#StandingRockSyllabus

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The NYC Stands with Standing Rock Collective contributors are:
Audra Simpson (Kahnawake Mohawk), Crystal Migwans (Anishnaabe of Wikwemikong Unceded), Elsa Hoover (Anishnaabe-kwe), Jamey Jesperson, Jaskiran Dhillon, Margaux L Kristjansson, Maria John, Matthew Chrisler, Paige West, Sandy Grande (Quechua), Sheehan Moore, Tamar Blickstein, and Teresa Montoya (Diné)

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Alyosha Goldstein, Cynthia Malone, Dean Saranillio, Jerry Jacka, Jessica Barnes, Karl Jacoby, Kim TallBear (Sisseton-Wahpeton Oyate), Manu Vimalassery, and Nick Estes (Lower Brule Sioux)

Preface

This syllabus project contributes to the already substantial work of the Sacred Stones Camp, Red Warrior Camp, and the Oceti Sakowin Camp to resist the construction of the Dakota Access Pipeline, which threatens traditional and treaty-guaranteed Great Sioux Nation territory. The Pipeline violates the Fort Laramie Treaty of 1868 and 1851 signed by the United States, as well as recent United States environmental regulations. The potentially 1,200-mile pipeline presents the same environmental and human dangers as the Keystone XL pipeline, and would transport hydraulically fractured (fracked) crude oil from the Bakken Oil Fields in North Dakota to connect with existing pipelines in Illinois. While the pipeline was originally planned upriver from the predominantly white border town of Bismarck, North Dakota, the new route passes immediately above the Standing Rock Sioux Reservation, crossing Lake Oahe, tributaries of Lake Sakakawea, the Missouri River twice, and the Mississippi River once. Now is the time to stand in solidarity with Standing Rock against catastrophic environmental damage.

The different sections and articles place what is happening now in a broader historical, political, economic, and social context going back over 500 years to the first expeditions of Columbus, the founding of the United States on institutionalized slavery, private property, and dispossession, and the rise of global carbon supply and demand. Indigenous peoples around the world have been on the frontlines of conflicts like Standing Rock for centuries. This syllabus brings together the work of Indigenous and allied activists and scholars: anthropologists, historians, environmental scientists, and legal scholars, all of whom contribute important insights into the conflicts between Indigenous sovereignty and resource extraction. While our primary goal is to stop the Dakota Access Pipeline, we recognize that Standing Rock is one frontline of many around the world. This syllabus can be a tool to access research usually kept behind paywalls, or a resource package for those unfamiliar with Indigenous histories and politics. Share, add, and discuss using the hashtag #StandingRockSyllabus on Facebook, Twitter, or other social media. Like those on frontlines, we are here for as long as it takes.

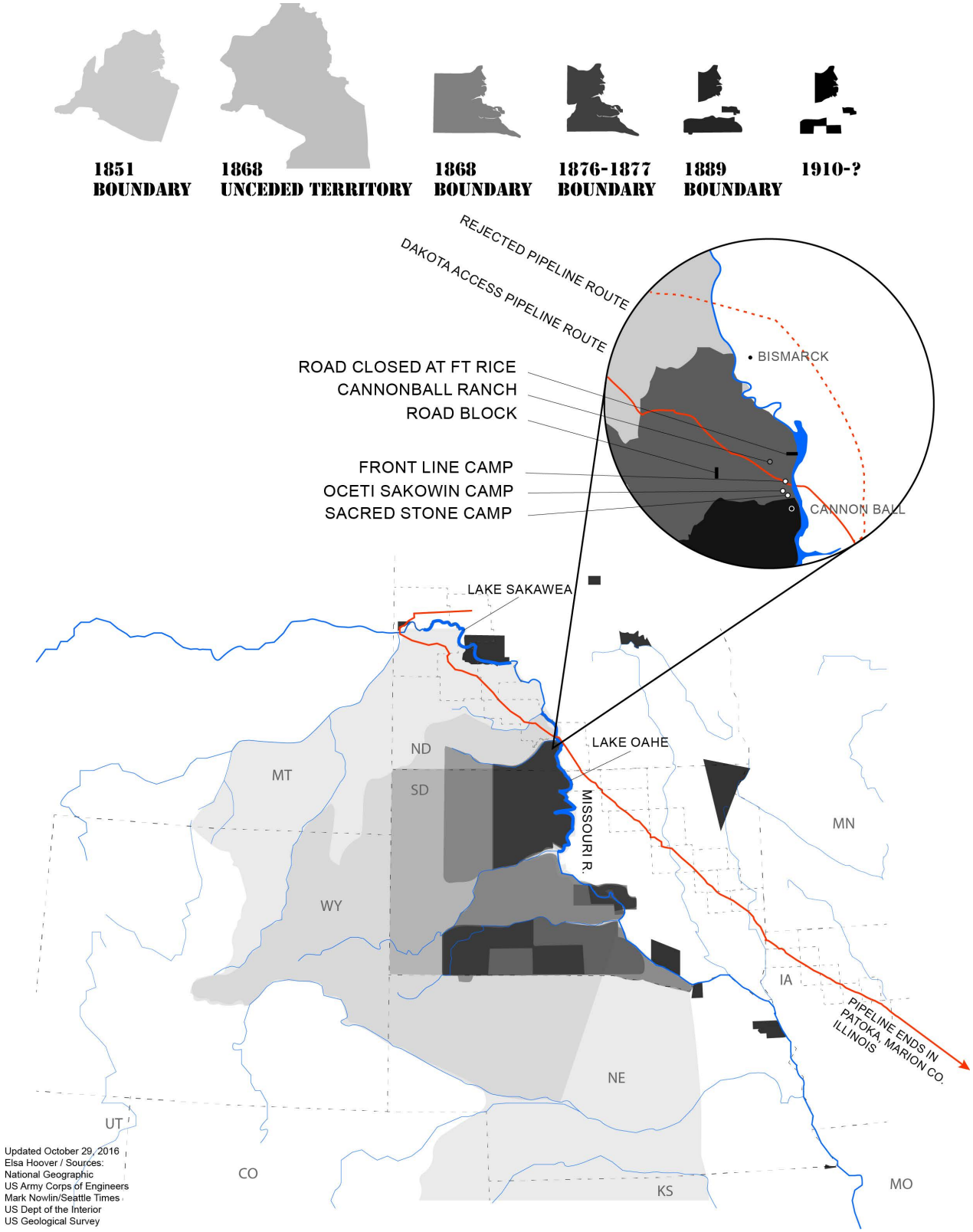
The NYC Stands for Standing Rock committee is a group of Indigenous scholars and activists, and settler/ PoC supporters. We belong and are responsible to a range of Indigenous peoples and nations, including Tlingit, Haudenosaunee, Secwepemc, St'at'imc, Creek (Muscogee), Anishinaabe, Peoria, Diné, Maya Kaqchikel, and Quechua. We have joined forces to support the Standing Rock Sioux in their continued assertion of sovereignty over their traditional territories. We welcome the support and participation of Indigenous peoples and allied environmental/community/social justice organizations in the New York area. If you can offer your organization's support, please email NYCnoDAPL@gmail.com to let us know how you would like to be involved. Connect with us on Twitter @NYCnoDAPL and our Facebook page, NYC Stands with Standing Rock.

—NYC Stands with Standing Rock Collective, Lenape territory, September 5, 2016

Key Terms

- Capitalism
- Dispossession
- Doctrine of Discovery
- Environmental racism
- Gender violence
- Indian Wars
- Indigenous
- Iŋyaŋ Wakháŋagapi Othí (Sacred Stone Camp)
- Manifest Destiny
- Neoliberalism
- Oceti Sakowin Oyate (Great Sioux Nation)
- Repatriation
- Residential schools
- Settler colonialism
- Sovereignty
- Treaty

Oceti Sakowin Oyate Territory and Treaty Boundaries



Timeline of United States settler colonialism

1492-1502 Columbus leads expeditions to the "New World," where he and his ships seeking a passage to trade ports in India establish colonies in the Antilles/Caribbean. In the pursuit of gold, Columbus and the colonists enslave and terrorize Indigenous inhabitants across the Antilles/Caribbean.

1493 Papal decrees establish that Catholic monarchs may claim the "New World" as part of their sovereign territory and dominion over peoples living there.

1500s-1888 Britain, Denmark, France, the Netherlands, Portugal, and Spain colonize the Antilles/Caribbean, Turtle Island/North America, and Central and Southern Americas. Indigenous peoples are enslaved and killed, but also resist, trade, and move in relation to European empires. European empires, the United States, and later independent Caribbean and Latin American states establish plantation economies relying on enslaved Black labor. Up to the abolishing of the slave trade, European empires capture and transport approximately 15 million Indigenous people from Africa, primarily to the Caribbean and Latin America. The capital generated by the slave trade and plantation economy fuels Europe's industrial revolution.

1676 British settlers in Virginia led by Nathaniel Bacon revolt against the Governor in order to drive out local Doeg (Algonquian) Indians. During the rebellion, indentured Europeans and enslaved Africans united, provoking elites to enact the strict Virginia Slave Codes in 1705 to divide the colonial labor force by the racial status of inheritable enslavement.

1763 Following France's loss of the Seven Years War/French and Indian War to Britain in 1763, Britain gains the Ohio territories around the Great Lakes region, and attempts to make Native peoples of those territories subjects of British rule. To forestall Native wars, Britain passes the 1763 Royal Proclamation, forbidding the purchase of Indian lands and British settlement past the Appalachian Mountains. Elite land speculators from Southern colonies, including George Washington and Thomas Jefferson, begin to build opposition to British rule.

1763-1766 A confederation of Native warriors from numerous tribes begin Pontiac's War against the British settlers and government, capturing military forts and taking back territory claimed by settlers. After two British military expeditions retake many of the forts, the fighting reaches a stalemate and the British government makes

concessions to end the conflict, though does not give up claim to the Ohio territories.

1776-1791 The American Revolution ends with independence from Britain, and the Constitution of the United States lays the foundation of the new government, including the enslavement of African-descendant peoples. The new government rejects the British Proclamation of 1763 as a basis for Indigenous sovereignty.

1787 United States Northwest Ordinance opens land for white settlement in allotments, provoking Indigenous resistance.

1791-1804 Toussaint L'ouverture leads the Haitian Revolution against French plantation rule, which ends in the establishment of Haiti as an independent republic.

1803 Thomas Jefferson approves the Louisiana Purchase, purchasing from France land west of the Mississippi River to the Rocky Mountains.

1804 Lewis and Clark venture into Oceti Sakowin territory on the Missouri River on an army expedition to map and expand United States territorial claims. After refusing to pay tribute for their passage, they are rebuffed by the Oceti Sakowin. The US explorers take hostage two headmen—Black Buffalo and Buffalo Medicine— to secure their passage on the river and label the Oceti Sakowin "the vilest miscreants of the savage race."

1812-1815 United States declares war with Britain in part to move beyond established western boundaries of the new nation-state. In the Northwest, Shawnee brothers Tecumseh and Tenskwatawa form a confederacy and ally with the British. The treaty of Ghent establishes firm borders between British Canada and the United States, ignoring Native land claims. The end of the war marks the last time a European or American state forms an alliance with a Native nation or confederacy.

1815 No longer checked by British competition, the United States begins removing Indians to western lands.

1816 Congress restricts licenses for trade with Indians to American citizens, effectively preventing foreign trade relations with European empires.

1823 The John Marshall Supreme Court, in its first decision on nation-to-nation relations with North American indigenous peoples, rules that "Indians had no right of soil as sovereign, independent states."

1824 The Bureau of Indian Affairs is created within War Department of the Executive Branch.

1831 The John Marshall Supreme Court issues a second decision that "Indian tribes" are "domestic dependent nations."

1832 The John Marshall Supreme Court issues a third decision that the United States federal government, through the commerce clause of the Constitution, had the authority to govern relations between indigenous nations and states.

1835 After the discovery of gold in Georgia, the state of Georgia pressures the Cherokee to move westward. The Treaty of New Echota provides the legal basis of Cherokee removal, though not approved by Cherokee National Council or Principal Chief.

1836-1839 The United States Army forcibly removes Cherokee along the "Trail of Tears."

1836-1840 A smallpox epidemic in the Missouri Basin carried by American fur traders spreads to the Blackfoot, Assiniboine, Arikara, Crow, and Pawnee.

1846-1848 The Mexican-American War and Treaty of Guadalupe Hidalgo ceded land east and north of the Rio Grande to the United States. Article XI of the Treaty stipulates that the United States must secure the new frontier lands against Indian raids, targeting Apache and Comanche who resisted both Mexican and United States expansion. Between 1850 and 1912 the Mexican Cession land is turned into ten new states.

1848 Gold discovered in California, settlers scramble West.

1849 Department of Interior is created and adopts the Bureau of Indian Affairs from the War Department.

1851 Treaty of Traverse des Sioux signed by the United States and the Dakota nations of what was Minnesota Territory. The treaty, although broken by the United States, stipulated Dakota peoples would live sedentary, agricultural lifestyles apart from white settlers and adopt Christianity in exchange for government rations and annuities for ceded lands.

1851 First Fort Laramie Treaty (the Horse Creek Treaty) signed by the United States and representatives of Arapaho, Arikara, Assiniboine, Cheyenne, Crow, Hidatsa, Mandan, and Sioux nations to guarantee safe passage of settlers to California in exchange for goods and services. Ten to fifteen thousand gathered in what is the largest gathering of Plains Nations in history. Many nations never receive payment from the United States. (See Map)

1852 California passes bounty law for Indian scalps, encouraging settlers to kill local indigenous people.

1861 The Civil War begins, leading to an increasing professionalization of the United States army. Native nations and forces fight for both the Union and Confederacy in order to preserve their lands and sovereignty.

1862 The Homestead Act opens 270 million acres of land west of the Mississippi for settlement. Settlers who lived on the land for five years, improved it, and filed an application were given ownership of the land.

1862 - 1864 Dakota frustrated by the lack of payments from the federal government, settler encroachments onto Dakota land, and other treaty violations begin the Great Sioux Uprising. Bands of Dakota attack settlers, and the United States Army is called in to protect them. United States military tribunals charge 303 Dakota of murder or rape of civilians and 38 Dakota men are sentenced to death in the largest penal execution in American history. The following year, the Bureau of Indian Affairs abolishes the Dakota reservation and forcibly moves the Dakota to Nebraska and South Dakota.

1863 The transcontinental railroad begins construction between Council Bluffs, Iowa and Sacramento, California – almost all of it on land controlled by Indigenous people.

1864 The Colorado Volunteer Cavalry destroy a Cheyenne and Arapaho village in Southern Colorado, killing more than a hundred, and display the maimed and disfigured bodies as trophies.

1864 Union Army Captain Kit Carson begins total war against the Navajo, destroying orchards, livestock, and Hogans. Carson forces the Navajo from eastern Arizona and western New Mexico to march 300 miles without aid to Fort Sumner/Bosque Redondo. There, they are interned with little support, vulnerable to weather and raids, until allowed to return to a portion of their homelands in 1868.

1865 The Civil War ends with surrender of the Confederacy. There is an increasing need for land as slavery becomes outlawed and migration to large Northern cities increases the national population. The 14th Amendment provides citizenship for Black and white people born within the United States.

1868 The Fort Laramie Treaty guarantees Sioux reservation land including the Black Hills, and hunting rights in Montana, Wyoming, and South Dakota. (See Map)

1871 The Indian Appropriation Act is passed with an amendment ending treaty making with Native nations – the United States moves to deal with Native nations as internal minorities rather than sovereign nations.

1876-1877 The Great Sioux War begins after gold is discovered in Black Hills and settlers rush to the area, prompting the United States Army to violate the 1868 Fort Laramie Treaty. Colonel Custer attacks Sioux and seizes the Black Hills. During the Battle of Greasy Grass (Little Bighorn), Lakota, Northern Cheyenne, and Arapaho forces kill Custer and a large portion of the U.S. 7th Cavalry.

1877 The United States Army is directed to kill buffalo, which are a threat to the railroad and cattle industries as well as a primary resource for Plains nations.

1877 The Black Hills Act (also known as "the Agreement of 1877," the "Sell or Starve Act," or the Indian Appropriations Act of 1876) cuts off government rations until the Oceti Sakowin cease hostilities and cede the Black Hills. The Black Hills were ceded but there is no record that the United States purchased the land.

1883 The United States Supreme Court rules in *Ex Parte Crow Dog* that, unless Congress authorizes it, federal courts have no jurisdiction over offenses tried at the tribal councils for Indian on Indian crimes. This decision began the plenary power doctrine used to limit Indigenous sovereignty (See 1885 Major Crimes Act).

1884 In *Elk v. Wilkins*, the United States Supreme Court holds the 14th Amendment's guarantee of citizenship to all persons born in the U.S. does not apply to Indians, even those born within geographic confines of U.S.

1885 The Major Crimes Act establishes major Indian on Indian crimes committed in Indian Country fall under federal jurisdiction and are prosecutable by federal courts. The initial seven were murder, manslaughter, rape, assault with intent to kill, arson, burglary, and theft of personal property. In addition, eight more were added, to

include kidnapping, maiming, sexual abuse, incest, assault with a dangerous weapon, assault against a minor, child abuse or neglect, and robbery.

1887 The Dawes Act grants the President authority to survey and divide Indian tribal reservation lands held in trust by the federal government and sell them to individual Indians. Those who accepted allotments and lived separately from tribes would be granted U.S. citizenship.

1889 United States violates the 1868 Fort Laramie Treaty by breaking up the Great Sioux Reservation into five smaller reservations, enforcing private property ownership, agriculture, and residential schools without adequate resources. (See Map)

1890 In response to the United States breaking up of the Great Sioux Reservation, Lakota Sioux take up the Ghost Dance. The Bureau of Indian Affairs calls in the Army, which assassinates Crazy Horse and Sitting Bull. A small band of Lakota is forced to camp outside Pine Ridge Reservation at Wounded Knee Creek, where the army attempts to disarm them. The U.S. army escalates a confrontation and kills 250 to 300 Lakota, mostly women and children.

1908 In *Winters v. United States*, the United States Supreme Court clarifies Indian reservation rights to water by ruling that Indian reservations have water use rights that cannot be blocked through water projects.

1921 Congress passes the Snyder Act, allowing appropriation of money for Indians (regardless of blood quantum/residence) under broad authority given to the Secretary of the Interior. This greatly expands funds for Indians by releasing the federal government from a strict adherence to treaty provisions.

1924 Indians are unilaterally made citizens of the United States, furthering the project of assimilating Native nations into the United States rather than recognizing their sovereignty.

1934 Indian Reorganization Act ends allotment and replaces traditional governance structures with Western, electoral system and tribal constitutions modeled after the United States Constitution.

1944 Indian Claims Commission is set up to settle outstanding claims against the United States. Generally viewed as the beginning of the termination era.

1944 Congress passes the Pick-Sloan Missouri Basin Plan, a massive water infrastructure project meant to increase hydropower, navigability, fishing and wildlife, and recreation along the Missouri River and its tributaries. In building these projects, the Army Corps of Engineers violates the Fort Laramie Treaties and Winters doctrine supporting the sovereignty of tribal lands, consultation, and access to water.

1944 National Congress of American Indians is established (Denver, Colorado) in anticipation of federal termination and assimilation policies in order to resist the elimination of tribal status.

1945 President Truman enters office and directs the Bureau of Indian Affairs to focus on termination and the assimilation of Indians into American Cold War society. From 1945-1960 the federal government terminates over 100 tribes and bands.

1948 Construction begins on the Lake Oahe dam for the Pick-Sloan Missouri Basin Program, and is completed in 1962. The Lake Oahe dam destroys more Native land than any other water project in the United States, and eliminates 90% of timber land on the Standing Rock Sioux and Cheyenne Sioux Reservations, along with grazing and agricultural land.

1949 The Hoover Commission recommends "termination" of Native reservations, and assimilation of Indians into American cities and society, reversing the Roosevelt New Deal policies and returning to 19th century politics of assimilation.

1952 House Joint Resolution 698 establishes criteria and guidelines for the termination of trustee status of Indian tribes and reservations. This is followed by several standalone termination resolutions, some of which immediately terminated dozens of tribes.

1953 Public Law 280 moves authority and jurisdiction over tribal lands and resources from the Bureau of Indian Affairs to the states in which tribes and reserves are located.

1961 Over 200 tribes gather in Chicago at the American Indian Chicago Conference. The Declaration of Indian Purpose is drafted for submission to Congress.

1961 From the Chicago Conference, the National Indian Youth Council is formed in Gallup, New Mexico, beginning the Red Power Movement.

1968 Congress passes the American Indian Civil Rights Act (loosely modeled on the protection the U.S. Constitution provides against state and local governments). It provides individual Indians with some statutory protection against their tribal governments.

1969 Occupation of Alcatraz by American Indian Movement to reclaim traditional land. Simultaneously, sit-ins are staged at the offices of the BIA.

1960s-1970s Creation of tribal colleges.

1970 In a special message to Congress on Indian Affairs, President Richard Nixon calls for the repeal of termination laws and the inauguration of the era of self-determination through self-help and community programming.

1971 The Alaska Natives Claims Settlement Act is passed. This saw 90% of Alaska Natives' land claims exchanged for a guarantee of 44 million acres and $1 billion.

1972 Trail of Broken Treaties Caravan. Several Indigenous-led groups (close to 200 Indians in total) began caravanning from the West coast to Washington D.C. to present President Nixon with a 20-point position paper demanding the United States respect the sovereignty of Indian nations. After Nixon refuses to meet with the Caravan, they occupy the Bureau of Indian Affair headquarters for a week until Nixon aides agreed to treaty negotiations.

1973 Wounded Knee Occupation. Oglala Lakota and American Indian Movement members occupy the town of Wounded Knee in the Pine Ridge Indian Reservation to protest against the corrupt reserve governance structure. The Occupation lasts for 71 days and calls for re-establishment of United States treaty obligations and nation-to-nation relations with Indian nations in the United States. AIM member Leonard Peltier is held in federal prison for the murder of two FBI agents despite evidence that his trial was unconstitutional and unfair.

1974 First meeting of the International Indian Treaty Council, the international arm of AIM, meets in Standing Rock Indian Reservation. More than 2000 people from 90 Indigenous Nations attend and issue "The Declaration for Continuing Independence."

1975 The Indian Self-Determination and Education Act is passed. Tribal governments get more control over their tribal affairs and can appropriate more funds for education.

1978 In *Oliphant v. Squamish Indian Tribe*, the United States Supreme Court reverses lower court decisions and decides that Indian tribes do not have jurisdiction over non-Natives on tribal or reservation land.

1980 U.S. government rules that the U.S. illegally seized the Black Hills in 1877, and offers $15.5 million (1877 price of the land) plus $105 million (5% interest on the land over 103 years). The Lakota refuse and demand return of land from the United States.

1980 The Penobscots and Passamaquoddies accept monetary compensation from the US Government for their lands (now the state of Maine), which the Massachusetts government took illegally in 1970.

1986 Congress amends the Indian Civil Rights Act and grants tribal courts the power to impose criminal penalties.

1988 Congress officially repeals the Termination Policy.

1993 Ada Deer is appointed Assistant Secretary for Indian Affairs by President Bill Clinton. She is the first Indian woman to hold the position.

1994 Three hundred representatives from the 556 federally recognized tribes meet with President Bill Clinton. This is the first time since 1822 that Indians have been invited to officially meet with a US President to discuss Indian affairs.

1994 The Violence Against Women Act is passed, which does not have provisions for tribal prosecution of domestic and sexual crimes against Native women by non-Native men.

1996 The University of Arizona creates the first PhD program in American Indian Studies.

1998 Four thousand Alaska Natives march in Anchorage in protest of Alaska legislative and legal attacks on tribal governments and Native hunting and fishing traditions.

1998 President Clinton issues Executive Order No.13084 (“Consultation and Coordination with Indian Tribal Governments”). This pledges that the federal government will establish and uphold meaningful consultation and collaboration

with Indian tribal governments in matters that will significantly impact their communities.

1998 The Makah Nation of Washington State renews its traditional practice of whaling after a respite of seventy years, despite protests from many environmentalists and other groups.

1999 President Clinton visits the Pine Ridge Sioux Reservation in South Dakota. He is the first sitting President since Calvin Coolidge in 1927 to make an official visit to an Indian Reservation.

2000 The United States Supreme Court declines to review a religious freedom case centering around the use of Devils Tower in Wyoming, a sacred site to several Indian nations. This decision upholds a federal court ruling that supported the religious rights of Indians against challenges from recreational rock climbers.

2002 In a blow to the Makah Nation, the 9th U.S. Circuit Court of Appeals rules in Anderson v. Evans, in a case brought by animal advocacy groups, that the government had violated the National Environmental Policy Act by failing to prepare an environmental impact statement prior to approving the whaling quota and also held that the Marine Mammal Protection Act applied to the tribe's proposed whale hunt.

2002 President Bush signs an executive order reaffirming the federal government's commitment to tribally-controlled colleges and universities.

2004 In *United States v. Lara* the Supreme Court holds that tribal courts had the inherent sovereign power to criminally prosecute nonmember Indians and that such power did not violate the U.S. Constitution's Fifth Amendment double jeopardy clause.

2004 In *Boneshirt v. Hazeltine*, a Federal district court rules that South Dakota violated the 1965 federal Voting Rights Act when it approved a statewide redistricting plan that had the effect of diluting the voting power of Indians in two districts.

2006 Congress enacts the Esther Martinez Native American Languages Preservation Act of 2006 (PL 109-394) to ensure the survival and continuing vitality of Native American languages.

2007 The United Nations adopts the Declaration on the Rights of Indigenous Peoples. The United States, Canada, New Zealand, and Australia vote against the Declaration's adoption.

2008 The Supreme Court in *Plains Commerce Bank v. Long Family Land and Cattle Company Inc*. holds that tribal courts lack jurisdiction to decide a discrimination claim concerning a non-Indian bank's sake of fee land that it owned within a reservation.

2009 President Obama signs a presidential memorandum seeking to renew and enhance the spirit of tribal consultation and collaboration previously outlined by the Clinton administration.

2010 The North Dakota Supreme Court supports a Board of Higher Education decision to retire the University of North Dakota's Fighting Sioux nickname and logo.

2012 HEARTH Act allows tribal governments to approve leasing of tribal lands: The Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (the HEARTH Act) creates a voluntary, alternative land leasing process available to tribes by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. Sec. 415.

2012 The Oglala Sioux Tribe of South Dakota sued some of the world's largest beer makers for $500 million claiming they knowingly contributed to alcohol-related problems on the Pine Ridge Indian Reservation.

2013 The Violence Against Women Act is reauthorized, and includes provisions where tribal governments may prosecute non-Natives, but only those who are accused of sexual or domestic violence against Natives with whom they have intimate relationships or other close ties. The legislation excludes Alaska Natives.

2013 Members of Congress took part in a ceremony bestowing the Congressional Gold Medal to honor 33 tribes for their WWI and WWII contributions as code talkers.

2014 President Obama speaks at the Standing Rock Sioux Reservation in North Dakota promoting the need to help reservations create jobs. At the time, some 63% of able workers at Standing Rock were unemployed on the 2.3 million-acre reservation, which is home to some 850 residents.

2015 In February, the US Army Corps of Engineers (USACE), the federal government body in charge of the nation's waterways, initiates the Dakota Access Pipeline Project. By December, The Corps publishes an environmental assessment stating that "the Standing Rock THPO had indicated to DAPL that the Lake Oahu site avoided impacts to tribally significant sites." The Corps eventually receives critical letters on the assessment from the Environmental Protection Agency, the US Department of Interior, and the American Council on Historical Preservation (ACHP). Other tribes whose ancestral lands are slated to be crossed by the pipeline voice their concerns in solidarity with Standing Rock, including the Osage Nation and Iowa Tribe THPO, who wrote to the ACHP: "We have not been consulted in an appropriate manner about the presence of traditional cultural properties, sites, or landscapes vital to our identity and spiritual well-being."

2016 In August, the Standing Rock Sioux, represented by Earthjustice, file an injunction, suing the Army Corps of Engineers. Eleven days later, Energy Transfer Partners, the parent company of Dakota Access LLC, sues the Standing Rock Sioux chairman and other tribal members for blocking construction.

Readings

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Statements of Support

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Concerned Faculty
Columbia University
116th & Broadway
New York, NY 10027

Chairman Dave Archambault II
Standing Rock Sioux Tribe
Building 1 North Standing Rock Avenue
Fort Yates, ND 58530

September 4, 2016

A Statement of Support for the Standing Rock Sioux Tribe

We the faculty of Columbia University stand in peaceful and politicized solidarity with Chairman Dave Archambault II, tribal members of the Standing Rock Sioux Tribe, and their allies against the construction of the Dakota Access Pipeline, a project of Dallas-based Energy Transfer Partners. This project is not only a violation of treaty rights, but federal law. Although federal law requires The Army Corps of Engineers to consult with the tribe about its sovereign interests, construction began without meaningful consultation. The Army Corps of Engineers disregarded the concerns outlined by the tribe and issued permits to Dakota Access LLC to dig under the Missouri River. Such a move signals the US government's ongoing disregard for tribal nations and their communities—a relationship that has been marked by genocide and structural injustice since the violent founding of the United States—in favor of corporate interests and profit. This is, and has always been, entirely unacceptable.

The Dakota Access Pipeline is an imminent threat to those living on the Standing Rock Sioux Reservation, as well as those who live near the pipeline and rely on water from the Missouri River. The pipeline is a dangerous, grave risk to a primary water source and would be an environmental assault on the community if a spill were to occur. Energy Transfer Partners has

assured the people of Standing Rock that the pipeline would be closely monitored, but given the historical relations between Indigenous peoples and the United States, the tribe has little faith that their safety and interests will be upheld. The record on spillage is bleak. In 2012-2013, there were 300 oil pipeline breaks in North Dakota alone. The pipeline will also disturb burial grounds and sacred sites on the tribe's ancestral treaty lands—its proposal marks violation on multiple fronts.

As a collective of scholars, some of whom come from and/or work alongside Indigenous communities, we understand the stakes associated with the propagation of US colonial interests; interests that place the extraction of fossil fuels over a fundamental right to access clean water and a desire to preserve and protect the planet. The Standing Rock Sioux Tribe are not just fighting for their own existence, but for those who are unable to do so and for all the future generations that follow.

Construction of the Dakota Access Pipeline has been temporarily halted, due to the resistance efforts at Standing Rock (and pending a US federal court decision to be released on September 9th, 2016), but we know this fight is far from being over. The faculty of Columbia University will continue to stand with Chairman Archambault, the tribal members, and their allies who are heroically holding the line to stop the pipeline construction. This fight is the fight of all Native peoples and their allies struggling against the imposition of neoliberal development projects that continue to harm humans and homelands alike.

Sincerely,

Audra Simpson, Associate Professor, Department of Anthropology
Paige West, Professor, Department of Anthropology
Elizabeth Povinelli, Franz Boas Professor, Anthropology
John Pemberton, Associate Professor, Anthropology
Marilyn Ivy, Associate Professor, Anthropology
Nan Rothschild, Professor, Dept of Anthropology
Jean E. Howard, Department of English and Comparative Literature
Joseph Massad, Professor, Department of Middle Eastern, South Asian, and African Studies
Sheldon Pollock, Department of Middle Eastern, South Asian, and African Studies
Steven Gregory, Professor, Department of Anthropology and the Institute for Research in African American Studies
Rosalind Morris, Professor, Department of Anthropology
Gayatri Chakravorty Spivak, University Professor
Lila Abu-Lughod, Joseph L. Buttenweiser Professor of Social Science, Department of Anthropology

Gray Tuttle, Leila Hadley Luce Associate Professor of Modern Tibet, Department of East Asian Languages And Cultures Wael Hallaq, Avalon Foundation Professor in the Humanities, MESAAS
Mae Ngai, Lung Family Professor of Asian American Studies and Professor of History
Allison Busch, Associate Professor, Department of Middle Eastern, South Asian, and African Studies Courtney Bender, Professor, Department of Religion
Gregory Mann, Professor, History Department Felicity D Scott, Associate Professor, GSAPP
James Schamus, Professor of Professional Practice, School of the Arts
Timothy Mitchell, Professor, MESAAS
Elsa Stamatopoulou, Director, Indigenous Peoples' Rights Program, Institute for the Study of Human Rights/Center for the Study of Ethnicity and Race/Anthropology.
Kellie Jones, Associate Professor, Art History and Archaeology
J. Blake Turner, Assistant Professor of Social Science (in Psychiatry) at CUMC
Wayne Proudfoot, Professor, Department of Religion
Patricia Dailey, Associate Professor, English and Comparative Literature, Director, Institute for Research on Women, Gender, and Sexuality
Natasha Lightfoot, Associate Professor, Department of History
Carole S. Vance, Professor, Department of Anthropology
E. Valentine Daniel, Professor, Department of Anthropology
Kevin Fellezs, Assistant Professor, Music
Ben Orlove, Professor, International and Public Affairs, Earth Institute.
Karl Jacoby, Professor, History
Marie Lee, Adjunct Professor, Creative Writing
Mabel O. Wilson, Professor, Architecture
Deborah Paredez, Associate Professor of Professional Practice, School of the Arts & Center for the Study of Ethnicity and Race
Claudio Lomnitz, Professor, Department of Anthropology.
J.C. Salyer, Term Assistant Professor of Practice, Sociology
Vanessa Agard-Jones, Assistant Professor, Department of Anthropology
Naor Ben-Yehoyada, Assistant Professor, Department of Anthropology
Brinkley Messick, Professor, Department of Anthropology
Andrew J. Nathan, Professor, Department of Political Science
Aaron Fox, Associate Professor, Department of Music
Catherine Fennell, Associate Professor, Department of Anthropology
Ellie M. Hisama, Professor, Department of Music
Bruce Robbins, Professor, department of English and Comparative Literature
Mick Taussig, Professor, Department of Anthropology
Neferti Tadiar, Professor, Women's, Gender, and Sexuality
E. Mara Green, Assistant Professor, Anthropology
Yvette Christiansë, Professor, English & Africana Studies
Celia E. Naylor, Associate Professor, Africana Studies and History

Deborah R. Coen, Professor, History
Manu Vimalassery, Term Assistant Professor, American Studies
Severin Fowles, Associate Professor, Department of Anthropology
Kaiama L. Glover, French and Africana Studies
Kim F. Hall, Lucyle Hook Professor of English, Professor of Africana Studies
Nicholas Bartlett, Assistant Professor, Asian and Middle Eastern Cultures
Lisa Tiersten, Professor, History
Elizabeth Hutchinson, Associate Professor, Art History and American Studies
Alex Pittman, Term Assistant Professor, Women's, Gender, and Sexuality
Rosalyn Deutsche, Art History
Monica L. Miller, Associate Professor of English and Africana Studies
Deborah Valenze, Ann Whitney Olin Professor of History
Debra Minkoff, Miriam Scharfman Zadek Family Professor of Sociology
Alexander Alberro, Professor, Art History
Najam Haider, Assistant Professor, Religion
Maja Horn, Associate Professor, Spanish and Latin American Cultures

Global Studies
66 West 12th Street
New York, NY 10011
newschool.edu
nsglobal.info

Chairman Dave Archambault II
Standing Rock Sioux Tribe
Building 1 North Standing Rock Avenue
Fort Yates, ND 58530

September 12th, 2016

A Statement of Support for the Standing Rock Sioux Tribe

We the faculty of The New School stand in peaceful and politicized solidarity with Chairman Dave Archambault II, tribal members of the Standing Rock Sioux Tribe, and their allies against the construction of the Dakota Access Pipeline, a project of Dallas-based Energy Transfer Partners. This project is not only a violation of treaty rights, but federal law. Although federal law requires The Army Corps of Engineers to consult with the tribe about its sovereign interests, construction began without meaningful consultation. The Army Corps of Engineers disregarded the concerns outlined by the tribe and issued permits to Dakota Access LLC to dig under the Missouri River. Such a move signals the US government's ongoing disregard for tribal nations and their communities—a relationship that has been marked by genocide and structural injustice since the violent founding of the United States—in favor of corporate interests and profit. This is, and has always been, entirely unacceptable.

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As a collective of scholars, some of whom come from and/or work alongside Indigenous communities, we understand the stakes associated with the propagation of US colonial interests; interests that place the extraction of fossil fuels over a fundamental right to access clean water and a desire to preserve and protect the planet. The Standing Rock Sioux Tribe are not just fighting for their own existence, but for those who are unable to do so and for all the future generations that follow.

Even though the construction of the Dakota Access Pipeline may be temporarily halted (and this remains to be seen), due to the massive resistance efforts at Standing Rock, we know this fight is far from being over. The faculty of The New School will continue to stand with Chairman Archambault, the tribal members, and their allies who are heroically holding the line to stop the pipeline construction. This fight is the fight of all Native peoples and their allies struggling against the imposition of neoliberal development projects that continue to harm humans and homelands alike.

Sincerely,

Jaskiran Dhillon, Global Studies and Anthropology
Jonathan Bach, Global Studies
Laura Liu, Global Studies
Alexandra Délano, Global Studies
Gustav Peebles, Global Studies

Joined by:
Miriam Ticktin, Anthropology
Erica Kohl-Arenas, Non-Profit Management
Rachel Sherman, Sociology
Rachel Heiman, Anthropology
Kendra Danowski, Civic Engagement & Social Justice
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Radhika Subramaniam,

Parsons School of Design
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Concerned Faculty, Staff, and Graduate Students
Stony Brook University
Stony Brook, NY 11794

Standing Rock Sioux Chairman Dave Archambault II
Standing Rock Sioux Tribe
Building 1 North Standing Rock Avenue
Fort Yates, ND 58530

September 15, 2016

A Statement of Support for the Standing Rock Sioux Tribe

We, the undersigned Stony Brook University (SUNY) faculty, staff, and graduate students stand in solidarity with the sovereign Oceti Sakowin Oyate (the Great Sioux Nation), the Standing Rock Sioux Tribe, and the many other tribal nations and Native and Indigenous peoples in strongly opposing the construction of the Dakota Access Pipeline.

The construction of the oil pipeline, stretching across Standing Rock Sioux lands on its 1,172mile path from North Dakota to Illinois, crosses the sacred ancestral lands of the Standing Rock Sioux Tribe and the Missouri River–a major source of water for the Tribe. This pipeline violates historic treaties between Oceti Sakowin and the United States, and also violates terms of the National Environmental Policy Act, the National Historic Preservation Act, as well as the collective human rights of the Standing Rock Sioux Tribe and its people. The US Army Corps of Engineers did not consult with the tribal government or affected communities before granting permits and allowing construction to begin.

The Standing Rock Sioux Tribe filed a preliminary injunction to cease construction of the pipeline, but a US District Court ruled against them on Friday, September 9th. The Justice, the Army, and the Interior issued a joint statement after the decision to halt construction on part of the pipeline at the Missouri River Crossing for further study. This is a temporary victory and

can be directly attributed to the resistance efforts by the Standing Rock Sioux, together with other tribes and allies in the US and beyond its borders. A camp has been set up to block construction, and despite the intense militarization of the area, there are plans to keep the mobilization going until the US Government respects the rights and desires of the Standing Rock Sioux Tribe. We state our support with them and call for the respect of the sovereign rights of the Oceti Sakowin and the Standing Rock Sioux Tribe, and for the permanent halt to the construction of the Dakota Access Pipeline.

Signed,

Melissa M. Forbis, Women's, Gender, and Sexuality Studies and Sociology
Joseph M. Pierce, Hispanic Languages and Literature

Joined By:
Ritch Calvin, Women's Gender, and Sexuality Studies
Joy C. Schaefer, Cultural Studies and Comparative Literature
Laura James, English
Joie Meier, Women's, Gender and Sexuality Studies
Shruti Mukherjee, Women's, Gender, and Sexuality Studies
Stephanie Bonvissuto, Women's, Gender, and Sexuality Studies
Sofia Varino, Cultural Studies and Comparative Literature
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Ryan Minor, Music Erika Honisch, Music
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Behnaz Varamini, Hispanic Languages and Literature
Karen Wishnia, Art
Daniel A. Weymouth, Music
Kathleen Vernon, Hispanic Languages and Literature
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CONNECTICUT COLLEGE

The Center for Comparative Study of Race and Ethnicity
Campus Box 5266
270 Mohegon Avenue
New London, CT 06320

Chairman Dave Archambault Il
Standing Rock Sioux Tribe
Building 1 North Standing Rock Ave
Fort Yates, ND 58530

September 17, 2016

A Statement of Support for the Standing Rock Sioux Tribe

Dear Chairman Archambault,

The Center for the Comparative Study of Race and Ethnicity (CCSRE) and allied faculty, staff, and students stand in solidarity with you, the tribal citizens of the Standing Rock Sioux Tribe, Oceti Sakowin and allies against the construction of the Dakota Access Pipeline. This pipeline, a project of the Dallas-based Energy 'Fransfcr Partners, was approved by the Army Corps of Engineers without proper consultation, as is required by federal law. As such, we understand that it is not only in violation of treaty rights, federal law, and human rights but also an infringement of Articles 25, 28, 32, 38, and 40 of the United Nations Declarauon on the Rights of Indigenous Peoples (UNDRIP).

We recognize that the Dakota Access pipeline poses an imrninent threat to those living on the Standing Rock Sioux Reservation and others who rely on the Missouri River. And that it will also disturb burial grounds and sacred sites on the Tribe's ancestral Treaty lands. As such, the CCSRE and our albes stand With you, the tribal citizens of the Standing Rock Sioux Tribe, and

all the water protectors assembled at the Sacred Stone and Red Warrior Camps who are heroically holding the line to stop the pipeline construction. Your fight is a fight shared by other Native peoples struggling against destructive development projects that not only threaten Indigenous lifeways but also the well being of the earth and all of its inhabitants. Any threats to water are threats to life itself.

With respect,
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Theodore Hendrickson, Associate Professor of Art
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David Canton, Director of the Africana Studies Program
Michelle Dunlap, Professor of Human Development
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Mab Segrest, Professor Emeritus of Gender and Women's Studies
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Siri Colom, C.3 Postdoctoral Fellow, Environmental Studies
Nadav Assor, Assistant Professor of Expanded Media, Studio Art Department
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Dana Wright, Associate Professor of Education

BINGHAMTON
UNIVERSITY
STATE UNIVERSITY OF NEW YORK

Harpur College of Arts and Sciences
Department of English, General Literature and Rhetoric
PO Box 6000
Binghamton, New York 13902-6000
607-777-2168, Fax: 607-777-2408

October 5, 2016

Chairman Dave Archambault II
Standing Rock Sioux Tribe
Building 1 North Standing Rock Avenue
Fort Yates, ND 58530

A Statement of Support for the Standing Rock Sioux Tribe

We, the undersigned faculty of Binghamton University in the great state of New York, stand in peaceful solidarity with the Standing Rock tribe and their allies against the construction of the Dakota Access Pipeline. Binghamton University as an institution is deeply committed to sustainable communities and energy forms. We applaud the leadership of LaDonna Brave Bull Allard, tribal Chairman Dave Archambault, the Water Protectors, and many others in their fight for clean water for the tribe and surrounding communities.

The Dakota Access Pipeline, a project of Dallas-based Energy Transfer Partners, violates federal law, treaty rights, and tribal sovereignty. It also presents an imminent danger to the water supply of the tribe. A potential leak would be an environmental disaster for millions more who depend on the water of the Missouri River. Such leaks occur regularly in oil pipelines across the nation. Louisiana and Alabama are currently in a State of Emergency due to pipeline spills and 300 pipeline breaks occurred in North Dakota in 2012-2013 alone. Finally, the tribe has documented that construction will destroy sacred sites and burial grounds. More than 1200 archeologists, museum directors, and other specialists have condemned such wanton destruction of invaluable cultural heritage.

As our colleagues at SUNY Stony Brook have noted, "the construction of the oil pipeline, stretching across Standing Rock Sioux lands on its 1,172 mile path from North Dakota to Illinois, crosses the sacred ancestral lands of the Standing Rock Sioux Tribe and the Missouri River—a major source of water for the Tribe. This pipeline violates historic treaties between Oceti Sakowin and the United States. It also violates terms of the National Environmental Policy Act, the National Historic Preservation Act, as well as the collective human rights of the Standing Rock Sioux Tribe and its people. The US Army Corps of Engineers did not consult with the tribal

government or affected communities before granting permits and allowing construction to begin." Furthermore, private security companies have unleashed attack dogs on peaceful protectors, injuring many including a pregnant woman and a child who was bit in the face. This is neither honorable nor just.

As a collective of scholars deeply committed to innovation and visionary thinking towards new sustainable futures, we stand with Standing Rock. Rather than continue to invest in damaging fossil fuels, we believe in pursuing a future of clean and sustainable energy. We also support the sovereign rights of the aboriginal peoples of the Americas and join the United Nations, Columbia University, the New School, and our colleagues at SUNY Stony Brook in calling for the Standing Rock Sioux to have a say in construction that crosses their treaty territory, threatens their water and their sacred sites, and imperils the entire region. Because of the actions of the tribe and allies thus far, construction has been temporarily halted while the courts and the US government investigates the process and impact further.

In support of the sovereign rights of the Standing Rock Sioux Tribe and the Oceti Sakowin, we join the Protectors in calling for a permanent halt to construction of the Dakota Access Pipeline and a collective commitment to honor indigenous rights and find alternative sources of energy to sustain the environment on which we all depend.

With gratitude for your leadership we join you in affirming that Mni Wiconi, Water is Life.

Signed,

Birgit Brander Rasmussen
Department of English, General Languages, and Rhetoric
Citizenship, Rights, and Cultural Belonging Transdisciplinary Area of Excellence

Susan Strehle
Dean of Graduate School
Distinguished Professor, English Department

Al Vos
Collegiate Professor of Hinman College
Associate Professor of English

Olivia Holmes
Professor of English and Medieval Studies
Editor, *Mediaevalia*
Binghamton University (SUNY)

J. Koji Lum
Professor of Anthropology and Bio Sci
Binghamton University

Michael West
Professor and Chair of Sociology

Elizabeth Tucker
Distinguished Service Professor of English, Binghamton University
Past President, International Society for Contemporary Legend Research

Juanita Diaz-Cotto
Professor of Sociology
Latin American & Caribbean Studies
Women Gender & Sexuality Studies

Joseph Keith
Chair, English Department
Associate Professor

Praseeda Gopinath
Director of Graduate Studies
Associate Professor
Department of English

Monika Mehta
Associate Professor and Undergraduate Director
Department of English

Robyn Cope, Ph.D.
Assistant Professor of French
Department of Romance Languages and Literatures

Ana Candela
Assistant Professor
Department of Sociology

Bridget Whearty
Assistant Professor
Department of English, Rhetoric, and General Literature

Jessie Reeder
Assistant Professor
Department of English

Louisa Holmes
Assistant Professor
Department of Geography

Meisha T. Lohmann
Adjunct
Department of English

Maria Chaves
Doctoral Student

Tim Lavis
Doctoral Candidate, Binghamton University
Department of English, General Literature and Rhetoric

Alexa Dicken
MA, Ph.D. Candidate

Kendall Geed
Graduate Student
Department of English
Institute for Child Development

Rachel Kaufman
Lecturer
Writing, Ithaca College
Women's and Gender Studies, Elmira College
Women's, Gender, and Sexuality Studies & English, SUNY Binghamton
PhD Candidate
Department of English, General Literature, and Rhetoric

Joseph Weil
Ph.D. Student

Danielle Schwartz
Ph.D. Student

Elizabeth Macaluso
Ph.D. Student

Kellam Throgmorton
Ph.D. Student
Department of Anthropology

Meisha Lohmann
Ph.D. Student

Joshua Lindenbaum
Ph.D. Student

Basics of Settler Colonialism

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periodico di filosofia politica e studi sociali

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renza della nerezza aborigena, significante la non-umanità (eliminabile) degli indigeni australiani, la nerezza costruita durante la schiavitù legittimava lo sfruttamento (imprescindibile) degli schiavi e allo stesso tempo stabiliva una non-umanità "indispensabile" (il non-detto della Carta costituzionale degli Stati Uniti d'America) alla fondazione sia dell'umanità esclusiva del colono-cittadino americano sia dell'egemonia culturale bianca.

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Settler Colonialism Then and Now

A conversation between J. Kēhaulani Kauanui and Patrick Wolfe[1]

Abstract

This conversation originated in a radio interview of Patrick Wolfe conducted by J. Kēhaulani Kauanui on her public affairs show, «Indigenous Politics: From Native New England and Beyond» from July 13, 2010. The article is an expanded version of that interview, updated to reflect our ongoing dialogue. Kauanui invites Wolfe to lay out the central features of his approach to settler colonialism, which he views as a project of eliminating and replacing Native societies on their land. Mindful of the approach's implications for both activism and scholarship, Kauanui guides the conversation through such key issues as: Settler colonialism's cultural logic of elimination – how is it defined and what are its various modalities (ethnic cleansing, spatial confinement, blood quantum, etc)? Who is a settler – are enslaved and/or indentured people settlers? What is the difference between colonies with settlers (Algeria, South Africa, etc) and settler colonies (Australia, Hawai'i, Palestine, the USA, etc)? What uses does this approach have for the campaign to liberate Palestine from Zionism (especially BDS)?

Keywords: settler colonialism; logic of elimination; Palestine; comparative colonial studies; blood quanta.

J. Kēhaulani Kauanui: Aloha. Before we dive in, I want to ask if you'd be willing to share a bit about your personal and professional background.

[1] This conversation has its origins in a radio interview of Patrick Wolfe conducted by J. Kēhaulani Kauanui on her public affairs show, "Indigenous Politics: From Native New England and Beyond", from July 13, 2010. What appears here is an expanded version that is updated to reflect our ongoing dialogue into 2012.

J. Kēhaulani Kauanui, Center for the Americas, Wesleyan University, Middletown, CT 06459 – jkauanui@wesleyan.edu.
Patrick Wolfe, Faculty of Humanities and Social Sciences, School of Historical and European Studies , DMB E126, Melbourne (Bundoora) – patrick.wolfe@latrobe.edu.au.

Patrick Wolfe: Yes, certainly, I'm a professional working academic, I'm afraid. I set up the teaching of Koori history – that's Indigenous southeast Australian history – at the University of Melbourne and introduced elders being paid proper money to give lectures. I gave up after a few years because I'm a Gubbah – a White guy – and it seemed wrong to me that a White guy should be teaching Aboriginal history when there weren't any Aboriginal people also teaching it. I don't mind White guys teaching it so long as they're not the only one.

So I left that, and I'm glad to say that the University of Melbourne Aboriginal history section subsequently thrived quite well. I've since written about a lot of comparative Indigenous issues, partly because of the experience of teaching Koori history in Melbourne – there's a lot of American students there because exchange students tend to look for something they can't do at home. The University of Melbourne offers very few things you can't do in California. Koori History – that's one thing you can't do even in San Francisco. So I used to get a disproportionately large number of U.S. students and when I'd say to them: «Why are you doing this course? – Where is your interest in Aboriginal history coming from?», ninety-five percent of them, even the Black ones, would say: «Well, I'm interested in civil rights and maybe doing some kind of work with Black groups and I wanted to come and do some work with Black groups in Australia».

To which I would say: «Yeah, but how about Indigenous people? – How about Native Americans? That's the parallel. Just because Aboriginal Australians are called Black – that's just some kind of shared name, misleadingly bracketing them together on the basis of skin color. The real parallel is dispossessed Indigenous people, you know about them? Where's your interest there?». And their eyes would glaze over and they'd say: «Well, I don't think I ever met one», to which I'd say: «Well probably not knowingly, but I bet you have». And it would go from there.

So that led me to think that there's more to this than – when I say "just", I don't mean in a belittling way – there's more to this than just Indigenous history in southeast Australia. There's a whole thing going on here around Indigenous politics and the consequences of invasion and dispossession and genocide and it's not limited to Australia. I wanted to see what we can say that's universal about Indigenous dispossession everywhere and what's particular to local situations.

JKK: "Black" is a term used to describe Indigenous peoples in Australia and that comes out of a British colonial history, right?

PW: I wouldn't like to say it only comes out of a British colonial history, because Indigenous people in Australia very happily call themselves Black. If you go to a party – on occasions I've been to a party where I've been the only non-Indigenous, Gubbah person – and they call it a "Black Out". Kooris call themselves Blackfellas, and we're Whitefellas. No doubt it also came out of some kind of colonial background but it's been taken over and made their own by Indigenous people for their own ends and for their own identity purposes.

JKK: I know from time that I've spent in graduate school in Aotearoa/New Zealand, at the University of Auckland, Maori also now self-identity, or did more strongly in an earlier period in the seventies and eighties, as Blacks. And you mention *Gubbah* or Whitefella. In terms of you self-identifying that way, that is really unusual for a lot of White men. Could you speak a little bit more to that in terms of that self-identification and that acknowledgment, especially in the midst of Indigenous peoples?

PW: I am an Australian settler. That doesn't mean that I have voluntarily dispossessed anybody, it doesn't mean that I've stolen anybody's child, it doesn't mean that I've participated in any massacres – it's not about my individual consciousness and free will. In terms of my individual free will, I'm a reluctant settler. I would rather not be existing on somebody else's stolen land. But the fact of the matter is that I wouldn't have had a university job if Indigenous people hadn't had their land stolen from them in Australia.

So, in a structural sense, in terms of the history that has put me where I am and Indigenous people where they are, my individual consciousness, my personal attitude has got nothing to do with this. I am a beneficiary and a legatee of the dispossession and the continuing elimination of Aboriginal people in Australia. As such, whatever my personal consciousness, I am a settler, which is to say *Gubbah* in Indigenous terminology, so I am happy to accept that terminology.

JKK: In Hawaii there is some debate about theorists of what is being termed "Asian settler colonialism" that deals with the contentious history of Asian immigrants coming in as plantation labor under coercive or exploitative conditions. Here I am referring namely, but not exclusively to the edited volume by Candace Fujikane and Jonathan Okamura titled *Asian Settler Colonialism: From Local Governance to the Habits of Everyday Life in Hawaii*. It prompts questions as to whether or not we should discern different kinds of settlers, and it begs the question of whether all settlers are colonialists. This leads me to ask, where you see race fitting into your analysis of what constitutes settler colonialism, especially whiteness.

PW: Okay, that's a really tricky and interesting one, as you know. When I'm in Hawaii, I'm a *Haole*, obviously. I may only be a *Haole* for three days visiting but I'm a *Haole*. Yes, of course, Japanese indentured people, Filipinos, a whole lot of other non-U.S., non-White people from the Pacific were put to work in horrific conditions on pineapple and other plantations in Hawaii two or three generations ago, so those people have endured colonial exploitation, there's no question about it whatsoever.

I think a parallel there would be, for instance, enslaved Africans in the U.S. Now, looked at from their point of view, they have experienced a colonial history, and it is therefore not right to lump them with together with the colonizers, the White folks who brought them there under oppressive and coercive conditions in the first place. Now of course I accept that, that degrees exist within the population that dispossessed and replaced Native peoples, of course I accept that. But can we just bracket that off for a moment and come back to it?

JKK: Yes, but I want to point out that Chinese, Japanese, and Filipinos were drawn to the continental US for agricultural labor – and with the Filipinos, they came as colonial subjects – so wouldn't that be the parallel in the US and not enslaved Africans? Isn't the question of chattel slavery different here?

PW: From the Native point of view, when it's a zero-sum contest – you or me, for land, for livelihood, for the places that are special, sacred to you that keep your society alive, culturally, spiritually and

every other way as well your economic subsistence, just putting food on your table – it doesn't matter if the people are enslaved or coerced or co-opted, they are still taking your food. They are still part of the invasive society that is taking your land over and driving you off. They may be an unwilling part, just as I said to you I'm a reluctant settler. They may be a lot more reluctant than I am in so far as they may be forced – I chose to go to Australia, after all.

But nonetheless, structurally, in the terms I was talking about before, like it or not, whether or not they collaborate with Indigenous people, they remain part of the settler project. *Asian Settler Colonialism* is edited by a couple of Japanese-descended settlers who have had the courage to come out and say: «We have come through the colonial plantation experience, our people have suffered, but nonetheless, vis-a-vis Natives, vis-a-vis Kanaka Maoli, we are settlers. Which is to say, structurally, we are part of the social process of dispossession». That doesn't mean that they haven't suffered, that doesn't mean they're bad guys. Willingly or not, enslaved or not, at the point of a gun or not, they arrived as part of the settler-colonial project. That doesn't make them settlers in the same sense as the colonizers who coerced them to participate – of course not – but it does make them perforce part of the settler-colonial process of dispossession and elimination. I can't stress strongly enough that it's NOT a matter of volition on their part, and certainly not of culpability. It's just a structural fact.

JKK: Also, I want to note that what I think is really important about what that they are doing and you've just mentioned it, in terms of the social process of dispossession – they do talk about settler *practices*. And that's of course part of the subtitle – *The Habits of Everyday Life*. And I think that that's what's so striking about your work is that you insist that settler colonialism is a practice.

PW: Okay, well why don't we go back to something I've already said, which is the number of U.S. students that would come to Australia and say that they saw a comparison between the politics of Indigenous people in Australia and the politics of African-Americans, of Black people in the United States, the descendants of African slaves? I found myself thinking: «Well, what IS the difference?». And, of course, the difference is that, in order to establish the European colo-

nial society, two entirely different contributions were extracted from these separate populations. So far as enslaved people, or you may say convicts to Australia, or indentured people – South Asians going to Guyana or Fiji, wherever it may be – the coerced, subordinated labor that is brought in by the Europeans to work the land in the place of the Natives – they're there for their labor. It's their bodies that are colonized in the case of enslaved people who are subject to being bought and sold, that's what they provide. Indigenous people, by contrast, provide the land. Their – Indigenous people's – historical role in settler colonialism is to disappear so far as the Europeans go, to get out of the way, to be eliminated, in order that the Europeans can bring in their subordinated, coerced labor, mix that labor with the soil, which is to say set it to work on the expropriated land and produce a surplus profit for the colonizer.

So there are three points to this triangle. There is the colonizer – and I won't just say European because say, for example, in the case of the Japanese, the same kind of thing has applied. I'm a European colonizer, though, so let's talk about European colonialism, which in any event is the bigger global phenomenon. So we'll say Europeans in that sense. The European applies coerced and/or enslaved labor to the land which has been expropriated, which has been taken away, which has been stolen from Indigenous people. So at first you can say: invasion generally is a violent process because nobody gives up their land voluntarily. Whatever the Europeans say about Natives rolling up their blankets and fading away, like the Israelis say about the Palestinians, dissolving into the night – that doesn't happen. People do not give up places where their old people are buried, where they have been born and bred for generations, where they've lived, where their gods are. They do not give that up easily, so it's invariably a violent process.

Europeans usually win, helped by alien diseases and cannons and all the rest of it. Europeans usually win in that violent confrontation. Let's call that the frontier, though the frontier is a very misleading term because it suggests a nice clear black and white line – Natives on one side, Europeans on the other. It doesn't work that way. The frontier, it seemed to me the more I thought about it, isn't just a line in space, albeit a misleading line in space – there are all sorts of transitions going on backward and forward across it so it's not a hard and

fast line – but it's also a line in time. What happens once the Natives have been violently suppressed, assuming they have been – have been pacified, depending on whose terminology you use – there are still some left around.

Now, the colonizers have to establish a colonial society in their place, on their land. To do that, you have to have a system of laws and regulations – the playing field has got to look level. You're bringing migrants in. They can be unruly, they can want rights that they're often not given first off. A rule of law has to be applied and applied consistently, otherwise the incoming settler society would get out of order. Therefore the Natives who have survived the initial catastrophe of invasion and violent dispossession – you can't just carry on shooting them on sight. It doesn't work for the settler rule of law that has to appear to be conducted fairly and legitimately.

Therefore the way in which remaining Natives are eliminated shifts – it becomes more legal and more genteel. It looks better. It is necessary for settlers to continue eliminating Natives for all sorts of reasons, but one is a very important political one. If you're a settler, theoretically at least, you've come with a social contract, you've done all those European things involving subjecting yourself to the rule of the sovereign and you've consented, the whole deal. Natives never did that – their rule of law was prior to colonial rule, independent of it. It springs from a separate source. The colonizers' legal system simply can't deal with that. It can't deal with something that originates outside of itself. So, even on a political level, quite apart from the economic competition, all traces of Native alternatives need to be suppressed or contained or in some way eliminated. This continues after the so-called frontier era but, as I said, in all sorts of genteel ways. Territorially, Natives tend to get banged up on reservations or stations or missions or whatever it is. Now, they may be still alive, and the rhetoric might well shift so that, instead of being marauding savages who are going to rape the White man's women and all this sort of stuff, which is the justification for killing them on the frontier, instead of that they become a kind of romantic dying race and it's the job of the missionary to smooth the pillow of their passing. The rhetoric shifts radically, but the outcome remains consistent with elimination.

When you gather people together and contain them in a fixed locale, you are still – you the colonizer – you are still vacating their erst-

while territory and rendering it available for colonization, whether it's farming or pastoralism or plantations, whatever it is. They're not on the land anymore. They're confined to a mission. So, even though the missions (or stations or reservations) are held out as a process of civilizing – «We are giving them the boons, the benefits of this superior culture that we have historically invented» – even though the rhetoric shifts, just by confining them, you continue to eliminate them, to clear their territory to make way for colonial settlement.

You go further down the track, and assimilation begins to kick in, whether it's in the U.S. or Australia – and, I think, in Hawai'i. Native identity gets compromised – as, in your wonderful book, *Hawaiian Blood*, you've shown in the Hawaiian case, and in other cases as well – with blood quantum regulations. Blood quantum eliminates Natives from the reckoning of authentic Natives who count. Of course, in the colonial situation, any Native person is liable to have non-Native relatives somewhere in their ancestry. That's a routine outcome of being invaded. It's used as another way of excluding Natives or eliminating them.

JKK: Yes, the contemporary legal definition of "native Hawaiian" as a "descendant with at least one-half blood quantum of individuals inhabiting the Hawaiian Islands prior to 1778" originated in the Hawaiian Homes Commission Act of 1921 (HHCA) in which the US Congress allotted approximately 200,000 acres of land in small areas across the main islands to be leased for residential, pastoral, and agricultural purposes by eligible "native Hawaiians". Many Kanaka Maoli (indigenous Hawaiians) contest the federal and state definition of "native Hawaiian" at fifty-percent not only because it is so exclusionary, but because it undercuts indigenous Hawaiian epistemologies that define identity on the basis of one's kinship and genealogy. Thus, I emphasize the strategic, socially embedded, and political aspects of these indigenous practices.

The blood quantum rule operates through a genocidal logic in both cultural and legal contexts and undermines identity claims based on genealogy that are expansive. In the blood quantum and legal debates about property during the debates that lead to the passage of the HHCA, issues of where the Chinese and Japanese stood in Hawai'i – in relation both to whites and Hawaiians – were prominent. Eventu-

ally, I realized that in many ways, some subtle, others crude, the racialization of Hawaiians was co-constructed in relation to Chinese and Japanese presence in the Islands. As I detail in the book, both elite whites and Hawaiians framed the post-overthrow push to rehabilitate Kanaka Maoli in anti-Asian terms by contrasting Kanaka Maoli as US citizens and the Chinese, and especially Japanese as "aliens". During the early Twentieth Century, the whiteness of American citizenship was sustained by a series of Asian exclusions and this racialization of Asians as perpetual "outsiders" would play a key role in the outcome of Hawaiian blood quantum debates.

In Hawai'i at this time, Asian groups occupied a racial place somewhat similar to African Americans in their structural relationship to whites during the Reconstruction in that they were considered an economic and political threat. The emancipation of black slaves motivated Southern whites to search for new systems of racial and economic control and by the 1890s, they passed Jim Crow segregation laws to isolate and intimidate African Americans. In Hawai'i, like the US continent, white Americans perceived the Japanese as a distinct danger as both a as a source of labor competition and a nationalist threat in the emerging world order. Their presence in Hawai'i was seen as antithetical to the goals of Americanizing the Islands, especially after World War I, a concern that only grew by the time of the HHCA debates, when their numbers were increasing in the islands.

So, with that in mind as a particular context, let us turn back to the question of slavery, whiteness, and indigeneity.

PW: This, I think, is where you can get the contrast between enslaved people and Indigenous people very clearly, and also how you can get the way that the process of elimination continues. It's a structure. It's an ongoing process, not a one-off event. It continues right through colonial society. And in the case of blood quantum, it comes through very clearly. Let's think of the U.S. example. As I said, the enslaved and their descendants who were bought and sold were used for one purpose, and that purpose was labor, whereas Indigenous people were there for one purpose, that was to disappear, to surrender their land. Given that Africans were valuable property, you wanted as many as you could get. So the offspring of an enslaved person and a White partner, it doesn't matter what their skin color is, how they present

phenotypically, how light or dark they are, they remain a slave, they're valuable property. But, of course, if you're out on the western frontier of the United States, the last thing you want is more Indians, so you're murdering them, or you're cooping them up on reservations.

But what happens racially? What happens to the offspring of a Native, usually a woman – ninety-nine times out of a hundred it's a woman, right? – the offspring of a Native woman and a colonizer experiences the opposite of what happens to Black people. With Black people, any amount of African blood whatsoever makes you a slave. Initially, this meant that offspring inherited the status of their mothers (though Maryland was an early exception) but, as time went by, slavery became the lot of everyone with African ancestry. After emancipation, this situation became racialized, so that anyone with African ancestry was classified as Black, a situation that reached its apogee in the one-drop rule, which continues into the present in an informal, unstated kind of way. You can have blue eyes and blond hair but, if somewhere back in your ancestry there's any Black person – bam, you're a slave or, today, under the one-drop rule, you're a Black person. Compared to that, let's look at what happens to Natives – whose role, as we've said, is to vanish from the land rather than to provide labor. In their case, the opposite applies. The colonial system wants fewer and fewer Natives, and guess what? – it seeps through into the way they're racialized, into their very identities, the identities the colonial society tries to impose upon them.

So the Native case is opposite to the one-drop rule, which makes (isn't this fantastic? – there's a real irony here) makes Black blood absolutely powerful in relation to White blood. In the case of Native blood, by contrast, any admixture of White blood compromises your indigeneity, makes you a half-blood or a half-caste or whatever racist term serves to eliminate people. So my point is that invasion doesn't stop at the frontier. It carries right on, right through colonial society in these less violent – that's what I meant by more genteel – ways, more thoroughly legal, bureaucratic ways. But the end outcome, which is eliminating the alternative, prior Native presence, is consistent. Is that clear enough?

JKK: Yes it is. And you did mention earlier that settler colonialism, you call it a zero-sum game, and I know that elsewhere you've referred to the dominant feature of its exploitative nature as a winner-take-all

project. And that's what you mean by total replacement. So thinking through in terms of the legal disappearance or things that are based on legal mechanisms of civilizing Indigenous peoples, it's precisely through that rather than, say, through massacres that settler colonial societies can continue to describe their projects as ones based on progress or that they're supposed to be seen as benign or kind to the Native.

PW: Absolutely – «We have come bearing you a gift, the gift of civilization and advancement». And assimilation, which ultimately has the effect of destroying Native society, reducing them demographically, is invariably – and I haven't come across a single settler colony where this doesn't happen – invariably, assimilation is held out as giving Natives the same opportunities as the White man. You steal children at the age of three and you put them in boarding schools and you abuse them, often sexually as well as psychologically, for years on end. Very often – except in the case of a few remarkable people – you put people out at the other end of that system who suffer for the rest of their life with appalling social and psychological pathologies. They'll still be prejudiced against, picked on in the street by cops because they look different, and all the rest of it. They won't actually get any of the advantages that they were promised would be the fruits of the civilizing experience. They will rather have been completely messed up, their families and the wider Native society will have suffered as a consequence, and this is held out as a special gift of civilization, giving the Native the same opportunities as the White man.

JKK: We have been discussing a couple examples of Anglo-settler societies, Australia and the United States, and can also obviously bring Canada and Aotearoa /New Zealand into the picture more. Yet I would suggest that the average American would probably be reluctant to see the U.S.A. alongside the other three nations, given their ongoing ties to the British monarchy. Can you speak to that in relation to the persistent myth of American exceptionalism, that idea that the formation of the U.S.A. was about liberation, freedom and equality framed as the opposite of any monarchical society?

PW: Right. Firstly, perhaps this illustrates the answer I'm trying to give: when Chief Joseph and the Nez Perce were fleeing California,

they were ultimately tracked down, with appalling consequences, by the U.S. Cavalry. But when they made their great trek, where were they headed? The answer is Canada, so they had no doubt as to who was the worse settler colonizer between the republican and democratic U.S. or a monarchy. And they were by no means – this is not in defense of monarchy, by the way – they were by no means the only colonized people who tried to escape across the Canadian border. African people did too. So, without defending monarchy, let's just say that republican egalitarianism is not a good thing for people who are not part of the club.

The problem with republican citizenship and popular democracy is that those who are outside the realm of this citizenship have no rights. It's a profoundly dehumanizing segregation of the rest of the world from yourself – you citizens, who participate in all these contractual deals to run your society equally and all the rest of it. In terms of what political system is involved, the important question is not whether you speak English, French or Dutch, not whether you've got a king or a queen or you're republican. The only thing that really counts in regard to settler colonialism is the outcome for the Natives.

I can't imagine a Native confronting a poisoned water hole or a bayonet or whatever instrument of violence they're forced to confront... I can't imagine them saying: «Well, at least I'm being killed by a republican rather than a monarchist». I mean, what sort of difference is that going to make? So let's get below the surface of those political distinctions to the real concrete relationships that are applying here. This leads us to the distinction between what I call settler colonialism, which refers to a foreign society invading a Native society and trying to take over all of it so as to replace the Natives rather than use them as labor. Settler colonialism brings its own labor. It tries to eliminate the Natives and do something completely new with the land that was theirs.

JKK: So, this gets at what makes a settler society different than, say, British relations to India.

PW: The situation in India was quite different. There, the colonizers didn't go to get rid of Indians and import English people in their place. Quite the contrary, the colonizers went to sit on top of

native society and set it to work for them on their own land. So it's a bit like the relationship of slavery insofar as natives were valuable. They were indispensable to the project of extracting surplus value through colonialism. The British went to India for mining and to do things like grow jute and opium and tea and cotton and a whole lot of primary products that would then be made up in the metropolis – Manchester cotton mills and so on. The industrial revolution, which in most European history books is represented as something that was internal to Europe and proves how superior Europeans are, was a global phenomenon that took raw materials that were made up in these factories from the situation of colonial exploitation, whereupon it used the same colonies as expanding markets for these factories' finished products. Primary production may have been going on in the deep south in the U.S., it may have been going on in India, it may have been going on in Egypt – to cite three that reference cotton, since I mentioned Manchester. The point is that the industrial revolution not only required settler colonialism in order to function. It also required other forms of colonialism, as in the case of the British-Indian colonial regime, which I call franchise colonialism. Franchise colonialism required a situation where Whites oversaw a system in which natives worked for them. Now that means that the natives remain a large majority, so Whites had to have native collaborators to help run the system. They had to have superior access to violence and all the rest of it, better troops. It's always a kind of fragile, vulnerable situation colonizing somewhere like India, or, for that matter, a franchise colony like the Dutch East Indies – today, it's Indonesia – was for the Dutch. When the colonial-nationalist movement gets under way, resists the Europeans, and finally throws them out, the Whites turn out not to have been established in the same way that settler colonizers have been established. As I've said, in going to wherever, Australia, settlers didn't go to get Aborigines to work for them – at least, not as their first priority. They went to Australia to replace Aborigines and themselves become Australians, so their children would be Australians and Australia would then go on forever.

Europeans in franchise colonies like India, they go to sit on top of native society. England remains home. They send their children back to boarding school in England. When they turn sixty, they retire back to England before encroaching senility can spoil the illusion

of their superhumanity. They remain based in England, overseeing the natives in a different kind of colony. Therefore, come the success of the colonial-nationalist movement, when finally the English get thrown out and they go back to London, they vanish, and the faces on the legislative benches change color. Indians take over. They tend, unfortunately, not to alter the system that the British imposed on them too much because the elites who ran the nationalist movement were educated at Oxford and Cambridge and the British knew who they were handing over to. Basically, they were handing over to brown Englishmen, so they weren't the kind of changes that you'd hope for from a national independence movement. Nonetheless, the fact is that the British had remained a minority dependent upon native labor and therefore native society was ultimately in a position to throw them out. By contrast, the victims of settler genocide, all the programs of elimination that have gone on in settler colonies, those Natives become a minority and can't realistically dream of sending the Whitefellas home.

So it's a different situation. And if I may say at this point, what I mean by settler colonialism is precisely this drive to elimination, this system of winner-take-all. I don't just mean that settler colonies are colonies that happen to have settlers in them. There were tea planters in British India. People go on and on at me about the French in Algeria, and rather like we said earlier, what difference does it make if you're monarchical or republican? In the case of French colonialism, the French colonies aren't just places that we rule from outside. They're part of France. In formal political terms, Algeria was meant to be part of mainland France, so the French settlers who went there were seen as somehow different to settlers elsewhere. It was a settler society that somehow was more organically wedded to the mother country than somewhere like Hawai'i (at least, prior to statehood) or the United States or Aotearoa/New Zealand. All the same, the fact of the matter is that the French settlers relied on native labor. Come the Algerian independence movement, they get thrown out. Whatever the constitutional niceties, whether they're meant to be part of France or not doesn't matter. They're there to be thrown out because they're a minority dependent on native labor. You can say something similar about South Africa, where Whites are something like fifteen, sixteen percent of the population. Yes, they're settlers, yes they stayed there,

but it's just a colony that happens to have settlers in it. It's not a settler colony in my sense. Does that make sense?

JKK: Most definitely. And also, I am thinking it through in terms of the notion of progress and the notion of the past, one of the most cited passages in your work is that «invasion is a structure and not an event». I would like it if you could speak to the persistent ideological notion of settler colonies that settler colonialism was just an event, that invasion was merely an event, and that that is how they are able to maintain the farce that it's long past, rather than an ongoing process.

PW: As an Indigenous person, you're very well aware of these things. These are some of the best targeted questions I've ever had, so if I could just thank you for that and also acknowledge that, because you're Indigenous, you know what you're talking about in a way that so few scholars do.

So, yes, settler invasion is an ongoing process. That's why I remain a beneficiary and a legatee of the invasion of Australia. That's why I categorize myself as a settler. The Prime Minister of Australia, the then Prime Minister John Howard, refused to apologize to Indigenous people for the abduction of the so called "stolen generations" of Aboriginal people, generally of mixed ancestry, who were taken away by the Australian state. We're not sure how many. It's somewhere around one in five to one in seven Aboriginal children were stolen from their families by the Australian state or by various states within the Commonwealth of Australia throughout the twentieth century.

And a great movement arose to get Mr. Howard to apologize on behalf of the Australian state for what happened. I personally think that movement was a great mistake, because what happened was that the whole issue of Aboriginal rights came to depend on whether or not one man would apologize for the stolen generations – not for the frontier homicides, not for the initial seizure of land or two centuries of systematic destruction, all the rest of it. And also the problem was that an apology would enable them to say: «Okay, now we've apologized, now everyone can go home, forget about it and move on». This is exactly what the subsequent Prime Minister, Kevin Rudd, did say when he issued his apology. He didn't ask whether or not Aboriginal people would accept his apology. He just unilaterally declared that his

apology meant that Australia should now move on. No question of compensation, no question of reparations, nothing like that. In fact, the reverse – the apology provided Rudd with a pretext to rule reparations out, explicitly and deliberately, at the same time. So I think that there are all sorts of problems with the whole apology business.

But nonetheless, to get back to your question, the reason that John Howard refused to apologize (which actually was tactically very stupid – as I said, if he realized he could get away with an apology and have it all over within a week, that would have suited him much better) but anyway, the reason that this bull-necked man refused to apologize was, as he kept saying over and over again: «Yes, bad things went on in the past, but I wasn't there, I didn't do anything wrong, I didn't kill anybody, I didn't steal any children. It's a later time now», failing to recognize that history results from causes and from preconditions, and that the cause and the precondition for contemporary Australian affluence and democracy and all the rest of it is the initial robbery, genocide and continuing elimination of Aboriginal people. Without that happening, as I said, I couldn't have had a job in History at La Trobe University.

So that's the sense in which it's very important to acknowledge that invasion is something that reverberates through continuing history in all sorts of ways. And the Indigenous presence, the Indigenous alternative needs to be suppressed. Either that, or we come to a fair deal. Now, coming to a fair deal doesn't mean finding a bunch of coconuts – brown on the outside and White on the inside – and setting them up in state-designed bureaucracies that just become yet another organ of the settler state. It doesn't mean that. It means handing over to Native sovereignty. How are you going to run your affairs? Who are you going to choose, as opposed to elect? – you don't need to go through the Westminster system. Whatever your system of choosing – an elder who will speak for you, or elders who will speak for you, whatever you choose – you go for it, and when you're ready, we'll talk together about what we can agree on. Anything less than that is a state-fabricated charade which is not only running parallel to the real challenge of an open negotiation between an invaded people and their invaders. Actually, these pre-fabricated, pretending-to-be-Native but actually part of the White colonial system bureaucracies are part of the invasion, because they take away Native initiative. They channel it

into areas, into bureaucratic zones, that are always already pre-dominated by being part of the colonial bureaucracy.

JKK: And that actually resonates with what you said earlier in the interview around the colonials themselves really not wanting to acknowledge anything that exists prior to their own system. And that's what Indigenous scholar from Australia Aileen Moreton-Robinson, who's a premier scholar of Whiteness studies there talks about: the anxiety of settler colonial societies regarding that persistent Indigenous sovereignty question.

PW: That anxiety is crucial and very telling. I think it has huge political potential. Aileen Moreton-Robinson nails it perfectly.

JKK: Now, I want to go back to something – you mentioned Palestinians earlier. And we've been talking a bit about American exceptionalism. Certainly there is a question, especially as of late, with the recent attack on the Gaza Freedom Flotilla – the persistent question of Israeli exceptionalism undergirded by American power. I wonder if you could speak to the question of Israeli-occupied Palestine and perhaps in relation to not only settler colonialism as a process but also the Boycott, Divest and Sanction movement.

PW: Well firstly, blinded in ways that one can sympathize with by the Holocaust, people look at Israelis as victims. And, of course, those who died in the Holocaust were victims, as well as their families, and the children who have been subjected to the memories of Auschwitz survivors and so on, and who've had to live with their guilt. Of course those people are victims. But, it's rather like saying the Japanese in Hawai'i suffered terribly in the plantations but that doesn't stop them being part of the settler-colonial process.

We're not talking about whether individuals are victims or not. We're talking about the fact that, from 1882 on, which is when the first Zionist settlement in Palestine was established, the first so-called *aliya*, which means "uplift", which means "ascent to the Promised Land", European Jews who were suffering pogroms and oppression and all sorts of horrific things in Europe that one should never understate, European Jews' solution to that – or the Zionist solution to

that, I'm sorry, not all European Jews' – the Zionist solution to that was: «We are being persecuted, especially within eastern Europe – the so-called Pale of Settlement, the Polish/southwest Russian border, but also traditionally throughout Europe – we are being persecuted because we haven't a got a nation. We haven't got a place that we can call our own, with our own sovereignty and independence. So, like the other peoples around us in nineteenth-century Europe, we need a nation with its own territory».

The only problem is there's no land left in Europe to found a nation in, so, initially they were thinking Argentina, then they thought Uganda, at one point the Portuguese offered them Angola, but increasingly it became Palestine – the place, they claimed, that Jews originated from, before being driven out by the Romans in seventy A.D., when the Second Temple was destroyed, this whole mythology. It actually is mythology, in the erroneous sense – there were Jews all over the Diaspora well before seventy A.D. Moreover not all of those who were in Palestine left, but that's a different story. The point is, that some of the European arm of world Jewry who were generally called Ashkenazim, meaning European Jewry – as opposed to Sephardim, who are the Jews who were driven out Iberia, out of Spain and Portugal in the fifteenth century and tended to settle in places like Morocco, as opposed to Yemenis and other Mizrahim who were in places like Iraq and Libya and so on – the point is that some members of the Ashkenazi branch of Jewry decided upon Zionism – though Zionism largely remained a minority tendency until the Nazi era. Zionists decided they would establish a civilized, secular, European colonial nation-state like France or Germany, which had ceased being monarchies and had united themselves and become secular, church- and state-separated states in the nineteenth century. They were going to have one of those in Palestine. So they set out to establish an autonomous state based on agricultural communities that would be self-sufficient. Of course, having been excluded from agriculture and productive industry in Europe, so that they'd been forced into parasitic occupations like money-lending and condemned as such – this is where the racist image of the Jew as greedy hoarder came from – these people arrive in Palestine quite incompetent as agriculturalists.

Yet they want to exclude the Natives. They want to build a Jewish-only nation-state in somebody else's country, Palestine. That's

what settler colonialism is. So they set about firstly persuading colonial authorities who ruled Palestine, first the Ottoman Empire and then, after World War I, the British Empire under a mandate granted by the League of Nations. The so-called *Yishuv*, the Jewish settlers in Palestine, set about firstly getting the colonial powers to allow more and more Jewish immigration into Palestine from Europe and, secondly, expanding their contiguous land base so as to build a colonial state-in-waiting there.

So they're different to an ordinary settler colony in that they had to proceed through legal channels. This they did, until they reached the point where they were strong enough to throw out both the colonial authorities, in this case the British mandate authorities, and complete the job of driving Palestinians off their land. This happened in the *nakba*, the calamity, the catastrophe as it's called, of 1948, that overtook Palestinians, when something like sixty-five percent of the Palestinian people were violently driven from their homes, driven to flee outside Mandate Palestine. Their houses were taken from them – either bulldozed or blown up or, more often than not, had Jewish settlers put into them, these people in many cases being Holocaust victims who had been brought from Europe.

So there's tremendous world sympathy – indeed, the United Nations vote to divide Palestine into Jewish and Palestinian sectors, which took place on November 29, 1947, only happened because the Soviet Union finally came around and cast its votes in favor of Israel. Why did they do that? Because they chose to read Israel as an anti-British colonial movement rather than as a settler-colonial movement. Zionism has these two faces. Now, it is very odd, is it not, that the last European settler colony to be established on Earth – which is Israel, which has displaced Palestinians from their own country and replaced them with Jews, has stolen their country – that the last one on Earth (Tibet isn't a European colony) should have been set up in 1948, after the U.N. declaration, and at a time when decolonization was the international climate of the moment?

After World War II, the United Nations was all about the British leaving India, the British and French and Portuguese and Spanish leaving Africa, the French and the British leaving southeast Asia, the Dutch leaving the East Indies, that's the mood of the moment. Yet Israel is set up at the same time. A settler colony is established in an

anti-colonial atmosphere. That is bizarte until one understands that Zionism has two faces: one is it's a resistance to persecution, the Holocaust being the ultimate extreme, but it's a persecution that goes on in Europe. The other is, it's a settler colonial movement, so it's as if the abused child has grown up to be an abuser – the Zionist tesponse to the persecution of Jews in Europe being to steal somebody else's country outside of Europe.

So, once it's understood in that dual way – as having two faces, I mean – that Zionism is both a response to persecution and a settler-colonial movement – then you're partly back to the situation of Hawaiians in relation to the Japanese or Native Americans in relation to enslaved Africans: «Yes, these people have suffered but, hullo, they're driving me off my country, they're killing me». They're patt of a settler system, regardless of their personal history and their consciousness. Palestinians own that country. They're being driven out of it and being replaced, with the approval, the sanction and the military and economic support of the West.

We, as Australians, as people from the United States – I distinguish Hawai'i from that, and I distinguish Native Americans from that because you're not part of the system – but people like me, like it or not and I certainly don't like it, are responsible for the contemporary, current-day Israeli colonization of Palestine. Now, in terms of the time-scale I talked about previously in places like the U.S. and Australia, that is like going back before the missions and before the assimilation. It's still the frontier eta in Israel/Palestine. There's no assimilation going on. Palestinians aren't being given land rights in certain places. They're still at the frontiet invasion stage, and it's in this day and age, in the twenty-first century.

When genocide was going on in the nineteenth-century United States, international communications were different. There weren't cell phones that you could film with, there wasn't a whole global communications framework whereby what was going on could be seen. I'm not justifying it, but it's pretty different to something going on under the nose of the world, in full view of the world and still being suppressed and successfully lied about, which is what's happening to the settler colonization, the invasion, of Palestine as we speak.

When students or people who've heard my talks ask me: «How did the Europeans ever get away with the atrocities that they committed on the Australian and American frontiers? – How could a Wounded Knee or a Coniston massacre go unavenged? – How could whole peoples be driven from their ancestral homelands in broad daylight?». When they ask me this question, which they very often do, I have to answer: «Why are you surprised? They didn't even have the internet or satellite TV in the nineteenth century. We have those things today, we have instant global communication, events relayed live into people's living rooms, but settler-colonial outrages are being perpetrated, nineteenth-century style, under our noses in Occupied Palestine every day of the week. So why should the nineteenth century have been any different? There's no reason for surprise».

JKK: Yes that's right, and does that suggest to me that you do support the BDS campaign?

PW: Absolutely, I have nothing to do with anything Israeli whatsoever. And anti-Zionist Israeli Jews, they support it too. They're saying: «This is wrong – not in our name, don't help it».

JKK: As you know, I serve on the advisory board for the U.S. Campaign for the Academic and Cultural Boycott of Israel (USACBI) as well as the broader boycott movement for sure.

PW: Again, absolutely, I'm completely in support of it. Actually, in the contemporary U.S. and Australian academy, that does involve a risk. The Zionist lobby – please don't call it the Jewish lobby, by no means all Jews are Zionists and, by the way, not all Zionists are Jewish. We're talking about a political movement – Zionism. Anti-Zionism and anti-semitism have nothing to do with each other. The Zionist lobby in countries like the U.S. and Australia is so strong. Helen Thomas is a recent example, even though I think her remarks were ill-judged and stupid. Nonetheless, what's happened to her so quickly, this grand old lady of United States journalism, how that day she was suddenly forced to resign – doesn't that show the power and the risk that you take when you speak out in favor of the oppressed, invaded Palestinian nation?

JKK: Yes, and when you mention that in Palestine right now it is the frontier era, I mean this for me really highlights the issue.

I saw for myself in January 2012 when I traveled there as part of a 5-scholar delegation. Obviously within settler colonial studies as a field of study for intellectual work in the academy, you know, comparative studies are important, but the settler colonials themselves undertook and still undertake a comparative approach to their own policies, their own military tactics. And I think that Israel modeling its occupation of Palestine in ways similar to what early Americans did to tribal nations throughout the nineteenth century in North America is really key. Speaking to a different comparative angle, could you offer your analysis of analogies between Israel and South Africa?

PW: Yes, I don't accept that apartheid and what's going on in Palestine are the same thing, for the reason that the Bantustans, the special native places that the South African government set up, were set up for the purpose of exploiting native labor. You were confined to your Bantustan unless you were being domestic labor, or you were working the mines or the farms or the factories of White South Africa, in which case you had to run around with a pass showing you were on your way to or from work, you had permission to be there. But the Bantustans were pools of labor which the workers would be taken out of and used as suited the White authorities, the apartheid authorities.

Palestinians are just being driven out. They're no pool of labor. Sure, they come in handy as cheap and hyperexploitable labor so long as they're still around, but Israel's primary goal is not to exploit them but to get rid of them. This is why they're energetically and systematically being replaced by anybody but a Palestinian. Bring in a million Russians, call them Jews, it's fine. A significant portion of them are Christians. They end up growing up and getting arrested in Israel running around in Nazi uniforms. Doesn't matter – they're not Palestinian. That's very different to South Africa, where segregation was for the purposes of exploitation for labor. For Palestinians, segregation is being marginalized. Israel is doing everything it can to free itself from any hint of dependence on Palestinian labor because it wants to get rid of them. So Zionism IS a form of apartheid in that it's racist, exclusive and oppressive. Israel's behavior squarely fits the international definition of the crime of apartheid under the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid and so on. All the same, it's not premised on the same basis as South African apartheid was – it's premised on elimination rather than exploitation. We have to recognize different forms of apartheid. They're all unacceptable.

JKK: And that really gets back to the core which is the Indigenous sovereignty question rather than a color line. I want to ask you something else as we're wrapping up the interview. Since your book, *Settler Colonialism and the Transformation of Anthropology*, was published just over a decade ago, the field of settler studies has grown to focus on collaborative and comparative theories of this process. I want to ask you how you see this new field developing.

PW: Well with mixed feelings. As you say, that book came out rather early – embarrassingly early, actually, seeing as I haven't done another book since. As a result, since it was fairly early, and it keeps getting quoted and cited, people quite often ask me: «What do you think?» – almost as if they're asking me: «What's happened to your offspring?», which is completely inappropriate. I didn't invent settler-colonial studies. Natives have been experts in the field for centuries.

I have mixed feelings, to be honest. What for me is a political practice – my intellectual practice is an activist practice so far as I'm concerned, which is not to say that I skimp on the facts. It's not to say that I cut corners. It's rather to say that I think the more you look at the facts, the more they stand up. The more rigorously you conduct your research, the more you establish that dispossessed Indigenous people have got the most substantial grounds for complaint and the most substantial claim for reparations and reversal of anyone on Earth. So I'm an activist-intellectual because I think that the truth speaks for itself and I believe you should keep uncovering the truth.

The problem is that I'm not sure that this applies to a mushrooming academic industry which spawns new theories and new buzzwords at the drop of a hat. I have that kind of concern.

JKK: Yes, and in conclusion, is there anything in particular with which you would like to close?

PW: Yes, there is one thing, and this applies to all settler-colonized peoples but I want to select the one we've been talking about last, the one that is so central and at the frontier stage as we speak. The last thing I want to say is: «Viva Palestine! Long live Palestine! Palestine will be free, from the river to the sea!».

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Settler Logics and Writing Indians Out of Existence

A conversation between J. Kēhaulani Kauanui and Jean M. O'Brien[1]

Abstract

This conversation originated in a radio interview of Jean O'Brien conducted by J. Kēhaulani Kauanui on her public affairs show, «Indigenous Politics: From Native New England and Beyond» from September 21, 2010. The article is an expanded version of that interview, updated to reflect our ongoing dialogue. Kauanui invites O'Brien to lay out the central features of her newest book, *Firsting and Lasting: Writing Indians Out of Existence in New England*, which is a history of settler colonial processes central to the formation of the United States. O'Brien explains how 'writing Indians out of existence' bolstered their settler project of claiming nativity for themselves and their attempts to replace Native people on their land. The dialogue also explores the contemporary implications of this historical formation. Finally, O'Brien also discusses two current projects – one regarding her forthcoming book on historical images of American Indians in children's literature, and a contemporary co-edited volume of essays on federal recognition struggles among tribal nations in the United States. The conversation concludes with a brief discussion of the current state of Native American and its relation to Indigenous Studies.

Keywords: U.S. settler colonialism; logic of elimination; American Indians; historical erasure; New England.

J. Kēhaulani Kauanui: I would like to ask how you came to be a scholar working in Native American history.

[1] This conversation has its origins in a radio interview of Jean M. O'Brien conducted by J. Kēhaulani Kauanui on her public affairs show, "Indigenous Politics: From Native New England and Beyond" from September 21, 2010. What appears here is an expanded version that is updated to reflect our ongoing dialogue.

J. Kēhaulani Kauanui, Center for the Americas, Wesleyan University, Middletown, CT 06459 – jkauanui@wesleyan.edu.
Jean M. O'Brien, Department of History, University of Minnesota – obrie002@umn.edu.

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Unsettling settler colonialism: The discourse and politics of settlers, and solidarity with Indigenous nations

Corey Snelgrove
University of British Columbia

Rita Kaur Dhamoon
University of Victoria

Jeff Corntassel
University of Victoria

Abstract
Our goal in this article is to intervene and disrupt current contentious debates regarding the predominant lines of inquiry bourgeoning in settler colonial studies, the use of 'settler', and the politics of building solidarities between Indigenous and non-Indigenous peoples. Settler colonial studies, 'settler', and solidarity, then, operate as the central themes of this paper. While somewhat jarring, our assessment of the debates is interspersed with our discussions in their original form, as we seek to explore possible lines of solidarity, accountability, and relationality to one another and to decolonization struggles both locally and globally. Our overall conclusion is that without centering Indigenous peoples' articulations, without deploying a relational approach to settler colonial power, and without paying attention to the conditions and contingency of settler colonialism, studies of settler colonialism and practices of solidarity run the risk of reifying (and possibly replicating) settler colonial as well as other modes of domination.

Keywords: *settler colonial studies; solidarity; Indigenous resurgence; place-based solidarity*

Introduction

Our goal in this article is intervene and disrupt current contentious debates regarding the predominant lines of inquiry bourgeoning in settler colonial studies, the use of 'settler', and the politics of building solidarities between Indigenous and non-Indigenous peoples. These three themes are not only salient in scholarly debates but also in practices of Indigenous resurgence, decolonization, anti-racism, feminist and queer work, and in alliances that challenge corporate pipeline expansion, resource extraction, colonial environmentalism, neo-liberal exploitation of temporary foreign workers, and violence against women, transgendered, and queer people. Through our own particular engagements with these issues, the three of us came together to think through our different relationships to settler colonial studies, debates about the term 'settler', and decolonizing relations of solidarity, with a shared commitment to practicing and/or supporting Indigenous resurgence. By Indigenous resurgence we mean ways to restore and regenerate Indigenous nationhood (Corntassel, 2012) and the "repatriation of Indigenous land and life" (Tuck & Yang, 2012). By centering Indigenous resurgence, we resist the disavowal of a colonial present still defined by Indigenous dispossession, we center transformative alternatives to this present articulated within Indigenous resurgence, and we remain attentive to the very ground upon which we stand. Indigenous resurgence, then, is our organizing frame for responding to the three themes of this essay, namely settler colonialism, settlers, and solidarity.

First, our process of thinking together revealed some uncertainty about the emerging institutionalization of *settler colonial studies* and its relationship to Indigenous studies; at the same time, the practice, structure, governmentality, and politics of settler colonialism distinctly sharpens the focus on ongoing colonialism, the dispossession of Indigenous lands, and the actual/attempted elimination of Indigenous peoples. It is this focus on power, land, and Indigenous bodies that we centre in our approach to the study of settler colonialism. But our understanding of settler colonialism is not one-dimensional; instead, we begin from the position that it is intrinsically shaped by and shaping interactive relations of coloniality, racism, gender, class, sexuality and desire, capitalism, and ableism. This multi-dimensional understanding of settler colonialism enables specificity in the ways to which place, culture, and relations of power are approached; reflects the ways in which the State has governed subjects differently; and emphasizes that the disruption of settler colonialism necessitates the disruption of intersecting forces of power such as colonialism, heteropatriarchy and capitalism. Second, our analysis and dialogue about the term '*settler*' illuminated that, whether using Indigenous words for 'settler' or the English word 'settler', these terms should be discomforting and provide an impetus for decolonial transformation through a renewed community-centered approach. This decolonizing praxis requires what Kanaka Maoli scholar Noelani Goodyear-Ka'ōpua (2013, pp. 30, 36) calls "land-centered literacies" which are "…based on an intimate connection with and knowledge of the land." At the same time, our concerns go beyond the proper assignment of 'settler', where we are vigilant of those who adopt and legitimize a "way of thinking with an imperialist's mind" (Alfred, 2009, p. 102). Third, while the language of *solidarity* does not fully capture the way we approach social struggles as interconnected, our collective conversations highlighted for us that

solidarity between Indigenous and non-Indigenous peoples must be grounded in actual practices and place-based relationships, and be approached as incommensurable but not incompatible.

We came together to think through the organizing concepts and politics of this paper together after a roundtable discussion at a Canadian political science conference that included two of the authors, with the third in the audience. The roundtable topic was broadly on settler colonialism, territorialities, and embodiments. Because of our pre-existing interests in anti-colonialism and decolonization, we were already aware of each other's scholarly and non-academic work and commitments to the politics of Indigenous resurgence. In particular, we were aware that as a methodology, a collective interview between a cis-gendered Tsalagi (Cherokee) man (Jeff Corntassel), cis-gendered white male (Corey Snelgrove), and cis-gendered woman of colour of Sikh origin (Rita Dhamoon) with different vantage points and interests would prompt multiple, albeit circumscribed, perspectives on settler colonialism, settler, and solidarity.

Given the proliferation of academic and non-academic sources on these topics over recent years, we had already been engaging together in these conversations informally (we have been at the same institution for two years, on Lekwungen and W̱SÁNEĆ territories) and it was a natural step to co-author a paper. We began first by assessing some of the recent literature on these concepts, and then started with the same questions for each concept, which we posed to one another in a series of face-to-face meetings over a period of a year. Our guiding questions were: how did we assess the current debates/literature on settler colonialism, and how can we disrupt some of the hegemonies that inevitably arise in the theory and practice of solidarity work between Indigenous and non-Indigenous peoples. Flowing from these questions emerged other sub-questions that reflected the debates in the relevant literature and our understanding of Indigenous resurgences. We recorded the interviews, and Corey transcribed the interviews (it is not lost on us that he was the student among us!). Two important methodological and epistemological points are worth emphasizing in our choice to conduct our collective interviews over an extended period of time: first, that it disrupted some (certainly not all of) the power dynamics of 'the expert scholar', where we each learned from one another and shifted our thinking collaboratively, challenged one another about our power differentials, and were constantly reminded of practicing our politics in theoretically-rich and action-oriented ways. Second, we unexpectedly built new kinds of relationships with one another that will travel with us as we take social action across issues and navigate the academy. This relationship building was an important reminder to us that good relations across differences take time and care, and a willingness to live in contention. As Nishnaabeg scholar Leanne Simpson points out, "Resurgence cannot occur in isolation. A collective conversation and mobilization is critical to avoid reproducing the individualism and colonial isolation that settler colonialism fosters" (2011, p. 69). Similarly, for Tsalagis (Cherokees), there is a word, digadatsele'i, which means 'we belong to each other'. If we take these relationships seriously, we must be willing to work through contention and, at times, disrupt discourses that reinscribe the colonial status quo.

As a way to anchor our power differentials and our various approaches to decolonization and resurgence, we begin by locating our social and cultural positions. This form of self-location

is already a common practice among some feminists and Indigenous peoples, but we specifically self-locate in relation to conceptions of 'settler' and settler colonialism and in response to the Oxford English Dictionary (OED) definitions (see Appendix), which Corey reviewed in tracing the etymology of these terms. This self-location exercise is a political practice that, while susceptible to performativity, ultimately reveals how each of us is coming to the paper differently and differentially. The rest of the paper is organized around the three major concepts of settler colonialism, settler, and solidarity. While somewhat jarring, because our collective interviews are in part responding to the respective literature on each of these concepts, we provide an assessment of that literature followed by the interview on each. Our overall conclusion is that without centering Indigenous peoples' articulations, without deploying a relational approach to settler colonial power, and without paying attention to the conditions and contingencies of settler colonialism, studies of settler colonialism and practices of solidarity run the risk of reifying (and possibly replicating) settler colonial, as well as other, modes of domination.

Self-locations: Locating settlement

Jeff Corntassel: What does it mean to acknowledge the Indigenous territory you're on? Are you coming to community, place-based relationships as a settler or as an Indigenous person? Additionally, how are you entering Indigenous homelands – as an invited guest, uninvited, trespasser, visitor, resident, immigrant, refugee etc.? How you situate yourself and your level of awareness about colonial occupations of Indigenous homelands brings new responsibilities to the forefront. Awareness of colonial realities requires us to go beyond a simple acknowledgement of the Indigenous nations and peoples of the territories you are visiting. It is a call for justice and the return of stolen lands/waterways to the Indigenous peoples who maintain special relationships to these places. Ultimately, what we are arguing for is a responsibility-based ethic of truth-telling to identify and act upon new pathways to Indigenous resurgence.

As a Tsalagi (Cherokee), the connection and responsibility to our homelands is unbroken, despite forced removal and dispossession. From our family history living in the Tsalagi homelands of Toquo, Tennessee, Lookout Mountain, Georgia, and Westville, Oklahoma, the Corntassel family's living historical legacy is to defend these places and honor our ancestral relationships. Like many Cherokee families, the consequences of forced removal and the Dawes Act (1901, 1906 amendments), which broke up collectively held land and distributed plots of land to individual Cherokees (and other Indigenous nations across the U.S.), led to further forced migrations; today my family is dispersed from Tennessee to California, all the way up to Alaska.

How do we carry our community consciousness and responsibilities with us even when we're not on our own territory? When visiting another Indigenous nation's territory, as Cherokees and Indigenous nations, we carry our communities and sense of place with us. According to Cherokee Elder Benny Smith, when arriving at another nation's territory, you are to come in the calmest, gentlest state of your being. This exemplifies to'hi dyanisti, or a call to

peaceful or healthy relationships. You only approach another Indigenous nation after you have thought it through, over and over again, and if there is willingness on the part of the host nation(s) to include or accept strangers.

How do our ancestors recognize us as Cherokee or Indigenous even when we're not living on our homelands? Ultimately it's about how we honor our place-based responsibilities and live our values and principles, as Tsalagi in everyday life, even when the land we're on does not recognize us. While the land may not recognize us, the goal is to be known not as strangers but as welcome visitors with accountability to the Indigenous nations and peoples of the territory.

Corey Snelgrove: I come from a family of predominantly English, Scottish, and German ancestors who arrived to the Eastern coast of what is now known as the United States from the early 17th century onwards, moving west and north in search of "opportunity" until arriving, at various times and in various places, on Anishinaabe and Haudenosaunee homelands around Lake Ontario. I come from a family of white settlers. And like my ancestors, I too have moved in search of "opportunity" and I now find myself occupying Lekwungen and W̱SÁNEĆ homelands. I too am a white settler, a colonizer. This recognition though is not meant to signal any innocence. There are no good settlers; there are no good colonizers. Instead, it signals complicity in the on-going processes of dispossession and eschewal of Indigenous nationhood. It necessarily connects me to histories and presents which shape how I came and come to be(ing) here. It is a sign that demands, that alludes to an accounting of, responsibility for, and nothing less than the destruction of settler colonialism. But a sign can also obscure, acting as an illusion, and disavow, operating as an elusion…

As the OED definition (in the Appendix) states, "to settle" involves both subject-formation and governance. Settlers have to be made and power relations between and among settlers and Indigenous peoples have to be reproduced in order for settler colonialism to extend temporally and spatially. Part of this subject formation involves disavowal of the processes of dispossession and disavowal of Indigenous governance structures. If we do not want to, my family and I do not have to think about, let alone experience, the violent processes that condition(ed) how we came and come to be here. Conversely, when we do choose to think about this, we are often able (and even encouraged) to think of it in terms of a celebratory, benevolent past. Yet, are all settlers able to ignore the processes of how one come's to be here or to think of it in terms of a celebratory past?

The subject formation and governance inherent to settling also involves processes of ordering, which govern the very notions of belonging. These processes of ordering, such as those based on white supremacy, not only enhance our privileges through exploitation, but also further enable my family and I to feel at home in other's homeland(s), or as the case may be, to disparage and even flee at the sight of Other(s). Belonging, after all, requires the discursive production and circulation of those who do not belong. "To settle" then remains differentiated in terms of race, national-origin, religion, class, dis/ability, sexuality, and gender. All of these

differentiations though are underwritten by the dispossession of Indigenous lands and eschewal of Indigenous governance orders. So while all non-Indigenous peoples residing in settler states may be complicit in settlement, making us all settlers, not all settlers are created equal. Subject-formation in settler colonies works in multiple ways, privileging in multiple ways, and settler colonialism's conditions of possibility rely on the differentiated forms of subject-formation and privilege. For myself, as a white, class-privileged, temporarily able-bodied, heterosexual, university-educated cis-male, the social world really is crafted in my image…

In spite of this worldly reflection, it is not the world that I want to live in. Thus, the term "settler" and the reason for its use, which brings forth the intimate and affective relationships to ancestral, social, cultural, economic, and political histories and presents which shape this world, necessarily leads not to pride, but rather to shame, frustration, alienation, and anger towards myself, other settlers, as well as the structures of settler colonialism. These feelings though also potentially signal an opening, a recognition of an un(der)realized interdependence. However, alone, these feelings are not sufficient. After all, I cannot just critique or declare that this world falls short of my desires and expect it to transform itself. Nor can I ignore the power differentials between settlers, as such willful acts risk stalling the decolonial engine. Instead, if these desires and simultaneous feelings of shame, frustration, alienation, and anger are to be at all transformative, they must be accompanied by thought and practice attentive to their respective sources; they must be guided by accountability and respect, care and renewal, with urgency and insurgency, to address and destroy the parasitical relations that exist between and among settlers and Indigenous peoples, as well as to support those (potentially) good relations that already exist, and those that we wish to establish between and among settlers and Indigenous peoples.

Rita Dhamoon: To settle in Canada, first on the traditional territories of Ojibway-Anishinaabe, then Musqueam and Qay'qayt First Nations, and now Lekwungen and W̱SÁNEĆ territories is, for me, linked to the global colonial context in which the British planted themselves, which includes now partitioned India and Pakistan. My family is from Punjab, India. I am from Punjab, India. This is a place where my great grandparents and grandparents struggled against British colonialism, and died for their struggle, and also where the seeds of colonizing fantasies were planted in the imaginations of my parents. The Brits were good at planting seeds, or should I say getting brown and black people to plant for profit. In the case of my parents, and many from their generation, moving westwards, moving to England was part of that colonizing fantasy, where 'progress' was supposedly available to everyone in European societies. After that fantasy collapsed with racial employment discrimination, displaced masculine violence, and attacks on my family from white supremacists, we moved further west, to Canada. This 'unsettling' move across continents, a move I made as a 'woman of colour' (a term I learned in Canada, as I was 'Black' in 1970s and 1980s England), means that I am structurally located as a settler.

When reflecting on the meaning of 'settle' (see Appendix), I think about what it means to materially take up residence, to take up abode in a foreign country, which I have done. 'To settle' is an attitude, a way of being that gets fixed in one's heart and mind, such that I don't have to

think about the violence against Indigenous peoples if I choose not to; it is to presume permanency, a temporality without an end; it is a way to establish authority over others, as the State and its settlers seek to do over Indigenous peoples; it is a mode of masculinity in which the land is married to exploitative capital; to settle does not require all settlers to own private property, but like many settlers I do. I now have citizenship in Canada, I was born and educated in the UK, and later further educated in Canada, I speak English with a western accent, I have a middle-class income, I carry no overt religious markings, and I have settled on stolen Indigenous land. Are these just performative declarations…

And, I do not have a "firm foundation" in this place, I have not "ceased from migration," am not resting "after agitation" or occupying a place that represents an "end of a series of changes", I am not seeking to secure "permanent regulations" upon others by "decree, ordinance, or enactment". But it doesn't matter. Settler colonialism does not work at the individual level, or need my consent or the consent of other individuals even, for it is a way of governing through a naturalized nation-state that erases Indigenous peoples and implicates us all, however well-intentioned we are, or differentially located. Like Corey, the white man among us, I am a settler, but the structural location of colonizer is more complex for me. My family, especially my great grandparents and grandparents were anti-colonialists in India, during formal British imperialism. Being anti-colonial is in me. I work to honour the struggles of my people against white supremacy and in my ongoing responsibilities towards other Others. I am suspicious of white men, and also know that the relationship with them cannot just be instrumental. I am suspicious of cis-men active in social struggles more generally, and also have obligations to Jeff, our Indigenous cis-male co-author, who symbolically legitimizes this collective paper, and in other ways to Corey who is also seeking a different way of being in the world. What holds us together, I think, in writing this paper, is our willingness to build relationships that centre power, anger (against what we each represent to the other), and the possibilities of love. With others, and in the context of interwoven struggles of social justice, I seek to unsettle.

Disrupting the institutionalization of settler colonial studies

Indigenous activists and scholars have long centred the constitutive features of settler colonial studies – land and the attempted elimination of Indigenous peoples – but now there is increasingly a body of work that signals the core of what has become known as settler colonial studies. Settler colonial studies as a distinct emerging field of study (rather than a site of struggle already critiqued by Indigenous peoples) has been centrally defined by Lorenzo Veracini's 2010 book, *Settler Colonialism: A Theoretical Overview*, Patrick Wolfe's 1999 book, *Settler Colonialism and the Transformation of Anthropology,* and his 2006 article "Settler Colonialism and the Elimination of the Native," and more recently with articles in the *Settler Colonial Studies* journal.

The bourgeoning field of settler colonial studies has made several important contributions, both theoretically and politically. First, settler colonialism is conceptually distinct

from other kinds of colonialism, in that it is rooted in the elimination of Indigenous peoples, polities and relationships from and with the land (Wolfe, 2006). Building on this, the distinctiveness of settler colonialism works to highlight the incommensurability between Indigenous struggles and, for instance, civil rights projects (see Byrd, 2014; Tuck & Yang, 2012). This has led Grande (2013), Macoun and Strakosch (2013), and Morgensen (2011c) to note the convergence of conservative and progressive goals by revealing settler investments in the dispossession of Indigenous lands. Second, conceptualizations of settler colonialism have provided ways to articulate its operations and effects. For instance, settler colonialism is being conceptualized in terms of its everyday modalities, what Rifkin (2013) calls 'settler colonial common sense'. Adam Barker (2012) draws on Wolfe and Veracini's definitions but also identifies settler colonialism as "a distinct method of colonizing" that involves " the creation and consumption of a whole array of spaces by settler collectives that claim and transform places through the exercise of their sovereign capacity" (p. 1). Settlement, then, is not led by elites alone (Barker, 2012, p. 1). Third, critics of settler colonialism have sharpened critiques of dominant power. Moreton-Robinson (2007, 2008), for instance, situates patriarchal white sovereignty as a constitutive feature of settler colonialism and the premise of settler logics of property; Byrd (2011) centres the deployment of Indianness as a constitutive feature of settler colonialism; Morgensen (2011b) centres settler colonialism in theories of biopower, state(s) of exception, and global governance; while Jackson (2014), King (2014), and Smith (2014) discuss the complex relationship between anti-blackness and settler colonialism. Fourth, studies of settler colonialism have also generated intellectual and political synergies between queer and feminist theories, Indigenous studies, and critiques of settler colonialism (Driskill et al., 2011; Morgensen, 2010, 2011a, 2012; Smith, 2010; Tuck et al., 2013), illuminating intersections and interactions, while simultaneously acknowledging the incommensurability of forces of colonial, gendered, and heteronormative power that Indigenous feminists (Green, 2007; Barker, 2008; Simpson, 2014) and postcolonial feminists have long emphasized.

In the tradition of critical approaches, scholars of (or engaging with) settler colonialism have also identified several challenges or weaknesses of this burgeoning field of study. Joanne Barker (2011), on the blog *Tequila Sovereign*, questioned the specificity of settler colonialism. Drawing on the etymological origins of "settle" as 'to reconcile', as well as in light of settler state apologies, Barker warns that settler colonialism may signal a nation-state that has moved "beyond its own tragically imperial and colonial history to be something else, still albeit colonial, but not quite entirely colonial." Second, Macoun and Strakosch (2013) note that settler colonial theory "is primarily a settler framework" that is largely about settler intentions to think through colonial relations (p. 427). This in itself may not be a problem, but as Macoun and Strakosch warn, settler colonial studies can re-empower non-Indigenous academic voices while marginalizing Indigenous resistance (2013, p. 436). Third, while settler colonialism is posited as both a condition of possibility (Rifkin, 2013) and a site of potential hope (Barker, 2012), there is an underlying "colonial fatalism" (Macoun and Strakosch, 2013, p. 435) that posits a structural inevitability to settler colonial relations. Macoun and Strakosch (2013) in particular note that

settler colonialism is unable to transcend itself precisely because it is conceptualized as a structure, where the only polarizing choices available to Indigenous peoples are either to be co-opted or hold a position of resistance/sovereign, while anti-colonial action by settlers is foreclosed. Fourth, the framework of settler colonialism has fostered over-characterizations of binary positions. Saranillio (2013), for instance, notes two common charges against settler colonial studies: that it affirms a binary of Indigenous and non-Indigenous, and that it leads to a neo-racist form of politics that requires non-Natives leave Indigenous territories (arguments that Sarinillo rejects). Moreover, we note that this binary, at times, has the effect of treating settler colonialism as a meta-structure, thus erasing both its contingency and the dynamics that co-constitute racist, patriarchal, homonationalist, ablest, and capitalist settler colonialism.

The institutionalization of settler colonial studies is quite remarkable. While some Indigenous journals have struggled to receive institutional support and funding, the journal *Settler Colonial Studies* – first published in 2011 in an open access format (entirely run on volunteer labour) to bring together critical scholarship on settler colonialism as a distinct social, cultural and historical formation with ongoing political effects (Edmonds and Carey, 2013, p. 2) – moved to a large academic publishing house, Taylor & Francis, within two years of being established. This institutionalization has been coupled with a proliferation of academic conferences, workshops, courses, and has also moved beyond academic confines through blogs, websites, workshops and teach-ins.

The institutionalization of settler colonial studies (rather than Indigenous studies) is on the one hand a significant shift in the academy. On the other hand, as de Leeuw, Greenwood, and Lindsay (2013) rightly argue, even when (and perhaps because) there are good intentions to decolonize and to "cultivate a culture of 'doing the right thing,'" there are no "fundamental shifts in power imbalances between Indigenous and non-Indigenous peoples or the systems within which we operate" (p. 386). Settler colonialism and the *study* of settler colonialism, in other words, cannot be decolonized because of good intentions. Following this, paradoxically and in deeply troubling ways, settler colonial studies can displace, overshadow, or even mask over Indigenous studies (for example, see Veracini, 2013) and variations within Indigenous studies, especially feminist and queer Indigenous work that is centred on Indigenous resurgence. Indeed the link between Indigenous studies and settler colonial studies is still in process. The synergies between the literature by/on two-spirited Indigenous identities, queer theory, Indigenous studies more broadly, and settler colonial studies are notable in their interwoven conversations across fields of study. But at times, Indigenous peoples and issues are de-centred in settler colonial studies (for example, Rifkin, 2013, p. 323). Furthermore, while Rifkin is right to argue that settler colonial practices and processes operate in everyday ways, are these practices really in the "background" (2013, p. 331), and for whom? Is settler colonialism "largely invisible", as Barker (2012) claims?

Yes, settler colonialism is naturalized, pervasive, and not just state-centred, but for whom is settler colonialism in the background and invisible? These kinds of claims seem to presume white settler subjectivity as the monolithic lens through which to examine settler colonialism and

dispossession, both in the context of whites and people of colour, in ways that obscures differentials of power. For Indigenous peoples, settler colonialism may not be the primary lens of living or theorizing, but it is also neither in the background or invisible.

Discussion

Jeff: What is the role of settler colonial studies in Indigenous studies? How should this conversation take place?

Corey: A recent issue of *Settler Colonial Studies* (3:3) came out with a corresponding issue in *American Indian Culture and Research Journal* (37:2), though both issues were edited by Patrick Wolfe. This makes me wonder about whether this is a way of building bridges between settler colonial studies and Indigenous studies, or instead, given that Wolfe edited both issues, is this a 'talking at?' I also wonder whether settler colonial studies is isolating itself, talking to the same crowd? What's more useful, isolation or disruption?

Rita: It does seem self-sustaining on some level – which may be inevitable since we're operating within an academic industrial complex. It seems complicated because on the one hand it's really good that settlers are taking this on as a project both theoretically and in practice. My concern is that it resonates with the emergence of critical whiteness studies and men's studies in the 1980s and 1990s, where there is some sort of anxiety at play for dominant groups. I wonder what anxieties are being masked over in the emergence and legitimacy of settler colonial studies, as a field distinct from Indigenous studies.

Jeff: It is interesting to see where *Settler Colonial Studies* thinks this is going to go. Are there legitimate linkages that they are trying to make? Or is it just about establishing their legitimacy as a field of inquiry?

*Rit***a**: Those scholars building queer critiques of settler colonialism who are working with Indigenous peoples in collaborative ways seem to make linkages in ways that is not as well reflected in settler colonial studies more generally. It's hard to assess at this stage, as in some ways it is early days for this field of study, although as Veracini notes in his work, settler colonial studies has a long history.

Corey: One reaction I have to these questions is that, for myself at least, it wasn't reading settler colonial studies that triggered anything for me, to begin to look critically at myself, my family, Canada. I can't help but think that in these works, the work and resistance of Indigenous peoples is overshadowed. For example, we

can look at Veracini's history of the concept [of settler colonialism] where Indigenous studies and Indigenous resistance is pretty much erased. Veracini briefly names both on the second last page, but then immediately goes on to credit white historians.

Rita: What you say Corey reminds of Black feminist bell hooks, who made the same point in the 1980s around the ways in which white feminists talk about critical whiteness studies, about how she was always doing critical whiteness studies – that was always her work. She's not a black feminist just talking about women of colour, for whiteness constitutes how we understand 'women of colour'. And so I wonder at the same time whether the claiming, or the framing of settler colonial studies itself, casts a shadow over the work that is being done by Indigenous scholars, who have been talking about the centrality of land, the specific nature of Indigenous experiences, and the role of settlers in dispossession for a long time now.

Jeff: I saw that when I was a grad student in political science. In the early 90s, political science scholars were just beginning to discuss Indigenous self-determination when Indigenous scholars and activists had been acting on it for decades by asserting their self-determining authority within United Nations' forums and on their homelands (for example, Akwesasne Notes, 1978). Yet it was non-Indigenous folks writing about this that received the acclaim… the other Indigenous research didn't conform to what was conceived of as Political Science… so when settlers take up these questions, it's suddenly considered a legitimate field of study.

Rita: Right. Exactly.

Jeff: Before it's viewed as a bunch of native activists…as I was called once, "an activist posing as an academic." And now with the involvement of settler academics it's viewed as a legitimate field of inquiry.

Rita: And there's something interesting too as people of colour are entering this discussion, often on terms set by white scholars and activists. This is a really interesting, ambiguous moment I think for people of colour, generating an anxiety that has prompted new ways of making declarations of solidarity. It is not Indigenous peoples who are anxious whether people of colour are defined as settlers. And while I think this moment serves to relieve white anxiety, for people of colour it has become about which side we are on, where do we place ourselves as non-Indigenous people who are trying to navigate racism and be accountable to

Indigenous peoples in the context of white supremacy and settlement. It can be a very tense moment, but one that can also tend to mask over the ways settlement happens through patriarchy, homophobia, transphobia, anti-Black racism, Islamaphobia.

Jeff: That's the really interesting part. It becomes about, like you said, how does settler colonial studies fit into Indigenous studies?

Rita: It seems that the current debate forces us to answer a question that, first of all, requires us to ask a very sort of positivist type of question: who's a settler. And it is also a necessary question when deciphering actual activist struggles against colonization… but it almost feels like a red herring. I just keep coming back to that. If our preoccupation becomes 'who is a settler', if that's what social justice activists (broadly defined) are fighting over, then who is dealing with white supremacist capitalism and heteropatriarchy, what's our target of critique? Where are we putting our energies? It's an important question and way to build relations, but such declarations can only take us so far.

Jeff: Well you see it in different ways, with the definition of Indigeneity. There's still this preoccupation with defining the term versus the implication of that term and the power of that term can be wielded to promote justice. It's a form of control – as I see it. You've got to narrow it down to a certain point where you can easily define it. It's only viewed as a legitimate field of study if you can define Indigenous in accordance with the UN Declaration on the Rights of Indigenous Peoples. Now that settler scholars are attempting to define the word settler, they are beginning to see the futility of such an exercise.

Rita: Right. Contain it. That's a modern liberal impulse…

Jeff: And the response to defining Indigenous has been a reliance on self-identification – 'okay, we're not going to fall into that definitional trap' – but then it creates other problems as well – groups just using that label of Indigeneity as an opportunistic way to distinguish themselves in the world system.

Rita: So what do you see as the work of that requirement to name, to categorize? How would you characterize that move to name, categorize – is that a process of delegitimizing? A process of containment?

Jeff: I see it as more containment. It's kind of that policy impulse – you've got to define your target.

> *Rita*: Right. Manage it, with the effect of depoliticizing the gendered nature of dispossession.
>
> *Jeff*: And if we have 5000-8000 Indigenous nations around the world trapped within 77 different countries, we become peoples for states to 'manage'. The underlying logic is that of an "Indigenous problem" to be contained. Locate the problem, and…
>
> *Rita*: Eradicate it…
>
> *Jeff:* Spatially locate it, ideologically, temporally all these things…

The questions we raise here on settler colonialism and power, prompted us to further reflect on the scholarly and activist debates on conceptions of 'settler' and how we understand this positionality.

'Settler' anxieties

Who is a settler? And why does it matter? These questions have been a preoccupation in activism and theory over recent years, especially for non-Indigenous peoples engaged in anti-colonial work, rather than Indigenous peoples. It is an anxiety that has manifested itself among white allies and, it seems more recently, communities of colour. Yet, despite the discussion and debate within the academy and beyond, there is ambiguity in regards to what is meant by 'settler'.

In examining the definition of 'settler' in the hegemonic site for English definitions and etymologies – that is the Oxford English Dictionary (OED), in comparison with other, critical articulations of 'settler', we can observe some resonances with and perhaps even a foreshadowing of the contemporary discussions and debates around the term. Perhaps most importantly in terms of its utility, throughout both the OED definition and other articulations, the occupation of land is central. In the OED definition of "settle", "place" and "property" are central in a number of usages. This is echoed by a number of other articulations. For example, Wolfe (2006) states that access to land is the primary motive for eliminating the native, and in settler colonialism "settler-colonizers come to stay" (p. 388); Bonita Lawrence and Ena Dua (2005) locate people of colour as settlers by virtue of living and owning land appropriated from Indigenous peoples, as well as exercising and seeking rights that are collectively denied to Indigenous peoples; Veracini (2011b) notes that "settlers do not discover: they carry their sovereignty and lifestyles with them. As they move towards what amounts to a representation of the world, as they transform the land into their image, they settle another place without really moving" (p. 206); and Eve Tuck and K. Wayne Yang (2012) similarly conclude that settlers are those who make Indigenous land "their home and source of capital." In addition, the OED also gestures to the relationship between settler colonial power and other forms of power, such as

capitalist property regimes and heteronormativity. Importantly signalling that this political positioning is not outside of other dominant discourses and State formations of masculinist, patriarchal, capitalism; in other words, while settlers are not without agency, they are variously and systemically positioned according to the shifting terms of State hegemonies.

However, the OED usage also differs in a number of respects. For example, the OED obscures the existence of Indigenous peoples and at times colonization, thereby performing terra nullius in the lexical register as well as portraying a perfection of settler colonialism. This is in stark contrast to other articulations, such as Lawrence and Dua (2005), Alfred (2009), and Tuck and Yang (2012) which center Indigenous sovereignty. Moreover, in other articulations, such as those just noted, 'settler' is deployed as a counter-performative term; not as containment, but as a demand for the transformation of 'settlers' through subjective *and* objective transformations. Furthermore, the OED also foreshadows some contemporary concerns through its emphasis on certainty. Once again, do all marginalized people feel certain, naturalized in white settler colonies? At the same time, how does that uncertainty lead one to disrupt complicity in Indigenous dispossession?

Discussion

Corey: So the question of 'who is a settler?'

Rita: I think about the work I've done with Indigenous peoples – we've had the conversations around about being on stolen land, or treaty land, where treaties have not been honoured by colonizers, and the obligations of non-Indigenous peoples, but I've not had Indigenous peoples express anxiety about the term settler. There has been an anxiety that I think has long existed among non-Indigenous peoples about how to be accountable about being on colonized land. The anxiety about 'settler' is just a recent manifestation of that.

Jeff: And also what is your set of criteria in defining a settler…

Rita: It's in activist spaces for sure – these kinds of declarations – 'I'm a settler, I'm pro-Palestinian, I support gays'… it can become a kind of mantra if we don't explain why we are making these statements. The term can be paralyzing for some non-Indigenous people who are absorbed by guilt, or it can mobilize action. 'Settler' certainly situates non-Indigenous peoples in a structural relationship to dispossession of Indigenous land and within imperialistic nation-building projects that require ongoing settlement. But it's contentious. Some folks are using different terms altogether: Scott Morgensen (2010) uses the term 'non-Native' in his piece on 'Settler Homonationalism' and Jodi Byrd (2011) references 'arrivants' in *Transit of Empire* to make distinctions between white settlers and settlers of

colour. It's also become clear that statements of 'I am settler' can become performative.

Jeff: Exactly. The thinking or mindset seems to be that settlers are in a different category, that they've shifted the terrain of discussion.

Rita: Yes. This seems especially heightened among people of colour since Bonita Lawrence and Ena Dua published their 2005 piece on decolonizing antiracism, which criticizes people of colour for failing to centre our implication in Indigenous dispossession. From their perspective, while there are differences among differently positioned people of colour (refugees, migrant workers, economic immigrants etc.), we are settlers. Sharma and Wright (2009) have responded to this by arguing that people of colour are not settlers, but they make their argument by denying Indigenous peoples relationship to their traditional lands. Then a third kind of response has emerged from some people of colour to say that we are settlers but not the same as white settlers. I find this third response more compelling, but I think the debate about types and degrees of settler is a distraction from critiques of how gendered dispossession, neo-liberal migration policies, and masculinist, capitalist white supremacy are linked.

Corey: I'm hesitant on the analogy between white declarations of anti-racism, and settler declarations of being a settler. Mostly because a declaration of being an anti-racist is different than saying one is a settler. The former is a move to innocence, the latter is not necessarily so. Yet, at the same time, I don't mean to argue that moves to innocence aren't happening with these declarations. For instance, we can see it on social media around 'upsettler'.

Rita: Tell us about this concept.

Corey: I think it was actually Eric Ritskes who said this phrase 'upsettler'[1] is a form of distancing, a move to innocence, as if those using it are saying 'I'm not like them. I'm not the problem'. As a move to innocence, it's a deferral of one's complicity and responsibility, as if colonization is only a problem because of others not quite getting it. In moves to innocence, those performing the move presume that there is such a thing as a good settler, a good colonizer, as if decolonization can occur outside of large scale, systematic subjective *and* objective transformations. While I've used 'upsettler' myself, it's use, obviously including my own, raises concerns because I'm interested in the potential of the 'settler' term – how it can be used to open discussions around responsibility, to

[1] A mash-up term, of 'upset' and 'settler', which began as a hashtag on Twitter.

identify and signal that colonization has never ceased, to "jumpstart the decolonial engine" by identifying the enemy, as George Ciccariello-Maher (2010) writes. But, at the same time, there is a danger of it being only a performance or, as others have noted, used by white settlers to flatten differences between non-Indigenous peoples, both of which, I think, stall the decolonial engine. I also think its potential depends on the space that you use it in. For instance, I see it used in Indigenous studies classrooms or at the Indigenous Governance program's Indigenous Leadership Forum at the University of Victoria. But, for example, I don't see it used in this political theory class that I audited last fall. This I think is an example of how 'settler' declarations can be just a move to innocence, which is problematic and disappointing in a number of ways. I think it can be disruptive, I think it – and its affects and effects – can foster transformative change (obviously not on its own), but it depends on the context, the space you're in.

Rita: I wonder then if it is more effective to make these kinds of statements/declarations in a context in which Indigeneity is not considered relevant? So it maybe is less effective to declare, 'I am a settler on X Indigenous land' in places where people are already mindful and aware of whose territory they are on, and more effective when people are not even aware that the territory is Indigenous.

Jeff: And then it just becomes, almost like a re-affirmation of the original logic of colonialism – paying lip service to the Indigenous peoples of the region but subsequently reinscribing settler names and histories on the landscapes. But settler studies, from what I've read, doesn't really discuss any new ways to confront that. It doesn't problematize it at the same time as declaring it.

Rita: Right. It depends on your audience.

Jeff: If you think about it, the most effective times I've used the term settler have been in spaces where folks are most resistant to it. And then it creates these tensions, but it also creates these great conversations about what is their role and responsibilities. I think folks become complacent with the term. There are several Indigenous words for settlers that provide deeper insights into the violence and destructiveness of historic and ongoing colonization. For example, yonega is a Tsalagi (Cherokee) term for white settlers, which connotes "foam of the water; moved by wind and without its own direction; clings to everything that's solid." Wasicu is a Dakota term for settlers, which means "taker of fat." In the northwest, hwunitum is a Hul'qumi'num and SENĆOŦEN word for settler, that some have described as "the hungry people". None of the above terms are positive reflections

> of settler society and represent the lived experiences of Indigenous nations amidst settler occupation. Often hearing that the word settler is offensive to some people or polarizing, I find that using Indigenous words to describe settler relationships can help to re-center the discussion and potential actions of solidarity back into community. Just as it is a challenge for Cherokees to be welcomed into another nation's territory as strangers, there is an urgent need for settlers to change their current relationships with the local Indigenous nations on whose territory they reside. If this is not the relationship one wants to embody, whether as yonega or hwunitum or any number of Indigenous terms for settler, then the impetus is on the settler to change the nature of the relationship by taking direction from Indigenous nations themselves. The ultimate goal is to create the need for a new word or phrase to describe positive features of a settler-Indigenous relationship.
>
> *Corey:* We've had similar conversations about this Jeff. And I think there is great potential in using Indigenous terms. It literally makes that Indigenous nation known to the settler, challenging the lie of Indigenous disappearance. It also reminds me of that scene on the train in France in *Black Skin, White Masks,* where Fanon identifies the enemy and makes himself known. And although the deployment of 'settler' certainly identifies the enemy (to me that is its function), it fails to make the Indigenous nation known. So, what you're talking about Jeff, this sort of counter-performative and thereby transformative demand, is often obscured by the definitions alone, especially when they are taken out of context, as well as by settler colonial studies, through their representation of settler colonialism as transhistorical and inevitable. I think this is at least partially attributed to the overshadowing of Indigenous peoples' articulations – their own accounts of Indigenous-settler relations, their own governance, legal and diplomatic orders. This then also stresses the importance of centering Indigenous resurgence to avoid the further disavowal of colonization and colonial fatalism, as well as to inform decolonization efforts.

In the next section, we build on Jeff's conclusions to consider ways to approach settler-Indigenous relations in ways that are directed towards disrupting settler colonialism and fostering Indigenous resurgences.

Responsibility for/in settler colonialism: Indigenous resurgence and settler solidarities

Above, Jeff discussed the importance of re-centering the discussion and actions of solidarity back into communities *and* a transformation of Indigenous-settler relationships. This reflects a broader trend in Indigenous studies, particularly within the Indigenous resurgence paradigm.

Indigenous resurgence is not a new phenomenon; as Leanne Simpson writes, it is Indigenous peoples' "original instruction" (2011, p. 66). In recent years though, Indigenous resurgence emerged to signal the importance of a turn away from dominant settler institutions, values, and ethics towards Indigenous institutions, values and ethics of "interdependency, cycles of change, balance, struggle, and rootedness" (Alfred, 2009, pp. 110, 250; Coulthard, 2008, 2013; Simpson, 2011, p. 17; Corntassel, 2012, p. 91). This simultaneous 'turn away and turn to' reflects Jeff's call for a re-centering of community in both discussion and action. Yet, there is much more to Indigenous resurgence than a 'turn away' from settler society. Since Indigenous resurgence is inherently in contention with settler society, it also has explicit and implicit demands of that which is being contended with – namely, settler society and its dominant values. Theorists of Indigenous resurgence, such as Taiaiake Alfred and Leanne Simpson, among others, also express the possibility for settler society listening, learning, and acting, with respect to one's position in relation to the colonial difference, in accordance with and for what is being articulated; in short, the possibility of settlers being transformed through anti-colonial resistance (see, for instance, Alfred, 2009, p. 35; Arvin, Tuck & Morill, 2013; Coulthard, 2013; Simpson, 2008 2011). Indigenous resurgence is ultimately about reframing the conversation around decolonization in order to re-center and reinvigorate Indigenous nationhood.

Recognizing how settler colonialism works through other forms of power, Indigenous theorists have also stressed the importance of dismantling other power structures for Indigenous liberation. For instance, Alfred states that "the end goal of our Wasáse – our warrior's dance" is the "transform[ation of] the whole of society," and a "remak[ing of] the entire landscape of power," to ultimately "reflect a truly post-imperial vision" (2009, p. 27); Arvin, Tuck and Morrill (2013) note how, "Native feminist theories offer new and reclaimed ways of thinking through not only how settler colonialism has impacted Indigenous and settler communities, but also how feminist theories can imagine and realize different modes of nationalism and alliances in the future" (p. 9); Coulthard (2013) definitively states that, "for Indigenous nations to live, capitalism must die"; Simpson (2011) writes that Indigenous resurgence, "requires a disruption of the capitalist industrial complex and the colonial gender systems (and a multitude of other institutions and systems) within settler nations" (p. 87); and Smith (2005) notes how sexual, gendered, and racial power works to naturalize hierarchies that effect both Indigenous and settler peoples (though, of course, in different ways), subsequently undermining alternatives to settler colonialism.

It seems clear to us that these explicit and implicit demands expressed through Indigenous resurgence, also provide important alternative and transformative visions articulated for Indigenous peoples and/with settlers. As Smith (2005) writes, "when we do not presume that [settler colonial states] should or will always continue to exist, we create the space to reflect on what might be more just forms of governance, not only for Native peoples, but for the rest of the world" (p. 311). This is because, "Indigenous sovereignty and nationhood are predicated on interrelatedness and responsibility" rather than hypermasculine configurations of sovereignty and self based on a rejection of interdependency and projection of impermeability (p. 311). At the

same time, following Coulthard (2014), centering the colonial relation corrects an "excessively temporal framing of [primitive accumulation]" (p. 58), resists "becoming complicit in the very structures and processes of domination that [critical theory] ought to oppose" through, for instance, blanket calls to reclaim the commons (p. 61), and, echoing Smith above, prevents "overlooking what could prove to be invaluable glimpses into the ethical practices and preconditions required of a more humane and sustainable world order" (p. 61).

In our collective discussion, we consider the question of solidarity in relation to the challenges and alternatives articulated above, specifically looking at some of the temporal and spatial aspects of solidarity building and how these relationships unfold.

Discussion

Rita: We need to problematize the question of solidarity because it separates issues, as if Indigenous issues are distinctly separate from migration issues, issues around temporary foreign workers, violence against women, etc. in two ways. One, it suggests that the white settler nation doesn't need to maneuver different bodies – Indigenous bodies, white bodies, bodies of colour, male, female, trans, queer, poor, disabled, religious, secular, citizens, noncitizen workers, refugees – differently. And also, in my case, people of colour are also structurally implicated in dispossession, whether that's our choice or not. So it posits that 'your' issues of Indigenous land are not separate from 'my' issues if I care about racism, sexism, and that I must think about the ways they are related to settler colonialism.

Jeff: I guess for me 'solidarity' gets away from the direct accountability, the trust elements that are embedded in any relationship that you have. So that trust and accountability are ongoing feedback loops, if you will, that you have to constantly renegotiate or reinterpret in order to act in solidarity, or act in concert, or act in camaraderie. But I think these terms mask the messiness of that overall process.

Corey: I agree with both your critiques. Solidarity does sometimes seem to imply a distinctness that, like you state Rita, ignores relations and complicity between. And like you state Jeff, there does seem to be an underlying conceptualization of solidarity as temporal event.

Jeff: And in terms of the temporal, at what point does forgetfulness become a problem? A Tsalagi saying, "Live in a longer 'now'— learn your history and culture and understand it is what you are now," urges us to consider that notions of time are fluid and flexible. After all, the Tsalagi word for "I am forgetting" is agikewsga, which literally means I am blind or am unable to see something that happened in the past (Altman and Belt, 2012, p. 232). To live in a longer 'now', it

becomes one's responsibility to live in tohi, or a process of balance and according to the pace of the natural world (p. 227). In this sense, 'the longer now' implies not just a different time scale but also future generational responsibilities. So there is a different sense of Indigenous place-based and living histories that should be understood by folks proposing to act in solidarity. If someone is just simply saying 'I'm a Canadian, and I don't know my history', how useful is that to deepening solidarity? Maybe that forgetfulness… is also sort of convenient. You haven't done the hard work to uncover your role, or your family's role in, whether it's direct colonial actions or just settling here.

Corey: This not knowing, this forgetting of our own histories, just supports the claiming of space and place. These histories too are obviously entangled and complex. For instance, my great-great grandfather and his family were settlers in Ohio, eventually becoming a doctor and Christian missionary in the interior of China. This side of my family stayed in China – over time, transitioning from Christian missionaries to foreign capitalists – until the Second World War, when my great-grandfather was interned and my grandmother with her mother and brother came to Canada. So my own ancestral history is entangled with the global structures of settler colonialism, capitalism, christianity, white supremacy and imperialism. And how does this affect my own approaches and thoughts to solidarity? If I'm responsible to Indigenous peoples who have been and continue to be displaced and dispossessed by myself and my ancestors, and thus accountable to the structures and practices of settler colonialism and ultimately their destruction, am I not also responsible for my ancestors who served as missionaries and capitalists in China, and thus accountable to the structures and practices undergirding those acts? How does this longer, entangled, complex history contribute to solidarity practices with Indigenous peoples, *and* (in combination and/or isolation) amongst settlers ourselves?

Rita: It is a challenge to know what it means to be 'fully grounded', in a social and political sense. Growing up in the UK as a brown person in the 1970s and 1980s, during the era of overt police racism, the rise of the National Front, the anti-immigrant stance of Margaret Thatcher, I recall noting that there was a battlefield and that I was in solidarity with nonwhites. When I first arrived in Canada, the terrain shifted. I remember a series of racist incidences my family and I experienced. One of them was when my brother went to apply for a job as a bar tender and, in the window it said, 'No dogs allowed, no Indians allowed'. He was mad when he got home, we were all angry. It took us a few months to realize that the notice was about Indigenous peoples, not us as peoples from India. But the connections and differences started to form in my mind. I find it helpful when I

think of the history of colonialisms, of my family, and my role in Canada now to use 'settler colonialism' because it centres the dispossession of land as a distinguishing and ongoing colonial feature. Colonial assemblages certainly exist in India today too, such as in the road or education system but this is not government by a colonial body. The challenge is when we see colonialisms and racisms as separate, because the dispossession of Indigenous peoples lands is related to the history of British and European imperialism in India, Africa, the Caribbean, and other parts of the world, and also continuing. And these are patriarchal, heteronormative, ablest, and capitalist imperial formations that remain relevant today.

Corey: This relational, interdependent focus is also important amongst settlers ourselves – perhaps as a way to counter the flattening of differences that occurs amongst settlers, particularly in solidarity work. Settlers obviously need to be doing our own work and challenging 'our' institutions and practices that serve to protect or further colonization. But we can't do this if we flatten the differences and ignore the inequalities and power relationships that exist within settler society. Not only does such flattening prevent much needed alliances but flattening itself can actually work to protect certain elements of settler colonialism. For instance, white supremacy works to naturalize *white* settler presence. In terms of solidarity then, I find it problematic for myself, as a white, class privileged, cis-hetero, and able bodied male (as well as people like me) to demand other peoples to act in solidarity, while also not holding myself (and others like me) responsible and accountable to other forms of violence that may be a contributing factor to the further reification of structures that support settler colonialism, like the State. Now I'm not arguing for the continued eschewal of Indigenous governance and legal orders because others experience violence, but rather, that the substantive recognition of Indigenous governance and legal orders also requires a dismantling of other, related forms of domination. This latter dismantling I see as necessary but also insufficient for the dismantling of settler colonialism. These sites and spaces of domination and resistance are distinct, but also connected dialectically. This seems to be something that settlers, white settlers specifically, have yet to articulate and take up, critique and act against. And this is perhaps most evident in how settlers seem to be continuously waiting for instruction from Indigenous peoples on how to act.

Rita: I wonder if this relational approach is a more useful direction for settler colonial studies, not unlike the kind of work you do Jeff, in thinking about colonialism in a global, comparative context.

Jeff: And I think, the more you can make those links, the British occupation of Maori territory is directly related to HBC's strategy to begin treaty making here… All those things are interrelated. They are shared, and they are seen as shared strategies. The other thing I see is this impulse to delocalize it… it's always that kind of Free Tibet Syndrome… the further away acts of genocide are from your location, the more outrage expressed at these injustices. It's a way of avoiding complicity, but it's also a way of recasting the gaze. It's like, 'We're not going to look right here, because this appears to be fairly peaceful' And so it's always that sort of re-directing away from localized responsibility, and almost magnifying impacts farther away.

Rita: So what settler colonial studies *does* do, is help us relocate to locality, which is helpful. You mention the HBC. I wonder what was the relationship between the Hudson Bay Company in Canada and the East India Company or the East Africa Company? If we're thinking about settler colonialism as a structure, how is it related to other modalities of gendered and sexualized white supremacy? How are the logics of State sovereignty and authority over nonwhite bodies connected? If we're thinking about it, as non-Indigenous peoples being 'in solidarity', part of that is locating, attacking the whole structure of imperialism that is deeply gendered and homonationalist, that depends on neo-liberal projects of prioritizing able-bodied workers who can serve capitalism.

Corey: Part of this, I think, what we've been discussing here, relates to what I sometimes see as the framing of 'settler' as event, rather than structure – where we are perhaps overly focused on the question of 'who' at the expense of the 'how'. If we don't understand how settlers are produced we run the risk of representing settlers as some sort of transhistorical subject with transhistorical practices. So I'm worried that while in one moment the term 'settler' denaturalizes our – that is all non-Indigenous peoples – presence on Indigenous lands, in the next, and through this construction of the 'settler' as transhistorical, we renaturalize it. In short, we go from a disavowal of colonization, to its representation as inevitable. Here is where I think a historical materialist or genealogical approach to the production of settler subjects may be useful in showing how this production is conditioned by but also contingent on a number of factors – white supremacy, hetero-patriarchy, capitalism, colonization, the eschewal of Indigenous governance and legal orders, environmental degradation, etc. Now this is also not to say that the binary of Indigenous/Settler isn't accurate. I think its fundamental. Rather, I think it is possible and important to recognize that there have been, and are, individuals (or even collectives) that might be referred to as something other than settlers by Indigenous peoples, perhaps as cousins. Or in a similar vein, that there have been

and are practices by settlers that aren't colonial (and here is where centering Indigenous peoples' accounts of Indigenous-settler relations, as well as their own governance, legal and diplomatic orders is crucial). But I think it's just as important to recognize that these relations have and do not occur *despite* settler colonial and imperial logics, and thus outside of the binary. Rather, such relations occur in the face of it. The binary then is fundamental as the logics that uphold the binary cannot be ignored due to the existence of possiblly good relations as the logics that uphold the binary threaten those relations through the pursuit of the elimination of Indigenous peoples.

Rita: Yet, how do we act in light of these entanglements, and with, rather than overcoming differences?

Corey: Tuck and Yang (2012) had this really great article, "Decolonization is not a Metaphor." In it, they talk about the importance of an ethics of incommensurability – a recognition of how anti-racist and anti-capitalist struggles are incommensurable with decolonization. But what I've been thinking about recently is whether these struggles are *incompatible*. For example, in the Indigenous resurgence literature, there is a turn away, but it's also not an outright rejection. It also demands settlers to change. Yet recognizing that settlers are (re)produced, the change demanded is not just an individual transformation, but one connected to broader social, economic, and political justice. There are then, it seems, potential lines of affinity between decolonization and others, though incommensurable, struggles. And in order to sustain this compatibility in the face of incommensurability, relationships are essential in order to maintain accountability and to resist repeating colonial and other relations of domination, as well as, in very strategic terms, in supporting each other's resistance.

Rita: As some anti-racist and Indigenous feminists have long argued, it's not possible for people of colour to confront different racisms without thinking about sexism, capitalist exploitation, homophobia and transphobia, Indigenous struggles – they are tied to one another. There is an affinity between decolonization and other struggles. Differently positioned people of colour and Indigenous peoples are not operating with the same kinds or degrees of authority as whites or each other, but nonetheless we are not outside of these relations and forces of power.

Jeff: I like building off Tuck and Yang too. It's a way of showing the linkages across these movements, but also how they can be tighter. How can we deepen them and focus on the everyday acts of resurgence that Indigenous peoples engage in?

Rita: What you say reminds me Corey about a question you have raised in another context on temporal and spatial solidarities.

Corey: In June 2013, at Congress, you both were on a panel titled "Solidarities, Territorialities, and Embodiments." At this panel, Jeff, you seemed to be challenging Rita's notion of "temporary solidarities" by emphasizing the importance of relationship grounded in place. So I first would question how useful 'temporary solidarities' as a concept is. Second, I'm wondering about the importance of bringing the role of territorialities within these discussions of solidarity themselves. Maybe, Jeff, what you were talking about at Congress and in conversations you and I have had, is a gesturing towards what we could potentially call 'spatial solidarities' – or bringing spatiality into discussions of solidarity.

Jeff: As the late Vine Deloria, Jr. (2001) has said, "power and place produce personality." In this sense, place-based relationships are personal and anything approaching spatial solidarity would entail the regeneration of Indigenous languages, ceremonial life, living histories, and nationhood. For this reason, spatial solidarities can be a way to localize struggles for Indigenous resurgence. While the "Idle No More" movement, which began in 2012 in Canada as a response to proposed legislation by Prime Minister Stephen Harper's government that undermined Indigenous protections of land and water, tapped into an ongoing and collective Indigenous struggle for land, culture and community, the settler support for it was predominantly temporally driven and performative rather than localized and land-based. I find that the most powerful mobilization for change happens when the spatial and temporal intersect.

Rita: This centering of land strikes me as constitutive to any kind of political work with Indigenous peoples. Can you give an example Jeff?

Jeff: One example might be how settlers are welcomed onto Indigenous homelands among Native nations in Australia. Beginning in the 1980's, Tasmanian activist and lawyer, Michael Mansell, issued 'Aboriginal Passports' to an Indigenous delegation visiting Libya in 1988. More recently, Aboriginal Passports have been issued to non-Indigenous people living on Indigenous homelands. Someone visiting Indigenous homelands in Australia can apply for an Aboriginal Passport and sign a pledge stating that, "We do not support the colonial occupation of Aboriginal and Torres Strait Islander lands" (Aboriginal Passport Ceremony, 2012). This innovative strategy challenges the authority of the Australian government to regulate the travel of visitors onto Indigenous homelands and raises

awareness of contemporary struggles of Indigenous peoples in order to build solidarity for future movements.

Rita: Corey, your question is helpful, and Jeff's response also helps me think through the movement between time-situated and place-based practices of 'solidarity' and ways of thinking about these situated practices in terms of an *ethos* of 'unsettled solidarities' that moves across time and space, that is a way of being in the world, a set of ongoing relations. Where I, where we, are never outside of struggle, everyone is 'structurally implicated' in the dispossession of Indigenous lands. Everyone is differentially structurally implicated, where the ideology of presumed consent underlies settler colonialism.

Jeff: I would add that living on another Indigenous nation's territory also carries an obligation to support those defending their homelands. Cheryl Bryce from Songhees First Nation started the "Community Tool Shed" in 2009 to generate support for the restoration of Lekwungen food systems. The Community Tool Shed in Victoria, British Columbia, is where settlers and Indigenous peoples can come together to rid the land of invasive species, such as Scottish Broom, and to revitalize traditional plants such as kwetlal or camas. Cheryl's focus for this informal group is on reclaiming traditional place names, educating people about the destructiveness of invasive species, and reinstating Lekwungen food systems. The tool shed meets once per month to pull invasive species on places that have been managed by Cheryl's family for generations, such as Meegan (aka, Beacon Hill Park), and Sitchamalth (Willows Beach). To a 'resident' of Lekwungen homelands, the above-mentioned places are public lands. This demonstrates the urgency of reclaiming Indigenous place names in tandem with the restoration of Indigenous foodscapes and landscapes. The May 22, 2013 reclamation of the name PKOLS (formerly known as Mount Douglas) is one of many examples where communities can come together to demand representation on their own terms. These are everyday acts of resurgence that highlight the terrain of Indigenous struggles to restore and reconnect a place-based existence.

Corey: And both examples you highlighted Jeff do not foreclose a wide-range of participants. The PKOLS reclamation led by the W̱SÁNEĆ peoples, involved participation from Indigenous peoples across Vancouver Island and across Turtle Island, it involved the university through the Indigenous Governance program, and it involved local, non-Indigenous, activist groups, most notably Social Coast. The Community Tool Shed, a project that I've also been involved in for the past two years, does something similar. What I find really interesting in this work is that settlers and Indigenous peoples challenge our environmentally degraded and

> colonial present simultaneously. Yet, there is still attention paid to the different roles and responsibilities in this work. For instance, non-Lekwungen people in removing invasive species, and Lekwungen people in managing these lands and in harvesting plants such as camas. So unlike other stewardship groups around Victoria, those participating are not seeking to depoliticize this work, nor do they argue that this work erases their complicity or their potential complicity in colonization. In supporting Cheryl's assertion of her roles and responsibilities, they aren't seeking to restore land in order to claim it for themselves. They aren't Locke redux. And, given the nature and extent of Broom here – you find it pretty much everywhere around Southern Vancouver Island, something like 18,000 seeds are produced in a single plant, and those seeds can lie dormant for up to thirty years – pulling broom one time really does not mean much. So there is a demand for long-term work, which itself can help build accountability through such place-based relationships. And since land is the irreducible element of settler colonialism, and that environmental degradation has often proceeded through and in support of settler colonialism, it provides an example of non-Indigenous practices with the land that aren't necessarily colonial. Now I'm not saying that this is an example of decolonization or that those involved are somehow not settlers. After all, decolonization and the transformation of settlers requires subjective and objective transformations. Rather it's a practice that does not reify colonization, and thus challenges settler colonial studies construction of settler colonialism as inevitable and transhistorical.

Conclusion

Decontextualized conceptions of settler colonial studies, 'settler', and solidarity risk further eschewing Indigenous peoples and thereby reifying the stolen land each of the above is founded upon. Perhaps, most centrally, this is done through de-centering Indigenous peoples own articulations of Indigenous-settler relations, their governance, legal, and diplomatic orders, and the transformative visions entailed within Indigenous political thought. Such de-centering has the potential to present settler colonialism as complete or transhistorical, as inevitable, rather than conditioned and contingent. This failure to attend to the conditions and contingency of settler colonialism can also be traced to the marginalization of how colonization actually proceeds across time and space. That is, as entangled with other relations of domination, and not only through structures, but also practices that serve as, what Paige Raibmon (2008) refers to, "microtechniques of dispossession." Those who critique settler colonialism through transhistorical representations are then able to feel good and satisfied about their criticisms, despite their ahistoricism and decontextualization, and thus their own role in actually sustaining colonial power by failing to attend to its conditions and contingency.

We ask: what good is it to analyze settler colonialism if that analysis does not shed light on sites of contradiction and weakness, the conditions for its reproduction, or the spaces and practices of resistance to it? What is the purpose of deploying 'settler' without attention to its utility, to what it alludes to or eludes from? What good is solidarity if it cannot attend to the literal (and stolen) ground on which people stand and come together upon?

In this paper, we have argued for a contextual approach to the questions of settler colonialism, settlers, and solidarity. It is ultimately about accountability to each other, as the Tsalagi word, digadatsele'i suggests, and treating Indigenous resurgence as a process that cannot occur in isolation. This, as argued throughout this paper, demands a centering of and support for Indigenous resurgences, and a shift from a one-dimensional to a relational approach to settler colonial analyses that is connected to the issue of other Others. This also demands place-based solidarities – that is, relationships and practices – that center both Indigenous resurgences and more relational approaches to settler colonial power. After all, settler colonialism will not be undone by analysis alone, but through lived and contentious engagement with the literal and stolen ground on which people stand and come together upon.

Appendix

"Settle", according to the Oxford English Dictionary, means:

1. *"To seat, place"*
2. *"To place (material things) in order, or in a convenient or desired position; to adjust (i.e. one's clothing)"*
3. *"To place (a person) in an attitude of repose, so as to be undisturbed for a time"*
4. *"To cause to take up one's residence in a place; esp. to establish (a body of persons) as residents in a town or country; to plant (a colony)". Two derivatives from the fourth definition are "to fix or establish permanently (one's abode, residence, etc.)," and "to furnish (a place) with inhabitants or settlers"*
5. *"To fix, implant (something) in (a person's heart, mind, etc.)"*
6. *"To set firmly on a foundation; to fix (a foundation) securely"*
7. *"Of things, esp. of flying or floating objects […] to come down and remain"*
8. *"To come together from dispersion or wondering […] of a body of persons: To direct their course to a common point"*
9. *"Of things: To lodge, come to rest, in a definite place after wandering"*
10. *"Of persons: To cease from migration and adopt a fixed abode; to establish a permanent residence […] become domiciled," with its derivative as "of a people: to take up its abode in a foreign country. Also to establish a colony"*
11. *"To come or bring to rest after agitation"*
12. *"Of persons: To become composed; to compose oneself to sleep; to come to a quiet or orderly state after excitement or restless activity"*

13. *"To quiet, tranquilize, compose (a person, his mind, brain, nerves, etc.); to allay (passion)"*
14. *"To come to an end of a series of changes or fluctuations and assume a definite form or condition"*
15. *"To ensure the stability or permanence of (a condition of things, a quality, a form of power, etc.)"*
16. *"To secure or confirm (a person) in a position of authority, an office; to install permanently, establish in an office, an employment." (First used in this manner by Hall in the Chronicles of King Henry VI, 1548: "When Kynge Henry was somewhat setteled in the realme of Scotlande")*
17. *"To establish (a person) in the matrimonial state"*
18. *"To establish (a person) in the legal possession of property"*
19. *"To secure (payment, property, title) to, on, or upon (a person) by decree, ordinance, or enactment"*
20. *"To subject to permanent regulations, to set permanently in order, place on a permanent footing (institutions, government)"*
21. *"To appoint or fix definitely beforehand, to decide upon (a time, place, plan of action, price, conditions, etc.) […] to adjust (one's action) to something". Derivatives of this definition include: "to appoint or arrange (something to be done or to take place)," "to fix by mutual agreement," "to come to a decision; to decide to do something; to decide upon (a plan of action, an object of choice)," "to settle for, to decide or agree on, to content oneself with"*
22. *"To decide, come to a fixed conclusion on (a question, a matter of doubt or discussion); to bring to an end (a dispute) by agreement or intervention." Derivatives of this use include: "Law. To decide (a case) by arrangement between the contesting parties," "To put beyond dispute, establish (a principle, fact) by authority or argument," "To arrange matters in dispute, to come to terms or agreement with a person"*
23. *"To close (an account) by a money payment; to pay (an account, bill, score)"*

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Decolonization is not a metaphor

Eve Tuck
State University of New York at New Paltz

K. Wayne Yang
University of California, San Diego

Abstract
Our goal in this article is to remind readers what is unsettling about decolonization. Decolonization brings about the repatriation of Indigenous land and life; it is not a metaphor for other things we want to do to improve our societies and schools. The easy adoption of decolonizing discourse by educational advocacy and scholarship, evidenced by the increasing number of calls to "decolonize our schools," or use "decolonizing methods," or, "decolonize student thinking", turns decolonization into a metaphor. As important as their goals may be, social justice, critical methodologies, or approaches that decenter settler perspectives have objectives that may be incommensurable with decolonization. Because settler colonialism is built upon an entangled triad structure of settler-native-slave, the decolonial desires of white, non-white, immigrant, postcolonial, and oppressed people, can similarly be entangled in resettlement, reoccupation, and reinhabitation that actually further settler colonialism. The metaphorization of decolonization makes possible a set of evasions, or "settler moves to innocence", that problematically attempt to reconcile settler guilt and complicity, and rescue settler futurity. In this article, we analyze multiple settler moves towards innocence in order to forward "an ethic of incommensurability" that recognizes what is distinct and what is sovereign for project(s) of decolonization in relation to human and civil rights based social justice projects. We also point to unsettling themes within transnational/Third World decolonizations, abolition, and critical space-place pedagogies, which challenge the coalescence of social justice endeavors, making room for more meaningful potential alliances.

Keywords: *decolonization, settler colonialism, settler moves to innocence, incommensurability, Indigenous land, decolonizing education*

> Decolonization, which sets out to change the order of the world, is, obviously, a program of complete disorder. But it cannot come as a result of magical practices, nor of a natural shock, nor of a friendly understanding. Decolonization, as we know, is a historical process: that is to say it cannot be understood, it cannot become intelligible nor clear to itself except in the exact measure that we can discern the movements which give it historical form and content.
>
> *-Franz Fanon, The Wretched of the Earth, 1963, p. 36*

> Let us admit it, the settler knows perfectly well that no phraseology can be a substitute for reality.
>
> *-Franz Fanon, The Wretched of the Earth, 1963, p. 45*

Introduction

For the past several years we have been working, in our writing and teaching, to bring attention to how settler colonialism has shaped schooling and educational research in the United States and other settler colonial nation-states. These are two distinct but overlapping tasks, the first concerned with how the invisibilized dynamics of settler colonialism mark the organization, governance, curricula, and assessment of compulsory learning, the other concerned with how settler perspectives and worldviews get to count as knowledge and research and how these perspectives - repackaged as data and findings - are activated in order to rationalize and maintain unfair social structures. We are doing this work alongside many others who - somewhat relentlessly, in writings, meetings, courses, and activism - don't allow the real and symbolic violences of settler colonialism to be overlooked.

Alongside this work, we have been thinking about what decolonization means, what it wants and requires. One trend we have noticed, with growing apprehension, is the ease with which the language of decolonization has been superficially adopted into education and other social sciences, supplanting prior ways of talking about social justice, critical methodologies, or approaches which decenter settler perspectives. Decolonization, which we assert is a distinct project from other civil and human rights-based social justice projects, is far too often subsumed into the directives of these projects, with no regard for how decolonization wants something different than those forms of justice. Settler scholars swap out prior civil and human rights based terms, seemingly to signal both an awareness of the significance of Indigenous and decolonizing theorizations of schooling and educational research, and to include Indigenous peoples on the list of considerations - as an additional special (ethnic) group or class. At a conference on educational research, it is not uncommon to hear speakers refer, almost casually, to the need to "decolonize our schools," or use "decolonizing methods," or "decolonize student thinking." Yet, we have observed a startling number of these discussions make no mention of Indigenous

peoples, our/their[1] struggles for the recognition of our/their sovereignty, or the contributions of Indigenous intellectuals and activists to theories and frameworks of decolonization. Further, there is often little recognition given to the immediate context of settler colonialism on the North American lands where many of these conferences take place.

Of course, dressing up in the language of decolonization is not as offensive as "Navajo print" underwear sold at a clothing chain store (Gaynor, 2012) and other appropriations of Indigenous cultures and materials that occur so frequently. Yet, this kind of inclusion is a form of enclosure, dangerous in how it domesticates decolonization. It is also a foreclosure, limiting in how it recapitulates dominant theories of social change. On the occasion of the inaugural issue of *Decolonization: Indigeneity, Education, & Society*, we want to be sure to clarify that decolonization is not a metaphor. When metaphor invades decolonization, it kills the very possibility of decolonization; it recenters whiteness, it resettles theory, it extends innocence to the settler, it entertains a settler future. Decolonize (a verb) and decolonization (a noun) cannot easily be grafted onto pre-existing discourses/frameworks, even if they are critical, even if they are anti-racist, even if they are justice frameworks. The easy absorption, adoption, and transposing of decolonization is yet another form of settler appropriation. When we write about decolonization, we are not offering it as a metaphor; it is not an approximation of other experiences of oppression. Decolonization is not a swappable term for other things we want to do to improve our societies and schools. Decolonization doesn't have a synonym.

Our goal in this essay is to remind readers what is unsettling about decolonization - what is unsettling and what should be unsettling. Clearly, we are advocates for the analysis of settler colonialism within education and education research and we position the work of Indigenous thinkers as central in unlocking the confounding aspects of public schooling. We, at least in part, want others to join us in these efforts, so that settler colonial structuring and Indigenous critiques of that structuring are no longer rendered invisible. Yet, this joining cannot be too easy, too open, too settled. Solidarity is an uneasy, reserved, and unsettled matter that neither reconciles present grievances nor forecloses future conflict. There are parts of the decolonization project that are not easily absorbed by human rights or civil rights based approaches to educational equity. In this essay, we think about what decolonization wants.

There is a long and bumbled history of non-Indigenous peoples making moves to alleviate the impacts of colonization. The too-easy adoption of decolonizing discourse (making decolonization a metaphor) is just one part of that history and it taps into pre-existing tropes that get in the way of more meaningful potential alliances. We think of the enactment of these tropes as a series of *moves to innocence* (Malwhinney, 1998), which problematically attempt to reconcile settler guilt and complicity, and rescue settler futurity. Here, to explain why decolonization is and requires more than a metaphor, we discuss some of these moves to innocence:

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[1] As an Indigenous scholar and a settler/trespasser/scholar writing together, we have used forward slashes to reflect our discrepant positionings in our pronouns throughout this essay.

i. Settler nativism
ii. Fantasizing adoption
iii. Colonial equivocation
iv. Conscientization
v. At risk-ing / Asterisk-ing Indigenous peoples
vi. Re-occupation and urban homesteading

Such moves ultimately represent settler fantasies of easier paths to reconciliation. Actually, we argue, attending to what is irreconcilable within settler colonial relations and what is incommensurable between decolonizing projects and other social justice projects will help to reduce the frustration of attempts at solidarity; but the attention won't get anyone off the hook from the hard, unsettling work of decolonization. Thus, we also include a discussion of interruptions that unsettle innocence and recognize incommensurability.

The set of settler colonial relations

Generally speaking, postcolonial theories and theories of coloniality attend to two forms of colonialism[2]. *External colonialism* (also called exogenous or exploitation colonization) denotes the expropriation of fragments of Indigenous worlds, animals, plants and human beings, extracting them in order to transport them to - and build the wealth, the privilege, or feed the appetites of - the colonizers, who get marked as the first world. This includes so-thought 'historic' examples such as opium, spices, tea, sugar, and tobacco, the extraction of which continues to fuel colonial efforts. This form of colonialism also includes the feeding of contemporary appetites for diamonds, fish, water, oil, humans turned workers, genetic material, cadmium and other essential minerals for high tech devices. External colonialism often requires a subset of activities properly called military colonialism - the creation of war fronts/frontiers against enemies to be conquered, and the enlistment of foreign land, resources, and people into military operations. In external colonialism, all things Native become recast as 'natural resources' - bodies and earth for war, bodies and earth for chattel.

The other form of colonialism that is attended to by postcolonial theories and theories of coloniality is *internal colonialism*, the biopolitical and geopolitical management of people, land, flora and fauna within the "domestic" borders of the imperial nation. This involves the use of

[2] Colonialism is not just a symptom of capitalism. Socialist and communist empires have also been settler empires (e.g. Chinese colonialism in Tibet). "In other words," writes Sandy Grande, "both Marxists and capitalists view land and natural resources as commodities to be exploited, in the first instance, by capitalists for personal gain, and in the second by Marxists for the good of all" (2004, p.27). Capitalism and the state are technologies of colonialism, developed over time to further colonial projects. Racism is an invention of colonialism (Silva, 2007). The current colonial era goes back to 1492, when colonial imaginary goes global.

particularized modes of control - prisons, ghettos, minoritizing, schooling, policing - to ensure the ascendancy of a nation and its white[3] elite. These modes of control, imprisonment, and involuntary transport of the human beings across borders - ghettos, their policing, their economic divestiture, and their dislocatability - are at work to authorize the metropole and conscribe her periphery. Strategies of internal colonialism, such as segregation, divestment, surveillance, and criminalization, are both structural and interpersonal.

Our intention in this descriptive exercise is not be exhaustive, or even inarguable; instead, we wish to emphasize that (a) decolonization will take a different shape in each of these contexts - though they can overlap[4] - and that (b) neither external nor internal colonialism adequately describe the form of colonialism which operates in the United States or other nation-states in which the colonizer comes to stay. *Settler colonialism* operates through internal/external colonial modes simultaneously because there is no spatial separation between metropole and colony. For example, in the United States, many Indigenous peoples have been forcibly removed from their homelands onto reservations, indentured, and abducted into state custody, signaling the form of colonization as simultaneously internal (via boarding schools and other biopolitical modes of control) and external (via uranium mining on Indigenous land in the US Southwest and oil extraction on Indigenous land in Alaska) with a frontier (the US military still nicknames all enemy territory "Indian Country"). The horizons of the settler colonial nation-state are total and require a mode of total appropriation of Indigenous life and land, rather than the selective expropriation of profit-producing fragments.

Settler colonialism is different from other forms of colonialism in that settlers come with the intention of making a new home on the land, a homemaking that insists on settler sovereignty over all things in their new domain. Thus, relying solely on postcolonial literatures or theories of coloniality that ignore settler colonialism will not help to envision the shape that decolonization must take in settler colonial contexts. Within settler colonialism, the most important concern is land/water/air/subterranean earth (land, for shorthand, in this article.) Land is what is most valuable, contested, required. This is both because the settlers make Indigenous land their new home and source of capital, and also because the disruption of Indigenous relationships to land represents a profound epistemic, ontological, cosmological violence. This violence is not temporally contained in the arrival of the settler but is reasserted each day of occupation. This is why Patrick Wolfe (1999) emphasizes that settler colonialism is a structure and not an event. In the process of settler colonialism, land is remade into property and human relationships to land are restricted to the relationship of the owner to his property. Epistemological, ontological, and cosmological relationships to land are interred, indeed made pre-modern and backward. Made savage.

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[3] In using terms as "white" and "whiteness", we are acknowledging that whiteness extends beyond phenotype.

[4] We don't treat internal/external as a taxonomy of colonialisms. They describe two operative modes of colonialism. The modes can overlap, reinforce, and contradict one another, and do so through particular legal, social, economic and political processes that are context specific.

In order for the settlers to make a place their home, they must destroy and disappear the Indigenous peoples that live there. Indigenous peoples are those who have creation stories, not colonization stories, about how we/they came to be in a particular place - indeed how we/they came to *be a place*. Our/their relationships to land comprise our/their epistemologies, ontologies, and cosmologies. For the settlers, Indigenous peoples are in the way and, in the destruction of Indigenous peoples, Indigenous communities, and over time and through law and policy, Indigenous peoples' claims to land under settler regimes, land is recast as property and as a resource. Indigenous peoples must be erased, must be made into ghosts (Tuck and Ree, forthcoming).

At the same time, settler colonialism involves the subjugation and forced labor of chattel slaves[5], whose bodies and lives become the property, and who are kept landless. Slavery in settler colonial contexts is distinct from other forms of indenture whereby *excess labor* is extracted from persons. First, chattels are commodities of labor and therefore it is the slave's *person* that is the excess. Second, unlike workers who may aspire to own land, the slave's very presence on the land is already an excess that must be dis-located. Thus, the slave is a desirable commodity but the person underneath is imprisonable, punishable, and murderable. The violence of keeping/killing the chattel slave makes them deathlike monsters in the settler imagination; they are reconfigured/disfigured as the threat, the razor's edge of safety and terror.

The settler, if known by his actions and how he justifies them, sees himself as holding dominion over the earth and its flora and fauna, as the anthropocentric normal, and as more developed, more human, more deserving than other groups or species. The settler is making a new "home" and that home is rooted in a homesteading worldview where the wild land and wild people were made for his benefit. He can only make his identity as a settler by making the land produce, and produce excessively, because "civilization" is defined as production in excess of the "natural" world (i.e. in excess of the sustainable production already present in the Indigenous world). In order for excess production, he needs excess labor, which he cannot provide himself. The chattel slave serves as that excess labor, labor that can never be paid because payment would have to be in the form of property (land). The settler's wealth is land, or a fungible version of it, and so payment for labor is impossible.[6] The settler positions himself as both superior and normal; the settler is natural, whereas the Indigenous inhabitant and the chattel slave are unnatural, even supernatural.

Settlers are not immigrants. Immigrants are beholden to the Indigenous laws and epistemologies of the lands they migrate to. Settlers become the law, supplanting Indigenous

[5] As observed by Erica Neeganagwedgin (2012), these two groups are not always distinct. Neeganagwedgin presents a history of the enslavement of Indigenous peoples in Canada as chattel slaves. In California, Mexico, and the U.S. Southwest under the Spanish mission system, Indigenous people were removed from their land and also made into chattel slaves. Under U.S. colonization, California law stipulated that Indians could be murdered and/or indentured by any "person" (white, propertied, citizen). These laws remained in effect until 1937.

[6] See Kate McCoy (forthcoming) on settler crises in early Jamestown, Virginia to pay indentured European labor with land.

laws and epistemologies. Therefore, settler nations are not immigrant nations (See also A.J. Barker, 2009).

Not unique, the United States, as a settler colonial nation-state, also operates as an empire - utilizing external forms and internal forms of colonization simultaneous to the settler colonial project. This means, and this is perplexing to some, that dispossessed people are brought onto seized Indigenous land through other colonial projects. Other colonial projects include enslavement, as discussed, but also military recruitment, low-wage and high-wage labor recruitment (such as agricultural workers and overseas-trained engineers), and displacement/migration (such as the coerced immigration from nations torn by U.S. wars or devastated by U.S. economic policy). In this set of settler colonial relations, colonial subjects who are displaced by external colonialism, as well as racialized and minoritized by internal colonialism, still occupy and settle stolen Indigenous land. Settlers are diverse, not just of white European descent, and include people of color, even from other colonial contexts. This tightly wound set of conditions and racialized, globalized relations exponentially complicates what is meant by decolonization, and by solidarity, against settler colonial forces.

Decolonization in exploitative colonial situations could involve the seizing of imperial wealth by the postcolonial subject. In settler colonial situations, seizing imperial wealth is inextricably tied to settlement and re-invasion. Likewise, the promise of integration and civil rights is predicated on securing a share of a settler-appropriated wealth (as well as expropriated 'third-world' wealth). Decolonization in a settler context is fraught because empire, settlement, and internal colony have no spatial separation. Each of these features of settler colonialism in the US context - empire, settlement, and internal colony - make it a site of contradictory decolonial desires[7].

Decolonization as metaphor allows people to equivocate these contradictory decolonial desires because it turns decolonization into an empty signifier to be filled by any track towards liberation. In reality, the tracks walk all over land/people in settler contexts. Though the details are not fixed or agreed upon, in our view, decolonization in the settler colonial context must involve the repatriation of land simultaneous to the recognition of how land and relations to land have always already been differently understood and enacted; that is, *all* of the land, and not just symbolically. This is precisely why decolonization is necessarily unsettling, especially across lines of solidarity. "Decolonization never takes place unnoticed" (Fanon, 1963, p. 36). Settler colonialism and its decolonization implicates and unsettles everyone.

[7] Decolonization is further fraught because, although the setter-native-slave triad structures settler colonialism, this does not mean that settler, native, and slave are analogs that can be used to describe corresponding identities, structural locations, worldviews, and behaviors. Nor do they mutually constitute one another. For example, Indigenous is an identity independent of the triad, and also an ascribed structural location within the triad. Chattel slave is an ascribed structural position, but not an identity. Settler describes a set of behaviors, as well as a structural location, but is eschewed as an identity.

Playing Indian and the erasure of Indigenous peoples

Recently in a symposium on the significance of Liberal Arts education in the United States, Eve presented an argument that Liberal Arts education has historically excluded any attention to or analysis of settler colonialism. This, Eve posited, makes Liberal Arts education complicit in the project of settler colonialism and, more so, has rendered the truer project of Liberal Arts education something like trying to make the settler indigenous to the land he occupies. The attendees were titillated by this idea, nodding and murmuring in approval and it was then that Eve realized that she was trying to say something incommensurable with what they expected her to say. She was completely misunderstood. Many in the audience heard this observation: that the work of Liberal Arts education is in part to teach settlers to be indigenous, as something admirable, worthwhile, something wholesome, not as a problematic point of evidence about the reach of the settler colonial erasure.

Philip Deloria (1998) explores how and why the settler wants to be made indigenous, even if only through disguise, or other forms of *playing Indian*. Playing Indian is a powerful U.S. pastime, from the Boston Tea Party, to fraternal organizations, to new age trends, to even those aforementioned Native print underwear. Deloria maintains that, "From the colonial period to the present, the Indian has skulked in and out of the most important stories various Americans have told about themselves" (p. 5).

> The indeterminacy of American identities stems, in part, from the nation's inability to deal with Indian people. Americans wanted to feel a natural affinity with the continent, and it was Indians who could teach them such aboriginal closeness. Yet, in order to control the landscape they had to destroy the original inhabitants. (Deloria, 1998, p.5)

L. Frank Baum (author of *The Wizard of Oz*) famously asserted in 1890 that the safety of white settlers was only guaranteed by the "total annihilation of the few remaining Indians" (as quoted in Hastings, 2007). D.H. Lawrence, reading James Fenimore Cooper (discussed at length later in this article), Nathaniel Hawthorne, Hector St. John de Crevecoeur, Henry David Thoreau, Herman Melville, Walt Whitman and others for his *Studies in Classic American Literature* (1924), describes Americans' fascination with Indigeneity as one of simultaneous desire and repulsion (Deloria, 1998).

> "No place," Lawrence observed, "exerts its full influence upon a newcomer until the old inhabitant is dead or absorbed." Lawrence argued that in order to meet the "demon of the continent" head on and this finalize the "unexpressed spirit of America," white Americans needed either to destroy Indians of assimilate them into a white American world...both aimed at making Indians vanish from the landscape. (Lawrence, as quoted in Deloria, 1998, p. 4).

Everything within a settler colonial society strains to destroy or assimilate the Native in order to disappear them from the land - this is how a society can have multiple simultaneous and conflicting messages about Indigenous peoples, such as all Indians are dead, located in faraway reservations, that contemporary Indigenous people are less indigenous than prior generations, and that all Americans are a "little bit Indian." These desires to erase - to let time do its thing and wait for the older form of living to die out, or to even help speed things along (euthanize) because the death of pre-modern ways of life is thought to be inevitable - these are all desires for another kind of resolve to the colonial situation, resolved through the absolute and total destruction or assimilation of original inhabitants.

Numerous scholars have observed that Indigeneity prompts multiple forms of settler anxiety, even if only because the presence of Indigenous peoples - who make *a priori* claims to land and ways of being - is a constant reminder that the settler colonial project is incomplete (Fanon, 1963; Vine Deloria, 1988; Grande, 2004; Bruyneel, 2007). The easy adoption of decolonization as a metaphor (and nothing else) is a form of this anxiety, because it is a premature attempt at reconciliation. The absorption of decolonization by settler social justice frameworks is one way the settler, disturbed by her own settler status, tries to escape or contain the unbearable searchlight of complicity, of having harmed others just by being one's self. The desire to reconcile is just as relentless as the desire to disappear the Native; it is a desire to not have to deal with this (Indian) problem anymore.

Settler moves to innocence

We observe that another component of a desire to play Indian is a settler desire to be made innocent, to find some mercy or relief in face of the relentlessness of settler guilt and haunting (see Tuck and Ree, forthcoming, on mercy and haunting). Directly and indirectly benefitting from the erasure and assimilation of Indigenous peoples is a difficult reality for settlers to accept. The weight of this reality is uncomfortable; the misery of guilt makes one hurry toward any reprieve. In her 1998 Master's thesis, Janet Mawhinney analyzed the ways in which white people maintained and (re)produced white privilege in self-defined anti-racist settings and organizations.[8] She examined the role of storytelling and self-confession - which serves to equate stories of personal exclusion with stories of structural racism and exclusion - and what she terms 'moves to innocence,' or "strategies to remove involvement in and culpability for systems of domination" (p. 17). Mawhinney builds upon Mary Louise Fellows and Sherene Razack's (1998) conceptualization of, 'the race to innocence', "the process through which a woman comes to believe her own claim of subordination is the most urgent, and that she is unimplicated in the subordination of other women" (p. 335).

Mawhinney's thesis theorizes the self-positioning of white people as simultaneously the oppressed and never an oppressor, and as having an *absence of experience* of oppressive power

[8] Thank you to Neoma Mullens for introducing Eve to Mawhinney's concept of moves to innocence.

relations (p. 100). This simultaneous self-positioning afforded white people in various purportedly anti-racist settings to say to people of color, "I don't experience the problems you do, so I don't think about it," and "tell me what to do, you're the experts here" (p. 103). "The commonsense appeal of such statements," Malwhinney observes, enables white speakers to "utter them sanguine in [their] appearance of equanimity, is rooted in the normalization of a liberal analysis of power relations" (ibid.).

In the discussion that follows, we will do some work to identify and argue against a series of what we call 'settler moves to innocence'. Settler moves to innocence are those strategies or positionings that attempt to relieve the settler of feelings of guilt or responsibility without giving up land or power or privilege, without having to change much at all. In fact, settler scholars may gain professional kudos or a boost in their reputations for being so sensitive or self-aware. Yet settler moves to innocence are hollow, they only serve the settler. This discussion will likely cause discomfort in our settler readers, may embarrass you/us or make us/you feel implicated. Because of the racialized flights and flows of settler colonial empire described above, settlers are diverse - there are white settlers and brown settlers, and peoples in both groups make moves to innocence that attempt to deny and deflect their own complicity in settler colonialism. When it makes sense to do so, we attend to moves to innocence enacted differently by white people and by brown and Black people.

In describing settler moves to innocence, our goal is to provide a framework of excuses, distractions, and diversions from decolonization. We discuss some of the moves to innocence at greater length than others, mostly because some require less explanation and because others are more central to our initial argument for the demetaphorization of decolonization. We provide this framework so that we can be more impatient with each other, less likely to accept gestures and half-steps, and more willing to press for acts which unsettle innocence, which we discuss in the final section of this article.

Moves to innocence I: Settler nativism

In this move to innocence, settlers locate or invent a long-lost ancestor who is rumored to have had "Indian blood," and they use this claim to mark themselves as blameless in the attempted eradications of Indigenous peoples. There are numerous examples of public figures in the United States who "remember" a distant Native ancestor, including Nancy Reagan (who is said to be a descendant of Pocahontas) and, more recently, Elizabeth Warren[9] and many others, illustrating how commonplace settler nativism is. Vine Deloria Jr. discusses what he calls the Indian-grandmother complex in the following account from *Custer Died for Your Sins*:

[9] See Francie Latour's interview (June 1 2012) with Kim Tallbear for more information on the Elizabeth Warren example. In the interview, Tallbear asserts that Warren's romanticized claims and the accusations of fraud are evidence of ways in which people in the U.S. misunderstand Native American identity. Tallbear insists that to understand Native American identity, "you need to get outside of that binary, one-drop framework."

> During my three years as Executive Director of the National Congress of American Indians it was a rare day when some white [person] didn't visit my office and proudly proclaim that he or she was of Indian descent...
>
> At times I became quite defensive about being a Sioux when these white people had a pedigree that was so much more respectable than mine. But eventually I came to understand their need to identify as partially Indian and did not resent them. I would confirm their wildest stories about their Indian ancestry and would add a few tales of my own hoping that they would be able to accept themselves someday and leave us alone.
>
> Whites claiming Indian blood generally tend to reinforce mythical beliefs about Indians. All but one person I met who claimed Indian blood claimed it on their grandmother's side. I once did a projection backward and discovered that evidently most tribes were entirely female for the first three hundred years of white occupation. No one, it seemed, wanted to claim a male Indian as a forebear.
>
> It doesn't take much insight into racial attitudes to understand the real meaning of the Indian-grandmother complex that plagues certain white [people]. A male ancestor has too much of the aura of the savage warrior, the unknown primitive, the instinctive animal, to make him a respectable member of the family tree. But a young Indian princess? Ah, there was royalty for the taking. Somehow the white was linked with a noble house of gentility and culture if his grandmother was an Indian princess who ran away with an intrepid pioneer...
>
> While a real Indian grandmother is probably the nicest thing that could happen to a child, why is a remote Indian princess grandmother so necessary for many white [people]? Is it because they are afraid of being classed as foreigners? Do they need some blood tie with the frontier and its dangers in order to experience what it means to be an American? Or is it an attempt to avoid facing the guilt they bear for the treatment of the Indians? (1988, p. 2-4)

Settler nativism, or what Vine Deloria Jr. calls the Indian-grandmother complex, is a settler move to innocence because it is an attempt to deflect a settler identity, while continuing to enjoy settler privilege and occupying stolen land. Deloria observes that settler nativism is gendered and considers the reasons a storied Indian grandmother might have more appeal than an Indian grandfather. On one level, it can be expected that many settlers have an ancestor who was Indigenous and/or who was a chattel slave. This is precisely the habit of settler colonialism, which pushes humans into other human communities; strategies of rape and sexual violence, and also the ordinary attractions of human relationships, ensure that settlers have Indigenous and chattel slave ancestors.

Further, though race is a social construct, Indigenous peoples and chattel slaves, particularly slaves from the continent of Africa, were/are racialized differently in ways that support/ed the logics and aims of settler colonialism (the erasure of the Indigenous person and

the capture and containment of the slave). "Indians and Black people in the US have been racialized in opposing ways that reflect their antithetical roles in the formation of US society," Patrick Wolfe (2006) explains:

> Black people's enslavement produced an inclusive taxonomy that automatically enslaved the offspring of a slave and any other parent. In the wake of slavery, this taxonomy became fully racialized in the "one-drop rule," whereby any amount of African ancestry, no matter how remote, and regardless of phenotypical appearance, makes a person Black. (p. 387)

Kim Tallbear argues that the one-drop rule dominates understandings of race in the United States and, so, most people in the US have not been able to understand Indigenous identity (Latour, 2012). Through the one-drop rule, blackness in settler colonial contexts is *expansive*, ensuring that a slave/criminal status will be *inherited* by an expanding number of 'black' descendants. Yet, Indigenous peoples have been racialized in a profoundly different way. Native American-ness[10] is *subtractive*: Native Americans are constructed to become fewer in number and *less* Native, but never exactly white, over time. Our/their status as Indigenous peoples/first inhabitants is the basis of our/their land claims and the goal of settler colonialism is to diminish claims to land over generations (or sooner, if possible). That is, Native American is a racialization that portrays contemporary Indigenous generations to be less authentic, less Indigenous than every prior generation in order to ultimately phase out Indigenous claims to land and usher in settler claims to property. This is primarily done through blood quantum registries and policies, which were forced on Indigenous nations and communities and, in some cases, have overshadowed former ways of determining tribal membership.

Wolfe (2006) explains:

> For Indians, in stark contrast, non-Indian ancestry compromised their indigeneity, producing "half-breeds," a regime that persists in the form of blood quantum regulations. As opposed to enslaved people, whose reproduction augmented their owners' wealth, Indigenous people obstructed settlers' access to land, so their increase was counterproductive. In this way, the restrictive racial classification of Indians straightforwardly furthered the logic of elimination. (p. 387)

The racializations of Indigenous people and Black people in the US settler colonial nation-state are geared to ensure the ascendancy of white settlers as the true and rightful owners and occupiers of the land.

> In the national mythologies of such societies, it is believed that white people came first and that it is they who principally developed the land; Aboriginal peoples are presumed to be mostly dead or assimilated. European settlers thus *become* the

[10] Native American, then, can be a signifier for how Indigenous peoples (over 500 federally recognized tribes and nations in the U.S. alone) are racialized into one vanishing race in the U.S. settler-colonial context.

> original inhabitants and the group most entitled to the fruits of citizenship." (Razack, 2002, p. 1-2; emphasis original.)

In the racialization of whiteness, blood quantum rules are reversed so that white people can stay white, yet claim descendance from an Indian grandmother. In 1924, the Virginia legislature passed the Racial Integrity Act, which enforced the one-drop rule *except* for white people who claimed a distant Indian grandmother - the result of strong lobbying from the aristocratic "First Families of Virginia" who all claim to have descended from Pocahontas (including Nancy Reagan, born in 1921). Known as the Pocahontas Exception, this loophole allowed thousands of white people to claim Indian ancestry, while actual Indigenous people were reclassified as "colored" and disappeared off the public record[11].

Settler nativism, through the claiming of a long-lost ancestor, invests in these specific racializations of Indigenous people and Black people, and disbelieves the sovereign authority of Indigenous nations to determine tribal membership. Dakota scholar Kim Tallbear (in an interview on the recent Elizabeth Warren example), provides an account that echoes and updates Deloria's account. Speaking to the many versions of settler nativism she has encountered, in which people say,

> "My great-great grandmother was an Indian princess." [or] "I'm descended from Pocohantas." What Elizabeth Warren said about the high cheekbones, I've had so many people from across the political spectrum say things that strange or stranger. And my point is, maybe you do have some remote ancestor. So what? You don't just get to decide you're Cherokee if the community does not recognize you as such (as quoted in Latour, 2012).

Ancestry is different from tribal membership; Indigenous identity and tribal membership are questions that Indigenous communities alone have the right to struggle over and define, not DNA tests, heritage websites, and certainly not the settler state. Settler nativism is about imagining an Indian past and a settler future; in contrast, tribal sovereignty has provided for an Indigenous present and various Indigenous intellectuals theorize decolonization as Native futures without a settler state.

Moves to innocence II: Settler adoption fantasies

Describing acts of passing, Sara Ahmed (2000) asserts the importance of being able to replace "the stranger", or take the place of the other, in the consolidation and (re)affirmation of white identity. To "become without becoming," is to reproduce "the other as 'not-I' *within* rather than *beyond* the structure of the 'I'" (p. 132). Sherene Razack, reading Ahmed, tells us that

[11] The 1940 Census only recorded 198 Indians in the State of Virginia. 6 out of 8 tribes in Virginia are currently unable to obtain federal recognition because of the racial erasure under the Racial Integrity Act (Fiske, 2004).

appropriating the other's pain occurs when, "we think we are recognizing not only the other's pain but his or her difference. Difference becomes the conduit of identification in much the same way as pain does" (Razack, 2007, p. 379). Discussing the film *Dances with Wolves* (a cinematic fiction of a Union soldier in the post-bellum Civil War era who befriends and protects the Lakota Sioux, who are represented as a noble, dying race), Ahmed critically engages the narrative, in which a white man (played by Kevin Costner) comes to respect the Sioux,

> to the point of being able to dance their dances...the white man in this example is able to 'to become without becoming' (Ahmed, 2000, p. 32)...He alone is transformed through his encounter with the Sioux, while they remain the mechanism for his transformation. He becomes the authentic knower while they remain what is to be known and consumed, and spit out again, as good Indians who confirm the white man's position as hero of the story...the Sioux remain objects, while Kevin Costner is able to go anywhere and be anything. (Ahmed's analysis, as discussed by Razack, 2007, p. 379).

For the purposes of this article, we locate the desire to *become without becoming [Indian]* within settler adoption fantasies. These fantasies can mean the adoption of Indigenous practices and knowledge, but more, refer to those narratives in the settler colonial imagination in which the Native (understanding that he is becoming extinct) hands over his land, his claim to the land, his very Indian-ness to the settler for safe-keeping. This is a fantasy that is invested in a settler futurity and dependent on the foreclosure of an Indigenous futurity.

Settler adoption fantasies are longstanding narratives in the United States, fueled by rare instances of ceremonial "adoptions", from John Smith's adoption in 1607 by Powhatan (Pocahontas' father), to Lewis Henry Morgan's adoption in 1847 by Seneca member Jimmy Johnson, to the recent adoption of actor Johnny Depp by the family of LaDonna Harris, a Comanche woman and social activist. As sovereign nations, tribes make decisions about who is considered a member, so our interest is not in whether adoptions are appropriate or legitimate. Rather, because the prevalence of the adoption narrative in American literature, film, television, holidays and history books far exceeds the actual occurrences of adoptions, we are interested in how this narrative spins a fantasy that an individual settler can become innocent, indeed heroic and indigenized, against a backdrop of national guilt. The adoption fantasy is the mythical trump card desired by critical settlers who feel remorse about settler colonialism, one that absolves them from the inheritance of settler crimes and that bequeaths a new inheritance of Native-ness *and claims to land* (which is a reaffirmation of what the settler project has been all along).

To more fully explain, we turn to perhaps the most influential version of the adoption narrative, penned by James Fenimore Cooper in 1823-1841. James Fenimore, son of "that genius in land speculation William Cooper" (Butterfield, 1954, p. 374), grew up in Six Nations territory that his father had grabbed and named after himself as Cooperstown, New York. In these Iroquois lakes, forests, and hills, James Fenimore, and later his daughter, Susan, imagined for themselves frontier romances full of tragic Indians, inventive and compassionate settlers, and virginal white/Indian women in virgin wilderness. Cooper's five-book series, collectively called

the *Leatherstocking Tales*, are foundational in the emergence of American literature. Melville called Cooper "our national author" and it was no exaggeration. His were the most widely read novels of the time and, in the age of the printing press, this meant they were the most circulated books in a U.S. print-based popular culture. Mass print established national language and identity, an "imagined community" (Anderson, 1991) from which emerges 'America' as a nation as opposed to just an assortment of former colonies. The *Tales* are credited with the constructions of the vanishing Indian, the resourceful Frontiersman, and the degenerate Negro: the pivotal triad of archetypes that forms the basis for an American national literature.

The Last of Mohicans is undoubtedly the most famous among the *Tales* and has been remade[12] into three separate television series in 1957, 1971, and 2004; an opera in 1977; a BBC radio adaptation in 1995; a 2007 Marvel comic book series; a stage drama in performance since 2010; and eleven separate films spanning 1912 to 1992. In a sense, *Last of the Mohicans* is a national narrative that has never stopped being remade[13].

Across all five books, Cooper's epic hero is Natty Bumppo, a white man 'gone native', at home in nature, praised for his wisdom and ways that are both Indian and white. In *Last of the Mohicans,* this hero becomes the adopted son of Chingachgook, fictional chief of the fictional tribe "Mohicans", who renames Natty, Nathaniel Hawkeye - thus legitimating and completing his Indigeneity. At the same time, Chingachgook conveniently fades into extinction. In a critical symbolic gesture, Chingachgook hands over his son Uncas - the last of the Mohicans - to the adopted, Indigenized white man, Hawkeye. When Uncas dies, the ramification is obvious: Hawkeye becomes without becoming the last of the Mohicans. *You are now one of us, you are now Native.* "The pale-faces are masters of the earth, and the time of the red-men has not yet come again" (Cooper 2000, p.407).

Cooper's books fantasize the founding and expansion of the U.S. settler nation by fictionalizing the period of 1740-1804, distilled into the single narrative of one man. The arc of his life stands in for the narrative of national development: the heroic settler Natty Bumppo transitions from British trapper to 'native' American, to prairie pioneer in the new Western frontier. Interestingly, the books themselves were written in reverse chronological order, starting with the pioneer, going backwards in time. Through such historical hypnosis, settler literature fabricates past lives, all the way back to an Indian past. 'I am American' becomes 'I was frontiersman, was British, was Indian'.

In this fantasy, Hawkeye is both adopter and adoptee. The act of adopting indigenous ways makes him 'deserving' to be adopted by the Indigenous. Settler fantasies of adoption alleviate the anxiety of settler un-belonging. He adopts the love of land and therefore thinks he belongs to the land. He is a first environmentalist and sentimentalist, nostalgic for vanishing

[12] Tellingly, these remakes were produced in Canada, Britain, Germany and the United States.

[13] To include all the 'remakes' of the story in its different forms (e.g. the post 9/11 historical fiction G*angs of New York*, the 2009 film *Avatar*, or the 2011 film *The Descendants* - also discussed in this article), would require an exhaustive and exhausting account well beyond the scope of this article.

Native ways. In today's jargon, he could be thought of as an eco-activist, naturalist, and Indian sympathizer. At the same time, his cultural hybridity is what makes him more 'fit' to survive - the ultimate social Darwinism - better than both British and Indian; he is the mythical American. Hawkeye, hybrid white and Indian, becomes the reluctant but nonetheless rightful inheritor of the land and warden of its vanishing people.

Similarly, the settler intellectual who hybridizes decolonial thought with Western critical traditions (metaphorizing decolonization), emerges superior to both Native intellectuals and continental theorists simultaneously. With his critical hawk-eye, he again sees the critique better than anyone and sees the world from a loftier station[14]. It is a fiction, just as Cooper's Hawkeye, just as the adoption, just as the belonging.

In addition to fabricating historical memory, the *Tales* serve to generate historical amnesia. The books were published between 1823-1841, at the height of the Jacksonian period with the Indian Removal Act of 1830 and subsequent Trail of Tears 1831-1837. During this time, 46,000 Native Americans were removed from their homelands, opening 25 million acres of land for re-settlement. The *Tales* are not only silent on Indian Removal but narrate the Indian as vanishing in an earlier time frame, and thus Indigenous people are already dead prior to removal.

Performing sympathy is critical to Cooper's project of settler innocence. It is no accident that he is often read as a sympathizer to the Indians (despite the fact that he didn't know any) in contrast to Jackson's policies of removal and genocide. Cooper is cast as the 'innocent' father of U.S. ideology, in contrast to the 'bad white men' of history.

Performing suffering is also critical to Cooper's project of settler innocence. Hawkeye takes on the (imagined) demeanor of the vanishing Native - brooding, vengeful, protecting a dying way of life, and unsuccessful in finding a mate and producing offspring. Thus sympathy and suffering are the tokens used to absorb the Native Other's difference, coded as pain, the 'not-I' into the 'I'.

The settler's personal suffering feeds his fantasy of mutuality. The 2011 film, *The Descendants,* is a modern remake of the adoption fantasy (blended with a healthy dose of settler nativism). George Clooney's character, "King" is a haole hypo-descendant of the last surviving princess of Hawai'i and reluctant inheritor of a massive expanse of land, the last wilderness on the Island of Kauai. In contrast to his obnoxious settler cousins, he earns his privilege as an overworked lawyer rather than relying on his unearned inheritance. Furthermore, Clooney's character suffers - he is a dysfunctional father, heading a dysfunctional family, watching his wife wither away in a coma, learning that she cheated on him - and so he is somehow Hawaiian at heart. Because pain is the token for oppression, claims to pain then equate to claims of being an innocent non-oppressor. By the film's end, King goes against the wishes of his profiteering settler cousins and chooses to "keep" the land, reluctantly accepting that his is the steward of the land, a responsibility bequeathed upon him as an accident of birth. This is the denouement of

[14] His lament is that no one else can see what he sees, just as Hawkeye laments his failed attempts to rescue white people from bad Indians, and good Indians from ignorant white people. He is the escapee from Plato's Cave. The rest of us are stuck in the dark.

reconciliation between the settler-I and the interiorized native-not-I within the settler. Sympathy and suffering are profoundly satisfying for settler cinema: *The Descendants* was nominated for 5 Academy Awards and won for Best Adapted Screenplay in 2012.

The beauty of this settler fantasy is that it adopts decolonization and aborts it in one gesture. Hawkeye adopts Uncas, who then conveniently dies. King adopts Hawai'i and negates the necessity for *ea*, Kanaka Maoli sovereignty. Decolonization is stillborn - rendered irrelevant because decolonization is already completed by the indigenized consciousness of the settler. Now 'we' are all Indian, all Hawaiian, and decolonization is no longer an issue. 'Our' only recourse is to move forward, however regretfully, with 'our' settler future.

In the unwritten decolonial version of Cooper's story, Hawkeye would lose his land back to the Mohawk - the real people upon whose land Cooperstown was built and whose rivers, lakes, and forests Cooper mined for his frontier romances. Hawkeye would shoot his last arrow, or his last long-rifle shot, return his eagle feather, and would be renamed Natty Bumppo, settler on Native land. The story would end with the moment of this recognition. Unresolved are the questions: Would a conversation follow after that between Native and the last settler? Would the settler leave or just vanish? Would he ask to stay, and if he did, who would say yes? These are questions that will be addressed at decolonization, and not a priori in order to appease anxieties for a settler future.

Moves to innocence III: Colonial equivocation

A more nuanced move to innocence is the homogenizing of various experiences of oppression as colonization. Calling different groups 'colonized' without describing their relationship to settler colonialism is an equivocation, "the fallacy of using a word in different senses at different stages of the reasoning" (Etymonline, 2001). In particular, describing all struggles against imperialism as 'decolonizing' creates a convenient ambiguity between decolonization and social justice work, especially among people of color, queer people, and other groups minoritized by the settler nation-state. 'We are all colonized,' may be a true statement but is deceptively embracive and vague, its inference: 'None of us are settlers.' Equivocation, or calling everything by the same name, is a move towards innocence that is especially vogue in coalition politics among people of color.

People of color who enter/are brought into the settler colonial nation-state also enter the triad of relations between settler-native-slave. We are referring here to the colonial pathways that are usually described as 'immigration' and how the refugee/immigrant/migrant is invited to be a settler in some scenarios, given the appropriate investments in whiteness, or is made an illegal, criminal presence in other scenarios. Ghetto colonialism, prisons, and under resourced compulsory schooling are specializations of settler colonialism in North America; they are

produced by the collapsing of internal, external, and settler colonialisms, into new blended categories[15].

This triad of settler-native-slave and its selective collapsibility seems to be unique to settler colonial nations. For example, all Aleut people on the Aleutian Islands were collected and placed in internment camps for four years after the bombing of Dutch Harbor; the stated rationale was the protection of the people but another likely reason was that the U.S. Government feared the Aleuts would become allies with the Japanese and/or be difficult to differentiate from potential Japanese spies. White people who lived on the Aleutian Islands at that same time were not interned. Internment in abandoned warehouses and canneries in Southeast Alaska was the cause of significant numbers of death of children and elders, physical injury, and illness among Aleut people. Aleut internment during WWII is largely ignored as part of U.S. history. The shuffling of Indigenous people between Native, enslavable Other, and Orientalized Other[16] shows how settler colonialism constructs and collapses its triad of categories.

This colonizing trick explains why certain minorities can at times become model and quasi-assimilable (as exemplified by Asian settler colonialism, civil rights, model minority discourse, and the use of 'hispanic' as an ethnic category to mean both white and non-white) yet, in times of crisis, revert to the status of foreign contagions (as exemplified by Japanese Internment, Islamophobia, Chinese Exclusion, Red Scare, anti-Irish nativism, WWII anti-semitism, and anti-Mexican-immigration). This is why 'labor' or 'workers' as an agential political class fails to activate the decolonizing project. "[S]hifting lines of the international division of labor" (Spivak, 1985, p. 84) bisect the very category of labor into caste-like bodies built for work on one hand and rewardable citizen-workers on the other. Some labor becomes settler, while excess labor becomes enslavable, criminal, murderable.

The impossibility of fully becoming a white settler - in this case, white referring to an exceptionalized position with assumed rights to invulnerability and legal supremacy - as articulated by minority literature preoccupied with "glass ceilings" and "forever foreign" status and "myth of the model minority", offers a strong critique of the myth of the democratic nation-state. However, its logical endpoint, the attainment of equal legal and cultural entitlements, is actually an investment in settler colonialism. Indeed, even the ability to be a minority citizen in the settler nation means an option to become a brown settler. For many people of color, becoming a subordinate settler is an option even when becoming white is not.

"Following stolen resources" is a phrase that Wayne has encountered, used to describe Filipino overseas labor (over 10% of the population of the Philippines is working abroad) and other migrations from colony to metropole. This phrase is an important anti-colonial framing of a

[15] E.g. Detention centers contain the foreign, non-citizen subject who is paradoxically outside of the nation yet at the mercy of imperial sovereignty within the metropole.

[16] We are using Orientalized Other in sense of the enemy other, following Edward Said's (1978) analysis of Orientalism.

colonial situation. However an anti-colonial critique is not the same as a decolonizing framework; anti-colonial critique often celebrates empowered postcolonial subjects who seize denied privileges from the metropole. This anti-to-post-colonial project doesn't strive to undo colonialism but rather to remake it and subvert it. Seeking stolen resources is entangled with settler colonialism because those resources were nature/Native first, then enlisted into the service of settlement and thus almost impossible to reclaim without re-occupying Native land. Furthermore, the postcolonial pursuit of resources is fundamentally an anthropocentric model, as land, water, air, animals, and plants are never able to become postcolonial; they remain objects to be exploited by the empowered postcolonial subject.

Equivocation is the vague equating of colonialisms that erases the sweeping scope of land as the basis of wealth, power, law in settler nation-states. Vocalizing a 'muliticultural' approach to oppressions, or remaining silent on settler colonialism while talking about colonialisms, or tacking on a gesture towards Indigenous people without addressing Indigenous sovereignty or rights, or forwarding a thesis on decolonization without regard to unsettling/deoccupying land, are equivocations. That is, they ambiguously avoid engaging with settler colonialism; they are ambivalent about minority / people of color / colonized Others *as settlers*; they are cryptic about Indigenous land rights in spaces inhabited by people of color.

Moves to innocence IV: Free your mind and the rest will follow

Fanon told us in 1963 that decolonizing the mind is the first step, not the only step toward overthrowing colonial regimes. Yet we wonder whether another settler move to innocence is to focus on decolonizing the mind, or the cultivation of critical consciousness, as if it were the sole activity of decolonization; to allow *conscientization* to stand in for the more uncomfortable task of relinquishing stolen land. We agree that curricula, literature, and pedagogy can be crafted to aid people in learning to see settler colonialism, to articulate critiques of settler epistemology, and set aside settler histories and values in search of ethics that reject domination and exploitation; this is not unimportant work. However, the front-loading of critical consciousness building can waylay decolonization, even though the experience of teaching and learning to be critical of settler colonialism can be so powerful it can feel like it is indeed making change. Until stolen land is relinquished, critical consciousness does not translate into action that disrupts settler colonialism. So, we respectfully disagree with George Clinton and Funkadelic (1970) and En Vogue (1992) when they assert that if you "free your mind, the rest (your ass) will follow."

Paulo Freire, eminent education philosopher, popular educator, and liberation theologian, wrote his celebrated book, *Pedagogy of the Oppressed*, in no small part as a response to Fanon's *Wretched of the Earth.* Its influence upon critical pedagogy and on the practices of educators committed to social justice cannot be overstated. Therefore, it is important to point out significant differences between Freire and Fanon, especially with regard to de/colonization. Freire situates the work of liberation in the minds of the oppressed, an abstract category of dehumanized worker vis-a-vis a similarly abstract category of oppressor. This is a sharp right

turn away from Fanon's work, which always positioned the work of liberation in the particularities of colonization, in the specific structural and interpersonal categories of Native and settler. Under Freire's paradigm, it is unclear who the oppressed are, even more ambiguous who the oppressors are, and it is inferred throughout that an innocent third category of enlightened human exists: "those who suffer with [the oppressed] and fight at their side" (Freire, 2000, p. 42). These words, taken from the opening dedication of *Pedagogy of the Oppressed*, invoke the same settler fantasy of mutuality based on sympathy and suffering.

Fanon positions decolonization as chaotic, an unclean break from a colonial condition that is already over determined by the violence of the colonizer and unresolved in its possible futures. By contrast, Freire positions liberation as redemption, a freeing of both oppressor and oppressed through their humanity. Humans become 'subjects' who then proceed to work on the 'objects' of the world (animals, earth, water), and indeed read the word (critical consciousness) in order to write the world (exploit nature). For Freire, there are no Natives, no Settlers, and indeed no history, and the future is simply a rupture from the timeless present. Settler colonialism is absent from his discussion, implying either that it is an unimportant analytic or that it is an already completed project of the past (a past oppression perhaps). Freire's theories of liberation resoundingly echo the allegory of Plato's Cave, a continental philosophy of mental emancipation, whereby the thinking man individualistically emerges from the dark cave of ignorance into the light of critical consciousness.

By contrast, black feminist thought roots freedom in the darkness of the cave, in that well of feeling and wisdom from which all knowledge is recreated.

> These places of possibility within ourselves are dark because they are ancient and hidden; they have survived and grown strong through darkness. Within these deep places, each one of us holds an incredible reserve of creativity and power, of unexamined and unrecorded emotion and feeling. The woman's place of power within each of us is neither white nor surface; it is dark, it is ancient, and it is deep. (Lorde, 1984, pp. 36-37)

Audre Lorde's words provide a sharp contrast to Plato's sight-centric image of liberation: "The white fathers told us, I think therefore I am; and the black mothers in each of us - the poet - whispers in our dreams, I feel therefore I can be free" (p. 38). For Lorde, writing is not action upon the world. Rather, poetry is giving a name to the nameless, "first made into language, then into idea, then into more tangible action" (p. 37). Importantly, freedom is a possibility that is not just mentally generated; it is particular and felt.

Freire's philosophies have encouraged educators to use "colonization" as a metaphor for oppression. In such a paradigm, "internal colonization" reduces to "mental colonization", logically leading to the solution of decolonizing one's mind and the rest will follow. Such philosophy conveniently sidesteps the most unsettling of questions:

> The essential thing is to see clearly, to think clearly - that is, dangerously and to answer clearly the innocent first question: what, fundamentally, is colonization? (Cesaire, 2000, p. 32)

Because colonialism is comprised of global and historical relations, Cesaire's question must be considered globally and historically. However, it cannot be reduced to a global answer, nor a historical answer. To do so is to use colonization metaphorically. "What is colonization?" must be answered specifically, with attention to the colonial apparatus that is assembled to order the relationships between particular peoples, lands, the 'natural world', and 'civilization'. Colonialism is marked by its specializations. In North America and other settings, settler sovereignty imposes sexuality, legality, raciality, language, religion and property in specific ways. Decolonization likewise must be thought through in these particularities.

> To agree on what [decolonization] is not: neither evangelization, nor a philanthropic enterprise, nor a desire to push back the frontiers of ignorance, disease, and tyranny... (Cesaire, 2000, p. 32)

We deliberately extend Cesaire's words above to assert what decolonization is not. It is not converting Indigenous politics to a Western doctrine of liberation; it is not a philanthropic process of 'helping' the at-risk and alleviating suffering; it is not a generic term for struggle against oppressive conditions and outcomes. The broad umbrella of social justice may have room underneath for all of these efforts. By contrast, decolonization specifically requires the repatriation of Indigenous land and life. Decolonization is not a metonym for social justice.

We don't intend to discourage those who have dedicated careers and lives to teaching themselves and others to be critically conscious of racism, sexism, homophobia, classism, xenophobia, and settler colonialism. We are asking them/you to consider how the pursuit of critical consciousness, the pursuit of social justice through a critical enlightenment, can also be settler moves to innocence - diversions, distractions, which relieve the settler of feelings of guilt or responsibility, and conceal the need to give up land or power or privilege.

Anna Jacobs' 2009 Master's thesis explores the possibilities for what she calls *white harm reduction* models. Harm reduction models attempt to reduce the harm or risk of specific practices. Jacobs identifies white supremacy as a public health issue that is at the root of most other public health issues. The goal of white harm reduction models, Jacobs says, is to reduce the harm that white supremacy has had on white people, and the deep harm it has caused non-white people over generations. Learning from Jacobs' analysis, we understand the curricular-pedagogical project of critical consciousness as *settler harm reduction,* crucial in the resuscitation of practices and intellectual life outside of settler ontologies. (Settler) harm reduction is intended only as a stopgap. As the environmental crisis escalates and peoples around the globe are exposed to greater concentrations of violence and poverty, the need for settler harm reduction is acute, profoundly so. At the same time we remember that, by definition, settler harm

reduction, like conscientization, is not the same as decolonization and does not inherently offer any pathways that lead to decolonization.

Moves to innocence V: A(s)t(e)risk peoples

This settler move to innocence is concerned with the ways in which Indigenous peoples are counted, codified, represented, and included/disincluded by educational researchers and other social science researchers. Indigenous peoples are rendered visible in mainstream educational research in two main ways: as "at risk" peoples and as asterisk peoples. This comprises a settler move to innocence because it erases and then conceals the erasure of Indigenous peoples within the settler colonial nation-state and moves Indigenous nations as "populations" to the margins of public discourse.

As "at risk" peoples, Indigenous students and families are described as on the verge of extinction, culturally and economically bereft, engaged or soon-to-be engaged in self-destructive behaviors which can interrupt their school careers and seamless absorption into the economy. Even though it is widely known and verified that Native youth gain access to personal and academic success when they also have access to/instruction in their home languages, most Native American and Alaskan Native youth are taught in English-only schools by temporary teachers who know little about their students' communities (Lomawaima and McCarty, 2006; Lee, 2011). Even though Indigenous knowledge systems predate, expand, update, and complicate the curricula found in most public schools, schools attended by poor Indigenous students are among those most regimented in attempts to comply with federal mandates. Though these mandates intrude on the sovereignty of Indigenous peoples, the "services" promised at the inception of these mandates do little to make the schools attended by Indigenous youth better at providing them a compelling, relevant, inspiring and meaningful education.

At the same time, Indigenous communities become the asterisk peoples, meaning they are represented by an asterisk in large and crucial data sets, many of which are conducted to inform public policy that impact our/their lives (Villegas, 2012). Education and health statistics are unavailable from Indigenous communities for a variety of reasons and, when they are made available, the size of the *n*, or the sample size, can appear to be negligible when compared to the sample size of other/race-based categories. Though Indigenous scholars such as Malia Villegas recognize that Indigenous peoples are distinct from each other but also from other racialized groups surveyed in these studies, they argue that difficulty of collecting basic education and health information about this small and heterogeneous category must be overcome in order to counter the disappearance of Indigenous particularities in public policy.

In U.S. educational research in particular, Indigenous peoples are included only as asterisks, as footnotes into dominant paradigms of educational inequality in the U.S. This can be observed in the progressive literature on school discipline, on 'underrepresented minorities' in higher education, and in the literature of reparation, i.e., redressing 'past' wrongs against non-white Others. Under such paradigms, which do important work on alleviating the symptoms of

colonialism (poverty, dispossession, criminality, premature death, cultural genocide), Indigeneity is simply an "and" or an illustration of oppression. 'Urban education', for example, is a code word for the schooling of black, brown, and ghettoized youth who form the numerical majority in divested public schools. Urban American Indians and Native Alaskans become an asterisk group, invisibilized, even though about two-thirds of Indigenous peoples in the U.S. live in urban areas, according to the 2010 census. Yet, urban Indians receive fewer federal funds for education, health, and employment than their counterparts on reservations (Berry, 2012). Similarly, Native Pasifika people become an asterisk in the Asian Pacific Islander category and their politics/epistemologies/experiences are often subsumed under a pan-ethnic Asian-American master narrative. From a settler viewpoint that concerns itself with numerical inequality, e.g. the achievement gap, underrepresentation, and the 99%'s short share of the wealth of the metropole, the asterisk is an outlier, an outnumber. It is a token gesture, an inclusion and an enclosure of Native people into the politics of equity. These acts of inclusion assimilate Indigenous sovereignty, ways of knowing, and ways of being by remaking a collective-comprised tribal identity into an individualized ethnic identity.

From a decolonizing perspective, the asterisk is a body count that does not account for Indigenous politics, educational concerns, and epistemologies. Urban land (indeed all land) is Native land. The vast majority of Native youth in North America live in urban settings. Any decolonizing urban education endeavor must address the foundations of urban land pedagogy and Indigenous politics *vis-a-vis* the settler colonial state.

Moves to innocence VI: Re-occupation and urban homesteading

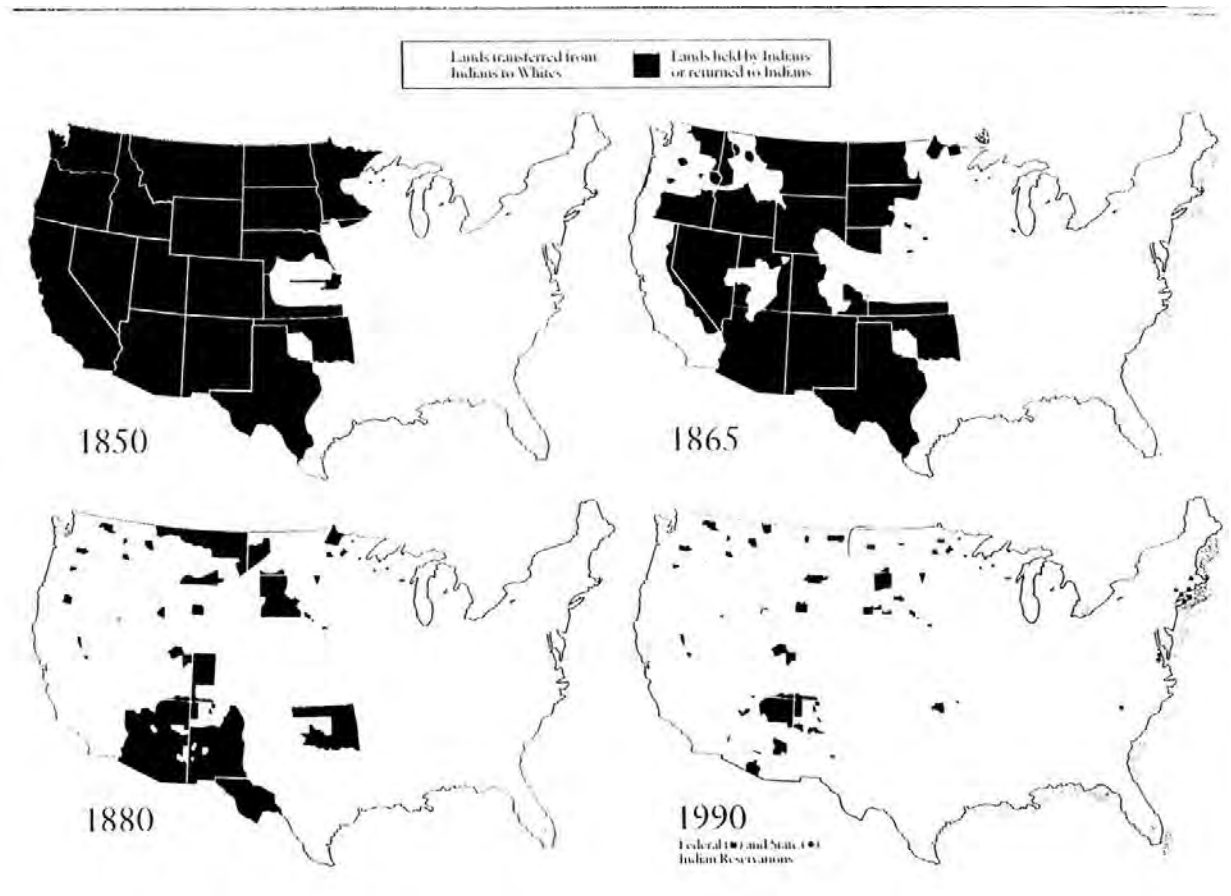
The Occupy movement for many economically marginalized people has been a welcome expression of resistance to the massive disparities in the distribution of wealth; for many Indigenous people, Occupy is another settler re-occupation on stolen land. The rhetoric of the movement relies upon problematic assumptions about social justice and is a prime example of the incommensurability between "re/occupy" and "decolonize" as political agendas. The pursuit of worker rights (and rights to work) and minoritized people's rights in a settler colonial context can appear to be anti-capitalist, but this pursuit is nonetheless largely pro-colonial. That is, the ideal of "redistribution of wealth" camouflages how much of that wealth is *land*, Native land. In Occupy, the "99%" is invoked as a deserving supermajority, in contrast to the unearned wealth of the "1%". It renders Indigenous peoples (a 0.9% 'super-minority') completely invisible and absorbed, just an asterisk group to be subsumed into the legion of occupiers.

Figure 1.1. If U.S. land were divided like U.S. wealth

For example, "If U.S. land were divided like U.S. wealth" (figure 1.1) is a popular graphic that was electronically circulated on the Internet in late 2011 in connection with the Occupy movement. The image reveals inherent assumptions about land, including: land is property; land is/belongs to the United States; land should be distributed democratically. The beliefs that land can be owned by people, and that occupation is a right, reflect a profoundly settling, anthropocentric, colonial view of the world.

In figure 1.1, the irony of mapping of wealth onto land seems to escape most of those who re-posted the images on their social networking sites and blogs: Land is already wealth; it is already divided; and its distribution is the greatest indicator of racial inequality[17]. Indeed the current wealth crisis facing the 99% spiraled with the crash in home/land ownership. Land (not money) is actually the basis for U.S. wealth. If we took away land, there would be little wealth left to redistribute.

[17] Wealth, most significantly in the form of home ownership, supercedes income as an indicator of disparities between racial groups. See discussions on the wealth gap, home ownership, and racial inequality by Thomas Shapiro (2004), in *The Hidden Cost of Being African American: How Wealth Perpetuates Inequality.*



NATIVE LAND: 100%. RESERVATION LAND: 2.3%.

Figure 1.2. If Native land were [is] divided like Native land

Settler colonization can be visually understood as the unbroken pace of invasion, and settler occupation, into Native lands: the white space in figure 1.2. Decolonization, as a process, would repatriate land to Indigenous peoples, reversing the timeline of these images.

As detailed by public intellectuals/bloggers such as *Tequila Sovereign* (Lenape scholar Joanne Barker), some Occupy sites, including Boston, Denver, Austin, and Albuquerque tried to engage in discussions about the problematic and colonial overtones of occupation (Barker, October 9, 2011). Barker blogs about a firsthand experience in bringing a proposal for a *Memorandum of Solidarity with Indigenous Peoples,*[18] to the General Assembly in Occupy Oakland. The memorandum, signed by Corrina Gould, (Chochenyo Ohlone - the first peoples of Oakland/Ohlone), Barker, and numerous other Indigenous and non-Indigenous activist-scholars, called for the acknowledgement of Oakland as already occupied and on stolen land; of the ongoing defiance by Indigenous peoples in the U.S. and around the globe against imperialism,

[18] The memorandum can be found at http://www.indybay.org/newsitems/2011/10/29/18695950.php, last retrieved June 1, 2012.

colonialism, and oppression; the need for genuine and respectful involvement of Indigenous peoples in the Occupy Oakland movement; and the aspiration to "Decolonize Oakland," rather than re-occupy it. From Barker's account of the responses from settler individuals to the memorandum,

> Ultimately, what they [settler participants in Occupy Oakland] were asking is whether or not we were asking them, as non-indigenous people, the impossible? Would their solidarity with us require them to give up their lands, their resources, their ways of life, so that we – who numbered so few, after all – could have more? Could have it all? (Barker, October 30, 2011)

These responses, resistances by settler participants to the aspiration of decolonization in Occupy Oakland, illustrate the reluctance of some settlers to engage the prospect of decolonization beyond the metaphorical or figurative level. Further, they reveal the limitations to "solidarity," without the willingness to acknowledge stolen land and how stolen land benefits settlers. "Genuine solidarity with indigenous peoples," Barker continues, "assumes a basic understanding of how histories of colonization and imperialism have produced and *still produce* the legal and economic possibility for Oakland" (ibid., emphasis original).

For social justice movements, like Occupy, to truly aspire to decolonization non-metaphorically, they would impoverish, not enrich, the 99%+ settler population of United States. Decolonization eliminates settler property rights and settler sovereignty. It requires the abolition of land as property and upholds the sovereignty of Native land and people.

There are important parallels between Occupy/Decolonize and the French/Haitian Revolutions of 1789-1799 and 1791-1804, respectively. Haiti has the dubious distinction of being "the poorest country in the Western hemisphere" (Central Intelligence Agency, 2012); yet, it was the richest of France's colonies until the Haitian Revolution, the only slave revolution to ever found a state. This paradox can be explained by what/who counts as whose property. Under French colonialism, Haiti was a worth a fortune in enslaved human beings. From the French slave owners' perspectives, Haitian independence abolished not slavery, but their property and a source of common-wealth. Unfortunately, history provides us with the exact figures on what their property was worth; in 1825, "France recognized Haitian independence by a treaty requiring Haiti to pay an indemnity of 150 million francs payable in 5 years to compensate absentee slaveowners for their losses" (Schuller, 2007, p.149). The magnitude[19] of these

[19] 150 million Francs was the equivalent of France's annual budget (and Haiti's population was less than 1% of France's), 10 times all annual Haitian exports in 1825, equivalent to $21 billion in 2010 U.S. Dollars. By contrast France sold the Louisiana Purchase to the United States in 1803 for a net sum of 42 million Francs. The indemnity demand, delivered by 12 warships armed with 500 canons, "heralded a strategy of plunder" (Schuller, 2007, p.166), as a new technology in colonial reconquest.

reparations not *for* slavery, but *to* former slave owners, plunged Haiti into eternal debt[20]. Occupy draws almost directly from the values of the French Revolution: the Commons, the General Assembly, the natural right to property, and the resistance to the decolonization of Indigenous life/land. In 1789, the French *Communes* (Commons) declared themselves a National Assembly directly "of the People" (the 99%) against the representative assembly of "the Estates" (the 1%) set up by the ruling elite, and adopted the celebrated *Declaration of the Rights of the Man and the Citizen.* Not unlike the heated discussions at the December 4, 2011 General Assembly of Occupy Oakland that ultimately rejected the proposal to change the name to "Decolonize Oakland", the 1789 National Assembly debated at great length over the language of emancipation in the *Declaration*. Ultimately, the *Declaration* abolished slavery but not property, and effectively stipulated that property trumped emancipation. While rhetorically declaring men as forever free and equal (and thus unenslavable), it assured the (revolutionary) colonial proprietors in the assembly that their chattel would be untouched, stating unequivocally: "The right to property being inviolable and sacred, no one ought to be deprived of it..." (Blackburn, 2006, p. 650).

Table 1.
Outnumbers. Incommensurable.

French Revolution	99% French, 1% Slaves[21]
Haitian Revolution	90% Slaves, 10% Whites & Free Blacks

Decolonizing the Americas means all land is repatriated and all settlers become landless. It is incommensurable with the redistribution of Native land/life as common-wealth.

Table 2.
Outnumbers. Incommensurable.

Occupy	99% Occupiers, 1% Owners
Decolonize	0.9% Indigenous[22], 99.1% Settlers[23]

[20] Haiti has literally been in debt from the moment it was recognized as a country. Haiti paid off its indemnity to France in 1937, but only through new indemnity with the United States. Ironically, in contemporary times, the Paris Club has power over Haiti's debt, and thus maintains Haiti's poverty.

[21] At 28 million people, France was the 3rd most populous country in the world in 1789, after China and India. Haiti's slave population in 1791 was approximately 452,000 - a fluctuating number as the slave mortality rate exceeded the birth rate, requiring a constant supply of newly enslaved Africans; and approximately 200,000 slaves died in the revolution. 1% refers to this number of enslaved people in Haiti relative to the French population, and does not include those enslaved in France or its other colonies.

[22] According to the 2010 U.S. census, Native Americans comprise 0.9% of U.S. inhabitants.

Our critique of Occupation is not just a critique of rhetoric. The call to "occupy everything" has legitimized a set of practices with problematic relationships to land and to Indigenous sovereignty. Urban homesteading, for example, is the practice of re-settling urban land in the fashion of self-styled pioneers in a mythical frontier. Not surprisingly, urban homesteading can also become a form of playing Indian, invoking Indigeneity as 'tradition' and claiming Indian-like spirituality while evading Indigenous sovereignty and the modern presence of actual urban Native peoples. More significant examples are Occupiers' claims to land and their imposition of Western forms of governance within their tent cities/colonies. Claiming land for the Commons and asserting consensus as the rule of the Commons, erases existing, prior, and future Native land rights, decolonial leadership, and forms of self-government.

Occupation is a move towards innocence that hides behind the numerical superiority of the settler nation, the elision of democracy with justice, and the logic that what became property under the 1% rightfully belongs to the other 99%.

In contrast to the settler labor of occupying the commons, homesteading, and possession, some scholars have begun to consider the labor of de-occupation in the undercommons, permanent fugitivity, and dispossession as possibilities for a radical black praxis. Such "a labor that is dedicated to the reproduction of social dispossession as having an ethical dimension" (Moten & Harney, 2004, p.110), includes both the refusal of acquiring property and of being property

Incommensurability is unsettling

Having elaborated on settler moves to innocence, we give a synopsis of the imbrication of settler colonialism with transnationalist, abolitionist, and critical pedagogy movements - efforts that are often thought of as exempt from Indigenous decolonizing analyses - as a synthesis of how decolonization as material, not metaphor, unsettles the innocence of these movements. These are interruptions which destabilize, un-balance, and repatriate the very terms and assumptions of some of the most radical efforts to reimagine human power relations. We argue that the opportunities for solidarity lie in what is incommensurable rather than what is common across these efforts.

We offer these perspectives on unsettling innocence because they are examples of what we might call an ethic of incommensurability, which recognizes what is distinct, what is sovereign for project(s) of decolonization in relation to human and civil rights based social justice projects. There are portions of these projects that simply cannot speak to one another, cannot be aligned or allied. We make these notations to highlight opportunities for what can only ever be strategic and contingent collaborations, and to indicate the reasons that lasting solidarities may be elusive, even undesirable. Below we point to unsettling themes that challenge the coalescence of social justice endeavors broadly assembled into three areas:

[23] Wayne would like to give special thanks to Jodi Byrd for pointing out this numerical irony.

Transnational or Third World decolonizations, Abolition, and Critical Space-Place Pedagogies. For each of these areas, we offer entry points into the literature - beginning a sort of bibliography of incommensurability.

Third world decolonizations

The anti-colonial turn towards the transnational can sometimes involve ignoring the settler colonial context where one resides and how that inhabitation is implicated in settler colonialism, in order to establish "global" solidarities that presumably suffer fewer complicities and complications. This deliberate not-seeing is morally convenient but avoids an important feature of the aforementioned selective collapsibility of settler colonial-nations states. Expressions such as "the Global South within the Global North" and "the Third World in the First World" neglect the Four Directions via a Flat Earth perspective and ambiguate First Nations with Third World migrants. For people writing on Third World decolonizations, but who do so upon Native land, we invite you to consider the permanent settler war as the theater for all imperial wars:

- the Orientalism of Indigenous Americans (Berger, 2004; Marez, 2007)
- discovery, invasion, occupation, and Commons as the claims of settler sovereignty (Ford, 2010)
- heteropatriarchy as the imposition of settler sexuality (Morgensen, 2011)
- citizenship as coercive and forced assimilation into the white settler normative (Bruyneel, 2004; Somerville, 2010)
- religion as covenant for settler nation-state (A.J. Barker, 2009; Maldonado-Torres, 2008)
- the frontier as the first and always the site of invasion and war (Byrd, 2011),
- U.S. imperialism as the expansion of settler colonialism (*ibid*)
- Asian settler colonialism (Fujikane, 2012; Fujikane, & Okamura, 2008, Saranillio, 2010a, 2010b)
- the frontier as the language of 'progress' and discovery (Maldonado-Torres, 2008)
- rape as settler colonial structure (Deer, 2009; 2010)
- the discourse of terrorism as the terror of Native retribution (Tuck & Ree, forthcoming)
- Native Feminisms as incommensurable with other feminisms (Arvin, Tuck, Morrill, forthcoming; Goeman & Denetdale, 2009).

Abolition

The abolition of slavery often presumes the expansion of settlers who own Native land and life via inclusion of emancipated slaves and prisoners into the settler nation-state. As we have noted, it is no accident that the U.S. government promised 40 acres of Indian land as reparations for plantation slavery. Likewise, indentured European laborers were often awarded tracts of 'unsettled' Indigenous land as payment at the end of their service (McCoy, forthcoming).

Communal ownership of land has figured centrally in various movements for autonomous, self-determined communities. "The land belongs to those who work it," disturbingly parrots Lockean justifications for seizing Native land as property, 'earned' through one's labor in clearing and cultivating 'virgin' land. For writers on the prison industrial complex, il/legality, and other forms of slavery, we urge you to consider how enslavement is a twofold procedure: removal from land and the creation of property (land and bodies). Thus, abolition is likewise twofold, requiring the repatriation of land and the abolition of property (land and bodies). Abolition means self-possession but not object-possession, repatriation but not reparation:

- "The animals of the world exist for their own reasons. They were not made for humans any more than black people were made for white, or women created for men" (Alice Walker, describing the work of Marjorie Spiegel, in the in the preface to Spigel's 1988 book, *The Dreaded Comparison*).
- Enslavement/removal of Native Americans (Gallay, 2009)
- Slaves who become slave-owners, savagery as enslavability, chattel slavery as a sign of civilization (Gallay, 2009)
- Black fugitivity, undercommons, and radical dispossession (Moten, 2008; Moten & Harney, 2004; Moten & Harney, 2010)
- Incarceration as a settler colonialism strategy of land dispossession (Ross, 1998; Watson, 2007)
- Native land and Native people as co-constituitive (Meyer, 2008; Kawagley, 2010)

Critical pedagogies

The many critical pedagogies that engage emancipatory education, place based education, environmental education, critical multiculturalism, and urban education often position land as public Commons or seek commonalities between struggles. Although we believe that "we must be fluent" in each other's stories and struggles (paraphrasing Alexander, 2002, p.91), we detect precisely this lack of fluency in land and Indigenous sovereignty. Yupiaq scholar, Oscar Kawagley's assertion, "We know that Mother Nature has a culture, and it is a Native culture" (2010, p. xiii), directs us to think through land as "more than a site *upon* which humans make history or as a location that accumulates history" (Goeman, 2008, p.24). The forthcoming special issue in *Environmental Education Research*, "Land Education: Indigenous, postcolonial, and decolonizing perspectives on place and environmental education research" might be a good starting point to consider the incommensurability of place-based, environmentalist, urban pedagogies with land education.

- The urban as Indigenous (Bang, 2009; Belin, 1999; Friedel, 2011; Goeman, 2008; Intertribal Friendship House & Lobo, 2002)
- Indigenous storied land as disrupting settler maps (Goeman, 2008)

- Novels, poetry, and essays by Greg Sarris, Craig Womack, Joy Harjo, Gerald Vizenor
- To Remain an Indian (Lomawaima & McCarty, 2006)
- Shadow Curriculum (Richardson, 2011)
- Red Pedagogy (Grande, 2004)
- Land Education (McCoy, Tuck, McKenzie, forthcoming)

More on incommensurability

Incommensurability is an acknowledgement that decolonization will require a change in the order of the world (Fanon, 1963). This is not to say that Indigenous peoples or Black and brown peoples take positions of dominance over white settlers; the goal is not for everyone to merely swap spots on the settler-colonial triad, to take another turn on the merry-go-round. The goal is to break the relentless structuring of the triad - a break and not a compromise (Memmi, 1991).

Breaking the settler colonial triad, in direct terms, means repatriating land to sovereign Native tribes and nations, abolition of slavery in its contemporary forms, and the dismantling of the imperial metropole. Decolonization "here" is intimately connected to anti-imperialism elsewhere. However, decolonial struggles here/there are not parallel, not shared equally, nor do they bring neat closure to the concerns of all involved - particularly not for settlers. Decolonization is not equivocal to other anti-colonial struggles. It is incommensurable.

There is so much that is incommensurable, so many overlaps that can't be figured, that cannot be resolved. Settler colonialism fuels imperialism all around the globe. Oil is the motor and motive for war and so was salt, so will be water. Settler sovereignty over these very pieces of earth, air, and water is what makes possible these imperialisms. The same yellow pollen in the water of the Laguna Pueblo reservation in New Mexico, Leslie Marmon Silko reminds us, is the same uranium that annihilated over 200,000 strangers in 2 flashes. The same yellow pollen that poisons the land from where it came. Used in the same war that took a generation of young Pueblo men. Through the voice of her character Betonie, Silko writes, "Thirty thousand years ago they were not strangers. You saw what the evil had done; you saw the witchery ranging as wide as the world" (Silko, 1982, p. 174). In Tucson, Arizona, where Silko lives, her books are now banned in schools. Only curricular materials affirming the settler innocence, ingenuity, and right to America may be taught.

In "No", her response to the 2003 United States invasion of Iraq, Mvskoke/Creek poet Joy Harjo (2004) writes, "Yes, that was me you saw shaking with bravery, with a government issued rifle on my back. I'm sorry I could not greet you, as you deserved, my relative." Don't Native Americans participate in greater rates in the military? asks the young-ish man from Viet Nam.

"Indian Country" was/is the term used in Viet Nam, Afghanistan, Iraq by the U.S. military for 'enemy territory'. The first Black American President said without blinking, "There was a point before folks had left, before we had gotten everybody back on the helicopter and were flying back to base, where they said Geronimo has been killed, and Geronimo was the code

name for bin Laden." Elmer Pratt, Black Panther leader, falsely imprisoned for 27 years, was a Vietnam Veteran, was nicknamed 'Geronimo'. Geronimo is settler nickname for the Bedonkohe Apache warrior who fought Mexican and then U.S. expansion into Apache tribal lands. The Colt .45 was perfected to kill Indigenous people during the 'liberation' of what became the Philippines, but it was first invented for the 'Indian Wars' in North America alongside The Hotchkiss Canon- a gattling gun that shot canonballs. The technologies of the permanent settler war are reserviced for foreign wars, including boarding schools, colonial schools, urban schools run by military personnel.

It is properly called Indian Country.


NEW YORK, SATURDAY, APRIL 8, 1882.

The Hotchkiss Revolving Cannon

which the cut represents, mounted on the field carriage, has been adopted by the United States for both Field and Naval purposes, and by nearly all the Governments of Europe.

They are made of 37mm., 47mm., and 58mm. calibre, and fire common and steel shell.

The 37mm. and 47mm. fire 60 to 80 shell per minute, giving 1,500 to 2,000 fragments. In service, with deliberate aim at moving objects, from 15 to 20, giving 1,200 dangerous fragments per minute.

The Naval gun is mounted on the non-recoil principle, and being almost free from the shoulder, with the aim of a musket, attains a greater accuracy at sea than any other cannon.

The range of the 37mm. gun is 3,000 yards, of the 47mm., 6,500 yards.

The steel shell from the smaller gun penetrates all torpedo boats up to 2,000 yards, and at acute angles up to 2,000 yards, and the 47mm. perforates all the unarmored ships now in service.

For Field service the accuracy of fire and regularity of range are unsurpassed.

(See Official Reports of Chief of Ordnance, U. S. A.)

FOR FURTHER INFORMATION, ADDRESS

HOTCHKISS & CO., 21 RUE ROYALE, PARIS.

Or MESSRS. GRAHAM & HAINES,

113 Chambers Street, New York.

Figure 1.3. Hotchkiss Revolving Cannon

Ideologies of US settler colonialism directly informed Australian settler colonialism. South African apartheid townships, the kill-zones in what became the Philippine colony, then nation-state, the checkerboarding of Palestinian land with checkpoints, were modeled after U.S. seizures of land and containments of Indian bodies to reservations. The racial science developed in the U.S. (a settler colonial racial science) informed Hitler's designs on racial purity ("This book is my bible" he said of Madison Grant's The Passing of the Great Race). The admiration is sometimes mutual, the doctors and administrators of forced sterilizations of black, Native, disabled, poor, and mostly female people - The Sterilization Act accompanied the Racial Integrity Act and the Pocohontas Exception - praised the Nazi eugenics program. Forced sterilizations became illegal in California in 1964. The management technologies of North American settler colonialism have provided the tools for internal colonialisms elsewhere.

So to with philosophies of state and corporate land-grabbing[24]*. The prominence of "flat world" perspectives asserts that technology has afforded a diminished significance of place and borders. The claim is that U.S. borders have become more flexible, yet simultaneously, the physical border has become more absolute and enforced. The border is no longer just a line suturing two nation-states; the U.S. now polices its borders interior to its territory and exercises*

[24] See also Arundhati Roy (2012) in Capitalism: A Ghost Story

sovereignty throughout the globe. Just as sovereignty has expanded, so has settler colonialism in partial forms.

New Orleans' lower ninth ward lies at the confluence of river channels and gulf waters, and at the intersection of land grabbing and human bondage. The collapsing of levies heralded the selective collapsibility of native-slave, again, for the purpose of reinvasion, resettlement, reinhabitation. The naturalized disaster of Hurricane Katrina's floodwaters laid the perfect cover for land speculation and the ablution of excess people. What can't be absorbed, can't be folded in (because the settlers won't give up THEIR land to advance abolition), translates into bodies stacked on top of one another in public housing and prisons, in cells, kept from the labor market, making labor for others (guards and other corrections personnel) making money for states -human homesteading. It necessitates the manufacturing of crime at rates higher than anywhere in the world. 1 in 6 people in the state of Louisiana are incarcerated, the highest number of caged people per capita, making it the prison capital of United States, and therefore the prison capital of the world.

Table 3
Prison capital of the world[25].

	Prisoners per 100,000 residents
Louisiana	1,619
United States	730
Russia	450
Iran	333
China	122
Afghanistan	62

The Yazoo and Mississippi Rivers' delta flood plain was once land so fertile that it could be squeezed for excess production of cotton, giving rise to exceptionally large-scale plantation slavery. Plantation owners lived in houses like pyramids and chattel slavery took an extreme form here, even for the South, beginning with enslaved Chitimachas, Choctaw, Natchez, Chaoüachas, Natchez, Westo, Yamasee, Euchee, Yazoo and Tawasa peoples, then later replaced by enslaved West Africans. Literally, worked to death. This "most Southern on earth"(Cobb, 1992) was a place of ultimate terror for Black people even under slavery (the worst place to be sold off too, the place of no return, the place of premature death). Black and Native people alike were induced to raid and enslave Native tribes, as a bargain for their own freedom or to defer their own enslavibility by the British, French, and then American settlers. Abolition has its incommensurabilities.

The Delta is now more segregated than it was during Jim Crow in 1950 (Aiken, 1990). The rising number of impoverished, all black townships is the result of mechanization of

[25] Source: Chang (2012).

agriculture and a fundamental settler covenant that keeps black people landless. When black labor is unlabored, the Black person underneath is the excess.

Angola Farm is perhaps the more notorious of the two State Penitentiaries along the Mississippi River. Three hundred miles upriver in the upper Delta region is Parchment Farm. Both State Penitentiaries (Mississippi and Louisana, respectively), both former slave plantations, both turned convict-leasing farms almost immediately after the Civil War by genius land speculators-cum-prison wardens. After the Union victory in the Civil War 'abolished' slavery, former Confederate Major, Samuel Lawrence James, obtained the lease to the Louisiana State Penn in 1869, and then bought Angola Farm in 1880 as land to put his chattel to work.

Figure 1.4. "The Cage: where convicts are herded like beasts of the jungle. The pan under it is the toilet receptacle. The stench from it hangs like a pall over the whole area" John Spivak, Georgia N_____, 1932.

Cages on wheels. To mobilize labor on land by landless people whose crime was mobility on land they did not own. The largest human trafficker in the world is the carceral state within

the United States, not some secret Thai triad or Russian mafia or Chinese smuggler. The U.S. carceral state is properly called neo-slavery, precisely because it is legal. It is not simply a product of exceptional racism in the U.S.; its racism is a direct function of the settler colonial mandate of land and people as property.

Black Codes made vagrancy - i.e. landlessness - illegal in the Antebellum South, making the self-possessed yet dispossessed Black body a crime (similar logic allowed for the seizure, imprisonment and indenture of any Indian by any person in California until 1937, based on the ideology that Indians are simultaneously landless and land-like). Dennis Childs writes "the slave ship and the plantation" and not Bentham's panopticon as presented by Foucault, "operated as spatial, racial, and economic templates for subsequent models of coerced labor and human warehousing - as America's original prison industrial complex" (2009, p.288). Geopolitics and biopolitics are completely knotted together in a settler colonial context.

Despite the rise of publicly traded prisons, Farms are not fundamentally capitalist ventures; at their core, they are colonial contract institutions much like Spanish Missions, Indian Boarding Schools, and ghetto school systems[26]*. The labor to cage black bodies is paid for by the state and then land is granted, worked by convict labor, to generate additional profits for the prison proprietors. However, it is the management of excess presence on the land, not the forced labor, that is the main object of slavery under settler colonialism.*

Today, 85% of people incarcerated at Angola, die there.

Conclusion

An ethic of incommensurability, which guides moves that unsettle innocence, stands in contrast to aims of reconciliation, which motivate settler moves to innocence. Reconciliation is about rescuing settler normalcy, about rescuing a settler future. Reconciliation is concerned with questions of *what will decolonization look like? What will happen after abolition? What will be the consequences of decolonization for the settler?* Incommensurability acknowledges that these questions need not, and perhaps cannot, be answered in order for decolonization to exist as a framework.

We want to say, first, that decolonization is not obliged to answer those questions - decolonization is not accountable to settlers, or settler futurity. Decolonization is accountable to Indigenous sovereignty and futurity. Still, we acknowledge the questions of those wary participants in Occupy Oakland and other settlers who want to know what decolonization will require of them. The answers are not fully in view and can't be as long as decolonization remains punctuated by metaphor. The answers will not emerge from friendly understanding, and indeed require a dangerous understanding of uncommonality that un-coalesces coalition politics - moves that may feel very unfriendly. But we will find out the answers as we get there, "in the

[26] As we write today, Louisiana has moved to privatize all of its public schools http://www.huffingtonpost.com/2012/06/01/louisiana-makes-bold-bid-_n_1563900.html

exact measure that we can discern the movements which give [decolonization] historical form and content" (Fanon, 1963, p. 36).

To fully enact an ethic of incommensurability means relinquishing settler futurity, abandoning the hope that settlers may one day be commensurable to Native peoples. It means removing the asterisks, periods, commas, apostrophes, the whereas's, buts, and conditional clauses that punctuate decolonization and underwrite settler innocence. The Native futures, the lives to be lived once the settler nation is gone - these are the unwritten possibilities made possible by an ethic of incommensurability.

> *when you take away the punctuation*
> he says of
> lines lifted from the documents about
> military-occupied land
> its acreage and location
> *you take away its finality*
> *opening the possibility of other futures*
>
> -Craig Santos Perez, Chamoru scholar and poet
> (as quoted by Voeltz, 2012)

Decolonization offers a different perspective to human and civil rights based approaches to justice, an unsettling one, rather than a complementary one. Decolonization is not an "and". It is an elsewhere.

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Patrick Wolfe

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Settler colonialism and the elimination of the native

PATRICK WOLFE

The question of genocide is never far from discussions of settler colonialism. Land is life—or, at least, land is necessary for life. Thus contests for land can be—indeed, often are—contests for life. Yet this is not to say that settler colonialism is simply a form of genocide. In some settler-colonial sites (one thinks, for instance, of Fiji), native society was able to accommodate—though hardly unscathed—the invaders and the transformative socioeconomic system that they introduced. Even in sites of wholesale expropriation such as Australia or North America, settler colonialism's genocidal outcomes have not manifested evenly across time or space. Native Title in Australia or Indian sovereignty in the US may have deleterious features, but these are hardly equivalent to the impact of frontier homicide. Moreover, there can be genocide in the absence of settler colonialism. The best known of all genocides was internal to Europe, while genocides that have been perpetrated in, for example, Armenia, Cambodia, Rwanda or (one fears) Darfur do not seem to be assignable to settler colonialism. In this article, I shall begin to explore, in comparative fashion, the relationship between genocide and the settler-colonial tendency that I term the logic of elimination.[1] I contend that, though the two have converged—which is to say, the settler-colonial logic of elimination has manifested as genocidal—they should be distinguished. Settler colonialism is inherently eliminatory but not invariably genocidal.

As practised by Europeans, both genocide and settler colonialism have typically employed the organizing grammar of race. European xenophobic traditions such as anti-Semitism, Islamophobia, or Negrophobia are considerably older than race, which, as many have shown, became discursively consolidated fairly late in the eighteenth century.[2] But the mere fact that race is a social construct does not of itself tell us very much. As I have argued, different racial regimes encode and reproduce the unequal relationships into which Europeans coerced the populations concerned. For instance, Indians and Black people in the US have been racialized in opposing ways that reflect their antithetical roles in the formation of US society. Black people's enslavement produced an inclusive taxonomy that automatically enslaved the offspring of a slave and any other parent. In the wake of slavery, this taxonomy became fully racialized in the "one-drop rule,"

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whereby any amount of African ancestry, no matter how remote, and regardless of phenotypical appearance, makes a person Black. For Indians, in stark contrast, non-Indian ancestry compromised their indigeneity, producing "half-breeds," a regime that persists in the form of blood quantum regulations. As opposed to enslaved people, whose reproduction augmented their owners' wealth, Indigenous people obstructed settlers' access to land, so their increase was counterproductive. In this way, the restrictive racial classification of Indians straightforwardly furthered the logic of elimination. Thus we cannot simply say that settler colonialism or genocide have been targeted at particular races, since a race cannot be taken as given. It is made in the targeting.[3] Black people were racialized as slaves; slavery constituted their blackness. Correspondingly, Indigenous North Americans were not killed, driven away, romanticized, assimilated, fenced in, bred White, and otherwise eliminated as the original owners of the land but *as Indians*. Roger Smith has missed this point in seeking to distinguish between victims murdered for where they are and victims murdered for who they are.[4] So far as Indigenous people are concerned, where they are *is* who they are, and not only by their own reckoning. As Deborah Bird Rose has pointed out, to get in the way of settler colonization, all the native has to do is stay at home.[5] Whatever settlers may say—and they generally have a lot to say—the primary motive for elimination is not race (or religion, ethnicity, grade of civilization, etc.) but access to territory. Territoriality is settler colonialism's specific, irreducible element.

The logic of elimination not only refers to the summary liquidation of Indigenous people, though it includes that. In common with genocide as Raphaël Lemkin characterized it,[6] settler colonialism has both negative and positive dimensions. Negatively, it strives for the dissolution of native societies. Positively, it erects a new colonial society on the expropriated land base—as I put it, settler colonizers come to stay: invasion is a structure not an event.[7] In its positive aspect, elimination is an organizing principal of settler-colonial society rather than a one-off (and superseded) occurrence. The positive outcomes of the logic of elimination can include officially encouraged miscegenation, the breaking-down of native title into alienable individual freeholds, native citizenship, child abduction, religious conversion, resocialization in total institutions such as missions or boarding schools, and a whole range of cognate biocultural assimilations. All these strategies, including frontier homicide, are characteristic of settler colonialism. Some of them are more controversial in genocide studies than others.

Settler colonialism destroys to replace. As Theodor Herzl, founding father of Zionism, observed in his allegorical manifesto/novel, "If I wish to substitute a new building for an old one, I must demolish before I construct."[8] In a kind of realization that took place half a century later, one-time deputy-mayor of West Jerusalem Meron Benvenisti recalled, "As a member of a pioneering youth movement, I myself 'made the desert bloom' by uprooting the ancient olive trees of al-Bassa to clear the ground for a banana grove, as required by the 'planned farming' principles of my kibbutz, Rosh Haniqra."[9] Renaming is central to the cadastral effacement/replacement of the Palestinian Arab presence that Benvenisti poignantly recounts.[10] Comparably, though with reference to Australia,

Tony Birch has charted the contradictory process whereby White residents sought to frustrate the (re-) renaming of Gariwerd back from the derivative "Grampians" that these hills had become in the wake of their original owners' forcible dispossession in the nineteenth century.[11] Ideologically, however, there is a major difference between the Australian and Israeli cases. The prospect of Israeli authorities changing the Hebrew place-names whose invention Benvenisti has described back to their Arabic counterparts is almost unimaginable. In Australia, by contrast (as in many other settler societies), the erasure of indigeneity conflicts with the assertion of settler nationalism. On the one hand, settler society required the practical elimination of the natives in order to establish itself on their territory. On the symbolic level, however, settler society subsequently sought to recuperate indigeneity in order to express its difference—and, accordingly, its independence—from the mother country. Hence it is not surprising that a progressive Australian state government should wish to attach an indigenous aura to a geographical feature that bore the second-hand name of a British mountain range. Australian public buildings and official symbolism, along with the national airlines, film industry, sports teams and the like, are distinguished by the ostentatious borrowing of Aboriginal motifs. For nationalist purposes, it is hard to see an alternative to this contradictory reappropriation of a foundationally disavowed Aboriginality. The ideological justification for the dispossession of Aborigines was that "we" could use the land better than they could, not that we had been on the land primordially and were merely returning home. One cannot imagine the Al-Quds/Jerusalem suburb of Kfar Sha'ul being renamed Deir Yasin. Despite this major ideological difference, however, Zionism still betrays a need to distance itself from its European origins that recalls the settler anxieties that characterize Australian national discourse. Yiddish, for instance, was decisively rejected in favour of Hebrew—a Hebrew inflected, what is more, with the accents of the otherwise derided Yemeni *mizrachim*. Analogously, as Mark LeVine has noted, though the Zionist modernization of the Arab city of Jaffa was intended to have a certain site specificity, "in fact Jaffa has had to be emptied of its Arab past and Arab inhabitants in order for architects to be able to reenvision the region as a 'typical Middle Eastern city'."[12]

In its positive aspect, therefore, settler colonialism does not simply replace native society *tout court*. Rather, the process of replacement maintains the refractory imprint of the native counter-claim. This phenomenon is not confined to the realm of symbolism. In the Zionist case, for instance, as Gershon Shafir has cogently shown, the core doctrine of the conquest of labour, which produced the *kibbutzim* and Histadrut, central institutions of the Israeli state, emerged out of the local confrontation with Arab Palestinians in a form fundamentally different from the pristine doctrine of productivization that had originally been coined in Europe. The concept of productivization was developed in response to the self-loathing that discriminatory exclusions from productive industry encouraged in Eastern European Jewry (in this sense, as Shafir acutely observes, Zionism mirrored the persecutors' anti-Semitism[13]). In its European enunciation, productivization was not designed to disempower anyone else. It was rather designed, autarkically as it were, to inculcate productive self-sufficiency in a Jewish

population that had been relegated to urban (principally financial) occupations that were stigmatized as parasitic by the surrounding gentile population—a prejudice that those who sought to build the "new Jew" endorsed insofar as they resisted its internalization. On its importation into Palestine, however, the doctrine evolved into a tool of ethnic conflict, as Jewish industries were actively discouraged from employing non-Jewish labour, even though Arabs worked for lower wages and, in many cases, more efficiently:

> "Hebrew labor," or "conquest of labor" . . . was born of Palestinian circumstances, and advocated a struggle against Palestinian Arab workers. This fundamental difference demonstrates the confusion created by referring "Hebrew labor" back to the productivization movement and anachronistically describing it as evolving in a direct line from Eastern European origins.[14]

As it developed on the colonial ground, the conquest of labour subordinated economic efficiency to the demands of building a self-sufficient proto-national Yishuv (Jewish community in Palestine) at the expense of the surrounding Arab population. This situated struggle produced the new Jew as subject of the labour that it conquered. In the words of Zionist architect Julius Posner, reprising a folk song, "We have come to the homeland to build and be rebuilt in it . . . the creation of the new Jew . . . [is also] the creator of that Jew."[15] As such, the conquest of labour was central both to the institutional imagining of a *goyim-rein* (gentile-free) zone and to the continued stigmatization of Jews who remained unredeemed in the *galut* (diaspora). The positive force that animated the Jewish nation and its individual new-Jewish subjects issued from the negative process of excluding Palestine's Indigenous owners.

In short, elimination refers to more than the summary liquidation of Indigenous people, though it includes that. In its positive aspect, the logic of elimination marks a return whereby the native repressed continues to structure settler-colonial society. It is both as complex social formation and as continuity through time that I term settler colonization a structure rather than an event, and it is on this basis that I shall consider its relationship to genocide.

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To start at the top, with the European sovereigns who laid claim to the territories of non-Christian (or, in later secularized versions, uncivilized) inhabitants of the rest of the world: justifications for this claim were derived from a disputatious arena of scholarly controversy that had been prompted by European conquests in the Americas and is misleadingly referred to, in the singular, as the doctrine of discovery.[16] Though a thoroughgoing diminution of native entitlement was axiomatic to discovery, the discourse was primarily addressed to relations between European sovereigns rather than to relations between Europeans and natives.[17] Competing theoretical formulas were designed to restrain the endless rounds of war-making over claims to colonial territory that European sovereigns were prone to indulge in. The rights accorded to natives tended to reflect the balance between European powers in any given theatre of colonial settlement. In Australia, for instance, where British

dominion was effectively unchallenged by other European powers, Aborigines were accorded no rights to their territory, informal variants on the theme of *terra nullius* being taken for granted in settler culture. In North America, by contrast, treaties between Indian and European nations were premised on a sovereignty that reflected Indians' capacity to permute local alliance networks from among the rival Spanish, British, French, Dutch, Swedish and Russian presences.[18] Even where native sovereignty was recognized, however, ultimate dominion over the territory in question was held to inhere in the European sovereign in whose name it had been "discovered." Through all the diversity among the theorists of discovery, a constant theme is the clear distinction between dominion, which inhered in European sovereigns alone, and natives' right of occupancy, also expressed in terms of possession or usufruct, which entitled natives to pragmatic use (understood as hunting and gathering rather than agriculture)[19] of a territory that Europeans had discovered. The distinction between dominion and occupancy illuminates the settler-colonial project's reliance on the elimination of native societies.

Through being the first European to visit and properly claim a given territory, a discoverer acquired the right, on behalf of his sovereign and *vis-à-vis* other Europeans who came after him, to buy land from the natives. This right, known as preemption, gave the discovering power (or, in the US case, its successors) a monopoly over land transactions with the natives, who were prevented from disposing of their land to any other European power. On the face of it, this would seem to pose little threat to people who did not wish to dispose of their land to anyone. Indeed, this semblance of native voluntarism has provided scope for some limited judicial magnanimity in regard to Indian sovereignty.[20] In practice, however, the corollary did not apply. Preemption sanctioned European priority but not Indigenous freedom of choice. As Harvey Rosenthal observed of the concept's extension into the US constitutional environment, "The American right to buy always superseded the Indian right not to sell."[21] The mechanisms of this priority are crucial. Why should ostensibly sovereign nations, residing in territory solemnly guaranteed to them by treaties, decide that they are willing, after all, to surrender their ancestral homelands? More often than not (and nearly always up to the wars with the Plains Indians, which did not take place until after the civil war), the agency which reduced Indian peoples to this abjection was not some state instrumentality but irregular, greed-crazed invaders who had no intention of allowing the formalities of federal law to impede their access to the riches available in, under, and on Indian soil.[22] If the government notionally held itself aloof from such disreputable proceedings, however, it was never far away. Consider, for instance, the complicity between bayonet-wielding troops and the "lawless rabble" in this account of events immediately preceding the eastern Cherokee's catastrophic "Trail of Tears," one of many comparable 1830s removals whereby Indians from the South East were displaced west of the Mississippi to make way for the development of the slave-plantation economy in the Deep South:

> Families at dinner were startled by the sudden gleam of bayonets in the doorway and rose up to be driven with blows and oaths along the weary miles of trail that led to the stockade

> [where they were held prior to the removal itself.] Men were seized in their fields or going along the road, women were taken from their wheels and children from their play. In many cases, on turning for one last look as they crossed the ridge, they saw their homes in flames, fired by the lawless rabble that followed on the heels of the soldiers to loot and pillage. So keen were these outlaws on the scent that in some instances they were driving off the cattle and other stock of the Indians almost before the soldiers had fairly started their owners in the other direction. Systematic hunts were made by the same men for Indian graves, to rob them of the silver pendants and other valuables deposited with the dead. A Georgia volunteer, afterward a colonel in the Confederate service, said: "I fought through the civil war and have seen men shot to pieces and slaughtered by thousands, but the Cherokee removal was the cruelest work I ever knew."[23]

On the basis of this passage alone, the structural complexity of settler colonialism could sustain libraries of elaboration. A global dimension to the frenzy for native land is reflected in the fact that, as economic immigrants, the rabble were generally drawn from the ranks of Europe's landless. The cattle and other stock were not only being driven off Cherokee land; they were being driven into private ownership. Once evacuated, the Red man's land would be mixed with Black labour to produce cotton, the white gold of the Deep South. To this end, the international slave trade and the highest echelons of the formal state apparatus converged across three continents with the disorderly pillaging of a nomadic horde who may or may not have been "lawless" but who were categorically White. Moreover, in their indiscriminate lust for any value that could be extracted from the Cherokee's homeland, these racialized grave-robbers are unlikely to have stopped at the pendants. The burgeoning science of craniology, which provided a distinctively post-eighteenth-century validation for their claim to a racial superiority that entitled them to other people's lands, made Cherokee skulls too marketable a commodity to be overlooked.[24] In its endless multidimensionality, there was nothing singular about this one sorry removal, which all of modernity attended.

Rather than something separate from or running counter to the colonial state, the murderous activities of the frontier rabble constitute its principal means of expansion. These have occurred "behind the screen of the frontier, in the wake of which, once the dust has settled, the irregular acts that took place have been regularized and the boundaries of White settlement extended. Characteristically, officials express regret at the lawlessness of this process while resigning themselves to its inevitability."[25] In this light, we are in a position to understand the pragmatics of the doctrine of discovery more clearly. Understood as an assertion of Indigenous entitlement, the distinction between dominion and occupancy dissolves into incoherence. Understood processually, however, as a stage in the formation of the settler-colonial state (specifically, the stage linking the theory and the realization of territorial acquisition), the distinction is only too consistent. As observed, preemption provided that natives could transfer their right of occupancy to the discovering sovereign and to no one else. They could not transfer dominion because it was not theirs to transfer; that inhered in the European sovereign and had done so from the moment of discovery. Dominion without conquest constitutes the theoretical (or "inchoate") stage of territorial sovereignty.[26] In US

Chief Justice John Marshall's words, it remained to be "consummated by possession."[27] This delicately phrased "consummation" is precisely what the rabble were achieving at Cherokee New Echota in 1838. In other words, the right of occupancy was not an assertion of native rights. Rather, it was a pragmatic acknowledgment of the lethal interlude that would intervene between the conceit of discovery, when navigators proclaimed European dominion over whole continents to trees or deserted beaches, and the practical realization of that conceit in the final securing of European settlement, formally consummated in the extinguishment of native title. Thus it is not surprising that Native Title had hardly been asserted in Australian law than Mr Justice Olney was echoing Marshall's formula, Olney's twenty-first-century version of consummation being the "tide of history" that provided the pretext for his notorious judgment in the *Yorta Yorta* case.[28] As observed, the logic of elimination continues into the present.

The tide of history canonizes the fait accompli, harnessing the diplomatic niceties of the law of nations to the maverick rapine of the squatters' posse within a cohesive project that implicates individual and nation-state, official and unofficial alike. Over the Green Line today, *Ammana*, the settler advance-guard of the fundamentalist *Gush Emunim* movement, hastens apace with the construction of its facts on the ground. In this regard, the settlers are maintaining a tried and tested Zionist strategy—Israel's 1949 campaign to seize the Negev before the impending armistice was codenamed *Uvda*, Hebrew for "fact."[29] As Bernard Avishai lamented of the country he had volunteered to defend, "settlements were made in the territories beyond the Green Line so effortlessly after 1967 because the Zionist institutions that built them and the laws that drove them ... had all been going full throttle within the Green Line before 1967. To focus merely on West Bank settlers was always to beg the question."[30] In sum, then, settler colonialism is an inclusive, land-centred project that coordinates a comprehensive range of agencies, from the metropolitan centre to the frontier encampment, with a view to eliminating Indigenous societies. Its operations are not dependent on the presence or absence of formal state institutions or functionaries. Accordingly—to begin to move toward the issue of genocide—the occasions on or the extent to which settler colonialism conduces to genocide are not a matter of the presence or absence of the formal apparatus of the state.

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While it is clearly the case, as Isabel Hull argues, that the pace, scale and intensity of certain forms of modern genocide require the centralized technological, logistical and administrative capacities of the modern state,[31] this does not mean that settler-colonial discourse should be regarded as pre- (or less than) modern. Rather, as a range of thinkers—including, in this connection, W. E. B. Dubois, Hannah Arendt and Aimé Césaire—have argued, some of the core features of modernity were pioneered in the colonies.[32] It is a commonplace that the Holocaust gathered together the instrumental, technological and bureaucratic constituents of Western modernity. Accordingly, despite the historiographical energy

that has already been devoted to the Holocaust, the genealogical field available to its historian remains apparently inexhaustible. Thus we have recently been informed that its historical ingredients included the guillotine and, for the industry-scale processing of human bodies, the techniques of Chicago cattle-yards.[33] Yet the image of the dispassionate genocidal technocrat that the Holocaust spawned is by no means the whole story. Rather, as Dieter Pohl, Jürgen Zimmerer and others have pointed out, a substantial number of the Nazis' victims, including Jewish and Gypsy (Sinti and Rom) ones, were not murdered in camps but in deranged shooting sprees that were more reminiscent of sixteenth-century Spanish behaviour in the Americas than of Fordism, while millions of Slav civilians and Soviet soldiers were simply starved to death in circumstances that could well have struck a chord with late-eighteenth-century Bengalis or mid-nineteenth-century Irish people.[34] This is not to suggest a partition of the Holocaust into, say, modern and atavistic elements. It is to stress the modernity of colonialism.

Settler colonialism was foundational to modernity. Frontier individuals' endless appeals for state protection not only presupposed a commonality between the private and official realms. In most cases (Queensland was a partial exception), it also presupposed a global chain of command linking remote colonial frontiers to the metropolis.[35] Behind it all lay the driving engine of international market forces, which linked Australian wool to Yorkshire mills and, complementarily, to cotton produced under different colonial conditions in India, Egypt, and the slave states of the Deep South. As Cole Harris observed in relation to the dispossession of Indians in British Columbia, "Combine capital's interest in uncluttered access to land and settlers' interest in land as livelihood, and the principal momentum of settler colonialism comes into focus."[36] The Industrial Revolution, misleadingly figuring in popular consciousness as an autochthonous metropolitan phenomenon, required colonial land and labour to produce its raw materials just as centrally as it required metropolitan factories and an industrial proletariat to process them, whereupon the colonies were again required as a market. The expropriated Aboriginal, enslaved African American, or indentured Asian is as thoroughly modern as the factory worker, bureaucrat, or *flâneur* of the metropolitan centre. The fact that the slave may be in chains does not make him or her medieval. By the same token, the fact that the genocidal Hutus of Rwanda often employed agricultural implements to murder their Tutsi neighbours en masse does not license the racist assumption that, because neither Europeans nor the latest technology were involved, this was a primordial (read "savage") bloodletting. Rwanda and Burundi are colonial creations—not only so far as the obvious factor of their geographical borders is concerned, but, more intimately, in the very racial boundaries that marked and reproduced the Hutu/Tutsi division. As Robert Melson has observed in his sharp secondary synopsis of it, "The Rwandan genocide was the product of a postcolonial state, a racialist ideology, a revolution claiming democratic legitimation, and war—all manifestations of the modern world."[37] The mutual Hutu/Tutsi racialization on which this "post"-colonial ideology was based was itself an artifice of colonialism. In classic

Foucauldian style, the German and, above all, Belgian overlords who succeeded each other in modern Rwanda had imposed a racial grid on the complex native social order, co-opting the pastoral Tutsi aristocracy as a comprador elite who facilitated their exploitation of the agriculturalist Hutu and lower-order Tutsis. This racial difference was elaborated "by Belgian administrators and anthropologists who argued—in what came to be known as the 'Hamitic Hypothesis'—that the Tutsi were conquerors who had originated in Ethiopia (closer to Europe!) and that the Hutu were a conquered inferior tribe of local provenance."[38] Shades of the Franks and the Gauls. In their inculcation with racial discourse, Rwandans were integrally modern. Even the notorious hoes with which some Hutus murdered their Tutsi compatriots symbolized the agriculture that not only encapsulated their difference from their victims. As such, these hoes were also the instruments of the Hutus' involvement in the global market.

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Of itself, however, modernity cannot explain the insatiable dynamic whereby settler colonialism always needs more land. The answer that springs most readily to mind is agriculture, though it is not necessarily the only one. The whole range of primary sectors can motivate the project. In addition to agriculture, therefore, we should think in terms of forestry, fishing, pastoralism and mining (the last straw for the Cherokee was the discovery of gold on their land). With the exception of agriculture, however (and, for some peoples, pastoralism), none of these is sufficient in itself. You cannot eat lumber or gold; fishing for the world market requires canneries. Moreover, sooner or later, miners move on, while forests and fish become exhausted or need to be farmed. Agriculture not only supports the other sectors. It is inherently sedentary and, therefore, permanent. In contrast to extractive industries, which rely on what just happens to be there, agriculture is a rational means/end calculus that is geared to vouchsafing its own reproduction, generating capital that projects into a future where it repeats itself (hence the farmer's dread of being reduced to eating seed stock). Moreover, as John Locke never tired of pointing out, agriculture supports a larger population than non-sedentary modes of production.[39] In settler-colonial terms, this enables a population to be expanded by continuing immigration at the expense of native lands and livelihoods. The inequities, contradictions and pogroms of metropolitan society ensure a recurrent supply of fresh immigrants—especially, as noted, from among the landless. In this way, individual motivations dovetail with the global market's imperative for expansion. Through its ceaseless expansion, agriculture (including, for this purpose, commercial pastoralism) progressively eats into Indigenous territory, a primitive accumulation that turns native flora and fauna into a dwindling resource and curtails the reproduction of Indigenous modes of production. In the event, Indigenous people are either rendered dependent on the introduced economy or reduced to the stock-raids that provide the classic pretext for colonial death-squads.

None of this means that Indigenous people are by definition non-agricultural. Whether or not they actually do practise agriculture, however (as in the case of

the Indians who taught Whites to grow corn and tobacco), natives are typically represented as unsettled, nomadic, rootless, etc., in settler-colonial discourse. In addition to its objective economic centrality to the project, agriculture, with its life-sustaining connectedness to land, is a potent symbol of settler-colonial identity. Accordingly, settler-colonial discourse is resolutely impervious to glaring inconsistencies such as sedentary natives or the fact that the settlers themselves have come from somewhere else. Thus it is significant that the feminized, finance-oriented (or, for that matter, wandering) Jew of European anti-Semitism should assert an aggressively masculine agricultural self-identification in Palestine.[40] The new Jew's formative Other was the nomadic Bedouin rather than the *fellaheen* farmer. The reproach of nomadism renders the native removable. Moreover, if the natives are not already nomadic, then the reproach can be turned into a self-fulfilling prophecy through the burning of corn or the uprooting of fruit trees.

But if the natives are already agriculturalists, then why not simply incorporate their productivity into the colonial economy? At this point, we begin to get closer to the question of just who it is (or, more to the point, who they are) that settler colonialism strives to eliminate—and, accordingly, closer to an understanding of the relationship between settler colonialism and genocide. To stay with the Cherokee removal: when it came to it, the factor that most antagonized the Georgia state government (with the at-least-tacit support of Andrew Jackson's federal administration) was not actually the recalcitrant savagery of which Indians were routinely accused, but the Cherokee's unmistakable aptitude for civilization. Indeed, they and their Creek, Choctaw, Chickasaw and Seminole neighbours, who were also targeted for removal, figured revealingly as the "Five Civilized Tribes" in Euroamerican parlance. In the Cherokee's case, two dimensions of their civility were particularly salient. They had become successful agriculturalists on the White model, with a number of them owning substantial holdings of Black slaves, and they had introduced a written national constitution that bore more than a passing resemblance to the US one.[41] Why should genteel Georgians wish to rid themselves of such cultivated neighbours? The reason why the Cherokee's constitution and their agricultural prowess stood out as such singular provocations to the officials and legislators of the state of Georgia—and this is attested over and over again in their public statements and correspondence—is that the Cherokee's farms, plantations, slaves and written constitution all signified *permanence*.[42] The first thing the rabble did, let us remember, was burn their houses.

Brutal and murderous though the removals of the Five Civilized Tribes generally were, they did not affect each member equally. This was not simply a matter of wealth or status. Principal Cherokee chief John Ross, for example, lost not only his plantation after setting off on the Trail of Tears. On that trail, one deathly cold Little Rock, Arkansas day in February 1839, he also lost his wife, Qatie, who died after giving her blanket to a freezing child.[43] Ross's fortunes differed sharply from those of the principal Choctaw chief Greenwood LeFlore, who, unlike Ross, signed a removal treaty on behalf of his people, only to stay behind himself, accept US citizenship, and go on to a distinguished career in Mississippi politics.[44]

But it was not just his chiefly rank that enabled LeFlore to stay behind. Indeed, he was by no means the only one to do so. As Ronald Satz has commented, Andrew Jackson was taken by surprise when "thousands of Choctaws decided to take advantage of the allotment provisions [in the treaty LeFlore had signed] and become homesteaders and American citizens in Mississippi."[45] In addition to being principal chiefs, Ross and LeFlore both had White fathers and light skin. Both were wealthy, educated and well connected in Euroamerican society. Many of the thousands of compatriots who stayed behind with LeFlore lacked any of these qualifications. There was nothing special about the Choctaw to make them particularly congenial to White society—most of them got removed like Ross and the Cherokee. The reason that the remaining Choctaw were acceptable had nothing to do with their being Choctaw. On the contrary, it had to do with their *not* (or, at least, no longer) being Choctaw. They had become "homesteaders and American citizens." In a word, they had become individuals.

What distinguished Ross and the removing Choctaw from those who stayed behind was collectivity.[46] Tribal land was tribally owned—tribes and private property did not mix. Indians were the original communist menace. As homesteaders, by contrast, the Choctaw who stayed became individual proprietors, each to his own, of separately allotted fragments of what had previously been the tribal estate, theirs to sell to White people if they chose to. Without the tribe, though, for all practical purposes they were no longer Indians (this is the citizenship part). Here, in essence, is assimilation's Faustian bargain—have our settler world, but lose your Indigenous soul. Beyond any doubt, this is a kind of death. Assimilationists recognized this very clearly. On the face of it, one might not expect there to be much in common between Captain Richard Pratt, founder of the Carlisle boarding school for Indian youth and leading light of the philanthropic "Friends of the Indian" group, and General Phil Sheridan, scourge of the Plains and author of the deathless maxim, "The only good Indian is a dead Indian." Given the training in individualism that Pratt provided at his school, however, the tribe could disappear while its members stayed behind, a metaphysical variant on the Choctaw scenario. This would offer a solution to reformers' disquiet over the national discredit attaching to the Vanishing Indian. In a paper for the 1892 Charities and Correction Conference held in Denver, Pratt explicitly endorsed Sheridan's maxim, "but only in this: that all the Indian there is in the race should be dead. Kill the Indian in him and save the man."[47]

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But just what kind of death is it that is involved in assimilation? The term "homicide," for instance, combines the senses of killing and of humanity. So far as I know, when it comes to killing a human individual, there is no alternative to terminating their somatic career. Yet, when Orestes was arraigned before the Furies for the murder of his mother Clytemnestra, whom he had killed to avenge her murder of his father Agamemnon, he was acquitted on the ground that, in a

patrilineal society, he belonged to his father rather than to his mother, so the charge of matricide could not stand. Now, without taking this legend too seriously, it nonetheless illustrates (as legends are presumably meant to) an important point. Orestes' beating the charge did not mean that he had not actually killed Clytemnestra. It meant that he had been brought before the wrong court (the Furies dealt with intra-family matters that could not be resolved by the mechanism of feud). Thus Orestes may not have been guilty of matricide, but that did not mean he was innocent. It meant that he might be guilty of some other form of illegal killing—one that could be dealt with by the blood-feud or other appropriate sanction (where his plea of obligatory revenge may or may not have succeeded). As in those languages where a verb is inflected by its object, the nature of a justiciable killing depends on its victim. There are seemingly absolute differences between, say, suicide, insecticide, and infanticide. The etymology of "genocide" combines the senses of killing and of grouphood. "Group" is more than a purely numerical designation. *Genos* refers to a denominate group with a membership that persists through time (Raphaël Lemkin translated it as "tribe"). It is not simply a random collectivity (such as, say, the passengers on a bus). Accordingly, with respect to Robert Gellately and Ben Kiernan (concerning both the subtitle of their excellent collection and their reference, in this context, to 9/11), the strike on the World Trade Center is an example of mass murder but not, in my view, of genocide. Certainly, the bulk of the victims were US citizens. On the scale of the whole, however, not only was it an infinitesimal part of the group "Americans" (which, strictly, is not a consideration), but it was a one-off event.[48] This does not mean that the perpetrators of 9/11 are not guilty. It means that a genocide tribunal is the wrong court to bring them before. Mass murders are not the same thing as genocide, though the one action can be both. Thus genocide has been achieved by means of summary mass murder (to cite examples already used) in the frontier massacring of Indigenous peoples, in the Holocaust, and in Rwanda. But there can be summary mass murder without genocide, as in the case of 9/11, and there can be genocide without summary mass murder, as in the case of the continuing post-frontier destruction, in whole and in part, of Indigenous *genoi*. Lemkin knew what he was doing when he used the word "tribe."[49] Richard Pratt and Phillip Sheridan were both practitioners of genocide. The question of degree is not the definitional issue.

Vital though it is, definitional discussion can seem insensitively abstract. In the preceding paragraph, part of what I have had in mind has, obviously, been the term (which Lemkin favoured) "cultural genocide." My reason for not favouring the term is that it confuses definition with degree. Moreover, though this objection holds in its own right (or so I think), the practical hazards that can ensue once an abstract concept like "cultural genocide" falls into the wrong hands are legion. In particular, in an elementary category error, "either/or" can be substituted for "both/and," from which genocide emerges as either biological (read "the real thing") or cultural—and thus, it follows, not real. In practice, it should go without saying that the imposition on a people of the procedures and techniques that are generally glossed as "cultural genocide" is certainly going to have a direct

impact on that people's capacity to stay alive (even apart from their qualitative immiseration while they do so). At the height of the Dawes-era assimilation programme, for instance, in the decade after Richard Pratt penned his Denver paper, Indian numbers hit the lowest level they would ever register.[50] Even in contemporary, post-Native Title Australia, Aboriginal life expectancy clings to a level some 25% below that enjoyed by mainstream society, with infant mortality rates that are even worse.[51] What species of sophistry does it take to separate a quarter "part" of the life of a group from the history of their elimination?

Clearly, we are not talking about an isolated event here. Thus we can shift from settler colonialism's structural complexity to its positivity as a structuring principle of settler-colonial society across time.

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The Cherokee Trail of Tears, which took place over the winter of 1838–1839, presupposed the Louisiana Purchase of 1803, when Thomas Jefferson had bought approximately one-third of the present-day continental United States at a knock-down price from Napoleon.[52] The greatest real estate deal in history provided the territory west of the Mississippi that successive US governments would exchange for the homelands of the eastern tribes whom they were bent on removing. For various reasons, these removals, which turned eastern tribes into proxy invaders of Indian territory across the Mississippi, were a crude and unsatisfactory form of elimination. In particular, they were temporary, it being only a matter of time before the frontier rabble caught up with them.[53] When that happened, as Annie Abel resignedly observed in concluding her classic account of the removals, "Titles given in the West proved less substantial than those in the East, for they had no foundation in antiquity."[54] Repeat removals, excisions from reservations, grants of the same land to different tribes, all conducted against a background of endless pressure for new or revised treaties, were the symptoms of removal's temporariness, which kept time with the westward march of the nation. In the end, though, the western frontier met the one moving back in from the Pacific, and there was simply no space left for removal. The frontier had become coterminal with reservation boundaries. At this point, when the crude technique of removal declined in favour of a range of strategies for assimilating Indian people now that they had been contained within Euroamerican society, we can more clearly see the logic of elimination's positivity as a continuing feature of Euroamerican settler society.

With the demise of the frontier, elimination turned inwards, seeking to penetrate through the tribal surface to the individual Indian below, who was to be co-opted out of the tribe, which would be depleted accordingly, and into White society. The Greenwood LeFlore situation was to be generalized to all Indians. The first major expression of this shift was the discontinuation of treaty-making, which came about in 1871.[55] Over the following three decades, an avalanche of assimilationist legislation, accompanied by draconian Supreme Court judgments which notionally dismantled tribal sovereignty and provided

for the abrogation of existing treaties,[56] relentlessly sought the breakdown of the tribe and the absorption into White society of individual Indians and their tribal land, only separately. John Wunder has termed this policy framework "the New Colonialism," a discursive formation based on reservations and boarding schools that "attacked every aspect of Native American life—religion, speech, political freedoms, economic liberty, and cultural diversity."[57] The centrepiece of this campaign was the allotment programme, first generalized as Indian policy in the Dawes Severalty Act of 1887 and subsequently intensified and extended, whereby tribal land was to be broken down into individual allotments whose proprietors could eventually sell them to White people.[58] Ostensibly, this programme provided for a cultural transformation whereby the magic of private property ownership would propel Indians from the collective inertia of tribal membership into the progressive individualism of the American dream. In practice, not only did Indian numbers rapidly hit the lowest level they would ever record, but this cultural procedure turned out to yield a faster method of land transference than the US Cavalry had previously provided. In the half-century from 1881, the total acreage held by Indians in the United States fell by two thirds, from just over 155 million acres to just over 52 million.[59] Needless to say, the coincidence between the demographic statistics and the land-ownership ones was no coincidence. Throughout this process, reformers' justifications for it (saving the Indian from the tribe, giving him the same opportunities as the White man, etc.) repeatedly included the express intention to destroy the tribe in whole.[60] With their land base thus attenuated, US citizenship was extended to all Indians in 1924. In 1934, under the New Deal *Indian Reform Act*, allotment was abandoned in favour of a policy of admitting the tribe itself into the US polity, only on condition that its constitution be rewritten into structural harmony with its US civic environment. A distinctive feature of the model constitutions that the Secretary of the Interior approved for tribes that registered under the 1934 Act was blood quantum requirements, originally introduced by Dawes Act commissioners to determine which tribal members would be eligible for what kind of allotments.[61] Under the blood quantum regime, one's Indianness progressively declines in accordance with a "biological" calculus that is a construct of Euroamerican culture.[62] Juaneño/Jaqi scholar Annette Jaimes has termed this procedure "statistical extermination."[63] In sum, the containment of Indian groups within Euroamerican society that culminated in the end of the frontier produced a range of ongoing complementary strategies whose common intention was the destruction of heterodox forms of Indian grouphood. In the post-World War II climate of civil rights, these strategies were reinforced by the policies of termination and relocation, held out as liberating individual Indians from the thralldom of the tribe, whose compound effects rivalled the disasters of allotment.[64] A major difference between this and the generality of non-colonial genocides is its sustained duration.

For comparative purposes, it is significant that the full radicalization of assimilation policies in both the US and Australia coincided with the closure of the frontier, which forestalled spatial stop-gaps such as removal. In infra-continental

societies like those of mainland Europe, the frontier designates a national boundary as opposed to a mobile index of expansion. Israel's borders partake of both qualities. Despite Zionism's chronic addiction to territorial expansion, Israel's borders do not preclude the option of removal (in this connection, it is hardly surprising that a nation that has driven so many of its original inhabitants into the sand should express an abiding fear of itself being driven into the sea). As the logic of elimination has taken on a variety of forms in other settler-colonial situations, so, in Israel, the continuing tendency to Palestinian expulsion has not been limited to the unelaborated exercise of force. As Baruch Kimmerling and Joel Migdal have observed, for instance, Israeli officials have only permitted family unions "in one direction—out of Israel."[65] The Law of Return commits the Jewish state to numerically unlimited but ethnically exclusive immigration, a factor that, formalities of citizenship notwithstanding, militates against the assimilation of gentile natives. Thus assimilation should not be seen as an invariable concomitant of settler colonialism. Rather, assimilation is one of a range of strategies of elimination that become favoured in particular historical circumstances. Moreover, assimilation itself can take on a variety of forms. In the Australian context, for instance, various scholars have recognized that "the genetic and cultural codes recapitulated each other."[66] Though "softer" than the recourse to simple violence, however, these strategies are not necessarily less eliminatory. To take an example from genocide's definitional core, Article II (d) of the UN Convention on Genocide, which seems to have been relatively overlooked in Australian discussions, includes among the acts that constitute genocide (assuming they are committed with intent to destroy a target group in whole or in part) the imposition of "measures intended to prevent births within the group." Given that the Australian practice of abducting Aboriginal children, assuming its "success," would bring about a situation in which second-generation offspring were born into a group that was different from the one from which the child/parent had originally been abducted, there is abundant evidence of genocide being practised in post-war Australia on the basis of Article II (d) alone. It is impossible to draw simple either/or lines between culture and biology in cases such as these. Though a child was physically abducted, the eventual outcome is as much a matter of a social classification as it is of a body count. Nonetheless, the intentional contribution to the demographic destruction of the "relinquishing" group is unequivocal.

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Why, then, logic of elimination rather than genocide? As stated at the outset, settler colonialism is a specific social formation and it is desirable to retain that specificity. So far as I can tell, an understanding of settler colonialism would not be particularly helpful for understanding the mass killings of, say, witches in medieval Europe, Tutsis in Rwanda, enemies of the people in Cambodia, or Jews in the Nazi fatherland (the *Lebensraum* is, of course, another matter). By the same token, with the possible exception of the witches (whose murders

appear to have been built into a great social transition), these mass killings would seem to have little to tell us about the long-run structural consistency of settler colonizers' attempts to eliminate native societies. In contrast to the Holocaust, which was endemic to Nazism rather than to Germany (which was by no means the only—or even, historically, the most—anti-Semitic society in Europe), settler colonialism is relatively impervious to regime change. The genocide of American Indians or of Aboriginal people in Australia has not been subject to election results. So why not a special kind of genocide?—Raymond Evans' and Bill Thorpe's etymologically deft "indigenocide," for instance,[67] or one of the hyphenated genocides ("cultural genocide," "ethnocide," "politicide," etc.)[68] that have variously been proposed? The apparently insurmountable problem with the qualified genocides is that, in their very defensiveness, they threaten to undo themselves. They are never quite the real thing, just as patronizingly hyphenated ethnics are not fully Australian or fully American. Apart from this categorical problem, there is a historical basis to the relative diminution of the qualified genocides. This basis is, of course, the Holocaust, the non-paradigmatic paradigm that, being the indispensable example, can never merely exemplify. Keeping one eye on the Holocaust, which is always the unqualified referent of the qualified genocides, can only disadvantage Indigenous people because it discursively reinforces the figure of lack at the heart of the non-Western. Moreover, whereas the Holocaust exonerates anti-Semitic Western nations who were on the side opposing the Nazis, those same nations have nothing to gain from their liability for colonial genocides. On historical as well as categorical grounds, therefore, the hyphenated genocides devalue Indigenous attrition. No such problem bedevils analysis of the logic of elimination, which, in its specificity to settler colonialism, is premised on the securing—the obtaining and the maintaining—of territory.[69] This logic certainly requires the elimination of the owners of that territory, but not in any particular way. To this extent, it is a larger category than genocide. For instance, the style of romantic stereotyping that I have termed "repressive authenticity," which is a feature of settler-colonial discourse in many countries, is not genocidal in itself, though it eliminates large numbers of empirical natives from official reckonings and, as such, is often concomitant with genocidal practice.[70] Indeed, depending on the historical conjuncture, assimilation can be a more effective mode of elimination than conventional forms of killing, since it does not involve such a disruptive affront to the rule of law that is ideologically central to the cohesion of settler society. When invasion is recognized as a structure rather than an event, its history does not stop—or, more to the point, become relatively trivial—when it moves on from the era of frontier homicide. Rather, narrating that history involves charting the continuities, discontinuities, adjustments, and departures whereby a logic that initially informed frontier killing transmutes into different modalities, discourses and institutional formations as it undergirds the historical development and complexification of settler society. This is not a hierarchical procedure.

How, then, when elimination manifests as genocide, are we to retain the specificity of settler colonialism without downplaying its impact by resorting to

a qualified genocide? I suggest that the term "structural genocide" avoids the questions of degree—and, therefore, of hierarchy among victims—that are entailed in qualified genocides, while retaining settler colonialism's structural induration (it also lets in the witches—whose destruction, as Charles Zika has shown, was closely linked to the coeval transatlantic destruction of Native Americans[71]). Given a historical perspective on structural genocide, we can recognize its being in abeyance (as, mercifully, it seems to be in contemporary Australia) rather than being a thing of the past—which is to say, we should guard against the recurrence of what Dirk Moses terms "genocidal moments" (social workers continue to take Aboriginal children in disproportionate numbers, for example.[72]) Focusing on structural genocide also enables us to appreciate some of the concrete empirical relationships between spatial removal, mass killings and biocultural assimilation. For instance, where there is no space left for removal (as occurred on the closure of the frontier in the US and Australia, or on the Soviet victory on Nazi Germany's eastern front), mass killings or assimilation become the only eliminatory options available. Under these circumstances, the resort to mass killings can reflect the proclaimed inassimilability of the victim group, as in the case of Jews in relation to the "Aryan" blood stock.[73] Correspondingly, assimilation programmes can reflect the ideological requirements of settler-colonial societies, which characteristically cite native advancement to establish their egalitarian credentials to potentially fractious groups of immigrants.[74]

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How, then, might any of this help to predict and prevent genocide?

In the first place, it shows us that settler colonialism is an indicator. Unpalatable though it is (to speak as a member of a settler society), this conclusion has a positive aspect, which is a corollary to settler colonialism's temporal dimension. Since settler colonialism persists over extended periods of time, structural genocide should be easier to interrupt than short-term genocides. For instance, it seems reasonable to credit the belated UN/Australian intervention in East Timor with warding off the likelihood of a continued or renewed genocidal programme. *Realpolitik* is a factor, however. Thus the Timorese miracle would not seem to hold out a great deal of hope for, say, Tibet.

Since settler colonialism is an indicator, it follows that we should monitor situations in which settler colonialism intensifies or in which societies that are not yet, or not fully, settler-colonial take on more of its characteristics. Israel's progressive dispensing with its reliance on Palestinian labour would seem to present an ominous case in point.[75] Colin Tatz has argued, conclusively in my view, that, while Turkish behaviour in Armenia, Nazi behaviour in Europe, and Australian behaviour towards Aborigines (among other examples) constitute genocide, the apartheid regime in South Africa does not. His basic reason is that African labour was indispensable to apartheid South Africa, so it would have been

counterproductive to destroy it. The same can be said of African American slavery. In both cases, the genocide tribunal is the wrong court.

The US parallel is significant because, unlike the South African case, the formal apparatus of oppression (slavery) was overcome but Whites remained in power.[76] On emancipation, Blacks became surplus to some requirements and, to that extent, more like Indians. Thus it is highly significant that the barbarities of lynching and the Jim Crow reign of terror should be a post-emancipation phenomenon.[77] As valuable commodities, slaves had only been destroyed *in extremis*. Even after slavery, Black people continued to have value as a source of super-cheap labour (providing an incitement to poor Whites), so their dispensability was tempered.[78] Today in the US, the blatant racial zoning of large cities and the penal system suggests that, once colonized people outlive their utility, settler societies can fall back on the repertoire of strategies (in this case, spatial sequestration) whereby they have also dealt with the native surplus. There could hardly be a more concrete expression of spatial sequestration than the West Bank barrier. There again, apartheid also relied on sequestration. Perhaps Colin Tatz, who insists that Israel is not genocidal,[79] finds it politic to allow an association between the Zionist and apartheid regimes as the price of preempting the charge of genocide. It is hard to imagine that a scholar of his perspicacity can have failed to recognize the Palestinian resonances of his statement, made in relation to Biko youth, that: "They threw rocks and died for their efforts."[80] Nonetheless, as Palestinians become more and more dispensable, Gaza and the West Bank become less and less like Bantustans and more and more like reservations (or, for that matter, like the Warsaw Ghetto). Porous borders do not offer a way out.

Notes and References

1 Patrick Wolfe, "Nation and miscegeNation: discursive continuity in the post-Mabo era," *Social Analysis*, Vol 36, 1994, pp 93–152; Wolfe, *Settler Colonialism and the Transformation of Anthropology* (London: Cassell 1999).

2 See e.g. Collette Guillaumin, "The idea of race and its elevation to autonomous scientific and legal status," in her *Racism, Sexism, Power and Ideology* (London: Routledge 1995), pp 61–98; Ivan Hannaford, *Race: The History of an Idea in the West* (Baltimore: Johns Hopkins U.P. 1996); Kenan Malik, *The Meaning of Race: Race, History and Culture in Western Society* (London: Macmillan 1996). For discussion, see my "Race and racialisation: some thoughts," *Postcolonial Studies*, Vol 5, No 1, 2002, pp 51–62.

3 Robert Manne has missed this point. Responding to a question posed in 1937 by Western Australian Aboriginal affairs functionary A. O. Neville ("Are we going to have a population of 1,000,000 blacks in the [Australian] Commonwealth, or are we going to merge them into our white community and eventually forget that there ever were any aborigines in Australia?"), Manne suggests that, in order to "grasp the genocidal implications" of the question, "we need only replace the words 'blacks' and 'Aborigine' [*sic*] with the word 'Jew'" and locate the posing of the question in Berlin rather than Canberra. Manne, "Aboriginal child removal and the question of genocide," in A. Dirk Moses, ed., *Genocide and Settler Society* (Berghahn, New York, 2005), pp 219–220. Apart from its contrivance, this analogy fails because the Nazi racialization of Jews did not conduce to their assimilation. Rather, the reverse was the case. As Robert Gellately has observed, "Although we can point to some similarities in Nazi plans and actions for Jews and Slavs, there was, and remains one crucial difference: in principle Jews could never be saved, never convert, nor be assimilated." Gellately, "The Third Reich, the Holocaust, and visions of serial genocide," in Gellately and Kiernan, eds, *The Specter of Genocide: mass murder in historical perspective* (Cambridge: Cambridge U.P. 2003), pp 241–263, at p 262.

4 Roger W. Smith, "Human destructiveness and politics: the twentieth century as an age of genocide," in Isidor Wallimann and Michael N. Dobkowski, eds, *Genocide and the Modern Age: Etiology and Case Studies of Mass Death* (New York: Greenwood Press. 1987), pp 21–39, at p 31.

5 Rose, *Hidden Histories: Black Stories from Victoria River Downs*, *Humbert River and Wave Hill Stations* (Canberra: Aboriginal Studies Press 1991), p 46.
6 "[O]ne, destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor. This imposition, in turn, may be made upon the oppressed population which is allowed to remain, or upon the territory alone, after removal of the population and colonization of the area by the oppressor's own nationals." Raphaël Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation*, *Analysis of Government*, *Proposals for Redress* (New York: Carnegie Endowment for International Peace 1944), p 79.
7 Wolfe, *Settler Colonialism and the Transformation of Anthropology*, p 2; "Nation and miscegeNation," p 96.
8 Theodor Herzl, *Old–New Land* [*Altneuland*, 1902], Lotta Levensohn, trans. (New York: M. Wiener 1941), p 38.
9 Meron Benvenisti, *Sacred Landscape. The Buried History of the Holy Land since 1948* (Berkeley, CA: California U.P. 2000), p 2.
10 Walid Khalidi and his team memorialized the obsessively erased Arab past in their undespairing *All That Remains: The Palestinian Villages Occupied and Depopulated by Israel in 1948* (Washington, DC: Institute for Palestine Studies 1992).
11 Tony Birch, "'Nothing has changed': the 'making and unmaking' of Koori Culture," in Michèle Grossman, ed., *Blacklines: Contemporary Critical Writing by Indigenous Australians* (Melbourne: Melbourne U.P. 2003), pp 145–158.
12 Mark LeVine, *Overthrowing Geography: Jaffa*, *Tel Aviv*, *and the Struggle for Palestine*, *1880–1949* (Berkeley, CA: California U.P. 2005), p 227.
13 Gershon Shafir, *Land*, *labor*, *and the origins of the Israeli–Palestinian Conflict*, *1882–1914* (Cambridge: Cambridge U.P. 1989), p 81.
14 Ibid, pp 81–82.
15 Quoted in LeVine, *Overthrowing Geography*, p 167.
16 For varying analyses and discussions of the principal formulations of the doctrine of discovery, see e.g. Anthony Anghie, "Francisco de Vitoria and the colonial origins of international law," in Eve Darian-Smith and Peter Fitzpatrick, eds, *Laws of the Postcolonial* (Ann Arbor, MI: Michigan U.P. 1999), pp 89–107; Andrew Fitzmaurice, *Humanism and America: An Intellectual History of English Colonisation*, *1500–1625* (Cambridge: Cambridge U.P. 2003); David Kennedy, "Primitive legal scholarship," *Harvard International Law Journal*, Vol 27, 1986, pp 1–98; Mark F. Lindley, *The Acquisition and Government of Backward Territory in International Law* (London: Longmans, Green. 1926); Robert A. Williams, Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (Oxford: Oxford U.P. 1990), esp. pp 233–286.
17 This observation unites almost all commentators, whatever their political inclination. Cf. e.g. Anthony Anghie, "Finding the peripheries: sovereignty and colonialism in nineteenth-century international law," *Harvard International Law Journal*, Vol 40, 1999, pp 1–80, at p 69; L. C. Green, "Claims to territory in colonial America," in L. C. Green and Olive P. Dickason, *The Law of Nations and the New World* (Alberta: Alberta U.P. 1989), p 125.
18 See e.g. Wilcomb E. Washburn, ed., *History of Indian–White Relations* (Washington, DC: Smithsonian Institution 1988), William C. Sturtevant, ed., *Handbook of North American Indians*, Vol 4 (Washington D.C., Smithsonian Institution, 1978), pp 5–39.
19 As Mr Justice Johnson put it in his concurrence with Chief Justice Marshall's judgment in *Cherokee v. Georgia*, "The hunter state bore within itself the promise of vacating the territory, because when game ceased, the hunter would go elsewhere to seek it. But a more fixed state of society would amount to a permanent destruction of the hope, and, of consequence, of the beneficial character of the pre-emptive right." *Cherokee v. Georgia*, 30 *US* (5 Peters) 1, 1831, p 23.
20 The judgments most often cited in this connection are *Worcester v. Georgia*, 31 *US* (6 Peters) 515, 1832, *Crow Dog*, 109 *US* 556, 1883, and *Williams v. Lee*, 358 *US* 217, 1959. I am currently preparing a critique of the limitations of these judgments, and of the limitations of US-style Indian sovereignty as a whole, in an article provisionally entitled "Against the intentional fallacy: marking the gap between rhetoric and outcome in US Indian law and policy."
21 Harvey D. Rosenthal, "Indian claims and the American conscience: a brief history of the Indian Claims Commission," in Imre Sutton, ed., *Irredeemable America: The Indians' Estate and Land Claims* (Albuquerque: New Mexico U.P. 1985), pp 35–70, at p 36.
22 The classic accounts from a well-established literature include: Annie H. Abel, "The history of events resulting in Indian consolidation west of the Mississippi River," in *American Historical Association Annual Report for 1906*, 2 vols (Washington, DC: American Historical Association 1906), Vol 2, pp 233–450; Angie Debo, *A History of the Indians of the United States* (Norman, OK: Pimlico 1970); Grant Foreman, *Indian Removal* (Norman, OK: Oklahoma U.P. 1932).

23 James M. Mooney, *Historical Sketch of the Cherokee* (Chicago: Aldine Transaction 1975 [1900]), p 124.
24 The most lively source on the ghoulish enterprise of craniology/craniometry remains Stephen J. Gould, *The Mismeasure of Man* (Harmondsworth: Norton 1981). For a superbly written account with an Australian focus, see Helen MacDonald, *Human Remains: Episodes in Human Dissection* (Melbourne: Melbourne U.P. 2005).
25 Wolfe, "Limits of native title," p 144.
26 Williams, *American Indian in Western Legal Thought*, p 269.
27 *Johnson v. McIntosh*, 21 US (8 Wheaton), 543, 1823, p 573.
28 For discussion of Olney's "tide of history" concept, see Jackie Delpero, "'The tide of history': Australian native title discourse in global context," MA thesis, Victoria University, Australia, 2003; David Rittter, "The judgement of the world: the Yorta Yorta case and the "tide of history,'" *Australian Historical Studies*, Vol 123, 2004, pp 106–121.
29 Ilan Pappé, *The Making of the Arab–Israeli Conflict, 1947–1951* (London: I.B. Tauris 2001), p 187. "[I]n order to justify the inclusion of the Negev in the future Jewish state, eleven new kibbutzim were simultaneously installed in that desert region on October 6th, 1946, in addition to the ten settlements already established there during the War for the same purpose." Nathan Weinstock, *Zionism, False Messiah*, Alan Adler, trans. (London: Ink Links 1979), p 249.
30 Bernard Avishai, "Saving Israel from itself: a secular future for the Jewish state," *Harper's Magazine*, January 2005, pp 33–43, at p 37.
31 Isabel V. Hull, "Military culture and the production of 'Final Solutions' in the colonies: the example of Wilhelminian Germany," in Gellately and Kiernan, *The Specter of Genocide*, pp 141–162.
32 In 1902, the renowned English liberal J. A. Hobson was expressing the fear "that the arts and crafts of tyranny, acquired and exercised in our unfree Empire, should be turned against our liberties at home." Hobson, *Imperialism. A Study* (London: Allen & Unwin 1902), p 160.
33 Enzo Traverso, *The Origins of Nazi Violence*, Janet Lloyd, trans. (New York: New Press 2003); Charles Patterson, *Eternal Treblinka: Our Treatment of Animals and the Holocaust* (New York: Lantern Books 2002).
34 "The [Central Government region Jewish] ghetto clearings amounted to wild, day-long shooting sprees in particular sections of cities, at the end of which bodies were lying in the main streets leading to train stations." Pohl, "The murder of Jews in the general government," in Ulrich Herbert, ed., *National Socialist Extermination Policies: Contemporary German Perspectives and Controversies* (New York: Berghahn Books 2000), pp 83–103, at p 99. See also Jürgen Zimmerer, "Colonialism and the Holocaust: towards an archaeology of genocide," Andrew H. Beattie, trans., in Moses, *Genocide and Settler Society*, pp 48–76. On colonial starvations and the "New Imperialism," see Mike Davis, *Late Victorian Holocausts: El Niño Famines and the Making of the Third World* (London: Verso 2001).
35 Israel is also, of course, a partial exception here, though not so substantial an exception as is asserted by those who claim that Israel cannot be a colonial formation because it lacks a single commissioning metropolis. From the outset, the Yishuv co-opted Ottoman, British and US imperialism to its own advantage, a reciprocated opportunism involving what Maxime Rodinson neatly glossed as "the collective mother country." Rodinson, *Israel. A Settler-Colonial State?* David Thorstad, trans. (New York: Monad 1973), p 76.
36 Cole Harris, "How did colonialism dispossess? Comments from an edge of empire," *Annals of the Association of American Geographers*, Vol 94, 2004, p 179.
37 Robert Melson, "Modern genocide in Rwanda: ideology, revolution, war, and mass murder in an African state," in Gellately and Kiernan, *The Specter of Genocide*, pp 325–338, at p 326.
38 Melson, "Modern genocide in Rwanda," pp 327–328.
39 "For the provisions serving to the support of humane life, produced by one acre of inclosed and cultivated land, are (to speak much within compasse) ten times more, than those, which are yeilded [*sic*] by an acre of Land, of an equal richnesse, lyeing wast in common." John Locke, *Two Treatises of Government* (Cambridge: Cambridge U.P. 1963 [1698]), p 312.
40 The new Jew is an enduring Zionist theme. In introducing his terrorist memoir, future Israeli prime minister Menachim Begin announced that, in addition to his Jewish readers, he had also written the book for gentiles: "lest they be unwilling to realise, or all too ready to overlook, the fact that out of blood and fire and tears and ashes a new specimen of human being was born, a specimen completely unknown to the world for over eighteen hundred years, 'the FIGHTING JEW'." Begin, *The Revolt*, Samuel Katz, trans. (London: W.H. Allen 1979), p xxv, capitals in original. For a more recent diasporan example, see, for instance, the Adi Nes photograph used as publicity for the Jewish Museum of New York's 1998–1999 "After Rabin: new art from Israel" show, at www.thejewishmuseum.org/site/pages/content/exhibitions/special/rabin/rabin_zoom/rabinL1.html
41 "[John] Ross—the successful self-made Cherokee entrepreneur—was really what white Georgians feared. Their biggest obstacle to acquiring the Cherokee lands was the cultivator's plow and overseer's whip—not

the war club, bow, and scalping knife." Sean M. O'Brien, *In Bitterness and in Tears: Andrew Jackson's Destruction of the Creeks and Seminoles* (Westport, CT: Praeger 2003), p 229. For the Constitution of the Cherokee Nation, see the *Cherokee Phoenix*, February 28, 1828.

42 The capacity to achieve permanence was typically put down to European ancestry, as in Andrew Jackson's exasperated disparagement of the "designing half-breeds and renegade white men" who had encouraged Chickasaw reluctance to cede land. Theda Perdue, *"Mixed Blood" Indians: Racial Construction in the Early South* (Athens, GA: Georgia U.P. 2003), pp 70, 95–96.

43 Foreman, *Indian Removal*, p 310.

44 Perdue, *"Mixed Blood" Indians*, p 68.

45 Ronald N. Satz, *American Indian Policy in the Jacksonian Era* (Lincoln, NE: Nebraska U.P. 1975), p 83.

46 European anti-Semitism could produce similar results: "What centuries of deprivation and persecution had failed to do, the dazzling light of [Jewish] emancipation [in France] achieved. Yet the choice was limited. The words of Clermont-Tonnère, a liberal deputy in the French national assembly: '*Aux Juifs comme nation nous ne donnons rien; aux Juifs comme individuels nous donnons tout'* [to Jews as national collectivity we give nothing; to Jews as individuals we give everything] . . . reveal how restricted was the application of liberty." Isaiah Friedman, *The Question of Palestine, 1914–1918: British–Jewish–Arab Relations* (London: Routledge & Kegan Paul 1973), p 26.

47 From Richard H. Pratt, "The advantages of mingling Indians with whites" (1892), selection in Francis P. Prucha, ed., *Americanizing the American Indians: Writings by the "Friends of the Indian," 1880–1900* (Cambridge, MA: Harvard U.P. 1973), pp 260–271, at p 261. Ward Churchill's *Kill the Indian, Save the Man: The Genocidal Impact of American Indian Residential Schools* (San Francisco: City Lights 2004) illuminates the genocidal consequences of Friends of the Indian-style total institutions with dreadful and systematic clarity.

48 So far, at least. If Al-Qaeda were to repeat the procedure a sufficient number of times, then 9/11 could emerge as the onset of a genocide. Definitionally, in other words, as in the case of other patterned or cumulative phenomena, genocide can obtain retrospectively.

49 He had alternatives. Liddell and Scott give "race, stock, family" as primary meanings of *genos*, with secondary meanings including offspring, nation, caste, breed, gender(!) and "class, sort, kind." "Tribe" is listed as a subdivision of *ethnos* ("a number of people living together, a company, body of men . . . a race, family, tribe"). Henry G. Liddell and Robert Scott, *Greek–English Lexicon* (Oxford: Clarendon 1869), pp 314, 426. Cf. Lemkin, *Axis Rule in Occupied Europe*, p 79.

50 Russell Thornton, *American Indian Holocaust and Survival: A Population History Since 1492* (Norman, OK: Oklahoma U.P 1987), p 133.

51 "In 1998–2000, life expectancy for Aboriginal and Torres Strait Islander peoples was shorter by 21 years for males and 20 years for females, compared with the total population . . . In 1998–2000, the death rate for Indigenous infants was around four times the rate in the total population." Australian Bureau of Statistics, *Australian Social Trends: Health—Mortality and Morbidity: Mortality of Aboriginal and Torres Strait Islander Peoples* (Canberra: Australian Bureau of Statistics, 2002), p 1. See also: House of Representatives Standing Committee on Family and Community Affairs, *Health is Life: Report on the Inquiry into Indigenous Health* (Canberra: House of Representatives, 2000); Neil Thomson, "Trends in Aboriginal infant mortality," in Alan Gray, ed., *A Matter of Life and Death: Contemporary Aboriginal Infant Mortality* (Canberra: Aboriginal Studies Press 1990), pp 1–8.

52 What Jefferson bought was French dominion. The rawly unsettled nature of the Purchase territory (at least, outside New Orleans and its environs and outpost settlements such as Detroit and St Louis) was illustrated by the rapid commissioning of Lewis and Clark's 1803 expedition to chart it.

53 This was the reality behind the mushrooming frontier demographies. "In the decade before 1820, the population of the new state of Alabama increased by a startling 1,000 per cent." O'Brien, *In Bitterness and in Tears*, p 221. For an illuminating catalogue of Creek responses to this invasion, see Richard S. Lackey, comp., *Frontier Claims in the Lower South. Records of Claims Filed by Citizens of the Alabama and Tombigbee River Settlements in the Mississippi Territory for Depradations by the Creek Indians During the War of 1812* (New Orleans: Polyanthos 1977).

54 Abel, "Indian consolidation west of the Mississippi River," p 412.

55 "No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty." 16 *Stat*., 566 (Act of March 3, 1871), c 120, s 1. For discussion, see Vine Deloria, Jr. and David E. Wilkins, *Tribes, Treaties, & Constitutional Tribulations* (Austin, TX: Texas U.P. 1999), pp 60–61; Francis P. Prucha, *The Great Father: The United States Government and the American Indians* (abridged ed., Lincoln, NE: Nebraska U.P. 1986), p 165.

56 In particular, *US v. Kagama*, 118 *US* 1886, p 375; *Lone Wolf v. Hitchcock*, 187 *US* 1903, p 553.

57 John R. Wunder, *"Retained by the People": A History of American Indians and the Bill of Rights* (New York: Oxford U.P. 1994), pp 17, 39.
58 The best source on this campaign remains the authoritative report that found its way into the House hearings preceding the *Indian Reorganization Act* of 1934: D. S. Otis, *The Dawes Act and the Allotment of Indian Lands*, Francis P. Prucha, ed. (Norman, OK: Oklahoma U.P. 1973 [1934]).
59 *Statistical Abstract of the United States* (Washington, DC: US Bureau of the Census, Department of Commerce, 1955), p 180.
60 See e.g. Frederick E. Hoxie, *A Final Promise. The Campaign to Assimilate the Indians, 1880–1920* (Cambridge: Nebraska U.P. 1989); Prucha, *Americanizing the American Indians*, passim.
61 Thomas J. Morgan, "What is an Indian?," in *Sixty-Fifth Annual Report of the Commissioner for Indian Affairs* (Washington, DC: Government Printing Office 1892), pp 31–37.
62 "Thus the key factor in colonial and 'post'-colonial race relations is not, as some have argued, simple demographic numbers, since populations have to be differentiated before they can be counted. Difference, it cannot be stressed enough, is not simply given. It is the outcome of differentiation, which is an intensely conflictual process." Patrick Wolfe, "Land, labor, and difference: elementary structures of race," *American Historical Review*, Vol 106, 2001, pp 865–905, at p 894.
63 M. Annette Jaimes, "Federal Indian identification policy: a usurpation of Indigenous sovereignty in North America," in her, ed., *The State of Native America: Genocide, Colonization, and Resistance* (Boston: South End Press 1992), pp 123–138, at p 137. Patricia Limerick is almost as succinct: "Set the blood quantum at one quarter, hold to it as a rigid definition of Indians, let intermarriage proceed as it has for centuries, and eventually Indians will be defined out of existence. When that happens, the federal government will finally be freed from its persistent 'Indian problem'." Limerick, *The Legacy of Conquest: The Unbroken Past of the American West* (New York: Norton 1987), p 338.
64 Donald L. Fixico, *Termination and Relocation. Federal Indian Policy, 1945–1960* (Albuquerque: New Mexico U.P. 1986); Charles F. Wilkinson and Eric R. Biggs, "The evolution of the termination policy," *American Indian Law Review*, Vol 5, 1977, pp 139–184.
65 Baruch Kimmerling and Joel S. Migdal, *The Palestinian People. A History* (rev. ed., Cambridge, MA: Harvard U.P. 2003), p 172.
66 Wolfe, "Nation and miscegeNation," p 111; *Settler Colonialism and the Transformation of Anthropology*, p 180. Scholars who have made this point after me are too numerous to mention. Among those who made it before I did, see e.g. Jeremy Beckett, "The past in the present, the present in the past: constructing a national Aboriginality," in his, ed., *Past and Present: The Construction of Aboriginality* (Canberra: Aboriginal Studies Press 1988), pp 191–217; Gillian Cowlishaw, "Colour, culture and the Aboriginalists," *Man*, Vol 22, 1988, pp 221–237; Andrew Lattas, "Aborigines and contemporary Australian nationalism: primordiality and the cultural politics of otherness," in Julie Marcus, ed., *Writing Australian Culture* (*Social Analysis* special issue no. 27, pp 50–69.
67 Evans and Thorpe, "The massacre of Aboriginal history," *Overland*, Vol 163, 2001, pp 21–39, at p 36.
68 For examples (some of which are actually hyphenated), see Katherine Bischoping and Natalie Fingerhut, "Border lines: Indigenous peoples in genocide studies," *Canadian Review of Social Anthropology*, Vol 33, 1996, pp 481–505, at pp 484–485; Robert K. Hitchcock and Tara M. Twedt, "Physical and cultural genocide of various Indigenous peoples," in Samuel Totten, William S. Parsons and Israel W. Charny, eds, *Genocide in the Twentieth Century* (New York: Garland Press 1995), pp 483–514, at pp 498–501. For "politicide" ("a process that covers a wide range of social, political, and military activities whose goal is to destroy the political and national viability of a whole community of people"), see Baruch Kimmerling, *Politicide. Ariel Sharon's War Against the Palestinians* (rev. ed., London: Verso 2006).
69 Ever alert to the damaging implications in this connection of Israel's invasion of Palestinian territory, Colin Tatz belittles the significance of "a contest for land and what the land held" as merely "explain[ing] away" colonial ethnocide. Tatz, *With Intent to Destroy: Reflecting on Genocide* (London: Verso 2003), p 180. Lower down the page, however, he observes that "We need to remember that Aboriginal Australians were deemed expendable not just because they were considered 'vermin', or because they sometimes speared cattle or settlers, but because they failed the Lockean test of being a people capable of a polity and a civility, to wit, they couldn't or wouldn't exploit the land they held, at least not in the European sense."
70 Wolfe, "Nation and miscegeNation," pp 110–118; *Settler Colonialism and the Transformation of Anthropology*, pp 168–190. For US examples, see e.g. Robert F. Berkhofer, Jr., *The White Man's Indian. Images of the American Indian from Columbus to the Present* (New York: Vintage Books 1979); Hugh Honour, *The New Golden Land: European Images of America from the Discoveries to the Present Time* (New York: Pantheon 1975). For responses to the phenomenon, see e.g. Fergus M. Bordewich, *Killing the White Man's Indian. Reinventing Native Americans at the End of the Twentieth Century* (New York: Anchor Books 1996); Ward Churchill, *Indians Are Us? Culture and Genocide in Native North America* (Monroe, ME: Common Courage Press 1994).

71 Zika, "Fashioning new worlds from old fathers: reflections on Saturn, Amerindians and witches in a sixteenth-century print," in Donna Merwick, ed., *Dangerous Liaisons: Essays in Honour of Greg Dening* (Melbourne: History Department, University of Melbourne 1994), pp 249–281; Zika, "Cannibalism and witchcraft in early-modern Europe: reading the visual images," *History Workshop Journal*, Vol 44, 1997, pp 77–105.

72 "At June 2002, 22% (4,200) of children in out-of-home care were Aboriginal or Torres Straight [*sic*] Islander children. This represented a much higher rate of children in out-of-home care among Indigenous children than non-Indigenous children (20.1 per 1,000 compared with 3.2 per 1,000)." "Children in out-of-home care," in Australian Bureau of Statistics, *Australia Now* (Canberra: Australian Bureau of Statistics, 2004), s. 2, "Australian social trends, 2003: family and community-services: child protection." An indication of the progress that Indigenous people in Australia have achieved since the darkest days of the assimilation policy is contained in the sentence that follows this excerpt: "In all jurisdictions, the Aboriginal Child Placement Principle outlines a preference for Indigenous children to be placed with other Aboriginal or Torres Straight [*sic*] Islander peoples, preferably within the child's extended family or community."

73 Given the matrilineal transmission of—and relative difficulty of conversion to—Judaism, this factor indicates vigilance in relation to Palestine.

74 "Assimilated natives would be proof positive that America was an open society, where obedience and accommodation to the wishes of the majority would be rewarded with social equality." Hoxie, *Final Promise*, p 34. See also George P. Castile, "Indian sign: hegemony and symbolism in federal Indian policy," in his and Robert L. Bee, eds, *State and Reservation. New Perspectives on Federal Indian Policy* (Tucson, AZ: Arizona U.P. 1992), pp 165–186, at pp 176–183.

75 A drive to replace Palestinian labour with cheap immigrant labour was begun in the early 1990s in response to the first *Intifada*. Though this policy was officially abandoned as it generated its own problems, around 8% of Israel's population continues to be made up of illegal immigrants (who are, by definition, non-Jewish). See Shmuel Amir, "Overseas foreign workers in Israel: policy aims and labor market outcomes," *International Migration Review*, Vol 36, 2002, pp 41–58; Eric Beachemin, "Illegal in Israel," Radio Netherlands broadcast, September 15, 2004, at http://www2.rnw.nl/rnw/en/features/humanrights/tornlives/ilegalinisrael?view = Standard; Leila Farsakh, "An occupation that creates children willing to die. Israel: an apartheid state?," *Monde Diplomatique*, English language edition, November 4, 2003, at http://mondediplo.com/2003/11/04apartheid

76 Though formal legislative power was, for a time, exercised by Blacks in Black-majority Southern states during Reconstruction. See Thomas C. Holt, *Black Over White: Negro Political Leadership in South Carolina during Reconstruction* (Urbana, IL: Illinois U.P. 1977).

77 W. Fitzhugh Brundage, *Lynching in the New South: Georgia and Virginia, 1880–1930* (Urbana, IL: Illinois U.P. 1993); Leon F. Litwack, *Trouble in Mind: Black Southerners in the Age of Jim Crow* (New York: Knopf 1998); Joel Williamson, *The Crucible of Race: Black–White Relations in the American South Since Emancipation* (Oxford: Oxford U.P. 1984), pp 180–223.

78 "Slave labor could be analyzed in economic, social, and political terms [in traditional histories,] but free labor was often defined as simply the ending of coercion, not as a structure of labor control that needed to be analyzed in its own way." Thomas C. Holt, Rebecca J. Scott and Frederick Cooper, *Beyond Slavery: Explorations of Race, Labor, and Citizenship in Postemancipation Societies* (Chapel Hill, NC: North Carolina U.P. 2000), pp 2–3.

79 Though he is too scrupulous a scholar not to acknowledge that "Israeli actions may become near-genocidal." Tatz, *With Intent to Destroy*, p 181.

80 "[C]apital punishment now being an unquestioned, routine penalty for chucking stones at Israelis." Robert Fisk, *The Great War for Civilisation: The Conquest of the Middle East* (London: Fourth Estate 2005), p 546. Quote in text from Tatz, *With Intent to Destroy*, p 117. I have chosen not to patronize Professor Tatz by quoting approvingly from his otherwise very useful book, from which I have learned a lot, on account of our fundamental divergence over the issue of contemporary Zionism, which I wholeheartedly oppose, and, in particular, of my disdain for his attempts to confuse contemporary anti-Zionism with anti-Semitism (e.g. pp 19, 27, 127). Apart from anything else, these attempts do grave injustice to the real victims of anti-Semitism.

Indigenous History of North America

Violence over the Land

INDIANS AND EMPIRES IN THE EARLY AMERICAN WEST

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Ned Blackhawk

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INTRODUCTION

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The Indigenous Body in Pain

"All of us, readers and writers, are bereft when criticism remains too polite or too fearful to notice a disrupting darkness before its eyes." So concludes *Playing in the Dark,* Toni Morrison's forceful exposition of American literature's deep "association with race." Published in 1992, the year of the Columbian quincentenary, Morrison's collection locates African Americans at the center of American cultural development, fusing "black" and "white" into a seemingly inescapable imaginary bond. As she and so many others have come to acknowledge, definitions of America are embedded in racial constructions: "the American self knows itself as not enslaved, but free; not repulsive, but desirable; not helpless, but licensed and powerful; not history-less, but historical; not damned, but innocent; not a blind accident of evolution, but a progressive fulfillment of destiny."[1]

This book attempts to add to these equations. The narrative of American history, it argues, has failed to gauge the violence that remade much of the continent before U.S. expansion. Nor have American historians fully assessed the violent effects of such expansion on the many Indian peoples caught within these continental changes. Following Morrison's critique, this work suggests that American history is considered a place of comfort, not one of pain; a realm of achievement rather than one of indigenous trauma.

Compared with Europe, Africa, the Middle East, and Asia, North America, in particular the region that would become the United States, has a short and linear history. Beginning in the early seventeenth cen-

tury, scattered groups of Anglo settlers discarded the constraints of Europe for the promises of a new land. Along the Atlantic, these economic and religious outposts grew and eventually united against England. A new polity and nation were formed, and a revolutionary experiment in politics and culture began, an experiment that not only continues to the present but also has spread through much of the world.

These are among the founding truths of American history, as are the United States' subsequent development and expansion as a superpower. Such truths are important. They underscore the achievements of a fledgling nation, and most indexes of American history support and reinforce this narrative. Cities sprouted where forests once stood, immigrants amassed great wealth, and industry grew and grew and grew. By the early twentieth century, such truths had become so accepted that many simply regarded American history as a process of nature: a promised "virgin land" uninhabited before European contact had supinely awaited its natural awakening, the fulfillment of its "destiny." On a narrative and discursive level, America represented the promise of prosperity, and the toil and suffering involved in achieving it simply confirmed the overarching potential and goodness of the nation. *Give us your tired, your poor, and your huddled masses yearning to be free,* and we shall turn them into prosperous citizens and adorn them with the vestments of the rights of man.[2]

Narratives about the past are in constant flux, and it is now commonplace to reject such portrayals as prejudiced and incomplete. Women, workers, racial and ethnic minorities do not fit easily into such contained mythologies. The primary function of myth, as Roland Barthes has argued, is to turn history into nature, and the past two generations of scholars have attempted to reconcile discordant views of our nation's past, to reconcile the mythic promise of America with its past and contemporary inequities, opening new fields of inquiry and reinterpreting canonical subjects. A deluge of scholarship on nearly all aspects of American life and culture now fills university press catalogs and the convention halls of our nation's academic gatherings.[3]

Yet a glaring absence remains at the heart of the field. Still missing from most narratives of American history are clear and informed anal-

yses of our nation's indigenous peoples. Although "Indians" are emblematic of America and continue to excite the imaginations of the young both here and abroad, Indian history is no mere curiosity or sideshow in the drama of the American past. The two remain interwoven. North America was already inhabited when Europeans arrived, and from their first days on this continent, Europeans relied on Native peoples for guidance, hospitality, and survival. American historians since the days of the Puritans have tried to rationalize Europeans' takings of Indian lands and lives, and all Indian peoples have endured the many traumas of contact and colonization. Native and European peoples have interacted, intermingled, and coexisted since the first moments of encounter. They have also come into bitter and deadly conflict. Reconciling the dispossession of millions with the making of America remains a sobering challenge, an endeavor that requires reevaluation of many enduring historical assumptions. A generation of scholars has already begun this large task, and this book aims to contribute to it.[4]

Historicizing Colonialism

Despite an outpouring of work over the past decades, those investigating American Indian history and U.S. history more generally have failed to reckon with the violence upon which the continent was built. Most scholarship has focused on colonial and early American history or, west of the Mississippi, on the decades of exploration and expansion in the nineteenth century. The Indians of the American Great Basin—the vast interior portions of the American West between the Sierra and Rocky Mountains—still figure little or not at all in the nation's vision of its past. The many Ute, Paiute, and Shoshone groups who have inhabited this region since time immemorial generally appear as distant shadows in historical texts, faint nameless traces of America's primordial past. Whether as hostile combatants against American migrants or as peaceful desert dwellers, Great Basin Indians are rarely seen as agents in histories of the region. They appear passive objects as history essentially rolls over them, forcing them into minor roles in a larger pageant, understudies in the very dramas remaking their homelands. From the first moments of conquest to the present

day, the experiences of these Indian peoples remain overlooked and bypassed on the thoroughfare of historical inquiry. These Indians, like so many others, remain nonparticipants in the epic of America.[5]

Such historical oversight is surpassed only by anthropology's treatment of these Native peoples. For nearly a century, many of those who have studied Great Basin Indians have consigned them to the distant netherworlds of "prehistory," to the very margins of "civilization." Because of their sparse technologies and migratory economies, anthropologists, including the influential ethnographer Julian Steward, have represented Great Basin Indians as the quintessential "peoples without history," the most "primitive" peoples in the world. Steward pioneered the field of Great Basin as well as American anthropology, using his research among the Nevada Shoshone to construct elaborate models of human organization in which Great Basin Indians supposedly remained the least "developed" cultures in the world. They represented antitheses of modernity and lived "simple" unchanging lives as endless desert wanderers, the first and definitive "hunters and gatherers." An entire language of cultural development arose from Steward's study of these Indian peoples, who became the sediment upon which others attempted to understand "Man's Rise to Civilization."[6]

Such environmentally determined cultural hierarchies have now become discredited, replaced by more relativistic and discursive notions of culture. In the Great Basin, however, as in many other parts of the Americas, the intellectual residue of primitivism remains. The region's indigenous peoples remain fixed within static definitions of culture, imprisoned in notions of essentialism. As a result of the pernicious, self-perpetuating logic of timelessness on the one hand, and of primitivism on the other, these groups remain outside of history, and any changes or adaptations they have made become only further evidence of their demise. When Native peoples adapt to foreign economies or utilize outside technologies, they are assumed to abandon their previous—that is, inferior—ways while in the process losing parts of themselves; they lose the very things that according to others define them. Once adaptation becomes synonymous with assimilation, change over time—the commonplace definition of history—becomes a death knell. The more things change, the greater the loss.[7]

This study takes direct aim at the intertwined ahistoricism and essentialism that pervade understandings of the Intermountain West. It

offers an alternative to this overlooked and overdetermined past. Far from being marginal actors in American history, Great Basin Indians in fact remain central to the development and course of western history. Furthermore, beneath the discourse of primitivism lie painful and traumatic pasts that defy summary analysis. From the spread of epidemic diseases, to the introduction of new economies, to the loss of lands, lives, and resources, these indigenous peoples, like so many others, have experienced epic ordeals. Moreover, they have done so largely outside the view of America's settler and immigrant populations. From their earliest recorded interactions with Europeans in the 1600s to their nineteenth-century struggles within an expansionist state, Great Basin Indians have witnessed the rise of new worlds and the collapse of old ones. Such challenges and changes remain fundamental to understandings of the region's past and are linked to larger imperial and national currents.[8]

These are not, however, simply *peoples with history* whose experiences can be molded or incorporated into common narratives of American history. As the pioneering Indian studies scholar Vine Deloria Jr. noted almost forty years ago, it does little good to add Indians into a flawed mosaic of American history without first reworking the temporal and spatial boundaries of the field. This book extends Deloria's critique and suggests that the experiences of Great Basin Indians force reconsideration of large portions of North American history, histories that after excavation offer far from celebratory portraits of America. Harrowing, violent histories of Native peoples caught in the maelstrom of colonialism define this and other regions and remain necessary foundations upon which other narratives must contend. Such painful histories also have contemporary legacies that continue to influence these communities and their descendants.[9]

Violence as both a subject and a method is at the heart of this book. That Native peoples endured violent attacks or responded to such attacks with force is not news. Indeed, the history of Indian-white relations, particularly throughout the eighteenth and nineteenth centuries, reads like a series of constant wars. The following pages examine the nature of such chronic conflict—the seemingly endless raids, battles, massacres, and numbers lost on all sides. Ultimately, however, violence becomes more than an intriguing or distressing historical subject. It becomes an interpretive concept as well as a method for

understanding these understudied worlds. By charting the region's changing relations of violence, this work seeks to open up historical landscapes already altered by European contact, as violence provides the clearest and at times only windows into them. Violence provides the threads that weave Great Basin Indian history together and organizes the discussion in the following four ways.[10]

First, the earliest moments of postcontact Great Basin history become accessible only through analyses of the shifting relations of violence that remade the Intermountain West during the Spanish colonial era. As the first colonial power in North America, Spain initiated imperial intrusions that disrupted the everyday lives of Indian peoples throughout the continent. The demographic, economic, and environmental changes unleashed throughout northern New Spain have received much analysis, but few have considered the central role and effects of violence in these transformations. While many recognize the effects of Spanish horses, trade networks, and diplomacy, few link these changes to broader patterns of everyday life in the Spanish borderlands. Focusing on the easternmost Great Basin groups, principally on bands of Ute Indians in northern New Mexico and in Colorado, Chapters 1 through 4 examine worlds revolutionized by the irruption of new forms of colonial violence. From the earliest explorations and settlements in colonial New Mexico to the varying frontier successes of Spanish and later Mexican regimes, Ute bands adopted changing strategies of survival in response to colonial disturbance and remained critical to the region's balance of power. In response to the waves of violence engulfing their homelands, Utes became feared combatants, courted allies, and eventually gracious hosts whose changing economic and political decisions contributed to the composition of the Spanish borderlands.[11]

Ute adaptation in the face of imperial expansion is, however, neither celebrated nor glorified. Utes responded in kind to the shifting relations of violence sweeping throughout their homelands, redirecting colonial violence against their neighbors, Spanish and Indian alike. Carrying violence to more distant peoples in New Mexico's expanding hinterlands, Utes attempted to monopolize the trade routes in and out of the colony while besieging neighboring groups, particularly those without horses. As their power north of Santa Fe increasingly weighed upon the minds of colonial rulers, Utes forged genera-

tions of ties to New Mexico that wedded these societies together in new and surprising ways. However, Spanish-Ute accommodation carried high and deadly costs for Ute neighbors, particularly nonequestrian Paiute and Shoshone groups in the southern Great Basin, whose communities were raided for slaves by Utes, New Mexicans, and later Americans. Like their neighboring Indian and Spanish rivals, Utes remade themselves in response to the region's cycles of violence and did so at the expense of others, as violence and Indian slavery became woven into the fabric of everyday life throughout the early West. While sparsely documented, evidence of Great Basin Indian captivity and Ute slave trafficking underscores the transformative and violent nature of Great Basin Indian history. In short, before their sustained appearance in written records, Great Basin Indians endured the disruptive hold of colonialism's expansive reach, brought to them first by other Indian people.[12]

Violence organizes this study in a second and related way. The shifting relations of violence that remade Native worlds throughout the early West did so largely outside of colonial settlements and the purview of authorities. Often only faint traces remain of the waves of violence that swept out of New Mexico and transformed Native peoples from the Sierras to the Mississippi. Accessing the effects of such waves of violence is a fragile endeavor, the results of which must be viewed with skepticism. As in other contact zones and imperial hinterlands, Utes and other Great Basin Indians inhabited "new worlds for all," the genesis of which remains lost to historical inquiry. The history of these groups becomes, then, a history without clear or fixed origins. The earliest documentary histories of Great Basin Indians remain unfixed and untied to specific moments or locales. They remain histories in motion, accelerated by the revolutionary and violent impacts of European contact and colonialism. As Utes ferried Great Basin Indian captives into New Mexico, for example, colonial officials knew little of the natal origins of these slaves, often classifying them as "Yutas" on the basis of shared linguistic ties. These renamed Great Basin captives—overwhelmingly young women and children—provide the earliest sustained references to nonequestrian Great Basin peoples while also revealing the violence intrinsic to the region's history.[13]

Such attention to violence and motion, however, by no means discredits Ute and other tribal traditions that for strategic reasons empha-

size the permanent and immemorial existence of each nation in their respective homelands. Forged against narratives of erasure, such histories have often countered policies aimed at denying Indians access to lands and resources. Emphasis on these Native groups' changing relations of violence is intended here to recast the received categories of analysis that have so readily frozen these Native people. As the following pages suggest, understandings of Indian history, culture, and identity remain historically determined, located not in essential cultural traits but in the violent postcontact time and space of American history. No timeless ethnographic categories or political definitions characterize these Native peoples. Indeed, in this region, precise band names, territorial locales, and stable political designations are often unreliable, particularly given the violent shock waves that engulfed these Indian homelands before their sustained documentation. Hybridity, adaptation, and exchange more clearly characterize these histories than do fixed ethnographic categories, let alone the convenient dichotomies so common to narratives of American Indians. Colonial violence, in sum, characterizes these Native worlds as the violence that saturated communities on the margins of empire has also destabilized the categories of analysis used to describe them.[14]

While violence emerges as the overarching theme of this book, pain remains its implied object, particularly as experienced by Indian peoples. Elusive yet omnipresent, pain remains an uncommon subject in historical inquiry, partly because of language's inability to capture the experiential nature of another's pain. As Elaine Scarry has argued, bodily pain not only resists representation but also destabilizes it, casting this most elemental human experience into the realms of medical and biological sciences.[15]

While Scarry's work focuses primarily on the psychology of pain, several historians have utilized her findings in assessing, in Barbara Young Welke's words, "the irony that the tools of civilization were themselves the instruments of acute suffering." Colonialism's effects upon such indigenous "bodies in pain" necessitate deeper documentary and interpretive attention. Underrecognized corollaries to Europe's expansion into the Americas, violence and pain remain essential, if destabilizing, prerequisites in the study of American history.[16]

Third, violence weds the history of these Native groups to larger imperial histories. Despite accounts to contrary, Europe's colonization of

North American Indian lands defines much of American history. In fact, pioneering American historian Frederick Jackson Turner was partially correct when he declared the process of American expansion as the foundational experience of American history. Although Turner's insistence on the self-democratizing attributes of "frontier" settlement has been recast, few have claimed the effects of such expansion on Indian peoples as equally foundational to, if not representative of, the American experience. This book attempts such suggestion. The violent transformation of Indian lands and lives characterizes European and American expansion. Neither natural nor inevitable, the violent deformations of Native communities locate these indigenous pasts within the broader field of European global colonialism. Historicizing the violent effects of colonialism and suggesting how enduring such effects have become remain objectives in the chapters to come.[17]

Finally, violence and the history of Native influences on imperial and national borderlands require alternative paradigms for understanding the nineteenth-century processes of American expansion. As Chapters 5 through 7 reveal, the United States expanded into worlds already affected by generations of European disruptions and remade these worlds through its own agents of empire. From the use of the U.S. Army to combat and confine Indian peoples, to the state-sanctioned theft of Indian lands and resources, violence both predated and became intrinsic to American expansion. Violence enabled the rapid accumulation of new resources, territories, and subject peoples. It legitimated the power of migrants, structured new social and racial orders, and provided the preconditions for political formation. From the initial moments of American exploration and conquest, through statehood, and into the stages of territorial formation, violence organized the region's nascent economies, settlements, and polities. Violence and American nationhood, in short, progressed hand in hand.[18]

American political formation in the Great Basin occurred through violence in the homelands of Native peoples, many of whom had forged generations of relations with colonial societies. In the 1800s such shared or mutually constructed worlds were overturned. Following a rapid succession of events, newcomers swarmed throughout the region, seizing the most fertile lands and resources for their own. Fur trappers, traders, and explorers either wrought the initial traumas or

laid the basis for subsequent ones. In the Great Basin, trappers vied with one another in scorched-earth trapping practices, emptying fragile watersheds of small game, while traders ferried resources into and out of the region, enmeshing Native communities in webs of economic dependency. Explorers and cartographers like Lewis and Clark initiated less immediate forms of violence, performing the geographical measurements required for subsequent disruptions. Armies, settlers, migrants, and their herds soon followed, forever altering the region's ecology and societies. In the span of one generation, from the Rocky Mountains to the Sierras immigrants became settlers, settlements became towns, and Indians became outsiders. Surveying the pre-reservation history of Colorado's and Utah's Native populations, the second half of this book highlights the divergent paths of diplomacy, warfare, and survival initiated by equestrian Utes and Shoshones in response to the pandemic relations of violence engulfing their communities.

Great Basin Indian Struggles for Survival

Amidst such demographic and environmental turmoil, Great Basin Indians struggled to survive. Colorado Utes navigated political channels to protect territories within their familiar yet changing world, while Utah's Utes and Shoshones escalated their use of violence in response to settler and emigrant disruptions. Others became overwhelmed by the onslaught, as many Indian families migrated out of the region to neighboring areas where the federal government had created federally protected Indian lands called reservations. Such enclaves, or "laboratories" as later government officials viewed them, became intertribal refugee centers where previously unrelated peoples joined together in diaspora. Despite the U.S. Senate's ratification of treaties mandating the creation of reservations throughout the region, many Great Basin groups, particularly nonequestrians, received few federal protections and faced the ordeal of conquest on their own.[19]

In Nevada, eastern California, and central Utah, survival often necessitated integration into the region's evolving settler economies. Facing enduring economic and environmental crises, many Indian families attached themselves to white farms, mining communities, or ranches where Indian men and women worked in the most degraded

sectors. Great Basin Indian impoverishment—a common trope in American literary and travel narratives—became the clearest expression of such disruption, as everywhere Indian peoples appeared to be on the verge of extinction, impoverished beyond the hope of survival. Mark Twain's infamous comments about the Goshute Shoshone of eastern Nevada encapsulate such perceptions: "It was along in this wild country . . . that we came across the wretchedest type of mankind . . . the Goshoot Indians. From what we could see and all we could learn, they are very considerably inferior to even the despised Digger Indians of California, inferior to all races of savages on our continent . . . Our Goshoots are manifestly descended from the self-same gorilla, or kangaroo or Norway rat, whichever animal-Adam the Darwinians trace them to." What America's most celebrated nineteenth-century writer failed to "learn" was that Indian poverty—masqueraded as "wretchedness" and "inferiority"—remained intimately linked to American colonization; these Native peoples were not relics of an ancient past but products of the most rapid territorial expansion in world history. Racial and cultural difference, however, more easily explained Indian misery.[20]

In the face of such impoverishment, Great Basin Indians fought to retain control over their communities and access to their homelands. Comparing the unique, though parallel, economic adaptations initiated by equestrian Utes and Shoshones, Chapters 6 and 7 link the region's colonial period to the violent aftermath of American expansion. Surveying pre-reservation efforts of Native communities to maintain control over their subsistence lands while also highlighting their growing tensions around settler communities, it ends where many narratives of Indian history end, in bloodshed, with an examination of the January 1863 Bear River Massacre, when 500 Northern Shoshones fought for survival against Civil War volunteers, more than half dying in the morning snow.

The Epilogue meditates on the region's divergent historical narratives. Contrasting Julian Steward's seminal ethnographies with Western Shoshone family histories, it highlights the power of narrative both to define a people's essence and to instill a deep sense of cultural pride. Steward, as powerfully as any American anthropologist, classified his subjects into reified cultural hierarchies and failed to see how the very people he interviewed and traveled among had responded to the challenges of conquest. More concerned with his evolutionary

typologies than with the everyday struggles of his informants, Steward went so far as to petition against Western Shoshone attempts to gain federal recognition and reservation lands under the auspices of the Indian Reorganization Act of 1934. He believed that the "traditional" political institutions of the Shoshone were so undeveloped that they could not manage as a "tribe"; their attempts to reinvent themselves politically were antithetical to, and thus threatened, their culture.

[To view this image, refer to the print version of this title.]

Shoshone Beggars at the Railway Station, Carlin, Nevada. Lithograph in *Frank Leslie's Illustrated Newspaper* (New York), November 8, 1873. Images of Western and Goshute Shoshone impoverishment captured the attention of Indian agents, journalists, and travel writers throughout the 1800s, most famously by Mark Twain.

Steward and other American intellectuals, the Epilogue suggests, have perpetuated one of the most lasting legacies of conquest: they have erased violence and colonialism from discussions of the region's past, performing acts of representational violence whose power continues to misinform assessments of these Native people.[21]

Western Shoshone and other Great Basin groups have resisted such intellectual and political racism in many ways. Denied the guarantees of nineteenth-century treaties, particularly the 1863 Treaty of Ruby Valley, the Western Shoshone, for example, spent the entire twentieth century fighting for implementation of the treaty's articles, particularly its provisions for the establishment of Indian reservations in Nevada. Despite Steward's protests, Shoshone groups used the mechanisms of the Indian Reorganization Act to receive some new lands and federal recognition. After World War II, they navigated the equally complicated legal channels established by the Indian Claims Commission to file for their outstanding land claims, and throughout the 1970s, 1980s, and 1990s Shoshone groups fought for the return of Indian homelands. Unlike any other state in the union, over 90 percent of Nevada is "owned" by the federal government, which manages tens of millions of acres through Department of Defense and Bureau of Land Management offices, using the region for everything from nuclear testing to wildlife preserves. The origins of these (sometimes contradictory) policies date to 1863 and to the unconstitutional failure of the federal government to receive title from Shoshone groups. As the final chapter and the Epilogue detail, Shoshone political struggles mirror the social and economic ordeals of other Great Basin groups, in which the threat and legacy of violence also remain ever present.[22]

The Epilogue ends with two nonreservation Shoshone family histories, including my own. The young Shoshone woman in the photo, Mamie Andrews, was my great-grandmother, born in the 1890s in central Nevada during the second generation after American conquest. While Nevada acquired statehood relatively early in the West, institutionalizing the mechanisms of statehood took decades. Many Native peoples continued to live "outside the state," speaking their own language, living to themselves, and traveling, as they always had, seasonally for food, work, worship, and recreation. Their migratory and cultural practices contravened government policies aimed at confining

and classifying Native peoples and prompted increased surveillance through institutions of state control, particularly the Bureau of Indian Affairs.

Born on a white ranch in Smoky Valley, Nevada, Mamie from her earliest days learned from her mother and aunts to cook and clean for white families, later becoming a domestic servant herself. Like the other Indian families who lived on ranches and in nearby mining towns, she grew up in intimate familiarity with whites, played with white and Indian children, and remained part of a community of ranchers and their Indian laborers. Never knowing her father, many

[To view this image, refer to the print version of this title.]

Mamie Andrews, about 1919. Eva Charley Family Collection. Photographed in a Nevada studio shortly before her confinement in the Nevada State Mental Hospital, Mamie Andrews left behind four Shoshone children in Smoky Valley, including Eva Charley, the author's grandmother.

believed her to be the result of the often nonconsensual sexual relations between Indian women and white men, which became commonplace in mining and ranching communities, where unequal gender ratios and racial hierarchies converged. Like most Indian laborers, Mamie received an English name. She married a handsome Indian man, Sam Johnson, and had one child with him, Eva, before leaving him for his half-brother, Bob Snooks, and having three more children.

Working hard with four children, Mamie and Bob became increasingly combative, especially during times when Bob drank with his friends and cousins after long days harvesting hay or mending endless cattle lines. Bob's excessive drinking and the aggressive behavior that followed from it paralleled that of other Indian men, whose poverty seemed only more glaring in contrast with the material possessions of whites and the countless images of fancy goods advertised in stores and newspapers. White insults, jokes, and generally disdainful manners fueled the need for escape. Whites owned just about everything, and the creation of liminal spaces outside of white control became as seemingly natural as Indian subjection. Indians traveled to regional Native festivals, called "fandangos," worked in seasonal labor groups, and migrated throughout the region.

After his return from one summer's fandango, Bob's attacks on Mamie became more severe, requiring her to seek assistance from local Indian healers as well as white doctors. Everyone in the community recalls that her second husband's abuse rendered Mamie unstable. Her crying and outbursts continued after Bob left, and her relatives grew concerned about little Eva and her two younger brothers and sister. Local authorities determined that Mamie required mental treatment, and in 1919, at the age of twenty-four, she was institutionalized in the state mental hospital, where she lived alone for her remaining fifty-seven years. The Epilogue traces the lives of Mamie and her parentless children and contrasts them with narratives emanating from anthropological, literary, and other outside commentators.

Mamie's oldest daughter, Eva, was my grandmother, and like her mother's, Eva's life was filled with poverty and hardship, testimony to the enduring challenges wrought by colonial expansion. As Native groups continue to recover from the aftermath of such collisions, these regional and personal histories bear witness to enduring historical truths. Throughout what we now call America, the nature of everyday life was forever transformed as violence swept over the land.

Notes

Introduction

1. Toni Morrison, *Playing in the Dark: Whiteness and the Literary Imagination* (Cambridge, Mass.: Harvard University Press, 1992), 91, 47, 52.
2. Studies of U.S. history have often maintained exceptional visions of the American experience, contradistinguishing the American past with other national histories. For surveys of recent challenges to such currents, see David W. Noble, *Death of a Nation: American Culture and the End of Exceptionalism* (Minneapolis: University of Minnesota Press, 2002), esp. 250–286. See also Kerwin Lee Klein, *Frontiers of Historical Imagination: Narrating the European Conquest of Native America, 1890–1990* (Berkeley: University of California Press, 1997).
3. Roland Barthes, *Mythologies,* trans. Annette Lavers (New York: Hill and Wang, 1972). As Joyce Appleby has argued, "For a long time American historical writing simply explained how the United States became the territorial embodiment of liberal truths." See Appleby, *Liberalism and Republicanism in the Historical Imagination* (Cambridge, Mass.: Harvard University Press, 1992), 2–3.
4. "Indian" is a problematic designation for the indigenous peoples of the Americas, one that has undergone critical interrogation and, in Canada, abandonment, where First Nations, Native, and Aboriginal commonly designate the status of Canada's First Peoples. In the United States, "Native American" has gained popularity, largely in an attempt to reject the homogenizing history of the term "Indian." While recognizing the constraining, contested usage of such terminology, this

study interchanges "Indian," "Native," and "indigenous" to describe aboriginal communities in North America, valuing the instructive past of such terms in an attempt to recapture and revise their representational power. While Indian history has recently become an honored subfield in American history, the field remains largely tied to the U.S. colonial period. See Ned Blackhawk, "Look How Far We've Come: How American Indian History Changed the Study of American History in the 1990s," *Organization of American Historians' Magazine of History* 19:6 (November 2005): 8–14.

5. Physiographically, the Great Basin begins west of the Wasatch Mountains in central Utah, while shared cultural traits, language, and historical experiences link Great Basin peoples to the Colorado Plateau and Rocky Mountains. See Charles B. Hunt, *Physiography of the United States* (San Francisco: W. H. Freeman, 1967), 308–347; Omer C. Stewart, *Indians of the Great Basin: A Critical Bibliography* (Bloomington: University of Indiana Press, 1982); and Warren L. D'Azevedo, "Introduction," *HBNAI,* 11: 1–14.
6. Eric Wolf, *Europe and the Peoples without History* (Berkeley: University of California Press, 1980). For Steward's legacies, see Richard O. Clemmer, L. Daniel Myers, and Mary Elizabeth Rudden, *Julian Steward and the Great Basin: The Making of an Anthropologist* (Salt Lake City: University of Utah Press, 1999), and citations therein for Steward's bibliography. For one example of Steward's influence in establishing Great Basin Indians as the evolutionary floor of human development, see Peter Farb, *Man's Rise to Civilization as Shown by the Indians of North America* (New York: E. P. Dutton, 1968).
7. For anthropology's imperialist legacies, see George W. Stocking Jr., *Colonial Situations: Essays on the Contextualization of Ethnographic Knowledge* (Madison: University of Wisconsin Press, 1991).
8. Homi K. Bhabha theorizes the intellectual quandaries incumbent upon being "amongst those whose very presence is both 'overlooked' and, at the same time, overdetermined." See Bhabha, *The Location of Culture* (New York: Routledge, 1994), 236. See also Linda Tuhiuai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London: Zed Books, 1999), esp. 1–41.
9. See Vine Deloria Jr., *Custer Died for Your Sins: An Indian Manifesto* (New York: Macmillan, 1969).
10. Max Weber pioneered the study of violence and state formation: "the relation between the state and violence is an especially intimate one . . . a state is a human community that (successfully) claims the *monopoly of*

the legitimate use of physical force within a given territory . . . The state is considered the sole source of the 'right' to use violence"; H. H. Gerth and C. Wright Mills, eds. and trans., *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1946), 78. The tensions between imperial historiographies and their simultaneous inabilities to grasp the colonial violence inherent in imperialism have forced reconsideration of innumerable national histories, especially in the aftermath of European decolonization and the enduring "postcolonial" challenge for former colonized populations. For a recent effort to expose such imperial currents in American cultural history, see Amy Kaplan, *The Anarchy of Empire in the Making of U.S. Culture* (Cambridge, Mass.: Harvard University Press, 2002).

11. For syntheses of Spanish colonialism in northern New Spain, see Thomas Hall, *Social Change in the Southwest, 1350–1880* (Lawrence: University of Kansas Press, 1988); and John L. Kessell, *Spain in the Southwest: A Narrative History of Colonial New Mexico, Arizona, Texas, and California* (Norman: University of Oklahoma Press, 2002).
12. For North American imperial-indigenous accommodation, see Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region* (New York: Cambridge University Press, 1991). For a related attempt to complicate indigenous-state relations in Latin America as "no longer a simple celebration of subaltern agency," see Florencia E. Mallon, *Peasant and Nation: The Making of Postcolonial Mexico and Peru* (Berkeley: University of California Press, 1995), esp. 1–20.
13. Colin G. Calloway, *New Worlds for All: Indians, Europeans, and the Remaking of America* (Baltimore: Johns Hopkins University Press, 1997).
14. As R. Brian Ferguson and Neil L. Whitehead argue, "While the importance of history and the role of violent conflict may be readily seen, it is more difficult to know *what that recognition implies:* at the very least, it involves the need to revitalize our ideas about the ethnographic universe, going beyond the rejection of untenable notions of self-contained, stable local societies, *and instead developing a conceptual framework for understanding conflict and change as part of the historical process* underlying observed ethnographic patterns." See Ferguson and Whitehead, "The Violent Edge of Empire," in *War in the Tribal Zone: Expanding States and Indigenous Warfare,* ed. Ferguson and Whitehead (Santa Fe: School of American Research Press, 1992), 3 (emphasis added).
15. Physical pain, as Elaine Scarry argues, not only is "resistant to language but also actively destroys language," a notion suggesting that representations, in this case of indigenous trauma, are always partial and cannot

be fully measured. See Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York: Oxford University Press, 1985), 172.

16. Barbara Young Welke, *Recasting American Liberty: Gender, Race, Law, and the Railroad Revolution, 1865–1920* (New York: Cambridge University Press, 2001), 126.
17. For reassessments of Frederick Jackson Turner's "frontier thesis," see Klein, *Frontiers of Historical Imagination*. See also Patricia Nelson Limerick, *The Legacy of Conquest: The Unbroken Past of the American West* (New York: W. W. Norton, 1987), esp. 17–32.
18. As Cole Harris suggests, "Claiming political control of a territory was an act of imperialism, coming to know it was often another, but using it was far more intrusive than either." See Harris, *The Resettlement of British Columbia: Essays on Colonialism and Geographic Change* (Vancouver: University of British Columbia Press, 1997), 182–183.
19. For the formulation of U.S. Indian policy, see Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press, 1994) and *The Great Father: The United States Government and the American Indians,* abridged ed. (Lincoln: University of Nebraska Press, 1986).
20. Franklin R. Rogers, ed., *The Works of Mark Twain: Roughing It* (Berkeley: University of California Press, 1972), 144.
21. See Clemmer et al., *Julian Steward and the Great Basin*.
22. Steven J. Crum provides the most complete assessment of Western Shoshone history. See Crum, *The Road on Which We Came: A History of the Western Shoshone* (Salt Lake City: University of Utah Press, 1994) (cited hereafter as Crum). For an overview of the development of nuclear testing in Nevada, see Howard Ball, *Justice Downwind: America's Atomic Testing Program in the 1950s* (New York: Oxford University Press, 1986), 20–83.

1. Spanish-Ute Relations to 1750

1. *LFNMH,* 2: 147. For additional references to Indian ears as trophies in New Spain, see Elizabeth A. H. John, *Storms Brewed in Other Men's Worlds: The Confrontation of Indians, Spanish, and French in the Southwest, 1540–1795,* 2d ed. (Norman: University of Oklahoma Press, 1996), 603; Ana Maria Alonso, *Thread of Blood: Colonialism, Revolution, and Gender on Mexico's Northern Frontier* (Tucson: University of Arizona Press, 1995), 38; Frank McNitt, *Navajo Wars: Military Campaigns, Slave Raids, and Reprisals* (Albuquerque: University of New Mexico Press, 1972), 51; and Zenas Leonard, *Narrative of the Adventures of Zenas Leonard* (1839; facsimile

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The Opinion Pages | OP-ED CONTRIBUTOR

Remember the Sand Creek Massacre

By NED BLACKHAWK NOV. 27, 2014

NEW HAVEN — MANY people think of the Civil War and America's Indian wars as distinct subjects, one following the other. But those who study the Sand Creek Massacre know different.

On Nov. 29, 1864, as Union armies fought through Virginia and Georgia, Col. John Chivington led some 700 cavalry troops in an unprovoked attack on peaceful Cheyenne and Arapaho villagers at Sand Creek in Colorado. They murdered nearly 200 women, children and older men.

Sand Creek was one of many assaults on American Indians during the war, from Patrick Edward Connor's massacre of Shoshone villagers along the Idaho-Utah border at Bear River on Jan. 29, 1863, to the forced removal and incarceration of thousands of Navajo people in 1864 known as the Long Walk.

In terms of sheer horror, few events matched Sand Creek. Pregnant women were murdered and scalped, genitalia were paraded as trophies, and scores of wanton acts of violence characterize the accounts of the few Army officers who dared to report them. Among them was Capt. Silas Soule, who had been with Black Kettle and Cheyenne leaders at the September peace negotiations with Gov. John Evans of Colorado, the region's superintendent of Indians affairs (as well as a founder of both the University of Denver and Northwestern University). Soule publicly exposed

Chivington's actions and, in retribution, was later murdered in Denver.

After news of the massacre spread, Evans and Chivington were forced to resign from their appointments. But neither faced criminal charges, and the government refused to compensate the victims or their families in any way. Indeed, Sand Creek was just one part of a campaign to take the Cheyenne's once vast land holdings across the region. A territory that had hardly any white communities in 1850 had, by 1870, lost many Indians, who were pushed violently off the Great Plains by white settlers and the federal government.

These and other campaigns amounted to what is today called ethnic cleansing: an attempted eradication and dispossession of an entire indigenous population. Many scholars suggest that such violence conforms to other 20th-century categories of analysis, like settler colonial genocide and crimes against humanity.

Sand Creek, Bear River and the Long Walk remain important parts of the Civil War and of American history. But in our popular narrative, the Civil War obscures such campaigns against American Indians. In fact, the war made such violence possible: The paltry Union Army of 1858, before its wartime expansion, could not have attacked, let alone removed, the fortified Navajo communities in the Four Corners, while Southern secession gave a powerful impetus to expand American territory westward. Territorial leaders like Evans were given more resources and power to negotiate with, and fight against, powerful Western tribes like the Shoshone, Cheyenne, Lakota and Comanche. The violence of this time was fueled partly by the lust for power by civilian and military leaders desperate to obtain glory and wartime recognition.

Expansion continued after the war, powered by a revived American economy but also by a new spirit of national purpose, a sense that America, having suffered in the war, now had the right to conquer more peoples and territories.

The United States has yet to fully recognize the violent destruction wrought against indigenous peoples by the Civil War and the Union Army. Connor and Evans have cities, monuments and plaques in their honor, as well as two universities and even Colorado's Mount Evans, home to the highest paved road in North America.

Saturday's 150th anniversary will be commemorated many ways: The National Park Service's Sand Creek Massacre Historic Site, the descendant Cheyenne and Arapaho communities, other Native American community members and their non-Native supporters will commemorate the massacre. An annual memorial run will trace the route of Chivington's troops from Sand Creek to Denver, where an evening vigil will be held Dec. 2.

The University of Denver and Northwestern are also reckoning with this legacy, creating committees that have recognized Evans's culpability. Like many academic institutions, both are deliberating how to expand Native American studies and student service programs. Yet the near-absence of Native American faculty members, administrators and courses reflects their continued failure to take more than partial steps.

While the government has made efforts to recognize individual atrocities, it has a long way to go toward recognizing how deeply the decades-long campaign of eradication ran, let alone recognizing how, in the face of such violence, Native American nations and their cultures have survived. Few Americans know of the violence of this time, let alone the subsequent violation of Indian treaties, of reservation boundaries and of Indian families by government actions, including the half-century of forced removal of Indian children to boarding schools.

One symbolic but necessary first step would be a National Day of Indigenous Remembrance and Survival, perhaps on Nov. 29, the anniversary of Sand Creek. Another would be commemorative memorials, not only in Denver and Evanston but in Washington, too. We commemorate "discovery" and "expansion" with Columbus Day and the Gateway arch, but nowhere is there national recognition of the people who suffered from those "achievements" — and have survived amid continuing cycles of colonialism.

Correction: November 27, 2014

An earlier version of this article incorrectly stated that the American Indian leader Black Kettle was killed in the Sand Creek Massacre. He died at the Battle of Washita in Oklahoma in 1868.

Correction: December 6, 2014

An Op-Ed article last Friday attributed an erroneous distinction to the Union general Patrick Edward Connor and the Colorado governor John Evans, who were involved in massacres of American Indians in the 1860s. There is no state capital named for them. Ned Blackhawk, a professor of history and American studies at Yale and the coordinator of the Yale Group for the Study of Native America, is the author of "Violence Over the Land: Indians and Empires in the Early American West."

A version of this op-ed appears in print on November 28, 2014, on page A31 of the New York edition with the headline: Remember the Sand Creek Massacre.

CUSTER DIED

FOR YOUR SINS

AN INDIAN MANIFESTO

BY VINE DELORIA, JR.

University of Oklahoma Press : NORMAN

By Vine Deloria, Jr.

Custer Died for Your Sins (New York, 1969; Norman, 1988)
The Indian Affair (New York, 1974)
The Metaphysics of Modern Existence (New York, 1978)
God Is Red (New York, 1983)
American Indians, American Justice (with Clifford M. Lytle) (Austin, Texas, 1983)
A Sender of Words: Essays in Memory of John G. Neihardt (Salt Lake City, 1984)
The Nations Within: The Past and Future of American Indian Sovereignty (with Clifford M. Lytle) (New York, 1984)
Behind the Trail of Broken Treaties: An Indian Declaration of Independence (Austin, Texas, 1985)
American Indian Policy in the Twentieth Century (ed.) (Norman, 1985)
Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775-1979 (with Raymond DeMallie) (Norman, 1999)
The Indian Reorganization Act: Congresses and Bills (Norman, 2002)

Deloria, Vine.
Custer died for your sins.

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3 * THE DISASTROUS POLICY OF TERMINATION

PEOPLE OFTEN FEEL guilty about their ancestors killing all those Indians years ago. But they shouldn't feel guilty about the distant past. Just the last two decades have seen a more devious but hardly less successful war waged against Indian communities. In the old days blankets infected with smallpox were given to the tribes in an effort to decimate them. In the past they were systematically hunted down and destroyed. Were an individual citizen to do this it would be classified as cold-blooded murder. When it was done by the U.S. Army it was an "Indian war." But during the past twenty years federal medical services have been denied various tribes, resulting in tremendous increase in disease.

The Congressional policy of termination, advanced in 1954 and pushed vigorously for nearly a decade, was a combination of the old systematic hunt and the deprivation of services. Yet

this policy was not conceived as a policy of murder. Rather it was thought that it would provide that elusive "answer" to the Indian problem. And when it proved to be no answer at all, Congress continued its policy, having found a new weapon in the ancient battle for Indian land.

The roots of termination extend backward in time to the early years of the Roosevelt administration. The New Deal ushered in a new program for the Indian people. The Meriam Report of 1928 had shown that Indian tribes were in a desperate situation. There had been no progress of any kind on the reservations since they were set up. The people were in the final stages of demise.

Pressures for reform coincided with the election of Roosevelt, who appointed John Collier as Commissioner of Indian Affairs. Collier was a well-known anthropologist of liberal persuasion. He quickly pushed the Wheeler-Howard Act through Congress in 1934 and gave the reservations their first taste of self-government in nearly half a century.

The Senate Interior Committee that handled Indian legislation kept alive its investigative powers over Indian Affairs by periodically renewing the original Congressional resolution which authorized it to initiate the Meriam Report investigation. The committee intended to ride herd on the programs of the New Deal lest any "foreign" influences should develop. It could not conceive of returning self-government to a people who should have disappeared long ago.

By 1943 the Senate Interior Committee was convinced that the Indian Bureau should be abolished. But the sentiment did not take hold in any discernible policy determinations because of the war.

The House Interior Committee, not to be outdone by its colleagues in the other chamber, authorized an investigation of Indian Affairs bv a special subcommittee headed by Karl Mundt, Republican of South Dakota. The committee reported that the Wheeler-Howard Act was not accomplishing its task of bringing the Indian people up to the level of their white neighbors.

In 1947 the Senate Civil Service Committee held hearings on ways that government payrolls could be cut and expenditures reduced. The Republicans had captured Congress that autumn and they were looking for defenseless New Deal programs to trim. They found a natural in the Bureau of Indian Affairs.

William Zimmerman, Acting Commissioner of Indian Affairs, was asked to give testimony on the possibility of reducing personnel in the bureau by releasing some of the tribes from federal supervision. The committee was primarily interested in a consolidation of functions and the subsequent saving of federal funds.

Zimmerman was anxious to remain a neutral party and so presented the committee with a series of recommendations, none of which would have resulted in substantial savings.

He classified the existing tribes into three categories. The first class was composed of tribes that could immediately be terminated from federal services, providing certain protections were given them. The second class consisted of tribes that might possibly achieve self-sufficiency within ten years following an intensified program of development. The last class had an indefinite time period in which federal services were needed.

In view of the three categories it is clear that Zimmerman had assumed the tribes would make substantial progress under already existing programs and take on increasing responsibilities for those programs. He also assumed that Congress would adopt a rational and understanding approach to the subject.

So Zimmerman laid out the criteria by which he had classified the tribes:

> . . . in making up these three groups of tribes, I took four factors into account.
>
> The first one is the degree of acculturation of the particular tribe. That includes such factors as the admixture of white blood, the percentage of illiteracy, the business ability of the tribe, their acceptance of white institutions and their acceptance by whites in the community.
>
> The second factor is the economic condition of the tribe, principally

> the availability of resources to enable either the tribe or the individuals, out of their tribal or individual assets, to make a reasonably decent living.
>
> The third factor is the willingness of the tribe and its members to dispense with federal aid.
>
> The last criterion is the willingness and ability of the State in which the tribe is located to assume the responsibilities.

There was no doubt that Zimmerman regarded Indian consent and understanding as among the important factors to be considered in any alteration of the existing relationship. But there was also an emphasis on the willingness of the state to assume responsibility for the tribe and its members.

Zimmerman had prepared sample withdrawal plans, which he shared with the committee members:

> I have prepared separate bills for the Klamath, Osage and Menominee tribes.
>
> I took those as examples, as specimens, because each of them has substantial assets, each of them has a small degree of tribal control, and each of them has indicated that it wants to assume more control, if not full control, of its tribal assets and its tribal operations.
>
> Each of those tribes further has prior legislation under which the Department supervises the operations. For that reason it seems to me best to suggest, *as types at least*, these three different tribes. [emphasis added]

The Acting Commissioner suggested three special plans by which the bureau might consider it possible to end federal supervision and enable the tribe to have some chance of success. For the Klamath, a rich timber tribe located near Crater Lake, Oregon, it was envisioned that all funds would remain subject to Congressional appropriation so that the tribal council would not be subjected to undue pressure for distribution by the reservation people.

A corporation to operate the massive Klamath forest by sustained-yield methods would be organized by the tribe. Officials would be subject to federal laws and courts for acts of

malfeasance, to guarantee proper administration of the corporation. Because of treaty rights of tax exemption the forest would remain untaxable until Congress provided otherwise in consultation with the tribe.

The plan advanced for the Menominee tribe of Wisconsin was similar. Earlier it had been awarded $1.5 million in a claim against the United States and took its judgment in land, consolidating its reservation into one large tract. The Menominees had previously successfully resisted the Allotment Act and issued use rights to members of the tribe instead of allotments. In that sense only were they different from the Klamaths, who had an allotted reservation.

The Menominees had a sawmill with a dual purpose—to provide jobs for tribal members and income for the tribe. Zimmerman foresaw a fifty-year period of tax exemption on the Menominee forest as the most feasible proposal.

The Osages had already distributed shares of their tribal estate in "headrights," allotted the land, and retained the subsurface mineral rights, which provided oil royalties to holders of headrights. The sample bill for the Osage provided that all funds administered by the Interior Department would henceforth be administered by the tribe, subject to audit at any time by Interior officials.

Proposals were also made that California and North Dakota take over the affairs of the tribes within their boundaries. The federal government would provide a subsidy to the states equal to what it had been spending on the Indians in the two states, to ensure that no programs be cut back. After a ten-year trial period the arrangement would be made permanent, unless Congress made other provisions. Part of the California proposal included the requirement that the state match a five-million-dollar development program for Indian families.

Every plan put forward by Zimmerman required that the tax immunity remain on Indian lands until the tribal enterprise was financially secure in its new method of operation. Plans also included provisions for approval by a clear majority of the adult

members of the tribes before they were to go into effect, and some proposals were not to be initiated by the bureau but had to come from the tribal governing body at its own request.

The suggestions were basically sound. They incorporated plans that had been discussed in the past between the bureau and the tribes. If carried out according to the original design, the program would have created a maximum of self-government and a minimum of risk until the tribes had confidence and experience in the program.

Unfortunately, the committee dropped Zimmerman's suggestions when it was discovered that the termination of even fifty thousand Indians would have had little effect on the Interior budget. Using the criteria of the committee—the reduction of federal expenditures—termination of Indian tribes was not a significant program. But discussion of the proposal provided the ammunition that would later be used to sink tribal ships of state.

Three years after the Senate hearings the House Interior Committee began a massive study of Indian Affairs. Unbelievably, it recommended using the philosophy of René Descartes, French rationalist of the 1600's, as a method of research:

> As a multitude of laws often only hampers justice, so that a State is best governed when, with few laws, these are rigidly administered; in like manner, instead of the great number of precepts of which Logic is composed, I believed that the four following would prove perfectly sufficient for me, providing I took the firm and unwavering resolution never in a single instance to fail in observing them.
>
> The first was never to accept anything for true which I did not clearly know to be such; that is to say, carefully to avoid precipitancy and prejudice, and to comprise nothing more in my judgment than what was presented to my mind so clearly and distinctly as to exclude all ground of doubt.
>
> The second, to divide each of the difficulties under examination into as many parts as possible, and as might be necessary for its adequate solution.
>
> The third, to conduct my thoughts in such order that, by commencing with objects the simplest and easiest to know, I might

> ascend little by little, and as it were step by step, to the knowledge of the more complex; assigning in thought a certain order even to those objects which in their own nature do not stand in a relation of antecedence and sequence.
>
> And last, in every case to make enumerations so complete, and reviews so general, that it might be assured that nothing was omitted.

In sum, the committee declared: "If we can order our treatment of materials in Indian Affairs after this fashion it should be possible to grasp firmly the essentials or the problems involved and to cope with them correspondingly well."

This insight was not the least of the committee's recommendations, however, as committee members fancied themselves to be powers of great historical importance. Thus they further proposed to use the Domesday survey of 1086 as the model for a twentieth-century investigation of Indian problems:

> This extensive report on an entire nation should serve as a model for the administration of Indian Affairs today. There is a need for an exact, highly localized and thorough accounting of all Indian properties and Indian tribes as a complete allotment and dissolution of separate Indian tribal economic and political organization is contemplated. A survey along the lines of the Domesday project would furnish an inventory of all the basic facts needed to complete Indian assimilation. The Congress and Federal Government exercise the function of sovereignty over the Indians in the same manner as that by the King of England over his domains. The title to Indian lands and federal public domain lands would be clearly and precisely stated for every locality. Present day information on Indian property and population is generally piecemeal, confused, and probably unreliable. There is a real need for a Domesday Survey of Indian Affairs.

Little did the general public or the Indian tribes realize the bizarre theories underlying Congressional thinking on termination.

If any other group had been subjected to research techniques of the era of William the Conqueror the nation would have risen in indignation and called for an investigation. But in the

whimsical world of the Interior committees, Indians were such an unknown commodity that the ridiculous made sense, the absurd was normal.

With this contemptuous announcement of royal power of Congressional committees, the stage was set for the disastrous era of the Eighty-third and ensuing congresses and the termination period in Indian Affairs.

The way had been prepared for this era by the attitude of Dillon Myer, a Truman appointee as Commissioner of Indian Affairs, who started the bureau on the termination trail when he had assumed office in 1950. Myer had been in charge of the Japanese internment camps during World War II and "knew" how to deal with minority rights.

He embarked on a withdrawal program in August of 1952, before Congress had even authorized its great Domesday study. "At this point," Myer wrote to his bureau employees, "I want to emphasize that withdrawal program formulation and effectuation is to be a cooperative effort of Indian and community groups affected, side by side, with Bureau personnel. We must lend every encouragement to Indian initiative and leadership. I realize that it will not be possible always to obtain Indian cooperation."

"Full understanding," Myer went on, "by the tribal membership should be attained in any event, and agreement with affected Indian groups must be attained if possible. In the absence of such agreement, however, I want our differences to be clearly defined and understood by both the Indians and ourselves. We must proceed, even though Indian cooperation may be lacking in certain cases."

The policy from Commissioner to field clerk was to get rid of Indians as quickly as possible, treaties or no. When the termination hearings were later held, the bureau had much to say. It gave every possible excuse to get rid of the particular tribe which was under consideration by the committee.

The Republicans entered the White House in the 1952 election and assumed control of Congress for the second time in two

decades. Two conservatives were named to head the Indian subcommittees in the Senate and House: Arthur Watkins, a Mormon from Utah, headed the Indian Subcommittee of the Senate Interior committee and E. Y. Berry from South Dakota headed the House counterpart. Both Watkins and Berry were determined to bring Indian Affairs to a swift conclusion. They had sat too long as junior members of the subcommittees not to relish the opportunity which now presented itself. They wanted to take the helm and make policy. Together they decided to hold joint hearings on all Indian bills so that there would be no conflicts between the Senate and House versions of legislation. A decision by the Joint Subcommittee could pass both houses of Congress simultaneously, and opposition as well as public awareness could be held to a minimum.

On June 9, 1953, the first shot of the great twentieth century Indian war was fired when Representative William Henry Harrison, a descendant of an old Indian fighter of the last century, introduced House Concurrent Resolution 108 in the Eighty-third Congress. HCR 108 declared the intention of Congress to terminate federal supervision at the "earliest possible time." Green light for Watkins and Berry. They waited only until the following February before launching their attack. And supervision, as it turned out, meant services only.

February, 1954, saw the beginning of a systematic attack on every tribe in the nation. Gone were the four factors which Zimmerman had used in 1947 to classify tribal readiness for termination. Watkins' idea was to get rid of as many tribes as possible before the 1956 elections. He feared that if the Great Golfer were not re-elected the movement would be stopped by a President who might pay attention to what was happening in the world around him.

The first termination case—concerning small bands of Paiutes in Utah—set the precedent for the Senate Interior Committee, from Arthur Watkins, conservative Republican from Utah in 1954, to Henry Jackson, pseudo-liberal Democrat from Washing-

ton in 1968. The basic approach of the Senate committee never varied for fourteen years. Unbearable pressures, lies, promises, and threats of termination were made whenever a tribe won funds from the United States because of past swindles by the federal government. Whenever a tribe needed special legislation to develop its resources, termination was often the price asked for the attention of the committee. And if a tribe compromised with the Senate committee it was on the road to termination. Quarter was asked but none given.

In this first case, Watkins made sure that some of his Utah Indians were the first to go in order to prove he was not picking on Indians of other states. It did not matter that the Paiutes had not been mentioned either by Zimmerman or in HCR 108. Watkins was determined to demonstrate fairness, as if once he had irrationally harmed Indians from his own state he would be free to do whatever he wanted with all those elsewhere.

He forced consent, if it can be called that, of these small bands of southern Utah by promising them recognition by the federal government of their tribal marriages. But when the legislation came out there was no mention of tribal marriages, only of removal of federal services. The Paiutes had been too poor to come to Washington for the hearings, and when they found out what Watkins had done it was too late. They were placed under a private trustee who rarely communicated with them, and in a more restrictive trusteeship than they had known when under federal supervision. Thus did Watkins "free" his Indians.

In another case, the Klamaths had received a judgment against the United States for $2.6 million. But they needed enabling legislation to spend it. Watkins withheld approval of the Joint Subcommittee until the Klamaths agreed to his termination bill. The state of Oregon was hardly consulted at all. Thus two basic factors of the four presented by Zimmerman for ending federal supervision were lacking from the very beginning. Termination of the Klamaths had neither tribal nor state willingness.

The Klamath bill had been so hastily written that it had to be amended to prevent a wholesale collapse of the lumber industry on the West Coast. Since it had originally called for immediate clear-cutting of eighty-million-dollars' worth of timber, the market appeared headed for total disaster because of the great quantity of wood that would suddenly depress the market. Strangely, there was no conspiracy to cheat the Klamaths, the legislation was simply so sloppily written that no one on the Senate or House committee realized what clear-cutting a massive forest meant. The committee members' only desire was to get the termination of the tribe over with as quickly as possible. If that meant cutting every tree in Oregon, they would have so authorized, simply to get on to another tribe.

In another example, the Kansas Potawatomi tribe was considered to be in such a low economic status that to assist it was felt to be too expensive. Better, the bureau said, to let the Potawatomis expire as private citizens than to have anyone find out how badly the federal government had shirked its responsibilities. Somehow they escaped the blow, although bureau assistance to them since 1954 has been nil.

In yet another example, the Alabama-Coushattas had a small reservation in Texas. They had been spared during the Texas Ranger sweep a century earlier because they had hidden Sam Houston when the Mexican government was after him during Texas' war with Mexico.

The bureau, meeting with the tribal council, told them the termination bill was concerned with forest management. They stated that any more cutting of timber on tribal lands would not be allowed unless the tribe agreed to the proposal. The tribe agreed, the law was quickly passed with little consultation with the state of Texas, and the tribe was placed under state trusteeship. There is still a question whether or not the constitution of Texas was violated.

Frantically the Joint Subcommittee searched for vulnerable and unsuspecting tribes for their termination program. Poor

tribes with no means to come to Washington and protest against proposals were in greatest danger. Absolute terror spread through Indian country as the power of the committee was arbitrarily used against the helpless Indian communities.

The Flatheads of Montana were saved only by the direct intervention of Mike Mansfield, who reminded the committee of the treaty rights of the tribe. The Florida Seminoles, 80 percent illiterate, were saved only through the intervention of the DAR's of that state.

Total relocation of the seven thousand Turtle Mountain Chippewas of North Dakota was considered. Watkins' plan was simply to relocate the Indians in a large city and forget about them. But the plan was blocked when North Dakota, in a fit of Christian charity, refused to provide any services whatsoever for the Chippewas should they be terminated.

The tragedy of the Menominee tribe of Wisconsin illustrates the extent of termination's failure. The tribe was one of the few paying for all its own services. The sum of $520,714.00 was budgeted by the tribe for the reservation the year before termination. The tribe invested $285,000 in construction projects, $56,745.00 for education, $47,021 for welfare, and $130,000 for health. It set aside $42,615 for law and order activities. The federal government, which was obligated to provide all of these services, actually spent only $95,000 for roads and $49,000 for education, on a matching basis with the state and tribe. The total federal cost per year for the Menominees was $144,000 or $50.85 per Indian. There was, consequently, not much to be saved by terminating them.

But they had won a $8.5 million judgment against the United States in the Court of Claims and needed legislation to distribute it. In 1908 federal legislation was passed which had given the Forest Service responsibility for administering the Menominee resources on a sustained-yield basis. In violation of this law, local government foresters had decided to clear-cut the forest, and the income which should have come to the Menominees through

the years on a sustained-yield basis was deprived them. Finally, in 1951 they had won their judgment against the United States, and the money was deposited to the tribe's account in the U.S. Treasury.

The Joint Subcommittee, particularly in the person of Watkins, was outraged that the tribe had been vindicated. They were determined to silence the Menominees once and for all. When a bill passed the House Interior Committee, which authorized the distribution of the judgment money, Watkins attached a provision to the bill in the Senate, requiring the tribe to submit to termination in order to get the money. The Menominees objected to the provision and Watkins held the bill until the end of the year.

There are varying reports on the sequence of developments after that. In 1960, when the Menominees went to Congress to get an extension on the date set for final termination of federal responsibilities, Senator Frank Church, then chairman of the Indian Subcommittee of the Senate, inquired of Mr. Lee of the Bureau of Indian Affairs just how the Menominee termination had come about. The record, as of 1960, is enlightening:

SENATOR CHURCH: Mr. Lee [from Interior] will you take me back a few years and tell me how this business got started? It is my understanding that originally the Menominee Tribe recovered a judgment against the Government which required legislation to distribute to the members of that tribe.

MR. LEE: That is correct.

SENATOR CHURCH: Legislation was proposed to effect a per capita distribution of this judgment fund.

MR. LEE: That is correct, $1,500.

SENATOR CHURCH: When it came to the Senate, the Senate amended the bill to provide that termination should take place in conjunction with the distribution of this money.

MR. LEE: That is correct. It was an interim step. In the meantime, Congress passed Senate Joint Resolution 108, which provided for the termination of certain tribes. I believe there were 10 tribes. Specifically——

SENATOR CHURCH: Was the Menominee Tribe one of the 10 tribes?

MR. LEE: The Menominee Tribe was one of the tribes. As you

have indicated, when H.R. 2828 was introduced in the 83rd Congress, it was passed by the House as a separate per capita bill of $1,500 per individual.

The Senate amended it and tacked termination on it and sent it back to the House. There were a number of conferences on it and finally, they worked out a compromise. This gets into the second question as to whether or not there was approval by the Indians.

SENATOR CHURCH: That is my second question. Did the Menominee Tribe, after this legislation was passed, then approve of termination by referendum of any kind?

MR. LEE: No, sir. As I recall, there was no referendum. The tribal delegates can correct me on this. They had a group that was negotiating with the conferees here in Washington and they stood up in the committees and agreed to this termination, I think, on the basis that the termination was coming regardless because of the resolution requiring termination.

SENATOR CHURCH: For this particular tribe?

MR. LEE: For this particular tribe.

SENATOR CHURCH: The question of termination was never taken to the Indians and put to a vote?

MR. LEE: As near as I know, there was never a general vote on termination in the tribe. Am I correct in that?

MR. WILKINSON: I can add one clarifying point to that. The chairman of the Indian Subcommittee of the Senate went to the reservation and met with the general council.

SENATOR ANDERSON: Senator Watkins.

MR. WILKINSON: That is right. There were approximately 150 people present. They voted that day to accept termination. There is one item which I thinks bears on it, which I think influenced the tribe to vote that way.

They were told that they could not have a per capita payment unless they accepted termination. Based on that, I felt they accepted it.

SENATOR ANDERSON: Senator Wakins did go there, he did present the matter, he did discuss it, he came back and reported to us that the tribe was enthusiastic for termination.

Of course, the answer was they were enthusiastic for the $1,500.

Senator Watkins had indeed gone to the Menominees and threatened the Indians. Recalling his visit, Watkins stated:

It was a very interesting experience. I appreciated your help in introducing me to those people and giving me the opportunity to see how they lived, how they felt about it. That was one of the most interesting experiences of the whole trip.

MR. WAUPOCHICK (a Menominee): We wish you could have stayed longer.

SENATOR WATKINS: I had the same experience visiting Europe, *the refugee camps of the Near East.* (emphasis added)

The Menominees had been so poor in comparision to other Americans that the only experience Watkins could relate his reservation visit with was his visit to refugee camps of the Near East after World War II.

The initial plan was for the Menominee forest to be turned over to the tribe for management. This plan was predicated on the fact that the Menominee tribe had over ten million dollars in the federal treasury. But the Menominees had to agree to termination in order to get a per capita distribution of that money authorized. Therefore the termination plan was based upon money that no longer existed.

Wisconsin strongly opposed the Menominees' termination. It was worried about the eventual effect of the plan on the community and the state. Mr. Harder, an official representing the Wisconsin Tax Commission, expressed the attitude of the state most concisely:

. . . I am concerned about that; because if they have to go to heavy taxation of their timberlands, that means they will have to cut on some other basis than their present sustained-yield method. And as soon as that happens, the forests will eventually deplete, and we may have a substantial welfare problem. That is a problem the State of Wisconsin now has with the Indians in the Bad River Reservation, where the lands were allotted, and the Indians sold their lands, and now they are on relief, in prosperous times as well as poor times. It is a continuing problem. And the State doesn't want anything like that to happen in this instance.

But Watkins, ideologically bound to traditional Republican myths, insisted that the state was more efficient than the federal government per se:

> Of course it is admitted the Federal Government moves slower than anybody else. The State government would be far more efficient. That is one reason we think federal supervision should be terminated, one among many reasons, because we can't move as fast as we should.

The tribal attorney, Mr. Wilkinson, appealed to the record of the Senate Civil Service Committee in which the original Zimmerman testimony was presented. Watkins callously informed him:

> If you want to comment on what he said, all right, but as far as I am personally concerned, and I think the rest of the committee, it is not going to make a lot of difference one way or another, except indicating that that far back this matter was discussed. So that there won't be any implication that certain parts of it haven't been brought up, I think that all of it should be included in this report and that will be the Chair's ruling.

So a reference to the Zimmerman recommendations which included the fifty-year tax exemption for the forest proved fruitless by the defenseless Menominees.

Their last argument was voiced by Antoine Waupochick, Chairman of the Menominee Advisory Council:

> History records that the Menominees have been loyal to this Government and have stood by their bargains when they have relinquished land to the United States. We think that your action should be governed by a desire to see that history will record that Congress was loyal to the Menominee people.

There was, however, no appeal for the tribe, either to historic commitments made by the federal government or to common sense of the present. Even after liberal Democrats took over the subcommittee after the 1958 sweep and firmly controlled the Senate in 1960, the attitude remained the same—dogmatic and idealistic:

> MR. GRIGNON [a Menominee]: . . . I believe if we are to terminate December 31, (the tribe was seeking an extension) with our economy so low where we cannot afford this county which is the cheapest for us to take, we will go until our money runs out. It is a question of what reserve we have in the fund.

SENATOR CHURCH: I think what Senator Anderson said was pretty wise. He suggested if you went on your own initiative, responsibility and resources, you might find a little resurgency of energy in the operation of the mill and things of that nature that might carry you along. It is the constant spoon feeding from the Federal Government that has held you back, is it not? You were getting ready for termination in 1954. Some tribes have terminated, you know, and they are getting along pretty well. But not the Menominees.

MR. GRIGNON: I believe one thing, Senator. If we were still making the kind of money as in 1958, I believe we certainly could terminate December 31, and be successful. If the economy was up, there would be no question in my mind.

Instead of providing assistance or admitting that a horrendous mistake had been made years ago, Frank Church admonished the Menominees to be more energetic.

But even Church, boy liberal from Idaho, had his moments of lucidity:

> This is the thing that disturbs me. We have come to the nub of this morning. All of the reasons that are put forth in support of extending the termination date make it plain that a 6 month extension is patently insufficient. This is evident on the face of the statement you have made. You support the extension because you say you have a marginal economy. You are going to have a marginal economy at the end of 6 months because to make it any other kind of economy is going to be an effort that will extend over many years.

The first War on Poverty by the Democrats was conducted in 1960 against a defenseless Indian tribe that asked only for justice. These same Senators who cold-bloodedly created a pocket of poverty in Wisconsin would later vote for the War on Poverty with good conscience.

With termination came the closing of the Menominee hospital. The tribe was unable, with the additional burden of taxation, to keep up its health program. Deprived of medical services and with poor housing, the infant death rate continued to rise. By July 1964, 14 percent of the county, which was the former reservation area, was receiving welfare payments. The State

Department of Public Welfare estimated that Menominee county needed a transfusion of ten to twenty million dollars to bring it up to par with other Wisconsin counties.

How much did the Menominee termination save the federal government? By 1960 the costs simply to plan for termination had become tremendous:

> MR. LEE: First, about how much money has been appropriated; there has been $500,000 appropriated to reimburse the tribe for their termination expenses. We have spent, including the reimbursement termination expenses $700,000 for special road construction, $644,000 I mentioned on special adult education program. We have already reimbursed $195,500 to the tribe for their termination expenses. We anticipate between now and the termination, if the termination does not drag on, another $161,000. HEW, as I understand it, has committed $510,000 for school construction. We have spent $136,000 in addition to agency expenses which were previously carried by the tribe. We are in the process of completing a survey for about $35,000. We have just made another assignment of a Bureau staff member mentioned this morning, of $6,000. This will bring a total we anticipate of $2,357,039 by December 31 (1960).

In addition to the $2,357,039, however, in 1961 the federal government had to give the Menominees $1,098,000 over a period of five years, to cover education and health subsidies for problems caused by termination. In 1966, because the county was rapidly going downhill, another law was passed giving the tribe another $1.5 million over a three-year period. By 1964 the state of Wisconsin had granted the tribe some $52,363 in special contributions to welfare costs. But by then the situation was so desperate that the state was forced to make a special grant of $1 million to individuals in the county to keep their shares in the Menominee Enterprises from going out of Menominee hands and disenfranchising the tribe from its forest.

Clearly, with some $5 million of special federal aid, over $1 million in state aid, and a rapidly sinking economy combined with increasing health and education problems and a skyrocketing tuberculosis rate, termination has not been a success for the

Menominees. It has been a rationally planned and officially blessed disaster of the United States Congress.

Whenever a tribe has been terminated all federal assistance stops. The number of Indian people who have died because health services were unavailable is difficult to define, but must certainly run into a significant number.

With the advent of the War on Poverty the push for termination has slowed, but certainly not stopped. Chief advocate of termination is James Gamble, staff member of the Senate Interior Committee, which is the parent committee of the Indian Subcommittee. Gamble has remained in the background while Henry Jackson, Chairman of the committee, has had to accept public responsibility for Gamble's moves against the tribes.

Rarely does a judgment bill come before the committee but what Gamble tries to have a termination rider attached. So powerful is Gamble that Jackson might be characterized as his front man. But Jackson is busy with his work on the Foreign Relations and other important committees and so he accepts Gamble's recommendations without much consideration of alternatives.

The chief termination problem in recent years has been that of the Colville tribe of Eastern Washington, Jackson's home state. In the closing years of the 1950's the Colvilles received some land back. This land had been part of the reservation and was opened for homestead. However, when some of it remained unused, the tribe asked for its return. Termination was the price the Colvilles were asked to pay for their own land.

Analysis of the Colville termination bill as it is now proposed reveals Gamble's method of operation. The bill provides that the act will become effective after a referendum of the adult members of the tribe. No provision is included to require that a majority of the enrolled adult members vote in the referendum. Thus a majority of fifty voters out of the five thousand plus tribal members would be sufficient to terminate the tribe. Zimmerman's original proposal, which incidentally contained no

reference to the Colvilles, provided for a majority of the enrolled adults to *initiate* any movement toward termination of supervision. The bill is comparable to a corporation being required to liquidate on the vote of those present at a stockholders' meeting, with no majority of stock being sufficient to carry the motion.

After the referendum is taken, the members will find out what they voted for. The reservation will then be appraised by three independent professionals and the three figures averaged. The average value is the price the United States will pay the tribe for its reservation. Any other group of American citizens would not dream of selling their property without knowing what the price was. Yet, since Congress is presumed to act with good faith toward the Indian people, this bill is considered to be sufficient justice for them. Can you imagine Henry Jackson, sponsor of the bill, walking into the offices of white businessmen in Everett, Washington, and asking them to sell him their property, with values to be determined six months after the sale? Jackson expects, and intends to write into law, a provision for Indians to do exactly this.

Section 15 of the bill is a typical Gamble gambit. There is a provision that while the money is being distributed, the Secretary of the Interior can determine whether any member of the tribe is incompetent and appoint a guardian for him. Incompetency is never mentioned as a requirement for voting in the first part of the bill. But hidden in the middle is a provision giving the Secretary of the Interior unlimited discretionary power over Indian people. Theoretically the Secretary could declare all of the Colvilles incompetent and place them under a private trustee. They would then be judged too incompetent to handle their own money, but competent enough to vote to sell their reservation. Is it any wonder that Indians distrust white men?

The major tribes of the nation have waged a furious battle against the Colville termination bill. Fortunately the House Interior Committee has been sympathetic to Indian pleas and has to date not passed the bill. Another mood, however, can come

over the House committee and sentiment may turn toward termination. This uncertainty creates fear and resentment among Indian people.

Under consideration at the present time is another termination bill. In 1964 the Seneca Nation of New York finally received its compensation for the land taken for the Kinzua Dam. Kinzua, as you will recall, was built by breaking the Pickering Treaty of 1794, which had pledged that the Senecas would remain undisturbed in the use of their land.

But before the Senecas could get the Senate Interior Committee to approve their judgment bill they had to agree to section 18, a termination rider, which required the Senecas to develop a plan for termination within three years. The Senate was determined to punish the tribe for having the temerity to ask for compensation for land which the United States had illegally taken.

If termination means the withdrawal of federal services in order to cut government expenditures, then the Seneca termination requirement is truly ironic. The only federal assistance the Senecas received in recent years was a staff man assigned by the Bureau of Indian Affairs to assist them in problems caused the tribe by the building of Kinzua Dam.

The Seneca bill proposes to capitalize annuities payable to the Senecas under a number of treaties and pay the tribe outright. Annuities amount to very little, but the Senecas regard them as highly symbolic, as they represent the historic commitments of the tribe and the United States. They have more of a religious and historical significance than they do monetary value.

Section 9 of the bill provides that the act shall not become effective until a resolution consenting to its provisions has been approved by a majority of the eligible voters of the Seneca Nation voting in a referendum. Why the difference between the Seneca bill and the Colville bill as to voting requirements? Gamble and Jackson are responsible for the Colville bill. The Bureau of Indian Affairs drafted the Seneca bill.

Termination is the single most important problem of the American Indian people at the present time. Since 1954 the National Congress of American Indians and most inter-tribal councils of the various states have petitioned the Senate committee and the Congress every year for a change in policy. There has been no change.

Sympathetic Senators and Congressmen have introduced new policy resolutions to take the place of the old HCR 108—which, Gamble insists, is Congressional policy though such resolutions usually die at the end of each Congress. Rarely do these new policy statements receive more than perfunctory attention. None are ever passed.

Indian people receive little if any help from their friends. Churches have been notably unsympathetic, preferring to work with the blacks, where they are assured of proper publicity. The attitude of the churches is not new. My father was fired from his post with the Episcopal Church for trying to get the church involved with the termination issue in the 1950's. Had the churches supported the Indian people in 1954, we would be tempted to believe their sincerity about Civil Rights today. But when the going is rough, churches disappear from sight. Judas, not Peter, characterizes the Apostolic succession.

The response from the American public has been gratifying at times, disappointing at other times. Public support for the Senecas was widespread but the land was still taken and a termination rider added. Interest on the Colville termination has not been great because the problem of fishing rights in the same area has received all of the publicity. In general, the public does not understand the issue of termination, and public statements of termination-minded Senators make it appear to be the proper course of action.

Too often termination has been heavily disguised as a plan to offer the Indian people full citizenship rights. Thus the Washington State legislature has been continually and deliberately misled by a few urban and termination-minded Colvilles into passing a resolution asking for the extinguishment of the Colville

tribal entity and the vesting of the Colville people with "full citizenship" rights.

In fact, the Citizenship Act of 1924 gave all Indians full citizenship without affecting any of their rights as Indian people. So the argument of second-class citizenship as a justification of termination is spurious from start to finish.

In practice, termination is used as a weapon against the Indian people in a modern war of conquest. Neither the Senecas nor the Colvilles were listed in the original discussion of termination by Acting Commissioner Zimmerman in 1947. Nor were these tribes listed in House Concurrent Resolution 108, which outlined termination and mentioned tribes eligible for immediate consideration.

Both tribes have had to submit to termination provisions in legislation which had nothing to do with the termination policy as originally defined by Congress. The Senecas and the Colvilles got caught in the backlash of Congressional ire at the Bureau of Indian Affairs. The Senecas had money coming to them because of the gross violation of their rights under treaty. The Colvilles wanted land returned which was theirs and which had been unjustly taken years before.

In the case of the Colvilles the record is doubly ironic. The tribe rejected the provisions of the Indian Reorganization Act and was determined to operate under a constitution of its own choosing. At the same time, under the IRA the Secretary of the Interior has full authority to return lands to the tribe, but he does not have authority to return lands to non-IRA tribes. Thus failure years before to adopt a constitution under the Indian Reorganization Act unexpectedly backfired on the tribe.

When the Kennedys and King were assassinated people wailed and moaned over the "sick" society. Most people took the assassinations as a symptom of a deep inner rot that had suddenly set in. They needn't have been shocked. America has been sick for some time. It got sick when the first Indian treaty was broken. It has never recovered.

When a policy is used as a weapon to force cultural confronta-

tion, then the underlying weakness of society is apparent. No society which has real and lasting values need rely on force for their propagation.

It is now up to the American people to make their will known. Can they condone the continual abuse of the American Indian by Congressmen and bureaucrats who use an unjust Congressional policy to threaten the lives and property of Indian people? Is the word of America good only to support its ventures overseas in Vietnam or does it extend to its own citizens?

If America has done to us as it wishes others to do to her, then the future will not be bright. America is running up a great debt. It may someday see the wholesale despoilation of its lands and people by a foreign nation.

AN INDIGENOUS PEOPLES' HISTORY OF THE UNITED STATES

ROXANNE DUNBAR-ORTIZ

ReVisioning American History

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THIS LAND

We are here to educate, not forgive.
We are here to enlighten, not accuse.

—Willie Johns, Brighton Seminole Reservation, Florida

Under the crust of that portion of Earth called the United States of America—"from California . . . to the Gulf Stream waters"—are interred the bones, villages, fields, and sacred objects of American Indians.[1] They cry out for their stories to be heard through their descendants who carry the memories of how the country was founded and how it came to be as it is today.

It should not have happened that the great civilizations of the Western Hemisphere, the very *evidence* of the Western Hemisphere, were wantonly destroyed, the gradual progress of humanity interrupted and set upon a path of greed and destruction.[2] Choices were made that forged that path toward destruction of life itself—the moment in which we now live and die as our planet shrivels, overheated. To learn and know this history is both a necessity and a responsibility to the ancestors and descendants of all parties.

What historian David Chang has written about the land that became Oklahoma applies to the whole United States: "Nation, race, and class converged in land."[3] Everything in US history is about the land—who oversaw and cultivated it, fished its waters, maintained its wildlife; who invaded and stole it; how it became a commodity ("real estate") broken into pieces to be bought and sold on the market.

US policies and actions related to Indigenous peoples, though

often termed "racist" or "discriminatory," are rarely depicted as what they are: classic cases of imperialism and a particular form of colonialism—settler colonialism. As anthropologist Patrick Wolfe writes, "The question of genocide is never far from discussions of settler colonialism. Land is life—or, at least, land is necessary for life."[4]

The history of the United States is a history of settler colonialism—the founding of a state based on the ideology of white supremacy, the widespread practice of African slavery, and a policy of genocide and land theft. Those who seek history with an upbeat ending, a history of redemption and reconciliation, may look around and observe that such a conclusion is not visible, not even in utopian dreams of a better society.

Writing US history from an Indigenous peoples' perspective requires rethinking the consensual national narrative. That narrative is wrong or deficient, not in its facts, dates, or details but rather in its essence. Inherent in the myth we've been taught is an embrace of settler colonialism and genocide. The myth persists, not for a lack of free speech or poverty of information but rather for an absence of motivation to ask questions that challenge the core of the scripted narrative of the origin story. How might acknowledging the reality of US history work to transform society? That is the central question this book pursues.

Teaching Native American studies, I always begin with a simple exercise. I ask students to quickly draw a rough outline of the United States at the time it gained independence from Britain. Invariably most draw the approximate present shape of the United States from the Atlantic to the Pacific—the continental territory not fully appropriated until a century after independence. What became independent in 1783 were the thirteen British colonies hugging the Atlantic shore. When called on this, students are embarrassed because they know better. I assure them that they are not alone. I call this a Rorschach test of unconscious "manifest destiny," embedded in the minds of nearly everyone in the United States and around the world. This test reflects the seeming inevitability of US extent and power, its destiny, with an implication that the continent had previously been *terra nullius,* a land without people.

Woody Guthrie's "This Land Is Your Land" celebrates that the

land belongs to everyone, reflecting the unconscious manifest destiny we live with. But the extension of the United States from sea to shining sea was the intention and design of the country's founders. "Free" land was the magnet that attracted European settlers. Many were slave owners who desired limitless land for lucrative cash crops. After the war for independence but preceding the writing of the US Constitution, the Continental Congress produced the Northwest Ordinance. This was the first law of the incipient republic, revealing the motive for those desiring independence. It was the blueprint for gobbling up the British-protected Indian Territory ("Ohio Country") on the other side of the Appalachians and Alleghenies. Britain had made settlement there illegal with the Proclamation of 1763.

In 1801, President Jefferson aptly described the new settler-state's intentions for horizontal and vertical continental expansion, stating: "However our present interests may restrain us within our own limits, it is impossible not to look forward to distant times, when our rapid multiplication will expand itself beyond those limits and cover the whole northern, if not the southern continent, with a people speaking the same language, governed in similar form by similar laws." This vision of manifest destiny found form a few years later in the Monroe Doctrine, signaling the intention of annexing or dominating former Spanish colonial territories in the Americas and the Pacific, which would be put into practice during the rest of the century.

Origin narratives form the vital core of a people's unifying identity and of the values that guide them. In the United States, the founding and development of the Anglo-American settler-state involves a narrative about Puritan settlers who had a covenant with God to take the land. That part of the origin story is supported and reinforced by the Columbus myth and the "Doctrine of Discovery." According to a series of late-fifteenth-century papal bulls, European nations acquired title to the lands they "discovered" and the Indigenous inhabitants lost their natural right to that land after Europeans arrived and claimed it.[5] As law professor Robert A. Williams observes about the Doctrine of Discovery:

> Responding to the requirements of a paradoxical age of Renaissance and Inquisition, the West's first modern discourses

> of conquest articulated a vision of all humankind united under a rule of law discoverable solely by human reason. Unfortunately for the American Indian, the West's first tentative steps towards this noble vision of a Law of Nations contained a mandate for Europe's subjugation of all peoples whose radical divergence from European-derived norms of right conduct signified their need for conquest and remediation.[6]

The Columbus myth suggests that from US independence onward, colonial settlers saw themselves as part of a world system of colonization. "Columbia," the poetic, Latinate name used in reference to the United States from its founding throughout the nineteenth century, was based on the name of Christopher Columbus. The "Land of Columbus" was—and still is—represented by the image of a woman in sculptures and paintings, by institutions such as Columbia University, and by countless place names, including that of the national capital, the District of Columbia.[7] The 1798 hymn "Hail, Columbia" was the early national anthem and is now used whenever the vice president of the United States makes a public appearance, and Columbus Day is still a federal holiday despite Columbus never having set foot on the continent claimed by the United States.

Traditionally, historians of the United States hoping to have successful careers in academia and to author lucrative school textbooks became protectors of this origin myth. With the cultural upheavals in the academic world during the 1960s, engendered by the civil rights movement and student activism, historians came to call for objectivity and fairness in revising interpretations of US history. They warned against moralizing, urging instead a dispassionate and culturally relative approach. Historian Bernard Sheehan, in an influential essay, called for a "cultural conflict" understanding of Native–Euro-American relations in the early United States, writing that this approach "diffuses the locus of guilt."[8] In striving for "balance," however, historians spouted platitudes: "There were good and bad people on both sides." "American culture is an amalgamation of all its ethnic groups." "A frontier is a zone of interaction between cultures, not merely advancing European settlements."

Later, trendy postmodernist studies insisted on Indigenous "agency" under the guise of individual and collective empowerment, making the casualties of colonialism responsible for their own demise. Perhaps worst of all, some claimed (and still claim) that the colonizer and colonized experienced an "encounter" and engaged in "dialogue," thereby masking reality with justifications and rationalizations—in short, apologies for one-sided robbery and murder. In focusing on "cultural change" and "conflict between cultures," these studies avoid fundamental questions about the formation of the United States and its implications for the present and future. This approach to history allows one to safely put aside present responsibility for continued harm done by that past and the questions of reparations, restitution, and reordering society.[9]

Multiculturalism became the cutting edge of post-civil-rights-movement US history revisionism. For this scheme to work—and affirm US historical progress—Indigenous nations and communities had to be left out of the picture. As territorially and treaty-based peoples in North America, they did not fit the grid of multiculturalism but were included by transforming them into an inchoate oppressed racial group, while colonized Mexican Americans and Puerto Ricans were dissolved into another such group, variously called "Hispanic" or "Latino." The multicultural approach emphasized the "contributions" of individuals from oppressed groups to the country's assumed greatness. Indigenous peoples were thus credited with corn, beans, buckskin, log cabins, parkas, maple syrup, canoes, hundreds of place names, Thanksgiving, and even the concepts of democracy and federalism. But this idea of the gift-giving Indian helping to establish and enrich the development of the United States is an insidious smoke screen meant to obscure the fact that the very existence of the country is a result of the looting of an entire continent and its resources. The fundamental unresolved issues of Indigenous lands, treaties, and sovereignty could not but scuttle the premises of multiculturalism.

With multiculturalism, manifest destiny won the day. As an example, in 1994, Prentice Hall (part of Pearson Education) published a new college-level US history textbook, authored by four members of a new generation of revisionist historians. These radical

social historians are all brilliant scholars with posts in prestigious universities. The book's title reflects the intent of its authors and publisher: *Out of Many: A History of the American People.* The origin story of a supposedly unitary nation, albeit now multicultural, remained intact. The original cover design featured a multicolored woven fabric—this image meant to stand in place of the discredited "melting pot." Inside, facing the title page, was a photograph of a Navajo woman, dressed formally in velvet and adorned with heavy sterling silver and turquoise jewelry. With a traditional Navajo dwelling, a hogan, in the background, the woman was shown kneeling in front of a traditional loom, weaving a nearly finished rug. The design? The Stars and Stripes! The authors, upon hearing my objection and explanation that Navajo weavers make their livings off commissioned work that includes the desired design, responded: "But it's a real photograph." To the authors' credit, in the second edition they replaced the cover photograph and removed the Navajo picture inside, although the narrative text remains unchanged.

Awareness of the settler-colonialist context of US history writing is essential if one is to avoid the laziness of the default position and the trap of a mythological unconscious belief in manifest destiny. The form of colonialism that the Indigenous peoples of North America have experienced was modern from the beginning: the expansion of European corporations, backed by government armies, into foreign areas, with subsequent expropriation of lands and resources. Settler colonialism is a genocidal policy. Native nations and communities, while struggling to maintain fundamental values and collectivity, have from the beginning resisted modern colonialism using both defensive and offensive techniques, including the modern forms of armed resistance of national liberation movements and what now is called terrorism. In every instance they have fought for survival as peoples. The objective of US colonialist authorities was to terminate their existence as peoples—not as random individuals. This is the very definition of modern genocide as contrasted with premodern instances of extreme violence that did not have the goal of extinction. The United States as a socioeconomic and political entity is a result of this centuries-long and ongoing colonial process.

Modern Indigenous nations and communities are societies formed by their resistance to colonialism, through which they have carried their practices and histories. It is breathtaking, but no miracle, that they have survived as peoples.

To say that the United States is a colonialist settler-state is not to make an accusation but rather to face historical reality, without which consideration not much in US history makes sense, unless Indigenous peoples are erased. But Indigenous nations, through resistance, have survived and bear witness to this history. In the era of worldwide decolonization in the second half of the twentieth century, the former colonial powers and their intellectual apologists mounted a counterforce, often called neocolonialism, from which multiculturalism and postmodernism emerged. Although much revisionist US history reflects neocolonialist strategy—an attempt to accommodate new realities in order to retain the dominance—neocolonialist methods signal victory for the colonized. Such approaches pry off a lid long kept tightly fastened. One result has been the presence of significant numbers of Indigenous scholars in US universities who are changing the terms of analysis. The main challenge for scholars in revising US history in the context of colonialism is not lack of information, nor is it one of methodology. Certainly difficulties with documentation are no more problematic than they are in any other area of research. Rather, the source of the problems has been the refusal or inability of US historians to comprehend the nature of their own history, US history. The fundamental problem is the absence of the colonial framework.

Through economic penetration of Indigenous societies, the European and Euro-American colonial powers created economic dependency and imbalance of trade, then incorporated the Indigenous nations into spheres of influence and controlled them indirectly or as protectorates, with indispensable use of Christian missionaries and alcohol. In the case of US settler colonialism, land was the primary commodity. With such obvious indicators of colonialism at work, why should so many interpretations of US political-economic development be convoluted and obscure, avoiding the obvious? To some extent, the twentieth-century emergence of the field of "US

West" or "Borderlands" history has been forced into an incomplete and flawed settler-colonialist framework. The father of that field of history, Frederick Jackson Turner, confessed as much in 1901: "Our colonial system did not start with the Spanish War [1898]; the U.S. had had a colonial history and policy from the beginning of the Republic; but they have been hidden under the phraseology of 'interstate migration' and 'territorial organization.'"[10]

Settler colonialism, as an institution or system, requires violence or the threat of violence to attain its goals. People do not hand over their land, resources, children, and futures without a fight, and that fight is met with violence. In employing the force necessary to accomplish its expansionist goals, a colonizing regime institutionalizes violence. The notion that settler-indigenous conflict is an inevitable product of cultural differences and misunderstandings, or that violence was committed equally by the colonized and the colonizer, blurs the nature of the historical processes. Euro-American colonialism, an aspect of the capitalist economic globalization, had from its beginnings a genocidal tendency.

The term "genocide" was coined following the Shoah, or Holocaust, and its prohibition was enshrined in the United Nations convention adopted in 1948: the UN Convention on the Prevention and Punishment of the Crime of Genocide. The convention is not retroactive but is applicable to US-Indigenous relations since 1988, when the US Senate ratified it. The terms of the genocide convention are also useful tools for historical analysis of the effects of colonialism in any era. In the convention, any one of five acts is considered genocide if "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group":

> killing members of the group;
> causing serious bodily or mental harm to members of the group;
> deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> imposing measures intended to prevent births within the group;
> forcibly transferring children of the group to another group.[11]

In the 1990s, the term "ethnic cleansing" became a useful descriptive term for genocide.

US history, as well as inherited Indigenous trauma, cannot be understood without dealing with the genocide that the United States committed against Indigenous peoples. From the colonial period through the founding of the United States and continuing in the twenty-first century, this has entailed torture, terror, sexual abuse, massacres, systematic military occupations, removals of Indigenous peoples from their ancestral territories, and removals of Indigenous children to military-like boarding schools. The absence of even the slightest note of regret or tragedy in the annual celebration of the US independence betrays a deep disconnect in the consciousness of US Americans.

Settler colonialism is inherently genocidal in terms of the genocide convention. In the case of the British North American colonies and the United States, not only extermination and removal were practiced but also the disappearing of the prior existence of Indigenous peoples—and this continues to be perpetuated in local histories. Anishinaabe (Ojibwe) historian Jean O'Brien names this practice of writing Indians out of existence "firsting and lasting." All over the continent, local histories, monuments, and signage narrate the story of first settlement: the founder(s), the first school, first dwelling, first everything, as if there had never been occupants who thrived in those places before Euro-Americans. On the other hand, the national narrative tells of "last" Indians or last tribes, such as "the last of the Mohicans," "Ishi, the last Indian," and *End of the Trail*, as a famous sculpture by James Earle Fraser is titled.[12]

Documented policies of genocide on the part of US administrations can be identified in at least four distinct periods: the Jacksonian era of forced removal; the California gold rush in Northern California; the post–Civil War era of the so-called Indian wars in the Great Plains; and the 1950s termination period, all of which are discussed in the following chapters. Cases of genocide carried out as policy may be found in historical documents as well as in the oral histories of Indigenous communities. An example from 1873 is typical, with General William T. Sherman writing, "We must act with vindictive earnestness against the Sioux, even to their

extermination, men, women and children . . . during an assault, the soldiers can not pause to distinguish between male and female, or even discriminate as to age."[13] As Patrick Wolfe has noted, the peculiarity of settler colonialism is that the goal is elimination of Indigenous populations in order to make land available to settlers. That project is not limited to government policy, but rather involves all kinds of agencies, voluntary militias, and the settlers themselves acting on their own.[14]

In the wake of the US 1950s termination and relocation policies, a pan-Indigenous movement arose in tandem with the powerful African American civil rights movement and the broad-based social justice and antiwar movements of the 1960s. The Indigenous rights movement succeeded in reversing the US termination policy. However, repression, armed attacks, and legislative attempts to undo treaty rights began again in the late 1970s, giving rise to the international Indigenous movement, which greatly broadened the support for Indigenous sovereignty and territorial rights in the United States.

The early twenty-first century has seen increased exploitation of energy resources begetting new pressures on Indigenous lands. Exploitation by the largest corporations, often in collusion with politicians at local, state, and federal levels, and even within some Indigenous governments, could spell a final demise for Indigenous land bases and resources. Strengthening Indigenous sovereignty and self-determination to prevent that result will take general public outrage and demand, which in turn will require that the general population, those descended from settlers and immigrants, know their history and assume responsibility. Resistance to these powerful corporate forces continues to have profound implications for US socioeconomic and political development and the future.

There are more than five hundred federally recognized Indigenous communities and nations, comprising nearly three million people in the United States. These are the descendants of the fifteen million original inhabitants of the land, the majority of whom were farmers who lived in towns. The US establishment of a system of

Indian reservations stemmed from a long British colonial practice in the Americas. In the era of US treaty-making from independence to 1871, the concept of the reservation was one of the Indigenous nation reserving a narrowed land base from a much larger one in exchange for US government protection from settlers and the provision of social services. In the late nineteenth century, as Indigenous resistance was weakened, the concept of the reservation changed to one of land being carved out of the public domain of the United States as a benevolent gesture, a "gift" to the Indigenous peoples. Rhetoric changed so that reservations were said to have been "given" or "created" for Indians. With this shift, Indian reservations came to be seen as enclaves within state' boundaries. Despite the political and economic reality, the impression to many was that Indigenous people were taking a free ride on public domain.

Beyond the land bases within the limits of the 310 federally recognized reservations—among 554 Indigenous groups—Indigenous land, water, and resource rights extend to all federally acknowledged Indigenous communities within the borders of the United States. This is the case whether "within the original or subsequently acquired territory thereof, and whether within or without the limits of a state," and includes all allotments as well as rights-of-way running to and from them.[15] Not all the federally recognized Indigenous nations have land bases beyond government buildings, and the lands of some Native nations, including those of the Sioux in the Dakotas and Minnesota and the Ojibwes in Minnesota, have been parceled into multiple reservations, while some fifty Indigenous nations that had been removed to Oklahoma were entirely allotted—divided by the federal government into individual Native-owned parcels. Attorney Walter R. Echo-Hawk writes:

> In 1881, Indian landholdings in the United States had plummeted to 156 million acres. By 1934, only about 50 million acres remained (an area the size of Idaho and Washington) as a result of the General Allotment Act of 1887. During World War II, the government took 500,000 more acres for military use. Over one hundred tribes, bands, and Rancherias

> relinquished their lands under various acts of Congress during the termination era of the 1950s. By 1955, the indigenous land base had shrunk to just 2.3 percent of its original size.[16]

As a result of federal land sales, seizures, and allotments, most reservations are severely fragmented. Each parcel of tribal, trust, and privately held land is a separate enclave under multiple laws and jurisdictions. The Diné (Navajo) Nation has the largest contemporary contiguous land base among Native nations: nearly sixteen million acres, or nearly twenty-five thousand square miles, the size of West Virginia. Each of twelve other reservations is larger than Rhode Island, which comprises nearly eight hundred thousand acres, or twelve hundred square miles, and each of nine other reservations is larger than Delaware, which covers nearly a million and a half acres, or two thousand square miles. Other reservations have land bases of fewer than thirty-two thousand acres, or fifty square miles.[17] A number of independent nation-states with seats in the United Nations have less territory and smaller populations than some Indigenous nations of North America.

Following World War II, the United States was at war with much of the world, just as it was at war with the Indigenous peoples of North America in the nineteenth century. This was total war, demanding that the enemy surrender unconditionally or face annihilation. Perhaps it was inevitable that the earlier wars against Indigenous peoples, if not acknowledged and repudiated, ultimately would include the world. According to the origin narrative, the United States was born of rebellion against oppression—against empire—and thus is the product of the first anticolonial revolution for national liberation. The narrative flows from that fallacy: the broadening and deepening of democracy; the Civil War and the ensuing "second revolution," which ended slavery; the twentieth-century mission to save Europe from itself—twice; and the ultimately triumphant fight against the scourge of communism, with the United States inheriting the difficult and burdensome task of keeping order in the world. It's a narrative of progress. The 1960s social revolutions, ignited by the African American liberation movement, complicated the origin nar-

rative, but its structure and periodization have been left intact. After the 1960s, historians incorporated women, African Americans, and immigrants as contributors to the commonweal. Indeed, the revised narrative produced the "nation of immigrants" framework, which obscures the US practice of colonization, merging settler colonialism with immigration to metropolitan centers during and after the industrial revolution. Native peoples, to the extent that they were included at all, were renamed "First Americans" and thus themselves cast as distant immigrants.

The provincialism and national chauvinism of US history production make it difficult for effective revisions to gain authority. Scholars, both Indigenous and a few non-Indigenous, who attempt to rectify the distortions, are labeled advocates, and their findings are rejected for publication on that basis. Indigenous scholars look to research and thinking that has emerged in the rest of the European-colonized world. To understand the historical and current experiences of Indigenous peoples in the United States, these thinkers and writers draw upon and creatively apply the historical materialism of Marxism, the liberation theology of Latin America, Frantz Fanon's psychosocial analyses of the effects of colonialism on the colonizer and the colonized, and other approaches, including development theory and postmodern theory. While not abandoning insights gained from those sources, due to the "exceptional" nature of US colonialism among nineteenth-century colonial powers, Indigenous scholars and activists are engaged in exploring new approaches.

This book claims to be a history of the United States from an Indigenous peoples' perspective but there is no such thing as a collective Indigenous peoples' perspective, just as there is no monolithic Asian or European or African peoples' perspective. This is not a history of the vast civilizations and communities that thrived and survived between the Gulf of Mexico and Canada and between the Atlantic Ocean and the Pacific. Such histories have been written, and are being written by historians of Diné, Lakota, Mohawk, Tlingit, Muskogee, Anishinaabe, Lumbee, Inuit, Kiowa, Cherokee, Hopi, and other Indigenous communities and nations that have survived colonial genocide. This book attempts to tell the story of

the United States as a colonialist settler-state, one that, like colonialist European states, crushed and subjugated the original civilizations in the territories it now rules. Indigenous peoples, now in a colonial relationship with the United States, inhabited and thrived for millennia before they were displaced to fragmented reservations and economically decimated.

This is a history of the United States.

EIGHT

"INDIAN COUNTRY"

Buffalo were dark rich clouds moving upon the rolling hills and plains of America. And then the flashing steel came upon bone and flesh.

—Simon J. Ortiz, *from Sand Creek*

The US Army on the eve of the Civil War was divided into seven departments—a structure designed by John C. Calhoun during the Monroe administration. By 1860, six of the seven departments, comprising 183 companies, were stationed west of the Mississippi, a colonial army fighting the Indigenous occupants of the land. In much of the western lands, the army was the primary US government institution; the military roots to institutional development run deep.

President Abraham Lincoln was inaugurated in March 1861, two months after the South had seceded from the union. In April, the Confederate States of America (CSA) seized the army base at Fort Sumter near Charleston, South Carolina. Of more than a thousand US Army officers, 286 left to serve the CSA, half of them being West Point graduates, most of them Indian fighters, including Robert E. Lee. Three of the seven army department commanders took leadership of the Confederate Army. Based on demographics alone, the South had little chance of winning, so it is all the more remarkable that it persisted against the Union for more than four years. The 1860 population of the United States was nearly thirty-two million, with twenty-three million in the twenty-two northern states, and about nine million in the eleven southern states. More than a third of the nine million Southerners were enslaved people of African heritage. Within the CSA, 76 percent of settlers owned no

slaves. Roughly 60–70 percent of those without slaves owned fewer than a hundred acres of land. Less than 1 percent owned more than a hundred slaves. Seventeen percent of settlers in the South owned one to nine slaves, and only 6.5 percent owned more than ten. Ten percent of the settlers who owned no slaves were also landless, while that many more managed to barely survive on small dirt farms. The Confederate Army reflected the same kind of percentages.[1] Those who, even today, claim that "states' rights" caused Southern secession and the Civil War use these statistics to argue that slavery was not the cause of the Civil War, but that is false. Every settler in the Southern states aspired to own land and slaves or to own *more* land and *more* slaves, as both social status and wealth depended on the extent of property owned. Even small and landless farmers relied on slavery-based rule: the local slave plantation was the market for what small farmers produced, and planters hired landless settlers as overseers and sharecroppers. Most non-slave-owning settlers supported and fought for the Confederacy.

LINCOLN'S "FREE SOIL" FOR SETTLERS

Abraham Lincoln's campaign for the presidency appealed to the vote of land-poor settlers who demanded that the government "open" Indigenous lands west of the Mississippi. They were called "free-soilers," in reference to cheap land free of slavery. New gold rushes and other incentives brought new waves of settlers to squat on Indigenous land. For this reason, some Indigenous people preferred a Confederate victory, which might divide and weaken the United States, which had grown ever more powerful. Indigenous nations in Indian Territory were more directly affected by the Civil War than anywhere else. As discussed in chapter 6, the southeastern nations—the Cherokees, Muskogees, Seminoles, Choctaws, and Chickasaws ("Five Civilized Tribes")—were forcibly removed from their homelands during the Jackson administration, but in the Indian Territory they rebuilt their townships, farms, ranches, and institutions, including newspapers, schools, and orphanages. Although a tiny elite of each nation was wealthy and owned enslaved Africans and

private estates, the majority of the people continued their collective agrarian practices. All five nations signed treaties with the Confederacy, each for similar reasons. Within each nation, however, there was a clear division based on class, often misleadingly expressed as a conflict between "mixed-bloods" and "full-bloods." That is, the wealthy, assimilated, slave-owning minority that dominated politics favored the Confederacy, and the non-slave-owning poor and traditional majority wanted to stay out of the Anglo-American civil war. Historian David Chang found that Muskogee nationalism and well-founded distrust of federal power played a major role in bringing about that nation's strategic alliance with the Confederacy. Chang writes: "Was the Creek council's alliance with the South a racist defense of slavery and its class privileges, or was it a nationalist defense of Creek lands and sovereignty? The answer has to be 'both.'"[2]

John Ross, principal chief of the Cherokee Nation, at first called for neutrality, but changed his mind for reasons similar to the Muskogees and asked the Cherokee council for authority to negotiate a treaty with the CSA. Nearly seven thousand men of the five nations went into battle for the Confederacy. Stand Watie, a Cherokee, held the post of brigadier general in the Confederate Army. His First Indian Brigade of the Army of the Trans-Mississippi was among the last units in the field to surrender to the Union Army on June 23, 1865, more than two months after Lee's surrender of the Army of Northern Virginia at Appomattox Courthouse in April 1865. During the war, however, many Indigenous soldiers became disillusioned and went over to the Union forces, along with enslaved African Americans who fled to freedom.[3]

Another story is equally important, though less often told. A few months after the war broke out, some ten thousand men in Indian Territory, made up of Indigenous volunteers, along with African Americans who had freed themselves and even some Anglo-Americans, engaged in guerrilla warfare against the Confederate Army. They fought from Oklahoma into Kansas, where many of them joined unofficial Union units that had been organized by abolitionists who had trained with John Brown years earlier. This was not likely the kind of war the Lincoln administration had desired—a multiethnic volunteer Union contingent fighting pro-slavery forces

in Missouri, where enslaved Africans escaped to join the Union side.[4] The self-liberation by African Americans, occurring all over the South, led to Lincoln's 1863 Emancipation Proclamation, which allowed freed Africans to serve in combat.

In Minnesota, which had become a non-slavery state in 1859, the Dakota Sioux were on the verge of starvation by 1862. When they mounted an uprising to drive out the mostly German and Scandinavian settlers, Union Army troops crushed the revolt, slaughtering Dakota civilians and rounding up several hundred men. Three hundred prisoners were sentenced to death, but upon Lincoln's orders to reduce the numbers, thirty-eight were selected at random to die in the largest mass hanging in US history. The revered leader Little Crow was not among those hanged, but was assassinated the following summer while out picking raspberries with his son; the assassin, a settler-farmer, collected a $500 bounty.[5]

One of the young Dakota survivors asked his uncle about the mysterious white people who would commit such crimes. The uncle replied:

> Certainly they are a heartless nation. They have made some of their people servants—yes, slaves. . . . The greatest object of their lives seems to be to acquire possessions—to be rich. They desire to possess the whole world. For thirty years they were trying to entice us to sell them our land. Finally the outbreak gave them all, and we have been driven away from our beautiful country.[6]

THE GENOCIDAL ARMY OF THE WEST

To free the professional soldiers posted in the West to fight against the Confederate Army in the East, Lincoln called for volunteers in the West, and settlers responded, coming from Texas, Kansas, California, Washington, Oregon, Colorado, Nebraska, Utah, and Nevada. Having few Confederates to fight, they attacked people closer to hand, Indigenous people. Land speculators in the trans-Mississippi West sought statehood for the occupied former Mexican territories in order to attract settlers and investors. Their eagerness to

undertake the ethnic cleansing of the Indigenous residents to achieve the necessary population balance to attain statehood generated strong anti-Indian hysteria and violent actions. Preoccupied with the Civil War in the East, the Lincoln administration did little to prevent vicious and even genocidal actions on the part of territorial authorities consisting of volunteer Indian haters such as Kit Carson.

The mode of maintaining settler "law and order" set the pattern for postwar genocide. In the most infamous incident involving militias, the First and Third Colorado Volunteers carried out the Sand Creek Massacre. Although assigned to guard the road to Santa Fe, the units mainly engaged in raiding and looting Indigenous communities. John Chivington, an ambitious politician known as the "Fighting Parson," led the Third Colorado.[7]

By 1861, displaced and captive Cheyennes and Arapahos, under the leadership of the great peace seeker Black Kettle, were incarcerated in a US military reservation called Sand Creek, near Fort Lyon in southeastern Colorado. They camped under a white flag of truce and had federal permission to hunt buffalo to feed themselves. In early 1864, the Colorado territorial governor informed them that they could no longer leave the reservation to hunt. Despite their compliance with the order, on November 29, 1864, Chivington took seven hundred Colorado Volunteers to the reservation. Without provocation or warning, they attacked, leaving dead 105 women and children and 28 men. Even the federal commissioner of Indian affairs denounced the action, saying that the people had been "butchered in cold blood by troops in the service of the United States." In its 1865 investigation, the Congress Joint Committee on the Conduct of the War recorded testimonies and published a report that documented the aftermath of the killings, when Chivington and his volunteers burned tepees and stole horses. Worse, after the smoke had cleared, they had returned and finished off the few survivors while scalping and mutilating the corpses—women and men, young and old, children, babies. Then they decorated their weapons and caps with body parts—fetuses, penises, breasts, and vulvas—and, in the words of Acoma poet Simon Ortiz, "Stuck them / on their hats to dry / Their fingers greasy / and slick."[8] Once back in Denver, they displayed the trophies to the adoring public in Denver's

Apollo Theater and in saloons. Yet, despite the detailed report of the deeds, neither Chivington nor any of his men were reprimanded or prosecuted, signaling a free field for killing.[9]

US Army colonel James Carleton formed the Volunteer Army of the Pacific in 1861, based in California. In Nevada and Utah, a California businessman, Colonel Patrick Connor, commanded a militia of a thousand California volunteers that spent the war years massacring hundreds of unarmed Shoshone, Bannock, and Ute people in their encampments. Carleton led another contingent of militias to Arizona to suppress the Apaches, who were resisting colonization under the great leader Cochise. At the time, Cochise observed:

> When I was young I walked all over this country, east and west, and saw no other people than the Apaches. After many summers I walked again and found another race of people had come to take it. How is it? Why is it that the Apaches wait to die—that they carry their lives on their finger nails? . . . The Apaches were once a great nation; they are now but few. . . . Many have been killed in battle.[10]

Following a scorched-earth campaign against the Apaches, Carleton was promoted to the rank of brigadier general and placed in command of the Department of New Mexico. He brought in the now-seasoned killing machine of Colorado Volunteers to attack the Navajos, on whom he declared total war. He enlisted as his principal commander in the field the ubiquitous Indian killer Kit Carson.[11] With unlimited authority and answering to no one, Carleton spent the entire Civil War in the Southwest engaged in a series of search-and-destroy missions against the Navajos. The campaign culminated in March 1864 in a three-hundred-mile forced march of eight thousand Navajo civilians to a military concentration camp at Bosque Redondo in the southeastern New Mexico desert, at the army base at Fort Sumner, an ordeal recalled in Navajo oral history as the "Long Walk." One Navajo named Herrero said,

> Some of the soldiers do not treat us well. When at work, if we stop a little they kick us or do something else. . . . We do not mind if an officer punishes us, but do not like to be treated

> badly by the soldiers. Our women sometimes come to the tents outside the fort and make contracts with the soldiers to stay with them for a night, and give them five dollars or something else. But in the morning they take away what they gave them and kick them off. This happens most every day.[12]

At least a fourth of the incarcerated died of starvation. Not until 1868 were the Navajos released and allowed to return to their homeland in what is today the Four Corners area. This permission to return was not based on the deadly conditions of the camp, rather that Congress determined that the incarceration was too expensive to maintain.[13] For these noble deeds, Carleton was appointed a major general in the US Army in 1865. Now he led the Fourth Cavalry in scorched-earth forays against Plains Indians.

These military campaigns against Indigenous nations constituted foreign wars fought during the US Civil War, but the end of the Civil War did not end them. They carried on unabated to the end of the century, with added killing technology and more seasoned killers, including African American cavalry units. Demobilized officers and soldiers often could not find jobs, and along with a new generation of young settlers—otherwise unemployed and often seeking violent adventure—they joined the army of the West, some of the officers accepting lower ranks in order to get career army assignments. Given that war was centered in the West and that military achievement had come to foster prestige, wealth, and political power, every West Point graduate sought to further his career by volunteering in the army. Some of their diaries echo those of combat troops in Vietnam, Afghanistan, and Iraq, who later were troubled by the atrocities they witnessed or committed. But most soldiers persevered in their ambition to succeed.

Prominent Civil War generals led the army of the West, among them Generals William Tecumseh Sherman, Philip Sheridan (to whom is ascribed the statement "The only good Indian is a dead Indian"), George Armstrong Custer, and Nelson A. Miles. The army would make effective use after 1865 of innovations made during the Civil War. The rapid-fire Gatling gun, first used in battle in 1862, would be employed during the rest of the century against Indigenous

civilians. Non-technological innovations were perhaps even more important, the Civil War having fostered an extreme patriotic ideology in the Union Army that carried over into the Indian wars. Now more centralized under presidential command, US forces relied less on state contributions and were thus less subject to their control. The prestige of the Department of War rose within the federal government, so that it had far more leeway to send troops to steamroll over Indigenous peoples who challenged US dominion.

The Union Army victory over the Confederate Army transformed the South into a quasi-captive nation, a region that remains the poorest of the United States well over a century later. The situation was similar to that in South Africa two decades later when the British defeated the Boers (descendants of the original seventeenth-century Dutch settlers). As the British would later do with the Boers, the US government eventually allowed the defeated southern elite to return to their locally powerful positions, and both US southerners and Boers soon gained national political power. The powerful white supremacist southern ruling class helped further militarize the United States, the army practically becoming a southern institution. Following the effective Reconstruction experiment to empower former slaves, the US occupying army was withdrawn, and African Americans were returned to quasi-bondage and disenfranchisement through Jim Crow laws, forming a colonized population in the South.

COLONIAL POLICY PRECEDES MILITARY IMPLEMENTATION

In the midst of war, Lincoln did not forget his free-soiler settler constituency that had raised him to the presidency. During the Civil War, with the southern states unrepresented, Congress at Lincoln's behest passed the Homestead Act in 1862, as well as the Morrill Act, the latter transferring large tracts of Indigenous land to the states to establish land grant universities. The Pacific Railroad Act provided private companies with nearly two hundred million acres of Indigenous land.[14] With these land grabs, the US government broke multiple treaties with Indigenous nations. Most of the western ter-

ritories, including Colorado, North and South Dakota, Montana, Washington, Idaho, Wyoming, Utah, New Mexico, and Arizona, were delayed in achieving statehood, because Indigenous nations resisted appropriation of their lands and outnumbered settlers. So the colonization plan for the West established during the Civil War was carried out over the following three decades of war and land grabs. Under the Homestead Act, 1.5 million homesteads were granted to settlers west of the Mississippi, comprising nearly three hundred million acres (a half-million square miles) taken from the Indigenous collective estates and privatized for the market.[15] This dispersal of landless settler populations from east of the Mississippi served as an "escape valve," lessening the likelihood of class conflict as the industrial revolution accelerated the use of cheap immigrant labor.

Little of the land appropriated under the Homestead Acts was distributed to actual single-family homesteaders. It was passed instead to large operators or land speculators. The land laws appeared to have been created for that result. An individual could acquire 1,120 or even more acres of land, even though homestead and preemption (legalized squatting) claims were limited to 160 acres.[16] A claimant could obtain a homestead and secure title after five years or pay cash within six months. Then he could acquire another 160 acres under preemption by living on another piece of land for six months and paying $1.25 per acre. While acquiring these titles, he could also be fulfilling requirements for a timber culture claim of 160 acres and a desert land claim of 640 acres, neither of which required occupancy for title. Other men within a family or other partners in an enterprise could take out additional desert land claims to increase their holdings even more. As industrialization quickened, land as a commodity, "real estate," remained the basis of the US economy and capital accumulation.[17] The federal land grants to the railroad barons, carved out of Indigenous territories, were not limited to the width of the railroad tracks, but rather formed a checkerboard of square-mile sections stretching for dozens of miles on both sides of the right of way. This was land the railroads were free to sell in parcels for their own profit. The 1863–64 federal banking acts mandated a national currency, chartered banks, and permitted the government to guarantee bonds. As war profiteers, financiers,

and industrialists such as John D. Rockefeller, Andrew Carnegie, and J. P. Morgan used these laws to amass wealth in the East, Leland Stanford, Collis P. Huntington, Mark Hopkins, and Charles Crocker in the West grew rich from building railroads with eastern capital on land granted by the US government.[18]

Indigenous nations, as well as Hispanos, resisted the arrival of railroads crisscrossing their farms, hunting grounds, and homelands, bringing settlers, cattle, barbed wire fencing, and mercenary buffalo hunters in their wake. In what proved a prelude to the genocidal decades to follow, the Andrew Johnson administration in 1867–68 sent army and diplomatic representatives to negotiate peace treaties with dozens of Indigenous nations. The 371 treaties between Indigenous nations and the United States were all promulgated during the first century of US existence.[19] Congress halted formal treaty making in 1871, attaching a rider to the Indian Appropriation Act of that year stipulating "that hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty. Provided, further, that nothing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or tribe."[20] This measure meant that Congress and the president could now make laws affecting an Indigenous nation with or without negotiations or consent. Nevertheless, the provision reaffirmed the sovereign legal status of those Indigenous nations that had treaties. During the period of US-Indigenous treaty making, approximately two million square miles of land passed from Indigenous nations to the United States, some of it through treaty agreements and some through breach of standing treaties.

In an effort to create Indigenous economic dependency and compliance in land transfers, the US policy directed the army to destroy the basic economic base of the Plains Nations—the buffalo. The buffalo were killed to near extinction, tens of millions dead within a few decades and only a few hundred left by the 1880s. Commercial hunters wanted only the skins, so left the rest of the animal to rot. Bones would be gathered and shipped to the East for various uses. Mainly it was the army that helped realize slaughter of the herds.[21]

Old Lady Horse of the Kiowa Nation could have been speaking for all the buffalo nations in her lament of the loss:

> Everything the Kiowas had came from the buffalo. . . . Most of all, the buffalo was part of the Kiowa religion. A white buffalo calf must be sacrificed in the Sun Dance. The priests used parts of the buffalo to make their prayers when they healed people or when they sang to the powers above.
>
> So, when the white men wanted to build railroads, or when they wanted to farm or raise cattle, the buffalo still protected the Kiowas. They tore up the railroad tracks and the gardens. They chased the cattle off the ranges. The buffalo loved their people as much as the Kiowas loved them.
>
> There was war between the buffalo and the white men. The white men built forts in the Kiowa country, and the woolly-headed buffalo soldiers shot the buffalo as fast as they could, but the buffalo kept coming on, coming on, even into the post cemetery at Fort Sill. Soldiers were not enough to hold them back.
>
> Then the white men hired hunters to do nothing but kill the buffalo. Up and down the plains those men ranged, shooting sometimes as many as a hundred buffalo a day. Behind them came the skinners with their wagons. They piled the hides and bones into the wagons until they were full, and then took their loads to the new railroad stations that were being built, to be shipped east to the market. Sometimes there would be a pile of bones as high as a man, stretching a mile along the railroad track.
>
> The buffalo saw that their day was over. They could protect their people no longer.[22]

Another aspect of US economic development that affected the Indigenous nations of the West was merchant domination. All over the world, in European colonies distant from their ruling centers, mercantile capitalists flourished alongside industrial capitalists and militaries, and together they determined the mode of colonization. Mercantile houses, usually family-owned, were organized to carry

goods over long stretches of water or sparsely populated lands to their destinations. The merchants' sources of commodities in remote regions were the nearby small farmers, loggers, trappers, and specialists such as woodworkers and metalsmiths. The commodities were then sent to industrial centers for credit against which money could be drawn. Thus, in the absence of a system of indirect credit, merchants could acquire scarce currency for the purchase of foreign goods. The merchant, thereby, became the dominant source of credit for the small operator as well as for the local capitalist. Mercantile capitalism thrived in colonial areas, with many of the first merchant houses originating in the Levant among Syrians (Lebanese) and Jews. Even as mercantile capitalism waned in the twentieth century, it left its mark on Native reservations where the people relied on trading posts for credit, a market for their products, and commodities of all kinds—an opportunity for super-exploitation. Merchants and traders, often by intermarrying Indigenous women, also came to dominate Native governance on some reservations.[23]

As noted above, at the end of the Civil War the US Army hardly missed a beat before the war "to win the West" began in full force. As a far more advanced killing machine and with seasoned troops, the army began the slaughter of people, buffalo, and the land itself, destroying the natural tall grasses of the plains and planting short grasses for cattle, eventually leading to the loss of the topsoil four decades later. William Tecumseh Sherman came out of the Civil War a major general and soon commanded the US Army, replacing war hero Ulysses S. Grant when Grant became president in 1869. As commanding general through 1883, Sherman was responsible for the genocidal wars against the resistant Indigenous nations of the West.

Sherman's family was among the first generation of settlers who rushed to the Ohio Valley region after the total war that drove the people of the Shawnee Nation out of their homes, towns, and farms. Sherman's father gave his son the trophy name Tecumseh after the Shawnee leader who was killed by the US Army. The general had been a successful lawyer and banker in San Francisco and New York before he turned to a military career. During the Civil War, most famously in the siege of Atlanta, he made his mark as a proponent and practitioner of total war, scorched-earth campaigns against civil-

ians, particularly targeting their food supplies. This had long been the colonial and US American way of war against the Indigenous peoples east of the Mississippi. Sherman sent an army commission to England to study English colonial campaigns worldwide, looking to employ successful English tactics for the US wars against Indigenous peoples. In Washington, Sherman had to contend with the upper echelons of the military that were under the sway of Carl von Clausewitz's book *On War*, which dealt with conflict between European nation-states with standing armies. This dichotomy of training the US military for standard European warfare but also training it in colonial counterinsurgency methods continues in the twenty-first century. Although a man of war, Sherman, like most in the US ruling class, was an entrepreneur at heart, and his mandate as head of the army and his passion were to protect the Anglo conquest of the West. Sherman regarded railroads a top priority. In a letter to Grant in 1867 he wrote, "We are not going to let a few thieving, ragged Indians stop the progress of [the railroads]."[24]

An alliance of the Sioux, Cheyenne, and Arapaho Nations was blocking the "Bozeman Trail," over which thousands of crazed gold seekers crashed through Indigenous territories in the Dakotas and Wyoming in 1866 to reach newly discovered goldfields in Montana. The army arrived to protect them, and in preparation for constructing Fort Phil Kearny, Lieutenant Colonel William Fetterman led eighty soldiers out to clear the trail in December 1866. The Indigenous alliance defeated them in battle. Strangely, this being war, the defeat of the US Army in the battle has come down in historical annals as "the Fetterman Massacre." Following this event, General Sherman wrote to Grant, who was still army commander: "We must act with vindictive earnestness against the Sioux, even to their extermination, men, women, and children." Sherman made it clear that "during an assault, the soldiers can not pause to distinguish between male and female, or even discriminate as to age."[25]

In adopting total war in the West, Sherman brought in its most notorious avatar, George Armstrong Custer, who proved his mettle right away by leading an attack on unarmed civilians on November 27, 1868, at the Southern Cheyenne reservation at Washita Creek in Indian Territory. Earlier, at the Colorado Volunteers' 1864

Sand Creek Massacre, the Cheyenne leader Black Kettle had escaped death. He and other Cheyenne survivors were then forced to leave Colorado Territory for a reservation in Indian Territory. Some young Cheyenne men, determined to resist reservation confinement and hunger, decided to hunt and to fight back with guerrilla tactics. Since the army was rarely able to capture them, Custer resorted to total war, murdering the incarcerated mothers, wives, children, and elders. When Black Kettle received word from Indigenous spies within the army ranks that the mounted troops of the Seventh Cavalry were leaving their fort and headed for the Washita reservation, he and his wife rode out at dawn in a snowstorm, unarmed, to attempt to talk with Custer and assure him that no resisters were present on the reservation. Upon Black Kettle's approaching the troops with a hoisted white flag, Custer ordered the soldiers to fire, and a moment later Black Kettle and his wife lay dead. All told, the Seventh Cavalry murdered over a hundred Cheyenne women and children that day, taking ghoulish trophies afterward.[26]

COLONIAL SOLDIERS

Many of the intensive genocidal campaigns against Indigenous civilians took place during the administration of President Grant, 1869–77. In 1866, two years before Grant's election, Congress had created two all–African American cavalry regiments that came to be called the buffalo soldiers. Some four million formerly enslaved Africans were free citizens in 1865, thanks to the Emancipation Proclamation, which took effect in January 1863. The legislation was intended to have a demoralizing effect on the CSA, but it gave belated official recognition to what was already fact: many African Americans, especially young men, had freed themselves by fleeing servitude and joining Union forces.[27] Up to 1862, Africans had been barred from serving in their own capacity in the army. Now the Union Army incorporated them but at lower pay and in segregated units under white officers. The War Department created the federal Bureau of Colored Troops, and one hundred thousand armed Africans served in the unit. Their courage and commitment made them

the best and most effective fighters, although they had the highest mortality rate. At the end of the Civil War, 186,000 Black soldiers had fought and 38,000 had died (in combat and from disease), a higher death toll than that of any individual state. The state with the highest casualty count was New York, with troops comprising mostly poor white immigrant soldiers, largely Irish. After the war many Black soldiers, like their poor white counterparts, remained in the army and were assigned to segregated regiments sent west to crush Indigenous resistance.

This reality strikes many as tragic, as if oppressed former slaves and Indigenous peoples being subjected to genocidal warfare should magically be unified against their common enemy, "the white man." In fact, this is precisely how colonialism in general and colonial warfare in particular work. It is not unique to the United States, but rather a part of the tradition of European colonialism since the Roman legions. The British organized whole armies of ethnic troops in South and Southwestern Asia, the most famous being the Gurkhas from Nepal, who fought as recently as Margaret Thatcher's war against Argentina in 1983.[28] The buffalo soldiers were such a specially organized colonial military unit. As Stanford L. Davis, a descendant of a buffalo soldier, writes:

> Slaves and the black soldiers, who couldn't read or write, had no idea of the historical deprivations and the frequent genocidal intent of the U.S. government toward Native Americans. Free blacks, whether they could read and write, generally had no access to first-hand or second-hand unbiased information on the relationship. Most whites who had access often didn't really care about the situation. It was business as usual in the name of "Manifest Destiny." Most Americans viewed the Indians as incorrigible and non-reformable savages. Those closest to the warring factions or who were threatened by it, naturally wanted government protection at any cost.[29]

Many Black men opted for army service for survival reasons, as it gave them food and shelter, pay and a pension, and even some glory. The United States had its own motives for assigning Black troops to

the West. Southerners and the eastern population did not want thousands of armed Black soldiers in their communities. There was also fear that if they demobilized, the labor market would be flooded. For US authorities, it was a good way of getting rid of the Black soldiers *and* the Indians.

The Civil War also set the template for the rapid "Americanization" of immigrants. Jewish immigrants fought on both sides in the war, and as individuals they earned a level of freedom from US bigotry they had never experienced before.

Indian scouts and soldiers were essential to the army as well, both as individuals and as nations making war on other Indigenous nations. Many decades later, Native Americans have continued to volunteer in US wars in percentages far beyond their populations. Wichita Nation citizen Stan Holder appeared in a 1974 documentary film on the Vietnam War, *Hearts and Minds*, in which he explained his volunteering for service. While growing up he had heard the older people's stories about Wichita warriors, and, looking around, the only warriors he could identify were marines, so he enlisted in what he considered a warrior society. It is no accident that the US Marine Corps evokes that image in angry young men. As with Black men who volunteered in the Indian wars and enlisted and served in other wars, Native men seized the security and potential glory of the colonialist army.

The explicit purpose of the buffalo soldiers and the army of the West as a whole was to invade Indigenous lands and ethnically cleanse them for Anglo settlement and commerce. As Native historian Jace Weaver has written: "The Indian Wars were not fought by the blindingly white American cavalry of John Ford westerns but by African Americans and Irish and German immigrants."[30] The haunting Bob Marley song "Buffalo Soldier" captures the colonial experience in the United States: "Said he was a buffalo soldier / Win the war for America."[31]

The army of the West was a colonial army with all the problems of colonial armies and foreign occupation, principally being hated by the people living under occupation. It's no surprise that the US military uses the term "Indian Country" to refer to what it considers enemy territory. Much as in the Vietnam War, the 1980s covert wars

in Central America, and the wars of the early twenty-first century in Muslim countries, counterinsurgent army volunteers in the late-nineteenth-century US West had to rely heavily on intelligence from those native to the land, informers and scouts. Many of these were double agents, reporting back to their own people, having joined the US Army for that purpose. Failing to find guerrilla fighters, the army resorted to scorched-earth campaigns, starvation, attacks on and removals of civilian populations—the weapons of counterinsurgency warfare. During the Soviet counterinsurgency in Afghanistan in the 1980s, the UN High Commissioner for Refugees called the effect "migratory genocide"—an apt term to apply retrospectively to the nineteenth-century US counterinsurgency against Indigenous peoples.[32]

ANNIHILATION UNTO TOTAL SURRENDER

The US Army's search-and-destroy missions and forced relocations (ethnic cleansing) in the West are well documented but perhaps not normally considered in the light of counterinsurgency.

Mari Sandoz recorded one such story in her 1953 best-selling work of nonfiction *Cheyenne Autumn*, on which John Ford based a 1964 film.[33] In 1878, the great Cheyenne resistance leaders Little Wolf and Dull Knife led more than three hundred Cheyenne civilians from a military reservation in Indian Territory, where they had been forcibly confined, to their original homeland in what is today Wyoming and Montana. They were eventually intercepted by the military, but only following a dramatic chase covered by newspaper reporters. So much sympathy was aroused in eastern cities that the Cheyennes were provided a reservation in a part of their original homeland. A similar feat was that of the Nimi'ipuu (Nez Perce) under Chief Joseph, who tried to lead his people out of military incarceration in Idaho to exile in Canada. In 1877, pursued by two thousand soldiers of the US cavalry led by Nelson Miles, Nimi'ipuu led eight hundred civilians toward the Canadian border. They held out for nearly four months, evading the soldiers as well as fighting hit-and-run battles, while covering seventeen hundred miles. Some

were rounded up and placed in Pauls Valley, Oklahoma, but they soon left on their own and returned to their Idaho homeland, eventually securing a small reservation there.

The longest military counterinsurgency in US history was the war on the Apache Nation, 1850–86. Goyathlay, known as Geronimo, famously led the final decade of Apache resistance. The Apaches and their Diné relatives, the Navajos, did not miss a beat in continuing resistance to colonial domination when the United States annexed their territory as a part of the half of Mexico taken in 1848. The Treaty of Guadalupe Hidalgo between the United States and Mexico, which sealed the transfer of territory, even stipulated that both parties were required to fight the "savage" Apaches. By 1877 the army had forced most Apaches into inhospitable desert reservations. Led by Geronimo, Chiricahua Apaches resisted incarceration in the San Carlos reservation designated for them in Arizona. When Geronimo finally surrendered—he was never captured—the group numbered only thirty-eight, most of those women and children, with five thousand soldiers in pursuit, which meant that the insurgents had wide support both north and south of the recently drawn US-Mexico border. Guerrilla warfare persists only if it has deep roots in the people being represented, the reason it is sometimes called "people's war." Obviously, the Apache resistance was not a military threat to the United States but rather a symbol of resistance and freedom. Herein lies the essence of counterinsurgent colonialist warfare: no resistance can be tolerated. Historian William Appleman Williams aptly described the US imperative as "annihilation unto total surrender."[34]

Geronimo and three hundred other Chiricahuas who were not even part of the fighting force were rounded up and transported by train under military guard to Fort Marion, in St. Augustine, Florida, to join hundreds of other Plains Indian fighters already incarcerated there. Remarkably, Geronimo negotiated an agreement with the United States so that he and his band would surrender as prisoners of war, rather than as common criminals as the Texas Rangers desired, which would have meant executions by civil authorities. The POW status validated Apache sovereignty and made the captives eligible for treatment according to the international laws of

war. Geronimo and his people were transferred again, to the army base at Fort Sill in Indian Territory, and lived out their lives there. The US government had not yet created the term "unlawful combatant," which it would do in the early twenty-first century, depriving legitimate prisoners of war fair treatment under international law.

During the Grant administration, the United States began experimenting with new colonial institutions, the most pernicious of which were the boarding schools, modeled on Fort Marion prison. In 1875, Captain Richard Henry Pratt was in charge of transporting seventy-two captive Cheyenne and other Plains Indian warriors from the West to Fort Marion, an old Spanish fortress, dark and dank. After the captives were left shackled for a period in a dungeon, Pratt took their clothes away, had their hair cut, dressed them in army uniforms, and drilled them like soldiers. "Kill the Indian and save the man" was Pratt's motto. This "successful" experiment led Pratt to establish the Carlisle Indian Industrial School in Pennsylvania in 1879, the prototype for the many militaristic federal boarding schools set up across the continent soon after, augmented by dozens of Christian missionary boarding schools. The decision to establish Carlisle and other off-reservation boarding schools was made by the US Office of Indian Affairs, later renamed the Bureau of Indian Affairs (BIA). The stated goal of the project was assimilation. Indigenous children were prohibited from speaking their mother tongues or practicing their religions, while being indoctrinated in Christianity. As in the Spanish missions in California, in the US boarding schools the children were beaten for speaking their own languages, among other infractions that expressed their humanity. Although stripped of the languages and skills of their communities, what they learned in boarding school was useless for the purposes of effective assimilation, creating multiple lost generations of traumatized individuals.[35]

Just before the centennial of US independence, in late June 1876, then–Lieutenant Colonel Custer, commanding 225 soldiers of the Seventh Cavalry, prepared to launch a military assault on the civilians living in a cluster of Sioux and Cheyenne villages that lay along the Little Bighorn River. Led by Crazy Horse and Sitting Bull, the Sioux and Cheyenne warriors were ready for the assault and wiped

out the assailants, including Custer, who after death was promoted to general. The proud author of multiple massacres of Indigenous civilians, starting during the Civil War with his assault on unarmed and reservation-incarcerated Cheyennes on the Washita in Indian Territory, Custer "died for your [colonialist] sins," in the words of Vine Deloria Jr.[36] A year later, Crazy Horse was captured and imprisoned, then killed trying to escape. He was thirty-five years old.

Crazy Horse was a new kind of leader to emerge after the Civil War, at the beginning of the army's wars of annihilation in the northern plains and the Southwest. Born in 1842 in the shadow of the sacred Paha Sapa (Black Hills), he was considered special, a quiet and brooding child. Already the effects of colonialism were present among his people, particularly alcoholism and missionary influence. Crazy Horse became a part of the Akicita, a traditional Sioux society that kept order in villages and during migrations. It also had authority to make certain that the hereditary chiefs were doing their duty and dealt harshly with those who did not. Increasingly during Crazy Horse's youth, the primary concern was the immigrant defilement of the Sioux territory. A steady stream of Euro-American migrants clotted the trail to Oregon Territory. Young militant Sioux wished to drive them away, but the Sioux were now dependent on the trail for supplies. In 1849, the army arrived and planted a base, Fort Laramie, in Sioux territory. Sporadic fighting broke out, leading to treaty meetings and agreements, most of which were bogus army documents signed by unauthorized individuals. Crazy Horse was a natural in guerrilla warfare, becoming legendary among his people. Although Crazy Horse and other militants did not approve of the 1868 US treaty with the Sioux, some stability held until Custer's soldiers found gold in the Black Hills. Then a gold rush was on, with hordes of prospectors from all over converging and running rampant over the Sioux. The treaty had ostensibly been a guarantee that such would not occur. Soon after, the Battle of the Little Bighorn put an end to Custer but not to the invasion.

Indigenous peoples in the West continued to resist, and the soldiers kept hunting them down, incarcerating them, massacring civilians, removing them, and stealing their children to haul off to faraway boarding schools. The Apache, Kiowa, Sioux, Ute, Kick-

apoo, Comanche, Cheyenne, and other nations were attacked, leaving community after community decimated. By the 1890s, although some military assaults on Indigenous communities and valiant Indigenous armed resistance continued, most of the surviving Indigenous refugees were confined to federal reservations, their children transported to distant boarding schools to unlearn their Indigenousness.

GHOST DANCING

Disarmed, held in concentration camps, their children taken away, half starved, the Indigenous peoples of the West found a form of resistance that spread like wildfire in all directions from its source, thanks to a Paiute holy man, Wovoka, in Nevada. Pilgrims journeyed to hear his message and to receive directions on how to perform the Ghost Dance, which promised to restore the Indigenous world as it was before colonialism, making the invaders disappear and the buffalo return. It was a simple dance performed by everyone, requiring only a specific kind of shirt that was to protect the dancers from gunfire. In the twentieth century Sioux anthropologist Ella Deloria interviewed a sixty-year-old Sioux man who remembered the Ghost Dance he had witnessed fifty years before as a boy:

> Some fifty of us, little boys about eight to ten, started out across country over hills and valleys, running all night. I know now that we ran almost thirty miles. There on the Porcupine Creek thousands of Dakota people were in camp, all hurrying about very purposefully. In a long sweat lodge with openings at both ends, people were being purified in great companies for the holy dance, men by themselves and women by themselves, of course. . . .
>
> The people, wearing the sacred shirts and feathers, now formed a ring. We were in it. All joined hands. Everyone was respectful and quiet, expecting something wonderful to happen. It was not a glad time, though. All wailed cautiously and in awe, feeling their dead were close at hand.

> The leaders beat time and sang as the people danced, going round to the left in a sidewise step. They danced without rest, on and on, and they got out of breath but still they kept going as long as possible. Occasionally someone thoroughly exhausted and dizzy fell unconscious into the center and lay there "dead." Quickly those on each side of him closed the gap and went right on. After a while, many lay about in that condition. They were now "dead" and seeing their dear ones. As each one came to, she, or he, slowing sat up and looked about, bewildered, and then began wailing inconsolably. . . .
>
> Waking to the drab and wretched present after such a glowing vision, it was little wonder that they wailed as if their poor hearts would break in two with disillusionment. But at least they had seen! The people went on and on and could not stop, day or night, hoping perhaps to get a vision of their own dead, or at least to hear the visions of others. They preferred that to rest or food or sleep. And so I suppose the authorities did think they were crazy—but they weren't. They were only terribly unhappy.[37]

When the dancing began among the Sioux in 1890, reservation officials reported it as disturbing and unstoppable. They believed that it had been instigated by Hunkpapa Teton Sioux leader Tatanka Yotanka (Sitting Bull), who had returned with his people in 1881 from exile in Canada. He was put under arrest and imprisoned in his home, closely guarded by Indian police. Sitting Bull was killed by one of his captors on December 15, 1890.

All Indigenous individuals and groups living outside designated federal reservations were considered "fomenters of disturbance," as the War Department put it. Following Sitting Bull's death, military warrants of arrest were issued for leaders such as Big Foot, who was responsible for several hundred civilian refugees who had not yet turned themselves in to the designated Pine Ridge Reservation. When Big Foot heard of Sitting Bull's death and that the army was looking for him and his people—350 Lakotas, 230 of them women and children—he decided to lead them through the subzero weather to Pine Ridge to surrender. En route on foot, they encountered US

troops. The commander ordered that they be taken to the army camp at Wounded Knee Creek, where armed soldiers surrounded them. Two Hotchkiss machine guns were mounted on the hillside, enough firepower to wipe out the whole group. During the night, Colonel James Forsyth and the Seventh Cavalry, Custer's old regiment, arrived and took charge. These soldiers had not forgotten that Lakota relatives of these starving, unarmed refugees had killed Custer and decimated his troops at the Little Bighorn fourteen years earlier. With orders to transport the refugees to a military stockade in Omaha, Forsyth added two more Hotchkiss guns trained on the camp, then issued whiskey to his officers. The following morning, December 29, 1890, the soldiers brought the captive men out from their campsites and called for all weapons to be turned in. Searching tents, soldiers confiscated tools, such as axes and knives. Still not satisfied, the officers ordered skin searches. A Winchester rifle turned up. Its young owner did not want to part with his beloved rifle, and, when the soldiers grabbed him, the rifle fired a shot into the air. The killing began immediately. The Hotchkiss guns began firing a shell a second, mowing down everyone except a few who were able to run fast enough. Three hundred Sioux lay dead. Twenty-five soldiers were killed in "friendly fire."[38] Bleeding survivors were dragged into a nearby church. Being Christmastime, the sanctuary was candlelit and decked with greenery. In the front, a banner read: PEACE ON EARTH AND GOOD WILL TO MEN.

The Seventh Cavalry attack on a group of unarmed and starving Lakota refugees attempting to reach Pine Ridge to accept reservation incarceration in the frozen days of December 1890 symbolizes the end of Indigenous armed resistance in the United States. The slaughter is called a battle in US military annals. Congressional Medals of Honor were bestowed on twenty of the soldiers involved. A monument was built at Fort Riley, Kansas, to honor the soldiers killed by friendly fire. A battle streamer was created to honor the event and added to other streamers that are displayed at the Pentagon, West Point, and army bases throughout the world. L. Frank Baum, a Dakota Territory settler later famous for writing *The Wonderful Wizard of Oz*, edited the *Aberdeen Saturday Pioneer* at the time. Five days after the sickening event at Wounded Knee, on

January 3, 1891, he wrote, "The Pioneer [*sic*] has before declared that our only safety depends upon the total extermination of the Indians. Having wronged them for centuries we had better, in order to protect our civilization, follow it up by one more wrong and wipe these untamed and untamable creatures from the face of the earth."[39]

Three weeks before the massacre, General Sherman had made clear that he regretted nothing of his three decades of carrying out genocide. In a press conference he held in New York City, he said, "Injins must either work or starve. They never have worked; they won't work now, and they will never work." A reporter asked, "But should not the government supply them with enough to keep them from starvation?" "Why," Sherman asked in reply, "should the government support 260,000 able-bodied campers? No government that the world has ever seen has done such a thing."[40]

The reaction of one young man to Wounded Knee is representative but also extraordinary. Plenty Horses attended the Carlisle school from 1883 to 1888, returning home stripped of his language, facing the dire reality of the genocide of his people, with no traditional or modern means to make a living. He said, "There was no chance to get employment, nothing for me to do whereby I could earn my board and clothes, no opportunity to learn more and remain with the whites. It disheartened me and I went back to live as I had before going to school."[41] Historian Philip Deloria notes: "The greatest threat to the reservation program . . . was the disciplined Indian who refused the gift of civilization and went 'back to the blanket,' as Plenty Horses tried."[42] But it wasn't simple for Plenty Horses to find his place. As Deloria points out, he had missed the essential period of Lakota education, which takes place between the ages of fourteen and nineteen. Due to his absence and Euro-American influence, he was suspect among his own people, and even that world was disrupted by colonialist chaos and violence. Still, Plenty Horses returned to traditional dress, grew his hair long, and participated in the Ghost Dance. He also joined a band of armed resisters, and they were present at Pine Ridge on December 29, 1890, when the bloody bodies were brought in from the Wounded Knee Massacre. A week later, he went out with forty other mounted warriors who accompanied Sioux leaders to meet Lieutenant Edward Casey for

possible negotiations. The young warriors were angry, none more than Plenty Horses, who pulled out from the group and got behind Casey and shot him in the back of his head.

Army officials had to think twice about charging Plenty Horses with murder. They were faced with the corollary of the recent army massacre at Wounded Knee, in which the soldiers received Congressional Medals of Honor for their deeds. At trial, Plenty Horses was acquitted due to the state of war that existed. Acknowledging a state of war was essential in order to give legal cover to the massacre.

As a late manifestation of military action against Indigenous peoples, Wounded Knee stands out. Deloria notes that in the preceding years, the Indian warrior imagery so prevalent in US American society was being replaced with "docile, pacified Indians started out on the road to civilization."

> Luther Standing Bear, for example, recounts numerous occasions on which the Carlisle Indian Industrial School students were displayed as docile and educable Indians. The Carlisle band played at the opening of the Brooklyn Bridge in 1883 and then toured several churches. Students were carted around East Coast cities. Standing Bear himself was placed on display in Wanamaker's Philadelphia department store, locked in a glass cell in the center of the store and set to sorting and pricing jewelry.[43]

GREED IS GOOD

During the final phase of military conquest of the continent, surviving Indigenous refugees were deposited in Indian Territory, piled on top of each other in smaller and smaller reservations. In 1883, the first of several conferences were held in Mohonk, New York, of a group of influential and wealthy advocates of the "manifest destiny" policy. These self-styled "friends of the Indians" developed a policy of assimilation soon formulated into an act of Congress written by one of their members, Senator Henry Dawes: the General Allotment Act of 1887. Arguing for allotment of collectively held Indigenous

lands, Dawes said: "The defect of the [reservation] system was apparent. It is [socialist] Henry George's system and under that there is no enterprise to make your home any better than that of your neighbors. There is no selfishness, which is at the bottom of civilization. Till this people will consent to give up their lands, and divide among their citizens so that each can own the land he cultivates they will not make much more progress." Although allotment did not create the desired selfishness, it did reduce the overall Indigenous land base by half and furthered both Indigenous impoverishment and US control. In 1889, a part of Indian Territory the federal government called the Unassigned Lands, left over after allotment, was opened to settler homesteading, triggering the "Oklahoma Run."

Oil had been discovered in Indian Territory, but the Dawes Allotment Act could not be applied to the five Indigenous nations removed from the South, because their territories were not technically reservations, rather sovereign nations. In contradiction to the terms of the removal treaties, Congress passed the Curtis Act in 1898, which unilaterally deposed the sovereignty of those nations and mandated allotment of their lands. Indigenous territories were larger than the sum of 160-acre allotments, so the remaining land after distribution was declared surplus and opened to homesteading.

Allotment did not proceed in Indian Territory without fierce resistance. Cherokee traditionalist Redbird Smith rallied his brethren to revive the Keetoowah secret society. Besides direct action, they also sent lawyers to argue before Congress. When they were overridden, they formed a community in the Cookson Hills, refusing to participate in privatization. Similarly, the Muskogee Creeks resisted, led by Chitto Harjo, who was lovingly nicknamed Crazy Snake. He led in the founding of an alternate government, with its capital a settlement they called Hickory Ground. More than five thousand Muskogees were involved. Captured and jailed, when freed Harjo led his people into the woods and carried on the fight for another decade. He was shot by federal troops in 1912, but the legacy of the Crazy Snake resistance remains a strong force in eastern Oklahoma. Muskogee historian Donald Fixico describes a contemporary enclave: "There is a small Creek town in Oklahoma which lies within the Creek Nation. The name of this town is Thlopthlocco. Thlopth-

locco is a small independent community which operates almost independently. They are not very much dependent on the federal government, nor are they dependent on the Creek Nation. So they're kind of a renegade group."[44]

In 1907, Indian Territory was dissolved and the state of Oklahoma entered the Union. Under the Dawes and Curtis Acts, privatization of Indigenous territories was imposed on half of all federal reservations, with a loss of three-fourths of the Indigenous land base that still existed after decades of army attacks and wanton land grabs. Allotment continued until 1934, when it was halted by the Indian Reorganization Act, but the land taken was never restored and its former owners were never compensated for their losses, leaving all the Indigenous people of Oklahoma (except the Osage Nation) without effective collective territories and many families with no land at all.[45]

The Hopi Nation resisted allotment with partial success. In 1894, they petitioned the federal government with a letter signed by every leader and chief of the Hopi villages:

> To the Washington Chiefs:
>
> During the last two years strangers have looked over our land with spy-glasses and made marks upon it, and we know but little of what it means. As we believe that you have no wish to disturb our Possessions we want to tell you something about this Hopi land.
>
> None of us were asked that it should be measured into separate lots, and given to individuals for they would cause confusion.
>
> The family, the dwelling house and the field are inseparable, because the woman is the heart of these, and they rest with her. Among us the family traces its kin from the mother, hence all its possessions are hers. The man builds the house but the woman is the owner, because she repairs and preserves it; the man cultivates the field, but he renders its harvest into the woman's keeping, because upon her it rests to prepare the food, and the surplus of stores for barter depends upon her thrift.

> A man plants the fields of his wife, and the fields assigned to the children she bears, and informally he calls them his, although in fact they are not. Even of the field which he inherits from his mother, its harvests he may dispose of at will, but the field itself he may not.[46]

The petition continues, explaining the matriarchal communal society and why dividing it up for private ownership would be unthinkable. Washington authorities never replied and the government continued to carve up the lands, finally giving up because of Hopi resistance. In the heart of New Mexico, the nineteen Indigenous city-states of the Pueblo Indians organized resistance under US occupation using the legal system as a means of survival, as they had under Spanish colonialism and in their relationship with the republic of Mexico. In the decades after they had lost their autonomous political status under Mexico and were counted as former Mexican citizens under US law, both Hispanos and Anglo squatters encroached upon the Pueblos' ancestral lands. The only avenue for the Pueblos was to use the US court of private land claims. The following report reflects their status in the eyes of the Anglo-American judiciary:

> Occasionally the court room at Santa Fe would be enlivened by a squad of Indians who had journeyed thither from their distant Pueblos as witnesses for their grant. These delegations were usually headed by the governor of their tribe, who exhibited great pride in striding up to the witness stand and being sworn on the holy cross; wearing a badge on his breast, a broad red sash round his waist, and clad in a white shirt, the full tail of which hung about his Antarctic zone like the skirt of a ballet dancer, and underneath which depended his baggy white muslin trousers, a la Chinese washee-washee. The grave and imperturbable bow which the governor gave to the judges on the bench, in recognition of their equality with himself as official dignitaries, arrayed in that grotesque fashion, was enough to evoke a hilarious bray from a dead burro.[47]

Without redress for their collective land rights under the claims court, the Pueblos had no choice but to seek federal Indian trust status. After they lost in their first attempt, finally in 1913 the US Supreme Court reversed the earlier decision and declared the Pueblos wards of the federal government with protected trust status, stating: "They are essentially a simple, uninformed, inferior people."[48]

At the beginning of the twentieth century, sculptor James Earle Fraser unveiled the monumental and iconic sculpture *The End of the Trail*, which he had created exclusively for the triumphal 1915 Panama-Pacific International Exposition in San Francisco, California. The image of the near naked, exhausted, dying Indian mounted on his equally exhausted horse proclaimed the final solution, the elimination of the Indigenous peoples of the continent. The following year, Ishi, the California Yani who had been held captive for five years by anthropologists who studied him, died and was proclaimed "the last Indian." Dozens of other popular images of "the vanishing Indian" were displayed during this period. The film industry soon kicked in, and Indians were killed over and over on screens viewed by millions of children, including Indian girls and boys.

With utter military triumph on the continent, the United States then set out to dominate the world, but the Indigenous peoples remained and persisted as the "American Century" proceeded.

NOTES

INTRODUCTION: THIS LAND

Epigraph: Willie Johns, "A Seminole Perspective on Ponce de León and Florida History," *Forum Magazine* (Florida Humanities Council), Fall 2012, http://indiancountrytodaymedianetwork.com/2013/04/08/seminole-perspective-ponce-de-leon-and-florida-history-148672 (accessed September 24, 2013).

1. The full refrain of Woody Guthrie's most popular song: "This land is your land / This land is my land / From California to the New York island / From the redwood forest to the Gulf Stream waters / This land was made for you and me."
2. Henry Crow Dog, testimony at the 1974 Sioux Treaty hearing, in Dunbar-Ortiz, *Great Sioux Nation*, 54.
3. Chang, *Color of the Land*, 7.
4. Wolfe, "Settler Colonialism," 387.
5. See Watson, *Buying America from the Indians*, and Robertson, *Conquest by Law*. For a list and description of each papal bull, see *The Doctrine of Discovery*, http://www.doctrineofdiscovery.org (accessed November 5, 2013).
6. Williams, *American Indian in Western Legal Thought*, 59.
7. Stewart, *Names on the Land*, 169–73, 233, 302.
8. Sheehan, "Indian-White Relations in Early America," 267–96.
9. Killsback, "Indigenous Perceptions of Time," 131.
10. Turner, *Frontier in American History*, 127.
11. "Convention on the Prevention and Punishment of the Crime of Genocide, Paris, 9 December 1948," Audiovisual Library of International Law, http://untreaty.un.org/cod/avl/ha/cppcg/cppcg.html (accessed December 6, 2012). See also Kunz, "United Nations Convention on Genocide."
12. O'Brien, *Firsting and Lasting*.
13. April 17, 1873, quoted in Marszalek, *Sherman*, 379.
14. Wolfe, "Settler Colonialism," 393.
15. 18 U.S.C.§1151 (2001).
16. Echo-Hawk, *In the Courts of the Conqueror*, 77–78.
17. "Tribes," US Department of the Interior website, http://www.doi.gov/tribes/index.cfm (accessed September 24, 2013); "Indian Reservation,"

New World Encyclopedia, http://www.newworldencyclopedia.org/entry/Indian_reservation (accessed September 24, 2013). See also Frantz, *Indian Reservations in the United States*.

CHAPTER ONE: FOLLOW THE CORN

Epigraph: Mann, *1491*, 252.

1. Ibid., 264.
2. Dobyns, *Native American Historical Demography*, 1; Dobyns, "Estimating Aboriginal American Population," and "Reply," 440–44. See also Thornton, *American Indian Holocaust and Survival*.
3. Quoted in Vogel, *American Indian Medicine*, 253–55. Vogel's classic text deals with every aspect of Indigenous medicine from shamanistic practices and pharmaceuticals to hygiene, surgery, and dentistry, applied to specific diseases and ailments.
4. Fiedel, *Prehistory of the Americas*, 305.
5. DiPeso, "Casas Grandes and the Gran Chichimeca," 50; Snow, "Prehistoric Southwestern Turquoise Industry," 33. DiPeso calls the area in the north "Gran Chichimeca," a term used by precolonial Mesoamericans and adopted by early Spanish explorers. Another term used in precolonial times in the south to describe the former homeland of the Aztecs is "Aztlán."
6. DiPeso, "Casas Grandes and the Gran Chichimeca," 52; Snow, "Prehistoric Southwestern Turquoise Industry," 35, 38, 43–44, 47.
7. Cox, *The Red Land to the South*, 8–12.
8. For further reading on the precolonial Southwest, see Crown and Judge, *Chaco & Hohokam*.
9. Ortiz, *Roots of Resistance*, 18–30. See also Forbes, *Apache, Navaho, and Spaniard*; Carter, *Indian Alliances and the Spanish in the Southwest*.
10. Davidson, "Black Carib Habitats in Central America."
11. Mann, *1491*, 254–57.
12. The material that follows is based on Denevan, "The Pristine Myth."
13. For the influence of the Iroquois Confederacy on the architects of the US Constitution, see Johansen, *The Forgotten Founders*.
14. Lyons, a professor at the State University of New York at Buffalo, says that when the American colonists borrowed from the Haudenosaunee system in forming the US government, they neglected to include the spirit world, and thus began the problems that beset US government today.
15. See Miller, *Coacoochee's Bones*, 1–12.
16. Mann, *1491*, 332.
17. Thomas Morton, quoted in ibid., 250.
18. Ibid., 251–52.
19. See David Wade Chambers, "Native American Road Systems and Trails," Udemy, http://www.udemy.com/lectures/unit-4-native-american-road-

5. See Zacks, *Pirate Coast*; and Boot, *Savage Wars of Peace*, 3–29.
6. Blackhawk, *Violence over the Land*, 145–75.
7. Pike, *Expeditions of Zebulon Montgomery Pike*. Coues, Pike's editor, characterized the expedition's straying into Spanish territory and his arrest as "a particular accident of a general design" (499). See also Owsley and Smith, *Filibusters and Expansionists*.
8. See Unrau, *Indians, Alcohol, and the Roads to Taos and Santa Fe*.
9. Pike, *Expeditions*, 499; Blackhawk, *Violence over the Land*, 117.
10. See Weber, *Taos Trappers*.
11. Dunbar-Ortiz, *Roots of Resistance*, 80; see also Hall, *Laws of Mexico*.
12. See Sides, *Blood and Thunder*, 92–101; Chaffin, *Pathfinder*, 33–35.
13. Holton, *Unruly Americans and the Origins of the Constitution*, 14.
14. Lamar, *Far Southwest*, 7–10.
15. See Vlasich, *Pueblo Indian Agriculture*.
16. See Sando and Agoyo, *Po'Pay*; Wilcox, *Pueblo Revolt and the Mythology of Conquest*; Dunbar-Ortiz, *Roots of Resistance*, 31–45; Carter, *Indian Alliances and the Spanish in the Southwest*.
17. Anderson, *Conquest of Texas*, 4, 18–29. See also "4th Largest Tribe in US? Mexicans Who Call Themselves American Indian," *Indian Country Today*, August 5, 2013, http://indiancountrytodaymedianetwork.com/ (accessed September 27, 2013).
18. Anderson, *Conquest of Texas*, 18–29. For a fascinating and historically accurate fictional account of Texas's independence from Mexico, see Russell, *Escape from Texas*.
19. See Anderson, *Conquest of Texas*. For the Texas Rangers' continuation of their counterinsurgent role in the twentieth century, see Johnson, *Revolution in Texas*; Harris and Sadler, *Texas Rangers and the Mexican Revolution*.
20. Tinker, *Missionary Conquest*, 42.
21. For documentation of California Indian resistance, see Jackson and Castillo, *Indians, Franciscans, and Spanish Colonization*, 73–86.
22. Murguía, *Medicine of Memory*, 40–41.
23. See Heizer, *Destruction of California Indians*. See also Cook, *Population of the California Indians*.
24. See Johannsen, *To the Halls of the Montezumas*.
25. See Kiser, *Dragoons in Apacheland*.

CHAPTER EIGHT: "INDIAN COUNTRY"

Epigraph: Ortiz, *from Sand Creek*, 20.

1. "Selected Statistics on Slavery in the United States," *Causes of the Civil War*, http://www.civilwarcauses.org/stat.htm (accessed December 10, 2013).

2. Chang, *Color of the Land*, 36.
3. See Confer, *Cherokee Nation in the Civil War*; Spencer, *American Civil War in the Indian Territory*; McLoughlin, *After the Trail of Tears*.
4. See Katz, *Black Indians*; Duvall, Jacob, and Murray, *Secret History of the Cherokees*.
5. See Wilson and Schommer, *Remember This!*; Wilson, *In the Footsteps of Our Ancestors*; Anderson, *Kinsmen of Another Kind*, 261–81; Anderson, *Little Crow*.
6. From Charles Eastman, *Indian Boyhood* (1902), quoted in Nabokov, *Native American Testimony*, 22.
7. West, *Contested Plains*, 300–301.
8. Ortiz, *from Sand Creek*, 41.
9. See Kelman, *Misplaced Massacre*.
10. From A. N. Ellis, "Reflections of an Interview with Cochise," Kansas State Historical Society 13 (1913–14), quoted in Nabokov, *Native American Testimony*, 177.
11. Utley, *Indian Frontier of the American West*, 82. Also see Carleton, *Prairie Logbooks*, 3–152.
12. From *Condition of the Indian Tribes*, Senate Report no. 156, 39th Cong., 2nd sess. (Washington, DC: Government Printing Office, 1867), quoted in Nabokov, *Native American Testimony*, 197–98.
13. See Denetdale, *Long Walk*; and Denetdale, *Reclaiming Diné History*.
14. See Gates, *History of Public Land Law Development*.
15. For a booster version of the relationship between the land acts and colonization, see Hyman, *American Singularity*.
16. White, *"It's Your Misfortune and None of My Own,"* 139.
17. Westphall, *Public Domain in New Mexico*, 43.
18. See White, *Railroaded*.
19. This is the total number of treaties signed by both parties, ratified by the US Congress, and proclaimed by US presidents. Many more treaties negotiated between the United States and Indigenous nations and signed by the president were not ratified by Congress, or if ratified were not proclaimed, the California Indigenous peoples' treaties being the most numerous, so there are actually around six hundred treaties that are considered legitimate by the Indigenous nations concerned. See Deloria, *Behind the Trail of Broken Treaties*; Deloria and DeMallie, *Documents of American Indian Diplomacy*; Johansen, *Enduring Legacies*.
20. See 16 Stat. 566, Rev. Stat. Sec. 2079; 25 U.S. Code Sec. 71.
21. Hanson, *Memory and Vision*, 211.
22. From Marriott and Rachlin, *American Indian Mythology*, quoted in Nabokov, *Native American Testimony*, 174–75.
23. Parish, *Charles Ilfeld Company*, 35.

24. Sherman to Grant, May 28, 1867, quoted in Fellman, *Citizen Sherman*, 264.
25. Sherman to Herbert A. Preston, April 17, 1873, quoted in Marszalek, *Sherman*, 379.
26. See Utley, *Cavalier in Buckskin*, 57–103.
27. See Hahn, *Nation under Our Feet*.
28. See Enloe, *Ethnic Soldiers*.
29. Stanford L. Davis, "Buffalo Soldiers & Indian Wars," Buffalosoldier.net, http://www.buffalosoldier.net/index.htm (accessed September 30, 2013).
30. Jace Weaver, "A Lantern to See By," 315; see also Enloe, *Ethnic Soldiers*.
31. Bob Marley, "Buffalo Soldier," by Bob Marley and Noel G. Williams, recorded 1980, on *Confrontation*, Island Records, 90085-1, 1983.
32. See Wolfe, "Settler Colonialism and the Elimination of the Native."
33. Sandoz, *Cheyenne Autumn*.
34. See Williams, *Empire as a Way of Life*.
35. Child, *Boarding School Seasons*; also see Christine Lesiak, director, "In the White Man's Image," *The American Experience*, season four, episode twelve (PBS, 1992).
36. Deloria, *Custer Died for Your Sins*.
37. From Deloria, *Speaking of Indians*, quoted in Nabokov, *Native American Testimony*, 253–55.
38. See Brown, *Bury My Heart at Wounded Knee*; Coleman, *Voices of Wounded Knee*.
39. L. F. Baum, "Editorials on the Sioux Nation," University of Oxford History of Science, Medicine, and Technology website, http://hsmt.history.ox.ac.uk//courses_reading/undergraduate/authority_of_nature/week_7/baum.pdf.
40. Quoted in Vizenor, *Native Liberty*, 143–44.
41. Quoted in Utley, "The Ordeal of Plenty Horses," 16.
42. Deloria, *Indians in Unexpected Places*, 28.
43. Ibid., 35–36.
44. From *New Directions in Indian Purpose*, quoted in Nabokov, *Native American Testimony*, 421.
45. See Chang, *Color of the Land*. For well-documented details on widespread corruption involved in using allotment to dispose of the lands of the Native nations and individual Indian allotment holders in Oklahoma, see Debo, *And Still the Waters Run*.
46. From Deloria, *Speaking of Indians*, quoted in Nabokov, *Native American Testimony*, 249.
47. Stone, "Report on the Court of Private Land Claims."
48. "United States v. Sandoval," 28. See also Dunbar-Ortiz, *Roots of Resistance*, 114–18.

CHAPTER NINE: US TRIUMPHALISM AND PEACETIME COLONIALISM

Epigraph 1: Theodore Roosevelt, "The Expansion of the White Races," address at the Methodist Episcopal Church, Washington, DC, January 18, 1909, in "Two Essays by Theodore Roosevelt," *Modern American Poetry*, English Department, University of Illinois, http://www.english.illinois.edu/maps/poets/a_f/espada/roosevelt.htm (accessed December 10, 2013), from Roosevelt, *American Problems*. See also *The Works of Theodore Roosevelt*, memorial ed., *North American Review* 15 (1890).

Epigraph 2: Brown, *Bury My Heart at Wounded Knee*, 419. See also Black Elk and Neihardt, *Black Elk Speaks*.

1. Williams, *Empire as a Way of Life*, 73–76, 102–10. Marshall Islands regained full sovereignty in 1986.
2. See Kinzer, *Overthrow*.
3. For photographs and documents, see Arnaldo Dumindin, *Philippine-American War, 1899–1902*, http://philippineamericanwar.webs.com (accessed October 1, 2013).
4. Kaplan, *Imperial Grunts*, 138. On early US imperialism overseas, see Immerman, *Empire for Liberty*; Zacks, *Pirate Coast*.
5. From *Condition of the Indian Tribes*, quoted in Nabokov, *Native American Testimony*, 194–95.
6. Silbey, *War of Frontier and Empire*, 211.
7. Williams, "United States Indian Policy and the Debate over Philippine Annexation."
8. See Kuzmarov, *Modernizing Repression*.
9. See Womack and Dunbar-Ortiz, "Dreams of Revolution: Oklahoma, 1917."
10. See Eisenhower, *Intervention!*
11. Miner, *Corporation and the Indian*, xi.
12. Ibid., xiv.
13. Ibid., 10.
14. Ibid., 19.
15. From "Address of Robert Spott," *Commonwealth* 21, no. 3 (1926), quoted in Nabokov, *Native American Testimony*, 315–16.
16. See Ifill, *On the Courthouse Lawn*.
17. McGerr, *Fierce Discontent*, 305.
18. See Philip, *John Collier's Crusade for Indian Reform*; Kelly, *Assault on Assimilation*.
19. Blackman, *Oklahoma's Indian New Deal*.
20. Aberle, *Peyote Religion Among the Navaho*, 53.
21. See Lamphere, *To Run After Them*.
22. Navajo Community College, *Navajo Livestock Reduction*, 47.

23. See Drinnon, *Keeper of Concentration Camps*. Some of the Japanese concentration camps were built on Native reservations.
24. Myer quoted in ibid., 235.
25. See Cobb, *Native Activism in Cold War America*.
26. House Concurrent Resolution 108, 1953, *Digital History*, http://www.digitalhistory.uh.edu/disp_textbook.cfm?smtid=3&psid=726 (accessed October 1, 2013). See also Getches, Wilkinson, and Williams, *Cases and Materials on Federal Indian Law*; Wilkinson, *Blood Struggle*. For a survey of federal Indian policy, see O'Brien, *American Indian Tribal Governments*, 84–85.
27. See Zinn, *People's History of the United States*, 420–28.
28. Kinzer, *Overthrow*, 111–47.

CHAPTER TEN: GHOST DANCE PROPHECY

Epigraph 1: "Sioux Ghost Dance Song Lyrics," documented and translated by James Mooney in 1894, *Ghost Dance*, http://www.ghostdance.com/songs/songs-lyricssioux.html (accessed December 10, 2013).

Epigraph 2: Quoted in Zinn, *People's History of the United States*, 525.

1. Slotkin, *Gunfighter Nation*, 1–2.
2. Ibid., 3.
3. "Blue Lake," *Taos Pueblo*, http://www.taospueblo.com/blue-lake (accessed October 2, 2013).
4. From the statement of James E. Snead, president of the Santa Fe Wildlife and Conservation Association, "Taos Indians—Blue Lake," in "Hearings before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, U.S. Senate, 91st Congress, 2nd Session (September 19–20, 1968)," in *Primitive Law—United States Congressional Documents*, vol. 9, pt. 1 (Washington, DC: Government Printing Office, 1968), 216.
5. For the senators' arguments against the return of Blue Lake, see "Pueblo de Taos Indians Cultural and Ceremonial Shrine Protection Act of 1970," Proceedings and Debates of the 91st Congress, 2nd Session (December 2, 1970), *Congressional Record* 116, pt. 29, 39, 587, 589–90, 594. Nielson, "American Indian Land Claims," 324. The senators on the subcommittee were concerned about the Alianza Federal de Mercedes (later renamed the Alianza Federal de Pueblos Libres), formed in 1963 to pressure the federal government for reconsideration of land-grant settlements and the loss of the commons. The organization claimed that colonialism had robbed resources, depopulated communities in northern New Mexico, and impoverished the people. The Alianza was composed of many poor land-grant heirs and was identified primarily with a Texas-born Mexican, Reies López Tijerina. In June 1967, the National Guard was dispatched with tanks, helicopters, and infantry to Rio Arriba County in search of the agrarian Mexican rebels who had participated in the "Courthouse Raid" at Tierra Amarilla.

The incident and the government's response briefly focused national and international attention on northern New Mexico, and the land-grant issue, which had been resolved in the courts over sixty years before, once again became a live issue.

Several federal Spanish and Mexican land-grant cases have been brought in federal courts, one to the Supreme Court in 1952 that was denied a hearing: Martínez v. Rivera, 196 Fed. 2nd 192 (Circuit Court of Appeals, 10th Circuit, April 16, 1952). In 2001, following more than a century of struggle by Hispanic land grantees who were deprived of most of their landholdings after the United States occupied New Mexico in 1848, the US General Accounting Office began a study of the New Mexico land grants. The GAO issued its final report in 2004, but no action has yet ensued. US General Accounting Office, *Treaty of Guadalupe Hidalgo.*

6. Cobb, *Native American Activism in Cold War America*, 58–61. For a full history of the NIYC, which still thrives, see Shreve, *Red Power Rising.*
7. Quoted in Zinn, *People's History of the United States*, 516–17.
8. Cobb, *Native American Activism in Cold War America*, 157.
9. Mantler, *Power of the Poor.*
10. Smith and Warrior, *Like a Hurricane*, 28–29.
11. Ibid., 29–30.
12. On the founding of the American Indian Movement, see ibid., 114–15, and Waterman and Bancroft, *We Are Still Here.*
13. Smith and Warrior, *Like a Hurricane*, 111.
14. "Trail of Broken Treaties 20-Point Position Paper," *American Indian Movement*, http://www.aimovement.org/ggc/trailofbrokentreaties.html (accessed December 10, 2013).
15. Robert A. Trennert, *Alternative to Extinction: Federal Indian Policy and the Beginnings of the Reservation System, 1846–51* (Philadelphia: Temple University Press, 1975), 166.
16. See testimony of Pat McLaughlin, chairman of the Standing Rock Sioux government, Fort Yates, ND (May 8, 1976), at hearings of the American Indian Policy Review Commission, established by Congress in the act of January 3, 1975.
17. See Philip, *John Collier's Crusade for Indian Reform.*
18. King quoted in Dunbar-Ortiz, *The Great Sioux Nation*, 156.
19. For a lucid discussion of neocolonialism in relation to American Indians and the reservation system, see Jorgensen, *Sun Dance Religion*, 89–146.
20. There is continuous migration from reservations to cities and border towns and back to the reservations, so that half the Indian population at any time is away from the reservation. Generally, however, relocation is not permanent and resembles migratory labor more than permanent relocation. This conclusion is based on my personal observations and on unpublished studies of the Indigenous populations in the San Francisco Bay area and Los Angeles.

21. The American Indian Movement convened a meeting in June 1974 that founded the International Indian Treaty Council (IITC), receiving consultative status in the UN Economic and Social Council (ECOSOC) in February 1977. The IITC participated in the UN Conference on Desertification in Buenos Aires, March 1977, and made presentations to the UN Human Rights Commission in August 1977 and in February and August 1978. It also led the organizing for the Non-Governmental Organizations (NGOs) Conference on Indigenous Peoples of the Americas, held at UN headquarters in Geneva, Switzerland, in September 1977; participated in the World Conference on Racism in Basel, Switzerland, in May 1978; and participated in establishing the UN Working Group on Indigenous Populations, the UN Permanent Forum on Indigenous Issues, and the 2007 UN Declaration on the Rights of Indigenous Peoples. See Echo-Hawk, *In The Light of Justice*; see also Deloria, *Behind the Trail of Broken Treaties*.
22. Herr, *Dispatches*, 45.
23. Zinn, *People's History of the United States*, 521.
24. Ellen Knickmeyer, "Troops Have Pre-Combat Meal, War Dance," Associated Press, March 19, 2003, http://www.myplainview.com/article_9c595368-42db-50b3-9647-a8d4486bff28.html.
25. Grenier, *First Way of War*, 223–24.

CHAPTER 11: THE DOCTRINE OF DISCOVERY

Epigraph 1: McNickle, *The Surrounded*, 49.

Epigraph 2: Vizenor, "Constitutional Consent," 11.

1. The author was present at the proceedings.
2. See Watson, *Buying America from the Indians*; and Robertson, *Conquest by Law*.
3. Miller, "International Law of Colonialism." See also Deloria, *Of Utmost Good Faith*, 6–39; Newcomb, *Pagans in the Promised Land*.
4. Eleventh Session, United Nations Permanent Forum on Indigenous Issues, http://social.un.org/index/IndigenousPeoples/UNPFIISessions/Eleventh.aspx (accessed October 3, 2013).
5. "International: Quakers Repudiate the Doctrine of Discovery," August 17, 2012, Indigenous Peoples Issues and Resources, http://indigenouspeoplesissues.com/ (accessed October 3, 2013). See also "The Doctrine of Discovery," http://www.doctrineofdiscovery.org/ (accessed October 3, 2013).
6. "The Doctrine of Discovery: 2012 Responsive Resolution," Unitarian Universalist Association of Congregations, http://www.uua.org/statements/statements/209123.shtml (accessed October 3, 2013).
7. Vincent Warren, "Government Calls Native American Resistance of 1800s 'Much Like Modern-Day Al-Qaeda,'" *Truthout*, April 11, 2011, http://truth-out.org/news/item/330-government-calls-native-american-resistance-of-1800s-much-like-modernday-alqaeda (accessed October 3, 2013).

8. Sharon H. Venne, "What Is the Meaning of Sovereignty," Indigenous Women's Network, June 18, 2007, http://indigenouswomen.org/ (accessed November 11, 2013).
9. Sanchez, *Treaty Council News*, 12.
10. See Dunbar-Ortiz, *Indians of the Americas*; Dunbar-Ortiz, *Roots of Resistance*, chapter 7, "Land, Indigenousness, Identity, and Self-Determination."
11. Killsback, "Indigenous Perceptions of Time," 150–51.
12. UN Commission on Human Rights, Sub-commission on Prevention of Discrimination and Protection of Minorities, 51st sess., *Human Rights of Indigenous Peoples: Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Populations: Final Report*, by Miguel Alfonso Martínez, special rapporteur, June 22, 1999, UN Document E/CN.4/Sub.2/1999/20. See also *Report of the Working Group on Indigenous Populations on Its Seventeenth Session, 26–30 July 1999*, UN Document E/CN.4/Sub.2/1999/20, August 12, 1999.
13. Rob Capriccioso, "*Cobell* Concludes with the Rich Getting Richer," *Indian Country Today*, June 27, 2011, http://indiancountrytodaymedianetwork.com/ (accessed October 3, 2013). See also "Indian Trust Settlement" (the *Cobell v. Salazar* settlement website), http://www.indiantrust.com/ (accessed October 3, 2013); and Jodi Rave, "Milestone in Cobell Indian Trust Case," *High Country News*, July 25, 2011, http://www.hcn.org/issues/43.12/milestone-in-cobell-indian-trust-case (accessed October 3, 2013).
14. Wilkinson, "Afterword," 468–69.
15. For the history of the establishment of Mount Rushmore as a national monument in the illegally taken Black Hills, see Larner, *Mount Rushmore*; and Taliaferro, *Great White Fathers*. For a history of the American Indian Movement, see Smith and Warrior, *Like a Hurricane*; and Wittstock and Bancroft, *We Are Still Here*. See also AIM-WEST, http://aimwest.info/ (accessed October 3, 2013). On the International Indian Treaty Council, see Dunbar-Ortiz, *Indians of the Americas*; Dunbar-Ortiz, *Blood on the Border*; and the IITC website, http://www.treatycouncil.org/ (accessed October 3, 2013).
16. "For Great Sioux Nation, Black Hills Can't Be Bought for $1.3 Billion," PBS *NewsHour*, August 24, 2011, video and transcript at http://www.pbs.org/newshour/bb/social_issues/july-dec11/blackhills_08-24.html (accessed October 3, 2013).
17. See Dunbar-Ortiz, *Economic Development in American Indian Reservations*.
18. See Harvard Project on American Indian Economic Development, *State of the Native Nations*.
19. See Light and Rand, *Indian Gaming and Tribal Sovereignty*.
20. Hedges, *Days of Destruction, Days of Revolt*, 1–58.

21. Vine Deloria Jr. speaking in PBS *Frontline* documentary *In the Spirit of Crazy Horse* (1990).
22. Lurie, "World's Oldest On-Going Protest Demonstration."
23. Poverty and class analysis can be accomplished without obliterating the particular effects of colonialism, as Alyosha Goldstein brilliantly demonstrated in *Poverty in Common*, with a chapter titled "On the Internal Border: Colonial Difference and the Locations of Underdevelopment," in which he treats Native nations and Puerto Rico with reference to sovereignty status and collective experiences of colonialism in addition to capitalism. Goldstein, *Poverty in Common*, 77–110.
24. For an excellent summary of testimonies, see Smith, "Forever Changed," 57–82.
25. From Embree, *Indians of the Americas*, quoted in Nabokov, *Native American Testimony*, 222.
26. See McBeth, *Ethnic Identity and the Boarding School Experience*, 105. See also Broker, *Night Flying Woman*, 93–94.
27. Yvonne Leif, *All Things Considered*, National Public Radio, October 14, 1991.
28. Roger Buffalohead, *All Things Considered*, National Public Radio, October 14, 1991.
29. Haig-Brown, *Resistance and Renewal*, 75.
30. Knockwood, *Out of the Depths*, 138.
31. Alfred, *Peace, Power, and Righteousness*, xii.
32. Smith, "Native American Feminism, Sovereignty and Social Change," 132; Smith, *Conquest*. See also Erdrich, *The Round House*. In this 2012 National Book Award winner for fiction, Erdrich, who is Anishinaabe from North Dakota, writes of the circumstances on reservations that allow for extreme sexual violence.
33. Amnesty International USA, *Maze of Injustice*.
34. Wilkins, "Sovereignty, Democracy, Constitution," 7.
35. Dennison, *Colonial Entanglement*, 197.
36. Vizenor and Doerfler, *White Earth Nation*, 63.
37. Ibid., 11.

CONCLUSION: THE FUTURE OF THE UNITED STATES

Epigraph: Byrd, *Transit of Empire*, 122–23.

1. For a magisterial study, see Slotkin, *Gunfighter Nation*.
2. Kaplan, *Imperial Grunts*.
3. Grenier, *First Way of War*, 10.
4. Kaplan, *Imperial Grunts*, 3–5.
5. Ibid., 6.
6. Ibid., 8, 10.

7. Ibid., 10.
8. Ibid., 7–8.
9. Hoxie, *Encyclopedia of North American Indians*, 319.
10. Byrd, *Transit of Empire*, 226–28.
11. Agamben, *Homo Sacer*.
12. Byrd, *Transit of Empire*, 226–27.
13. *The Modoc Indian Prisoners*, 14 Op. Att'y Gen. 252 (1873), quoted in John C. Yoo, *Memorandum for William J. Haynes II, General Counsel of the Department of Defense,* March 14, 2003, p. 7. Quoted in Byrd, *Transit of Empire*, 227.
14. Byrd, *Transit of Empire*, 227.
15. Vine, *Island of Shame*, 2.
16. Kissinger quoted in ibid., 15.
17. Ibid., 15–16.
18. LaDuke, *Militarization of Indian Country*, xvi.
19. Interview with Cynthia Enloe, "Militarization, Feminism, and the International Politics of Banana Boats," *Theory Talk*, no. 48, May 22, 2012, http://www.theory-talks.org/2012/05/theory-talk-48.html (accessed October 4, 2013). See also Enloe, *Bananas, Beaches and Bases.*
20. Grenier, *First Way of War*, 222.
21. Price, *Weaponizing Anthropology*, 1, 11.
22. Stone and Kuznick, *Untold History of the United States*, xii; *The Untold History of the United States*, TV series, Showtime, 2012. An interesting aside to the question of lack of national health care is that only two sectors of US society actually have national health care, with no private insurer participating: war veterans and Native Americans.
23. Byrd, *Transit of Empire*, xii–xiv.
24. Ibid., 123; Cook-Lynn, *New Indians, Old Wars*, 204.
25. Razack, *Dark Threats and White Knights*, 10.
26. For understanding the limitations of these initiatives regarding Indigenous self-determination, see Forbes, *Native Americans and Nixon.*
27. Hardt and Negri, *Commonwealth*; the first two volumes in their trilogy are *Empire* (2000) and *Multitude* (2005). Other writers calling for a "commons" include, most notably, Linebaugh, *Magna Carta Manifesto*, and theorists associated with the Midnight Notes Collective and the Retort Collective.
28. Sharma and Wright, "Decolonizing Resistance, Challenging Colonial States."
29. Lorraine Le Camp, unpublished paper, 1998, quoted in Bonita Lawrence and Enaskshi Dua, *Social Justice* 32, no. 4 (2005): 132.
30. Cook-Lynn, *Why I Can't Read Wallace Stegner and Other Essays*, 88.
31. Byrd, *Transit of Empire*, 205.
32. Johansen, *Debating Democracy*, 275.

33. See McKeown, *In the Smaller Scope of Conscience.*
34. Thomas, *Skull Wars*, 88.
35. Erik Davis, "Bodies Politic: Fetishization, Identity, and the Indigenous Dead," unpublished paper, 2010.
36. Asutru Folk Assembly statement, quoted in Downey, *Riddle of the Bones*, xxii.
37. Ibid., 11.
38. Davis, "Bodies Politic."
39. Silverberg, *Mound Builders of Ancient America*, 57.
40. Gómez-Quiñones, *Indigenous Quotient*, 13.
41. Ortiz, *from Sand Creek*, 86.

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ABSTRACT

This article focuses on the United States Northwest Ordinance of 1787's profession of 'utmost good faith' towards Indians and its provision for 'just and lawful wars' against them. As interpreted by US officials as they authorized and practised war against native communities in the Northwest Territory from 1787 to 1832, the 'just and lawful wars' clause legalized wars of 'extirpation' or 'extermination', terms synonymous with genocide by most definitions, against native people who resisted US demands that they cede their lands. Although US military operations seldom achieved extirpation, this was due to their ineptness and the success of indigenous strategies rather than an absence of intention. When US military forces did succeed in achieving their objective, the result was massacre, as revealed in the Black Hawk War of 1832. US policy did not call for genocide in the first instance, preferring that Indians embrace the gift of civilization in exchange for their lands. Should Indians reject this display of 'utmost good faith', however, US policy legalized genocidal war against them.

Introduction

Did the United States establish a formal policy of genocide against American Indians? In his magisterial *The great father: the United States government and the American Indians*, published in 1984, Francis Paul Prucha wrote that '[t]he United States, of course, absolutely rejected a war of extermination against the Indians'. Prucha's 'of course' reflected a well-founded confidence that his judgement reflected a scholarly consensus. In recent decades, scholars have become more critical of US Indian policy than Prucha, although most continue to argue that the US did not adopt a policy of genocide. Gary Clayton Anderson's recent *Ethnic cleansing and the Indian: the crime that should haunt America* makes a strong distinction between ethnic cleansing and genocide and acquits the US of the latter, arguing that the government never embarked on a 'concerted effort to kill large numbers of people or indeed to annihilate a given people'.[1]

Scholars in genocide studies have been only partially effective in countering the thesis that the US never established a policy of genocide against American Indians. Arguments for the pervasiveness of genocide in the western hemisphere first became prominent at the time of the Columbus Quincentennial. David Stannard's *American holocaust: the*

CONTACT Jeffrey Ostler jostler@uoregon.edu

conquest of the New World and Ward Churchill's *A little matter of genocide*: *holocaust and denial in the Americas, 1492 to the present* argued that Europeans in the western hemisphere consistently committed genocide against indigenous people. As their titles announced, the narrative strategy in these works was to relate horrific event after horrific event (massacres, enslavements, epidemics), indict Europeans in the Americas for their greed, racism and bloodlust, and link these to the drastic decline of indigenous populations in the Americas, thus depicting an unrelenting and intentional process that closely resembled the Nazis' systematic annihilation of Jews.[2] Although Stannard and Churchill did not provide a detailed analysis of policy, their works conveyed the strong impression that Spain, Britain and the United States intended as a matter of policy to physically eliminate all American Indians. In part because of a generally conservative disposition among academic specialists in colonial American and US history, but also because of its excessive polemics, empirical overreaches and reductionism, the Quincentennial literature has never gained much traction among scholars of US relations with Native Americans. If the question is whether the United States pursued a policy of physically killing all Indians in the first instance, as the Quincentennial writers argued, Prucha and Anderson have the better of the debate, since the US government did not adopt such an overarching policy. US policymakers generally preferred that Indians cede their lands and go away (through assimilation, voluntary removal or a 'natural' process of disappearance) without having to kill them. It was cheaper that way and it gave less trouble to the consciences of men devoted to a project they wished to see and be seen as honourable.

But policy was not limited to policymakers' statements of what they ideally wished to happen. What if Indians refused the gift of 'civilization' in exchange for their lands? What if they defended their lands against settler invasions? Recent scholarship in genocide studies is more capable of accounting for these contingencies. Ben Kiernan observes that 'US policies towards Indians did not mandate genocide, but it was practiced when considered necessary', while Michael Mann points out that '[t]he effect of Indian resistance on even enlightened presidents drove to them to accept a Plan C, threatening genocide if they did not accept deportation'. Similarly, in a discussion of the Australian case with theoretical implications for settler colonial situations in general (the US included), A. Dirk Moses outlines a process of 'policy radicalization' related to the 'intensity of Indigenous resistance' that could lead to 'genocidal moments'. Nonetheless, genocide studies' move from an intentionalist to a structuralist approach and accompanying concepts such as 'society-led' (instead of 'state-led') genocides, 'relations of genocide' and 'logic of elimination' turns attention away from formally constructed policy, leaving the impression that wars of extermination and massacres were often improvised responses to policy breakdown rather than the result of legislation and formal decisions by policymakers that called for and sanctioned acts of genocide under certain conditions.[3] Benjamin Madley's recent documentation of state and federal government policies such as establishing scalp bounties and funding exterminatory militias returns attention to policy and suggests the need for further analysis of the location of genocide in US policy.[4]

This article argues that at the founding of the United States policymakers developed a clearly defined policy option for dealing with indigenous groups who resisted US demands that they cede their lands. This policy option called for the extirpation or extermination of such groups, terms that meant the intentional killing of a substantial portion of a group and so can be considered as genocidal under the 'restrictive' definition of the term

proposed by Frank Chalk and Kurt Jonassohn as 'a form of one-sided mass killing in which a state or other authority intends to destroy a group'. In citing this definition, I am not arguing for it as authoritative for analysing genocide as a general phenomenon. For the purposes of this article, Chalk and Jonassohn's definition is useful because there is considerable consensus, despite what Dan Stone refers to as a 'merry-go-round of definitional debates', that a government policy intentionally authorizing mass killing to destroy a group clearly qualifies as a policy of genocide.[5]

The Northwest Ordinance

The Northwest Ordinance of 1787 at first appears an unlikely document for identifying a foundational location for genocide in US Indian policy. Enacted in New York City by the Continental Congress as the Constitutional Convention was meeting in Philadelphia, the Northwest Ordinance was reaffirmed in 1789 during the first session of the US Congress.[6] At one time, what Frederick Jackson Turner termed the 'great Ordinance' was commonly celebrated, in Bernard Bailyn's words, for its 'brilliantly imaginative provisions … for opening up new lands in the West and settling new governments within them'. This it did through a series of provisions allowing for an orderly creation of territories in the area north of the Ohio River into the Great Lakes and their admission to the Union on

Figure 1. Northwest Territory.

an 'equal footing' with existing states. The states created were Ohio (1803), Indiana (1816), Illinois (1818), Michigan (1837) and Wisconsin (1848).[7]

In recent decades, scholars have continued to see the Ordinance as an effective means for reconciling the metropolitan priority to regulate the pace of US expansion with the frontier priority to resist the reestablishment of colonial rule, although they have more often registered the costs of US expansion for the region's indigenous people. Writing at the time of the Ordinance's bicentennial, Jack N. Rakove observed that the Ordinance 'solved the problem of the frontier by offering a means both to extend the empire of liberty and to incorporate these liberated territories into [an] extended republic'. For the 'original occupants of the Northwest Territory', he added, 'one people's liberty was another people's loss'.[8]

Historians have also expressed considerable ambivalence about the Ordinance's provision (in article 6) forbidding slavery in the Northwest Territory. Paul Finkleman acknowledges that '[t]he Ordinance certainly helped put slavery on the road to ultimate extinction in the area north of the Ohio River', but, he argues, not only did slavery remain a 'vigorous institution' within the region for decades, by implicitly sanctioning slavery in new territories in the south, the Ordinance had the effect of clarifying a national commitment to the expansion of slavery in that region. Similarly, George William Van Cleve has shown that article 6 was part of a 'western development bargain' in which southern political leaders accepted the Ordinance's anti-slavery provision (tempered by a fugitive slave clause and language respecting the property, presumably including slaves, of US citizens already residing in the territory) in exchange for northern states' withdrawal of support for a commercial treaty with Spain that would have denied southern states access to the Mississippi River. This allowed the Constitutional Convention to avoid the very real possibility of sectional stalemate and meant that the US would be committed to the western expansion of plantation slavery.[9] Van Cleve's analysis of the Ordinance's role in the creation of the Constitution contributes an additional dimension to its implications for Indians. Had the Constitution failed and the weaker Articles of Confederation remained in effect, settlement of the Northwest would still have occurred and Indians would undoubtedly have been threatened by local militias. But Indians might not have faced sustained federal military invasions. Expansion under the Articles of Confederation might also have encouraged breakaway republics with the resulting decentralization allowing Indians greater room for manoeuvre. The adoption of the Constitution, however, meant that Indians would be subject to an empire with relatively strong central authority that assumed that Indian lands would be converted into private property owned by white US citizens.

Of the Northwest Ordinance's 2,819 words, seventy-six concern Indians. Part of article 3, they read as follows:

> The utmost good faith shall always be observed towards the Indians, their lands and property shall never be taken from them without their consent and in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorised by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

Although the most recent full-length study of the Ordinance ignores article 3 altogether,[10] scholars' most common failing is to focus entirely on the 'utmost good faith' clause. Rakove sees this language as evidence of a 'reassessment of the naive and unjust assumptions in

which Congress had first acted towards the defeated tribes' in treating them as a 'conquered people' at the close of the Revolutionary War. Rakove goes on to say that unfortunately the 'hopeful intentions' of the Ordinance were undermined by 'practical factors that operated along the frontier' and so the Ordinance was unable to prevent the 'further deterioration of relations that led to the brutal and violent frontier war of the early 1790s'. Similarly, Prucha treats the 'utmost good faith' clause as an expression of a 'policy of justice toward the Indians'. Like Rakove, Prucha recognizes that because of an 'undeclared war between the frontiersmen and the Indians', the US eventually turned to 'military force' in the region, but neither he nor Rakove considers the structural relationship between article 3's profession of 'utmost good faith' towards Indians and its provision for 'just and lawful wars authorised by Congress'. The general impression is that article 3, including its anticipation of war (presumed to be both 'lawful' and 'just'), was a straightforward expression of good intentions but that these were undermined by forces or events unanticipated by policymakers and beyond their control. Occasionally, critically minded authors have suggested some dissonance between expressions of good faith and war, as in Reginald Horsman's sardonic remark that 'it was hardly likely that the American and Indian concepts of "just and lawful war" would be identical' or in the suggestion by Vine Deloria Jr. and David E. Wilkins that 'Congress never did bother to examine whether the wars it waged against the tribes in the West were just or lawful'. Overall, however, treatments of the Northwest Ordinance's article 3 exemplify what Patrick Wolfe calls 'the intentional fallacy', a mode of interpretation that 'privileges expressions of intention, no matter how contrary to historical experience, over collective outcomes, no matter how emphatic their historical regularity'. Even critical accounts that register a gap between intention and outcome, Wolfe continues, provide 'an ideological alibi for the negative outcomes of Indian administration', explaining them as 'policy failures or unintended consequences instead of systemic regularities'.[11]

'Extirpative war' as 'just and lawful' against resisting Indians

The Northwest Ordinance's provision for 'just and lawful wars' was not formulated as an abstract principle to be applied in some hypothetical future. It was a concrete option to deal with a formidable indigenous movement organized to resist US efforts to obtain Indian lands. Immediately after the US secured independence in the 1783 Treaty of Paris, Congress authorized a commission to inform Ohio Valley Indians of the US's intention to 'establish a boundary line between them and us' running from the mouth of the Great Miami River northeast to Lake Erie, thus giving the US most of the present-day state of Ohio.[12] In January 1785 when this commission informed Wyandots, Delawares, Ottawas and Ojibwes of this new boundary, native leaders objected that the land east of it was theirs. The commissioners bluntly replied, 'we claim the country by conquest'.[13] Although some Indians agreed to this new boundary in signing the 1785 Fort McIntosh Treaty, a larger number regarded this treaty as illegitimate and began organizing a multinational confederation to secure a boundary between the US and Indian country at the Ohio River. In late 1786, Mohawks, Wyandots, Delawares, Shawnees, Ottawas, Ojibwes, Potawatomis, Chickamauga Cherokees, Miamis, Weas and Piankashaws, calling themselves the United Indian Nations (UIN), informed the US Congress that any 'cession of our lands should be made … by the united voice of the confederacy' and called for a

peace conference. Should the US reject a reasonable settlement, the UIN was 'obliged to defend those rights and privileges which have been transmitted to us by our ancestors', a clear assertion of sovereignty and a right to self-defence.[14]

The message from the UIN reached Congress in July 1787. In response, Secretary of War Henry Knox recommended that Congress authorize a commission to negotiate a 'general treaty … with the tribes of [I]ndians'. Knox rejected the alternative, war, for two reasons. First, to fail to respond to the UIN's appeal would make it 'appear that we preferred War to Peace', thus placing a 'stain on the national reputation of America'. Second, for a 'small sum of money' it would be possible to purchase land from Indians, whereas a war 'may cost much blood and infinitely more money'. Congress accepted Knox's recommendation and further advised that the commissioners negotiating a treaty should reject 'a language of superiority and command' and instead 'treat with the Indians more on a footing of equality' and 'convince them of the Justice and humanity as well as the power of the United States'.[15]

Coming on the heels of the passage of the Northwest Ordinance, Congress's acceptance of Knox's recommendations has typically been seen as a repudiation of a policy of claiming Indian lands by right of conquest in favour of a new policy consistent with the 'utmost good faith' clause recognizing that Indian nations owned their lands and so requiring the US to purchase them.[16] Pragmatically, US officials hoped that displays of 'utmost good faith' would encourage Indians to accept land cessions without costly war. An avowed commitment to 'utmost good faith' also followed from the United States' paradoxical position as a postcolonial empire. Aziz Rana points out that the US was the 'first example' within European imperialism of a 'successful settler revolt against metropolitan rule'. As such, US leaders needed to demonstrate to themselves and to a watching world a commitment to the highest principles of 'civilization'; otherwise, an unprecedented experiment in constructing what Thomas Jefferson imagined as an 'empire for liberty' would fail.[17] Despite the adoption of an ostensibly new policy, however, basic premises were unaltered. The US might begin with gentler tones when asking Indians to give up their lands and would provide compensation, but indigenous sovereignty remained severely circumscribed. Not only would the US claim a right of pre-emption and so deny an indigenous right to sell lands to parties other than the federal government, more importantly, the US would not recognize an indigenous right to refuse to sell when presented with reasonable terms as defined by the US. As Horsman observes for the period from 1787 to 1812, '[i]n many cases treaties were still imposed upon the Indians, but the United States was henceforth at least to go through the motions of formal purchase of Indian rights'.[18] Nor would the US accept an indigenous right of self-defence.

In early 1788 the governor of the Northwest Territory, Arthur St. Clair, sent word to the UIN of his intention to negotiate. But before formal negotiations began, he made clear their parameters when he rejected a proposal by moderate confederationists for a compromise boundary between the US and Indian country on the Muskingum River (giving the US the eastern quarter of Ohio) and sent word that Indians must accept the Fort McIntosh Treaty boundary. Any departure from the earlier conquest policy would not entail a reconsideration of treaties dictated under that policy. St. Clair's inflexibility caused many members of the UIN to decide against attending the treaty council. When the council convened at Fort Harmar in December 1788 some leaders thought St. Clair might be open to

reconsider his insistence on the Fort McIntosh Treaty boundary. After days of discussion, however, it became clear that St. Clair was unwilling to give an inch. 'The United States … were much inclined to be at peace with all the Indians', he said, 'but if the Indians wanted war they should have war'. Utmost good faith had been shown. The consequence of rejecting US generosity was clear.[19]

Although some confederationists signed the Fort Harmar Treaty, most did not. In 1789 they turned to militancy to pressure the US to accept an Ohio River boundary, raiding colonial settlements and harassing military convoys and boats along the Ohio River. As Knox continued to receive reports of 'depredations of the Indians', in May 1790 he proposed a military expedition against 'the banditti Shawanese and Cherokees, and some of the Wabash Indians'. President George Washington approved this expedition and in June Knox ordered General Josiah Harmar and Governor St. Clair to make plans to 'extirpate, utterly, if possible, the said banditti'.[20] Three years after the adoption of the Northwest Ordinance, then, Knox provided an official interpretation of the phrase 'just and lawful wars' to mean wars of extirpation. Knox's statement, it is crucial to recognize, was not mere rhetoric; it was an official order.

On what basis did Knox consider a war of extirpation against 'banditti' Indians to be 'just and lawful'? Knox did not provide a rationale, evidence that the legitimacy of extirpative war against the 'merciless Indian savages' Thomas Jefferson identified in the Declaration of Independence was axiomatic.[21] Had Knox been asked to cite a legal authority, he would have turned to the Swiss jurist Emmerich de Vattel, author of *Law of nations* (1758) and widely regarded by US founders as the world's pre-eminent authority on law and war.[22] In the tradition of John Locke, whose 1690 *Second treatise of government* contrasted the 'wild Woods and uncultivated waste of *America* left to Nature without any improvements, tillage, or husbandry' with England's 'well Cultivated' lands, Vattel made a strong distinction between agricultural/civilized peoples who cultivated and improved the land and 'savage' peoples who ostensibly did not. In writing about North America, Vattel argued that the 'people of Europe, too closely pent up at home, finding land of which the savages stood in no particular need, and of which they made no actual and constant use, were lawfully entitled to take possession of it, and settle it with colonies'. From this legal grounding in the 'doctrine of discovery', Vattel further contended that 'those nations that inhabit fertile countries but disdain to cultivate their lands and chuse rather to live by plunder … deserve to be extirpated as savage and pernicious beasts' and that civilized nations had a 'right to join a confederacy for the purpose of punishing and even exterminating … savage nations … who seem to delight in the ravages of war'.[23] These formulations did not allow for extirpation of all Indians under all conditions, but they did provide a legal basis for extirpation under those Knox stipulated: against 'banditti' engaged in 'depredations'.

'Utmost good faith', extirpation and US military operations, 1790–94

What exactly did Knox sanction in ordering extirpation? In the late eighteenth and early nineteenth centuries the term was used interchangeably with extermination, a word, as Ben Kiernan explains, that meant 'utter destruction' and expressed the modern 'concept of genocide'.[24] US officials did not author a manual on wars of extirpation and so to comprehend Knox's intention in ordering a war of extirpation it is necessary to observe US

military forces at work in the Northwest Territory in the early 1790s.[25] Doing so also reveals how US officials cultivated an image of themselves as exercising 'utmost good faith' before going to war, an image necessary to assure themselves, an eastern public and a sceptical Europe that US expansion was proceeding 'with honor'.[26]

The military operation Knox authorized in 1790, commanded by Harmar, has seldom been considered in relation to genocide, but this is because historians have generally emphasized its failures at the expense of its intentions. Harmar's force, 1,400 strong, departed Fort Washington (present-day Cincinnati) in late September towards Indian villages on the upper Maumee River, marching, in the words of Wiley Sword, like a 'herd of elephants trampling through the underbrush'.[27] In October, as Harmar approached his target, he received intelligence that Indians were preparing to abandon their towns. Obviously intending to kill people before they could find safety, he sent a detachment 'to endeavor to surprise the Miami village' of Kekionga, but by the time these troops arrived, its residents were gone. Harmar ordered a detachment to 'reconnoitre the country' and then proceeded to the nearby town of Chillicothe. It, too, had been evacuated and so, as one of the officers recorded, 'the army all engaged burning and destroying everything that could be of use: corn, beans, pumpkins, stacks of hay, fencing and cabins, etc'. The army burned four other towns. Consistent with what John Grenier terms America's 'first way of war', a tradition dating to the early seventeenth century of 'extirpative war' manifested not only by the destruction of Indians' 'agricultural resources' but also 'the destruction of enemy noncombatants', Harmar was not content with material destruction and so ordered another detachment to 'surprise any parties' that might return to Kekionga. Rather than surprising Indians, however, Harmar's detachments provided targets for otherwise outnumbered Miamis, Potawatomis and Shawnees. On terrain they knew well, confederation fighters, led by Blue Jacket (Shawnee) and the Little Turtle (Miami), ambushed and overwhelmed both detachments, killing 178 US soldiers and militiamen in what became known as 'Harmar's Defeat'.[28] Confederation losses were fewer (between ten and forty men killed in combat),[29] but, as Barbara Alice Mann points out, small 'fractal massacres' had a devastating impact on Ohio Valley Indian nations with fairly small populations, especially when their cumulative impact over time is taken into account.[30] Although a failure on its own terms, then, Harmar's expedition did result in partial extirpation. The reason it did not achieve a more complete extirpation was not because of an absence of intent. Rather, the decisions of Indians to evacuate their towns rather than risk catastrophic violence and their capacity for effective counter-attack prevented the US from fulfilling its objective.

Soon after Harmar's defeat, St. Clair began planning a new expedition, but it would take months for him to assemble the necessary men and supplies. As confederation fighters launched attacks on colonizers in eastern Ohio in early 1791, Washington and Knox felt pressure to take immediate action. In March they authorized a quick-strike force of 750 Kentucky militiamen to attack Indian towns north of the Ohio. Knox's orders to the militia's commander, Brigadier General Charles Scott, were more specific than those he gave to Harmar. Instead of general 'extirpation', Scott was to 'assault the said towns, and the Indians therein … sparing all who may cease to resist, and capturing as many as possible, particularly women and children'. Captives would be used as hostages to ensure that Indians submitted to the terms of US expansion. But this did not mean that Scott's expedition would avoid killing non-combatants. When Scott's militia reached its

destination, the Wea town of Ouiatenon and satellite Wea and Kickapoo villages on the Wabash, he 'discovered the enemy in great confusion, endeavoring to make their escape over the river in canoes'. The detachment he ordered to pursue them 'destroyed all the savages with which five canoes were crowded'. Scott did not specify the age and sex of those killed, but almost certainly the canoes carried women, children and older men. In all, Scott burned several towns—mostly evacuated—and reported killing 'thirty-two, chiefly warriors of size and figure' and taking fifty-eight prisoners. Scott congratulated himself that 'no act of inhumanity has marked the conduct of the volunteers of Kentucky on this occasion', but his pursuit of people fleeing in canoes appears to have violated his orders to spare those not resisting. Higher officials did not question this action, indicating that they regarded non-combatant deaths as an acceptable aspect of extirpative war.[31] Overall, Scott's operation against Indians on the Wabash can be considered, like Harmar's, as partially extirpative. It achieved significant destruction, including the killing of non-combatants, but the destruction was less than it would have been had Scott achieved total surprise and/or had Indians chosen military confrontation under conditions unfavourable to them.

By contrast, St. Clair's much larger operation fell even farther short of its intention than Harmar's. With a force of 2,000 men, St. Clair left Fort Washington in September 1791. His destination was the Miami villages on the upper Wabash. Once he arrived there, according to Knox's orders, he was 'to strike them with great severity'. Confederation scouts had little difficulty monitoring the progress of what Colin Calloway describes as 'St. Clair's ponderous, noisy, tree-felling army, with its camp followers, bellowing oxen, and lumbering wagons'. When St. Clair was about fifty miles from his target, confederation strategists decided that their force of 1,200 men could surprise the US army and so attacked on 4 November, killing over 600 soldiers. This was the largest number of Americans killed by Indians in any single battle, far exceeding the 268 fatalities in the much better known 1876 Battle of the Little Bighorn. St. Clair's men did kill between twenty and thirty confederation fighters, but confederationists regarded these as acceptable losses in light of such an overwhelming victory. Judged by its impact, St. Clair's expedition can hardly be considered even partially extirpative (it did not burn a single cornstalk), but he did intend extirpation. Had all gone according to plan, St. Clair would have fulfilled Knox's orders to 'strike with great severity'.[32]

US policymakers' need to reconcile the practice of extirpative war with the humane disposition supposedly expressed in the Northwest Ordinance's 'utmost good faith' clause required constant cultivation. Thus, in reviewing the events that led to St. Clair's defeat, Knox assured Washington, and by extension metropolitan observers in the east and across the Atlantic, that the post-1783 treaties with Indians had been fairly conducted. The 'Miami and Wabash Indians' had been invited to come to Fort Harmar, Knox observed, but they had rejected the invitation. Instead, with other 'banditti' they 'continued their depredations'. The US had made further peace overtures but these 'were treated … with neglect' and 'outrages were renewed with still greater violence than ever'. Although Knox did not explicitly refer to the Northwest Ordinance, his account was obviously designed to establish that 'utmost good faith' had been shown and that Indians' rejection of this good faith meant, as he phrased it, that it was 'necessary to make an experiment of the effect of coercion'. The failure of this experiment meant that the '[p]ride of victory is too strong at present for [the confederation] to receive the offers of peace on reasonable

terms'. Since the confederation 'would probably insist upon a relinquishment of territory', for which they had 'no just claim' (a formulation which failed to recognize the various forms of coercion and lack of consensus undergirding the Fort Harmar and other treaties), Knox concluded that 'adequate military force should be raised as soon as possible'.[33] 'Just and lawful war' was becoming endless war.

Before an army could be raised, however, Knox and Washington promoted several diplomatic initiatives, some involving efforts to make direct contact with the confederacy, others involving efforts to enlist Haudenousaunee (Iroquois) intermediaries. Consistent with a general tendency to take US policymakers' expressions of their intentions at face value, historians have often represented these initiatives as a sincere and humanitarian 'peace offensive'.[34] Given that policymakers had already decreed that the confederacy's position lacked the slightest legitimacy and were predicting that confederation leaders would reject US conditions for peace, however, diplomacy was guided less by a desire to avoid war than to create the appearance that war was consistent with principles of justice. Consider the most elaborate of the diplomatic initiatives the US pursued, a peace commission authorized in early 1793. Knox instructed the commissioners to gain confederation leaders' consent to the Fort Harmar Treaty boundary, though if that failed, he authorized the commissioners to modify the boundary to allow Indians areas within this boundary that the federal government had not already granted to land companies. This, however, was a very modest concession and a repudiation not only of the confederation's position but of a compromise, floated by Haudenousaunee leaders Joseph Brant and Red Jacket, for a revised boundary at the Muskingum River. Not surprisingly, the confederation continued to insist on an Ohio River boundary and the legitimacy of 'defending our just rights against your invasions'. Knox, of course, would have preferred that confederationists accept his limited concession, thus avoiding the cost of fielding another army and risking another failure. But Secretary of State Thomas Jefferson observed that the cabinet's approval of this commission was 'merely to gratify the public opinion' and 'not from an expectation of success', making the overriding purpose of diplomacy plain enough.[35]

By 1794, with policymakers satisfied that they had shown 'utmost good faith' and General Anthony Wayne's Legion of the United States ready to march, US officials began the war that, given their premises, they had viewed as inevitable all along. Wayne proceeded cautiously along his route north from Fort Washington towards the confederation's headquarters at the Glaize in northwestern Ohio, deploying rangers and Indian scouts (Chickasaws and Choctaws) to closely monitor confederation forces and so avoid the fate of Harmar and St. Clair. Wayne's ultimate objective was to force the confederacy to agree to peace on US terms, or, in other words, to cease resisting US efforts to expropriate their lands. From US officials' perspective, there were various scenarios under which this could be accomplished. It was possible that confederation leaders, perceiving that Wayne's army could not be surprised and was in a position to inflict massive destruction, might sue for peace. In this case, little extirpation would occur. But should confederation resist, Wayne's army would attempt to inflict, in Knox's words, 'severe strokes to make them sensible how necessary a solid and permanent peace would be to prevent their utter extirpation'. By this logic, continued resistance would eventually mandate total annihilation.[36]

As Wayne's army drew near, an Ottawa named Kin-jo-i-no later recalled, 'all was consternation and fright throughout the villages. They fled from the corn fields on the fertile bottom lands. … Old women, burdened with immense packs strapped to their shoulders, followed their retreating families with all the haste their aged limbs would permit'. A few days later on 20 August 1794, as US troops moved down the Maumee, confederation leaders decided to attack at a place called Fallen Timbers. Weaker than it was a few years earlier and facing a stronger, more disciplined force, the confederation army was unable to turn back Wayne's. Indian casualties were significant (forty to sixty killed) but not in themselves devastating. Their inability to turn back Wayne's army, however, gave Wayne's men a free hand to continue the work of destruction already commenced, burning cabins and cornfields, uprooting gardens and despoiling graves along a fifty-mile stretch of the Maumee. After Fallen Timbers, confederation forces retreated to Fort Miami, a nearby British post. Expecting aid, they were stunned to find the gates closed in their faces, a betrayal they would remember for decades. The post's commander feared that assisting Indians against a US military operation might drag the empire into war at a time when Britain was already fighting revolutionary France. Deprived of British assistance and with their towns in ruins, most confederation leaders decided to accept Wayne's condition for peace—the cession of most of Ohio—rather than continue to fight. Their assent to the Greenville Treaty in 1795 brought to an end the war for Ohio.[37]

From 1790 to 1794 US military forces killed between 150 and 200 Indians, a significant number as measured as a percentage of small populations. The majority were combatants, but some, like those killed trying to escape Scott's attack in canoes, were non-combatants.[38] US troops also routinely razed crops and villages and frequently plundered graves. But a narrative in which Indians twice rout the US army and finally surrender after a battle (not a massacre) scarcely corresponds to the one-sided massive killing ordinarily associated with genocide. As the foregoing analysis has shown, however, US officials intended the military operations they authorized to inflict overwhelming violence, including the killing of significant numbers of non-combatants, against targeted indigenous communities. That these military operations did not realize their full potential was not because of an absence of genocidal intent. Rather, the salient variable is the inability of US forces to surprise and destroy native population centres. This was due to logistical problems for US armies operating in foreign territory, the incompetence of US military leaders, the competence of Indian military leaders (including their capacity to gather intelligence) and the decisions of confederation leaders to protect non-combatants by evacuating villages when necessary. Ironically, then, US incompetence and native competence combined to 'camouflage'[39] the genocidal potential of US military operations during this period.

'Just and lawful war' in the Northwest Territory, 1800—32

After 1795, as the United States continued to dispossess Indians in the Northwest Territory, government officials repeated earlier assertions of the legitimacy of exterminatory warfare against Indians who resisted US efforts to gain their lands. In the first decade of the nineteenth century, Indiana Territorial Governor William Henry Harrison, described by Robert Owens as President Thomas Jefferson's 'hammer', used a variety of tactics, including bribing, pitting leaders against each other, distributing whiskey and threatening to

withhold annuities, to secure a series of treaties that allowed the US to claim Indian lands in Michigan, Indiana and Illinois. As in the late 1780s, many Indians regarded these treaties as illegitimate. Under the leadership of two Shawnee brothers, Tenskwatawa (the Prophet) and Tecumseh, they organized a new confederacy.[40]

Faced with the re-emergence of indigenous resistance, in 1807 Jefferson instructed Michigan Territorial Governor William Hull to inform Potawatomis and Ojibwes near Detroit that 'if ever we are constrained to lift the hatchet against any tribe, we will never lay it down till that tribe is exterminated, or driven beyond the Mississippi'. Hull was also to notify the Indians that should they go to war, 'they will kill some of us; we shall destroy all of them'. Although a few scholars informed by genocide studies have quoted Jefferson's words, historians of Jefferson's Indian policy have generally ignored them, let alone seen them as a policy statement.[41] As an official presidential communication, however, Jefferson's threat of extermination was exactly that: an official reaffirmation of Knox's interpretation of the Northwest Ordinance's 'just and lawful wars' clause as legalizing exterminatory—that is, genocidal—warfare against resisting Indians. Again, Jefferson's threat was not simply rhetoric; it both reflected and constituted policy.

As in the early 1790s, US officials expressed a preference for peace, but once again peace was contingent on compliance with US demands that Indians accept land cessions. When confederation leaders refused to recognize the legitimacy of Harrison's treaties, in the autumn of 1811 Harrison marched on the confederation's headquarters at Prophetstown, thus igniting a new phase in the long war for the Northwest Territory.[42] Rather than rehearse the details of US military operations over the next several months, it is sufficient to say that, consistent with the patterns in the early 1790s, these operations intended to surprise Indian villages and so carried the potential for wholesale slaughter, but Indians thwarted this intention by evacuating their villages. US troops destroyed as many as two dozen villages in the region, including Prophetstown, rebuilt after Harrison razed it in November 1811 only to be torched again a year later by Kentucky militiamen. Indians suffered some casualties while defending their villages and fighting with their British allies during the war of 1812, but the total number directly killed was probably not much more than one hundred.[43]

Although US military operations in the 1790s and 1810s did not result in a major massacre of Indians, the potential for such operations to have precisely that result was eventually realized on the far western edge of the original Northwest Territory in the early 1830s. As before, the US went to war against a coalition of Indians—in this case, Sauks, Mesquakies (Foxes), Ho Chunks (Winnebagos), Potawatomis and Kickapoos—that objected to the legitimacy of a treaty containing a land cession. The treaty in question was signed in 1804 when Harrison, using veiled threats of war, convinced some Sauk and Mesquakie leaders to agree to cede lands in present-day northwestern Illinois and southwestern Wisconsin, while allowing occupancy of the ceded lands until an unspecified time when US citizens would require them. The majority of Sauks and Mesquakies did not sign the treaty and contended that those who did sign lacked authority to do so. In later years, some Sauks and Mesquakies, again under pressure, agreed to accept the 1804 treaty, though many, notably the Sauk leader Black Hawk, did not.[44]

In the late 1820s, when lead miners and agriculturalists invaded the region, US and Illinois officials declared that it was time to enforce the 1804 treaty and demanded that Indians on the east side of the Mississippi relocate west. Black Hawk and his allies refused. Though Black Hawk's people spent the winter of 1830–31 hunting west of the

Mississippi, in the spring Black Hawk along with well over a thousand followers returned to Saukenuk, for decades the capital of the Sauk nation, on the eastern side of the Mississippi. In late May 1831 Illinois Governor John Reynolds, citing the need 'to protect the Citizens of this State … from Indian invasion, and depredation', called up a force of 700 militiamen to 'remove [Black Hawk's band] *dead*, or *alive* over to the west side of the Missis[s]ippi'. To assert federal authority, General Edmund P. Gaines informed Reynolds that mobilizing the Illinois militia was neither 'necessary' nor 'proper' and immediately led regular troops from St. Louis to Fort Armstrong, not far from Saukenuk. In early June Gaines informed Black Hawk and his people that although the 1804 treaty required the Sauks to relinquish their lands east of the Mississippi, 'the humane disposition of the United States' and desire of 'your great Father' to 'treat you as friends and brethren' had led him to allow 'you to remain on the lands you sold, till the present time'. Now, though, '[y]ou must therefor without delay move to the west side of the Mississippi'. After Black Hawk replied that 'his Braves and People were unanimous in their desire to remain in their old fields', Gaines stated that if Black Hawk's band 'did not move in a few days, they would visited by troops and driven off'. Gaines's position reproduced the logic of the Northwest Ordinance: the US had demonstrated 'utmost good faith'; should the Indians continue to resist, they would be subject to 'just and lawful war'.[45]

For the moment, Gaines lacked sufficient force to compel Black Hawk to move, but a few weeks later, with the arrival of additional troops and an armed steamboat, Gaines prepared to attack Saukenuk. A massacre was avoided when Black Hawk's scouts detected Gaines's approach, allowing his people to escape across the Mississippi. Early the following April, Black Hawk and several hundred Indians, confident of British support, recrossed the Mississippi and headed up the Rock River towards the village of an important ally, the Ho Chunk prophet Wabokiesheik. Some days later, General Henry Atkinson met with the accommodationist Sauk leader Keokuk at Fort Armstrong. Atkinson informed Keokuk that Black Hawk and his followers 'can be easily crushed as a piece of dirt' and that if his band 'strikes one white man in a short time they will cease to exist'. Although Atkinson's words potentially left room for Black Hawk to capitulate and so avoid being slaughtered, they revealed a strong inclination to wage genocidal warfare.[46]

On 14 May 1832, a group of 280 Illinois militiamen commanded by Major Isaiah Stillman found Black Hawk's encampment. Black Hawk sent emissaries to Stillman with word of his intention to return west of the Mississippi, but Stillman took three of the emissaries prisoner and then fired on a party backing them up, killing three. Indians returned fire and killed twelve of Stillman's men. In the weeks after what became known as the Battle of Stillman's Run (Stillman's men had 'run' in panic), members of Black Hawk's band and other Indians in the region who had previously tried to remain neutral conducted several attacks on colonial settlements and military posts, killing perhaps sixty civilians and militiamen.[47] In late May Secretary of War Lewis Cass notified Atkinson that '[t]his commencement of hostilities, together with the previous conduct of the Black Hawk and his party, calls for the most prompt and efficient measures to chastise these Indians … '. Consistent with his earlier message to Keokuk, Atkinson informed the Commanding General of the Army Alexander Macomb in mid June of his intentions. Should 'the Sacs elude us and recross the Mississippi', he wrote, 'I will pursue them forthwith and never cease till they are anihilated [sic] or fully and severely punnished [sic] and subdued'.[48]

Over the next several weeks, US forces attempted to find Black Hawk and his people as they fled north into Wisconsin and then west towards the Mississippi. On 21 July, Illinois and Michigan territorial militiamen commanded by Henry Dodge and James Henry and guided by Ho Chunks auxiliaries caught up to Black Hawk's band on the Wisconsin River. In the Battle of Wisconsin Heights, Black Hawk's men held off the militia long enough to allow women and children, in the words of Black Hawk's autobiography, 'sufficient time to reach the island in the Ouisconsin', but militiamen killed several dozen of Black Hawk's fighters.[49] Black Hawk and his people continued to evade US forces until 1 August when the steamship *Warrior* intercepted them as they prepared to cross the Mississippi near the mouth of the Bad Axe River. Black Hawk raised a white flag, hoping to 'save our women and children', but the *Warrior*'s captain, Joseph Throckmorton, thought the white flag was a 'decoy' to trick him into bringing his vessel into range of Black Hawk's weapons. Throckmorton opened cannon fire on Black Hawk's band, killing twenty-three before departing to refuel.[50]

The next morning, Atkinson, Dodge and Henry, marching in from the east, attacked. The bulk of Black Hawk's men tried to hold off the attackers and allow non-combatants to cross the river. Some made it, but after a few hours, the *Warrior* returned and along with regular troops, militiamen and Menominee auxiliaries fired at people as they swam the river or sought cover on two islands in the main channel. By the end of the day, US forces and native auxiliaries had killed about 260 of Black Hawk's band, somewhere around half of its population, many of whom were non-combatants. Illinois militiamen did some of the killing, although it would be a mistake to conclude that they were more inclined than regular troops to fire indiscriminately at Black Hawk's people. According to a laudatory report by future president Zachary Taylor, the Sixth Regiment 'killed every Indian that presented himself on land, or who endeavored to seek safety by swim[m]ing the river'.[51] Rather than have US troops pursue survivors as they made their way west into Iowa, Atkinson encouraged Ho Chunks, Menominees and Santee Dakotas to continue the work of extermination. By late August, they had presented to US officials several dozen prisoners and over one hundred scalps. Although native auxiliaries were acting in their own interests in the context of a separate ongoing war against the Sauks and Mesquakies, the United States' use of them as a means of destruction was entirely consistent with the execution of a policy of using massive violence against resisting Indians.[52]

During what became known as the Black Hawk War, regular troops, volunteers and native auxiliaries killed well over 300 of Black Hawk's people, including a significant number of non-combatants. In so doing, they fulfilled an intention frequently expressed by General Atkinson, the officer in charge of the campaign, to annihilate Black Hawk's people. Higher officials were aware of Atkinson's intention and clearly approved of it as the campaign progressed. Importantly, too, once the war was over, higher officials ratified what had happened. Secretary of War Cass had nothing but praise for US actions against Black Hawk, observing in his November 1832 annual report that the 'campaign terminated in the unqualified submission of the hostile party, and in the adoption of measures for the permanent security of the frontier'. The following month when he addressed Congress, President Jackson endorsed Cass's conclusions, adding that '[t]he Indians were entirely defeated, and the disaffected band dispersed or destroyed … .

Severe as is the lesson to the Indians, it was rendered necessary by their unprovoked aggressions'.[53]

Some historians have offered 'balanced' interpretations of the war, holding the US and Black Hawk equally responsible for the conflict and emphasizing that the war could have been avoided had it not been for 'misunderstandings' or actions of 'rash members of both sides'.[54] Others have focused on Atkinson's 'blunder' in relying on Stillman's poorly disciplined militiamen, a perspective that assigns responsibility for the conflict to the US rather than Black Hawk's people but only in a very narrow sense while reinforcing a tendency to see the war as 'accidental'.[55] Like all eruptions of violence, the Black Hawk War and Bad Axe Massacre, of course, were not inevitable, but an excessive emphasis on contingency elides larger contexts and provides US imperialism with an alibi. More critically minded historians reject 'balanced' interpretations and, while allowing for some contingencies, see the outbreak of the conflict and the resulting massacre as expressing basic tendencies in US history. Cecil Eby focuses on 'The People' (frontiersmen/local militiamen), indicting them for characteristic actions of 'trespass[ing] on Sauk land' and 'open[ing] fire on the Sauk while they were advancing under a white flag'. At this and similar moments throughout US history, Eby adds, the 'professional army was called in', but 'often against its wishes' and only because 'The People demanded' it, thus separating frontier from metropole, society from policy. Similarly, drawing on Richard Drinnon's analysis of the 'metaphysics of Indian hating', Kerry A. Trask attributes Bad Axe to the 'revolutionary rage that created the nation' and resulted in 'a love of freedom and a glorification of violence'. While Trask's identification of a deeply rooted frontier mentality establishes an important context for Bad Axe and other cases of US violence against Indians, this line of interpretation also overlooks the congruity of metropolitan and frontier intentions and the expression of these intentions in policy.[56] There is no question that frontiersmen had genocidal intentions towards Black Hawk's people, but it is equally true that US officials did as well, especially after Black Hawk crossed the Mississippi River in April 1832. To be clear, officials did not intend to destroy all Indians, as evidenced by their recruitment of Ho Chunks, Menominees and Dakotas as well as their non-violence to accommodationist Sauks. Once they categorized Black Hawk as deserving of punishment and a threat to the frontier, however, they fully intended to destroy his people. The slaughter at Bad Axe is clearly encompassed by Chalk and Jonassohn's definition of genocide as 'a form of one-sided mass killing in which a state or other authority intends to destroy a group.'

Conclusion

Genocidal violence against indigenous people on the western edge of the Northwest Territory in 1832 was an intended consequence of a policy option that had been codified in New York City forty-five years earlier. From the 1780s into the 1830s, as they sought to transform Indian country into grids containing propertied citizens, US officials preferred that Native Americans accept dispossession with gratitude. This would allow US Americans to enjoy the benefits of territorial expansion at minimal expense, their consciences soothed and their sense of themselves as exceptional nourished by the fantasy that Indians endorsed their claim to have acted with 'utmost good faith'. If,

however, Indians spurned civilization's generosity, if Indians sought to retain and defend their ancestral lands from invasion, they would be subject to war, self-defined as 'just and lawful'. When war came, as it frequently did, US officials authorized military forces to practise a particular kind of war, one they termed extirpative or exterminatory. In most instances, US military forces were unable to fully accomplish their intention. But just as US expressions of 'utmost good faith' towards Indians should not deflect attention from war as a policy option, Indians' frequent success in blunting genocidal violence should not obscure the fact that when genocidal violence did occur it was not an aberration. Despite its spatial and temporal distance from the Northwest Ordinance, the slaughter at Bad Axe revealed the meaning of 'just and lawful war'.

Notes

1. Francis Paul Prucha, *The great father: the United States government and the American Indians*, 2 Vols. (Lincoln: University of Nebraska Press, 1984), 1: p. 61; Gary Clayton Anderson, *Ethnic cleansing and the Indian: the crime that should haunt America* (Norman: University of Oklahoma Press, 2014), p. 13.
2. David E. Stannard, *American holocaust: the conquest of the New World* (New York: Oxford University Press, 1992); Ward Churchill, *A little matter of genocide: holocaust and denial in the Americas, 1492 to the present* (San Francisco: City Lights Books, 1997). Another work published in the run up to the Quincentennial, Russell Thornton, *American Indian holocaust and survival: a population history since 1492* (Norman: University of Oklahoma Press, 1987), also deployed the Holocaust metaphor, although Thornton offered a far more measured assessment of genocide, arguing that 'warfare and genocide', though important 'causes of decline for particular tribes', were 'not very significant overall in the American Indian population decline' (p. 47). For criticism of Stannard's and Churchill's approach, see David B. MacDonald, *Identity politics in the age of genocide: the holocaust and historical representation* (New York: Routledge, 2008), pp. 74–89.
3. Ben Kiernan, *Blood and soil: a world history of genocide from Sparta to Darfur* (New Haven: Yale University Press, 2007), p. 310; Michael Mann, *The dark side of democracy: explaining ethnic cleansing* (Cambridge: Cambridge University Press, 2005), p. 92; A. Dirk Moses, 'Genocide and settler society in Australian history', in Dirk Moses (ed.), *Genocide and settler society: frontier violence and stolen indigenous children in Australian history* (New York: Berghahn, 2004), p. 33; Alison Palmer, *Colonial genocide* (Adelaide: Crawford House, 2000); Tony Barta, 'Relations of genocide: land and lives in the colonization of Australia', in Isidor Walliman and Michael N. Dobkowski (eds.), *Genocide in the modern age: etiology and case studies of mass death* (Westport, CT: Greenwood, 1987), pp. 237–251; Patrick Wolfe, 'Settler colonialism and the elimination of the native', *Journal of Genocide Research*, Vol. 8, No. 4, 2006, pp. 387–409. Recent scholarship on US American violence against Indians in the late 1700s and early 1800s, whether associating it with frontier fears of Indians, as in Peter Silver, *Our savage neighbors: how Indian war transformed early America* (New York: W. W. Norton, 2008), or seeing it as essential to the construction of a US identity, as in Carroll Smith-Rosenberg, *This violent empire: the birth of an American national identity* (Chapel Hill: University of North Carolina Press, 2010), does not address the question of genocide and neglects policy.
4. Benjamin Madley, 'Reexamining the American genocide debate: meaning, historiography, and new methods', *American Historical Review*, Vol. 120, No. 1, 2015, pp. 98–139.
5. Frank Chalk and Kurt Jonassohn, *The history and sociology of genocide: analyses and case studies* (New Haven: Yale University Press, 1990), p. 23; Dan Stone, 'Introduction', in Stone (ed.), *The historiography of genocide* (New York: Palgrave Macmillan, 2008), p. 2.

6. The text of the Northwest Ordinance is available at: http://avalon.law.yale.edu/18th_century/nworder.asp (retrieved 10 September 2015). For the drafting of the Ordinance and its relationship to the land ordinances of 1784 and 1785, see Peter S. Onuf, *Statehood and union: a history of the Northwest Ordinance* (Bloomington: Indiana University Press, 1987), pp. 44–59.
7. Frederick Jackson Turner, *The frontier in American history* (New York: Henry Holt, 1921), p. 168; Bernard Bailyn, 'The central themes of the American Revolution: an interpretation', in Stephen G. Kurtz and James H. Hutson (eds.), *Essays on the American Revolution* (Chapel Hill: University of North Carolina Press, 1973), p. 20. The 'equal footing' clause is in section 13 of the Ordinance.
8. Jack N. Rakove, 'Ambiguous achievement: the Northwest Ordinance', in Frederick D. Williams (ed.), *The Northwest Ordinance: essays on its formulation, provisions, and legacy* (East Lansing: Michigan State University Press, 1989), pp. 3, 18.
9. Paul Finkleman, 'Slavery and bondage in the "empire of liberty"', in Williams, *Northwest Ordinance*, pp. 87, 61; George William Van Cleve, *A slaveholders' union: slavery, politics, and the constitution in the early American republic* (Chicago: University of Chicago Press, 2010), pp. 153–167.
10. Onuf, *Statehood and union*.
11. Rakove, 'Ambiguous achievement', p. 17; Prucha, *Great father*, 1: pp. 46–47; Reginald Horsman, *Expansion and American Indian policy, 1783–1812* (East Lansing: Michigan State University Press, 1967), pp. 38, 61; Vine Deloria, Jr., and David E. Wilkins, *Tribes, treaties, and constitutional tribulations* (Austin: University of Texas Press, 1999), pp. 17–18; Patrick Wolfe, 'Against the intentional fallacy: legocentrism and continuity in the rhetoric of Indian dispossession', *American Indian Culture and Research Journal*, Vol. 36, No. 1, 2012, p. 4.
12. *Journals of the Continental Congress, 1774–1789*, Worthington C. Ford et al. (eds.) (Washington, DC, 1904–37), 1783, 25: p. 686.
13. Colin G. Calloway, *Pen and ink witchcraft: treaties and treaty making in American Indian history* (New York: Oxford University Press, 2013), p. 102.
14. Gregory Evans Dowd, *A spirited resistance: the North American Indian struggle for unity, 1745–1815* (Baltimore: Johns Hopkins University Press, 1992), pp. 94–95; 'Speech of the United Indian Nations', 18 December 1786, *American state papers: Indian affairs* (Washington, DC: Gales and Seaton, 1832), 1: pp. 8–9.
15. *Journals of the Continental Congress*, 1787, 33: pp. 388–389, 479–480.
16. Prucha, *Great father*, 1: p. 49; Stuart Banner, *How the Indians lost their land: law and power on the frontier* (Cambridge, MA: Harvard University Press, 2005), pp. 130–133; Silver, *Our savage neighbors*, p. 290.
17. Aziz Rana, *The two faces of American freedom* (Cambridge, MA: Harvard University Press, 2010), p. 11; Jefferson quoted in Peter S. Onuf, *Jefferson's empire: the language of American nationhood* (Charlottesville: University of Virginia Press, 2000), p. 2.
18. Horsman, *Expansion and American Indian policy*, p. 42. Banner, *How the Indians lost their land*, p. 135, argues that government officials' statements that Indians had 'the right to refuse to sell' recognize ownership. The practice of US treaty making, however, consistently revealed an unwillingness to allow Indians to exercise that right in any permanent sense. A particular indigenous nation might refuse to agree to a particular offer and so might defer a land cession, but US officials would always return with a new proposal and would eventually categorize sustained opposition as unreasonable, thus sanctioning threats ranging from withdrawal of protection against settler aggression to war.
19. These events can be followed in Horsman, *Expansion and American Indian policy*, pp. 46–49; David Andrew Nichols, *Red gentlemen and white savages: Indians, Federalists, and the search for order on the American frontier* (Charlottesville: University of Virginia Press, 2008), pp. 91–92, 100–103. St. Clair quoted in Ebenezer Denny, *Military journal of Ebenezer Denny* (Philadelphia: J. P. Lippincott, 1859), p. 129.
20. 'Summary statement of the situation of the frontiers by the Secretary of War', 27 May 1790, in William Henry Smith (ed.), *The St. Clair papers: the life and public services of Arthur St. Clair*, 2 Vols. (Cincinnati: Robert Clarke & Co., 1882), 2: pp. 146–147; Secretary of War to General Harmar, 7 June 1790, *American state papers: Indian affairs*, 1: p. 97.

21. 'Declaration of Independence', in Paul Leicester Ford (ed.), *The writings of Thomas Jefferson*, 10 Vols. (New York: G. P. Putnam's Sons, 1892–1902), 2: p. 51.
22. Emmerich de Vattel, *The law of nations, or principles of the law of nature* (London: G. G. and J. Robinson, [1758] 1797). To my knowledge the only time Knox cited Vattel was to argue that it was illegal to enlist soldiers in a foreign country during the Citizen Genet Affair. See Memorandum from Henry Knox, 16 May 1793, in Theodore J. Crackel (ed.), *The papers of George Washington digital edition*, available at: http://rotunda.upress.virginia.edu/founders/GEWN.html (retrieved 16 May 2014). Nonetheless, the absence of citation reflects Vattel's ubiquitousness, for which, see Cynthia Cumfer, *Separate peoples, one land: the minds of Cherokees, blacks, and whites on the Tennessee frontier* (Chapel Hill: University of North Carolina Press, 2007); John Fabian Witt, *Lincoln's code: the laws of war in American history* (New York: Free Press, 2012), pp. 42–44; 16–19, 28, 44; Ian Hunter, 'Vattel in revolutionary America', in Lisa Ford and Tim Rowse (eds.), *Between indigenous and settler governance* (Abingdon, UK: Routledge, 2013), pp. 12–22.
23. John Locke, *Two treatises of government* (London, [1690] 1764), p. 226; Vattel, *Law of nations*, pp. 100, 36, 305. For the doctrine of discovery, see Robert J. Miller, *Native America, discovered and conquered: Thomas Jefferson, Lewis and Clark, and manifest destiny* (Lincoln: University of Nebraska Press, 2008).
24. Kiernan, *Blood and soil*, p. 15; Ben Kiernan, 'Is "genocide" an anachronistic concept for the study of early modern mass killing?', *History*, Vol. 99, No. 336, July 2014, pp. 530–548. For an argument for using the term *extermination* instead of the 'neologism, genocide' for the nineteenth century, see Karl Jacoby, '"The broad platform of extermination": nature and violence in the nineteenth century North American borderlands', *Journal of Genocide Research*, Vol. 10, No. 2, 2008, p. 263.
25. The Articles of War, adopted by the Continental Congress on 30 June 1775, were concerned with the conduct of officers and soldiers rather than their conduct towards the enemy. *Journals of the Continental Congress , 1774–1789*, 34 vols. (Washington, DC: GPO, 1904–1937) 1775, 2: pp. 111–123.
26. For 'expansion with honor', see Robert F. Berkhofer, Jr., *The white man's Indian: images of the American Indian from Columbus to the present* (New York: Random House, 1970), pp. 134–145.
27. Wiley Sword, *President Washington's Indian war: the struggle for the Old Northwest, 1790–1795* (Norman: University of Oklahoma Press, 1985), p. 96.
28. Court of Inquiry of General Harmar, 16 September 1791, *American state papers: military affairs*, 1: p. 21; Denny, *Military journal*, pp. 145–147; John Grenier, *The first way of war: American war making on the frontier, 1607–1814* (Cambridge: Cambridge University Press, 2005), p. 21. The events can be followed in Colin G. Calloway, *The victory with no name: the Native American defeat of the first American army* (New York: Oxford University Press, 2015), pp. 64–67; Sword, *President Washington's Indian war*, pp. 101–116.
29. Harmar to Knox, 4 November 1790, *American state papers: Indian affairs*, 1: p. 104, claimed that 'not less than 100 or 120 warriors were slain'. A more accurate consideration of Indian casualties is provided by Leroy V. Eid, '"The slaughter was reciprocal": Josiah Harmar's two defeats, 1790', *Northwest Ohio Quarterly*, Vol. 65, No. 2, 1993, p. 62.
30. Barbara Alice Mann, 'Fractal massacres in the Old Northwest: the example of the Miamis', *Journal of Genocide Research*, Vol. 15, No. 2, 2013, pp. 167–182.
31. H. Knox to Brigadier General Charles Scott, 9 March 1791, and Report of Brigadier General Scott, 28 June 1791, *American state papers: Indian affairs*, 1: pp. 129–132. The events can be followed in Sword, *President Washington's Indian war*, pp. 138–141.
32. Henry Knox, 'Instructions to Major General Arthur S. Clair', 21 March 1791, *American state papers: Indian affairs*, 1: p. 172; Calloway, *Victory with no name*, p. 111. The events can be followed in Calloway, *Victory with no name*, pp. 76–128; Sword, *President Washington's Indian war*, pp. 159–191.
33. Henry Knox, 'Statement relative to the frontier northwest of Ohio', 26 December 1791, *American state papers: Indian affairs*, 1: pp. 197–199.
34. Prucha, *Great father*, 1: p. 65; Nichols, *Red gentlemen and white savages*, p. 140.

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Notes on contributor

Jeffrey Ostler is Beekman Professor of Northwest and Pacific History at the University of Oregon. He is the author of *The Plains Sioux and US colonialism from Lewis and Clark to Wounded Knee* (2004) and *The Lakotas and the Black Hills: the struggle for sacred ground* (2010).

United States Indian Policy, Sovereignty, and Treaty-Making

SOVEREIGNTY MATTERS

Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination

EDITED BY

Joanne Barker

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Joanne Barker (Lenape)

For Whom Sovereignty Matters

As a category of scholarship, activism, governance, and cultural work, sovereignty matters in consequential ways to understanding the political agendas, strategies, and cultural perspectives of indigenous peoples in the Americas and the Pacific. This is not to suggest that all indigenous peoples within these diverse regions share the same understanding of what sovereignty is or how it matters, nor that all of their concerns and labor can be reduced to sovereignty as a kind of raison d'être. Rather, following World War II, sovereignty emerged not as a new but as a particularly valued term within indigenous discourses to signify a multiplicity of legal and social rights to political, economic, and cultural self-determination. It was a term around which social movements formed and political agendas for decolonization and social justice were articulated. It has come to mark the complexities of global indigenous efforts to reverse ongoing experiences of colonialism as well as to signify local efforts at the reclamation of specific territories, resources, governments, and cultural knowledge and practices.

At the same time and owing much to its proliferation, sovereignty has become notoriously generalized to stand in for all of the inherent rights of indigenous peoples. Certainly many take for granted what sovereignty means and how it is important. As a result sovereignty can be both confused and confusing, especially as its normalization masks its own ideological origins in colonial legal-religious discourses as well as the heterogeneity of its contemporary histories, meanings, and identities for indigenous peoples.

Origins

In "Self-Determination and the Concept of Sovereignty," Lakota scholar Vine Deloria, Jr., writes that sovereignty originated as a theological term within early east Asian and European discourses: "Sovereignty is an ancient idea, once

used to describe both the power and arbitrary nature of the deity by peoples in the Near East. Although originally a theological term it was appropriated by European political thinkers in the centuries following the Reformation to characterize the person of the King as head of the state."[1] The king, or the sovereign, was thought to have inherited the authority to rule from God. This "divine right" was understood to be absolute, a power that was accountable only to the god from whom it originated.[2] The power was manifested specifically within the authority of the king to make war and govern domestic affairs (frequently in the name of God).[3]

The Protestant and Catholic churches, however, were also important governing powers during the early uses of sovereignty and consequently church doctrine impacted its meaning. The churches understood their roles as both the translators of the laws of God to the people and as governing the people's adherence to those laws, work sometimes interfered with or undermined by the king. Competing claims of legitimacy and sanction to speak for God and to rule over God's subjects between the church and the king, and between Protestants and Catholics, characterized the early politico-theological debates over sovereignty and who was sovereign. The church maintained that only God was the true sovereign and the church was the medium of God's will on earth, while the king claimed to be a sovereign who inherited from God the right to rule. While both understood sovereignty as an absolute power to govern, the views were diametrically opposed as to its revelation and exercise.

The powers of the church and the king slowly gave way through various political revolutions against the tyrannies of dogma and kingdoms to the ideologies and structures of the nation. The nation reorganized concepts of social status and responsibility from the obligations of subjects either of the church or of the kingdom to notions of citizenship, civil society, and democracy. In some of the early debates, it was argued that sovereignty emanated from individuals (citizens).[4] Individuals possessed rights to personal freedoms that informed their collective rights to rule themselves as nations. In other debates, sovereignty was linked to the "law of nations." Therein nations were based on the collective rights of individuals to civil society, life, happiness, property, justice, and defense; nations held rights to be free, independent, and respected as equals in the pursuit of securing the collective rights of their citizens.[5] In both kinds of debates, sovereignty was about figuring out the relationship between the rights and obligations of individuals (citizens) and the rights and obligations of nations (states). Sovereignty seemed to belong to nations but was then understood to originate either from the people who made up those nations or as a character of the nation itself (nationhood).[6] The

former assertion has defined the work of contemporary indigenous scholars and activists, who have argued that sovereignty emanates from the unique identity and culture of peoples and is therefore an inherent and inalienable right of peoples to the qualities customarily associated with nations.[7] The latter assertion has dominated legal debates over how nations exercise their sovereignty in relation to one another.[8]

In time the nation would be characterized by rights to "exclusive jurisdiction, territorial integrity, and nonintervention in domestic affairs," and these rights would be correlated to concepts of sovereignty.[9] The rights to jurisdiction and territory were modeled on concepts of individual personal freedom and linked to both secular and Christian ideologies about civilization.[10] Unaffiliated individuals, or individuals in kin groups, were believed to live in baser states of nature according to the demands of survival and dictates of instinct. They merely roamed upon the lands to acquire the material goods needed to survive. Social groups emerged as individuals or kin groups recognized their need for help and took on the responsibilities of aiding one another toward achieving their mutual goals for survival. Nations formed when social groups developed higher aspirations for civil society and government. Depending on the theorist, civility was evidenced by the existence of reason, social contract, agriculture, property, technology, Christianity, monogamy, and/or the structures and operations of statehood. These aspects of society or civilization were associated with the possession of sovereignty. Nations possessed the full measure of sovereignty because they were the highest form of civilization; individuals roaming uncultivated lands did not possess either civilization or sovereignty.[11]

In Christian ideology the dichotomy was not between the uncivil and civil but between the unbelieving and believing, though it would be false to suggest that these terms were mutually exclusive. The uncivil was equated with the unbelieving, the civil with the believing.[12] These associations were grounded in the projects of colonization and the congruous objectives of the nation and the church to civilize/christianize the uncivil/nonbelieving world in the name of God and the manifest destiny of the nation. In fact missionaries often went before and worked within the processes of establishing trade routes and military bases with national militaries in the name of extending God's kingdom on earth.[13] While some individual missionaries were highly critical of the colonial project and the church's complicity with the genocide and enslavement of indigenous peoples, the church as a sociopolitical institution consistently advanced and acted upon the notion of the rights of believers over those of nonbelievers, both to lands and resources and to existence as peoples.

The church even helped to sort through rival national interests over the rights to "discover" specific territories and exploit indigenous labor located therein. In many instances it is impossible to talk about a difference between the interests of the church and of the nation.[14] Many have argued, in fact, that the claim to the separation of church and state is ideologically and politically hypocritical.[15]

Out of the political and theological debates about what constituted the nation, debates deeply embedded within the ideologies and activities of colonialism, modern international law was defined as such. The two primary vehicles that served for the articulation of international legal precepts about nationhood, and so of the sovereignty with which such a character was defined, were the national constitution and the treaty. The constitution functioned as a document of nation formation and was used by colonists, rebellions, and commonwealths to assert territorial boundaries and the authority and terms of the nation-so-formed to govern within them. Yet the declarative status of the constitution disguised the fact that the nation so defined was contingent upon it being recognized as legitimate by other already recognized nations. Therefore custom within international law emerged around the treaty as a mechanism for both the exercise of nationhood and the recognition of national sovereignty. Treaties required that they be honored as legally binding compacts or agreements between nations, as the terms would be understood by the signatories. Nations recognized each other's status as nations by entering into treaties with each other. Territorial boundaries and jurisdiction dominated the specific articles of treaties throughout the colonial period. So too did peace, rights of passage, alliance in instances when other nations breached boundaries or interfered with government operations (i.e., broken treaties), and the like. The integrity of the exercise of nationhood and the recognition of sovereignty by treaty depended, of course, on the nation's honoring of the treaties into which it entered. However, because nationhood and sovereignty were interlocked through the entire discursive apparatus of treaty making, the recognition of one implied the recognition of the other.[16]

Inflections

Nations certainly put sovereignty to work during the colonization of the Americas and the Pacific to justify—by explanation or denial—the dispossession, enslavement, and genocide of indigenous peoples. In Australia, it was inflected through the doctrine of discovery to justify the complete dispossession of Aborigines from their lands and the outright refusal by the colonists to

enter into treaties with them. In Canada sovereignty was invoked to defend the use of military force, such as happened in the territories of Newfoundland and Nova Scotia, where most indigenous peoples were massacred by colonists during early conflicts over territorial rights.[17] In the southwestern region of the United States and northern parts of Mexico, it informed the efforts of the church to have the enslavement and conversion of nonbelievers supported by the military—first by Spain, then by Mexico, and later by an emergent immigrant class that would reform themselves as a state of the union.[18] In each instance the concept of sovereignty served the colonists in negating indigenous territorial rights and humanity while justifying the right of conquest by claims to national superiority.

The question that follows is whether the sovereignty of indigenous peoples was ever really recognized within international customary or documentary law. England, France, Canada, New Zealand, and the United States certainly negotiated, signed, and ratified treaties with indigenous peoples. Many have noted, however, that such efforts were less about the recognition and provision for the *sovereignty* of indigenous peoples than they were about the assertion of the respective nations' status as the more powerful sovereign within a given territory, against other European powers and over indigenous peoples.[19] Given the fact that every single treaty signed with indigenous peoples in the Americas and the Pacific was broken, it would seem to be so. England, France, Canada, New Zealand, and the United States used the treaty-making process to neutralize the political force of allied and individual indigenous groups and then deployed specific articles of signed treaties to secure the right over and against other European countries to relate with, trade, and govern with those groups as a matter of domestic policy. They understood perfectly well the precedence within international law that defined sovereignty through the attributes of territorial integrity and jurisdiction, and they were hardly likely ever to acquiesce these principles to indigenous peoples, by treaty or otherwise.

Yet the fact remains that indigenous peoples were recognized by England, France, Canada, New Zealand, and the United States as constituting nations that possessed rights to sovereignty—by treaty, by constitution, by legislative action, and by court ruling. Even U.S. Chief Justice John Marshall conceded that terms like *nation*, *sovereign*, and *treaty* had been used in colonial and U.S. law in reference to American Indian tribes and that the U.S. Supreme Court was therefore obligated to adhere to the internationally accepted definitions of those terms in relating to the tribes as independent sovereigns.[20] This is remarkable given the ideological force of theories of civilization and Christian theology that worked against the acknowledgment that indigenous peoples

possessed any such rights on the grounds that they lacked proper civility or belief in God. Still, adherence to the tenets of international law and Christian theology demanded that particular steps be taken in securing desired territories and claiming jurisdiction therein. European nations were required to treat with indigenous peoples in order to secure lands by cession and purchase; treaties resulted.

The contradictions within recognition-by-treaty histories are not in the moments of alleged adherence to international law by the nations of Europe and North America, who had to follow customary practices by entering into treaties with indigenous peoples in order that their territorial claims in the colonies be respected by one another. The blatant contradictions are between the recognition of the sovereignty of indigenous peoples through the entire apparatus of treaty making and the unmitigated negation of indigenous peoples' status and rights by national legislation, military action, and judicial decision.

The "Marshall trilogy"—*Johnson v. McIntosh* (1823), *Cherokee Nation v. Georgia* (1831), and *Worcester v. Georgia* (1832)—is probably one of the most important instances of these incongruities.[21] The trilogy provided the first substantive definition of sovereignty for American Indians by the U.S. judiciary and subsequently served to establish precedence for the trust relationship between the U.S. federal government and American Indian tribes (and, since 1972, Alaskan Native villages and, since 1920, Native Hawaiians). The way that the trilogy was taken up by England's Colonial Office in directing relations with indigenous peoples in Canada, New Zealand, and Australia signifies much about the international exchange of ideas regarding the character and rights of sovereignty for the nations of Europe and North America as well as the attempt to justify the denial of that status and rights for indigenous peoples.[22] The subjugation of indigenous peoples to U.S. plenary power through Marshall's fictionalized accounting of the doctrine of discovery provided the Colonial Office with the legal precedence it needed to justify its colonization of North America and the Pacific.

Johnson v. McIntosh involved competing claims to a single parcel of land in the state of Illinois between Johnson, who had acquired a deed to the land from the Piankeshaw, and McIntosh, who had acquired a deed to the land from the United States. It was determined that the Piankeshaw were in possession of the land when they issued the deed, as evidenced by two treaties that had been signed with the Illinois and Piankeshaw tribes in 1773 and 1775 over the lands in question. It was also determined that the U.S. had acquired title to those lands by those same treaties and subsequently had sold the parcel to McIntosh

(there was a dispute in the case over whether the parcel was located within the ceded area, but it was ruled that it had been).

The immediate question before the Supreme Court, as Marshall framed it in his opinion, was what kind of title the Piankeshaw had in the lands. Obviously it was a title that they could treat upon. Within the customs of international law, treaties implied nationhood and so sovereignty and so inherent territorial rights. While not missing the import of such links, Marshall sided with the defendant, whose argument he summarized as follows:

> The uniform understanding and practice of European nations, and the settled law, as laid down by the tribunals of civilized states, denied the right of the Indians to be considered as independent communities, having a permanent property in the soil, capable of alienation to private individuals. They remain in a state of nature, and have never been admitted into the general society of nations. All the treaties and negotiations between the civilized powers of Europe and of this continent, from the treaty of Utrecht, in 1713, to that of Ghent, in 1814, have uniformly disregarded their supposed right to the territory included within the jurisdictional limits of those powers. Not only has the practice of all civilized nations been in conformity with this doctrine, but the whole theory of their titles to lands in America, rests upon the hypothesis, that the Indians had no right of soil as sovereign, independent states.[23]

Effectively, Marshall rewrote treaty history by ruling that the treaties signed between American Indians and European powers functioned in a way contrary to the precepts of existing international law. Instead of recognizing the sovereignty of Indians, Marshall argued that the treaties had "disregarded" Indian land rights and so the status of Indians as "sovereign, independent states." Marshall's evidence for this "disregard" was not located within the fact or provision of the treaties but by the doctrine of discovery.

According to Marshall, the doctrine established that American Indians were not the full sovereigns of the lands that they possessed but were rather the users of the lands that they roamed and wandered over for purposes of shelter and sustenance. This distinction was informed by European worldviews, particularly the theories of English philosopher John Locke, who argued that hunter-gatherer societies "might have property in what they found or captured . . . but not in the land over which they traveled in its pursuit."[24]

While it was accepted that Indians maintained particular rights associated with their status as the original inhabitants of the land, the exclusive rights of

property in the land belonged to the nation who discovered the lands. Discovery was demonstrated by the appropriation of the lands for agriculture, which in turn secured the rights of the discovering nation to claim full sovereignty within the lands and against all other claims:

> Discovery is the foundation of title, in European nations, and this overlooks all proprietary rights in the natives. The sovereignty and eminent domain thus acquired, necessarily precludes the idea of any other sovereignty existing within the same limits. The subjects of the discovering nation must necessarily be bound by the declared sense of their own government, as to the extent of this sovereignty, and the domain acquired with it. Even if it should be admitted that the Indians were originally an independent people, they have ceased to be so. A nation that has passed under the dominion of another, is no longer a sovereign state. The same treaties and negotiations, before referred to, show their dependent condition.[25]

From the Lockean hunter-gatherer/agriculturalist dichotomy, and with the correlation in international law between sovereignty, jurisdiction, and territorial rights in hand, it followed in Marshall's reasoning that by virtue of their relationship to the land as hunter-gatherers, Indians had been made "subject to the sovereignty of the United States."[26] These were well-established facts, Marshall contended, of colonial law, which had treated Indians "as an inferior race of people, without the privileges of citizens, and under the perpetual protection and pupilage of the government" on the basis that they were not in full possession of the lands upon which they roamed and wandered.[27]

In lieu of full title to or property in the lands, Marshall offered "aboriginal title" as the legal definition for the kinds of rights that Indians had in the lands. This title presupposed their relationship to the lands as hunters-gatherers. It was "a mere right of usufruct and habitation, without power of alienation."[28] All "civilized nations" were "founded on this principle" and distinction.[29] No civilized person, Marshall went on, would expect those who had appropriated the lands for agriculture, and thereby acquired full title to the lands by right of discovery, to give up the lands to "natives" who merely wandered over them in search of materials to satisfy their immediate needs for clothing, shelter, and sustenance:

> By the law of nature, [Indians] had not acquired a fixed property capable of being transferred. The measure of property acquired by occupancy is determined, according to the law of nature, by the extent

> of men's wants, and their capacity of using it to supply them. It is a violation of the rights of others to exclude them from the use of what we do not want, and they have an occasion for. Upon this principle the North American Indians could have acquired no proprietary interest in the vast tracts of territory which they wandered over; and their right to the lands on which they hunted, could not be considered as superior to that which is acquired to the sea by fishing in it. The use in the one case, as well as the other, is not exclusive. According to every theory of property, the Indians had no individual rights to land; nor had they any collectively, or in their national capacity; for the lands occupied by each tribe were not used by them in such a manner as to prevent their being appropriated by a people of cultivators. All the proprietary rights of civilized nations on this continent are founded on this principle. The right derived from discovery and conquest, can rest on no other basis; and all existing titles depend on the fundamental title of the crown by discovery.[30]

Marshall's "aboriginal title" was directly at odds with the treaty-making efforts of the United States at the time. The treaty most certainly did recognize a title in the land that could be negotiated as well as the authority of the signatories to function as representatives of their governments. Under the precepts of international law, the 371 treaties ratified between the United States and indigenous peoples between 1778 and 1871 provided for the clear recognition of indigenous peoples as nations who could enter into treaties and, therefore, as nations who possessed jurisdiction and territorial rights. Yet Marshall's ruling in *Johnson v. McIntosh* maintained that indigenous peoples did not possess the kind of title in the lands that they could be and were negotiating by treaty.[31]

In 1830 the state of Georgia passed "an act to prevent the exercise of assumed and arbitrary power by all persons under pretext of authority from the Cherokee Indians, &c." The act sectioned Indian lands into state county districts, set up a process for state citizens to acquire individual parcels by lottery, required non-Indians to possess state permits to reside on Indian lands, declared all Indian laws null and void, outlawed public gatherings of Indians, and forbade the testimony of Indians against whites in court. The immediate impetus for the act was the discovery of gold on Cherokee lands in 1828, but the more foundational purpose was Georgia's aim, quickly followed by Alabama and Mississippi, to gain jurisdictional controls over Indian lands and to dissolve the political and economic clout of the powerful Cherokee.

With the support of their own multilingual lawyers educated in eastern U.S. universities, and diplomatic teams in Washington DC and London, the Cherokee sought an injunction against Georgia to stop it from applying laws that were obviously intended to "annihilate the Cherokee as a political society and to seize for the use of Georgia the lands of the nation which have been assured to them by the United States in solemn treaties."[32] The request for the injunction went before the Supreme Court.

In their arguments the lawyers for the Cherokee maintained that the Cherokee were a sovereign nation and that, as such, Georgia's laws could not be unilaterally enforced upon them. They based their arguments on the fact that the Cherokee had entered into treaty relations with the United States and so were a sovereign nation under the precepts of international law as well as according to the specific provisions of the treaties that provided for the protection of Cherokee rights by the U.S. government because of the Cherokee's demonstrated status as sovereigns.

The Supreme Court did not miss the implications of the Cherokee argument. Negating the significance of U.S. treaties signed with the Cherokee that suggested they possessed a sovereignty akin to that of the United States or European nations under the customs of international law, Marshall turned instead to article 1, section 8, paragraph 3 of the U.S. Constitution to render his opinion. The article provides that the federal branch of the U.S. government has the sole right and responsibility "to regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes." Marshall argued that the clause intended to show a legal distinction between the categories of sovereigns that it employed—foreign nations, state governments, and Indian tribes. The task before the Court was to enumerate the distinction of "Indians tribes."

Assuming that "Indian tribes" were not foreign nations or state governments, Marshall posited that they were instead "domestic dependent nations" whose relationship to the U.S. federal government, as the juridical power charged with regulating commerce and collateral issues with them, was like that "of a ward to a guardian." These two enumerations—domestic dependent nationhood and the ward/guardian analogy—would set the legal precedence for defining relations between the United States and indigenous peoples.

Translated in subsequent court decisions and legislative action as the plenary power doctrine and trust or protectorate relationship, Marshall's concepts sought to secure U.S. interests in controlling indigenous peoples and their lands by defining their relationship to the United States as wholly subjected and conquered. Removed from the realm of the "foreign," "Indian tribes" were

likewise removed from the realm of international law, breaking any implied link between treaties, nationhood, sovereignty, territorial integrity, and jurisdiction that the United States would be obligated to recognize in Indians. Indian tribes were to be related to as "domestic" political entities whose specific rights to territorial integrity and jurisdiction were under the sole guardianship of the U.S. government. This allowed the United States to assume authority for representing tribal interests in matters of international law as well as to control the terms of the exercise of tribal sovereignty in the realm of domestic politics. Marshall effectively "passed [the Indian tribes] under" the governing authority of the United States and so made them "dependent" on U.S. protection from foreign and state interests.

Since under the U.S. Constitution only foreign nations can sue state governments before the Supreme Court, Marshall unsurprisingly denied the Cherokee request for an injunction against Georgia's laws on the basis that they were not a "foreign nation." Concerned about the legal implications of the decision, the Cherokee strategized a case that would force the Supreme Court to some accounting for the fact of U.S. treaty history with the Cherokee as a sovereign nation.

Missionaries Samuel A. Worcester, Elizur Butler, James Trott, Samuel Mays, Surry Eaton, Austin Copeland, and Edward D. Losure broke Georgia's newly passed law requiring that non-Indians possess a state license in order to reside on Indian lands. They were tried in state court and sentenced to four years of hard labor. Worcester appealed to the Supreme Court.

The same counsel from *Cherokee Nation v. Georgia* argued in *Worcester v. Georgia* that Worcester had entered Cherokee territory as a missionary under the authority of the U.S. president and with the approval of the Cherokee. They claimed that "the State of Georgia ought not to maintain the prosecution, as several treaties had been entered into by the United States with the Cherokee Nation by which that Nation was acknowledged to be a sovereign nation, and by which the territory occupied by them was guaranteed to them by the United States."[33] They further claimed that "the laws of Georgia under which the plaintiff in error was indicted are repugnant to the treaties, and unconstitutional and void, and also that they are repugnant to the Act of Congress of March, 1802, entitled 'An act to regulate trade and intercourse with the Indian Tribes.'"[34]

The Court recognized that the arguments made by the plaintiffs called into question not only the validity of Georgia's laws but "the validity of the treaties made by the United States with the Cherokee Indians."[35] The Court also acknowledged that the case raised questions about the jurisdictional authority

of the Cherokee within their own territories and in relationship to Georgia as provided for by U.S. treaty and federal statute. Did states have jurisdiction over Indian tribes? Could states make laws regulating the status and rights of Indian tribes over and against federal law? The Cherokee argued that they could not. They contended that they enjoyed a special relationship to the U.S. federal government because they were a sovereign nation, proven by the fact that since 1785 they had entered into twelve treaties with the government that would constitute the United States.[36]

To render the Court's opinion, Marshall returned to the doctrine of discovery to establish that the United States possessed full title in the lands and, by implication, over the peoples residing within them. As in *Johnson v. McIntosh*, he traced the passage of title from the colonists to England to the United States in order to demonstrate U.S. property in the lands and commensurate plenary power over the lands (again representing the Cherokee as "roaming" and "wandering" over the lands and not as agriculturalists with established rights of property in the soil—a representation in direct contradiction with the known history and culture of the Cherokee as agriculturalists).

Marshall then turned to the Treaty of Hopewell, signed in 1785 with the Cherokee, to prove that the Cherokee acknowledged not only that they were "under the protection of the United States of America, and of no other power" but that they had benefited directly from said protections as evidenced by the subsequent treaties they signed with the United States.[37] (In other words, that the Cherokee kept signing treaties with the United States proved to Marshall that they not only benefited from said relations but were acknowledging the United States as the more powerful sovereign in the territory.) Consequently, Marshall purported, the Cherokee were not a sovereign equal in political status and rights to the United States, as might be suggested by the conventions of international law regarding the relationship between signatories. Rather, the Cherokee were a sovereign possessing partial or limited powers as dependent wards under the more supreme governing authority that it had recognized and benefited from in the United States.

Next Marshall addressed the matter of the Cherokee's relationship to Georgia as a state of the union. He argued that Georgia, as all states, recognized by their own statutes that it was the federal government that held exclusive rights and responsibilities to regulate relations with the Indian tribes "with which no state could interfere" by virtue of the U.S. Constitution's commerce clause. He concluded: "The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right

to enter but with the assent of the Cherokees themselves, or in conformity with treaties and with the acts of Congress. The whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the Government of the United States."[38]

The Court ruled that Georgia's 1830 act interfered with relations between the United States and the Cherokee, "the regulation of which, according to the settled principles of our Constitution, is committed exclusively to the Government of the Union." Marshall declared that Georgia's act was "in direct hostility with treaties, repeated in a succession of years, which mark out the boundary that separates the Cherokee country from Georgia; guaranty to them all the land within their boundary; solemnly pledge the faith of the United States to restrain their citizens from trespassing on it; and recognise the pre-existing power of the Nation to govern itself." Georgia's act was found to be "in equal hostility with the acts of Congress for regulating this intercourse and giving effect to the treaties." Marshall concluded that Georgia's laws were "unconstitutional and void" and granted Worcester a full pardon.[39]

Many have noted that U.S. president Andrew Jackson, who was instrumental in the passage of the Indian Removal Act of 1830, was so enraged by Marshall's opinion that he uttered something to the effect that Marshall had made his laws, let him enforce them. Jackson refused to send in the troops needed to defend Cherokee territory against Georgia's retaliatory encroachment and instead sent in commissioners to negotiate treaties for Cherokee removal to Indian Territory.[40]

Despite the superficial appearance of conflict in the Supreme Court's opinions in the Marshall trilogy, the decisions were in perfect keeping with the colonial objectives of the U.S. government at the time, a government that aimed to abrogate the means and abilities of Indian tribes to maintain their jurisdiction and territorial rights. The configuration of "Indian tribes" as being under the governing authority of the United States was neither adverse to nor undermining of the ultimate objective to dissolve Indian governments and dispossess Indians of their territories. And it certainly was not unique.

European nations likewise constructed themselves as sovereigns with abject rights to claim jurisdictional authority and territorial rights over indigenous peoples in their colonies throughout the Americas and the Pacific. The specific claims and exercises of their sovereign powers—militarily and otherwise—made almost incestuous use of each other's laws and policies to justify the dispossession, enslavement, and genocide of "their Indians." This is reflected in the opinions of Marshall's trilogy—which claimed that Indians had "passed under" U.S. plenary power, which in turn had a trust responsibility to govern

the Indians as a matter of domestic policy—and in the ways that these rulings were taken up by England's Colonial Office to justify the usurpation of indigenous territorial rights in Canada, Australia, and New Zealand.[41]

Though informed by international debates, no previous legislative or court decision had defined the "doctrine of discovery" as such.[42] Marshall invoked it as though it were a well-founded legal principle of international law. It took on the force of precedence because Marshall invented a legal history that gave it that status. In this history, Marshall defined "aboriginal title," "domestic dependent nations," plenary power, and trust as inevitable evolutionary legal principles of a civilized state. The history constructed indigenous peoples under the civilized governing authority of the United States. In this tale, the United States, as all progressing nations, was charged with the demands of adhering to the principles of international law but also burdened with the responsibilities of civilizing/Christianizing Indians into those more civilized/Christian legal beliefs and practices.

The entire self-fulfilling narrative of legal, moral, and social superiority offered in such claims to doctrine as Marshall's discovery reinvented a sovereignty for indigenous peoples that was void of any of the associated rights to self-government, territorial integrity, and cultural autonomy that would have been affiliated with it in international law at the time.[43] In junction with the fact that the specific story Marshall told affirmed British and then U.S. title to the lands in North America on the basis of the legal precedence of discovery that it fictionalized, it is unsurprising that Marshall's trilogy was taken up by the Colonial Office in England to direct relations with indigenous peoples and its colonists in Canada and the Pacific. As in the United States, these relations were embedded with the ideologies of race, culture, and identity that legitimated the narratives.[44]

In response to the perceived problems with the colonial rebellion in the United States, and settler violence against indigenous peoples in Canada, Australia, New Zealand, and the Cape Colony, the Colonial Office established a firm "rule of law" framework for developing its guidelines for colonization.[45] Colonies were expected to adhere to the letter of the law, not to interpret the law according to their own want or personal interest.[46] However, geographical distance made it virtually impossible for the Colonial Office to oversee, let alone enforce, its guidelines. The result was an incredibly incongruous relationship between England, its colonies, and indigenous peoples.

The primary legal point of reference for the Colonial Office was the British Royal Proclamation of 1763. The Proclamation was issued by King George III after the cession of New France to England by the Treaty of Paris. Basically it

determined English territorial boundaries and the terms for trade and governance within the Americas. In relationship to indigenous peoples, it asserted that the Crown possessed the sole right to acquire indigenous lands and prohibited the purchasing of lands by individuals from indigenous peoples. This directive necessitated that England enter into treaties with indigenous peoples in order to acquire title to desired areas before settlement.[47] Though not a law, the Proclamation was given the force of law by legislative action and court rulings in North America and the Pacific (including Marshall's trilogy).

Despite the Proclamation's directive, lands were occupied by English colonists without the required treaties in place. Violence against indigenous peoples occurred as individual colonies usurped lands from indigenous peoples and/or protected their interests to remain on lands they had illegally seized. The Aborigines in Australia, Maori in New Zealand, Beothuk in Newfoundland, and Tasmanians of Tasmania were some of the groups almost exterminated by colonists ignoring their own policy.[48]

In the 1830s and 1840s, Sir James Stephen was under-secretary of the Colonial Office (he had worked in the office as a legal advisor since the 1810s). Believing that the immediate genocide of Australian Aborigines had been "immoral," he turned to Marshall's opinion in *Johnson v. McIntosh* to help him write guidelines for William Hobson, the British consul in New Zealand, to treat with the Maori.[49]

> It [*Johnson v. McIntosh*] shows that the whole Territory over which those Tribes wandered was to be regarded as the property of the British Crown in right of discovery and conquest—and that the Indians were mere possessors of the soil on suffrance. Such is American Law. The British law in Canada is far more humane, for there the Crown purchases of the Indians before it grants to its own subjects. . . . Besides what is this to the case of New Zealand? The Dutch, not we, discovered it. Nearly a hundred years ago Captain Cook landed there, and claimed the Sovereignty for King George III. Nothing has ever been done to maintain and keep alive that claim. The most solemn Acts have been done in repudiation and disavowal of it. Besides the New Zealanders are not wandering Tribes, but bodies of men, till lately, very populous, who have a settled form of Government, and who have divided and appropriated the whole Territory amongst them. They are not huntsmen, but after their rude fashion, Agriculturalists.[50]

Stephen's invocation of *Johnson v. McIntosh* is based on Marshall's affirmation of the preeminence of English title within North America, as the first

discoverers (agriculturalists), and of the Proclamation as the force of law in determining title. These affirmations were required by Marshall in order to make the claim that the passage of title from England to the United States had established U.S. entitlement to the lands and to jurisdiction over and within them. The rationale served English interests. Far more interesting than the predictably flippant remarks about "American Law" and the superiority of English civility over American barbarity in Stephen's directive is his treatment of the discovery doctrine as a well-established legal precept read back into the Proclamation and out of Marshall's opinion. This history provided Stephen with the legal framework that he needed in order to direct English colonists to treat with the natives as a distinction of English civilization. His directive concludes by ordering Hobson to treat with the Maori.[51] Hobson responded by initiating the negotiations that would result in the Treaty of Waitangi of 1840 (see Fiona Cram, "Backgrounding Maori Views on Genetic Engineering," this volume).[52]

Marshall's trilogy also influenced numerous Canadian court decisions. The discovery doctrine was taken as an extension of the principles set forth in the Proclamation, especially in regard to the notion that the Crown alone enjoyed the right to treat with and purchase lands from First Nation peoples.[53] As in the United States it was decided that title to lands that were unceded or unpurchased by treaty could still be found to have been "extinguished" if settlement within the area had progressed unfettered—a convenient displacement of the impact of overt military aggression and dispossession of indigenous peoples on the progress of said settlements. As in U.S. case history, this logic provided an efficient justification for Canadian nullification of "aboriginal title" by treaty, by purchase, or by the default of colonization.[54]

One of the other legacies of the Marshall trilogy was the configuration of indigenous peoples as welfare beneficiaries.[55] The notion that indigenous peoples are *weaker than*, *wards*, *dependent*, and *limited* in power in relation to their colonial states has perpetuated dominant ideologies of race, culture, and identity. Within these identificatory practices, "indigenous people" are marked as yet another ethnic group within the larger national melting pot, where the goal is to boil out cultural differences and the national jurisdictions and territorial boundaries of indigenous groups by boarding schools, farming programs, citizenship, and adoption.[56]

As I have argued elsewhere, the *making ethnic* or *ethnicization* of indigenous peoples has been a political strategy of the nation-state to erase the sovereign from the indigenous.[57] To the extent that the nation-state can maintain that indigenous peoples are nothing but welfare recipients under its trust, the very

notion that indigenous peoples are members of sovereign political collectivities is made incomprehensible. This incomprehensibility works to collapse indigenous peoples into minority groups that make up the social rainbow of multicultural difference as a means of erasing their unique political status and rights under the precedence of international law.

The erasure of the sovereign is the racialization of the "Indian." These practices have had important consequences in shaping cultural perspectives about the relationship between indigenous identity and sovereignty, not only from the viewpoint of some dominant, privileged position but within indigenous communities as well.

On the one hand are all of the myriad social forces of oppression that have racialized (invented) an Indian identity that can be used to usurp indigenous sovereignty. These forces presuppose the legitimacy of an entire discourse of cultural authenticity, racial purity, and traditional integrity, which in turn legitimates assimilationist ideologies. In this discourse is the real Indian (the mythic full-blood traditionalist born and raised on the reservation in poverty and despair), romanticized as the last vestige of real Indian culture, and the fraud (the mythic mixed-blood urban Indian born and raised without any sense of Indian culture), demonized as the contaminant of all things Indian while serving as testimony to the successes of the colonial project. Nowhere in this discourse are real indigenous peoples permitted or heard to speak for themselves, and when they do, their self-definitions are incomprehensible.[58]

On the other hand are all of the ways that indigenous identity is foundational to the structure, exercise, and character of sovereignty. It is, in other words, impossible to separate Native Hawaiian identity from Native Hawaiian perspectives about and struggles for self-government; Chamorro identity from Chamorro struggles for jurisdictional integrity in Guam; Taíno identity from Taíno land rights; Makah identity from Makah whaling rights; Maori identity from Maori struggles for intellectual property rights. In the historical complexities and cultural richness and diversity of these and all indigenous communities is the truth of the heterogeneity of indigenous identity, not only in how indigenous peoples identify themselves and their cultures but in how their self-definitions inform the character of their unique political perspectives, agendas, and strategies for sovereignty.

Rearticulations

Following World War II *sovereignty* emerged as a particularly valued term within indigenous scholarship and social movements and through the media of cul-

tural production. It was a term around which analyses of indigenous histories and cultures were organized and whereby indigenous activists articulated their agendas for social change. It was also a term through which indigenous artists represented their histories, cultures, and identities, often in opposition to the erasures of their sovereignty by dominant ideologies of race, culture, and nationalism coined in the discourses of eugenics and American patriotism.

This is not to say that the concept of sovereignty was new to indigenous peoples. Certainly by the early 1600s it was a familiar and often belligerent self-descriptive against relentless military invasions and the social forces of colonization. It was employed to claim nationhood status and so collective rights to territorial integrity and governance as well as to define a humanity that was denied by the discourses of missionization. For example, the adoption of the designation Five Civilized Tribes by the Cherokee, Muskogee (Creek), Choctaw, Chickasaw, and Seminole in relations with the United States was an interesting discursive maneuver in this regard.[59] So were the exchanges between the members of the Haudenosaunee Confederacy and early U.S. government leaders about democracy and personal freedom.[60] Paiute writer and activist Sara Hopkins Winnemucca wrote *Life among the Piutes* to make an intellectual intervention against assimilationist ideologies and toward affirming American Indian humanity, cultural vitality, and land rights.[61] These and other self-definitions by the status and rights of sovereignty disrupted the solidity of dominant representations of indigenous peoples as savage heathens.

One of the most important reasons why sovereignty took on renewed currency following World War II was the oppositional perspective it signified toward the racist ideologies of beneficiarism that settled national policies during the preceding assimilationist period. Sovereignty had come to represent a staunch political-juridical identity refuting the dominant notion that indigenous peoples were merely one among many "minority groups" under the administration of state social service and welfare programs. Instead, sovereignty defined indigenous peoples with concrete rights to self-government, territorial integrity, and cultural autonomy under international customary law.[62] By doing so, it served to link indigenous peoples across the territorial borders of nation-states, refuting their position under the domains of domestic policy and reclaiming their status under the conventions and relations of international law.

Again the strategy was learned from previous generations. Since the initiation of conquest, indigenous leaders had assumed the relevance of a legal discourse that was, conventionally speaking, "not their own" as a way of claiming a status, and its associated rights, against the ideologies and prac-

tices of colonialism.[63] Of course, translating indigenous epistemologies about law, governance, and culture through the discursive rubric of sovereignty was and is problematic.[64] Sovereignty as a discourse is unable to capture fully the indigenous meanings, perspectives, and identities about law, governance, and culture, and thus over time it impacts how those epistemologies and perspectives are represented and understood.

Despite the problems of translation, indigenous peoples learned that how they represented themselves in international affairs mattered in consequential ways to how they were related to and what rights they were perceived to be claiming.[65] Refuting minority status was a refutation of the assimilationist ideologies that constructed indigenous peoples as ethnic minorities under the governing authority of the nation-state and a claim of the attributes of sovereignty customarily associated with nations.[66]

These discursive strategies were key as the world community mobilized attention on the rights of minority groups after World War II and in the context of the formation of the United Nations.[67] Within the political forums and policy agreements of the UN, indigenous peoples insisted on being identified as *peoples* (political collectivities) and not as *people* (minorities). The stakes in being so identified originated with the UN Charter, which affiliated the rights of *peoples* to *self-determination*—a legal category that came to be defined by both group and individual rights not to be discriminated against on the basis of race, ethnicity, gender, sexual orientation, or physical or mental ability, and to determine one's own governments, laws, economies, identities, and cultures. By taking on the self-definition of peoples with group and individual rights to self-determination, indigenous leaders were claiming a difference from minorities and a status akin to the status of nations.[68] The UN community has not missed the political importance of such links, as has been true within the signatory process of the *Declaration on the Rights of Indigenous Peoples*.

Written by an international consortium of approximately one hundred indigenous leaders from around the world over a decade's time, the *Declaration* translates human rights principles for indigenous peoples into the specific rights of self-determination, including provision for aspects of tradition, custom, property, language, oral histories, philosophies, writing systems, educational systems, medicines, health practices, resources, lands, and self-definition. Though there are some troubles with the conceptualization of what these particular rights mean, and many feel that the definitions do not go far enough, what remains interesting is how those who participated in the process chose to represent the rights as *indivisible* and *interdependent* aspects of their identities as sovereigns.[69] Human rights for indigenous peoples, in

other words, became translated to mean rights to a self-determination that was indelibly linked to sovereignty. So strong is this conceptualization that it is now virtually impossible to talk about what *sovereignty* means for indigenous peoples without invoking self-determination. As a consequence, sovereignty has been solidified within indigenous discourses as an inherent right that emanates from historically and politically resonant notions of cultural identity and community affiliation: "Sovereignty, in the final instance, can be said to consist more of a continued cultural integrity than of political powers and to the degree that a nation loses its sense of cultural identity, to that degree it suffers a loss of sovereignty."[70] "Sovereignty is inherent; it comes from within a people or culture."[71]

The link of sovereignty to peoples and cultures has been an important contribution to the precepts of human rights within international law by indigenous scholars and activists. The link has opened up debates about theories of humanity, notions of rights, and the authority of the nation-state to determine the legal substance of both. But it is also one of the most misunderstood and misrepresented aspects of how sovereignty matters. It is simultaneously and contradictorily true that many have mistaken an essentialist rhetoric for a politically strategic one, questioning what is perceived to be a gross reduction of everything from land rights to rug designs to sovereignty as a kind of raison d'être for all things indigenous.

The discursive proliferation of sovereignty must be understood in its historical context. The multiple social forces of globalization have reinvented colonial practices from the supposed confines of the nation as empire builder to the elusive networks of decentralized political economies and informatics.[72] These networks have perpetuated the kinds of exploitation of indigenous labor, products, resources, lands, and bodies conventionally ascribed to colonialism proper—that is, Colonialism with a capital C.[73] The almost aggressive self-definition of indigenous peoples by sovereignty is in large part a response to their continued experiences of exploitation and disempowerment under processes of globalization.[74] Fiercely claiming an identity as sovereign, and including multiple sociocultural issues under its rubric, has been a strategy of not merely deflecting globalization's reinvention of colonial processes but of reasserting a politically empowered self-identity within, besides, and against colonization.

It is also true that there is a troubling and troubled essentialism of sovereignty by indigenous scholars, community organizers, and cultural producers, evident in the moments when what it is or how it is important is taken-for-granted. Many find it troubling that indigenous histories and

cultures are often framed through sovereignty without a consideration of the ways in which its ideological origins might predispose a distortion or negation of indigenous epistemologies of law and governance.[75] What this means for the actual decolonization of indigenous cultures is complicated by how those origins impinge upon real revitalization efforts or effective decolonization strategies. Others find the links between sovereignty and particular cultural practices, such as certain aspects of basket weaving or food preparation, to flatten out, distort, or even make light of the legal importance and political substance of sovereignty.

What is important to keep in mind when encountering these myriad discursive practices is that sovereignty is historically contingent. There is no fixed meaning for what *sovereignty* is—what it means by definition, what it implies in public debate, or how it has been conceptualized in international, national, or indigenous law. Sovereignty—and its related histories, perspectives, and identities—is embedded within the specific social relations in which it is invoked and given meaning. How and when it emerges and functions are determined by the "located" political agendas and cultural perspectives of those who rearticulate it into public debate or political document to do a specific work of opposition, invitation, or accommodation. It is no more possible to stabilize what *sovereignty* means and how it matters to those who invoke it than it is to forget the historical and cultural embeddedness of indigenous peoples' multiple and contradictory political perspectives and agendas for empowerment, decolonization, and social justice.[76]

The challenge, then, to understand how and for whom sovereignty matters is to understand the historical circumstances under which it is given meaning. There is nothing inherent about its significance. Therefore it can mean something different during its original uses in the politico-theological discourses of the Catholic church than it did during Marshall's delivery of the Supreme Court's decision in *Worcester v. Georgia*, differing again in its links to concepts of self-determination and human rights and in the contexts of Alaskan Native, Native Hawaiian, or Maori or Aborigine struggles.

Understanding the problems of translating indigenous concepts of law, governance, and culture through the discourses of sovereignty requires unpacking the social forces and historical conditions at each moment when it is invoked as well as the social relations in which it functions. How did those forces cohere? What social conditions were the social actors confronting? What kinds of identities did they have stakes in claiming and asserting? In relationship to what other identities?[77]

Concurrent with associating sovereignty with self-determination has been

its linking to *self-government*.[78] In locating sovereignty within the idea of peoples who are collective political entities with inherent rights to decide their own laws and practice their own cultures, self-government has emerged as an attendant concept to signify rights to determine, practice, and transform multiple forms of social organization—in effect to decolonize social institutions from federal/state paternalism and to reformulate them along the lines of distinctive cultural perspectives. This is evident in everything from efforts to revitalize traditional forms of education and health care to reclamations of legal traditions and practices.

For instance a myriad of First Nation organizations in Canada—such as the Native Women's Association of Canada, Indian Women for Indian Rights, Assembly of First Nations, Native Council of Canada, Inuit Committee on National Issues, Inuit Tapirisat of Canada, Inuit Women's Association, and the Métis National Council—have almost unilaterally (though with important differences among them in political perspectives) made the assumption of band/reserve control over social programs and services like education, health care, child welfare, resource management, and economic development a key aspect of their movements to sovereignty by self-government. They have argued that not only should their unique cultural perspectives regarding education, health care, family, environmentalism, and communalism inform the structure and administration of these various types of social institutions but that sovereignty itself is a vacuous idea for indigenous peoples without providing for and guaranteeing their means and abilities to exercise it.[79]

Similarly, many indigenous peoples have revitalized their laws and legal practices in the contexts of their own juridical epistemologies and justice systems.[80] Several groups in Canada have returned to the model of the talking circle for deciding sentencing terms.[81] The Navajo have introduced the Peacemakers Court for mediation.[82] These efforts have been characterized by serious attention to inherited beliefs, stories, and ceremonies as well as a concern as to how best to entrench these cultural perspectives and practices within "tribal" law.[83]

One of the most powerful examples of these efforts is their implication for reforming nation-state policy, indicated by Australia's high court decision in *Mabo v. Queensland* in 1992. Eddie Koiki Mabo, Sam Passi, David Passi, Celuia Mapo Salee, and James Rice filed a legal claim of ownership to their "preconquest" lands on the island of Mer in the Torres Straight between Australia and Papua New Guinea. Their claim was based on their unique legal customs for naming (singing) territorial occupation, use, and responsibility. They argued that the said customs superseded English title, which had been illegally

asserted without proper treaty or purchase in violation of the principles outlined in England's own Proclamation and wrongly justified on the basis of Marshall's discovery doctrine.[84]

In response to the claim, the high court of Australia required Queensland to determine the facts of the case. However, while the case was still pending, Parliament passed the Torres Strait Islands Coastal Act, which stated that "any rights that Torres Strait Islanders had to land after the claim of sovereignty in 1879 is hereby extinguished without compensation."[85] The challenge to the act was taken to Australia's high court in *Mabo v. Queensland*.[86]

In what would be an unprecedented ruling until Canada's Supreme Court decision in *Delgamuukw v. British Columbia* in 1997, Australia's high court found that indigenous customary law was a valid body of legal precedence for deciding aboriginal title. It held that title existed prior to Captain James Cook's maps of the area and the formal establishment of the neighboring English colony of New South Wales in 1788. The ruling overturned the discovery doctrine on which England had asserted title to indigenous territories in Australia. In recognizing that prior title in the lands existed with the Aborigines, the high court acknowledged that indigenous title still existed in any region where it had not been legally ceded.[87] Following the court's ruling, Parliament passed the Native Title Act in 1993, which provided indigenous peoples with the means to claim territorial rights to unalienated lands. These statutes have not only reversed the precedence for determining aboriginal title through discovery in Australia but have affirmed indigenous customary law as a credible source of precedence in matters of national jurisdiction.[88]

What all of these various political movements indicate is an attempt by indigenous peoples to be recognized as sovereigns and to be related to by their nation-states as forming legitimate governments with rights to direct their own domestic policies and foreign affairs, unmediated by the regional contours of state/provincial politics and corporate interests. Unevenly but steadily, the movements have impacted the direction of national law and policy, as nation-states have been held accountable to the increasing validation of indigenous epistemologies in matters of territorial rights and governance. Corollary terms like *nations within* and *government-to-government* have been deployed by indigenous peoples to position themselves as comprising fully self-determining political entities invested with the power to be related to as sovereigns in matters ranging from treaty to intellectual property rights.[89]

Indigenous opposition to being characterized as minorities by self-defining as peoples with the sovereignty of self-determination and self-government has met the challenge of conservative political interests that deploy the discourses

of reverse racism to contest the terms of indigenous legal status, treaty and land rights, and economic self-sufficiency. The argument goes that indigenous peoples are only receiving these special funds and services on the basis of race and that such funds and services are therefore unconstitutionally discriminating against non-indigenous people.[90]

In the United States these discourses have been profoundly informed by anti–Affirmative Action movements that work to portray federal and state funding and services to indigenous peoples as nothing more than special benefits for a racial/minority group that perpetuates reverse discrimination. Therein anti-gaming, anti-recognition, and anti-sovereignty movements have coalesced by the reracialization of indigenous status and rights. Given their successes in challenging civil rights principles in university admissions and fellowship programs, and in recent Supreme Court decisions such as *Rice v. Cayetano* in 2000, many indigenous peoples in the United States and in U.S. territories such as Puerto Rico, Guam, and Samoa are justifiably concerned about the long-term implications of these efforts for treaty and land rights.[91]

These tensions likewise inform the now twenty-year revision process for the *Declaration on the Rights of Indigenous Peoples*, as member nations of the UN resist including the identification of indigenous groups as *peoples* because of the legal status that this would imply. At the UN meetings on race and human rights in South Africa in 2001, some nations conceded to the use of the term *peoples* as long as it was explicitly stripped of its legal connotations. As a result, indigenous peoples are identified as peoples in the *Declaration* but only as a matter of semantics.[92]

Reverberations

Despite the strategic deployments of sovereignty, many indigenous scholars have criticized its proliferation within indigenous discourses because of its etymological origins within European colonial law and Christian ideologies. In "International Law and Politics: Toward a Right to Self-Determination for Indigenous Peoples," Shawnee scholar Glenn T. Morris writes: "Indigenous peoples, as all colonized peoples, have come to realize the importance of semantics in their quest for self-determination."[93] As the ideological forces of colonialism bear down through the etymological origins, meanings, and histories of *sovereignty*, Morris questions "the usefulness of forcing indigenous reality into the forms [semantics] developed by Europeans."[94] Morris even anticipates an emergent field of inquiry within indigenous studies focusing on indigenous epistemologies of law and governance that move past the colonial legacies of concepts like sovereignty and nationhood.

A similar perspective is articulated by Mohawk scholar and activist Taiaiake Alfred in *Peace, Power, Righteousness: An Indigenous Manifesto* (1999) and "Sovereignty" (in this volume):

> But few people have questioned how a European term and idea—sovereignty is certainly not Sioux, Salish, or Iroquoian in origin—came to be so embedded and important to cultures that had their own systems of government since the time before the term *sovereignty* was invented in Europe. Fewer still have questioned the implications of adopting the European notion of power and governance and using it to structure the postcolonial systems that are being negotiated and implemented within indigenous communities today.[95]

For Morris, Alfred, and other indigenous theorists, sovereignty fails to interrogate the ideological bases on which it has emerged and functioned as a category. Accordingly, using it to theorize indigenous histories, governments, and epistemologies is not merely problematical but faulty because such configurations are perceived to distort rather than translate the representation and so understanding of indigenous epistemologies, laws, governments, and cultures. In order to decolonize indigenous peoples, they explain, a return to indigenous epistemologies and languages is required.

Paradoxically, Morris, Alfred, and others anticipate the need for a body of scholarship that has chosen to represent itself as "intellectual sovereignty."[96] What is common among these various writings is the explicit attempt by indigenous scholars to decolonize the theoretical and methodological perspectives used within analyses of indigenous histories, cultures, and identities from the legacies of intellectual colonialism. Fierce criticisms of the exploitative research practices of anthropology (ethnography) and history parallel attempts to revitalize and legitimize indigenous epistemologies as valid bodies of knowledge.[97]

What is interesting about the term "intellectual sovereignty" is its link to ongoing political and cultural movements working to rearticulate the rights of indigenous peoples to sovereignty by self-determination and self-government. While problematical for its occasional invocation of or reliance on racialized notions of cultural integrity and traditionalism, intellectual sovereignty has situated itself as a part of the various sociopolitical movements toward sovereignty, self-determination, and self-government and is understood by its authors to be an integral aspect of the configuration and import of their intellectual work.[98] Given ongoing social forces of intellectual exploitation and appropriation, it is understandable that indigenous scholars would want to

mark their projects as oppositional by situating them as part of a sociopolitical movement for sovereignty.[99]

Conclusion

Sovereignty is historically contingent. What it has meant and what it currently means belong to the political subjects who have deployed and are deploying it to do the work of defining their relationships with one another, their political agendas, and their strategies for decolonization and social justice. Therefore to understand how it matters and for whom, sovereignty must be situated within the historical and cultural relationships in which it is articulated. The specific social conditions that produce its meanings must be considered. This is not to say that etymology is unimportant. Sovereignty carries the horrible stench of colonialism. It is incomplete, inaccurate, and troubled. But it has also been rearticulated to mean altogether different things by indigenous peoples. In its link to concepts of self-determination and self-government, it insists on the recognition of inherent rights to the respect for political affiliations that are historical and located and for the unique cultural identities that continue to find meaning in those histories and relations.

Notes

1. Vine Deloria, Jr., "Self-Determination and the Concept of Sovereignty," in *Economic Development in American Indian Reservations*, ed. Roxanne Dunbar Ortiz (Albuquerque: University of New Mexico Native American Studies, 1979), 22–28, see 22.

2. Kirke Kickingbird, Lynn Kickingbird, Charles J. Chibitty, Curtis Berkey, *Indian Sovereignty*, pamphlet (Washington DC: Institute for the Development of Indian Law, 1977), 64 pp., 1.

3. Deloria, "Self-Determination and the Concept of Sovereignty," 22.

4. S. James Anaya, *Indigenous Peoples in International Law* (New York: Oxford University Press, 1996), 13–19.

5. Anaya, *Indigenous Peoples in International Law*, 14–15.

6. Anaya, *Indigenous Peoples in International Law*, 13–19.

7. Kickingbird et al., *Indian Sovereignty*.

8. Glenn T. Morris, "International Law and Politics: Toward a Right to Self-Determination for Indigenous Peoples," in *The State of Native America: Genocide, Colonization, and Resistance*, ed. M. Annette Jaimes (Boston: South End Press, 1992), 55–86.

9. Anaya, *Indigenous Peoples in International Law*, 15.

10. Anaya, *Indigenous Peoples in International Law*, 15.

11. J. G. A. Pocock, "Waitangi as Mystery of the State: Consequences of the Ascription of Federative Capacity to the Maori," in *Political Theory and the Rights of Indigenous Peoples*, ed. Duncan Ivison, Paul Patton, and Will Sanders (Cambridge: Cambridge University Press, 2000), 25–35.

12. Robert F. Berkhofer, Jr., *The White Man's Indian: Images of the American Indian from Columbus to the Present* (New York: Vintage Books, 1979).

13. George E. Tinker, *Missionary Conquest: The Gospel and Native American Cultural Genocide* (Minneapolis: Fortress Press, 1993).

14. Ronald Niezen, *Spirit Wars: Native North American Religions in the Age of Nation Building* (Berkeley: University of California Press, 2000).

15. Christopher Vecsey, ed., *Handbook of American Indian Religious Freedom* (New York: Crossroad Publishing Company, 1993).

16. Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press, 1994).

17. Sidney L. Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence* (Toronto: Osgoode Society for Canadian Legal History, University of Toronto Press, 1998).

18. Tomás Almaguer, *Racial Fault Lines: The Historical Origins of White Supremacy in California* (Berkeley: University of California Press, 1994).

19. Vine Deloria, Jr., *Behind the Trail of Broken Treaties: An Indian Declaration of Independence* (Austin: University of Texas Press, 1974).

20. *Worcester v. Georgia* (1832).

21. Anaya, *Indigenous Peoples in International Law*, 16–19.

22. Harring, *White Man's Law*; Thomas Isaac, *Aboriginal Law: Cases, Materials, and Commentary*, 2nd ed., Aboriginal Issues Series (Saskatoon: Purich Press, 1999).

23. *Johnson v. McIntosh* (1823).

24. Pocock, "Waitangi as Mystery of the State," 27.

25. *Johnson v. McIntosh* (1823).

26. *Johnson v. McIntosh* (1823).

27. *Johnson v. McIntosh* (1823).

28. *Johnson v. McIntosh* (1823).

29. *Johnson v. McIntosh* (1823).

30. *Johnson v. McIntosh* (1823).

31. Marshall's "aboriginal title" was taken up by the colonies in Canada to justify land acquisition on the grounds that said title could be extinguished if the lands were not being used. See Antonio Mills, *Eagle Down Is Our Law: Witsuwit'en Law, Feasts, and Land Claims* (Vancouver: University of British Columbia Press, 1994). This argument was likewise used by the Indian Claims Commission in determining Western Shoshone extinguishment of title to Newe Segobia.

32. Quoted in Sharon O'Brien, *American Indian Tribal Governments* (Norman: University of Oklahoma Press, 1989), 57.

33. *Worcester v. Georgia* (1831).

34. *Worcester v. Georgia* (1831).

35. *Worcester v. Georgia* (1831).

36. Hopewell 1785; Holston 1791; Philadelphia 1794; Tellico 1798; Tellico 1804; Tellico 1805; Tellico 1805; Washington City 1805; Washington City 1816; Chickasaw Council House 1816; Cherokee Agency 1817; Washington City 1819 (*Worcester v. Georgia* 1831).

37. *Worcester v. Georgia* (1831).

38. *Worcester v. Georgia* (1831).

39. *Worcester v. Georgia* (1831).

40. Deloria, *Behind the Trail of Broken Treaties*, 8.

41. See Harring, *White Man's Law* and Mills, *Eagle Down Is Our Law*.

42. Some have suggested that the discovery doctrine was historically linked to the Spanish doctrine of "right of conquest." See, for example, O'Brien, *American Indian Tribal Governments*.

43. See Anaya, *Indigenous Peoples in International Law*, and Pocock, "Waitangi as Mystery of the State."

44. Brain W. Dippie, *The Vanishing American: White Attitudes and United States Indian Policy* (Middletown CT: Wesleyan University Press, 1982); Richard Drinnon, *Facing West: The Metaphysics of Indian Hating and Empire Building* (New York: New American Library, 1980); Robert A. Williams, Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford University Press, 1990).

45. Harring, *White Man's Law*, 19.

46. Harring, *White Man's Law*, 17.

47. Isaac, *Aboriginal Law*, 3.

48. Harring, *White Man's Law*, 19–20.

49. Harring, *White Man's Law*, 22.

50. Sir James Stephen, quoted in Harring, *White Man's Law*, 21–22.

51. Harring, *White Man's Law*, 22.

52. Harring, *White Man's Law*, 23.

53. Isaac, *Aboriginal Law*.

54. Mills, *Eagle Down Is Our Law.*

55. J. Kehaulani Kauanui, " 'For Get' Hawaiian Entitlement: Configurations of Land, 'Blood', and Americanization in the Hawaiian Homes Commission Act of 1920," *Social Text* 17, no. 2 (Summer 1999), 123–44, and "The Politics of Blood and Sovereignty in *Rice v. Cayetano*" *Political and Legal Anthropology Review* 25, no. 1 (2002), 110–28 (reprinted in this volume).

56. Andrew Armitage, *Comparing the Policy of Aboriginal Assimilation: Australia, Canada, and New Zealand* (Vancouver: University of British Columbia Press, 1995).

57. Joanne Barker, "Looking for Warrior Woman (Beyond Pocahontas)," in *This Bridge We Call Home: Radical Visions for Transformation*, ed. Gloria Anzaldúa and AnaLouise Keating (New York: Routledge, 2001), and "Indian(TM) U.S.A.," *Wicazo Sa Review: A Journal of Native American Studies* 18, no. 1 (Spring 2003).

58. Rayna Green, "The Pocahontas Perplex: The Image of Indian Women in American Culture," in *Unequal Sisters: A Multicultural Reader in U.S. Women's History*, ed. Ellen Carol DuBois and Vicki L. Ruiz (New York: Routledge, 1990), 15–21.

59. Angie Debo, *And Still the Waters Run: The Betrayal of the Five Civilized Tribes* (Princeton, NJ: Princeton University Press, 1940).

60. *Exiled in the Land of the Free: Democracy, Indian Nations, and the U.S. Constitution*, collectively edited by contributing authors (Santa Fe: Clear Light Publishers, 1992).

61. Sara Hopkins Winnemucca, *Life among the Piutes: Their Wrongs and Claims* (New York: Putnam, 1883).

62. Anaya, *Indigenous Peoples in International Law*, 13–19.

63. Morris, "International Law and Politics."

64. Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (Toronto: Oxford University Press, 1999), and "Sovereignty," this volume.

65. Anaya, *Indigenous Peoples in International Law*.

66. Anaya, *Indigenous Peoples in International Law*; Franke Wilmer, *The Indigenous Voice in World*

Politics (Newbury Park: Sage Publications, 1993); Sharon Helen Venne, *Our Elders Understand Our Rights: Evolving International Law Regarding Indigenous Rights* (Penticton, British Columbia: Theytus Books, 1998). Joanne Barker, "The Human Genome Diversity Project: 'Peoples,' 'Populations,' and the Cultural Politics of Identification," *Routledge Journal of Cultural Studies*, forthcoming.

67. It would be challenging to try to figure out what the long-term implications of the normalization of the discourses of sovereignty for indigenous peoples have been for theorizing indigenous epistemologies and perspectives of law and governance, because it is tempting—almost irresistible from the context of dominant ideologies of race and culture—to mark the authentic from the inauthentic, the pure from the contaminated, the traditional from the colonial. The fact remains that after hundreds of years of cultural exchange between indigenous peoples and colonial states, sovereignty's currency within indigenous discourses has been long established, and not always or necessarily to detrimental or disastrous ends (Dan Taulapapa McMullin, "The Passive Resistance of Samoans to U.S. and Other Colonialisms," this volume; Donna Ngaronoa Gardiner, "Hands Off—Our Genes: A Case Study on the Theft of Whakapapa" [paper presented at Sovereignty 2000 conference, University of California, Santa Cruz, May 2000]).

Indigenous peoples have impacted sovereignty in important ways, changing what it means within international law and politics. For while ideologies of race and culture would like us to look at the exchanges between indigenous and colonial peoples from the authority of the colonial to erase the indigenous from historical significance, the fact is that indigenous peoples have made an important difference in what sovereignty means (Michael P. Perez, "Chamorro Resistance and Prospects for Sovereignty in Guam," this volume; Déborah Berman Santana, "Indigenous Identity and the Struggle for Independence in Puerto Rico," this volume). Understanding this requires the consideration of the heterogeneity of the "local," of the impact of locally specific cultural perspectives on what sovereignty is and how it matters.

68. Barker, "Human Genome Diversity Project."

69. Tony Simpson, *Indigenous Heritage and Self Determination: The Cultural and Intellectual Property Rights of Indigenous Peoples*, On Behalf of the Forest Peoples Programme, International Working Group for Indigenous Affairs Document no. 86 (Copenhagen: IWGIA, 1997), 138.

70. Deloria, "Self-Determination and the Concept of Sovereignty," 123.

71. Kickingbird et al., *Indian Sovereignty*, 1.

72. David Harvey, *The Condition of Postmodernity: An Inquiry into the Origins of Cultural Change* (Cambridge: Basil Blackwell, 1989).

73. Gardiner, "Hands Off—Our Genes."

74. Hence the reason why indigenous scholars have been resistant to theories of postcolonialism and why postcolonial theory does not often work in understanding indigenous histories, meanings, and identities (see Barker, "Human Genome Diversity Project").

75. Alfred, "Sovereignty."

76. Compare Lee Maracle, *I Am Woman: A Native Perspective on Sociology and Feminism* (New York: Press Gang Publishers, 1996); Patricia Monture-Angus, *Thunder in My Soul: A Mohawk Woman Speaks* (Nova Scotia: Fernwood Publishing, 1995); Haunani-Kay Trask, *From a Native Daughter: Colonialism and Sovereignty in Hawai'i* (Maine: Common Courage Press, 1993).

77. Lawrence Grossberg, "On Postmodernism and Articulation: An Interview with Stuart Hall," in *Stuart Hall: Critical Dialogues in Cultural Studies*, ed. David Morley and Kuan-Hsing Chen (New York: Routledge, 1996), 131–50.

78. Vine Deloria, Jr., and Clifford Lytle, *The Nations Within: The Past and Future of American Indian Sovereignty* (New York: Pantheon, 1984).

79. Harold Cardinal, *The Unjust Society: The Tragedy of Canada's Indians* (Edmonton: Hurtig Press, 1969); George Manuel, *The Fourth World* (New York: Free Press, 1974).

80. Bruce G. Miller, *The Problem of Justice: Tradition and Law in the Coast Salish World* (Lincoln: University of Nebraska Press, 2001).

81. Ross Gordon Green, *Justice in Aboriginal Communities: Sentencing Alternatives* (Saskatoon, Sasakatchewan: Purch Publishing, 1998).

82. Gloria Valencia-Weber and Christine Zuni, "Domestic Violence and Tribal Protection of Indigenous Women in the United States," *St. John's Law Review* (Winter–Spring 1995); Marianne O. Neilson and Robert A., Silverman, eds., *Native Americans, Crime, and Justice* (Boulder CO: Westview Press, 1996).

83. Alfred, *Peace, Power, Righteousness*, and "Sovereignty."

84. Mabo v Queensland No. 2 1992 (Cth), http://www.foundingdocs.gov.au (accessed January 5, 2002).

85. Torres Strait Islands Coastal Act (1982).

86. http://www.foundingdocs.gov.au.

87. http://www.foundingdocs.gov.au.

88. http://www.foundingdocs.gov.au.

89. Deloria and Lytle, *The Nations Within*; Curtis Cook and Juan D. Lindau, eds., *Aboriginal Rights and Self-Government: The Canadian and Mexican Experience in North American Perspective* (Montreal: McGill-Queen's University Press, 2000); Debra Harry, "The Human Genome Diversity Project," *Abya Yala News* 8, no. 4 (Fall–Winter 1993): 13–15, and "Biopiracy: The Theft of Human DNA from Indigenous Peoples" (paper, Sovereignty 2000: Locations of Contestation and Possibility, University of California, Santa Cruz, May 19, 2000).

90. For a list of some of the organizations, lobbyists, business people, and representatives making these arguments, see Adversity.Net's Web site for links and contact information at http://www.adversity.net. Adversity.Net is "a Civil Rights Organization for Color Blind Justice" that wants to "stop the divisive emphasis on race" in American law.

91. Kauanui, "The Politics of Blood and Sovereignty in Rice v. Cayetano."

92. See the Web site of the World Conference against Racism for information and documents on the debates at the conference, http://www.unhchr.ch/html/racism.

93. Morris, "International Law and Politics," 55–86.

94. Morris, "International Law and Politics," 27.

95. Alfred, *Peace, Power, Righteousness*, and "Sovereignty"; quoted text is from "Sovereignty," this volume.

96. Robert Allen Warrior, *Tribal Secrets: Recovering American Indian Intellectual Traditions* (Minneapolis: University of Minnesota Press, 1994); Elizabeth Cook-Lynn, "American Indian Intellectualism and the New Indian Story," *American Indian Quarterly* 20, no. 1 (Winter 1996): 57–76.

97. On exploitative practices see Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (New York: Zed Books/Dunedin, New Zealand: University of Otago Press, 1999). On revitalization see the following essays in the present volume: Guillermo Delgado-P. and John Brown Childs, "First Peoples/African American Connections"; Fiona Cram, "Backgrounding Maori Views on Genetic Engineering"; Kilipaka Kawaihonu Nahili Pae Ontai, "A Spiritual Defi-

nition of Sovereignty from a Kanaka Maoli Perspective"; Leonie Pihama, "Asserting Indigenous Theories of Change."

98. Louis Owens, *Mixedblood Messages: Literature, Film, Family, Place* (Norman: University of Oklahoma Press, 1998).

99. Laurie Anne Whitt, "Cultural Imperialism and the Marketing of Native America," *American Indian Culture and Research Journal* 19, no. 3 (1995): 1–31.

CUSTER DIED

FOR YOUR SINS

AN INDIAN MANIFESTO

BY VINE DELORIA, JR.

University of Oklahoma Press : NORMAN

2 * LAWS AND TREATIES

AFTER LYNDON B. JOHNSON had been elected he came before the American people with his message on Vietnam. The import of the message was that America had to keep her commitments in southeast Asia or the world would lose faith in the promises of our country.

Some years back Richard Nixon warned the American people that Russia was bad because she had not kept any treaty or agreement signed with her. You can trust the Communists, the saying went, to be Communists.

Indian people laugh themselves sick when they hear these statements. America has yet to keep one Indian treaty or agreement despite the fact that the United States government signed over four hundred such treaties and agreements with Indian tribes. It would take Russia another century to make and break as many treaties as the United States has already violated.

Since it is doubtful that any nation will ever exceed the record of the United States for perfidy, it is significant that statesmen such as Johnson and Nixon, both professional politicians and

opportunists of the first magnitude, have made such a fuss about the necessity of keeping one's commitments. History may well record that while the United States was squandering some one hundred billion dollars in Vietnam while justifying this bloody orgy as commitment-keeping, it was also busy breaking the oldest Indian treaty, that between the United States and the Seneca tribe of the Iroquois Nation, the Pickering Treaty of 1794.

After the Revolution it appeared necessary to the colonies, now states in the new confederation, that in order to have peace on the frontier a treaty would have to be signed with the Iroquois of New York. George Washington sent a delegation to Iroquois country headed by Timothy Pickering. In return for peace and friendship the United States promised to respect the lands and boundaries which the Iroquois had set for themselves and never to disturb the Indians in the use of their land. The United States also affirmed its promise that it would never claim the Indian lands.

In the early 1960's, however, a dam was built which flooded the major part of the Seneca reservation. Although the tribe hired their own engineer and offered an alternative site on which the dam would have been less expensive to construct and more efficient, the government went ahead and broke the treaty, taking the land they had decided on for the dam.

It has been alleged by people who had reason to know that this dam was part of the price of keeping Pennsylvania in line for John F. Kennedy at the 1960 Democratic convention.

Article III of the Pickering Treaty read:

> Now the United States acknowledge all the land within the aforementioned boundaries, to be the property of the Seneka nation; and the United States will never claim the same, nor disturb the Seneka nation, nor any of the Six Nations, or of their Indian friends residing thereon and united with them, in the free use and enjoyment thereof; but it shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.

Rather than having a choice as to whether or not to sell to the United States, the Senecas were simply forced to sell. It was a buyer's market.

Hucksterism and land theft have gone hand in hand in American history. The tragedy of the past is that it set precedents for land theft today when there is no longer any real need to steal such vast areas. But more damage is being done to Indian people today by the United States government than was done in the last century. Water rights are being trampled on. Land is being condemned for irrigation and reclamation projects. Indian rights are being ground into the dirt.

It is fairly easy to trace the principal factors leading to the great land steals. The ideological basis for taking Indian land was pronounced by the Christian churches shortly after the discovery of the New World, when the doctrine of discovery was announced.

Discovery negated the rights of the Indian tribes to sovereignty and equality among the nations of the world. It took away their title to their land and gave them the right only to sell. And they had to sell it to the European nation that had *discovered* their land.

Consequently the European nation—whether England, France, Spain, or Holland—that claimed to have discovered a piece of land had the right to that land regardless of the people living there at the time. This was the doctrine of the Western world which was applied to the New World and endorsed as the will of God by the Christian churches of western Europe.

As early as 1496 the King of England, head of the English church, commissioned John Cabot to discover countries then unknown to Christian peoples and to take possession of them in the name of the English king. In Cabot's commission was the provision that should any prior Christian title to the land be discovered it should be recognized. Christianity thus endorsed and advocated the rape of the North American continent, and her representatives have done their utmost to contribute to this process ever since.

After the Revolution the new United States adopted the doctrine of discovery and continued the process of land acquisition. The official white attitude toward Indian lands was that discovery gave the United States exclusive right to extinguish Indian title of occupancy either by purchase or conquest.

It turned out that the United States acquired the land neither by purchase nor by conquest, but by a more sophisticated technique known as trusteeship. Accordingly few tribes were defeated in war by the United States, fewer still sold their land to the United States, but most sold some land and allowed the United States to hold the remainder in trust for them. In turn, the tribes acknowledged the sovereignty of the United States in preference to other possible sovereigns, such as England, France, and Spain. From this humble beginning the federal government stole some two billion acres of land and continues to take what it can without arousing the ire of the ignorant public.

This fight for land has caused much bitterness against the white man. It is this blatant violation of the treaties that creates such frustration among the Indian people. Many wonder exactly what their rights are, for no matter where they turn treaties are disregarded and laws are used to deprive them of what little land remains to them.

The original import of the treaties was allegedly to guarantee peace on the frontier. And the tribes generally held to their promises, discontinued the fighting, and accepted the protection of the United States over their remaining lands. Yet submission became merely the first step from freedom to classification as incompetents whose every move had to be approved by government bureaucrats.

Incompetency was a doctrine devised to explain the distinction between people who held their land free from trust restrictions and those who still had their land in trust. But it soon mushroomed out of proportion. Eventually any decision made by an Indian was casually overlooked because the Indian was, by definition, incompetent.

Indians often consider the history of the Jews in Egypt. For

four hundred years these people were subjected to cultural and economic oppression. They were treated as slaves without rights and property although the original promise of the Pharoah to Joseph, like the Indian treaties, spelled out Hebrew rights. Like the Great White Father, the Pharoah turned his back on his former allies and began official oppression and destruction of rights. Yet the Hebrews survived.

America's four-hundred-year period is nearly up. Many Indians see the necessity of a tribal regrouping comparable to the Hebrew revival of old.

What were the treaties and agreements that the United States violated? For the most part they were contracts signed with tribes living in areas into which the whites moved during the last century. Nearly a third were treaties of peace; the rest were treaties for land cession.

Some tribes signed a number of treaties. The Chippewa and Potawatomi signed over twenty treaties at one time or another. The Cherokees had a number of treaties which were basically land-cession treaties. The Sioux signed a great many treaties, primarily peace treaties. In the Far West many treaties were made, but never ratified by Congress, leaving them in a legalistic limbo.

A glance at some of the obscure provisions of the treaties indicates that there must have been no intention on the part of the United States to keep them. The United States was obviously promising things it could not, at least politically speaking, deliver. And the curious thing about court cases which have occurred since treaty days is that legal interpretation has been traditionally pro-Indian. Treaties must be interpreted as the Indians would have understood them, the courts have ruled. Unfortunately in many cases the tribes can't even get into court because of the ambiguous and inconsistent interpretation of their legal status.

The concept of dependency, a favorite topic in government agencies and Congress, originally came from the Delaware

Treaty of September 17, 1778. Dependency, as the term is used today, implies a group of lazy, dirty Indians loafing the day away at the agency. Indeed, this is the precise connotation which people love to give. But the actual provision in the Delaware Treaty is not a social or philosophical or even political theory of man. Rather it is a narrowly economic provision of dependency, as seen in Article V:

> Whereas the confederation entered into by the Delaware Nation and the United States renders the first dependent on the latter for all the articles of cloathing, utensils and implements of war, and it is judged not only reasonable, but indispensably necessary, that the aforesaid Nation be supplied with such articles from time to time, as far as the United States may have it in their power, by a well regulated trade . . .

Dependency, as one can easily tell from the article, was simply a trade dependency. Nowhere was there any inkling that the tribe would eventually be classified as *incompetent.* Indeed, the very next article, Article VI, implies that the United States considered the Delawares as competent as any people on earth:

> . . . the United States do engage to guarantee to the aforesaid nation of Delawares, and their heirs, all their territorial rights in the fullest and most ample manner as it hath been bound by former treaties, as long as they the said Delaware nation shall abide by and hold fast the chain of friendship now entered into. And it is further agreed on between the contracting parties should it for the future be found conducive for the mutual interest of both parties to invite any other tribes who have been friends to the interest of the United States, to join the present confederation, and to form a state whereof the Delaware nation shall be the head, and have a representation in Congress: Provided, nothing contained in this article to be considered as conclusive until it meets with the approbation of Congress.

During the darkest days of the Revolution, in order to keep the Indians from siding with the British and completely crushing the new little nation, the United States held out equality and statehood to the Delawares and any other tribes they could muster to support the United States. But when the shooting was

all over the Delawares were forgotten in the rush to steal their land.

This promise was not only made to the Delawares. In Article XII of the Hopewell Treaty of November 28, 1785 the United States promised the Cherokee Nation:

> That the Indians may have full confidence in the justice of the United States, respecting their interest, they shall have the right to send a deputy of their choice, whenever they think fit, to Congress.

The early dream of the Indian nations to achieve some type of peaceful compromise and enter the United States as an equal was brutally betrayed a generation later when, after winning the Supreme Court case *Worcester v. Georgia*, the President of the United States refused to enforce federal law and allowed the state of Georgia to overrun the Cherokee Nation. But in those days it was not uncommon for commissioners to promise the most enticing things in treaties, knowing full well that the United States would never honor them.

Treaties initially marked off the boundaries between the lands of the Indian nations and the United States. Early treaties allowed the tribes to punish white men violating their laws and borders, but since any attempt by the tribes to exercise this right was used as an incident to provoke war, that right was soon taken away "for the Indians' own protection."

Besides marking boundaries, treaties defined alliances between the United States and tribes in the eighteenth century. England and France were still very much involved in the acquisition of land and power on the continent and it was to the best advantage of the United States to have strong Indian allies to prevent a European invasion of the fledgling United States. Thus Article II of the 1791 Treaty with the Cherokees contained the provision that

> they also stipulate that the said Cherokee Nation will not hold any treaty with any foreign power, individual state, or with individuals of any state.

When Indian people remember how weak and helpless the United States once was, how much it needed the good graces of the tribes for its very existence, how the tribes shepherded the ignorant colonists through drought and blizzard, kept them alive, helped them grow—they burn with resentment at the treatment they have since received from the United States government.

It is as if a man had invited a helpless person to his home, fed and clothed him until he was strong and able to care for himself, only to have the person he had nursed wreak incredible havoc on the entire household. And all this destruction in the name of help. It is too much to bear.

Treaties were originally viewed as contracts. Many treaties contain the phrase "contracting parties" and specify that each party must agree to the terms of the treaty for it to be valid. It would have seemed that, if treaties were contracts, the United States was required under the impairment of contracts or due process clause to protect the rights of the Indian tribes. Or at least it so seemed to the Cherokees, Choctaws, and other tribes who continually went to court to establish their property rights. But, although on one occasion, New Jersey was not allowed to break a contract with a band of the Delawares, the federal government has not traditionaly recognized treaties as contracts. So tribes had no recourse in the federal courts although many treaties had provided that the tribes should have rights and that the United States should stand behind the treaty provisions as guarantor.

Often when discussing treaty rights with whites, Indians find themselves being told that "We gave you the land and you haven't done anything with it." Or some commentator, opposed to the welfare state remarks, "We gave the Indians a small piece of land and then put them on the dole and they are unable to take care of themselves."

The truth is that practically the only thing the white men ever gave the Indian was disease and poverty. To imply that Indians were given land is to completely reverse the facts of history.

Treaties settled disputes over boundaries and land cessions. Never did the United States give any Indian tribe any land at all. Rather, the Indian tribe gave the United States land in consideration for having Indian title to the remaining land confirmed.

The August 13, 1802 Treaty with the Kaskaskias is one of the clearest examples of this concept. When settlement was made, it was stated in Article I that the Kaskaskias were "reserving to themselves" certain lands. Often the phrase "to live and hunt upon, and otherwise occupy as they shall see fit" was used to indicate the extent of right and lands reserved (Treaty with the Wiandot, Delaware, Ottawa, Pattawatima, and Sac, January 9, 1789). Or a passage might state that "the United States [will] never interrupt the said tribes in the possession of the lands which they rightfully claim, but will on the contrary protect them in the quiet enjoyment of the same. . ." (Treaty with the United Tribes of Sac and Fox, November 3, 1804).

Indian rights to lands reserved by them are clearly stated in the treaties. Article II of the Treaty with the Wiandot, Delaware, Ottawa, Pattawatima, and Sac of January 9, 1789, states that

> (the United States) do by these presents renew and confirm the said boundary line; to the end that the same may remain as a division line between the lands of the United States of America, and the lands of said nations, forever.

And Article III of the same treaty elaborates on the Indian title to lands reserved:

> The United States of America do by these presents relinquish and quit claim to the said nations respectively, all the lands lying between the limits above described, for them the said Indians to live and hunt upon, and otherwise to occupy as they shall see fit.

Similarly Article II of the Treaty with the Weas, October 2, 1818, stated:

> The said Wea tribe of Indians reserve to themselves the following described tract of land . . .

The United States pledged over and over again that it would guarantee to the tribes the peaceful enjoyment of their lands. Initially tribes were allowed to punish whites entering their lands in violation of treaty provisions. Then the Army was given the task of punishing the intruders. Finally the government gave up all pretense of enforcing the treaty provisions. But it was many years before the tribes were shocked into awareness that the United States had silently taken absolute power over their lands and lives.

It was not only a shock, but a breach of common decency when Congress decided that it had absolute power over the once-powerful tribes. When the Supreme Court also decided that such should be the policy in *Lone Wolf v. Hitchcock*, the silent conquest of unsuspecting tribes was complete.

At the turn of the century an agreement was reached with the Kiowa, Comanche, and Apache tribes of Oklahoma in regard to their lands. When an act ratifying the agreement was presented before Congress in the form of a bill, a rider was placed on it which had the effect of providing for the allotment of lands in severalty to the members of the tribes and opening the remainder of their reservation to white settlement.

The law was totally unrelated to the previous agreement with the tribes. When the controversy reached the Supreme Court—in the case of Lone Wolf, a Kiowa leader, versus Hitchcock, then Secretary of the Interior—to enjoin the Interior Department from carrying out the allotment, the Supreme Court ruled against the tribes. It laid down the principle that the tribes had no title to the land at all. Rather the land was held by the United States and the tribes had mere occupancy rights. Therefore the power of Congress to dictate conditions of life and possession on the reservations was limited only by its own sense of justice.

That decision slammed the door on the question of morality and justice. It was like appointing a fox to guard the chicken coop. Under the theory expounded in *Lone Wolf* the Indians had no chance whatsoever to acquire title or rights to lands which had been theirs for centuries. And without the power to

acquire rights, they were cut loose from all power to enforce agreements that were generations old.

It had not been much over a century from the time when the United States had begged for its very existence to the time when it had broken every treaty—except the Pickering Treaty—and made the tribes beggars on their ancestral lands. Lands of which the United States had guaranteed to the tribes a free and undisturbed use became pawns in the old game of cowboys and Indians And everywhere Indians appealed for help there stood a man in chaps with a big black hat.

The subject of tax exemption of Indian lands is often raised. Most Indian tribes feel that they paid taxes for all time when they gave up some two billion acres of land to the United States. This, they claim, paid the bill quite a few centuries in advance. For certainly any bargain of a contract nature would have had to include the exemption of lands reserved and retained by the tribes for their own use or it would have been unreasonable to have assumed that tribes would have signed treaties.

Furthermore there is a real question about the right of the United States to tax Indians at all. Taxing authority and power are a function of the exercise of sovereignty. The United States never had original sovereignty over the Indian people, merely a right to extinguish the Indian title to land. Where, argue Indian people when questioned, did sovereignty come from?

Certainly the treaties do not support the contentions of the government with respect to sovereignty. The Treaty of the United Sac and Fox tribe of November 3, 1804, is a case in point. Article I states:

> The United States receive the united Sac and Fox tribes into their friendship and protection, and the said tribes agree to consider themselves under the protection of the United States, and of no other power whatsoever.

Here, certainly is not affirmation of sovereignty. At most it is a defense pact to protect the tribes and guarantee peace for the United States.

Early statutes in the colonies exempted Indians from taxation in Massachusetts, Connecticut, and Virginia and some of these still exist today. Each Thanksgiving the Virginia Indians still take a turkey, deer, clams, and other treaty payments to the Governor's mansion to fulfill their part of the treaty. The state of Virginia, at least, has kept its part of the treaty with the Virginia Indians.

Perhaps the clearest expression of exemption from taxation is contained in the Treaty of September 29, 1817, with the Wyandot, Seneca, Delaware, Shawanese, Potawatomees, Ottawas, and Chippeway. This treaty states in Article XV that

> The tracts of land herein granted to the chiefs for the use of the Wyandot, Shawnese, Seneca and Delaware Indians, and the reserve for the Ottawa Indians, shall not be liable to taxes of any kind so long as such land continues the property of the said Indians.

Succeeding treaties generally provided for lands to be held "as Indian lands are held." From this practice tribes have felt that their lands were tax free and the federal government has upheld the taxation theory of the tribes, although with an added twist. Current federal theory indicates the federal government supports tax exemption on the basis of its trusteeship rather than on the basis of its long-standing treaty promises.

Courts have generally upheld tribal claims to tax exemption. In *The Kansas Indians*, a Supreme Court case of the last century, Kansas was prohibited from taxing the lands of the Shawnees because they still kept their tribal entity intact and maintained their relationship with the federal government.

Such a decision would seem to indicate that tax exemption is a general right of Indian tribes based upon their cessions of land in the last century. Later courts have found reasons for tax exemption all the way from such exotic theories as Indians being a *federal activity* to a vague and generalized purpose of *rehabilitation* of the individual Indian, whose progress would be impeded by taxation.

Because taxation is such a nebulous and misunderstood concept, the general public usually believes that Indians *get away*

with millions of dollars of tax-free money. In fact, as has been pointed out many times, the income from taxing the entire Navajo reservation, some sixteen million acres, would be less than the income from taxing a large bank building in downtown Phoenix.

Another primary concern of the Indian people through the years has been the protection of their hunting and fishing rights. In the early days Indians preferred to feed themselves by hunting and fishing, and some tribes refused to move or change reservations until they were assured that there would be plenty of game available to feed their people.

The first few years after the Revolution saw a great movement of settlers westward, and although Indians ceded land, they rarely gave up their hunting rights on the land sold. The Treaty of August 3, 1795, with the Wyandots, Delawares, Shawanoes, Ottawas, Chippewa, Putawatimes, Miamis, Eel-River, Weea's, Kickapoos, Piankashaws, and Kaskaskias states in

> Article VII: The said tribes of Indians, parties to this treaty, shall be at liberty to hunt within the territory and lands which they have now ceded to the United States, without hinderance of molestation, so long as they demean themselves peaceably, and offer no injury to the people of the United States.

Recent conflicts between Indian people and the states of Idaho, Washington, and Oregon have stemmed from treaty provisions such as these by which Indian people reserved for themselves an easement on lands they ceded for hunting and fishing purposes. Today hunting and fishing are an important source of food of poverty-stricken Indian peoples, but they are merely a *sport* for white men in the western Pacific states. Yet the states insist upon harassment of Indian people in continual attempts to take by force what they promised a century earlier would be reserved for Indians forever.

It is the actions of scattered, yet powerful groups of white men breaking the treaties that cause nearly all of the red-white tensions today. Foremost of the whites violating Indian treaties have been the fish and game departments in Washington,

Oregon, Wisconsin, and Nevada and the Corps of Army Engineers.

Recently the Supreme Court once again had an Indian fishing case before it and the decision was so vague and indecisive that neither Indians nor the state could determine the next course of action.

The fishing controversy can be stated simply. Indians have reserved the right to hunt and fish off the reservation because there was not sufficient game on the reservations to feed their families. In the meantime, powerful sportsmen's clubs of overweight urbanites who go into the woods to shoot at each other each fall, have sought to override Indian rights, claiming conservation as their motive.

Meanwhile the general public has sat back, shed tears over the treatment of Indians a century ago, and bemoaned the plight of the Indian. In many instances, when the tribes have attempted to bring their case before the public, it has turned a deaf ear, claiming that the treaties are some historical fancy dreamed up by the Indian to justify his irresponsibility.

This despite the fact that during the period before the War of 1812 the United States government hurriedly sent emissaries to the western tribes and tried to force them to choose sides against Great Britain. Again when the life of the small nation was hanging in the balance, the United States was eager to have the support of the Indian tribes.

Article II of the Treaty with the Wyandots, Delawares, Shawanese, Senecas, and Miamies of July 22, 1814, provided that:

> The tribes and bands abovementioned, engage to give their aid to the United States in prosecuting the war against Great Britain, and such of the Indian tribes as still continue hostile; and to make no peace with either without the consent of the United States the assistance herein stipulated for, is to consist of such a number of their warriors from each tribe, as the president of the United States, or any officer having his authority therefore, may require.

Within a generation these same tribes that fought and died for

the United States against Great Britain were to be marched to the dusty plains of Oklahoma, dropped in an alien and disease-ridden land, and left to disappear. Hardly had the war been concluded when the first of a series of removal treaties began to force the tribes west across the Mississippi, first to Missouri and Arkansas, then on to Oklahoma. By 1834 the United States had pretty well cleared the eastern states of the former Indian allies.

On reviewing the record of the United States in its Indian treaties, it seems humorous to Indian people to hear the outraged cries against Communist domination and infidelity. Indeed, Czechoslovakia and Hungary got off easier with Russia than did America's allies in the War of 1812. And few Communist satellites have been treated as have the Five Civilized Tribes whose treaty rights were declared in the Supreme Court and yet who were powerless against the perfidy of Andrew Jackson.

Perhaps the greatest betrayal of Indian people was the treatment accorded the Choctaws. Treaty after treaty was signed with the Choctaws, one of the so-called Five Civilized Tribes (because they were so like white men), until the final treaty of Dancing Rabbit Creek forced them across the Mississippi to the parched plains of Oklahoma. The Choctaws stubbornly resisted each encroachment but were finally forced to make the long trek westward.

In an earlier treaty, ten years prior to Dancing Rabbit Creek, the Choctaws had asked for a provision guaranteeing that the United States would never apportion the lands of the tribe, as they preferred to hold their lands in common. So in the Treaty of January 20, 1825, Article VII, the United States provided that "the Congress of the United States shall not exercise the power of apportioning the lands."

Just prior to the admission of Oklahoma as a state, the lands of the Choctaw were allotted, although a minority opinion in the report on the Dawes Allotment Act stated that perhaps the Choctaw method of holding land in common was superior to

that of the white man because there was so little poverty among the members of the Five Civilized Tribes.

Today the Choctaws and people of the other "Civilized" Tribes are among the poorest people in America. Their little allotments have been subdivided and grown smaller. As they are sold the people move into friends' and neighbors' allotments, huddling there in absolute destitution.

During the drive to sever federal services in the 1950's the Choctaws were talked into agreeing to terminate the federal responsibilities. Over the last ten years they have waged a continual fight to postpone the time when they must surrender all lands, rights, and services. The condition of the people is so bad that only a massive crash program of development can save the tribe from its poverty. Yet in the ten years since termination was proposed the tribe and its members have even been denied the use of loan funds from the Interior Department which could be used to develop projects that would employ Choctaws.

There has been another side to the machinations of the United States government against the Indian tribes, however, and that was the unilateral action of the Congress. Paralleling treaty negotiations, throughout history statutes were continually passed by Congress to regulate Indian Affairs. Although a treaty would promise one thing, subsequent legislation, designed to expand the treaty provisions, often changed the agreements between tribe and federal government completely.

Continual infringement on treaty rights by statute rarely reached the ears of the tribesmen in time to remedy the situation either by further agreements or appeals to conscience. Some actions were outright thefts of land, such as the wholesale giveaway to railroads for construction purposes. Other detrimental laws were overtly philanthropic and seemed to reflect just dealings between the Congress and the tribes. But in all respects, the beneficial aspects of Congressional actions affecting Indian tribes have been so minute that they are irrelevant.

Congress has passed a number of important pieces of legisla-

tion which pertain to the relationships between the United States government and the various Indian tribes. Some of these stand out over the years as landmarks in the ever-changing federal policy.

Even prior to the Constitution, the Northwest Ordinance, passed by the Congress of the Articles of Confederation, outlined a lofty attitude and policy for dealing with Indian people:

> The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; and in the property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

It was just a short time later that the Treaty with the Delawares, discussed above, was signed and the big push westward over the prostrate bodies of slaughtered Indians was begun.

Subsequent policies have generally referred to the policy of humanity and justice initially outlined by the Northwest Ordinance. Many a land steal has been covered up with the generalities of the Northwest Ordinance.

Certain influential white men knew quite early that the shores of the Great Lakes, particularly Lake Superior, contained immense deposits of copper and other minerals. And there was a desperate need for copper in early America. On April 16, 1800, a Joint Resolution was passed in Congress authorizing the President to determine whether Indian title to copper lands adjacent to Lake Superior was still valid and, if so, the terms on which Indian title could be extinguished.

In the Treaty of August 5, 1826, almost as if it were an afterthought, an article (III) stated:

> The Chippewa tribe grant to the government of the United States the right to search for, and carry away, any metals or minerals from any part of their country. But this grant is not to affect the title of the land, nor the existing jurisdiction over it.

The Chippewas, in the dark as to the importance of their mineral

wealth, signed the treaty. This was the first clear-cut case of fraudulent dealings on the part of Congress. Certainly no one could have accused the Congress of "utmost good faith."

Close examination of subsequent Congressional dealings shows a record of continued fraud covered over by pious statements of concern for their *wards.*

The basis for Congressional interference into the realm of Indian activities was originally the third clause in section 8 of Article I of the Constitution, which declared that Congress had the "power to regulate Commerce . . . with the Indian tribes. . . ." From this obscure phrase—which if we reread the early Delaware treaty was to provide the Delaware with modern utensils they needed—came the full-blown theory of the incompetency of the Indian, his wardship, and the plenary power of Congress to exercise its whim over Indian people.

The next important statute referring to the Indian people was the Act of March 3, 1819 (3 Stat 679), which was entitled "An act making provision for the civilization of the Indian tribes adjoining the frontier settlements." This act stipulated that:

> . . . for the purpose of providing against the further decline and final extinction of the Indian tribes adjoining the frontier settlements of the United States, and for introducing among them the habits and arts of civilization, the President of the United States shall be, and he is hereby authorized, in every case where he shall judge improvement in the habits and condition of such Indians practicable, and that the means of instruction can be introduced with their own consent, to employ capable persons of good moral character, to instruct them in the mode of agriculture suited to their situation . . .

In essence, although the treaties read that the United States would *never disturb* the tribes on the land they had reserved to themselves, Congress determined that it had the right to make Indians conform to their idea of civilization and outlined the great legislative attempt to make them into farmers.

Practically all subsequent legislation has revolved around the Congressional desire to make Indians into white farmers. Most laws passed to administer Indian lands and property have re-

flected the attitude that, since Indians have not become successful white farmers, it is perfectly correct to take their land away and give it to another who will conform to Congressional wishes.

One of the two most important laws passed in the last century was the Indian Trade and Intercourse Act of June 30, 1834 (4 Stat 729). This act concentrated mainly on the trade aspect of Indian Affairs and was supplemented by a companion act outlining the Bureau of Indian Affairs and its duties. From these two acts came the immense power of the Department of the Interior over the lives and property of the Indian people.

The other important law of the last century was the General Allotment Act, or the Dawes Act, passed in 1887 and amended in 1891, 1906, and 1910 until it included nearly every tribe in the country. The basic idea of the Allotment Act was to make the Indian conform to the social and economic structure of rural America by vesting him with private property.

If, it was thought, the Indian had his own piece of land, he would forsake his tribal ways and become just like the white homesteaders who were then flooding the unsettled areas of the western United States. Implicit in the ideology behind the law was the idea of the basic sameness of humanity. Just leaving tribal society was, to the originators of the law, comparable to achieving an equal status with whites.

But there was more behind the act than the simple desire to help the individual Indian. White settlers had been clamoring for Indian land. The Indian tribes controlled nearly 135 million acres. If, the argument went, that land were divided on a per capita basis of 160 acres per Indian, the Indians would have sufficient land to farm and the *surplus* would be available to white settlement.

So the Allotment Act was passed and the Indians were allowed to sell their land after a period of twenty-five years during which they were to acquire the management skills to handle the land. However, nothing was done to encourage them to acquire these skills and consequently much land was immediately leased to

non-Indians who swarmed into the former reservation areas.

By 1934 Indians had lost nearly 90 million acres through land sales, many of them fraudulent. The basic device for holding individual lands was the trust, under which an Indian was declared to be incompetent. Indians were encouraged to ask for their papers of competency, after which land was sold for a song by the untutored Indian who had never heard of buying and selling land by means of a paper.

Many Indians sold their land for a mere fraction of its value. Others received title to their land and lost it through tax sales. In general the policy was to encourage the sale of Indian lands, as it was believed that this process would hasten the integration of Indians into American society.

The churches strongly supported the Dawes Allotment Act as the best means available of Christianizing the tribes. Religion and private property were equated in the eyes of many churchmen. After all, these were the days when J. P. Morgan used to take entire trainloads to the Episcopal conventions and John D. Rockefeller had his Baptist advisor helping him distribute his wealth. Wealth was an index of sainthood.

Bishop William H. Hare, noted missionary bishop of the Episcopal Church, is said to have remarked that the Allotment Act would show whether the world or the church was more alert to its opportunity. In other words, it was to be a race between the stealers of men's land and the stealers of men's souls for two unrelated goals—90 million acres of land and the Christianizing of some of the feathered friends who lived on those lands.

It was, of course, no contest. The church came in a dead last. Indians were not magically turned into white, churchgoing farmers by their little plot of ground. Sharper white men than the missionaries, representing the Christians' traditional opponent, easily won the contest. And the American Indians were the losers. But at least they had the comfort of hearing the missionaries' sermons against greed.

Gone apparently was any concern to fulfill the articles of

hundreds of treaties guaranteeing the tribes free and undisturbed use of their remaining lands. Some of the treaties had been assured by the missionaries. The Indians had not, however, been given lifetime guarantees.

Perhaps the only bright spot in all of Indian-Congressional relations came at the beginning of the New Deal. Backed by a sympathetic President and drawn up by scholar John Collier—probably the greatest of all Indian commissioners—the Indian Reorganization Act was passed in 1934.

This act, known popularly as the Wheeler-Howard Act, provided for self-government of the reservations by the Indian residents. Written into the law was a prohibition on further allotment of Indian lands and provisions for land consolidation programs to be undertaken by the tribal councils in order to rebuild an adequate land base.

In many cases the Indian Bureau was authorized to buy land for landless Indians and to organize them as recognized tribal groups eligible for governmental services. Programs for rehabilitation were begun, Indians were given preference in hiring within the Bureau of Indian Affairs, and a revolving loan fund for economic development was created. Overall the IRA was a comprehensive piece of legislation which went far beyond previous efforts to develop tribal initiative and responsibility, but one provision was unfortunate. Once having voted down the acceptance of the provisions of the act, a reservation was forbidden from considering it again.

Unfortunately, Indian tribes were given only a short ten years under this act to bring themselves to an economic and social standard equal with their white neighbors. Following World War II the Congressional policy toward Indian self-government was to change radically. But that story deserves a special chapter in this book.

In looking back at the centuries of broken treaties, it is clear that the United States never intended to keep any of its promises. Like other areas of life, the federal government adapted its

policies to the expediency of the moment. When the crisis had passed, it promptly proceeded on its way without a backward glance at its treachery.

Indian people have become extremely wary of promises made by the federal government. The past has shown them that even the most innocent-looking proposal is often fraught with implications the sum total of which is loss of land.

Too often the attitude of the white man was, "Tell the Indians anything to keep them quiet. After they are settled down we can do what we want to do." Alvin Josephy brings this attitude out magnificently in his book *The Nez Perce Indians and the Opening of the Northwest.*

"What," people often ask, "did you expect to happen? After all, the continent had to be settled, didn't it?"

We always reply, "Did it?" And continue, "If it did, did it have to be settled in that way?" For if you consider it, the continent is now settled and yet uninhabitable in many places today.

There were many avenues open for the government besides wholesale theft. In Canada, for example, there are Indian reservations in every province. Indians have not had their basic governmental forms disturbed. They still operate with chiefs and general councils. Nor were they forced to remove themselves whenever and wherever the white man came. Nor did they have their lands allotted and then stolen piece by piece from under them.

It would have been fairly simple for the federal government to have provided a special legal status whereby Indian rights would have vested while keeping their original sovereignty and entitlements of self-government. There was no need for the government to abruptly change from treaty negotiations to a program of cultural destruction, as it did in 1819 with its Indian assimilation bill. And when the Five Civilized Tribes had adapted to a semi-white political structure the government could have supported the great experiment of the Cherokees instead of removing them to Oklahoma.

Even in the closing years of the last century, when the tribes

had by and large adapted from hunters to ranchers, the government could have kept its promises and left the tribes alone. There was no reason for it to allot the lands of the Choctaw. The United States had promised never to do so. Yet, in large measure, if there is Indian poverty today—and Indians rank lowest of any group in every conceivable statistic used to measure poverty—it is the fault of the United States government.

The betrayal of treaty promises has in this generation created a greater feeling of unity among Indian people than any other subject. There is not a single tribe that does not burn with resentment over the treatment it has received at the hands of an avowedly *Christian* nation. New incidents involving treaty rights daily remind Indian people that they were betrayed by a government which insists on keeping up the facade of maintaining its commitments in Vietnam.

The complicity of the churches too is just beginning to be recognized. After several hundred years of behind-the-scenes machinations, the attempt of the churches to appear relevant to the social needs of the 1960's is regarded as utter hypocrisy by many Indian people. If, they argue, the churches actually wanted justice, why haven't they said or done anything about Indian rights? Why do they continue to appear in bib-overalls at the Poor People's March? Why do they wait until a problem is nearly solved and then piously proclaim from the pulpits that they have discovered that the movement is really God's will?

Even today Indian rights are stuck in a legalistic limbo from which there is apparently no escape. When a tribe tries to get its rights defined it is politely shunted aside. Some tribes have gone to the Supreme Court to seek relief against the United States by claiming a violation of their rights as wards. They have been told in return that they are not wards but "dependent domestic nations." And when other tribes have sought relief claiming that they are dependent domestic nations, they have been told they are "wards of the government."

Under the laws and courts of the present there is no way for Indian people to get the federal government to admit they have

rights. The executive branch of the government crudely uses Indian lands as pawns in the great race to provide pork-barrel agencies with sufficient dam-building projects to keep them busy.

Until America begins to build a moral record in her dealings with the Indian people she should not try to fool the rest of the world about her intentions on other continents. America has always been a militantly imperialistic world power eagerly grasping for economic control over weaker nations.

The Indian wars of the past should rightly be regarded as the first foreign wars of American history. As the United States marched across this continent, it was creating an empire by wars of foreign conquest just as England and France were doing in India and Africa. Certainly the war with Mexico was imperialistic, no more or less than the wars against the Sioux, Apache, Utes, and Yakimas. In every case the goal was identical: land.

When the frontier was declared officially closed in 1890 it was only a short time before American imperialistic impulses drove this country into the Spanish-American War and the acquisition of America's Pacific island empire began. The tendency to continue imperialistic trends remained constant between the two world wars as this nation was involved in numerous banana wars in Central and South America.

There has not been a time since the founding of the republic when the motives of this country were innocent. Is it any wonder that other nations are extremely skeptical about its real motives in the world today?

When one considers American history in its imperialistic light, it becomes apparent that if morality is to be achieved in this country's relations with other nations a return to basic principles is in order. Definite commitments to fulfill extant treaty obligations to Indian tribes would be the first step toward introducing morality into American foreign policy.

Many things can immediately be done to begin to make amends for past transgressions. Passage of federal legislation acknowledging the rights of the Indian people as contained in the treaties can make the hunting and fishing rights of the Indians a reality.

Where land has been wrongfully taken—and there are few places where it has not been wrongfully taken—it can be restored by transferring land now held by the various governmental departments within reservation boundaries to the tribes involved. Additional land in the public domain can be added to smaller reservations, providing a viable land base for those Indian communities needing more land.

Eastern tribes not now receiving federal services can be recognized in a blanket law affirming their rights as existing communities and organized under the Indian Reorganization Act. Services can be made available to these communities on a contract basis and the tribes can be made self-sufficient.

Mythical generalities of what built this country and made it great must now give way to consideration of keeping contractual obligations due to the Indian people. Morality must begin where immorality began. Karl Mundt, in commenting on the passage of the Indian Claims Commission Bill in 1946, stated:

> . . . if any Indian tribe can prove that it has been unfairly and dishonorably dealt with by the United States it is entitled to recover. This ought to be an example for all the world to follow in its treatment of minorities.

The Indian Claims Commission opened a special commission for tribes that had been swindled in land transactions in the last century. But a great many cases have not been heard and a great many others which have been heard produced exceedingly harsh decisions against the tribes. In addition, eastern tribes were not allowed to press claims at all. And since the termination policy has been in effect, additional moral claims of tribes who were severely hurt by that policy have arisen.

The Indian Claims Commission is, or should be, merely the first step in a general policy of restitution for past betrayals. Present policy objectives should be oriented toward restitution of Indian communities with rights they enjoyed for centuries before the coming of the white man.

The world is indeed watching the behavior of the United States. Vietnam is merely a symptom of the basic lack of integrity

of the government, a side issue in comparison with the great domestic issues which must be faced—and justly faced—before this society destroys itself.

Cultural and economic imperialism must be relinquished. A new sense of moral values must be inculcated into the American blood stream. American society and the policies of the government must realistically face the moral problems created by the roughshod treatment of various segments of that society. The poverty program only begins to speak of this necessity, the Employment Act of 1946 only hinted in this direction. It is now time to jump fully into the problem and solve it once and for all.

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By Eminent Domain or Some Other Name: A Tribal Perspective on Taking Land

Stacy L. Leeds

BY EMINENT DOMAIN OR SOME OTHER NAME: A TRIBAL PERSPECTIVE ON TAKING LAND

Stacy L. Leeds*

Private Property . . . is a Creature of Society, and is subject to the Calls of that Society, whenever its Necessities shall require it, even to its last Farthing.

Benjamin Franklin[1]

I. INTRODUCTION

Throughout the United States there is a backlash to recent eminent domain decisions.[2] People are dismayed their government has the power to force landowners to surrender their property so that a new owner can utilize the land for a different, arguably better use. This shockwave of vulnerability extends to landowners and legislatures from all political spectrums.[3] Moreover, it is hard to find a demographic group within the United States that is not outraged by recent eminent domain developments,[4] except American Indians.[5]

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* Associate Professor of Law and Director, Tribal Law and Government Center, University of Kansas School of Law; Justice, Cherokee Nation Judicial Appeals Tribunal (Supreme Court). I would like to thank the University of Tulsa *Law Review* editors and staff for their hard work on this symposium issue. I would also like to extend my sincere gratitude to University of Kansas law students Mark Dodd, Benjamin Lowenthal, and William Reynolds for their diligent research assistance, and to the University of Kansas for continued support of faculty scholarship.

1. John F. Beggs, Student Author, *The Theoretical Foundations of the Takings Clause and the Utilization of Historical Conceptions of Property in the Ecological Age*, 6 Fordham Envtl. L.J. 867, 892 (1995) (citing Benjamin Franklin, *Queries and Remarks: Respecting Alterations in the Constitution of Pennsylvania*, in *The Writings of Benjamin Franklin* vol. 10, 59 (Albert Henry Smyth ed., Macmillan Co. 1907)).

2. Bruce Moyer, *Court's Decision Provokes Property Rights Backlash*, 52 Fed. Law. 10 (Sept. 2005).

3. *See id.* (describing a "firestorm of protest" by members of Congress and in state capitals across the country). Recently, House Representative Maxine Waters, a democrat from California remarked, "'The taking of private property for private use, in my estimation, is unconstitutional. It's un-American, and it's not to be tolerated. . . . This is not a partisan issue.'" Greg Simmons, *Bipartisan Support for Eminent Domain Reform*, http://www.foxnews.com/story/0,2933,169926,00.html (Sept. 20, 2005).

4. Many efforts to limit the reach of eminent domain have been initiated on the national, state, and local level. Silla Brush, *Real Angry Over Real Estate: Why a Recent Supreme Court Ruling Has Lots of Homeowners Hot Under the Collar*, U.S. News & World Rpt. 34 (Oct. 10, 2005). Nationally, the House of Representatives passed a nonbinding resolution criticizing the *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), decision within a week of the ruling. *Brush, supra* (citing H.R. Res. 340, 109th Cong. (June 30, 2005)). The Senate has several proposed bills, including one by Texas Senator John Cornyn, that would limit federal funds to projects that use *Kelo*-like eminent domain for economic development projects. *Id.* (citing Sen. 1313, 109th Cong. (June 27, 2005)).

5. Others have made similar observations. Several postings to Internet web-boards and blogs make references to the wholesale takings of Indian lands as an irony to current eminent domain debates. For example, one website went as far as awarding a poetry prize for a poem entitled *Eminent Domain*, by John

For centuries, American Indians have seen their lands taken by federal and state governments without consent, and at times, without compensation.[6] Some Indian land takings have fallen squarely within the exercise of eminent domain powers,[7] but takings have routinely occurred under other theories that provide no legal remedy.[8] In both situations, the underlying rationale for the taking was the belief that Indians were not using the land as efficiently as another owner would.[9] In short, the "public good" necessitated the taking of land from the Indians, so the land could be redistributed to others who would make better use of the land. From these experiences, American Indians have long been confronted with the reality that no matter what legal interest one holds in property, those ownership interests are always subject to divestiture by the government, whether tribal, state, or federal.[10]

Parker. Creative-Poems, *Featured Poem Award*, http://www.creative-poems.com/poem.php?id=157905 (Aug. 14, 2005).

6. *E.g. Tee-Hit-Ton Indians v. U.S.*, 348 U.S. 272, 288–91 (1955) (holding unavailable compensation for lands where the United States did not recognize aboriginal title); *Sioux Tribe of Indians v. U.S.*, 316 U.S. 317, 331 (1942) (holding federal government owes no compensation for taking of lands that were set aside for Indians pursuant to an executive order); *Lone Wolf v. Hitchcock*, 187 U.S. 553, 567 (1903) (holding compensation for tribal government for lands allotted to individuals was a political question and unreviewable by the Supreme Court because Congress had plenary power to redistribute lands). *See also* Michael M. McPherson, Trustees of Hawaiian Affairs v. Yamasaki *and the Native Hawaiian Claim: Too Much of Nothing*, 21 Envtl. L. 453, 481 (1991) (noting Native Hawaiians received no compensation).

Even with treaty guarantees to the contrary, Indian lands were taken and not subject to review. The only recourse was to pursue compensation after the fact in the Court of Claims. Scott C. Hall, *The Indian Law Canons of Construction v. The* Chevron *Doctrine: Congressional Intent and the Unambiguous Answer to the Ambiguous Problem*, 37 Conn. L. Rev. 495, 508 (2005). The Indian Claims Commission Act of 1946 established a commission to adjudicate takings claims and allows tribes to seek compensation. 25 U.S.C. §§ 70–70v (2000). However, there is no remedy for return or exchange of lands. *Id.* Monetary compensation is the only remedy the United States allows. *Id.*

7. *See generally Cherokee Nation v. S. Kan. Ry. Co.*, 135 U.S. 641 (1890) (holding the federal government may exercise and delegate power of eminent domain over Cherokee fee simple lands within a Cherokee reservation and without tribal consent).

The Federal Power Act also authorizes eminent domain over Indian lands held in fee simple by an Indian tribe for purposes of utilities. 16 U.S.C. §§ 836, 836a (2000). *See Fed. Power Commn. v. Tuscarora Indian Nation*, 362 U.S. 99 (1960).

8. For a discussion of various theories for taking Indian land see *infra* pages 60–67.

9. Juan F. Perea, *A Brief History of Race and the U.S.-Mexican Border: Tracing the Trajectories of Conquest*, 51 UCLA L. Rev. 283, 292–93 (2003) (noting that in both the Mexican and Indian contexts, one rationale for dispossession of lands was the belief that Anglos could use the lands better and more productively); Judith V. Royster, *Mineral Development in Indian Country: The Evolution of Tribal Control Over Mineral Resources*, 29 Tulsa L.J. 541, 553 (1994) (noting that during allotment, Congress made policy decisions based on what they deemed was the most "efficient and wise use of Indian lands"); Dennis Wiedman, *The Miami Circle: Teacher of Respect for Nature, People, History, and Place*, 13 St. Thomas L. Rev. 269, 274 (2000) (noting one rationale for taking of Indian lands based on lack of use or the notion that the lands were empty).

10. While this article focuses primarily on federal action, there are many instances where state governments have targeted Indian lands for taking. *E.g. Cass County Jt. Water Resource Dist. v. 1.43 Acres of Land in Highland Township*, 643 N.W.2d 685, 687–89 (D.N.D. 2002) (upholding North Dakota eminent domain over fee lands owned by the Turtle Mountain Chippewa tribe); *see* Todd Miller, *Easements on Tribal Sovereignty*, 26 Am. Indian L. Rev. 105 (2001) (mentioning that state eminent domain powers can not be used to acquire lands held in trust by the federal govemment for the benefit of tribes or individual Indians); Robert B. Porter, *Building A New Longhouse: The Case for Government Reform within the Six Nations of the* Haudenosaunee, 46 Buff. L. Rev. 805, 873 (1998) (noting that beginning in 1971, New York acted in bad faith toward Indian land by eminent domain power, even though the power had long been denied by federal law; and that states cannot take Indian land (citing *Seneca Nation of Indians v. N.Y.*, 397 F. Supp. 685, 686 (W.D.N.Y. 1975) (holding the state had no power to apply state law to lands within Indian reservation))); Sheree R. Weisz, Student Author, *Constitutional Law–Federal Indian Law: The Erosion of Tribal Sovereignty*

There are interesting parallels to be drawn from the American Indian experience in land takings. This article reveals how federal actions have divested American Indians of vast land holdings using much of the same political and theoretical framework of today's eminent domain debate.[11] Noting that tribal governments, like their state and federal counterparts, have inherent sovereign powers, this article encourages tribes to exercise *their* eminent domain powers in order to reacquire and consolidate their land base. In conclusion, this article notes the mainstream backlash to eminent domain power has little to do with changes in the law. Eminent domain has, however, started affecting a different class of people.

II. EMINENT DOMAIN GENERALLY

Within the United States, the federal government has constitutional authority to seize private lands for public use provided the landowner is compensated.[12] The various states within the federal union also exercise the power of eminent domain pursuant to state constitutional provisions.[13]

The power of eminent domain can be traced back to Roman law,[14] and was a well-established concept long before the American Revolution.[15] But with the advent of the United States, there was a change in terms of how people viewed the power of the sovereign against the individual's right to property:[16] the expectation of individual rights to property increased significantly. Governmental seizure of individual property, even

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as the Protection of the Nonintercourse Act Continues to be Redefined More Narrowly, 80 N.D. L. Rev. 205 (2004) (discussing state power of eminent domain of fee simple lands owned by tribes); *see also* Jessica A. Shoemaker, Student Author, *Like Snow in the Spring Time: Allotment, Fractionation, and the Indian Land Tenure Problem*, 2003 Wis. L. Rev. 729, 744–45 (2003) (discussing how the "continual taking of Indian lands under eminent domain" by both state and federal governments leads to a negative land base result even when there have been programs to increase tribal land bases through repurchase programs).

11. Tribal lands have been taken by eminent domain powers in several contexts. However, this article focuses on large-scale federal policies that have divested tribes of property on the basis of theories beyond eminent domain.

12. The Fifth Amendment of the U.S. Constitution provides "[no] private property be taken for public use, without just compensation." Eminent domain was recognized as an appropriate governmental power at common law. *See e.g. Kohl v. U.S.*, 91 U.S. 367, 372 (1875).

13. Some state constitutions explicitly grant the state the power of eminent domain. *E.g.* Cal. Const. art. I, § 19.

14. Timothy Sandefur, *A Natural Rights Perspective on Eminent Domain in California: A Rationale for Meaningful Judicial Scrutiny of "Public Use,"* 32 Sw. U. L. Rev. 569, 571–75, 571 n. 11 (2003) (noting that the public use limitation on governmental taking dates back to the Twelve Tables of Roman law: "No privileges, or statutes, shall be enacted in favor of private persons, to the injury of others contrary to the law common to all citizens, and which individuals, no matter of what rank, have a right to make use of." (internal quotation marks omitted)).

15. Matthew P. Harrington, *"Public Use" and the Original Understanding of the So-Called "Takings" Clause*, 53 Hastings L.J. 1245, 1252–53 (2002) (noting that prior to the American Revolution the power of eminent domain was well entrenched but was not limited by the public use doctrine).

16. With the emergence of the United States, the importance of individual property rights increased. *See* Robert Bejesky, *An Analytical Appraisal of Public Choice Value Shifts for Environmental Protection in the United States & Mexico*, 11 Ind. Intl. & Comp. L. Rev. 251, 264 (2001); J. Gordon Hylton, *Property Rights in John Marshall's Virginia: The Case of* Crenshaw and Crenshaw v. Slate River Company, 33 John Marshall L. Rev. 1175, 1176 (2000).

when compensated, would come to be viewed as "un-American,"[17] unless it was for a clear public use, such as a highway or a public park.

It is argued eminent domain powers, particularly the public use doctrine, have evolved in recent years. Some argue the public use limitation in the takings clause has been severely abused, with sovereigns having a newly recognized power to take private lands for redistribution to other private parties.[18] Critics suggest that present eminent domain powers are inconsistent both textually and ideologically with the framers' intent.[19]

Although the outcomes of recent court decisions might suggest an expansion of eminent domain powers, a review of prior cases reveals that the courts have historically deferred to the legislative and executive policy determinations in takings cases.[20] Very rarely have federal courts sided with landowners in takings cases.[21]

Condemnation of privately owned lands for uses such as water projects, roadways, parks and recreation areas, hospitals, and military bases are seldom challenged.[22] Once the government takes the land, there is no requirement that the government retain the right to exclude, or that citizens have an unqualified right to access the taken land.

Many of the first eminent domain cases involved a taking of land to make way for railroads.[23] In these cases, the federal government subsequently granted ownership of the taken lands to the railway corporation.[24] Critics of recent cases argue that the courts have taken the public use requirement almost out of existence by allowing private land to

17. Many Americans view property as a principled right. *See* Steve P. Calandrillo, *Eminent Domain Economics: Should "Just Compensation" Be Abolished, and Would "Takings Insurance" Work Instead?* 64 Ohio St. L.J. 451, 468 (2003).

18. *See e.g.* D. Benjamin Barros, *The Police Power and the Takings Clause*, 58 U. Miami L. Rev. 471, 522 (2004) (arguing the current state of takings law does not violate framers' intent).

19. *See e.g.* Nancy K. Kubasek, *Time to Return to a Higher Standard of Scrutiny in Defining Public Use*, 27 Rutgers L. Rec. 3 (2003) (arguing that framers' intent would not permit current state of takings law).

20. *See e.g. Hsiung v. City & County of Honolulu*, 378 F. Supp. 2d 1258, 1265 (D. Haw. 2005) ("In recent years, the Supreme Court has taken no action that would undermine this long standing authority. Rather, the Court's latest decisions regarding the power of eminent domain have only bolstered the 'longstanding policy of deference to legislative judgments in this field.'" (citing *Kelo*, 125 S. Ct. at 2663)); *HTK Mgt., L.L.C. v. Seattle Pop. Monorail Auth.*, 121 P.3d 1166, 1176 (Wash. 2005) ("Since the turn of the century, Washington courts have provided significant deference to legislative determinations of necessity in the context of eminent domain proceedings.").

21. One case representing the framers' intent that takings be limited to purely public uses is *Missouri Pacific Railway Company v. Nebraska*, 164 U.S. 403, 417 (1896) (holding that the taking of lands owned by a railroad was unconstitutional because the taking was considered a private function). The decision is frequently cited to suggest that courts have departed from the traditional interpretations of the takings clause. *See e.g. Hall v. City of Santa Barbara*, 797 F.2d 1493 (9th Cir. 1986); *State ex rel. Wabash Ry. Co. v. Pub. Serv. Commn. of Mo.*, 100 S.W.2d 522 (Mo. 1936); *St. v. Pub. Serv. Commn.*, 137 P. 1057 (Wash. 1914).

22. There are reasonable governmental interferences with property ownership to which most people agree. Property owners do not expect an absolute right to exclude. Police, firemen, and other governmental entities have a right to possess or use private property in certain circumstances. Moreover, when a legitimate public purpose for condemnation exists, most property owners do not expect to keep their homes. No matter how unpleasant it may be for the condemnee, few would expect to prevail in litigation that argues a property taken for a road, flood control measure, or hospital is based on illegitimate public purpose. For this reason, most takings claims are challenged on grounds of inadequate compensation.

23. *E.g. Cherokee Nation*, 135 U.S. at 642–43.

24. *E.g. Pacific Railroad Act*, Pub. L. No. 37-120, § 2, 12 Stat. 489 (1862) (providing for grants of land to the railroad companies).

be taken for the private economic benefit of others. This is hardly a new development in the law.[25]

When railroad companies became new owners of taken land there was little public outcry, perhaps because it happened in isolated instances and in remote areas. Other types of takings claims have also gone seemingly unnoticed by mainstream Americans, despite the large number of people that were impacted. One such category of takings that has failed to enrage mainstream Americans is the taking of lands considered slums or "blighted" areas.

Litigation of the "blight" cases began in the 1950s[26] and increased in number with the advent of urban renewal projects. Blight cases involve condemnation of land where the articulated public use is the removal of undesirable or unhealthy living conditions.[27] Yet, rarely are these cases initiated for the purpose of actually protecting the unfortunate residents from uninhabitable conditions or improving their standard of living. Instead, often private corporations, working in collaboration with state, federal, and local governments in urban renewal programs, are waiting in the wings to redevelop the land.[28]

By definition, "blight" is a highly subjective term which easily leads to expansive interpretations.[29] Condemnation of property may meet the public use requirement when it is taken for any number of reasons, including building dilapidation, deterioration, age, inadequate ventilation, population overcrowding, arrested economic development, traffic congestion; or where the area is conducive to ill health, juvenile delinquency, or high crime rates.[30]

In many states, condemnation proceedings may commence as soon as an urban renewal plan has been adopted through a local resolution declaring the need to acquire real property to execute the plan. Challenging these takings has proven difficult. Condemnation for the redevelopment of blighted areas has been repeatedly declared a sufficient public use to validate the taking, even though the condemned land ultimately goes to private entities.[31] The blight cases allow governments to take private land and redistribute that land to another private entity on the grounds that it is in the public's best interest. In many cases, these eminent domain actions have resulted in state-sanctioned

25. It is well recognized the sovereign may transfer private property to public ownership—such as for a road, hospital, or a military base. But it is equally well established that the sovereign may transfer private property to private parties, often common carriers, who make the property available for the public's use—such as with a railroad, a public utility, or a stadium.

26. *See Berman v. Parker*, 348 U.S. 26, 32 (1954). *Berman* is also cited by the *Kelo* Court; it deals with areas that were declared blighted and thus targeted for redevelopment. *Kelo*, 125 S. Ct. at 2663.

27. Ilya Somin, *Overcoming* Poletown: County of Wayne v. Hathcock, *Economic Development Takings, and the Future of Public Use*, 2004 Mich. St. L. Rev. 1005, 1034 (2004).

28. *See id.* at 1009–19 (discussing how Detroit and General Motors partnered to take land and create a new plant based on an economic development rationale).

29. *Id.* at 1034 (discussing the how the definition of blight has expanded).

30. These are merely examples of how subjective property conditions can be to constitute "blight." *See e.g. Oklahoma Urban Renewal Neighborhood Redevelopment Act*, Okla. Stat. Ann. tit. 11, §§ 38-101–38-123 (West 1994).

31. *See* Wendell E. Pritchett, *The "Public Menace" of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 Yale L. & Policy Rev. 1 (2003).

redistribution of wealth and property rights.[32] Moreover, a disproportionate amount of communities of color and disadvantaged classes fall under statutory definitions of "blight."[33] As a result, the redistribution typically involves the taking of land belonging to the disadvantaged and transferring it to wealthier individuals and entities, such as private corporations. Only rarely does it work in reverse.

A rare exception, where the property interests of wealthier individuals were taken and redistributed to others, was seen in *Hawaii Housing Authority v. Midkiff*.[34] Through land reform legislation, the Hawaii legislature sought a reduction in high concentrations of land ownership as a way to address the state's sky-rocketing residential real estate market.[35] The law would potentially deprive large landholders, typically lands owned by a vast private trusts and estates, from maintaining long-term residential leases to much of their lands.[36] The legislation allowed leaseholders to petition a state agency to convert their leasehold interest to fee simple estates.[37] Under this process, lessees of the Bishop Estate, the largest private land owner in Hawaii, tried to avail themselves of the legislative conversion.[38] Litigation challenging the constitutionality of Hawaii's legislation followed.[39]

State action in *Midkiff* was challenged as nothing more than government seizure of private land for redistribution for the private use of another.[40] The United States Supreme Court upheld the taking, finding that the state's attempted reduction of land ownership concentration satisfied the public use requirement.[41]

Midkiff reinforced the judiciary's tradition of upholding takings, so long as the exercise of eminent domain is "rationally related"[42] to a public purpose.[43] The Court continued the precedent of deferring to the legislature to define public use.[44] State courts have been equally deferential to legislative determinations, and have mandated similar transactions where the new property owner is a private entity or individual.[45]

Although the *Midkiff* decision received scrutiny in the academic and legal community for arguably breaking new ground in public use jurisprudence,[46] there was

32. *See e.g. Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229 (1984); *Berman*, 348 U.S. 26.

33. *See* Pritchett, *supra* n. 31, at 3–4.

34. 467 U.S. 229 (1984).

35. *Id.* at 232–33.

36. *See Hawaii Land Reform Act*, Haw. Rev. Stat. §§ 516-1–516-186 (1993). *See also* Mark C. Landry, *The Public Use Requirement in Eminent Domain—A Requiem*, 60 Tul. L. Rev. 419, 420–21 (1985) (providing a full discussion of the legislation at issue in *Midkiff*).

37. Until that point, the legislative act and the power of the Hawaii Housing Authority remained unused by the state for many years.

38. *Midkiff v. Tom*, 483 F. Supp. 62, 65 (D. Haw. 1979).

39. *Id.*

40. *Id.*

41. *Midkiff*, 467 U.S. at 244–45.

42. *Id.* at 241.

43. *Id.* at 242–45.

44. *Id.* at 230–31.

45. *See Hsiung*, 378 F. Supp. 2d 1258; *HTK Mgt., L.L.C.*, 121 P.3d 1166.

46. *See e.g.* Richard A. Epstein, *Takings: Private Property and the Power of Eminent Domain* 184 (Harv. U. Press 1990); Russell A. Brine, *Containing the Effect of* Hawaii Housing Authority v. Midkiff *on Takings for Private Industry*, 71 Cornell L. Rev. 428 (1986) (criticizing the *Midkiff* Court's "public purpose" interpretation).

no serious public outcry. Perhaps there was a lack of sympathy from mainstream Americans for the wealthy landowners of Hawaii. Likewise, in the blight cases, perhaps the average middle-class American failed to identify with the mostly low-income communities of color that had been displaced.

The public reaction to the Supreme Court's recent decision in *Kelo v. City of New London*[47] is a different matter.[48] The petitioners in *Kelo* were firmly rooted in a "regular" neighborhood. One petitioner was born in her home back in 1918 and had lived in New London her entire life.[49] The targeted neighborhood was part of an urban renewal plan, but this neighborhood differed from the typical blight situation because it was neither run-down nor crime ridden.[50]

Nevertheless, the community in *Kelo* was considered a "distressed municipality"[51] based on its economic condition and high unemployment rate.[52] A private non-profit entity began assisting the local government with economic development planning, and Pfizer Incorporated announced plans to build a research facility in the area, which would

47. 125 S. Ct. 2655 (2005).

48. Many states have proposed legislation or initiated studies on restrictions to their eminent domain statutes with Alabama, Delaware, and Texas legislators having already passed bills. Brush, *supra* n. 4, at 34. Responses vary greatly between states, and even within the same state. For example, Oklahoma statutes limit condemnation of private property for actual use by the public for projects like roads, schools, and parks. Dan Batchelor, *No Need to Fix What Isn't Broken*, The Oklahoman 13A (Oklahoma City, Okla.) (Sept. 30, 2005). It also includes condemnation for utilities that provide public services and for removing blight when property conditions are harmful to the public. *Id.* This has caused some to say that *Kelo* has no effect in Oklahoma because its statutes already restrict condemnation for economic development. *See id.*; *After* Kelo*: Drive Targets 'Takings' Decision*, The Oklahoman 10A (Oklahoma City, Okla.) (Sept. 22, 2005). But this has not stopped a petition drive to change the state constitution as well as several task forces that are studying the ruling to see if future legislative action is necessary. *Id.*

Similarly, in 2004 the Michigan Supreme Court held the use of eminent domain, like that used in *Kelo*, is not constitutional in their state. *Property: Lawmakers, Voters Should Adopt Amendment to Limit Takings*, Lancing St. J. 8A (Sept. 22, 2005) [hereinafter *Property*]. At least seven other states had laws in opposition to *Kelo* when it was decided. *Lawmakers: Trump* Kelo*—State, Federal Laws Needed to Preserve Property Rights*, Worcester Telegram & Gaz. A10 (Sept. 23, 2005). In Michigan, like many other states, the legislature is considering a constitutional amendment despite *Kelo* having no effect in the state, because many do not want to rely on a Court ruling that can be overturned. *See Property*, *supra*. They want a constitutional amendment that is not easily overturned. *Id.*

Ohio legislation is possibly the most creative. Senate Bill 167 would put a two-year moratorium on state agencies and local governments' ability to use eminent domain. *News Briefs: Eminent Domain Bill Vote Tuesday*, Cincinnati Enquirer 1C (Oct. 2, 2005). The bill also creates a task force to study what changes should be made in the future. *Id.*

Local governments in Connecticut have taken two stark positions. The Town Council in Trumbull introduced a resolution modeled after one already passed in Milford that would require a two-thirds majority vote of the Council for the use of eminent domain for public projects including new schools or roads and never for another's private use or development. Bill Cummings, *Protecting Land Often Tough Fight: Recent Ruling Indicates Courts Favoring Seizure*, Connecticut Post A1 (Oct. 2, 2005). But towns like Bridgeport and Stamford support *Kelo*'s use of eminent domain, arguing it is the only way to acquire land for redevelopment in urban areas, an issue that rural or suburban areas like Milford do not have to deal with since they do not lack available property. *Id.*

The City Council of Encinitas, California, is considering a proposal that any transfer of private property over to another private individual using eminent domain must pass a two-thirds vote in a regular election. Amitai Etzoni, *States to the Rescue*, 181 N.J. L.J. 27 (Sept. 26, 2005).

49. *Kelo*, 125 S. Ct. at 2660 (referring to Petitioner Wilhelmina Dery).

50. *Id.* at 2659–60. New London did not claim that the petitioners' well-maintained homes are the source of any social harm. *See id.* at 2660.

51. *Id.* at 2658 (internal quotation marks omitted).

52. *Id.* 2658–59.

require more land.[53] When the landowners refused voluntarily to sell their homes, condemnations proceedings were initiated.[54] The U.S. Supreme Court upheld the taking as a valid public use of promoting economic development.[55]

An unparalleled public outrage followed the Court's decision. The mainstream American public sympathized with the petitioners because they could identify with them. If the government can force the sale of,[56] or simply seize this neighborhood, nobody's home is safe.[57]

The *Kelo* decision is not, as many commentators have suggested, a departure from precedent in eminent domain law. Instead, it affirms a long history of judicial deference to the policy decisions of state and federal legislatures. Perhaps *Kelo* is most important because it extends the same feelings of vulnerability to mainstream America that have long permeated other groups of people. Perhaps the expectancy of private property owners has likely been misplaced all along. When resources are limited, federal and state governments have always determined one land use to be superior to another. These policy decisions have long resulted in taking of land from the inefficient use, followed by transfers of property interests, to the most efficient user.

Now that land resources in urban and suburban neighborhoods are depleting, mainstream Americans are finally being affected. Where was the outrage when American Indian lands were taken to make way for new settlers, or when inner-city apartment buildings were taken for office buildings and parking garages?

Is it that the perceived abundance of lands in the United States has given a false sense of security to mainstream American landowners? What if the expectations of individual property ownership, which are rooted deeply in the American gestalt, have been flawed from the start? Maybe the fee simple owner should have always expected that their land could be taken away to make way for a better use.

III. PROPERTY LAW MYTHS: EXPLAINING THE "UN-AMERICAN" TAKING TO THE LANDLESS INDIAN

Property rights debates invoke strong passions from all perspectives. But the present debate, and accompanying resistance against eminent domain powers, is largely an outgrowth of commonly held myths about property law within the United States. Present-day rhetoric tells us that it is frankly "un-American" for the government to take private property from one person and redistribute the land to another. One principle that

53. *Kelo*, 125 S. Ct. at 2659.

54. *Id.* at 2660.

55. *Id.* at 2668.

56. The most common avenue for "taking" land is when the government practically forces a property owner to sell their lands with the threat of condemnation. *Taking Land: Compulsory Purchase and Regulation in Asian-Pacific Countries* 349–75, 349 (Tsuyoshi Kotaka & David L. Callies eds., U. Haw. Press 2002) ("The use of *compulsory* purchase of private land is common throughout national, state, and local government jurisdictions in the United States." (emphasis added)) [hereinafter *Taking Land*].

57. Landowners feel vulnerable after the *Kelo* decision because it conflicts with their expectations about their own property. The public use requirement's basic conflict is between protecting private property rights while ensuring that all property be used in a manner most consistent with the public good. Intertwined in the conflict is what persons expect from their ownership rights. After the *Kelo* decision, many property owners do not know what to reasonably expect in terms of governmental interference with their property rights.

allegedly distinguishes the United States from the rest of the world is the high priority placed on individual rights, the most sacred of which are property rights.[58]

The irony of this story is that it is told, and whole-heartedly believed, by the very people whose individual ownership interests necessarily originated from the dispossession of another land owner, the American Indian. The history of federal Indian policy is replete with examples of land taken from one owner and redistributed to another who will presumably make better use of the land.[59]

In some areas of the United States, every single tract of land was previously owned, less than a century ago, by a tribal government or individual tribal citizen.[60] The reason these lands are now owned by non-Indians is simple: the United States took the lands from the Indians and redistributed them to non-Indians. The present owners, resting on a very short chain of title, are often the same people who profess the "un-Americanism" of current takings law.[61]

While takings of Indian land are innumerable and immeasurable, the following section will detail four examples of federal action involving all three branches of the government that lead to the dispossession of Indian lands to make way of non-Indian ownership. The similarities between these actions and the present day eminent domain debate are stunning. Each scenario involves (1) a governmental taking of property interest, (2) without the consent of the owner, (3) on the basis that the present owner is not using the land efficiently, followed by (4) a redistribution of lands to a private party that will put the land to a presumptively better use.

A. Doctrine of Discovery

When Europeans arrived in the Western hemisphere they discovered a pre-existing property owner.[62] Although Europeans viewed Indians as inferior non-Christian

58. James S. Burling, *The Theory of Property and Why it Matters*, SJ051 ALI-ABA 491, 505–07 (2004).

59. *See infra* pages 60–67 (discussing the takings of Indian land under federal law).

60. For example, the eastern half of Oklahoma, including the Tulsa metropolitan area was owned in fee simple by one of five tribes prior to statehood. The Five Tribes, Cherokee, Chickasaw, Seminole, Creek, and Choctaw, received fee patents to the land in Indian Territory that eventually became eastern Oklahoma. *See Choctaw Nation v. Okla.*, 397 U.S. 620, 634–35 (1970). The tribal lands of these tribes were eventually allotted pursuant to tribally specific allotment agreements. *See e.g. Agreement with the Choctaw and Chickasaw* (July 1, 1902), 32 Stat. 641. Individual land ownership was only possible because of the allotment process, which the tribes resisted to no avail. Tribes were opposed to allotment and initially refused to negotiate an allotment agreement with the United States. Angie Debo, *And Still the Waters Run: The Betrayal of the Five Civilized Tribes* 32–35 (Princeton U. Press 1991). Only after allotment was complete could lands be alienated to non-Indians. Title searches in Eastern Oklahoma reveal a chain of title back to one of the Five Tribes following the allotment agreements. D. Faith Orlowski & Robbie Emery Burke, *Oklahoma Indian Titles*, 29 Tulsa L.J. 361, 362–67 (1993).

61. In December 2005, a citizen's group called "Oklahomans in Action" collected 170,000 signatures from Oklahomans who want to reign in the state government's eminent domain powers. Associated Press, *Petition Filed to Reign in Government Right to Eminent Domain*, The Oklahoman (Oklahoma City, Okla.) (Dec. 12, 2005) (available at http://www.kctv.com/Global/story.asp?S=4270730). In light of the circumstances surrounding the Five Tribes, *see supra* n. 60, these homeowners also derive their title from lands taken away from the tribes during the allotment process.

62. *See Johnson v. M'Intosh*, 21 U.S. 543, 574 (1823) ("[Indians] were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion.").

beings,[63] international law recognized that Indians had property interests that could not simply be ignored.[64] International law's "discovery doctrine"[65] governed the relations between European powers, and allowed them to recognize and acquire Indian lands.[66] Lands could either be purchased, or acquired, as the spoils of a "just war."[67] However, it was impermissible, under international law, for a European power to simply declare ownership over Indian lands without the consent or knowledge of the tribe.[68]

Moreover, early treaties between European powers and Indian tribes reflected that the Indians owned the land.[69] European powers were grantees who acquired their property interest through treaty negations in exchange for valuable consideration.[70] The very terms of these treaties recognized that the Indians, as the grantor, had the power to cede, transfer, or convey their lands.[71]

When one European power succeeded a previous sovereign, as did the United States after the American Revolution, title or ownership to all lands within the boundaries claimed did not automatically pass to the new sovereign.[72] To the contrary, a successor-in-interest sovereign merely obtained the right, to the exclusion of other European powers, to purchase or otherwise acquire lands from the Indians.[73] Yet, the doctrine of discovery merely governed the relationships between competing European sovereigns.[74]

The United States operated under this international approach early on. The new United States recognized Indian ownership of lands, even entering into treaties to obtain

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63. *See id.* at 573 ("The potentates of the old world found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new, by bestowing on them civilization and Christianity, in exchange for unlimited independence.").

64. *See id.* at 574 ("In the establishment of these relations, the rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired.").

65. *Cohen's Handbook of Federal Indian Law* 970–71 (Nell Jessup Newton et al. eds., 2005 ed., LexisNexis 2005)

66. *See generally id.* at § 1.02[1] (discussing the evolution of international law).

67. *Id.* at 16 ("In the 1960s, the Crown affirmed that land could not be claimed without Indian consent or after a just war against them." (footnote omitted)).

68. *Id.* at 14. Principles of Victoria continue to dominate discourse, *id.*:

> (1) that Indian peoples had both property rights and the power of a sovereign in their land; (2) that Indian lands could only be acquired with tribal consent or after a just war against them; and (3) that acquisition of Indian lands was solely a governmental matter, not to be left to individual colonists.

69. For example, the European powers did not simply declare themselves owners of the lands. They negotiated land transactions with tribal leaders. In the *Land Grant from the Ottawa and Chippewa of May 15, 1786*, the tribe conveyed lands to the British crown. Vine Deloria, Jr. & Raymond J. DeMallie, *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775–1979* vol. 1, 119–20 (U. Okla. Press 1999).

70. S. James Anaya & Robert A. Williams, Jr., *The Protection of Indigenous Peoples' Rights over Lands and Natural Resources Under the Inter-American Human Rights System*, 14 Harv. Human Rights J. 33, 68 (2001) ("Through the practice of treaty-making, the United States recognized Indian land and resource rights in traditional lands.").

71. In the *Land Grant from the Ottawa and Chippewa of May 15, 1786*, the Indian Chiefs, with consent of their nations, convey lands to European powers using the following language: "given, granted, enfeoffed, alienated & confirmed & by these Presents do give, grant & enfeoff, alien & confirm unto His Majesty George the Third, King of Great Britain, France & Ireland . . . a certain tract or parcel of Land . . . ." Deloria, Jr. & DeMallie, *supra* n. 69, at 119. This is the same type of language used to convey property interest in deeds.

72. *See Cohen's Handbook of Federal Indian Law*, *supra* n. 65 at 970–71.

73. *Id.*

74. *Id.*

Indian permission for federal troops to cross Indian lands.[75] Other treaties involved the outright purchase of lands from the tribes.[76]

Eventually, ownership conflicts arose over lands that were previously acquired from the Indian tribes. In *Johnson v. M'Intosh*,[77] a group claimed ownership in lands that were originally purchased directly from an Indian tribe.[78] The United States had subsequently acquired the same lands from the same tribe via an armistice treaty.[79] The individual's property interest clearly preceded the interest acquired by the United States.[80]

When asked to determine the status of the disputed land, the U.S. Supreme Court transformed, and ultimately diminished the property interests of all Indian tribes. Rather than recognizing that tribes, as the original owners of the lands, had the power to grant fee simple title to an individual or another sovereign, the Court simply reclassified the tribe's original property interest. The Court ruled the only property interest held by tribes was a right of occupancy, which was subject to extinguishment by the federal government only.[81]

The Court's action, though not an exercise of eminent domain, nonetheless constitutes a taking of a property interest. By judicial action, the federal government took a property interest away from the original owner by simply declaring that the original owner never held absolute title in the first place.[82] The Court never mentioned that both grantees, the individuals and the United States, clearly thought the Indian grantors had the full power to convey title. Simply put, the Court refused to recognize that the tribe ever owned a full property interest.

The Court's decision in *M'Intosh*, while devastating to Indians, also violated international law.[83] To justify the departure from precedent, the Court rationalized the

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75. *E.g. Treaty with the Delawares, 1778* (Sept. 17, 1778), 7 Stat. 13. In Article III of the Treaty, the Delaware Indians promised to allow American troops Delaware lands during the American Revolution. *Id.*

76. *E.g. Treaty with the Creeks* (Aug. 7, 1790), 7 Stat. 35. In Article IV of the Treaty, the land boundaries to be purchased are set out along with annual payments for the tribe to "release, quit claim, relinquish and cede, all the land" in a particular area. *Id.*

77. 21 U.S. 543 (1823).

78. *Id.* at 543.

79. *Id.* at 562–63.

80. *Id.* at 562.

81. *Id.* at 562–63. From the federal government's perspective, extinguishment of Indian title does not constitute eminent domain. *See Shoshone Tribe of Indians v. U.S.*, 299 U.S. 476 (1937) (involving tribal suit to recover damages for appropriation of lands where the United States took lands for settlement of another Indian tribe). In *Shoshone Tribe of Indians*, the Shoshones argued the jurisdictional act, creating a court of claims, is an exercise of eminent domain based on the language that the final decree of the court "shall be in full settlement of all damages, if any, committed by the Government of the United States and shall annul and cancel all claim, right, and title of the Shoshone Indians in and to such money, lands, or other property." *Id.* at 493 (internal quotation marks omitted). The Court stated that it is not eminent domain, because it does not require the Shoshone to sue at all. *Id.* Moreover, the failure to sue or prosecute the suit, leaves liabilities as they were before the act was passed. *Id.* "The sovereign power is not exercised to extinguished titles or other interests against the will of tribal occupants by force of eminent domain." *Id.*

82. In doing so, the Supreme Court recognized its own power to take Indian property interests without just compensation by refusing to recognize the land belonged to Indians. *See* Rachel San Kronowitz et al., Student Authors, *Toward Consent and Cooperation: Reconsidering the Political Status of Indian Nations*, 22 Harv. Civ. Rights-Civ. Libs. L. Rev. 507, 534 (1987).

83. *See* Robert A. Williams, Jr., *Columbus's Legacy: Law as an Instrument of Racial Discrimination Against Indigenous Peoples' Rights of Self-Determination*, 8 Ariz. J. Intl. & Comp. L. 51 (1991).

decision on the myth that Indians did not use the land efficiently and should therefore not be permitted to own the land. Justice Marshall wrote:

> We will not enter into the controversy, whether agriculturists, merchants, and manufacturers, have a right, on abstract principles, to expel hunters from the territory they possess, or to contract their limits.
>
> . . .
>
> But the tribes of Indians inhabiting this country were fierce savages, . . . whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness.[84]

Several scholars have pointed out that Justice Marshall's stereotypical view of all Indian land uses, and all Indians, is not supported by the evidence.[85] Many tribes, particularly the eastern tribes that would have had the most contact with colonial United States, were landed agrarian societies with elaborate property law systems.[86]

Nonetheless, the Court's perception, whether disingenuous or not, that Indians' land uses were less efficient and therefore inferior to non-Indians' land uses, served as partial justification for dispossession. *M'Intosh* paved the way for westward expansion by making it easier for the federal government to acquire Indian lands and redistribute those lands to non-Indian settlers. "Indian title" was unilaterally diminished by judicial interpretation to nothing more than a right of occupancy, which could be extinguished by the federal government without tribal consent.[87] Therefore, the chain of title for most lands in the United States begins with the extinguishment of Indian title, followed by subsequent redistribution from the federal government to an individual non-Indian.

B. Indian Removal

Although original Indian title after *M'Intosh* was considered merely a right of occupancy, full Indian ownership in lands was affirmatively recognized by the federal government in many treaties.[88] When lands guaranteed by treaty were subsequently taken by the federal government, tribes were entitled to compensation based on the value of the land at the time of the taking.[89]

That tribes received just compensation in some instances does not soften the effect, from the tribal perspective, of repeated actions by the federal government to invoke a

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84. *M'Intosh*, 21 U.S. at 588–90.

85. *See e.g.* Joshua L. Seifert, *The Myth of* Johnson v. M'Intosh, 52 UCLA L. Rev. 289 (2004); Williams, Jr., *supra* n. 83.

86. *See* Kenneth H. Bobroff, *Retelling Allotment: Indian Property Rights and the Myth of Common Ownership*, 54 Vand. L. Rev. 1559, 1573–74 (2001) (describing Indian property systems in New England recognizing exclusive rights in land and discussing agricultural uses). The Iroquois tribes, which had a long history of contact with colonial Americans, "long recognized exclusive property rights in agricultural fields and homes." *Id.* at 1578.

87. *See M'Intosh*, 21 U.S. 543 (interpreting the nature of Indian property rights as a right of occupancy, but not absolute title).

88. For example, recognized title was acquired in the Treaty with the Sioux Indians, (Apr. 29, 1868), 15 Stat. 635, at Fort Laramie.

89. In contemporary takings claims, market value at the time of the taking, plus interest, is the preferred method of compensation. *See U.S. v. Sioux Nation of Indians*, 448 U.S. 371 (1980).

large scale compulsory purchase system[90] for the purpose of removing Indians from lands wanted for non-Indian settlement.[91]

The most common story of dispossession of Indian lands is likely the Cherokee Trail of Tears, a forced removal of the Cherokee people from their lands in the southeastern United States to lands within present-day northeastern Oklahoma.[92] But the Cherokee story is one of literally thousands of stories of tribes being relocated to new lands to make way for non-Indian settlements.[93]

The Indian Removal Act of 1830[94] codified the federal policy of relocating Indians to less desirable lands in the west to make way for non-Indian settlement. Making the case for Indian removal, President Andrew Jackson noted that non-Indians had long pressured tribes to retreat to other lands.[95] President Jackson promised this type of dispossession would not happen again:

> The pledge of the United States has been given by Congress that the country destined for the residence of this people shall be forever "secured and guaranteed to them." A country west of Missouri and Arkansas has been assigned to them, into which the white settlements are not to be pushed. . . . A barrier has thus been raised for their protection against the encroachment of our citizens.[96]

Once Indian removal became federal policy, it was simply not an option for tribes to retain their homelands. Instead, tribes could voluntarily sell their land to the federal government via treaty or be forcibly removed without compensation.[97]

In this context, tribes faced a similar decision as the landowners in *Kelo*. They could voluntarily accept the offers made for purchase of their lands, or the lands would be taken by the government. The difference of course, is that there were no judicial remedies available to the tribes should they decline the offer of purchase. The federal Indian removal policy was fortified by the military's physical seizure of homes and physical ouster of individual objectors.[98]

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90. *See supra* n. 57 and accompanying text.

91. Among the varied motivations for Indian removal, "[t]he strongest pressure came from the land hunger of the whites." Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* 70 (abr. ed., U. Neb. Press 1986). Another element leading to the dispossession of Indian lands in Georgia was the discovery of gold within the Cherokee Nation in 1829. *Id.*

92. *See generally* Vine Deloria, Jr., & Clifford M. Lytle, *American Indians, American Justice* 7, 33 (U. Tex. Press 1983) (discussing the Cherokee Trail of Tears).

93. Prucha, *supra* n. 91, at 90–92. Early movements of the Indians were accomplished, by and large, without war. "The notable exception was the Black Hawk War of 1832, a military conflict that in its small way was as embarrassing to the Jackson administration as the Seminole War." *Id.* at 90.

94. *Indian Removal Act*, Pub. L. No. 21-148, 4 Stat. 411 (1830).

95. Andrew Jackson, Annual Message to Congress, *Indian Removal*, (Dec. 8, 1829), in *Documents of United States Indian Policy* 48 (Francis Paul Prucha ed., 3d ed., U. Neb. Press 2000) ("Our ancestors found them the uncontrolled possessors of these vast regions. By persuasion and force they have been made to retire from river to river and from mountain to mountain.").

96. Andrew Jackson, Annual Message to Congress, *Indian Removal*, (Dec. 7, 1835), in *Documents of United States Indian Policy*, *supra* n. 95, at 71–72.

97. The president is given the power to remove Indians west of the Mississippi river "as he may judge necessary." *Indian Removal Act*, *supra* n. 94. An example where a tribe refused to leave and then were physically ousted was the Black Hawk War. *See supra* n. 93.

98. Angie Debo, *A History of the Indians of the United States* 124 (U. Okla. Press 1970).

C. *Allotment*

After the tribes' forced relocation to new lands, new treaties once again recognized Indian property ownership in the lands.[99] Typically, the tribal government was recognized as being the beneficial owner, sometimes in fee simple absolute.[100] The tribal government controlled the land use of individual tribal citizens, and internal property transactions were governed by tribal law.[101]

Many tribes held their lands in common in a contiguous land base where non-Indian ownership of lands was prohibited.[102] It was the preference of the federal government that the tribal government, not individual Indians, owned the land.[103] If further land cessions were acquired from the Indians, it was much easier to have a single transaction with the tribal government, than to recognize, as a matter of federal law, that individual Indians had property rights.[104] Moreover, where tribal law unequivocally recognized and protected individual property interests, the federal government ignored them.[105] In a few short decades, the federal government began making deals with tribal governments for further land cessions.[106] Many of the negotiations led to land cessions by one tribe to make room for the forced relocation of yet another tribe.[107]

The continued need for Indian land for non-Indian settlement soon necessitated a new federal Indian policy. The new federal policy was set forth in the General Allotment Act of 1887.[108] One of the reasons for the new policy was, once again, the inefficiency of Indian land use. Indians were viewed as making inefficient use of their land because they allegedly did not promote or permit individual ownership of land. Like Justice Marshall's stereotypical commentary on Indian land use in *M'Intosh*, allotment's myth of common ownership has been refuted by many scholars.[109] Even

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99. *See e.g. Treaty with the Choctaws: A Treaty of Perpetual Friendship, Cession and Limits* (Sept. 27, 1830), 7 Stat. 333 [hereinafter *Treaty with the Choctaws*]. Article II discusses Choctaw title to the new lands in Indian Territory, which were patented in fee simple. *Id. See Choctaw Nation*, 397 U.S. at 625 (holding that lands conveyed in 1830 retained fee title).

100. *See e.g. Treaty with the Choctaws*, *supra* n. 99.

101. Stacy L. Leeds, *The Burning of Blackacre: A Step Toward Reclaiming Tribal Property Law*, 10 Kan. J.L. & Pub. Policy 491, 493–96 (2000) (describing Cherokee laws between 1808 and 1898).

102. Non-Indian encroachment was prohibited by federal law and coupled with the promise to the Indians of federal ouster of trespassers. *Treaty with the Choctaws*, *supra* n. 99, at art. XII.

103. *See id.*

104. That tribal governments, and not individual Indians, owned the land, made subsequent land cessions in post-United States Civil War treaties easier. Many tribes lost additional land base as a result of their perceived participation with the Confederacy during the Civil War. *Treaty with the Creek Indians* (June 14, 1866), 14 Stat. 785. In the Preamble, the fact that the Creek Nation had entered a treaty with the Confederacy was grounds for further land cessions. *Id.* If the lands were held by individual Creek citizens, the federal government could not have acquired the land cessions with such ease.

105. *Id.*

106. *See e.g. Treaty with the Sauk & Foxes, 1867*, at art. I (Feb. 18, 1867), 15 Stat. 495 (dealing with land cessions of existing reservation); *id.* at art. VI (creating new reservation within the existing Cherokee reservation); *Treaty with the Choctaw and Chickasaw, 1866*, at arts. XXX–XXXI (Apr. 28, 1866), 14 Stat. 769 (providing provisions for Kansas Indians to remove into lands previously held by other Indian tribes).

107. *See e.g. Treaty with the Creek Indians*, *supra* n. 104, at art. III. The United States sought Creek lands to relocate other Indians and freedmen. *Id.*

108. Pub. L. No. 49-119, 24 Stat. 388 (1887) (repealed by Pub. L. No. 106-462, § 106(a)(1), 114 Stat. 2007 (2000)).

109. *See e.g.* Bobroff, *supra* n. 86; Leeds, *supra* n. 101.

tribes in areas such as the Great Plains and the Pacific Northwest, who primarily relied on hunting and fishing economies, recognized individual property rights.[110] Tribal recognition of individual property rights became even more entrenched as their land became scarce within the confines of small reservation boundaries.[111]

The proponents of the allotment thought it was in the best interest of the tribes to abandon all forms of common ownership in favor of individual property rights.[112] It was believed, or at least stated, that common tribal ownership was stagnating any chance for economic or social development in Indian country.[113]

The allotment policy was firmly rooted in the notion that farming and other agricultural pursuits were the best uses for land.[114] Common lands should be divided into individual parcels so the individual Indian could become a farmer with the incentive to work harder and make the most profit from the land.[115] The policy, of course, ignored that many individual Indians had been farmers for many generations and that those Indian agriculturalists held individual title, under tribal law, to lands they had already improved.[116]

The federal government ordered all tribal lands to be allotted to individual Indians, with or without the consent of the tribes or the individual Indians.[117] In order to effectuate the transaction, the federal government typically took lands out of the ownership of the tribal government and redistributed those lands as the United States saw fit. As a procedural matter, this transaction was sometimes completed by forcing the tribal government to deed the lands directly to individual Indians,[118] and in these instances, the United States, as the middleman, was not a party to the actual conveyance.[119]

The tribal governments were never compensated for the loss of ownership, even when the transactions violated express treaty guarantees. The federal action of allotting lands without tribal consent, and in express violation of treaty guarantees, was unsuccessfully challenged in the federal courts. In *Lone Wolf v. Hitchcock*,[120] the Court upheld the authority of Congress to allot lands without tribal consent, even if the action

110. Bobroff, *supra* n. 86, at 1589–94.

111. *See* Leeds, *supra* n. 101, at 493 (discussing how tribal laws were sometimes reactionary to limited resources, and increased encroachment by outside settlers).

112. *Americanizing the American Indians: Writings by the "Friends of the Indian" 1880–1900*, at 83–86 (Francis Paul Prucha ed., Harv. U. Press 1973).

113. *Id.* at 84.

114. *Id.*

115. *Id.*

116. Bobroff, *supra* n. 86, at 1586.

117. 24 Stat. 388. The Act was confirmed by *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903). *See generally* Symposium, Lone Wolf v. Hitchcock*: One Hundred Years Later*, 38 Tulsa L. Rev. 1 (2002) [hereinafter Lone Wolf *Symposium*].

118. Allotment was often effectuated pursuant to an allotment agreement with a particular tribe, but the agreements do not represent the willing consent of the tribes. Tribes vehemently opposed allotment and only participated in allotment agreements to exercise some control over a process they could not stop.

119. The Cherokee Nation allotment deeds are from the Cherokee Nation to the individual. The United States is not part of the chain of title. The 1902 Agreement mentions the "Secretary of the Interior shall furnish the principal chief with blank patents" for the conveyances. Pub. L. No. 57-241, § 58, 32 Stat. 716 (1902).

120. 187 U.S. 553 (1903). *See also Cherokee Nation v. Hitchcock*, 187 U.S. 294 (1902) (holding the federal government has full administrative power of tribal lands, including the power to change the status of the land).

violated treaty provisions.[121] Further, the tribal governments were not entitled to compensation because the transaction was viewed not as a taking, but as an appropriate exercise of federal administrative power of tribal property,[122] even when the tribe owned the lands in fee simple absolute.

> In effect, the action of Congress now complained of was but an exercise of such power, a mere change in the form of investment of Indian tribal property, the property of those who . . . were in substantial effect the wards of the government. We must presume that Congress acted in perfect good faith in the dealings with the Indians . . . and that the legislative branch of the government exercised its best judgment in the premises.[123]

The allotment of tribal lands eventually led to the loss of most of the land that was still under tribal control at the end of the late nineteenth century. Ninety percent of the land owned by Indians at the time of European contact had already been taken before the allotment process ever began.[124]

The loss of land continued, and rapidly increased, following allotment.[125] One reason for rapid loss of land is that once the lands were parceled out to individual Indians, those lands were no longer under the watchful protection of either the federal government or the tribal government. Individual lands were freely alienable and could be acquired by state eminent domain, or by adverse possession.[126] The lands became subject to state debtor-creditor laws and forced sales for failure to pay state taxes.[127] Prior to allotment, only the federal government could acquire Indian lands.[128] After allotment, Indian lands could be acquired through private transactions like any other piece of land. The land transactions that followed almost always resulted in the land passing, once and for all, to non-Indians.[129]

D. Surplus Lands

As part of the allotment process, tribal lands were divided into individual parcels and conveyed to individual Indians. If there were any remaining lands within a tribe's territory after the allotments were redistributed to individual tribal citizens, the "surplus" lands were deeded to white settlers as homesteads.[130] These lands were deemed "surplus" because it was presumed the tribe did not need the land, or implicitly, that the tribe would not make good use of the lands. If a future tribal use for the lands could be

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121. 187 U.S. at 568.

122. *See generally* Blue Clark, Lone Wolf v. Hitchcock*: Treaty Rights and Indian Law at the End of the Nineteenth Century* 67–76 (U. Neb. Press 1994) (discussing the Supreme Court's decision in detail).

123. 187 U.S. at 568.

124. Bobroff, *supra* n. 86, at 1560.

125. *See id.* at 1561.

126. Section 5 of the General Allotment Act provides the United States shall issue to the allottee a patent in fee which is "free of all charge or incumbrance whatsoever." 24 Stat. 288, at § 5 (This language is also repeated in 25 U.S.C. § 348 (1988).). Once lands become freely alienable, they can be acquired in the same fashion as any other fee lands within a state.

127. Title 26, section 348 of the United States Code has been interpreted to open allotted lands to state taxation once they become alienable. *County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 263, 263 n. 3 (1992).

128. *See Trade and Intercourse Act*, Pub. L. No. 7-13, 2 Stat. 139 (1802).

129. Bobroff, *supra* n. 86, at 1611.

130. *See* Pub. L. No. 53-290, 28 Stat. 286 (1894).

contemplated, there were other people who could make better uses of the land: the white settlers who the federal government had previously promised to keep away from Indian land.

White homesteaders acquired sixty-million acres of the Indian land through this federally sanctioned program.[131] Although tribes received some compensation for the surplus lands, their consent was irrelevant.[132] The tribes were required to cede their lands to the United States, the surplus lands were typically returned to the public domain, and homestead deeds to non-Indian private landowners followed.[133]

The redistribution of surplus lands provides the best analogy from the many examples in federal Indian law to the current eminent domain debate in light of *Kelo*. The surplus lands example clearly involves the governmental taking of property over the landowner's objection for the purpose of redistributing those lands to a private party. In the *Kelo* context, the legislative determination deemed commercial and economic development land use as superior to individual residential property. The surplus lands, though a less deliberative process, presumed non-Indian settlement would lead to more efficient land use than continued Indian ownership.

IV. THE LEGACY OF ALLOTMENT

Today, the allotted lands that remain under Indian control are highly fractionated with multiple co-owners sharing the same parcel of land deeded to a common ancestor.[134] The allotment process, that provided for disposal of surplus lands did not provide for subsequent generations: "The lands were not, of course, surplus. The formula used—160 acres for the head of the family, eighty acres for older children and wives, and forty acres for minor children, did not look even five years down the road to the future of the tribe."[135] Conventional wisdom presumed that allotment would be the end of the Indian problem, and there would eventually be no more Indians or Indian tribes.[136] The allotment process would prepare the Indians for ultimate United States citizenship and full inclusion into the American melting pot.[137] When that did not happen, the practical problems with allotment were quickly revealed, and those problems are exasperated with each passing generation. "If an adult man were capable of supporting his family on 160 acres, did that mean that his eighteen-year-old son could do so on eighty acres, and a decade later his twelve-year-old, now twenty-two, on forty

131. *Felix S. Cohen's Handbook of Federal Indian Law* 138 (Rennard Strickland et al. eds., 1982 ed., Michie 1982).

132. *See Lone Wolf*, 187 U.S. 553; *see also* Lone Wolf *Symposium*, *supra* n. 117.

133. *See* Jessica A. Shoemaker, *Like Snow in the Spring Time: Allotment, Fractionation, and the Indian Land Tenure Problem*, 2003 Wis. L. Rev. 729, 744 (2003).

134. *See Hodel v. Irving*, 481 U.S. 704, 713 (1987).

135. Vine Deloria, Jr., *Reserving to Themselves: Treaties and the Powers of Indian Tribes*, 38 Ariz. L. Rev. 963, 978 (1996).

136. Some allotment acts even attempted to dissolve the tribal govemment or certain branches within the tribal government. *E.g.* Pub. L. No. 56-676, § 46, 31 Stat. 861 (1901) ("The tribal government of the Creek Nation shall not continue longer than March fourth, nineteen hundred and six, subject to such further legislation as Congress may deem proper.").

137. United States citizenship and inclusion was tied to the Indian's acceptance of allotted lands. Allotment meant that tribal members would lose their tribal citizenship and become citizens of the United States. Prucha, *supra* n. 91, at 260.

acres?"[138] When an original allottee dies, their property interest will pass, in intestate succession,[139] equally to all their children. With each generation, the number of co-owners increases, yet the tribal land base can never expand because it is locked into a finite number of parcels. As the number of co-owners increase, the property interest of each co-owner is diminished, and the more difficult it becomes to make efficient use of the land.[140]

Congress has recognized that highly fractionated allotments preclude any meaningful economic development in Indian country.[141] The allotment process that was premised on maximizing the efficiency of Indian land use has rendered most Indian land useless. There are multiple examples that illustrate the problem of fractionated ownership in Indian country, but the most famous description follows:

> Tract 1305 is 40 acres and produces $1,080 in income annually. It is valued at $8,000. It has 439 owners, one-third of whom receive less than $.05 in annual rent and two-thirds of whom receive less than $1. . . . The common denominator used to compute fractional interests in the property is 3,394,923,840,000. The smallest heir receives $.01 every 177 years. . . . The administrative costs of handling this tract are estimated by the Bureau of Indian Affairs at $17,560 annually.[142]

In attempt redress this legacy of allotment, Congress passed the Indian Lands Consolidation Act ("ILCA"),[143] which included a forced escheat provision where small fractional property interest, such as the example above, would revert to the tribal government.[144] The forced escheat provision only applied to lands that had an economic yield of less than one-hundred dollars per year.[145]

When challenged by individual Indian property owners, the U.S. Supreme Court struck down the ILCA as an unconstitutional taking of individual property without just compensation.[146] The problem with the ILCA was not a lack of public use, but a lack of compensation for property interests taken.

In response, Congress amended the ILCA by extending the time period over which economic viability of the subject lands would be gauged.[147] Congress's second pass at the ILCA was stricken by the Court on the same grounds.[148] Another amendment to the ILCA has now been enacted in hopes of reducing fractionated property interests.[149]

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138. Deloria, *supra* n. 135, at 978.

139. Many Indian people, like their non-Indian counterparts, die intestate.

140. *See generally* Stacy L. Leeds, *Borrowing from Blackacre: Expanding Tribal Land Bases through the Creation of Future Interests and Joint Tenancies*, 80 N.D. L. Rev. 827 (2004).

141. One of the reasons for consolidating land bases was to make them more economically viable. Sen. Rpt. 98-632 (Sept. 24, 1984) (reprinted in 1984 U.S.C.C.A.N. 5470) (evidencing the first attempt to correct the problem).

142. *Irving*, 481 U.S at 713. *See also* Michael A. Heller, *The Tragedy of the Anticommons: Property in the Transition from Marx to Markets*, 111 Harv. L. Rev. 621, 685–87 (1998); Leeds, *supra* n. 101, at 496.

143. 25 U.S.C. §§ 2201–2210 (1988).

144. *Id.*

145. *Id.*

146. *Irving*, 481 U.S. at 716–18.

147. *See Indian Land Consolidation Act, Amendment*, Sen. Rpt. 98-632 (reprinted in 1984 U.S.C.A.A.N. 5470).

148. *Babbitt v. Youpee*, 519 U.S. 234, 240–43 (1997).

149. *See* Pub. L. No. 102-238, § 3, 105 Stat. 1908, 1908–09 (1991).

The ILCA sought to take some property interest and redistribute those lands back to the tribal government, so that tribal lands could be consolidated towards increased efficiency. Rather than have the federal government pass this type of law for redistribution of land, perhaps an exercise of tribal eminent domain power would be the best avenue to address arrested economic development in tribal communities.

The unilateral actions of the federal government created the need for tribal communities to become creative in re-establishing land base through land consolidation and acquisitions. But do tribes want to follow in the footsteps of the federal government in the exercise of these powers?

V. TRIBAL POWERS OF EMINENT DOMAIN

In recent years, some tribes have considered exercising eminent domain powers in the same manner as their federal, state, and local governmental counterparts. Tribal codes and constitutions have been amended to provide for the power to acquire lands within their political and territorial boundaries without the consent of the individual landowners.[150] In some instances, tribes and local state officials have teamed up to

150. For example, the Sisseton-Wahpeton Sioux Tribe provides for condemnation of trust or restricted lands within their jurisdiction:

> The Sisseton-Wahpeton Sioux Tribe shall have authority pursuant to this Chapter and in accordance with Section 8 of the Act of October 19, 1984, 98 Stat[.] 2411 (P.L. 98-513), to condemn trust or restricted land within the original exterior boundaries of the Lake Traverse Reservation, as described in Article III of the Treaty of February 19, 1867, 15 Stat. 505, for public uses, including the elimination of fractional heirship interests in such land, the consolidation of tribal interests in land and the development of tribal agriculture.

National Tribal Resource Center, *Sisseton-Wahpeton Sioux Tribe: Chapter 47 Condemnation of Trust or Restricted Land Under Power of Eminent Domain* § 47-01-01, http://www.tribalresourcecenter.org\ccfolder\sisseton_wahpeton_codeoflaw47.htm (accessed Oct. 30, 2005).

Section 47-02-01 provides for condemnation proceedings to be initiated by the tribe in tribal court for just compensation to be made for the property, and allows a jury to make that determination. Moreover, the jury determination requires a verdict of five-sixths of the jury as to the compensation. *Id.* at § 47-18-01. Section 47-09-01 notes that the United States is not an indispensable party but that the federal government does have the right to intervene in the proceedings.

The Eastern Band of Cherokee Indians Code allows power within the reservation when the Council deems it appropriate for a public purpose. National Tribal Justice Resource Center, *The Cherokee Code*, at § 40-1, http://tribalresourcecenter.org/ccfolder/eccodech40eminent.htm (accessed Aug. 24, 2005). The Tribal Council initiates by passing a resolution. *Id.* Compensation is provided for in Section 40-2. *Id.* at § 40-2. The courts will determine the value by a jury of six tribal members. *Id.* at § 40-3.

Although the Constitution was rejected, a proposed draft language to the Eastern Cherokee Constitution purported to take the power one step further, and apply it to all lands within the reservation. Article XIII entitled "Real Property" stated:

> The Council shall enact a comprehensive Property Code establishing a Land Office and governing a system of property for all lands within the Territory. The Property Code shall include provisions governing the issuance of patents in fee or any lesser interest, the establishment of a Registry, eminent domain, the recordation of patents, deeds, wills, trusts, leases, gifts, mortgages, liens, and other writings used to memorialize transactions of property interests, and land use and zoning. All property within the Territory, by whomever held, shall be deemed to have originated in a patent issues pursuant to the sovereign authority of the Band and such interests shall be recorded in the Land Office.

Richard Monette, Conference Presentation, *Preserving Our Sovereignty* (Miami, Fla., Feb. 10–12, 2005) (copy on file with author).

exercise the power of eminent domain collectively.[151] In these instances, states have acquired lands by condemning private lands and then redistributing the lands to tribal governments.[152] When the tribal government converts the land to commercial uses, the tribe then shares revenues with the state governments.[153]

Noting the controversy over eminent domain powers throughout the United States, the following section explores whether tribes have historically exercised the power in the past and whether tribes retain the power to acquire or re-acquire lands from private individuals.

VI. HISTORICAL TRIBAL EMINENT DOMAIN

Tribal nations are diverse in their history, culture, language, and legal traditions. It goes without saying that it is impossible to declare a monolithic "traditional" tribal viewpoint on whether tribal governments, prior to contact with Europeans, exercised the power of eminent domain or some equivalent.

Additionally, it goes without saying that Indians had a system of law for determining property rights prior to the day Columbus arrived on what are now North American shores.[154] It is inconceivable that the millions of people that populated the continent prior to European contact were aimlessly moving about with no norms, customs, or laws.

Prior to contact with Europeans, Indians recognized property rights, made conveyances of land, regulated trade, and exercised the full gamut of jurisdiction. But did they exercise the power of eminent domain, or an equivalent sovereign power, at that time?

Those tribes that truly practiced common ownership of lands, of which they have long been accused, exercised the highest form of governmental power. The permanent exclusion of private rights for the good of all citizens embodies a public use doctrine that far exceeds the eminent domain model. The tribal government, through the people, has pre-determined that all lands shall be used for the public good only, and there is no room for the recognition of private individual rights.

However, it is doubtful that many tribes practiced common ownership in the purest form.[155] The tribal government either owned the land, or the exercised usufructuary rights over specific territories.[156] It is well documented that conflicts were occurring between tribes prior to European contact and thereafter, in order to establish supremacy

151. *See* Indianz.com, *Tribe Teams Up With County on Eminent Domain Push*, http://www.indianz.com/News/2005/010220.asp (accessed Sept. 9, 2005).

152. *See State Taking Properties to Give to Senecas: Eminent Domain Process Is Under Way in Niagara Falls, Angering Land Owners*, http://www.syracuse.com/news/poststandard/index.ssf?/base/news-0/112245390335650.xml&coll=1 (July 27, 2005).

153. *Id.*

154. Indianz.com, *State Asserts Eminent Domain on Behalf of Tribe*, http://www.Indianz.com/News/2005/009533.asp (July 28, 2005).

155. Bobroff, *supra* n. 86, at 1571–96 (detailing pre-colonial Indian property schemes from diverse geographic areas).

156. *Id.*

over and ownership in land.[157] The myth of "wandering hordes"[158] of people attaching no value to property is one told by non-Indians seeking to seize Indian land or otherwise disregard Indian claims to land.[159]

Contrary to the prevailing myths, most tribes had some form of recognized private ownership in land, if not an elaborate property law scheme.[160] The Pueblos of the Southwest, the tribes of the southeastern United States, and the Iroquois were well known for having elaborate property schemes.[161]

Some of these tribal property law schemes protected individual property, and arguably protected private rights to a greater extent than the United States or their European predecessors. In previous works, I have suggested the Cherokee Nation, one of the tribes noted for an elaborate property law system of recognized individual property rights, did not traditionally provide for the governmental authority of eminent domain.[162] In the Cherokee system, individuals had protected property interest to surface rights and improvements, with the tribal government holding the underlying estate in common for the people. Although the Cherokee government did not expressly reserve to itself constitutional authority to take individual property for public use or otherwise,[163]

---

157. *See e.g. Lower Sioux Indian Community in Minn. v. U.S.*, 163 Ct. Cl. 329, 333–34 (1963) (bracket and ellipses in original):

> The Treaty of August 19, 1825, commonly called the "Treaty of Prairie des Chiens" or "Prairie du Chien," was the result of continuous warfare among the tribes of the Upper Mississippi region. The warring tribes were assembled at Prairie des Chiens and a treaty was entered into establishing boundaries among them in an attempt to remove the cause of their hostilities. The preamble of the treaty clearly bears this out:
>
> > The United States of America have seen with much regret, that wars have for many years been carried on between [the different tribes who were parties to the treaty] ***. In order, therefore, to promote peace among these tribes, and to establish boundaries among them ***, and thereby to remove all causes of future difficulty, the United States have invited [the different tribes who were parties to the treaty] *** to assemble together, and in a spirit of mutual conciliation to accomplish these objects ***.
>
> Thus it can be seen that the purpose of the treaty was to promote peace by establishing boundaries among the tribes "*** and thereby to remove all causes of future difficulty ***."

158. *Cherokee Nation v. Ga.*, 30 U.S. 1, 27 (1831). As part of his concurrence, Justice Johnson, *id.* at 27–28, noted:

> But I think it very clear that the constitution neither speaks of them as states or foreign states, but as just what they were, Indian tribes; an anomaly unknown to the books that treat of states, and which the law of nations would regard as nothing more than wandering hordes, held together only by ties of blood and habit, and having neither laws or government, beyond what is required in a savage state.

159. Seifert, *supra* n. 85, at 325–28.

160. Bobroff, *supra* n. 86, at 1571–96.

161. *Id.*

162. *E.g.* Leeds, *supra* n. 101, at 498 ("The idea of governmental taking by the Cherokee government, I must admit, is not a concept supported by early sources of Cherokee law.").

163. As evidence of this, see the Cherokee Constitution, art. 1, in *The Constitution and Laws of the Cherokee Nation: Passed at Tal-Le-Quah, Cherokee Nation, 1839*, at 5–6 (Gales & Seaton 1840) (emphasis in original), stating:

> Sec. 1. The boundary of the Cherokee Nation shall be that described in the treaty of 1833 between the United States and Western Cherokees, subject to such extension as may be made in the adjustment of the unfinished business with the United States.
>
> Sec. 2. The lands of the Cherokee nation shall remain common property; but the improvements made thereon, and in the possession of the citizens . . . respectively who made, or may rightfully be

nothing in the early Cherokee laws would have precluded the tribal government from passing a law to exercise the power of eminent domain if the tribal legislature found it necessary. Nonetheless, there is no indication that legislation to this effect was ever passed.[164]

In comparing the possibilities for eminent domain under tribal law in the historic sense, it appears that tribes would have fallen somewhere on the spectrum between those governments who control all land use, and therefore had no need for express eminent domain authority, to those tribes who valued private property to the extent they would never exercise eminent domain powers.

The range of tribal individual property rights in contrast to sovereign eminent domain powers is consistent with the range of divergent laws in a current survey of international law. There are countries in which the government is the sole property owner with no need to exercise eminent domain,[165] and those countries where the power, if exercised, is more constrained than the current United States system.[166] The same diversity of viewpoints would have existed at traditional tribal law.

VII. CONTEMPORARY TRIBAL EMINENT DOMAIN POWERS

Contemporary tribal governments have exercised eminent domain powers for various purposes. Some tribal codes expressly authorize the tribal legislature or executive branch to invoke the power when needed.[167] At least one tribal court has upheld tribal landowners' challenges to the exercise of tribal eminent domain.

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in possession of them: *Provided*, That the citizens of the Nation possessing exclusive and indefeasible right to their improvements, as expressed in this article, shall possess no right or power to dispose of their improvements, in any manner whatever, to the United States, individual States, or to individual citizens thereof; and that, whenever any citizen shall remove with his effects out of the limits of this Nation, and become a citizen of any other Government, all his rights and privileges as a citizen of this Nation shall cease: *Provided, nevertheless*, That the National Council shall have power to re-admit, by law, to all the rights of citizenship, any such person or persons who may, at any time, desire to return to the Nation, on memorializing the National Council for such readmission.

164. Condemnation proceedings could very well be found upon review of Cherokee case law between 1839 and 1898. However, the Cherokee Nation's official governmental records and judicial opinions were seized by the Dawes Commission during allotment and are currently housed in the Oklahoma Historical Society, outside the custody of the Cherokee judiciary. The judicial opinions have never been published; remarks with respect to eminent domain are based on review of constitutional and statutory laws exclusively.

165. For instance, all lands in Cuba were nationalized in 1961. Edward Yates, *Central Planning Meets the Neighborhood: Land-Use Law and Environmental Impact Assessment in Cuba*, 16 Tul. Envtl. L.J. 653, 658 (2003). In Mozambique, ultimate ownership of lands rests with the state. Kendall Burr, *The Evolution of the International Law of Alienability: The 1997 Land Law of Mozambique as a Case Study*, 43 Colum. J. Transnatl. L. 961, 961–62 (2005).

166. Consider the example of New Zealand. Takings in New Zealand are highly regulated; there are numerous checks and balances required for a public purpose. *Taking Land, supra* n. 56, at 255–56. All takings must go through the Environment Court, and it appears to be more like actual public use than the American system that would allow an automatic conveyance to a third party. *Id.* at 255.

The compensation is better than the United States system: "The taking of land is not viewed in New Zealand as an invasion of a person's rights so much as a regulation of land use permitting compensation to those who are deprived in the interests of the broader society." *Id.* The compensation goes beyond the market value provided in the United States. The compensation can be in the form of "monetary compensation or by transfer of other property to the displaced parties." *Id.* "It is also intended to cover the costs incurred in the process as well as to provide a small sum for loss of employment." *Id.*

167. *See supra* n. 150 (discussing tribal codes and constitutional provisions).

The Navajo Nation case *Dennison v. Tucson Gas and Electric Co.*,[168] involved a taking of private land for a right of way.[169] The Navajo Supreme Court ruled that the taking violated Navajo law based on procedural grounds and due process considerations.[170] The question of whether the Navajo Nation had the power to take lands by eminent domain was answered in the affirmative:

> Eminent Domain is the power of any sovereign to take or to authorize the taking of any property within its jurisdiction for public use without the consent of the owner. It is an inherent power and authority which is essential to the existence of all governments.
>
> Therefore, as in this case, the sovereign (the Navajo Tribal Government), has the power and the authority to take or to authorize the taking of the Dennison property, all or part of it, without their consent. Plaintiffs' consent to the granting of the right-of-way is totally unnecessary.[171]

In *Dennison*, the Court noted that limitations on tribal eminent domain powers are found in the Indian Civil Rights Act of 1968 ("ICRA").[172] Section 1302(5)(8) of the ICRA states that "[n]o Indian tribe in exercising the powers of self-government shall: . . . take any private property for public use without just compensation."[173] The Navajo Bill of Rights,[174] contained similar limitations on the Navajo Nation.

The Navajo courts provided an historical account of tribal takings law:

> Furthermore, under the customary division of governmental powers into three (3) branches, executive, legislative, and judicial, the right to authorize the exercise of Eminent Domain is wholly legislative (Navajo Tribal Council) and there can be no taking of private property for public use against the will of the owner [without] direct authority from the legislative body (Navajo Tribal Council) and then the taking must be only in the manner as prescribed by the legislative body (Navajo Tribal Council).
>
> In 1960, the Navajo Tribal Council vested the exercise of the Eminent Domain power of the Navajo Nation in the Executive Branch of the Navajo Government, and provided by law the exact manner and the procedure to be followed in its execution or use.[175]

Under Navajo law, the tribal administrative agency is charged with estimating probable damages, and an offer is made to the landowner.[176] If the landowner refuses to accept the compensation offered, condemnation proceedings may follow.[177]

In *Dennison*, the proper procedures were not followed and the exercise of eminent domain was deemed illegal.[178] However, the power of the Navajo government to exercise eminent domain powers is recognized by the Navajo courts.

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168. 1 Navajo 95 (Navajo 1974) (available at National Tribal Justice Resource, Dennison v. Tucson Gas & Elec. Co., http://www.tribalresourcecenter.org/opinions/opfolder/1974.NANN.0000002.htm (accessed Nov. 11, 2005)).
169. *Id.* at ¶ 16.
170. *Id.* at ¶ 72.
171. *Id.* at ¶¶ 30–31.
172. *Id.* at ¶ 37 (citing 25 U.S.C. §§ 1301–1303 (2000)).
173. *Dennison*, 1 Navajo at ¶¶ 38–39.
174. Navajo Nation Code tit. 9, §§ 1, 5, 8 (Equity 1995).
175. *Dennison*, 1 Navajo at ¶¶ 44–45 (citation omitted).
176. *Id.* at ¶¶ 49–54.
177. *Id.* at ¶ 56.

However, tribes are not exercising the power to acquire lands or reconsolidate land bases in large numbers. Tribal governments are cautious in exercising their inherent powers because numerous federal court cases, in recent years, have negatively impacted tribal sovereign powers.[179]

The tribes that expressly authorize eminent domain powers typically restrict the power to lands owned by tribal citizens within the tribe's political and territorial boundaries.[180] While takings by tribal governments include easements for road projects and utilities, the public use doctrine is incorporated to allow for more liberal interpretations.[181]

As a matter of federal Indian law, tribal takings of private lands will present the question of whether tribes retain eminent domain powers. Eminent domain is usually considered an inherent power of all sovereigns. If the tribal power is ultimately challenged in federal court, the courts will likely look to various textual sources to determine whether the tribal power has somehow been divested.

General principles of federal Indian law state that tribes may exercise inherent governmental powers, so long as those powers have not been voluntarily relinquished by the tribal government or expressly taken away by an act of Congress.[182] In recent years, the federal courts have added a third avenue for possible divestiture of tribal authority: if the federal courts find that the exercise of such power is inconsistent with the tribe's dependent status vis-à-vis the federal government.[183]

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178. *Id.* at ¶ 72.

179. Many commentators are less reluctant to conclude that tribes retain eminent domain powers. *See e.g.* Philip P. Frickey, *A Common Law for Our Age of Colonialism: The Judicial Divestiture of Indian Tribal Authority over Nonmembers*, 109 Yale L.J. 1, 83 (1999) (describing the recognition of tribal eminent domain powers over fee simple lands within reservation boundaries as an aggressive measure that could be taken by Congress); Philip P. Frickey, *Domesticating Federal Indian Law*, 81 Minn. L. Rev. 31, 87 (1996) (suggesting tribes lack eminent domain powers); Ezra Rosser, *This Land is My Land, This Land is Your Land: Markets and Institutions for Economic Development on Native American Land*, 47 Ariz. L. Rev. 245, 310 (2005) (mentioning only the possibility of tribal exercise of eminent domain); Victoria Verbyla Sutton, *Divergent But Co-Existent: Local Governments and Tribal Governments Under the Same Constitution*, 31 Urb. Law. 47 (1999) (suggesting that tribal governments do not enjoy the power of eminent domain to the same extent that state and local governments do).

Only a few law review articles expressly conclude that tribes retain the power of eminent domain. *E.g.* Kirke Kickingbird, *What's Past is Prologue: The Status and Contemporary Relevance of American Indian Treaties*, 7 St. Thomas L. Rev. 603 (1995) (noting that the power of eminent domain is retained by tribes); Leeds, *supra* n. 101 (discussing options for exercise of tribal eminent domain power).

180. Examples include the Sisseston-Wahpeton Sioux Tribe and Eastern Band of Cherokee Indians. *See supra* n. 150 and accompanying text. Each of these limits the power to lands within the reservation boundaries or within the tribe's Indian country.

181. For example, consider the situation of the Eastern Band of Cherokee Indians. *See id.* (discussing the Council's determination of what constitutes "public use").

182. Felix S. Cohen noted in the most recent edition of the leading treatise in the field that

> [p]erhaps the most basic principle of all Indian law, supported by a host of decisions, is that those powers lawfully vested in an Indian nation are not, in general, delegated powers granted by express acts of Congress, but rather "inherent powers of a limited sovereignty which has never been extinguished."

Cohen's Handbook of Federal Indian Law, *supra* n. 65, at 206 (footnote omitted). *See also* Robert N. Clinton, Nell Jessup Newton & Monroe E. Price, *American Indian Law: Cases and Materials* 317–18 (3d ed., Michie 1991) (discussing Cohen's synthesis of the doctrine of inherent sovereignty).

183. *See* Frank Pommersheim, Lara*: A Constitutional Crisis in Indian Law?* 28 Am. Indian L. Rev. 299, 304 (2003–2004) (referencing judicial plenary power); Frank Pommersheim, *Coyote Paradox: Some Indian Law Reflections from the Edge of the Prairie*, 31 Ariz. St. L.J. 439, 462 (1999).

There is no indication that tribes have voluntarily relinquished their power of eminent domain. Of course, the question turns on a case-by-case evaluation of a particular tribe's history, but few tribes would have voluntarily relinquished their sovereign rights to regulate land use within tribe's own territory.

There is no indication that Congress has divested tribal governments of eminent domain powers through express legislation. In fact, Congress mentioned tribal eminent domain as a retained tribal power in the ICRA.[184] The ICRA provides certain civil rights protections, as a matter of federal law, to all persons, Indian and non-Indian, who come within the jurisdiction of tribal governments.[185] The power of eminent domain is specifically mentioned, and the Act simply requires that tribes who take lands for public use provide just compensation for takings.[186] The ICRA restricts tribal governments to the same extent the Bill of Rights restricts the federal government.[187]

The question of judicial implicit divestiture, as a relatively new way tribes could lose governmental powers, is difficult to predict. In recent decisions, the federal courts have tended to restrict the exercise of tribal inherent powers to lands over which the tribe or its members retain the right to exclude.[188] If this trend were extended, in a challenge to the tribal eminent domain powers, the power might be restricted to the taking of lands held by tribal citizens only.

Tribal eminent domain powers will most likely be treated by the federal court like other inherent tribal powers such as sovereign immunity and taxation that are retained, but limited by federal law.[189] Tribes continue to enjoy sovereign immunity, but it is recognized that tribal sovereign immunity can be waived by Congress.[190] Tribes also enjoy taxation powers, but those powers are limited to tribal lands or consensual relationships.[191]

The Bureau of Indian Affairs ("BIA") has recognized the right of tribal governments to take lands claimed by tribal members for public uses.[192] Professor Richard Monette shared the story of an Indian family who sought the assistance of the BIA when their tribal government attempted to build a helicopter landing pad on lands claimed by the family.[193] The BIA refused assistance to the tribal citizens noting that

184. 25 U.S.C. §§ 1301–1303 (2000).

185. *Id.* at § 1302.

186. *Id.*

187. Section 1302 of the ICRA states: "No Indian tribe in exercising powers of self-government shall take any private property for a public use without just compensation." 25 U.S.C. § 1302(5). Compare this language with the almost identical language of the takings clause of the United States Constitution: "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V.

188. *See e.g. Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001); *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Mont. v. U.S.*, 450 U.S. 544 (1981).

189. *See Kiowa Tribe of Okla. v. Mfg. Technologies, Inc.*, 523 U.S. 751, 754 (1998) ("As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.").

190. *Kiowa*, 523 U.S. at 753–57; *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 57–58 (1978).

191. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982).

192. Ltr. from Robert R. McNichols, Bureau of Indian Affairs, Truxton Canon Field Office, to Guy Marshall, Jr. (May 9, 2003) (copy on file with author).

193. Monette, *supra* n. 150.

the tribal use served a "community purpose."[194] The BIA commented that the tribal power to take lands claimed by the family was "consistent with tribal law and traditions."[195] The example demonstrates a reluctance, on the part of the BIA, to allow private property interest to restrict the exercise of tribal governmental power.

The Internal Revenue Service ("IRS") is another federal agency that recognizes eminent domain as a retained tribal power.[196] The IRS Code contains provisions that treat tribal governments like state governments for certain tax purposes.[197] In internal agency reviews of the legislative history of these provisions, the IRS concluded the provisions should apply to an Indian tribal government that exercises inherent sovereign powers.[198] According to the IRS, among those inherent sovereign powers is the power to tax, the power of eminent domain, and police powers, such as control over zoning, police protection, and fire protection.[199]

Some state officials have agreed that eminent domain is a sovereign power of modern tribal governments, even in states where tribal powers have otherwise been diminished. For example, a 1985 Attorney General's Opinion for the state of Nebraska places eminent domain in the same category with tribal tax powers:[200]

> You ask if the Tribe will have additional powers regarding taxation and condemnation as a result of retrocession. The answer would appear to be "no." . . . Indian tribes retained broad authority in the areas of taxation and eminent domain (i.e., condemnation). . . .
>
> [A]ny exercise of [eminent domain powers of] the Tribe is subject to a number of limitations imposed by federal law, including due process, equal protection and just compensation considerations.[201]

Tribal governments should evaluate whether the exercise of eminent domain powers would be useful, particularly in combating fractionated ownership and land tenure problems that were created without tribal consent. As a retained element of inherent sovereignty, tribes have the same authority to avail themselves of the power as do federal and state governments. But tribes should move forward in policy determinations with the unique insight gained from having similar powers exercised against them. Perhaps tribal governments have the perspective to show the other two sovereigns how to exercise the power in a way that is more respectful of individual rights.

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194. Ltr., *supra* n. 192.

195. *Id.* It is important to note that in this example, the land in this particular tribe is held in trust by the United States for the beneficial use of the tribe and the lands were never allotted to individuals.

196. Mark J. Cowan, *Leaving Money on the Table(s): An Examination of Federal Income Tax Policy Towards Indian Tribes*, 6 Fla. Tax Rev. 345, 363 n. 78 (2004) (noting that the three major sovereign powers of tribes, as mentioned in title 26, section 7871 of the U.S. Code, include taxation, eminent domain, and police powers).

197. 26 U.S.C. § 7871(a) (2000).

198. Priv. Ltr. Rul. 2000-29-039 (July 21, 2000).

199. H.R. Conf. Rpt. No. 97-984 at 15 (Dec. 19, 1982).

200. Ltr. from Robert Spire, Atty. Gen. Neb., to James E. Goll, Sen., Neb. Legislator (Mar. 28, 2005) (available at http://ago.nol.org/local/opinion/?topic=detao;s&id=798).

201. *Id.*

VIII. CONCLUSION

Over the years, American Indian people have come to view property rights differently from their non-Indian counterparts, but perhaps the *Kelo* decision brings the two groups closer together. The United States has consistently rationalized the taking of Indian lands on the premise that Indians do not make efficient use of land the way non-Indians do. Now the rationale for taking non-Indian lands is similar: land should be placed with the entities that will make the best use of those lands.

Indian people have known for some time that fee simple title is far from absolute. The notion that the government can take land at any time is a foundation of the American Indian experience. The inquiry as to what it is in the best interest of the "public" is an exceedingly broad question. American Indian people have watched their lands transferred to other individuals for centuries.

Are mainstream American families coming to realize what American Indians have known for generations? Eminent domain, and similar theories of land allocation, are rarely discussed when land resources are abundant. But when competing interests eye a particular tract of land, a hierarchy of preferred land uses emerges.

We have finally reached a resource crunch that brings to mainstream communities the truth about governmental power and private property rights. As one of my colleagues has aptly noted, "[i]t seems to violate the spirit of storytelling to declare a story 'wrong.'"[202] But perhaps the American people have simply gotten it wrong, both in their response to *Kelo*, and to their false security in private property rights. The laws governing eminent domain and other governmental powers have not changed, just the people affected.

202. Bobroff, *supra* n. 86, at 1620.

Oceti Sakowin Oyate (Sioux Nation), Standing Rock Reserve, and Standoff

This Stretch of the River

Craig Howe and Kim TallBear, Editors

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OAK LAKE WRITERS' SOCIETY

This book is a publication of the Oak Lake Writers' Society, a state-wide organization of Dakota, Lakota, and Nakota writers. The Society is an outgrowth of the summer retreats for aspiring tribal writers that have taken place at South Dakota State University's Oak Lake Field Station since 1993. The primary goal of the Society is to contribute to the strengthening and preservation of Dakota, Lakota, and Nakota cultures through the development of culture-based writings.

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Where Are They?

Charmaine White Face

There is an old legend of the Titonwan of the Oceti Sakowin. In it, animals desire to kill the first human beings, the two-leggeds, because they fear that the two-leggeds will destroy them and the other relatives on Unci Maka. But the winged ones have pity and want to help the two-legged beings. A great race is held around the Black Hills, more than 500 miles, and the winner will determine the fate of the human beings. The racetrack becomes red with the blood from the hooves, feet, and paws of the animals running the grueling race. But the magpie is smart and rides on a horn of the buffalo, the fastest runner with the most endurance. As they near the end, the magpie, who has conserved his strength, flies ahead of the buffalo and wins the race. As a result, human beings are allowed to live and the buffalo nation must provide for their needs.

In any natural field, one that has not been cultivated by human beings, there might be hundreds of species of plants. Each year, the field will change as seeds grow in relation to the amount of moisture, temperature, and sunlight available the previous winter and spring. But even though this ever-changing living tapestry produces varied kinds of plant life with each new year, there will always be one dominant plant: grass, broad leaf, or perhaps cacti. The less dominant will grow among the more prolific, sometimes in small family clusters, sometimes alone, standing proudly. Perbaps a bird flying overhead has dropped one seed on its way to feed its young, and the seed, left in a favorable position, has grown into a single entity, thus adding a touch of difference to an otherwise homogenous mixture.

Were human beings allowed to co-exist with each other and the rest of creation in certain geographic areas in an environmentally sustainable manner, just such a tapestry would develop over thousands of years. Such was the North American continent when the Europeans invaded. However, such a tapestry was not conceivable for Europeans, after almost 2,000 years of conquest, pillage, and use and abuse of what were known as "natural resources."

When Lewis and Clark traveled along the Missouri River, they were a part of this mindset. They could not know that the indigenous peoples they were encountering had cultures thousands of years old, very complex societal systems, and an understanding of nature that America still does not grasp today. Nor did Lewis and Clark, like the cultures of America or Europe today, realize or understand the indigenous peoples' comprehension of the vast spiritual dimensions of this world.

Lewis and Clark were merely the starter cells of a vast, cancerous way of thinking that is rapidly killing Unci Maka. That thinking started in Europe thousands of years ago. "Natural resources," whether they be oil, minerals, timber or crops, were to be used solely for the production of "things" for the enjoyment and comfort of human beings.

In their journals, Lewis and Clark described the countless numbers and new kinds of species they encountered: the large herds of buffalo drinking at the river, the amazingly graceful antelope and deer lowering their heads to the water in the early evening, the many kinds of waterfowl everywhere. They also expressed the need for interpreters for the many indigenous languages they were encountering, but only for the purpose of trade and business, only for the purpose of conquest and use.

So where are they? Where are the buffalo? Why are they not still running free across the prairies? Where are the black bears, the brown bears, the grizzly bears? Why are they not in the Black Hills? Where are the wolves? They live in family and clan units too. They once lived all over the Midwest. Where are the moose that once traveled in these areas? Where are the mountain sheep that lived so plentifully among the spires and tables in the Badlands?

Where are the plants that were not given Latin names by scientists and botanists but disappeared under plows, or water caused by dams, or were eaten by cattle? Where are the tallgrass prairies? There is a tiny one left in North Dakota, near Fargo, completely surrounded by farms. Yet, at one time, the tallgrasses, taller than a horse, were found all over in the Midwest. How many plants and animals will die, and how many threatened and endangered species will become extinct, so a new railroad line can be built through one of the last pristine grasslands? We are supposed to nevermind that railroad lines are obsolete and only increase air, water, and land pollution. After all, we are told, the railroad cars will carry what is left of the coal in Wyoming to points east. These are parts of the legacy of Lewis and Clark.

Where are the myriad streams of clean water that once flowed in the Black Hills, in the Badlands, all over the prairies, following each spring and summer rain? Where are the flocks of waterfowl that once covered the waterways in South Dakota? A pitiful few have become full-time residents of the location across from the mouth of the Bad River where Lewis and Clark encountered the Titonwan, that place which is now the capitol of the state of South Dakota.

Where are the thousands of trees, shrubs, and bushes that once lined the Missouri River and were the homes, shelter, and food for innumerable animals and birds? Where are the fish and turtles and other small aquatic life that needed the trees and shrubs and bushes to extend their branches over the water so that their breeding places would be shaded from the hot summer sun? Where are the insects that inhabited the trees, shrubs and bushes and were food for some of the water life?

Where is the clean air of the Great Plains? Now it is filled with the noxious fumes of mining for coal and methane and oil. It contains the radioactive particles of hundreds of abandoned uranium mines, particles to be breathed in by humans and cattle, to settle on grass and crops that will be eaten by humans and cattle, and to be carried by the wind elsewhere. These also are part of the legacy of Lewis and Clark.

Where are the Black Hills places that were sacred to the Titonwan and other indigenous nations? Is there a consequence for the destruction of something sacred? How many burial sites containing the remains of the ancestors of the Oceti Sakowin and other tribes have been crushed under cultivators so crops of winter wheat can bring in the almighty dollar? How many sacred places and burial sites, areas that were left in reverence for thousands of years on the prairies, are being considered for destruction so coal can be strip-mined to increase the pollution in the air? How many petroglyphs, places of communication with those wiser than the two-leggeds, have been vandalized with the initials of plunderers, or destroyed by "educated" people to be placed in museums? These are also the legacies of Lewis and Clark.

Where are my people, the Titonwan and the rest of the Oceti Sakowin? Where are the ones of whom Thomas Jefferson said, "On that nation, we wish most particularly to make a friendly impression, because of their immense power..."

Where is the honor of a nation that made treaties with the Oceti Sakowin bnt then violated them? Where is the integrity of a nation that would go against its own Constitution in order to have access to gold? Where is the humanity of a nation that would steal children to change them from being who the Creator made them to be?

Where are my people of whom William Clark said, "These are the vilest miscreants of the savage race, and must ever remain the pirates of the Missouri, until such measures are pursued, by our government, as will make them feel a dependence on its will for their supply of merchandise?"

Where are the thousands and thousands of Titonwans who perished from starvation, bullets, smallpox and other diseases after Lewis and Clark traveled up the Big Muddy? Where are the Wahpekute, the Wahpetonwan, the Mdewakantonwan, the Sisitonwan, the Ihanktonwan, and the Ihanktonwanna, the other six nations of the Oceti Sakowin?

Where are the children buried who died in residential boarding schools generation after generation? Where are the ones who survived the physical, mental, emotional, and spiritual abuse of the boarding schools and died later of the consequences of their experiences? Where are the burial sites of their parents, the ones who were prisoners of war, who whispered secrets to their grandchildren hoping a miracle would happen and some seed would remain of the Oceti Sakowin?

Where are the ancient family practices of the Oceti Sakowin? Where is the strong societal structure that forbid a son-in-law to talk to his mother-in-law? Where are the whipbearers so that no woman or child had to fear abuse at the hands of a man? Where are the old laws that guided nations for millennia to live and thrive on Unci Maka? These absences are the greatest tragedy of the legacy of Lewis and Clark.

cheap like our land
that was sold at four pennies an acre
but no indian was there that day
as whitemen sold to whitemen
making convenient policy makers

because back then
and maybe even now
indians were never seen as being equal
to the white people
just a copper penny
next to a shiny nickel

what would you do
if someone put a price tag on your home
and sold it with no remorse?
this country became
one big wholesale store
and it never closes
because there's always something to buy
and something to sell
and pretty soon
no one will be able to tell
...what truth really is

here's a nickel for your thoughts

Reflections on Mnisose after Lewis and Clark

Kathryn Akipa, Gladys Hawk, Craig Howe, Lanniko Lee, Kim TallBear, and Lydia Whirlwind Soldier

A Dialogue between members of the Oak Lake Writers' Society held at The Birdsong Inn and Guest House, Java, South Dakota, February 12, 2005

Kim TallBear In this collection of essays, we have decided to center the river as an actor, and not simply think of it as a subject or something simply acted upon in our response to Lewis and Clark. So, we—Craig and I —want to have you all philosophize about rivers as entities or beings in themselves. It's kind of an open question where you might talk about the meaning of the river to you personally, to your family, to your tribe.

Lanniko Lee All my life I have known the river to be part of a larger expression of our relationship to everything that is—everything that exists. A good example is what Arvol Looking Horse[1] published in his wonderful "World Peace and Prayer Day." In it he describes the earth as a living organism having anatomical functions similar to that of the human body. Mnisose, the river we know, is a major artery. As a major artery it is meant to flow for the life of the world.

In fact, long before scientists began speculating about the alleged benefits of changing the river, my family, like Arvol, talked about the river as doing the work of circulation. Circulation is the vital function of the Mnisose. After all, flowing water brings necessary changes. So when I think about the man-made dams that obstruct the river's flow, I can't help but grieve over the loss of a river flowing and the loss of its life-giving and healing forces coursing through Unci Maka, Grandmother Earth, to the ocean.

Another important conversation for indigenous people regarding caring for the earth is the ability of the rain forest to continue functioning in a healthy way. So much destruction of the rain forest is occurring. Soon it will not be able to do what it was meant to do—provide the essential respiratory exchange needed to keep body Earth healthy. Arvol's message was a proposal to all humanity that we pay attention to how the relationships of the parts of the world work and how we are all responsible for Earth's health. This is good Lakota reasoning.

I remember the elders of my family asking how the clouds would be able to come if there were no trees to call in the clouds. This was after hearing John F. Kennedy's speech about the progress and the good that would come after the river was dammed and hydroelectric power would be available to improve the lives of everyone. My recollection of those times is a mixture of strong emotions interfused with memories of ceremonies and

dire prophecies; photographs were taken by those who wanted to remember a river that was destined to be changed. Strong emotions were displayed; everyone living along the river was affected by those changes.

Kim Gladys and Lydia and Kathryn have also talked a lot about the effects on the people and also what the river meant to them personally. How do each of you feel about the Missouri River project and the inherent contradiction for Native people of referring to the River as a "project"?

Lanniko When I grew up, the river was at the center of conversations about the sacred. The river helps explain our belief about the sacred permeating our lives. Images of baptismals are prominent in my memory. All of the songs that we sing when we are burying our people who have grown up along the river are always focused on the water. Gladys can probably talk about that.

Gladys Hawk My piece in this anthology is my personal experience of the river. But it was the Grand River I was talking about. It wasn't far from the Missouri, though. I am also familiar with the Missouri just traveling back and forth to Mobridge. I write about a time when all of the river was still there, but it was being planned to be flooded. I remember seeing the surveyors when they came along the hillside right above our house; they were way up there, so I rode on my horse and I went up there and I asked them, "What are you doing?" There were two guys there with their tripods and they said, "Well, some day the water level is going to be this high" [gestures]. I looked at that and I looked down towards our house and to the river and to the east. I couldn't imagine it; I just could not imagine that. But that was when I was only about ten. And it wasn't until '58, '59 and '60, when I was in my twenties, when we actually saw it happen, when they cut down all the trees along the river and it was bare.

Kim Some of us here were talking last night in the kitchen about the sense of disbelief that people had. First of all, that morally the Army Corps could do this and second, that technologically it was possible. And I wonder if, because it took so long from planning to the actual flood, the sense of disbelief was really big? Or did people gradually accept it would happen?

Gladys I think they gradually accepted it. What more could they do? Their homes were taken away. I just want to say the impact that it had. There was an old man that lived where the bay is now. His name was Ed Hawk. He was an old man with a blind eye. All he had was just two little sorrel horses that he used for his wagon. He had them in the corral and one little log cabin where they wintered. And he lived in a one-room log house. He would not sign anything that the Corps brought in. He just stood his ground. And the Corps came in and they bulldozed his little house. [One gasp of disbelief, then 30 seconds of silence.]

Lydia The damming of the river displaced a lot of people and multiple generations from the river. It destroyed a way of life that was centuries old. I remember somebody telling me that their grandparents would go to the river every Sunday and sit on the bluffs overlooking the water just to see their land disappearing under the water. They would reminisce about the old days, their gardens, their livestock and their homes. And they would feel sad over how their lives had changed since their land was flooded.

As a Sicangu, I didn't grow np along the river. But when they started building the dam near Pierre, my dad worked on it for one summer. He was really torn about that, but he had to support a family. So he just worked on it one summer and then found work elsewhere. But I remember every summer my grandparents would take us to the river by Pickstown, Fort Randall, to see how far the water had come up. We would spend the day, go to Fort Randall and have a picnic and they would sit and talk about the river. They were in disbelief that this could be done. But I was a little kid and as a little kid you don't pay too much attention. As Sicangus we lived so many hours away from the river, but we still went to the river to see what was happening every summer.

Lanniko Another arrogant, irresponsible act occurred even before politicians set in motion those changes to the river. Locals took it upon themselves to move prayer stones off the river—very large boulders that had previously been prairie altars where mortals communed with the sacred. If you go down the river road here, you will see those prayer stones with hand marks on them made during prayer—prayers that were given for that river. One such group, not American Indians, decided to construct a building in Gettysburg, South Dakota; a big prayer stone was moved in to attract tourists to the community. Now if you want to visit one of these stones, you can visit the Dakota Sunset Museum and pay a fee to see the prayer stone, but not to touch it, nor do you have the open, private prairie setting to use the stone as it had been used for bundreds, possibly thousands of years. By moving those stones off the river—it's like another group of people is shaping even our memory. Between that and the river project, maybe they were thinking we would forget our past. Those who were involved in making the decisions to change the river—they knew what they were doing culturally and economically to our lives. I don't know how they can possibly be unaware of what they were doing.

Kim Kathryn, in your essay, you talked about your mom getting a new teaching appointment in Iowa and leaving Lower Brule. Did you actually see what happened after the flooding or did you leave before it got flooded?

Kathryn We left before it got flooded. But a couple of girls who my mom taught came with us on the move. And then when we took them back we heard the stories, the horrible things that happened with the flood. At the store the people would talk around the stove and they would sit there smoking and

they just couldn't believe it. "How could they do something like this? How is this possible?" They would ask. The underlying feeling that I remember as a child when I was probably about eight was "How could man think that he is so powerful that he could change the course of the river?" And I remember that there was almost a feeling of toksta. They are going to find out the river will take its own course eventually and it will come back on them. You can't change the course of something like that—so powerful—so mighty. Somewhere you're going to pay for it. That was the feeling of disbelief that the people around the stove and the women in their sewing circles had. It just seemed like such an absurd and far-fetched plan. How could the wasicu think like this?

It reminds me of when they decided to go to the moon in the later 60s—the same kind of idea—a kind of disbelief! [laughter]. But the dam in particular worried a lot of people because a lot of them could not afford to move the graves and they worried about their relatives. Sure enough, three weeks after the flooding they saw caskets floating down the river. That flabbergasted people in the Lower Brule area. Out of respect, I didn't want to put that scene in my essay. It could hurt people to be reminded of that. Some of them, those were their relatives.[2]

I remember such disbelief from my child's point of view. I didn't fully understand the whole thing. I just knew that a flood was coming and that the village would be goue—everything that we knew there. And I think that is the reason why I wrote in my piece about the happy memories as a child, to show the tragic loss. My point was to show that this is on the continuum of what began when Lewis and Clark sailed—the so-called progress of America and how it continues to impact Native Americans in modern times. When you lose a village where you did have such good memories—yes, some of them were tragic and life goes on—but when you lose a village like that and you know that you will never be able to walk in those places again because they're under water, it's hard to imagine.

Kim You just stated clearly the importance of the dam in the legacy of American progress. Lewis and Clark were also part of that movement towards "progress." I'm also interested in what you all have to say about the need to respect the river, its power, and the possible consequences of not respecting it.

Lydia I grew up listening to old people and their philosophies. One of the phrases that they always used was "mni wiconi," which means "water is life." It also means respect for water—respect for river. As long as you have water, there is life. The old people use that phrase in their prayers and everyday conversation.

Lanniko Vine Deloria and Dan Wildcat in their book, *Power and Place*, have also talked about Indian peoples' respect for the river.[3] They talk about our nnderstanding of the changing nature of the river, our understanding

of flood plains, of the appropriate places for habitation, and what kinds of things people did to fit their own lives into the balance by understanding the river's changes. They state that witb that knowledge, people were able to take care of themselves, while non-Indians build on the flood plains with a lot of investment and insurance. They make money off tragedies that they participate in creating. A critique of capitalism comes across in their book—a conversation about non-Natives who build on the flood plains and reap benefits from loss. They say we never did that because we had a responsibility for not just ourselves, but our whole family—for those communities along the river. We had to have a sense of our responsibility as humans, an understanding of the river phenomena and its changing nature. We had to respect it so that we could share that wisdom with those around us.

Let me give a couple of specific examples of how understanding and respecting the river translated into taking care of our families and communities. We sang songs wben we were burying our family members who had grown up and died along the river. We focused on the power of the water, both the sacred power and the power expressed in the cycles of nature. Each spring—as our elders taught us—the seasonal power expressed in floods brought about the renewal of the landscape, of life.

I have another example of how we linked river knowledge and river power to the knowledge and power in our human lives. Late one summer evening when my grandmother and I were down at the river getting water, a light breeze started the cottonwood leaves chattering overhead; she told me to stop and listen. A sliver of moon hung in the sky and she motioned up to it and then to the trees: "Listen to the cottonwood women talking," she said to me. I asked her what they were saying and she said that I should always remember that I am like the river and that one day I would flow and become a woman. Like the popping trees in the spring, and later when the ice was breaking, I would live a springtime, like the river, and bring life into the world. It was then that I learned about how tbe seeds of cottonwood trees are imbedded into the soft river soil by the swift moving waters that flooding causes in the spring run-off. I learned about the gift of life, and she made clear to me the Lakota saying, "Our children are sacred," with her explanation of how young cottonwood trees were the gifts of floods. I learned then to respect those powerful changes and appreciate our connection to the river, the trees, and the land.

Our everyday lives were spent learning lessons about change and our people used those lessons to make decisions like where to build our homes and where to plant our gardens. Immigrants have not learned much from American Indians when it comes to human connectedness to the land. Our understanding of home is probably because we know Earth as our grandmother, Unci Maka. Unfortunately, our perspective and the wisdom of our

elders are never fully appreciated, especially when it comes to stewardship, or when environmental changes are contemplated.

To go back to your comment about disbelief, I think it is untrue that indigenous people had no real sense of the power of technology. On the contrary, our people were more keenly aware of the power of making choices. It wasn't that we all disbelieved that the river's course could be changed. We were in disbelief that the wasicu would do such a thing. Our choices as Lakota people were made from a different way of discerning the world.

Kathryn I just want to make a comment about the Dakota world. Although I lived along this river as a child, we Dakota don't in general live that close to the river. Of course we do have the Mississippi, the Yellow Medicine, the Great Sioux, the Minnesota. . . a lot of rivers. The water was always a very big part of our lives too. It's like you say, Lydia, mni wiconi.

My father, my step-dad, Woodrow Keeble, was born in 1917. His dad was Isaac Keeble, who was very traditional, and never learned to speak a wasicu language. My step-dad used to tell us how to get up in the morning. The old way of making your day is to go out on your own to the east. You face the sunrise and when the sun breaks, you acknowledge the creator, "Wakan Tanka Tukansina." You acknowledge the day and the gift of life that you have and the woods and everything around you on every horizon. That is one of the important things that they did iu those days when we lived in camps—we always camped by some kind of water. You would go down in that sacred moment of silence early in the morning to greet the creator, to wash your face, or to use the water in some way to bless yourself. Because it is mni wiconi.

My dad used to tell about how when he was a little boy, his dad would tell them, all six of them, all boys, "Inajin po," and they would get up. They lived on the west side of Pickerel Lake and they would all have to run down to the lake and he would make them jump in the water. They would all have to go in for a swim in the morning, until the ice formed and they couldn't get through the ice any more. And if the little ones tried to complain, he would tell them that it makes your heart strong. And it made my dad's heart strong. He was North Dakota's most decorated war hero from World War II and Korea. He was never given the medal of honor that he was recommended for three times because it was a racial issue—and that's been acknowledged now. But that's just an aside—a plug for my dad! [Laughter]. He lived when it was important to greet your day with the water and to face the sun and commune with Wakan Tanka.

Kim I grew up in Flandreau [SD] mostly, always living about a half mile from the Big Sioux River. Every time I go by a river—it doesn't matter if it's that one or another one—I always look down and think, "I wonder where that goes?" It's always struck me that rivers are roads, yet I haven't spent a lot of time on rivers, canoeing or anything. But I've always felt that they are

going somewhere, going somewhere in a good way. I've always been interested in what's at the other end. I don't know if I focused on rivers as travel routes because I always wanted to go somewhere ever since I was small, to travel and see other places, or because there is something in my cultural memory—I don't know how to describe it—in which rivers were our roads. And I think rivers are still central to the Dakota landscape today.

Lydia Rivers were important boundaries for us. In land descriptions, in maps, in designating meeting places, a river would be mentioned. We had Lakota names for all of the rivers in our territory. The Mnisose was the grandfather river. The course of the river can be changed, but how does the change affect the environment? How does that change affect the lives of the people, the animal and plant nations? These were not issues that the government thought about when it built the dams. How many of those animals and plants that Lewis and Clark saw are now extinct? And, how many more will disappear? Can man ever replace what was lost?

Lanniko Last spring I went down to St. Louis and traveled back up the river during spring break. I went along the road coming up and I made a point of going off the road and I saw those levees, big mounds directing water up away from the river, and it reminded me of a picture from when I went to parochial school. We learned all about how the great gardens of the world in the Christian belief were created, how they were all built by slave labor. The whole idea was to turn the desert into the Garden of Eden. When I came up the river from St. Louis, I was reminded of all of that human energy needed to reshape the landscape, and how the newcomers didn't call us people of the river. Yet that's where we were *always*. We were instead called people of the plains.

And it became a self-fulfilling prophecy, that label, one that reminds us of what has been taken away from us. Whether it's the Big Sioux or the Grand or the Cheyenne, we were people of the rivers. Yet now some of our own people don't have an understanding of what the river is. Especially young people have no real understanding of that history. Many of them grew up away from the river, moved off the river to Eagle Butte and live on the Cheyenne River Reservation. They have very little understanding of the cottonwood stories, the fish stories. They don't interact with the landscape—which they can hardly do when they're in the [boarding school] dormitory or with parents or relatives who are caught up in BIA employment or tribal employment or they're in the churches—when they're part of the institutions that shape them with western thinking. They don't have the same kind of connection with the landscape which in itself is the primal, sacred language of the very being of indigenous people.

When Lewis and Clark came up, I can't help but think that with all their litany of what they saw, the things they described in their journals, that they were thinking in terms similar to the Garden of Eden. And the plant

life and birds and animals were there waiting for them to catalogue as new species, to re-name. They were coming from a Christian philosophy of understanding, of what happened in another part of the world. To name and catalogue—to try to know everything—is a way that is opposite to the way we had. We didn't go about naming objects, plants and phenomenon like Western explorers; our belief back then was that the "thing" gave its power and the knowledge of its being-ness to us. We didn't have names for everything because not everything gave us its name. The landscape is loaded with mysteries.

Certain plants gave us the power to heal when we used them and they gave us their names. Such knowledge came to those who made it their work to help others through healing. Those people were taught how to work with those things; they received that knowledge through dreams and the like. Today, people who hold such knowledge have also learned that it is not valued like scientific knowledge. We don't talk about those things today. Instead, our people give up that powerful knowledge to be treated by Indian Health Service and Western medical practitioners.

Kim Your comments bring to mind one of my pet peeves. I used to do environmental program planning for tribes and I don't like when people so often say that we are inherently environmentalists—that it's in our blood. Because I think that discounts the fact that we got knowledge of our landscape by interacting with it and having a relationship with it. We—or our ancestors—learned those things and cultivated that knowledge; they weren't just born with it. It's about practice. And if you don't acknowledge that, then you don't necessarily have to practice. So you lose a lot of knowledge by not using those resources every day like in the past and then having a thoughtful spiritual relationship with them.

But I was also interested in something else you said, Lanniko. Were you relating Lewis and Clark's classification of species to cultivating a landscape or creating a certain kind of landscape?

Lanniko The Christian heritage they inherited— Jefferson, Lewis and Clark—has a certain understanding of the Middle East and how the Middle East deserts were manipulated to be habitations for large numbers of people. So when we talk about large populations of outsiders coming into this country, what better way to accommodate them than to harness ideas—with roots in Middle East history—to build the nation and to overcome the landscape that was here to accommodate the European? That was what I was referring to when I said that there was a design. And that design is still evident along that path that I drove to St. Louis and back. There are long mounds that were created to hold the water, to pull that water farther away from the channel of the river in order to create farms. But now all the cities are choked with big plumes—pollution emissions in the air and effluents in the water. They've harnessed the power of the river but that

power has another objective now. Rather than being gardens, it is trapped by industries.

I think that with the advancing technology, the vision that was there has changed. I can't help but imagine that in the abundance of what Lewis and Clark saw, they must have felt they had fallen into some wonderful magical place. Whatever they saw when they were out there with their surveyors and looking at the raw, innocent landscape, seeing what potential was there—I would be very curious to see what they saw for the future of that landscape. What did they anticipate they would achieve?

Kim Craig, do you want to talk a little about your perspectives about what the intentions of Lewis and Clark were? We've had some debate amongst ourselves—more in the pieces we've written than in spoken conversation—about what the intentions and goals of Lewis and Clark and the Corps of Discovery were. For example, in terms of Lewis and Clark's classification of species, Lanniko made an interesting point in relating the classification to the eventual taming of the landscape. It's not a direct connection perhaps in terms of their goals, but can be seen as part of an overall vision.

Craig Howe Theirs was a scientific expedition. Jefferson charged them with recording all of those things that were new to science. It was not new to humanity. It was old knowledge to all of those Indian tribes. Lewis and Clark were documenting it for scientific purposes, so it was a new "discovery" for them. At most, in terms of future settlement, they were thinking about how to get trading posts up here. The records do not seem to support that they were considering that non-Lakotas or non-Indians would be living up here in vast numbers. It is hard for us to imagine, but at that time they couldn't see the US population exploding, I don't think. They were not that visionary. Jefferson himself thought it would take hundreds of years before non-Indians would get here. So the idea was not to be negative but to be good to Indian tribes because there was no way they could alone extract the resources of the area. There were too few Americans, so they had to try to figure out a way to use the Indians to exploit the natural resources while simultaneously making Indians dependent upon the US.

In the bigger picture today, I think we put a lot more emphasis on Lewis and Clark; we make them into a bigger event than they were. Because the non-Indians are celebrating the bicentennial of Lewis and Clark we too put too much emphasis on it. Lewis and Clark didn't *cause* anything in my mind. They came and they left.

Lydia It was the beginning of the end of the Mnisose, the beginning of the end to a way of life as our people knew it.

Craig The fact is that there were non-Indians here for decades before Lewis and Clark came.

Lydia But before them it wasn't a scientific expedition to record rivers and tribes and start counting Indians. The Europeans who came before them learned to live with the Natives. Lewis and Clark had a purpose to record what would be in their way when they did finally come. They were a scouting party. They learned that the Lakotas are a fierce tribe that they'd have to deal with. They were probably the first grave robbers to enter Lakota territory.

Lanniko I don't think we can speak of Lewis and Clark without speaking of Jefferson. He was a visionary individual. Anybody can *talk* about empire-building, but he had so many projects ongoing in different aspects of his personal life. And being the public man that he was, some of those projects spilled over into the public realm and this one was one of them.

Kim I just read something about Jefferson being essentially the first American archaeologist in that he started excavating the mounds on his property. Today, we all know about that method of scientific inquiry, but at that time, trying to decipher human history through examining human bones was not something people did. It was a very weird thing to go dig up bones and study them. So it is argued that he was very much a scientist in his own right.

But this brings me back to the idea that rather than Lewis and Clark's individual intentions or even those of Jefferson, what's more important is what that journey has come to symbolize for people. That's why Kathryn's point is interesting—that they were part of another continuum, not necessarily that they directly impacted something but that they were part of a broader cultural movement that resulted in the kinds of things that you're talking about in your pieces about the taming of rivers. But that also gets back to Craig's point too: You don't have to attribute to them intention or necessarily direct responsibility for these things. But certainly I would view them as part of American westward expansionism because science is part of that. Science was very much a tool of expansionism.

Craig Yes, science also involves "discovery." Another kind of wanting to be the first . .

Lanniko Politics too. You don't want to forget that. You can't practice science without practicing politics.

Kim It was one of Jefferson's big political tools, right? Science.

Lanniko Yes. To me that's just another language for being able to be intrusive. The whole business of excavating is the story of European expansion and control.

Craig What Jefferson was trying to do was give the fledgling United States a "History." In Europe they had the castles and ruins, and so what he was trying to do when he wrote a paper about this was to show that over here there was a history. He also wanted to show how things were even bigger over here than in Europe. So he was looking for these mastodon bones. . .

Kim Yes, Jefferson and others were having fights with French naturalists who said "Oh, *nothing* has happened over there." So, if you know that he was fighting with French naturalists and trying to prove that there was history here worth talking about . . .

Craig Right! So he used American Indians to show them how much better this continent was. "Look, American Indians are taller and stronger and did more than you Europeans and your ancestors." Jefferson, on that level, was promoting the noble savage. He was promoting a sense of indigenousness here. Later, maybe he argued another side, but at that time he was trying to give the US an identity separate from Europe. And he argued, "What does the US have that Europe doesn't? It has this indigenous history, it has American Indians and it has the landscapes and the species that are unique here—that you do not have over in Europe and so that's what makes this new country strong." That is what would give this country a unique identity.

Kim I see that as an early sign of Euro-Americans trying to become indigenous here.

Craig And that's why when they dressed up at the Boston Tea Party, they didn't dress up as colonists. They dressed up as Mohawks. The whole idea was to take on the identity of the land so they became Indians in order to fight against the British.

Kim So why are Lewis and Clark so important now? Is it just because we all the feel the need to respond to the commemoration? I certainly never thought about them before the bicentennial very much. I remember knowing who they were—we probably all heard about them in school. But have others of you thought about them extensively and the repercussions of what they did?

Lanniko Not me. But I realize that the bicentennial event is an attempt to rejuvenate a sense of belonging here. People are all capitalizing on an historical event in order to have some prominence here today. There are squabbles all up and down the river about how to sell the bicentennial. Although more recently there has been more positive language. I just heard on public radio about the indigenous perspective, indigenous commemorations. But that also seems like another effort to try to bring capitalist enterprise to this part of the world. As Americans we've exhausted everything; we've wasted and exhausted so much that we're now looking at capitalizing on history to get the world to come and see and spend their money here.

Kim It sounds like you're talking not only about whites but about indigenous people too.

Lanniko Yes! Absolutely! It's cultural enterprise—cultural tourism that they're hoping to achieve, not only whites but Indians too. They're talking about the positive financial repercussions of the Lewis and Clark commemoration today as a result of people coming to this part of the world to see who we are . . .

Kim Craig was saying in an earlier meeting that the Lewis and Clark centennial in 1904 was not such a big deal, right?

Craig Right.

Kim So, Lewis and Clark have in fact been revitalized as historical figures. In 1904, most Americans didn't know who they were.

Craig Yeah, it wouldn't even be close to how it is now.

Lydia Now, they're creating American heroes for their own history books.

Kathryn I didn't really think about them before this commemoration. In school, yes, they were some more wasicu people I had to learn about. But when I was a kid, the only thing that was interesting about them—in depictions of them—they kind of looked more like us. I thought, "How come they wear clothes like that?" They weren't going around with the little powdered wigs and the fluffy blouses. They looked more like real people—the way they were dressed. But they were still wasicus. I never really gave it too much thought. My thing as a kid was trying to keep them all straight. I had to keep all these American heroes straight in my mind and I didn't really make too much effort to do that [laughs].

Lydia They also took Indians and created Indian heroes for their own history —those Indians who helped white people. When you're a little kid trying to hang on to your identity and your cultural pride and you see those Indians who helped the whites destroy our way of life, like Sacajawea, you began to wonder why people cannot accept and appreciate differences. If we don't conform, we cannot be successful in the eyes of the whites.

Gladys Who interpreted that name? I always ask that because I'm curious. Apparently in 1904 they must have had a dedication in Mobridge because my oldest sister had a picture of my grandfather and my grandmother—they were young then—standing near a monument to Sacajawea just across the river from Mobridge. There was a chain fence around it and all of our relatives were standing there. The women had on shawls, of course. I thought "that must have been an important day." They must have dedicated that monument that day. My grandparents, they said "Zintkala Winyan."

Lydia What?! Oh, I always thought "wea" in Sacajawea sounded like "woman" [referring to winyan, the L/D/Nakota the word for "woman"]. Zintkala Winyan, oh, Bird Woman.

Gladys Zintkala Winyan, that's how they talked about her and it means Bird Woman.

Lydia Now that makes sense! I always wondered about that name. In Lakota "saca" means, something brittle and hard. Some people were even pronouncing it "Sacacawea." You know what "caca" means so that couldn't be right.

Gladys I was wondering if "Sacajawea" was a spin-off of "Zintkala Winyan," that the wasicus couldn't pronounce it. I wondered if that was the best that they could do and now we know her as Sacajawea.

Kathryn Is that what it means in her language?

Craig She had two names. One is Shoshone and one is Hidatsa. And one of them, I think, means Bird Woman. But it would have been strange if she had a Lakota name because Lakotas never saw her. She was never on this stretch of the river.

Gladys But I heard them talking about her where I grew up, "Zintkala Winyan." She was known. I never heard of Lewis and Clark, but people talked about *her*.

Craig I can't remember hearing about Lewis and Clark at school.

Lydia I remember seeing pictures, the explorers standing in canoes and pointing toward the west and wearing buckskin clothing like real frontiersmen.

Kathryn This whole bicentennial has forced me to look at it. Of course, as an adult you have a different view when you know the history that has ensued.

Lanniko When I was a girl, I somehow got it fixed in my head that Sacajawea was a barren woman. "Saca, saca," which in Lakota means dry or shriveled up, like someone's hands when they have been in water a long time. And then "wea," which sounds like "winyan", and I put that together to mean *dry woman*. That's what got stuck in my head [laughter]. I was a child interpreting "Who was this woman? She couldn't have children from a man of her own people." I had this really wild imagination! I thought she could only have a child with a wasicu, a Frenchman. She had Little Pompy.[4]

Kim Do you think she is more important to non-Indians then to Indians, because we don't talk about her that much?

Craig Sacajawea makes the Voyage of Discovery a great story because then it's a multi-gender and multi-cultural story. That's why it resonates with people so strongly.

Lanniko That's the reason that we created the Unity Fest and the Sacajawea Learning Center in Mobridge [SD]. The reason why we did it there is because people from other places in the world know about Mobridge because of the brutalities that have been publicized all over the world in newspapers. So when strangers come through the door who have that knowledge, some of them do ask questions and I refer them to our efforts to try to change that history with the Unity Fest, to learn about one another and

hopefully have some better understanding of our human-ness, our frailties and also our capabilities to relate to each other in a positive way.

Craig I think again that if we look at the historical documents, none of the Winter Counts mention Lewis and Clark. So if we use that as a milestone, was this event that important? Little Big Horn is so important to non-Indians. It's the most written-about battle. And Lewis and Clark are so important to non-Indians. But again, using the Winter Counts as evidence, Lewis and Clark are not that important.

Lydia It's not that Little Big Horn was not an important event to us, but that people were afraid to talk about it because they were afraid of retaliation. It couldn't be put in a winter count because then it could be taken as evidence against those involved. Bad enough the 7th Cavalry took revenge against Big Foot and his band at Wounded Knee.

Kim Kiowa writer N. Scott Momaday has stated that "Lewis and Clark remains in my mind one of the great epic odysseys in American history." So what's your interpretation of such a perspective?

Lydia For the Americans it is [an epic odyssey] in their history, but I don't see it that way.

Craig I think in human history it is an epic odyssey. We have to go beyond "the" Indian viewpoint as if there is a single Indian viewpoint and we have to judge Lewis and Clark on where they fit in the big picture of human history. At that time and in this place they tried to do something that they thought was really, really important. It was against a lot of odds that they fulfilled their mission, although they failed in the main thing they went to look for—that [water] passage to the Pacific. And they had to realize that failure early and yet they soldiered on. In lots of ways, they brought all types of new knowledge back. They were outdated by the time they got back. To me, that's the important point—that they didn't *cause* anything. By the time they got back, they were meeting non-Indians going up the river. You can read the journals; all the way down, they were meeting non-Indians coming up the river. They weren't the first. All these peoples along this stretch of the river had seen non-Indians before.

Kim I think that's how "the" history books are portraying them, as being the first.

Craig And a lot of us buy into that. Lewis and Clark wanted to be the first—that was their whole goal. And by us perpetuating the idea that they were the first, they're winning in a sense—we're still bought into their incorrect history. They weren't the first—they weren't even close to the first. They weren't that important as individuals. But that journey, as a journey, was on this almost epic scale in terms of the importance it has had to this nation. The truthfulness of these epic journeys is a whole different issue. But

a lot of nations have these epic journeys and we can have that in the migration stories of Native tribes. This was the epic journey for this nation.

Kim So, it's more the way the story is told than perhaps what actually happened?

Craig And I think the great thing for us, the great opportunity we have, is that it's in historical time and we have the documents so that we don't have to treat it as myth. We can come back and interrogate it. And we can challenge that epic journey of this nation. And we can challenge it using the technologies and the techniques of that nation. And I think we have abundant evidence to challenge that—the truth value of that epic journey.

Kim I don't mean to pick on Momaday, because it's important to know the context in which he made his statement. But while one might truthfully make that statement, as a Native person I would never say that without also saying "and this is what it means to us—it doesn't mean the same thing to us." Liz [Elizabeth Cook-Lynn, a founding member of the Oak Lake Writers] has also pointed out that he said he was in awe of the Lewis and Clark journey.

Craig I can see it! If you sent 40 guys with the knowledge they had at that time, to do all that, it's awe-inspiring at some level. I'm awed by the fact they were able to do it. Now, that doesn't mean that I think it's an awesome thing, right? I'm awed by the fact that they decided they would do that. How it's played out I think is completely wrong. And that's part of what I'm trying to do is to show that the myth that came out of that is a myth not based on fact.

Kim And a related question is, "How is what came out of the Voyage of Discovery operative today?" What are the contemporary manifestations of it globally? This idea of expeditionary force—voyage and discovery—still resonates in foreign policy discussion today. Liz gets at that in her essay included in this collection—the discovery and the saving of people—those kinds of dialognes are still pervasive in American culture today and the fact that we are a moral nation that has God as our symbol. So you're not just colonizing for self-interested reasons, but you're colonizing because you're saving the world and you're bringing democracy to the world. She relates this still pervasive idea to the ways Lewis and Clark is celebrated today.

Craig To me, that's not what they were doing.

Kim No, not necessarily what *they* were doing, but it's the way the story is told—it's what the story means. She's saying the story means something to Americans—it's part of that overall belief system. In a way, it doesn't matter what Lewis and Clark themselves intended.

Craig Maybe we should talk about the differences between Lewis and Clark? It's kind of "the hero," singular, isn't it? Two men made into one word. To what extent do we differentiate between them?

Kim I know I didn't think about them as individuals until I read Ambrose's book that foregrounds Lewis.[5] Now I know that they were very different people and their lives had very different outcomes.

Kathryn My son, Zion, had a comment about that. He said "I think I might have committed suicide too if you had named me Meriwether. Meriwether, that's a jacked-up name!" [laughter]

Craig It is interesting, the insistence on that being basically one word when at least one side of the equation—Lewis—was a tormented being.

Lydia In the end of my piece, I wrote, "What was he thinking when he put that buffalo robe on the floor and ended up killing himself?

Kathryn I wondered that too, why did he do all of that? Almost like . . .

Lydia Like he might have had some regrets.

Kathryn Maybe that's what it was—almost like a ceremonial act. It seemed like he was trying to soothe his mind.

Craig Apparently a number of individuals from the expedition had significant difficulties. Several of them were charged with homicides after the expedition. They had problematic lives beyond the experience of the expedition. But in terms of Lewis, the Slaughter book argues that those guys had to adjust to a new way of thinking and a new way of being and basically that Clark was able to become more Indian and Lewis couldn't and that just led to his spiral downward.[6] Slaughter uses writings by Clark to show that he starts to talk like they record the Indians talked. And he wrote a speech abont their horses being stolen even before they were stolen. In his journal he wrote a speech about how he was going to talk about it even thongh it hadn't happened yet—that in a dream he heard the horses talk to him and say they'd be taken. It's jnst really interesting. Becanse Clark *could* accommodate himself to this new way of *being* out there—he lived, whereas Lewis couldn't accommodate himself. He was too "civilized" and he couldn't accommodate himself to this other mindset.

Kathryn Do you have any historical insight as to why he committed this suicide the way that he did? Did he leave any notes?

Craig He was in debt, big time. He was snpposedly mismanaging funds and he had the worst case of writer's block. He got back and he hadn't written one word. He was supposed to write np the journals because he was supposedly the best writer. And he didn't write one word from 1806-1809 despite pressure from Jefferson to publish.

Kim If you read Stephen Ambrose's *Undaunted Courage,* he makes the case that by our standards today, Lewis would probably have been considered mentally ill—bipolar disorder—although they didn't have that term then. He didn't deal as well as Clark emotionally with the trials of being immersed in other cultures and with a bunch of charges who didn't always do things the way he wanted them done.

Craig For small offenses he would go ballistic. And these are things we don't hear about. For example, a hatchet was stolen. Well, they didn't know it was stolen. A hatchet was lost and Lewis wanted to burn that Indian camp—the whole camp. The guy was almost off his rocker. I think Cruzatte tried to kill him [langhter]. I think you can make a strong argument that Cruzatte tried to kill him. The story is that Cruzatte thought Lewis was an elk and shot him, but I think he knew it was Lewis and he really *tried* to shoot him and because he only had one eye, he missed and got him in the bntt! [laughter]

But before we stop, Gladys, if you feel comfortable, I'd like to hear the rest of that story about Ed Hawk. Was this along the Grand River where he lived?

Gladys That's right. In fact, the Corps built a park there—it's called Indian Camp. And people still come there—there are RV hookups there. That was part of the plan of the Corps.

Craig So the water was backing up from the Missouri River dam up the Grand River? And so they came in and they just bulldozed his house?

Gladys Yes, but he was living along the Missouri—he was at the part where the Fool Soldiers Band commemoration was, near the place they call Mile Long Bridge.

Craig So what's the fuller story on that? Why did they just come and bulldoze him?

Gladys He wasn't the only one. But he just wouldn't sign and he was in his 80s. The water was backing up and I think they just wanted him out of there becanse they wanted to clear that bottom land as much as they could.

Kim So if they bulldozed and you didn't sign, does that mean you didn't get any compensatiou at all?

Gladys I don't know that. . . But many people were instantly displaced—were made instantly homeless.

Craig What happened to Mr. Hawk? Do you know?

Gladys I know that they finally moved him into a house in town—in Wakpala [SD]. And he lived there a very short time and then of course he died. This displacement really had an effect on a whole bunch of families because whole families lived together. And now they were displaced and they could

no longer live together as family units and so they had hard times. They had hard times finding places. And I kind of blame our tribe for this in part—I'm not putting the whole blame on them. They weren't educated enough to really have a big plan up there to meet the needs of these people who were suffering.

So, there was a white man from McLaughlin. His name was Wendell Keller. He moved a bunch of these one-room shacks into town and boy he was making lots of money off of that, charging rent. No running water, and of course no indoor bathrooms. So there were a lot of people coming in and making money off of these people. And so that's an impact of the flooding—a direct impact and I blame that on the river [project]. Even though for all the good that it did, we're back to square one. There's no water there. I mean there's a lake there, but we have water problems everywhere, on the reservation especially. So that's just what I experienced with my own eyes and my own knowledge during that time. So I couldn't tell you more than what I know.

Craig Do you know what happened to those two sorrel horses of Ed Hawk's?

Gladys When he moved into town, there was no place. The grazing land was gone. What could you do with them? People who had a lot of horses, who had a lot of chickens—there was no place to take them in town. There was no place where maybe they could put up a chicken coop and continue with that way of life. So, I don't know what happened. They probably sold them.

Craig Or people might have just taken them too. . .

Lydia People were self-sufficient then. They raised stock and they had gardens and then to be placed into town where they had no income, no water, and no lights. . .

Gladys You know, there was a cultural side to the loss too. My grandmother died when I was only about 11. But I lived with her during that time. And here's what I saw. When she had a hide she would take it down to the river and she would stake it on the side of the water that was flowing—for days, I don't know how many days. That was her way of cleansing that hide and stretching it out and drying it—using part of it for rawhide and the other part for tan hide—for the tops of the moccasins. So that cultural way was also taken from us. I don't know how they tan hides now. They even have classes on it: "How to tan hide." When I saw that, I thought "Oh, my God!" The way that I saw it certainly can't be what they're teaching. Because I saw it step by step by step, how she did it. If I were to tan hide, I would want a river close by so I could do it the particular way that my grandmother did. But if I were to do that today, I'd keel over because I am no longer the resourceful person that my grandmother was at 80. You see, the loss of that way of life is what the river [project] did to us.

The other thing that I've noticed is that we can no longer go by the weather and predict how we're going to prepare. I think that has a lot to do with the water and the trees. What little trees we had are no longer there. We could predict different things by the river, the trees, the birds, the animals—the way they acted.

Kim But if the river's changed and the birds and animals are gone, you have no way of knowing.

Gladys You have no way of knowing all of those things. We lived so close and we depended on these birds and animals, on how they acted, how they sang, the owls at night. Now we watch the TV and they tell us the weather forecast and that's what we're going by today. But the Indians had their own natural ways of interpreting a lot of that.

Lydia Cultural knowledge.

Craig Can that cultural knowledge—can those interpretive skills and abilities—can new ones develop along this type of a river?

Gladys Probably, but not as thorongh as the way I was raised.

Lanniko So much knowledge needs to be a part of the language for you to have a conversation. We need a new language and a new knowledge of that landscape—new because the landscape has changed after the river changed. And in order to articulate our ongoing experiences, to interact, to be reflective, to listen to the small voice and the great barrenness which is our river today—we need the kind of language I'm talking about, the kind of language that's been lost to a great degree and that we need to redevelop.

Lydia It will probably take generations to develop that new conversation.

Gladys It begins in the soil. The soil has changed. For example, let's say that you want to transplant ceyaka[7] along the river. Maybe it will grow. Maybe it won't. But it all depends on that soil that's underneath. It has changed from the flooding. What did it bring? We don't know. So whether or not that will be an annual plant that grows by itself—you don't know that. You can't depend on that. Whereas when the river was there, you knew where to go to pick certain things because you knew it was there.

Craig So, in a positive long-term look, we as a people can develop that new type of relationship?

Gladys I think it's possible. We can try, I guess. There are people out there who are trying that. At Sitting Bull College, Linda Bishop-Jones teaches about native plants—ethnobotany.

Lanniko Her educational foundation is in traditional western botany. The tribal aspect of it is new to her program and our elders have been helping bring her knowledge up to where we have a compatible understanding of the landscape. She is learning the plants' stories.

Kathryn I don't think it will ever get to that again—to what Mrs. Hawk is telling us about—that we'll have all of the elements around us that can tell us how the winter's going to be, how tomorrow's going to be. My grandpa used to talk about that and I never even memorized it, how he used to ask, when the beavers build their lodges in a certain part of the lake, is it close to the shore or out in the middle? He would predict the winter by that. My grandma used to say how the day would be tomorrow by the sunset. She would say, when it goes down as a red ball like that it will be a good day—a sunny and clear day tomorrow and then you can do things outside. But I think technology interrupts that too much and I think that kind of knowledge is only going to be relegated to universities, colleges, and special interest sections of bookstores. I think that we ourselves as Native people are too interrupted by technology. It's permeated our modern, daily Indian-ness. In the TV generation you can really see the loss of our language. Up on my reservation, a lot of the cultural ways are leaving us because of that technology. It's a double-edged sword. We can watch KELO-land news and see these blizzards forming way out there and coming in—these Alberta Clippers. But if we were out on our own, especially now, without that knowledge that died with our grandparents, we'd be probably caught in a blizzard and die for our lack of knowledge.

Lydia So, are we beaten down and are we quitting? Hell no! [laughter all around]

Gladys The change in environment has also affected our stories—stories associated with the river. But now, with the way the water is, say, and twenty years down the line, are there going to be stories on that same level—of, say, Inktomi—that were associated with all of these elements of the surrounding area, the land and everything? They won't be the same and so it has affected that possibility. Let me give you an example. Inktomi stories about coyote, rabbit, and others—common stories that were native to us—were associated with all of the natural elements. They came out of the natural environment that we were familiar with. But if you take away the natural world as we knew it, you can no longer create or tell the stories. You can't tell the stories anymore to younger generations because those animals are no longer there to be used to tell the stories in order to teach the values those stories were intended to teach. And the stories don't resonate with the young people because of that.

Lydia Disrupting the river disrupted a way of life and a way of transferring knowledge. It broke a link. And it was not just the river, but also the boarding schools.

Gladys There is an absence there. The whole generation is changing. The other thing is, and I know that this is probably on all the reservations, but we are really experiencing on Standing Rock a lot of young people taking their

own lives. Now we try to reason as to why. She [gesturing to Lydia] talked about that one time and she came up with some possible reasons—one of which was that children have nothing to do. Their parents are not there. We have a different way of life today where one parent is working here and the other is working over there. When the children come home from school, there is no parent there. Right away, they turn the TV on and they play these games and they see all of this drama—all of this crime. And when they have a personal problem—and everyone has problems—who are they going to turn to talk about it?

When we were growing up, we and our parents were constantly associated with the land and the river. We had something to do. We had our parents to listen to us, to tell us when to plant, how to take care of a horse. Even that by itself could be a whole class, how to take care of a horse. Now that generation today has no experience with any kind of things that make sense to them except the fact that they want to copy other kinds of generations, listen to hip-hop. They want to be noticed. There really are no black and white answers to why they take their lives. We just buried one here about two weeks ago, I think. The young man who killed himself was 16 and absolutely a nice-looking young man. Now, even his parents don't know why he did that. At his funeral—they had a huge funeral for him—they heard some younger ones saying, "Do you think that if we killed ourselves, we'd have a big funeral like this? Are they going to pay attention to us?" That's what we're hearing, because we're aggrandizing that young man through this funeral. He's actually a hero in their sight and that's a sad part of it.

Lydia The kids don't have the outlets that we had growing up. Like when we had problems, we had ceremonies. We went into a sweat to pray and talk about our problems in the sweat. And people, you know, talked to you afterwards and encouraged you. When we were kids and we went into a ceremony, everyone listened and people supported and encouraged one another, but some people don't have that anymore. The positive thing is that people are realizing what was almost lost and they are relearning and restoring what was nearly lost.

Lanniko When I was growing up, the river was not just industry to us. It gave us fuel, water, food, furniture, clothing, toys. Everything that we had came from the river—including the bullhead puppets [laughter].[8] Up the river were little dams where there were little creeks where those bullheads were. But what I was going to say was that we had not just a physical sense of who we were, but we were tired at night from the work. We would go to bed and sleep and our nights were filled with wonderful dreams of our experiences. And now we have a generation of young people who don't have such experiences—such interpretations of a world in their dreams. I wonder about that all the time. If they don't have that way of contributing to

the community, by hauling wood to the elders, such things that bring value to us as a person—are they turning their knowledge of who they are—in terms of our community—inward? Do they look to see a worthless being, a person who is in the way or who is the butt of someone else's anger? If you are a young person in today's world, this is what the aftermath of the river changing has brought. There is a world of difference between understanding through knowledge of place how the world has come about and understanding the world through what these young people have—canned knowledge.

Across from the [Sacajawea Learning] center we have in Mobridge, I have watched a whole hillside slide into the river. Every time she comes over [gesturing to Gladys], we go out and look at that hill. We're going to go over there [gesturing to the group]. We need to be on that river when we're talking about it! We need to be physically standing on the river to look out across, to see the hills; the places we once played on are now silt. Who is telling the story of this devastation? It's good that we have something to say about the bicentennial commemoration, but the more important conversation is related to the ongoing legacy of scientists trying to put their imprint on the landscape—tearing up the land. And even our Indian people feel they need to engage successfully in making money off the land in order to survive. But as Indian people, we used to know and live off the resources that were there. We knew not to alter it in such a way that those resources would then not be there for us.

Kim There's one final question that should be addressed. What are your hopes for this book—why do you think it's important that we have this conversation? Why did you want to be a part of this project in the first place?

Kathryn I feel it is important to have Native voices speaking about this whole thing. It seems that many times nationally in the United States our voices are so little and do not have impact, nor are they sought. I thought that this was a good opportunity to be able to say something. And as we have said, writing is cathartic. The loss that I experienced as a child in Lower Brule—if you write about it you don't have to go out and hatchet somebody [laughter].

Lydia I feel similar to Kathryn. This is an opportunity to express ourselves—our thoughts—what we really think about that journey and how it affected all of us.

Craig I think it's a chance to write something that's contrary. It's a chance to examine the Lewis and Clark myth using the evidence. Collectively, as Oak Lake Writers, it's a wonderful opportunity to participate with published authors who are Lakota, Nakota, or Dakota. I think it's important to promote that type of literature. In terms of the book itself, it will be evident that we don't all think the same and that is a very important educational message—that is, that there isn't "the" Indian viewpoint on this. We're going to have viewpoints on the importance of Lewis and Clark and all aspects of this bicentennial commemoration.

Gladys It's an opportunity to preserve our personal experiences as we lived along the river and for readers to try to understand and to imagine how it really was when now there is nothing there to help us go back and investigate how it was.

Lanniko I have a fourteen-year-old daughter and I want her knowledge of history to be whole—not just what's in a textbook. When we look at the standard South Dakota geography book, there's no mention of what we've been discussing here and yet that is a sanctioned part of the curriculum that has been developed for all of our public schools, including the tribal schools. And that's the reason I feel that it's important to make what little contribution I can make to bringing that history that is not in any textbook.

Also, we can't really begin a conversation about Indians' role as stewards unless we talk about participating in river management. How can we get the river flowing again or help make changes that will recover the resources that were lost? We have something that non-Native people don't have. They need to be able to digest someone else's experience of the phenomenon of Mnisose before they can have a re-direction in their thinking.

Kim My reason is much the same as Craig's. First, I was thrilled when I heard about the Oak Lake Writers because I lived on both coasts for a while and grew weary of being the only Indian among other writers. I didn't want to serve the purpose people too often wanted me to serve—to have the perspectives and demeanor they expected me to have. When Liz told me about the Oak Lake Writers, I thought "Wow, I can sit around with other Dakota, Lakota and Nakota people" and that is a unique opportunity, as is being in South Dakota with other writers. Having grown up here, I always thought the great writers were in other places, but they're here too. So, I was very inspired by that.

Second, because I focus on "cultural studies," for lack of a better term, I am really interested in the cultural politics surrounding Lewis and Clark today. I'm not so much interested in who they were as individuals. What is fascinating is the way Americans are constructing an identity and using them as symbols. And so this is a chance to think about American nationalism, particularly white American nationalism. Lewis and Clark are a good vehicle for thinking about and critiquing those ideas.

NOTES

[1] A Lakota traditional chief and the keeper of the Sacred Buffalo Calf Pipe.

[2] Editors' note: Kathryn Akipa was uncomfortable mentioning in her autobiographical piece (also published in this collection) the caskets on the river. She felt that using that image might be to capitalize in her individually written piece on particularly painful memories of the desecration of the dead.

However, she was more comfortable leaving the reference in the dialogue transcript because the image was shared in conversation among L/D/Nakota people, thereby representing an exchange or mutual remembering rather than an individual promulgation.

[3] Vine Deloria Jr. and Dan Wildcat, *Power and Place: Indian Education in America* (Golden, Colorado: Fulcrum Publishing, 2001).

[4] "Little Pompy" (a nickname apparently given by Clark) is what Lanniko remembers Lakota people calling Jean-Baptiste Charbonneau, the son of Sacajawea and the Corps of Discovery interpreter, Touissant Charbonneau.

[5] Stephen E. Ambrose, *Undaunted Courage: Meriwether Lewis, Thomas Jefferson, and the Opening of the American West* (New York: Simon & Schuster, 1996).

[6] Thomas P. Slaughter, *Exploring Lewis and Clark: Reflections on Men and Wilderness* (New York: Alfred A. Knopf, 2003).

[7] Lakota word for "tobacco."

[8] Just prior to the taping of the dialogue, Lanniko Lee told the group a hilarious story from her childhood. Her uncles made puppets from the heads of bull head fish they caught in Mnisose. They dressed the puppets up in hats and made wigs for them and put on impromptu puppet shows at the dinner table.

Solitary

Kim TallBear

for Arlene Heminger Lamb

A chair in grass that turns to sand
and rocks at the river.
The rod, the flies bright painted or
nightcrawlers,
what was needed for
slow water.
She was a fisherwoman.
She had a granddaughter who stayed
cool in green rooms all day
not liking sun, breathed cream-coffee
turned cold in her grandmother's cup.
The fisherwoman sat
solitary, breathing rocks, wet
like earth, breathing sweet grass, the field.
'Cross the narrow water,
old, dry, cut boughs,
shade for the people,
the old dance grounds.
Perhaps she imagined bells jingle,
the hide of the drum, a deep voice
contest calling.
She must have felt her house
at her back, a mile up the road.
She'd wanted it so long.

Why the Founder of Standing Rock Sioux Camp Can't Forget the Whitestone Massacre

We must remember we are part of a larger story. We are still here. We are still fighting for our lives on our own land.

LaDonna Bravebull Allard at Sacred Stones camp along the banks of the Cannonball River. Photo by Kat Eng.

LaDonna Bravebull Allard *posted Sep 03, 2016*

On this day, 153 years ago, my great-great-grandmother Nape Hote Win (Mary Big Moccasin) survived the bloodiest conflict between the Sioux Nations and the U.S. Army ever on North Dakota soil. An estimated 300 to 400 of our people were killed in the Inyan Ska (Whitestone) Massacre, far more than at Wounded Knee. But very few know the story.

As we struggle for our lives today against the Dakota Access pipeline, I remember her. We cannot forget our stories of survival.

Just 50 miles east of here, in 1863, nearly 4,000 Yanktonais, Isanti (Santee), and Hunkpapa gathered alongside a lake in southeastern North Dakota, near present-day Ellendale, for an intertribal buffalo hunt to prepare for winter. It was a time of celebration and ceremony—a time to pray for the coming year, meet relatives, arrange marriages, and make plans for winter camps. Many refugees from the 1862 uprising in Minnesota, mostly women and children, had been taken in as family. Mary's father, Oyate Tawa, was one of the 38 Dah'kotah hanged in Mankato, Minesota, less than a year earlier, in the largest mass execution in the country's history. Brigadier General Alfred Sully and soldiers came to Dakota Territory looking for the Santee who had fled the uprising. This was part of a broader U.S. military expedition to promote white settlement in the eastern Dakotas and protect access to the Montana gold fields via the Missouri River.

As my great-great-grandmother Mary Big Moccasin told the story, the attack came the day after the big hunt, when spirits were high. The sun was setting and everyone was sharing an evening meal when Sully's soldiers surrounded the camp on Whitestone Hill. In the chaos that ensued, people tied their children to their horses and dogs and fled. Mary was 9 years old. As she ran, she was shot in the hip and went down. She laid there until morning, when a soldier found her. As he loaded her into a wagon, she heard her relatives moaning and crying on the battlefield. She was taken to a prisoner of war camp in Crow Creek where she stayed until her release in 1870.

Where the Cannonball River joins the Missouri River, at the site of our camp today to stop the Dakota Access pipeline, there used to be a whirlpool that created large, spherical sandstone formations. The river's true name is Inyan Wakangapi Wakpa, River that Makes the Sacred Stones, and we have named the site of our resistance on my family's land the Sacred Stone Camp. The stones are not created anymore, ever since the U.S. Army Corps of Engineers dredged the mouth of the Cannonball River and flooded the area in the late

1950s as they finished the Oahe dam. They killed a portion of our sacred river.

I was a young girl when the floods came and desecrated our burial sites and Sundance grounds. Our people are in that water.

This river holds the story of my entire life.

I remember hauling our water from it in big milk jugs on our horses. I remember the excitement each time my uncle would wrap his body in cloth and climb the trees on the river's banks to pull out a honeycomb for the family—our only source of sugar. Now the river water is no longer safe to drink. What kind of world do we live in?

Look north and east now, toward the construction sites where they plan to drill under the Missouri River any day now, and you can see the old Sundance grounds, burial grounds, and Arikara village sites that the pipeline would destroy. Below the cliffs you can see the remnants of the place that made our sacred stones.

Of the 380 archeological sites that face desecration along the entire pipeline route, from North Dakota to Illinois, 26 of them are right here at the confluence of these two rivers. It is a historic trading ground, a place held sacred not only by the Sioux Nations, but also the Arikara, the Mandan, and the Northern Cheyenne.

Again, it is the U.S. Army Corps that is allowing these sites to be destroyed.

The U.S. government is wiping out our most important cultural and spiritual areas. And as it erases our footprint from the world, it erases us as a people. These sites must be protected, or our world will end, it is that simple. Our young people have a right to know who they are. They have a right to language, to culture, to tradition. The way they learn these things is through connection to our lands and our history.

If we allow an oil company to dig through and destroy our histories, our ancestors, our hearts and souls as a people, is that not genocide?

Today, on this same sacred land, over 100 tribes have come

together to stand in prayer and solidarity in defiance of the black snake. And more keep coming. This is the first gathering of the Oceti Sakowin (Sioux tribes) since the Battle of the Greasy Grass (Battle of Little Bighorn) 140 years ago. When we first established the Sacred Stone Camp on April 1 to stop the pipeline through prayer and non-violent direct action, I did not know what would happen. But our prayers were answered.

We must remember we are part of a larger story. We are still here. We are still fighting for our lives, 153 years after my great-great-grandmother Mary watched as our people were senselessly murdered. We should not have to fight so hard to survive on our own lands.

My father is buried at the top of the hill, overlooking our camp on the riverbank below. My son is buried there, too. Two years ago, when Dakota Access first came, I looked at the pipeline map and knew that my entire world was in danger. If we allow this pipeline, we will lose everything.

We are the river, and the river is us. We have no choice but to stand up.

Today, we honor all those who died or lost loved ones in the massacre on Whitestone Hill. Today, we honor all those who have survived centuries of struggle. Today, we stand together in prayer to demand a future for our people.

LaDonna Bravebull Allard wrote this article for YES! Magazine. LaDonna is the Standing Rock Sioux Tribe's Section 106 Historic Preservation Officer. She is also the Founder and Director of the Sacred Stone Camp, a spirit camp established in April 2016 on her family's land on the Standing Rock Reservation, as a center of cultural preservation and spiritual resistance to the Dakota Access pipeline.

OP-ED CONTRIBUTOR

Taking a Stand at Standing Rock

KIM RYU

By DAVID ARCHAMBAULT II
AUGUST 24, 2016

Near Cannon Ball, N.D. — It is a spectacular sight: thousands of Indians camped on the banks of the Cannonball River, on the edge of the Standing Rock Sioux Reservation in North Dakota. Our elders of the Seven Council Fires, as the Oceti Sakowin, or Great Sioux Nation, is known, sit in deliberation and prayer, awaiting a federal court decision on whether construction of a $3.7 billion oil pipeline from the Bakken region to Southern Illinois will be halted.

The Sioux tribes have come together to oppose this project, which was approved by the State of North Dakota and the United States Army Corps of Engineers. The nearly 1,200-mile pipeline, owned by a Texas oil company named Energy Transfer Partners, would snake across our treaty lands and through our ancestral burial grounds. Just a half-mile from our reservation boundary, the proposed route crosses the Missouri River, which provides drinking water for millions of Americans and irrigation water for thousands of acres of farming and ranching

lands.

Our tribe has opposed the Dakota Access pipeline since we first learned about it in 2014. Although federal law requires the Corps of Engineers to consult with the tribe about its sovereign interests, permits for the project were approved and construction began without meaningful consultation. The Environmental Protection Agency, the Department of the Interior and the National Advisory Council on Historic Preservation supported more protection of the tribe's cultural heritage, but the Corps of Engineers and Energy Transfer Partners turned a blind eye to our rights. The first draft of the company's assessment of the planned route through our treaty and ancestral lands did not even mention our tribe.

The Dakota Access pipeline was fast-tracked from Day 1 using the Nationwide Permit No. 12 process, which grants exemption from environmental reviews required by the Clean Water Act and the National Environmental Policy Act by treating the pipeline as a series of small construction sites. And unlike the better-known Keystone XL project, which was finally canceled by the Obama administration last year, the Dakota Access project does not cross an international border — the condition that mandated the more rigorous federal assessment of the Keystone pipeline's economic justification and environmental impacts.

The Dakota Access route is only a few miles shorter than what was proposed for the Keystone project, yet the government's environmental assessment addressed only the portion of the pipeline route that traverses federal land. Domestic projects of this magnitude should clearly be evaluated in their totality — but without closer scrutiny, the proposal breezed through the four state processes.

Perhaps only in North Dakota, where oil tycoons wine and dine elected officials, and where the governor, Jack Dalrymple, serves as an adviser to the Trump campaign, would state and county governments act as the armed enforcement for corporate interests. In recent weeks, the state has militarized my reservation, with road blocks and license-plate checks, low-flying aircraft and racial profiling of Indians. The local sheriff and the pipeline company have both called our protest "unlawful," and Gov. Dalrymple has declared a state of emergency.

It's a familiar story in Indian Country. This is the third time that the Sioux Nation's lands and resources have been taken without regard for tribal interests. The Sioux peoples signed treaties in 1851 and 1868. The government broke them before the ink was dry.

When the Army Corps of Engineers dammed the Missouri River in 1958, it took our riverfront forests, fruit orchards and most fertile farmland to create Lake Oahe. Now the Corps is taking our clean water and sacred places by approving this river crossing. Whether it's gold from the Black Hills or hydropower from the Missouri or oil pipelines that threaten our ancestral inheritance, the tribes have always paid the price for America's prosperity.

Protecting water and our sacred places has always been at the center of our cause. The Indian encampment on the Cannonball grows daily, with nearly 90 tribes now represented. Many of us have been here before, facing the destruction of homelands and waters, as time and time again tribes were ignored when we opposed projects like the Dakota Access pipeline.

Our hand continues to be open to cooperation, and our cause is just. This fight is not just for the interests of the Standing Rock Sioux tribe, but also for those of our neighbors on the Missouri River: The ranchers and farmers and small towns who depend on the river have shown overwhelming support for our protest.

As American citizens, we all have a responsibility to speak for a vision of the future that is safe and productive for our grandchildren. We are a peaceful people and our tribal council is committed to nonviolence; it is our constitutional right to express our views and take this stand at the Cannonball camp. Yet the lieutenant governor of North Dakota, Drew Wrigley, has threatened to use his power to end this historic, peaceful gathering.

We are also a resilient people who have survived unspeakable hardships in the past, so we know what is at stake now. As our songs and prayers echo across the prairie, we need the public to see that in standing up for our rights, we do so on behalf of the millions of Americans who will be affected by this pipeline.

As one of our greatest leaders, Chief Sitting Bull of the Hunkpapa Lakota, once said: "Let us put our minds together and see what life we can make for our children." That appeal is as relevant today as it was more than a century ago.

David Archambault II is the chairman of the Standing Rock Sioux tribe.

NO

DAKOTA ACCESS PIPELINE

PROPOSED DAPL ROUTE

Cannonball, SD – On April 1st, 2016, tribal citizens of the Standing Rock Lakota Nation and ally Lakota, Nakota, & Dakota citizens, under the group name “Chante tin’sa kinanzi Po” founded a Spirit Camp along the proposed route of the bakken oil pipeline, Dakota Access.

The Dakota Access Pipeline (DAPL), owned by Energy Transfer Partners, L.P., is proposed to transport 450,000 barrels per day of Bakken crude oil (which is fracked and highy volatile) from the lands of North Dakota to Patoka, Illinois. The threats this pipeline poses to the environment, human health and human rights are strikingly similar to those posed by the Keystone XL. Because the DAPL will cross over the Ogallala Aquifer (one of the largest aquifers in the world) and under the Missouri River twice (the longest river in the United States), the possible contamination of these water sources makes the Dakota Access pipeline a national threat.

This Spirit Camp is called Iŋyaŋ Wakháŋagapi Othí, translated as Sacred Rock, the original name of the Cannonball area. The Spirit Camp is dedicated to stopping and raising awareness the Dakota Access pipeline, the dangers associated with pipeline spills and the necessity to protect the water resources of the Missouri river. We reject the appropriation of the name “Dakota” in a project that is in violation of aboriginal and treaty lands. The word Dakota means “the People” in the Dakota/Lakota/Nakota language and was never intended to be used in a project which violates traditional ceremonial areas.

Chante tin’sa kinanzi Po is a grassroots group with the following mission statement: “They claim this mother of ours, the Earth, for their own use, and fence their neighbors away from her, and deface her with their buildings and their refuse.” – Chief Sitting Bull. His way of life is our way of life–standing in opposition to the Dakota Access Pipeline is our duty. Group: Chante tin’sa kinanzi Po translates as People, Stand with a Strong Heart!

The Dakota Access threatens everything from farming and drinking water to entire ecosystems, wildlife and food sources surrounding the Missouri. The nesting of bald eagles and piping plovers as well as the quality of wild rice and medicinal plants like sweet grass are just a few of the species at stake here. We ask that everyone stands with us against this threat to our health, our culture, and our sovereignty. We ask that everyone who live on or near the Missouri River and its tributaries, everyone who farms or ranches in the local area, and everyone who cares about clean air and clean drinking water stand with us against the Dakota Access Pipeline!

Everyone is welcome to join the Spirit Camp located at the conffluence of the Cannon Ball and Missouri River on the Standing Rock Sioux Reservation to pray, share food and stories and connect with the land and water that is being threatened by the Dakota Access Pipeline.

For more infomation:

FACEBOOK.COM/CAMPOFTHESACREDSTONE/

GOFUNDME.COM/SACREDSTONECAMP

We will not allow this pipeline to cross our land, water, and sacred sites.

We will not allow Dakota Access to trespass on our treaty territory and destroy our medicines and our culture. From the horse ride that established the Camp of the Sacred Stones, to the 500-mile Run for Our Lives relay that delivered our recommendations to the Army Corps of Engineers, with the hundreds of community members who met with Army Corps Colonel Henderson on April 29, and the ongoing vigilance of our prayers, we are committed to stopping the Dakota Access Pipeline.

"The place where pipeline will cross on the Cannonball is the place where the Mandan came into the world after the great flood, it is also a place where the Mandan had their Okipa, or Sundance. Later this is where Wisespirit and Tatanka Ohitika held sundances. There are numerous old Mandan, Cheyenne, and Arikara villages located in this area and burial sites. This is also where the sacred medicine rock [is located], which tells the future."
LaDonna Bravebull Allard (Lakota, Dakota)

"The dangers imposed by the greed of big oil on the people who live along the Missouri river is astounding. When this proposed pipeline breaks, as the vast majority of pipelines do, over half of the drinking water in South Dakota will be affected. How can rubber-stamping this project be good for the people, agriculture, and livestock? It must be stopped. The people of the four bands of Cheyenne River stand with our sister nation in this fight as we are calling on all the Oceti Sakowin or Seven Council Fires to do so with our allies, both native and non native in opposing this pipeline."
Joye Braun (Cheyenne River)

DAPL Violates Numerous Federal Laws

Fort Laramie Treaty of April 29, 1868

The DAPL violates Article 2 of the 1868 Fort Laramie Treaty which guarantees that the Standing Rock Sioux Tribe shall enjoy the "undisturbed use and occupation" of our permanent homeland, the Standing Rock Indian Reservation. The U.S. Constitution states that treaties are the supreme law of the land.

Executive Order 12898 on Environmental Justice

All agencies must determine if proposed project disproportionately impacts Tribal community or other minority community.
The DAPL was original routed to cross the Missouri River north of Bismarck. The crossing was moved to "avoid populated areas", so instead of crossing upriver of the state's capital, it crosses the aquifer of the Great Sioux Reservation.

Pipeline Safety Act and Clean Water Act

DAPL has not publicly identified the Missouri River crossing as high consequence. The Ogallala Aquifer must be considered a"high consequence area", since the pipeline would cross critical drinking water and intakes for those water systems.The emergency plan must estimate the maximum possible spill (49 CFR §195.452(h)(iv)(i)). DAPL refuses to release this information to the tribe.

National Environmental Policy Act (NEPA)

A detailed Environmental Impact Statement (EIS) must be completed for major actions that affect the environment. Also, the Army Corps of Engineers must comply w/ NEPA for the permit for the Missouri River crossing. The way agencies get around this is to provide a lesser study, a brief Environmental Assessment (which Dakota Access has done). A full EIS would be an interdisciplinary approach for the integrated use of natural and social sciences to determine direct and indirect effects of the project and "possible conflicts...with Indian land use plans and policies (and) cultural resources" 40 CFR §1502.16

Executive Order 13007 on Protection of Sacred Sites

"In managing federal lands, each executive branch agency shall avoid adversely affecting the physical integrity of such sites." There are historical ceremony sites and burial grounds in the immediate vicinity of the Missouri River crossing. The Corps must deny the DAPL permit to protect these sites in compliance with EO 13007.

EXCERPTS FROM STANDING ROCK SIOUX TRIBE RESOLUTION NO. 406-15 - SEP 2, 2015

WHEREAS, the Standing Rock Indian Reservation was established as a permanent homeland for the Hunkpapa, Yanktonai, Cuthead and Blackfoot bands of the Great Sioux Nation: and
WHEREAS, the Dakota Access Pipeline threatens public health and welfare on the Standing Rock Indian Reservation; and
WHEREAS, the Standing Rock Sioux Tribe relies on the waters of the life-giving Missouri River for our continued existence, and the Dakota Access Pipeline poses a serious risk to Mni Sose and to the very survival of our Tribe; and .
WHEREAS, the horizontal direction drilling in the construction of the pipeline would destroy valuable cultural resources of the Standing Rock Sioux Tribe; and
WHEREAS, the Dakota Access Pipeline violates Article 2 of the 1868 Fort Laramie Treaty which guarantees that the Standing Rock Sioux Tribe shall enjoy the "undisturbed use and occupation" of our permanent homeland, the Standing Rock Indian Reservation;

NOW THEREFORE BE IT RESOLVED, that the Standing Rock Sioux Tribal Council hereby strongly opposes the Dakota Access Pipeline; and
BE IT FURTHER RESOLVED, that the Standing Rock Sioux Tribal Council call upon the Army Corps of Engineers to reject the river crossing permit for the Dakota Access Pipeline...

Indigenous Youth Are Building a Climate Justice Movement by Targeting Colonialism

Monday, 20 June 2016 00:00

By Jaskiran Dhillon (/author/itemlist/user/52316), Truthout (http://truth-out.org) | Report

Rezpect Our Water campaign youth leaders (left to right) Tokata Iron Eyes, AnnaLee Yellow Hammer, Precious Winter Roze Bernie and Winona Gayton stand in defense of land and water. (Photo: Kettie Jean)

"Climate change is the defining issue of our time." These urgent words came from 16-year-old Xiuhtezcatl Roske-Martinez, a young Indigenous man raised in the Aztec tradition, at a United Nations General Assembly event (http://indiancountrytodaymedianetwork.com/2015/07/05/video-15-year-old-climate-warrior-address-un-calls-climate-change-human-rights-issue) on climate change held on June 29, 2015. Roske-Martinez is the youth director for Earth Guardians (http://www.earthguardians.org/new-page-1/), a nonprofit organization centered on galvanizing global youth leadership to defend the planet for current and future generations (http://www.justiceforgirls.org/uploads/2/4/5

through school-based presentations, legal challenges (http://ourchildrenstrust.org/sites/default/files/16.04.08MTD.Decision.PR_.pdf), eco hip-hop and public talks -- elevating the voices of young people near and far and empowering them to become forces of change in their own right.

Upon learning the federal courts upheld the rights of youth on April 8, 2016, in a landmark constitutional climate change case (http://www.ourchildrenstrust.org/sites/default/files/16.04.08MTD.Decision.PR_.pdf) brought forward by Our Children's Trust (http://ourchildrenstrust.org/about) (representing 21 youth plaintiffs) against the US federal government and fossil fuel industry, Roske-Martinez made the following public statement:

> When those in power stand alongside the very industries that threaten the future of my generation instead of standing with the people, it is a reminder that they are not our leaders. The real leaders are the twenty youth standing with me in court to demand justice for my generation and justice for all youth. We will not be silent, we will not go unnoticed, and we are ready to stand to protect everything our "leaders" have failed to fight for. They are afraid of the power we have to create change. And this change we are creating will go down in history.

And change things they will.

Roske-Martinez is not alone in his pursuit of environmental justice through the harnessing of young people's power, experiential knowledge and visioning of a future world where balance has been restored on Earth. He is part of a growing battalion of Indigenous youth warriors (https://www.culturalsurvival.org/publications/cultural-survival-quarterly/what-important-indigenous-youth-speak) railing against the failure of governments, fossil fuel companies, domestic and international monitoring agencies, and human rights organizations to acknowledge the grave environmental destruction surfacing in the wake of Western-born models of industrialization (https://unsettlingamerica.wordpress.com/2013/11/05/for-our-nations-to-live-capitalism-must-die/) and to be accountable around climate recovery. They are calling out the relentless rise of a global, capitalist social order (https://www.theguardian.com/books/2014/sep/22/this-changes-everything-review-naomi-klein-john-gray) promoting an extreme form of economic growth (http://www.truth-out.org/progressivepicks/item/28933-climate-change-is-violence) that results in the skyrocketing of wealth for few at the great expense of many.

Demanding the environmental movement contend first and foremost with the

across Native North America are mounting resistance efforts to protect their ancestral homelands from further exploitation. This is a timely endeavor, as natural gas and oil extraction continue unabated throughout Turtle Island (http://indiancountrytodaymedianetwork.com/2011/09/30/canada-and-united-states-are-turtle-island), with lethal aftereffects, as recently witnessed with the Fort McMurray wildfire (http://www.newyorker.com/news/daily-comment/fort-mcmurray-and-the-fires-of-climate-change) that burned the city to the ground. Simultaneously, Indigenous youth are developing locally based solutions to address the toxic impact of extractive processes on their communities. Indigenous Nations are often situated on the frontlines and forced to deal with the immediate fallout of environmental degradation such as contaminated soil (http://www.scientificamerican.com/article/contaminated-culture-native-people-struggle-with-tainted-resources/), open-air wastewater pits (http://www.livescience.com/47535-tar-sands-ponds-toxic-and-unstable.html) and poisoned water sources (http://www.reuters.com/article/us-usa-indigenous-un-idUSBRE8431Q220120504). For Indigenous peoples, youth have always been at the heart of society (https://www.youtube.com/watch?v=28u7BOx0_9k), and future generations are a key motivation for the practice of maintaining balance with the world of relations.

These young people are bold and brave. They are innovative and imaginative. And they are organizing through an arsenal of tactics that reflect a profound and intergenerational commitment to the land, water and air upon which everything is dependent -- the sacred building blocks of life itself. It's a commitment, in fact, that predates the colonial founding of the settler states of Canada and the USA (http://rabble.ca/columnists/2015/01/land-relationship-conversation-glen-coulthard-on-indigenous-nationhood).

Violence on the Land, Violence on Our Bodies

Violence on the Land, Violence on Our Bodies Artwork, Native Youth Sexual Health Network. (Image: Konsmo)

On June 6, 2016, the Native Youth Sexual Health Network (http://nativeyouthsexualhealth.com) (NYSHN), in partnership with Women's Earth Alliance (http://womensearthalliance.org) (WEA), released a report and toolkit entitled "Violence on the Land, Violence on our Bodies: Building an Indigenous Response to Environmental Violence (http://landbodydefense.org/uploads/files/Violence%20on%20the%20Land%20and%20Body%20Report%20and%20Toolkit%202016.pdf)." The multiyear initiative aims to articulate an explicit connection between violence on the land and violence to the body by exposing how strategies of colonization,

on the very intersection between Indigenous territory and people. As a staff member from NYSHN told Truthout, "This resource was built by community to help to

continue mobilizing responses to assaults on both our bodies and lands, giving direct tools and strategies for resistance and harm reduction to colonial and environmental gendered violence."

The report underscores the systematic environmental violence (http://www.un.org/esa/socdev/unpfii/documents/EGM12_carmen_waghiyi.pdf) experienced by Indigenous communities continuing to live under conditions of occupation. It also showcases the widespread resistance efforts that mark a clear distinction between Indigenous ways of being in relation to the land (http://www.silvafor.org/assets/silva/PDF/DebMcGregor.pdf) and those perceptions held by settlers, the latter being heavily influenced by the principle of *terra nullius (http://www.un.org/press/en/2012/hr5088.doc.htm)* outlined in the Doctrine of Discovery (http://ili.nativeweb.org/sdrm_art.html), which was used to justify the seizure and subsequent desecration of Native lands more than 500 years ago. Terra nullius is a Latin phrase meaning "nobody's land," a colonial invention of European international law legitimating the idea that any land deemed "unoccupied or unsettled" could be acquired as a "new territory" by a sovereign state, and that the laws of that state would apply in the new territory.

NYSHN is a grassroots network by and for Indigenous youth that works across issues of sexual and reproductive health, rights and justice in the United States and Canada. To create the report, members of NYSHN travelled to some of the most severely impacted Indigenous homelands to document the lived realities on the frontlines. They uncovered stories about how extractive industries have drilled, mined and

These energy projects have resulted in massive economic gains for transnational corporations (http://www.theguardian.com/environment/true-north/2016/may/12/the-arsonists-of-fort-mcmurray-have-a-name), but have come at a significant cost to Indigenous peoples, disproportionately impacting Indigenous women (http://grist.org/climate-energy/making-the-connections-on-tar-sands-pollution-racism-and-sexism/), two-spirit people (https://www.theguardian.com/music/2010/oct/11/two-spirit-people-north-america) and youth. As Amanda Lickers (Turtle Clan, Seneca), a youth participant and advocate working with NYSHN, puts it, "The reason women [are] attacked is because women carry our clans. That's where we get our identity as nations. So if you destroy the women, you destroy the nations and then you get access to the land." The multilayered wreckage caused by environmental violence is broad ranging and devastating in scope -- gender violence (http://www.cbc.ca/news/canada/british-columbia/missing-women-amnesty-international-1.3281541), higher rates of drug and alcohol abuse, murders and disappearances (http://www.huffingtonpost.com/georgianne-nienaber/murder-mahem-and-mexican-_b_4646552.html), reproductive illness and toxic exposure (https://inciteblog.wordpress.com/2010/08/19/international-indigenous-womens-environmental-and-reproductive-health-symposium-declaration/), direct threats to culture and Indigenous lifeways (http://www.ammsa.com/node/6945), and an undermining of Indigenous political claims to governance and self-determination all reared their ugly heads in the report.

The testimonies also make it clear that the inception of this environmental violence first found its footing in the equally abhorrent processes of conquest and domination over nature that was necessary to bring Canada and the United States into being -- a realization that takes the founding of the Native environmental justice movement (http://indiancountrytodaymedianetwork.com/2015/09/18/uranium-mining-book-explores-wastelanding-navajo-nation-161788) back to 1492. "We are talking about how we experience climate change and environmental destruction as a direct result of colonization," Lickers told Truthout in an interview about the project. "The root problem is not climate change per se, the root problem is the occupation of our territories and these anti-Indigenous world views that see the natural world as separate from human existence." Indigenous-youth-led organizations such as NYSHN, then, are doing the important work of challenging the political vernacular and analytic focus within the dominant climate justice movement -- a movement that exercises deliberate amnesia about the complex and colonial power structures and legacies (https://www.opendemocracy.net/uk/anna-lau/climate-stories-environment-colonial-legacies-and-systemic-change) that have driven the world to

and gendered critique at the center of deliberations over climate crisis.

No More Pipelines

Across the plains of North Dakota, Indigenous youth have been speaking truth to power (http://www.independent.co.uk/news/world/americas/13-year-old-native-american-s-petition-to-stop-oil-pipeline-reaches-80000-signatures-a7024426.html) by attempting to stop the building of the Dakota Access Pipeline (http://indiancountrytodaymedianetwork.com/2016/05/23/dakota-access-pipeline-construction-begins-despite-standing-rock-sioux-objections-164566), a project of Dallas-based Energy Transfer Partners. If approved, the pipeline would transport oil from the Bakken region of North Dakota across four states to Pakota, Illinois through a route that traverses underneath the Missouri River twice and runs alongside the Standing Rock Reservation (http://thinkprogress.org/climate/2016/05/05/3774984/dakota-access-pipeline-indigenous-opposition/).

The Standing Rock Sioux get their drinking water from the Missouri River. Consequently, the proposed pipeline serves as a direct threat to their water sources and would be an environmental assault on the community if a spill were to occur. Energy Transfer Partners has assured the people of Standing Rock that the pipeline would be closely monitored, but given the historical relations between Indigenous peoples and the United States (http://www.beacon.org/An-Indigenous-Peoples-History-of-the-United-States-P1164.aspx), the tribe has little faith that their safety and interests will be upheld. The record on spillage is bleak. In 2012-2013, there were 300 oil pipeline breaks (https://secure.earthjustice.org/site/Advocacy?cmd=display&page=UserAction&id=1861) in North Dakota alone.

When Indigenous youth in the region heard about the pipeline proposal, they initiated a campaign called Rezpect Our Water (http://rezpectourwater.com) to make their voices heard, raise public awareness, and ultimately halt the pipeline project. Drawing on oral histories of Indigenous political resistance in her homelands, Tokata Iron Eyes, a 12-year-old Lakota young woman and one of the lead youth organizers in the campaign, explained to me her motivation for joining the struggle: "Our ancestors are the ones that died fighting for this land, so that makes me think that *we* have a duty to fight for our land. And we are obligated to protect the soil and the water and everything that is sacred like that. Whatever happens with the pipeline and climate change -- that is going to be affecting us, this generation. And it will affect the next generation too." Tokata and her youth comrades are holding rallies, organizing spiritual relay runs (http://lastrealindians.com/run-for-

through formal and informal teach-ins, writing letters (http://respectwaterfall.com/category/the-letters/), circulating petitions (https://www.change.org/p/jo-ellen-darcy-stop-the-dakota-access-pipeline), and creating videos (https://www.youtube.com/watch?v=XL0aq05t7ds) to get their message out and to remind the broader public that the United States is still, and has always been, Indigenous land.

The role of Indigenous young women coming together in this campaign has also been paramount, signaling the enduring strength of Indigenous women's leadership in questions of tribal governance. "Women were the people who held the tribe together and they were the willpower of the tribe and its strength. So, just knowing that we come from such powerful genes makes us feel strong inside," Tokata offered in an interview with Truthout. "So I feel that even if the men aren't fighting for us and our land, then we as young women have an obligation to fight for ourselves and our people. I feel like I need to fight for my kids and my grandchildren, and my grandmas who can't fight for themselves anymore."

Decolonization and Indigenous Resurgence: The Path to Real Climate Justice

The work of these Indigenous young people demands a critical evaluation of the construction of the climate justice movement. The colonial violence that fostered the ruination of the planet in the first place has, for the most part, been blurred out of focus in public dialogue on this topic. An accurate examination of the social and political causes of climate change requires a close look at the history of genocide (http://www.truth-out.org/news/item/29954-the-native-american-genocide-and-the-teaching-of-us-history), land dispossession and concerted destruction of Indigenous societies and cultural practices that has come alongside the irreversible damage wrought by environmental destruction.

Siku Allooloo (http://briarpatchmagazine.com/contributors/view/allooloo-siku), an Inuit-Taino writer and community organizer from Denendeh (Northwest Territories, Canada), recently gave a keynote at the 2016 Girls Climate Summit (http://phennd.org/update/girls-climate-summit/) in Philadelphia, Pennsylvania, where she spoke about her work bringing youth and elders together on the land to discuss climate change impacts on their ways of life. In an interview with Truthout, Allooloo said:

> Indigenous peoples are living with the overlapping effects of colonialism,

> commitment to protecting all that generates life, both within our ancestral practices and the life-giving forces within the land. This is why Indigenous peoples throughout the world -- and primarily Indigenous women and girls -- are at the very forefront of movements for decolonization and climate justice.

She urged the delegates, ages 9 to 18, to place these realities front and center in their strategizing around climate justice.

As each of these young leaders have made evident, this is not only a fight about climate, but also an ancient, anti-colonial fight over the seizure of land and its translation into a commodity that can be bought and sold, the exploitation of Earth and air resources, and the elimination of entire peoples for the pursuit of conquest and profit.

It is not enough to protect the environment from grave industrial harm; we must also dismantle the very systems from which these industries stem -- systems that perpetuate violence against humans and homelands alike. As such, climate justice organizing must go hand in hand with decolonization (http://www.yesmagazine.org/peace-justice/dancing-the-world-into-being-a-conversation-with-idle-no-more-leanne-simpson) efforts by fostering and growing the leadership of Indigenous youth, supporting large-scale land restitution projects for Indigenous Nations (https://taiaiake.files.wordpress.com/2015/01/ahf-restitution-article.pdf), reinforcing the revitalization of Indigenous governance systems (https://muse.jhu.edu/article/587729) and channeling resources into the frontline resistance (http://unistoten.camp) of Indigenous peoples across Turtle Island.

Simply put: Close attention must be paid to the wisdom and knowledge of Indigenous youth and their communities as they attempt to heal and protect our planet from the harm that comes in the wake of a never-ending demand for more energy, regardless of the cost.

JASKIRAN DHILLON (/AUTHOR/ITEMLIST/USER/52316)

colonialism, anthropology of the state, anti-racist feminism, colonial violence and youth studies. Her first book, forthcoming with University of Toronto Press in 2017, *Prairie Rising: Indigenous Youth, Decolonization, and the Politics of Intervention*, provides a critical, ethnographic account of state interventions in the lives of urban Indigenous youth. She is currently an assistant professor of global studies and anthropology at The New School in New York City.

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'The Way of the Fat-Taker is No Good'

Lakota Giving and Justice

Posted: November 26, 2015 | **Author:** Editors | **Filed under:** Uncategorized |Leave a comment
Two young, uniformed soldiers knocked at the door of a humble Lakota log house on the Lower Brule Sioux Indian Reservation, or the Kul Wicasa Oyate. An older Lakota woman, a widow, answered the door. She collapsed to the ground sobbing before the two the men could tell her, in a language she couldn't understand, her only son was killed in combat. They left her with a sorry your son's body wouldn't be returned and here's a check for hundreds of dollars.

After local clergy encouraged the mourning woman, she cashed the check. As per Lakota custom, the fourth day after finding out her only son was killed, she cut her hair. The hundreds of dollars from the severance pay was soon given away. All her worldly possession, including her wood stove, were set outside her house. Relatives and community members came by, offered words of condolences, songs of healing, and they took everything from her already humble home.

That night she slept on the bare floor.

The next day, relatives brought her food, as she began the yearlong sacred duty of caring for her son's spirit. Everyday after that, the community came by her home, bringing gifts of food, cooking utensils, and blankets. Hunters would set aside meat after every kill for her. A couple of potatoes and squash were picked for from the community gardens and given to her. Pies and soups were made for her.

After a year, she was nurtured back to health physically and materially, re-acquiring the necessary items for her home to keep warm and to keep her fed. Her physical needs were cared for as she cared for the spiritual needs for her son's spirit.

Lakota customary law disallows needless suffering in times of abundance and plenty. It's an embarrassment to have relatives wanting and in need or deprived of basic humanity.

It's an affront to Wolakota to have others in want, need, and material deprivation. This, to my mind, was perhaps the most concrete aspect of Lakota kinship.

This also worked the other way around. Those who hoarded or 'took the fat'—or wasicu—were criminal. Narcissism and greed were punishable by stripping individuals of material wealth or forcing them to give away all their possessions as a means of repentance.

If humility, unsiiciyapi, was not practiced, it was enforced as the highest ideal of ikce wicasa, the common people.

Poverty in Lakota society does not, however, solely equate to material wealth. One is pitiful or poor, or unsica, if they are deprived of belonging and home.

This worked internally and externally. Often, families adopted other poor natives or non-natives, caring for their spiritual and material well-being. Those violating this code, too, were punished, mocked, and shamed—and sometimes killed or their wealth expropriated.

The highest insult in Lakota is to be greedy, to be wasicu.

Stories exist of Lakota headmen and women sitting side by side in council. Amongst themselves, the leaders would wear the most humble attire (not the headdresses or beautiful beadwork we're so used to seeing) and speak with brevity and clarity. To do otherwise could result in ejection from leadership and one could be viewed negatively as long-winded or worse greedy.

In my short life, these teachings have stuck with me and guided my actions as ikce wicasa. The rampant commercialization of Lakota 'culture,' however, troubles me. Many non-Lakota (and Lakota) have taken up Lakota ways, especially 'spirituality' like the sundance or other ceremonies, but they have ignored the most concrete aspect of Wolakota, in my opinion—the giveaway.

It was after all not the sundance that was first banned under the 1887 Civilization Regulations, but it was the giveaway or the potlatch ceremony that was first targeted because it posed the greatest threat to the imposed reservation social order. Giveaways kept in tact and promoted the classless, non-hierarchical, and radically anti-materialist political and social structure. In this structure, women owned all the domestic material wealth, like the house and everything in it, and had final say on how these materials were used and distributed.

Anti-capitalism and anti-patriarchal social relations posed the biggest threats to the acquisition of Native lands and subduing Native peoples. Native people were not colonized because of our culture, but because we were 'Indians'—being 'Indian' meant being attached to a land base where relationships to that land required maintaining idealized reciprocal social relations among ourselves and the nonhuman world. Being 'Indian' meant defending this social organization attached to land.

To eliminate a people to gain access to desired lands and resources requires annihilating their relationship to that land and therefore their social relations. That's settler colonialism.

Today, Lakota culture is a readily available commodity to be consumed by anyone, stripped of its concepts of justice and equal social relations. It appears to have become like any other religion, something anyone can take up to 'discover oneself.'

While it is encouraging to see the revitalization and resurgence of cultural practices, it is equally disturbing to see what aspects of this way of life are taken up and promoted at the expense of others.

For example, there is a rise in 'restorative justice' practices, which focus on the 'healing' of individuals committing offenses in Indian Country. These are positive and progressive movements away from the punitive system of mass incarceration. Yet, they typically only apply to Native on Native crimes and often center perpetrators not victims. They also limit the application of justice to broader society. We still cannot apply our models of justice to non-Native individuals and societies committing acts of violence against our lands and peoples.

Another troubling trend is the over emphasis on healing *just* lands and water—singing songs and revitalizing cultural relationships—while often ignoring the rampant violence against Native women, youth, poor, unsheltered, and LGBTQ2 relatives. As we scale up land based direct actions against the nonconsensual trespass of corporate and state agencies on Indigenous lands, I am reminded of the powerful insights of Kwagiulth scholar and activist Sarah Hunt:

> So what would happen if every time an Indigenous woman had her personal boundaries crossed without consent, we were moved to act in the same way as we've seen to the threat of a pipeline in our territories – the nonconsenual crossing of territorial boundaries? We would see our chiefs and elders, the language speakers, children and networks of kin, all in our regalia, our allies and neighbors all across the generations show up outside the house of a woman who had been hurt to drum and sing her healing songs. What if we looked to the land for berries and to the ocean for fish and herring eggs and seaweed to help her body to heal? What if we put her within a circle of honor and respect to show her that we will not stand for this violence any longer. We would bring her food and song and story, we would truly protect her self-determination and to defend the boundaries of her body which had been trespassed and violated.

With the historic defeat of the Keystone XL pipeline across Lakota treaty territory, we need to also take seriously Wolakota—what it means and how we treat each other and the land. Indigenous bodies, land, and water are not abstract things that can be healed through prayer alone. As our leaders and allies bravely declared war against TransCanada and defeated them, we should expect the same attention given to those materially and physically deprived of a dignified life. It would require not just a political revolution but a radical restructuring of our social relations—how we relate to each other indelibly affects how we relate to the nonhuman world.

In closing, I began this essay with a story of healing during the Second World War. Years later, the woman and her nation, the Kul Wicasa Oyate, would be violently removed from their bottomlands on the Mni Sose, the Missouri River. Our lands were flooded by massive earthen rolled dams and our way of life was forever disrupted.

What would justice look like if we applied the same model of healing shown in this story and in Lakota customary law to those wasicu institutions who flooded our lands and destroyed our life ways? Would our allies stand with us knowing justice would involve a radical reciprocity, redistribution, and restructuring of resources and wealth for a more just future? Would they expropriate the wealth and resources extracted from us with the same fervor they have taken up our culture? Will they give away their wealth and privilege and join us?

I hope so. After all, we have given so much.

Hecetu Welo!

SEPTEMBER 18, 2016SEPTEMBER 18, 2016EDITORS

Fighting for Our Lives: #NoDAPL in Historical Context

by Nick Estes

Little has been written about the historical relationship between the movement against the Dakota Access Pipeline and the longer histories of Oceti Sakowin (The Great Sioux Nation) resistance against the trespass of settlers, dams, and pipelines across the Mni Sose, the Missouri River. This is a short analysis of the historical and political context of the #NoDAPL movement and the transformative possibilities of the current struggle.

Thousands have camped along the banks of the Missouri River at Cannon Ball in the Standing Rock Sioux Indian Reservation to halt the construction of the Dakota Access Pipeline (DAPL), which promises to carry half a million barrels of heavy crude oil a day across four states, under the Missouri River twice, and under the Mississippi River toward the Gulf of Mexico for global export. Camp Oceti Sakowin, Red Warrior Camp, and Sacred Stone Camp, the various Native-led groups standing in unity against DAPL, have brought together the largest, mass-gathering of Natives and allies in more than a century, all on land and along a river the Army Corps of Engineers claims sole jurisdiction and authority over.

How and why did this happen?

In 1803 the wasicu — the fat-takers, the settlers, the capitalists — claimed this stretch of the river as part of what became the largest real estate transaction in world history. The fledgling U.S. settler state "bought" 827 million acres from the French Crown in the Louisiana Purchase and sent two white explorers, Lewis and Clark, to claim and map the newly acquired territory. None of the Native Nations west of the Mississippi consented to the sale of their lands to a sovereign they neither recognized nor viewed as superior. It was only after we rebuffed Lewis and Clark for failing to pay tribute for their passage on our river that they labeled the Oceti Sakowin "the vilest miscreants of the savage race." Thus began one of the longest and most hotly contested struggles in the history of the world.

The Louisiana Purchase

For the next hundred years, the U.S. led various unsuccessful military campaigns to suppress, annihilate, and dispossess us of our rightful claim to the river and our lands. Despite popular belief, we were never militarily defeated. Red Cloud's War and the War for the Black Hills led to the military defeat of the U.S. Calvary, most famously the annihilation of General George Armstrong Custer's forces at the Battle of

Greasy Grass in 1876. These wars, for our part, were entirely defensive. The Oceti Sakowin signed peace treaties with the invading settler government. The 1854 and 1868 Fort Laramie treaties provided temporary reprieve and defined the vast 25-million-acre territory of what became the Great Sioux Reservation, which stretched from the eastern shore of the Missouri River to the Bighorn Mountains. Four decades of intense warfare, however, took its toll. More than ten million buffalo were slaughtered to starve us out. Settler hordes invaded and pillaged our Black Hills for its gold. Our vast land base diminished and the treaties were nullified when Congress passed the Indian Appropriations Act of 1876, which abolished treaty-making with Native Nations, and the Black Hills Act of 1877, which illegally ceded the Black Hills and created the present-day reservation system.

The Oceti Sakowin has vigorously opposed these bald imperialistic maneuvers to usurp our self-determining authority over our lives and lands. Settler society entreated the Oceti Sakowin for the 1854 and 1868 agreements, not the other way around. We entered these relationships with the understanding that both parties respected a common humanity with the people and the lands. In our view, the settler state lost its humanity when it violated the treaties. Every act on our part to recover and reclaim our lives and land and to resist elimination is an attempt to recuperate that lost humanity — humanity this settler state refuses and denies even to its own.

1868 Fort Laramie Treaty Territory

South Dakota and North Dakota statehood also played a major role in suppressing the Oceti Sakowin. Although we have never signed any treaties with these states, they lay claim to the destinies of our lands, our river, and our people. To do so, they have always used violence and hatred. In 1890, a year after statehood, these two states drummed up anti-Indian sentiment to further break up and open reservation lands for settlement. As a result, they fabricated the Ghost Dance crisis; called for federal troops to intervene to protect white property that resulted in the assassination of our military and political leaders such as Crazy Horse and Sitting Bull; and resulted in the killing of over 300 mostly unarmed women, children, and elders at Wounded Knee in the Pine Ridge Indian Reservation.

Outright murder was never enough. The Dawes Allotment Act of 1887 and the creation of five smaller reservations attempted to factionalize the Oceti Sakowin and opened up “surplus” lands to white homesteaders. From 1907 to 1934, millions of acres of the remaining Great Sioux Reservation were lost. In the early 1900s, Missouri River Basin states began organizing to usurp Native water rights for large-scale irrigation projects. These states envisioned a dam system that would create large reservoirs that would primarily flood Native lands. But there was a major problem. In 1908, a U.S. Supreme Court decision held that tribes maintained access and control of water within original treaty territory, even if that territory was diminished. This became known as the Winters Doctrine. For the Missouri River, the Oceti Sakowin possessed the prior claim to both the river and its shorelines as spelled out in the 1851 and 1868 Fort Laramie Treaties.

Historic and present day treaty lands

An opportunity for the states arose. After unseasonal mass flooding, Congress passed the Flood Control Act in 1944 — or what became known as the Pick-Sloan Plan authorizing the Army Corps of Engineers and the Bureau of Reclamation to erect five dams on the mainstem of the river. All of which targeted and disproportionately destroyed Native lands and lives. Of the five Pick-Sloan dams, four flooded the lands of seven nations of the Oceti Sakowin: the Santee Sioux Tribe, the Yankton Sioux Tribe, the Sicangu Oyate, the Lower Brule Sioux Tribe, the Crow Creek Sioux Tribe, the Cheyenne River Sioux Tribe, and the

Standing Rock Sioux Tribe. Of the 611,642 condemned acres through eminent domain in what was called the "taking area," these nations lost 309,584 acres of vital bottomlands. Inundation also forced more than a thousand Native families, in patent violation of treaties and without their consent, to relocate. Entire communities were removed to marginal reservation lands, and many were forced to leave the reservation entirely. As a result of condemnation, the Army Corps of Engineers claims sole jurisdiction over the river and its shoreline.

Pick-Sloan Dams

The dams, which promised and delivered wholesale destruction, coincided and worked in tandem with the federal policies of termination and relocation. In 1953, Congress passed House Concurrent Resolution 108 (HCR 108) that inaugurated termination policy, and called for the immediate termination or ended federal recognition of the Flathead, Klamath, Menominee, Potawatomi, and Turtle Mountain Chippewa tribes. That same year, Congress passed Public Law 280 (PL 280) that authorized states to assume criminal and civil jurisdiction over Native lands. The Bureau of Indian Affairs supported these programs and carried out the Indian Relocation Act of 1956 that relocated thousands from the reservation to far-off urban centers. HCR 108, PL 280, relocation, and the Pick-Sloan dams did not just promote assimilation — they enforced genocide and elimination.

Through termination, relocation, and massive flooding, however, colonialism created its own gravediggers. The Oceti Sakowin unified to thwart the state of South Dakota's attempts to implement PL 280 to overthrow Native governments and assume control over their lands. Natives on relocation also began to organize. Groups such as the National Indian Youth Council and the American Indian Movement (AIM) formed in the urban centers to combat the wholesale destruction of Native life on- and off-reservation. In 1973, AIM occupied Wounded Knee in the Pine Ridge Indian Reservation, which was a culmination of more than a decade of Red Power organizing. The occupation was the catalyst for a mass gathering of thousands at Standing Rock in 1974, which resulted in the founding of the International Indian Treaty Council. At Standing Rock, more than 90 Native Nations from around the world built the foundations of what would become four decades of work at the United Nations and the basis for the 2007 Declaration on the Rights of Indigenous Peoples.

The International Indian Treaty Council, the international arm of the American Indian Movement, was founded at Standing Rock in 1974.

The anti-colonial uprising taking place in Oceti Sakowin treaty territory and spilling onto the world stage was met with violent state repression. AIM leaders were assassinated and many were imprisoned. For example, Native leader Leonard Peltier, who participated in this movement for the life and dignity of his people, to this day sits behind bars as one of the longest serving political prisoners in United States history. From 1977 to 2012 South Dakota's prison population increased 500 percent. One-third of its prison population is Native, although Natives make up only nine percent of the total population.

With the advent of tarsands extraction and heavy crude pipelines destroying water supplies and scorching the earth, Natives and the Oceti Sakowin have once again reunited. This unification first targeted tarsands and pipeline construction in so-called Canada in First Nations' territory. Successful blockades have halted pipelines. In 2014, the Oceti Sakowin began a massive organizing effort, with help from allies, against the Keystone XL (KXL) pipeline that, too, threatened to cross the Missouri River. Our Nation is made up of some of the poorest people in the Western hemisphere organizing to oppose a fossil fuel industry made up of some of the most powerful and wealthiest people on the planet. Despite these odds KXL was defeated

on November 6, 2015. After mass protests, the Obama administration denied the pipeline's permit.

Two important lessons were drawn from the KXL struggle that were carried into #NoDAPL. The power of multinational unity between Natives and non-Natives was one of the movement's successes. The other proved the transformative power and potential of anti-colonial resistance to successfully mobilize poor people against the rich and powerful — and win!

The Red Nation riders at the #NoDAPL camp.

Like our ancestors' wars of the nineteenth century, our current war is also defensive — it is to protect water and land from inevitable spoliation in the name of profit. The #NoDAPL movement is explicitly nonviolent, which accounts for its mass appeal to Native and non-Native communities. In spite of this, political violence as a tactic of state repression has emerged against water protectors who engage in nonviolent direct action to disrupt the construction of the pipeline *as well as* those not engaged in direct actions. Natives at or near camp — whether involved in direct actions or not — are also targets for surveillance and repression. The camp and the Standing Rock reservation are under constant surveillance. The reason: Native bodies stand between corporations and their money. Halting the accumulation of capital, which in this context is the exploitation of our river and lands, has piqued settler ire and spite.

The prolonged peaceful encampment practices an unsettling counter-sovereignty. It has drawn the support and solidarity of more than 200 Native Nations and countless thousands of allied forces sending a clear message to corporate interests: North Dakota cannot manage its Indians and the "Indian Problem" is out of control. After all, controlling the "Indian Problem" has always meant maintaining unrestricted access to Native lands and resources and keeping Indians silent, out of view, and factionalized. At Standing Rock, an unarmed, nonviolent prayer camp poses such a serious threat to settler proprietary claims that North Dakota Governor Jack Dalrymple, who has direct ties to the oil and gas industry, has deployed the full force of the Highway Patrol and the National Guards. These forces are not there to service an impoverished Native community or protect the integrity of the land and river. They are there to carry out the will of DAPL backers Energy Transfer Partners, some of the richest and most powerful people in the world who have used attack dogs against unarmed, nonviolent water protectors. More than 60 have been arrested, including journalists. Violent state repression has not ceased.

The #NoDAPL "United Nations" of Native Nation flags

The Army Corps of Engineers, who maintains jurisdiction over the river in violation of the 1854 and 1868 Fort Laramie Treaties, claims it holds the final say about whether the DAPL can cross the Missouri River. The #NoDAPL encampment, in an exercise in Native sovereignty, sits atop lands claimed by the Corps, who only recently "permitted" the camp's presence. On September 9, the Department of Interior, the Department of Justice, and the Corps also issued a joint statement halting — for now — the construction of the pipeline under the Missouri River as the Standing Rock Sioux Tribe's case against DAPL will be considered and reviewed. This was a victory — a temporary halt of construction at a key site — and proof that this enemy, no matter how powerful, violent, or spiteful, too, can be defeated if Native people refuse to back down and continue to act in unity and cooperation. While construction halted under the river, it continues everywhere else. So too do direct actions. So too does the peaceful encampment. And so too must our focus and support on #NoDAPL. The encampment will remain until the pipeline is completely defeated.

Oceti Sakowin and Native resistance, as it has for centuries, will also continue until our common enemy is defeated.

The Red Nation delegation at the #NoDAPL camp

Early lessons from this ongoing struggle can be drawn to help strategize future possibilities:

- The colonial state does not possess, and never has possessed, the moral high ground. It defends corporate access to Native lands and uses violence as a political tactic to maintain its contested authority over the land. The North Dakota National Guard has never in its history been deployed in force against an unarmed "domestic" population– until now. The National Guard and the Highway Patrol protect corporate interests and enforce the colonial state's monopoly on violence against the most vulnerable and marginalized populations – Native people.
- The prayer camp has galvanized multinational unity, primarily mobilizing everyday people in defense of Native sovereignty, self-determination, and treaty rights.
- Treaty rights, and by default Native sovereignty, protect everyone's rights. In this case, they protect a vital fresh water source for millions – the Missouri River.
- #NoDAPL anti-colonial struggle is profoundly anti-capitalist. It is the frontline. It is the future.
- The profits that corporations like Energy Transfer Corporation reap from colonial projects like the DAPL should be seized and used to repair damage to the land and river. With this also comes a long-term goal to restore the Missouri River to its rightful protectors – the Oceti Sakowin – and its natural path. This means the Army Corps of Engineers must relinquish its claim to the river and begin to demolish the Pick-Sloan dams so that the river and its people may once again live.

ANALYSIS **FEATURES** **REPORTS**

#NODAPL **AMERICAN INDIAN MOVEMENT**
INTERNATIONAL INDIAN TREATY COUNCIL **LEONARD PELTIER**
MISSOURI RIVER **NATIONAL GUARD** **NORTH DAKOTA**
POLICE VIOLENCE **POLITICAL PRISONERS** **RED WARRIOR CAMP**
RELOCATION **SACRED STONE CAMP** **SOUTH DAKOTA**
TERMINATION

Editors

Obama Pipeline Plot Twist Is Not a Victory—And Could Erase the Struggle

The illusion of victory is a dangerous thing. We could undo what we have built at Standing Rock, this unprecedented act of Native American collective resistance.

Private security used pepper spray and attack dogs.

Photo by Dell Hambleton.

Kelly Hayes *posted Sep 10, 2016*

All Native struggles in the United States are a struggle against erasure. The poisoning of our land, the theft of our children, the state violence committed against us — we are forced to not only live in opposition to these ills, but also to live in opposition to the fact that they are often erased from public view and public discourse, outside of Indian Country. The truth of our history

and our struggle does not match the myth of American exceptionalism, and thus, we are frequently boxed out of the narrative.

The struggle at Standing Rock, North Dakota, has been no exception, with Water Protectors fighting tooth and nail for visibility, ever since the Sacred Stone prayer encampment began on April 1.

For months, major news outlets have ignored what's become the largest convergence of Native peoples in more than a century. But with growing social media amplification and independent news coverage, the corporate media had finally begun to take notice. National attention was paid. Solidarity protests were announced in cities around the country. The National Guard was activated in North Dakota.

The old chant, "The whole world is watching!" seemed on the verge of accuracy in Standing Rock.

And then came today's ruling, with a federal judge finding against the Standing Rock Sioux, and declaring that construction of the pipeline could legally continue. It was the ruling I expected, but it still stung. I felt the sadness, anger and disappointment that rattled many of us as we received the news. But then something happened. Headlines like, "Obama administration orders ND pipeline construction to stop" and "The Obama Administration Steps In to Block the Dakota Access Pipeline" began to fill my newsfeed, with comments like, "Thank God for Obama!" attached to them.

Clearly, a major plot twist has occurred. But it's not the one that's being sold.

To understand that this isn't the victory it's being billed as, you have to read the fine print in the presently lauded joint statement from the Department of Justice, the Department of the Army and the Department of the Interior:

"The Army will not authorize constructing the Dakota Access pipeline on Corps land bordering or under Lake Oahe until it can

determine whether it will need to reconsider any of its previous decisions regarding the Lake Oahe site under the National Environmental Policy Act (NEPA) or other federal laws."

Note what's actually being said here, what's being promised and what isn't.

What is actually being guaranteed?

Further consideration.

But this next section is a little more promising, right?

"Therefore, construction of the pipeline on Army Corps land bordering or under Lake Oahe will not go forward at this time. The Army will move expeditiously to make this determination, as everyone involved—including the pipeline company and its workers—deserves a clear and timely resolution. In the interim, we request that the pipeline company voluntarily pause all construction activity within 20 miles east or west of Lake Oahu."

So things are on hold at Lake Oahe until the powers that be think it through some more—with no assurances about how they'll feel when it's all said and done. The rest is a voluntary ask being extended to the company.

Let's reflect on that for a moment: A company that recently sicced dogs on Water Protectors, including families, who stepped onto a sacred site to prevent its destruction, is being asked to voluntarily do the right thing.

But the thing is, they probably will. For a moment. Because what's being asked of them isn't an actual reroute. Right now, all that's being asked is that they play their part in a short term political performance aimed at letting the air out of a movement's tires.

Presidential contender Hillary Clinton was beginning to take a bit of heat for her silence on the Standing Rock struggle. Between Jill Stein's participation in a lockdown action, broadening social media support for the cause, and the beginnings of substantial media coverage, #NoDAPL was on the verge of being a real thorn in Clinton's side. And with more than 3,000 Natives gathered in an

unprecedented act of collective resistance, an unpredictable and possibly transformational force was menacing a whole lot of powerful agendas.

So what did the federal government do? Probably the smartest thing it could have: It gave us the illusion of victory.

As someone who organizes against state violence, I know the patterns of pacification in times of unrest all too well. When a Black or Brown person is murdered by the police, typically without consequence, and public outrage ensues, one of the pacifications we are offered is that the Department of Justice (DOJ) will investigate the shooting. It's a deescalation tactic on the part of the state. It helps transition away from moments when rage and despair collide, creating a cooling off period for the public. "Justice" is still possible, we are told. We are asked to be patient as this very serious matter is investigated at the highest level of government, and given all due consideration.

The reality, of course, is that the vast majority of investigations taken up by the DOJ Civil Rights Division end in dismissal – a batting average that's pretty much inverse to that of other federal investigations. But by the time a case gets tossed at the federal level, it's probably not front page news anymore, and any accumulated organizing momentum behind the issue may have been lost — because to many people, the mere announcement of a federal investigation means that the system is working. Someone is looking into this, they're assured. Something is being done. Important people have expressed that they care, and thus there is hope.

So how is this similar to what's happening with Standing Rock?

It's the same old con game.

Federal authorities are going to give a very serious matter very serious consideration, and then… we'll see.

The formula couldn't be clearer.

As the joint statement says, "This case has highlighted the need for a serious discussion on whether there should be nationwide reform

with respect to considering tribes' views on these types of infrastructure projects."

Discussion.

How many times have marginalized people been offered further discussion when what they needed was substantive action? And how often has the mere promise of conversation born fruit for those in a state of protest?

But this is a great moment for the Democrats. A political landmine has been swept out of Hillary Clinton's path, and Obama will be celebrated as having "stopped a pipeline" when the project has, at best, been paused. After all, an actual pause in construction, outside of the Lake Oahe area, assumes the cooperation of a relentless, violent corporation, that has already proven it's wiling to let dogs loose on children to keep its project on track.

But Dakota Access, LLC probably will turn off its machines — for a (very) little while. They'll wait for the media traction that's been gained to dissipate, and for the #NoDAPL hashtag to get quieter. They'll wait until the political moment is less fraught, and their opposition is less amped. And then they will get back to work — if we allow it.

Here's the real story: This fight has neither been won nor lost. Our people are rising and they are strong. But the illusion of victory is a dangerous thing. Some embrace it because they don't know better, some because they need to. We all want happy endings. Hell, I long for them, and I get tired waiting. But if you raise a glass to Obama and declare this battle won, you are erasing a battle that isn't over yet. And by erasing an ongoing struggle, you're helping to build a pipeline.

Kelly Hayes is a direct action trainer and a co-founder of The Chicago Light Brigade and the direct action collective

Lifted Voices. She blogs at TransformativeSpaces.org, where this article originally appeared, about U.S. movements and her work as an organizer against state violence.

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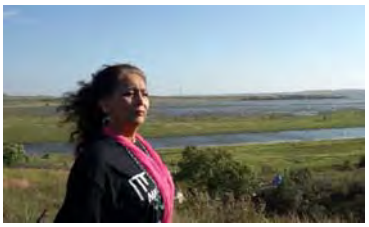

Why the Founder of Standing Rock Sioux Camp Can't Forget the Whitestone Massacre

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A History and Future of Resistance

The fight against the Dakota Access Pipeline is part of a centuries-long indigenous struggle against dispossession and capitalist expansionism.

by Julian Brave NoiseCat & Anne Spice

Occupiers at the Pine Ridge Reservation in 1973. AP

Mounted Lakota warriors, their horses resplendent in traditional regalia, charge a line of law enforcement. They gallop headlong, push back the police, pull up only at the last moment, and then circle back for more.

The scene could be the Battle of the Little Bighorn, circa 1876. But it's not. Here, along the banks of the Missouri River, just beyond the boundary of the Standing Rock Sioux reservation in North Dakota, indigenous land and water defenders are standing together to block the Dakota Access Pipeline, which threatens their land, water, ancestral burial grounds, and future generations. They are part of a decades-long struggle to assert and reclaim indigenous lands, jurisdictions, and sovereignties. And they are doing so on ground that has given rise to indigenous resistance for centuries.

For the average American, it's easy to mistake the resistance at Standing Rock for a one-time re-run: indigenous warriors emerge from the wild, put up a brief, fierce, but ultimately tragic fight before succumbing to progress and providence. Cowboys and Indians II: Pipeline edition.

Vine Deloria Jr, the father of Native American Studies, called this the "cameo theory" of American history. In this version of events, indigenous people are cast in fleeting roles — movie set extras in the grand drama of American progress — only to be dropped from the next episode's storyline.

But such a narrative obscures the fact that indigenous people — not only in the United States, but across the settler colonized Angloworld in Australia, Canada, and New Zealand — have starred in a series of long-running, quietly successful movements to oppose natural resource extraction and neoliberal colonization.

At Standing Rock and across indigenous territories, indigenous peoples are resisting hundreds of years of dispossession, subjugation, and elimination committed in the name of capitalist accumulation and white possession. As indigenous people put their bodies on the line to resist the Dakota Access Pipeline, they are fighting for their sovereignty while offering an alternative relationship to land, water, and each other.

The fight for our shared future is on.

Remember Wounded Knee

In the United States, the modern roots and spiritual center of indigenous struggle are interred at the village of Wounded Knee on the Oglala Lakota Nation's Pine Ridge Reservation. There, on December 28, 1890, the Seventh Cavalry intercepted a band of some four hundred Miniconjou and Hunkpapa Lakota from the Cheyenne River and Standing Rock reservations under the leadership of Chief Bigfoot, and ordered them to camp along the banks of Wounded Knee Creek.

The Lakota were followers of the prophet Wovoka's Ghost Dance movement, which taught that the dead would return, the colonists would be driven off, and tribes would be united, bringing peace and prosperity to the dispossessed. The movement inspired indigenous people across the continent, while fomenting fear among settlers along the frontier.

On the morning of December 29, during a confused effort to disarm the encampment, a shot rang out. With Hotchkiss guns already trained on the camp, the cavalry opened fire, slaughtering Lakota people and even some of their own soldiers. Cavalrymen hunted down women and children as they fled.

Once the last shot was fired, more than three hundred Lakota lay dead on the plains. Their corpses were left to freeze for three days before the army hired civilians to bury them in a mass grave. As laborers shoveled dirt over the slain bodies, indigenous land was opened to settlement.

Eighty years later, the spirit of the Ghost Dance and the memory of Wounded Knee inspired the Red Power movement. Resistance and optimism for a better future rolled across the continent from the occupation of Alcatraz in the West to the takeover of the Bureau of Indian Affairs (BIA) building in the East.

On the Trail of Broken Treaties in 1972, the young, militant, and photogenic American Indian Movement (AIM) released its "Twenty Point Position Paper," which called on the United States government to respect, re-forge, and even rewrite treaties as the basis for nation-to-nation relationships with the continent's first peoples. That call to recognize indigenous sovereignty and honor the treaties endures today.

In February 1973, the Oglala Sioux Civil Rights Organization (OSCRO) invited AIM to Pine Ridge to help remove BIA-backed Tribal Chairman Dick Wilson, a menacing leader who thought nothing of using his private militia, the Guardians of the Oglala Lakota Nation (GOONs), to suppress dissent and opposition. Wilson, charged with corruption, intimidation, and abuse, had avoided impeachment.

On the night of February 27, 1973, in a brilliant act of political theater, a fifty-four-car caravan of Oglala and AIMsters took up arms and liberated Wounded Knee under the terms of the broken Fort Laramie Treaty of 1868. TV stations and newspapers across the country lit up with news of the occupation. "Armed Indians Seize Wounded Knee, Hold Hostages," read the front-page headline in the *New York Times*.

Within hours, a stand against Wilson turned into an armed standoff against the United States government. In a list of demands sent to the Justice Department, the activists called for immediate Senate hearings on Indian treaties and prompt investigation into the BIA at Sioux reservations across South Dakota. They courted the press, played hardball with government negotiators, and began smuggling food, activists, and supplies into the village.

In a decision unbeknownst to journalists, rumored among AIM activists, and in clear violation of the Constitution, the United States military was called in to quash the protest. Relying on the intelligence of the FBI's infamous COINTELPRO program, military commanders in duck-hunting gear called the plays and coordinated law enforcement, deploying armored vehicles and air force munitions.

Wilson's GOONs, armed with shotguns, set up roadblocks beyond federal lines to stop protesters, sympathizers, and news cameras. As in Cuba, the Congo, and other corners of the colonized world, the United States government demonstrated its willingness to ally with a tyrant as long as that tyrant's interests aligned with its own.

AIM warriors held their ground with hunting rifles, .22s, and an AK-47 carried back from the jungles of Vietnam. Federal law enforcement responded with a .50-caliber arsenal, tear gas, and fighter jet flyovers.

On April 17, Frank Clearwater, a Cherokee who had arrived from North Carolina with his pregnant wife the day before, was shot in the head. He died on April 25. The next day, a bullet pierced the heart of Oglala Vietnam veteran Buddy Lamont. He was buried with a one-hundred-gun salute next to Chief Bigfoot's band, his coffin draped in the flags of the nations he served: the United States, and the Independent Oglala Nation.

Before it was over, the OSCRO and AIM had held Wounded Knee for an astounding seventy-one days. Their rebellion galvanized indigenous people across the country — and around the world.

In Canada, Red Power forced a shift in indigenous policy from assimilation to recognition. In Australia, the fight for aboriginal land rights won significant political and legal victories. And in Aotearoa/New Zealand, the Maori Renaissance successfully pressured the Crown to honor the Treaty of Waitangi, which to this day structures Crown-Maori relations.

The Indigenous Struggle Today

The struggle against the Dakota Access Pipeline is rooted in this history. Indeed, the pipeline violates the same treaty that underwrote the AIM occupation of Wounded Knee. And just as AIM demanded respect for the treaties and indigenous sovereignty, the Standing Rock Sioux are demanding that the Fort Laramie Treaty be honored and the land and water be protected.

The people who have endured centuries of dispossession and attempted elimination — the poorest of the poor, the most likely to be killed by law enforcement, the most easily forgotten — are still here and still fighting. They have built alternatives within and beyond capitalism for hundreds of years. They are the carriers of traditions of indigenous resistance and resurgence simultaneously rooted in Lakota land and history, and global in scope.

In recent decades, this struggle has been threatened by neoliberal cooptation. Repelled by a colonizing state, many indigenous groups found themselves in an uneasy alliance with neoliberals who denounced "big government" and jumped at the opportunity to slash the welfare state and restructure tribes as junior corporate partners in the global economy. "Tribal sovereignty" became increasingly conflated with owning and profiting from an Indian casino.

Yet despite the absence of a free-market critique in some indigenous circles, Standing Rock and other actions have emerged as exemplary counterweights to this pernicious drift.

And elsewhere, indigenous land protectors are also navigating the currents of globalization to great effect. The Unist'ot'en camp in northern British Columbia has, thus far, blocked construction of numerous potential and proposed pipelines through their territory, building a space where indigenous lifeways can persist on lands defined by industry as an "energy corridor." In Minnesota, the energy company Enbridge recently shelved plans for the Sandpiper pipeline, partially in response to tribal opposition. And the Obama administration nixed the Keystone XL Pipeline, after facing enormous pressure from tribes and their allies.

In each of these instances, indigenous peoples are more than cameo extras. They are central protagonists in the fight against the forces of capitalist expansion, who would destroy the land and water, and trample indigenous sovereignty, all for the purposes of resource extraction.

At Standing Rock, disparate tribes have set aside differences and come together as one. People from indigenous nations across the continent have travelled thousands of miles to stand with them. Indigenous people are rallying in support from New York City to San Francisco. Together, they are envisioning a future without a Dakota Access Pipeline, and enacting a future where indigenous nations exercise their rights to define a more just, equal, and sustainable path forward, as stewards of land, water, humanity, and each other.

At Standing Rock, the audacious vision for an indigenous future, handed down from Wounded Knee and global in force, is alive and well. This is how you Ghost Dance in 2016.

9.8.16

Julian Brave NoiseCat is an enrolled member of the Canim Lake Band Tsq'escen in British Columbia and a graduate of Columbia University and the University of Oxford. Anne Spice is a Tlingit member of Kwanlin Dun First Nation and a doctoral student in anthropology at the CUNY Graduate Center.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STANDING ROCK SIOUX TRIBE
P.O. Box D
Building No. 1., North Standing Rock Avenue
Fort Yates, ND 58538,

Plaintiff,

v.

U.S. ARMY CORPS OF ENGINEERS
441 G Street NW
Washington, DC 20314-1000,

Defendant.

Case No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This is a complaint for declaratory and injunctive relief. The Standing Rock Sioux Tribe ("Tribe") brings this action in connection with federal actions relating to the Dakota Access Pipeline ("DAPL"), a 1,168-mile-long crude oil pipeline running from North Dakota to Illinois. The Tribe, a federally recognized American Indian Tribe with a reservation in North Dakota and South Dakota, brings this case because defendant U.S. Army Corps of Engineers ("Corps") has taken actions in violation of multiple federal statutes that authorize the pipeline's construction and operation. The construction and operation of the pipeline, as authorized by the

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Corps, threatens the Tribe's environmental and economic well-being, and would damage and destroy sites of great historic, religious, and cultural significance to the Tribe.

2. This complaint involves two kinds of claims. First, the Tribe brings an as-applied challenge to Nationwide Permit 12 ("NWP 12"), issued by the Corps in 2012 pursuant to the federal Clean Water Act ("CWA") and Rivers and Harbors Act ("RHA"). DAPL crosses hundreds if not thousands of federally regulated rivers, streams, and wetlands along its route. The discharge of any fill material in such waters is prohibited absent authorization from the Corps. Federal authorization under these statutes, in turn, triggers requirements under the National Historic Preservation Act ("NHPA"), intended to protect sites of historic and cultural significance to Tribes like Standing Rock. In issuing NWP 12, however, the Corps authorized discharges into federal waters without ensuring compliance with the NHPA. In essence, in enacting NWP 12, the Corps pre-authorized construction of DAPL in all but a handful places requiring federal authorization without any oversight from the Corps. In so doing, the Corps abdicated its statutory responsibility to ensure that such undertakings do not harm historically and culturally significant sites.

3. Second, on July 25, 2016, the Corps issued multiple federal authorizations needed to construct the pipeline in certain designated areas along the pipeline route. One such authorization allows DAPL to construct the pipeline underneath Lake Oahe, approximately half a mile upstream of the Tribe's reservation. Others authorize the DAPL to discharge into waters of the United States at multiple locations in the Tribe's ancestral lands. The Tribe brings this challenge because these authorizations were made in violation of the CWA and its governing regulations and without compliance with NHPA, and the National Environmental Policy Act ("NEPA").

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4. The Tribe seeks a declaration that the Corps violated the NHPA in issuing NWP 12, and an injunction preventing the Corps from using NWP 12 as applied to DAPL and directing the Corps to ensure full compliance with § 106 at all sites involving discharges into waters of the United States. The Tribe further seeks a declaration that the July 25, 2016 authorizations were made in violation of the CWA, NEPA, and NHPA, and an order vacating all existing authorizations and verifications pending full compliance with the CWA, NEPA, and NHPA.

JURISDICTION AND VENUE

5. This case states a claim under the Administrative Procedures Act, 5 U.S.C. § 701 et seq. ("APA"), which authorizes a federal court to find unlawful and set aside any final agency action that is "arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." *Id*. § 706. Jurisdiction arises under 28 U.S.C. § 1362 ("district courts shall have original jurisdiction all civil actions, brought by any Indian Tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States"); § 2201 (declaratory relief); § 2202 (injunctive relief).

6. Venue in this district is appropriate under 28 U.S.C. § 1391(e) because it is the district in which the defendant resides and in which "a substantial part of the events or omissions giving rise to the claim occurred."

PARTIES

7. The Standing Rock Sioux Tribe is a federally-recognized Indian tribe with a governing body recognized by the Secretary of the Interior. The Tribe is a successor to the Great Sioux Nation, a party to the two Treaties of Fort Laramie in 1851 and 1868. In those Treaties, the Sioux ceded a large portion of their aboriginal territory in the northern Great Plains, but

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reserved land rights "set apart for the absolute and undisturbed use and occupation" of the Indians.

8. The reservation established in the 1851 Treaty of Fort Laramie included extensive lands that would be crossed by the proposed pipeline. The Tribe has a strong historical and cultural connection to such land. Despite the promises made in the two Fort Laramie treaties, in 1877 and again in 1889, Congress betrayed the treaty parties by passing statutes that took major portions of this land away from the Sioux. In 1889, Congress stripped large portions of the Great Sioux Reservation that had been promised to the Tribe forever, leaving nine much smaller Sioux reservations, including Standing Rock. In the modern area, the Tribe suffered yet another loss of lands, this time in connection with the same Oahe dam and Reservoir. In 1958, the Corps took 56,000 acres of bottomlands on the Standing Rock reservation for the Oahe project without the Tribe's consent or agreement.

9. Since time immemorial, the Tribe's ancestors lived on the landscape to be crossed by the DAPL. The pipeline crosses areas of great historical and cultural significance to the Tribe, the potential damage or destruction of which greatly injures the Tribe and its members. The pipeline also crosses waters of utmost cultural, spiritual, ecological, and economic significance to the Tribe and its members. The Tribe and its members have been, are being, and unless the relief sought herein is granted, harmed by the Corps' failure to comply with environmental and historic preservation laws.

10. The U.S. Army Corps of Engineers is an agency of the United States government, and a division of the U.S. Army, part of the U.S. Department of Defense. It is charged with regulating any dredging and filling of the waters of the United States under § 404 of the CWA and § 10 of the RHA.

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11. By filing this action, the Tribe does not waive its sovereign immunity and does not consent to suit as to any claim, demand, offset, or cause of action of the United States, its agencies, officers, agents, or any other person or entity in this or any other court.

STATUTORY AND REGULATORY BACKGROUND

I. THE CLEAN WATER ACT

12. Congress enacted the CWA in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). To accomplish this goal, the CWA prohibits the discharge of any pollutant, including dredged spoil or other fill material, into waters of the United States unless authorized by a permit. *Id*., § 1311(a). Unless statutorily exempt, all discharges of dredged or fill material into waters of the United States must be authorized under a permit issued by the Corps. *Id*., §§ 1344(a)–(e).

13. The Corps is authorized to issue two types of permits under § 404: individual permits and general permits. *Id*. The Corps issues individual permits under § 404(a) on a case-by-case basis. *Id*., § 1344(a). Such permits are issued after a review involving, among other things, site specific documentation and analysis, public notice and opportunity for a hearing, public interest analysis, and formal determination. 33 C.F.R. § 322.3; Parts 323, 325.

14. The CWA also authorizes the Corps to issue "general" permits on a state, regional or nationwide basis. 33 U.S.C. § 1344(e). Such general permits may be issued for any category of similar activities that "will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment." *Id*. "No general permit … shall be for a period of more than five years after the date of its issuance." 33 U.S.C. § 1344(e)(2). The purpose of this approach to permitting is to "regulate with little, if any, delay or paperwork certain activities that have minimal impacts." 33 C.F.R. § 330.1(b).

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15. The Corps issued the current set of 48 nationwide permits ("NWPs") in February of 2012. 77 Fed. Reg. 10184 (Feb. 21, 2012). The 2012 NWPs in "most cases" authorize discharge into regulated waters without any further process involving the Corps. In effect, the NWP pre-authorizes certain categories of discharge, without any additional approval from, or even notification to, the Corps. 33 C.F.R. § 330.1(e)(1). In other instances, discharges cannot occur until the proponent of the action files a "pre-construction notification" ("PCN") to the Corps, and receives verification that the proposed action is consistent with the terms of the NWP. *Id*. § 330.6(a). The specifics of whether or not a PCN is required are spelled out in each individual NWP as well as a series of "general conditions" accompanying the NWP. 77 Fed. Reg. at 10282 (listing 31 general conditions).

II. THE RIVERS AND HARBORS ACT

16. The Rivers and Harbors Act of 1899 is the nation's oldest environmental law. The statute prohibits a number of activities that impair ports, channels and other navigable waters. Unlike the CWA, which applies in all waters of the United States, the RHA applies only in "navigable" waters, defined as waters subject to the ebb and flow of the tides, or waters that are "presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce." 33 C.F.R. § 329.4.

17. Section 10 of the RHA, 33 U.S.C. § 403, among other things, makes it unlawful "to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of" any navigable water without a permit from the Corps. Like § 404 permits, § 10 permits may be issued as individual permits or pursuant to the NWP program and are generally subject to many of the same regulations.

18. Tunneling under a navigable water requires a section 10 permit from the Corps, even without any discharge into navigable waters. 33 C.F.R. § 322.3(a) ("For purposes of a

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section 10 permit, a tunnel or other structure or work under or over a navigable water of the United States is considered to have an impact on the navigable capacity of the waterbody.").

19. A separate provision of the RHA, known as "Section 408," makes it unlawful to "build upon, alter, deface, destroy, move, injure, obstruct by fastening vessels thereto or otherwise, or in any manner whatever impair the usefulness of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States" without a permit from the Corps. 33 U.S.C. § 408. Unlike Section 10 permits, § 408 permits cannot be issued pursuant to the NWP program but are only issued as individual permits. Prior to issuance of a § 408 permit, the Corps must determine whether the use or occupation will be injurious to the public interest or impair the usefulness of the project.

III. THE NATIONAL HISTORIC PRESERVATION ACT

20. Section 106 of the National Historic Preservation Act ("NHPA") requires that, prior to issuance of a federal permit or license, federal agencies shall take into consideration the effects of that "undertaking" on historic properties. 54 U.S.C. § 306108. Agencies "must complete the section 106 process prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license." 36 C.F.R. § 800.1.

21. The NHPA defines undertaking as "a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including— (1) those carried out by or on behalf of the Federal agency; (2) those carried out with Federal financial assistance; (3) those requiring a Federal permit, license, or approval; and (4) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency." 54 U.S.C. § 300320; 36 C.F.R. § 800.16(y).

22. Early in the NHPA process, an agency must determine the area of potential effects ("APE") of a federal undertaking. 36 C.F.R. § 800.4(1)(1). The APE is defined by regulation to

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include the area "within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties…. The [APE] is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking." *Id*. § 800.16(d).

23. The Section 106 process requires consultation with Indian Tribes on federal undertakings that potentially affect sites that are culturally significant to Indian Tribes. 36 C.F.R. § 800.2(c)(2); 54 U.S.C. § 302707 (properties "of traditional religious and cultural importance to" a Tribe may be included on the National Register, and federal agencies "shall consult with any Indian Tribe…that attaches religious or cultural significance" to such properties). Consultation must occur regarding sites with "religious and cultural significance" even if they occur on ancestral or ceded land. *Id*. § 800.2(c)(2)(II)(D).

24. Under the consultation regulations, an agency official must "ensure" that the process provides Tribes with "a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties….articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects." *Id*. § 800.2(c)(ii)(A). This requirement imposes on agencies a "reasonable and good faith effort" by agencies to consult with Tribes in a "manner respectful of tribal sovereignty." *Id*. § 800.2(c)(2)(II)(B).

25. Acting "in consultation with … any Indian tribe … that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take steps necessary to identify historic properties within the area of potential effects." *Id*. §800.4(b). The agency must evaluate the historic significance of such sites, and determine whether they are potentially eligible for listing under the National Register. *Id*. § 800.4(c).

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26. If the agency determines that no historic properties will be affected by the undertaking, it must provide notice of such finding to the state and tribal historic preservation offices, and the Advisory Council on Historic Preservation ("ACHP"), which administers the NHPA. *Id*. § 800.4(d). The regulations give those parties the opportunity to object to such a finding, which elevates the consultation process further. *Id*.

27. If the agency finds that historic properties are affected, it must provide notification to all consulting parties, and invite their views to assess adverse effects. *Id*. Any adverse effects to historic properties must be resolved, involving all consulting parties and the public. *Id*. § 800.6. If adverse effects cannot be resolved, the process is elevated again to the ACHP and the head of the agency undertaking the action. *Id*. §800.7. Until this process is complete, the action in question cannot go forward.

28. The ACHP authorizes agencies to adopt their own regulations for implementing its § 106 obligations. Such regulations must be reviewed and approved by the ACHP in order to be valid. *Id*. § 800.14.

29. The Corps has adopted procedures intended to satisfy its § 106 obligations. *See* App. C to 33 C.F.R. Part 325. Those procedures, which predate amendments to the NHPA that significantly broaden the role of Tribes in the § 106 process, have never been approved by the ACHP. Several courts have concluded that the Corps' NHPA procedures are legally invalid. However, the Corps continues to follow these procedures for purposes of § 106 consultation, including in the process surrounding DAPL.

30. Section 106 regulations also provide an alternative compliance mechanism under which agencies can negotiate a "programmatic agreement" with the ACHP to resolve "complex project situations or multiple undertakings." 36 C.F.R. § 800.14(b). Such agreements are

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suitable for "when effects on historic properties are similar and repetitive or are multi-State or regional in scope;" "when effects on historic properties cannot be fully determined prior to approval of an undertaking;" or when "nonfederal parties are delegated major decisionmaking responsibilities," among other situations. *Id*. § 800.14(b)(1). Programmatic agreements require consultation with Tribes, among others, as well as public participation.

31. The Corps has never adopted a programmatic agreement with the ACHP regarding its CWA/RHA permits or any other activity.

IV. THE NATIONAL ENVIRONMENTAL POLICY ACT

32. NEPA, 42 U.S.C. §§ 4321–4370f, is our "basic national charter for protection of the environment." 40 C.F.R. § 1500.1(a). It makes environmental protection a part of the mandate of every federal agency. 42 U.S.C. § 4332(1).

33. NEPA seeks to ensure that federal agencies take a "hard look" at environmental concerns. One of NEPA's primary purposes is to ensure that an agency, '"in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts.'" *Robertson v. Methow Valley Citizens Council,* 490 U.S. 332, 349 (1989). NEPA also "guarantees that the relevant information [concerning environmental impacts] will be made available to the larger audience," including the public, "that may also play a role in the decisionmaking process and the implementation of the decision." *Id.*

34. NEPA requires agencies to fully disclose all of the potential adverse environmental impacts of its decisions before deciding to proceed. 42 U.S.C. § 4332(C). NEPA also requires agencies to use high quality, accurate scientific information and to ensure the scientific integrity of the analysis. 40 C.F.R. §§ 1500.1(b), 1502.24.

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35. If an agency action has adverse effects that are "significant," they need to be analyzed in an environmental impact statement ("EIS"). 40 C.F.R. § 1501.4. If it is unclear whether impacts are significant enough to warrant an EIS, it may prepare an "environmental assessment" ("EA") to assist in making that determination. *Id*. If the agency determines that no EIS is required, it must document that finding in a "finding of no significant impact" ("FONSI").

36. NEPA's governing regulations define what "range of actions, alternatives, and impacts [must] be considered in an environmental impact statement." 40 C.F.R. § 1508.25. This is in part what is known as the "scope" of the EIS. The EIS must consider direct and indirect effects. The direct effects of an action are those effects "which are caused by the action and occur at the same time and place." 40 C.F.R. § 1508.8(a). The indirect effects of an action are those effects "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." 40 C.F.R. § 1508.8(b).

37. An agency must also analyze and address the cumulative impacts of a proposed project. 40 C.F.R. § 1508.25(c)(3). Cumulative impacts are the result of any past, present, or future actions that are reasonably certain to occur. Such effects "can result from individually minor but collectively significant actions taking place over a period of time." 40 C.F.R. § 1508.7.

FACTUAL ALLEGATIONS

I. INTERESTS OF THE STANDING ROCK SIOUX TRIBE

38. Since time immemorial, the Tribe's ancestors—the Oceti Sakowin, also known as the Great Sioux Nation—used and occupied a broad area throughout the northern Great Plains, including much of the area that DAPL proposes to traverse with its pipeline. Within this broad region, tribal members followed migrating buffalo herds and traversed a landscape filled with cultural and historical significance central to the Tribe's identity.

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39. The Tribe's traditional and ancestral territory extends well beyond the current Reservation's exterior boundaries, encompassing lands that are the subject of this action. The Corps and other federal agencies have repeatedly acknowledged the traditional use of lands within and around the DAPL route by the Tribe's ancestors.

40. The Tribe's cultural resources are historically and culturally interrelated over the entirety of the land within the Tribe's traditional territory, within and outside of the exterior boundaries of the Reservation. Protection of the Tribe's cultural heritage is of significant importance to the Tribe. Destruction or damage to any one cultural resource, site, or landscape contributes to destruction of the Tribe's culture, history, and religion. Injury to the Tribe's cultural resources causes injury to the Tribe and its people.

41. Cultural resources of significance to the Tribe are located on the lands that are the subject of this action and adjacent lands. In addition to specific archaeological sites that have been identified to date, there are numerous significant culturally important sites that have not been identified. The lands within the pipeline route are culturally and spiritually significant.

42. The Tribe and its members also have a cultural interest in preserving the quality of the land, water, air, fauna, and flora within the Tribe's traditional territory, within and outside the Reservation. For example, the Tribe is concerned with impacts to the habitat of wildlife species such as piping plovers, least tern, Dakota skipper, and pallid sturgeon, among others. The Tribe has a particular concern for bald eagles, which remain federally protected and play a significant role in the Tribe's culture, and which would be adversely affected by the proposed pipeline. The Tribe is greatly concerned with the possibility of oil spills and leaks from the pipeline should it be constructed and operated, particularly into waters that are of considerable economic, religious, and cultural importance to the Tribe.

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II. THE CORPS' ISSUANCE OF NWP 12

43. The Corps issued the current suite of 48 NWPs, covering a wide array of potential activities involving discharges into regulated waters, in February of 2012. 77 Fed. Reg. 10184 (Feb. 21, 2012). Of relevance here, NWP 12 governs "utility line activities." *Id*. at 10271. NWP 12 authorizes the "construction, maintenance, repair and removal of utility lines and associated facilities" in waters of the United States, providing that the activity does not result in the loss of greater than a ½ acre of waters "for each single and complete project." Counterintuitively, a "single and complete project" in the case of linear projects like utility lines is any crossing of a separate waterbody. 33 C.F.R. § 330.2(i). Under this definition, a pipeline like DAPL is made up of hundreds if not thousands of "single and complete projects."

44. The NWP defines "utility line" to include "any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose." 77 Fed. Reg. at 10271. The Corps considers pipelines carrying crude oil to be covered by NWP 12.

45. Under NWP 12, preconstruction notification ("PCN") to the Corps by a non-federal project proponent, and a verification from the Corps, is required if any one of several criteria is met. *Id*. at 10272. If none of the criteria are met, the proponent is authorized by NWP 12 to proceed with the work in regulated waters without additional notification to, or approval from, the Corps. None of the NWP 12-specific criteria relates to historic or cultural preservation.

46. The NWP program also includes a set of general conditions that are applicable to all NWPs, include NWP 12. General Condition 20 ("GC 20") addresses historic properties. Under GC 20, a non-federal permittee must submit a PCN "if the authorized activity may have the potential to cause effects to any historic priorities listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties." *Id*. at 10284. If a PCN is provided, the Corps purports to

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comply with § 106 of the NHPA prior to verifying that the NWP is applicable, and work may not commence until such verification is provided. 33 C.F.R. § 330.5(g)(2). Conversely, if no PCN is provided, no § 106 process occurs.

47. GC 20 puts the responsibility on the proponent, not the Corps, to determine whether historic or culturally significant properties are present, and requires Corps' verification only if the proponent finds such sites and reports them to the Corps via a PCN.

48. NWP 12 was formally adopted by the Corps in a "Decision Document" signed by Major General Michael J. Walsh on Feb. 13, 2012. In responding to public comment regarding potential impacts to tribal sites, the Decision Document states that compliance with NHPA on NWP implementation is carried out via GC 20.

III. FACTS RELEVANT TO CHALLENGE TO NWP 12

49. The proponent of DAPL proposes to construct a major crude oil pipeline across 1,168 miles through North Dakota, South Dakota, Iowa, and Illinois. The pipeline will have a capacity of 570,000 barrels of crude oil per day, making it one of the largest crude oil pipelines in the nation, carrying over half of the current capacity of North Dakota's oil production.

50. DAPL is one of several pipelines that have been proposed for the North Dakota oil production area, some of which have been moving on a slower timeline due to environmental review requirements. DAPL has moved aggressively to get the pipeline constructed as quickly as possible.

51. The pipeline's route passes through the Tribe's ancestral lands, and areas of great cultural, religious and spiritual significance to the Tribe. Construction of the pipeline includes clearing and grading a 100-150 foot access pathway nearly 1200 miles long, digging a trench as deep as 10 feet, and building and burying the pipeline. Such work would destroy burial grounds,

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sacred sites, and historically significant areas in its path. These sites carry enormous cultural importance to the Tribe and its members.

52. DAPL claims to have completed cultural resource surveys along the entire pipeline length. However, the out-of-state, non-Tribal consultants hired by DAPL to do cultural surveys are unable to assess the potential cultural significance of sites in this area to the Tribes. Only Tribally trained and approved consultants have the ability to assess such sites. The Tribe has never had the opportunity to discuss protocols for cultural surveys, or participate in the surveys that were conducted. Instead, it was provided copies of partial surveys after they were completed.

53. Compared to other pipelines, DAPL has taken a highly unusual approach to Corps permitting for activities involving discharges into regulated waters. Rather than seek Corps' verifications on all waters of the U.S. in which pipeline construction would cause a discharge, as has been typical, DAPL has only sought Corps' verification for a tiny minority of the impacts to federally regulated waters.

54. For example, DAPL's route through North Dakota is 359 miles. A 2015 "Wetlands and Waterbodies Delineation Report" provided to the state Public Service Commission identifies 263 waterbodies and 509 wetlands that would be impacted by the pipeline. However, this information was never provided to the Corps. Instead, DAPL submitted PCNs for only two of these sites, at crossings of the Missouri River. Neither of these PCNs was submitted based on potential impacts to historic sites.

55. In South Dakota, DAPL would cross 273 miles. DAPL's state Public Utilities Commission filings reveal 288 waterbody crossings and 102 acres of wetlands impacts.

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However, DAPL only provided the Corps with PCNs for 10 of these sites. None of the PCNs in South Dakota was triggered by impacts to historic sites.

56. In both states, this delineation of waterbody impacts was only partially complete, as DAPL did not have landowner access to all sites along the pipeline route. Accordingly, some of the features were estimated through desktop analysis. The ultimate number of waterbody and wetland impacts remains unknown.

57. One of the two places in North Dakota where Corps authorization is required is at Lake Oahe, where the pipeline would cross underneath the Lake (a dammed section of the Missouri River) immediately upstream of the Tribe's reservation.

58. Due to its concerns about the configuration of the pipeline and inadequacies in the regulatory process, the Tribe has participated extensively in the public process associated with the permits, including filing numerous formal technical comments on the Lake Oahe crossing, meeting with Corps' leadership and staff, and communicating with elected representatives and agency officials to express concerns. The Tribe has repeatedly conveyed to the Corps and other government officials the significance of its concerns and the risks to the Tribe about moving ahead with the pipeline in its current configuration. The Tribe has in particular highlighted the inadequacies of the Corps' § 106 consultation process with regard to historic and cultural impacts at the Lake Oahe site.

59. On July 25, 2016, the Corps issued the NWP 12 verification and other authorizations required at the roughly 204 sites in the four states for which verification has been requested along the pipeline's entire length. However, prior to that time, construction started along the remainder of the route, including construction involving discharges into the hundreds if

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not thousands of sites where pipeline construction involves discharges into waters of the United States, but for which no PCN is required.

60. The Tribe has repeatedly expressed concerns to the Corps regarding construction in waters of the United States pursuant to NWP 12 without any section 106 consultation on historic impacts. On June 30, 2016, the Standing Rock Tribal Historic Preservation Officer, Jon Eagle Sr., wrote to the Corps District Commander regarding the extensive work proceeding without any § 106 consultation under NWP 12. This letter explained that non-Tribal archaeologists were unable to appreciate the cultural significance of Tribal historic sites, and that his office had found the DAPL cultural surveys, conducted by out-of-state archaeologists with no training in the cultural practices of the Oceti Sakowin to be "gravely deficient."

61. The letter requested that the Corps declare that all impacts to waters of the United States had potential historic impacts and requested that the Corps require PCNs from all such crossings, so that full § 106 consultation could occur.

62. In response, the regulatory branch chief of the Corps' Omaha district invited Mr. Eagle's office to participate in "monitoring" for "post construction discoveries of cultural resources and/or burials" at six sites subject to PCNs in North and South Dakota. The Corps did not respond to the issue to which Mr. Eagle's letter was actually addressed, specifically, cultural impacts at sites that are not subject to a PCN.

63. The Tribe's concerns were highlighted in June of 2016 when archaeologists working on behalf of Upper Sioux Tribe discovered a site of great religious and cultural significance to Oceti Sakowin in the pipeline's route in Iowa. The site was not discovered by DAPL during its cultural resource surveys, even though it lay directly in the pipeline's route.

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64. The pipeline will also impact historic and culturally significant sites in uplands along the pipeline's route in between areas of Corps' jurisdiction. The Corps views any impacts to such uplands sites as outside of its responsibility under § 106, as the Corps interprets §106 to apply only within the immediate area of CWA jurisdiction.

65. The ACHP regulations take a different approach. In a May 6, 2016 letter to the Corps regarding DAPL, the ACHP explained that its regulations "define the undertaking as the entire project, portions of which may require federal authorization or assistance." Even where the jurisdiction is limited to particular portions of a project, the ACHP explained, "the federal agency remains responsible for taking into account the effects of the undertaking on historic properties." The letter concluded that given the close relationship between the project and multiple federal approvals, "a greater effort to identify and evaluate historic properties" was required.

66. In a May 19, 2016, letter, the ACHP formally objected to the Corps' finding of "no effect" at the site of the Lake Oahe crossing, one of only two sites in the entire state of North Dakota for which the Corps even purported to engage in § 106 consultation. The ACHP asserted that the Corps misapplied § 106 by considering only historic properties within its areas of jurisdiction, when it should consider indirect impacts to historic sites in uplands that could not occur but for the Corps' authorization to discharge into waters of the United States.

67. At the time of filing this complaint, DAPL has not executed agreements with all landowners, and eminent domain proceedings are underway in several states. Additionally, several lawsuits have been filed against DAPL and state regulatory agencies which challenge the legality of DAPL approvals, and seeking the remedy of vacating such approvals, which would

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require DAPL to stop work. However, DAPL has chosen to move ahead with construction in places where regulatory approval is secured and where landowner consent has been obtained.

68. DAPL has been repeatedly told by state regulatory agencies that any construction prior to the completion of the regulatory and eminent domain process is at its own risk. DAPL has repeatedly acknowledged that it bears the risk of starting construction prior to the completion of the regulatory and legal process.

IV. GENERAL FACTS REGARDING THE CORPS' ISSUANCE OF THE § 408 PERMITS AND CWA VERIFICATIONS

69. On July 25, 2016, the Corps' issued authorizations pursuant to § 408 of the RHA for DAPL to cross federally managed or owned lands on the Missouri River in two places, at Lake Sakakawea and Lake Oahe, roughly 230 miles apart. Accompanying this authorization, the Corps released a final environmental assessment ("EA") and "finding of no significant impact" ("FONSI") with respect to two components of the DAPL in North Dakota. The EA and FONSI concluded that these two small segments of the pipeline did not have sufficient adverse environmental impact to warrant preparation of an environmental impact statement ("EIS"), which would have triggered substantially broader environmental review, a closer comparison of alternatives, and greater public engagement.

70. This decision authorizes DAPL proponents to begin drilling a pipeline path underneath each of the two reservoirs, install the pipeline, and begin operating it to transport crude oil in the Tribe's culturally significant ancestral lands, and adjacent its reservation. DAPL has notified Tribes that construction at the site is scheduled to begin on July 30, 2016.

71. Also on that date, the Corps issued verifications pursuant to the CWA and RHA finding that 204 crossings of jurisdictional waters of the United States, for which PCNs had been filed, met the terms of NWP 12. The verifications include federally protected waters in four

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states: North Dakota (2 verifications), South Dakota (10 verifications), Iowa (61 verifications), and Illinois (45 verifications). The verifications authorize DAPL proponents to begin construction of the pipeline through federally regulated streams, rivers, and wetlands, and operate the pipeline to transport crude oil in the Tribe's culturally significant ancestral lands, and adjacent its reservation. DAPL has notified Tribes that construction is set to begin at such many of these sites on or before August 1, 2016.

72. On January 5, 2016, the St. Louis District of the Corps released a public notice announcing that it intended to authorize another segment of the pipeline under § 408 of the RHA. That segment crossed federal flowage easements and federally managed levees on the Illinois River. To date, no permit or even draft environmental review document has been issued for this segment of the pipeline.

73. On or about December 17, 2015, the U.S. Fish and Wildlife Service ("FWS") released a draft EA for yet another segment of the pipeline. That EA reviewed potential impacts of the pipeline over grassland easements held by FWS and managed for wildlife values. A final EA and FONSI were issued by the FWS on June 22, 2016.

74. The current proposed route crosses Lake Oahe a half of a mile upstream of the Tribe's reservation boundary, where any leak or spill from the pipeline would flow into the reservation. The Tribe and its members have been deeply concerned about the potential impacts of the Lake Oahe crossing since its inception, for two primary reasons. First, the Tribe relies on the waters of Lake Oahe for drinking water, irrigation, fishing, and recreation, and to carry out cultural and religious practices. The public water supply for the Tribe, which provides drinking water for thousands of people, is located a few miles downstream of the proposed pipeline crossing route. Additionally, the cultural and religious significance of these waters cannot be

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overstated. An oil spill from the pipeline into Lake Oahe would cause an economic, public health and welfare, and cultural crisis of the greatest magnitude.

75. Pipeline leaks and spills are routine in both new and old pipelines. A segment of the Keystone pipeline built in 2010 recorded 35 leaks in its first year of operations. A study of North Dakota's pipelines revealed over 300 leaks in two years, most of which were unreported to the public. Major spills from crude oil pipelines have occurred recently on the Kalamazoo and Yellowstone Rivers, with devastating economic and environmental impacts. The Corps does not require, and DAPL does not propose, any technology or mitigation approaches that reduce risk relative to other recent pipelines that have been the source of major and minor spills and leaks in recent years.

76. Second, the Lake Oahe crossing will take place in an area of great cultural, religious and spiritual significance to the Tribe. Construction of the pipeline, which includes clearing and grading a 100-150 foot access pathway nearly 1200 miles long, digging a trench as deep as 10 feet, and building and burying the pipeline, would destroy burial grounds, sacred sites, and historically significant areas on either side of Lake Oahe. These sites carry enormous cultural importance to the Tribe and its members.

77. Construction of pipelines involves other significant environmental impacts, including massive amounts of water required for hydrostatic testing and permanent maintenance of a 50-foot right of way above the pipeline.

78. The confluence of the Cannonball and Missouri Rivers, where the crossing would take place, is a sacred place to the Tribe. It is a place of great historical significance, serving as a place of peace, prayer, and trade where traditional enemies could meet without risk of violence.

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There are numerous sacred stones and historically important sites in the immediate landscape of the Lake Oahe Crossing, few of which have been fully evaluated by Tribal archaeologists.

79. The Corps operates Oahe dam, downstream of the Lake Oahe crossing, for flood control and other purposes. The result of its management is that water levels fluctuate greatly in the reservoir, with attendant erosion, scouring, and deposition of sediments. The geomorphology of the segment of Lake Oahe to be crossed by the pipeline is highly dynamic.

80. Due to its concerns about the configuration of the pipeline and inadequacies in the regulatory process, the Tribe has participated extensively in the public process associated with the permits, including filing numerous formal technical and legal comments on the Lake Oahe crossing, meeting with Corps' leadership and staff, and communicating with agency officials to express concerns. The Tribe has repeatedly conveyed to the Corps and other government officials the significance of its concerns and the risks to the Tribe about moving ahead with the pipeline in its current configuration.

V. SPECIFIC FACTS RELATED TO NHPA COMPLIANCE FOR JULY 25, 2016 AUTHORIZATIONS

81. The confluence of the Cannonball and Missouri Rivers is sacred ground to the Standing Rock Sioux people. It is rich in history, and it is rich in cultural and religious significance. Industrial development of that site for the crude oil pipeline has a high potential to destroy sites eligible for listing in the National Register.

82. The Corps undertook a process to consider the impacts of the Missouri River crossing on historic and culturally significant sites that was flawed in multiple respects. It defined the "area of potential effects" ("APE") for the Lake Oahe crossing exceptionally narrowly to include only a tiny parcel immediately surrounding the horizontal directional drilling ("HDD") pits on each side of the river and a narrow strip for an access road and "stringing area"

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on the west side of the crossing. On the east side of the river, the APE is difficult to determine because in some of the Corps' figures, the "project workspace" includes both the access road and stringing area, while in others only the HDD pit is included.

83. The Corps' attempts at § 106 consultation omit the actual pipeline route that will be entering and existing the HDD borehole. The pipeline itself will involve 100-150 yard swath of industrial development—clearing, grading, excavation of a 6 to 10 foot trench, and construction work to shape and place the pipeline.

84. It is likely that such development would destroy any historic or culturally significant sites in its path. There are already known but unevaluated historic sites—in other words, sites that may be eligible for protection under the National Historic Preservation Act ("NHPA")—in the direct path of the pipeline immediately in the area of the HDD crossing. For example, according to the draft EA, several sites are directly in the pipeline's path in the first mile outside of the HDD site.

85. Consultation with the Tribal Historic Preservation Office ("THPO") on the DAPL, which would be routed just outside the reservation boundary, on ancestral land with great cultural and religious importance to the Standing Rock Sioux Tribe, has been profoundly inadequate. The Tribe has never been able to participate meaningfully in assessing the significance of sites that are potentially affected by the project.

86. The non-Tribal consultants hired by DAPL to do cultural surveys are not equipped to suitably assess the potential cultural significance of sites in this area. The Tribe has never had the opportunity to discuss protocols for cultural surveys or participate in the surveys that were conducted.

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87. The Tribe's first record of correspondence from the Corps related to the DAPL is dated February 12, 2015, when a Corps representative emailed the THPO asking if there were concerns related to preliminary bore hole testing to be conducted at the HDD site.

88. The THPO, Ms. Waste'Win Young, wrote back immediately objecting to the Corps' conclusion that no historic properties would be affected by the bore hole drilling, documenting numerous specific important sites that could be affected as well as the cultural significance of the area generally, and requesting a full Class III survey with tribal archaeologists before any work was done.

89. No response to this urgent correspondence was ever provided, despite several follow up requests from the THPO, and the work was done without any additional tribal consultation or process. Many months later, in a September 16, 2015 letter, a Corps official stated that the § 106 process *had ended* on January 18, 2015—nearly a month *prior* to the Corps' initial email about the project.

90. On February 17, 2015, the Corps sent the THPO a generic form letter seeking to initiate consultation under § 106 on the DAPL. The THPO wrote back immediately, committing the SRST to participation in the § 106 process, highlighting the significance of the site, and recommending full Class III surveys with tribal involvement.

91. In the months that followed, both the THPO and the Chairman of the SRST followed up with numerous additional letters to the Corps outlining concerns about cultural impacts, and seeking to engage the Corps in a good-faith consultation process as required by § 106 regulations.

92. However, no response was received from the Corps to this correspondence until September of 2015, when another letter was sent to the Tribal Chairman that again inquired "if

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you would like to consult" on the pipeline project. The letter asked for any "knowledge or concerns regarding historic properties" that the Tribe wanted the Corps to consider. A deadline of less than a month later was provided.

93. The THPO responded promptly, outlining the Tribe's significant concerns with properties on the site, and its ongoing exclusion from the § 106 process. The THPO observed that "it has become clear that the Corps is attempting to circumvent the Section 106 process" and urged it to broaden its review to include affected areas outside the Corps' jurisdiction, as required by governing regulations. The Corps did not respond to this letter.

94. Instead, the Corps' next action was to publish a draft environmental assessment ("EA") that included not a single mention of the potential impacts of the pipeline project on the SRST or areas of historic and cultural significance to the Tribe. The draft EA also stated incorrectly that the SRST THPO had indicated to DAPL that the Lake Oahe site avoided impacts to tribally significant sites.

95. SRST submitted extensive comments on the EA, on three occasions, highlighting both the flaws in the § 106 consultation process as well as the significant cultural resources that could be harmed by the project.

96. Additionally, the Corps received critical letters from the U.S. Environmental Protection Agency, the U.S. Department of Interior, and the ACHP, all of whom questioned the Corps' approach to consultation with the SRST. The ACHP observed that it had "not been provided evidence that the Corps has met" the requirements of § 106, observing that "there is likely to be significant tribal interest" and that "[t]he Corps' approach to meeting its government-to-government consultation is extremely important." It later asked to be formally made a party to consultation on the project.

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97. Around the time of the draft EA, the Tribe also learned that the proponent had conducted cultural surveys at the Lake Oahe site and along the pipeline route during 2014 and 2015. Neither the proponent nor the Corps ever consulted with the Tribe about the protocols for those assessments or the area of potential affects, or had invited their participation as the Tribe had repeatedly requested. Instead, the proponent provided the Tribe with a massive quantity of its survey data, after it was complete, and provided an opportunity to comment.

98. During this same time frame, i.e., late 2015 and early 2016, the proponent stated repeatedly in public and private meetings that construction was slated to start in mid-May of 2016, regardless of any additional process requirements or needs.

99. In February of 2016, the Tribe and the commander of the Omaha District, Col. John Henderson, entered discussions about a visit to the reservation and the Lake Oahe crossing site. SRST Chairman Archambault emphasized in a letter to the Colonel that "there can be no meaningful consultation with respect to decisions that have already been made," and urged a reopening of the NEPA process to assess route alternatives.

100. The meeting with the Colonel took place on Feb. 29, 2016, at which time the Colonel and Corps archaeologists toured the site with the Chairman, THPO, and tribal archaeologists. Tribal participants in this meeting emphasized the cultural importance of the site, and demonstrated it with specific evidence.

101. In a follow up letter, the Chairman expressed hope that the visit would constitute a "turning point" in what had been to that point a flawed process, and that the Corps could pursue greater consideration of the Tribe's interests through a full EIS.

102. A follow up visit between Corps and Tribal archaeologists occurred on March 7, 2016, during which SRST staff pointed out places where moles had pushed dirt to the surface,

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carrying prehistoric pottery shards, pieces of bone, flint, and tools. The sites shown to the Corps staff had never been previously assessed or recorded, consistent with the Tribe's repeatedly expressed belief that the site generally was rich in unassessed sites of historic and cultural significance.

103. During this visit Corps archaeologists stated that they were unaware of many of the sites that they were witnessing and agreed with Tribal staff that additional study was required.

104. On March 15, 2016 the ACHP wrote to the Corps again, noting that the agency "remained perplexed" by the Corps' difficulties in consulting with the SRST, pointing out that there was no tribal participation in identification surveys and urging the Corps to look at alternative pipeline alignments as required by ACHP regulations.

105. In later March 2016, Chairman Archambault invited Col. Henderson back to the reservation to continue the dialogue about impacts to historic properties. However, on April 22, 2016, the Corps' next action was to make a formal finding that no historic properties were affected by the Lake Oahe decision.

106. The Tribal THPO requested that the ACHP review the April 22 decision by letter on May 2, 2016.

107. On May 6, 2016, the ACHP sent another letter responding to previous correspondence between the Corps and ACHP. The letter laid out a number of significant criticisms of the Corps' compliance with § 106 and made recommendations for additional steps that Corps should take.

108. The Chairman of the SRST sent a letter to the Corps formally objecting to the "no historic properties effected" on May 18, 2015. The THPO also sent an objection letter on May

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17, 2016. Neither the Chairman nor the THPO received any response to these formal objections besides additional general information from the Corps on their permitting process.

109. On May 19, 2016, the ACHP formally objected to the effects determinations made by the Corps for DAPL. The ACHP outlined several fundamental flaws with the Corps § 106 compliance, including a failure to properly define the undertaking and area of potential effects; inadequate Tribal consultation and incomplete identification efforts; and numerous procedural flaws.

110. The April 22, 2016 finding pertains only to the Lake Oahe crossing site. It does not apply to any the other hundreds of NWP 12 verifications along the pipeline's route.

111. Section 106 consultation is required for the Corps' verifications as well. But the Corps has not consulted with the Tribe to evaluate the impacts of PCN verifications on historic sites within its ancestral lands, including sites in South Dakota and Iowa. Instead, in issuing the verifications, it provided for tribal monitoring during construction.

VI. SPECIFIC FACTS RELATED TO NEPA COMPLIANCE FOR JULY 25, 2016 AUTHORIZATIONS

112. The Corps is evaluating different components of DAPL in multiple separate segments, each following an independent process and on its own timeline. The Corps' documents for each segment fail to acknowledge the existence or impacts of the other segments.

113. One segment is made up of two crossings of Corps-managed or Corps-owned lands in North Dakota, at Lake Sakakawea and at Lake Oahe, roughly 230 miles apart from one another. Another segment is the crossing of Corps-managed and operated land and levees towards the other end of the pipeline, on the Illinois River. Finally, the Corps issued 204 verifications in four states that DAPL can proceed under NWP 12 where they cross jurisdictional waters.

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114. In yet another NEPA process, the FWS reviewed the impacts of providing authorization to cross easements on private land intended to protect wildlife. In June of 2016, FWS released a final EA covering authorization to cross miles of grasslands and wetlands easements in North and South Dakota.

115. The Corps and FWS have pursued a NEPA process for each of these components independently of the other components. For the North Dakota crossings, the Omaha District of the Corps released a draft EA in December 2015 and a final EA and FONSI on July 25, 2016. For the Illinois River crossings, the St. Louis District of the Corps released an EA and FONSI on July 25, 2016, but without having provided a draft EA and any opportunity for public comment. For the FWS easements, an EA was issued in June of 2016. For the CWA NWP 12 verifications, the Corps has not taken any action to comply with NEPA, asserting that verifications are not federal actions subject to NEPA.

116. The North Dakota EA looks narrowly at the impacts of pipeline construction at the HDD crossing site only. It does not look at the indirect effect of facilitating pipeline construction to, from, and through the two HDD crossings. Accordingly, the EA is silent on the impacts to the environment associated with pipeline construction outside the immediate confines of the HDD crossing site, including oil spill risks to waters or lands of cultural significance to the Tribe.

117. The North Dakota EA also does not analyze the environmental impacts of the North Dakota crossings in the context of either the CWA verifications for the pipeline, the Illinois River § 408 permit, or the FWS easement crossings, all of which are integrally related to a single pipeline project.

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118. In multiple sets of legal comments, the Tribe expressed its concerns regarding these and many other issues associated with the NEPA process.

119. On January 8, 2016, the U.S. Environmental Protection Agency ("EPA") sent comments to the Corps on the draft EA saying that the document lacked "sufficient analysis of direct and indirect impacts to water resources," lacks information related to the operation of the pipeline, and that the document is "limited to small portions of the complete project and does not identify the related effects of the entire project segment."

120. EPA sent additional comments on March 11, 2016, highlighting the proximity of the Tribe's drinking water intake to the pipeline crossing. The letter highlighted multiple risks to water resources from the project, recommended additional analysis of emergency preparedness measures, and urged consideration of additional alternatives that reduced potential conflicts with drinking water supplies.

121. On March 29, 2016, the U.S. Department of the Interior sent a comment letter to the Corps urging preparation of a full Environmental Impact Statement ("EIS"). DOI highlighted the risks to the Tribe's reservation and drinking water resources. The letter also observed that the Corps' NEPA analysis should consider more of the pipeline route as a connected action under NEPA.

VII. SPECIFIC FACTS RELATED TO CWA/RHA COMPLIANCE FOR JULY 25, 2016 AUTHORIZATIONS

122. Construction of the DAPL will involve dredge and/or fill in waters of the United States in hundreds if not thousands of locations. Construction of DAPL will also involve obstructions to the capacity of navigable waters of the United States.

123. The Corps is only issuing individual permits at three locations on the entire length of the pipeline: at the two North Dakota reservoir crossings, and at the Illinois River crossing.

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Those components of the pipeline require a permit under § 408 of the Rivers and Harbors Act and real estate actions because the pipeline will cross federally owned or managed land.

124. The remainder of the pipeline's impacts on jurisdictional waters is being processed under NWP 12, which authorizes certain actions without an individual permit.

125. With respect to PCNs and verifications, the final verifications identify 2 locations in North Dakota, 10 locations in South Dakota, 61 locations in Iowa, and 45 locations in Illinois, for a total of 204 crossings in 1,168 miles of pipeline.

126. Since the purpose of the pipeline is to carry crude oil developed in western North Dakota to sites in Illinois, no component of the pipeline is useful without all of the other components of the pipeline in place

127. The Lake Oahe pipeline crossing will take place in close proximity to the Tribe's public water supply, as well as a number of private water supplies, and irrigation intakes. The crossing will also impair tribal treaty rights on the Standing Rock reservation, including reserved water rights.

CLAIMS FOR RELIEF

I. FIRST CLAIM FOR RELIEF – FAILURE TO CONSULT UNDER § 106 OF THE NHPA

128. Plaintiff reincorporates the allegations in all preceding paragraphs.

129. Issuance of an individual or general § 404 permit is an "undertaking" as defined in the NHPA. As such, § 106 consultation is required to determine the effect of such undertaking on historic properties.

130. The Corps failed to consider the impacts of NWP 12 on historic or culturally significant properties, or otherwise engage in the § 106 process, prior to issuance of NWP 12 in 2012.

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131. The Corps has never developed a programmatic agreement with the ACHP with respect to the NWP program.

132. Issuance of NWP 12 is a "final agency action" within the meaning of the APA.

133. The Corps' failure to comply with the requirements of the NHPA and its implementing regulations is arbitrary, capricious, and contrary to law in violation of the APA, 5 U.S.C. § 706.

II. SECOND CLAIM FOR RELIEF – UNLAWFUL ABDICATION OF § 106 RESPONSIBILITIES

134. Plaintiff reincorporates the allegations in all preceding paragraphs.

135. Section 106 of the NHPA directs federal agency heads to take into account the effect of any undertaking on historic properties, and provide the ACHP and affected parties a reasonable opportunity to comment on such undertaking.

136. Under ACHP regulations, "it is the statutory obligation *of the Federal agency* to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance…." 36 C.F.R. § 800.2(a).

137. In issuing NWP 12, however, the Corps does not fulfill the requirements of § 106 or "take legal and financial responsibility" for compliance. Rather, it provided up-front CWA/RHA authorization to discharge fill into waters of the United States, effectively ending its involvement in most situations. In so doing, it improperly abdicated its § 106 responsibility, and delegated to the proponent its NHPA duty to determine whether there would be any potential impact to historic properties. If the proponent determines for itself that no historic properties are affected, the Corps is not notified of the action and provides no verification of NWP 12 authorization. In such circumstances, the Corps does not consider, and does not give the ACHP

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or interested parties a reasonable opportunity to comment on, the potential impacts to historic sites. In so doing, the Corps abdicated its § 106 duties and/or improperly delegated them to private parties.

138. ACHP regulations direct that agencies "shall involve" consulting parties in findings and determinations made during the § 106 process. 36 C.F.R. § 800.2(a)(4). Consulting parties must include Indian Tribes "that attach religious and cultural significance to historic properties that may be affected by an undertaking." *Id*. § 800.2(c)(2). The agency "shall ensure" that the § 106 process provides such Tribe " a reasonable opportunity" to "identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects." *Id*. §800.2(c)(2)(ii)(A). Further, it is the "responsibility of the agency official to make a reasonable and good faith effort to identify Indian Tribes" to be consulted in the § 106 process. *Id*. § 800.2(c)(4)

139. Applicants for federal permits are "entitled to participate" as consulting parties in § 106 consultation, and the responsible official may "authorize an applicant … to initiate consultation with" consulting parties, but "remains legally responsible for all findings and determinations charged to the agency official." *Id*. Such authorization requires notice to all state and tribal historic preservation offices, and federal agencies "remain responsible for their government-to-government relationships with Indian Tribes." *Id*. Moreover "the views of the public are essential" to the § 106 process and agencies "shall seek and consider the views of the public" in carrying out its responsibilities. *Id*. § 800.2(d).

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140. Additionally, ACHP regulations require Federal agencies to "ensure" that all actions taken by employees or contractors "shall meet professional standards under regulations developed by" the ACHP. However, in issuing NWP 12 and GC 20, the Corps did not "ensure" that any standards at all would be used by private parties delegated to make their own § 106 threshold determinations.

141. In enacting NWP 12 and GC 20, the Corps authorized discharges into waters of the United States in a way that sidesteps virtually all of the requirements of the ACHP § 106 regulations. Under NWP 12 and GC 20, private project proponents can make their own determinations as to the effects on tribally significant sites without any involvement of the Tribes. Under NWP 12 and GC 20, Tribes are not provided any opportunity, let alone a reasonable one, to identify their concerns or assist in the identification of historic sites. Under NWP 12 and GC 20, the Corps is not responsible for the findings and determinations regarding adverse effects. Under NWP 12 and GC 20, private project proponents can be made in a vacuum, with no input, no notice, no accountability, and no oversight. Moreover NWP 12 and GC 20 do not establish definitions or standards to be used by private project proponents on how to make determinations of historic impacts, leaving it up to the proponents' unfettered discretion to determine whether a PCN is required or not.

142. NWP 12 and CG 20 are being applied to DAPL to authorize discharges into waters of the United States with no verification or oversight by the Corps, and no accompanying § 106 process. Through NWP 12 and GC 20, the Corps is violating non-delegable duties: there is no consultation process, there are no standards governing determinations made by private parties, and the Corps has no mechanism to "ensure" compliance with its legal responsibilities.

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143. The Tribe is harmed by NWP 12 and GC 20 because they have led and will continue to lead to the destruction of culturally significant sites. Following NWP 12 and GC 20, DAPL proponents have conducted gravely deficient cultural surveys, with no involvement by the Tribes. DAPL proponents have not found historic properties that would be affected by pipeline construction in Corps' jurisdictional areas. Accordingly, they have not filed PCNs and sought verification at the vast majority of sites at which they will be discharging into waters of the United States.

144. The ACHP wrote to the Corps on May 6, 2016 to share the concern that Tribes like Standing Rock Sioux Tribe have not had the opportunity to share relevant information "in the vicinity of water crossings and within the project [right of way] that the applicant assumes will not require PCNs under General Conditions 20 and 31 [standards for PCNs] of the NWP protocols."

145. Issuance of NWP 12 is a "final agency action" within the meaning of the APA.

146. The Corps' delegation of its § 106 responsibilities to private parties in NWP 12 and GC 20 is arbitrary, capricious, and contrary to law in violation of the APA, 5 U.S.C. § 706.

III. THIRD CLAIM FOR RELIEF – FAILURE TO REQUIRE CONSIDERATION OF INDIRECT EFFECTS UNDER § 106

147. Plaintiff reincorporates the allegations in all preceding paragraphs.

148. Under NHPA, federal agencies must consult on the effects of "undertakings" to historic properties. An undertaking is defined by rule to mean "a project, activity, or program funded in whole or in part under the direct *or indirect jurisdiction of a Federal agency*, including those carried out by or on behalf of a federal agency, those carried out with Federal financial assistance, and those requiring a federal permit, license or approval." 36 C.F.R. § 800.16(y) (emphasis added).

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149. The entirety of a private pipeline project that requires Corps' authorization for hundreds if not thousands of discharges into waters of the United States is an "undertaking" for purposes of § 106 because it requires federal approval in order to occur and because it is under the "indirect jurisdiction" of the Corps.

150. GC 20 directs permittees to file a PCN with the Corps if the authorized activity will have the potential to cause effects to historic properties. However, the Corps directs permittees to only consider the direct effects of activities in jurisdictional waters, and not indirect impacts such as construction impacts in uplands.

151. ACHP regulations require consideration of indirect effects of agency undertakings, including areas in uplands outside of Corps jurisdiction. With respect to DAPL, in a May 19, 2016 letter, the ACHP confirmed that the entire 1,168-mile crude oil pipeline is the "undertaking" for purposes of § 106 consultation, and accused the Corps of "not differentiating appropriately between federal action and the undertaking…." The ACHP concluded that "the Corps' effects determinations, thus far, fail to consider the potential for effects from the larger undertaking on historic properties including those of cultural and religious significance to Indian Tribes."

152. Issuance of NWP 12 is a "final agency action" within the meaning of the APA.

153. As applied to DAPL, the authorization to discharge into waters of the United States, without consideration of indirect impacts on historic sites as required by § 106, is arbitrary, capricious, and contrary to law in violation of the APA, 5 U.S.C. § 706.

IV. FOURTH CLAIM FOR RELIEF – VIOLATIONS OF NATIONAL HISTORIC PRESERVATION ACT WITH RESPECT TO JULY 25, 2016 VERIFICATIONS AND § 408 PERMITS

154. Plaintiff reincorporates the allegations in all preceding paragraphs.

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A. Incorrect Definition of "Area of Potential Effects"

155. Section 106 of the National Historic Preservation Act ("NHPA") requires that, prior to issuance of a federal permit or license, that federal agencies shall take into consideration the effects of that "undertaking" on historic properties. 54 U.S.C. § 306108. Issuance of § 408 permits and CWA/RHA verifications under NWP 12 are federal undertakings within the meaning the NHPA.

156. Early in the NHPA process, an agency, in consultation with the THPO, must determine the area of potential effects ("APE") of a federal undertaking. 36 C.F.R. § 800.4(1)(1). The APE is defined by regulation to include the area "within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties…. The [APE] is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking." *Id*. § 800.16(d).

157. The Corps defined the APE for the Lake Oahe crossing unlawfully narrowly, and inconsistently with both the ACHP regulations and its own guidance.

158. The APE for the crossing includes only a tiny parcel immediately surrounding the HDD pits on each side of the river and a narrow strip for an access road and "stringing area" on the west side of the crossing. On the east side of the river, the APE is difficult to determine because in some of the Corps' figures, the "project workspace" includes both the access road and stringing area, while in others only the HDD pit is included.

159. The Corps unlawfully omits the actual pipeline route that will be entering and exiting the HDD borehole from the APE. Pipeline construction would involve 100-150 yard swath of industrial development—clearing, grading, excavation of a 6 to 10 foot trench, and construction work to shape and place the pipeline. Such development would destroy any historic

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or culturally significant sites in its path. But because these sites are outside the APE, the Corps' conclusion does not consider them.

160. The pipeline path should be in the APE because, even where the Corps lacks direct permitting jurisdiction over segments in between regulatory areas, pipeline construction in such areas is an indirect effect of the HDD process. *Id*. § 800.16(d).

161. The Corps' failure to consider the impacts to historic and sacred sites outside of the immediate and narrow confines of the HDD drilling sites was arbitrary, capricious, and not in accordance with law in violation of the APA and the NHPA.

B. Inadequate § 106 Consultation

162. The Section 106 process requires consultation with Indian Tribes on federal undertakings that potentially affect sites that are sacred or culturally significant to Indian Tribes. 36 C.F.R. § 800.2(c)(2). Consultation must occur regarding sites with "religious and cultural significance" even if they occur on ancestral or ceded land. *Id*. § 800.2(c)(2)(II)(D); 54 U.S.C. § 302707.

163. Under the consultation regulations, an agency official must "ensure" that the process provides Tribes with "a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties….articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects." *Id*. § 800.2(c)(ii)(A). This requirement imposes a "reasonable and good faith effort" by agencies to consult with Tribes in a "manner respectful of tribal sovereignty." *Id*. § 800.2(c)(2)(II)(B).

164. The Corps' final permit decision is the product of a fundamentally flawed consultation process that does not meet the requirements of the ACHP regulations.

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165. Consultation never occurred at all on the bore hole testing. The Tribe was notified and the work was done before the Tribe's serious concerns were even received by the Corps.

166. Consultation did not start at the earliest phases of the process. Consultation did not occur on the "area of potential affects." Consultation did not occur on participation in the surveys or protocols for how they should be conducted. 36 C.F.R. § 800(c)(2)(II)(A).

167. Instead, the THPO was given a brief window to "comment" on the proponents' deeply flawed and completed surveys long after the route had been selected and construction scheduled.

168. The Corps' April 22, 2016 "no effect" determination contains citations to documents, like "Landt & McCord, 2016," that have never been provided to the Tribe.

169. The Tribe acted promptly and repeatedly to draw the Corps' attention to its serious concerns. It immediately responded to all correspondence from the Corps.

170. Information was not sought from the Tribe in determining the scope of its identification efforts, as required by 36 C.F.R. § 800.4(a), nor was the Tribe given a meaningful opportunity to assist the Corps in the identification of this culturally rich but largely unassessed site. *Id*. § 800.4(b).

171. The Standing Rock THPO formally objected to the Corps' finding of no historic properties affected on May 17, 2016. Although the regulations required the Corps to either consult with the objecting party to resolve the disagreement, or request action by the ACHP, neither of those things have ever happened. 36 C.F.R. § 800.4(d)(1)(ii).

172. The ACHP formally objected to the Corps' findings of no historic properties affected on May 19, 2016. Under ACHP regulations, such an objection must be taken into

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account by the Corps prior to reaching a final decision, and the Corps must prepare a summary of the decision and its rationale, along with evidence of consideration of the ACHP's objection. 36 C.F.R. § 800.4(d)(1)(iv).

173. There are significant unevaluated properties in and near the Lake Oahe crossing work site, as well as the broader pipeline route. Some sites deemed "ineligible" by DAPL's private surveys may in fact be eligible. Some sites deemed unevaluated have in fact been evaluated and are potentially eligible.

174. The Corps' decision on the Lake Oahe crossing was arbitrary, capricious, and not in accordance with law in violation of the APA and the NHPA.

C. No § 106 Consultation for Verifications

175. The Corps' NWP general conditions require completion of the § 106 process for NWP permit verifications and before work can begin. The proponent must present a PCN to the Corps wherever an activity "may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing" on the National Register. 77 Fed. Reg. 10184, 10284 (Feb, 21, 2012).

176. The Corps has never consulted with the Tribe on issuance of verifications in its ancestral lands, which span the length of the pipeline. The Tribe is unaware of any formal § 106 findings for verifications outside of the two sites in North Dakota.

177. The Corps' decision that § 106 consultation had been completed on the 204 CWA verifications was arbitrary, capricious, and not in accordance with law in violation of the APA and the NHPA.

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V. FIFTH CLAIM FOR RELIEF – VIOLATIONS OF NEPA WITH RESPECT TO JULY 25, 2016 VERIFICATIONS AND § 408 PERMITS

178. Plaintiff hereby alleges and incorporates and restates all previous paragraphs of this complaint.

A. Failure to Consider Indirect Effects of Missouri River Crossings

179. NEPA requires consideration of indirect effects of agency decision. The Corps misapplied these legal standards in the final North Dakota EA. It looked narrowly at the impacts of the river crossings themselves, and did not disclose or consider the impacts of other components of the pipeline, either related to its construction or its operation to transport 570,000 barrels a day of crude oil over nearly 1200 miles.

180. Pipeline construction is an indirect impact of the Corps § 408 permits because it is proximately caused by the Corps' decision. Without the ability to cross the Missouri River, the pipeline could not be built. Pipeline construction is a reasonably foreseeable outcome of the Corps' decision.

181. Alternatively, pipeline construction could be considered an indirect effect of the Corps' § 408 permit because it is a future action that is reasonably certain to occur as long as DAPL receives Corps' authorization at the Missouri River crossings.

182. The Corps failure to consider and disclose the impacts of the pipeline's construction and operation is arbitrary and capricious and not in accordance with law in violation of the APA and NEPA.

B. Unlawful Segmentation of Project Components

183. NEPA requires consideration of separate components of a single project in a single NEPA review. 40 C.F.R. § 1508.25. NEPA regulations state that connected actions should be considered in a single EIS, defining them as action that "cannot or will not proceed

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unless other actions are taken previously or simultaneously," and "are interdependent parts of a larger action and depend on the larger action for their justification." *Id*.

184. The Corps' permitting regulations also require it to reject applications that seek to segment a single project into multiple permits. 33 C.F.R. § 325.1(c)(2) ("All activities which the applicant plans to undertake which are reasonable related to the same project and for which a DA permit would be required should be included in the same permit application.").

185. The Corps has not adhered to these requirements, despite having them pointed out to them by the Tribe, multiple federal agencies, and others. Rather, it unlawfully segmented its NEPA review into separate components in North Dakota and in Illinois, each of which is proceeding independent of the other.

186. Moreover, the FWS issued its own EA and FONSI for a component of this pipeline project. That EA and FONSI did not evaluate the impacts of the FWS decision in the context of the Corps permits or the larger project which it was a part of.

187. The Illinois § 408 permit, the North Dakota § 408 permit, and the FWS grassland easements, are connected actions because they meet the criteria in 40 C.F.R. § 1508.25. NEPA requires them to be considered in a single NEPA document. They were not.

188. By unlawfully segmenting multiple components of the same pipeline project, the Corps has acted in a manner that is arbitrary, capricious, and not in accordance with law, in violation of NEPA and the APA.

C. Arbitrary Economic Analysis

189. NEPA and its implementing regulations require the Corps to produce environmental review documents that are factually accurate, well supported, and that fully discloses the impacts of an action to the public. 40 C.F.R. § 1502.

190. These standards apply equally to an agency's treatment of economic data. 40

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C.F.R. §§ 1502.23 (cost benefit analysis), 1508.8 (EIS must evaluate economic effects). An agency's failure to include and analyze information that is important, significant, or essential renders an EA and FONSI inadequate. 40 C.F.R. § 1500.1. These fundamental NEPA principles apply to both economic and environmental analyses in an EIS. 40 C.F.R. §§ 1502.24, 1508.8 ("effects" in an EIS must evaluate include economic impacts.).

191. In reaching its decision on the North Dakota crossings, the Corps looked very narrowly at only two tiny segments of the pipeline, ignoring the environmental and economic risks and harms of the pipeline as a whole.

192. However, it balanced these narrow risks and harms against the full economic benefit of the pipeline as a whole. For example, the EA cites the full $3.78 billion investment "directly impacting the local, regional, and national labor force by creating nearly 12,000 construction jobs." Final EA, at 80. It repeats DAPL's public talking points about providing "considerable labor income and state income tax revenue – including the generation of more than $13.4 million in ad valorem taxes." *Id*.

193. The Corps' decision to balance the full economic benefits of building and operating the entire pipeline against the economic risks of constructing tiny segments of that pipeline is arbitrary and capricious and not in accordance with law, in violation of NEPA and the APA.

VI. SIXTH CLAIM FOR RELIEF: VIOLATIONS OF THE CLEAN WATER ACT AND RIVERS AND HARBORS ACT WITH RESPECT TO JULY 25, 2016 VERIFICATIONS AND § 408 PERMITS

194. Plaintiff incorporates by reference all preceding paragraphs.

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(206) 343-7340

A. Arbitrary and Inadequate Public Interest Review for North Dakota Permits

195. Prior to issuance of a § 408 permit, or any other CWA/RHA permit, the Corps is required to conduct a "public interest" review consistent with its governing regulations, 33 C.F.R. § 320.4(a).

196. In conducting a public interest review, the Corps must consider the probable impacts of the proposed action, and weigh "all those factors which become relevant." *Id*. The Corps must balance the benefits "which reasonably may be expected to accrue" from the action against the "reasonably foreseeable detriments." *Id*. "All factors" which may be relevant to the proposal must be considered, including the extent of the public and private need for the proposal, and the existence of unresolved conflicts around resource use. The District Engineer is authorized to make an "independent review of the need for the project from the perspective of the overall public interest." *Id*. § 320.4(q)

197. The Corps' did not conduct a valid public interest review of the § 408 authorizations in North Dakota. To the extent it conducted any public interest review at all, it suffered from all of the same flaws as the NEPA review identified above. Specifically, the Corps conducted an arbitrary and segmented approach that ignored virtually all of the indirect effects of its decision, specifically, the construction and operation of the pipeline itself; and it conducted an arbitrary and one-sided economic balance in which the benefits of the entire $4 billion pipeline were weighed against the impacts of tiny segments of the pipeline.

198. By failing to undertake a lawful and adequate public interest review of the actions proposed in its § 408 decision, the Corps has acted in a manner that is arbitrary, capricious, and not in accordance with law, in violation of the CWA and the APA.

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B. Unlawful Verification For Lake Oahe Crossing

199. In addition to a § 408 permit, the portion of the pipeline that crosses under Lake Oahe requires a Rivers and Harbors Act § 10 permit. 33 C.F.R. § 322.3(a)

200. On July 25, 2016, the Corps issued verification that the Lake Oahe pipeline crossing complied with the conditions of NWP 12, and hence was authorized under § 10 of the Rivers and Harbors Act.

201. In order to "qualify" for NWP authorization, proposals must meet a number of general conditions. 77 Fed. Reg. 10184, 10282 (Feb. 21, 2012).

202. The Lake Oahe crossing does not comply with these conditions and, accordingly, does not "qualify" for NWP 12. *See also* 33 C.F.R. § 330.6(a)(2) ("If the [Army Corps] decides that an activity does not comply with the terms or conditions of an NWP, he will notify the person desiring to do the work and instruct him on the procedures to seek authorization under a regional general permit or individual permit.").

203. General Condition 7 states that no activity may be authorized under a NWP that is in "proximity" to public water supplies. 77 Fed. Reg. at 10283. The Lake Oahe crossing is in close proximity to the Tribe's source of drinking water for a significant portion of the reservation community.

204. The potential impact on drinking water for the Standing Rock and many other Tribes and communities has also been emphasized by the Environmental Protection Agency and the U.S. Department of Interior, as well as the Tribal government and many of its members.

205. Further, General Condition 17 states that no activity authorized by a NWP may "impair tribal rights" including "reserved water rights." 77 Fed. Reg. at 10283. DAPL is routed just upstream of the Tribe's reservation boundary, where any oil spill would have devastating effects within the reservation. The Reservation necessarily includes the protection of adequate

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water quality. The Lake Oahe crossing does not "qualify" for a NWP 12 because of the risks to Tribal resources protected by treaty.

206. The Corps decision to verify that the Lake Oahe crossing was consistent with NWP 12 was arbitrary, capricious and not in accordance with law, in violation of the APA.

C. Issuance of Verifications for 204 Jurisdictional Waters

207. Under the Corps' regulations, a single project can only proceed under both an NWP and an individual permit where the "portions qualifying for NWP authorization would have independent utility and are able to function or meet their purpose independent of the total project." 33 C.F.R. § 330.6(d).

208. For the reasons discussed immediately above, the Lake Oahe crossing requires an individual permit. Moreover, Section 408 authorizations are individual "permits" within the meaning of this regulation. *See id.,* § 320.2(e); § 320.4 (general policies applicable to "all" Army permits).

209. No component of DAPL has "independent utility" or the "ability to function" without the other components of the pipeline. As a result of this, the Corps cannot authorize some portions of DAPL under NWP 12, and other portions as individual permits.

210. Because the Lake Oahe crossing requires an individual permit, no other component of the pipeline can be authorized under NWP 12.

211. Issuance of a verification by the Corps constitutes a final agency action within the meaning of the APA.

212. The Corps' verification of 204 additional crossings of jurisdictional waters was arbitrary and capricious and not in accordance with law, in violation of the APA and the CWA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

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(206) 343-7340

1. Declare that NWP 12 is invalid as applied to DAPL because the Corps failed to comply with § 106 at the time of its issuance, in violation of the NHPA.

2. Declare that NWP 12 is invalid as applied to DAPL because the Corps unlawfully delegated its responsibility to comply with § 106 to private parties, effectively allowing discharge into waters of the United States without any consideration of impacts to historic properties, in violation of the NHPA.

3. Declare that NWP 12 is invalid as applied to DAPL because the Corps authorized discharge into waters of the United States without consideration of indirect impacts on historic sites, in violation of the NHPA.

4. Declare that the July 25, 2016 authorizations and verifications are arbitrary, capricious, and in violation of the NHPA, NEPA, CWA and RHA, and implementing regulations.

5. Vacate NWP 12 as applied to DAPL.

6. Enjoin the Corps to direct DAPL to seek either an individual permit covering all discharges along the entire pipeline route, or submit PCNs for all impacts to waters of the U.S., and fully comply with § 106 prior to finalizing such permit or verifications.

7. Vacate all authorizations and verifications related to DAPL pending full compliance with law.

8. Vacate the final EA and FONSI.

9. Retain jurisdiction over this matter to ensure that the Corps complies with the law.

10. Award Plaintiff its reasonable fees, costs, expenses, and disbursements, including attorneys' fees, associated with this litigation; and

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Seattle, WA 98104
(206) 343-7340

11. Grant Plaintiff such further and additional relief as the Court may deem just and proper.

Respectfully submitted this 27th day of July, 2016.

/s/ Patti A. Goldman
Patti A. Goldman, DCBA # 398565
Jan E. Hasselman, WSBA # 29107
(*Pro Hac Vice Application Pending*)
Stephanie Tsosie, WSBA # 49840
(*Pro Hac Vice Application Pending*)
Earthjustice
705 Second Avenue, Suite 203
Seattle, WA 98104
Telephone: (206) 343-7340
pgoldman@earthjustice.org
jhasselman@earthjustice.org
stsosie@earthjustice.org

Attorneys for Plaintiff

Earthjustice
705 Second Ave., Suite 203
Seattle, WA 98104
(206) 343-7340

History

The Standing Rock Sioux Reservation was originally established as part of the Great Sioux Reservation. Article 2 of the Treaty of Fort Laramie of April 29, 1868 described the boundaries of the Great Sioux Reservation, as commencing on the 46th parallel of north latitude to the east bank of Missouri River, south along the east bank to the Nebraska line, then west to the 104th parallel of west longitude. (15 stat. 635).

The Great Sioux Reservation comprised all of present-day South Dakota west of the Missouri River, including the sacred Black Hills and the life-giving Missouri River. Under article 11 of the 1868 Fort Laramie Treaty, the Great Sioux Nation retained off-reservation hunting rights to a much larger area, south to the Republican and Platte Rivers, and east to the Big Horn Mountains. Under article 12, no cession of land would be valid unless approved by three-fourths of the adult males. Nevertheless, the Congress unilaterally passed the Act of February 28, 1877 (19 stat. 254), removing the Sacred Black Hills from the Great Sioux Reservation. The United States never obtained the consent of three-fourths of the Sioux, as required in article 12 of the 1868 Treaty. The U.S. Supreme Court concluded that "A more ripe and rank case of

dishonorable dealings will never, in all probability, be found in our history." United States v. Sioux Nation of Indians, 448 U.S. 371, 388 (1980).

The Standing Rock Agency was established at Fort Yates in 1873. The Executive Order of March 16, 1875 extended the Reservation's northern boundary to the Cannon Ball River.

In the act of March 2, 1889, however, Congress further reduced the Great Sioux Reservation, dividing it into six separate reservations, including the Standing Rock Sioux Reservation. (25 stat. 889). The Standing Rock Reservation boundaries, delineated in section 3 of the 1889 act, have remained intact since that time.

The Standing Rock Sioux Tribe operates under a constitution approved on April 24, 1959 by the Tribal Council of Standing Rock Sioux Tribe.

The Tribal Council consists of a Chairman, Vice-Chairman, a Secretary and fourteen additional Councilmen which are elected by the tribal members. The Tribal Council Chairman provides leadership and administrative direction to the tribe.

The Tribal Council Chairman and Council serve a term of four years. Six of the fourteen additional Council members shall be residents of the Reservation without regard to residence in any district or state. Each of the remaining additional council members shall be a resident of the district from which his/she is elected.

The At-large Council members are elected by the district people as whole.

Regular Tribal Council meetings are the first Tuesday, Wednesday, and Thursday of the month. Committee meetings are held the second week of the month. The last Monday of the month is for gaming and other tribal business.

The Standing Rock Sioux Tribe stands by its right to self-government as a sovereign nation, which includes taking a government-to-government stance with the states and federal government entities. Having signed treaties as equals with the United States Government in 1851 and in 1868, which established the original boundaries of the Great Sioux Nation. The tribe staunchly asserts these treaty rights to remain steadfast and just as applicable today as on the day they were made.

The Standing Rock Sioux Reservation was greatly reduced through the Act of March 2, 1889, also known as the Dawes Act and the Allotment Act. This opened up the reservations throughout the United States to settlement by non-Indian entities, thus creating checker-boarded land ownership within the Standing Rock Reservation. The tribe maintains jurisdiction on all reservation lands, including rights-of-way, waterways, and streams running through the reservation; this in turn leads to on-going jurisdictional disputes in criminal and civil court. Recent cases such as Nevada vs Hicks have contributed to the contentious issues in this iron triangle between the Federal, State, and Tribal governments.

The Standing Rock Sioux Tribe (Nation) operates under a constitution approved on April 24, 1959 by its own elected council members, under the auspices of the Indian Reorganization Act of 1934.

The Tribal Government consists of a Chairman, Vice-Chairman, a Secretary, and 14 council members, consisting of a member elected from each of the eight districts, and 6 at-large council elected by the tribe. The Administration consists of the Chair, Vice-Chair, Secretary, an Executive Director (not elected), and 6 political appointees; Administration carries out resolutions and motions made by the tribal council. Note that there is no Treasurer, as the tribe has an excellent Finance Department which handles all of its accounting for payroll, business transactions, and bank reconcilement; this provides for adequate checks and balances.

The Tribal Council passes legislation, makes budgets, approves of financial transactions, and makes major decisions affecting the tribe including:

* Managing the tribe's real property, including trust lands.

* Engaging in business ventures.

* Passing and enforcing ordinances to serve the general welfare of enrollees, the environment, and the public safety of reservation residents.

* Entering into Contracts for business and for government needs.

That is to say, the tribe operates similar to a corporation, which may make business decisions, hires employees, grants business licenses, and operates corporate subsidies to develop tribal economy.

The tribal court hears and prosecutes civil and criminal complaints, where questions of jurisdictional remedies are exhausted before going to a federal court. These three branches of tribal government are meant to provide a balance of power, which, at this point, continues to evolve as it struggles to modernize its method of governance. Law Order For the Standing Rock Sioux Tribal

The Standing Rock Sioux Reservation is situated in North and South Dakota. The people of Standing Rock, often called Sioux, are members of the Dakota and Lakota nations. "Dakota" and "Lakota" mean "friends" or "allies." The people of these nations are often called "Sioux", a term that dates back to the seventeenth century when the people were living in the Great Lakes area. The Ojibwa called the Lakota and Dakota "Nadouwesou" meaning "adders." This term, shortened and corrupted by French traders, resulted in retention of the last syllable as "Sioux." There are various Sioux divisions and each has important cultural, linguistic, territorial and political distinctions.

The Dakota people of Standing Rock include the Upper Yanktonai in their language called Ihanktonwana which translates "Little End Village" and Lower Yanktonai, called Hunkpatina in their language, "Campers at the Horn" or "End of the Camping Circle". When the Middle Sioux moved onto the prairie they had contact with the semisedentary riverine tribes such as the Mandan, Hidatsa, and Arikara. Eventually the Yanktonai displaced these tribes and forced them upstream. However, periodically the Yanktonai did engage in trade with these tribes and eventually some bands adopted the earthlodge, bullboat, and horticultural techniques of these people, though buffalo remained their primary food source. The Yanktonai also maintained aspects of their former Woodland lifestyle. Today Yanktonai people of Standing Rock live primarily in communities on the North Dakota portion of the reservation.

The Lakota, as the largest division of the Sioux, subdivided into the Ti Sakowin or Seven Tents and Lakota people of the Standing Rock Reservation included two of these subdivisions, the Hunkpapa which means "Campers at the Horn" in English and Sihasapa or "Blackfeet," not to be confused with the Algonquian Blackfeet of Montana and Canada which are an entirely different group. By the early 19th century the Lakota became a northern Plains people and practically divested themselves of most all Woodland traits. The new culture revolved around the horse and buffalo; the people were nomadic and lived in tee pees year round. The Hunkpapa and Sihasapa ranged in the area between the Cheyenne and Heart Rivers to the south and north and between the Missouri River on the east and Tongue to the west. Today the Lakota at Standing Rock live predominantly in communities located on the South Dakota portion of the reservation.

This Stretch of the River

Craig Howe and Kim TallBear, Editors

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OAK LAKE WRITERS' SOCIETY

This book is a publication of the Oak Lake Writers' Society, a state-wide organization of Dakota, Lakota, and Nakota writers. The Society is an outgrowth of the summer retreats for aspiring tribal writers that have taken place at South Dakota State University's Oak Lake Field Station since 1993. The primary goal of the Society is to contribute to the strengthening and preservation of Dakota, Lakota, and Nakota cultures through the development of culture-based writings.

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Where Are They?

Charmaine White Face

There is an old legend of the Titonwan of the Oceti Sakowin. In it, animals desire to kill the first human beings, the two-leggeds, because they fear that the two-leggeds will destroy them and the other relatives on Unci Maka. But the winged ones have pity and want to help the two-legged beings. A great race is held around the Black Hills, more than 500 miles, and the winner will determine the fate of the human beings. The racetrack becomes red with the blood from the hooves, feet, and paws of the animals running the grueling race. But the magpie is smart and rides on a horn of the buffalo, the fastest runner with the most endurance. As they near the end, the magpie, who has conserved his strength, flies ahead of the buffalo and wins the race. As a result, human beings are allowed to live and the buffalo nation must provide for their needs.

In any natural field, one that has not been cultivated by human beings, there might be hundreds of species of plants. Each year, the field will change as seeds grow in relation to the amount of moisture, temperature, and sunlight available the previous winter and spring. But even though this ever-changing living tapestry produces varied kinds of plant life with each new year, there will always be one dominant plant: grass, broad leaf, or perhaps cacti. The less dominant will grow among the more prolific, sometimes in small family clusters, sometimes alone, standing proudly. Perbaps a bird flying overhead has dropped one seed on its way to feed its young, and the seed, left in a favorable position, has grown into a single entity, thus adding a touch of difference to an otherwise homogenous mixture.

Were human beings allowed to co-exist with each other and the rest of creation in certain geographic areas in an environmentally sustainable manner, just such a tapestry would develop over thousands of years. Such was the North American continent when the Europeans invaded. However, such a tapestry was not conceivable for Europeans, after almost 2,000 years of conquest, pillage, and use and abuse of what were known as "natural resources."

When Lewis and Clark traveled along the Missouri River, they were a part of this mindset. They could not know that the indigenous peoples they were encountering had cultures thousands of years old, very complex societal systems, and an understanding of nature that America still does not grasp today. Nor did Lewis and Clark, like the cultures of America or Europe today, realize or understand the indigenous peoples' comprehension of the vast spiritual dimensions of this world.

Lewis and Clark were merely the starter cells of a vast, cancerous way of thinking that is rapidly killing Unci Maka. That thinking started in Europe thousands of years ago. "Natural resources," whether they be oil, minerals, timber or crops, were to be used solely for the production of "things" for the enjoyment and comfort of human beings.

In their journals, Lewis and Clark described the countless numbers and new kinds of species they encountered: the large herds of buffalo drinking at the river, the amazingly graceful antelope and deer lowering their heads to the water in the early evening, the many kinds of waterfowl everywhere. They also expressed the need for interpreters for the many indigenous languages they were encountering, but only for the purpose of trade and business, only for the purpose of conquest and use.

So where are they? Where are the buffalo? Why are they not still running free across the prairies? Where are the black bears, the brown bears, the grizzly bears? Why are they not in the Black Hills? Where are the wolves? They live in family and clan units too. They once lived all over the Midwest. Where are the moose that once traveled in these areas? Where are the mountain sheep that lived so plentifully among the spires and tables in the Badlands?

Where are the plants that were not given Latin names by scientists and botanists but disappeared under plows, or water caused by dams, or were eaten by cattle? Where are the tallgrass prairies? There is a tiny one left in North Dakota, near Fargo, completely surrounded by farms. Yet, at one time, the tallgrasses, taller than a horse, were found all over in the Midwest. How many plants and animals will die, and how many threatened and endangered species will become extinct, so a new railroad line can be built through one of the last pristine grasslands? We are supposed to nevermind that railroad lines are obsolete and only increase air, water, and land pollution. After all, we are told, the railroad cars will carry what is left of the coal in Wyoming to points east. These are parts of the legacy of Lewis and Clark.

Where are the myriad streams of clean water that once flowed in the Black Hills, in the Badlands, all over the prairies, following each spring and summer rain? Where are the flocks of waterfowl that once covered the waterways in South Dakota? A pitiful few have become full-time residents of the location across from the mouth of the Bad River where Lewis and Clark encountered the Titonwan, that place which is now the capitol of the state of South Dakota.

Where are the thousands of trees, shrubs, and bushes that once lined the Missouri River and were the homes, shelter, and food for innumerable animals and birds? Where are the fish and turtles and other small aquatic life that needed the trees and shrubs and bushes to extend their branches over the water so that their breeding places would be shaded from the hot summer sun? Where are the insects that inhabited the trees, shrubs and bushes and were food for some of the water life?

Where is the clean air of the Great Plains? Now it is filled with the noxious fumes of mining for coal and methane and oil. It contains the radioactive particles of hundreds of abandoned uranium mines, particles to be breathed in by humans and cattle, to settle on grass and crops that will be eaten by humans and cattle, and to be carried by the wind elsewhere. These also are part of the legacy of Lewis and Clark.

Where are the Black Hills places that were sacred to the Titonwan and other indigenous nations? Is there a consequence for the destruction of something sacred? How many burial sites containing the remains of the ancestors of the Oceti Sakowin and other tribes have been crushed under cultivators so crops of winter wheat can bring in the almighty dollar? How many sacred places and burial sites, areas that were left in reverence for thousands of years on the prairies, are being considered for destruction so coal can be strip-mined to increase the pollution in the air? How many petroglyphs, places of communication with those wiser than the two-leggeds, have been vandalized with the initials of plunderers, or destroyed by "educated" people to be placed in museums? These are also the legacies of Lewis and Clark.

Where are my people, the Titonwan and the rest of the Oceti Sakowin? Where are the ones of whom Thomas Jefferson said, "On that nation, we wish most particularly to make a friendly impression, because of their immense power..."

Where is the honor of a nation that made treaties with the Oceti Sakowin bnt then violated them? Where is the integrity of a nation that would go against its own Constitution in order to have access to gold? Where is the humanity of a nation that would steal children to change them from being who the Creator made them to be?

Where are my people of whom William Clark said, "These are the vilest miscreants of the savage race, and must ever remain the pirates of the Missouri, until such measures are pursued, by our government, as will make them feel a dependence on its will for their supply of merchandise?"

Where are the thousands and thousands of Titonwans who perished from starvation, bullets, smallpox and other diseases after Lewis and Clark traveled up the Big Muddy? Where are the Wahpekute, the Wahpetonwan, the Mdewakantonwan, the Sisitonwan, the Ihanktonwan, and the Ihanktonwanna, the other six nations of the Oceti Sakowin?

Where are the children buried who died in residential boarding schools generation after generation? Where are the ones who survived the physical, mental, emotional, and spiritual abuse of the boarding schools and died later of the consequences of their experiences? Where are the burial sites of their parents, the ones who were prisoners of war, who whispered secrets to their grandchildren hoping a miracle would happen and some seed would remain of the Oceti Sakowin?

Where are the ancient family practices of the Oceti Sakowin? Where is the strong societal structure that forbid a son-in-law to talk to his mother-in-law? Where are the whipbearers so that no woman or child had to fear abuse at the hands of a man? Where are the old laws that guided nations for millennia to live and thrive on Unci Maka? These absences are the greatest tragedy of the legacy of Lewis and Clark.

cheap like our land
that was sold at four pennies an acre
but no indian was there that day
as whitemen sold to whitemen
making convenient policy makers

because back then
and maybe even now
indians were never seen as being equal
to the white people
just a copper penny
next to a shiny nickel

what would you do
if someone put a price tag on your home
and sold it with no remorse?
this country became
one big wholesale store
and it never closes
because there's always something to buy
and something to sell
and pretty soon
no one will be able to tell
...what truth really is

here's a nickel for your thoughts

Reflections on Mnisose after Lewis and Clark

Kathryn Akipa, Gladys Hawk, Craig Howe, Lanniko Lee, Kim TallBear, and Lydia Whirlwind Soldier

A Dialogue between members of the Oak Lake Writers' Society held at The Birdsong Inn and Guest House, Java, South Dakota, February 12, 2005

Kim TallBear In this collection of essays, we have decided to center the river as an actor, and not simply think of it as a subject or something simply acted upon in our response to Lewis and Clark. So, we—Craig and I —want to have you all philosophize about rivers as entities or beings in themselves. It's kind of an open question where you might talk about the meaning of the river to you personally, to your family, to your tribe.

Lanniko Lee All my life I have known the river to be part of a larger expression of our relationship to everything that is—everything that exists. A good example is what Arvol Looking Horse[1] published in his wonderful "World Peace and Prayer Day." In it he describes the earth as a living organism having anatomical functions similar to that of the human body. Mnisose, the river we know, is a major artery. As a major artery it is meant to flow for the life of the world.

In fact, long before scientists began speculating about the alleged benefits of changing the river, my family, like Arvol, talked about the river as doing the work of circulation. Circulation is the vital function of the Mnisose. After all, flowing water brings necessary changes. So when I think about the man-made dams that obstruct the river's flow, I can't help but grieve over the loss of a river flowing and the loss of its life-giving and healing forces coursing through Unci Maka, Grandmother Earth, to the ocean.

Another important conversation for indigenous people regarding caring for the earth is the ability of the rain forest to continue functioning in a healthy way. So much destruction of the rain forest is occurring. Soon it will not be able to do what it was meant to do—provide the essential respiratory exchange needed to keep body Earth healthy. Arvol's message was a proposal to all humanity that we pay attention to how the relationships of the parts of the world work and how we are all responsible for Earth's health. This is good Lakota reasoning.

I remember the elders of my family asking how the clouds would be able to come if there were no trees to call in the clouds. This was after hearing John F. Kennedy's speech about the progress and the good that would come after the river was dammed and hydroelectric power would be available to improve the lives of everyone. My recollection of those times is a mixture of strong emotions interfused with memories of ceremonies and

dire prophecies; photographs were taken by those who wanted to remember a river that was destined to be changed. Strong emotions were displayed; everyone living along the river was affected by those changes.

Kim Gladys and Lydia and Kathryn have also talked a lot about the effects on the people and also what the river meant to them personally. How do each of you feel about the Missouri River project and the inherent contradiction for Native people of referring to the River as a "project"?

Lanniko When I grew up, the river was at the center of conversations about the sacred. The river helps explain our belief about the sacred permeating our lives. Images of baptismals are prominent in my memory. All of the songs that we sing when we are burying our people who have grown up along the river are always focused on the water. Gladys can probably talk about that.

Gladys Hawk My piece in this anthology is my personal experience of the river. But it was the Grand River I was talking about. It wasn't far from the Missouri, though. I am also familiar with the Missouri just traveling back and forth to Mobridge. I write about a time when all of the river was still there, but it was being planned to be flooded. I remember seeing the surveyors when they came along the hillside right above our house; they were way up there, so I rode on my horse and I went up there and I asked them, "What are you doing?" There were two guys there with their tripods and they said, "Well, some day the water level is going to be this high" [gestures]. I looked at that and I looked down towards our house and to the river and to the east. I couldn't imagine it; I just could not imagine that. But that was when I was only about ten. And it wasn't until '58, '59 and '60, when I was in my twenties, when we actually saw it happen, when they cut down all the trees along the river and it was bare.

Kim Some of us here were talking last night in the kitchen about the sense of disbelief that people had. First of all, that morally the Army Corps could do this and second, that technologically it was possible. And I wonder if, because it took so long from planning to the actual flood, the sense of disbelief was really big? Or did people gradually accept it would happen?

Gladys I think they gradually accepted it. What more could they do? Their homes were taken away. I just want to say the impact that it had. There was an old man that lived where the bay is now. His name was Ed Hawk. He was an old man with a blind eye. All he had was just two little sorrel horses that he used for his wagon. He had them in the corral and one little log cabin where they wintered. And he lived in a one-room log house. He would not sign anything that the Corps brought in. He just stood his ground. And the Corps came in and they bulldozed his little house. [One gasp of disbelief, then 30 seconds of silence.]

Lydia The damming of the river displaced a lot of people and multiple generations from the river. It destroyed a way of life that was centuries old. I remember somebody telling me that their grandparents would go to the river every Sunday and sit on the bluffs overlooking the water just to see their land disappearing under the water. They would reminisce about the old days, their gardens, their livestock and their homes. And they would feel sad over how their lives had changed since their land was flooded.

As a Sicangu, I didn't grow np along the river. But when they started building the dam near Pierre, my dad worked on it for one summer. He was really torn about that, but he had to support a family. So he just worked on it one summer and then found work elsewhere. But I remember every summer my grandparents would take us to the river by Pickstown, Fort Randall, to see how far the water had come up. We would spend the day, go to Fort Randall and have a picnic and they would sit and talk about the river. They were in disbelief that this could be done. But I was a little kid and as a little kid you don't pay too much attention. As Sicangus we lived so many hours away from the river, but we still went to the river to see what was happening every summer.

Lanniko Another arrogant, irresponsible act occurred even before politicians set in motion those changes to the river. Locals took it upon themselves to move prayer stones off the river—very large boulders that had previously been prairie altars where mortals communed with the sacred. If you go down the river road here, you will see those prayer stones with hand marks on them made during prayer—prayers that were given for that river. One such group, not American Indians, decided to construct a building in Gettysburg, South Dakota; a big prayer stone was moved in to attract tourists to the community. Now if you want to visit one of these stones, you can visit the Dakota Sunset Museum and pay a fee to see the prayer stone, but not to touch it, nor do you have the open, private prairie setting to use the stone as it had been used for bundreds, possibly thousands of years. By moving those stones off the river—it's like another group of people is shaping even our memory. Between that and the river project, maybe they were thinking we would forget our past. Those who were involved in making the decisions to change the river—they knew what they were doing culturally and economically to our lives. I don't know how they can possibly be unaware of what they were doing.

Kim Kathryn, in your essay, you talked about your mom getting a new teaching appointment in Iowa and leaving Lower Brule. Did you actually see what happened after the flooding or did you leave before it got flooded?

Kathryn We left before it got flooded. But a couple of girls who my mom taught came with us on the move. And then when we took them back we heard the stories, the horrible things that happened with the flood. At the store the people would talk around the stove and they would sit there smoking and

they just couldn't believe it. "How could they do something like this? How is this possible?" They would ask. The underlying feeling that I remember as a child when I was probably about eight was "How could man think that he is so powerful that he could change the course of the river?" And I remember that there was almost a feeling of toksta. They are going to find out the river will take its own course eventually and it will come back on them. You can't change the course of something like that—so powerful—so mighty. Somewhere you're going to pay for it. That was the feeling of disbelief that the people around the stove and the women in their sewing circles had. It just seemed like such an absurd and far-fetched plan. How could the wasicu think like this?

It reminds me of when they decided to go to the moon in the later 60s—the same kind of idea—a kind of disbelief! [laughter]. But the dam in particular worried a lot of people because a lot of them could not afford to move the graves and they worried about their relatives. Sure enough, three weeks after the flooding they saw caskets floating down the river. That flabbergasted people in the Lower Brule area. Out of respect, I didn't want to put that scene in my essay. It could hurt people to be reminded of that. Some of them, those were their relatives.[2]

I remember such disbelief from my child's point of view. I didn't fully understand the whole thing. I just knew that a flood was coming and that the village would be goue—everything that we knew there. And I think that is the reason why I wrote in my piece about the happy memories as a child, to show the tragic loss. My point was to show that this is on the continuum of what began when Lewis and Clark sailed—the so-called progress of America and how it continues to impact Native Americans in modern times. When you lose a village where you did have such good memories—yes, some of them were tragic and life goes on—but when you lose a village like that and you know that you will never be able to walk in those places again because they're under water, it's hard to imagine.

Kim You just stated clearly the importance of the dam in the legacy of American progress. Lewis and Clark were also part of that movement towards "progress." I'm also interested in what you all have to say about the need to respect the river, its power, and the possible consequences of not respecting it.

Lydia I grew up listening to old people and their philosophies. One of the phrases that they always used was "mni wiconi," which means "water is life." It also means respect for water—respect for river. As long as you have water, there is life. The old people use that phrase in their prayers and everyday conversation.

Lanniko Vine Deloria and Dan Wildcat in their book, *Power and Place*, have also talked about Indian peoples' respect for the river.[3] They talk about our nnderstanding of the changing nature of the river, our understanding

of flood plains, of the appropriate places for habitation, and what kinds of things people did to fit their own lives into the balance by understanding the river's changes. They state that witb that knowledge, people were able to take care of themselves, while non-Indians build on the flood plains with a lot of investment and insurance. They make money off tragedies that they participate in creating. A critique of capitalism comes across in their book—a conversation about non-Natives who build on the flood plains and reap benefits from loss. They say we never did that because we had a responsibility for not just ourselves, but our whole family—for those communities along the river. We had to have a sense of our responsibility as humans, an understanding of the river phenomena and its changing nature. We had to respect it so that we could share that wisdom with those around us.

Let me give a couple of specific examples of how understanding and respecting the river translated into taking care of our families and communities. We sang songs wben we were burying our family members who had grown up and died along the river. We focused on the power of the water, both the sacred power and the power expressed in the cycles of nature. Each spring—as our elders taught us—the seasonal power expressed in floods brought about the renewal of the landscape, of life.

I have another example of how we linked river knowledge and river power to the knowledge and power in our human lives. Late one summer evening when my grandmother and I were down at the river getting water, a light breeze started the cottonwood leaves chattering overhead; she told me to stop and listen. A sliver of moon hung in the sky and she motioned up to it and then to the trees: "Listen to the cottonwood women talking," she said to me. I asked her what they were saying and she said that I should always remember that I am like the river and that one day I would flow and become a woman. Like the popping trees in the spring, and later when the ice was breaking, I would live a springtime, like the river, and bring life into the world. It was then that I learned about how tbe seeds of cottonwood trees are imbedded into the soft river soil by the swift moving waters that flooding causes in the spring run-off. I learned about the gift of life, and she made clear to me the Lakota saying, "Our children are sacred," with her explanation of how young cottonwood trees were the gifts of floods. I learned then to respect those powerful changes and appreciate our connection to the river, the trees, and the land.

Our everyday lives were spent learning lessons about change and our people used those lessons to make decisions like where to build our homes and where to plant our gardens. Immigrants have not learned much from American Indians when it comes to human connectedness to the land. Our understanding of home is probably because we know Earth as our grandmother, Unci Maka. Unfortunately, our perspective and the wisdom of our

elders are never fully appreciated, especially when it comes to stewardship, or when environmental changes are contemplated.

To go back to your comment about disbelief, I think it is untrue that indigenous people had no real sense of the power of technology. On the contrary, our people were more keenly aware of the power of making choices. It wasn't that we all disbelieved that the river's course could be changed. We were in disbelief that the wasicu would do such a thing. Our choices as Lakota people were made from a different way of discerning the world.

Kathryn I just want to make a comment about the Dakota world. Although I lived along this river as a child, we Dakota don't in general live that close to the river. Of course we do have the Mississippi, the Yellow Medicine, the Great Sioux, the Minnesota. . . a lot of rivers. The water was always a very big part of our lives too. It's like you say, Lydia, mni wiconi.

My father, my step-dad, Woodrow Keeble, was born in 1917. His dad was Isaac Keeble, who was very traditional, and never learned to speak a wasicu language. My step-dad used to tell us how to get up in the morning. The old way of making your day is to go out on your own to the east. You face the sunrise and when the sun breaks, you acknowledge the creator, "Wakan Tanka Tukansina." You acknowledge the day and the gift of life that you have and the woods and everything around you on every horizon. That is one of the important things that they did iu those days when we lived in camps—we always camped by some kind of water. You would go down in that sacred moment of silence early in the morning to greet the creator, to wash your face, or to use the water in some way to bless yourself. Because it is mni wiconi.

My dad used to tell about how when he was a little boy, his dad would tell them, all six of them, all boys, "Inajin po," and they would get up. They lived on the west side of Pickerel Lake and they would all have to run down to the lake and he would make them jump in the water. They would all have to go in for a swim in the morning, until the ice formed and they couldn't get through the ice any more. And if the little ones tried to complain, he would tell them that it makes your heart strong. And it made my dad's heart strong. He was North Dakota's most decorated war hero from World War II and Korea. He was never given the medal of honor that he was recommended for three times because it was a racial issue—and that's been acknowledged now. But that's just an aside—a plug for my dad! [Laughter]. He lived when it was important to greet your day with the water and to face the sun and commune with Wakan Tanka.

Kim I grew up in Flandreau [SD] mostly, always living about a half mile from the Big Sioux River. Every time I go by a river—it doesn't matter if it's that one or another one—I always look down and think, "I wonder where that goes?" It's always struck me that rivers are roads, yet I haven't spent a lot of time on rivers, canoeing or anything. But I've always felt that they are

going somewhere, going somewhere in a good way. I've always been interested in what's at the other end. I don't know if I focused on rivers as travel routes because I always wanted to go somewhere ever since I was small, to travel and see other places, or because there is something in my cultural memory—I don't know how to describe it—in which rivers were our roads. And I think rivers are still central to the Dakota landscape today.

Lydia Rivers were important boundaries for us. In land descriptions, in maps, in designating meeting places, a river would be mentioned. We had Lakota names for all of the rivers in our territory. The Mnisose was the grandfather river. The course of the river can be changed, but how does the change affect the environment? How does that change affect the lives of the people, the animal and plant nations? These were not issues that the government thought about when it built the dams. How many of those animals and plants that Lewis and Clark saw are now extinct? And, how many more will disappear? Can man ever replace what was lost?

Lanniko Last spring I went down to St. Louis and traveled back up the river during spring break. I went along the road coming up and I made a point of going off the road and I saw those levees, big mounds directing water up away from the river, and it reminded me of a picture from when I went to parochial school. We learned all about how the great gardens of the world in the Christian belief were created, how they were all built by slave labor. The whole idea was to turn the desert into the Garden of Eden. When I came up the river from St. Louis, I was reminded of all of that human energy needed to reshape the landscape, and how the newcomers didn't call us people of the river. Yet that's where we were *always*. We were instead called people of the plains.

And it became a self-fulfilling prophecy, that label, one that reminds us of what has been taken away from us. Whether it's the Big Sioux or the Grand or the Cheyenne, we were people of the rivers. Yet now some of our own people don't have an understanding of what the river is. Especially young people have no real understanding of that history. Many of them grew up away from the river, moved off the river to Eagle Butte and live on the Cheyenne River Reservation. They have very little understanding of the cottonwood stories, the fish stories. They don't interact with the landscape—which they can hardly do when they're in the [boarding school] dormitory or with parents or relatives who are caught up in BIA employment or tribal employment or they're in the churches—when they're part of the institutions that shape them with western thinking. They don't have the same kind of connection with the landscape which in itself is the primal, sacred language of the very being of indigenous people.

When Lewis and Clark came up, I can't help but think that with all their litany of what they saw, the things they described in their journals, that they were thinking in terms similar to the Garden of Eden. And the plant

life and birds and animals were there waiting for them to catalogue as new species, to re-name. They were coming from a Christian philosophy of understanding, of what happened in another part of the world. To name and catalogue—to try to know everything—is a way that is opposite to the way we had. We didn't go about naming objects, plants and phenomenon like Western explorers; our belief back then was that the "thing" gave its power and the knowledge of its being-ness to us. We didn't have names for everything because not everything gave us its name. The landscape is loaded with mysteries.

Certain plants gave us the power to heal when we used them and they gave us their names. Such knowledge came to those who made it their work to help others through healing. Those people were taught how to work with those things; they received that knowledge through dreams and the like. Today, people who hold such knowledge have also learned that it is not valued like scientific knowledge. We don't talk about those things today. Instead, our people give up that powerful knowledge to be treated by Indian Health Service and Western medical practitioners.

Kim Your comments bring to mind one of my pet peeves. I used to do environmental program planning for tribes and I don't like when people so often say that we are inherently environmentalists—that it's in our blood. Because I think that discounts the fact that we got knowledge of our landscape by interacting with it and having a relationship with it. We—or our ancestors—learned those things and cultivated that knowledge; they weren't just born with it. It's about practice. And if you don't acknowledge that, then you don't necessarily have to practice. So you lose a lot of knowledge by not using those resources every day like in the past and then having a thoughtful spiritual relationship with them.

But I was also interested in something else you said, Lanniko. Were you relating Lewis and Clark's classification of species to cultivating a landscape or creating a certain kind of landscape?

Lanniko The Christian heritage they inherited— Jefferson, Lewis and Clark—has a certain understanding of the Middle East and how the Middle East deserts were manipulated to be habitations for large numbers of people. So when we talk about large populations of outsiders coming into this country, what better way to accommodate them than to harness ideas—with roots in Middle East history—to build the nation and to overcome the landscape that was here to accommodate the European? That was what I was referring to when I said that there was a design. And that design is still evident along that path that I drove to St. Louis and back. There are long mounds that were created to hold the water, to pull that water farther away from the channel of the river in order to create farms. But now all the cities are choked with big plumes—pollution emissions in the air and effluents in the water. They've harnessed the power of the river but that

power has another objective now. Rather than being gardens, it is trapped by industries.

I think that with the advancing technology, the vision that was there has changed. I can't help but imagine that in the abundance of what Lewis and Clark saw, they must have felt they had fallen into some wonderful magical place. Whatever they saw when they were out there with their surveyors and looking at the raw, innocent landscape, seeing what potential was there—I would be very curious to see what they saw for the future of that landscape. What did they anticipate they would achieve?

Kim Craig, do you want to talk a little about your perspectives about what the intentions of Lewis and Clark were? We've had some debate amongst ourselves—more in the pieces we've written than in spoken conversation—about what the intentions and goals of Lewis and Clark and the Corps of Discovery were. For example, in terms of Lewis and Clark's classification of species, Lanniko made an interesting point in relating the classification to the eventual taming of the landscape. It's not a direct connection perhaps in terms of their goals, but can be seen as part of an overall vision.

Craig Howe Theirs was a scientific expedition. Jefferson charged them with recording all of those things that were new to science. It was not new to humanity. It was old knowledge to all of those Indian tribes. Lewis and Clark were documenting it for scientific purposes, so it was a new "discovery" for them. At most, in terms of future settlement, they were thinking about how to get trading posts up here. The records do not seem to support that they were considering that non-Lakotas or non-Indians would be living up here in vast numbers. It is hard for us to imagine, but at that time they couldn't see the US population exploding, I don't think. They were not that visionary. Jefferson himself thought it would take hundreds of years before non-Indians would get here. So the idea was not to be negative but to be good to Indian tribes because there was no way they could alone extract the resources of the area. There were too few Americans, so they had to try to figure out a way to use the Indians to exploit the natural resources while simultaneously making Indians dependent upon the US.

In the bigger picture today, I think we put a lot more emphasis on Lewis and Clark; we make them into a bigger event than they were. Because the non-Indians are celebrating the bicentennial of Lewis and Clark we too put too much emphasis on it. Lewis and Clark didn't *cause* anything in my mind. They came and they left.

Lydia It was the beginning of the end of the Mnisose, the beginning of the end to a way of life as our people knew it.

Craig The fact is that there were non-Indians here for decades before Lewis and Clark came.

Lydia But before them it wasn't a scientific expedition to record rivers and tribes and start counting Indians. The Europeans who came before them learned to live with the Natives. Lewis and Clark had a purpose to record what would be in their way when they did finally come. They were a scouting party. They learned that the Lakotas are a fierce tribe that they'd have to deal with. They were probably the first grave robbers to enter Lakota territory.

Lanniko I don't think we can speak of Lewis and Clark without speaking of Jefferson. He was a visionary individual. Anybody can *talk* about empire-building, but he had so many projects ongoing in different aspects of his personal life. And being the public man that he was, some of those projects spilled over into the public realm and this one was one of them.

Kim I just read something about Jefferson being essentially the first American archaeologist in that he started excavating the mounds on his property. Today, we all know about that method of scientific inquiry, but at that time, trying to decipher human history through examining human bones was not something people did. It was a very weird thing to go dig up bones and study them. So it is argued that he was very much a scientist in his own right.

But this brings me back to the idea that rather than Lewis and Clark's individual intentions or even those of Jefferson, what's more important is what that journey has come to symbolize for people. That's why Kathryn's point is interesting—that they were part of another continuum, not necessarily that they directly impacted something but that they were part of a broader cultural movement that resulted in the kinds of things that you're talking about in your pieces about the taming of rivers. But that also gets back to Craig's point too: You don't have to attribute to them intention or necessarily direct responsibility for these things. But certainly I would view them as part of American westward expansionism because science is part of that. Science was very much a tool of expansionism.

Craig Yes, science also involves "discovery." Another kind of wanting to be the first . .

Lanniko Politics too. You don't want to forget that. You can't practice science without practicing politics.

Kim It was one of Jefferson's big political tools, right? Science.

Lanniko Yes. To me that's just another language for being able to be intrusive. The whole business of excavating is the story of European expansion and control.

Craig What Jefferson was trying to do was give the fledgling United States a "History." In Europe they had the castles and ruins, and so what he was trying to do when he wrote a paper about this was to show that over here there was a history. He also wanted to show how things were even bigger over here than in Europe. So he was looking for these mastodon bones. . .

Kim Yes, Jefferson and others were having fights with French naturalists who said "Oh, *nothing* has happened over there." So, if you know that he was fighting with French naturalists and trying to prove that there was history here worth talking about . . .

Craig Right! So he used American Indians to show them how much better this continent was. "Look, American Indians are taller and stronger and did more than you Europeans and your ancestors." Jefferson, on that level, was promoting the noble savage. He was promoting a sense of indigenousness here. Later, maybe he argued another side, but at that time he was trying to give the US an identity separate from Europe. And he argued, "What does the US have that Europe doesn't? It has this indigenous history, it has American Indians and it has the landscapes and the species that are unique here—that you do not have over in Europe and so that's what makes this new country strong." That is what would give this country a unique identity.

Kim I see that as an early sign of Euro-Americans trying to become indigenous here.

Craig And that's why when they dressed up at the Boston Tea Party, they didn't dress up as colonists. They dressed up as Mohawks. The whole idea was to take on the identity of the land so they became Indians in order to fight against the British.

Kim So why are Lewis and Clark so important now? Is it just because we all the feel the need to respond to the commemoration? I certainly never thought about them before the bicentennial very much. I remember knowing who they were—we probably all heard about them in school. But have others of you thought about them extensively and the repercussions of what they did?

Lanniko Not me. But I realize that the bicentennial event is an attempt to rejuvenate a sense of belonging here. People are all capitalizing on an historical event in order to have some prominence here today. There are squabbles all up and down the river about how to sell the bicentennial. Although more recently there has been more positive language. I just heard on public radio about the indigenous perspective, indigenous commemorations. But that also seems like another effort to try to bring capitalist enterprise to this part of the world. As Americans we've exhausted everything; we've wasted and exhausted so much that we're now looking at capitalizing on history to get the world to come and see and spend their money here.

Kim It sounds like you're talking not only about whites but about indigenous people too.

Lanniko Yes! Absolutely! It's cultural enterprise—cultural tourism that they're hoping to achieve, not only whites but Indians too. They're talking about the positive financial repercussions of the Lewis and Clark commemoration today as a result of people coming to this part of the world to see who we are . . .

Kim Craig was saying in an earlier meeting that the Lewis and Clark centennial in 1904 was not such a big deal, right?

Craig Right.

Kim So, Lewis and Clark have in fact been revitalized as historical figures. In 1904, most Americans didn't know who they were.

Craig Yeah, it wouldn't even be close to how it is now.

Lydia Now, they're creating American heroes for their own history books.

Kathryn I didn't really think about them before this commemoration. In school, yes, they were some more wasicu people I had to learn about. But when I was a kid, the only thing that was interesting about them—in depictions of them—they kind of looked more like us. I thought, "How come they wear clothes like that?" They weren't going around with the little powdered wigs and the fluffy blouses. They looked more like real people—the way they were dressed. But they were still wasicus. I never really gave it too much thought. My thing as a kid was trying to keep them all straight. I had to keep all these American heroes straight in my mind and I didn't really make too much effort to do that [laughs].

Lydia They also took Indians and created Indian heroes for their own history —those Indians who helped white people. When you're a little kid trying to hang on to your identity and your cultural pride and you see those Indians who helped the whites destroy our way of life, like Sacajawea, you began to wonder why people cannot accept and appreciate differences. If we don't conform, we cannot be successful in the eyes of the whites.

Gladys Who interpreted that name? I always ask that because I'm curious. Apparently in 1904 they must have had a dedication in Mobridge because my oldest sister had a picture of my grandfather and my grandmother—they were young then—standing near a monument to Sacajawea just across the river from Mobridge. There was a chain fence around it and all of our relatives were standing there. The women had on shawls, of course. I thought "that must have been an important day." They must have dedicated that monument that day. My grandparents, they said "Zintkala Winyan."

Lydia What?! Oh, I always thought "wea" in Sacajawea sounded like "woman" [referring to winyan, the L/D/Nakota the word for "woman"]. Zintkala Winyan, oh, Bird Woman.

Gladys Zintkala Winyan, that's how they talked about her and it means Bird Woman.

Lydia Now that makes sense! I always wondered about that name. In Lakota "saca" means, something brittle and hard. Some people were even pronouncing it "Sacacawea." You know what "caca" means so that couldn't be right.

Gladys I was wondering if "Sacajawea" was a spin-off of "Zintkala Winyan," that the wasicus couldn't pronounce it. I wondered if that was the best that they could do and now we know her as Sacajawea.

Kathryn Is that what it means in her language?

Craig She had two names. One is Shoshone and one is Hidatsa. And one of them, I think, means Bird Woman. But it would have been strange if she had a Lakota name because Lakotas never saw her. She was never on this stretch of the river.

Gladys But I heard them talking about her where I grew up, "Zintkala Winyan." She was known. I never heard of Lewis and Clark, but people talked about *her*.

Craig I can't remember hearing about Lewis and Clark at school.

Lydia I remember seeing pictures, the explorers standing in canoes and pointing toward the west and wearing buckskin clothing like real frontiersmen.

Kathryn This whole bicentennial has forced me to look at it. Of course, as an adult you have a different view when you know the history that has ensued.

Lanniko When I was a girl, I somehow got it fixed in my head that Sacajawea was a barren woman. "Saca, saca," which in Lakota means dry or shriveled up, like someone's hands when they have been in water a long time. And then "wea," which sounds like "winyan", and I put that together to mean *dry woman*. That's what got stuck in my head [laughter]. I was a child interpreting "Who was this woman? She couldn't have children from a man of her own people." I had this really wild imagination! I thought she could only have a child with a wasicu, a Frenchman. She had Little Pompy.[4]

Kim Do you think she is more important to non-Indians then to Indians, because we don't talk about her that much?

Craig Sacajawea makes the Voyage of Discovery a great story because then it's a multi-gender and multi-cultural story. That's why it resonates with people so strongly.

Lanniko That's the reason that we created the Unity Fest and the Sacajawea Learning Center in Mobridge [SD]. The reason why we did it there is because people from other places in the world know about Mobridge because of the brutalities that have been publicized all over the world in newspapers. So when strangers come through the door who have that knowledge, some of them do ask questions and I refer them to our efforts to try to change that history with the Unity Fest, to learn about one another and

hopefully have some better understanding of our human-ness, our frailties and also our capabilities to relate to each other in a positive way.

Craig I think again that if we look at the historical documents, none of the Winter Counts mention Lewis and Clark. So if we use that as a milestone, was this event that important? Little Big Horn is so important to non-Indians. It's the most written-about battle. And Lewis and Clark are so important to non-Indians. But again, using the Winter Counts as evidence, Lewis and Clark are not that important.

Lydia It's not that Little Big Horn was not an important event to us, but that people were afraid to talk about it because they were afraid of retaliation. It couldn't be put in a winter count because then it could be taken as evidence against those involved. Bad enough the 7th Cavalry took revenge against Big Foot and his band at Wounded Knee.

Kim Kiowa writer N. Scott Momaday has stated that "Lewis and Clark remains in my mind one of the great epic odysseys in American history." So what's your interpretation of such a perspective?

Lydia For the Americans it is [an epic odyssey] in their history, but I don't see it that way.

Craig I think in human history it is an epic odyssey. We have to go beyond "the" Indian viewpoint as if there is a single Indian viewpoint and we have to judge Lewis and Clark on where they fit in the big picture of human history. At that time and in this place they tried to do something that they thought was really, really important. It was against a lot of odds that they fulfilled their mission, although they failed in the main thing they went to look for—that [water] passage to the Pacific. And they had to realize that failure early and yet they soldiered on. In lots of ways, they brought all types of new knowledge back. They were outdated by the time they got back. To me, that's the important point—that they didn't *cause* anything. By the time they got back, they were meeting non-Indians going up the river. You can read the journals; all the way down, they were meeting non-Indians coming up the river. They weren't the first. All these peoples along this stretch of the river had seen non-Indians before.

Kim I think that's how "the" history books are portraying them, as being the first.

Craig And a lot of us buy into that. Lewis and Clark wanted to be the first—that was their whole goal. And by us perpetuating the idea that they were the first, they're winning in a sense—we're still bought into their incorrect history. They weren't the first—they weren't even close to the first. They weren't that important as individuals. But that journey, as a journey, was on this almost epic scale in terms of the importance it has had to this nation. The truthfulness of these epic journeys is a whole different issue. But

a lot of nations have these epic journeys and we can have that in the migration stories of Native tribes. This was the epic journey for this nation.

Kim So, it's more the way the story is told than perhaps what actually happened?

Craig And I think the great thing for us, the great opportunity we have, is that it's in historical time and we have the documents so that we don't have to treat it as myth. We can come back and interrogate it. And we can challenge that epic journey of this nation. And we can challenge it using the technologies and the techniques of that nation. And I think we have abundant evidence to challenge that—the truth value of that epic journey.

Kim I don't mean to pick on Momaday, because it's important to know the context in which he made his statement. But while one might truthfully make that statement, as a Native person I would never say that without also saying "and this is what it means to us—it doesn't mean the same thing to us." Liz [Elizabeth Cook-Lynn, a founding member of the Oak Lake Writers] has also pointed out that he said he was in awe of the Lewis and Clark journey.

Craig I can see it! If you sent 40 guys with the knowledge they had at that time, to do all that, it's awe-inspiring at some level. I'm awed by the fact they were able to do it. Now, that doesn't mean that I think it's an awesome thing, right? I'm awed by the fact that they decided they would do that. How it's played out I think is completely wrong. And that's part of what I'm trying to do is to show that the myth that came out of that is a myth not based on fact.

Kim And a related question is, "How is what came out of the Voyage of Discovery operative today?" What are the contemporary manifestations of it globally? This idea of expeditionary force—voyage and discovery—still resonates in foreign policy discussion today. Liz gets at that in her essay included in this collection—the discovery and the saving of people—those kinds of dialognes are still pervasive in American culture today and the fact that we are a moral nation that has God as our symbol. So you're not just colonizing for self-interested reasons, but you're colonizing because you're saving the world and you're bringing democracy to the world. She relates this still pervasive idea to the ways Lewis and Clark is celebrated today.

Craig To me, that's not what they were doing.

Kim No, not necessarily what *they* were doing, but it's the way the story is told—it's what the story means. She's saying the story means something to Americans—it's part of that overall belief system. In a way, it doesn't matter what Lewis and Clark themselves intended.

Craig Maybe we should talk about the differences between Lewis and Clark? It's kind of "the hero," singular, isn't it? Two men made into one word. To what extent do we differentiate between them?

Kim I know I didn't think about them as individuals until I read Ambrose's book that foregrounds Lewis.[5] Now I know that they were very different people and their lives had very different outcomes.

Kathryn My son, Zion, had a comment about that. He said "I think I might have committed suicide too if you had named me Meriwether. Meriwether, that's a jacked-up name!" [laughter]

Craig It is interesting, the insistence on that being basically one word when at least one side of the equation—Lewis—was a tormented being.

Lydia In the end of my piece, I wrote, "What was he thinking when he put that buffalo robe on the floor and ended up killing himself?

Kathryn I wondered that too, why did he do all of that? Almost like . . .

Lydia Like he might have had some regrets.

Kathryn Maybe that's what it was—almost like a ceremonial act. It seemed like he was trying to soothe his mind.

Craig Apparently a number of individuals from the expedition had significant difficulties. Several of them were charged with homicides after the expedition. They had problematic lives beyond the experience of the expedition. But in terms of Lewis, the Slaughter book argues that those guys had to adjust to a new way of thinking and a new way of being and basically that Clark was able to become more Indian and Lewis couldn't and that just led to his spiral downward.[6] Slaughter uses writings by Clark to show that he starts to talk like they record the Indians talked. And he wrote a speech abont their horses being stolen even before they were stolen. In his journal he wrote a speech about how he was going to talk about it even thongh it hadn't happened yet—that in a dream he heard the horses talk to him and say they'd be taken. It's jnst really interesting. Becanse Clark *could* accommodate himself to this new way of *being* out there—he lived, whereas Lewis couldn't accommodate himself. He was too "civilized" and he couldn't accommodate himself to this other mindset.

Kathryn Do you have any historical insight as to why he committed this suicide the way that he did? Did he leave any notes?

Craig He was in debt, big time. He was snpposedly mismanaging funds and he had the worst case of writer's block. He got back and he hadn't written one word. He was supposed to write np the journals because he was supposedly the best writer. And he didn't write one word from 1806-1809 despite pressure from Jefferson to publish.

Kim If you read Stephen Ambrose's *Undaunted Courage,* he makes the case that by our standards today, Lewis would probably have been considered mentally ill—bipolar disorder—although they didn't have that term then. He didn't deal as well as Clark emotionally with the trials of being immersed in other cultures and with a bunch of charges who didn't always do things the way he wanted them done.

Craig For small offenses he would go ballistic. And these are things we don't hear about. For example, a hatchet was stolen. Well, they didn't know it was stolen. A hatchet was lost and Lewis wanted to burn that Indian camp—the whole camp. The guy was almost off his rocker. I think Cruzatte tried to kill him [langhter]. I think you can make a strong argument that Cruzatte tried to kill him. The story is that Cruzatte thought Lewis was an elk and shot him, but I think he knew it was Lewis and he really *tried* to shoot him and because he only had one eye, he missed and got him in the bntt! [laughter]

But before we stop, Gladys, if you feel comfortable, I'd like to hear the rest of that story about Ed Hawk. Was this along the Grand River where he lived?

Gladys That's right. In fact, the Corps built a park there—it's called Indian Camp. And people still come there—there are RV hookups there. That was part of the plan of the Corps.

Craig So the water was backing up from the Missouri River dam up the Grand River? And so they came in and they just bulldozed his house?

Gladys Yes, but he was living along the Missouri—he was at the part where the Fool Soldiers Band commemoration was, near the place they call Mile Long Bridge.

Craig So what's the fuller story on that? Why did they just come and bulldoze him?

Gladys He wasn't the only one. But he just wouldn't sign and he was in his 80s. The water was backing up and I think they just wanted him out of there becanse they wanted to clear that bottom land as much as they could.

Kim So if they bulldozed and you didn't sign, does that mean you didn't get any compensatiou at all?

Gladys I don't know that. . . But many people were instantly displaced—were made instantly homeless.

Craig What happened to Mr. Hawk? Do you know?

Gladys I know that they finally moved him into a house in town—in Wakpala [SD]. And he lived there a very short time and then of course he died. This displacement really had an effect on a whole bunch of families because whole families lived together. And now they were displaced and they could

no longer live together as family units and so they had hard times. They had hard times finding places. And I kind of blame our tribe for this in part—I'm not putting the whole blame on them. They weren't educated enough to really have a big plan up there to meet the needs of these people who were suffering.

So, there was a white man from McLaughlin. His name was Wendell Keller. He moved a bunch of these one-room shacks into town and boy he was making lots of money off of that, charging rent. No running water, and of course no indoor bathrooms. So there were a lot of people coming in and making money off of these people. And so that's an impact of the flooding—a direct impact and I blame that on the river [project]. Even though for all the good that it did, we're back to square one. There's no water there. I mean there's a lake there, but we have water problems everywhere, on the reservation especially. So that's just what I experienced with my own eyes and my own knowledge during that time. So I couldn't tell you more than what I know.

Craig Do you know what happened to those two sorrel horses of Ed Hawk's?

Gladys When he moved into town, there was no place. The grazing land was gone. What could you do with them? People who had a lot of horses, who had a lot of chickens—there was no place to take them in town. There was no place where maybe they could put up a chicken coop and continue with that way of life. So, I don't know what happened. They probably sold them.

Craig Or people might have just taken them too. . .

Lydia People were self-sufficient then. They raised stock and they had gardens and then to be placed into town where they had no income, no water, and no lights. . .

Gladys You know, there was a cultural side to the loss too. My grandmother died when I was only about 11. But I lived with her during that time. And here's what I saw. When she had a hide she would take it down to the river and she would stake it on the side of the water that was flowing—for days, I don't know how many days. That was her way of cleansing that hide and stretching it out and drying it—using part of it for rawhide and the other part for tan hide—for the tops of the moccasins. So that cultural way was also taken from us. I don't know how they tan hides now. They even have classes on it: "How to tan hide." When I saw that, I thought "Oh, my God!" The way that I saw it certainly can't be what they're teaching. Because I saw it step by step by step, how she did it. If I were to tan hide, I would want a river close by so I could do it the particular way that my grandmother did. But if I were to do that today, I'd keel over because I am no longer the resourceful person that my grandmother was at 80. You see, the loss of that way of life is what the river [project] did to us.

The other thing that I've noticed is that we can no longer go by the weather and predict how we're going to prepare. I think that has a lot to do with the water and the trees. What little trees we had are no longer there. We could predict different things by the river, the trees, the birds, the animals—the way they acted.

Kim But if the river's changed and the birds and animals are gone, you have no way of knowing.

Gladys You have no way of knowing all of those things. We lived so close and we depended on these birds and animals, on how they acted, how they sang, the owls at night. Now we watch the TV and they tell us the weather forecast and that's what we're going by today. But the Indians had their own natural ways of interpreting a lot of that.

Lydia Cultural knowledge.

Craig Can that cultural knowledge—can those interpretive skills and abilities—can new ones develop along this type of a river?

Gladys Probably, but not as thorongh as the way I was raised.

Lanniko So much knowledge needs to be a part of the language for you to have a conversation. We need a new language and a new knowledge of that landscape—new because the landscape has changed after the river changed. And in order to articulate our ongoing experiences, to interact, to be reflective, to listen to the small voice and the great barrenness which is our river today—we need the kind of language I'm talking about, the kind of language that's been lost to a great degree and that we need to redevelop.

Lydia It will probably take generations to develop that new conversation.

Gladys It begins in the soil. The soil has changed. For example, let's say that you want to transplant ceyaka[7] along the river. Maybe it will grow. Maybe it won't. But it all depends on that soil that's underneath. It has changed from the flooding. What did it bring? We don't know. So whether or not that will be an annual plant that grows by itself—you don't know that. You can't depend on that. Whereas when the river was there, you knew where to go to pick certain things because you knew it was there.

Craig So, in a positive long-term look, we as a people can develop that new type of relationship?

Gladys I think it's possible. We can try, I guess. There are people out there who are trying that. At Sitting Bull College, Linda Bishop-Jones teaches about native plants—ethnobotany.

Lanniko Her educational foundation is in traditional western botany. The tribal aspect of it is new to her program and our elders have been helping bring her knowledge up to where we have a compatible understanding of the landscape. She is learning the plants' stories.

Kathryn I don't think it will ever get to that again—to what Mrs. Hawk is telling us about—that we'll have all of the elements around us that can tell us how the winter's going to be, how tomorrow's going to be. My grandpa used to talk about that and I never even memorized it, how he used to ask, when the beavers build their lodges in a certain part of the lake, is it close to the shore or out in the middle? He would predict the winter by that. My grandma used to say how the day would be tomorrow by the sunset. She would say, when it goes down as a red ball like that it will be a good day—a sunny and clear day tomorrow and then you can do things outside. But I think technology interrupts that too much and I think that kind of knowledge is only going to be relegated to universities, colleges, and special interest sections of bookstores. I think that we ourselves as Native people are too interrupted by technology. It's permeated our modern, daily Indian-ness. In the TV generation you can really see the loss of our language. Up on my reservation, a lot of the cultural ways are leaving us because of that technology. It's a double-edged sword. We can watch KELO-land news and see these blizzards forming way out there and coming in—these Alberta Clippers. But if we were out on our own, especially now, without that knowledge that died with our grandparents, we'd be probably caught in a blizzard and die for our lack of knowledge.

Lydia So, are we beaten down and are we quitting? Hell no! [laughter all around]

Gladys The change in environment has also affected our stories—stories associated with the river. But now, with the way the water is, say, and twenty years down the line, are there going to be stories on that same level—of, say, Inktomi—that were associated with all of these elements of the surrounding area, the land and everything? They won't be the same and so it has affected that possibility. Let me give you an example. Inktomi stories about coyote, rabbit, and others—common stories that were native to us—were associated with all of the natural elements. They came out of the natural environment that we were familiar with. But if you take away the natural world as we knew it, you can no longer create or tell the stories. You can't tell the stories anymore to younger generations because those animals are no longer there to be used to tell the stories in order to teach the values those stories were intended to teach. And the stories don't resonate with the young people because of that.

Lydia Disrupting the river disrupted a way of life and a way of transferring knowledge. It broke a link. And it was not just the river, but also the boarding schools.

Gladys There is an absence there. The whole generation is changing. The other thing is, and I know that this is probably on all the reservations, but we are really experiencing on Standing Rock a lot of young people taking their

own lives. Now we try to reason as to why. She [gesturing to Lydia] talked about that one time and she came up with some possible reasons—one of which was that children have nothing to do. Their parents are not there. We have a different way of life today where one parent is working here and the other is working over there. When the children come home from school, there is no parent there. Right away, they turn the TV on and they play these games and they see all of this drama—all of this crime. And when they have a personal problem—and everyone has problems—who are they going to turn to talk about it?

When we were growing up, we and our parents were constantly associated with the land and the river. We had something to do. We had our parents to listen to us, to tell us when to plant, how to take care of a horse. Even that by itself could be a whole class, how to take care of a horse. Now that generation today has no experience with any kind of things that make sense to them except the fact that they want to copy other kinds of generations, listen to hip-hop. They want to be noticed. There really are no black and white answers to why they take their lives. We just buried one here about two weeks ago, I think. The young man who killed himself was 16 and absolutely a nice-looking young man. Now, even his parents don't know why he did that. At his funeral—they had a huge funeral for him—they heard some younger ones saying, "Do you think that if we killed ourselves, we'd have a big funeral like this? Are they going to pay attention to us?" That's what we're hearing, because we're aggrandizing that young man through this funeral. He's actually a hero in their sight and that's a sad part of it.

Lydia The kids don't have the outlets that we had growing up. Like when we had problems, we had ceremonies. We went into a sweat to pray and talk about our problems in the sweat. And people, you know, talked to you afterwards and encouraged you. When we were kids and we went into a ceremony, everyone listened and people supported and encouraged one another, but some people don't have that anymore. The positive thing is that people are realizing what was almost lost and they are relearning and restoring what was nearly lost.

Lanniko When I was growing up, the river was not just industry to us. It gave us fuel, water, food, furniture, clothing, toys. Everything that we had came from the river—including the bullhead puppets [laughter].[8] Up the river were little dams where there were little creeks where those bullheads were. But what I was going to say was that we had not just a physical sense of who we were, but we were tired at night from the work. We would go to bed and sleep and our nights were filled with wonderful dreams of our experiences. And now we have a generation of young people who don't have such experiences—such interpretations of a world in their dreams. I wonder about that all the time. If they don't have that way of contributing to

the community, by hauling wood to the elders, such things that bring value to us as a person—are they turning their knowledge of who they are—in terms of our community—inward? Do they look to see a worthless being, a person who is in the way or who is the butt of someone else's anger? If you are a young person in today's world, this is what the aftermath of the river changing has brought. There is a world of difference between understanding through knowledge of place how the world has come about and understanding the world through what these young people have—canned knowledge.

Across from the [Sacajawea Learning] center we have in Mobridge, I have watched a whole hillside slide into the river. Every time she comes over [gesturing to Gladys], we go out and look at that hill. We're going to go over there [gesturing to the group]. We need to be on that river when we're talking about it! We need to be physically standing on the river to look out across, to see the hills; the places we once played on are now silt. Who is telling the story of this devastation? It's good that we have something to say about the bicentennial commemoration, but the more important conversation is related to the ongoing legacy of scientists trying to put their imprint on the landscape—tearing up the land. And even our Indian people feel they need to engage successfully in making money off the land in order to survive. But as Indian people, we used to know and live off the resources that were there. We knew not to alter it in such a way that those resources would then not be there for us.

Kim There's one final question that should be addressed. What are your hopes for this book—why do you think it's important that we have this conversation? Why did you want to be a part of this project in the first place?

Kathryn I feel it is important to have Native voices speaking about this whole thing. It seems that many times nationally in the United States our voices are so little and do not have impact, nor are they sought. I thought that this was a good opportunity to be able to say something. And as we have said, writing is cathartic. The loss that I experienced as a child in Lower Brule—if you write about it you don't have to go out and hatchet somebody [laughter].

Lydia I feel similar to Kathryn. This is an opportunity to express ourselves—our thoughts—what we really think about that journey and how it affected all of us.

Craig I think it's a chance to write something that's contrary. It's a chance to examine the Lewis and Clark myth using the evidence. Collectively, as Oak Lake Writers, it's a wonderful opportunity to participate with published authors who are Lakota, Nakota, or Dakota. I think it's important to promote that type of literature. In terms of the book itself, it will be evident that we don't all think the same and that is a very important educational message—that is, that there isn't "the" Indian viewpoint on this. We're going to have viewpoints on the importance of Lewis and Clark and all aspects of this bicentennial commemoration.

Gladys It's an opportunity to preserve our personal experiences as we lived along the river and for readers to try to understand and to imagine how it really was when now there is nothing there to help us go back and investigate how it was.

Lanniko I have a fourteen-year-old daughter and I want her knowledge of history to be whole—not just what's in a textbook. When we look at the standard South Dakota geography book, there's no mention of what we've been discussing here and yet that is a sanctioned part of the curriculum that has been developed for all of our public schools, including the tribal schools. And that's the reason I feel that it's important to make what little contribution I can make to bringing that history that is not in any textbook.

Also, we can't really begin a conversation about Indians' role as stewards unless we talk about participating in river management. How can we get the river flowing again or help make changes that will recover the resources that were lost? We have something that non-Native people don't have. They need to be able to digest someone else's experience of the phenomenon of Mnisose before they can have a re-direction in their thinking.

Kim My reason is much the same as Craig's. First, I was thrilled when I heard about the Oak Lake Writers because I lived on both coasts for a while and grew weary of being the only Indian among other writers. I didn't want to serve the purpose people too often wanted me to serve—to have the perspectives and demeanor they expected me to have. When Liz told me about the Oak Lake Writers, I thought "Wow, I can sit around with other Dakota, Lakota and Nakota people" and that is a unique opportunity, as is being in South Dakota with other writers. Having grown up here, I always thought the great writers were in other places, but they're here too. So, I was very inspired by that.

Second, because I focus on "cultural studies," for lack of a better term, I am really interested in the cultural politics surrounding Lewis and Clark today. I'm not so much interested in who they were as individuals. What is fascinating is the way Americans are constructing an identity and using them as symbols. And so this is a chance to think about American nationalism, particularly white American nationalism. Lewis and Clark are a good vehicle for thinking about and critiquing those ideas.

NOTES

[1] A Lakota traditional chief and the keeper of the Sacred Buffalo Calf Pipe.

[2] Editors' note: Kathryn Akipa was uncomfortable mentioning in her autobiographical piece (also published in this collection) the caskets on the river. She felt that using that image might be to capitalize in her individually written piece on particularly painful memories of the desecration of the dead.

However, she was more comfortable leaving the reference in the dialogue transcript because the image was shared in conversation among L/D/Nakota people, thereby representing an exchange or mutual remembering rather than an individual promulgation.

[3] Vine Deloria Jr. and Dan Wildcat, *Power and Place: Indian Education in America* (Golden, Colorado: Fulcrum Publishing, 2001).

[4] "Little Pompy" (a nickname apparently given by Clark) is what Lanniko remembers Lakota people calling Jean-Baptiste Charbonneau, the son of Sacajawea and the Corps of Discovery interpreter, Touissant Charbonneau.

[5] Stephen E. Ambrose, *Undaunted Courage: Meriwether Lewis, Thomas Jefferson, and the Opening of the American West* (New York: Simon & Schuster, 1996).

[6] Thomas P. Slaughter, *Exploring Lewis and Clark: Reflections on Men and Wilderness* (New York: Alfred A. Knopf, 2003).

[7] Lakota word for "tobacco."

[8] Just prior to the taping of the dialogue, Lanniko Lee told the group a hilarious story from her childhood. Her uncles made puppets from the heads of bull head fish they caught in Mnisose. They dressed the puppets up in hats and made wigs for them and put on impromptu puppet shows at the dinner table.

Solitary

Kim TallBear

for Arlene Heminger Lamb

A chair in grass that turns to sand
and rocks at the river.
The rod, the flies bright painted or
nightcrawlers,
what was needed for
slow water.
She was a fisherwoman.
She had a granddaughter who stayed
cool in green rooms all day
not liking sun, breathed cream-coffee
turned cold in her grandmother's cup.
The fisherwoman sat
solitary, breathing rocks, wet
like earth, breathing sweet grass, the field.
'Cross the narrow water,
old, dry, cut boughs,
shade for the people,
the old dance grounds.
Perhaps she imagined bells jingle,
the hide of the drum, a deep voice
contest calling.
She must have felt her house
at her back, a mile up the road.
She'd wanted it so long.

Oceti Sakowin Oyate Territorial Sovereignty

8 FOUNDATIONS OF LAKOTA SOVEREIGNTY

Harry Charger, Ione V. Quigley, and Ulrike Wiethaus

INTRODUCTION

In March of 2007, the South Dakota state legislature voted for Lakota language and culture to be taught in all public schools.[1] This is a decision of great significance, given the history of federal and state orchestrated efforts to assimilate and/or annihilate Lakota culture, language, economic, and spiritual practices.[2] As several of this volume's essays have described in some detail, full sovereignty depends on a thriving culture and language, practiced across generations. Legal solutions alone are not enough. In responding to a study by Thomas Biolsi on legal dimensions of Lakota-Euro-American interactions on the Rosebud reservation, Vine Deloria Jr. asserted that "history has nearly vanished from law, culture is being torn apart by law, religion stands outside law for the most part. Without a context in which law can function, it is a farce and resolves issues by brute force."[3]

The present chapter features two conversations with Lakota elders on the traditional foundations of Lakota sovereignty. We chose the interview format to acknowledge the importance and culturally appropriate protocol of oral communication in traditional contexts to assert truth, teach values, and share view points. This choice, an evocation of intellectual sovereignty in dialogue with Euro-American scholarship, is one of several models to work against discursive displacement strategies. As the discipline of the humanities transforms itself to become multi-perspectival and inclusive, academic discourse by necessity is broadened to include a wealth of meta-academic discursive styles.[4] Both Lakota contributors to this chapter grew up as fluent Lakota speakers, learned English as a second language while removed from their families, and have taught Lakota language classes.[5] Harry Charger (Sans Arc Lakota) works as a ceremonial leader, cultural educator, and wisdom keeper in Eagle Butte, South Dakota. Ione V. Quigley (Sicangu Lakota) is the chair person of the Department of Lakota Studies at Sinte Gleska University in Mission, South Dakota. Trained as an anthropologist, she teaches numerous courses on Lakota history, geography, biology, and culture, and is actively involved in revitalizing Lakota governmental structures through her participation in the process of rewriting the Sicangu Oyate (Sicangu Nation) constitution and by-laws. Both elders stress the meaning of sovereignty not as an abstract concept, but as a lived reality expressed through distinct values, spirituality, and behaviors. It is manifest in an education for personal independence and a sense of communal responsibility capable of supporting the well-being of the Lakota nation. The participants underscore the contributions of Lakota women in the struggle for sovereignty, and address contemporary themes such as the historic role of AIM

(American Indian Movement), efforts to move towards a model of restorative justice, and spiritual and environmental revitalization.[6]

SOVEREIGNTY IS OUR THOUGHTS, OUR WORDS, OUR CEREMONIES: A CONVERSATION WITH HARRY CHARGER

UW: How would you like to begin?

HC: This is about sovereignty. You know, to a lot of Lakota, it is something that is kind of strange to us because we are already sovereign. If you want to use the word sovereign... it is god given: it is our thoughts, our words, our ceremonies. Everything is free. We did not feel that we had to satisfy anybody when we were sovereign. We were just a very strong, balanced, harmonized people. Then of course with the coming of the people that did not belong on this continent, or came to this continent from other countries, they brought something with them that was not sovereign in this sense, it wasn't even— they were tied to their religion, you know. So that wasn't sovereign in our understanding. They were tied to their language, which wasn't our definition of being sovereign. They were tied to their culture. That was not an expression of sovereignty either in that they did not recognize everybody as brother and sister. They did not recognize kinship obligations—they called each other John, Bill, Joe, and Bob, but they did not call each other Little Brother, Older Brother, Little Sister, Big Sister and Uncle, Grandfather, Grandmother, something like that, you know. There was a big gap we noticed right away—how they did away with their relationships, even in their families. They called their boys Joe, Bob, Bill, or sometimes they would call them son, but it seemed like it had a hollow ring to it, instead of recognizing a real son or a real grandson. The deeper meaning was not there. Oh, that's my grandson over there, or that's my son. As if he was just a piece of property or a thing, not very important. Our relationships to each other were very important. They were one of the bases of our culture, our freedom.

The same contrast holds true for religion. Although the newcomers talked about the Great Spirit, which they called God, it did not sound real. They only went to church one day, one hour a week. That is how they tried to do everything, cram it all in at once. But when they got out of church, they were the same old people again, you know, showing the same old greed—how to cheat your neighbor, how to nibble at your neighbor so you can get some money or some material gain out of it. Well, we were not like that. When we came out of a ceremony, we were at peace. We felt deeply, deeply conscious of our re-

lationship to one another, but also to the Great Spirit. And we had to do that and be that way, because we knew, too, that we were not anything, we were nothing.

Without spirituality, there is no sovereignty. To us, sovereignty exists in spirituality. And spirituality is an expression of sovereignty, a god-given innate freedom, that feeling that you have that hey, I am a part of things, I am a part of something – but still a part of something, instead of wanting to be all of it. We pray as we do, being part of something. We were satisfied with that, you know.

So sovereignty to us is not a form of government, but yet it expresses itself in a form of government. When you are free, you can freely interact with your neighbors, freely, for real, instead of having to reenact shallow rules. For example, I know that this is an expression of respect, but people will see the governor or the president, and they fall all over themselves. It is truly happening, but it is not real. These men and women do not know that governor, that president that much. I don't. I have heard of him, but I don't know him that much. Whereas all of my relatives, my uncle, my dad, my relatives, my brothers, my cousins—I take time to talk to them. You know that we are genuinely—I don't know if you can see that or not, but we are genuinely glad to see one another. If we weren't cowboys, we'd probably cry [chuckles]. So anyway, I am just touching very briefly, very lightly on what sovereignty means to me.

And sovereignty is something you have to not just talk about, or read about, or write about, but you have to live it. And that is one of the big aspects of it, you have to live it. And if you don't, then you have got something else. You have another kind of control, or government, and it is not good.

UW: What needs to be said to the next generation of Lakota?

HC: It would be a message of different meanings, or different points, because all of those things that we just talked about have to be strengthened and in some cases rediscovered. Take our ceremonies as an example. Whatever ceremony it is, it has to be rediscovered and it's a little bit difficult when you don't speak the language. So that brings up the point of language, which is all important. And before we get into that, we have to practice compassion. I mean full compassion, not just good acts or good deeds, and that kind of thing, but full god-given compassion—love, unrequited love for your fellow man and woman and all things god-given or god-created.

And then there is the respect for these things, these people, these relatives, and everything created. And related to it are responsibility and account-

ability. We have to be responsible for our self. This is me; I have to be responsible for my words, my actions, as they have to as well. This is what relationship, kinship, responsible interaction means. And accountability refers to my person as well. And if I am trying to hold myself to be responsible and accountable, then of course the other fellow should be expected to do the same. When they do that, we are all at the same level, we feel good, we do not feel fear of one another, we do not feel resentment. Rather, we feel comfortable in each other's presence, and we feel we are real; he is real; she is real. And I know that he or she is real, as real as we can get.

And it is no longer that way. We are just a little bit leery of one another, even relatives. So there is not much of that original sovereignty there. I do not know if it is really even the same word anymore, if we can apply it to that or not, but sovereignty to me is god-given freedom of equality. That is very important, equality, because I am equal to everybody, but no better and no worse. I feel that. And that is the message that I have to give to our young people, because we not only have to give it to them, we have to show them how.

We must show them how to be free, or it would be just that much more talk. So somehow we have to get up groups, maybe in school. Maybe the American Indian classes that they have in the schools nowadays could pick up on that, or American Indian Studies groups at universities. Instead of just teaching a block system type of Indian Studies, they should really get into it and do these things, if they really want to get the concept of sovereignty across. Otherwise it's just a stuffy old class.

Of course, young people were all important [in traditional Lakota society]. *Wakanheja,* children, means that 'sacred they, too, are', or, 'mysterious they, too, are' because of their innocence and inexperience. So everything belongs to them, or must belong to them. And as far as political maneuvering goes, it existed not in the western sense, if you will, or in the European sense of politics. Politics did exist, but only in kind of a fun way. My brother-in-law's a chief, so you know that I will make a play of getting away with mischief. In actuality, I am still just as subject to any of the rules and regulations. The mischief is a way to tease him and for him to tease me.

Governance is based on respect. Respect people, do not turn them one way or another, because that is disrespectful. You can tell them about some things, but let them make up their own mind. And I think that was where we differed in our definition of sovereignty: we had a choice. We had a choice to make our own decisions, good or bad, and we made them. And we were given

that respect, you know. And so I think that we did not practice "politics." We learned that when organized government came on the scene. And they divided our people to gain power. To be in power. To gain a vote. There was no voting back in those days when we were free. There was mutual consent as to who was going to be the thinker of thinkers, the *naca*, the chief, for example. And he was chosen because of his compassion, respect, responsibility, and accountability. He had to live those values, you see. And he was chosen on those merits.

And then of course there are derivatives. Compassion means to be able to share things, and never expect anything in return. And the people depended on him so much that when they made him a *naca,* then for four days there was grieving because they had done him a terrible injustice. He was no longer his own man. He belonged to the people, everything that he is, and owned, and knew belonged to the people, forever. It was not just a four-year term, a five year term, but forever. And they were men who could make these decisions for the people. But it goes back further than that even. From the time that he was born until the time that he died, there were rules to follow in each corner of his life as in the four different directions. Each corner had 111 rules of behavior. So in all there were 444 rules of behavior for how the individual ought to behave toward god's creations. And if that person lives accordingly, he is then noticed by the elders and by the people, who say, hey this guy might be worthy of being a *naca*. And so if that's politics, we knew it was superior to what was brought over here.

UW: I am interested in women's roles.

HC: The women, let me see now, who are they? [laughs] No, the women are very important. They were not possessions, certainly; they were partners; they were a part of everything; they were equal. Yet they did not have the masculine kind of voice, but they had the feminine voice. Because the Lakota were very aware of that—the male and female energy, and that one cannot do without the other. They have to complement one another, in a family circle, in decisions as a camp, decisions that affect teaching, many decisions. Although there are some decisions that are made by men only, for example, when to go to war or when to go on a raiding party, or on the hunt. But the women accompanied them on these journeys for other purposes, to tend to them or to do the butchery. Yet they did not do it alone, but the men helped. In the hunt the men killed a buffalo, and they helped with the butchery, but the women did the refined work, if you will. They decided who would get what—if a hunter killed four buffalo, for example, each woman would think of the wel-

fare cases back home, the elderly, the young, the orphan, and they would set aside, this one here, and this and this, for those in need. In other words, it was kind of a welfare system, to take care of those people. And the women would decide this hide here will make a teepee for old stick-in-the-mud, or whoever he is, you know, an old guy who is not able to hunt anymore. And he might even be a relative. So we would put these hides aside and prepare them for him and make him a teepee, so he can take care of his grandchildren or himself or even other villagers. It took a whole camp to raise youngsters. It was not just one family, although you knew which family you belonged to. If you happened to be at a certain family's camp during the night, then you slept there, but everyone knew it was normal. It took the whole camp to raise youngsters. And this was how our sense of extended family responsibility came about. Everybody cared for everybody else.

And all of these kids listened, and they learned from this uncle, that uncle, and all of the relatives. What was happening then was that each youngster would have several doctors, several masters, several professors, teachers, and so on. They did not have a degree and did not want one. They passed on what they knew to this child. And then as they got older, these young people got older, the old ones passed away, and they in turn passed it on. There was a continuance of knowledge that was shared, which was very good. There was no need for books. They did not have to put their knowledge in books. They taught everything in tellings, in words, and in songs. The women played a big part in this; they passed on many of the finer points of camp life, of personal life, interactive knowledge, stories, all that was the women's job to do in addition to keeping and holding the family together. So they were very important; they were partners; they were not possessions, like in some societies, but they were equal partners. And then of course like everyplace else, there were abusers. But they were dealt with by the laws of the Lakota. They were banished.

UW: Or killed.

HC: Or killed. If somebody mistreated my sister badly, or even struck her or cut her, it was my right to stand up for her and to kill the abuser. The camp was not going to say anything. It happened on occasion, but rarely, because of our belief in compassion. You first went to talk to him and ask him to leave; if he resisted, then you took other measures.

Of course, compassion, respect, responsibility, and accountability are just human characteristics or attributes. They govern any human being, or should, but some human beings choose not to. The reason lies in their upbringing, ge-

ography maybe, culture, religion, government maybe, and education. All of these might have steered them away, and were replaced by negative things. The most important are greed, anger, and guilt. Why do you think in some parts of the world, especially here in South Dakota, do white men hate us? Now why is that? Is that because of guilt? Is that because of greed? That hatred, that stupidity, that ire against the Lakota still exists among these people. And I often wonder is that because they feel guilty? Because this land for which they have a piece of paper saying it's theirs is not theirs? Do they know that intuitively? The land that was given to the white people on our reservation has been declared "surplus" by a foreign government, the United States government, and given to their citizens.[7] That is a crime against humanity, against the treaties that were written. Is this what European Americans feel? What is it? We are the only nation in the world where a foreign government says, hey, your land is surplus. We will give it to our own people—in our own country. It is for the Lakota to determine what constitutes "surplus land" because it is our land. European Americans came into our land uninvited. The language of the treaty stipulates only three white people on any reservation, especially on the Cheyenne River Reservation. This includes a superintendent, the chief clerk, and a member of the clergy. And a clergy member is to only teach the English language. The treaty did not say to educate the Lakota, it did not say to convert the Lakota. We already had our educational and religious resources in place, and we already had our Black Hills, which is rich in mineral resources. You name it, and it was there. Our land was our storehouse and they stole it. And it's still stolen. The Black Hills are still stolen now.[8] No matter how long, no matter who has title to it, the title belongs by law to the Lakota.

UW: Can there be sovereignty without the land?

HC: Can you grow without your mother? It would be very hard. But with land *and* spirituality, not either one or the other, it takes those two main ingredients, big ingredients. I should say, spirituality and *unci maka,* Mother Earth. Land, like you use the word, is a possession type of thing, but we look at it as Mother Earth, *unci maka.* And the great essence, you know, is spirituality. And without those two, it would be pretty hard, almost impossible. Without those two it would be hard, hard to have sovereignty because I think people would be suffering for a lack of those two. In fact, we are lost when we kick spirituality aside and only take it up one hour a week. It would be awfully hard. When we tear up Mother Earth, that's like hurting your mother, you take knives and tear her open. It's what we're doing today to Mother Earth. You do that too many times to your Mother and she will die. This is what Mother Earth is beginning

to feel—the destructiveness that we are imposing upon her. The air is getting bad, the water is not very good any more. The land is not very good anymore. The animals are not very good anymore. The people are not very good anymore. The plants are not very good anymore. The fliers, the crawlers, the borers are not very good anymore. They are losing their strength. And when you come to that point, it brings you up against a whole new chapter of history which, if you are without spirituality, you are not going to believe.

UW: Today, over sixty-five percent of American Indians live in cities and not in the countryside.[9]

HC: Well, when they live in cities, they went perhaps out of necessity, or perhaps to get a job and make a living for their families. So necessity might be a part of being in a city. The other part is perhaps due to some kind of attraction that city life might hold for them. Some might be there because of a loss of identity, but some made a free choice to go there, to live there. And of course the sovereignty is not taken away from them, the innate sovereignty, the god-given sovereignty that they have within them. Collectively, if they try to form something, perhaps they can arrive at some peace. But it is hard in the city. I have had a brother in a city—I have even lived in big cities myself for a while. I have lived in Cleveland, Ohio, I have lived in Indianapolis, Terre Haute, Indiana, Portland, Oregon. I lived in Austin, Texas, different places. When you get in that hectic mainstream, it is hard to maintain any sort of spirituality, because you are going for a fast ride. And it is just almost impossible for spirituality to emerge out of that. You got to slow down and there is no time for that in the big city. I have heard people say that so many times when they come to South Dakota. All of a sudden, an old guy says, "[sighs] I feel so good, what is it about this place here?" I respond, "nothing." It is slower, a slower place. The clock is not king anymore. It is, but not controlling every second of your life, you know. So if the Indians in the big cities, those urbans, if they would slow down ... I think that's why a lot of them come back to the rez for a few days to catch their breath [chuckles], but then they go right back into that. Because there is something there that attracts them, I don't know what it is, but a lifestyle that they see or live there attracts them. They have to go back to it. But they come back every now and then to strengthen themselves.

UW: AIM activism began in the city. What is your view of its legacy in support of sovereignty?

HC: Of course, Wounded Knee number two in the 70s did one thing. It drew attention to the plight. It showed the world that all was not a bed of roses for the

American Indian here in America. We were forgotten, we were abused, we were all of these things. There again, because of guilt, I don't know what it is, but there was hatred for us. So then the movement started to retaliate, maybe avenge. And of course the beginning of it was perhaps to come back to the rez and learn whatever you need to know, perhaps. And I think maybe most of all spirituality, because they did not know anything about spirituality. But like their Caucasian brothers, they just wanted it in a lump sum. They did not care to be patient, there was not much respect there because they did not take the time to learn the language. So then they cut across a lot of these things I spoke of earlier. And then when you realize that this quick fix is not the real thing, you are going to get angry. You are getting mad at somebody, at yourself perhaps, at your brothers, for not knowing. And you know that what you are pursuing was real for a while to you, but then you found out that it was not all that real after all. The reason is that now, you are doing ceremonies, or whatever you will call it, in English.[10] It was not intended that way. This caused a lot of confusion back in those days and still does to this day. Pipes are a good example. People are saying that [ceremonial] pipes are for Indians only, Sun Dances are for Indians only. At one time, when there were only Indians on this continent, that might have been true. But now we got relatives who are half this and half that, and yet we are still blood relatives, you see. What does that indicate to me? It indicates that we are all relatives and that all things are intended to be shared. But it must be grounded in the Lakota language, in the Lakota life ways.

LAKOTA STUDIES AS SOVEREIGNTY STUDIES: A CONVERSATION WITH IONE V. QUIGLEY

The vision of Lakota Studies at Sinte Gleska University embraces seven areas vital to the strengthening of Lakota sovereignty, thus following the definition of sovereignty as developed by the United Nations.[11] Of premier importance is an intimate knowledge of the homeland, *otiwota*, both as the place of birth and the home to which a human spirit returns after death. Language revitalization and preservation programs include the development of online courses, immersion language camps, and regular classes ranging from the introductory level to Lakota oratory. The Lakota Studies Department sponsors several major ceremonies throughout the year, including the "Welcoming Back the Thunders" ceremony at every spring equinox at Harney Peak in the Black Hills. Meals, meetings, and other gatherings are begun with a Lakota prayer. Leadership training across the university analyzes and encourages the practice of the traditional four Lakota values of bravery, *woohitika*, generosity, *wacantognaka*,

wisdom, *woksape,* and fortitude, *wowacintanka*. Lakota Studies classes are offered on the topic of tribal social systems with particular instruction in Lakota educational and family support systems, past and present. Sinte Gleska University has also become a leader in the economic development of tribal resources by offering courses and research in traditional tribal economic systems, economic values, and their relationship to the environment. A consistent effort is being made to apply traditional practices, principles, and insights to contemporary problems.[12]

Finally, Lakota Studies supports the development of tribal self-governance and self-determination by offering courses on traditional forms of Lakota government and the history of the IRA government, especially as it relates to the *Sicangu Oyate*, the Sicangu Nation. Lakota citizens are thus empowered to work toward positive changes in tribal self-governance. Non-Lakota students benefit from Lakota Studies by learning holistically about regional and national history in the midst of a vibrant Lakota educational environment that offers cultural and spiritual windows into the Lakota past, present, and future. In the following conversation, Ione Quigley presents her view of the relationship between the seven Lakota Studies themes and the issue of Lakota sovereignty for the *Sicangu Oyate*.

UW: How would you like to begin addressing the issue of sovereignty in the context of Lakota Studies at Sinte Gleska University?

IQ: I gave the issue of sovereignty a lot of thought. I have been looking at it from every angle that I could think of. Sovereignty is an issue that every one of us faces, no matter who we are or where we come from, no matter what background and history we have. We all face this. Even as we speak, the United States faces the issue of sovereignty. Are we a true sovereign nation? I have my own thoughts on that issue. But for now, I would like to focus on Lakota sovereignty and how we view it.

To understand sovereignty, we must start at the individual level. As individuals, we should ask, are we truly sovereign? Can we answer that question on an individual level and ask ourselves, am I happy? Do I have enough? Am I completely responsible for my own self, for my emotions, for my mental well-being, and for my physical well-being? Am I comfortable with my life, which is truly the time that I am to live on the land that I was born on? Am I truly living a sovereign life where I am my sole sovereign, and am I able to let others be sovereign in the same sense?

At one time, over one hundred years ago, we were a strong and sovereign nation. Each individual, each social unit, each band or nuclear family unit was

actually given the choices implicit in the questions posed above. So we look at sovereignty as actually having the freedom of choice.

I have also given thought to the counter or opposite of sovereignty. What is that? I have begun to think of the different ways in which you are not free to choose. On the opposite side of your right to choose we find oppression, which takes away the right to make choices.

UW: The Lakota Studies Program at Sinte Gleska University is rooted in a long struggle to regain sovereignty.

IQ: We actually started with a movement of our own right here. We started trying to find out what land and resources we actually have. Before we began our own search, all of that information was kept from us. All of that information was kept within United States government agencies. The government declared itself a guardian of us, the Lakota, a sovereign nation. Considering themselves a guardian of our land as well, they also took it upon themselves to have the land measured and surveyed and explored for its resources. The government decided who could have access to our land and who could come in and choose to do what they pleased. What is our land worth? Where are the borders of our land base? What resources do we really have here? This information has been made publicly available more and more. And there are certain Sinte Gleska programs and departments that are increasingly addressing these questions.

The United States guardianship took away a lot of our power as a sovereign nation. For the United States government, oppression of our nation and the sovereignty of the United States go hand in hand. It is important to understand that oppression takes away power as well as responsibilities. For example, consider our society and our culture. We had to think twice whether we should speak our language. Should we allow our children to speak the language or allow them to get beaten?[13] Today, these and other destructive aspects of United States government policies are coming out into the open.

The greatest of oppression we faced, however, was the destruction of gaining our livelihood and the food, when they took that away. The threat of starvation puts people into a vise. You have them where you want them. That was only the starting point, however. The people were suffering, and then they were given this medicine that was going to make them feel better. That's when they introduced *mni wakan,* the sacred water. It is said that in the beginning, only the men of our people drank. Yet like any kind of disease that spreads, drinking spread to everybody. This particular tool, alcohol, was probably the strongest weapon that the government had.[14]

Another tool that it used against us was education. The United States imposed a completely new language upon us. It imposed a completely new system of education upon us. Yet we already had a fully functioning system of education. Our mothers, grandmothers and grandfathers, they were our educators. All of a sudden, a completely different system was forced on us. Instead of family members, strangers educate us. The Western system is impersonal and hierarchical. You get children into a classroom and tell them that this is the way it is. Our family-based system of education was different. We were taught lessons through life experiences, and then we were given the choice to interpret, explore, and apply our lessons. In the rigid education system that we have now, we are learning abstractly. We are given only one version of the way things are, even when it comes to history. This is what happened, and we were never really given any other option.

UW: The Lakota encountered Western education first in religious schools.

IQ: The education that was imposed on us was rigid and impersonal. From there we move on to the question of spirituality. We have had the Catholic Church and the Episcopal Church, but the major church coming in was the Catholic Church.[15] Personally speaking, I have always thought that Catholicism is not a system of teaching about the good things in life. And these are the important matters. Life is to be loved and appreciated. Life is to be lived. You know, these are the rules to live by. That was always my ideal. Lakota spirituality teaches that through living life fully, you will have many experiences. All of these experiences are your own immersion into the process of creation. In contrast, in Catholicism you look for external attributes and symbols that everybody recognizes. We still look for those attributes and confuse them with spiritual values. For example, consider the belief that you are not a good person until you have a good job, a nice home, beautiful children—the ideal family, the ideal Mr. and Mrs. Jones if you like. The Lakota people say no to this view. Enjoy life, live life—even if society is concerned with materialism.

Our social systems at one time worked in harmony with our spirituality. We lived in a kinship system in which relatives were never addressed by their name. When you address a person through our kinship terms, the person knows her responsibilities and how she will be taken care of by her relatives. I never quit using kinship terms. I still say to my children, "tell your grandfather, go visit your grandmother." In the past, we lived our lives with each other in camps where we were able to take care of each other. Now we have to cope with another culture's social system. I am forced to drive across town

to where my mother lives, and she has to live by herself. We have been living with this foreign system for the past one hundred years, adjusting to a program of education and values that the United States government has forced on us. What does that do to the spirit, what does that do to the family?

When you have relatives, you will always have care, you will always have that. Our social systems are still intact in that we care for each other. So we do have a course on the kinship system here at Sinte Gleska's Lakota Studies. It's called *LS 221: Lakota Social Systems*. The instructors have done a wonderful job of having everybody learn and appreciate what behaviors are appropriate for each kinship role and how to fully participate in the family unit and beyond. This knowledge allows our children to feel that they belong and that they are an important part of the family. It is one of several cultural projects we have created. It is exciting to be a part of it all, because it is going to be a good thing for the people. Kinship ways were so natural and they are still meaningful today.

When the *canupa* (sacred pipe) was brought to us by White Buffalo Calf Woman, the pipe came with responsibilities. The goal was to live in peace with all people.[16] You know there are always stories within the families, within the kinship that you know and belong to. Where language is concerned, at one time, our language was such that it carried the larger cultural, social, and spiritual meaning in all these specific kinship terms. At the time of the worst oppression of our culture, our language came to almost a standstill. And because of that we have had to work hard on not only teaching the language, but on the meaning behind the words. This affects all that we face in trying to revitalize our culture. So we actually have multiple bumps.

In the Lakota system, kinship relations are deeply connected to economic survival and well-being as well.[17] The United States government tried to destroy this link as well. If you are allowed welfare benefits, for example, it amounts to yet another form of oppression. We have a lot of lost people out there because of state welfare. If you are on welfare, it can quickly happen that a social worker looks into whether a child needs to be placed outside of her biological family. The child grows up without learning who she is in the larger kinship system and what it means to be Lakota.

Take another example, the Native American Graves Repatriation Act.[18] It allows us to bring home our relatives, our ancestors. The flip side of that is that it is only applied to federal travel, and not regionally. That restriction actually helps keep us oppressed. True sovereignty will not come about until we can educate and unite the Lakota who live here.

UW: To accomplish all of this takes a strong group effort.

IQ: We actually have a group of women who have begun all of this, one of the best things that could have happened to us.[19] It was a group of women that finally stood up and said, "we want positive change for ourselves and for our children." The women actually went about to start the change by gathering information. They started a movement within the tribe. They are also one of several groups that I have been working with in writing our constitution. During our work on the constitution, we have accepted several proposed amendments. With all of the decisions we make, we have to remember that we are not making them for ourselves. For example, we are working to set up our own judicial system. You know, having the understanding that "this is wrong, let's fix it," not, "this is wrong, let's put him away for two years and let him think about it." Rather, "this is wrong, let's fix it, right here." At the university, Marlise Whitehat leads a movement called "Restorative Justice."[20] We had a judge who made all the decisions without allowing us to apply our own justice system. He said, in top-down fashion and without knowing the community, "ok you're wrong and you're not and you're the one that needs to go sit in jail." It is another form of oppression to not be allowed to fully deal with legal issues through our own justice system. I think we need to work with a model to allow everybody involved to resolve the crime and to give everybody a sense that this is what needs to be done. This is where the government courts fail. It has brought a lot of grief, a lot of anger. And it is just another example of denying sovereignty to the Lakota.

I truly believe that we can be economically sovereign. When people do not have something they need, it constitutes an imbalance. It is in the nature of things that are unbalanced that they attract that which will bring back balance. That is possible for economic sovereignty as well. What we need to do is take an inventory of what we have here on the reservation and say, "okay, this is what we each have. Now what do the tribes in Montana have, what do the tribes in Arizona have?" We practiced a bartering system in the past that worked. Many archaeologists have said that our area was a trade center. A bartering system can be brought back today. It is happening for our language, our justice system, and our kinship system.

CONCLUSION

In her study of the origins of the Lakota Nation, Ione Quigley writes that Lakota oral traditions point to the emergence of the Lakota during the Pleistocene Period about

20,000 to 40,000 years ago. An ice age bison kill in Colorado from about 13,000 years ago suggests strong similarities with a Lakota buffalo hunt/kill site in the 1600s, thus suggesting ancestral links.[21] At the other end of the historical spectrum, efforts are being made to heal the trauma of boarding schools,[22] relocation, and other forms of colonial oppression through culturally appropriate means that center on the reappearance of *Pte Oyate,* the buffalo nation, traditional ceremonies, and other cultural and economic activities.[23]

Both Lakota elders affirm the viability of their traditions in shaping the necessary conditions for a full exercise of sovereignty now and in the future. Both work with the knowledge that the process will not be a "quick fix," that it will take the patient labor of many to heal and revitalize legal systems in tandem with cultural, economic, and spiritual systems. The fact that the State of South Dakota has made one significant step toward supporting the efforts of tribal colleges such as Sinte Gleska University and the teachings and ceremonial work of elders such as Harry Charger render their conversations timely and relevant to their students, their communities, and other tribal nations.

NOTES

The notes are intended to guide the reader to further information on the subjects discussed in the chapter.

1 "Public schools in South Dakota to include American Indian education" posted March 19, 2007 by David Melmer, *Indian Country Today* Web site. "PIERRE, S.D.—Students in South Dakota will hear different approaches to the state's history in the next school year: [T]hey will be exposed to American Indian culture and the language of the Lakota. Much like Montana, which has implemented an Indian Education for All program, South Dakota will attempt to bridge educational achievement gaps between American Indian and non-Indian students, lower dropout rates, and bring about a better understanding of the cultures. Gov. Mike Rounds has signed a bill into law that will include curriculum changes that will teach about American Indian culture and language, and require teachers to upgrade their skills with American Indian studies courses. The new law also officially creates the office of American Indian Education."

2 For an introduction to the many cultural strategies to undermine Indigenous sovereignty in European-American contexts, especially in the academy, see Elizabeth Cook-Lynn, *Anti-Indianism in Modern America: A Voice from Tatekeya's Earth* (Champaign: University of Illinois Press, 2001). On the impact of boarding schools, see Debra K. S. Barker, "Kill the Indian, Save the Child: Cultural Genocide and the Boarding School," in *American Indian Studies: An Interdisciplinary Approach to Contemporary Issues,* edited by Dane Morrison (New York: Peter Lang, 1997), 47–69.

3 Thomas Biolsi, "Bringing the Law Back in: Legal Rights and the Regulation of Indian-White Relations on Rosebud Reservation," *Current Anthropology* 36.4 (August-October 1995): 543–71, quotation p. 561.

4 For an academic analysis of the inherent tensions involved in negotiating a relationship between Indigenous and non-Indigenous discursive practices, see Chadwick Allen, *Blood Narrative. Indigenous Identity in American Indian and Maori Literary and Activist Texts* (Durham: Duke University Press, 2002), and Thomas W. Cooper, *A Time before Deception: Truth in Communication, Culture, and Ethics* (Santa Fe: Clear Light Publishers, 1998).

5 On the resurgence of oral knowledge and traditions in American Indian Studies, see Donald L. Fixico, *The American Indian Mind in a Linear World: American Indian Studies and Traditional Knowledge* (New York: Routledge, 2003), especially chapter two, "Oral Tradition and Traditional Knowledge," 21–41.

6 For background information on Lakota women, see, for example, Marla N. Powers, *Oglala Women: Myth, Ritual, and Reality* (Chicago: The University of Chicago Press, 1986) and Mark St. Pierre and Tilda Long Soldier, *Walking in the Sacred Manner: Medicine Women of the Plains Indians* (New York: Touchstone, 1995); on AIM, see Joane Nagel, *American Indian Ethnic Renewal: Red Power and the Resurgence of Identity and Culture* (New York: Oxford University Press, 1996); on Lakota history and political structures, see *Unit Three: Makoce*, and *Unit Five: Itancan*, *Curriculum Materials Resource Units*, designed by Vivian One Feather, Oglala Sioux Culture Center, Red Cloud Indian School, Inc., Pine Ridge, South Dakota, 1972–1974.

7 For a survey on the constitutional foundations of the relationship between United States Federal Government and Tribal Nations, see Vine Deloria Jr. and David E. Wilkins, *Tribes, Treaties, and Constitutional Tribulations* (Austin: University of Texas Press, 1999).

8 See Edward Lazarus, *Black Hills, White Justice: the Sioux Nation Versus the United States, 1775 to the Present* (New York: Harper Collins, 1991).

9 See Susan Lobo and Kurt M. Peters, *American Indians and the Urban Experience* (Walnut Creek, CA: Altamira Press), 2001. On the multiple dimensions of exile for American Indians, see Vine Deloria, Jr., "Out of Chaos," in D. M. Dooling and Paul Jordan-Smith, *I Become Part of It: Sacred Dimensions on Native American Life* (New York: Harper San Francisco, 1989), 259–70.

10 On Lakota vocabulary used in ceremony, see William K. Powers, *Sacred Language: The Nature of Supernatural Discourse in Lakota* (Norman: University of Oklahoma Press, 1986).

11 Thanks to several global initiatives, including efforts by the United Nations, the concept of a "Fourth World" of Indigenous Peoples is steadily gaining momentum. For an overview, see Jeffrey Sissons, *First Peoples: Indigenous Cultures and Their Futures* (London: Reaktion Books, 2005).

12 For an example of the culturally appropriate integration of all these elements, see Ronal *Lakota Star Knowledge: Studies in Lakota Stellar Theology* (Mission, SD: Sinte Gleska Universi

13 The scholarship on the vital link between Indigenous languages and environmental a health is steadily growing, thus supporting Sinte Gleska's holistic vision. See, for exa Nettle and Suzanne Romaine, *Vanishing Voices: The Extinction of the World's Languages* (Ox University Press, 2000).

14 Indigenous Sobriety and Wellness Programs are spreading; for an academic contextuali ergenerational trauma and culturally appropriate healing, see Eduardo Duran and Bonni *tive American Postcolonial Psychology* (Albany: State University of New York Press, 1995).

15 On the cultural and theological dynamics of missionary activity among First Nations, s Tinker, *Missionary Conquest: The Gospel and Native American Cultural Genocide* (Minneap Press, 1993).

16 See D. M. Dooling and Paul Jordan-Smith, "White Buffalo Woman," in *I Become Pa Dimensions on Native American Life*, edited by D. M. Dooling and Paul Jordan-Smith

HarperSanFrancisco, 1989), 204–6, and James R. Walker, *Lakota Belief and Ritual*, edited by Raymond DeMallie and Elaine A. Jahner (Lincoln: University of Nebraska Press, 1980, 1991), 109–12.

17 See Dean Howard Smith, *Modern Tribal Development: Paths to Self-Sufficiency and Cultural Integrity in Indian Country* (Lanham, MD: Altamira Press, 2000) for a succinct and optimistic model of integrating culture and economic development.

18 See Winona LaDuke, "Quilled Cradleboard Covers, Cultural Patrimony, and Wounded Knee," in *Recovering the Sacred. The Power of Naming and Claiming,* edited by Winona LaDuke (Cambridge, MA: South End Press, 2005), 87–113.

19 For further discussion of women's contributions to the reclamation of full sovereignty, see Andrea Smith, "Native American Feminism, Sovereignty, and Social Change," *Feminist Studies* 31.1 (Spring 2005): 116–32.

20 The concept of restorative justice is gaining global momentum in and beyond Indigenous communities. See Elizabeth Elliott, Robert M. Gordon, eds., *New Directions in Restorative Justice: Issues, Practice, Evaluation* (Portland, OR: Willan, 2005). For a Canadian First Nations comparison, see Wayne Warry, *Unfinished Dreams: Community Healing and the Reality of Aboriginal Self-Government* (Toronto: University of Toronto Press, 2000), chapter five, "Restoring Justice: Conflict with the Law," 163–205. Warry concludes that at least for the Canadian context, "the idea that alternative justice programs can serve as a locus for community healing and development is greatly underestimated by non-Native policy-makers who continue to compartmentalize law" (p. 202).

21 Ione V. Quigley, "An Evaluation of True Sovereignty of the Rosebud Sioux Tribe," unpublished paper, n.p.

22 Sharon Waxman, "Sioux Allege Abuse at Church Boarding Schools," *Washington Post*, June 2, 2003, <http://www.rickross.com/reference/ckergy/clergy164.html> (accessed October 18, 2004).

23 See Winona LaDuke, "Buffalo Nations, Buffalo People," in *All Our Relations. Native Struggles for Land and Life* (Cambridge, MA: South End Press, 1999), 139–67.

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Excerpt from Roxanne Dunbar-Ortiz, *An Indigenous Peoples History of the United States,* pp. 185-191

The first international relationship between the Sioux Nation and the US government was established in 1805[1] with a treaty of peace and friendship two years after the United States acquired the Louisiana Territory, which included the Sioux Nation among many other Indigenous nations. Other such treaties followed in 1815 and 1825. These peace treaties had no immediate effect on Sioux political autonomy or territory. By 1834, competition in the fur trade, with the market dominated by the Rocky Mountain Fur Company, led the Oglala Sioux to move away from the Upper Missouri to the Upper Platte near Fort Laramie. By 1846, seven thousand Sioux had moved south. Thomas Fitzpatrick, the Indian agent in 1846, recommended that the United States purchase land to establish a fort, which became Fort Laramie. "My opinion," Fitzpatrick wrote, "is that a post at, or in the vicinity of Laramie is much wanted, it would be nearly in the center of the buffalo range, where all the formidable Indian tribes are fast approaching, and near where there will eventually be a struggle for the ascendancy [in the fur trade]."[2] Fitzpatrick believed that a garrison of at least three hundred soldiers would be necessary to keep the Indians under control.

Although the Sioux and the United States redefined their relationship in the Fort Laramie Treaty of 1851, this was followed by a decade of war between the two parties, ending with the Peace Treaty of Fort Laramie in 1868. Both of these treaties, though not reducing Sioux political sovereignty ceded large parts of Sioux territory by establishing mutually recognized boundaries, and the Sioux granted concessions to the United States that gave legal color to the Sioux's increasing economic dependency on the United States and its economy. During the half century before the 1851 treaty, the Sioux had been gradually enveloped in the fur trade and had become dependent on horses and European-manufactured guns, ammunition, iron cookware, tools, textiles, and other items of trade that replaced their traditional crafts. On the plains the Sioux gradually abandoned farming and turned entirely to bison hunting for their subsistence and for trade. This increased dependency on the buffalo in turn brought deeper dependency on guns and ammunition that had to be purchased with more hides, creating the vicious circle that characterized modern colonialism. With the balance of power tipped by mid-century, US traders and the military exerted pressure on the Sioux for land cessions and rights of way as the buffalo population decreased. The hardships for the Sioux caused by constant attacks on their villages, forced movement, and resultant disease and starvation took a toll on their strength to resist domination. They entered into the 1868 treaty with the United States on strong terms from a guerrilla fighting force through the 1880s, never defeated by the US army—but

their dependency on buffalo and on trade allowed for escalated federal control when buffalo were purposely exterminated by the army between 1870 and 1876. After that the Sioux were fighting for survival.

Economic dependency on buffalo and trade was replaced with survival dependency on the US government for rations and commodities guaranteed in the 1868 treaty. The agreement stipulated that "no treaty for the cession of any portion or part of the reservation herein described which may be held in common shall be of any validation or force against the said Indians, unless executed and signed by at least three fourths of all the adult male Indians." Nevertheless, in 1876, with no such validation, and with the discovery of gold by Custer's Seventh Cavalry, the US government seized the Black Hills—Paha Sapa—a large, resource-rich portion of the treaty-guaranteed Sioux territory, the center of the great Sioux Nation, a religious shrine and sanctuary. When the Sioux surrendered after the wars of 1876–77, they lost not only the Black Hills but also the Powder River country. The next US move was to change the western boundary of the Sioux Nation, whose territory, though atrophied from its original, was a contiguous block. By 1877, after the army drove the Sioux out of Nebraska, all that was left was a block between the 103rd meridian and the Missouri, thirty-five thousand square miles of land the United States had designated as Dakota Territory (the next step toward statehood, in this case the states of North and South Dakota). The first of several waves of northern European immigrants now poured into eastern Dakota Territory, pressing against the Missouri River boundary of the Sioux. At the Anglo-American settlement of Bismarck on the Missouri, the westward-pushing Northern Pacific Railroad was blocked by the reservation. Settlers bound for Montana and the Pacific Northwest called for trails to be blazed and defended across the reservation. Promoters who wanted cheap land to sell at high prices to immigrants schemed to break up the reservation. Except for the Sioux units that continued to fight, the Sioux people were unarmed, had no horses, and were unable even to feed and clothe themselves, dependent upon government rations.

Next came allotment. Before the Dawes Act was even implemented, a government commission arrived in Sioux territory from Washington, DC, in 1888 with a proposal to reduce the Sioux Nation to six small reservations, a scheme that would leave nine million acres open for Euro-American settlement. The commission found it impossible to obtain signatures of the required three-fourths of the nation as required under the 1868 treaty, and so returned to Washington with a recommendation that the government ignore the treaty and take the land without Sioux consent. The only means to accomplish that goal was legislation, Congress having relieved the government of the obligation to negotiate a treaty. Congress com- missioned General George Crook to head a delegation to try again, this time with an offer of $1.50 per acre. In a series of manipulations and dealings with leaders whose people were now starving, the commission garnered the needed

signatures. The great Sioux Nation was broken into small islands soon surrounded on all sides by European immigrants, with much of the reservation land a checkerboard with settlers on allotments or leased land.[3] Creating these isolated reservations broke the historical relationships between clans and communities of the Sioux Nation and opened areas where Europeans settled. It also allowed the Bureau of Indian Affairs to exercise tighter control, buttressed by the bureau's boarding school system. The Sun Dance, the annual ceremony that had brought Sioux together and reinforced national unity, was outlawed, along with other religious ceremonies. Despite the Sioux people's weak position under late-nineteenth-century colonial domination, they managed to begin building a modest cattle-ranching business to replace their former bison-hunting economy. In 1903, the US Supreme Court ruled, in *Lone Wolf v. Hitchcock*, that a March 3, 1871, appropriations rider was constitutional and that Congress had "plenary" power to manage Indian property. The Office of Indian Affairs could thus dispose of Indian lands and resources regardless of the terms of previous treaty provisions. Legislation followed that opened the reservations to settlement through leasing and even sale of allotments taken out of trust. Nearly all prime grazing lands came to be occupied by non-Indian ranchers by the 1920s.

Indian land allotment under the Indian Reorganization Act, non-Indians outnumbered Indians on the Sioux reservations three to one. However, the drought of the mid- to late-1930s drove many settler ranchers off Sioux land, and the Sioux purchased some of that land, which had been theirs. However, "tribal governments" imposed in the wake of the Indian Reorganization Act proved particularly harmful and divisive for the Sioux.[4] Concerning this measure, the late Mathew King, elder traditional historian of the Oglala Sioux (Pine Ridge), observed: "The Bureau of Indian Affairs drew up the constitution and by-laws of this organization with the Indian Reorganization Act of 1934. This was the introduction of home rule. . . . The traditional people still hang on to their Treaty, for we are a sovereign nation. We have our own government."[5] "Home rule," or neocolonialism, proved a short-lived policy, however, for in the early 1950s the United States developed its termination policy, with legislation ordering gradual eradication of every reservation and even the tribal governments.[6] At the time of termination and relocation, per capita annual income on the Sioux reservations stood at $355, while that in nearby South Dakota towns was $2,500. Despite these circumstances, in pursuing its termination policy, the Bureau of Indian Affairs advocated the reduction of services and introduced its program to relocate Indians to urban industrial centers, with a high percentage of Sioux moving to San Francisco and Denver in search of jobs.[7]

Mathew King has described the United States throughout its his- tory as alternating between a "peace" policy and a "war" policy in its relations with Indigenous nations and communities, saying that these pendulum swings

coincided with the strength and weak- ness of Native resistance. Between the alternatives of extermination and termination (war policies) and preservation (peace policy), King argued, were interim periods characterized by benign neglect and assimilation. With organized Indigenous resistance to war pro- grams and policies, concessions are granted. When pressure lightens, new schemes are developed to separate Indians from their land, resources, and cultures. Scholars, politicians, policymakers, and the media rarely term US policy toward Indigenous peoples as colonialism. King, however, believed that his people's country had been a colony of the United States since 1890.

The logical progression of modern colonialism begins with economic penetration and graduates to a sphere of influence, then to protectorate status or indirect control, military occupation, and finally annexation. This corresponds to the process experienced by the Sioux people in relation to the United States. The economic penetration of fur traders brought the Sioux within the US sphere of influence. The transformation of Fort Laramie from a trading post, the center of Sioux trade, to a US Army outpost in the mid-nineteenth century indicates the integral relationship between trade and colonial control. Growing protectorate status established through treaties culminated in the 1868 Sioux treaty, followed by military occupation achieved by extreme exemplary violence, such as at Wounded Knee in 1890, and finally dependency. Annexation by the United States is marked symbolically by the imposition of US citizenship on the Sioux (and most other Indians) in 1924. Mathew King and other traditional Sioux saw the siege of Wounded Knee in 1973 as a turning point, although the violent backlash that followed was harsh.

Two decades of collective Indigenous resistance culminating at Wounded Knee in 1973 defeated the 1950s federal termination policy. Yet proponents of the disappearance of Indigenous nations seem never to tire of trying. Another move toward termination developed in 1977 with dozens of congressional bills to abrogate all Indian treaties and terminate all Indian governments and trust territories. Indigenous resistance defeated those initiatives as well, with another caravan across the country. Like colonized peoples elsewhere in the world, the Sioux have been involved in decolonization efforts since the mid-twentieth century. Wounded Knee in 1973 was part of this struggle, as was their involvement in UN committees and international forums.[81] However, in the early twenty-first century, free-market fundamentalist economists and politicians identified the communally owned Indigenous reservation lands as an asset to be exploited and, under the guise of helping to end Indigenous poverty on those reservations, call for doing away with them—a new extermination and termination initiative.

[1] UN Commission on Human Rights, Sub-commission on Prevention of Dis- crimination and Protection of Minorities, 51st sess., *Human Rights of Indigenous Peoples: Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Populations: Final Report*, by Miguel Alfonso Martínez, special rapporteur, June 22, 1999, UN Document E/CN.4/Sub.2/1999/20. See also *Report of the Working Group on Indigenous Populations on Its Seventeenth Session, 26–30 July 1999*, UN Document E/CN.4/Sub.2/1999/20, August 12, 1999.

[2] Robert A. Trennert, *Alternative to Extinction: Federal Indian Policy and the Beginnings of the Reservation System, 1846–51* (Philadelphia: Temple University Press, 1975), 166.

[3] Testimony of Pat McLaughlin, then chairman of the Standing Rock Sioux government, Fort Yates, ND (May 8, 1976), at hearings of the American Indian Policy Review Commission, established by Congress in the act of January 3, 1975.

[4] See Kenneth R. Philip, *John Collier's Crusade for Indian Reform, 1920–1954.* Tucson: University of Arizona Press, 1977.

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[7] There is continuous migration from reservations to cities and border towns and back to the reservations, so that half the Indian population at any time is away from the reservation. Generally, however, relocation is not permanent and resembles migratory labor more than permanent relocation. This conclusion is based on my personal observations and on unpublished studies of the Indigenous populations in the San Francisco Bay area and Los Angeles.

[8] The American Indian Movement convened a meeting in June 1974 that founded the International Indian Treaty Council (IITC), receiving consultative status in the UN Economic and Social Council (ECOSOC) in February 1977. The IITC participated in the UN Conference on Desertification in Buenos Aires, March 1977, and made presentations to the UN Human Rights Commission in August 1977 and in February and August 1978. It also led the organizing for the Non-Governmental Organizations (NGOs) Conference on Indigenous Peoples of the Americas, held at UN headquarters in Geneva, Switzerland, in September 1977; participated in the World Conference on Racism in Basel, Switzerland, in May 1978; and participated in establishing the UN Working Group on Indigenous Populations, the UN Permanent Forum on Indigenous Issues, and the 2007 UN Declaration on the Rights of Indigenous Peoples. See: Walter R. Echo-Hawk, *In The Light of Justice*: *The Rise of Human Rights in Native America and the UN Declaration on the Rights of Indigenous Peoples.* Golden, CO: Fulcrum, 2013; Vine Deloria, Jr., *Behind the Trail of Broken Treaties*: *An Indian Declaration of Independence.* Austin: University of Texas Press, 1985. Originally published 1974: Roxanne Dunbar-Ortiz, Dalee Sambo Dorough, Gudmundur Alfredsson, Lee Swepston and Peter Wille, Eds., *Indigenous Peoples' Rights in International Law: Emergence and Application.* Kautokeino, Norway & Copenhagen, Denmark: Gáldu and IWGIA, 2015.

The Great Sioux Nation and the Resistance to Colonial Land Grabbing

Beacon Broadside, September 12, 2016

By Roxanne Dunbar-Ortiz

Dakota Access Pipeline Protest. Photo credit: UnicornRiot.Ninja

Members of the Standing Rock Sioux Tribe have been protesting the construction of the Dakota Access pipeline since April. Slated to direct crude oil from North Dakota to Illinois, the multibillion-dollar project threatens to contaminate the Missouri River and likely destroy Native burial sites and sacred places. The protesters have received support and solidarity from representatives of other Indigenous nations from all over North America, Alaska, Hawaii, and the Andes, along with climate activists and the Black Lives Matter movement.

The history of the Sioux peoples' fight for their homeland runs deep. To understand the background of the protest, we turn to Roxanne Dunbar-Ortiz's An Indigenous Peoples' History of the United States. *In this excerpt, Dunbar-Ortiz unpacks the origin of the nineteenth-century treaties and colonial land-grabbing that have repeatedly denied the Sioux the right to their land.*

(Véase abajo la traducción al español de este extracto.)

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The first international relationship between the Sioux Nation and the US government was established in 1805[i] with a treaty of peace and friendship two years after the United States

acquired the Louisiana Territory, which included the Sioux Nation among many other Indigenous nations. Other such treaties followed in 1815 and 1825. These peace treaties had no immediate effect on Sioux political autonomy or territory. By 1834, competition in the fur trade, with the market dominated by the Rocky Mountain Fur Company, led the Oglala Sioux to move away from the Upper Missouri to the Upper Platte near Fort Laramie. By 1846, seven thousand Sioux had moved south. Thomas Fitzpatrick, the Indian agent in 1846, recommended that the United States purchase land to establish a fort, which became Fort Laramie. "My opinion," Fitzpatrick wrote, "is that a post at, or in the vicinity of Laramie is much wanted, it would be nearly in the center of the buffalo range, where all the formidable Indian tribes are fast approaching, and near where there will eventually be a struggle for the ascendancy [in the fur trade]."[ii] Fitzpatrick believed that a garrison of at least three hundred soldiers would be necessary to keep the Indians under control.

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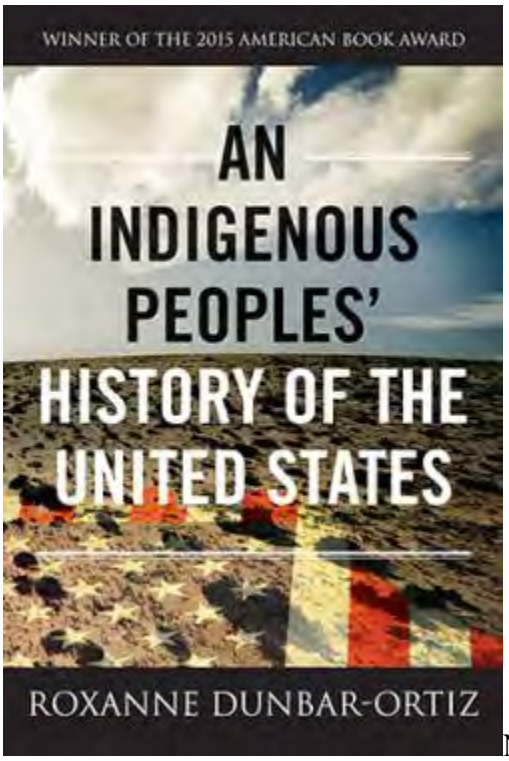

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About the Author

Roxanne Dunbar-Ortiz grew up in rural Oklahoma, the daughter of a tenant farmer and part-Indian mother. She has been active in the international Indigenous movement for more than four decades and is known for her lifelong commitment to national and international social justice issues. After receiving her PhD in history at the University of California at Los Angeles, she taught in the newly established Native American Studies Program at California State University, Hayward, and helped found the Departments of Ethnic Studies and Women's Studies. Her 1977 book *The Great Sioux Nation* was the fundamental document at the first international conference on Indigenous peoples of the Americas, held at the United Nations' headquarters in Geneva. Dunbar-Ortiz is the author or editor of seven other books, including *Roots of Resistance: A History of Land Tenure in New Mexico*. She lives in San Francisco. Follow her on Twitter at **@rdunbaro**.

Notes

[i] UN Commission on Human Rights, Sub-commission on Prevention of Dis- crimination and Protection of Minorities, 51st sess., *Human Rights of Indigenous Peoples: Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Populations: Final Report*, by Miguel Alfonso Martínez, special rapporteur, June 22, 1999, UN Document E/CN.4/Sub.2/1999/20. See also *Report of the Working Group on Indigenous Populations on Its Seventeenth Session, 26–30 July 1999*, UN Document E/CN.4/Sub.2/1999/20, August 12, 1999.

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[vi] For a lucid discussion of neocolonialism in relation to American Indians and the reservation system, see Joseph Jorgensen, *Sun Dance Religion: Power for the Powerless.* Chicago: University of Chicago Press, 1977, 89–146.

[vii] There is continuous migration from reservations to cities and border towns and back to the reservations, so that half the Indian population at any time is away from the reservation. Generally, however, relocation is not permanent and resembles migratory labor more than permanent relocation. This conclusion is based on my personal observations and on unpublished studies of the Indigenous populations in the San Francisco Bay area and Los Angeles.

[viii] The American Indian Movement convened a meeting in June 1974 that founded the International Indian Treaty Council (IITC), receiving consultative status in the UN Economic and Social Council (ECOSOC) in February 1977. The IITC participated in the UN Conference on Desertification in Buenos Aires, March 1977, and made presentations to the UN Human Rights Commission in August 1977 and in February and August 1978. It also led the organizing for the Non-Governmental Organizations (NGOs) Conference on Indigenous Peoples of the Americas, held at UN headquarters in Geneva, Switzerland, in September 1977; participated in the World Conference on Racism in Basel, Switzerland, in May 1978; and participated in establishing the UN Working Group on Indigenous Populations, the UN Permanent Forum on Indigenous Issues, and the 2007 UN Declaration on the Rights of Indigenous Peoples. See: Walter R. Echo-Hawk, *In The Light of Justice*: *The Rise of Human Rights in Native America and the UN Declaration on the Rights of Indigenous Peoples.* Golden, CO: Fulcrum, 2013; Vine Deloria, Jr., *Behind the Trail of Broken Treaties*: *An Indian Declaration of Independence.* Austin: University of Texas Press, 1985. Originally published 1974: Roxanne Dunbar-Ortiz, Dalee Sambo Dorough, Gudmundur Alfredsson, Lee Swepston and Peter Wille, Eds., *Indigenous*

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La gran nación sioux y su resistencia al continuado despojo territorial

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Por Roxanne Dunbar-Ortiz

Traducido por Nancy Viviana Piñeiro

(Versión preliminar susceptible de corrección, que forma parte de la traducción del libro.)

Manifestación contra el oleoducto Dakota Access. Foto: UnicornRiot.Ninja

Desde el mes de abril, los miembros de la nación sioux de Standing Rock han estado manifestándose contra la construcción del oleoducto Dakota Access. El proyecto multimillonario tiene previsto llevar el crudo desde Dakota del Norte hasta Illinois y amenaza con contaminar el río Misuri, además de la posible destrucción de cementerios y otros lugares sagrados. Los manifestantes recibieron el apoyo y la solidaridad de representantes de otras naciones indígenas de Norteamérica, Alaska, Hawái y los Andes, y también de activistas ambientales y del movimiento Black Lives Matter.

La historia de lucha del pueblo sioux por su territorio es profunda. El libro de Roxanne Dunbar-Ortiz, An Indigenous People's History of the United States, *nos ayuda a comprender el contexto de la actual protesta. En este extracto la autora rastrea el origen de los tratados del siglo XIX y de la apropiación colonial de la tierra, fenómenos que han despojado a los sioux del derecho a su territorio una y otra vez.*

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La primera relación internacional entre la nación sioux y el Gobierno de los Estados Unidos se estableció en 1805[i] mediante un tratado de paz y amistad firmado dos años después de que ese país adquiriera el Territorio de Luisiana, que incluía a la nación indígena, entre muchas otras. Se firmaron acuerdos similares entre 1815 y 1825. Ninguno de esos tratados de paz tuvo consecuencias inmediatas en la autonomía política ni el territorio de los sioux. Hacia 1834, la competencia en el comercio de pieles y un mercado dominado por la Rocky Mountain Fur Company obligaron a los oglala sioux a alejarse del Alto Misuri y dirigirse hacia el curso alto del río Platte, cerca del Fuerte Laramie. Para el año 1846, siete mil sioux ya se habían desplazado hacia el sur. Thomas Fitzpatrick, el agente resposable de asuntos indígenas durante ese año,

recomendó a los Estados Unidos que compraran tierras para establecer un fuerte, que sería el llamado Fuerte Laramie. Fitzpatrick escribió: “Opino que es muy deseable un puesto en Laramie o sus cercanías; estaría casi en el centro del área de búfalos, hacia donde se acercan con rapidez todas las formidables tribus indias, y cerca del lugar donde tarde o temprano habrá una lucha por la supremacía [en el comercio de pieles]”. [ii] Fitzpatrick creía que sería necesaria una guarnición de al menos trescientos soldados para controlar a los indígenas.

A pesar de que los sioux y los Estados Unidos redefinieron su relación en el Tratado del Fuerte Laramie de 1851, a este le siguieron unos diez años de guerra entre ambas partes, que culminarían con el Tratado de Paz del Fuerte Laramie en 1868. Ambos tratados, si bien no redujeron la soberanía política de los sioux, cedieron porciones extensas de territorio indígena mediante el establecimiento de fronteras reconocidas por las dos partes; además, la nación indígena otorgó concesiones a los Estados Unidos que dieron carácter legal a una dependencia económica que iba en aumento. Durante el medio siglo previo al tratado de 1851, los sioux se habían visto cada vez más envueltos en el comercio de pieles y pasaron a depender de los caballos y las armas de fabricación europea, las municiones, los artículos de cocina de hierro, las herramientas, los textiles y otros productos de comercio que reemplazaron a sus objetos tradicionales. Esta creciente dependencia del búfalo significó, a su vez, una mayor dependencia de las armas y municiones que había que comprar con más pieles: un círculo vicioso que caracterizó al colonialismo moderno. Con una balanza de poder inclinada a su favor, los comerciantes y el ejército estadounidenses presionaron a los sioux para que estos cedieran tierras y derechos de vía a medida que disminuía la población de búfalos. Las dificultades que padecieron los sioux como consecuencia de ataques constantes a sus comunidades, desplazamientos forzados, y de las enfermedades y hambrunas resultantes, hicieron mella en su capacidad de resistir la dominación. Para 1868, año de la firma del tratado con el gobierno estadounidense, eran fuertes desde el punto de vista militar ¾siguieron siendo una fuerza de combate guerrillero efectiva a lo largo de la década de 1880, sin haber perdido nunca ante el ejército de los Estados Unidos¾, pero su dependencia del búfalo y el comercio permitió el aumento del control federal cuando el búfalo fue exterminado deliberadamente por el ejército entre 1870 y 1876. De allí en adelante, la lucha de los sioux fue por la supervivencia.

Pasaron de la dependencia económica de la caza y el comercio del búfalo a la dependencia del gobierno estadounidense, que les daba raciones y productos, según se garantizaba en el tratado de 1868. El acuerdo estipulaba que “ningún tratado de cesión de cualquier porción o parte de la reservación que aquí se referencia y pueda ser de uso común tendrá validez o fuerza alguna contra los mencionados indios, a menos que sea formalizado y firmado por al menos tres cuartas partes de todos los indios adultos de sexo masculino”. Sin embargo, en 1876, sin ningún tipo de validación y tras el descubrimiento de oro por parte de la Séptima Caballería de John Armstrong Custer, el gobierno estadounidense tomó las Colinas Negras (Paha Sapa), una gran extensión del territorio sioux garantizada por el tratado, rica en recursos, y que conformaba el centro de la gran nación sioux, además de ser un sitio sagrado. Cuando los sioux se rindieron, después de las guerras de 1876 y 1877, perdieron no solo las Colinas Negras, sino también el territorio del río Powder. La siguiente movida de los Estados Unidos fue modificar la frontera oeste de la nación sioux, cuyo territorio, aunque atrofiado respecto del original, constituía un bloque continuo. Para 1877, luego de que el ejército los expulsara de Nebraska, solo quedó un bloque entre el meridiano 103 y el río Misuri: 90 649 km^2 de tierra que los Estados Unidos habían designado

como Territorio Dakota (el siguiente paso hacia la estatalidad, en este caso, los estados de Dakota del Norte y Dakota del Sur). La primera de varias olas migratorias del norte europeo ahora ingresaba en el Territorio Dakota del este, presionando contra la frontera sioux del río Misuri. En el poblado angloamericano de Bismark sobre el Misuri, la reservación bloqueaba el avance hacia el oeste del Ferrocarril del Pacífico Norte. Los colonos que se dirigían a Montana y al Pacífico Noroeste exigían que se abrieran vías a lo largo de la reservación y se las defendiera. Los promotores que querían tierra barata para venderla a precios altos a los inmigrantes planeaban dividir la reservación. Salvo por las unidades de sioux que aún luchaban, el pueblo indígena estaba desarmado, sin caballos, y era incapaz siquiera de alimentarse y vestirse; dependían del gobierno para recibir raciones.

Luego llegó la parcelación de tierras. Incluso antes de que se implementara la Ley Dawes (o Ley General de Parcelación), una comisión del gobierno estadounidense llegó a territorio sioux desde Washington D. C. en 1888, con una propuesta para reducir la nación sioux a seis pequeñas reservaciones: un esquema que liberaría unas 3 600 000 hectáreas a la colonización euroamericana. Fue imposible para la comisión reunir las firmas de tres cuartas partes de la nación sioux, como se exigía en el tratado de 1868, y entonces regresó a Washington con la recomendación de que el gobierno ignorara el tratado y se apropiara de las tierras sin el consentimiento indígena. El único medio para lograr ese fin era la legislación, ya que el Congreso había liberado al gobierno del requisito de negociar un acuerdo. Así fue que el Congreso le encargó al general George Crook que encabezara una delegación para volver a intentarlo, esta vez con una oferta de 3 dólares por hectárea. Tras una serie de manipulaciones, y tratos con líderes de un pueblo que se moría de hambre, la comisión reunió las firmas necesarias. La gran nación sioux fue fragmentada en pequeñas islas, que pronto quedarían rodeadas de inmigrantes europeos por todos los flancos, y la mayor parte de la reservación terminaría siendo un tablero con colonos establecidos en parcelas o tierras arrendadas. [iii] La creación de estas reservaciones aisladas quebró las relaciones históricas entre clanes y comunidades de la nación sioux y abrió áreas en las que se asentaron los europeos. También le permitió a la Oficina de Asuntos Indígenas ejercer un control mayor, apuntalado por su sistema de colegios pupilos. Se prohibió, junto con otras ceremonias religiosas, La “Danza del sol”, que todos los años congregaba a los sioux y fortalecía su unidad nacional. A pesar de la débil posición de este pueblo en el contexto de la dominación colonial de fines del siglo XIX, lograron establecer una modesta actividad ganadera para reemplazar su economía previa basada en la caza del búfalo. En 1903, la Corte Suprema de los Estados Unidos dictaminó, en el caso *Lone Wolf vs. Hitchcock*, que una cláusula de apropiación del 3 de marzo de 1871 era constitucional y que el Congreso tenía “pleno” poder para administrar propiedad indígena. Así es que la Oficina de Asuntos Indígenas pudo disponer de tierras y recursos haciendo caso omiso de las disposiciones de los tratados anteriores. A esto le siguió legislación que dispuso de las reservaciones para el establecimiento de colonos mediante arrendamiento e incluso se vendieron parcelas que se eliminaron de los fideicomisos.

Para la época de la era del “Nuevo trato”, también conocida como la era Collier, y la anulación de la parcelación que supuso la Ley de Reorganización, los no indígenas superaban en número a los indígenas en las reservaciones sioux por tres a uno. Sin embargo, la sequía que se extendió de mediados a fines de la década de 1930 expulsó a muchos ganaderos de las tierras sioux, y los indígenas compraron parte de esas parcelas, que habían sido de su propiedad. Sin embargo,

resultó que los “gobiernos tribales” impuestos después de la Ley de Reorganización fueron especialmente perjudiciales y divisivos. [iv] Respecto de esa medida, el difunto Mathew King, viejo historiador tradicional de los sioux oglala (Pine Ridge), comentó: “La Oficina de Asuntos Indígenas redactó la constitución y los estatutos de esta organización con la Ley de Reorganización de 1934. Fue la introducción del autogobierno [...]. El pueblo tradicional todavía se aferra a su Tratado, puesto que somos una nación soberana. Tenemos nuestro propio gobierno”. [v] Sin embargo, el “autogobierno”, o neocolonialismo, demostró ser una política de corta vida, dado que a principios de los años 50 los Estados Unidos desarrollaron su política de “terminación”: nuevas leyes ordenaron la erradicación gradual de cada reservación e incluso de los gobiernos tribales. [vi] Al momento de la terminación y relocalización, el ingreso per cápita anual de las reservaciones sioux era de 355 dólares, mientras que en los pueblos cercanos de Dakota del Sur era de 2 500 dólares. A pesar de estas circunstancias, y para ejecutar su política de terminación, la Oficina de Asuntos Indígenas promovió la reducción de servicios e introdujo un programa para relocalizar a los indígenas en centros urbanos industriales; un alto porcentaje de sioux se fueron a San Francisco y Denver en búsqueda de trabajo. [vii]

Mathew King ha descrito a los Estados Unidos como un país que a lo largo de su historia fue alternando entre una política de “paz” y una de “guerra” en sus relaciones con las naciones y comunidades indígenas, y dijo que estos movimientos pendulares coincidieron con la fortaleza o debilidad de la resistencia de los nativos. King sostuvo que entre las alternativas de exterminio y terminación (políticas de guerra) y la preservación (política de paz), había periodos intermedios de abandono benévolo y asimilación. Ante la resistencia indígena organizada contra los programas y políticas de guerra, se otorgan concesiones. Cuando la presión disminuye, se diseñan nuevos esquemas para apartar a los indígenas de sus tierras, recursos y culturas. Estudiosos, políticos, formuladores de política y los medios rara vez describen la política estadounidense hacia los pueblos indígenas como colonialismo. King, sin embargo, creía que su nación había sido colonia de los Estados Unidos desde 1890.

La progresión lógica del colonialismo moderno comienza con la penetración económica y avanza gradualmente hacia una esfera de influencia, luego a un estatus de protectorado o control indirecto, ocupación militar y, por último, anexión. Esto se corresponde con el proceso que experimentó el pueblo sioux en su relación con los Estados Unidos. La penetración económica de los comerciantes de pieles hizo que los sioux ingresaran a la esfera de influencia de los Estados Unidos. La trasformación del Fuerte Laramie de puesto comercial, centro del comercio con los sioux, a puesto militar estadounidense a mediados del siglo XIX demuestra la relación esencial que existe entre el comercio y el control colonial. Un estatus de protectorado cada vez mayor, establecido mediante tratados, culminó en tratado de 1868; a este le siguió la ocupación militar, obtenida por medio de la violencia aleccionadora, como la que se vio en la masacre de Wounded Knee en 1890, y por último, la dependencia. La anexión por parte de los Estados Unidos quedó marcada simbólicamente en 1924 mediante la imposición de ciudadanía a los sioux (y a la mayoría de los pueblos indígenas). Mathew King y otros sioux tradicionales consideraron la toma de Wounded Knee en 1973 como un punto de inflexión, aunque la violenta reacción que le siguió fue severa.

Dos décadas de resistencia indígena colectiva, que culminó con Wounded Knee en 1973, derrotaron la política federal de terminación de los años 50. Aun así, los defensores de la

desaparición de naciones indígenas parecen no rendirse nunca. En 1977 se tomó otra medida hacia la "terminación": decenas de proyectos legislativos intentaron derogar todos los tratados indígenas y terminar con sus gobiernos y territorios protegidos por fideicomisos. La resistencia indígena también derrotó esas iniciativas con otra caravana a lo largo del país. Al igual que otros pueblos colonizados del mundo, los sioux han llevado adelante esfuerzos descolonizadores desde mediados del siglo XX. Wounded Knee en 1973 fue parte de esa lucha, como también lo fue la participación en comités de las Naciones Unidas y en foros internacionales. [viii] Sin embargo, a principios del siglo XXI, los economistas y políticos fundamentalistas del libre mercado identificaron a las reservaciones indígenas de propiedad comunitaria como un bien que debe ser explotado y, con el pretexto de ayudar a poner fin a la pobreza de los indígenas en esos territorios, instan a deshacerse de ellos: una nueva iniciativa de "terminación" y exterminio.

Sobre la autora

Roxanne Dunbar-Ortiz es hija de un peón de campo y de una madre con ascendencia indígena y creció en la Oklahoma rural. Ha participado activamente en el movimiento indígena internacional por más de cuatro décadas, y es conocida por su incansable compromiso con la justicia social en su país y en el mundo. Después de terminar su posdoctorado en historia en la Universidad de California en Los Ángeles, dio clases en los nuevos programas de Estudios sobre los Indígenas Norteamericanos en la universidad estatal de California, Hayward, y ayudó a crear el Departamento de Estudios Étnicos y Estudios de la mujer, como se denominaban en ese momento. Su libro de 1977, *The Great Sioux Nation* (La gran nación sioux) fue el documento fundamental en la primera conferencia internacional sobre pueblos indígenas de las Américas, celebrada en la sede las Naciones Unidas en Ginebra. Dunbar-Ortiz es autora y editora de otros siete libros, entre ellos, *Roots of Resistance: A History of Land Tenure in New Mexico* (Raíces de la resistencia: Historia de la tenencia de la tierra en Nuevo México) y uno disponible en español: *La cuestión miskita en la revolución nicaragüense.* Vive en San Francisco y la pueden seguir en su cuenta de Twitter **@rdunbaro**.

Notas

[i] Comisión de Derechos Humanos de las Naciones Unidas, Subcomisión de Prevención de Discriminaciones y Protección de las Minorías, 51° periodo de sesiones, *Derechos Humanos de las Poblaciones Indígenas: Estudio sobre los tratados, convenios y otros acuerdos constructivos entre los Estados y las poblaciones indígenas: Informe final,* presentado por el Sr. Miguel Alfonso Martínez, Relator Especial, 22 de junio de 1999, Documento E/CN.4/Sub.2/1999/20 (Disponible en español). Véase también *Informe del Grupo de Trabajo sobre las Poblaciones Indígenas acerca de su 17º período de sesiones,* 26 al 30 de julio de 1999, Documento E/CN.4/Sub.2/1999/19, 12 de agosto de 1999 (Disponible en español).

[ii] Robert A. Trennert, *Alternative to Extinction: Federal Indian Policy and the Beginnings of the Reservation System, 1846–51,* Filadelfia, Temple University Press, 1975, p. 166.

[iii] Testimonio de Pat McLaughlin, entonces presidente del gobierno de Standing Rock Sioux, Fort Yates, ND (8 de mayo de 1976), en las audiencias de la American Indian Policy Review Commission, establecida por el Congreso en la ley del 3 de enero de 1975.

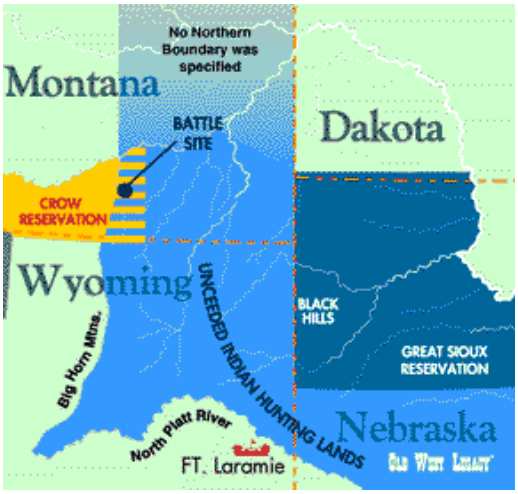
[iv] Véase Kenneth R. Philip, *John Collier's Crusade for Indian Reform, 1920–1954,* Tucson, University of Arizona Press, 1977.

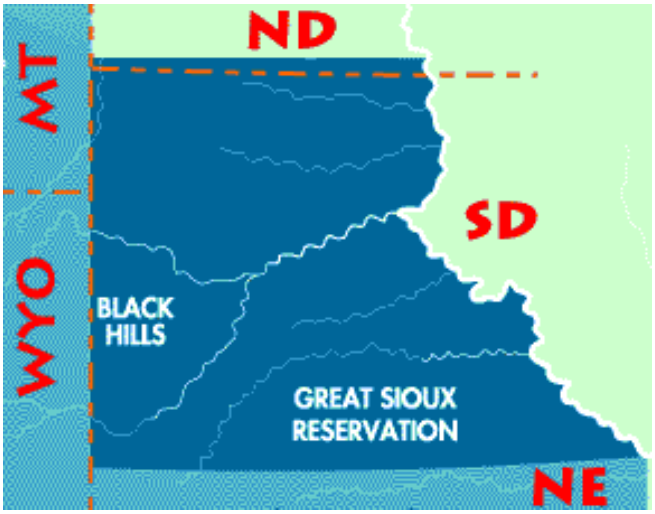
[v] Matthew King, citado en Roxanne Dunbar-Ortiz, *The Great Sioux Natiom: Sitting in Judgment on America,* Lincoln, University of Nebraska Press, 2013, p. 156. Primera edición: 1977.

[vi] Puede encontrarse un análisis lúcido del neocolonialismo referido a los indígenas norteamericanos y el sistema de reservaciones en Joseph Jorgensen, *Sun Dance Religion: Power for the Powerless,* Chicago, University of Chicago Press, 1977, pp. 89–146.

[vii] Existe una migración continua desde las reservaciones hacia las ciudades y pueblos aledaños, y de vuelta a las reservaciones, de manera que la mitad de la población indígena en cualquier periodo de tiempo se encuentra fuera de las reservaciones. Sin embargo, por lo general, la relocalización no es permanente y se asemeja más a la mano de obra migrante que a la relocalización definitiva. Esta conclusión se basa en mis observaciones personales y en estudios no publicados sobre las poblaciones indígenas en el Área de la Bahía de San Francisco y Los Ángeles.

[viii] El Movimiento Indígena Estadounidense convocó a una reunión en junio de 1974 en la que se fundó el Consejo Internacional de Tratados Indios (IITC, por su sigla en inglés), y adquirió estado consultivo ante el Consejo Económico y Social de las Naciones Unidas (ECOSOC) en febrero de 1977. El IITC participó en la Conferencia de las Naciones Unidas sobre Desertificación celebrada en Buenos Aires en marzo de 1977, e hizo presentaciones ante la Comisión de Derechos Humanos de la ONU en agosto de 1977 y en febrero y agosto de 1978. También encabezó los preparativos para la Conferencia Internacional de ONG sobre los Pueblos Indígenas de las Américas, que se celebró en la sede de la ONU en Ginebra, Suiza, en septiembre de 1977; participó en la Conferencia Mundial contra el Racismo en Basilea, Suiza, en mayo de 1978; y en el establecimiento del Grupo de Trabajo de Naciones Unidas sobre Poblaciones Indígenas, el Foro Permanente para las Cuestiones Indígenas de la ONU y la Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas, de 2007. Véanse: Walter R. Echo-Hawk, *In The Light of Justice*: *The Rise of Human Rights in Native America and the UN Declaration on the Rights of Indigenous Peoples,* Golden, CO, Fulcrum, 2013; Vine Deloria, Jr., *Behind the Trail of Broken Treaties*: *An Indian Declaration of Independence,* Austin, University of Texas Press, 1985. Primera edición: 1974; Roxanne Dunbar-Ortiz, Dalee Sambo Dorough, Gudmundur Alfredsson, Lee Swepston y Peter Wille, Eds., *Indigenous Peoples' Rights in International Law: Emergence and Application,* Kautokeino, Noruega y Copenhague, Dinamarca, Gáldu y IWGIA, 2015.





FORT LARAMIE TREATY OF 1868

This is the actual text of the treaty. The Maps are provided for visualization purposes.

TREATY WITH THE SIOUX - BRULÉ, OGLALA, MINICONJOU, YANKTONAI, HUNKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE, SANS ARCS, AND SANTEE - AND ARAPAHO, 1868.

ARTICLE 1. From this day forward all war between the parties to this agreement shall forever cease. The Government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they now pledge their honor to maintain it.
If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also re-imburse the injured person for the loss sustained.
If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States, and at peace therewith, the Indians herein named solemnly agree that they will, upon proof made to their agent and notice by him, deliver up the wrong-doer to the United States, to be tried and punished according to its laws; and in case they wilfully refuse so to do, the person injured shall be re-imbursed for his loss from the annuities or other moneys due or to become due to them under this or other treaties made with the United States. And the President, on advising with the Commissioner of Indian Affairs, shall prescribe such rules and regulations for ascertaining damages under the provisions of this article as in his judgment may be proper. But no one sustaining loss while violating the provisions of this treaty or the laws of the United States shall be re-imbursed therefor.

ARTICLE 2. The United States agrees that the following district of country, to wit, viz: commencing on the east bank of the Missouri river where the forty-sixth parallel of north latitude crosses the same, thence along low-water mark down said east bank to a point opposite where the northern line of the State of Nebraska strikes the river, thence west across said river, and along the northern line of Nebraska to the one hundred and fourth degree of longitude west from Greenwich, thence north on said meridian to a point where the forty-sixth parallel of north latitude intercepts the same, thence due east along said parallel to the place of beginning; and in addition thereto, all existing reservations on the east bank of said river shall be, and the

same is, set apart for the absolute and undisturbed use and occupation of the Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them; and the United Sates now solemnly agrees that no persons except those herein designated and authorized so to do, and except such officers, agents, and employes of the government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article, or in such territory as may be added to this reservation for the use of said Indians, and henceforth they will and do hereby relinquish all claims or right in and to any portion of the United States or Territories, except such as is embraced within the limits aforesaid, and except as hereinafter provided.

ARTICLE 3. If it should appear from actual survey or other satisfactory examination of said tract of land that it contains less than one hundred and sixty acres of tillable land for each person who, at the time, may be authorized to reside on it under the provisions of this treaty, and a very considerable number of such persons shall be disposed to commence cultivating the soil as farmers, the United States agrees to set apart, for the use of said Indians, as herein provided, such additional quantity of arable land, adjoining to said reservation, or as near to the same as it can be obtained, as may be required to provide the necessary amount.

ARTICLE 4. The United States agrees, at its own proper expense, to construct at some place on the Missouri River, near the center of said reservation, where timber and water may be convenient, the following buildings, to wit: a warehouse, a store-room for the use of the agent in storing goods belonging to the Indians, to cost not less than twenty-five hundred dollars; an agency-building for the residence of the agent, to cost not exceeding three thousand dollars; a residence for the physician, to cost not more than three thousand dollars; and five other buildings, for a carpenter, farmer, blacksmith, miller, and engineer, each to cost not exceeding two thousand dollars; also a school-house or mission-building, so soon as a sufficient number of children can be induced by the agent to attend school, which shall not cost exceeding five thousand dollars.

The United States agrees further to cause to be erected on said reservation, near the other buildings herein authorized, a good steam circular-saw mill, with a grist-mill and shingle-machine attached to the same, to cost not exceeding eight thousand dollars.

ARTICLE 5. The United States agrees that the agent for said Indians shall in the future make his home at the agency-building; that he shall reside among them, and keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint by and against the Indians as may be presented for investigation under the provisions of their treaty stipulations, as also for the faithful discharge of other duties enjoined on him by law. In all cases of depredation on person or property he shall cause the evidence to be taken in writing and forwarded, together with his findings, to the Commissioner of Indian Affairs, whose decision, subject to the revision of the Secretary of the Interior, shall be binding on the parties to this treaty.

ARTICLE 6. If any individual belonging to said tribes of Indians, or legally incorporated with them, being the head of a family, shall desire to commence farming, he shall have the privilege to select, in the presence and with the assistance of the agent then in charge, a tract of land within said reservation, not exceeding three hundred and twenty acres in extent, which tract, when so selected, certified, and recorded in the "land-book," as herein directed, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family, so long as he or they may continue to cultivate it.

Any person over eighteen years of age, not being the head of a family, may in like manner select and cause to be certified to him or her, for purposes of cultivation, a quantity of land not exceeding eighty acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed.

For each tract of land so selected a certificate, containing a description thereof and the name of the person selecting it, with a certificate endorsed thereon that the same has been recorded, shall be delivered to the party entitled to it, by the agent, after the same shall have been recorded by him in a book to be kept in his office, subject to inspection, which said book shall be known as the "Sioux Land-Book."

The President may, at any time, order a survey of the reservation, and, when so surveyed, Congress shall

provide for protecting the rights of said settlers in their improvements, and may fit the character of the title held by each. The United States may pass such laws on the subject of alienation and descent of property between the Indians and their descendants as may be thought proper. And it is further stipulated that any male Indians, over eighteen years of age, of any band or tribe that is or shall hereafter become a party to this treaty, who now is or who shall hereafter become a resident or occupant of any reservation or Territory not included in the tract of country designated and described in this treaty for the permanent home of the Indians, which is not mineral land, nor reserved by the United States for special purposes other than Indian occupation, and who shall have made improvements thereon of the value of two hundred dollars or more, and continuously occupied the same as a homestead for the term of three years, shall be entitled to receive from the United States a patent for one hundred and sixty acres of land including his said improvements, the same to be in the form of the legal subdivisions of the surveys of the public lands. Upon application in writing, sustained by the proof of two disinterested witnesses, made to the register of the local land-office when the land sought to be entered is within a land district, and when the tract sought to be entered is not in any land district, then upon said application and proof being made to the Commissioner of the General Land-Office, and the right of such Indian or Indians to enter such tract or tracts of land shall accrue and be perfect from the date of his first improvements thereon, and shall continue as long as he continues his residence and improvements, and no longer. And any Indian or Indians receiving a patent for land under the foregoing provisions, shall thereby and from thenceforth become and be a citizen of the United States, and be entitled to all the privileges and immunities of such citizens, and shall, at the same time, retain all his rights to benefits accruing to Indians under this treaty.

ARTICLE 7. In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of such of them as are or may be settled on said agricultural reservations, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher. The provisions of this article to continue for not less than twenty years.

ARTICLE 8. When the head of a family or lodge shall have selected lands and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, he shall be entitled to receive seeds and agricultural implements for the first year, not exceeding in value one hundred dollars, and for each succeeding year he shall continue to farm, for a period of three years more, he shall be entitled to receive seeds and implements as aforesaid, not exceeding in value twenty-five dollars.
And it is further stipulated that such persons as commence farming shall receive instruction from the farmer herein provided for, and whenever more than one hundred persons shall enter upon the cultivation of the soil, a second blacksmith shall be provided, with such iron, steel, and other material as may be needed.

ARTICLE 9. At any time after ten years from the making of this treaty, the United States shall have the privilege of withdrawing the physician, farmer, blacksmith, carpenter, engineer, and miller herein provided for, but in case of such withdrawal, an additional sum thereafter of ten thousand dollars per annum shall be devoted to the education of said Indians, and the Commissioner of Indian Affairs shall, upon careful inquiry into their condition, make such rules and regulations for the expenditure of said sum as will best promote the educational and moral improvement of said tribes.

ARTICLE 10. In lieu of all sums of money or other annuities provided to be paid to the Indians herein named, under any treaty or treaties heretofore made, the United States agrees to deliver at the agency-house on the reservation herein named, on or before the first day of August of each year, for thirty years, the following articles, to wit:
For each male person over fourteen years of age, a suit of good substantial woolen clothing, consisting of

coat, pantaloons, flannel shirt, hat, and a pair of home-made socks.
For each female over twelve years of age, a flannel skirt, or the goods necessary to make it, a pair of woolen hose, twelve yards of calico, and twelve yards of cotton domestics.
For the boys and girls under the ages named, such flannel and cotton goods as may be needed to make each a suit as aforesaid, together with a pair of woolen hose for each.
And in order that the Commissioner of Indian Affairs may be able to estimate properly for the articles herein named, it shall be the duty of the agent each year to forward to him a full and exact census of the Indians, on which the estimate from year to year can be based.
And in addition to the clothing herein named, the sum of ten dollars for each person entitled to the beneficial effects of this treaty shall be annually appropriated for a period of thirty years, while such persons roam and hunt, and twenty dollars for each person who engages in farming, to be used by the Secretary of the Interior in the purchase of such articles as from time to time the condition and necessities of the Indians may indicate to be proper. And if within the thirty years, at any time, it shall appear that the amount of money needed for clothing under this article can be appropriated to better uses for the Indians named herein, Congress may, by law, change the appropriation to other purposes; but in no event shall the amount of this appropriation be withdrawn or discontinued for the period named. And the President shall annually detail an officer of the Army to be present and attest the delivery of all the goods herein named to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery. And it is hereby expressly stipulated that each Indian over the age of four years, who shall have removed to and settled permanently upon said reservation and complied with the stipulations of this treaty, shall be entitled to receive from the United States, for the period of four years after he shall have settled upon said reservation, one pound of meat and one pound of flour per day, provided the Indians cannot furnish their own subsistence at an earlier date. And it is further stipulated that the United States will furnish and deliver to each lodge of Indians or family of persons legally incorporated with them, who shall remove to the reservation herein described and commence farming, one good American cow, and one good well-broken pair of American oxen within sixty days after such lodge or family shall have so settled upon said reservation.

ARTICLE 11. In consideration of the advantages and benefits conferred by this treaty, and the many pledges of friendship by the United States, the tribes who are parties to this agreement hereby stipulate that they will relinquish all right to occupy permanently the territory outside their reservation as herein defined, but yet reserve the right to hunt on any lands north of North Platte, and on the Republican Fork of the Smoky Hill River, so long as the buffalo may range thereon in such numbers as to justify the chase. And they, the said Indians, further expressly agree:
1st. That they will withdraw all opposition to the construction of the railroads now being built on the plains.
2d. That they will permit the peaceful construction of any railroad not passing over their reservation as herein defined.
3d. That they will not attack any persons at home, or travelling, nor molest or disturb any wagon-trains, coaches, mules, or cattle belonging to the people of the United States, or to persons friendly therewith.
4th. They will never capture, or carry off from the settlements, white women or children.
5th. They will never kill or scalp white men, nor attempt to do them harm.
6th. They withdraw all pretence of opposition to the construction of the railroad now being built along the Platte River and westward to the Pacific Ocean, and they will not in future object to the construction of railroads, wagon-roads, mail-stations, or other works of utility or necessity, which may be ordered or permitted by the laws of the United States. But should such roads or other works be constructed on the lands of their reservation, the Government will pay the tribe whatever amount of damage may be assessed by three disinterested commissioners to be appointed by the President for that purpose, one of said commissioners to be a chief or head-man of the tribe.
7th. They agree to withdraw all opposition to the military posts or roads now established south of the North Plate River, or that may be established, not in violation of treaties heretofore made or hereafter to be made with any of the Indian tribes.

ARTICLE 12. No treaty for the cession of any portion or part of the reservation herein described which may be held in common shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians, occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him, as provided in article 6 of this treaty.

ARTICLE 13. The United States hereby agrees to furnish annually to the Indians the physician, teachers, carpenter, miller, engineer, farmer, and blacksmiths as herein contemplated, and that such appropriations shall be made from time to time, on the estimates of the Secretary of the Interior, as will be sufficient to employ such persons.

ARTICLE 14. It is agreed that the sum of five hundred dollars annually, for three years from date, shall be expended in presents to the ten persons of said tribe who in the judgment of the agent may grow the most valuable crops for the respective year.

ARTICLE 15. The Indians herein named agree that when the agency-house or other buildings shall be constructed on the reservation named, they will regard said reservation their permanent home, and they will make no permanent settlement elsewhere; but they shall have the right, subject to the conditions and modifications of this treaty, to hunt, as stipulated in Article 11 hereof.

ARTICLE 16. The United States hereby agrees and stipulates that the country north of the North Platte River and east of the summits of the Big Horn Mountains shall be held and considered to be unceded Indian territory, and also stipulates and agrees that no white person or persons shall be permitted to settle upon or occupy any portion of the same; or without the consent of the Indians first had and obtained, to pass through the same; and it is further agreed by the United States that within ninety days after the conclusion of peace with all the bands of the Sioux Nation, the military posts now established in the territory in this article named shall be abandoned, and that the road leading to them and by them to the settlements in the Territory of Montana shall be closed.

ARTICLE 17. It is hereby expressly understood and agreed by and between the respective parties to this treaty that the execution of this treaty and its ratification by the United States Senate shall have the effect, and shall be construed as abrogating and annulling all treaties and agreements heretofore entered into between the respective parties hereto, so far as such treaties and agreements obligate the United States to furnish and provide money, clothing, or other articles of property to such Indians and bands of Indians as become parties to this treaty, but no further.

In testimony of all which, we, the said commissioners, and we, the chiefs and headmen of the Brulé band of the Sioux nation, have hereunto set our hands and seals at Fort Laramie, Dakota Territory, this twenty-ninth day of April, in the year one thousand eight hundred and sixty-eight.

11 Tribal Sovereignty Movements Compared

The Plains Region

Loretta Fowler

Plains tribes are among the "energy tribes" of the Western states. In 1938 they gained more control over energy development, but in the 1980s, even with a favorable Supreme Court decision in 1982, control over income from minerals remained problematic (table 2, 1938; table 5, 1982; table 6, 1985, 1989). Today, isolated from markets, they are impoverished despite their mineral wealth. In Western states, oil and gas, coal, and uranium are important to both state and tribal economies. Tribal leaders struggle to protect and develop resources and ward off state efforts to siphon off income from mineral development. There are pressures for tribes to negotiate with states over shared taxation.[1] Fowler's chapter discusses how tribal control over management, distribution of income, and environmental impact affects relations between grassroots community groups and elected officials, and she addresses the social repercussions of negotiation for tribes attempting to exercise sovereignty.

The tribal sovereignty movement has taken hold in all High Plains communities. Yet sovereignty is implemented in different ways, aspects of sovereignty are given different degrees of emphasis, and sovereignty agendas may be based on community consensus or subject to contention between officials

Figure 8. An American Indian Movement rally in South Dakota to oppose the reinstatement of a local sheriff accused by the community of discriminatory behavior toward Native Americans. David Bartecchi and Kathleen Pickering © 2004. Used with permission.

and grassroots groups. Through a comparison of twelve communities in South Dakota, Montana, Wyoming, and Oklahoma during the 1990s, I situate sovereignty movements within regional and local contexts to examine how different political views and choices about economic and cultural rights emerge.[2] A focus on the local exercise of sovereignty complements a large literature that deals almost exclusively with federal policy and legal cases in the sovereignty movement in the United States.[3]

State by state, I discuss how state–tribe relations influence commitment to the exercise of tribal sovereignty. I also describe the political organization of each tribe in the state and examine how that organization affects the local expression of sovereignty. What the comparisons show is that, first, for a tribe to attempt to exercise sovereignty fully, grassroots commitment is necessary and grassroots commitment to sovereignty issues is influenced by state actions, especially by the perception of state violence against Indians

(figure 8). The greater the fear of violence, the greater the support for a sovereignty agenda. Second, where defense of a homeland (maintaining control over a sizable land base or recovering land through a treaty-based claim) is possible, grassroots groups can be more easily mobilized to support the exercise of tribal sovereignty. Third and finally, the more that political authority is diffused in a community, the more likely that broad-based consensus exists between grassroots groups and officials. In fact, grassroots groups have been working toward greater participation in self-determination by supporting constitutional revisions that decentralize tribal government.

South Dakota.

Earl Bordeaux, one of the Rosebud councilmen, remarked: "Look what the State of South Dakota is doing to her Indians, you know. They show in a glowing picture. Those of us who live within the State of South Dakota really know the spirit of the South Dakota non-Indian world. It's not a true reconciliation. They won't recognize our Treaty Rights. They won't recognize our jurisdiction." Suspicion and hostility appear to be mutual. The four Sioux reservations in the western part of the state are large: Pine Ridge is 3.1 million acres; Rosebud, 3.2 million acres; Cheyenne River, 2.8 million acres; and Standing Rock, 2.7 million acres. In the 1990s all these reservations were in conflict with the state over several issues, one of which was juvenile justice. Sioux people argued that the state judicial system was biased against the Sioux. In fact, South Dakota's incarceration rate was the highest for a state with an Indian population. Sixty percent of youths in South Dakota's prison system were Indian; yet Indians made up only 10 percent of the population in the state. In contrast, in Montana, youths composed 25 percent of the prison population, and the state's Indian population was 6.5 percent; in Oklahoma, youths were 18 percent of the prison population, and Indians, 8.1 percent of the state population. Sioux advocates referred to Indians as a "cash crop" in the state, where Indians were discriminated against in terms of fines. Child custody was another point of contention. South Dakota had the highest rate of termination of Indian parents' rights in the nation; 60 percent of cases were Indian. The state and the tribes battled over highway jurisdiction, game and fish regulations, and taxation in Indian Country. Also, the tribes took special umbrage at the state's opposition to the return of tribal land not used by the Oahe Dam project.[4]

The Oglala Sioux Nation of the Pine Ridge Reservation has a history of conflict between "hostiles" and "friendlies" that pre- and postdates reservation settlement. The American Indian Movement precipitated an "Indian Renaissance," to use Herbert Hoover's terminology, and, from the 1970s

on, the sovereignty movement grew. The number of participants increased significantly as the years passed, and, in the aftermath of the civil war during the Wounded Knee takeover, there was a reconciliation of sorts between the hostiles and the friendlies (who were both Full and Mixed Bloods, sociologically and culturally defined). By the 1990s the sovereignty agenda had extensive and passionate grassroots support, nourished by the State of South Dakota's intransigence over sovereignty questions and its general pattern of state violence toward Indians.[5]

On Pine Ridge (settled by Lakota Sioux of the Oglala division) during the 1990s, Oglala political organization was based on the principles of diffusion and circumscription of leadership. The elected tribal council consisted of eighteen representatives from districts in which they resided. The districts had councils of representatives from smaller "communities" within each district. The districts effectively exerted pressure on their representatives. Much of the tribal council's work was done by committees and boards made up of people from all the districts, as well as tribal council members. Districts also administered tribal and private funds, as did political advocacy groups that crosscut districts. During the 1990s the tribal council was committed to mitigating tensions between the council and the people in districts and advocacy groups (such as treaty committees, women's rights organizations, and the tribal college movement).[6]

These advocacy groups pursued an aggressive sovereignty agenda. Petitions from grassroots groups dissuaded the tribal council from waiving sovereignty to get a bank loan, and petitions helped persuade the tribal council to file a court case against South Dakota for trespass by law enforcement agencies. The constitution (accepted along with the Indian Reorganization Act) was revised in 1985, and voters eliminated provisions that the secretary of the interior had to review tribal council decisions. After the successful claim filed against the federal government for the violation of the Treaty of 1868 (described by one leader, Harold Salway, as "divine intervention from the spirit world"), the grassroots community in the 1990s consistently rejected a monetary settlement (see table 5). "The Black Hills is not for sale" has been central to the ideology of the sovereignty movement and used by communities to reject the establishment of dumps or the building of pipelines on community land. The tribal law and order code was revised in response to grassroots pressure. In 1996 the tribal court adopted a position of leniency in sentencing, stressing rehabilitation instead. Counseling and supervision by groups of elders became mandatory in domestic abuse cases. Court decisions could be reviewed by a board of elders, and officers of the court did not have to have law degrees. Even though the reservation community was very poor and the tribal government had to rely on taxes

(of business activity on tribal land, usually non-Indian businesses) and federal programs, public sentiment favored precedence of treaty and cultural rights over economic development projects or per capita payments. As one leader at Oglala Lakota College explained, they were "beginning an intellectual revolution" in order to reverse the damage done to them by "alien concepts."[7]

The other three Sioux reservations also participated in the Indian Renaissance. Passionate support for a sovereignty agenda existed at Rosebud, and considerable grassroots commitment to it, at Cheyenne River and Standing Rock in the 1990s. All three reservation communities rejected a monetary settlement for the Black Hills. Charles Murphy, a Standing Rock leader, remarked, "We cannot forget the sufferings our people endured by signing these treaties—that is our driving force [that their suffering will not be in vain]." At Rosebud (settled largely by Lakota Sioux of the Brule division), the tribal council officers were elected at-large, and eight districts elected community residents as representatives to the tribal council. Each district also elected a council that chose officers, held meetings, met with the tribal council, and owned enterprises. A recent amendment to the IRA constitution eliminated provisions that required review of tribal council actions by the secretary of the interior. Only 27.2 percent of the reservation land is Indian owned (compared with 55 percent at Pine Ridge), which feeds the conflict between Indian and white residents. Descendents of four Lakota Sioux tribes settled on the Cheyenne River Reservation, 49.5 percent of which is Indian owned. An IRA constitution provided for a tribal council with officers elected at-large and councilmen elected from thirteen districts. Districts also had councils with elected officers. Standing Rock (which straddles North and South Dakota) was settled by people from two divisions of the Lakota Sioux and from Yanktonais bands, whom the United States regarded as hostile factions resisting the surrender of the Black Hills. Sitting Bull was a symbol of resistance and, after he was murdered on the reservation, a martyr to the cause. Like the residents of Cheyenne River, these Sioux were particularly damaged by the Oahe Dam. Only 32.1 percent of reservation land is Indian owned. Land recovery has been a major issue here, and the constitution requires that sale, exchange, or leasing of tribal lands be approved by a vote of the membership. Standing Rock rejected the IRA but adopted a constitutional government: the tribal council officers are elected at-large, six members of the council are elected at-large, and eight are elected from eight districts. Tribal council members are required to attend district council meetings. In the 1990s multiple committees took responsibility for programs and other activities on the reservation, including defending treaty rights.[8]

Montana.

Montana is less overtly hostile than South Dakota, although not really supportive of Indian communities. Backlash usually follows state legislature efforts to support Indian issues, but Indians have some leverage with the Democratic Party and moderate Republicans because the Indian vote can determine the outcome of close elections in some parts of the state. Whereas the Sioux in western South Dakota were regarded as "hostile," only two tribes in Montana had this kind of reputation. Despite the seemingly greater tolerance in Montana than in South Dakota, state officials have opposed even changing place names that are offensive to Indians (for example, Custer Battlefield and geographical features named Squaw). Indian leaders have complained of state violence and discrimination against Indians in judicial, child custody, and welfare matters. Compared with the Sioux tribes in South Dakota, the Blackfeet, Crow, Fort Peck Assiniboine and Sioux, Northern Cheyenne, and Fort Belknap Assiniboine and Gros Ventre have less grassroots involvement in the sovereignty movement generally, although people from all these communities once participated in a mass demonstration to protest "anti-Indian" legislation. In Montana, grassroots passion usually focused on local, land-related issues in the 1990s. Most of these tribes were better off economically than the tribes in South Dakota. In fact, almost 48 percent of Indian families in South Dakota had incomes below the poverty level; at Pine Ridge and Rosebud, a higher percentage. In Montana, the percentage for impoverished Indians in the state was 39 percent. At Fort Peck, it was 46 percent; Northern Cheyenne, 43 percent; Fort Belknap, 37 percent; Crow, 32 percent; and Blackfeet, 31 percent. Subsistence hunting and fishing were important, to some degree, on all these large reservations.[9]

The Blackfeet have a 1.5 million-acre reservation and were relatively wealthy in oil and gas in the 1990s. Together, the tribe and individual Blackfeet owned 63 percent of the reservation. Some of that land was in fee status, owned by nonmembers who were descendants of Blackfeet; this land was in jeopardy of passing out of Indian ownership. Despite the mineral resources, 64 percent were unemployed. The tribe used most of its income from oil and gas for social programs, attorneys, and land purchase, but, at public insistence, a portion went to make one or two small per capita payments a year.[10]

Most authority was concentrated in the business council, which had nine members elected at-large from four districts. To run as a district representative, an individual had to reside in the district but did not have to win a majority of votes in that district. The business council appointed committees that included people from the districts (but did not always respond to

their concerns). An honorary council of elderly men, all Blackfeet speakers, who had lifetime appointments and were selected by the business council, was the most important mitigating influence on the business council, although the former was not mentioned in the constitution.[11]

The constituency had less input than was the case on the Sioux reservations, and the grassroots support for a sovereignty agenda was less pervasive or wide ranging. Leadership for sovereignty implementation primarily came from the business council, except for protection of wilderness areas, in which several grassroots groups took passionate interest. Speaking in opposition to proposals to drill for oil in a wilderness area, Leland Ground linked religious duty to prevention of drilling: "In the name of Creator, don't do this." The business committee focused on negotiating with Montana on legal jurisdiction, water, and taxation issues. On one hand, their constituents expressed concern that these efforts would undermine Blackfeet sovereignty, frequently charging that the council would not properly manage tribal assets. On the other hand, constitutents supported land purchase and lobbied the business council to file suit against the United States for fraudulent land sales. The Blackfeet constitution (accepted under the auspices of the Indian Reorganization Act) was revised to allow the business council to buy fee land. In fact, part of the tribe's income was used annually to buy land.

In an 1895 agreement between the Blackfeet and the United States, the land that is now Glacier Park was transferred to the United States. The Blackfeet people believe that they did not cede the rights to hunt, fish, gather wood and other plants there, and visit and protect sacred sites in the park. Michael Desrosier put it this way: "Ever since we live in the country, we camp, hunt, gather from the mountains, and, since horses, graze them there. We have lived and died, we have played and dreamed and roamed those mountains and hills for more than a thousand years.... It belongs to us and we belong to it." During the 1990s grassroots organizations demonstrated and sought international support for Blackfeet rights there, and the honorary council pressured the business council to sue to establish Blackfeet rights in the park. The business council cooperated with grassroots organizations, such as traditionalist groups, and with individuals whose rights to operate businesses in the park were challenged by park officials. Many Blackfeet supported a traditionalized tribal fish-and-game program—for example, with no hunting seasons for people in need and designated hunters for the elderly.[12]

The Crow, who have a history of alliance with Americans in the nineteenth century, have a 2.2 million-acre reservation, with large deposits of coal and oil in their home territory. In the 1990s the Crow was the wealthiest tribe in Montana. The tribe and Crow individuals owned 65 percent of the land, but some of it was in fee status. The Crow used tribal income for

some land purchase, small per capita payments, and job creation to supplement federal programs. Unemployment was high—57 percent.[13]

The Crow's 1948 (non-IRA) constitution provided that every two years the Crow elect four officers. These officers managed the tribe's programs and represented the tribe to the state and federal governments. The constitution also provided that major decisions and budget ratification were the responsibility of the "tribal council," a meeting open to all adult Crows. By tradition, decisions have been made by voice vote or "walking through the line" (standing with representatives of a position). Both practices subjected participants to peer pressure. Thus, clan leaders and/or tribal officials often have had the opportunity to influence tribal members to support a particular position. Also, a committee of district representatives—two elected officials from each of the six districts and two from off the reservation (Billings)—were supposed to offer advice to the four tribal officials. Frequently, the district elections were by acclamation; in practice, these representatives have had little influence. In 2001 the Crow amended the constitution, most significantly, to provide for separation of executive, legislative, and judicial powers—a checks and balances system. Representatives from six districts thereafter constituted a "legislative branch," which could adopt ordinances and codes and approve executive (the four officers') decisions. The executive branch could veto legislation, and tribal members elected judges.[14]

In the 1990s grassroots people and tribal officials alike viewed the United States' disregard of the Crow Act of 1920 as a serious betrayal in light of the support the Crow gave the United States during the Indian wars. This act, which provided for allotment, precluded non-Indians from owning more than 3,200 acres of reservation land. In fact, non-Indians acquired much more, and many Crows were unilaterally given fee patents on their land; therefore, less than half the reservation is in trust status. The land issue and associated water rights were the driving force of a grassroots-supported sovereignty agenda, largely because ranching is important to Crow identity. The Crow Tribe pursued legal action in the Crow Act case, despite the expense. Tribal officers also have obtained tribal council consent to buy land and to pay taxes on fee land owned by Crows so that the land would not be sold to non-Indians. Crow officials retained consistent public support through the 1990s by using a large portion of tribal income for job creation. Unemployment dropped by half, and the tribal employees increased from 450 in 1989 to 1,300 in 2000. In 2000 most of the tribe's $12 million budget was spent on wages. Some income from leasing tribally owned land and minerals was used for moderately-sized per capita payments. Income from court settlements against corporations was programmed, for example, to help the Little Big Horn College and the tribal court (whose judges are

fluent in Crow). But the tribal college, established in 1980, was not as central to the sovereignty agenda as on Sioux reservations. In 1990 the college president, commenting on the college's recent accreditation noted, "People will start to believe that we are a real school now."[15]

At Fort Peck are Assiniboines, historically allies of the United States, and Sioux, who agreed to peace when they settled there. The Fort Peck Reservation is 2 million acres, only 43 percent of which is Indian owned. More than 56 percent is in fee status, creating a reduced land base for development and conflict over jurisdiction with the state (for example, over hunting and fishing on fee land within the reservation). Half the residents are non-Indians, and they have controlled the school system on the reservation. Unemployment was about 53 percent in the 1990s, even though the tribes had the largest income from oil in the state. Tribal income was used to purchase land, purchase and support tribally owned businesses, and supplement federal programs. The tribes made a small, annual per capita payment from the mineral leases and tax income.[16]

The Tribal Executive Board (TEB)—twelve representatives, a chair, vice chair, and sergeant-at-arms, all elected at-large every two years—managed the tribal businesses, programs, and income. This body was very stable throughout the 1990s, with most incumbents achieving re-election. The 1960 non-IRA constitution (amended in 1971) provided for the possibility of a "general council" to initiate a decision or reject enactments by the TEB, but meetings of the general council of adult enrolled members have been rare (only one in the 1990s). Authority and resources were broadly diffused (as was the case on Sioux reservations in South Dakota). In addition to the TEB, there were several "community organizations," the largest and most important of which were Poplar (a Sioux community) and Wolf Point (an Assiniboine community). These organizations elected officers, had sizable budgets (from treaty claim settlements), owned their own businesses in the community, gave assistance to individuals, and had control over some programs. They obtained loans and funds from the TEB. There also were two tribal organizations with elected officers that managed funds from treaty claim settlements. They made per capita payments, operated businesses, and bought land. In addition, the TEB appointed community members to all the boards that directed tribal businesses, the tribal college, and certain programs and to the oversight committees and commissions (for example, the fish and wildlife commission).[17]

Some grassroots groups pursued particular sovereignty issues and, toward that end, effectively put pressure on the TEB. People in the communities were outraged at the state's attempt to interfere with the traditional ways they had handled hunting and fishing on the reservation. The reservation has had a

tradition of restricting hunting and fishing to Indians even though half the residents are non-Indians. Tribal fish and wildlife officers enforced tribal code. Through public pressure, grassroots communities prevented the TEB from negotiating an agreement to share authority with the state. The communities also spearheaded an effort to tribalize the educational system on the reservation, by working to elect Fort Peck Assiniboine and Sioux individuals to school boards and by supporting Native language and culture curriculum. However, the constitution still required that the secretary of the interior review TEB actions with regard to non-Indians on the reservation, the tribal court system, and loans and contracts to which the tribal government was party. And the Sioux at Fort Peck expressed willingness to accept money for the Black Hills treaty claim.[18]

After the Northern Cheyenne ended their war with the United States and settled on their reservation in 1884, they embarked on a strategy of isolation, determined to maintain their traditions. In fact, the tribe waives a one-half blood requirement for membership for individuals who reside in the reservation community. At 445,000 acres, their reservation is one of the smallest, but the tribe and Cheyenne individuals own 99 percent of the land. In the 1990s they did not exploit potential mineral wealth but rather concentrated on negotiating for jobs in local, energy-related industries and the Tongue River Dam project. Unemployment was about 50 percent. Leases on grazing land and timber and taxes were the main sources of tribal income; much of it has been used for small per capita payments. Tribal income in the 1990s was very low compared with that of the Blackfeet, Crow, and Fort Peck, but tribal leaders in prior decades had made a policy of buying back all the land alienated after allotment and had obtained federal assistance to do that.[19]

In 1935 the Cheyenne accepted the Indian Reorganization Act and a constitutional government, largely to enable the older, traditionally oriented men to gain more political influence during a time when the tribal government was dominated by younger, "progressive" men. The constitution was revised in 1960. It provided for a president elected at-large and a tribal council elected by the districts in which they lived (ten individuals from five districts). The districts have had frequent meetings. The 1960 constitution required that the secretary of the interior review most of the tribal council's actions. In 1996 the constitution was amended again: Cheyennes approved a "separation of powers" provision so that some tribal judges attained office by election and some (appellate judges) by appointment by the tribal president. In the 1990s there was great turnover in the positions of president and council member, producing instability in leadership and policy. This pattern developed, in large part, because of disagreement over coal leases.[20]

The issue that generated the most grassroots passion in the 1990s was the plan for the creation of a reservationwide school district so that Cheyennes could control the education of their children, who were bused off the reservation. Cheyenne communities worked on this project for thirty years and finally succeeded in 1994, overcoming strenuous opposition from the local, non-Indian-controlled school districts. They obtained money from Congress to build the school. "Traditionalists" have been very influential in grassroots politics. They have resisted coal mining on the reservation, because it would bring outsiders to their community and would damage the environment: these objections were presented as tradition or religion based. Conflict erupted over this decision because many Cheyennes wanted the per capita payments that coal mining would bring. Cheyenne leaders, working with environmental groups, focused on negotiating air quality agreements with companies near the reservation. Traditionalist interest groups also put pressure on the tribal council to create a leadership sphere for themselves in response to repatriation issues following NAGPRA and issues associated with the Sand Creek Massacre (see table 6). The tribal court has used a traditional model of social control relatively more than the other Montana reservations.[21]

The Gros Ventre and Assiniboine, historical allies of the United States, share Fort Belknap Reservation. The cession of the southern portion of the reservation in 1895 removed from their control the major mineral resources on the 650,000-acre reservation. The reservation land is 95 percent Indian owned, but the tribes (which own about 28 percent of the land) received little income from leasing tribal land. With no mineral resources on the reservation, the Fort Belknap community government was largely dependent on federal programs and contracts, and the reservation had an unemployment rate of 52 percent. Fort Belknap leaders attempted to sue in order to force the state to negotiate a gaming compact, but their suit was unsuccessful, as was an attempt to stop mining companies from polluting the water on the reservation. Elected leaders negotiated agreements with the state concerning taxes and water; Fort Belknap tried unsuccessfully to secure the right to market water.[22]

In 1935 Fort Belknap accepted a constitution under the auspices of the Indian Reorganization Act and instituted a twelve-member community council consisting of six Gros Ventres and six Assiniboines elected at-large. The constitution required that the secretary of the interior review most of the council's actions. In 1993 the constitution was amended; thereafter, the community council consisted of two Gros Ventres and two Assiniboines elected by their respective districts and a president and vice president elected at-large. The president–vice president team consisted of one Assiniboine and

one Gros Ventre tribal member. The 1993 constitution also provided for the recall of these officials. There is a Gros Ventre treaty committee and an Assiniboine treaty committee, each with its own funds.[23]

In the 1990s grassroots efforts at Fort Belknap centered on amending the constitution to allow for more community participation and for acknowledgment of tribal identity, as well as on revising the law code. In the new 1999 code, the judges of the tribal court are appointed by the community council; judges must have a high school diploma. Laws regarding fish and wildlife conservation and child welfare received the most attention. Regarding fish and wildlife conservation, the Fort Belknap community assumed exclusive jurisdiction over non-Indians on trust land and established a committee of community members to oversee the tribes' Fish and Wildlife Department. The code authorized cooperative agreements with the state, county, and federal governments. It was to be enforced by tribal officers or federal officers; state conservation officers would need an agreement in place before they could enforce the code, and they would have to institute proceedings in tribal court.[24]

Wyoming.

In Wyoming, there is only one reservation, shared by the Eastern Shoshone and the Northern Arapaho. The Indian population in Wyoming is only 3 percent of the total and has less clout than the Indians in Montana, even though the oil and gas resources on the Wind River Reservation make it the wealthiest of all the reservations considered here. The state has shown great intransigence toward Wind River sovereignty, forcing the tribes there to go through expensive court proceedings over water rights and other matters of jurisdiction. Even when the water rights case was decided in Wind River's favor in 1989, the state refused to cooperate in the administration of those rights.[25]

Eighty-five percent of the oil and gas income is distributed in monthly per capita payments (from 40 to 325 dollars a month). The tribal governments rely on the remaining 15 percent, plus money from taxation, to hire legal assistance and create jobs by establishing tribally owned businesses. During the 1990s unemployment was about 51 percent, and 39 percent of the families lived below the poverty line. The establishment of fisheries and businesses that take advantage of the huge 118,000-acre wilderness area on the reservation has been thwarted by the state's opposition to the tribes' exercising their water rights.[26]

Each tribe has its own six-member business council, elected at-large every two years, and each has a general council (a meeting of voters) that can overrule the business council, initiate policy, and even disband the busi-

ness council and hold a new election. A combined Shoshone-Arapaho business council has responsibility for managing the tribally owned trust lands. Neither tribe adopted a constitution, and both rejected the Indian Reorganization Act. The lack of a constitution is regarded as the perpetuation of "tradition." This means that the business councils must have the general councils' support for the sovereignty agenda.

The large 2.3 million-acre reservation is 90 percent Indian owned, but water rights are an issue. Arapahos boycotted merchants in neighboring towns for several weeks to protest lack of support for the tribes' "treaty-based water rights," a matter of "dignity" and "respect," and fairness, one council member insisted. Shoshone councilman Wes Martel explained that, in the matter of water rights, the "Creator and Creation" guided them. Both general councils have supported the pursuit of water rights. In the 1990s the Arapaho general council approved the separation of joint Shoshone and Arapaho federal programs into tribally controlled ones. With general council approval, Arapaho elders initiated a Native language program with tribal funding, and Shoshones, a cultural center. In the late 1960s the Arapaho led the successful effort to tribalize the school system on the reservation. During the 1990s, even with considerable turnover on the business councils, there was consistency in sovereignty goals. Also, in an effort to diffuse authority, the general councils created boards of tribal members to oversee tribal businesses, economic development, and water resources.[27]

Oklahoma.

In western Oklahoma, the non-Indian and the Cheyenne, Arapaho, Kiowa, Comanche, and Plains Apache populations live in small towns, where their children attend the public schools. In the 1990s Indians made up about 8 percent of the state population, but less in western Oklahoma. Nineteen percent of Indian families in the state had incomes below the poverty level; among the Cheyenne and Arapaho, 23 percent, and among Comanche, 27 percent on average—significantly lower than on Northern Plains reservations. Western Oklahoma Indians have access to urban centers, where they obtain employment, and these areas are close enough to allow them to return to western Oklahoma for tribal meetings and celebrations. State violence against Indians is less an issue here than on the Northern Plains. The majority population in Oklahoma employs romantic Indian imagery mostly to promote tourism. In eastern Oklahoma, where there has been extensive intermarriage with non-Indians, state officials often promote projects that recognize Indian heritage. Yet in western Oklahoma the treatment of Indians has come under fire by the civil liberties organizations. As I have argued

elsewhere, the majority population has promoted an Indian imagery that works to marginalize and trivialize the Indian way of life, as well as undermine Indian confidence in their own political institutions.

The Cheyenne and Arapaho settled on a reservation in western Oklahoma in 1869. After the reservation was allotted in 1892, the federal government permitted the ownership of the remaining "surplus lands" to pass into the hands of non-Natives. About 10,000 acres were assigned to the federal government and have since been recovered and put in trust status, owned by the tribes. The tribes' oil and gas income is derived from these lands. Most of the allotments eventually were sold.

During the 1990s the elected Cheyenne-Arapaho business committee initiated efforts to implement sovereign rights over trust land, primarily so that they could generate income on these lands. The business committee has eight members, four from two Arapaho districts and four from four Cheyenne districts. There is no residency requirement for candidates or voters. The Arapaho and Cheyenne pre–World War II rural communities have largely been replaced by housing projects in small, multiethnic towns. The constitution written under the auspices of the Oklahoma Indian Welfare Act (and amended in 1975 and 1993) provided for an annual meeting of the general council, as well as a business committee (see table 2). Although the meeting is open to all enrolled tribal members, about 75–130 people attend, and here they vote on a budget presented by the business committee. All the tribes' income from oil and gas is budgeted for a small, annual per capita payment. In the 1990s the business committee operated as independently of the general council as possible.

The Cheyenne-Arapaho business committee drove the sovereignty agenda. Its constituents supported the committee in the unsuccessful struggle to prevent the state from taking income from cigarette and fuel businesses on trust land, but the general council voted down land-buying proposals and there was no grassroots sentiment for such an effort. Cheyennes and Arapahos celebrated Native traditions in powwows, but no grassroots pressure for a tribal college emerged. Most Cheyenne and Arapaho people favored the per capita distribution of all tribal income (although not all tribal income can be distributed per capita, because of federal constraints). The business committee implemented a program to tax non-Indian and tribal businesses, despite objections from constituents, and this income largely supplemented federal programs. There was no grassroots pressure to traditionalize the tribal court, although, in sentencing, the code provided for banishment, which reflects Cheyenne legal tradition. Cheyennes and Arapahos generally did not view their tribes or the combined tribes as a corporate entity within which individuals are subsumed. Rather, the "tribe" was viewed as a collection of individual

members, each with an equal share in whatever resources the tribe has. The sovereignty movement was kept alive and pursued by a small group of elected officials either descended from the chiefs who fought and eventually won payment for the United States' violation of the 1851 treaty or from individuals who were exposed to American Indian Movement ideology in the 1970s while living in cities away from western Oklahoma.[28]

The Comanche Nation lost most of its reservation land at the time of allotment but in the 1990s had some income from oil on the remaining trust land. The Comanche refused to organize their government under the Oklahoma Indian Welfare Act but eventually adopted a constitution. The Comanche constitution provides for a tribal council, which meets at least once a year and has authority to approve budgets and leases and contracts on tribal property. Comanche voters also elect a seven-member (including three officers) business committee at-large. As among the Cheyenne and Arapaho in the 1990s, grassroots political activity focused on revising the constitution to restrict the business committee's powers. In the revised constitution, voters did not strike a provision that required the secretary of the interior to review tribal council actions. They did change enrollment requirements so that descendants of allottees need one-eighth Comanche ancestry (instead of one-fourth) to be members of the Comanche Nation. Opposition to business committee actions interfered with the development of several projects, but the business committee contracted programs, issued licenses, and operated small businesses.[29]

Comparisons and Conclusions

Tribal officials in all the Plains communities saw the exercise of sovereignty as entwined with control over tribal land and resources. Where they could generate income from energy resources and businesses established on tribal land, they tried to commit at least some of that income to strengthening the tribe as a corporate entity, for example, by buying land and putting it in tribal ownership. Grassroots commitment to a sovereignty agenda, however, was an equally important component of sovereignty movements. Tribal officials' success largely depended on the extent to which grassroots groups supported their goals. With strong grassroots support, there also were aggressive efforts to protect and extend cultural rights, for example, to indigenize the educational system. The extent to which the exercise of sovereignty had grassroots support depended on several factors: tribal–state relations, a "sustainable homeland," and a tribal government that allowed for diffusion of authority.

The degree to which grassroots people believed that they had a problem

with state-supported violence against Indians varied among the four states considered here. Indians were visible minorities in Plains states and owned significant amounts of land in trust status—more so in some states than in others. Presumably, states with larger Native populations acted in response to a perceived threat. In any case, during the 1990s grassroots commitment to tribal sovereignty was greatest where Native people most feared state violence.

Plains communities were established as the result of treaties, but some land bases offer more potentially sustainable homelands than others do. A sustainable homeland has adequate economic resources to enable its residents to have real control over economic development, education, health care, and other aspects of life. Where the grassroots community was committed to the defense of a sustainable homeland, tribal members viewed the "tribe" as a corporate entity and supported investing tribal income to augment and protect the land base rather than distribute all tribal income per capita. Defense of homeland was rooted in collective memories about the treaty era in which these homelands were established in South Dakota, Montana, Wyoming, and Oklahoma. Treaty symbolism propelled modern sovereignty agendas and was linked to ideas about the connection between contemporary and ancestral peoples and among the natural, social, and sacred realms of life. During the 1990s tribes with sustainable homelands (Blackfeet, Crow, Northern Cheyenne, Northern Arapaho, Sioux, and Assiniboine) or potentially sustainable homelands (Sioux of South Dakota), which included wilderness areas and mineral resources, had some grassroots commitment to a broad sovereignty agenda and to resistance to compromises with states. The Gros Ventre and Assiniboines and the tribes of western Oklahoma have homelands that currently lack substantial economic resources.[30]

The exercise of sovereignty by tribal governments created conditions for alienation of constituents from elected leaders. A constitutional revision movement emerged on many Plains reservations. These movements worked for greater diffusion of authority. Where authority was widely diffused, grassroots support for sovereignty goals developed, and the idea of tribal corporateness was strengthened. Where there was little effort to diffuse authority, an individualized notion of "tribe" prevailed, and public pressure developed to distribute all tribal resources per capita.

In the 1990s grassroots commitment was greatest among the Sioux of South Dakota, who exhibited the most fear of state violence. Among these Sioux was passionate support for multiple spheres of a sovereignty movement: recovery of the Black Hills, protection of the homeland environment, protection of legal jurisdiction on reservation land, and cultural rights (especially an indigenized tribal court and educational system). The Sioux

had a strong sense of "tribe" as a corporate entity, and they had the most developed system for the diffusion of authority positions.

At the other extreme, in western Oklahoma, Native people lived in counties where non-Indians outnumbered them ten to one. The tribes' land base is very small. The fear of state violence was less than on the Northern Plains. There was little grassroots commitment for and considerable controversy over a sovereignty agenda, and that agenda, which was pursued by elected officials, was narrowly defined (collection of taxes and establishment of businesses to generate income for distribution). In western Oklahoma, an individualized notion of "tribe" prevailed, and sporadic efforts to diffuse authority positions throughout the Native community have not succeeded.

Federal policy changes in the 1970s and 1980s opened the door for aggressive pursuit of sovereignty agendas. But the growth and direction of sovereignty movements on the Plains also was influenced by local circumstances and local views—and by Indian people taking the initiative and developing localized versions of sovereignty and sovereignty goals.

Notes

1. Marjane Ambler, *Breaking the Iron Bonds: Indian Control of Energy Development* (Lawrence: University Press of Kansas, 1990); Richard White, *It's Your Misfortune and None of My Own: A New History of the American West* (Norman: University of Oklahoma Press, 1991); and Brad Bays and Erin Hogan Fouberg, eds., *The Tribes and the States: Geographies of Intergovernmental Interaction* (Lanham, MD: Rowman and Littlefield, 2002).

2. The term *community* refers to ten reservations on the Northern Plains, the Cheyenne-Arapaho people in west-central Oklahoma, and the Comanche people living in west-central Oklahoma. The research for this chapter was supported by Wenner-Gren Foundation for Anthropological Research and is based on records from the 1990s.

3. For example, see Russell Lawrence Barsh and James Youngblood Henderson, *The Road: Indian Tribes and Political Liberty* (Berkeley: University of California, 1980); Vine Deloria Jr. and Clifford Lytle, *The Nations Within: The Past and Future of American Indian Sovereignty* (New York: Pantheon, 1984); Lyman Legters and Fremont Lyden, eds., *American Indian Policy: Self-Governance and Economic Development* (Westport, CT: Greenwood, 1994); David Wilkins, *American Indian Sovereignty and the United States Supreme Court: The Masking of Justice* (Austin: University of Texas Press, 1997); Troy Johnson, ed., *Contemporary Native American Political Issues* (Walnut Creek, CA: Alta Mira, 1999); Dean Howard Smith, *Modern Tribal Development: Paths to Self-Sufficiency and Cultural Integrity in Indian Country* (Walnut Creek, CA: Alta Mira, 2000); David Wilkins and K. Tsianina Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (Norman: University of Oklahoma Press, 2001); and David Wilkins, *American Indian Politics and the American Political System* (Lanham, MD: Rowman and Littlefield, 2002).

4. *Lakota Times*, see March 20 and July 31, 1990; October 23, 1991 (quoted in); vol. 2, nos. 5, 9, 15, 37, 47, 48 (2001); Herbert Hoover and Carol Goss Hoover, *Sioux Country: A History of Indian–White Relations* (Sioux Falls, SD: Center for Western Studies, Augustana College, 2000),

171. Also see Thomas Biolsi, *"Deadliest Enemies": Law and the Making of Race Relations on and off Rosebud Reservation* (Berkeley: University of California Press, 2001).

5. Hoover and Hoover, *Sioux Country*, 164–171; Herbert Hoover, personal communication, February 2004; and Frank Pommersheim, personal communication, February 2004.

6. Constitution and By-Laws of the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota, 1935, amended 1985; on the districts' political role, see, for example, *Lakota Times*, May 20, 1990.

7. Constitution and By-Laws of the Oglala Sioux Tribe; Oglala Sioux Tribe's Law and Order Code Book, 1996; on grassroots sovereignty activity, see *Lakota Times*, October 10, 1989, February 6, 1990, February 5, 1991, and May 7, 2001. Quotations are from February 6, 1990, and May 24, 1991. My study and comparison of tribal law codes was inspired by Bruce Miller's "Contemporary Tribal Codes and Gender Issues," *American Indian Culture and Research Journal* 18, no. 2 (1994): 43–74.

8. Hoover and Hoover, *Sioux Country*; Constitution, Bylaws and Corporate Charter of the Rosebud Sioux Tribe, 1935, amended 1962, 1966; and *Lakota Times*, vol. 9 (17, 18:1889), and November 16, 1990. On grassroots activity, see *Lakota Times*, January 9, 1990, vol. 1 (47:2000) and vol. 2 (22, 24:2001). The quotation is from *Lakota Journal*, November 13–19, 2000. Constitution and By-Laws of the Cheyenne River Sioux Tribe, South Dakota, 1935, amended 1960, 1980; Constitution of the Standing Rock Sioux Tribe, 1959, amended 1961, 1963, 1974, 1984. On committees at Standing Rock, see *Lakota Times*, vol. 2 (44:2001).

9. *Big Horn County News*, October 9 and November 4, 1992; James Lopach, Margery Hunter Brown, and Richmond Clow, *Tribal Government Today: Politics in Montana* (Boulder: University Press of Colorado 1998), 17, 36. Data on poverty levels are from 2000 Census, Summary Social, Economic, and Housing Characteristics, for South Dakota, Montana, Wyoming, and Oklahoma.

10. Lopach, Brown, and Clow, *Tribal Government Today*, 204–205; see also Native American Development Corporation (NADC), *Tribal Economic Contributions to Montana* (n.p., 2004), 11–12. There has long been tension between the so-called Full Blood group and a group of Blackfeet who are descendants of American Fur Company employees. The American Indian Movement influenced the younger generation of both groups, and this has resulted in support for sovereignty from both groups. Stanley Clay Wilmouth, "The Development of Blackfeet Politics and Multiethnic Categories" (Ph.D. diss., University of California at Riverside, 1987).

11. Constitution and By Laws of the Blackfeet Tribe of the Blackfeet Indian Reservation, 1935, amended 1978. On the honorary council, see *Glacier Reporter*, January 26, 1995, February 13, 1997, and January 22, 1998.

12. On land issues, see *Glacier Reporter*, February 5, 1998, and April 15, 1999. On Glacier Park, see *Glacier Reporter*, March 7 and 17 and October 17, 1991, May 14, 1992, March 18 and June 17, 1993, March 10, 1994, April 14, 1994, February 13, 1997, July 16, 1998, and January 13, 2000. Ground is quoted in March 7, 1991, and DesRosier in October 10, 1991.

13. Lopach, Brown, and Clow, *Tribal Government Today*, 204–205; and NADC, *Tribal Economic Contributions*, 12–14.

14. Constitution and Bylaws of the Crow Tribe of the Crow Reservation, 1948, amended by resolution in 1959, 1986, and 2001; and *Big Horn County News*, October 8, 1997.

15. *Big Horn County News*, July 4, 1990 (quoted in), January 27, 1993, November 22, 1995, January 10, June 5, and October 9, 1996, February 18, 1998, May 26, 1999, March 29, May 10, August 16, and November 29, 2000.

16. Lopach, Brown, and Clow, *Tribal Government Today*, 204–205; and NADC, *Tribal Economic Contributions*, 15–16.

17. Constitution and Bylaws of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, 1960. *Wotanin Wowapi*, August 26, 1993, August 18, 1994, January 30, 1997, and July 22, 1999; on taxes, July 11, 1991, April 2, 1992, July 3, 1996, and July 16, 1998; on gaming, December 16, 1993, and January 26, 1995; and on water rights, December 6, 1991, and September 22, 1994.

18. *Wotanin Wowapi*, on hunting and fishing, February 3, June 2 and 30, August 25, and September 1, 1994; on the Black Hills Claim, July 2, 1998; and Constitution of the Assiniboine and Sioux Tribes, VII, 3, 5 and X, 6–8.

19. Lopach, Brown, and Clow, *Tribal Government Today*, 204–205; and NADC, *Tribal Economic Contributions*, 17–18. The Cheyenne also face considerable hostility from the Crow, whose reservation borders theirs. The Crow often challenge Cheyenne rights to land and resources in what was once Crow land.

20. Constitution and By-Laws of the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, 1935, amended 1960, 1996; Graham Taylor, *The New Deal and American Indian Tribalism: The Administration of the Indian Reorganization Act, 1934–1945* (Lincoln: University of Nebraska Press, 1980), 104; and Separation of Powers Code, 1997.

21. On the new school district, see *Big Horn County News*, January 16 and July 3, 1991, September 30, 1992, June 30 and November 10, 1993, and August 17, 1994; on coal mining and tribal income, February 3 and October 6, 1993, and September 4, 1996, and *Wotanin Wowapi*, April 25, 1991. On traditionalist issues, see Tribal Code of the Northern Cheyenne Reservation, 1987; and *Wotanin Wowapi*, March 14, 1991, March 3, 1994.

22. *Wotanin Wowapi*, January 27, 1994; Lopach, Brown, and Clow, *Tribal Government Today*, 204–205; and NADC, *Tribal Economic Contributions*, 14–15.

23. Constitution and By-Laws of the Fort Belknap Community of the Fort Belknap Reservation, Montana, 1935, amended 1993.

24. The Laws of the Gros Ventre and Assiniboine Tribes of Fort Belknap, 1999.

25. *Wind River News*, February 6 and August 20, 1990, April 9, 1991, April 21 and 28, 1992, and December 13, 2001.

26. *Wind River News*, January 2 and 23, February 27, and June 19, 1990, September 7, 1993, May 11, June 29, July 27, and November 9, 2000. Also see Geoffrey O'Gara, *What You See in Clear Water: Indians, Whites, and a Battle over Water in the American West* (New York: Vintage, 2000).

27. *Wind River News*, January 2, March 20, April 10, May 20 (quoted in), September 25 and October 2 and 9, 1990, August 13, 1991, January 14 and July 7, 1992, May 9, 1995, September 25, 1997, and November 10, 1998.

28. On the Cheyenne-Arapaho, see Cheyenne-Arapaho Tribes of Oklahoma Law and Order Code, 1988; and Loretta Fowler, *Tribal Sovereignty and the Historical Imagination: Cheyenne-Arapaho Politics* (Lincoln and London: University of Nebraska Press, 2002).

29. Constitution of the Comanche Nation, 1966, amended 1976, 1978, 1979, 1981, 1984, 1985, 1994, 2002.

30. The term *sustainable homeland* is Earl Old Person's, *Glacier Reporter*, May 9, 1991. The Rocky Boy Reservation was settled by Native people who did not sign a treaty with the United States.

THE CASE OF THE AMERICAN INDIAN AGAINST THE FEDERAL GOVERNMENT OF THE UNITED STATES –

AS DOCUMENTED IN TREATIES, SPEECHES, JUDICIAL RULINGS, CONGRESSIONAL BILLS AND HEARINGS FROM 1830 TO THE PRESENT.

OF UTMOST GOOD FAITH

EDITED BY
VINE DELORIA, JR., AUTHOR OF
CUSTER DIED FOR YOUR SINS

Shoshone-Bannock Agreement of 1888

The following excerpt indicates that the phrase, "in common with other citizens," was used with reference to an agreement with the Shoshone and Bannock Indians of Fort Hall in order to settle whites on the Indian lands. It thus gives the whites equal rights to water with the Indians even though federal doctrines have affirmed that the Indians are entitled to water rising on or flowing through the reservation.

It remains to be seen whether or not there will be an equitable settlement of the fishing rights problem in Washington. The Indians would certainly win if the court interpreted the phrase consistently with its meaning in this agreement since the whites have certainly had their right to water upheld.

An Act to accept and ratify an agreement made with the Shoshone and Bannock Indians, for the surrender and relinquishment . . . of a portion of the Fort Hall Reservation . . . , for the purposes of a town-site, and for the grant of a right of way through said reservation to the Utah and Northern Railway Company.

SECTION 10. That the citizens of the town hereinbefore provided for shall have the free and undisturbed use in common with the said Indians of the waters of any river, creek, stream, or spring flowing through the Fort Hall Reservation in the vicinity of said town, with right of access at all times thereto, and the right to construct, operate, and maintain all such ditches, canals, works, or other aqueducts, drain, and sewerage pipes, and other appliances on the reservation, as may be necessary to provide said town with proper water and sewerage facilities.

(September 1, 1888)

Great Sioux Agreement
25 Stat. 888 (1889)

Some years after the great plains wars, pressure grew to allot the Great Sioux reservation which extended over almost all of western South Dakota. Thousands of hungry whites, demanded that the vast reservation be allotted and the surplus lands be opened to white settlement. Thus, it was that General Crook, "Three Stars," was sent out to negotiate the Great Sioux Agreement of 1889. With Crook sitting at the table the Sioux were reminded that if they didn't agree to cede their lands the Army would come in and exterminate them. In spite of such pressures by the United States government less than ten per cent of the adult males signed the paper agreeing to the cession.

Claiming total accord, the negotiators rushed to Washington and pushed the agreement through Congress as a statute. The huge territory was broken into a number of smaller reservations with separate agencies, each declared as executive order reservations thus depriving them of treaty-reservation status which holds a superior right to self-government. For whereas treaty-right reservations have all rights inherent in the original Indian tribe, executive order reservations only have rights implied in their establishment by the executive branch.

The agreement of 1889 must be regarded as a basic document of the Sioux Nation and it may have within it the seeds of Sioux revival. It amends the treaty of 1868 only slightly. Yet, as the next selection will show, it can be regarded as a major step, as yet unrecognized, in the continuing process of treaty negotiations between the Sioux Nation and the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

degree of latitude; thence on said forty-fourth degree of latitude to western boundary of township number seventy-two; thence south on said township western line to an intersecting line running due west from Fort Lookout; thence eastwardly on said line to the center of the main channel of the Missouri River at Fort Lookout; thence north in the center of the main channel of the said river to the original starting point.

SECTION 6. That the following tract of land, being a part of the Great Reservation of the Sioux Nation, in the Territory of Dakota, is hereby set apart for a permanent reservation for the Indians receiving rations and annuities at the Crow Creek Agency, in said Territory of Dakota, namely: The whole of township one hundred and six, range seventy; township one hundred and seven, range seventy-one; township one hundred and eight, range seventy-one; township one hundred and eight, range seventy-two; township one hundred and nine, range seventy-two, and the south half of township one hundred and nine, range seventy-one, and all except sections one, two, three, four, nine, ten, eleven, and twelve of township one hundred and seven, range seventy, and such parts as lie on the east or left bank of the Missouri River, of the following townships, namely: Township one hundred and six, range seventy-one; township one hundred and seven, range seventy-two; township one hundred and eight, range seventy-three; township one hundred and eight, range seventy-four; township one hundred and eight, range seventy-five; township one hundred and eight, range seventy-six; township one hundred and nine, range seventy-three; township one hundred and nine, range seventy-four; south half of township one hundred and nine, range seventy-five, and township one hundred and seven, range seventy-three; also the west half of township one hundred and six, range sixty-nine, and sections sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, and thirty-three, of township one hundred and seven, range sixty-nine.

SECTION 7. That each member of the Santee Sioux tribe of Indians now occupying a reservation in the State of Nebraska not having already taken allotments shall be entitled to allotments upon said reserve in Nebraska as follows: To each head of a family, one-quarter of a section; to each single person over eighteen years, one-eighth of a section; to each orphan child under eighteen years, one-eighth of a section; to each other person under eighteen years of age now living, one-sixteenth of a section; with title thereto in accordance with the provisions of article six of the treaty concluded April twenty-ninth, eighteen hundred and sixty-eight, and the agreement with said Santee Sioux approved February twenty-eighth, eighteen hundred and seventy-seven, and rights under the same in all other respects conforming to this act. And said Santee Sioux shall be entitled to all other benefits under this act in the same manner and with the same conditions as if they were residents upon said Sioux Reservation, receiving rations at one of the agencies herein named: *Provided*, That all allotments heretofore made to said Santee Sioux in Nebraska are hereby ratified and confirmed; and each member of the Flandreau band of Sioux Indians is hereby authorized to take allotments on the Great Sioux Reservation, or in lieu therefor shall be paid at the rate of one dollar per acre for the land to which they would be entitled, to be paid out of the proceeds of lands relinquished under this act, which shall be used under the direction of the Secretary of the Interior; and said Flandreau band of Sioux Indians is in all other respects entitled to the benefits of this act the same as if receiving rations and annuities at any of the agencies aforesaid.

SECTION 8. That the President is hereby authorized and required, whenever in his opinion any reservation of such Indians, or any part thereof, is advantageous for agricultural or grazing purposes, and the progress in civilization of the Indians receiving rations on either or any of said reservations shall be such as to encourage the belief that an allotment in severalty to such Indians, or any of them, would be for the best interest of said Indians, to cause said reservation, or so much thereof as is necessary, to be surveyed, or re-surveyed, and to allot the lands in said reservation in severalty to the Indians located thereon as aforesaid, in quantities as follows: To each head of a family, three hundred and twenty acres; to each single person over eighteen years of age, one-fourth of a section; to each orphan child under eighteen years of age, one-fourth of a section; and to each other person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-eighth of a section. In case there is not sufficient land in either of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be alloted to each individual of each of said classes *pro rata* in accordance with the provisions of this act: *Provided*, That where the lands on any

reservation are mainly valuable for grazing purposes, an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual; or in case any two or more Indians who may be entitled to allotments shall so agree, the President may assign the grazing lands to which they may be entitled to them in one tract, and to be held and used in common.

SECTION 9. That all allotments set apart under the provisions of this act shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under this act: *Provided*, That if anyone entitled to an allotment shall fail to make a selection within five years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which selection shall be alloted as in cases where selections are made by the Indians, and patents shall issue in like manner: *Provided*, That these sections as to the allotments shall not be compulsory without the consent of the majority of the adult members of the tribe, except that the allotments shall be made as provided for the orphans.

SECTION 10. That the allotments provided for in this act shall be made by special agents appointed by the President for such purpose, and the agents in charge of the respective reservations on which the allotments are directed to be made, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office.

SECTION 11. That upon approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottee, which patents shall be of the legal effect, and declare that the United States does and will hold the lands thus allotted

for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs, as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever, and patents shall issue accordingly. And each and every allottee under this act shall be entitled to all rights and privileges and be subject to all the provisions of section six of the act approved February eighth, eighteen hundred and eighty-seven, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians and for other purposes." *Provided*, That the President of the United States may in any case, in his discretion, extend the period by a term not exceeding ten years; and if any lease or conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such lease or conveyance or contract shall be absolutely null and void: *Provided further*, That the law of descent and partition in force in the State or Territory where the lands may be situated shall apply thereto after patents therefor have been executed and delivered. Each of the patents aforesaid shall be recorded in the General Land Office, and afterward delivered, free of charge, to the allottee entitled thereto.

SECTION 12. That any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner, if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which said reservation is held of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress: *Provided, however*, That all lands adapted to agriculture, with or without irrigation, so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers, and shall be disposed of by the United States to actual and bona-fide settlers only in tracts

not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall provide, subject to grants which Congress may make in aid of education: *And provided further*, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years' occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lein thereon, created prior to the date of such patent shall be null and void. And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians to whom such reservation belonged; and the same, with interest thereon at five per centum per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians, or the members thereof. The patents aforesaid shall be recorded in the General Land Office, and afterward, delivered, free of charge, to the allottee entitled thereto.

SECTION 13. That any Indian receiving and entitled to rations and annuities at either of the agencies mentioned in this act at the time the same shall take effect, but residing upon any portion of said Great Reservation not included in either of the separate reservations herein established, may, at his option, within one year from the time when this act shall take effect, and within one year after he had been notified of his said right of option in such manner as the Secretary of the Interior shall by recording his election with the proper agent at the agency to which he belongs, have the allotment to which he would be otherwise entitled on one of said separate reservations upon the land where such Indian may then reside, such allotment in all other respects to conform to the allotments herein before provided. Each member of the Ponca tribe of Indians now occupying a part of the old Ponca Reservation, within the limits of the said Great Sioux Reservation, shall be entitled to allotments upon said old Ponca Reservation as follows: To each head of a family, three hundred and twenty acres; to each single person over eighteen years of age, one-fourth of a section; to each orphan child under eighteen years of age, one-fourth of a section; and to each other person under eighteen years of age now living, one-eighth of a section, with title thereto and rights under the same in all other respects conforming to this act. And said Poncas shall be entitled to all other benefits under this

act in the same manner and with the same conditions as if they were a part of the Sioux Nation receiving rations at one of the agencies herein named. When allotments to the Ponca tribe of Indians and to such other Indians as allotments are provided for by this act shall have been made upon that portion of said reservation which is described in the act entitled "An act to extend the northern boundary of the State of Nebraska" approved March twenty-eighth, eighteen hundred and eighty-two, the President shall, in pursuance of said act, declare that the Indian title is extinguished to all lands described in said act not so allotted hereunder and thereupon all of said land not so allotted and included in said act of March twenty-eighth, eighteen hundred and eighty-two, shall be open to settlements as provided in this act: *Provided*, That the allotments to Ponca and other Indians authorized by this act to be made upon the land described in the said act entitled "An act to extend the northern boundary of the State of Nebraska," shall be made within six months from the time this act shall take effect.

SECTION 14. That in cases where the use of water for irrigation is necessary to render the lands within any Indian reservation created by this act available for agricultural purposes, the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such Indian reservation created by this act; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.

SECTION 15. That if any Indian has, under and in conformity with the provisions of the treaty with the Great Sioux Nation concluded April twenty-ninth, eighteen hundred and sixty-eight, and proclaimed by the President February twenty-fourth, eighteen hundred and sixty-nine, or any existing law, taken allotments of land within or without the limits of any of the separate reservations established by this act, such allotments are hereby ratified and made valid, and such Indian is entitled to a patent therefor in conformity with the provisions of said treaty and existing law and of the provisions of this act in relation to patents for individual allotments.

SECTION 16. That the acceptance of this act by the Indians in manner and form as required by the said treaty concluded between the different bands of the Sioux Nation of Indians and the United States, April twenty-ninth, eighteen hundred and sixty-eight, and proclaimed by the President

February twenty-fourth, eighteen hundred and sixty-nine, as hereinafter provided, shall be taken and held to be a release of all title on the part of the Indians receiving rations and annuities on each of the said separate reservations, to the lands described in each of the other separate reservations so created, and shall be held to confirm in the Indians entitled to receive rations at each of said separate reservations, respectively, to their separate and exclusive use and benefit, all the title and interest of every name and nature secured therein to the different bands of the Sioux Nation by said treaty of April twenty-ninth, eighteen hundred and sixty-eight. This release shall not affect the title of any individual Indian to his separate allotment on land not included in any of said separate reservations provided for in this act, which title is hereby confirmed, nor any agreement heretofore made with the Chicago, Milwaukee and Saint Paul Railroad Company or the Dakota Central Railroad Company for a right of way through said reservation; and for any lands acquired by any such agreement to be used in connection therewith, except as hereinafter provided; but the Chicago, Milwaukee and Saint Paul Railroad Company and the Dakota Central Railroad Company shall, respectively, have the right to take and use, prior to any white person, and to any corporation, the right of way provided for in said agreements, with not to exceed twenty acres of land in addition to the right of way, for stations for every ten miles of road; and said companies shall also, respectively, have the right to take and use for right of way, side-track, depot and station privileges, machine-shop, freight-house, round house, and yard facilities, prior to any white person, and to any corporation or association, so much of the two separate sections of land embraced in said agreements; also, the former company so much of the one hundred and eighty-eight acres, and the latter company so much of the seventy-five acres, on the east side of the Missouri River, likewise embraced in said agreements, as the Secretary of the Interior shall decide to have been agreed upon and paid for by said railroad, and to be reasonably necessary upon each side of said river for approaches to the bridge of each said companies to be constructed across the river, for right of way, side-track, depot and station privileges, machine-shop, freight-house, round house, and yard facilities, and no more: *Provided*, That the said railway companies shall have made the payments according to the terms of said agreements for each mile of right of way and each acre of land for railway purposes, which said companies take and use under the

provisions of this act, and shall satisfy the Secretary of the Interior to that effect: *Provided further*, That no part of the lands herein authorized to be taken shall be sold or conveyed by way of sale of, or mortgage of the railway itself. Nor shall any of said lands be used directly or indirectly for town site purposes, it being the intention hereof that said lands shall be held for general railway uses and purposes only, including stock yards, warehouses, elevators, terminal and other facilities of and for said railways: but nothing herein contained shall be construed to prevent any such railroad company from building upon such lands houses for the accommodation or residence of their employees, or leasing grounds contiguous to its tracks for warehouse or elevator purposes connected with said railways: *And further provided*, That said payments shall be made and said conditions performed within six months after this act shall take effect: *And provided further*, That said railway companies and each of them shall, within nine months after this act takes effect, definitely locate their respective lines of road, including all station grounds and terminals across and upon the lands of said reservation designated in said agreements, and shall also, within the said period of nine months, file with the Secretary of the Interior a map of such definite location, specifying clearly the line of the road the several station grounds and the amount of land required for railway purposes, as herein specified, of the said separate sections of land and said tracts of one hundred and eighty-eight acres and seventy-five acres, and the Secretary of the Interior shall, within three months after the filing of such map, designate the particular portions of said sections and of said tracts of land which the said railway companies respectively may take and hold under the provisions of this act for railway purposes. And the said railway companies, and each of them, shall, within three years after this act takes effect, construct, complete, and put in operation their said lines of road; and in case the said lines of road are not definitely located and maps of location filed within the periods hereinbefore provided, or in case the said lines of road are not constructed, completed, and put in operation within the time herein provided, then, and in either case, the lands granted for right of way, station grounds, or other railway purposes, as in this act provided, shall, without any further act or ceremony, be declared by proclamation of the President forfeited, and shall, without entry or further action on the part of the United States, revert to the United States and be subject to entry under the other provisions of this act;

and whenever such forfeiture occurs the Secretary of the Interior shall ascertain the fact and give due notice thereof to the local land officers, and thereupon the lands so forfeited shall be open to homestead entry under the provisions of this act.

SECTION 17. That it is hereby enacted that the seventh article of the said treaty of April twenty-ninth, eighteen hundred and sixty-eight, securing to said Indians the benefits of education, subject to such modifications as Congress shall deem most effective to secure to said Indians equivalent benefits of such education, shall continue in force for twenty years from and after the time this act shall take effect; and the Secretary of the Interior is hereby authorized and directed to purchase from time to time, for the use of said Indians, such and so many American breeding cows of good quality, not exceeding twenty-five thousand in number, as in his judgment can be under regulations furnished by him, cared for and preserved, with their increase, by said Indians: *Provided,* That each head of family or single person over the age of eighteen years, who shall have or may hereafter take his or her allotment of land in severalty, shall be provided with two milch cows, one pair of oxens, with yoke and chain, or two mares and one set of harness in lieu of said oxen, yoke and chain, as the Secretary of the Interior may deem advisable, and they shall also receive one plow, one wagon, one harrow, one hoe, one axe, and one pitchfork, all suitable to the work they may have to do, and also fifty dollars in cash; to be expended under the direction of the Secretary of the Interior in aiding such Indians to erect a house and other buildings suitable for residence or the improvement of his allotment; no sales, barters, or bargains shall be made by any person other than said Indians with each other, of any of the personal property hereinbefore provided for, and any violation of this provision shall be deemed a misdemeanor and punished by fine not exceeding one hundred dollars, or imprisonment not exceeding one year or both in the discretion of the court; That for two years the necessary seeds shall be provided to plant five acres of ground into different crops, if so much can be used, and provided that in the purchase of such seed preference shall be given to Indians who may have raised the same for sale, and so much money as shall be necessary for this purpose is hereby appropriated out of any money in the Treasury not otherwise appropriated; and in addition thereto there shall be set apart, out of any money in the Treasury not otherwise appropriated, the sum of three

millions of dollars, which said sum shall be deposited in the Treasury of the United States to the credit of the Sioux Nation of Indians as a permanent fund, the interest of which, at five per centum per annum, shall be appropriated, under the direction of the Secretary of the Interior, to the use of the Indians receiving rations and annuities upon the reservations created by this act, in proportion to the numbers that shall so receive rations and annuities at the time this act takes effect as follows: One-half of said interest shall be so expended for the promotion of industrial and other suitable education among said Indians, and the other half thereof in such manner and for such purposes, including reasonable cash payments per capita as, in the judgment of said Secretary, shall, from time to time, most contribute to the advancement of said Indians in civilization and self-support; and the Santee Sioux, the Flandreau Sioux, and the Ponca Indians shall be included in the benefits of said permanent fund, as provided in sections seven and thirteen of this act: *Provided,* That after the Government has been reimbursed for the money expended for said Indians under the provisions of this act, the Secretary of the Interior may, in his discretion, expend, in addition to the interest of the permanent fund, not to exceed ten per centum per annum of the principal of said fund in the employment of farmers and in the purchase of agricultural pursuits, and he shall report to Congress in detail each year his doings hereunder. And at the end of fifty years from the passage of this act, said fund shall be expended for the purpose of promoting education, civilization, and self-support among said Indians or otherwise distributed among them as Congress shall from time to time thereafter determine.

SECTION 18. That if any land in said Great Sioux Reservation is now occupied and used by any religious society for the purpose of missionary or educational work among Indians, whether situated outside of or within the lines of any reservation constituted by this act, or if any such land is now occupied upon the Santee Sioux Reservation, in Nebraska, the exclusive occupation and use of said land, not exceeding one hundred and sixty acres in any one tract, is hereby, with the approval of the Secretary of the Interior, granted to any such society so long as the same shall be occupied and used by such society for educational and missionary work among said Indians; and the Secretary of the Interior is hereby authorized and directed to give to such religious society patent of such tract of land to the legal effect aforesaid; and for the purpose of such educational or missionary work any

such society may purchase, upon any of the reservations herein created, any land not exceeding in any one tract one hundred and sixty acres, not interfering with the title in severalty of any Indian, and with the approval of and upon such terms, not exceeding one dollar and twenty-five cents an acre, as shall be prescribed by the Secretary of the Interior. And the Santee Normal Training School may, in like manner, purchase for such educational or missionary work on the Santee Reservation, in addition to the foregoing, in such location and quantity, not exceeding three hundred and twenty acres, as shall be approved by the Secretary of the Interior.

SECTION 19. That all the provisions of the said treaty with the different bands of the Sioux Nation of Indians concluded April twenty-ninth, eighteen hundred and sixty-eight, and the agreement with the same approved February twenty-eighth, eighteen hundred and seventy-seven, not in conflict with the provisions and requirements of this act, are hereby continued in force according to their tenor and limitation, anything in this act notwithstanding.

SECTION 20. That the Secretary of the Interior shall cause to be erected not less than thirty school-houses, and more, if found necessary, on the different reservations, at such points as he shall think for the best interests of the Indians, but at such distance only as will enable as many as possible attending schools to return home nights, as white children do attending district schools: *And provided*, That any white children residing in the neighborhood are entitled to attend the said school on such terms as the Secretary of the Interior may prescribe.

SECTION 21. That all lands in the Great Sioux Reservation outside of the separate reservations herein described are hereby restored to the public domain, except American Island, Farm Island, and Niobrara Island, and shall be disposed of by the United States to actual settlers only, under the provisions of the homestead law (except section two thousand three hundred and one thereof) and under the law relating to town-sites; *Provided*, That each settler, under and in accordance with the provisions of said homestead acts, shall pay to the United States, for the land so taken by him, in addition to the fees provided by law, the sum of one dollar and twenty-five cents per acre for all lands disposed of within the first three years after the taking effect of this act, and the sum of seventy-five cents per acre for all lands disposed of within the next two years following thereafter, and fifty cents per acre for the residue of the lands then undisposed of, and

shall be entitled to a patent therefor according to said homestead laws, and after the full payment of said sums: but the rights of honorably discharged Union soldiers and sailors in the late civil war as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States, shall not be abridged, except as to said sums; *Provided*, That all lands herein opened to settlement under this act remaining undisposed of at the end of ten years from the taking effect of this act shall be taken and accepted by the United States and paid for by said United States at fifty cents per acre, which amount shall be added and credited to said Indians as part of their permanent fund, and said lands shall thereafter be a part of the public domain of the United States to be disposed of under the homestead laws of the United States, and the provisions of this act; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of final entry, shall be null and void: *Provided*, That there shall be reserved public highways four rods wide around every section of land allotted, or opened to settlement by this act, the section lines being the center of said highways; but no deduction shall be made in the amount to be paid for each quarter-section of land by reason of such reservation. But if the said highway shall be vacated by any competent authority the title to the respective strips shall inure to the then owner of the tract of which it formed a part of the original survey. *And provided further*, That nothing in this act contained shall be so construed as to affect the right of Congress or of the government of Dakota to establish public highways, or to grant to railroad companies the right of way through said lands, or to exclude the said lands, or any thereof, from the operation of the general laws of the United States now in force granting to railway companies the right of way and depot grounds over and upon the public lands, American Island, an island in the Missouri River, near Chamberlain, in the Territory of Dakota, and now a part of the Sioux Reservation, is hereby donated to the said city of Chamberlain: *Provided further*, That said city of Chamberlain shall formally accept the same within one year from the passage of this act, upon the express condition that the same shall be preserved and used for all time entire as a public park, and for no other purpose, to which all persons shall have free access; and said city shall have authority to adopt all proper rules and regulations for the improvement and care of said park; and upon the failure of any said con-

ditions the said island shall revert to the United States, to be disposed of by future legislation only. Farm Island, an island in the Missouri River near Pierre, in the Territory of Dakota, and now a part of the Sioux Reservation, is hereby donated to the said city of Pierre: *Provided further*, That said city of Pierre shall formally accept the same within one year from the passage of this act, upon the express condition that the same shall be preserved and used for all time entire as a public park, and for no other purpose, to which all persons shall have free access; and said city shall have authority to adopt all proper rules and regulations for the improvement and care of said park; and upon the failure of any of said conditions the said island shall revert to the United States, to be disposed of by future legislation only. Niobrara Island, an island in the Niobrara River, near Niobrara, and now a part of the Sioux Reservation, is hereby donated to the said city of Niobrara: *Provided further*, That the said city of Niobrara, shall formally accept the same within one year from the passage of this act, upon the express condition that the same shall be preserved and used for all time entire as a public park, and for no other purpose, to which all persons shall have free access; and said city shall have authority to adopt all proper rules and regulations for the improvement and care of said park; and upon failure of any of the said conditions the said island shall revert to the United States, to be disposed of by future legislation only; *And provided further*, That if any full or mixed blood Indian of the Sioux Nation shall have located upon Farm Island, American Island, or Niobrara Island before the date of the passage of this act, it shall be the duty of the Secretary of the Interior, within three months from the time this act shall have taken effect, to cause all improvements made by any such Indian so located upon either of said islands, and all damage that may accrue to him by a removal therefrom, to be appraised, and upon the payment of the sum so determined, within six months after notice thereof by the city to which the island is herein donated to such Indian, said Indian shall be required to remove from said island, and shall be entitled to select instead of such location his allotment according to the provisions of this act upon any of the reservations herein established, or upon any land opened to settlement by this act not already located upon.

SECTION 22. That all money accruing from the disposal of lands in conformity with this act shall be paid into the Treasury of the United States and be applied solely as follows: First, to the reimbursement of the United States for all

necessary actual expenditures contemplated and provided for under the provisions of this act, and the creation of the permanent fund hereinbefore provided; and after such reimbursement to the increase of said permanent fund for the purposes hereinbefore provided.

SECTION 23. That all persons who, between the twenty-seventh day of February, eighteen hundred and eighty-five, and the seventeenth day of April, eighteen hundred and eighty-five, in good faith, entered upon or made settlements with intent to enter the same under the homestead or pre-emption laws of the United States upon any part of the Great Sioux Reservation lying east of the Missouri River, and known as the Crow Creek and Winnebago Reservation, which, by the President's proclamation of date February twenty-seventh, eighteen hundred and eighty-five, was declared to be open to settlement, and not included in the new reservation established by section six of this act, and who, being otherwise legally entitled to make such entries, located or attempted to locate thereon homestead, pre-emption, or town site claims, by actual settlement and improvement of any portion of such lands, shall, for a period of ninety days after the proclamation of the President required to be made by this act, have a right to re-enter upon said claims and procure title thereto under the homestead or pre-emption laws of the United States, and complete the same as required therein, and their said claims shall, for such time, have a preference over later entries; and when they shall have in other respects shown themselves entitled and shall have complied with the law regulating such entries, and, as to homesteads, with the special provisions of this act, they shall be entitled to have said lands, and patents therefor shall be issued as in like cases: *Provided*, That pre-emption claimants shall reside on their lands the same length of time before procuring title as homestead claimants under this act. The price to be paid for town-site entries shall be such as is required by law in other cases, and shall be paid into the general fund provided for by this act.

SECTION 24. That sections sixteen and thirty-six of each township of the lands open to settlement under the provisions of this act, whether surveyed or unsurveyed, are hereby reserved for the use and benefit of the public schools, as provided by the act organizing the Territory of Dakota; and whether surveyed or unsurveyed said sections shall not be subject to claim, settlement, or entry under the provision of this act or any of the land laws of the United States: *Provided, however*, That the United States shall pay to said

Indians, out of any moneys in the Treasury not otherwise appropriated, the sum of one dollar and twenty-five cents per acre for all lands reserved under the provisions of this section.

SECTION 25. That there is hereby appropriated the sum of one hundred thousand dollars, out of money in the Treasury not otherwise appropriated, or so much thereof as may be necessary, to be applied and used toward surveying the lands herein described as being opened for settlement, said sum to be immediately available; which sum shall not be deducted from the proceeds of lands disposed of under this act.

SECTION 26. That all expenses for the surveying, platting, and disposal of the lands opened to settlement under this act shall be borne by the United States, and not deducted from the proceeds of said lands.

SECTION 27. That the sum of twenty-eight thousand two hundred dollars, or so much thereof as may be necessary, be, and hereby is, appropriated out of any money in the Treasury not otherwise appropriated, to enable the Secretary of the Interior to pay to such individual Indians of the Red Cloud and Red Leaf bands of Sioux as he shall ascertain to have been deprived by the authority of the United States of ponies in the year eighteen hundred and seventy-six, at the rate of forty dollars for each pony; and he is hereby authorized to employ such agent or agents as he may deem necessary in ascertaining such facts as will enable him to carry out this provision, and to pay them therefor such sums as shall be deemed by him fair and just compensation: *Provided*, That the sum paid to each individual Indian under this provision shall be taken and accepted by such Indian in full compensation for all loss sustained by such Indian in consequence of the taking from him of ponies as aforesaid: *And provided further*, That if any Indian entitled to such compensation shall have deceased, the sum to which such Indian would be entitled shall be paid to his heirs-at-law, according to the laws of the Territory of Dakota.

SECTION 28. That this act shall take effect, only, upon the acceptance thereof and consent thereto by the different bands of the Sioux Nation of Indians, in manner and form prescribed by the twelfth article of the treaty between the United States and said Sioux Indians concluded April twenty-ninth, eighteen hundred and sixty-eight, which said acceptance and consent, shall be made known by proclamation by the President of the United States, upon satisfactory proof presented to him, that the same has been obtained in the manner and

form required, by said twelfth article of said treaty; which proof shall be presented to him within one year from the passage of this act; and upon failure of such proof and proclamation this act becomes no effect and null and void.

SECTION 29. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of twenty-five thousand dollars, or so much thereof as may be necessary which sum shall be expended, under the direction of the Secretary of the Interior, for procuring assent of the Sioux Indians to this act provided in section twenty-seven.

SECTION 30. That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved, March 2, 1889.

Waldron v. United States
143 Fed. Repts. 413 (1905)

Some years after the Great Sioux Agreement in 1889 a case was brought in federal court attempting to define exactly what rights were given under that agreement. While the agreement had been passed as a statute by the United States Congress and the days of the treaty-making powers with all Indian tribes had long since vanished, the court came up with a remarkable conclusion—[illegible] of March 3, 1889 was in fact a TREATY.

This obscure case may someday reach out of the past to haunt the United States. For if statutes can be interpreted at will by the United States as treaties may not the Indians also do the same? If so would it not appear that, as in any treaty-making situation, the tribes have the right to reject the overtures of the United States? Would it not also follow that regardless of the intention of the United States Congress in passing statutes none can be effective with respect to Indian tribes unless they are consented to by Indian tribes since they are in the nature of a treaty and not a statute?

What then about the myriads of laws passed since 1871? Are they valid when passed without the consent of the tribe? Is not a law passed which has the nature of a treaty a violation of the tribe's constitutional rights? What now, *Lone Wolf v. Hitchcock?*

Through commissioners appointed by the United States the provisions of the act of March 2, 1889, were accepted by the Sioux Nations of Indians and the President of the United States by proclamation fixed February 10, 1890 as the date on which said act should take effect. From the decisions of the General Land Office it appears that the right of complainant to have the land allotted to her was denied solely for the reason that complainant was not an Indian, within the meaning of that term as used in section 13 of the act of Congress of March 2, 1889. As the court finds in this case that complainant is an Indian, within the meaning of said act, it is proper that the law affecting this question be referred to in connection with the facts in the case. In the first place, it is necessary to keep in mind that the act of Congress of March 2, 1889, does not stand, for the purposes of construction and interpretation, as ordinary laws of Congress, so far as the Indians are concerned, for while it appears in form as an independent legislative act of the government, it was and is a treaty or contract made by the United States and the Sioux Nation of Indians. The act was to have no force or effect unless the provisions thereof were accepted by the Sioux Nations of Indians in the manner provided by Article 12 of the treaty of 1868.

The Indians were an ignorant and uncivilized race. They knew little or nothing of the terms of the law which they were to accept except what they were told by the commissioners who negotiated its acceptance. A man who can read cannot be heard to say that he understood a contract to mean something different than its terms imply; but a man who cannot read, and signs a contract on the faith of what the other party to the contract tells him, stands in a very different position. The commissioners of the United States stated to the Indians before obtaining their signatures that the law included mixed-bloods as well as full-bloods. It must be presumed that Congress knew when the law was submitted for acceptance that there were numerous mixed-bloods living upon the reservation about to be divided and drawing rations

at the different agencies, and it cannot be presumed that these mixed-bloods were intended to be deprived of their rights to tribal property by a law that, without their signature, would not have become effective for any purpose. These observations are made for the purpose of showing that the law must be looked at as a contract and construed with reference to the understanding the Indians had of the law at the time they accepted its provisions. Mixed-bloods were accepted as going to make up the number of Indians necessary to accept the law . . .

When this very case was before the Secretary of the Interior the advice of the then Attorney General of the United States, Mr. Olney, was asked as to the status of complainant as an Indian. Under date of February 9, 1894, in a letter addressed to the Secretary of the Interior, Mr. Olney used the following language:

> It will be noticed that the act under consideration was dependent for its validity upon the consent of the Indians. In other words, it was substantially a treaty with the Sioux Nation; acts of this form having taken the place of the ancient Indian treaty since the latter was prohibited by the act of Congress in 1871. By the agreement confirmed in this act the Sioux Nation gave up a large amount of territory, and the rights conferred on the nation or on individuals were in consideration thereof.

The Indian Reorganization Act (Wheeler-Howard Act) 48 Stat. 984 (1934)

One of the most progressive eras in Indian history was the New Deal of Franklin D. Roosevelt. Under his Commissioner of Indian Affairs, John Collier (an anthropologist incidentally), recognition of the basic strength of the tribal structure was made official government policy. Early in the Roosevelt years the Congress passed the Wheeler-Howard Act allowing the tribes self-government for the first time since they had settled on the reservations.

Because this act is the foundation for the modern tribal

U.S. Citizenship: The American Policy to Extinguish the Principle of Lakota Political Consent

Author(s): Edward C. Valandra

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U.S. Citizenship: The American Policy to Extinguish the Principle of Lakota Political Consent

by Edward C. Valandra

Introduction: Lakota Political Consent

In the formative years of the Lakota-American relationship, it was the expected norm of the Lakota that the United States must secure their consent prior to any U.S. policy decision which would effect the Lakota. Thus the formative years of Lakota-American interactions are replete with examples of treaties and agreements which recognized this norm of obtaining Lakota political consent.

However, in the contemporary Lakota-American relationship, the historically established norm of Lakota consent is no longer a viable part of this relationship. U.S. policy decisions, which impact Lakota society, are unilaterally implemented without Lakota consent. For example, Lakota males who are eighteen must register for the U.S. military draft as a condition to receiving federal aid for education.

If applying the norm of the formative years today, the United States would have to secure the consent of the Lakota that, registering for the draft is a condition that Lakota males must meet in order to receive federal aid for their education.

The use of this example is important because the Lakota and the United States have already agreed on the question of federal aid for education with respect to the Lakota people. Specific provisions in a previous agreement have already committed the United States to financing the education of the Lakota people. The United States, as a condition for a peace settlement with the Lakota, agreed to the Lakota demand that the United States would provide educational facilities, personnel, and scholarships for Lakota education.[1] Thus, the draft registration represents an additional condition to what the Lakota had initially agreed.

The question of why Lakota consent is missing in the contemporary Lakota-American relationship is the subject of this paper. For the Lakota, political consent is an important principle in their exercise of self-determination, especially when U.S. policy decisions such as the draft registration condition for federal aid discards Lakota consent. Hence, my thesis is that the Federal policy of granting U.S. citizenship to Lakota people is, in effect, a policy to extinguish the principle of Lakota political consent by "politically incorporating" the Lakota into the body politic of the United States.

One of the objectives of this thesis is to disclose how the political incorporation of the Lakota people into the American political system is inconsistent with the political realities of the world today. Thus this paper will discuss three topics, the history of political incorporation through U.S. citizenship, U.S. citizenship and its application to extinguish Lakota political consent, and Lakota political coexistence in the United States.

The Process of Political Incorporation from 1868 to 1924

The historical process of the political incorporation of the Lakota people into the U.S. body politic has its origins in a bilateral agreement commonly referred to as the Fort Laramie Treaty of 1868. This document was the culminating event which ended fifteen years of military hostilities between the Lakota and the United States. The first article prefaces the nature of this agreement, "...all war between the parties shall forever

cease." In suing for peace, the United States acknowledged that there shall be a political relationship which shall govern the interactions between the Lakota people and the people of the United States. The premise of this political relationship between the two peoples was that Lakota consent would necessarily be required to amend or affect any of the provisions of the bilateral agreement or any U.S. action which would affect the Lakota.

In the Ft. Laramie Treaty of 1868, Article Six provided a process by which a Lakota individual could acquire U.S. citizenship. Under this provision, the acquisition of U.S. citizenship was tied to having an allotment of land. Briefly, if a Lakota individual wanted an allotment of land, said allotment had to be within the exterior boundaries of the Lakota nation. Once an allotment was selected, a certificate was issued containing a description of the land and the name of the person to whom the allotment belongs; after said certificate was endorsed, it was recorded in a book entitled "Sioux Land-Book," and upon the issuing of a patent for the allotment a Lakota automatically became a U.S. citizen. This provision of article six was voluntary. That is, it required that a Lakota individual would, at the very least, consent to invoking this provision in the first place.

Because the allotments were to be within the exterior boundaries of the Lakota nation, and the fact the Lakota asserted its geo-political sovereignty over any person residing within its territory, it was apparent that U.S. citizenship would not alter any fundamental change for a Lakota individual other than the fact that he or she would have dual citizenship.

The next agreement between the Lakota and the United States that had some bearing on the U.S. citizenship question was the Great Sioux Agreement Act of 1889. With the exception of one important provision, the Great Sioux Agreement incorporated various sections of the General Allotment Act of 1887 verbatim.

Section Nine of the Great Sioux Agreement Act proved to be the discriminating provision because the General Allotment Act of 1887, as a matter of federal policy, mandated that allotments be issued to indigenous people whether they requested them or not. U.S. citizenship was part and parcel of the allotment process, and the mandating of allotments forced U.S. citizenship upon those indigenous people who were subjected to the application of the General Allotment Act. However, Section Nine of the Great Sioux Agreement Act included language stating that allotments, and hence U.S. citizenship, were not compulsory without the consent of the majority of the adult Lakota.

There were two other acts by the U.S. legislature regarding U.S. citizenship that had general applicability to Lakota people. One U.S. law, which was enacted in 1888, extended U.S. citizenship, to Lakota women by virtue of their marriage to a white American male. The other U.S. law, enacted in 1919, concerned Lakota men (and women) who served in a U.S. military establishment during WWI and who had been honorably discharged. These veterans would be granted U.S. citizenship if they formally requested it. These two U.S. laws marked an anomaly because U.S. citizenship was usually predicated upon a Lakota having an allotment of land first and then U.S. citizenship second.

During the first twenty-five years of the twentieth century, the United States began the forced political incorporation of the Lakota people, first through its general allotment policy and then with the enactment of a 1924 statute.

In the late 1890s, the United States took the initiative and began the process of allotting Lakota homelands to the Lakota without any regard to the two previous documents--the 1868 and 1889 agreements -- which required Lakota consent prior to any allotment of Lakota homelands. Generally, under the allotment law of 1887, the United States would issue a (trust) patent to the holder of an allotment and said holder would automatically have his or her U.S. citizenship.

However, in 1906, the U.S. legislature amended its allotment law in two ways.[2] The first amendment was that U.S. citizenship would be granted after the trust patent expired, which was a standard twenty-five period. Prior to this amendment U.S. citizenship was granted at the initial issuing of the trust patent. The second amendment was that the Secretary of the Interior, at his discretion, could terminate the status of a trust patent at any point and issue a fee patent to a holder of an allotment. In effect, then, this would constitute a grant of U.S. citizenship for indigenous people.

Eleven years after the 1906 amendments to the general allotment law of 1887, the United States initiated a policy which resulted in the issuing of fee patents to most Lakota people. The issuing of fee patents was based upon a blood quantum. That is, fee patents would be issued to all Lakota who were "less than one-half Indian blood." This policy decision was within the purview of the Secretary of the Interior's discretion, but it was a policy that unilaterally forced U.S. citizenship upon those Lakota people who were subjected to this

forced fee patent policy.

Roughly seven years after the forced fee patent policy, the U.S. legislature enacted the Indian Citizenship Act of 1924 which read, in part, "Non-U.S. citizen Indians are declared to be citizens of the United States." This U.S. law was all encompassing and thus completed the political incorporation of the Lakota people into the body politic of the United States.

Hence, within a span of sixty years the process of political incorporation of the Lakota people was completed. From this point forward, the American political system would engage in a political policy to distort and erode at least one fundamental reality of the Lakota-American relationship--the principle of Lakota political consent.

U.S. Citizenship: Political Participation to Extinguish Lakota Political Consent

During the seventy years after the Indian Citizenship Act, the American political system has been engaged in an overall policy in which the principle of Lakota consent is in a political equilibrium. As it is today, the tension within this political equilibrium is to shift toward the extinguishment of Lakota consent.

Why the American policy is shifting toward the extinguishment of Lakota consent can be found in a policy which originated in 1950s. Today the basic ideology underlying the policies of the American political system can summarized in House Concurrent Resolution 108 (1953):

> it is the policy...to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States.

In the 1950s this policy became known as the Termination policy, and one of the major sponsors was Senator Watkins of Utah. The Senator wrote an article concerning what the fundamental concept of the Termination policy was to entail for the Lakota people. Within the Senator's article were five statements which are excerpted below:

> he or she can stand with us in the enjoyment and responsibilities of our national citizenship
>
> would possess all the attributes of complete citizenship a fellow American
>
> we...should grant them all the rights and prerogatives pertaining to American citizenship
>
> the realization of their national citizenship with other Americans.

The analysis of these five excerpts and HCR 108 meant that the Lakota would have the same relationship to the United States as other non-Lakota U.S. citizens. Thus, the outcome of the Termination policy discarded the principle of Lakota consent to that of politically participating in the American political system. This shift to participating within the American body politic undermined the historical and political relationship of the Lakota people enjoyed with the United States.

For the Lakota, one of the first experiences with the transition from political consent to political participation was with the U.S. law, P.L. 280. P.L. 280 was to be a direct transfer of political sovereignty from the United States to its political subdivisions (i.e., states) even though indigenous peoples, including the Lakota, petitioned against its enactment. The main reason the Lakota petitioned against its enactment was because there was no provision for indigenous peoples' consent to such a transfer of authority. However, the position of the United States was expressed in a letter concerning the matter of indigenous consent:

> Now let me say a few words about the principle of Indian "consent"... [W]e must start, I believe, with the fact... that Indians are citizens and now have the privilege of the ballot in 48 states. This means that they are represented in Congress just as other citizens are and that they have the same rights... of petitioning the Congress and stating their views before Congressional committees considering legislation. What you are proposing--and let us be quite clear about this--is that, over and above these normal rights of citizenship, the Indians should also have a special veto power over legislation which might affect them. No other element in our population...now has such a power and ever has had in the history of our country. In short, it seems to me that the principle of Indian "consent"... has most serious Constitutional implications. With full respect for the rights an needs of the Indian people, I believe it would be extremely dangerous to pick out any segment of the population and arm its members with authority to frustrate the will of Congress which the whole people has elected. (Douglas McKay, Secretary of the Interior, November 3, 1955)

The HCR 108, the excerpts from Senator Watkin's article, and the Secretary of the Interior's letter all point out that political incorporation of the Lakota would have an extinguishing effect on the principle of Lakota political consent today.

One other U.S. law, the "Indian Civil Rights Act" (P.L. 90-284), passed in 1968, was "to ensure that the American Indian is afforded the broad Constitutional rights secured to other Americans." Briefly, P.L. 90-284 imposed a statutory--not constitutional--bill of rights upon the Lakota peoples' governments. Although having U.S. citizenship, the Lakota were already subject to the constitutional provisions under state and federal sovereignty, but not under Lakota sovereignty.

The Lakota, along with other indigenous peoples, petitioned against its application to their respective governments. The U.S. law contained many acculturation features as well as infringing into the internal political affairs of the Lakota. More importantly, much like the P.L. 280, Lakota political participation in the American political system did little to prevent P.L. 90-284 from being passed.

These two U.S. laws, P.L. 280 and 90-284, are only two of many samples which show how the Lakota, as U.S. citizens, fare as participants in the political affairs of the United States. Since Lakota political consent has been either disregarded or discarded, the American political system is literally unlimited in what it can, and has, forced upon the Lakota people.

Although the U.S. legislature is furthering the policy to extinguish the principle of Lakota political consent, the U.S. judiciary has, in all probability, done as much or more political damage to this principle than its sister branch, the U.S. legislature. The primarily reason for this political damage is that most issues before the U.S. judiciary often involve indigenous self-determination cases which have general applicability to all indigenous peoples. For example, the U.S. Supreme Court can hold, as it did in 1978, that a particular indigenous government had no criminal jurisdiction over non-indigenous people who are physically within their territory.

The impact of this Supreme Court also stripped the Lakota of any criminal jurisdiction over non-Lakota people who are physically within the exterior boundaries of Lakota homelands. After approximately thirteen years after this ruling, there continues to be no attempt within the American political system to address how this ruling requires the political consent issue of the Lakota. Part of the justification of this ruling is based upon the political incorporation of indigenous people as the court stated:[3]

> Indian reservations "are a part of the territory of the United States. [I]ndian tribes hold and occupy [the reservations] with the assent of the United States, and under their authority." [Upon] *incorporation* into the territory of the United States, the Indian tribes and the exercise of separate power is constrained so as not to conflict with the interests of this overriding sovereignty (emphasis added).

This statement by the U.S. judicial system reveals that incorporation is enough to extinguish political consent of the Lakota people if the exercise of that consent is in conflict with the overriding interest of the U.S. political system. A following case study will illustrate how the American political system interprets political incorporation of the Lakota and Lakota political consent as being in conflict with the overriding interest of the United States.

In the early 1970s, the administrative component of the American political system engaged in a dialogue with indigenous peoples who presented, to the United States, twenty points on the state of indigenous affairs within the United States. The twenty points were chosen because they do serve to explain how the American political system justifies it policy or policies toward Lakota people.

Of all twenty points, seven of the points involve the re-establishment of Lakota political consent through a treaty relationship with the United States. Only the first point is analyzed because it best represents the argument of my thesis.

The first of the twenty points stated that a provision of the 1871 Indian Appropriation Act should be repealed because said provision within the 1871 act terminated the exercise of negotiating political documents (i.e., treaties) between the Lakota and the United States. By repealing the provision, the first point was calling for the restoration of the constitutional treaty-making authority of the United States with respect to the Lakota-American relationship.

Excerpts taken from the book *Behind the Trail of Broken Treaties* exposes the full intent of U.S. policy on the issue of Lakota consent. The excerpt below is the United States' response to the first point.

> Over one hundred years ago the Congress decided that it was no longer appropriate for the United States to make treaties with Indian tribes. By 1924, all Indians were citizens of the United States

and of the states in which they resided. The citizenship relationship with one's government and the treaty relationship are mutually exclusive; a government makes treaties with foreign nations, not with its own citizens.

The following comments are Vine Deloria Jr.'s reply to the United States. Note how Mr. Deloria's reply gets to the basis of the American policy to extinguish Lakota consent.

> The treaty points were most strenuously rejected by members of the administration task force on the vague grounds that the Indian Citizenship Act of 1924 had precluded the United States from dealing with Indian tribes by treaty because the individual members thereof happened to be United States citizens.
>
> This response generally characterizes the approach of the administration and seems to mean that the subject has been rejected without much consideration of the value of the proposal for contemporary times and in the context of the world situation today.

Thus the re-establishment of the treaty making process with the Lakota is paramount to having Lakota political consent restored as well.

Lakota Political Co-existence

Almost thirty years prior to Vine Deloria's commentary on the U.S. response against point one of the twenty points, global movements for self-determination were emerging after the second world war. This movement was primarily led by the people of the "third world" who successfully challenged European colonialism within their homelands. Although initially the self-determination movement was in terms of decolonialization, now the concept of self-determination has evolved into an international principle, if not a right, which now applies to peoples who have been "politically incorporated" into an external political system without their consent.

Self-determination, at its most fundamental level, is also about peoplehood. The international community, in the era of self-determination, has articulated some basic criteria regarding what constitutes a people. In 1951, for instance, the International Commission of Jurist outlined what it considered to be such criteria:

> A people having a common history, racial or ethic ties, cultural or linguistic ties, religious or ideological ties, common territory or geographical area, common economic base, and sufficient number of people.

Almost twenty years after the International Commission of Jurist criteria, the International Court of Justice, in 1970, stated similar criteria:

> A group of persons living in a given country or locality having a race, religion, language, and traditions of their own and united by the identity...of race, religion, and tradition in sentiment of solidarity, with a view of preserving their traditions, maintaining their form of worship, insuring the instruction of upbringing of their children in accordance with the spirit and tradition of their faith and rendering mutual assistance to each other.

Of course, incorporation into the body politic of an external political system is often at the expense of those characteristics which define the fundamental nature of peoplehood. The common fate of peoples who have been subject to involuntary incorporation is their assimilation or acculturation into the social, religious, economic, and political norms of the external political system.

The concept of peoplehood and the principle that self-determination embraces a peoples' right to "freely determine their political status and freely pursue their economic, social, and cultural development" exposes U.S. indigenous policy as inconsistent, if not hostile, to the principle of Lakota political consent,[4] especially when U.S. policy decisions adversely effect the Lakota people socially, economically, and politically. And because of U.S. political hostility toward the Lakota, there are numerous laws, court decisions, and executive decrees emanating from the American political system which all have a least common denominator: to extinguish Lakota political consent by terminating the Lakota peoples' sense of being a "distinct society." And one method, as the thesis of this paper argues, has been to grant U.S. citizenship to the Lakota people.

Today, nearly two decades after the twenty points were first articulated, global trends are demonstrating that the American policy to extinguish Lakota political consent is truly "inconsistent within the context of the

self-determination movements of today" (Deloria, 1974, xii). The Solidarity movement of the Polish people, the fall of the Berlin Wall, and the independence of Lithuania, Estonia, and Latvia are examples of peoples who were politically incorporated or annexed into an external political system without their consent. It is the political incorporation into an external political system that the Lakota people share with these people.

As the Lakota people continue to assert the principle of political consent in the contemporary Lakota-American relationship, the self-determination movement of the Lakota people is challenging the American policy of extinguishing political consent. The issue of political consent is being framed as a political incorporation problem for the Lakota people. In a recent editorial, "Should U.S. Citizenship be a Question Raised?" (*Sicangu Sun Times*, March 19, 1992, p. 6), the point of the editorial focused on Lakota sovereignty and how U.S. citizenship of Lakota people, especially the leadership, has distorted the one fundamental nature of Lakota political consent--peoplehood. The editorial put the question in the following manner:

> The root of the problem lies in what we think of ourselves as being--citizens of a sovereign tribal nation or citizens of the United States? Can we be both? Is that working and can it work? Or should we become one or the other?

The whole process of politically incorporating the Lakota into the American political system, the global events which have transpired before, and since, the twenty points were articulated twenty years ago, and the development of Lakota self-determination within the context of the pre-1900 Lakota-American relationship is raising the point of Lakota political co-existence within the United States today.

The basis for Lakota political co-existence is already established by an historical Lakota-American relationship. The American people and the Lakota people entered into a political relation with each another, and this political relationship was expressed and defined in bilateral agreements that required the mutual consent of both peoples.

However, the incorporation of the Lakota people into the American body politic has been eroding the principle of Lakota political consent to its current state of affairs today: it has no meaningful application. Unilateral U.S. political action is now the norm, and this norm adversely affects the political integrity, economic security, and the health and welfare of the Lakota people.

The global self-determination trends are recognizing that the right of political consent must be taken into account by the world community, including the United States. The International Treaty Council, a non-governmental organization of the United Nations, submitted a document to the United Nations Working Group on Indigenous Populations (7129183). Part Five on jurisdiction, which upholds the essence of Lakota political consent, states in part:

> No state shall assert or claim to exercise any right of jurisdiction over any indigenous nation or people or the territory of such indigenous population *unless pursuant to a valid treaty or other agreement freely made* with the lawful representatives of the indigenous nation or people concerned (emphasis added).

However for treaties or agreements to be freely made by the Lakota people--referring to the editorial in the *Sicangu Sun Times*--it asks its Lakota readership a pertinent question which would be a first step to Lakota political consent as well as political co-existence:

> If you were given a choice of whether to be a tribal citizen or a U.S. citizen, which would you choose and why?

It is a question the Lakota should have been asked over seventy years ago by the United States.

Notes

1 See Fort Laramie Treaty of 1868.

2 The Burke Act of 1906.

3 **Oliphant v. Suquamish Indian Tribe** 1978. 435 U.S. 191.

4 International Covenant On Economic, Social, and Cultural Rights: Part I, Article 1. General Assembly Resolution 2200 (XXI) of 16 December 1966.

Edward Valandra, Sicunya Lakota, is pursuing a master's degree in public policy at the University of Colorado, Boulder. He served one term on the governing body of the Rosebud Sioux tribe and taught part-time at Oglala Lakota (Kyle) and Sinte Gleska universities. This paper was prepared for the Conference on Western Social Science at Denver, April 1992.

Policing Nations:

Settler Colonialism, Police, and State Violence

CHAPTER 13

BUFFALO GENOCIDE IN NINETEENTH-CENTURY NORTH AMERICA

"Kill, Skin, and Sell"

Tasha Hubbard

> *The Buffalo are very numerous on the ne side the Red Deers river & near . . . the ground is entirely covered by them & appears quite black. I never saw such amazing numbers together before. I am sure there was some millions in sight as no ground could be seen for them in that complete semicircle & extending at least 10 miles.*
>
> —Peter Fidler (1792), quoted in Brink, *Imagining Head-Smashed-In*

Peter Fidler and other eighteenth- and early nineteenth-century Euro-Western observers could not help but be overwhelmed by the numbers of buffalo on the Great Plains. Scholars debate the exact number of buffalo that ranged from what is now central Saskatchewan and Alberta down to Mexico, but a generally accepted number falls between 30 and 60 million. Their sheer numbers made them a keystone species, influencing almost every other living being that inhabited the Plains, humans included. Winona Laduke (1999: 143) explains their impact in the following way: "Buffalo determine landscape. By their sheer numbers, weight, and behavior, they cultivated the prairie, which is the single largest ecosystem in North America."

When Euro-Westerners began to eye the Great Plains as part of the imperialist project, they identified two major obstacles to claiming the land: Indigenous peoples and the buffalo. Through philosophers and thinkers of the day the foundation was laid for colonial genocide, couched in the language of progress. Charles Lyell, one of Darwin's mentors, said the following in *Principles of Geology*: "We human beings . . . have no reason to feel guilty

because our progress exterminates animals and plants. In our defense, we can state that when we conquer the earth and defend our occupations by force, we are only doing what all species in nature do" (quoted in Lindqvist 1992: 117). By positioning extermination of entire species as a "natural" process, Lyell and his followers were able to mitigate their guilt. After all, why say one does not have to feel guilty, unless one is guilty?

Following Lyell, Herbert Spencer, in his 1850 treatise, *Social Statistics*, says that imperialism is "the great scheme of perfect happiness" and the Indigenous peoples were obstacles to achieving said happiness. Thus "be he human or be he brute—the hindrance must be got rid of" (quoted in Lindqvist 1992: 8). Spencer is equating Indigenous peoples with animals in an attempt to relegate them to the status of "savage" in the colonial mind, thereby absolving the perpetrators of the colonial project. For Spencer, "savagery itself was often, by definition, a sufficient explanation for the extinction of some, if not all, savage races" (Brantlinger 2003: 18). The explanation is easily transformed into justification of action toward that end.

In the language of imperialism, Indigenous peoples and buffalo became conflated, both categorized as brutes that needed to be erased. Colonel Nelson A. Miles wrote the following of the buffalo slaughter: "This might seem like cruelty and wasteful extravagance but the buffalo, like the Indian, stood in the way of civilization and in the path of progress" (quoted in Smits 1994: 333). Savagery, represented by the Indian and the buffalo, must give way to civilization, represented by the Euro-Western man and his agrarian ideal. Daniel Heath Justice (2010: 66) posits that erasure "provides the philosophical and legal justification for land and resource theft, cultural and spiritual appropriation, subversion of social and political sovereignty, degradation, dehumanization, abuse, misrecognition, and slaughter." A few of the authors in this collection have outlined the physical genocide of Indigenous peoples in the Americas, but it is the specific act of slaughter that I grapple with in this chapter. I wish to make the argument that the slaughter of the buffalo constitutes an act of genocide.

Obviously the loss of the buffalo was catastrophic for Plains Indigenous peoples and, alongside actual massacres of Indigenous peoples, is often characterized as part of the colonial genocide of Indigenous people: "Starvation tactics, the destruction of homes and shelters during the freezing winter, and the killing of horses and buffalo herds ensured the submission or deportation of the survivors of the various tribes" (Travis 2010: 129). By removing the means of survival, the perpetrators of genocide succeed in removing Indigenous peoples. Raphael Lemkin agreed, including Indigenous experience in the Americas as part of his writings on genocide, arguing, "Colonial

genocide involved the destruction of the foundations of the collective life of hunter-gatherers and their subsequent extermination" (quoted in Breen 2011: 73). In other words, destroy the buffalo, and one destroys the foundation of Plains Indigenous collectivity and their very lives.

I do not disagree with this idea. My traditional teachers describe the loss of the buffalo as the second major wave of trauma for Plains Indigenous peoples (epidemic disease is the first). Many people starved to death after the herds were extinguished. However, I endeavor to apply the concept of genocide to the buffalo slaughter of the late nineteenth century within an Indigenous epistemological framework, while not excluding the impact of the near-extinction of the buffalo on the Indigenous peoples and the land itself.

Solidifying a definition of genocide is the subject of numerous scholarly and ideological positions. Christopher Powell (2007: 530) reminds us of the following: "Different definitions of 'genocide,' different conceptions of what 'genos' could refer to, presume different theories about the nature of social life." An Indigenous paradigm expands the conception of *people* to include other-than-human animals. George Tinker (1996: 165), an Osage theologian, explains this: "In one of the polyvalent layers of meaning, those four directions hold together in the same egalitarian balance the four nations of two-leggeds, four-leggeds, wingeds, and living-moving things. In this rendition human beings lose their status of 'primacy' and 'dominion.' Implicitly and explicitly American Indians are driven by their culture and spirituality to recognize the personhood of all 'things' in creation." In other words, being "a people" is not a domain exclusive to humans. Animals-as-people is found throughout Indigenous epistemologies. Linda Hogan (1998: 12), in her essay "First People," echoes Tinker's statement: "For us, the animals are understood to be our equals. They are still our teachers. They are our helpers and healers. They have been our guardians and we have been theirs."

For some Plains Indigenous peoples, buffalo are known as the first people. Arvol Looking Horse, keeper of the Sacred White Buffalo Calf pipe, explains this to Laduke (1999: 162): "With the teaching of our way of life from the time of being, the First People were the Buffalo people, our ancestors which came from the sacred Black Hills, the heart of everything that is." My own teachings tell me that the buffalo people take care of us and teach us how to live, much like a benevolent grandparent.

Many Euro-Western viewpoints disregard this knowledge or relegate it to the category of folk tales. However, Griffan Huggan and Helen Tiffin (2010: 11), in their *Postcolonial Ecocriticism: Literature, Animals, Environment*, remind us that colonial domination over Indigenous peoples "was effected over the ensuing centuries through environmental—and hence

cultural—derangement on a vast scale, such destructive changes were premised on *ontological* and *epistemological* differences between European and Indian ideas of human and animal being-in-the-world." According to Indigenous ways of knowing, humans do not hold exclusive title to personhood, and therefore neither to genocide.[1]

Specific genocidal practices and their theoretical underpinnings can be applied to the buffalo slaughter. As Andrew Woolford reminds us in this volume, "Study of colonial genocide should help decolonize genocide studies by challenging Eurocentric biases within the field." I maintain that this entails, among other things, challenging human-centric and territorially shallow conceptualizations of group life. It is specifically the "human-centric" bias that I wish to dispute by arguing that Euro-Western governments and their representatives undertook buffalo genocide in order to consolidate political power in the Great Plains.

Recent research on the late nineteenth-century western United States draws a firmer line between the army and the slaughter of the buffalo. Sarah Carter (1999: 96) explains this recent development in scholarship, which suggests that the army's involvement in the buffalo extermination was part "of a well-calculated policy to subdue Native Americans and drive them onto reserves . . . by employing and providing assistance to non-Aboriginal buffalo hunters, by routinely sponsoring and outfitting civilian hunting expeditions that slaughtered on a massive scale, and by encouraging troops to kill large numbers of buffalo using artillery and cannon." The army, representing the colonial U.S. interest in erasing buffalo in order to clear Indigenous peoples from the land, engaged in the genocidal process through policy and action, and at the same time "allowed," according to Israel Charny's (1994) definition, genocide to happen by encouraging civilian sport hunters and hide hunters to indiscriminately slaughter the buffalo.

David Smits (1994: 333), in his article "The Frontier Army and the Destruction of the Buffalo: 1865–1883," not only outlines the details of the slaughter but posits that the slaughter was unwritten official army policy, whereby "the decree had gone forth that they must both give way," referring to Indigenous peoples and the buffalo. This includes orders from General Phillip Sheridan, appointed in 1867 to lead the U.S. military during the Indian Wars, the campaign to pacify Indigenous Nations in the west. Because of Sheridan's past practice of issuing kill orders without written documentation, Smits says, "it is probable that Sheridan deliberately refused to issue the relevant written orders knowing that orally conveyed orders could be more easily concealed or more plausibly denied. . . . Why subject himself and the army to avoidable Indian enmity and humanitarian disapproval?" (333).

Sheridan can be understood as one of the engineers of buffalo genocide. His biographer refers to his "pragmatism and elastic ethics," which made him "the perfect frontier soldier" (Hutton 2009: 180). Thus, willing to undertake gruesome tasks in order to fulfill his frontier goals, "Sheridan authorized an conscious extermination of the remaining bison (and, where appropriate, horses too) to starve intractable tribes into submission" (Levene 2005: 96). Sheridan and other military leaders fostered an atmosphere in which killing buffalo was a patriotic practice. When one officer admitted that he had indiscriminately killed buffalo while out on a hunting party, his superior responded, "Kill every buffalo you can! Every buffalo dead is an Indian gone" (quoted in Smits 1994: 328). The infamous 7th Cavalry general George Armstrong Custer is known to have used buffalo as target practice for his new recruits.

Much has been written about the period in U.S. history known as the Indian Wars and its inclusion within the category of genocide. However, there were periods when the army was hampered in its efforts for various reasons. Smits (1994: 318) elaborates:

> Frustrated bluecoats, unable to deliver a punishing blow to the so-called "Hostiles," unless they were immobilized in their winter camps, could, however, strike at a more accessible target, namely, the buffalo. That tactic also made curious sense, for in soldiers' minds the buffalo and the Plains Indian were virtually inseparable. When Captain Robert G. Carter of the Fourth Cavalry referred to the "nomadic red Indian and his migratory companion, the bison," he linked the two together in a manner typical of military men. Soldiers who associated the buffalo with the Indian so inseparably could even occasionally pretend that slaughtering buffalo was actually killing Indians.

Again Custer provides the best example of this, as he is known to have described the tactics of a buffalo hunt in the same terms as a military action against Indigenous peoples.

There was also collusion between official U.S. government representatives and the army to decimate buffalo in order to decimate Indigenous peoples. In the Fort Laramie Treaty the "government agreed to abandon the Bozeman Trail and its guardian forts and to look upon the Powder River country as 'unceded Indian territory' in which the Sioux might continue to roam" (Utley and Washburn 2002: 233). However, wording was included in the treaty to ensure the right to this territory existed only "so long as the buffalo may range thereon in such numbers as to justify the chase" (Rinella 2008: 81). As soon as the treaty was concluded, the military looked the other way as the hide hunters went in and began slaughtering buffalo. With their food sources

depleted, the Lakota were forced to ask for provisions, suggesting the buffalo numbers no longer justified the chase. "That effectively undid the treaty and opened the door for more hide hunters to go down there with military protection and kill whatever buffalo were left" (81).

Collusion between the army and the government had a third party with which to enact buffalo genocide: hide hunters themselves. Records exist of a speech Sheridan delivered before the Texas legislature, which was contemplating a bill to protect the buffalo in 1875: "[The buffalo hunters] have done in the last two years and will do more in the next year to settle the vexed Indian question, than the entire regular army has done in the last thirty years. They are destroying the Indian's commissary, and it is a well-known fact that an army losing its base of supplies is placed at a great disadvantage. Send them powder and lead, if you will; for the sake of a lasting peace, let them kill, skin, and sell until the buffaloes are exterminated" (quoted in Dary 1989: 129). The words "kill, skin, and sell" are an appropriate mantra for the hide hunters, whose efforts had begun in earnest in 1871. According to William Hornaday (2002: 494), a former hunter turned conservationist, "The buffalo country fairly swarmed with hunters, each party putting forth its utmost efforts to destroy more buffaloes than its rivals." While buffalo had been hunted in significant numbers prior to 1871, what focused the efforts was the development of an industrial tanning process in that year. "Buffalo leather suddenly became part of the world economy, prized for machinery belts and army boots. The United States government realized it could subdue the Plains tribes by letting freelance hunters (many of whom were Civil War veterans) kill off their food supply" (Wright 2008: 164). Ironically the genocide of the buffalo and the subsequent use of their hides became fuel for the overall genocidal project of colonizing the entire western territory.

The numbers are stunning: "Colonel Dodge once counted one hundred and twelve carcasses of buffalo 'inside a semicircle of 200 yards radius, all of which were killed by the one man from the same spot, and in less than three-quarters of an hour'" (Hornaday 2002: 469–70). Dodge went on to describe the slaughter: "Where there were myriads of buffalo the year before, there were now myriads of carcasses. The air was foul with a sickening stench, and the vast plain, which only a short twelvemonth before teemed with animal life, was a dead, solitary, putrid desert" (quoted in Smits 1994: 327). By 1883 the buffalo were effectively removed from the Great Plains, relegated to remnant herds of orphan calves, a few animals in captivity, and a refugee herd in Yellowstone. Estimates put their numbers as low as a few hundred animals by 1889.

Patrick Wolfe's (2006: 387) discussion about the "logic of elimination"

and the ways "settler colonialism destroys to replace" is especially relevant for this period. The buffalo were now essentially destroyed, facilitated in part by their replacement with cattle: "Only the smaller northern herd [of buffalo] remained by 1879. Its destruction by 1883 resulted from a combination of hide-market (and 'sport') hunting, drought, and the arrival of nearly a half million head of cattle in Wyoming alone, whose appetite for grass and water competed with that of the diminishing bison" (Magoc 2006: 92). In fact, as Andrew Isenberg (2000: 130) observes, "the belief that domestic livestock were destined to replace the bison sustained the hide hunter's destructive harvest." Remove the existing species and replace it with one of European origins in order to solidify ownership of the land.

I should pause here to note that there is considerable dissent about the primary cause of the buffalo's near extinction. There are those, including Shepherd Krech (1999), Dan Flores (2001), and even Andrew Isenberg (2000), who posit that Indigenous peoples share equal (or more) responsibility for the destruction of the buffalo herds, thereby minimizing the actions of the government, the army, and hide hunters. The most commonly cited example is Indigenous overhunting by the use of buffalo pounds or Indigenous participation in the hide trade. There is some good Indigenous (and non-Indigenous) scholarship about the breakdown of the intricate relationship between the buffalo and Indigenous people due to colonization and some accounts of over-hunting as part of participation in the hide trade.[2] However, the evidence of Euro-Western culpability is overwhelming: "Still, even with some profligate hunting, estimates are that all Indian tribes on the Great Plains killed no more than half a million bison annually" (Magoc 2006: 90).

Furthermore Krech, Flores, and Isenberg rely on such evidence as comparing cattle's impact on the land in 1910 to buffalo's use of the land over millennium, manipulate numbers of the buffalo to minimize the destruction, and conflate European and Indigenous peoples' actions, such as in the following passage from Isenberg (2000: 197): "From the perspective of the bison, there were striking similarities between the nomads and the Euroamericans. Both were newcomers to the plains in the eighteenth century. Both employed new technologies and adopted new modes of production to hunt the bison. Both sacrificed bison to meet social demands of integration, prestige, or conquest. Both increasingly adapted to capitalism in the eighteenth and nineteenth centuries. In the end, that adaptation was fatal to millions of bison." This statement not only fails to take into account the oral history of Indigenous existence and interrelatedness with other inhabitants of the land over thousands of years but also completely disregards the uneven power dynamics

that were occurring during the time of the buffalo slaughter. Sebastian Braun (2007: 195) explains Isenberg's reasoning this way: "Following his own agenda . . . he in turn does not contextualize relations between Indians and Euro-Americans, which makes him ignore any notions of distribution of power, and ultimately any notion of cultural difference."

Genocide and denial of genocide work in conjunction, and the buffalo genocide is no exception. After all, "the battle is not only about history and the authenticity of the records of past events in our civilization, it is about the extent to which we today hold our governments responsible for their actions" (Charny 1994: 74). Isenberg and the others attempt to render the government, army, and hide hunters inculpable by reinforcing notions of Indigenous culpability in their own destruction.

Returning now to the Indigenous epistemology that applies "peoplehood" to the buffalo, the actions of the trinity of destruction (government, army, and hide hunters) can be viewed through the lens of genocide. For example, it has been established, in this volume and elsewhere, that colonial genocide includes the removal of children, which is destructive to the future of a people. "The sportsmen adventurer John Mortimer Murphy claimed to have seen a troop of cavalry lasso one hundred buffalo calves and bring them to a corral near the post barracks. Although the little ones had sufficient room to run about and an abundance of hay and grass, 'few of them lived more than a week'" (Smits 1994: 320). Other accounts abound of the removal of calves from the herds for both sport and curiosity. In exploring the parameters of the concept of genocide, Powell (2007: 538) writes, "Given that a genos is a network of practical social relationships, destruction of a genos means the forcible breaking down of those relationships." The army in effect broke down the family relationships of the buffalo by removing the calves, contributing to the genocidal project. The destruction of the buffalo's social relationships did not stop with the removal of calves from the herd. Even Isenberg (2000: 136) discusses the impact on the buffalo's ability to reproduce, which depended on the ability to gather together: "Reproductive success likely declined with group size in the 1870s, as unceasing predation (by hide hunters) prevented the congregation of the herds in the rutting season, upsetting the bison's patterns of migration and reproduction and thus inhibiting a recovery of the bison's population."

. . . the impact of the geno-

> When Charlie and Jimmie drove out the next morning to get the hides, there was a young calf standing by one of the carcasses, its mother being one of the victims of yesterday's work. It still had the reddish color that all buffalo calves have in their infancy, not obtaining their regular blackish brown until in the fall of the year, when they are very fat, plump and stocky, and take on a glossy look. I have watched buffaloes many times during my three years' hunt, not with a covetous eye at the time, but to study the characteristics of the animal, and I do not remember ever seeing buffalo calves frisky, gambolling, and cavorting around in playful glee like domestic calves. Perhaps their doom has been transmitted to them! Yes, this was the pathetic side of the question. And thousands of these little creatures literally starved to death, their mothers being killed from the time they were a day old on up to the time they could rustle their own living on the range.

Buffalo feel grief for their dead, according to both my traditional teachers and the longtime buffalo warden at the Grasslands National Park, Wes Olsen. He has observed the behavior of the wild herd and their reaction to a death. Rather than abandon the body, buffalo will stay with the deceased, attempt to revive their family member, and make audible sounds of grief. The hide hunters' practice of shooting from a hidden location with a high-powered rifle did not give warning to the buffalo of the coming danger. Hide hunter accounts of what happened after they shot their first victims intersect with Olsen's observations: "When one of their number was killed the rest of the herd, smelling the blood, would become excited, but instead of stampeding would gather around the dead buffalo, pawing, bellowing and hooking it viciously. Taking advantage of this well-known habit of the creature, the hunter would kill one animal and then wipe out almost the entire herd" (quoted in Magoc 2006: 95). Hornaday's (2002: 469) accounts also support the buffalo's expression of grief: "They cluster around the fallen ones, sniff at the warm blood, bawl aloud in wonderment, and do everything but run away."

In the latter days of the buffalo slaughter, many of the buffalo's social relationships broke down. Cook describes the hunters' practice of surrounding available waterways, forcing the buffalo to approach anyway, and gunning them down. Those buffalo who managed to find a water source that was free from hunters "would rush and crowd in pell-mell, crowding, jamming, and trampling down both the weak and the strong, to quench a burning thirst. Many of them were rendered insane from their intolerable, unbearable thirst" (Cook 1938: 198). Instead of living cooperatively in their herd society, the buffalo were tortured prior to their death at the hands of the hide hunters.

It is not surprising that Indigenous accounts describe buffalo genocide as a war on buffalo. Note the account told by Old Lady Horse (1968: 170) in "The Last Buffalo Herd":

> There was a war between the buffalo and the white men. The white men built forts in the Kiowa country, and the wooly-headed buffalo soldiers [the 10th Calvary, made up of Negro troops] shot the buffalo as fast as they could, but the buffalo kept coming on, coming on, even into the post cemetery at Fort Sill. Soldiers were not enough to hold them back. . . . But then the whites came and built the railroad, cutting the people's land in half. The buffalo fought for the people, tearing up the tracks and chasing away the whites' cattle. So the army was sent to kill the buffalo. The army brought in hunters, who killed until the bones of the buffalo covered the land and the buffalo saw they could no longer fight.

Indigenous peoples saw the buffalo as their protector, who took a position on the front line in the genocidal war against Indigenous peoples. Laduke (1999: 154), in her exploration of buffalo genocide, discovered that "many native people view the historic buffalo slaughter as the time when the buffalo relatives, the older brothers, stood up and took the killing intended for the younger brothers, the Native peoples." Laduke contextualizes buffalo genocide as an example of a colonial war on nature, "a war on the psyche, a war on the soul" (149). Others have characterized the destruction of nature with similar terminology. The Indigenous psychologist Eduardo Duran (2006) describes it as a "soul wound." He remarks that elders understand such circumstances as the erasure of the buffalo from the land as an earth wounding: "When the earth is wounded, the people who are caretakers of the earth are also wounded at a very deep soul level" (16).

Pretty Shield describes her reaction to witnessing the aftermath of buffalo genocide: "Ahh, my heart fell down when I began to see dead buffalo scattered all over our beautiful country, killed and skinned, and left to rot by white men, many, many hundreds of buffalo. The first I saw of this was in the Judith basin. The whole country there smelled of rotting meat. Even the flowers could not put down the bad smell. Our hearts were like stones. And yet nobody believed, even then, that the white man could kill *all* the buffalo. Since the beginning of things there had always been so many!" (quoted in Calloway 1996: 131). Her being as an Indigenous person was profoundly impacted by the loss. Crow Plenty-Coups describes his grief in the same terms: "But when the buffalo went away the hearts of my people fell to the ground, and they could not lift them up again. After this nothing happened. There was little singing anywhere" (quoted in Lindemann 1930: 169). Both Indigenous

individuals are expressing what Justice (2010: 63) categorizes as "an understanding of nationhood that's fully rooted in broadly ecosystemic concepts of Indigenous kinship" with the buffalo, which intertwines their respective and interrelated genocides. The buffalo gone from the land meant the Plains Indigenous peoples who had been holding out to negotiate better treaties and claims to their land were forced to submit and relocate to small reservations scattered across the newly forming states and provinces. The destruction of the interrelated bond between buffalo, Indigenous people, and the land reminds me of Waldau's claim that cultural imperialism affects both human and nonhuman animals (2006: 636). The stories of genocide need to be told and accepted as truth in order to clear space for Indigenous stories, many of which lay out ways to live on the land in healthy and non-destructive ways.

In her work outlining what she terms the "pillars of white supremacy," the Cherokee scholar Andrea Smith (2006: 68) lists the logic of genocide as the second pillar: "This logic holds that indigenous peoples must disappear. In fact, they must *always* be disappearing, in order to allow non-indigenous peoples rightful claim over this land." Through a complex and interrelated policy of buffalo genocide, enacted by the state, military, and hide hunters, the buffalo disappeared from the land, forcing the disappearance of Indigenous people at the same time. Both Indigenous peoples and buffalo were the subjects of colonial elegies, which lamented their loss with a pen held in one hand and a gun in the other. "Extinction discourse often takes the form of proleptic elegy, sentimentally or mournfully expressing, even in its most humane versions, the confidence of self-fulfilling prophecy, according to which new, white colonies and nations arise as savagery and wilderness recede" (Brantlinger 2003: 3).

These tropes remain with us still. As we examine the current realities facing the Great Plains, including widespread drought, continued animal genocides (wolves come to mind), and the relentless extraction of what is termed "resources," it would be wise to revisit the historic buffalo genocide in order to consider the repercussions of applying a Euro-Western ideology to the land, propped up by the continued hierarchy in which humans occupy an exalted place at the top.[3] Huggan and Tiffin (2010: 6) put it this way: "In assuming a natural prioritization of humans and human interests over those of other species on earth, we are both generating and repeating the racist ideologies of imperialism on a planetary scale." How can the past lessons of buffalo genocide speak to us now?

I wish to conclude by returning to my own teachings as a Nehiyaw human person. I am reminded that the buffalo remains with us. I am reminded that everything comes back to our spiritual understandings. Their bodies were

destroyed; their spirits were not. Our stories, still told and still understood, tell us the buffalo will return one day.

Notes

1. These kinds of discussions are also happening in recent animal studies scholarship. David Sztybel (2008: 252) discusses the limitations in both language and understanding: "'Person' is interchangeable with humans in most dictionaries but we need to update our lexicon in order to overcome speciesist thinking."
2. The Blackfoot scholar Betty Bastien (2004) is the best example.
3. Buffalo genocide continues into the present time, with the systemic slaughter of buffalo that leave the confines of Yellowstone National Park, a genocide sanctioned by the state government of Montana until a Montana Supreme Court ruling in March 2014. For the first time in centuries, buffalo in Yellowstone are free from genocidal practices.

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3. Law, Colonialism and Space

> Canadian law is largely devoid of our views. It most often acts as if we are not even here—through the doctrines of discovery, Crown sovereignty and constitutional law. We need to at least find ways to attenuate that force. (Borrows 2010b, 142)

> All the oppression of Aboriginal Peoples in Canada has operated with the assistance and the formal sanction of the law. The Canadian legal system is at the heart of what we must reject as Aboriginal nations and as Aboriginal individuals. (Monture-Angus 1995, 250)

Embedded in this research are questions about the limitations inherent in seeking recognition of Indigenous people as subjects of Canadian law. As Christie (2007) states, arguments for recognition "begin with the assumption that the state (or dominant society) is there, a given, and then imagine Indigenous peoples coming to the centre of power to try to argue (somehow) that they should have a place within the larger system. This approach begins with the notion that in some way the power structure of Canada is legitimate" (16). This analysis has been applied to efforts by Indigenous peoples' land use rights, treaty negotiations and other broad discussion of rights, but has not yet been applied to the scale of bodily violence.

Categories of 'Indians' (and the contemporary equivalent, 'Aboriginal') and 'Indian space' have become naturalized in Canadian society and in much scholarship on Indigenous-government relations, and they continue to be enforced through a set of state-determined power relations, and histories of both physical and epistemic violence. This system of categorization is foundationally gendered, as the rights and socio-legal standing of 'Indians' have always been delineated along gender lines, resulting in distinct experiences of violence for 'Indian' men, women and two-spirit people. I argue the perpetuation of this categorization serves to affirm the closure of settlement, and reinforce Indigenous peoples' status as colonized subjects: dependent, victimized and

incapable of progress, a product of spaces which are inherently violent, impoverished and marginalized. We see these categories at work when we talk about native people 'migrating' from reserves (Indian space) to cities (non-Indian space). This framing undermines claims of Indigenous people in BC to anything more than those "points of attachment" (Harris 2008, 5) within their traditional territories that together cover all of BC.

This section is intended to provide a foundation from which to understand the role of law in shaping day-to-day reality in Indigenous communities and the potential to address violence through legal means. I hope to show how law structures the categories in which Indigenous people are situated in relation to socio-legal norms and in the criminal justice system. I situate my exploration of violence within the colonial history of BC's legal geographies in order to argue that the issue of interpersonal violence should be addressed as an integral part of asserting Indigenous self-determination. To do so, we must begin with understanding the primary spatial and embodied categories of colonialism: 'Indians' and reserves. Together with other categories embedded within foundational discourses of colonialism, such as categories of gender, these form the basis on which Indigenous-government relations are negotiated and shape the possibilities for recognition of Indigenous people as legal subjects. I hope to show how colonial categories and their spatialization entail the erasure of Indigenous subjectivities and territories, making it difficult for Indigenous people to be seen as anything other than colonial subjects within their subjectivity as 'Indians'. I will argue that this erasure might be understood as the spatialization of the violence of law itself.

In this section, I first discuss the creation of Indian reserves within the settlement process of BC, and the legal measures through which Indigenous peoples became 'Indians' across this settler geography. Second, I trace the ways that western legal thought was used to create 'Indians' as colonial subjects who were void of their own legal order, which preceded the creation of reserves. This history is useful in understanding how settlers imagined themselves and justified the violent acts which settlement entailed. It also illustrates how the violent erasure of Indigenous self-determination and Indigenous geographies was naturalized. Third, I suggest that in the ideological shift from *terra nullius* geography to the settler society 'Indians' became imagined as subjects of the reserve, a mobile status that travels with Indigenous people

across diverse spaces within Canada. I suggest the logics of *terra nullius,* the frontier and the reserve are activated within Canada's colonialscape, a concept which is helpful in understanding the spatial rationales through which colonial relations are continually remade. Finally I discuss the manifestation of colonialscape logics in the treatment of violence toward Indigenous people across reserve and non-reserve spaces. This history provides an important foundation for understanding the colonial logics embedded in everyday socio-legal relations in Canada which make it difficult to recognize Indigenous legal orders as a possible venue for addressing violence and for reasserting Indigenous peoples' agency.

3.1 Creating reserves: material reality

> Colonialism in a place like British Columbia is not so much a set of tactics that others employed at some time in the past as an ongoing set of relationships based on the fact that newcomers established themselves here, and refashioned a strange place, making it their own. (Harris 1997, xvii)

As Cole Harris (2002) has shown, Canadian Indian reserves can be understood as a manifestation of colonial ideologies, produced in order to realize the ongoing dispossession of Indigenous peoples of their territories and to establish the sovereignty of the Canadian state. Yet the creation of BC entailed not only the mental work of imagining 'Indians' as without legal tenure, but also the practical work of individuals mapping out and dividing up land, confining 'Indians' onto reserves through force: "violence was not only an *outcome* of law, but its *realization*" (Blomley 2003, 129, emphasis in original). Reserves in BC came into being through a land policy with a mandate "to grant miniscule reserves and ignore title" (Harris 2008, 437). Through this process, native people became trespassers in their own territories, at the same time as

becoming subjects of the federal *Indian Act* as status Indians[8]. As Doug Harris (2008) notes in his account of reserves and fisheries in BC, reserves became points of attachment within native people's traditional territories, but little more. Reserves were, and are, part of territorial strategies to empty space of Indigenous tenure, yet in BC the lack of consensus around the legal issue of title is evident in the lengthy and messy treaty process that is still ongoing. "The arbitrary boundaries created by the Indian Act cookie cutter, which divided aboriginal peoples into bands, cut across the aboriginal legal orders" (Napoleon 2009, 384). Although the reserve geography of BC is often taken as fixed or natural spaces of Indigenous occupation, the history of reserve development in the province reveals that their construction and realization was anything but neutral.

In the mid-nineteenth century, British interest in what is now known as British Columbia changed from trading country to settlement frontier, marking the beginnings of a fundamental transition in relations with Native peoples (Harris 2008). Beginning with the creation of the Colony of Vancouver Island in 1849, processes of dividing land into reserves and that for settlers, continued in tandem for 75 years. In 1924, the Dominion and provincial government agreed on what they regarded as the final reserve geography of BC (Harris 2008). With few exceptions the need to seek agreement with Native peoples over the shared use of space was ignored. Instead, during this time of early settlement, "a carefully choreographed display of violence" (Harris 2002, 22) was used to keep Indigenous people in their place – that is, out of the places that white settlers had deemed to be desirable for themselves. The BC government was the only provincial government in Canada that would not acknowledge Indigenous peoples' right to negotiate the use of land, thus the lack of treaties and late creation of reserves in the province. Here, the Crown did not negotiate transfer of rights to land or governance, but "merely asserted such rights, and acted as if their unilateral declarations have (sic) legal

[8] Not all Indigenous people were granted Indian status, as status was determined by a set of state-imposed regulations based on gender, marital status, education level and other factors. Additionally, Métis people and Inuit people were categorized differently than other Indigenous groups or First Nations in Canada. For more on Indian status in Canada, see Bonita Lawrence, 2003, Gender, Race, and the Regulation of Native Identity in Canada and the United States: an overview*, Hypatia* 18(2), 3-31 and Royal Commission on Aboriginal Peoples. 1996. *Part Two: False Assumptions and a Failed Relationship.* Ottawa: Government of Canada.

meaning" (Borrows 2002, 113). BC reserves were created only when white settlers were increasingly encroaching on the land and had interest in capitalizing on the land and natural resources (Miller 2009). Thus, the Fraser Valley and Vancouver Island reserves were established first and other areas were plotted out later.

Reserves were seen as a temporary measure, meant to be self-sustained through access to fisheries while Indigenous people became part of the wage economy, thus, "the land policy was built around access to the fisheries" (Harris 2008, 39). The power dynamics which shaped the creation of reserves in BC centered around the tension between provincial and federal fights for control, and the shared desire of both governments to establish a prosperous, powerful settler society (Harris 2002). The rights of 'Indians' were formed within these overlapping and often competing jurisdictions related to federal and provincial governance, as well as the administration of reserves themselves within a federally defined band system.

The settlement of BC, as with colonialism the world over, was premised on, and facilitated through, a process of creating spaces which were orderly, easily commodified and clearly defined through the imposition of Western socio-legal property regimes. These regimes were enacted through tools of the western geographic imaginary, including the frontier, the survey and the grid (Blomley 2003), which served to neutralize the violence inherent in property's realization. As stated by Mitchell (2002) in his account of colonial Egypt, "The colonial presentation of law as a conceptual structure brought from abroad performs the silencing of the actuality out of which property is made. But it is not just the colonial legal texts that produce this difference. The very act of colonial occupation produces it" (77). In BC, reserves became compartments to which Indigenous people could easily be relegated in order to clear up the rest of the land for settlers to develop (Harris 2002). This process depended upon well-established traditions of positioning the category of 'Indian' or savage opposite that of English settler subject. Settlers acting on behalf of the Crown or the colony "took European civilization, Native savagery, the superiority of colonial power, and the sovereign rights of colonizers to colonial land completely for granted" (Harris 2002, 6). Through this process, new geopolitical spaces—those of firmly demarcated reserves, towns, and spaces of resource extraction and production—were superimposed onto the former territories of Indigenous peoples, and their boundaries closely monitored and policed. Colonial power

operated in favor of settlers and the expansion of capitalist ideologies of empire, and law was used to construct, enforce and normalize power relations literally on the ground through separating 'Indian' spaces from settler spaces. Thus as materializations of the violent power of law, arbitrary boundaries became legal realities (Harris 2002, 271).

Indeed, the establishment of lawful spaces, and unlawful spaces, were central to the frontier landscape in which reserves emerged. In Blomley's (2003) analysis of the role the western geographic imaginary played in colonial violence, the frontier, the survey and the grid are exposed as central to processes of settlement. Blomley explains that the boundaries created around that which is deemed law vs. the violent world of nonlaw entails the inscription of "a *frontier*—which may be figurative, temporal and spatial" (124, emphasis in original). An imagined frontier was integral to implementing a regime of private property within the sovereign territory of Canada, and the simultaneous implementation of a regime of Indian reserves. This imagined frontier is also temporally bound, as Indigenous land tenure exists prior to its establishment, consisting of nomadic, temporary or otherwise uncertain claims to the land. Thus, the imagined frontier which brought delineated reserves for 'Indians' and western property regimes for settlers is made possible by imagining its spatio-temporal edges against which Indigenous claims exist. The frontier makes property and reserves necessary to bring order and lawfulness to the land, rendering violence to the space beyond the space and time of the frontier, or under the control of the frontier's logics. "Western notions of property are deeply invested in a colonial geography, a white mythology in which the racialized figure of the savage plays a central role" (Blomley 2003, 124).

However, despite the obvious racism underpinning the settler view through which reserves came to be formed, the history of BC is told in a particular way in order to minimize the violence and lawlessness inherent in its creation. Harris (1997) argues that smallpox is downplayed in historical accounts of BC's creation because this history threatens the narrative that European contact meant progress and improvement for the savages. The logics underpinning the reception of law in Canada can be traced to its roots in *terra nullius* and the doctrine of discovery, which naturalizes the categorization of Indigenous people as 'Indians' incapable of formulating their own law, thus hiding the violence inherent in their displacement.

The *Indian Act* of 1876 was another strategy to facilitate colonial expansion, providing a national legal foundation based on the assumption that Indigenous people were inferior to Europeans. A report of the Department of the Interior of the same year expressed this paternalistic and assimilationist philosophy that 'Indians' were to be treated as "children of the state" (Comack 2012, 70). This legal framework was established during a time when the goal was to assimilate 'Indians', to 'civilize' them, in order to eventually rid Canada of 'Indians' altogether. The dehumanizing inscription of 'Indians' as colonial subjects of Canada is evident in the lasting ways 'Indians' were given restricted legal rights and status. The *Indian Act* created categorizations and sub-categorizations of 'Indians', in a highly gendered system of stratification determined by the federal government. Replacing Indigenous peoples' existing systems of diverse identifications emerging within place-specific cultural worldviews, the *Indian Act* established one unitary way of defining who was and who was not an 'Indian' male and female within the cultural worldview of European settlers. Indigenous nations each had systems of gender and cultural identity enacted within their distinct worldviews – including non-binary gender roles that are now called 'Two-Spirit'. All 'Indians' were made to ascribe to this imposed system in order to count as legal subjects. The price of not counting was not having access to the rights and resources provided through the *Indian Act*, such as on-reserve housing, dental and health care, and education (minimal as these provisions might be).

Within this gendered system, Indian status was granted to 'Indian' men, women married to 'Indian' men and children of those men, thereby instituting a patrilineal definition of Indian status. Until 1985, non-Indigenous women gained status when they married status Indian men while Indian women lost status when marrying non-status men. My mother, who married my father in the mid-1970's has Indian status to this day despite the fact that she is not Indigenous and she divorced my dad over 30 years ago. The establishment of a patriarchal system of power and leadership was also introduced and enforced through the *Indian Act*, as only men could run for chief and council and only men could vote in band elections until 1951. Additionally, 'Indians' were denied the right to vote in provincial or federal elections until 1949 in British Columbia provincial elections, and 1960 in federal elections.

The *Canadian Criminal Code* was also used to create laws which were specific to 'Indians'. For example, a number of status offences applied only to Indigenous people, including the 1884 ban of the *potlatch* and the *tamanawas* (a healing ceremony), as well as the 1885 ban of the sundance (Comack 2012). In these examples, the laws of colonial Canada can be seen as rooted in Christian doctrine, as Indigenous spiritual and cultural practices that were seen as preventing conversion were simply made illegal.

The establishment of a new stratified system of colonial power relations required the actions of individuals to make these laws real through bringing meaning to emergent categorizations of 'Indians' and reserves. Indian agents and the North West Mounted Police (NWMP) were responsible for enforcing the word of colonial law, including the *Criminal Code* and *Indian Act*. Indian agents could in fact conduct trials anywhere in Canada (including off reserve) for *Indian Act* violations and some *Criminal Code* violations. Thus, Indian agents could ask police to prosecute Indians and then the agents themselves sat in judgment of those cases (Comack 2012). These legal technicians were integral to the civilizing mission of Canadian law, ensuring Indigenous peoples' submission to colonial rule (Comack 2012, 74). Armed with the violent technologies of law enforcement – a gun and a badge to go with it – police and Indian agents served to keep 'Indians', as colonial subjects, in line with settler priorities. The legal systems of Indigenous people themselves were effectively mapped over, although they remained (and continue to remain) alive and active through diverse strategies of resistance. One such strategy of cultural survival was to go underground and be unrecognizable to agents of colonial law. In one well known example from my own community, potlatches continued to be practiced out of sight, such as by wrapping gifts in Christmas paper in order to mask their real purpose.

In summary, the province of British Columbia and the country of Canada used both ideologies of European superiority and the actions of individual legal technicians on the ground to cement the new colonial vision of BC. Creating social relations in which these power relations were naturalized and seen as necessary for progress, law itself carries the mythical power to enforce its own vision as truth. Canadian law bulldozed over pre-existing Indigenous geographies, yet Indigenous jurisdiction was never ceded. Rather, Canadian legal representations of space came to be given certain performative power through the violence of law, where Indigenous spatial representations continued

to be lived upon the land but were not successfully performative. In other words, while Indigenous people's socio-legal practices of living their obligations and relations within their traditional territories continues to this day, the spatial relations they produce remain unrecognized within dominant operations of power.

Thus, as I have outlined, law was not only used to empower and enforce colonial worldviews but was in fact constitutive of colonial ideologies, categories, and spatial imaginings. The existence and nature of law itself, as a civilizing system, was at the heart of colonial subjectivities which set colonists apart from Indigenous people and turned them into 'Indian' men and 'Indian' women, gendered and racialized subjects of colonial rule. Indigenous people were constructed as a racial group incapable of having systems of law, because Indigenous legal systems were not recognizable as law to settlers. As I will explore in the next section, conceiving of 'law' in terms which did not include Indigenous law allowed for the lands of Canada to be conceived as empty in the doctrine of *terra nullius.* Indigenous people essentially disappeared in the process, as their lands were envisioned as void of legitimate legal subjects. As 'Indians', Indigenous people became residents of spaces which were legally delineated as reserves, though any place where they lived within Canada were subject to federally defined categories, and could thus be imagined as 'Indian' or 'reserved' space to justify government intervention. Further, this imaginary served to render invisible Indigenous territorialities and to neutralize their threat to Canadian sovereignty. As I will show, this fundamental differentiation between Indigenous law (or lack thereof) and Western law, and the subsequent categorization of Indigenous people as 'Indians' under Canadian rule, is still foundational to socio-legal relations in BC today.

3.2 Empty land and the doctrine of discovery

> Simply put, the law creates reality that is real because it has been created by the law. (Culhane 1998, 65)

As I have discussed, reserves and 'Indians' are legal and social categories which are ontologically linked, and inherently co-constitutive in their definition and regulation

through the federal *Indian Act* and their everyday use by Canadians. Embedded in these concepts are racist ideologies which justified and legitimated colonialism in the first place, positioning Indigenous people as inferior to Europeans. The myth of European discovery of Canada embedded in Canadian law perpetuates the myth of inferiority of Indigenous peoples (Borrows 2010), categorizing 'Indians' as incapable of governing themselves and incapable of formulating law. This categorization of 'Indians' as the racialized subjects of European settlers was integral to the formation of reserves. As Cole Harris (2008) writes, "Had Natives been treated as people, rather than as Indians, there would not have been reserves" (157).

Indigenous peoples' relationships to the Canadian state have been shaped by the imposition of a Canadian legal system which has rendered Indigenous legal practices all but invisible. "In Canada, the law has often layered itself over pre-existing Indigenous legal landscapes, concealing this previous existence" (Borrows 2010, 68). The Canadian legal system has been used to entrench colonial power relations between Indigenous peoples and the Canadian government, and has shaped all aspects of Indigenous peoples lives. So while Canadians largely take for granted the neutrality of Canadian law and governance, Indigenous people's experiences reflect the culturally-specific, power-laden nature of law. Discourses about 'Indians' embedded in Western legal discourse can be understood as legitimizing, energizing and constraining roles of power in the violent conquest of 'The New World' (Williams 1990). In order to imagine the lands of Turtle Island, and other parts of the world, as available for settlement, they needed to first be cleared of any legal 'owners'. Religious and racial ideologies were utilized in creating ideas of European Christians as fundamentally different from Indigenous peoples, who were imagined as unable to formulate their own legal orders. Through this racial categorization of non-Europeans, meaningful legal status was denied to Indigenous people because 'heathens' and 'pagans' were seen as lacking the rational capacity to exercise equal rights under the West's medievally derived law. In this way, the category of Indian 'other' was formulated in opposition to that of civilized, Christian European settlers. Conquest of their lands was constructed as morally just because it was done in the name of God. It was also seen as being carried out for the 'heathens' own good, because they were in need of being converted to Christianity.

The legal codification of these racial categorizations can be traced back to the decrees of Popes that allowed Christians to use "a vanquishing violence" (Frichner 2010, 9) to claim lands belonging to non-Christians in perpetuity within a framework of dominance. The 15th century law of Christendom stated that discovery gave title to assume sovereignty over, and to govern, lands of Africa, Asia, and North and South America. This principle, now known as the doctrine of discovery, has been recognized as a part of international law for nearly four centuries and is integrated into political and judicial texts the world over.

Empire's rule of law thus begins with the doctrine of discovery and its discourse of conquest, which naturalizes the concept of *terra nullius,* or empty lands, while denying fundamental human rights and self-determination to Indigenous peoples (Williams 1990, 325). Together, these ideas created the mythology around which the Canadian legal order was founded:

> Within this ideology, human beings can be considered, legally, not to exist, and can be treated accordingly. At this most fundamental, common sense level, a study of British and Canadian law in relation to Aboriginal title and rights therefore begins not 'on the ground,' in concrete observations about different peoples' diverse ways of life, but rather 'in the air,' in abstract, imagined theory. Hovering, like the sovereign, who embodies this abstraction, over the land. (Culhane 1998, 49)

The racially based doctrine of discovery is not only at the heart of justifications for the theft of Indigenous territories, but fundamentally denying Indigenous peoples' humanity. Institutionalization and depoliticization of the doctrine of discovery lies at the root of violations of Indigenous peoples' human rights, both individual and collective (Frichner 2010). The United Nations Permanent Forum on Indigenous Issues calls this holistic structure the Framework of Dominance (Frichner 2010), claiming it is responsible for centuries of dispossession and impoverishment of Indigenous peoples.

Originating in legal rationales of the middle ages, this mythology has been encoded in Canadian law as well as nationalist stories about Canada's legal foundations. In colonial societies, law is presented as "the opposite of violence, exception, arbitrariness, and injustice, yet somehow these features [are] all incorporated within it" (Mitchell 2002, 77-8). This presentation of law and legal actors as non-violent

arbiters of justice is evident in the narratives told in history books, in which the NWMP are portrayed as aiding natives, bringing law and order to the West (Comack 2012). These stories comprise the foundational Canadian national mythologies, which are naturalized in the concept of *terra nullius* in which the lands of Canada were empty of civilization before settlers arrived here and brought the rule of law with them.

Yet, as Indigenous peoples, legal scholars and others have argued, by imposing a system of governance within the European tradition, Canada has subjugated Indigenous rights to Canadian values, imposing a culturally-specific form of governance on Indigenous peoples (Alfred 2001). Consequently, material realities of colonialism are extensions of a racist discourse of conquest that at its core regards Indigenous peoples as normatively deficient and culturally, politically, and morally inferior (Williams 1990, 326). Moreover, legal categorization of 'Indians' has underpinned Canadian policies which seek to assimilate Indigenous people in to Canadian society 'for their own good' while stripping them of their political and individual agency. As Williams (1990) writes, "Animated by a central orienting vision of its own universalized, hierarchical, position among all other discourses, the West's archaic, medievally derived legal discourse respecting the American Indian is ultimately genocidal in both its practice and its intent" (326). Principles generated by this discourse of conquest continue to be used to deny Indigenous nations the ability to govern themselves according to their own vision. By categorizing Indigenous legal practices as 'cultural beliefs' and Canadian law as 'truth', Indigenous peoples continue to be legally constituted within these foundational ideologies emerging from the doctrine of discovery (Monture-Angus 1999, Culhane 1998).

Through tracing this history of legal rationale and its integration into policies governing the lives of status Indians, it becomes abundantly clear that law is not neutral but is itself violent in a multitude of ways. And law is violent in specific ways in colonial relations. The violence of law is concealed through ideological and material processes of naturalizing unequal rights for 'Indian' men and 'Indian women, and reinforcing the categorization of 'Indians' as 'other'. Williams (1990) argues that "law, regarded by the West as its most respected and cherished instrument of civilization, was also the West's most vital and effective instrument of empire during its genocidal conquest and colonization of the non-Western peoples of the New World, the American Indians" (6).

3.3 Emergence of the colonialscape

Having traced the history and ideological work of *terra nullius* and its codification in Canadian law, as well as the materialization of colonial legal geographies in the creation of Indian reserves in BC, it is useful to now ask what ideological shifts happened in the movement from imagining Canada as *terra nullius* to materializing reserve and non-reserve spaces. 'Indians' went from being constructed as heathens in an empty, lawless land to subjects of federal law in a settler society which relegated 'Indians' to Indian reserves. What kind of ideological work was accomplished in this move from imagined empty land to imagined reserve and settler spaces? How did the categorization of 'Indians' shift? How did the gendered nature of these colonial categorizations impact Indigenous men and women differently? I argue below that 'Indians' are now imagined as subjects of the reserve, carrying this mobile spatial status with them regardless of where they travel within Canadian borders. This is accomplished within the federal reach of the *Indian Act* and *Criminal Code*, as well as the acceptance of Canadian law itself as the supreme law of the land, as 'Indians' are continually at risk of being transported to the reserve through justice wormholes (Osofsky 2008) in which their rights can be denied. I draw on the concept of landscape here, and its recent adaptation to describe 'securityscapes', in developing the concept of 'colonialscape' through which we might understand the interrelated spatial rationales of *terra nullius*, the frontier and reserves.

There are several approaches one might take to make sense of the relationship between imagined Indian space and its materialization in the everyday lives of Indigenous people as subjects of these spaces. Building on Harris's (2008) argument that Indian reserves would not have existed had 'Indians' been seen as human, I would argue that Indian reserve geographies have since produced a different kind of imagined 'Indian' subject emerging through the realization of the reserve itself. As such, there are multiple imaginaries at work, capable of producing 'Indians' as colonial subjects within nested legal rationales which underpin BC's geopolitical relations. Reserve geographies are produced within the rationale of *terra nullius*, and in relation to the imagined frontier, which are all at work under the spatialization of contemporary socio-legal relations. I find this examination of imagined and material geographies useful in understanding the

normalization of violence, as we can see how reserves are produced as spaces of assumed violence, while 'Indians', inherently 'of the reserve', are produced as subjects of this naturalized violence. 'Indians' can thus be understood as 'reserved subjects', as their spatio-legal subjectivity travels with them anywhere within the boundaries of Canada. The reserve, in essence, can be imagined and produced anywhere within national borders – anywhere naturalized as 'Canada' through the doctrine of discovery. This argument rests on the assumption that 'Indian' is not a static legal category, but is constantly made and remade through spatially and temporally specific socio-legal relations. Thus, a spatial analysis helps us to see how 'Indians' are not merely subjects of the federal *Indian Act*, but are produced within the realization and naturalization of reserves as both material and imagined "Indian space' to which 'Indians' can be transported throughout all of Canada.

In understanding how reserves function within the colonial imagination, I find the concept of landscape to be useful. A central theme of cultural geography, landscape has been taken up and defined in various ways over the past several decades. Exploring the productive tensions within studies of landscape, Wylie (2007) recounts that the cultural turn in human geography in the mid 1980s-1990s saw landscape being defined "less as an external, physical object, or as a mixture of 'natural' and 'cultural' elements, and more as a particular, culturally specific way of seeing or representing the world" (13). Representations of landscape—of a particular physical space and its cultural overlay — may be understood as expressions of cultural, political and economic power which are central to local and national identities.

In *Lie of the Land,* Mitchell (1996) explores the connection between the material production of the California landscape and the production of landscape representations, through tracing the reproduction of industrialized agricultural workers' labor. Mitchell explains that the connection between their work and the imaginary through which this work and its products become knowable comprise the making of the California landscape. Mitchell goes on to describe the ways in which 'landscape', like 'culture', 'nature' and 'nation', become integral to naturalized discourses which underwrite the legitimacy of dominant relations of power: "the more the word landscape is used, the greater its ambiguity. And the greater its ambiguity, the better it functions to naturalize power" (2). I would like to suggest here that in the context of settler societies like Canada

and the USA, these relations of power being naturalized are explicitly colonial in nature. Mitchell examines landscape as both a material thing and a representation of that thing to understand relations of labor in California in which the marginalization and resistance of agricultural workers is rendered invisible. Here, I similarly examine colonialscapes as both the embodied, material conditions of violence in Indigenous peoples lives and the representations through which this violence becomes knowable, and thus naturalized as integral to the maintenance of the nation.

Colonialscapes, then, might be understood as representations of the space now called 'Canada', which perpetuate and manifest particular (colonial) expressions of power. Such representations take not only visual forms (such as maps, paintings or photographs of 'Indians') but also textual (legal) forms within which western ontologies of space, race, gender and power are embedded. Just as landscapes appear to create a complete view of a particular space, colonialscapes create the appearance that a colonial spatio-legal perspective of 'Canada' is somehow 'true'. Colonialscapes thus cover over other spatial relations and representations, as the colonial view blankets over these prior and deeper spatial orders. The concepts of *terra nullius,* the frontier and Indian reserves (and their outside, non-reserve spaces, cities, and so on) are culturally rooted ideas which together form a colonial way of seeing the Canadian landscape. As representations of the colonialscape, Indian reserves reinforce the underlying power relations which naturalize settlement, and hide Indigenous ways of living in relation to the land in ontologically distinct understandings of space. Further, the spatial representations which make up the colonialscape have been given material significance through legal and social enforcement. In this research, then, when I talk about colonialscape logics, I am speaking of the underlying categorizations and representations of *terra nullius*, 'Indians', Indian reserves, the frontier and so on, which together form a coherent logic which naturalizes colonial power relations. Importantly, I am also speaking of the spaces of settlement which form their outside: the city, civility, spaces of progress and resource extraction are all naturalized through the colonialscape as that which is not Indigenous.

In the colonialscape, reserves become the natural space of 'Indians', as Indigenous territorialities are rendered an impossibility in order to facilitate the reception of Canadian sovereignty. Indian reserves were first imagined as a space in which to

contain ‘Indians’ and to neutralize their potential claims to the lands of North America by enfolding them as subjects defined through the jurisdiction of the Canadian state. The category ‘Indian’ is spatialized in the form of Indian reserves, which were first imagined and then materialized by technicians of Canadian law, expressed in legal text, and realized in the form of physical force and control. However, today, Indigenous people are no longer contained, by force or by choice, to Indian reserves. I contend here that the ‘problem’ of Indigenous territorialities continues to be erased or neutralized within the colonialscape by imagining ‘Indians’ as residents of reserve spaces no matter where they travel. In the discussion that follows, I will show how ‘Indians’ are transported “to a different spatio-temporal configuration” (Osofsky 2008, 118) through justice wormholes to spaces where violence is expected and naturalized, in situations of interpersonal violence. The violence of law is spatialized through colonialscape logics to transport ‘Indians’ to a space in which justice is hard to come by.

As this research will show, Indigenous people are turned into ‘Indians’ and residents of ‘Indian space’ not only through the *Indian Act* or *Canadian Constitution*, but through the everyday actions and logics of networks of Canadian legal technicians. These spatial logics are not only racialized but are also gendered, as ideas about the proper place of ‘Indian’ women underpin the type of targeted sexualized violence experienced by Indigenous girls and women, as well as responses to this violence by officials of Canadian law. These actions are further normalized through socio-legal discourses which emerge from, and sustain, the colonialscape. In her study of the role of ‘Indianness’ in the transit of US imperial history, Chickasaw scholar Jodi A. Byrd (2011) argues that “Indianness can be felt and intuited as a presence, and yet apprehending it as a process is difficult, if not impossible, precisely because Indianness has served as the field through which structures have always already been produced” (xviii). It is not the reserve that is ubiquitous, then, but the colonial imaginary, which is based on Indigenous erasure.

The processes and logics underpinning colonial socio-legal relations are depoliticized through dominant ways of seeing the nation of Canada. The realization of the grid, explicitly a regime of property (Blomley 2003, Delaney 1997), entailed the violent displacement of Indigenous peoples in order to physically empty the land upon which the grid could be materialized. Not only were Indigenous people themselves

displaced in the process, but by imagining the lands through the grid, Indigenous peoples cultural, political and legal systems of meaning were rendered invisible or inconsequential. Rather than speaking of a bend in the river as connected to a particular ancestor or story, that place where land meets water became merely one part of the larger whole of Canadian lands opened up for ownership, exploration and settlement. However, within the a-historical, depoliticized colonialscape, the fractured geography of Indian reserves is neutralized, and their historical socio-legal construction within processes of colonialism is rendered invisible. This spatial imaginary can be put to work at any given time in order to produce colonial relations in which settler society can prosper. Various kinds of violence are naturalized and rendered invisible through this colonial ordering of space. Resting on a naturalized imaginary in which 'Indians' are subjects of reserves, and on a legal framework through which 'Indians' are subject to the *Indian Act* anywhere in Canada's borders, the reserve is always an emergent possibility. Anywhere and everywhere is *terra nullius*, as the empty lands imaginary can be seen as underpinning natural resource acquisition throughout northern BC, as pipeline routes, fracking, and other extraction are shown to be occurring on unused or uninhabited lands. Indigenous resistance to this development has made visible the ways that the lands are actually in use and are inhabited by Indigenous nations, although it may fail to 'matter' within legal processes.

Within colonialscape logics, as the violence of displacement is rendered invisible, violence against Indigenous women is also made to be invisible in their gendered and racial construction as reserved subjects. Together the colonialscape works dynamically to produce 'Indians' as subjects of spaces which they fail to fully occupy, claim, or govern: their lands, their homes, and their bodies. For example, the violence of tearing children from their families and homes is seen as necessary, as 'Indians' themselves are constructed as incapable of caring for their own children. The violence of taking children to residential school is justified in this same way, through a rhetoric of care within an imagined colonial view.

As scholars have argued of the Downtown Eastside of Vancouver, the logics of the reserve and the frontier are used to naturalize widespread neglect, as well as processes of gentrification. Colonial BC was described in the same ways the Downtown Eastside is today, as empty and ready for development: "the characterization of life in

the Downtown Eastside as 'degenerate' and as 'waste' is an old frontier trick remade for a contemporary moment (Dean 2010, 123). Gentrification might be understood as a new word for conquest, as it uses a similar discourse to claim jurisdiction over Indigenous territories in the name of progress. In representing the Downtown Eastside as the frontier, Indigenous people, sex workers and other residents fail to adequately claim or occupy this space.

On the other hand, law can be used to create spaces where violence by Indigenous people is made hyper-visible, as "law constructs boundaries between legitimate and illegitimate violence and produces sociospatial zones in which violence is tolerated" (Sanchez 1997, 547). Blomley (2003) explains "Gendered violence is also understood legally in relation to the grid, with the law differentiating violence against women to the extent that it is coded public or private" (132). Lisa Sanchez's (1997) analysis of spaces of the sex trade recognizes that violence needs a space and the law provides for it by creating spaces where violence has no witness. Reserves are also such spaces. And yet colonial law can be used within any space – urban, rural, reserve, non-reserve – to create a space where violence against Indigenous people has no witness. I suggest this is not only because reserves are physically and socially isolated from mainstream Canadian society, but also because Canadian legal actors are unable to 'witness' this violence due to the inability to recognize violence against Indigenous people, given their primary socio-legal construction as 'Indians'.

Thus, although I agree with many aspects of Razack's (2000) analysis of how the murder of Pamela George was handled in the courts, my analysis differs in significant ways. Razack claims that as an Indigenous sex worker, Pamela George was "considered to belong to a space to which violence routinely occurs, and to have a body that is routinely violated" (93). Although Razack calls for Pamela George's location in this space to be connected to colonial dispossessions, I would argue that Pamela George's murder would have been naturalized in any space within Canada, not only the inner city spaces of prostitution. If Pamela was murdered in her home, would she have a better chance of justice? If she was found on the side of a remote highway or on a college campus, would she, as an Indigenous woman, have found 'justice' within Canadian law? I would argue, no. Given the prevalence of violence against Indigenous women – children, adults, students, elders, sex workers, homeless, transient, and

professionals—there are no spaces within Canada where violence against us is rendered problematic. Yet it is useful to understand the specific spatial and legal mechanisms through which this violence is naturalized through transporting 'Indians' through justice wormholes, as various jurisdictional mechanisms and individual legal technicians work together to continually constitute Indigenous people as unworthy of justice across diverse settings. Such are the manifestations of colonialscape logics in ongoing settler colonialism. Although 'spaces of prostitution' are indeed constructed as zones in which violence against women is justified through the stigma against sex work, the whole of Canada is rendered as a zone in which violence against Indigenous people is justified, and indeed, necessary. It is not enough to see these as connected, but we must see these spatialized legal relations as interrelated such that the violence against sex workers and the violence against all Indigenous people stems from the same socio-legal relations: simply, our dehumanization.

Thus, being made a subject of 'the reserve', emerging within the logics of the frontier, means that you are produced as a specific kind of legal subject – an 'Indian', against whom violence is naturalized. These logics can be mobilized to justify violence in the Downtown Eastside as easily as in a remote highway or logging road in northern BC. Reserved subjects are of a time and place in which police negligence or excessive force is routine. 'Indians' do not have the capacity to make decisions for themselves, and, as failed legal subjects, are not reliable witnesses. Investigations into violence against Indigenous women can be seen as produced through the spatial relations of the reserve. Any space, not only the Downtown Eastside, can become a space of exception. Reserves are spaces of exception and anywhere can become the reserve. In court cases, this can be seen at work when the validity of testimony made by young women is called in to question. Indeed, this is a reason why many cases fail to get to court in the first place. It is up to police to gather evidence, and then Crown Counsel decides whether or not there is enough evidence to press charges. In my work on violence over the years, I repeatedly heard that cases did not get to court because young women or boys were said to be unreliable witnesses that would not stand up to cross examination. Maybe they were drinking or they have a history of sexual abuse which will be triggered and cause them to cry under questioning. Maybe their mother is a drug addict and none of the family can be seen as credible. Maybe that young woman is known to police for

working on the streets herself or has been in trouble with the law. Or maybe they are just plain 'Indian', and 'Indians' cannot be trusted.

In logics of the colonialscape, the naturalization of violence on reserves entails a certain kind of temporal warping, as reserves are always stuck in the past, beyond the realm of progress. Their inherent violence and neglect remains unchanged. As subjects of the reserve, 'Indians' are also stuck in the past, forever at risk of being transported to these spaces in which justice cannot be achieved. As Linda Tuhiwai Smith (1999) discusses, Western concepts of space and time are encoded in language, philosophy and science – and, socio-legal scholars would argue, in law. Western conceptions of space "have meant that not only has the indigenous world been represented in particular ways back to the West, but the indigenous world view, the land and the people, have been radically transformed in the spatial image of the West" (51). While the rest of BC was opened up for 'development' or settlement, moving forward through time, reserves remained outside these zones of 'progress'. Some efforts to move reserve economies in to the future, such as through selling land, can be seen as attempts to reimagine reserve spaces as enfolded in to the time and place of modern Canadian socio-political relations

The colonialscape covers up the ways in which reserve economies and politics are produced through policies and programs of neglect. They were never set up to thrive, but to make themselves obsolete by getting rid of 'Indians' altogether. Byrd's (2011) analysis of U.S. empire is useful here, as she contends that "ideas of Indians and Indianness have served as the ontological grounds through which U.S. settler colonialism enacts itself as settler imperialism" (xix). Here, I aim to provide a geographically based analysis of the way Indianness leaves indigenous people "everywhere and nowhere" (Byrd 2011, xix) in the Canadian colonialscape, contending that justice wormholes can be configured through various spatio-legal mechanisms to reproduce reserves and perpetuate the erasure of Indigenous territorialities.

Geographic boundaries around reserves themselves are also materially significant for Indigenous people in BC. An examination of the daily life of reserve residents reveals the impact of their fractured social and geographic isolation. There are a number of small reserves in the area around Williams Lake, where I travelled as a consultant working with Victim Services to support a project to assist in the development

of programs for local youth. None of the surrounding reserve communities had high school available, so young people had to travel to Williams Lake for school. Many of these students lived in Williams Lake, apart from their families, reminiscent of residential school days. Isolated from familial supports, I heard that some of the youth had become involved in gang activity, and many dropped out of school. Driving to one of the nearby reserves, I was struck by the lack of buildings of any kind along the small roads, and the total isolation of these communities. We approached a cluster of buildings and a cross road that indicated we had arrived 'somewhere'. But for young people living there, it was obvious how the lack of educational opportunities and lack of jobs emerged directly from the isolation and lack of resources within the reserve itself. The only jobs available seemed to be at the band office, which was a new building of only a few rooms. While isolation may be desired or beneficial for some Indigenous people as a way to maintain traditional land use and connections to territory, we know that reserve geographies in BC often do not match up with Indigenous territorialities.

These realities of isolation are out of sight, out of mind for most Canadians, including the government officials making decisions about services for reserve residents. Rather than seeing that low employment, high suicide rates, high alcoholism, and high drop out rates emerge within a set of constrained opportunities for young people, 'Indians' are just seen as lazy welfare bums, trouble makers and violent offenders. Thus, more government intervention is justified because of 'Indians' failure to succeed, and the negligence of the reserve geography itself is rendered invisible.

The embodied realities that are erased through the naturalization of the colonialscape are illustrative of the underlying Indigenous socio-legal relations which cross over reserve boundaries. Although tethered to reserves through the *Indian Act*, Indigenous people are indeed mobile, and more and more natives in BC now live off reserve. Indigenous people often move between reserve and non-reserve spaces in their daily life both in order to access services and to maintain family relations. In tension with their legal subjectivity as 'Indians', Indigenous people have maintained and sustained their own legal subjectivity through activations of cultural, legal and political systems that were here prior to settlement. Although these legal relations may not be visible within the terms of Canadian law, they are productive of categories of knowledge and identity which are lived in tension with those of the colonialscape under Canadian law.

Some have argued that the very representational tools used to naturalize colonialscape logics—such as gridded maps—can be used as tools of resistance which express active Indigenous spatialities. Sparke (1998) writes that maps can be used to "dim the violence of displacement" (485) yet can also provide sites in which surviving and continuing Indigenous territorialities can be represented simultaneously with those of colonialism. In a study of Indigenous politics in urban Australia, Jane Jacobs (1996) draws on Said in stating that anti-imperialism efforts are geographical because the imperial project entails acts of geographical violence. "For the colonized, insurgency is in part a search for and restoration of place lost" (150). Maps, as expressions of the cartographic vision of the world, can be reclaimed by Indigenous peoples in representing places in a hybrid vision using a spatial narrative that can be widely read, yet "unsettles the comprehensive hold of colonial constructs" (Jacobs 1996, 151). Sparke (1998) calls this remapping an example of "contrapuntal cartographies" (467), bringing together the dominant colonial discourse and other, older histories against which the dominant discourse acts. In the terms of this research, I understand this dual mapping as a spatial representation of legal pluralism.

Indigenous geographies are productive of another imaginary and diverse legal relations which produce legal subjects spatially rooted in Indigenous worldviews. These subjectivities are not temporally or spatially determined by the *Indian Act* nor the jurisdictional reach of the Canadian state, but emerge within relations which reach back prior to Canada's formation. If we understand the colonialscape to cover up the violence of Canadian law, and to naturalize bodily violence against Indigenous people by constructing them as reserved subjects, making interventions into the colonialscape is one possibility for shifting norms around violence. What spatial imaginary is put to work under the inherently plural vision of Indigenous law?

The texture, shape and potential of pluralistic law in BC, particularly its anti-violence strategies, are explored in the chapters that follow. In particular, how might our definition of violence change if we do not separate the violence of erasure central to 'Indians' and 'Indian space', and the embodied violence naturalized within these categories? Although the land was imagined as empty, and made to be legally empty, we know through Indigenous peoples lived experiences, oral histories and legal

relations, that the land was not empty. It was, indeed, rich with life. Life that goes back to time immemorial, not back to the date of Canada's formation as a state.

Despite the ways in which the violence of Canadian law reproduces Indigenous peoples' dehumanization, we continue to turn to the criminal justice system and changes in legislation, in situations of crisis. Although the utility of Canadian law and recognition within normative legal categories have been examined in relation to land claims, cultural knowledge and other issues of collective and personal rights, I now turn to examining its utility in cases of interpersonal violence. In the next chapter, I discuss several cases in BC in which violence against Indigenous women and girls, men and children has become visible within Canadian social and legal discourse, resulting in court cases, inquiries and the creation of new governmental monitoring tools. I describe how this recognition is achieved and how legal actors and systems respond in light of this recognition. In doing so, I aim to highlight the interpersonal level at which colonialscape logics are manifested in the everyday lives of Indigenous people, as they seek justice within systems that continue to transform them into subjects of reserved spaces in which violence is expected. In these examples, it becomes clear that colonialscape logics serve to naturalize violence in urban streets, remote highways, and private homes, indeed, anywhere an 'Indian' body might turn up.

The Colonialism of Incarceration

Robert Nichols

Abstract: This essay attends to the specificity of indigenous peoples' political critique of state power and territorialized sovereignty in the North American context as an indispensible resource for realizing the decolonizing potential latent within the field of critical prison studies. I argue that although the incarceration of indigenous peoples is closely related to the experience of other racialized populations with regard to its causes, it is importantly distinct with respect to the normative foundation of its critique. Indigenous sovereignty calls forth an alternative normativity that challenges the very existence of the carceral system, let alone its racialized organization and operation.

Despite common perception to the contrary, the Canadian prison population is disproportionately large relative to other comparable societies—with the seventeenth highest incarceration rate of thirty-four OECD nations, higher than most European nations—driven in part by a dramatic increase in Canada's prison population in the last twenty-five years.[1] In the 1990s alone, federal prison populations increased by 25 percent and provincial prison populations by a further 15 percent. The number of young people in the country's correctional institutions has increased by nearly 30 percent since 1986.[2] A large omnibus crime bill recently passed into law by

1. Mia Dauvergne, "Adult Correctional Statistics in Canada, 2010–2011," *Juristat* (11 October 2012): 7.
2. Unless otherwise indicated, statistical information on Aboriginal incarceration in Canada is drawn from Dauvergne, "Adult Correctional Statistics" and from Samuel Perreault, "The Incarceration of Aboriginal People in Adult Correctional Services," *Juristat* (21 July 2009). The majority of statistical evidence on indigenous incarceration in Canada derives from *Juristat*, a

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the Conservative government, which promotes further ideologically driven, yet demonstrably dysfunctional "tough on crime" policies, ensures that these trends will only expand and compound over time.[3]

This reality has been somewhat obscured by the hyperbolic violence of prison expansion and carceral power in the United States. Nevertheless, just as is true of the U.S. case, prison expansion north of the border has been highly racialized, especially targeting indigenous peoples. In 2010/11, Aboriginal peoples comprised 27 percent of the total adult population in provincial or territorial custody and 20 percent in federal custody in Canada. Since Aboriginal peoples account for only 3–4 percent of the total Canadian population, this incarceration rate is 7 to 8 times higher than the general average. This discrepancy is particularly striking when considered in conjunction with a gendered analysis: Aboriginal women make up the single fastest growing imprisoned population, and now account for 33.6 percent of all federally sentenced women in Canada.[4] Additionally, Aboriginal inmates are subject to what the head Federal Correctional Investigator refers to, rather euphemistically, as "routine over-classification." This means that indigenous peoples are commonly classified as higher risk and more likely to reoffend; thus, they are released later in their sentences and are more often subjected to highly intense forms of incarceration, such as maximum security prisons and "administrative segregation" (otherwise known as solitary confinement). Partially as a result of this intensification, Aboriginal peoples are more likely to be involved in incidents involving harm to self or others while in custody, including 45 percent of all documented cases of self-injury.[5] Significant discrepancies between indigenous and non-indigenous incarceration rates can be found consistently across all provincial and territorial jurisdictions in Canada, but the degree of disproportion

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periodical published by Statistics Canada, which advertises itself as "of interest to all those who plan, establish, administer and evaluate justice programs and projects, as well as to anyone who has an interest in Canada's justice system." http://www.statcan.gc.ca/pub/85-002-x/index-eng.htm. Accessed 26 October 2013. Copyright Minister of Industry, Government of Canada (2013).

3. The controversial bill, travelling under the equally bloated and mangled title *An Act to Enact the Justice for Victims of Terrorism Act and to Amend the State Immunity Act, the Criminal Code, the Controlled Drugs and Substances Act, the Corrections and Conditional Release Act, the Youth Criminal Justice Act, the Immigration and Refugee Protection Act and other Acts* (abbreviated title: *Safe Streets and Communities Act*), passed into law in September of 2013. See http://www.parl.gc.ca/LEGISInfo/BillDetails.aspx?Mode=1&billId=5120829&Language=E.
4. Government of Canada, *Annual Report of the Office of the Correctional Investigator* (2012–2013), Section IV, p. 30.
5. Ibid.

increases significantly in the West (e.g., Alberta, Manitoba and Saskatchewan) and in the Territories of the North. Moreover, just as with the U.S. case, racial disproportionally is increasing over time. As the Office of the Correctional Investigator recently put the matter: "Aboriginal over-representation has grown in recent years: between 1998 and 2008, the federal Aboriginal population increased by 19.7 percent. Moreover, the number of federally sentenced Aboriginal women increased by a staggering 131 percent over this period."[6]

Critical prison studies—and the various forms of radical, grounded praxis out of which it has emerged, been transformed and subsequently reinvigorated with conceptual and practical tools—has insufficiently attended to the centrality of colonialism to the origins, scope, scale, and legitimation techniques of carceral power in North America and, as a result, it has by and large deprived itself of the energy and force of indigenous critique. With the aim of contributing to a positive interjection and reinvigoration of the *decolonizing* possibilities latent within this field then, this essay seeks to expand and refocus this framework. I argue that although the incarceration of indigenous peoples is closely related to the experience of other racialized populations in North America (especially African Americans) with regard to its *causes*, it is importantly distinct with respect to the *normative foundation* of its critique. Indigenous critique is (1) first and foremost a political critique, related but not reducible to causal explanations rooted in economic and sociological developments. It is a form of critique that (2) challenges the prevailing paradigm of "over-representation" in critical prison studies by calling into question the biopolitical category of "racialized population" itself; (3) challenges the ideological distinction between the logic of war and the logic of social pacification upon which carceral expansion depends; (4) situates critical prison studies within the broader horizon of settler colonialism and territorialized sovereignty, and; (5) offers alternative normative grounds from which to launch a general critique of these processes.

6. Office of the Correctional Investigator, *Good Intentions, Disappointing Results: A Progress Report on Federal Aboriginal Corrections* (Ottawa: Office of the Correctional Investigator, 2009), 6. Cited in Patricia A. Monture, "The Need for Radical Change in the Canadian Criminal Justice System: Applying a Human Rights Framework," in *Visions of the Heart: Canadian Aboriginal Issues*, ed. David Long and Olive Patricia Dickason (Don Mills, ON: Oxford University Press, 2011), 238–57, 238. For a study on the imprisonment of women in Canada (but with little specific attention to Aboriginal women and no mention of colonialism), see Kelly Hannah-Moffat, *Punishment in Disguise: Penal Governance and Federal Imprisonment of Women in Canada* (Toronto: University of Toronto Press, 2001).

I.

The single most important set of tools available to any contemporary critical prison analysis in North America comes to us from decades of work in African-American and women of color feminism, broadly defined. Academic/activists such as Angela Davis and Ruth Gilmore are central to this debate, but so are organizations such as *Incite! Women of Colour Against Violence*, *Critical Resistance*, and the *Sylvia Rivera Law Project*.[7] Since these thinkers and organizations are building their analysis and critical praxis out of the U.S. experience, they have been particularly focused on the centrality of anti-Black racism to understanding prison expansion in that country.[8] This has taken the form of drawing a line of continuity between the contemporary prison system and the long history of slavery, either by way of a causal link, or via argument by analogy. The former attempts to demonstrate how the proliferation of Black Codes in the wake of formal abolition was directly and causally responsible for the turn to incarceration as a primary mechanism of social control over racialized populations (but especially African Americans). Such causal explanations have been difficult to establish with sufficient certainty, however, and can tend towards reductive, "single variable" forms of analysis that may improperly bracket out alternative explanations. Of late then, critical prison studies in the United States has tended towards a looser analogizing structure of argumentation, making the case that contemporary forms of imprisonment are *functionally equivalent* to Antebellum slavery or Jim Crow legislation in the post-Reconstruction era, even if not causally determined by these antecedents.[9]

Any critique of indigenous incarceration will have to grapple with a similar ambiguity whenever linking imprisonment to colonialism, and in this we can no doubt learn from Critical Race Theory, women of color feminism, and their related domains. However, we will as fundamentally require some departure from them. For just as any properly grounded critical praxis would be, these other fields are rooted in a historical experience that, while intersecting with settler colonialism and indigenous struggles, also diverges

7. Two of the most frequently cited works in contemporary critical prison studies include Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003), and Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007).
8. In the section that follows, I will be speaking frequently of "racism" and "racialization." My specific understanding of these terms is highly indebted to Ruth Gilmore's definition of racism as "state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death" (Gilmore, *Golden Gulag*, 28).
9. E.g., Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2012).

from them in relevant ways. Although some important literature exists that focuses on the specificity of indigenous incarceration—most notably, work by Patricia Monture and Luana Ross—to date this dimension of the field remains relatively occluded from view.[10]

One feature of prevailing discourses on prisons that serves to propagate a certain occlusion of its colonial dimension is the persistent language of "over-representation" and "racial disproportion," an idiom one can find even in the most critical camps. In this framework, empirical evidence is presented just as has been given here (above). The standard narrative structure begins with a recitation of statistical evidence pertaining to demographics, specifically comparing the racial organization of society at large versus that of the incarceration population. Any incongruity or discrepancy between the two is noted, commonly named as over-representation, and then employed to offer tacit or overt condemnation of the system. This rhetorical strategy is, not surprisingly, most evident in mainstream organizations and academic research, but it is also startlingly widespread in more critical or radical literature as well. To offer but one influential example of the former, in April of 2011 the NAACP released a major report titled *Misplaced Priorities: Over Incarceration, Under Education*.[11] This meticulously detailed report documents the rapid growth of racialized incarceration in the United States with a particular focus on its impacts on African-American communities, and the detrimental effects this is having on state capacities in other areas of investment and service delivery (especially education). Nevertheless, the primary critical thrust of this work rests with the idea of *disproportionality*, or the *over-representation* of racialized populations. As the title attests, it is primarily about *over* incarceration, not imprisonment per se.

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10. Luana Ross, *Inventing the Savage: The Social Construction of Native American Criminality* (Austin: University of Texas Press, 1998); Patricia Monture-Angus, "Aboriginal Women and Correctional Practice: Reflections on the Task Force on Federally Sentenced Women," in *An Ideal Prison?: Critical Essays on Women's Imprisonment in Canada*, ed. Kelly Hannah-Moffat and Margaret Shaw (Halifax, NS: Fernwood Publishing, 2000), 52–60; Monture, "The Need for Radical Change." See also Jane Dickson-Gilmore and Carole La Prairie, eds., *Will the Circle be Unbroken?: Aboriginal Communities, Restorative Justice, and the Challenges of Conflict and Change* (Toronto: University of Toronto Press, 2005); Joyce Green, "From Stonechild to Social Cohesion," *Canadian Journal of Political Science* 39.1 (2006); Patricia Monture-Okanee and Mary Ellen Turpel, "Aboriginal Peoples and Canadian Criminal Law: Rethinking Justice," *University of British Columbia Law Review* (Special Edition), vol. 26 (1992): 239–77. On incarceration as a theme in indigenous literature, see Deena Rymhs, ed., *From the Iron House: Imprisonment in First Nations Writing* (Waterloo, ON: Wilfrid Laurier University Press, 2008).
11. http://naacp.3cdn.net/ecea56adeef3d84a28_azsm639wz.pdf.

Over-representation is a highly ambiguous and malleable idiom, susceptible to multiple interpretations and easily rendered into diverse programs for action. For instance, disproportion may be construed as the result of economic or social pathologies exogenous to the criminal justice system itself. In this formulation, the over-representation of racialized populations in prisons merely *makes visible* broader social pathologies, albeit in a highly dramatic way. For instance, criminality is correlated to poverty, which in turn is correlated to racialization and marginalization. Thus, the over-representation of certain populations in penal institutions may be thought a function of racism, but only in a highly mediated manner. On a different reading, however, we also know that the judicial system *itself* is rife with racialized violence and injustice. Such relatively unmediated mechanisms of racism operate endogenous to the system and have also been found to directly contribute to over-representation, for instance, in the manner in which racial bias operates at various stages of interaction with criminal justice officials, from being stopped for routine infractions (especially "stop and frisk" policies), through to sentencing and treatment by prison officers. Returning to the Canadian context then, both of these (external and internal) factors have been central to understanding the expansion of indigenous incarceration. To cite but one example, a 2004 study found that Aboriginal women in maximum security were involved in security incidences at a rate (28.6 percent) comparable to female inmates in minimum and medium security institutions (26.8 percent), and the correlation between the Security Risk Score (based on previous criminal history) and involvement in such incidences was found to be practically zero: 0.01 for violent incidences and 0.05 for non-violent incidences. The report drew the following conclusion from this evidence: "Aboriginal women are thus more routinely placed into tighter security settings despite the fact that their *criminal history has no predictive value* for whether they are genuinely a risk to other inmates or staff."[12] In other words, racial bias is demonstrably impacting internal prison operations, a key factor in understanding divergence between Aboriginal and non-Aboriginal experiences of incarceration (in terms of scope, scale and intensity).

Analysis of the racism both exogenous and endogenous to the criminal justice system is clearly indispensible to a comprehensive analysis of imprisonment. It remains therefore the focus of much critical prison studies, as analysts seek to provide causal explanations for recent carceral expansion. However, this focus has its limits. While discriminatory implementation is undoubtedly important to the overall operation of penal power in

12. David Milward, "Sweating It Out: Facilitating Corrections and Parole in Canada Through Aboriginal Spiritual Healing" in *Windsor Yearbook of Access to Justice* 29.1 (2011): 43.

North America, it is limited as an explanatory device in relation to prison expansion. For racial discrimination to serve this explanatory function, one would need to demonstrate not merely its contemporary extent and operation, but its dramatic *increase* since the 1970s. However racist the operation of the criminal justice system today may be (and no credible position can deny this generally), it another thing altogether to suggest that the system prior to the 1970s was significantly *less* so.[13]

As numerous works have documented then, understanding the expansion of prisons in North America requires not merely a *social* analysis—that is, one rooted in the sociology of criminal justice officials in their interactions with targeted populations—but a *political* one. This is to say that carceral mutation and expansion is explainable principally as a political strategy, one that links up with a variety of social and economic transformations taking place over the last few decades (especially neoliberal economic "adjustments," and deregulation and dissolution of social welfare networks) without being entirely reducible to these other factors.[14] In other words, while these social and economic forces produced the relevant context, multiple responses to these transformations were nevertheless possible. Carceral expansion was not so much then the necessary, automated effect of these various causes: it was (and is) a political choice adopted from within a range of possible responses. This point is punctuated by the fact, made repeatedly in the literature, that carceral expansion is not a function of increased crime. In fact, as volumes of work attest, there is little connection between crime and punishment in North America: technologies of punishment (and their ideological justifications) grow and morph quite independently of changes in crime trends.[15] Nor are such punitive transformations a function of economic demands in any simple, straightforward manner. Despite a continued emphasis in activist literature on privatization, for-profit motives, prisoners-as-surplus-labour, or even the somewhat misleading "prison industrial complex" neologism, prisons remain overwhelmingly public

13. As Loïc Wacquant puts this point, "True, discrimination in sentencing remains a reality at the final stage of the criminal justice process . . . but discrimination clearly has not *increased* since the mid-1970s and so it cannot account for the spectacular worsening of 'racial disproportionality' in prison administration in the recent period." Wacquant, *Prisons of Poverty*, expanded edition (Minneapolis: University of Minnesota Press, 2009), 156.
14. Cf. Joe Soss, Richard Fording, and Sanford Schram, *Disciplining the Poor: Neoliberal Paternalism and the Persistent Power of Race* (Chicago: University of Chicago Press, 2011).
15. E.g., in the same year that the Conservative government of Canada announced sweeping new "tough on crime" laws, Statistics Canada reported that the crime rate was the lowest in decades. See http://www.cbc.ca/news/canada/canada-s-crime-rate-lowest-since-1972-1.1334090 (accessed December 11, 2013).

institutions and carceral expansion a function of state imperatives. So the growth of prisons is not straightforwardly a function of either an increase in crime, nor unmediated profit motives. This isn't to say that privatization has not increased, or that it is not a central component of many contemporary prison systems in the western world. However, sSuch phenomena are more properly understood as the effects of prison expansion, rather than its causes.[16] This indicates then that prison expansion is a distinctly *political* phenomenon.

Ruth Gilmore theorizes the politics of carceral expansion in terms of "surplus state capacity," which she defines as a "quality that can emerge over time as a result of the difference between what states can do *technically* and what they can do *politically*."[17] Thus, while the surplus state capacity mobilized towards carceral expansion is about technical power, it equally pertains to and has its roots in discourses of legitimation, namely social pacification and managerial democracy. Political elites push "law and order" ideologies and carceral expansion because they recognize that these work to solidify hierarchical chains of authority and control over of the state apparatus, and this functions primarily because large swaths of middle class white people, driven by fear and racist fantasies, support such policies even in the face of overwhelming evidence that they do not operate to reduce crime. By bringing forward this political circuit of violence and legitimation, we can thus break from the kind of social critique proffered by the prototypical exasperated criminologist who throws up her hands in frustration that governments continue to pursue legal reforms that are not only ineffective but actively counter-productive (i.e., they fail to reduce crime rates and may actual increase them). For, unlike this naïve approach, we can see that such policies may not be designed to reduce crime in the first place. They can only be viewed as failures if one adopts the view that they are primarily enacted in order to make communities safer. Once we see that this is not the case—once we realize that such policies are first and foremost devised to maintain a system of state violence, racialized hierarchy, and, as I will argue, continuous colonial reterritorialization—then we must confront how effective and successful they truly are.

Thus, carceral expansion as a *political formation* has been increasingly grasped as a function of the emergence and consolidation of a new "penal ethos" in North America over the last twenty to thirty years.[18] This entails

16. For criticism of the "new slavery" arguments and the idea that capitalist labour exploitation is the primary driver of prison expansion, see Gilmore, *Golden Gulag*, 21; James Kilgore, "The Myth of Slave Labor Camps in the U.S.," *Counterpunch* (August 11–13, 2013).
17. Gilmore, *Golden Gulag*, 113.
18. Loïc Wacquant has meticulously documented how this new "penal common sense" has been actively exported by the United States to Western Europe (and

the deliberate dismantling of the social welfare state (however inadequate and uneven its institutions were), a corresponding growth and glorification of the penal state, and a internal transcription of the very terms of the penal state towards an increasingly moralized, punitive approach that prioritizes the isolation, segregation, and politically symbolic (though functionally ineffective) performance of castigating criminals (overwhelmingly the racialized poor). In other words, it is not merely that the state punishes *more*, it does so *differently*, with a new penology that emphasizes highly intense sociospatial isolation.[19] As Loïc Wacquant reminds us, "The expansive and expensive penal system is not just a consequence of neoliberalism . . . but an *integral component of the neoliberal state itself*."[20] The ritualized morality of punishment has ensured that even those remnants of the social welfare state that persevere have been effectively integrated into and subordinated to carceral rhetoric and imperatives, for instance in so-called "workfare" programs.[21] The horizontal spread of carceral governmentality thus exceeds its limited institutional manifestation in the prison itself, confirming yet exceeding one of Foucault's central insights from *Discipline and Punish*.

II.

Much of the survey above is known. Although the general trajectory of critical prison studies has been driving towards the kind of distinctly *political* critique of carceral expansion outlined above, the field nevertheless still remains fixated primary upon causal explanations. To be clear, I am not suggesting that explicating the sociological causes of prison growth over the last thirty years or so is unworthy of time and attention. However, no causal explanation, however complex and nuanced, can satisfy our need for a normative critique. And in this regard, historically and in the present, the indigenous peoples of North America provided indispensible tools since their critical praxis (decolonization) has always *primarily* focused on a robust normative critique of state sovereignty *as such*, and only secondarily upon its racist implementations. The focus of indigenous peoples' struggles has always been the imposition of the Euro-American state apparatus itself. This critique imports a broader perspective, one that activists from various other traditions (indigenous and non) can learn from and must contend with.

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beyond) through neoliberal think tanks, policy experts, and lobby groups. It is reasonable to expect that the appearance of many of the same trends in Canada can be attributed to the adoption of this new kind of "Washington Consenus." See Wacquant, *Prisons of Poverty*, especially p. 54.

19. For a powerful political-phenomenological critique of solitary confinement, see Lisa Guenther, *Solitary Confinement* (Minneapolis: University of Minnesota Press, 2013).
20. Wacquant, *Prisons of Poverty*, 175–76.
21. See Soss, Fording, and Schram, *Disciplining the Poor*, passim.

In light of this perspective, sociological and demographic analysis of racialized incarcerated populations is inadequate when thinking about the political form of carceral power in North America. The colonial violence of carceral power in North America is not exclusively, or even predominately, a function of the *number* or *proportion* of racialized bodies within institutions. Moreover, framing the matter in this way may exacerbate the problem. When the critique of incarceration rests upon the over-representation of racialized bodies within penal institutions, this tacitly renders carcerality as a *dehistoricized* tool of state power—even if distorted by the pathological effects of a racist society—displacing an account of the continuity and linkages between carcerality, state formation and territorialized sovereignty.

As indigenous scholars such as Taiaiake Alfred, Joanne Barker, Glen Coulthard, and Audra Simpson (*inter alia*) have consistently argued, unlike other racialized populations in North America, indigenous peoples constituted self-governing political communities prior to the imposition of European state and market forms.[22] Their *continued* sovereign presence on the North American continent attests then not only to the failure of a series of projects of racial population management, but also fundamentally calls into question the very legitimacy of Euro-American states themselves. The central role of policing, prisons and the criminal justice system in the maintenance and reproduction of the state form is therefore challenged in a manner that exceeds the paradigm of over-representation. Moving beyond the over-representation model means then asking after the political function of the carceral system as a whole beyond that of racialized bodies within. In so doing, we confront a series of new questions: How can we analyze carceral power in the context of an ongoing denial of indigenous peoples not merely as individuals, nor even as "populations," but as self-organizing, self-governing political collectivities? How are we to apprehend the cataloguing and deploying of statistical evidence itself in this situation, especially when the evidentiary record is itself so indebted to a state apparatus of monitoring, tracking, and documenting indigenous bodies?[23] How do we draw upon such statistical evidence while recognizing that these numbers constitute

22. See Taiaiake Alfred, *Wasáse: Indigenous Pathways of Action and Freedom* (Peterbourgh, ON: Broadview Press, 2005); Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (Oxford: Oxford University Press, 1999); Joanne Barker, ed., *Sovereignty Matters* (Lincoln: University of Nebraska Press, 2005); Glen Coulthard, *Red Skin, White Masks* (Minneapolis: University of Minnesota Press, 2014); Audra Simpson, *Mohawk Interruptus* (Durham, NC: Duke University Press, 2014).
23. For instance, consider the role of *Juristat* in the Canadian context. Discussed above in footnote 2.

bodies as "populations" in a context of a depoliticizing biopolitics of surplus humanity and human management?[24]

Returning once more to the Canadian case then, indigenous peoples do not merely represent racialized bodies produced by a biopolitics of population management. Rather—and this is the radical actuality that must always be held at bay by the state—they constitute alternative political, economic, ecological and spiritual systems of ordering, governing, and relating. In the context of ongoing occupation, usurpation, dispossession and ecological devastation, *no* level of representation in one of the central apparatuses of state control and formalized violence would be proportionate. Instead, indigenous sovereignty itself calls forth an alternative normativity that challenges the very *existence* of the carceral system, let alone its internal organization and operation.

III.

Before turning more centrally to the question of alternative normativities, consider how indigenous critique recasts another, related theme currently circulating in activist-academic literature, namely, the contemporary concern over a collapse between military and police operations. We are repeatedly reminded that, at present, foreign policy objectives described explicitly in terms of "war" are advanced not through the traditional confrontation of armed combatants, but through police-like operations over a globe envisioned as one large domestic space of surveillance and pacification. As we repeatedly hear from critics and defenders alike, U.S.-led empire functions as a "global policeman." The corollary development is the increased militarization of traditional, domestic policing. Policing is thought to be militarized either when (1) it begins to employ certain technologies of intense violence normally not deployed against civilian citizenry (e.g., the use of armed personal carriers, drones, aerial surveillance, etc.) or (2) when it

24. Statistical evidence of over-representation is not irrelevant or useless as a tool of argumentation. However, due to the inherent ambiguities of "over-representation," it has never been sufficient for a robust normative critique of carceral power itself. Consider that between 1967 and 1991 there were thirty major studies commissioned on Aboriginal peoples and justice in Canada that, on some accounts, have resulted in some 1800 recommendations for reforming the Canadian justice system. In 1996, the Report of the Royal Commission on Aboriginal Peoples (RCAP) included a separate volume on Indigenous peoples and criminal justice, *Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (Ottawa: Minister of Supply and Services, 1996), which provided fifteen major new findings on the matter and seventeen additional recommendations. Almost none of these have been implemented and, in the time since RCAP was released, the problem has only compounded. Monture, "The Need for Radical Change," 239.

begins to serve overtly political aims, exceeding its traditional mandate to "serve and protect" the citizenry.[25] In such situations, the police risks being viewed as a force imposed externally by a government that the subjugated population does not recognize, authorize and/or does not have effect participation within.[26] Criminal control bleeds into war.

Assertions that the logic of war and that of social pacification can still be effectively disentangled are belied by our reality. In the current climate no attempt to fully insulate these two logics from one another can succeed. Yet, while recent commentators have expressed great dismay at the nakedly fluid boundary between military and policing operations today, viewed from the vantage point of settler colonialism and indigenous critique, there is nothing new about this permeability. In the history of Anglo-American settler colonialism, for instance, the extension of criminal jurisdiction has long been central to the subjugation and displacement of indigenous polities.[27] Existing in the "third space of sovereignty," indigenous nations have always subverted foreign/domestic distinctions, as well as attempts to distinguish war decisively from crime management.[28] The largest and most important domestic policing organization in Canada, the Royal Canadian Mounted Police (RCMP), emerged from its predecessor organization, the North-West Mounted Police (NWMP). The latter was modelled upon the Royal Irish Constabulary (RIC) and was expressly intended to function as a paramilitary organization, meant simultaneously to defeat indigenous resistance politically and pacify it criminally.[29] In the United States as well, although the Office of Indian Affairs, created in 1824, was very symbolically

25. For examples from mainstream and journalistic work of spreading fear related to the former development (but which completely overlooks the colonial and racial dimensions of these questions), see Sarah Stillman, "Swat Team Nation," *The New Yorker*, August 8, 2013 (http://www.newyorker.com/online/blogs/comment/2013/08/swat-team-nation.html); Radley Balko, *The Rise of the Warrior Cop: The Militarization of America's Police Forces* (New York: Public Affairs, 2013); Arthur Rizer and Joseph Hartman, "How the War on Terror has Militarized the Police," *The Atlantic*, November 7, 2011 (http://www.theatlantic.com/national/archive/2011/11/how-the-war-on-terror-has-militarized-the-police/248047/).
26. See Wacquant, *Prisons of Poverty*, 19.
27. For historical work documenting this fluidity, see Sydney Harring, *White Man's Justice: Native People in 19th Century Canadian Jurisprudence* (Toronto: University of Toronto Press, 1998).
28. Kevin Bruyneel, *The Third Space of Sovereignty* (Minneapolis: University of Minnesota Press, 2007).
29. Harring, *White Man's Justice*, passim; and R. C. Macleod, "Canadianizing the West: The North-West Mounted Police as Agents of the National Policy, 1873–1905," in *The Prairie West: Historical Readings*, ed. R. Douglas Francis and Howard Palmer (Edmonton: Pica Pica Press, 1992), 225–38.

relocated from the War Department to the Department of the Interior in 1849, from this point forward, including Wounded Knee and the complex and tense relationship between American Indians and the F.B.I., indigenous peoples have always doubled subjected to these two logics of violence and control.[30] As a result, they are well positioned to observe that these are not, and never have been, fixed and parallel logics, but have always intersected one another. Indigenous critique thereby discloses the oscillation of these forms of state violence as *constitutive* of territorialized sovereignty in a colonial context, rather than extraneous and novel.

The deep challenge posed by indigenous peoples does not merely consist in their doubly-subjected position here, however. Rather, it resides in the delegitimizing of the war/crime dichotomy in the first place, for indigenous peoples in North America are in precisely the position mentioned above: experiencing policing itself as a force imposed externally by a government that the subjugated population does not recognize, authorize and/or does not have effect participation within.[31] In short, the *state itself* is apprehended as the primary vehicle for the collective organization of violence upon indigenous peoples, historically and in the present. Indigenous politics is founded upon this existential challenge. As indigenous (Mohawk) scholar, Patricia Monture-Angus points out, in the Canadian context, study after study has demonstrated that, "Aboriginal people do not view the criminal justice system as a system that represents or respects them," and, as a result, "the perceptions of Aboriginal peoples (while keeping in mind their diversity) thus

30. The FBI shares jurisdiction with the Bureau of Indian Affairs, Office of Justice Services (BIA-OJS) and has primary law enforcement responsibility on nearly 200 Indian reservations. The Department of Justice traces its authority over law enforcement to treaty responsibilities established in *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831), which set out the United States government's duty to "protect" Indian tribes as "domestic dependent nations." See http://www.fbi.gov/about-us/investigate/vc_majorthefts/indian/indian_country_crime and http://www.justice.gov/otj (accessed June 2014). Perhaps the locale most symbolically associated with the overlap of military and policing powers as they relate to American Indians is Alcatraz, which initially functioned as a military prison where indigenous political opposition was routinely incarcerated, and, as a result, was later the target of indigenous (re)occupation from 1969 to 1971 by the United Indians of All Tribes. See Paul Chaat Smith and Robert Warrior, *Like a Hurricane: The American Indian Movement from Alcatraz to Wounded Knee* (New York: New Press, 1997).

31. This article does not attempt to extend the comparison beyond Canada and the United States to include other Anglo-settler polities, such as Australia and New Zealand. No doubt, however, such comparative work is possible and needed. For an example of such analysis, see Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous Peoples in America and Australia, 1788–1836* (Cambridge, MA: Harvard University Press, 2010).

thoroughly challenge the perspective of those who regard Canada to be a free and democratic state."[32] In this context, reforming the penal system to produce less "disproportionality" in racial demographics (between inside and outside the prison walls) will continue to fail to take into account Aboriginal justice traditions themselves, which are "a clear component of the inherent right to self-government."[33] While indigeneity consistently avoids reduction to any fixed or determinate content, the condition of possibility for continued creative reinvention and reproduction of culture, tradition, spirituality, and life itself *as* indigenous peoples has meant a persistent refusal to acknowledge the dehistoricized naturalization of domestic/foreign distinctions meant to legitimize state violence.

Although this has a centuries-long history, what has changed is that, unlike pervious eras (unlike even the 1970s, e.g., Pine Ridge) the incarceration of indigenous peoples is increasingly dehistoricized—and thus depolitized—through its representation as the general extension of racialized criminality. Even though far more indigenous peoples are incarcerated today than, say, when Lenard Pelltier was convicted in 1977, today this is more effectively and smoothly enacted because it has been routinized, bureaucratized, and detached from the longer colonial history of the state itself. By attending to the colonial function of carceral expansion today, we are cautioned then against too hastily accepting the supposed radical novelty of the present, not to mention the story of neoliberalism's hollowed out states, or Empire's virtuality. Indeed, we are even cautioned against too hastily accepting one of indigenous studies' prevailing narratives today, namely, that North American settler states have moved from openly coercive and violent relations with indigenous communities towards a more flexible, docile, politics of recognition and assimilation—a move away from the "hard infrastructure" of military operations and residential schools to the "soft infrastructure" of public apologies and cultural accommodation. While this transition to soft tactics has certainly occurred in some fields of governance, it is coeval with the growth of a whole shadow system of hard infrastructure that is every bit as material, physical and coercive as ever. The settler colonial state has not gone away at all, or even become less of a physical, material presence—it has merely shifted its site of operation, perhaps most symbolically from the residential school to the prison. Read against this larger backdrop then, we can begin to read the vast network of prisons in North America in terms of its ideological function relative to settler colonialism: that is, the manner in which it functions strenuously to depoliticize this ongoing material violence and erect a strict separation between *criminal control* and *conquest* despite indigenous societies' continued insistence that externally imposed coercive

32. Patricia Monture, "The Need for Radical Change," 244.
33. Ibid., 240. See also RCAP, *Bridging the Cultural Divide*, 289.

control over their members (for whatever reason) is an affront to the inherent right to self-government.

IV.

Ruth Gilmore has persuasively argued that if we are to understand and properly subject carceral power to an effective critique then we must not only "develop complex understandings of how prisoners became so massively available as carceral objects"—a matter surely deeply rooted in processes of racialization—but we must also "figure out how the ground the prisons stand on becomes available for such a purpose."[34] In thinking about how this ground becomes available, Gilmore has in mind the manner in which a permanent crisis in the workfare-welfare state has been literally displaced onto the landscape of relatively low-density, rural communities, which has produced new opportunities and demands for land grabbing. However, highlighting the colonialism of incarceration further draws our attention to the territorial foundation of prison expansion in a deeper and longer history. It forces consideration of the politics of territoriality in North America in a variety of forms, including the ways in which territorialized sovereignty aspires to impose an exclusivity and singularity of command and control that obliterates alternative normative orders beneath and beyond its aegis.

At the most immediate level, criminalized capture by the state is about management of "disorderly populations" through isolation. As Allen Feldman famously put it: "Arrest is the political art of individualizing disorder."[35] Of course, isolation and sequester are always already geospatial and are thus implicated in territoriality in a general sense. Prisons are a spatial and territorialized matrix of punishment and control inasmuch as they attempt to provide geographical solutions to socio-economic and political contradictions (in the form of cages, walls and other technologies of isolation and segregation). As Gilmore forcefully put this point,

> Incapacitation doesn't pretend to change anything about people except where they are. It is in a simple-minded way, then, a geographical solution that purports to solve social problems by extensively and repeatedly removing people from disordered, deindustrialized milieus and depositing them somewhere else.[36]

Prisons certainly operate through geospatial media in this general sense, sharing a certain continuity with other technologies of spatial control such as "ghettoization." As a result, there is overlap here with other important experiences of, for instance, African American subjugation and control.

34. Gilmore, *Golden Gulag*, 130.
35. Allen Feldman, *Formations of Violence* (Chicago: University of Chicago Press, 1991); cited in Gilmore, *Golden Gulag*, 235.
36. Gilmore, *Golden Gulag*, 14.

Prisons, ghettos, and other tools of capture and separation exhibit a revealing morphological continuity.[37] Attending to the historical experience of indigenous peoples, however, these general geospatial formations are refocused through another lens of territoriality—settler colonialism and land acquisition—reframing Gilmore's considerations on the territorial foundation of the prison apparatus.

Indigenous (Dene) political theorist Glen Coulthard provides a succinct and precise definition from which we may begin to bring the colonial-territorial politics to the fore here. He designates a "colonial relationship" in terms of the distinct form of domination it engenders. Colonialism is:

> A relationship where power—in this case, interrelated discursive and non-discursive facets of economic, gendered, racial, and state power—has been structured into a relatively secure or sedimented set of hierarchical social relations that continue to facilitate the *dispossession* of Indigenous peoples of our lands and self-determining authority. In this respect, Canada is no different than any other settler-colonial power: in the Canadian context, colonial domination continues to be structurally oriented around the state's longstanding commitment to maintain—through force, fraud, and more recently, so-called "negotiations"—ongoing access to the land that contradictorily provides the material and spiritual sustenance of Indigenous societies on the one hand, and the foundation of colonial state-formation, settlement and capitalist development on the other.[38]

Coupling Coulthard's work with the emergent field of settler colonial studies brings into focus the extent to which state and market formation in North America has always been intimately bound up with *land acquisition* and *resettlement*, and that these have called forth distinct ideologies rooted in notions of agrarianism, territorial possession and improvement. The defining feature of this particular political formation is not the appropriation of labour, nor the subjugation of indigenous self-governing powers (although these are both also present). Rather, as James Tully reminds us, "the ground of the relation is the appropriation of the land, resources, and jurisdiction of indigenous peoples, not only for the sake of resettlement and exploitation . . . , but *for the territorial foundations of the dominant society itself*."[39]

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37. See Wacquant, *Prisons of Poverty*, 82.
38. Glen Coulthard, "From Wards of the State to Subjects of Recognition? Marx, Indigenous Peoples, and the Politics of Dispossession in Denendeh," in *Theorizing Native Studies*, ed. A. Simpson and A. Smith (Durham, NC: Duke University Press, 2014), chap. 3.
39. James Tully, "The Struggles of Indigenous Peoples For and Of Freedom," in *Political Theory and the Rights of Indigenous Peoples*, ed. D. Ivison, P. Patton, and W. Sanders (Cambridge: Cambridge University Press, 2000), 36–59, at 39. Emphasis added.

Or as Patrick Wolfe states rather more bluntly: "Territoriality is settler colonialism's specific, irreducible element."[40]

Contemporary critical theory has largely evaded an analysis of territoriality and its relationship to classical colonial formations, oftentimes staking much on a supposed movement towards a decentred, deterritorialized, virtual or "postmodern" Empire thought to have succeeded the older, land-based form of colonial power that held sway over an era now imagined as distant to us.[41] However, viewed from the vantage point of indigenous struggles, settler colonialism and—our focus here—carceral power as it is subtended by colonialism, predictions of a neoliberal hollowed-out state and/or a deterritorialized Empire appear not merely premature but inattentive to the dialectical inversion of these tendencies, that is, to the processes of concretization and the persistence of *fixity*, *rigidity* and *territoriality*. Thinking through carceral power and indigenous incarceration, we can here instead ask after the continuation of classical state building practices, including its hard infrastructure, as well as classical colonial relationships to land acquisition and dispossession that have provided the literal terrain upon which biopolitical population management techniques as segregation and sequester rest, observing not only that these remain central to the global organization of capital and biopower, but that such forces are in fact advancing rather than melting away.

Work by political theorist Wendy Brown stands as an exception to this general occlusion in as much as she has attended to the paradoxes of the territoriality of contemporary sovereignty by highlighting the continued importance of walls, fences, borders, and barriers to the organization of political space. Brown notes that what we have come to call "globalization" in fact

> harbors fundamental tensions between opening and barricading, fusion and partition, erasure and reinscription. These tensions materialize as increasingly liberalized borders, on the one hand, and the devotion of unprecendented funds, energies, and technologies to border fortification, on the other.[42]

In other words, while capital and military technology is increasingly deterritorialized and fluid, it is so only through the reassertion of rigidity, fixity and territorial segmentation for certain populations. And, quite rightly,

40. Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8.4: 387–409, at 388.
41. Important exceptions to this rule include Michel Foucault, *Security, Territory, Population* (New York: Palgrave Macmillan, 2007), and the work of Stuart Elden, especially *The Birth of Territory* (Chicago: University of Chicago Press, 2013).
42. Wendy Brown, *Walled States, Waning Sovereignty* (New York: Zone Books, 2010), 7–8.

Brown draws a line of continuity between the contemporary resurgence of concrete barriers and the historical lineage of settler colonialism and land appropriations. In this way, she provides tools for understanding how the regulation of political space is not merely about the construction (or removal) of any specific walls, fences, or cages, but more properly "a technology of separation and domination in a complex context of settler colonialism and occupation."[43]

In so-called "Indian Country," there is nothing new about this paradoxical relationship of segregation and fluidity. Indigenous peoples are well acquainted with what Ann Laura Stoler has termed (following and building upon Foucault) the carceral archipelago of empire, which has always combined spatial isolation and confinement with linkages and connectivity—in this particular case, highlighted most dramatically by the circuit many indigenous peoples traverse today between the reserve or reservation and the prison, two sites of physical and spatial containment that are intertwined in one another.[44] In settler colonial societies today, however, this reality is obscured not only by the ideological depoliticization of carceral expansion in general, but also by the delinking of prison abolitionism from decolonialism and the "land question" specifically. To speak of the colonial violence of carceral power in North America is precisely to focus attention to how incarceration facilitates dispossession, in this time, in this place.

In the final analysis then, indigenous critique launches its evaluation of carceral power by attending to the ways in which this apparatus of capture operates as one armature of territorialized colonial sovereignty, a continuous process of dispossession that (always imperfectly) undermines indigenous practices of self-government by severing peoples from their historical relationship to the land. This critique speaks then already of alternative normative relationships of governance, sociality, and ecology.

With regard to this latter question, consider again the work of Patricia Monture-Angus. Drawing upon extensive work with Aboriginal women's associations across Canada, Monture-Angus points us directly to the ultimate

43. Ibid., 30.

44. Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton, NJ: Princeton University Press, 2009). Stoler is building upon, while critically provincializing and decentring Foucault's classic genealogy of carceral power in *Discipline and Punish*, but especially the symbolic function of the Mettray institution. While Foucault employs the opening of the Mettray penal colony in January of 1840 to "fix the date of the completion of the carceral system," Stoler rightly points out that the institution was in fact part of a global, imperial formation that "connected strategies of confinement from metropole to colony and across the imperial world" (Stoler, 131). See also Foucault, *Discipline and Punish*, 2nd ed. (New York: Vintage, 1995).

normative foundation of the critique proffered here. In 1989, the Aboriginal Women's Caucus submitted a brief to the Solicitor General of Canada, making clear the status of indigenous women as both (1) multiply subjected by sexist, racist and colonial forms of governance, and yet (2) firmly rooted in an alternative ethic that precludes their legitimate incorporation into the criminal justice system, whatever their "level of representation" therein. They wrote:

> All Aboriginal, First Nations citizens are in conflict with the law. We are First Peoples with an inherent right to exercise our own systems of justice and the values these systems represent. The issue of Aboriginal women and the criminal justice system is merely the most blatant example of the oppression of First Nations People under a system of laws to which we have never consented.[45]

Reflecting on this and other examples, the conclusion Monture-Angus draws is that, "the foundational ideas of current correctional philosophy"—namely, punitive power and risk management—are "incompatible with Aboriginal cultures, law and tradition."[46] This presents a unique and important challenge then to the new penal ethos, since it cannot be easily resolved even through a "de-racialization" process, or the reorganization of demographics. Even attempts to incorporate the alternative ethical systems of indigenous peoples will fall short under such conditions. The inclusion of Healing Lodges and other Aboriginal-centred correctional facilities cannot conceal the fact that these institutions remain "within the legal and bureaucratic structure of the Canadian prison system . . . no matter how much Aboriginal culture and tradition inspires their contour, shape and form."[47] Whereas "racialization" approaches tend to focus on the racist operation of correctional institutions then, indigenous critique focuses attention on the normative

45. *Report of the Task Force on Federally Sentenced Women: Creating Choices* (Ottawa: Ministry of the Solicitor General, 1990), 23; Cited in Monture-Angus, "Aboriginal Women and Correctional Practice," p. 57. The Aboriginal Women's Caucus was a group of Aboriginal Women working in the Canadian criminal justice system.
46. She goes on to elaborate: "People (or any 'thing' with a spirit) were not intended to be managed but rather respected. The conclusion is that one of the foundational ideas of current correctional philosophy is, in my opinion, incompatible with Aboriginal cultures, law and tradition." Monture-Angus, "Aboriginal Women and Correctional Practice," 56.
47. Ibid., 53. This principled, deep normative critique of prisons as institutions of violence displaces and eclipses work whose primary aim is to diagnose the manner in which carceral expansion is "antagonistic to democratic participation" and "inspires negative orientations toward government." Vesla M. Weaver and Amy E. Lerman, "Political Consequences of the Carceral State," *American Political Science Review* (November 2010): 1–17.

critique of carceral power within a broader horizon, but especially insofar as it functions as a principle apparatus of colonial-state power. This deep, territorially grounded normative vision is not reducible to the more prevalent anti-racist analysis of critical prison studies (however indispensible the latter remains) and cannot be overlooked or ignored.

V.

Theorizing and interrupting indigenous incarceration means attending to more than the over-representation of racialized bodies.[48] It calls instead for an analysis of the colonial function of the carceral form in the here and now. To recapitulate: the concern here is not with a general notion that all imprisonment, regardless of time and place, is inherently colonial merely due to its form or mode of operation. It is rather with the fact that, in *this* context carceral power takes on a colonial function as a result of its central role in manifesting and managing the territorialized violence of *these* states.[49] If sovereignty can be said to comprise the continual practice of asserting the singularity of political control in a given territorial space—thus combining exclusion and absolute decision—colonialism is the practical mediation of the external/internal boundaries of this process. It is the means by which sovereignty extends outward and is then reterritorialized through continual internal reorganization. Hence the association of colonization as an outward expansive force and an internal reorganization through containment, capture and divisive social organization. In the contemporary Anglo-American world, this colonization is predicated by its *settler* form, as so many important interventions in Native American studies have demonstrated.

Settler colonialism is a distinctive ideological and material formation, and it should be clear here that the prison industrial complex in North America is one technique in its operation today. Set alongside that other archipelago of spatial containment—the Indian reservation and reserve system—the contemporary carceral system colonizes and re-colonizes in a classical sense: by providing a solution to that which exceeds and destabilizes sovereignty via a spatial reorganization of populations and a depoliticization of that process. While this apparatus is currently situated within empire and manifests itself in fully racialized terms of articulation today, it cannot be reduced to these other formations. For settler colonialism

48. For work that carefully avoids the generalized "racialization" framework in favour of a rich historical analysis of the intertwining of anti-Black racism and settler colonialism, see Shona Jackson, *Creole Indigeneity: Between Myth and Nation in the Caribbean* (Minneapolis: University of Minnesota Press, 2012).
49. This leaves open the question of how to relate the specificity of the carceral-colonial linkage in North America to other Anglo-settler colonies or other occupied lands (which is beyond the scope of this particular article).

aims not primarily at exogenous domination or the extraction of surplus value from an enslaved and subjugated population but, first and foremost, at the acquisition and maintenance of territorialized sovereignty through continual spatial containment, reorganization and pacification—a process that both undermines, and is continually challenged by, the plurality of indigenous normative worlds. Thus, the rise of carceral power in the Anglo-American world cannot be told without attending to the history of settler colonialism, and it is only on the basis of this reframing that prison abolition can properly announce itself as decolonization.[50] — • —

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Luana Ross

INVENTING THE SAVAGE

THE SOCIAL CONSTRUCTION OF NATIVE AMERICAN CRIMINALITY

PART I *Colonization and the Social Construction of Deviance*

The United States may not have written the book on ethnic cleansing, but it certainly provided several of its most stunning chapters—particularly in its treatment of the American Indian. . . . Americans, as de Tocqueville long ago recognized, are a future-oriented people with a short historical memory. And the accepted, widely taught versions of history are written by the victors, presented in schools as sanitized costume pageantry. This is especially true when the victory is as total as that of America's forefathers over the American Indians, who were nearly "cleansed" from an entire continent—an outcome the likes of which Bosnia's Serbs can only dream.

KENNETH DAVIS
"Ethnic Cleansing Didn't Start in Bosnia"

One WORLDS COLLIDE

NEW WORLD, NEW INDIANS

> *The more [Indians] we can kill this year the less will have to be killed the next war, for the more I see of these Indians, the more convinced I am that they all have to be killed or be maintained as a species of paupers.*
>
> GENERAL WILLIAM T. SHERMAN, *1867*
> *(quoted in Sharon O'Brien,* American Indian Tribal Governments*)*

Once, all Native American tribes were largely free of the impositions of external social forces. These indigenous people did not live in isolation, although each nation had separately constructed a unique world. But their meetings, even when conflictual, never followed the notion of absolute dominance by means of total war that justified European and Euro-American invasion and occupation (Jaimes and Halsey 1992).

When Europeans first came to this country, there were approximately ten to twelve million indigenous people living on the land that became the United States (Dobyns 1983). These indigenous people were divided into numerous autonomous nations, each with its own highly developed culture and history. Politically, the indigenous people were not weak, dependent groups of people but rather powerful equals whom the early colonists had to deal with as independent nations.

Over the years, Native people have been stripped of most of their resources by the aggressive "settlers" who subjected them to unilateral political and economic exploitation and cultural suppression (Talbot 1981; Weyler 1982). Although Native nations are still politically distinct from the United States, under the definition of colonial theory today's Native nations are colonies. One of the main motives of colonialism is economic exploitation, and cultural suppression almost invariably ac-

companies colonialism (Blauner 1972; Talbot 1981). Cultural suppression is a legal process that involves deculturation—eradication of the indigenous people's original traditions—followed by indoctrination in the ideas of the dominators so the colonized may themselves assist the colonial project (Talbot 1981). The process, in which the colonized are removed from their cultural context through enslavement or transplantation, involves the abandonment of culture and the adoption of new ways of speaking, behaving, and reasoning.

The destruction of indigenous cultures includes the eradication of their judicial systems. Law has repeatedly been used in this country to coerce racial/ethnic group deference to Euro-American power. Understanding this history of colonization is essential because Native criminality/deviancy must be seen within the context of societal race/ethnic relations; otherwise, any account of crime is liable to be misleading. Any explanation of Native criminality that sees individual behavior as significant overlooks the social and historical origins of the behavior. A thorough analysis of Native criminality must include the full context of the criminal behavior—that is, their victimization and the criminalization of Native rights by the United States government.

NATIVE WORLDS

As with other social worlds, Native societies are the result of the world-building activities of their members. This unending pursuit contains a variety of aspects, some of which are included in a social phenomenon known as social control. This area, which includes the concept of deviance and the manner and appearance of its construction, is my concern.

There is a widely held belief that the Americas' indigenous people were completely lawless. Nothing could be further from the truth. Although the standards of right and wrong varied widely, as did the procedures for punishing transgressors, Native groups all exercised legal systems founded upon their own traditional philosophies.[1] The law was a part of their larger worldview (Barsh and Henderson 1980; Deloria and Lytle 1983, 1984; Yazzie 1994). According to Rennard Strickland, "law" is more than statutes and balanced scales:

> Law is also a Cherokee priest listening to the spirit world while holding the sacred wampums in hand and the Cheyenne soldier-society warrior draped in the skin of a wolf. In fact, a command from the spirit world can have greater force as law than the most elaborate code devised by the most learned of men. For law is organic. Law is part of a time and a place, the product of a specific time and an actual place. (1975, xiv)

As Deloria and Lytle write,

> Indian tribes, as we shall see, were once primarily judicial in the sense that the council, whether it was that of a village, a league of tribes, or a simple hunting band, looked to custom and precedent in resolving novel and difficult social questions that arose. . . . The task of the council, when it had a difficult question to resolve, was to appeal to that larger sense of reality shared by the people of the community and reach a decision that the people would see as consonant with the tradition. Few new laws or customs were needed and when these occasions presented themselves the homogeneity of the community made the adoption of the innovation simple. (1983, xi)

We are reminded that Indian Country[2] had no prisons:

> . . . as Native people, we believe in truth, and not the facts. That is why we never had to sign a receipt, because we knew we were dealing with each other in an honest way. . . . We never had locks on our tipis . . . go ahead and dig all you want to search for the history of the Americas, and you will never find evidence of prisons. (Deere 1980; quoted in Weyler 1982, 98)

Native people continue to survive and reach forth, extending, building Native worlds as best they are able. Part of these efforts concerns the recuperation of Natives whose path takes them outside the natural order or across Euro-American legal lines. It is these Natives and the manner of their contact with other Natives and Euro-Americans, especially the "official" ones, that is now our concern. The United States has the distinction of incarcerating more of its people than any other

country. Natives are now locked up in great numbers, jailed in buildings constructed in line with the system of legislated law, which the United States proudly and forcefully imposes on Natives.

Prior to the coming of this law and its jails, Natives were free to follow laws seen as coming from a natural, external place instead of flowing from the pens of men. On occasion, Natives did not follow Native ways. How much this happened is difficult to ascertain, but it surely was little compared to the deviance apparent in today's society. Natives involved in these situations knew what was amiss and met together to search out a remedy. These meetings, authorized by the wise—whose age, gifts, and spirit were acknowledged—looked for a path that would compensate for the injured and recuperate the offender.

> The primary goal was simply to mediate the care to everyone's satisfaction. It was not to ascertain guilt and then bestow punishment upon the offender. Under Anglo-American notions of criminal jurisprudence, the objectives are to establish fault or guilt, and then to punish. . . . Under the traditional Indian system the major objective was more to ensure restitution and compensation than retribution. (Deloria and Lytle 1983, 111)

Precontact Native criminal justice was primarily a system of restitution—a system of mediation between families, of compensation, of recuperation. But this system of justice was changed into a shadow of itself. Attempts were made to make Natives like white people, first by means of war and, when the gunsmoke cleared, by means of laws—Native people instead became "criminals." *Criminal* meant to be other than Euro-American. We will see that Euro-Americans sought to delegitimize Native worlds and attacked their constructs, including Native justice systems, which were systematically torn down, eroded, and replaced.

One damaging effect of colonization has been its influence on the structure of Native governments. The expansion of Euro-American legality contributed greatly to the further decline of tribal systems, already rocked by foreign invasion. For instance, except in a few early treaties, in regulating Native-white relations, Euro-Americans insisted that disagreements and crimes be disposed of in Euro-American fashion.[3] Consequently, political discretion, generally handled in Native societies by a council of elders and the clans, came to be assumed by Euro-Americans, greatly weakening the traditional councils.

FENCING INDIAN COUNTRY: DISRUPTIVE POLICY AND LEGISLATION

By the end of the eighteenth century the newly independent United States had cleared the eastern seaboard of most of its original inhabitants (Josephy 1984). At the turn of the century, the most intense wave of westward migration began in earnest, driven by land speculation. Speculators, often backed by New England and European banks, cheaply purchased large tracts of land from the federal government, who had procured it (often forcibly) from Native nations. The land was sold in smaller tracts, at considerable profit, to white settlers (Johansen and Maestas 1979).

Colonialism, thus, did not end with the Declaration of Independence. The United States continued colonizing after its revolutionary war. All the characteristics of colonialism—unilateral political control, economic exploitation, and cultural oppression—were present in Euro-American expansionism in the nineteenth century. Colonialism remained, albeit manifested more subtly.

Racialized oppression, then as now, was not a discrete phenomenon independent of larger political and economic tendencies. Nineteenth-century laws and their enforcement can readily be seen as instruments for maintaining social and economic stratification created in the centuries before. In a greedy, expanding young nation building law and custom on the ownership of property, crime control was part of the maintenance of that sacred foundation. Law-enforcement officials were not simply bystanders in this history; they participated in and encouraged lawlessness in the interests of suppressing minorities. As remaining Native lands were seized and resisting tribes massacred, federal officials often looked the other way or were actively involved (Brown 1970). Genocide against Native people was never seen as murder. Indeed, in the Old West the murder of Natives was not even a crime (Heizer 1974; Hurtado 1988; Schwartz and Disch 1970). Native men and women, their humanity cast aside, were commonly referred to as "bucks" and "squaws." Those not exterminated faced dire circumstances. For instance, the state of California enacted "The Act for the Government and Protection of Indians" in 1850, amended in 1860. Despite the title of the act, it allowed white people to simply take Native children, those orphaned or supposedly with parental consent, as indentured slaves (Hurtado 1988). The law also "virtually compelled

Indians to work because any Indian found 'loitering or strolling about' was subject to arrest on the complaint of any white citizen, whereupon the court was required within twenty-four hours to hire out arrestees to the highest bidder for up to four months" (Hurtado 1988, 130).

During early contact with Europeans, tribes retained exclusive jurisdiction over such issues as law and order. This right followed the assumption that tribes possessed complete sovereign powers over their members and lands. Tribal sovereignty, as defined by Euro-American law, was upheld in two early major U.S. Supreme Court cases: *The Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832). Tribes did not intend to give up their culture, social organization, or self-government; therefore, according to treaties, tribes were to retain their system of criminal justice (Ortiz 1977).

Native legal and political status changed, however. One factor in this transformation was the view Europeans and Euro-Americans historically had, and continue to have, of Natives. Indigenous people's land and other resources were desired by ethnocentric Europeans and later Euro-Americans, who expressed their cultural superiority as the justification for the expropriation of Native lands. Natives were regarded as "savages," legitimizing the removal of Natives from the westward path of civilization's progress (Berkhofer 1978). The ideology of Native inferiority was used to justify both genocide and attempts to supposedly assimilate Natives into the dominant society. Whatever the intent, the common denominator was the assertion that Native societies were lower on the evolutionary scale. Accordingly, the stereotype of the "savage, inferior" Native was carefully developed, and Natives were seen and treated as deviant. In this manner, the ground was prepared for the entry of "modern, rational" Euro-American law into Indian Country.

One product of colonialism is, thus, the controlling of indigenous people through law. The values that ordered Native worlds were naturally in conflict with Euro-American legal codes. Many traditional tribal codes instantly became criminal when the United States imposed their laws and culture on Native people. New laws were created that defined many usual, everyday behaviors of Natives as "offenses." The continuous clashing of worlds over the power to control Native land and resources constantly brought Native people in conflict with the legal and judicial system of the United States, which demonstrates the political intent and utility of Euro-American laws.

Crucial to understanding Native criminality is knowledge of the disruptive events brought about by assimilationist, racist policy and prohibitive legislation mandated by federal, state, and municipal governments. These policies and accompanying criminal statutes were concerned with cultural genocide and control as the tenacious Euro-Americans, seeking to replace tribal law and order with their own definitions of criminality and due process, increasingly restricted the power of Native nations.

The Euro-American surge to gain legal and judicial control over tribes included the creation of the Bureau of Indian Affairs (BIA). To relieve the military while retaining control of tribes, the federal government created the BIA within the War Department in 1824. In 1849 the BIA was transferred to the Department of the Interior. Additionally, the early part of that same century saw the federal government's first attempts to impose federal criminal laws on nonconsenting tribes. The effort to facilitate Euro-American encroachment on Native lands was led by the U.S. Congress, which awarded itself federal jurisdiction over Natives by passing the General Crimes Act in 1817. The tribes retained exclusive jurisdiction only over offenses in which both the offender and the victim were Native (Barsh 1980). In all other cases, tribes now held concurrent jurisdiction with the federal government.

Another intrusion by the federal government into Native affairs was launched in 1825, when Congress passed the Assimilative Crimes Act. This act expanded the number of crimes that could be tried by federal courts when offenses were committed on Native land. The act is limited to interracial crimes and is not applicable when crimes are committed between Natives on reservations (Deloria and Lytle 1983).

From the mid– to late nineteenth century, the overriding task of the federal government was, in theory, the "civilizing" or "Americanizing" of tribes (Prucha 1973). In practice, the goal seems to have been to obtain Native land and resources. This era featured the "Friends of the Indians," a group of Euro-Americans that worked in common to "save" Natives from their "primitive" ways. This well-placed group, which can be likened to Howard Becker's (1963) moral crusaders, applied considerable political pressure in an effort to get their reforms enacted. The reformers, solidly agreeing that the Americanization of Indians required that they be brought under the protection and restraints of Euro-American law, worked to bring a special set of courts and procedures to the reservations. These procedures were to hasten their illusive assimilation.

The influential reformers pressured the Department of the Interior to take action against the "savage and barbarous" practices of the Natives (Prucha 1973). The vehicle chosen to accomplish this task was the Court of Indian Offenses. These courts were composed of Native judges, handpicked by BIA Indian agents, who satisfied the agents, not tribal communities (Deloria and Lytle 1983). The judges were supposed to be men with high moral integrity who "engage in civilized pursuits"; the requirements stated also that "no person shall be eligible to such appointment who is a polygamist" (Morgan 1882; quoted in Prucha 1973, 301).[4] Preference was given to those who read and wrote English. The judges were to bring Natives "under the civilizing influence of law" (Teller 1883; quoted in Prucha 1973, 299). Indirect rule, along the British colonial model, was thus established with the formation of Indian police and judges in the latter part of the nineteenth century (for a full description, see Hagan 1966). These men were employed to police other Natives according to Euro-American law in another attempt to Americanize indigenous people.

The regulations for the Court of Indian Offenses were drawn up in 1883 by Thomas Morgan, then Commissioner of Indian Affairs. Morgan listed offenses and the appropriate punishments. The following constituted offenses: plural or polygamous marriages; immorality; intoxication; destroying property of other Natives (this speaks to mourning practices: destroying the property of the deceased was customary in many tribes); any Native dance "intended and calculated to stimulate the warlike passions of the young warriors of the tribes" (Teller 1883; quoted in Prucha 1973, 296); and the practices of medicine people, which were seen as "anti-progressive," because medicine people used their power in "preventing the attendance of the children at the public schools, using their conjurers' arts to prevent the people from abandoning their heathenish rites and customs" (Teller 1883; quoted in Prucha 1973, 297–298). In some tribes spiritual leaders had assumed broader roles after the slaying or arrests of war leaders, so by criminalizing their practices the courts seized the authority of traditional tribal leaders.

Misdemeanor offenses generally covered Native neglect to engage in what Euro-Americans defined as "work." The Protestant work ethic was upheld to Natives, and failure "to adopt habits of industry, or to engage in civilized pursuits or employments," brought swift punishment (Morgan 1892; quoted in Prucha 1973, 304). Clearly these courts were used to suppress Native worlds, which were made criminal, and especially to attack their religion. This repression of religion forged ahead at full steam until 1934, when the Indian Reorganization Act somewhat lessened the court's powers. The ban on alcohol, which came in the early nineteenth century, was not lifted until 1953.

In 1881 an important event occurred in Indian Country. A Lakota named Crow Dog killed another Lakota by the name of Spotted Tail (Harring 1994). As their tribal custom decreed, the matter was remedied by Crow Dog's family paying restitution to the victim's family. Under Lakota law Crow Dog would not be further punished, let alone executed. White people, however, were enraged over the much-publicized case and demanded that the United States seize jurisdiction over the tribes and punish Crow Dog "properly." *Ex parte Crow Dog* (1883) opined that the United States did not have the jurisdiction to prosecute a Native when the crime was against another Native. Euro-American reformers thought that to allow such a "primitive" form of justice to prevail was lawless (Deloria and Lytle 1983). Their furor led to the passage of the Major Crimes Act of 1885, whereby Congress unilaterally gave federal courts jurisdiction in Indian Country (when the offenders were Native) over seven major crimes. The act was later amended to include fourteen felonies.[5]

This delineation of certain crimes in Indian Country to be federal offenses outside tribal jurisdiction established a pattern that has held to the present. By taking jurisdiction over crimes, the federal government also assumed the power to punish. Significantly, the act applies only when the offender is Native, although the victim may be Native or non-Native, and the offense must be committed within the legal definition of Indian Country (Deloria and Lytle 1983).

Some of the daily operations of this act are seen by Dumars (1968), who contends that Native Americans charged with major crimes on an Indian reservation receive harsher treatment than non-Natives charged with the same crimes on a reservation. Using the example of assault with a deadly weapon, Dumars demonstrates that Natives convicted of this crime receive from federal judges penalties twice as harsh as those given non-Natives committing the same crime but falling under state jurisdiction. Hence, in their lurch to possess Indian Country, Euro-Americans in Congress defined crime differently for Natives than for themselves, with the Native definition requiring less proof for conviction in Euro-American courts (Deloria and Lytle 1983).

In 1887 another direct violation of treaties came with the passage of the General Allotment Act. This policy, again backed by Euro-American reformers, was aimed at the destruction of Native worlds by making their reproduction impossible. Reformers determined that the individualization of property in Indian Country would spark Native initiative. The "civilizing" design was intended to break up the alleged communistic notion of holding land in common and, most important, to open up Native land for Euro-American takeover (Prucha 1973). The president was awarded absolute authority to allot Native reservation lands to individual Natives and turn over the "surplus" to white people. As a result, Native lands were reduced from 138 million acres in 1887 to 48 million acres by 1934, and the reservations subjected to allotment are now checkerboards of white and Native land. The General Allotment Act left a tangled legacy of land ownership and jurisdictional patterns, persisting even today, that pushed Natives further into poverty.

The degree of Native acceptance into white communities, a supposed goal of the Friends of the Indians, demonstrates the treatment of Natives by the Euro-American legal framework. One way to test an ethnic group's acceptability is their eligibility for citizenship. In colonial times, for example, Natives were never considered citizens; accordingly, they did not hold voting rights, nor could they participate in colonial politics (Kawashima 1986). In 1871 voting rights were denied in Montana Territory to those living at Indian agencies, on reservations, or in Indian Country. Furthermore, the Montana Enabling Act, passed in 1889 (the year Montana secured statehood), again prevented Natives from voting in their homeland (Svingen 1987).[6]

The troublesome legal status of people of color in the United States during the nineteenth century is well documented in a series of court decisions. For example, in *People v. Hall* the California Supreme Court decided in 1854 that a California statute excluding Natives and African Americans from testifying in court cases involving whites additionally applied to Chinese Americans (Cushman and Cushman 1958). Forbidden from testifying against whites, people of color were deprived of the usual means of legal protection. For example, in 1851 in California a white man was released for the murder of a Native man because the only witness was a Native, and the law did not permit his testimony (Heizer 1974). In 1866 Congress, overriding President Johnson's veto, gave equal rights to all persons born in the United States—except Natives (Brown 1970). In 1884, in *Elk v. Wilkins*, a Native man was denied the right to vote in Nebraska on the grounds that he was not a citizen of the United States, although he was living off the reservation (Barsh and Henderson 1980). This decision explicitly ruled that Native people did not have the right to citizenship (Hoxie 1984).

The technological world of the nineteenth century was represented by the philosophy and accomplishments of Francis Amasa Walker, Commissioner of Indian Affairs during the 1870s. Using a scientific management theory, Walker proposed that the federal government impose on Natives "a rigid reformatory discipline" (Takaki 1979, 186). According to historian Ronald Takaki,

> The crucial term is *reformatory*. The "discovery of the asylum" in white society had its counterpart in the invention of the reservation for Indian society. Based on "the principle of separation and seclusion," the reservation would do more than merely maintain Indians: It would train and reform them. (1979, 186; emphasis in original)

Walker viewed Natives as biologically inferior beings with "strong animal appetites and no intellectual tastes or aspirations to hold those appetites in check" (quoted in Takaki 1979, 187). Once confined on reservations, Natives would be obligated to work as part of the Americanizing project.

As the nineteenth century closed, Native people were confined, imprisoned on reservations. Those who resisted had been forcibly removed from their homelands, with many massacred in the process. One outrageous example is the 1890 Wounded Knee massacre, in which the U.S. Army murdered over two hundred unarmed Natives, including many women and children. The Army later opposed compensation to the survivors on the grounds that the "battle" (massacre) had been essential in the dissolution of the Lakota Ghost Dance religion (Johansen and Maestas 1979). Cultural oppression of Natives remained blatant, and Native opposition—whether militaristic, legal, or spiritual—would not be tolerated by the federal government.

In the obstructive policies of the nineteenth century, which caused intense jurisdictional conflicts and unequal justice, the social construction of deviance becomes obvious. Euro-American interest groups' involvement in the development of new laws for Natives created a situa-

tion in which, as put forth by Austin Turk (1969), the interests of the more powerful groups were legitimate while those of the less powerful were made illegal.

The pervasive political, economic, and cultural control of Native nations by the federal government continued into the present century. For all its brutality and intensity, this colonial control has not terminated Native sovereignty. It has, however, suppressed its exercise. Cultural oppression facilitates economic exploitation, and twentieth-century federal policy toward Natives follows this pattern. Aside from laws, the federal government has actively pursued policies, rules, and regulations designed to suppress the Native worlds. For instance, in 1901 all agents and superintendents were notified to enforce the "short hair" order. To the federal government, long hair signified a primitive culture. All Native men who refused to cut their hair were refused rations, and those working for the government were released from their duties (Prucha 1984). During the 1920s the BIA strictly limited Native dancing, and those under age fifty were prohibited from participating in their traditional dances (Price 1973). A BIA document issued in 1924 noted that "there are large numbers of Indians who believe that their native religious life and Indian culture is frowned upon by the government, if not actually banned" (Price 1973, 207).

The BIA saw its powers enhanced with the passage of the Indian Reorganization Act (IRA) in 1934. This act was ostensibly intended to strengthen tribal authority and legal systems by letting tribes establish their own governing organizations—the elected tribal councils of today. However, it smacks heavily of indirect rule, again along the British colonial model, as the United States recognizes only the leadership of the councils. Natives were empowered to rule other Natives, incredibly complicating reservation life when traditional tribal leaders were usurped by elected tribal councils.

The IRA also converted Courts of Indian Offenses into tribal courts, and the modern tribal court system was born. Tribal codes enacted after 1934 followed the BIA model. Tribal courts and codes are subject to the approval of the BIA and are limited in their power to the handling of misdemeanors. Although this policy gave the appearance of maintaining the status quo, Deloria and Lytle (1983) offer that the new tribal courts did promise to resurrect the traditional customs of Native people. The balancing act for tribal courts today is to recuperate and retain

tribal traditions of justice despite being immersed in contemporary Euro-American jurisprudence. Tribes work to retain their ways and are reluctant to follow Euro-American legal procedures exclusively. On Indian reservations,

> The desired resolution of an intratribal dispute is one that benefits the whole Indian community (family) and not one designed to chastise an individual offender. Non-Indian critics may not understand such a concept of justice, but within Indian traditions it is an accepted and expected norm. (Deloria and Lytle 1983, 120)

Issues of sovereignty are vital to Native people and the tribal court system, no matter what the cost. Tim Giago, editor of *Indian Country Today*, contends that tribal courts on Indian reservations must acknowledge their sovereign status. Discussing the case of Peter MacDonald, a former Navajo tribal chair who is serving a fourteen-year sentence for conspiracy and bribery in tribal and federal courts, Giago expresses:

> [I]f the Navajo Nation really believed in sovereignty it would have tried Mr. MacDonald within the borders of their Nation instead of allowing federal officials to take him off the reservation and try him before an all-white jury in Prescott, Arizona. This was hardly a jury of his peers and few, if any, of the jury members understood anything about the Navajo Nation, its laws, customs, or traditions. (1995, 2)

THE COMPLICATED EFFECTS OF PUBLIC LAW 280

Plunder normally characterizes only the early stage of colonialism, although it is possible to find subtle forms of plunder by the United States in the twentieth century. For example, beginning in the late 1940s and lasting into the 1960s, the federal government shifted toward a policy of termination, another violation of treaties. Rather than struggling to dominate tribal land, the government started to do away with Native nations themselves, making their lands "open" lands. A simple

resolution of the House of Representatives in 1953, House Concurrent Resolution 108, terminated the sovereignty of one hundred Native nations.

Another element in the process was the transfer to certain states of federal jurisdiction over reservation areas. The authority for this transfer was Public Law 280, passed by Congress in 1954—one of the most bold and discriminating actions against Natives in the legal and judicial system. Moving without tribal consent, PL 280 initially handed five states jurisdiction over offenses committed by or against Natives on reservations; eventually, nine other states assumed limited jurisdiction. Upon the expansion of their legal domain over Natives, states mistakenly hoped to increase their revenue by taxing Native land and by receiving federal assistance to improve enforcement, corrections, and judicial agencies.

The timeworn argument was that reservations were "lawless." In 1952 Representative D'Ewart of Montana said that there was a "complete breakdown of law and order on many of the Indian reservations" and that the law was driven by "[t]he desire of all law abiding citizens living on or near Indian reservations for law and order" (quoted in Barsh and Henderson 1980, 128–129). The principal concern of Congress was, therefore, the reaction of white people to the perceived lawlessness (U.S. Commission on Civil Rights 1981). White communities that had settled on or near reservations, their growth partially a result of the allotment policy, were concerned about law and order outside their direct control and held the belief that Native law was irresponsible and federal law distant. PL 280 provided for their interests by endowing to various states criminal and civil jurisdiction on reservations. Witness the language used in a 1963 report titled "A Study of the Problems Arising from the Transfer of Law and Order Jurisdiction on Indian Reservations to the State of Montana":

> Indian people hesitate to give up this powerful position which they hold in the United States society. They do not fully realize however, their responsibility when they seek to protect this powerful position. They must maintain a standard of society which is acceptable. This probably is the greatest weakness in the Indian position on law and order. The trend in modern society requires that Indian people conform to reasonable acceptable community standards of law and order. . . . Any time that there is segregation in an area like law and order the attitude of segregation spreads into other areas. Segregation always sows the seeds of discrimination and racial problems. (Montana Office of the State Coordinator of Indian Affairs 1963)

Natives are depicted as irresponsible and "backward," as though they have not yet been civilized—all couched in terms of the fear of segregation. But segregation existed prior to 1963 and exists today in Montana.

Many Montana Native people were in opposition to PL 280 (known in Montana as House Bill 55). The chief proponent was state representative Jean Turnage, an enrolled member of the Confederated Salish and Kootenai Tribes (from Lake County on the Flathead Reservation) and a member of the Inter-Tribal Policy Board. Opponent Bill Youpee, chairman of the Fort Peck Tribal Council, expressed that the Inter-Tribal Policy Board was "influenced by outside interests" (*Great Falls Tribune*, 10 February 1963). The Flathead Tribal Council, under the direction of Walter McDonald, supported the transfer of jurisdiction to the state, although not all tribal members were in agreement. Moreover, all other tribes in Montana opposed such action, principally because PL 280 violated rights reserved in treaties and likewise violated the self-determination of sovereign nations. Another major issue was that PL 280 was a step toward the dreaded termination of all Indian reservations, as evidenced by House Resolution 108. PL 280 was passed by Congress in 1953, and in 1965, with the endorsement of the tribal council of the Confederated Salish and Kootenai Tribes, House Bill 55 (that is, PL 280) was implemented on the Flathead Reservation.

Many Natives perceive the imposition of state laws on reservations without tribal consent as blatant discrimination (U.S. Commission on Civil Rights 1981). Although the Indian Civil Rights Act of 1968 amended PL 280 to require tribal consent, this act also limits the penalties in tribal courts to imprisonment for six months and/or a fine of five hundred dollars, thereby effectively confining action in tribal courts to misdemeanors. Furthermore, the amendment authorizes states to retrocede jurisdiction already assumed—that is, relinquish it if burdensome. Tribes, however, are not empowered to demand retrocession (Barsh 1980).

PL 280 denies Native nations the right to govern themselves. There is also concern that under PL 280 state police and courts are treating

Natives and whites differently. Refusal to cross-deputize Native law enforcement personnel creates an imbalance whereby Euro-American police steadily send Natives to Euro-American courts and jails, while tribal police can only stand by and observe white criminal behavior. The result is a continuous and increasing supply of Native American "criminals." According to noted attorney Russel Barsh, "Arrests of Indians reportedly increase when per capitas or lease monies are [due to be] paid, to generate fines. Tribes contend that sentences are 'light and ineffective' for crimes against Indians, 'harsh and unjust' for crimes against non-Indians" (1980, 10).

PL 280 is curious in its uneven application. Not all states chose to apply its measures, and some selected only certain reservations within their boundaries. For instance, Montana has seven Indian reservations, but only on the Flathead Reservation is Euro-American jurisdiction extended through PL 280. Not surprisingly, Flathead includes a large white population due to various acts of Congress, including allotment and homesteading implemented at the turn of the century. A challenge would be to determine the proportion of Salish and Kootenai—the tribes of Flathead—among the Montana Natives involved in the state's criminal justice system. One would expect to find more Salish and Kootenai pass through the legal system than members of other tribes, with the exception of Landless Native Americans.[7]

Non-Natives are now immune from tribal prosecution, in both criminal and civil matters, due to a 1978 U.S. Supreme Court ruling in *Oliphant v. Suquamish*. In states where cross-deputization has not been worked out, many non-Natives who violate state law on reservations go unapprehended. This has been, and continues to be, a national Native American concern as tribal leaders fear white people will see the reservations as areas to "do anything they please without fear of arrest or judicial reprisal" (Wachtel 1980, 13). Moreover, in 1981 in *Montana v. United States*, the U.S. Supreme Court ruled that white people who own land on the Crow Reservation are not under the authority of Crow hunting and fishing laws on or near the Big Horn River. This decision violates the Crow treaty of 1868. Additionally, this case takes the ruling in *Oliphant* one step further toward the dissolution of tribal sovereignty (Churchill and Morris 1992).

Five statutory enactments of the U.S. Congress—the General Crimes Act, Major Crimes Act, Assimilative Crimes Act, PL 280, and the Indian Civil Rights Act—in addition to the court cases cited, all infringe upon tribal powers to tackle crime issues on reservations (Deloria and Lytle 1983). These statutes have forged a legal sword that slashes at tribal sovereignty, and the cuts are not clean as continual redefinition by these statutes creates the problem of determining which among multiple authorities may handle alleged Native criminals. The road to legal jurisdiction on reservations travels through mazes. It is not a product of logic other than that of sporadic legislative responses to the demand for Euro-American hegemony over Indian Country. Meanwhile, a major handicap for reservation Natives today is the multiplicity of jurisdiction, wherein

> The accused ordinarily confronts two jurisdictional "layers," general federal criminal laws applicable everywhere in the United States and concurrent state criminal law defining both related and separate offenses. On an Indian reservation the accused confronts as many as six jurisdictional layers, with as many as four possible forum-law outcomes: federal-federal, federal-state, state-state, and tribal-tribal. This does not mean that reservations are safer, only that it is harder for reservation residents to know fully their rights and liabilities, and easier for jurisdictional conflicts to arise. (Barsh 1980, 3)

The fundamental question, according to Deloria and Lytle (1983), is which level of government assumes jurisdiction over criminal offenses on reservations. Part of the answer requires determining the race of all involved to the extent of investigating past generations, the precise location within overlapping political boundaries where the alleged crime all or in part occurred, the appropriate statute of competing codes under which the violator can be prosecuted, and who has the political initiative at the moment. Indian reservations are the only places in the United States where the criminality of an act relies exclusively on the race of the offender and victim (Barsh 1980).[8]

PUBLIC LAW 280 AND RETROCESSION

Since 1968, some tribes have been successful in their efforts to retrocede state jurisdiction to federal control (O'Brien 1989). Other tribes, however, encounter stereotypic expectations that Native Americans

cannot behave responsibly enough to exercise effective law enforcement, thereby threatening the safety of non-Natives (Barsh 1980). This is the attitude that the Confederated Salish and Kootenai Tribes face in their pursuit of retrocession. Opponents to retrocession cite that white people do not want to be subjected to a justice system they fear will discriminate against them because they are white. What they do not understand is that the withdrawal of PL 280 will not result in the confinement of white people in Flathead's tribal jail because prior court cases have opined that tribes do not have jurisdiction over non-Natives.

In the 1990s the Confederated Salish and Kootenai Tribes seek to withdraw from PL 280 jurisdiction for two basic reasons: to further self-determination and promote tribal sovereignty, and to develop a justice system that is culturally appropriate (Confederated Salish and Kootenai Tribes 1991). The tribes argue that they have made economic progress—after all, this has been the goal of federal policy—since they consented in 1965 to the implementation of PL 280. They offer as evidence a tribal budget of over $70 million and twelve hundred tribal employees in the 1990s, compared to the eleven employees and budget of less than $250,000 in 1963. When PL 280 was first proposed in 1963, the tribes were not financially able to provide law enforcement for people on the reservation, but this is no longer the case. Moreover, the tribes cite that the notion of justice predates European contact and that judges and courts have always existed in the social and political structure of the tribes. Subsequently, they have integrated traditional justice frameworks with Euro-American jurisprudence.

The Major Crimes Act of 1885 postulated that tribes did not have tribal institutions sufficient to maintain law and order (Barsh 1980). This was not true in the nineteenth century and it is not true today. The Confederated Salish and Kootenai Tribes boast a competent justice system, a system more capable than some counties in Montana (Confederated Salish and Kootenai Tribes 1991). The current tribal justice system on Flathead includes a tribal court system with three divisions (a trial court, a youth court, and an appellate court), a law and order department, fish and game enforcement, advocate program, and social service programs.

In 1989 54 percent of all arrests in Lake County, the primary county on Flathead, were Native American (Confederated Salish and Kootenai Tribes 1991). The Confederated Salish and Kootenai Tribes recognize

that most arrests on the reservation are alcohol- or drug-related. Responding to this issue, the tribes developed an extensive substance abuse program. They argue that withdrawal from PL 280 will enable them to rehabilitate those arrested for misdemeanors (felonies would fall under federal jurisdiction). In fact, the tribes have more substance abuse counselors than Lake County (nine compared to one) and are, therefore, better equipped to handle substance abuse problems than the county.

RECUPERATING NATIVE WORLDS

Policies governing Native American affairs are legally bound to protect Native resources and treaty rights, but these policies have been perverted by Euro-American economic interests. The product is a system that imposes on indigenous populations cradle-to-grave control designed to obliterate worldview, political independence, and economic control. To resist is to be criminal, risking the wrath of multiple state law enforcement agencies. In the Americas, this exploitation has been the backbone of a colonial relationship now hundreds of years old yet still vigorous.

The Euro-American legal system, based on English common law and Euro-American statute law oriented to Euro-American values and philosophy, has never been able to accommodate within its bounds the different culture and aberrant status of the indigenous people. The goal of justice ostensibly sought by the legal system often results in the opposite when Natives are involved. The mechanisms of Euro-American law either are incapable of recognizing the cultural and legal separateness of Natives or are deliberately designed to destroy that independence (Washburn 1971).

Even when Native nations agreed to acculturate, they not only were thwarted but suffered additional castigation. There is probably no better documented case study of the cultural adaptation of a traditional legal system than that of the Cherokee Nation. *Fire and the Spirits* (1975), written by Rennard Strickland, examines the development of Cherokee legal institutions and the Cherokee Nation's attempt to acculturate. The Cherokee applied Euro-American laws that fit their needs and rejected those that did not. Their legal experience illustrates that it is in fact possible to create Native versions of Euro-American ways. The out-

come was not what Euro-Americans expected, as the Cherokee became deserving Native opponents, insisting that their customs should be honored. Yet the ways of Euro-Americans had been learned too well: Strickland concludes that in the end the Cherokee Nation would be obliterated. Damned if you do, damned if you don't; while assimilation is theoretically offered, equality is not a part of the bargain.

Although the Confederated Salish and Kootenai Tribes present another case of cultural adaptation with the blending of their traditional legal system and Euro-American jurisprudence, their fate may prove similar to the Cherokees'. The retrocession of PL 280 for the people of the Flathead Indian Reservation may never happen. Montana Senate Bill 368, which would give tribal police and courts additional criminal jurisdiction on reservations, died in 1993.

The Northern Cheyenne Tribe, a non–PL 280 reservation, presently struggles to reclaim their traditional system of law and order, one in which the Warrior Societies play a major role.[9] Evidently in agreement with the Cheyenne Tribal Court, the Warrior Societies recently employed traditional Cheyenne justice and banished two nonmembers from the reservation for a period of one hundred years (Crisp 1995). This action has not met with agreement from all tribal members, however, and the Northern Cheyenne remain divided over the actions of the Warrior Societies. A significant aspect of this case is that the Northern Cheyenne's justice system, as they are recreating it, demonstrates that modern tribal court systems and traditional systems can work together.

Chief Justice Robert Yazzie (1994) of the Navajo Tribal Court describes the Euro-American system of justice as one of hierarchies and power—a vertical system of justice. The Navajo word for "law," brought to them by the Holy People, is *beehaz-aanii*, which means "fundamental, absolute." Yazzie conveys that law is the source of a meaningful life, precisely because life emerges from it. In the Navajo system of law, one of horizontal justice, all parties are allowed to explain their views, and there is no one authority that ascertains the "truth." This is a system of restorative justice based on equality and participation, with a notion of justice that involves recuperating both the offender and victim.

The concept of solidarity is important to Navajo healing and justice. Although difficult to translate, Yazzie expresses that solidarity

> carries connotations that help the individual to reconcile self with family, community, nature, and the cosmos—all reality. That feeling of oneness with one's surroundings, and the reconciliation of the individual with everyone and everything else, is what allows an alternative to vertical justice to work. It rejects the process of convicting a person and throwing the keys away in favor of methods that use solidarity to restore good relations among people. Most importantly, it restores good relations with self. (1994, 30)

The healing process, called *peacemaking* in English, is a complex system of relationships where there is no coercion or control because there is no need for such power. Additionally, there are no plaintiffs or defendants, and no one is right or wrong. The Navajo have a different concept of equality. The focus is not on equal treatment *before* the law; people are envisioned as equal *in* the law. For example, the vertical system of justice—the Euro-American system—requires of the defendant a plea of innocence or guilt. In the Navajo language there is no word for *guilty*—a word that assumes fault and thus punishment. Yazzie advises that the word *guilty* is a nonsense word in Navajo, because the Navajo focus on healing and reintegration with the goal of feeding and preserving healthy, ongoing relationships.

Navajo law is also based on distributive justice. According to Yazzie, Navajo Court decisions emphasize aiding the victim, not finding fault. The victim's wishes of compensation and the offender's financial ability are taken into account. The offender and his or her family are responsible to the victim and must pay compensation. The focus of distributive justice is the well-being of everyone in the community. Taking the notion of responsibility further, Yazzie conveys:

> If I see a hungry person, it does not matter whether I am responsible for the hunger. If someone is injured, it is irrelevant that I did not hurt that person. I have a responsibility, as a Navajo, to treat everyone as if that person was my relative. Everyone is part of a community, and the resources of the community must be shared with all. (1994, 30)

The contemporary Navajo Peacemaker Court is founded upon the traditional principles of distributive justice and restoration over punishment. The Navajo operated under a vertical system of justice from 1892 to 1959 under the Court of Indian Offenses and from 1959 to the present day under the Courts of the Navajo Nation (Yazzie 1994). Intensely weary of the vertical system, in 1982 they created the Navajo

Peacemaker Court. The court selects a peacemaker, or *naat' aanii*—a person known for wisdom, integrity, and respect. His or her job is to ensure a decision in which everyone benefits. The court attempts to reclaim the original philosophical reasoning of traditional Navajo rather than simply blend cultures and philosophies.

The variance between Euro-American and Native worlds is apparent in how they work to maintain the social order. In Indian Country collective ways were developed to right an offensive activity with the larger harmony, recuperate the offender, and thereby protect the people. On the other hand, the Euro-American system of institutionalized justice featuring legislated law, aggressive enforcers, and punitive judges acts beyond controlling activity within the Euro-American world; it is also instrumental in fulfilling the Manifest Destiny of the Euro-American world—its own expansion. Intrusion into Indian Country was spearheaded by Euro-American law and the territory secured in the same manner. The federal government has embraced conflicting policies regarding Native people, shifting from genocide to expulsion, exclusion, and confinement, and later to supposed assimilation—the rhetoric was integration, the reality was confinement and domination. Amid the roller coaster of federal policy, one thing is crystal clear: at every stage of colonialism, Native people have been disempowered.

Some Euro-American criminologists agree that the Euro-American justice system represents the interests of the powerful and is inherently oppressive (Hartjen 1978; Quinney 1970; Turk 1976). The recognition that law and its administration is biased against certain categories of people is crucial to understanding Native American criminality. Nevertheless, one must first distinguish between Euro-American and Native worlds to grasp the role of Euro-American law in their collision.

To mechanically explain Native Americans by means of production, skin color, cultural practices, and so on is to peer through a tunnel—a tunnel engineered straight, perhaps, but a tunnel nonetheless. Absolutely, race/ethnicity, gender, class, and lifestyle are important concerns to Natives who feel the weight of their consequences both within Indian Country and in relations with Euro-Americans, but care must be taken not to let those issues obscure the broader battle between worlds and the emergence of neocolonial racism.

History tells us that Native "criminals" were not lawless "savages" but rather were living in the turbulent wake of a cataclysmic clash wherein

Native legal systems, along with everything else, collided with a most different world. Native worlds have been devastated by their relationship with Euro-Americans and their laws. The number of jailed Natives is a disheartening indication—a reminder that because deviance is a social construct, official crime statistics reveal discretion in defining and apprehending criminals. The behavior of reservation Natives, from both PL 280 and non–PL 280 reservations, is clearly subject to greater scrutiny, especially considering the number of criminal jurisdictions they fall under, and there is a greater presumption of guilt than for Euro-Americans. This assumption is based on the prevalence of Native Americans in the official crime statistics and the composition of prison populations. But the battle for jurisdiction in the remainder of Indian Country, where various Euro-American legal entities led by the federal government compete for primacy over tribes, is a telling example of the continuing struggle for sovereignty.

Stark, Heidi Kiiwetinepinesiik
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Criminal Empire: The Making of the Savage in a Lawless Land

Indigenous resistance in the 19th century was recast as criminal activities, enabling the U.S. and Canada to avert attention from their own illegality. The imposition of colonial law, facilitated by casting Indigenous men and women as savage peoples in need of civilization and constructing Indigenous lands as lawless spaces absent legal order, made it possible for the United States and Canada to *reduce* Indigenous political authority, domesticating Indigenous nations within the settler state, shifting and expanding the boundaries of both settler law and the nation itself by judicially proclaiming their own criminal behaviors as lawful.

On December 26th, 1862, 38 Dakota men were hanged before a crowd of some 4,000 spectators in Mankato, MN.[1] Thirteen years later at Battleford, Saskatchewan, 6 Cree and 2 Assiniboine leaders were hanged in front of hundreds of witnesses.[2] These would mark the largest mass executions in both countries.

Yet, these were neither isolated nor exceptional events. Various Indigenous leaders, such as Modoc[3], Tlingit[4], and Nisqually[5] leaders in the United States along with Tsilquotin[6], Ojibwe[7] and Metis[8] leaders in Canada would also be executed under the pretense of criminality within colonial law. Countless individuals would find themselves under the jurisdiction of these two states, prosecuted and imprisoned for alleged criminal activities.[9] This article traces how Indigenous resistance in the 19th century was recast as criminal activities, laying out the techniques and taxonomies of empire that enabled these two states to *reduce* Indigenous political authority, domesticating Indigenous nations within the settler state, while *producing* the settler nation-state and its accompanying legitimating juridical narratives.

I do so by charting the construction of Indigenous criminality and subsequent imposition of colonial law that enabled the United States and Canada to not just imagine but actively produce their claims of sovereignty.[10] This required distinct configurations of Indigenous criminality along gender lines. As Indigenous men's political authority had already been recognized in the public sphere by the United States and Canada via the treaty making process, their domestication into the nation-state required forceful violent constructions of Indigenous men as savages, criminals, and lawless figures. Indigenous women's political authority had largely been discounted in the treaty process by the US and Canada, which, not surprisingly, afforded limited to no recognition of white women's political authority in the 19th century. Therefore, the continued domestication of Indigenous women political authority was carried out with focus given to the private sphere, constructing Indigenous women as deviant, immoral beings who needed to learn proper forms of domesticity.

Framing Indigenous peoples as criminals enabled the US and Canada to avert attention from their own illegality. By discursively transforming treaties from relationships to land cession contracts, these two states sought to disguise the illegitimacy of their settlement, which had been rendered unlawful the moment they violated the treaty relationships and commitments that authorized their presence across Indigenous lands. The imposition of colonial law, facilitated by casting Indigenous men and women as savage peoples in need of civilization and composing Indigenous lands as lawless spaces absent legal order, made it possible for the United States and Canada to shift and expand the boundaries of both settler law and the nation itself by judicially proclaiming their own criminal behaviors as lawful. The federal Indian and aboriginal laws and policy these shifts produced occupied the dark shadows of empire. Indigenous nations and their attending sovereignty became contained in this liminal space, cast as foreign and then violently remade as domestic in order to subsume Indigenous sovereignty within the bounds of the state.[11] The United States and Canada continually drew and redrew boundaries while crafting and revising the juridical narratives that gave legality to these spaces.

It is in these shadows that we can see the making of a criminal empire. Within these liminal spaces, we can see how colonialism continuously transforms and realigns as proclaimed settler sovereignty is challenged and resisted by Indigenous nations. As Amy Kaplan reminds us, "imperialism does not emanate from the solid center of a fully

formed nation; rather, the meaning of the nation itself is both questioned and redefined through the outward reach of empire."[12] Blurring the distinctions between sovereignty, territory, and jurisdiction that barred unfettered acquisition and settlement of Indigenous lands, the United States and Canada harnessed the constructions of criminality to assert jurisdiction over sovereign Indigenous lands and bodies in order to remake the foreign (Indigenous nations) into the domestic (individual Indigenous subjects).

I conclude by arguing that the political authority of the United States and Canada paradoxically required the recognition of Indigenous sovereignty. These two nation-states could not, or would not, unequivocally dismiss or deny the existence of Indigenous sovereign authority. Instead, both nations developed and drew on legal narratives that discursively transformed and anchored the political attributes of Indigenous nations by framing treaties away from ongoing relationships to contractual events that were temporally and geographically fixed. By tethering treaties to a specific historical moment and framing these relationships as contractual events, the United States and Canada were able to preserve their own legitimacy that was contingent on these treaties while enabling the courts to demarcate the bounds of Indigenous sovereignty and contemporaneously chip away at Indigenous political authority by criminalizing and domesticating Indigenous nations.

Transformation of the Treaty Relationship

The Dakota – starving and aggravated by the criminal neglect of the United States to adhere to previous treaties, fraudulent treaty payouts that privileged corrupt traders and delayed annuities desperately needed to ameliorate deplorable reservation conditions – declared war on MN, initially targeting agency employees, traders, and clerks. Surrendering thirty-seven days after the war began, the Dakota were not treated as prisoners of war. Instead, Former MN governor Henry Sibley decided to convene a five-person military commission, an action outside his authority, to try the Dakota for "murder and outrages." The commissioners Sibley appointed were all military officers who had fought against the Dakota just days earlier and who were now being called upon to dispense impartial justice. Each trial averaged ten minutes, with some lasting less than five minutes. By November 5, 1862, 392 Dakota were tried for "crimes" connected to war, 323 of whom were convicted and 303 condemned to death.[13]

President Lincoln, wanting to temper the draconian sentences Sibley had hoped to impose while still imparting sentences severe enough to discourage Indigenous resistance and satisfy Minnesotan's call for revenge, ultimately ordered the execution of 38 Dakota. The hanging of 38 Dakota men occurred the same week that Lincoln issued the Emancipation Proclamation freeing the slaves.[14]

Twelve years later, in 1877, in the aftermath of the Battle at the Little Big Horn, in the Speech from the Throne, Canadian Prime Minister Alexander Mackenzie alluded to the violent military campaign against Indigenous nations in the United States. Defending the recently negotiated Treaty 6, a diplomatic accord between the Crown and Cree and Assiniboine First Nations across central Saskatchewan and Alberta, despite provisions he characterized as "of a somewhat onerous and exceptional nature," Mackenzie asserted, "the Canadian policy is nevertheless the cheapest, ultimately, if we compare the results with those of other countries; and it is above all a humane, just and Christian policy."[15] Mackenzie brought this point home, stating "Notwithstanding the deplorable war waged between the Indian tribes of the United States territories and the Government of that country during the last year, no difficulties has arisen with the Canadian tribes living in the immediate vicinity of the scene of the hostilities." This speech marked the beginning of one of the most deep-seated myths in Canadian history- that Canada was a benevolent and just nation.[16] Especially in comparison to the United States, who, by implication, was not.

Yet, Indigenous nations north of the border had also been actively resisting encroachment and settlement on their lands.[17] This had been a major impetus for the Numbered Treaties, including the hurried signing of Treaty 6. Chief Poundmaker had been blocking progress on telegraph lines near Battleford, making it clear that "lines could not be strung across Cree lands without a treaty."[18] A number of prominent leaders, including Poundmaker and Big Bear, refused to sign onto the treaty until they saw the Canadian Government live up to their promises.[19] Chief Big Bear expressed one of his central concerns to Commissioner Morris in 1876, stating "I will make a request that he (Morris) save me from what I most dread, that is the rope about my neck…. It was not given to us to have the rope about our neck."[20] While Morris would interpret these words to be a reference to hanging, others have argued Big Bear feared Canadian officials were trying to restrict indigenous political authority, and that "he feared being controlled or 'enslaved,' just as an animal is controlled when it has a rope around its neck."[21] In the years that immediately followed, however, Chief Big Bear's fears would come to fruition. Indigenous political autonomy and

authority would be increasingly constrained by colonial policy and law, made possible literally by tightening ropes around the necks of Indigenous leaders.

Across Treaty 6 territory, growing tensions spurred by settler encroachment on Indigenous lands and the implementation of policies to starve Indigenous nations in order to coercively promote their adhesion to the treaty[22], resulted in the Frog Lake Resistance (also known as the Northwest Rebellion) in 1885. Stemming from Cree resentment at their mistreatment by Canadian Indian Department employees on their reserve, Indigenous warriors killed 9 settlers. The trials that followed were no less fraught then the trials in Minnesota. Initially charged with treason, the inability to accurately translate the term in Cree rendered a defense impossible. Even the Crown recognized this fact and reduced many of the charges. Nonetheless, the Crown failed to question or answer how and when Indigenous peoples had been incorporated into Canada, as a charge of treason presumed. Weak evidentiary support[23] coupled with a partial judge and jury[24] resulted in hasty guilty verdicts.

In addition to the 8 Indigenous leaders hanged in1885, an additional 40, including Chiefs Big Bear and Poundmaker, were sentenced to the Stony Mountain Penitentiary for treason. Another 100 Indigenous people were tried for criminal offenses with 60 convicted. In fact, so many Indigenous people were sentenced following the 1885 resistance that a new wing was built onto the Stony Mountain Penitentiary, and kept full with Indigenous peoples in the years that followed.[25]

Indigenous resistance and its subsequent criminalization was indicative of the ruptures in Indigenous-state relations in the 19th century as the US and Canada sought to expand their national borders in violation of their treaty relations with Indigenous nations. Legal Scholar Sidney Harring found "The North-West Rebellion looms large in western Canadian history as the most important Indian war in a country largely without them. " He notes that "wars are not ordinarily the subjects of legal history, but Canada insisted on treating the rebellion as an internal act of treason, trying dozens of Indians for criminal offences in order to impose the legal framework of its Prairie Indian policy on the aftermath of the uprising."[26] The United States and Canada, in constructing Indigenous resistance as criminal activities, deflected their own criminality, or at least illegality in failing to honor and uphold their treaty commitments that had served as the impetus for this warfare.

Instead, both countries utilized Indigenous resistance as the rationale for the subsequent abrogation of treaty commitments. The 264 Dakota who had their executions commuted by Lincoln were imprisoned, with an additional 1600 Dakota women, children and elderly men held in an internment camp, with over 300 Dakota dying from the severe conditions. In 1863 the US congress abolished their reservation, declared all previous treaties with the Dakota null and void and began expelling the Dakota from MN.[27] Canadian Assistant Commission Hayter Reed, labeling Indigenous participants as disloyal, also insisted the Indigenous nations involved in the Resistance in Canada had violated their treaties, obscuring both the cause of Indigenous protest and further negating government responsibility to carry out these treaty relationships in good faith. Historian Sarah Carter notes, "In the case of the disloyal bands, he recommended that the tribal system be abolished and that the chiefs and councilor be deposed and deprived of their treaty medals. By the 'careful repression' of the leaders, [Reed determined] 'a further obstacle will be thrown in the way of future united rebellious movements.'"[28]

The United States and Canada sought to impress their power and authority onto Indigenous nations, by whatever means necessary. The public nature of the hangings was intended to induce Indigenous nations and their leaders to heel to the US and Canada. As Harring notes, "The political decision to try Indians and as well as the Metis for the rebellion showed that the Crown intended to stage these trials with the intent of breaking the back of Indian resistance to the federal government's Indian policy. The trials were show trials, designed to convince the Indians of the futility of further resistance and also to send dozens of Indian leaders, almost all Cree, to prison until they were no longer a threat to Canadian officials."[29] Indeed, Assistant Indian Commissioner Reed stated as much, writing to Indian Commissioner Edgar Dewdney, "I am desirous of having the Indians witness it- No sound threshing having been given them I think a sight of this sort would cause them to meditate for many a day."[30]

Prime Minister John A. Macdonald would also use the Resistance to silence Indigenous objections to Canadian settlement on their lands, failed treaty implementation and deplorable reserve conditions. He asserted, 'The execution of the Indians … ought to convince the Red man that the White man governs.'"[31] Indigenous resistance became the rational and justification for the development and application of greater colonial control over Indigenous bodies and lands that sought to dismantle the tribal system and restrict Indigenous mobility.[32]

State law, both through the development of policies and the ability of local agents to act outside the parameters of legality, became the mechanism that would animate the machinery of empire. Legal historian Shelley Gavigan notes, "In the aftermath of the events of 1885, the seemingly impossible occurred: Things became even more dire…"[33] Indigenous nations across Canada and the United States were increasingly being stripped of their political authority and brought under the long arm of colonial law. While fitting in both settler contexts, Harring notes that for Indigenous nations in Canada, "full access to the privileges of British law' more often meant the opposite of legal protection of their lands rights: *they went to prison*."[34]

Settler Law as the Machinery of Empire

The reconfiguration of Indigenous sovereign political authority followed the path of westward expansion, with colonial law laying the stage to legalize the violent atrocities visited on Indigenous nations at the hands of settlers and government actors who framed Indigenous resistance as criminal activity, restricted Indigenous mobility and imprisoned Indigenous political leaders. The local, material effects of this reconfiguration both produced and were produced by legal doctrines that configured the unlawful usurpation of Indigenous territory and political authority as lawful.

Robert Williams contends "that law, regarded by the West as its most respected and cherished instrument of civilization, was also the West's most vital and effective instrument of empire…"[35] Local agents and officials increasingly presumed jurisdiction over Indigenous peoples. For example, while Indigenous peoples on the Canadian prairies were arrested at a rate of less than 5 per year in the 1870's, this number drastically increased within a decade to 40-50 arrests per year. While perhaps a low number in relation to the Indigenous population, one scholar notes, "the significance of this large increase of arrests and imprisonment of Indians is not measured in simple numbers: imprisonment was an enormously powerful symbol of the meaning of police authority."[36]

The assertion of state jurisdiction over Indigenous peoples of the Canadian prairies was facilitated primarily through the creation of the North-West Mounted Police (NWMP). The NWMP were far more than a national police force. "It was a self-contained legal institution organized on a quasi-military model: Mounties arrested, prosecuted, judged, and jailed offenders under their jurisdiction. The commissioner and assistant commissioners were appointed stipendiary magistrates with full judicial powers extending even to capital crimes. Inspectors and captains were appointed justices of the peace (JPs) with authority to summarily try minor crimes." Harring found, "This legal function was not incidental to the force but was conceptualized at its core."[37]

The NWMP was a hybrid of military and law, deployed to ensure law preceded settlement, promoting an image of protection for the settlers needed to carry out westward expansion.[38] Popular mythology connotes the mounted police "established law where no law existed, spoke order into existence wherever order was threatened and laid broad and deep the foundations of peace and prosperity in the wide reaches of the Western country."[39] Yet, the NWMP facilitated the imposition of assimilative policies as they were uniquely poised to domesticate Indigenous nations. As Harring notes, "any kind of military fore could have asserted Canadian sovereignty in the west… But only a federal police force could bring Indians and Métis within the reach of Canadian law." (94)

While local agents and colonial officials at all levels of the Department of Indian Affairs (DIA) and NWMP had sought to restrict Indigenous mobility in the early 1880's, following the 1885 resistance, increased attention was given to supervision, restriction and control of Indigenous leaders.[40] Local agents were especially sensitive to any actions that were perceived as possibly leading to political mobilization. Thus, the pass system became instrumental in controlling Indigenous mobility and confining Indigenous peoples to their reserves by constructing Indigenous political action as criminal activity.[41] As Keith Smith remarks, "This restriction [on the rights of Indigenous peoples to travel freely] is best seen as a matric of laws, regulations and policy meant to 'elevate' Indigenous people while simultaneously securing the interests of non-Indigenous newcomers. Like colonialism itself, this restrictive complex was creative and adaptable and so could adjust as political, economic, or social conditions changed." He notes "the most notorious element of this network was the 'pass system,' a DIA policy that had no legal basis, but nonetheless required reserve residents to secure a pass from their Indian agents before leaving their reserve for any reason."[42]

While recognizing that local agents were acting beyond the purview of their authority, Assistant Indian Commissioner Hayter Reed nonetheless continued to press for the enforcement of the pass system, arguing that the "moral responsibilities of the Indian Department transcended treaty obligations.'" Reporting from Battleford in August 1885, Reed insisted, "I am adopting the system of keeping the Indians on their respective Reserves + not allowing any leave them without passes- I know this is hardly supportable by any legal enactment but one must do many things which can only be supported by common sense and by what may be for the general good- I get the Police to send out daily and send any Indians without passes back to their Reserves."[43] The pass system restricted Indigenous leaders by constructing their mobility as a measure of loyalty, labeling Indigenous men as hostile and disloyal if they left their reserves.

"The Majestry of Civilized Law" and the Making of a Lawless Land

The United States also sought to quell Indigenous political mobilization and restrict Indigenous mobility. Indian agents and Commissioners called for legislation that would enable the imposition of colonial laws over Indigenous lands and bodies to achieve this aim. Early treaties often made it clear that US authority didn't apply over Indians or their lands, thus it would take congressional legislation to legalize the imposition of colonial law over Indigenous nations.[44] However, by 1789, treaties would begin to contain clauses that brought Indigenous people under US jurisdiction for crimes against US citizens, moving away from a territorial based model toward a citizenship driven model.[45] While the early Indian trade and intercourse acts[46] (collectively referred to as the NonIntercourse Act) sought to implement treaties and enforce these treaties against settlers intent on violating the rights and lands of Indigenous nations, American criminality generated calls for greater imposition of colonial law within Indian country, a space that had been largely constructed as lawless (both construed as a space absent law because Indigenous legal traditions were deemed illegitimate and a space of illegality due to the unscrupulous activities of American traders and speculators). By 1817, the trade and intercourse act uniformly extended US jurisdiction over crimes committed by Indigenous peoples against American citizens.[47]

Yet, the trade and intercourse acts did little to dispel settler criminality. Commissioner of Indian Affairs George Manypenny, for example, detailed how illegality structured Indigenous-state relations in his annual report in 1856. He stated, "Humanity, Christianity, national honor, united in demanding the enactment of such laws as will not only protect the Indians, but as shall effectually put it out of the power of any public officer to allow these poor creatures to be despoiled of their lands and annuities by a swarm of hungry and audacious speculators, attorneys, and others, their instruments and coadjutors."[48] Manypenny urged the development of more stringent statutes, as the response to American criminality, arguing "the relation which the federal government sustains toward the Indians, and the duties and obligations flowing from it, cannot be faithfully met and discharged without ample legal provisions, and the necessary power and means to enforce them."[49]

Yet, initial calls for clearer and stricter laws in response to American criminality also generated proposals for the imposition of US law onto Indigenous bodies and lands, At the same time, the federal government was eager to decrease military expenditures and amplify their efforts to "civilize" American Indians. This ignited an aggressive campaign to get Congress to enact more assimilative laws. Seeing westward expansion as inevitable, Commissioners urged the federal government that western law was the only way to protect Indigenous peoples from settlers, but also a necessary weapon to wield if Indigenous peoples were going to be saved from their own savagery.

For example, in 1872 Commissioner Walker stated:

> The government should extend over them a rigid reformatory discipline, to save them from falling hopelessly into the condition of pauperism and petty crime. Merely to disarm the savages, and to surround them by forces which it is hopeless in them to resist, without exercising over them for a series of years a system of paternal control… is to make it pretty much a matter of certainty that by far the larger part of the roving Indians will become simply vagabonds in the midst of civilization, forming little camps… which will be festering sores on the communities near which they are located, the men resorting for a living to basket-making and hog-stealing; the women to fortune-telling and harlotry.[50]

This sentiment for the imposition of settler law over Indigenous peoples was the driving force of proposals put forward by the US Board of Indian Commissioners. In their 1871 report, they urged, "A serious detriment to the

progress of the partially civilized Indians is found in the fact that they are not brought under the domination of law, so far as regards crimes against each other." They further pleaded, "We owe it to them, and to ourselves, to teach them the majesty of civilized law, and to extend to them its protection against the lawless among themselves."[51]

Drawing on Canada's success with their police force and wanting to fill the power vacuum created by the withdrawal of troops while expediting the assimilation of American Indians, Congress authorized police units in 1878. This proposal had been strongly supported by United States Commissioner of Indian Affairs Ezra Hayt, who claimed, "A civilized community could not exist as such without law, and a semi-civilized and barbarous people are in a hopeless state of anarchy without its protections and sanctions."[52] The solution was a police force, made up of Indigenous peoples, to impose colonial laws onto their own people. These quasi-military units proliferated. Within three years, this experiment operated on forty-nine reservations and included eighty-four commissioned officers and 786 non-commissioned officers and privates.[53] Harring found, "the [US Bureau of Indian Affairs (BIA)] created a substantial system of policing and punishment that was administrative rather than legal, therefore effectively beyond the reach of federal or state courts."[54]

Policy and law worked in tandem with the shared aim of assimilating Indigenous peoples and subjugating Indigenous sovereignty. "Law for the Indians" became a slogan of the BIA, arguing that the imposition of settler law would expedite the civilization and assimilation of Indigenous peoples. Harring argues "the image of US law replacing the gun as the agent of civilization reveals the coercive core of the application of criminal law to Indians."[55] This shared aim of absorbing/domesticating Indigenous peoples into the United States and Canada, and diminishing or severing Indigenous sovereignty, was achieved through the assertion of criminal jurisdiction over individual Indigenous peoples. [56] This is seen by the fact that case law pertaining to Indigenous peoples in the 19th century focused primarily on two tenets: land title and criminal law.[57]

At the same time, settler law failed to protect Indigenous nations or punish settlers for depredations or murder of Indigenous people. In the US, violence against Indigenous nations was not just outside the restriction of law, but was partially funded by Indigenous treaty annuities as tribal money was allocated to pay out depredation claims. Indeed, "this legal process was so efficient and so many claims were granted that it came into conflict with the BIA's assimilation policy" by diverting treaty money away from assimilatory programs.[58] Law became a direct threat to Indigenous nations, both suppressing Indigenous legal and political institutions and failing to provide protection under American or Canadian law.[59] The construction of Indigenous resistance as criminal activity produced an environment where Indigenous lands could be legally stolen and Indigenous leaders could be legally murdered under the dominion of settler laws.[60]

Gendered Domestication in the Making of a Criminal Empire

Much like their male counterparts, Indigenous women also found their mobility restricted and their activities constructed through the lens of criminality and savagery. While Indigenous men's political authority had to be transformed within the public sphere, Indigenous women's authority would be relegated to the private sphere, configured through domesticity. Domesticity, "monitor[ing] the borders between civilized and the savage as it regulates the traces of savagery within its purview,"[61] became another mechanism to bring Indigenous bodies and lands inside the state system. Through Anglo-American conventions of modern domesticity, Indigenous women could be liberated from their "natural" yet "unreasonable" state of "savagery".[62]

The discourse of domesticity sought to determine boundaries and delineate defined spaces, as imperialism had produced a fear of catastrophic boundary loss that generated discourses centered on "an *excess* of boundary order coupled with fantasies of limitless power."[63] In this environment, Indigenous women's bodies, much like Indigenous lands, became marked as both criminal and lawless spaces, solely because of their racialized-gender and its accompanying western constructions of Indigenous women's sexuality. Gavigan notes "One theme in the historical literature concerning Aboriginal women and Canadian law and society concerns the rapid and pervasive construction, by settlers, missionaries, and government officials alike, of Aboriginal women as a menace and as sexually promiscuous, such that any expression of sexual independence or agency was interpreted as illustrative of a "wildness" that had to be "tamed" while being simultaneously exploited by male newcomers."[64] As such, Indigenous women's bodies were constructed as inherently deceptive, cunning terrains, lawless frontiers, virgin territory, in need of conquest and civilization, that were to be strictly controlled through law because of the perilousness these lawless spaces posed.

Policies aimed at the assimilation of Indigenous nations targeted Indigenous family-life. Sex, marriage, and domesticity rapidly fell under colonial surveillance.[65] Progress toward civilization became measured by home life. Government agents and the church sought to impose virtues that were seen as tethered to domesticity, such as modesty and cleanliness.[66] As Adele Perry notes, "Christian missionaries of all denominational stripes were interested in Aboriginal women and, more particularly, in reforming their relationships to domesticity, to conjugality, and to work." She asserts "This triple program reflected missionaries' profound unease with the different ways that First Nations people experienced and understood manliness and womanliness. The collective, moveable, and matrilineal households; their plural, mixed-race, or consensual relationships; and their physical labour or apparent lethargy all signaled a world of irreparable and dangerous difference."[67]

Government officials, much in the same way they invoked Indigenous resistance to distract from inept policies and corrupt practices, fixated on Indigenous women's "backward conditions." As Carter finds "Indian women were often blamed for the squalid living conditions and poor health of reserve residents; their abilities as housewives and mothers were disparaged as were their moral standards."[68] This depiction of Indigenous women and their sexuality as "out of control" became an attractive explanation for failing government policies and missionary work.[69] Furthermore, the sexualization of Indigenous women became a mechanism for colonial officials in power to justify the imposition of the settler law and policy that sought to reorder Indigenous life and subordinate indigenous authority with impunity.[70]

The perception of deviancy applied to Indigenous women and the concomitant need to save, not only these women, but all Indigenous peoples, from their demoralizing family structures, gave rise to a number of restrictive policies that stripped Indigenous women of their political authority.[71] Under the Indian Act, the principle legislation through which Canada administers its paternalistic relationship with Indigenous nations, widows could only inherit their husband's property if they could prove they were of a good, moral character.[72] Indian agents would decide what constituted a valid family unit in distributing treaty annuities. While neither state had the capacity to fully administer marriage, Indigenous law would only be recognized if these marriages followed western, Christian norms. Furthermore, both countries sought to expel polygamy, charging Indigenous men and women alike. Indigenous people were also accused of bigamy when they remarried, as Indigenous divorce law was not recognized.[73] In Canada, the ultimate domestication of Indigenous women's political authority occurred through the severance of their political status as Indians under the Indian Act when they married non-Indians.[74]

Kaplan finds that this spatial representation of domesticity and manifest destiny is exemplar of these gendered divisions; with the home a feminized safe haven, that is constructed as a bounded and ordered interior space while the male sphere is comprised of a boundless, infinitely expanding frontier in want of territorial conquest. She states, "To understand this spatial and political interdependence of home and empire, it is necessary to consider rhetorically how the meaning of the domestic relies structurally on its intimate opposition to the notion of the foreign. *Domestic* has a double meaning that links the space of the familial household to that of the nation, by imagining both in opposition to everything outside the geographic and conceptual border of the home."[75] While on the one hand, drawing strict boundaries between the private and the public, domesticity, on the other hand, served as the engine of national expansion, reaching beyond its bounds to render the exterior as interior through the violent appropriation of Indigenous lands.[76] This appropriation of Indigenous lands required Indigenous nations, foreign entities whose sovereign political authority was requisite for treaty-making, to be reconstituted as individual subjects of the state, made internal through the construction of Indigenous political authority as criminal, facilitating the imposition of settler law. Through the extension of criminal jurisdiction, the settler state was able to bring Indigenous bodies, through colonial gendered norms, into the national polity, and in the process, domestic Indigenous nations and their lands.

Narrating State Legitimacy and the Making of the Savage

Western law served as a violent tool for the United States and Canada to strip Indigenous nations of a vast majority of their lands and much of their political authority. In the United States, individual states increasingly asserted their jurisdiction over Indigenous peoples and their lands, in violation of treaties, the US Constitution, and Supreme Court decisions that explicitly recognize Indigenous political authority over the criminal matters of their own citizens as well as federal supremacy in dealing with Indian tribes and their citizens.[77] Indigenous peoples not only found themselves being prosecuted under state law but also found litigation to be the new site for the negotiation of their

political relationship with the federal government, with the US as the ultimate arbitrator. For example, during the fifty-two years between *Cherokee Nation* in 1831, in which Chief Justice John Marshal defined Indigenous nations as "domestic-dependent nations," and the expressed recognition of tribal political authority over criminal matters in *Crow Dog,* the Supreme Court would hear approximately 20 Indian law cases. In the twenty years following *Crow Dog,* the court would hear nearly 100 Indian law cases. This sharp increase followed the application of federal Indian policies that were produced in the shadows of legality, made lawful by judicial proclamation. As Harring notes, "Americans were not bound by Old World legal traditions or by abstract notions of morality; they felt free to write laws that would unleash the productive forces needed to develop a new land. The application of this legal order to Indian tribes ranks as a test of the absolute limits of legality and constitutionalism."[78] An analysis of these moments reminds us that neither these outcomes nor the nation-states they produced were inevitable but instead were in continuous flux.

Settler law and its formations of criminality served as the organizing taxonomy of the settler state. The United States and Canada, alike, framed Indigenous resistance as criminal. They used these depictions of Indigenous peoples as savage, lawless, and disloyal to act outside the bounds of the law, imposing policies and practices at the local level that had little basis in law. Subsequently, these two settler states deployed the same constructions of Indigenous savagery and lawlessness to expand the boundaries of settler law in order to bring their actions within its parameters. Nonetheless, the language mobilized by the United States and Canada to legitimate the imposition of settler law in response to criminality would take a slightly different form. The US would use the explicit language of savagery to diminish tribal sovereignty and subordinate Indigenous peoples.[79] While the language of savagery would result in the US Supreme Court upholding Indigenous sovereignty in *Ex Parte Crow Dog* in 1883, the Court would signal that a departure from this long-standing policy in dealing with Indigenous nations would require a "clear expression of the intention of Congress." Judicial acknowledgement of Indigenous political authority[80] and the constitutional entrenchment of the supremacy of treaties required a forceful approach in order to dislodge the political authority already attributed to Indigenous nations. The language of Indigenous savagery and lawlessness would provide the courts the rational for stripping Indigenous nations of important attributes of their sovereignty, as long as this intention was clearly expressed by Congress. Thus, the language of savagery would pave the way for Congress to enact the Major Crimes Act in 1885. The subsequent Indigenous resistance to this imposition of federal jurisdiction would give judicial birth to perhaps the most destructive legal doctrine of Federal Indian law, plenary power, with the courts arguing Congress has absolute, unlimited power of Indian affairs.[81] Declaring in *US v Kagama* (1886) "the power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protections, as well as to the safety of those among whom they dwell," the language of dependency would be continually relied on to strip Indigenous nations of their political authority by deeming these powers "inconsistent with their status as dependent nations."

In Canada, the absence of explicit judicial recognition of Indigenous sovereignty and a continuous desire to see itself as a more humane and just nation than the United States, necessitated a more subtle- though equally violent and paternalistic- approach to subordinating Indigenous political authority within the settler state. Canada relied on the civilized/uncivilized binary to contend that Canadian policies and practices were in the best interest of Indigenous peoples. The push to civilize Indigenous nations would primarily be carried out through the Indian Act, which restricted Indigenous nations from seeking judicial remedies until 1951. Instead of diminishing Indigenous sovereignty through the trope of savagery, the Canadian Supreme Court primarily frames aboriginal and treaty rights through the language of culture, eschewing discussion of Indigenous sovereignty altogether.[82]

The juridical narratives produced by US and Canadian Supreme Court justices sought to fashion the settler state as capable of boundless expansion that was outside the restraints of law. At the same time, these narratives drew on this image of a lawless space, arguing the necessity of imposing western law over foreign territories and bodies. This enabled the settler state to transgress the boundaries of both law and the nation-state in order to map external, foreign spaces and peoples as internal, continuously and expansively affirming the boundaries of the settler nation. This is seen in the transgression of not just settlers into Indigenous territories but also their laws onto Indigenous lands.

In articulating their specificities and unpacking the formulations of Indigenous peoples that become fixed in these moments, we can see that the United States and Canada were not "fixed taxonomies" but rather "states of becoming," not "empires in distress" but instead "imperial polities in active realignments and formation."[83] The borderlands of empire, the liminal spaces occupied by Indigenous peoples, both in law and on the land, are sites of

this active realignment. It is in these liminal spaces, through this active realignment that the settler state is *producing* itself. Settler colonialism, then is not just reductive, it is productive, actively producing both the settler state and its accompanying legitimating narratives.

As Patrick Wolfe has noted and many others have taken up, nuanced, and expanded upon "settler colonialism is inherently eliminatory." This eliminatory logic is driven by the desire to acquire Indigenous lands. He notes "Territoriality is settler colonialism's specific, irreducible element."[84] Yet Wolfe recognizes that "on the one hand, settler society required the practical elimination of the native in order to establish itself on their territory. On the symbolic level, however, settler society subsequently sought to recuperate indigeneity in order to express its difference- and, accordingly, its independence- from the mother country."[85] As the editors of this collection remind us, settler colonialism, as an analytic, risks eliding both power relations and decolonial possibilities if too much focus is given to a Native/Settler binary. I argue this analytic also risks becoming over determined if focus is given exclusively to the eliminatory logic that Wolfe draws out to the exclusion of the productive nature of settler colonialism. Indeed, settler colonialism doesn't just try to eliminate but in its place, seeks to actively produce something new. In their attempts to "eliminate," or at least significantly diminish Indigenous political authority, the United States and Canada also sought to produce their own legality by reframing their criminal activities as lawful.

Indeed, the precarity of settler colonialism as an enabling logic of the state becomes visible when we look to the backdrop that led to the hangings this essay opened with. It was everyday assertions of Indigenous nationhood that would serve as the impetus for treaty making and would respond to the failures of these two states to implement these treaties in accord with Indigenous perspectives. Indigenous protest disrupted and destabilized the settler state. While Britain asserted sovereignty over North America in 1763 with the Royal Proclamation, this wildly imaginative attempt to reorder Indigenous space would have little effect on the ground, as Indigenous nations exercised political authority over their lands.

But importantly this assertion of British sovereignty constrained the settler states that sprang from this will for empire. The Royal Proclamation clearly articulated the process through which settlers could acquire Indigenous lands. It was only through the apparatus of treaty making that these colonial governments could legitimately acquire lands. These two nation-states required Indigenous sovereignty as this recognition of Indigenous sovereignty activated the authority of the treaties that give legitimacy to United States and Canadian settlement. Furthermore, Indigenous resistance quickly made it clear that British proclamations of sovereignty had little weight or bearing on the ground. The United States quickly turned to the treaty process, realizing this was the only legal and just method for land acquisition. Indigenous blockades and protests coupled with desires to mirror the rapidity of western expansion south of the border would also be the impetus for Canadian treaty making.

Indigenous nations primarily saw treaties as living relationships, diplomatic processes that enabled the expansion of intricate kin-based networks situated within a relational paradigm that saw the world as a deeply interconnected and interdependent place. While treaty-making prior to the nineteenth century was primarily centered on the establishment of political, military and economic alliances between Indigenous nations and newcomers, by the nineteenth century treaty making had become a vehicle for nation-building for the US and Canada as these polities began articulating a national identity through the creation and expansion of a bounded state. Treaty making became the primary apparatus through which the US and Canada sought to legitimate and expand their land base. Nineteenth century treaty making became tied up in state interest to quiet Indigenous title. Thus treaties became about extinguishment of Indigenous title, with cession becoming the given, the presumed.

This transformation of the treaty process follows the eliminatory logic of settler colonialism. They reconstructed treaties away from Indigenous visions of living relationships toward a contractual event. Treaty became about certainty and finality for the two states. Yet I argue that in this moment, with the treaty constructed as an event, we can see the double bind of settler colonialism.[86] Settler colonialism is both conditioned by the perceived need to eliminate the native while at the same time this eliminatory aspect of settler colonialism can never be fully achieved. While this eliminatory logic can never be fully achieved because Indigenous resistance and persistence would never permit it, I argue the eliminatory nature of settler colonialism can also never be fully achieved because state sovereignty is constituted through the recognition of Indigenous sovereignty.

The United States and Canada require Indigenous sovereignty as their own legitimacy as nation-states is constituted through the treaties that are intended to at least provide the perception of legality. This discursive function of treaties

for these two states is part of the double bind of the settler colonial logic. The US and Canada are deeply concerned with a perception of legality (which is coded to mean just and humane) that requires them to traverse to boundaries of law (and indeed stretch and reconfigure law so as not to step outside its bounds) in order to reconfigure Indigenous nations through this logic that is not so much eliminatory as it is concomitantly reductive and productive. Indeed, this is why I think Robert Williams contends that law was and remains the West's most vital and effective instrument of empire. He notes "laws utility in generating legitimating arguments for the acquisition, maintenance, and defense of colonial spheres of influence was seized on as a principal instrument of empire."[87] It is in these moments that we can see how settler logics operate to keep state sovereignty discursively intact while implementing and mobilizing settler sovereignty in increasingly material ways.

These are the moments when we can see how Canada and the US begin to make *real* that which has only been *imagined.* It is in these moments that these two states attempt to perfect settler sovereignty; they do so by claiming jurisdiction over Indigenous bodies, facilitated through the construction of Indigenous political activities as criminal. Yet, in both the US and Canada, the material and discursive implications of the domestication of Indigenous political authority fails to eliminate Indigenous sovereignty. Plenary power, while increasingly constraining how Indigenous nations in the United States are able to exercise their political authority, fails to obscure Indigenous sovereignty altogether. Instead it sits beside judicial recognition of tribal sovereignty. The Indian Act, while continuing to paternalistically order Indigenous life, nonetheless also inherently recognizes-by its very existence- the unique, political relationship Canada has with Indigenous nations. The production of Indigenous criminality that make "savages" and the "uncivilized" in a "lawless" land, while having material implications for Indigenous peoples as seen with high rates of incarceration and the continued subjugation of their sovereign authority, also brings forward the conditions and contexts that enabled these narrations, reminding the settler state that it remains a criminal empire.

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[2] Sidney L Harring, ""There Seemed to Be No Recognized Law": Canadian Law and the Prairie First Nations," in *Laws and Societies in the Canadian Prairie West, 1670-1940*, ed. Louis A. Knafla and Jonathan Swainger (Vancouver: University of British Columbia Press, 2005); Sidney L. Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence* (Toronto ; Buffalo: Osgoode Society for Canadian Legal History by University of Toronto Press, 1998); Blair Stonechild and W. A. Waiser, *Loyal Till Death: Indians and the North-West Rebellion* (Calgary: Fifth House, 1997).

[3] Boyd Cothran, *Remembering the Modoc War: Redemptive Violence and the Making of American Innocence*, 1st edition. ed., First Peoples: New Directions in Indigenous Studies (Chapel Hill, NC: The University of North Carolina Press, 2014).

[4] Sidney L. Harring, *Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century*, Cambridge Studies in North American Indian History (Cambridge ; New York: Cambridge University Press, 1994).

[5] Lisa Blee, *Framing Chief Leschi: Narratives and the Politics of Historical Justice*, First Peoples, New Directions in Indigenous Studies (Chapel Hill: The University of North Carolina Press, 2014).

[6] Case citation, lower court.

[7] Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence*.
[8] Ibid.
[9] See, for example, *Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century*; *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence*. Also see, Thomas Fiddler and James R Stevens, *Killing the Shamen* (Newcastle Penumbra Press, 1985). Joseph Fiddler died Sept 1, 1908 in the infirmary at the Stony Mountain Penitentiary, convicted of murder under Canadian law. His sentence was commuted three days later.
[10] Lisa Ford has argued that "perfect settler sovereignty rested on the conflation of sovereignty, territory and jurisdiction." Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous Peoples in America and Australia 1788-1836* (Cambridge: Havard University Press, 2010), 2.
[11] Jodi A. Byrd, *The Transit of Empire: Indigenous Critiques of Colonialism*, First Peoples : New Directions Indigenous (Minneapolis: University of Minnesota Press, 2011), 136.
[12] Amy Kaplan, *The Anarchy of Empire in the Making of US Culture*, Convergences (Cambridge, Mass.: Harvard University Press, 2002), 12.
[13] Carol Chomsky, "The United States-Dakota War Trials: A Study in Military Injustice," *Stanford Law Review,* 43, no. 1 (Nov 1990), pp.13-98. Also see Mary Lethert Wingerd, *North Country: The Making of Minnesota* (Minneapolis: University of Minnesota Press, 2010); Gwen Westerman and Bruce M. White, *Mni Sota Makoce: The Land of the Dakota* (St. Paul: Minnesota Historical Society Press, 2012); Gary Clayton Anderson, *Little Crow, Spokesman for the Sioux* (St. Paul, MN: Minnesota Historical Society Press, 1986); Gary Clayton Anderson and Alan R. Woolworth, *Through Dakota Eyes: Narrative Accounts of the Minnesota Indian War of 1862* (St. Paul: Minnesota Historical Society Press, 1988); Kenneth Carley, *The Dakota War of 1862*, 2nd ed. (St. Paul: Minnesota Historical Society Press, 2001).
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[15] Speech from the Throne, in House of Commons, *Debates,* February 8, 1877, p.3. and add quite about money
[16] Jill St. Germain, *Indian Treaty-Making Policy in the United States and Canada 1867-1877* (Toronto: University of Toronto Press, 2001). Sarah Carter has noted, "Favourable comparisons were drawn between Canadian and American Indian policy, and these became particularly self-congratulatory after 1890 when the battle of Wounded Knee, the murder of Sitting Bull, and the "messiah craze" in the United States all appeared to point to the fact, on contrast, the Indians of Canada had been treated with justice," Sarah Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy*, Mcgill-Queen's Series in Native and Northern Studies (Montreal ; Buffalo: McGill-Queen's University Press, 1990), 134.
[17] Heidi Kiiwetinepinesiik Stark, "Marked by Fire: Anishinaabe Articulations of Nationhood in Treaty-Making with the United States and Canada," *American Indian Quarterly* 36, no. 2 (Spring 2012).
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[19] Shelley A. M. Gavigan, *Hunger, Horses, and Government Men: Criminal Law on the Aboriginal Plains, 1870-1905*, Law & Society, (Vancouver: UBC Press, 2012).
[20] Alexander Morris, *The Treaties of Canada with the Indians of Manitoba and the North-West Territories: Including the Negotiations on Which They Were Based, and Other Information Relating Thereto* (Toronto: Belfords, Clarke & Co., 1880).
[21] John L. Tobias, "Canada's Subjegation of the Plains Cree, 1879-1885," *Canadian Historical Review* 64, no. 4 (1983).
[22] James W. Daschuk, *Clearing the Plains: Disease, Politics of Starvation, and the Loss of Aboriginal Life*, Canadian Plains Studies, (Regina, Saskatchewan, Canada: U of R Press, 2013); Gavigan, *Hunger, Horses, and Government Men: Criminal Law on the Aboriginal Plains, 1870-1905*.
[23] Harring, ""There Seemed to Be No Recognized Law": Canadian Law and the Prairie First Nations."; Gavigan, *Hunger, Horses, and Government Men: Criminal Law on the Aboriginal Plains, 1870-1905*.
[24] For example, Judge Charles-Borromée Rouleau of Battleford had his own house looted and burned in the resistance. See Harring, ""There Seemed to Be No Recognized Law": Canadian Law and the Prairie First Nations," 99.
[25] Ibid.
[26] Ibid., 110-11.
[27] Except the 208 Mdewakanton exempted from this legislation.

[28] Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy*, 145.
[29] Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence*, 247.
[30] Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy*, 145. See also, NA, RG10 Vol. 3710 F.19 550-3
[31] Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence*, 245-6.
[32] Jeffrey Monaghan, "Mounties in the Frontier: Circulations, Anxieties, and Myths of Settler Colonial Policing in Canada," *Journal of Canadian Studies* 47, no. 1 (Winter 2013): 123.
[33] Gavigan, *Hunger, Horses, and Government Men: Criminal Law on the Aboriginal Plains, 1870-1905*, 135.
[34] Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence*, 109. Emphasis mine.
[35] Robert A. Williams, Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford University Press, 1990), 6.
[36] Harring, ""There Seemed to Be No Recognized Law": Canadian Law and the Prairie First Nations," 96.
[37] Ibid., 94.
[38] Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence*, 239.
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[40] *Liberalism, Surveillances and Resistance: Indigenous Communities in Western Canada, 1877-1927*, 63.
[41] Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy*, 141.
[42] Smith, *Liberalism, Surveillances and Resistance: Indigenous Communities in Western Canada, 1877-1927*, 61.
[43] Hayter Reed to Edgar Dewdney, 16 August 1885, LAC, Edgar Dewdney Fonds, MC 27-ICA, reprinted in *Strange Visitors: Documents in Indigenous-Settler Relations in Canada from 1876* (Toronto: University of Toronto Press, 2014).
[44] Initially, the United States recognized the validity of Indigenous legal traditions and jurisdiction in their treaties with Indigenous nations. For example, the Delaware Nation Treaty called for the application of both Delaware and US law over criminal matters between their respective citizens. The early treaties between 1778-1796 would primarily continue this tradition, utilizing a territorially based model to determine jurisdiction, despite the move in 1789 to begin including clauses that increasingly brought Indigenous peoples under US jurisdiction for crimes committed against US citizens. See Robert N. Clinton, "Development of Criminal Jurisdiction over Indian Lands: The Historical Perspective," *Arizona Law Review, Vol. 17, No.4* (1975), pg. 951-991.
[45] Francis Paul Prucha, *The Great Father: The United States Government and the American Indians*, 2 vols. (Lincoln: University of Nebraska Press, 1984).
[46] For a history of these acts, see *American Indian Policy in the Formative Years: The Indian Trade and Intercourse Acts, 1790-1834* (Cambridge: Harvard University Press, 1962).
[47] Absent treaty stipulations securing this authority to the tribes.
[48] Geo. W. Manypenny, "Report of the Commissioner of Indian Affairs," Nov. 22, 1856 Sen. Exec, Doc. 34th Cong., 3 sess., vol. 2, Doc 5, pp.554-580, 575.
[49] Ibid., 572.
[50] Smith to Secretary of the Interior, 1 November 1872, in United States, Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs to the Secretary for the Year 1872* (Washington: Government Printing Office, 1872), 3-22, NADP Document R872001A. http://public.csusm.edu/nadp/r872001a.htm
[51] Colyer to President, 15 November 1871, in United States, Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs to the Secretary for the Year 1871* (Washington: Government Printing Office, 1872), 12-22, NADP Document RB1871.
http://public.csusm.edu/nadp/r871002.htm
[52] David E. Wilkins, *Documents of Native American Political Development : 1500s to 1933* (Oxford ; New York: Oxford University Press, 2009), 161.
[53] Prucha, *The Great Father: The United States Government and the American Indians*.
[54] Harring, *Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century*, 206.
[55] Ibid., 13.
[56] *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence*, 119.
[57] Harring notes, "laws for nineteenth-century Ontario Indians, meant either the legal basis for settler claims to their lands or the reason for their being locked in a jail cell Indian traditions." Ibid., 93.For an example of the extension of

criminal law onto Indigenous peoples, see Thomas Fiddler and James R. Stevens, *Killing the Shamen* (Moonbeam, Ont., Canada: Penumbra Press, 1985).

[58] Harring, *Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century*, 255. For a discussion of the Indian depredation acts, see David E. Wilkins, *Hollow Justice: A History of Indigenous Claims in the United States*, The Henry Roe Cloud Series on American Indians and Modernity (New Haven: Yale University Press, 2013).

[59] Erik M. Redix, *The Murder of Joe White: Ojibwe Leadership and Colonialism in Wisconsin*, American Indian Studies Series (East Lansing, MI: Michigan State University Press, 2014), 125-6 & 52. For Canada, see Harring, *White Man's Law: Native People in Nineteenth-Century Canadian Jurisprudence*..

[60] For discussion of lands legally stolen see Jeffrey Ostler, *The Plains Sioux and US Colonialism from Lewis and Clark to Wounded Knee*, Studies in North American Indian History (Cambridge ; New York: Cambridge University Press, 2004). For discussion of Indigenous leaders being legally murdered, see Redix, *The Murder of Joe White: Ojibwe Leadership and Colonialism in Wisconsin*.

[61] Kaplan, *The Anarchy of Empire in the Making of US Culture*, 26.

[62] Anne McClintock, *Imperial Leather: Race, Gender, and Sexuality in the Colonial Contest* (New York: Routledge, 1995), 35.

[63] Ibid., 26.

[64] Gavigan, *Hunger, Horses, and Government Men: Criminal Law on the Aboriginal Plains, 1870-1905*, 106.

[65] Smith, *Liberalism, Surveillances and Resistance: Indigenous Communities in Western Canada, 1877-1927*.

[66] Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy*, 18-19.

[67] Adele Perry, "Metropolitcan Knowledge, Colonial Practice, and Indigenous Womanhood: Missions in Nineteenth-Century British Columbia," in *Contact Zones: Aboriginal and Settler Women in Canada's Colonial Past*, ed. Myra Rutherdale and Katie Pickles (Vancouver: UBC Press, 2005), 125.

[68] Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy*, 180.

[69] Jean Barman, "Taming Aboriginal Sexuality: Gender, Power, and Race in British Columbia, 1850-1900," *BC Studies* Autumn/Winter, no. 115/116 (1997/98): 257.

[70] Ibid., 258.

[71] Beth H. Piatote, *Domestic Subjects: Gender, Citizenship, and Law in Native American Literature*, The Henry Roe Cloud Series on American Indians and Modernity (New Haven: Yale University Press, 2013), 23.

[72] Sarah A. Carter, "Creating "Semi-Widows" and "Supernumerary Wives": Prohibiting Polygamy in Prairie Canada's Aboriginal Communities to 1900 " in *Contact Zones: Aboriginal and Settler Women in Canada's Colonial Past*, ed. Myra Rutherdale and Katie Pickles (Vancouver: UBC Press, 2005), 139.

[73] Ibid.; Harring, *Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century*.

[74] Pamela D. Palmater, *Beyond Blood: Rethinking Indigenous Identity* (Saskatoon: Purich Publishing, 2011).

[75] Kaplan, *The Anarchy of Empire in the Making of US Culture*, 25.

[76] Ibid., 29 & 50. Also see Piatote, *Domestic Subjects: Gender, Citizenship, and Law in Native American Literature*.

[77] Harring, *Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century;* Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous Peoples in America and Australia 1788-1836*; Erik M. Redix, *The Murder of Joe White: Ojibwe Leadership and Colonialism in Wisconsin*.

[78] Harring, *Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century*, 8.

[79] Robert A. Williams, *Like a Loaded Weapon: The Rehnquist Court, Indian Rights, and the Legal History of Racism in America*, Indigenous Americas (Minneapolis: University of Minnesota Press, 2005).

[80] See *Cherokee Nation v Georgia* 30 US (5 Peters) 1 (1831); *Worcester v Georgia* 31 US (6 Pet) 515 (1832). These constructions of Indigenous political status are mired with various competing interpretations/definitions. See David E. Wilkins, "The Manipulation of Indigenous Status: The Federal Government as Shape Shifter," *Stanford Law and Policy Center* 12, no. 2 (Spring 2001).

[81] David E. Wilkins and K. Tsianina Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (Norman: University of Oklahoma Press, 2001).

[82] Until *Haida Nation* when Aboriginal occupancy was recast as Aboriginal sovereignty. Felix Hoehn, *Reconciling Sovereignties: Aboriginal Nations and Canada* (Saskatoon: Native Law Centre, University of Saskatchewan, 2012).

[83] Ann Laura Stoler, "Intimidations of Empire: Predicaments of the Tactile and Unseen," in *Haunted by Empire : Geographies of Intimacy in North American History*, ed. Ann Laura Stoler (Durham: Duke University Press, 2006), 9.

[84] Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8, no. 4 (2006): 387-8.
[85] Ibid., 389.
[86] Jean M. O'Brien, *Firsting and Lasting: Writing Indians out of Existence in New England*, Indigenous Americas (Minneapolis: University of Minnesota Press, 2010). O'Brien utilizes the phrase "the double bind of settler colonialism" to refer to the narrative erasure of Indigenous peoples that enables the subsequent erection of settler society; narratives that are always conditioned by and dependent upon the presence of Indigenous peoples. Along the same vein, I use "the double bind of settler colonialism" to refer to the ways in which the settler state's own legitimacy is conditioned and predetermined by the recognition of Indigenous sovereignty, and thus stands alongside settler state juridical and popular narratives that perceive settler-state stability requires the domestication of Indigenous sovereignty, making elimination of the native an impossibility.
[87] Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest*, 59.

Gender, Sexuality, and Indigenous Lifeways

Queer Indigenous Studies

Critical Interventions in Theory, Politics, and Literature

Edited by
Qwo-Li Driskill, Chris Finley, Brian Joseph Gilley, and Scott Lauria Morgensen

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1

Decolonizing the Queer Native Body (and Recovering the Native Bull-Dyke)

Bringing "Sexy Back" and Out of Native Studies' Closet

Chris Finley

> Whence the Freudian endeavor (out of reaction no doubt to the great surge of racism that was contemporary with it) to ground sexuality in the law—the law of alliance, tabooed consanguinity, and the Sovereign Father, in short, to surround desire with all the trappings of the old order of power.
>
> —Michel Foucault[1]

Thinking about how gender reifies colonial power has begun to be an important analytic in Native studies with the publication of special issues on Native feminisms in *American Quarterly* (2008) and *Wicazo Sa Review* (2009), and the three exciting panels on Native feminisms at the 2008 Native American and Indigenous Studies Conference in Athens, Georgia.[2] While gender is not a main theoretical framework in Native studies, discussions of gender occur more frequently than do those about sexuality. In Native studies, gender is not as scary a topic as sexuality, especially discussions of Native sexualities. This reaction should be reconsidered. An important analysis of colonial power for Native studies and Native nations can be found in Michel Foucault's theories of sexuality and biopower. He argues that the modern racial state comes into being by producing "sex" as a quality of bodies and populations, which get targeted for life or death as a method of enacting state power. He says that historically this "gave rise . . . to comprehensive measures, statistical assessments, and interventions aimed at the entire social body or at groups taken as a whole. Sex was a means of access to both the life of the body and the life of the species."[3] Scholars in Native studies increasingly argue that biopower defines the colonization of Native peoples when it makes sexuality, gender, and race key arenas of the power of the settler state.[4]

Histories of biopower deeply affected Native people's relationship to the body and sexuality. Natives, and lots of other folks, like sex but are

terrified to discuss it. For many tribes, this shame around sex started in the boarding schools, and sexual shame has been passed down for generations. Throughout the imposition of colonialism in the United States, one of the methods Native communities have used to survive is adapting silence around sexuality. The silencing of sexuality in Native studies and Native communities especially applies to queer sexuality. While it does not differ from mainstream U.S. society, this attitude of silence has more intense consequences for Native peoples, because of the relationship of sexuality to colonial power. Sexuality is difficult terrain to approach in Native communities, since it brings up many ugly negative realities and colonial legacies of sexual violence. As Andrea Smith argues, sexual violence is both an ideological and a physical tool of U.S. colonialism.[5] Because of this reality, there is a high rate of sexual abuse in Native communities. Non-Native pedophiles target children in Native nations because there is little chance of perpetrators being brought to justice or caught by tribal police, since non-Natives on tribal lands are not bound to the same laws as Natives. Historically, and arguably in the present, Native women are targeted for medical sterilization. In some Native nations, tribal councils have adapted heterosexist marriage acts into their tribal government constitutions. All this proves that discussions of sexuality are happening in Native communities. Yet the relationship between colonial power and normalizing discourses of sexualities is not a part of these dialogues. Heterosexism and the structure of the nuclear family needs to be thought of as a colonial system of violence.

My goal here is to show how new and exciting work linking Native studies and queer studies can imagine more open, sex-positive, and queer-friendly discussions of sexuality in both Native communities and Native studies. This not only will benefit Native intellectualism but also will change the ways in which Native nationalisms are perceived and constructed by Native peoples, and perhaps non-Native peoples. How are queered Native bodies made into docile bodies open to subjugation by colonial and imperial powers? How does the queering of Native bodies affect Native sovereignty struggles? Can Native peoples decolonize themselves without taking colonial discourses of sexualities seriously? What might some of the results of a decolonizing revolutionary movement for Native people that challenged heteropatriarchy look like? How could a decolonizing movement that challenged biopower be constructed as a coalitional and community-building movement?

Heteropatriarchy, Biopower, and Colonial Discourse: Not So Sexy

Imagining the future of sexuality in Native studies and Native nations produces many stimulating possibilities for decolonization. One place where sexuality is discussed explicitly is in queer studies, yet this field only rarely addresses Native peoples and Native issues. The debates over the civil rights of queer peoples form one of the main topics of discussion in queer studies. Thinking about sovereignty and colonialism in relation to theory in queer studies would shift conversations of citizenship and subjectivity to rethinking the validity of the U.S. nation-state. Importantly, queer theory's critiques of heterosexism, subjectivity, and gender constructions would be very useful in the context of Native studies.

There are potential problems in intersecting queer studies with Native studies. For the most part, neither discipline has shown much interest in critically engaging the other.[6] It is my hope, along with other scholars in this collection, to change this relationship. I pursue that work here by: interrogating the queered colonial discourses that define Native people; critiquing the state for constructing Native people as nonheteronormative, since they do not conform to heteropatriarchy; and critiquing Native nation building that uses the U.S. nation-state as a model. In Native studies, discussions of sexuality, gender, and colonialism have the possibility of exposing heteronormative discourses of colonial violence directed at Native communities. Heteropatriarchy and heteronormativity should be interpreted as logics of colonialism. Native studies should analyze race, gender, and sexuality as logics of colonial power without reducing them to separate identity-based models of analysis, as argued by Andrea Smith in "Heteropatriarchy and the Three Pillars of White Supremacy: Rethinking Women of Color Organizing."[7] The simple inclusion of queer people or of sexuality as topics of discussion in Native studies and Native communities is not enough to effectively detangle the web of colonialism and heteropatriarchy. Taking sexuality seriously as a logic of colonial power has the potential to further decolonize Native studies and Native communities by exposing the hidden ways that Native communities have been colonized and have internalized colonialism. As Smith has argued, colonialism is supported through the structure of heteropatriarchy, which naturalizes hierarchies.[8] Heteropatriarchy disciplines and individualizes communally held beliefs by internalizing hierarchical gendered relationships and heteronormative

attitudes toward sexuality. Colonialism needs heteropatriarchy to naturalize hierarchies and unequal gender relations. Without heteronormative ideas about sexuality and gender relationships, heteropatriarchy, and therefore colonialism, would fall apart. Yet heteropatriarchy has become so natural in many Native communities that it is internalized and institutionalized as if it were traditional. Heteropatriarchal practices in many Native communities are written into tribal law and tradition. This changes how Natives relate to one another. Native interpersonal and community relationships are affected by pressure to conform to the nuclear family and the hierarchies implicit in heteropatriarchy, which in turn, are internalized. The control of sexuality, for Native communities and Native studies, is an extension of internalized colonialism. As Foucault argues in the first volume of *The History of Sexuality,* simply talking about sex and having more deviant sex does not challenge power relations produced by sexuality. Instead, the "excitement" of sexuality discourses reifies their power.[9] Purposeful deconstruction of the logics of power rather than an explosion of identity politics will help end colonial domination for Native peoples.

Colonialism disciplines both Native people and non-Native people through sexuality. The logics governing Native bodies are the same logics governing non-Native people. Yet the logic of colonialism gives the colonizers power, while Native people are more adversely affected by these colonizing logics. The colonizers may feel bad, stressed, and repressed by self-disciplining logics of normalizing sexuality, but Native people are systematically targeted for death and erasure by these same discourses. Rayna Green discusses the intersecting logics of race, gender, and sexuality in her work to show the unequal power relationship between the colonizer and the colonized.

Green's "The Pocahontas Perplex: The Image of Indian Women in American Culture" argues that colonial discourses represent Native women as sexually available for white men's pleasure.[10] These images of Native women equate the Native female body with the conquest of land in the "New World." In other words, the conflation of the "New World" with Native women's bodies presents Native women's heterosexual desire for white male settlers as justifying conquest and the settlement of the land by non-Natives. I would like to consider this sexualization, gendering, and racialization of the land by providing a queer reading. First, the land is heterosexualized within the heteropatriarchal order through the discovery, penetration, and ownership of the land by white men.

Of course, this narrative erases the fact that Native peoples were living on and owning these lands. The conflation of Native women's bodies with racialized and sexualized narratives of the land constructs it as penetrable and open to ownership through heteropatriarchal domination. Becoming critically aware of the heterosexual construction of land while queering Native peoples would be a queer Indigenous studies approach to rethinking conquest, even as it would shift ideas of sovereignty, subjectivity, recognition, nationalism, and self-determination to include queer Indigenous readings of the land.

While I agree with Green's formulation, her focus on Native women's conflation with land erases the sexual desirability of Native men in the colonial matrix. Green states, "But the Indian woman is even more burdened by this narrow definition of a 'good Indian,' for it is she, not the males, whom white men desire sexually."[11] Here, I want to include Native men as well as Native women as having been sexualized, gendered, and racialized as penetrable within colonial and imperial discourses. In other words, it is not only Native women who are (hetero)sexually controlled by white heteropatriarchy, for Native men are feminized and queered when put in the care of a white heteropatriarchal nation-state. Importantly, heteropatriarchy is effective whether Native women are read as queer or heterosexual, because "deviant" queer Native women need to be disciplined and controlled by colonial sexual and gendered "norms." Nevertheless, heteropatriarchy is more effective if Native women are read as heterosexual, since they can fit neatly as mothers and wives into its power hierarchies. All sexualization of Native peoples constructs them as incapable of self-governance without a heteropatriarchal influence that Native peoples do not "naturally" possess.

Under the disciplining logics of colonialism, Native women need to be heterosexualized to justify conquest. The "creation" story of the U.S. nation carefully includes a Native woman named Pocahontas who chooses her love for John Smith, and later John Rolfe, over the interests of her Native family. According to these colonial logics, Native women need to be managed, because they lack control over their sexuality and therefore their bodies. Native women embody the reproductive position of receiver of the fertile white colonial heteropatriarch and the mother of the U.S. nation. Under the logics of patriarchy and white supremacy, when a Native woman reproduces with a white man the child of this union becomes a white inheritor of the land. The child, although racially half Native, through white supremacy and patriarchy becomes white,

since inheritance under patriarchy is passed on through the father. Indigeneity, unlike blackness, is erased through miscegenation with whiteness, since colonizing logic stipulates that Native people need to disappear for the settlers to inherit the land. Then as soon as the Native mother gives birth, her indigeneity must disappear and die for her offspring to inherit the land and replace her body. For this whole narrative to work, the Native woman must be heterosexual and desire to have her body sexually and reproductively conquered through her love of the white man. Her body, and therefore her land, would now be owned and managed by the settler nation.

If the Native woman were read as queer, her heterosexual desire for white settlers to invade her nation would not be for the universal truth of love, since the sexual desire for white men would not exist. The narrative of universal love covering for imperial expansion and colonial violence would be exposed and destroyed. For this narrative to work, the Native woman *must* desire white heteropatriarchy through her desire of heteronormative sex and the love of white men. With a queer Native mother, the sex with the white settler may not have been consensual. In the absence of consent and the death of the mother sans the love story, conquest is revealed as a violent process with no regard for Native life. Colonialism naturalizes the heterosexual Native woman's desire for a white man to make conquest a universal love story.

In turn, in colonial narratives Native men must be queered as sexually unavailable object choices for Native women. While Native women are necessary for the imaginary origin story for the U.S. nation, Native men are not. In fact, Native men's presence in that story is erased. They must disappear to allow the white male heteropatriarch to rule over Native women without competition from Native men. For this to occur, Native men are constructed as nonheteronormative and unable to reproduce Native peoples. Native men are read as nonheteronormative because Native men do not correctly practice heteropatriarchy and govern Native women and children. Native gender norms and family structures, which vary from tribe to tribe, do not conform to Native men having control of the public space and the nuclear family or to caring for the land correctly. In other words, in a colonial reading, Native men "allow" matriarchal structures to govern society and extended families, while Native peoples do not make as much profit off the land as the settlers would. Native men are seen as sterile members of a dying race that needs a "genetically superior" white race to save it from the "unavoidable" extinction. Native men are constructed as nonheteronormative to justify the extinction of Native people. Since it is the father that gives the child the inheritance in patriarchy, white heteropatriarchy can slip in and "save" the Natives through the management of Native women and erasure of Native men.

Through the action of colonial discourses, the bodies of Native women and men are queered and racialized as disordered, unreproductive, and therefore nonheteronormative. By making Native bodies "disappear," the colonial logic of Native nonheteronormative sexualities justifies genocide and conquest as effects of biopower. On these terms, Native people are diseased, dying, and nonheteronormative, all of which threatens the survival of the heteronormative U.S. nation-state. Native people are eliminated discursively or actually killed to save the heteronormative body politic from possible contamination by Native nonheteronormativity. Yet through death and disappearance, nonheteronormative Natives are transformed into heteronormative spirit/subjects in discourses told by the colonizer to appropriate the land and culture of Native peoples while building a heteropatriarchal nation.

Nation-Building: Native Feminist Critiques and Decolonization as Foreplay for Sexy Native Nations

Taiaiake Alfred, a Mohawk Native, offers a decolonizing challenge to Native people. He does not center his construction of indigeneity in apolitical identity politics or solely on genealogy. Instead, he wants Native people to recreate the relations between themselves and their land base. He advocates fighting colonialism through regaining the spiritual strength and integrity colonialism has stolen from Native communities (as well as the hope Native people have given away to colonialism). This is a beautiful conception of sovereignty and self-determination. Alfred writes:

> Wasáse, as I am speaking of it here, is symbolic of the social and cultural force alive among Onkwehonwe dedicated to altering the balance of political and economic power to recreate some social and physical space for freedom to re-emerge. Wasáse is an ethical and political vision, the real demonstration of our resolve to survive as Onkwehonwe and to do what we must to force the Settlers to acknowledge our existence and the integrity of our connection to the land.[12]

Alfred wants freedom for Native people that can come only from decolonizing Native communities. For him, this is a political project that involves Native communities *and* the colonizing settlers. Alfred does not discuss how colonialism impacts Native women specifically or how colonial discourses of sexuality dispossess Native people from the land and from capacity for governance. Yet his alternative construction of sovereignty can be used to include sexuality as part of politics and land management.

Jennifer Nez Denetdale is one of the few Native scholars overtly discussing the politics of sexuality, gender, and Native nationalisms in her work. Denetdale's work exposes homophobia as part of modern Native nation building. To critique masculinist discourses working within Navajo nationalism, Denetdale, along with other Native feminists, has found it necessary to critique traditionalism in Native communities. This is an important intervention, because Native peoples are often read as existing outside of homophobic discourse or as more accepting of trans and queer people in Native communities because of traditional Native ideas regarding gender and sexuality. Denetdale writes: "With the imposition of Western democratic principles, Navajo women find themselves confronted with new oppressions in the name of 'custom and tradition.'"[13] Here, tradition is invoked to justify heteropatriarchy and male leadership in the Navajo Nation (as in other Native nations) by discouraging or forbidding Native women from taking leadership roles, on account of this being constructed as untraditional. Ironically, as Denetdale points out, Navajo women are allowed to participate in the Navajo Nation beauty pageant but not to hold a position on the tribal council. Denetdale supports Native sovereignty, but she also believes Native traditions should be historicized so that traditions are not abused and used to support forms of oppression, such as antiblack racism and heteronormativity. She writes:

> While it is necessary for Native scholars to call upon the intellectual community to support and preserve Indigenous sovereignty, it is crucial that we also recognize how history has transformed traditions, and that we be critical about the ways tradition is claimed and for what purposes. In some cases, tradition has been used to disenfranchise women and to hold them to standards higher than those set for men. Tradition is not without a political context.[14]

Denetdale explains that traditionalism is used in Native communities to silence women and to disenfranchise them from possessing political power. She does not dismiss Navajo traditions when she asks critical questions about whether certain traditions emerge in a historical trajectory or how Navajo men benefit by defining traditionalism in a historical vacuum. Her critique denaturalizes heteropatriarchal traditionalism by placing it inside histories of heteropatriarchal discourse instead of outside of modern constructions of power.[15] Native nations should be self-critiquing of Native constructions of nationalisms.

Native nations' use of heteronormative citizenship standards also disallows nonheteronormative identity formations from belonging in Native nations. Denetdale discusses this matter further when she also takes on the Diné Marriage Act passed by the tribal council of the Navajo Nation, in her paper entitled, "Carving Navajo National Boundaries: Patriotism, Tradition, and the Diné Marriage Act of 2005."[16] Denetdale examines how the intersection of heteropatriarchy, militarism, and homophobia strengthened the Navajo Nation in the post–9/11 moment. She criticizes her tribe for participating in oppressive colonial nation building by trying to enforce heteronormative marriage practices on Diné people. This sort of homophobic nationalism is similar to the U.S. nation-state's use of hyped-up homophobic nationalism and militarism in this time of war. Nationalism that is dependent on the exclusion of queer people has many consequences for Native communities. Denetdale tells how some Navajo youth left the Navajo Nation to move to urban areas and to find a queer community because of the backlash against nonheteronormative Navajos. This is a loss to the Navajo Nation. As Denetdale successfully argues, Native nations that mirror the U.S nation-state by relying on homophobia and heteropatriarchy to establish national belonging and exclusion are not ideal models to further Native sovereignty. She forcefully argues, "Critically examining the connections constructed between the traditional roles of Navajo warriors and present-day Navajo soldiering for the United States, as well as the connections made between family values and recent legislation like the Diné Marriage Act, are critical to our decolonization as Native peoples."[17] Denetdale, like many other Native scholars, advocates looking for a construction of sovereignty and Native nation building other than the model of the U.S. nation-state. She does not want to reproduce the oppressive colonial methods that exclude queers, women, and black Natives. Instead, she, like Alfred, challenges us in Native studies to conceptualize a more harmonious construction of sovereignty and Native nationhood. Native people and Native studies need to understand

how discourses of colonial power operate within our communities and within our selves through sexuality, so that we may work toward alternative forms of Native nationhood and sovereignty that do not rely on heteronormativity for membership.

Centering discourses of sexualities in Native studies engages gender, sexuality, and indigeneity as enmeshed categories of analysis, since examining gender is an important part of deconstructing sexualities and exposing colonial violence. Andrea Smith writes, "The very simplified manner in which Native women's activism is theorized prevents Native women from articulating political projects that both address sexism *and* promote indigenous sovereignty. In addition, this framework does not show the complex way in which Native women organizers position themselves with respect to other coalition partners."[18] I build my ideas upon the work of Indigenous feminist theorists whose ideas and articulations of indigeneity could transform other fields of study, such as white feminist and white queer theories. The scholarly work of Indigenous feminisms centers Native women and critiques white heteropatriarchy, colonialism, sexual violence, and the U.S. nation-state model of nationalism. I want to take this a step further, as some Native feminists have done, and add the intersection of these power relations with sexuality to reveal colonizing logics and practices embedded in constructing Native peoples as hypersexual and nonheteronormative. It is time to bring "sexy back" to Native studies and quit pretending we are boring and pure and do not think or write about sex. We are alive, we are sexy, and some of us Natives are queer. Native nationalisms have the potential to be sexy (and are already sexualized), but to be sexy from a Native feminist perspective, they need to be decolonizing and critical of heteropatriarchy.

Conclusion

Critical theory of biopower exposes the colonial violence of discourse on Native nonheteronormativity being used to justify Native genocide and the "disappearance" of Native people. Deconstructing Native sexualities within a biopolitical analysis has the ability to further unlock the closet of Native studies and expose how colonial power operates in Native nations. The silence in Native studies around issues of sexuality, even heterosexuality, does not benefit the work of decolonizing Native studies or articulating it as a project of freedom for Native people. Silence around Native sexuality benefits the colonizers and erases queer Native people from their communities.[19] Putting Native studies and queer studies in dialogue creates further possibilities to decolonize Native communities. Doing so will expose colonial violence in discursive practices that construct the Native body as hypersexualized, sexually disordered, and queer while presenting Native people as incapable of governance on Native land. Centering a queer studies framework within Native studies also calls Native communities to confront heteropatriarchal practices that have resulted from internalizing sexual colonization.

In response to Justin Timberlake's song "Sexy Back," the artist Prince stated, "Sexy never left."[20] The same can be said for Native studies and Native communities, because sex is always there, but Native sexualities are just beginning to be theorized. Sexuality discourses have to be considered as methods of colonization that require deconstruction to further decolonize Native studies and Native communities. Part of the decolonizing project is recovering the relationship to a land base and reimagining the queer Native body. What does this look like? We will have to imagine this and build this together. I want to imagine that Native peoples have a new bright future full of life and the spirits of our ancestors.

Notes

1. Michel Foucault, *The History of Sexuality*, vol. 1, *An Introduction* (New York: Vintage Books, 1978), 150.

2. Mishuana Goeman and Jennifer Nez Denetdale, eds., "Native Feminisms: Legacies, Interventions, and Sovereignties," *Wicazo Sa Review* 24, no. 2 (2009): 9–187; Andrea Smith and J. Kehaulani Kauanui, eds., "Forum: Native Feminisms without Apology," *American Quarterly* 60, no. 2 (2008): 241–315.

3. Michel Foucault, *The History of Sexuality*, vol. 1 : *An Introduction* (New York: Vintage Books, 1978), 146.

4. See, for example: Andrea Smith, "Queer Theory and Native Studies: The Heteronormativity of Settler Colonialism" (this vol.).

5. Andrea Smith, *Conquest: Sexual Violence and American Indian Genocide* (Cambridge: South End Press, 2005).

6. This is changing rapidly and some Native studies scholars are engaging queer theory and queering indigeneity. See, for example: Daniel Heath Justice and James Cox, eds. "Queering Native Literature, Indigenizing Queer Theory" *SAIL: Studies in American Indian Literature* 20, no. 1 (2008); Daniel Heath Justice, Mark Rifkin, and Bethany Schneider, eds., "Sexuality, Nationality, Indigeneity: Rethinking the State at the Intersection of Native American and Queer Studies" *GLQ: A Journal of Lesbian and Gay Studies* 16, no. 1–2 (2010).

7. Andrea Smith, "Heteropatriarchy and the Three Pillars of White Supremacy: Rethinking Women of Color Organizing." *The Color of Violence: Incite Women of Color against Violence*, ed. INCITE Women of Color Against Violence(Boston: South End Press, 2006), 66.

8. Ibid., 72.

9. Foucault, *The History of Sexuality*, 4. I am certainly not discouraging the practice of deviant sex, which is such a broad category, anyhow.

10. Rayna Green, "The Pocahontas Perplex: The Image of Indian Women in American Culture," *Massachusetts Review* 16, no. 4 (1975).

11. Ibid., 703.

12. Taiaia Alfred, *Wasáse*, (University of Toronto Press, 2005) 19.

13. Jennifer Nez Denetdale, "Chairmen, Presidents, and Princesses: The Navajo Nation, Gender, and the Politics of Tradition," *Wicazo Sa Review* 21, no. 1 (2006): 10.

14. Ibid., 20–21.

15. Traditionalism is seen as existing outside of discourse and existing before the invention of the law. By contextualizing tradition in history and heteropatriarchy, Denetdale disrupts the narrative of traditionalism as sacred and uncorrupted by modernity.

16. Jennifer Nez Denetdale, "Carving Navajo National Boundaries: Patriotism, Tradition, and the Diné Marriage Act of 2005," *American Quarterly* 60 (2008).

17. Ibid., 289.

18. Andrea Smith, *Native Americans and the Christian Right: The Gendered Politics of Unlikely Alliances* (Durham, NC: Duke University Press, 2008), 108.

19. Native people, who are racialized as being dead and gone, should be aware of the psychological damage erasure causes and be mindful not to do it to other people in our communities.

20. SFGate, "Prince Takes Swipe at Timberlake," August 31, 2006, http://www.sfgate.com/cgi-bin/blogs/dailydish/detail?blogid=7&entry_id=8455.

2

Queer Theory and Native Studies

The Heteronormativity of Settler Colonialism

Andrea Smith

Native studies and queer theorist Chris Finley (this volume) challenges Native studies scholars to integrate queer theory into their work. She notes that while some scholars discuss the status of gender-non-normative peoples within precolonial Native communities, virtually no scholars engage queer theory. This absence contributes to a heteronormative framing of Native communities. "It is time to bring 'sexy back' to Native studies and quit pretending we are boring and pure and do not think or write about sex," Finley insists. "We are alive, we are sexy, and some of us Natives are queer."[1] Furthermore, she notes, while there are emerging feminist and decolonial analyses within Native studies that point to the gendered nature of colonialism, it is necessary to extend this analysis to examine how colonialism also queers Native peoples. Thus, her charge goes beyond representing queer peoples within Native studies (an important project); it also calls on *all* scholars to queer the analytics of settler colonialism. Qwo-Li Driskill further calls for the development of a "two-spirit" critique that remains in conversation with, while also critically interrogating, queer and queer of color critique.[2]

Queer theory has made a critical intervention in GLBT studies by moving past simple identity politics to interrogate the logics of heteronormativity. According to Michael Warner, the "preference for 'queer' represents, among other things, an aggressive impulse of generalization; it rejects a minoritizing logic of toleration or simple political interest-representation in favor of a more thorough resistance to regimes of the normal." Native studies, however, has frequently intersected more with GLBT studies than with queer theory in that it has tended to focus on the status of "two-spirit" peoples within Native communities.[3] While this scholarship is critically important, I argue that Native studies additionally has more to contribute to queer studies by unsettling settler colonialism. At the same time, while queer theory does focus on normalizing logics, even those engaged in queer of color critique generally neglect the normalizing logics of settler colonialism, particularly within the U.S. context.

Heterosexualism and the Colonial / Modern Gender System

Maria Lugones

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Heterosexualism and the Colonial / Modern Gender System

MARÍA LUGONES

The coloniality of power is understood by Anibal Quijano as at the constituting crux of the global capitalist system of power. What is characteristic of global, Eurocentered, capitalist power is that it is organized around two axes that Quijano terms "the coloniality of power" and "modernity." The coloniality of power introduces the basic and universal social classification of the population of the planet in terms of the idea of race, a replacing of relations of superiority and inferiority established through domination with naturalized understandings of inferiority and superiority. In this essay, Lugones introduces a systemic understanding of gender constituted by colonial/modernity in terms of multiple relations of power. This gender system has a light and a dark side that depict relations, and beings in relation as deeply different and thus as calling for very different patterns of violent abuse. Lugones argues that gender itself is a colonial introduction, a violent introduction consistently and contemporarily used to destroy peoples, cosmologies, and communities as the building ground of the "civilized" West.

In a theoretico-praxical vein, I am offering a framework to begin thinking about heterosexism as a key part of how gender fuses with race in the operations of colonial power. Colonialism did not impose precolonial, European gender arrangements on the colonized. It imposed a new gender system that created very different arrangements for colonized males and females than for white bourgeois colonizers. Thus, it introduced many genders and gender itself as a colonial concept and mode of organization of relations of production, property relations, of cosmologies and ways of knowing. But we cannot understand this gender system without understanding what Anibal Quijano calls "the coloniality of power" (2000a, 2000b, 2001–2002). The reason to historicize gender

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formation is that without this history, we keep on centering our analysis on the patriarchy; that is, on a binary, hierarchical, oppressive gender formation that rests on male supremacy without any clear understanding of the mechanisms by which heterosexuality, capitalism, and racial classification are impossible to understand apart from each other. The heterosexualist patriarchy has been an ahistorical framework of analysis. To understand the relation of the birth of the colonial/modern gender system to the birth of global colonial capitalism—with the centrality of the coloniality of power to that system of global power—is to understand our present organization of life anew.

This attempt at historicizing gender and heterosexualism is thus an attempt to move, dislodge, complicate what has faced me and others engaged in liberatory/decolonial projects as hard barriers that are both conceptual and political. These are barriers to the conceptualization and enactment of liberatory possibilities as de-colonial possibilities. Liberatory possibilities that emphasize the light side of the colonial/modern gender system affirm rather than reject an oppressive organization of life. There has been a persistent absence of a deep imbrication of race into the analysis that takes gender and sexuality as central in much white feminist theory and practice, particularly feminist philosophy. I am cautious when I call it "white" feminist theory and practice. One can suspect a redundancy involved in the claim: it is white because it seems unavoidably enmeshed in a sense of gender and of gendered sexuality that issues from what I call the light side of the modern/colonial gender system. But that is, of course, a conclusion from within an understanding of gender that sees it as a colonial concept. Yet, I arrive at this conclusion by walking a political/praxical/theoretical path that has yet to become central in gender work: the path marked by taking seriously the coloniality of power. As I make clear later in this essay, it is also politically important that many who have taken the coloniality of power seriously have tended to naturalize gender. That position is also one that entrenches oppressive colonial gender arrangements, oppressive organizations of life.

So, on the one hand, I am interested in investigating the intersection of race, class, gender, and sexuality in a way that enables me to understand the indifference that persists in much feminist analysis. Women of color and Third World feminisms have consistently shown the way to a critique of this indifference to this deep imbrication of race, gender, class, and sexuality. The framework I introduce is wholly grounded in the feminisms of women of color and women of the Third World and arises from within them. This framework enables us to ask harsh but hopefully inspiring questions. The questions attempt to inspire resistance to oppression understood in this degree of complexity. Two crucial questions that we can ask about heterosexualism from within it are: How do we understand heterosexuality not merely as normative but as consistently perverse when violently exercised across the colonial modern gender system so as to

construct a worldwide system of power? How do we come to understand the very meaning of heterosexualism as tied to a persistently violent domination that marks the flesh multiply by accessing the bodies of the unfree in differential patterns devised to constitute them as the tortured materiality of power? In the work I begin here, I offer the first ingredients to begin to answer these questions. I do not believe any solidarity or homoerotic loving is possible among females who affirm the colonial/modern gender system and the coloniality of power. I also think that transnational intellectual and practical work that ignores the imbrication of the coloniality of power and the colonial/modern gender system also affirms this global system of power. But I have seen over and over, often in disbelief, how politically minded white theorists have simplified gender in terms of the patriarchy. I am thus attempting to move the discussion of heterosexualism, by changing its very terms.

I am also interested in investigating the intersection of race, class, gender and sexuality in a way that enables me to understand the indifference that men, but, more important to our struggles, men who have been racialized as inferior, exhibit to the systematic violences inflicted upon women of color.[1] I want to understand the construction of this indifference so as to make it unavoidably recognizable by those claiming to be involved in liberatory struggles. This indifference is insidious since it places tremendous barriers in the path of the struggles of women of color for our own freedom, integrity, and well-being and in the path of the correlative struggles toward communal integrity. The latter is crucial for communal struggles toward liberation, since it is their backbone. The indifference is found both at the level of everyday living and at the level of theorizing of both oppression and liberation. The indifference seems to me not just one of not seeing the violence because of the categorial[2] separation of race, gender, class, and sexuality. That is, it does not seem to be only a question of epistemological blinding through categorial separation.

Feminists of color have made clear what is revealed in terms of violent domination and exploitation once the epistemological perspective focuses on the intersection of these categories.[3] But that has not seemed sufficient to arouse in those men who have themselves been targets of violent domination and exploitation any recognition of their complicity or collaboration with the violent domination of women of color. In particular, theorizing global domination continues to proceed as if no betrayals or collaborations of this sort need to be acknowledged and resisted.

Here, I pursue this investigation by placing together two frameworks of analysis that I have not seen sufficiently jointly explored. I am referring, on the one hand, to the important work on gender, race and colonization done, not exclusively, but significantly by Third World and women of color feminists, including critical race theorists. This work has emphasized the concept of intersectionality and has exposed the historical and the theoretico-practical

exclusion of nonwhite women from liberatory struggles in the name of women.[4] The other framework is the one Quijano introduced and which is at the center of his work, that of the coloniality of power (2000a, 2000b, 2001–2002).[5] Placing both of these strands of analysis together permits me to arrive at what I am tentatively calling "the modern/colonial gender system." I think this understanding of gender is implied in both frameworks in large terms, but it is not explicitly articulated, or not articulated in the direction I think necessary to unveil the reach and consequences of complicity with this gender system. I think that articulating this colonial/modern gender system, both in large strokes, and in all its detailed and lived concreteness will enable us to see what was imposed on us. It will also enable us to see its fundamental destructiveness in both a long and wide sense. The intent of this writing is to make visible the instrumentality of the colonial/modern gender system in subjecting us—both women and men of color—in all domains of existence. But it is also the project's intent to make visible the crucial disruption of bonds of practical solidarity. My intent is to provide a way of understanding, of reading, of perceiving our allegiance to this gender system. We need to place ourselves in a position to call each other to reject this gender system as we perform a transformation of communal relations.[6] In this initial essay, I present Quijano's model that I will complicate, but one that gives us—in the logic of structural axes—a good ground from within which to understand the processes of intertwining the production of race and gender.

The Coloniality of Power

Quijano thinks the intersection of race and gender in large structural terms. So, to understand that intersection in his terms, it is necessary to understand his model of global, Eurocentered capitalist power. Both race[7] and gender find their meanings in this model (*patrón*).[8] Quijano understands that all power is structured in relations of domination, exploitation, and conflict as social actors fight over control of "the four basic areas of human existence: sex, labor, collective authority and subjectivity/intersubjectivity, their resources and products" (2001–2002, 1). Global, Eurocentered, capitalist power is organized characteristically around two axes: the coloniality of power and modernity (2000b, 342). The axes order the disputes over control of each area of existence in such a way that the coloniality of power and modernity thoroughly infuse the meaning and forms of domination in each area. So, for Quijano, the disputes/struggles over control of "sexual access, its resources and products" define the domain of sex/gender and the disputes, in turn, can be understood as organized around the axes of coloniality and modernity.

This is too narrow an understanding of the oppressive modern/colonial constructions of the scope of gender. Quijano also assumes patriarchal and

heterosexual understandings of the disputes over control of sex, its resources, and products. Quijano accepts the global, Eurocentered, capitalist understanding of what gender is about. These features of the framework serve to veil the ways in which nonwhite colonized women have been subjected and disempowered. The heterosexual and patriarchal character of the arrangements can themselves be appreciated as oppressive by unveiling the presuppositions of the framework. Gender does not need to organize social arrangements, including social sexual arrangements. But gender arrangements need not be either heterosexual or patriarchal. They need not be, that is, as a matter of history. Understanding these features of the organization of gender in the modern/colonial gender system—the biological dimorphism, the patriarchal and heterosexual organizations of relations—is crucial to an understanding of the differential gender arrangements along "racial" lines. Biological dimorphism, heterosexualism, and patriarchy are all characteristic of what I call the light side of the colonial/modern organization of gender. Hegemonically, these are written large over the meaning of gender. Quijano seems unaware of his accepting this hegemonic meaning of gender. In making these claims I aim to expand and complicate Quijano's approach, while preserving his understanding of the coloniality of power, which is at the center of what I am calling the modern/colonial gender system.

The coloniality of power introduces the basic and universal social classification of the population of the planet in terms of the idea of 'race' (Quijano 2001–2002, 1). The invention of race is a pivotal turn as it replaces the relations of superiority and inferiority established through domination. It reconceives humanity and human relations fictionally, in biological terms. It is important that what Quijano provides is a historical theory of social classification to replace what he terms the "Eurocentric theories of social classes" (2000b, 367). This move makes conceptual room for the coloniality of power. It makes conceptual room for the centrality of the classification of the world's population in terms of races in the understanding of global capitalism. It also makes conceptual room for understanding historical disputes over control of labor, sex, collective authority, and intersubjectivity as developing in processes of long duration, rather than understanding each of the elements as predating the relations of power. The elements that constitute the global, Eurocentered, capitalist model of power do not stand separately from each other and none is prior to the processes that constitute the patterns. Indeed, the mythical presentation of these elements as metaphysically prior is an important aspect of the cognitive model of Eurocentered, global capitalism.

In constituting this social classification, coloniality permeates all aspects of social existence and gives rise to new social and geocultural identities (Quijano 2000b, 342). "America" and "Europe" are among the new geocultural identities. "European," "Indian," "African" are among the "racial" identities.

This classification is "the deepest and most enduring expression of colonial domination" (2001–2002, 1). With expansion of European colonialism, the classification was imposed on the population of the planet. Since then, it has permeated every area of social existence, constituting the most effective form of material and intersubjective social domination. Thus, *coloniality* does not just refer to racial classification. It is an encompassing phenomenon, since it is one of the axes of the system of power and as such it permeates all control of sexual access, collective authority, labor, subjectivity/intersubjectivity and the production of knowledge from within these intersubjective relations. Or, alternatively, all control over sex, subjectivity, authority, and labor are articulated around it. As I understand the logic of "structural axis" in Quijano's usage, the element that serves as an axis becomes constitutive of and constituted by all the forms that relations of power take with respect to control over that particular domain of human existence. Finally, Quijano also makes clear that, though coloniality is related to colonialism, these are distinct as the latter does not necessarily include racist relations of power. Coloniality's birth and its prolonged and deep extension throughout the planet is tightly related to colonianism (2000b, 381).

In Quijano's model of global, Eurocentered, capitalist power, *capitalism* refers to "the structural articulation of all historically known forms of control of labor or exploitation, slavery, servitude, small independent mercantile production, wage labor, and reciprocity under the hegemony of the capital-wage labor relation" (2000b, 349). In this sense, the structuring of the disputes over control of labor is discontinuous: not all labor relations under global, Eurocentered capitalism fall under the capital/wage relation model, though this is the hegemonic model. It is important in beginning to see the reach of the coloniality of power that wage labor has been reserved almost exclusively for white Europeans. The division of labor is thoroughly racialized as well as geographically differentiated. Here, we see the coloniality of labor as a thorough meshing of labor and race.

Quijano understands modernity, the other axis of global, Eurocentered capitalism, as "the fusing of the experiences of colonialism and coloniality with the necessities of capitalism, creating a specific universe of intersubjective relations of domination under a Eurocentered hegemony" (2000b, 343). In characterizing modernity, Quijano focuses on the production of a way of knowing, labeled rational, arising from within this subjective universe since the seventeenth century in the main hegemonic centers of this world system of power (Holland and England). This way of knowing is Eurocentered. By *Eurocentrism* Quijano understands the cognitive perspective not of Europeans only, but of the Eurocentered world, of those educated under the hegemony of world capitalism. "Eurocentrism naturalizes the experience of people within this model of power" (2000b, 343).

The cognitive needs of capitalism and the naturalizing of the identities and relations of coloniality and of the geocultural distribution of world capitalist power have guided the production of this way of knowing. The cognitive needs of capitalism include "measurement, quantification, externalization (or objectification) of what is knowable with respect to the knower so as to control the relations among people and nature and among them with respect to it, in particular the property in means of production" (Quijano 2000b, 343). This way of knowing was imposed on the whole of the capitalist world as the only valid rationality and as emblematic of modernity.

Europe was mythologically understood to predate this pattern of power as a world capitalist center that colonized the rest of the world and, as such, the most advanced moment in the linear, unidirectional, continuous path of the species. A conception of humanity was consolidated according to which the world's population was differentiated in two groups: superior and inferior, rational and irrational, primitive and civilized, traditional and modern. *Primitive* referred to a prior time in the history of the species, in terms of evolutionary time. Europe came to be mythically conceived as preexisting colonial, global, capitalism and as having achieved a very advanced level in the continuous, linear, unidirectional path. Thus, from within this mythical starting point, other human inhabitants of the planet came to be mythically conceived not as dominated through conquest, nor as inferior in terms of wealth or political power, but as an anterior stage in the history of the species, in this unidirectional path. That is the meaning of the qualification "primitive" (Quijano 2000b, 343–44).

We can see then the structural fit of the elements constituting global, Eurocentered capitalism in Quijano's model (pattern). Modernity and coloniality afford a complex understanding of the organization of labor. They enable us to see the fit between the thorough racialization of the division of labor and the production of knowledge. The pattern allows for heterogeneity and discontinuity. Quijano argues that the structure is not a closed totality (2000b, 355).

We are now in a position to approach the question of the intersectionality of race and gender[9] in Quijano's terms. I think the logic of "structural axes" does more and less than intersectionality. Intersectionality reveals what is not seen when categories such as gender and race are conceptualized as separate from each other. The move to intersect the categories has been motivated by the difficulties in making visible those who are dominated and victimized in terms of both categories. Though everyone in capitalist Eurocentered modernity is both raced and gendered, not everyone is dominated or victimized in terms of their race or gender. Kimberlé Crenshaw and other women of color feminists have argued that the categories have been understood as homogenous and as picking out the dominant in the group as the norm; thus *women* picks out white bourgeois women, *men* picks out white bourgeois men, *black* picks out

black heterosexual men, and so on. It becomes logically clear then that the logic of categorial separation distorts what exists at the intersection, such as violence against women of color. Given the construction of the categories, the intersection misconstrues women of color. So, once intersectionality shows us what is missing, we have ahead of us the task of reconceptualizing the logic of the intersection so as to avoid separability.[10] It is only when we perceive gender and race as intermeshed or fused that we actually see women of color.

The logic of structural axes shows gender as constituted by and constituting the coloniality of power. In that sense, there is no gender/race separability in Quijano's model. I think he has the logic of it right. But the axis of coloniality is not sufficient to pick out all aspects of gender. What aspects of gender are shown depends on how gender is actually conceptualized in the model. In Quijano's model (pattern) gender seems to be contained within the organization of that "basic area of existence" that Quijano calls "sex, its resources, and products" (2000b, 378). That is, there is an account of gender within the framework that is not itself placed under scrutiny and that is too narrow and overly biologized as it presupposes sexual dimorphism, heterosexuality, patriarchal distribution of power, and so on.

Though I have not found a characterization of gender in what I have read of his work, Quijano seems to me to imply that gender difference is constituted in the disputes over control of sex, its resources, and products. Differences are shaped through the manner in which this control is organized. Quijano understands sex as biological attributes[11] that become elaborated as social categories. He contrasts the biological quality of sex with phenotype, which does not include differential biological attributes. On the one hand, "the color of one's skin, the shape of one's eyes and hair do not have any relation to the biological structure" (2000b, 373). Sex, on the other hand, seems unproblematically biological to Quijano. He characterizes the "coloniality of *gender* relations,"[12] that is, the ordering of gender relations around the axis of the coloniality of power, as follows:

> 1. In the whole of the colonial world, the norms and formal-ideal patterns of sexual behavior of the genders and consequently the patterns of familial organization of "Europeans" were directly founded on the "racial" classification: the sexual freedom of males and the fidelity of women were, in the whole of the Eurocentered world, the counterpart of the free—that is, not paid as in prostitution—access of white men to "black" women and "indians" in America, "black" women in Africa, and other "colors" in the rest of the subjected world.
> 2. In Europe, instead, it was the prostitution of women that was the counterpart of the bourgeois family pattern.

3. Familial unity and integration, imposed as the axes of the model of the bourgeois family in the Eurocentered world, were the counterpart of the continued disintegration of the parent-children units in the "nonwhite" "races," which could be held and distributed as property not just as merchandise but as "animals." This was particularly the case among "black" slaves, since this form of domination over them was more explicit, immediate, and prolonged.
4. The hypocrisy characteristically underlying the norms and formal-ideal values of the bourgeois family are not, since then, alien to the coloniality of power. (Quijano 2000b, 378, my translation.)

As we see in this complex and important quote, Quijano's framework restricts gender to the organization of sex, its resources, and products and he seems to make a presupposition as to who controls access and who become constituted as resources. Quijano appears to take for granted that the dispute over control of sex is a dispute among men, about men's control of resources which are thought to be female. Men do not seem understood as the resources in sexual encounters. Women are not thought to be disputing for control over sexual access. The differences are thought of in terms of how society reads reproductive biology.

Intersexuality

In "Definitional Dilemmas," Julie Greenberg tells us that legal institutions have the power to assign individuals to a particular racial or sexual category:[13] "Sex is still presumed to be binary and easily determinable by an analysis of biological factors. Despite anthropological and medical studies to the contrary, society presumes an unambiguous binary sex paradigm in which all individuals can be classified neatly as male or female (2002, 112). Greenberg argues that throughout U.S. history the law has failed to recognize intersexuals, in spite of the fact that 1 to 4 percent of the world's population is intersexed. That is, they do not fit neatly into unambiguous sex categories; "they have some biological indicators that are *traditionally* associated with males and some biological indicators that are *traditionally* associated with females. The manner in which the law defines the terms *male*, *female*, and *sex* will have a profound impact on these individuals" (112, emphases added).

The assignations reveal that what is understood to be biological sex is socially constructed. From the late nineteenth century until World War I, reproductive function was considered a woman's essential characteristic. The presence or absence of ovaries was the ultimate criterion of sex (Greenberg 2002, 113). But

there are a large number of factors that can enter into "establishing someone's 'official' sex": chromosomes, gonads, external morphology, internal morphology, hormonal patterns, phenotype, assigned sex, and self-identified sex (Greenberg 2002, 112). At present, chromosomes and genitalia enter into the assignment, but in a manner that reveals biology is thoroughly interpreted and itself surgically constructed.

> XY infants with "inadequate" penises must be turned into girls because society believes the essence of manhood is the ability to penetrate a vagina and urinate while standing. XX infants with "adequate" penises, however, are assigned the female sex because society and many in the medical community believe that the essence of womanhood is the ability to bear children rather than the ability to engage in satisfactory sexual intercourse. (Greenberg 2002, 114)

Intersexed individuals are frequently surgically and hormonally turned into males or females. These factors are taken into account in legal cases involving the right to change the sex designation on official documents, the ability to state a claim for employment discrimination based upon sex, the right to marry (Greenberg 2002, 115). Greenberg reports the complexities and variety of decisions on sexual assignation in each case. The law does not recognize intersexual status. Though the law permits self-identification of one's sex in certain documents, "for the most part, legal institutions continue to base sex assignment on the traditional assumptions that sex is binary and can be easily determined by analyzing biological factors" (Greenberg 2002, 119).

Greenberg's work enables me to point out an important assumption in the model that Quijano offers us. This is important because sexual dimorphism has been an important characteristic of what I call "the light side" of the colonial/modern gender system. Those in the "dark side" were not necessarily understood dimorphically. Sexual fears of colonizers led them to imagine the indigenous people of the Americas as hermaphrodites or intersexed, with large penises and breasts with flowing milk.[14] But as Paula Gunn Allen (1986/1992) and others have made clear, intersexed individuals were recognized in many tribal societies prior to colonization without assimilation to the sexual binary. It is important to consider the changes that colonization brought to understand the scope of the organization of sex and gender under colonialism and in Eurocentered global capitalism. If the latter did only recognize sexual dimorphism for white bourgeois males and females, it certainly does not follow that the sexual division is based on biology. The cosmetic and substantive corrections to biology make very clear that "gender" is antecedent to the "biological" traits and gives them meaning. The naturalizing of sexual differences is another product of the modern use of science that Quijano points out in the case of "race." Not all

different traditions correct and normalize intersexed people. So, as with other assumptions, it is important to ask how sexual dimorphism served and continues to serve global, Eurocentered, capitalist domination/exploitation.

Nongendered and Gynecratic Egalitarianism

As global, Eurocentered capitalism was constituted through colonization, gender differentials were introduced where there were none. Oyéronké Oyewùmí (1997) has shown us that the oppressive gender system that was imposed on Yoruba society did a lot more than transform the organization of reproduction. Her argument shows us that the scope of the gender system colonialism imposed encompasses the subordination of females in every aspect of life. Thus Quijano's understanding of the scope of gendering in global, Eurocentered capitalism is much too narrow. Allen argued that many Native American tribes were matriarchal, recognized more than two genders, recognized "third" gendering and homosexuality positively, and understood gender in egalitarian terms rather than in the terms of subordination that Eurocentered capitalism imposed on them. Gunn's work has enabled us to see that the scope of the gender differentials was much more encompassing and it did not rest on biology. Allen also showed us a gynecentric construction of knowledge and approach to understanding "reality" that counters the knowledge production of modernity. Thus she has pointed us in the direction of recognizing the gendered construction of knowledge in modernity, another aspect of the hidden scope of "gender" in Quijano's account of the processes constituting the coloniality of gender.

Nongendered Egalitarianism

In *The Invention of Women*, Oyéronké Oyewùmí raises questions about the validity of patriarchy as a valid transcultural category (1997, 20). She does so, not by contrasting patriarchy and matriarchy, but by arguing that "gender was not an organizing principle in Yoruba society prior to colonization by the West" (31). No gender system was in place. Indeed, she tells us that gender has "become important in Yoruba studies not as an artifact of Yoruba life but because Yoruba life, past and present, has been translated into English to fit the Western pattern of body-reasoning" (30). The assumption that Yoruba society included gender as an organizing principle is another case "of Western dominance in the documentation and interpretation of the world, one that is facilitated by the West's global material dominance" (32). She tells us that "researchers always find gender when they look for it" (31). "The usual gloss of the Yoruba categories *obinrin* and *okunrin* as 'female/woman' and 'male/man,' respectively, is a mistranslation. These categories are neither binarily opposed nor hierarchical" (32–33). The prefixes *obin* and *okun* specify a variety of

anatomy. Oyewùmí translates the prefixes as referring to the anatomic male and the anatomic female, shortened as *anamale* and *anafemale*. It is important to note that she does not understand these categories as binarily opposed.

Oyewùmí understands gender as introduced by the West as a tool of domination that designates two binarily opposed and hierarchical social categories. 'Women' (the gender term) is not defined through biology, though it is assigned to anafemales. Women are defined in relation to men, the norm. Women are those who do not have a penis; those who do not have power; those who cannot participate in the public arena (Oyewùmí 1997, 34). None of this was true of Yoruba anafemales prior to colonization.

> The imposition of the European state system, with its attendant legal and bureaucratic machinery, is the most enduring legacy of European colonial rule in Africa. One tradition that was exported to Africa during this period was the exclusion of women from the newly created colonial public sphere. . . . The very process by which females were categorized and reduced to "women" made them ineligible for leadership roles. . . . The emergence of women as an identifiable category, defined by their anatomy and subordinated to men in all situations, resulted, in part, from the imposition of a patriarchal colonial state. For females, colonization was a twofold process of racial inferiorization and gender subordination. The creation of "women" as a category was one of the very first accomplishments of the colonial state. It is not surprising, therefore, that it was unthinkable for the colonial government to recognize female leaders among the peoples they colonized, such as the Yorùbá. . . . The transformation of state power to male-gender power was accomplished at one level by the exclusion of women from state structures. This was in sharp contrast to Yorùbá state organization, in which power was not gender-determined. (123–25)

Oyewùmí recognizes two crucial processes in colonization, the imposition of races with the accompanying inferiorization of Africans, and the inferiorization of anafemales. The inferiorization of anafemales extended very widely—from exclusion from leadership roles to loss of control over property and other important economic domains. Oyewùmí notes that the introduction of the Western gender system was accepted by Yoruba males, who thus colluded with the inferiorization of anafemales. So, when we think of the indifference of nonwhite men to the violences exercised against nonwhite women, we can begin to have some sense of the collaboration between anamales and Western colonials against anafemales. Oyewùmí makes clear that both men and women resisted cultural changes at different levels. Thus, while

> in the West the challenge of feminism is how to proceed from the gender-saturated category of "women" to the fullness of an unsexed humanity. For Yorùbá obinrin, the challenge is obviously different because at certain levels in the society and in some spheres, the notion of an "unsexed humanity" is neither a dream to aspire to nor a memory to be realized. It exists, albeit in concatenation with the reality of separate and hierarchical sexes imposed during the colonial period. (156)

We can see, then, that the scope of the coloniality of gender is much too narrow. Quijano assumes much of the terms of the modern/colonial gender system's hegemonic light side in defining the scope of gender. I have gone outside the coloniality of gender in order to examine what it hides, or disallows from consideration, about the very scope of the gender system of Eurocentered global capitalism. So, though I think that the coloniality of gender, as Quijano pointedly describes it, shows us very important aspects of the intersection of race and gender, it follows rather than discloses the erasure of colonized women from most areas of social life. It accommodates rather than disrupt the narrowing of gender domination. Oyewùmí's rejection of the gender lens in characterizing the inferiorization of anafemales in modern colonization makes clear the extent and scope of the inferiorization. Her understanding of gender, the colonial, Eurocentered capitalist construction is much more encompassing than Quijano's. She enables us to see the economic, political, and cognitive inferiorization as well as the inferiorization of anafemales regarding reproductive control.

Gynecratic Egalitarianism

> To assign to this great being the position of "fertility goddess"
> is exceedingly demeaning: it trivializes the tribes
> and it trivializes the power of woman.
>
> —Paula Gunn Allen

As she characterizes many Native American tribes as gynecratic, Paula Gunn Allen emphasizes the centrality of the spiritual in all aspects of Indian life and thus a very different intersubjectivity from within which knowledge is produced than that of the coloniality of knowledge in modernity. Many American Indian tribes "thought that the primary potency in the universe was female, and that understanding authorizes all tribal activities" (Allen 1986/1992, 26). Old Spider Woman, Corn Woman, Serpent Woman, Thought Woman are some of the names of powerful creators. For the gynecratic tribes, Woman is at the center and "no thing is sacred without her blessing, her thinking" (Allen 1986/1992, 13).

Replacing this gynecratic spiritual plurality with one supreme male being as Christianity did, was crucial in subduing the tribes. Allen proposes that transforming Indian tribes from egalitarian and gynecratic to hierarchical and patriarchal "requires meeting four objectives:

1. The primacy of female as creator is displaced and replaced by male-gendered creators (generally generic) (1986/1992, 41).
2. Tribal governing institutions and the philosophies that are their foundation are destroyed, as they were among the Iroquois and the Cherokee (41).
3. The people "are pushed off their lands, deprived of their economic livelihood, and forced to curtail or end altogether pursuits on which their ritual system, philosophy, and subsistence depend. Now dependent on white institutions for their survival, tribal systems can ill afford gynocracy when patriarchy—that is, survival—requires male dominance" (42).
4. The clan structure "must be replaced in fact if not in theory, by the nuclear family. By this ploy, the women clan heads are replaced by elected male officials and the psychic net that is formed and maintained by the nature of nonauthoritarian gynecentricity grounded in respect for diversity of gods and people is thoroughly rent" (42).

Thus, for Allen, the inferiorization of Indian females is thoroughly tied to the domination and transformation of tribal life. The destruction of the gynocracies is crucial to the "decimation of populations through starvation, disease, and disruption of all social, spiritual, and economic structures" (42). The program of degynocratization requires impressive "image and information control." Thus "recasting archaic tribal versions of tribal history, customs, institutions and the oral tradition increases the likelihood that the patriarchal revisionist versions of tribal life, skewed or simply made up by patriarchal non-Indians and patriarchalized Indians, will be incorporated into the spiritual and popular traditions of the tribes" (42).

Among the features of the Indian society targeted for destruction were the two-sided complementary social structure; the understanding of gender; and the economic distribution that often followed the system of reciprocity. The two sides of the complementary social structure included an internal female chief and an external male chief. The internal chief presided over the band, village, or tribe, maintaining harmony and administering domestic affairs. The red, male, chief presided over mediations between the tribe and outsiders (Allen 1986/1992, 18). Gender was not understood primarily in biological terms. Most individuals fit into tribal gender roles "on the basis of proclivity,

inclination, and temperament. The Yuma had a tradition of gender designation based on dreams; a female who dreamed of weapons became a male for all practical purposes" (196).

Like Oyewùmí, Allen is interested in the collaboration between some Indian men and whites in undermining the power of women. It is important for us to think about these collaborations as we think of the question of indifference to the struggles of women in racialized communities against multiple forms of violence against them and the communities. The white colonizer constructed a powerful inside force as colonized men were co-opted into patriarchal roles. Allen details the transformations of the Iroquois and Cherokee gynecracies and the role of Indian men in the passage to patriarchy. The British took Cherokee men to England and gave them an education in the ways of the English. These men participated during the time of the Removal Act.

> In an effort to stave off removal, the Cherokee in the early 1800s under the leadership of men such as Elias Boudinot, Major Ridge, and John Ross, and others, drafted a constitution that disenfranchised women and blacks. Modeled after the Constitution of the United States, whose favor they were attempting to curry, and in conjunction with Christian sympathizers to the Cherokee cause, the new Cherokee constitution relegated women to the position of chattel. (Allen 1986/1992, 37)

Cherokee women had had the power to wage war, to decide the fate of captives, to speak to the men's council, they had the right to inclusion in public policy decisions, the right to choose whom and whether to marry, the right to bear arms. The Women's Council was politically and spiritually powerful (36–37). Cherokee women lost all these powers and rights, as the Cherokee were removed and patriarchal arrangements were introduced. The Iroquois shifted from a Mother-centered, Mother-right people organized politically under the authority of the Matrons, to a patriarchal society when the Iroquois became a subject people. The feat was accomplished with the collaboration of Handsome Lake and his followers.

According to Allen, many of the tribes were gynecratic, among them the Susquehanna, Hurons, Iroquois, Cherokee, Pueblo, Navajo, Narragansett, Coastal Algonkians, Montagnais. She also tells us that among the eighty-eight tribes that recognized homosexuality, those who recognized homosexuals in positive terms included the Apache, Navajo, Winnebago, Cheyenne, Pima, Crow, Shoshoni, Paiute, Osage, Acoma, Zuñi, Sioux, Pawnee, Choctaw, Creek, Seminole, Illinois, Mohave, Shasta, Aleut, Sac and Fox, Iowa, Kansas, Yuma, Aztec, Tlingit, Maya, Naskapi, Ponca, Maricopa, Lamath, Quinault, Yuki, Chilula, and Kamia. Twenty of these tribes included specific references to lesbianism.

Michael Horswell (2003) comments usefully on the use of the term *third gender*. He tells that third gender does not mean that there are three genders. It is rather a way of breaking with sex and gender bipolarities. The "third" is emblematic of other possible combinations than the dimorphic. The term *berdache* is sometimes used for "third gender." Horswell tells us that male berdache have been documented in nearly 150 North American societies and female berdache in half as many groups (2003, 27). He also comments that sodomy, including ritual sodomy, was recorded in Andean societies and many other native societies in the Americas (27). The Nahuas and Mayas also reserved a role for ritualized sodomy (Sigal 2003, 104). Interestingly, Pete Sigal tells us that the Spanish saw sodomy as sinful, but Spanish law condemned the active not the passive partner in sodomy to criminal punishment. In Spanish popular culture, sodomy was racialized by connecting the practice to the Moors and the passive partner was condemned and seen as equal to a Moor. Spanish soldiers were seen as the active partners to the passive Moors (102–4).

Allen has not only enabled us to see how narrow Quijano's conception of gender is in terms of the organization of the economy and of collective authority, but she has also revealed that the production of knowledge is gendered, as is the very conception of reality at every level. Allen supported the questioning of biology in the construction of gender differences and introduces the important idea of gender roles being chosen and dreamt. Allen also showed us that the heterosexuality characteristic of the modern/colonial construction of gender relations is produced, mythically constructed. But heterosexuality is not just biologized in a fictional way; it is compulsory and permeates the whole of the coloniality of gender in the renewed, large sense. In this sense, global, Eurocentered capitalism is heterosexualist. I think it is important to see, as we understand the depth and force of violence in the production of both the light and the dark sides of the colonial/modern gender system, that this heterosexuality has been consistently perverse, violent, and demeaning, turning people into animals and turning white women into reproducers of "the (white) race" and "the (middle or upper) class." Horswell's and Sigal's work complements Allen's, particularly in understanding the presence of sodomy and male homosexuality in colonial and precolonial America.

The Colonial/Modern Gender System

Understanding the place of gender in precolonial societies is pivotal to understanding the nature and scope of changes in the social structure that the processes constituting colonial/modern Eurocentered capitalism imposed. Those changes were introduced through slow, discontinuous, and heterogeneous processes that violently inferiorized colonized women. The gender system introduced was one thoroughly informed through the coloniality of power.

Understanding the place of gender in precolonial societies is also essential to understanding the extent and importance of the gender system in disintegrating communal relations, egalitarian relations, ritual thinking, collective decision making and authority, and economies. Thus, it is important to understand the extent to which the imposition of this gender system was as constitutive of the coloniality of power as the coloniality of power was constitutive of it. The logic of the relation between them is of mutual constitution.[15] But it should be clear by now that the colonial, modern, gender system cannot exist without the coloniality of power, since the classification of the population in terms of race is a necessary condition of its possibility.

To think the scope of the gender system of global, Eurocentered capitalism it is necessary to understand the extent to which the very process of narrowing of the concept of gender to the control of sex, its resources, and products constitutes gender domination. To understand this narrowing and to understand the intermeshing of racialization and gendering, we must consider whether the social arrangements prior to colonization regarding the sexes gave differential meaning to them across all areas of existence. This will enable us to see whether control over labor, subjectivity/intersubjectivity, collective authority, sex—Quijano's "areas of existence"—was itself gendered. Given the coloniality of power, I think we can also say that having a dark and a light side is characteristic of the co-construction of the coloniality of power and the colonial/modern gender system. Considering critically both biological dimorphism and the position that gender socially constructs biological sex helps us understand the scope, depth, and characteristics of the colonial/modern gender system. The sense is that the reduction of gender to the private, to control over sex and its resources and products is a matter of ideology, of the cognitive production of modernity that has understood race as gendered and gender as raced in particularly differential ways for Europeans/whites and colonized/nonwhite peoples. Race is no more mythical and fictional than gender—both are powerful fictions.

In the development of twentieth-century feminism, the connections among gender, class, and heterosexuality as racialized were not made explicit. That feminism centered its struggle and its ways of knowing and theorizing against a characterization of women as fragile, weak in both body and mind, secluded in the private, and sexually passive. But it did not bring to consciousness that those characteristics only constructed white bourgeois womanhood. Indeed, beginning from that characterization, white bourgeois feminists theorized white womanhood as if all women were white.

It is part of their history that only white bourgeois women have consistently counted as women so described in the West. Females excluded from that description were not just their subordinates. They were also understood to be animals in a sense that went further than the identification of white women with nature, infants, and small animals. They were understood as animals in the deep sense

of "without gender,"[16] sexually marked as female, but without the characteristics of femininity.[17] Women racialized as inferior were turned from animals into various modified versions of "women" as it fit the processes of global, Eurocentered capitalism. Thus, heterosexual rape of Indian or African slave women coexisted with concubinage, as well as with the imposition of the heterosexual understanding of gender relations among the colonized—when and as it suited global, Eurocentered capitalism, and heterosexual domination of white women. But the work of Oyewùmí and Allen has made clear that there was no extension of the status of white women to colonized women even when they were turned into similes of bourgeois white women. Colonized females got the inferior status of gendering as women, without any of the privileges accompanying that status for white bourgeois women, although the histories Oyewùmí and Allen have presented should make clear to white bourgeois women that their status is much inferior to that of Native American or Yoruba women before colonization. Oyewùmí and Allen have also explained that the egalitarian understanding of the relation between anafemales, anamales, and "third gender" people has left neither the imagination nor the practices of Native Americans and Yoruba. But these are matters of resistance to domination.

Erasing any history, including oral history, of the relation of white to nonwhite women, white feminism wrote white women large. Even though historically and contemporarily white bourgeois women knew perfectly well how to orient themselves in an organization of life that pitted them for very different treatment than nonwhite or working-class women.[18] White feminist struggle became one against the positions, roles, stereotypes, traits, and desires imposed on white bourgeois women's subordination. They countenanced no one else's gender oppression. They understood women as inhabiting white bodies but did not bring that racial qualification to articulation or clear awareness. That is, they did not understand themselves in intersectional terms, at the intersection of race, gender, and other forceful marks of subjection or domination. Because they did not perceive these deep differences they saw no need to create coalitions. They presumed a sisterhood, a bond given with the subjection of gender.

Historically, the characterization of white European women as fragile and sexually passive opposed them to nonwhite, colonized women, including female slaves, who were characterized along a gamut of sexual aggression and perversion, and as strong enough to do any sort of labor. For example, slave women performing backbreaking work in the U.S. South were not considered fragile or weak.

> First came, led by an old driver carrying a whip, forty of the largest and strongest women I ever saw together; they were all in a simple uniform dress of a bluish check stuff, the skirts reaching

> little below the knee; their legs and feet were bare; they carried themselves loftily, each having a hoe over the shoulder, and walking with a free, powerful swing, like *chasseurs* on the march. Behind came the cavalry, thirty strong, mostly men, but a few of them women, two of whom rode astride on the plow mules. A lean and vigilant white overseer, on a brisk pony, brought up the rear. . . . The hands are required to be in the cotton field as soon as it is light in the morning, and, with the exception of ten or fifteen minutes, which is given to them at noon to swallow their allowance of cold bacon, they are not permitted to be a moment idle until it is too dark to see, and when the moon is full, they often times labor till the middle of the night. (Takaki 1993, 111)

Patricia Hill Collins has provided a clear sense of the dominant understanding of black women as sexually aggressive and the genesis of that stereotype in slavery:

> The image of Jezebel originated under slavery when Black women were portrayed as being, to use Jewelle Gomez' words, "sexually aggressive wet nurses." Jezebel's function was to relegate all Black women to the category of sexually aggressive women, thus providing a powerful rationale for the widespread sexual assaults by White men typically reported by Black slave women. Jezebel served yet another function. If Black slave women could be portrayed as having excessive sexual appetites, then increased fertility should be the expected outcome. By suppressing the nurturing that African-American women might give their own children which would strengthen Black family networks, and by forcing Black women to work in the field, "wet nurse" White children, and emotionally nurture their White owners, slave owners effectively tied the controlling images of jezebel and mammy to the economic exploitation inherent in the institution of slavery. (Collins 2000, 82)

But it is not just black slave women who were placed outside the scope of white bourgeois femininity. In *Imperial Leather*, as she tells us of Columbus's depiction of the earth as a woman's breast, Anne McClintock evokes the "long tradition of male travel as an erotics of ravishment."

> For centuries, the uncertain continents—Africa, the Americas, Asia—were figured in European lore as libidinously eroticized. Travelers' tales abounded with visions of the monstrous sexuality of far-off lands, where, as legend had it, men sported gigantic penises and women consorted with apes, feminized men's breasts

> flowed with milk and militarized women lopped theirs off. . . . Within this porno tropic tradition, women figured as the epitome of sexual aberration and excess. Folklore saw them, even more than the men, as given to a lascivious venery so promiscuous as to border on the bestial. (1995, 22)

McClintock described the colonial scene depicted in a sixteenth-century drawing in which Jan van der Straet "portrays the 'discovery' of America as an eroticized encounter between a man and a woman."

> Roused from her sensual languor by the epic newcomer, the indigenous woman extends an inviting hand, insinuating sex and submission. . . . Vespucci, the godlike arrival, is destined to inseminate her with his male seeds of civilization, fructify the wilderness and quell the riotous scenes of cannibalism in the background. . . . The cannibals appear to be female and are spit roasting a human leg. (25–26)

In the nineteenth century, McClintock tells us, "sexual purity emerged as a controlling metaphor for racial, economic and political power" (47). With the development of evolutionary theory "anatomical criteria were sought for determining the relative position of races in the human series" (50) and "the English middle-class male was placed at the pinnacle of evolutionary hierarchy. White English middle class women followed. Domestic workers, female miners and working class prostitutes were stationed on the threshold between the white and black races" (56). Along the same lines, Yen Le Espiritu tells us that

> representations of gender and sexuality figure strongly in the articulation of racism. Gender norms in the United States are premised upon the experiences of middle-class men and women of European origin. These Eurocentric-constructed gender norms form a backdrop of expectations for American men and women of color—expectations which racism often precludes meeting. In general, men of color are viewed not as the protector, but rather the aggressor—a threat to white women. And women of color are seen as over sexualized and thus undeserving of the social and sexual protection accorded to white middle-class women. For Asian American men and women, their exclusion from white-based cultural notions of the masculine and the feminine has taken seemingly contrasting forms: Asian men have been cast as both hypermasculine (the "Yellow Peril") and effeminate (the "model minority"); and Asian women have been rendered both superfeminine (the "China Doll") and castrating (the "Dragon Lady"). (1997, 135)

This gender system congealed as Europe advanced the colonial project(s). It took shape during the Spanish and Portuguese colonial adventures and became full blown in late modernity. The gender system has a light and a dark side. The light side constructs gender and gender relations hegemonically, ordering only the lives of white bourgeois men and women and constituting the modern/colonial meaning of men and women. Sexual purity and passivity are crucial characteristics of the white bourgeois females who reproduce the class and the colonial and racial standing of bourgeois, white men. But equally important is the banning of white bourgeois women from the sphere of collective authority, from the production of knowledge, from most control over the means of production. Weakness of mind and body are important in the reduction and seclusion of white bourgeois women from most domains of life, most areas of human existence. The gender system is heterosexualist, as heterosexuality permeates racialized patriarchal control over production, including knowledge production, and over collective authority. Heterosexuality is both compulsory and perverse among white bourgeois men and women since the arrangement does significant violence to the powers and rights of white bourgeois women and serves to reproduce control over production and white bourgeois women are inducted into this reduction through bounded sexual access.

The dark side of the gender system was and is thoroughly violent. We have begun to see the deep reductions of anamales, anafemales, and "third gender" people from their ubiquitous participation in rituals, decision making, and economics; their reduction to animality, to forced sex with white colonizers, to such deep labor exploitation that often people died working. Quijano tells us that "the vast Indian genocide of the first decades of colonization was not caused, in the main, by the violence of the conquest, nor by the diseases that the conquerors carried. Rather is was due to the fact that the Indians were used as throwaway labor, forced to work till death" (2000a, my translation).

I want to mark the connection between the work that I am citing here as I introduce the modern colonial gender system's dark side and Quijano's coloniality of power. Unlike white feminists who have not focused on colonialism, these theorists very much see the differential construction of gender along racial lines. To some extent, they understand gender in a wider sense than Quijano; thus they think not only of control over sex, its resources and products, but also of labor as both racialized and gendered. That is, they see an articulation between labor, sex, and the coloniality of power. Oyewùmí and Allen, for example, have helped us realize the full extent of the reach of the colonial/modern gender system into the construction of collective authority, all aspects of the relation between capital and labor, and the construction of knowledge.

Important work has been and has yet to be done in detailing the dark and light sides of what I am calling the modern colonial gender system.[19] In

introducing this arrangement in very large strokes, I mean to begin a conversation and a project of collaborative, participatory, research and popular education wherein we may begin to see in its details the long sense of the processes of the colonial/gender system enmeshed in the coloniality of power into the present, to uncover collaboration, and to call each other to reject it in its various guises as we recommit to communal integrity in a liberatory direction. We need to understand the organization of the social so as to make visible our collaboration with systematic racialized gender violence, so as to come to an inevitable recognition of it in our maps of reality.

Notes

1. I use the U.S.–originated *women of color* throughout this piece as a coalitional term against multiple oppressions. It is a problematic term and not necessarily one of self-identification for many of the women who had the modern/colonial gender system imposed on them. Those women were and continue to be the target of systematic and extensive state and interpersonal violence under global, Eurocentered capitalism.

2. I use *categorial* to mark arrangements in accordance with categories. I certainly do not mean *categorical*.

3. There is a very large and significant literature on this question of intersectional. Here I refer only to a few pieces: Spelman 1988; Barkley Brown 1991; Crenshaw 1995; Espiritu 1997; Collins 2000; and Lugones 2003.

4. To the work mentioned already, I want to add Amos and Parmar 1984; Lorde 1984; Allen 1986; Anzaldúa 1987; McClintock 1995; Oyewùmí 1997; and Alexander and Mohanty 1997.

5. Anibal Quijano's has written extensively and influentially on this topic. The interpretation I offer is gathered from 1991, 2000a, 2000b, 2001–2002.

6. Popular education can be a method of collective critical exploration of this gender system both in the large stroke, and most importantly, in its detailed space/time concreteness toward a transformation of communal relations.

7. Quijano understands race to be a fiction. He always places quotation marks around the term to signify this fictional quality. When terms "European," "Indian," are in quotation marks, they signify a racial classification.

8. Quijano prefers *pattern* to *model* as a translation for *patrón*. His reason is that model suggests something to follow or copy. Because this use of *pattern* is often awkward, I use *model*.

9. In dropping the quotation marks around race here, I do not mean to disagree with Quijano about the fictive quality of race. Rather I want to begin to emphasize the fictive quality of gender, including the biological "nature" of sex and heterosexuality.

10. See my *Pilgrimages/Peregrinajes* (2003) and "Radical Multiculturalism and Women of Color Feminisms" (n.d.) for an unpacking of this logic.

11. I have not seen these attributes summarized by Quijano. So, I do not know whether he is thinking of chromosomal combinations or of genitalia and breasts.

12. I want to mark that Quijano calls this section of his "Colonialidad del Poder y Clasificación Social" (2000b), not the coloniality of sex but of gender.

13. The relevance of contemporary legal disputes over the assignation of gender to intersexed individuals should be clear since Quijano's model includes the contemporary period.

14. See McClintock 1995.

15. I am sure that those who read this piece will recognize much of what I am saying and some may think that it has already been said. That is quite fine with me, so long as it is accompanied by a theoretico-practical recognition of this mutual constitution, one that shows throughout the theoretical, the practical, and the theoretico-practical work. But I think something that may well be new here is my approach to the logic of intersectionality and my understanding of the mutuality of construction of the coloniality of power and the colonial/modern gender system. I think they are both necessary, but it is only the logic mutuality of construction that yields the inseparability of race and gender.

16. Spelman's interpretation (1988) of Aristotle's distinction between free men and women in the Greek polis and slave males and slave females suggested this claim to me. It is important to note that reducing women to nature or the natural is to collude with this racist reduction of colonized women. More than one Latin American thinker who decries Eurocentrism, relates women to the sexual and the reproductive.

17. It is important to distinguish between being thought of as without gender because an animal, and not having, even conceptually, any gender distinctions. That is, having gender is not a characteristic of being human for all people.

18. The deep distinction between white working-class and nonwhite women can be glimpsed from the very different places they occupied in the evolutionary series referred to by McClintock (1995, 4).

19. I am clear now that there is an ambiguous in-between zone between the light and the dark side that conceives/imagines/constructs white women servants, miners, washerwomen, prostitutes as not necessarily caught through the lens of the sexual or gender binary and as racialized ambiguously, but not as white. See McClintock 1995. I am working on the inclusion of this crucial complexity into the framework.

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EXTERMINATION OF THE *JOYAS*

Gendercide in Spanish California

Deborah A. Miranda (Ohlone-Costanoan Esselen Nation, Chumash)

Attempting to address the many communities from which she spoke, Paula Gunn Allen once asserted: "I cannot do one identity. I'm simply not capable of it. And it took me years to understand that that's one of the features of my upbringing. I was raised in a mixed cultural group—mixed linguistic, mixed religion, mixed race—Laguna *itself* is that way. So I get really uncomfortable in any kind of mono-cultural group."[1] Although Allen does not speak specifically of another community—her lesbian family—in this quotation, her legacy of activism and writing document the unspoken inclusion of sexual orientation within her list of identities. Like Allen, my own identity is not monocultural: by blood, I am Esselen and Chumash (California Native) as well as Jewish, French, and English. I was born at UCLA Medical Center, raised in trailer parks and rural landscapes, possess a PhD, and teach at a small, private southern liberal arts university. I am fluent in English, can read Spanish, and was called to an *aliyah* at the bat mitzvah of my partner's niece. Who am I? Where is home?

In my poetry and my scholarship, I have worked through issues of complex identities for much of my life, primarily those relating to my position as a mixed-blood woman with an Indian father and European American mother. But one of the most urgent questions in my life—the intersection of being Indian and being a lesbian—has always been more complicated, less easily articulated, than anything else. Here again, Allen's body of work has been most helpful. In a poem titled "Some Like Indians Endure," Allen plays with concepts of just what makes an Indian an Indian—and asks if those qualities, whatever they are, are necessarily exclusive to Indians. At the heart of this poem is this thought:

> I have it in my mind that
> dykes are indians
> they're a lot like indians . . .

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they were massacred
lots of times
they always came back
like the gas
like the clouds
they got massacred again. . . .[2]

This poem illustrates the multiple directions of Allen's thought: while defending the concept of Indian as something different and distinguishable from colonizing cultures around it, Allen simultaneously compares the qualities of being Indian with those of being lesbian. She comes up with lists of similarities for both identities, the lengthiness of which overwhelms her ability to keep the two apart. While Allen recognizes balance and wholeness in both her Laguna and lesbian identities, this is not necessarily something that completely expresses my own situation.

While researching material for my book "Bad Indians: A Tribal Memoir," however, I came across a page of the ethnologist J. P. Harrington's field notes that provided a doorway for me to enter into a conversation about complex identities with my ancestors.[3] Tracing my California Native ancestors from first contact with Spanish missionaries through contemporary times, my research required that I immerse myself in a rich variety of archival resources: correspondence between missionaries and their supervisors in Spain; mission records of baptism, birth, and death as well as finances and legal cases; the as-told-to testimonies of missionized Indians both before, during, and after the mission era; as well as newspapers, family oral history, photographs, and ethnological and anthropological data from earliest contact through the "salvage ethnology" era and into the present.[4] None of these archival materials came from unfiltered Indian voices; such records were impossible both because of their colonizing context and the prevalence of an oral tradition among California Indians that did not leave textual traces. The difficulties of using non-Indian archives to tell an Indian story are epic: biases, agendas, cultural pride, notions of Manifest Destiny, and the desire to "own" history mean that one can never simply read and accept even the most basic non-Native detail without multiple investigations into who collected the information, what their motivations were, who preserved the information and their motivations, the use of rhetorical devices (like the passive voice so prevalent in missionization histories: "The Missions were built using adobe bricks" rather than "Indians, often held captive and/or punished by flogging, built the Missions without compensation"). Learning how to "re-read" the archive through the eyes of a mixed-blood California Indian lesbian poet and scholar was an education in and of itself, so the fact that this essay emerges from

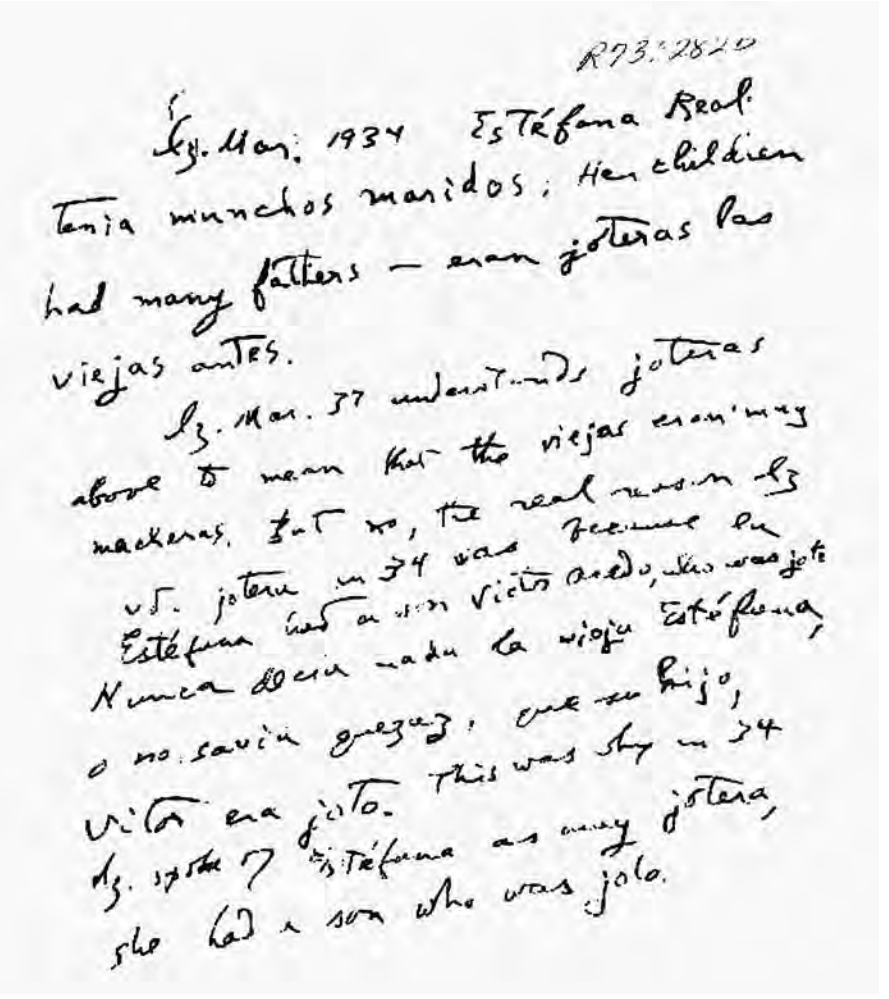

Figure 1. Harrington field note R73:282B, in Elaine Mills, ed., *The Papers of John Peabody Harrington in the Smithsonian Institution, 1907–1957* (White Plains, NY: Kraus International, 1981)

one short, handwritten piece of information gleaned by Harrington from one of my ancestors about older ancestors should not be surprising.

To tell the story of this field note, for which I use the shorthand title "Jotos" (Spanish slang for "queer" or "faggot"), I must pull threads of several stories together. The field note is like a petroglyph; when I touch it, so much else must be known, communicated, and understood to see the power within what looks like a simple inscription, a random bit of Carmel Mission Indian trivia. Once read, this note opens out into deeper and deeper stories. Some of those stories are full of grief—like the one that follows—yet they are all essential to possessing this

archival evidence and giving it a truly indigenous reading. When I say "indigenous reading," I mean a reading that enriches Native lives with meaning, survival, and love, which points to the important role of archival reconstruction in developing a robust Two-Spirit tradition today.[5] In the last two decades, the archaeology of sexuality and gender has also helped create new ways to use these biased primary sources, and I hope to pull together the many shards of information available in order to glimpse what contemporary California Indians might use in our efforts to reclaim and reinvent ourselves.[6] This essay, then, examines methods employed by the Spaniards to exterminate the *joya* (the Spanish name for third-gender people); asks what that extermination meant to California Indian cultures; explores the survival of this third gender as first *joyas*, then *jotos* (Spanish for homosexual, or faggot); and evaluates the emergence of spiritual and physical renewal of the ancestral third gender in California Indian Two-Spirit individuals.[7] It is both a personal story and a historical struggle about identity played out in many indigenous communities all over the world.

Waging Gendercide 101

Spanish colonizers — from royalty to soldier to padre — believed that American Indians were intellectually, physiologically, and spiritually immature, if not actual animals.[8] In the area eventually known as California, the genocidal policies of the Spanish Crown would lead to a severe population crash: numbering one million at first contact, California Indians plummeted to about ten thousand survivors in just over one hundred years.[9] Part of this massive loss were third-gender people, who were lost not by "passive" colonizing collateral damage such as disease or starvation, but through active, conscious, violent extermination. Speaking of the Chumash people living along the southern coast (my grandmother's tribal roots), Pedro Fages, a Spanish soldier, makes clear that the soldiers and priests colonizing Mexico and what would become California arrived with a deep abhorrence of what they viewed as homosexual relationships. In his soldier's memoir, written in 1775, Fages reports:

> I have substantial evidence that those Indian men who, both here and farther inland, are observed in the dress, clothing, and character of women — there being two or three such in each village — pass as sodomites by profession (it being confirmed that all these Indians are much addicted to this abominable vice) and permit the heathen to practice the execrable, unnatural abuse of their bodies. They are called *joyas,* and are

> held in great esteem. Let this mention suffice for a matter which could not be omitted,—on account of the bearing it may have on the discussion of the reduction of these natives,—with a promise to revert in another place to an excess so criminal that it seems even forbidden to speak its name. . . . But we place our trust in God and expect that these accursed people will disappear with the growth of the missions. The abominable vice will be eliminated to the extent that the Catholic faith and all the other virtues are firmly implanted there, for the glory of God and the benefit of those poor ignorants.[10]

Much of what little we know about *joyas* (Spanish for "jewels," as I discuss below) is limited to observations like that of Fages, choked by Eurocentric values and mores. The majority of Spanish soldiers and priests were not interested in learning about California Indian culture and recorded only as much as was needed to dictate spiritual and corporeal discipline and/or punishment; there are no known recorded interviews with a *joya* by either priest or Spaniard, let alone the salvage ethnologists who arrived one hundred years later. In this section, I provide an overview of what first contact between *joya* and Spaniard looked like, and how that encounter leaves scars to this day in California Indian culture. The key word here is not, in fact, encounter, but *destruction*.

Weapons of Mass Destruction: The Mastiffs

As I show, while the Spanish priests' disciplinary methods might be strict and intolerant, they were at least attempting to deal with *joyas* and *joya* relationships in ways that allowed these Indians to live, albeit marginalized and shamed.

Spanish soldiers had a different, less patient method. They threw the *joyas* to their dogs. Shouting the command "Tómalos!" (take them, or sic 'em), the Spanish soldiers ordered execution of *joyas* by specially bred mastiffs and greyhounds.[11] The dogs of the conquest, who had already acquired a taste for human flesh (and were frequently fed live Indians when other food was unavailable), were the colonizer's weapon of mass destruction.[12] In his history of the relationship between dogs and men, Stanley Coren explains just how efficient these weapons were: "The mastiffs of that era . . . could weigh 250 pounds and stand nearly three feet at the shoulder. Their massive jaws could crush bones even through leather armor. The greyhounds of that period, meanwhile, could be over one hundred pounds and thirty inches at the shoulder. These lighter dogs could outrun any man, and their slashing attack could easily disembowel a person in a matter of seconds."[13] Columbus brought dogs along with him on his second journey and claimed that

Figure 2. Theodor de Bry, "Balboa Throws the Indians Who Have Committed the Abominable Crime of Sodomy to Be Torn to Bits by Dogs," engraving from Bartolomé de las Casas, *Narratio regionum Indicarum per Hispanos quosdam deuestatarum verissima* (Frankfurt: De Bry and Saurii, 1598)

one dog was worth fifty soldiers in subduing the Natives.[14] On September 23, 1513, the explorer Vasco Nuñez de Balboa came on about forty indigenous men, all dressed as women, engaged in what he called "preposterous Venus." He commanded his men to give the men as "a prey to his dogges," and the men were torn apart alive.[15] Coren states matter-of-factly that "these dogs were considered to be mere weapons and sometimes instruments of torture."[16] By the time the Spaniards had expanded their territory to California, the use of dogs as weapons to kill or eat Indians, particularly *joyas*, was well established.

Was this violence against *joyas* classic homophobia (fear of people with same-sex orientation) or gendercide? I argue that gendercide is the correct term. As Maureen S. Heibert comments:

> Gendercide would then be . . . an attack on a group of victims based on the victims' gender/sex. Such an attack would only really occur if men or

> women are victimized because of their *primary* identity as men or women. In the case of male gendercide, male victims must be victims first and foremost because they are men, not male Bosnians, Jews, or Tutsis. Moreover, it must be the perpetrators themselves, not outside observers making ex-poste analyses, who identify a specific gender/sex as a threat and therefore a target for extermination.
>
> *As such, we must be able to explicitly show that the perpetrators target a gender victim group based on the victims' primary identity as either men or women.*[17]

Or, I must add, as a third gender? Interestingly, although Heibert doesn't consider that possibility, her argument supports my own definition of gendercide as an act of violence committed against a victim's primary gender identity.

Consider the immediate effect of Balboa's punishment of the "sodomites": when local Indians found out about the executions "upon that filthy kind of men," the Indians turned to the Spaniards "as if it had been to Hercules for refuge" and quickly rounded up all the other third-gender people in the area, "spitting in their faces and crying out to our men to take revenge of them and rid them out of the world from among men as contagious beasts."[18] This is not homophobia (widely defined as irrational fear of or aversion to homosexuals, with subsequent discrimination against homosexuals); obviously, the Indians were not suddenly surprised to find *joyas* in their midst, and dragging people to certain death went far beyond discrimination or culturally condoned chastisement. This was fear of death; more specifically, of being murdered. What the local indigenous peoples had been taught was gendercide, the killing of a particular gender *because of their gender.* As Heibert says in her description of gendercide above, "It must be the perpetrators themselves, not outside observers making ex-poste analyses, who identify a specific gender/sex as a threat and therefore a target for extermination." Now that the Spaniards had made it clear that to tolerate, harbor, or associate with the third gender meant death, and that nothing could stand against their dogs of war, the indigenous community knew that demonstrations of acquiescence to this force were essential for the survival of the remaining community—and both the community and the Spaniards knew exactly which people were marked for execution. This tragic pattern in which one segment of indigenous population was sacrificed in hopes that others would survive continues to fester in many contemporary Native communities where people with same-sex orientation are no longer part of cultural legacy but feared, discriminated against, and locked out of tribal and

familial homes. We have mistakenly called this behavior "homophobia" in Indian Country; to call it gendercide would certainly require rethinking the assimilation of Euro-American cultural values and the meaning of indigenous community.

Thus the killing of the *joyas* by Spaniards was, indeed, "part of a coordinated plan of destruction"—but it was only one strategy of gendercide.

(Re-)Naming

Father Juan Crespi, part of the 1769 "Sacred Expedition" from Mexico to Alta California, traveled with an exploration party through numerous Chumash coastal villages. "We have seen heathen men wearing the dress of women," he wrote. "We have not been able to understand what it means, nor what its purpose is; time and an understanding of the language, when it is learned, will make it clear."[19] Crespi's willingness to wait for "an understanding of the language" was not, unfortunately, a common sentiment among his countrymen, and although he describes but does not attempt to name these "men wearing the dress of women," it wasn't long before someone else did.

Erasure of tribal terms, tribal group names, and personal tribal names during colonization was a strategy used by European colonizers throughout the Americas. The act of naming was, and still is, a deeply respected and important aspect of indigenous culture. Although naming ceremonies among North American Indians followed many traditions, varying according to tribe and often even by band or time period, what has never changed is an acknowledgment of the sense of power inherent in a name or in the person performing the act of naming, and the consequent right to produce self-names as utterances of empowerment. Renaming both human beings and their own names for people or objects in their world is a political act of dominance. As Stephen Greenblatt writes of Christopher Columbus's initial acts of renaming lands whose indigenous names the inhabitants had already shared with him, "The founding action of Christian imperialism is a christening. Such a christening entails the cancellation of the native name—the erasure of the alien, an exorcism, an appropriation, and a gift . . . [it is] the taking of possession, the conferral of identity."[20] To replace various tribal words for a Spanish word is indeed an appropriation of sovereignty, a "gift" that cannot be refused, and perhaps more properly called an "imposition."

Therefore, when Spaniards arrived in Alta California and encountered a class of Indians we would now identify as being "third gender," it makes sense that in exercising power over the land and inhabitants, one of the first things the Spaniards did was invent a name for the third-gender phenomenon, a name applied only to California Indians identified by Spaniards as men who dressed as

women and had sex with other men. Interestingly, although Spanish morality disapproved of "sodomy" within their own culture and had a collection of words and euphemisms available to describe "el acto pecado nefando" ("the silent/unspoken sin") and its participants (*hermafrodita*, *sodomía*, *bujarrón*, *nefandario*, *maricón*, *amujerado*), they did not choose to apply these existing Spanish labels to California Indians.[21] Instead, overwhelmingly, primary sources use the word *joya*. As early as 1775, only six years after Crespi made his observation, the term *joya* was already in widespread use. In describing the customs of Indian women in 1775, Fages writes, "The Indian woman takes the little girls with her, that they may learn to gather seeds, and may accustom themselves to carrying the basket. In this retinue are generally included some of the worthless creatures which they call *joyas*."[22] Although Fages states that "they" (Indians) use the word *joyas*, the slippage is obvious when we note that in 1776 or 1777, the missionaries at Mission San Antonio also reported that

> the priests were advised that two pagans had gone into one of the houses of the neophytes, one in his natural raiment, the other dressed as a woman. Such a person the Indians in their native language called a *joya*. Immediately the missionary, with the corporal and a soldier, went to the house to see what they were looking for, and there they found the two in an unspeakably sinful act. They punished them, although not so much as deserved. The priest tried to present to them the enormity of their deed. The pagan replied that that *joya* was his wife . . . along the Channel of Santa Barbara . . . many *joyas* are found.[23]

In precontact California, the linguist Leanne Hinton writes, "Over a hundred languages were spoken here, representing five or more major language families and various smaller families and linguistic isolates."[24] Adding in estimates of hundreds of different dialects, it seems clear that every California tribe would have had its own word for third-gendered people, not the generic *joya* that Spanish records give us. For example, at Mission San Diego, Father Boscana describes the biological men who dressed and lived as women or, as he put it, those who were accustomed to "marrying males with males." He writes, "Whilst yet in infancy they were selected, and instructed as they increased in years, in all the duties of the women — in their mode of dress — of walking, and dancing; so that in almost every particular, they resembled females. . . . To distinguish this detested race at this mission, they were called '*Cuit*,' in the mountains, '*Uluqui*,' and in other parts, they were known by the name of '*Coias*.'"[25] *Joya*, then, is a completely new term

and must have been fashioned one way or another by the Spaniards, perhaps from an indigenous word that sounded like "joyas" or as commentary on the *joyas*' fondness for women's clothing, jewelry, and hairstyles (Spanish explorers in Mexico called hummingbirds *joyas voladores*, or "flying jewels").[26] It seems doubtful that the Spaniards would retain a beautiful name like "jewel" to describe what they saw as the lowest, most bestial segment of the Indian community unless it was meant as a kind of sarcasm to enact a sense of power and superiority over the third-gendered people. James Sandos has some sense of this as well, writing that "the Spanish called them (jewels), a term that may have been derisive in Spanish culture but inadvertently conveyed the regard with which such men were held in Chumash culture."[27] By "derisive," Sandos perhaps means that the Spaniards were making fun of what they perceived to be a ridiculous and shameful status.

Another possibility for the origins of *joya* lies in a linguistic feat, the pun. For years, people have assumed that the California town La Jolla (the double *l* in Spanish is pronounced as a *y*) is simply a misspelling of *joya*. However, Nellie Van de Grift Sanchez writes: "*La Jolla*, a word of doubtful origin, said by some persons to mean a 'pool,' by others to be from *hoya*, a hollow surrounded by hills, and by still others to be a possible corruption of *joya*, a 'jewel.' The suggestion has been made that La Jolla was named from caves situated there which contain pools."[28] Yet another similar sounding Spanish word is *olla*, which means jar or vessel. What all these things have in common—a pool, a hollow, a vessel—is that each is a kind of container, a receptacle. Ethnologists and Spaniards alike agree that the *joya*'s role as a biological male living as a female meant, among many other things, *joyas* were sexually active with "normative" men as the recipients of anal sex. In fact, a *joya* would never consider having sex with another *joya*—this was not forbidden, simply unthinkable—so this may truly have been a case of "I'm not *joya* but my boyfriend is!"

All in all, the renaming of the *joyas* was not likely meant to be a compliment, but strangely enough, it does reflect the respect with which precontact California Natives regarded this gender. Perhaps, as with the word *Indian*, *joya* has strong potential for reappropriation and a new signification of value. By choosing this word and not one of their established homolexemes, this act of renaming reinforces the notion that Spanish priests and soldiers sensed something else—an indefinable gender role, a "new" class of people?—going on here, something more or different than the deviant "sodomites" of their own culture.

On an individual basis, the changing of California Indian personal names is recorded in the mission baptism records.[29] An Indian from Cajats was baptized

at Mission Santa Barbara in 1819, stripped of the name Liuixucat and renamed Vitor Maria.[30] Yautaya from Chucumne, near Mission San Jose, became Robustiano in 1823.[31] In 1832 an Indian from Liuayto, near the San Francisco Mission, came in with the name Coutesi but was baptized Viador.[32] These same three people, brought into missions for baptism at ages thirty-two, thirty-three, and forty-five, respectively, had notations on their baptism records of another kind of naming: "*armafrodita o joya*," "*joya*," or "*joya o amugereado*." The padres applied Spanish words meaning "hermaphrodite" or "effeminate," as well as (in all three cases) *joya*. Vitor Maria died in 1821, just two years after baptism. Robustiano died in 1832, nine years after baptism. There is no death record for Viador, who may have been one of the many mission runaways. Interestingly, *joya* or other gender identifiers do not appear on the death records available, unlike the baptisms. Had Vitor and Robustiano learned to hide their gender, or was it simply accepted and no longer noted? It seems most likely that in the interest of survival (coming into the missions as grown adults, in this late era, usually meant starvation and/or capture), a *joya* would at least attempt a form of assimilation such as assuming male dress and work roles. However, as Sandos comments, "If contemporary study is any guide, these berdache, especially when they entered the missions, were important links between the new, European-imposed culture and traditional Chumash ways."[33] The entrance of older *joyas*, raised to revere and preserve cultural and spiritual continuity, into California missions where Native culture was disparaged and forbidden, must have provided a powerful infusion of Native language, religion, and values that contributed to or delayed assimilation. (Indeed, on a larger scale, tremendously high death rates combined with perilously low birth rates meant a constant "restocking" of the missions with "wild" Indians captured from farther and farther away as time went on, creating a situation where the Spanish language and European farming/herding skills were not passed from one generation to the next but had to be retaught to each incoming wave. This breakdown in transference of culture actually allowed California Natives a chance to retain more indigenous culture, albeit at great personal loss.)

Punishment, Regendering, and Shame

The Spanish priests, viewing themselves *in loco parentis*, approached the *joya*'s behaviors through the twin disciplinary actions of physical and spiritual punishment and regendering. Both of these terms are euphemisms for violence. The consequences for being a *joya*—whether dressing as a woman, doing women's work, partnering with a normative male, or actually being caught in a sexual liaison with

a man—included flogging with a leather whip (braided leather typically as thick as a fist), time in the stocks, and *corma* (a kind of hobbling device that restricted movement but allowed the Indian to work). Enforced, extended rote repetition of unfamiliar prayers on knees, verbal harassment and berating, ridicule, and shaming in front of the *joya*'s community were other forms of discipline. The Ten Commandments were beaten into Indians who spoke fragmented Spanish by priests who spoke little if any Indian language, so misunderstandings were frequent and devastating. In a culture where corporal punishment was unknown, even for children, the Spaniards quickly learned that "the punishing of Indians with lashes . . . in the case of the old and married produces shame and sarza of mind, so that at times the victims die of chagrin and melancholy, or desert to the mountains, or, *if women, are rejected by their husbands*."[34] As *joyas* were treated like women by their tribal communities, married or partnered to "normative" men, they too would be subject to rejection by their partners or community. Father Boscana wrote that *joyas*, "being more robust than the women, were better able to perform the arduous duties required of the wife, and for this reason, they were often selected by the chiefs and others, and on the day of the wedding a grand feast was given."[35] Often, *joyas* were driven from their communities by tribal members at the instigation of the priests and made homeless; this, after a lifetime of esteem and high status, must have been a substantial blow to both physical well-being and emotional health.

In one case, Father Palóu described a group of natives visiting at Mission Santa Clara; soldiers and priests noticed that one native among the women was actually a man. Father Palóu wrote:

> Among the gentile [Indian] women (who always worked separately and without mixing with the men) there was one who, by the dress, which was decorously worn, and by the heathen headdress and ornaments displayed, as well as the manner of working, sitting, etc., had all the appearances of a woman, but judging by the face and the absence of breasts, though old enough for that, they concluded that he must be a man, but that he passed himself off always for a woman and always went with them and not the men. Taking off his aprons they found that he was more ashamed than if he really had been a woman. They kept him there three days, making him sweep the plaza, but giving him plenty to eat. But he remained very cast down and ashamed. After he had been warned that it was not right for him to go about dressed as a woman and much less thrust himself in with them, as it was presumed that he was sinning with them, they let him go.

> He immediately left the Mission and never came back to it, but from the converts it was learned that he was still in the villages of the gentiles and going about as before, dressed as a woman.[36]

Close reading ("thrust himself in") suggests that the priest and soldiers completely misunderstood the situation, and assumed that this man was "sinning"—that is, sneaking into the women's work area dressed as a woman to flirt or have sex with them. The idea that a man would *choose* to dress and work as a woman with other women—and that the community accepted and in fact benefited from that choice—was inconceivable to the Spaniards. Probably because of this misunderstanding, this *joya* was able to escape and find another community (at least temporarily). After a taste of regendering by the Spaniards, no doubt even unfamiliar villages looked better than remaining with one's own family and friends. At this point in the missionization process, leaving for life with the "gentiles" was still a possibility.

As time went on and escapes like the one above became less viable, *joyas* trapped in the missions or brought in as adults by raiding parties suffered from a kind of social dislocation that must have been deeply troubling for individuals accustomed to a rich but specialized community network. Precontact native Californian societies operated under a gender separation that generally kept men and women working at separate tasks, away from the opposite sex, most of the day. Women had their work areas and were accustomed to withdrawing to them to weave, harvest, process and prepare food, care for children, and so on. *Joyas* were always a part of this women's world and did not cross over into the men's territory. The mission priests, however, demanded that *joyas* spend all their time in "masculine" company, doing "masculine" work, rather than in the company of women and benefiting from the camaraderie, friendships, and sense of worth found there. Aside from the emotional shock of being cut off from friends and community, *joyas* were also faced with what, to them, was an inappropriate mixing of genders. In a culture where work and play were gendered activities (although not necessarily gendered as the Spanish would think of them), being forcibly placed in the "wrong" group would have been both extremely uncomfortable and unfamiliar for *joyas*. Remember that Father Palóu remarked of the *joya* found in his mission, "Taking off his aprons they found that he was more ashamed than if he really had been a woman." In a kind of involuntary gender-reassignment, *joyas* were made to dress as men, act as men, and consort with men in contexts for which they had little if any experience. For the "normative" men, having a *joya* among them all day and night—let alone someone stripped of appropriate clothing, status,

and respect—must have also been disturbing and a further disruption of cultural signification. Women, too, would have noticed and missed the presence of *joyas* within that smaller, interdependent feminine community.

As a consequence of this regendering, renaming, and murder, one of the *joya*'s most important responsibilities, on which the well-being of the tribe depended, was completely disrupted; prohibited by the priests, the complex and deeply spiritual position of undertaker became a masterful example of colonization by appropriation.

Replacement

Most research on the indigenous third gender agrees that a person living this role had particular responsibilities to the community, especially ceremonial and religious events and tasks.[37] In California, death, burial, and mourning rituals were the exclusive province of the *joyas*; they were the undertakers of their communities. As the only members of California Indian communities who possessed the necessary training to touch the dead or handle burials without endangering themselves or the community, the absence of *joyas* in California Indian communities must have constituted a tremendously disturbing crisis.[38] As Sandra E. Hollimon states, "Perhaps most profoundly, the institution of Catholic burial programs and designated mission cemeteries would have usurped the traditional responsibilities of the *'aqi* [Ventureno Chumash word for *joya*]. The imposition of Catholic practices in combination with a tremendously high death rate among mission populations would undoubtedly have contributed to the disintegration for the guild."[39] It is hard to overstate the chaos and panic the loss of their undertakers must have produced for indigenous Californians. The journey to the afterlife was known to be a prescribed series of experiences with both male and female supernatural entities, and the *'aqi*, with their male-female liminality, were the only people who could mediate these experiences. Since the female (earth, abundance, fertility) energies were so powerful, and since the male (Sun, death-associated) energies were equally strong, the person who dealt with that moment of spiritual and bodily crossing over between life and death must have specially endowed spiritual qualities and powers, not to mention long-term training and their own quarantined tools. Baskets used to scoop up the earth of a grave, for example, were given to the *'aqi* by the deceased person's relatives as partial payment for burial services, but also because they could never again be used for the life-giving acts of cooking or gathering.[40]

The threshold of death was the realm of the *'aqi*, and no California Indian community was safe or complete without that mediator. Asserting that undertakers were exclusively *'aqi* or postmenopausal women (also called *'aqi*), Hollimon specu-

lates that perhaps "the mediation between death and the afterlife, and between human and supernatural realms, was entrusted by the Chumash to individuals who could not be harmed by symbolic pollution of the corpse, and who were no longer (or never had been) capable of giving birth."[41] Hollimon's archaeological work allows us to understand that the "third gender" status of *joyas* may have been extended, in some fashion, to postmenopausal women as well, should they desire to pursue a career as undertaker. Another strong possibility is that elderly women stepped into the role of undertaker when persecution reduced the availability of *joyas*.

With the loss of the *'aqi*, then, came an instant and urgent need for some kind of spiritual protection and ritualization of death. This would have suited the Roman Catholic Church, which had more than enough ritual available—and priests were anxious to institute new rituals to replace what they regarded as pagan practices. While founding the San Francisco Mission, Fray Palóu wrote, "Those who die as pagans, they cremate; nor have we been able to stop this," indicating that burial—as tribes farther south practiced—was the only mortuary practice considered civilized.[42] At these same cremations, in reference to funeral rituals, Palóu noted that "there are some old women who repeatedly strike their breast with a stone. . . . they grieve much and yell quite a bit."[43] It would have been difficult to tell an elderly *joya* dressed as a woman from an elderly woman, if one did not know of the connection between *joyas* and the death ceremony; in fact, years later, when Harrington interviewed Maria Solares, a Chumash survivor of Mission Santa Ynez (and one of his major consultants), she told him that all undertakers ("aqi") were women, strong enough to carry bodies and dig deep graves, and that the role was passed from mother to daughter.[44] Harrington pointed out that the Ineseño word for *joto* was also *'aqi*, that it was strange that "women should be so strong to lift bodies," and Solares agreed, though still puzzled.[45] It seems that by the mid-1930s, the memory of *'aqi* as beloved members of the community no longer matched Solares's cultural understanding of *joto*—the long-term damage of homophobia was substantial even in linguistic terms, let alone human terms. It is not hard for me to imagine my ancestors, fearing for their spiritual well-being, their loved ones, and what remained of their communities, turning to Catholicism out of desperation. As the diseases and violence of colonization took their toll, communities were under intense pressure about the many burials or cremations to be carried out. The turn to, and dependence on, Catholic burial rituals was a form of coerced conversion that had nothing to do with Christianity, and everything to do with fear.

Through these methods, then—murder, renaming, regendering, and replacement—the *joya* gendercide was carried out. The destruction seems to

cover every aspect of *joya* identity and survival. Yet, I argue, *joya* identity did not disappear entirely.

Surviving Gendercide

How could *joyas* survive such devastation? Where are they? What is their role in contemporary California Indian life?

First, it is important to note that mission records show baptisms of adult *joyas* as late as 1832, almost sixty years after Fages expressed his outrage in 1775. "Late arrivals" to the mission — adult Indians who, having lived most of their lives as "wild" Indians, were rounded up and brought in for forced baptism — actually slowed the missionization process considerably. In combination with the low life expectancy of mission-born children (two to seven years), a strong influx of adult indigenous cultural practices probably also kept the role of *joya* from fading away as quickly as might otherwise be expected (allowing younger Indians to witness or know *joyas*, as well as pass on that information orally to future generations).[46]

Second, just as the extermination of California Indians, while extensive, has been exaggerated as complete, so too is the idea that *joyas* could be gendercided out of existence. A *joya*'s conception does not depend on having a *joya* parent, unlike normative male and female sexes, who depend on both male and female for conception; as long as enough of the normative population remains alive and able to bear children, the potential for *joya* gender to emerge in some of those children also remains. To exterminate *joyas* entirely, *all* California Indian people would have had to be killed, down to the very last; thus it makes sense that during missionization and postsecularization, as in the past, *joyas* rose out of the general population spontaneously and regularly. However, those *joya* had virtually no choice but to hide their gender. Like Pueblo tribes who took their outlawed religious ceremonies underground until it was safe to practice more openly (although outsiders are understandably rarely allowed to partake or witness the ceremonies), *joyas* in California may have taken a similar tactic, removing themselves from ceremonial roles with religious connotations and hiding out in the general population. Sadly, the traditional blend of spiritual and sexual energy that was a source of *joya* empowerment suffered an abrupt division; as time passed and the few surviving elder *joyas* passed on, younger *joyas* would have been forced to function without role models, teachers, spiritual advisers, or even — eventually — oral stories of their predecessors. Walter Williams reports that he "could not find any traces of a *joya* gender in oral traditions among contemporary California Indians from mis-

sionized tribes," but adds, "that does not mean that a recognized and respected status for berdache no longer existed, or that same-sex behavior vanished. To find evidence of such continuity is extremely difficult."[47]

Williams outlines three major obstacles to finding such evidence: inability of surviving *joyas* to use written language (or refusal, once it was introduced), resulting in a lack of documentation; the need for extremely specialized and culturally sensitive oral ethnographies by contemporary researchers with some way to take part in community conversations; and the backlash against earlier kinds of research that left indigenous peoples distrustful and unwilling to share sensitive material.

Williams's research in South America suggests that a division of the third gender occurred there, perhaps as a conscious effort to "remove the berdaches from a public institutionalized role, to protect them from the Spanish wrath," resulting in two new, distinct groups, each with distinct roles.[48] One group are those who identify as "homosexual"—males whose preferred sexual partners are men, but who often marry women later in life to attain acceptance and status within their birth families. This group does not participate in any ceremonial or religious activity. The other group consists of a switch from traditional shamanism, with its association with male-male sex, to powerful, oftentimes physically androgynous, shamans or spiritual leaders whose birth sex is female and who identify as women (often married with children, but just as often unmarried or postmenopausal). "So strong was the association of femininity with spiritual power that if the androgynous males could not fill the role," Williams writes, "then the Indians would use the next most spiritually powerful persons. In striving for effective spirituality, they responded in a creative way to Spanish genocidal pressures."[49] By dividing sexual and spiritual power, indigenous people were able to deflect some of the violence visited on those original individuals yet maintain living connections with essential powers of life and death. Neither a traditional nor an ideal solution, such a split was nonetheless necessary for tribal survival.

I suggest that a similar survival strategy evolved among missionized California Indians: that those people who may have identified as or been identified as *joyas* experienced the spiritual-sexual split in one of two ways: they became either closeted same-sex *jotos* who engaged in secret sexual relationships with other men, or they became adult male or female members of the community with important roles as caretakers and "grave-tenders" of Native culture who chose to remain single—that is, unmarried to normative genders—throughout life. Traces of a split *joya* gender, I argue, can be found from the time of the gendercide to the

present day, if not in our oral traditions then in the libraries and documentation of our colonizers, as well as in our own Two-Spirit bodies. Two examples illustrative of this split are outlined below.

Kitsepawit Fernando Librado, a Chumash man born early in 1839, became a primary consultant for Harrington.[50] Librado lived his long life as a person who adapted from someone who might have been *'aqi* (or *joya*) in an earlier time to what seems to be a kind of cultural caretaker, collecting and preserving stories, technologies, and histories. Born at the end of mission life into the chaos of secularization, Librado would not have been allowed to become a *joya*, even if he could have found enough of a community to support him in his efforts. However, Librado fulfilled many of the spiritual roles of a *joya*: in oral material gathered by Harringon, Librado comments frequently on his intense desire to learn as much about his "dying" culture's knowledge as possible, tracking down Chumash doctors and quizzing Chumash women about plants, wild harvesting, and how to prepare traditional foods, ceremonies, and songs.[51] Librado traveled widely to attend Chumash dances, sings, storytellings, or ceremonies to observe and learn; significantly, his hunger for knowledge encouraged him to cross male and female gender boundaries, not limiting his research by labels such as "men's work" or "women's work." Librado never married, never had children, and never spoke of having ever been partnered.

Even when discouraged or chastised by other Indian people, Librado persisted in his own form of research. Repeatedly throughout his narrative in *Breath of the Sun*, he speaks of scenes like this: "Francisca . . . asked me why I wanted to learn the Swordfish Dance songs, and then she said to me: 'You should abandon the idea.' I replied: 'What is the matter with it?' and Francisca told me: 'It is not good. You better abandon the idea.'"[52] But Librado was persistent and well versed in Indian etiquette; gathering up valuable gifts of food and drink, he visited another home: "Donociana and Nolberto knew the Indian dances too. . . . I once went over to Donociana's house, taking with me some marrow, guts, tripe, and other inner things of a beef, along with some bread and wine. I wanted to learn the Swordfish Dance. After the meal I asked her to teach me the old dances, saying, 'for you are the only ones left who know the old dances.' Donociana began to cry, and I left saying nothing more."[53] Such refusal and grief among his own people must have been difficult to bear, yet Librado continued collecting knowledge and storing it away. While Librado was not able to act as an actual undertaker, tending to dead bodies, departing spirits, and their final needs, he did, in many ways, act as an undertaker for his culture, gathering indigenous cultural knowledge and caring for those scattered pieces. As traditional *joyas* protected the people and

community through their tending of the dead, so Librado protected his people and community through his tending of what culture the dead had left behind. He had no idea that someone like Harrington would come along; Librado was simply compelled to care for his culture.

Remember that in Librado's time, it was easy to believe that this world had come to an end. Anglos and Indians alike were under the influence of the notion of Manifest Destiny, which preached the inevitable and imminent death of all things Indian. Ultimately, Librado told much of what he knew to Harrington, knowing that it would be recorded—both in writing and on early sound recordings—and preserved, perhaps, until descendants came to claim it. In other words, Librado gave the remnants of his culture—all that he could gather in his long and determined lifetime—a good burial, a good place to rest, rather than let the pieces lie scattered all over the ground, without prayers, ritual, proper care. While I can't do more than speculate about Librado's decision to remain unmarried and without children, when considered together with his caretaking, his chosen role seems to be that of an *'aqi* who adapted to the times in order to best serve his community's spiritual needs. In fact, when Maria Solares from Santa Ynez discussed the word *'aqi* with Harrington, she told him that Librado was *'aqi*, meaning homosexual: "He stayed with men and would go crawling to other men in the night."[54]

Here we see clearly the spiritual-sexual split of the *joya* role; Solares knew about queerness, and she knew about undertakers, but until Harrington pointed out that the two roles shared the same word, she did not realize the connection between the two. At the same time, Solares, by her use of what she thought of as the word for faggot, indicates that she knew something of Librado's more private life that, together with his efforts as a cultural caretaker, seem to point to his living adaptation of the traditional *'aqi* role.

We glimpse the sexual side of the *joya* split in those field notes from Harrington mentioned early in this essay, in two brief comments by his consultant Isabel Meadows, from Mission Carmel. Following are my transliteration and translation of those notes.

> Transliteration:
> Isabel
> Mar. 1934
> Estefana Real tenia muchos maridos. Her children had many fathers—eran joteras las Viejas antes.
> Isabel Mar.[19]37 understands joteras above to mean that the Viejas eran muy macheras. But no, the real reason Isabel used jotera in 34 was

> because la Estefana had a son, Victor Acedo, who was joto. Nuca decir nada la vieja Estefana, o no savia quezez [quizas?], que su hijo, Victor, era joto. This was why in [19]34 Isabel spoke of Estefana as muy jotera, she had a son who was joto.[55]
>
> Translation:
> Isabel
> Mar. 1934
> Estefana Real had many husbands. Her children had many fathers—they were joteras, the old ladies before.
> Isabel March [19]37 understands "joteras" above to mean that the old women were very macho. But no, the real reason Isabel used "jotera" in '34 was because Estefana had a son, Victor Acedo, who was a faggot.[56] The old lady Estefana never said nothing, or she didn't know, maybe, that her son, Victor, was a faggot. This was why in '34 Isabel spoke of Estefana as very macho, she had a son who was a faggot.

These are not just names out of an ethnologist's old field notes, nor are these details simply interesting, if belated, gossip from a tribal consultant. I am related to Isabel Meadows by marriage.[57] In addition, Estefana Real was born in 1809 at the Carmel Mission; her sister, Josefa "Chepa" Real, born in 1812, was my great-great-great-great grandmother. Victor Acedo, my cousin, is the "joto" under discussion.

It's true what Isabel said about Estefana Real—she had at least nine, possibly eleven, children by at least several men whose names are sometimes recorded, sometimes not. She began having babies in 1825 and kept it up through 1848. Victor, born "Nestor Bitoreano Antonio," was given the surname Real at his baptism on March 4, 1846.[58] Fray Doroteo Ambris officiated. Estefana did not declare Victor's paternity at the baptism (the father's name is listed as "incognito"), but Padre Ambris noted "Parvulo [child] de Razon Real"—indicating that the father was "de Razon" or "of reason," meaning European, as well as "of Real," the priest.[59] The sketchy material is normal for this time period; during the post-secularization era of the California missions, life was a gamble and chaos was the everyday challenge. Steven W. Hackel, a scholar who has studied Mission San Carlos extensively, writes:

> By 1833, only about 220 Indians lived at San Carlos. The most skilled and independent had left or died. An untold number had never been born

> because of the sterility of many San Carlos residents. Of those at the missions, nearly half were under age twenty and a third were over forty, leaving just about two dozen men between the ages of twenty and thirty-nine. Too small to be an economically productive community, the mission had become a decaying congregation of families and dependents, an increasingly dilapidated place where people often competed with one another for food.[60]

Estefana, however, was a fighter from a long line of survivors. Her father, Fructuoso Jose Cholom, had served as a mission *alcalde* prior to secularization, which was a kind of overseer, or boss. With his wife, Hyginia, Fructuoso received a small parcel of land during secularization in 1835, one of very few Indians given this opportunity.[61] Fructuoso lived on this land until his death in 1845, when Victor was about a year old. By 1850, Hackel states, his widow may have been joined on the land by her daughter Estefana, and presumably her surviving underage children, including Victor, who would have been four years old. Some of the land was sold to Joaquin Gonzalez, an emigrant from Chile who had been a soldier at the Presidio in Monterey. The contract carried the agreement that Hyginia and Estefana (and presumably any of her surviving underage children) could continue to live on the land until Hyginia's death. By 1853, when Victor was seven, Hyginia had sold the remainder of her husband's rancho to Gonzalez, and around the same time, Estefana married the Chilean. Like several other Indian women, only marriage to a non-Indian secured what was left of Estefana's inheritance.

So it is possible for me to imagine a little of Victor Acedo's life. Born into a postholocaust Indian world, living in poverty, illegitimate in the Church's eyes, he grew up with his strong Indian grandmother Hyginia, her two powerful daughters Josefa (a.k.a. Chepa) and Teodosia as his aunts, on a small chunk of his indigenous land secured for him by his mother's marriage to a former soldier at the former mission. No wonder Isabel told Harrington those old women were "joteras"—meaning, I suspect, "tough broads"! Now that I know more about Estefana, I can see how Isabel used that word as a sign of her admiration, as a way to praise those "Viejas antes," those old women before us, troublemakers who never stopped fighting, never stopped loving, never stopped trying to survive, and never gave up their identity or their relationship with their homeland.

Of course, Estefana "never said nothing" about her son's sexual choices. First, her father's position as *alcalde* indicates that, premissionization, his family was probably already in a position of authority. Inherited family status often

replicated itself within the missions, with formerly high-status families gravitating toward whatever new positions of authority were available to Indians. These same high-status families also retained much of the traditional knowledge, language, and cultural information, in part because they were more able to protect themselves and preserve the individuals possessing this information. Fructuoso came from a time when knowledge of *joyas*, by any name, was common; when men of high status sought out *joyas* as wives because of their reputations as hard workers; when to be a *joya* was a position of high status in and of itself, no matter what status the *joya*'s family of origin. Fructuoso would have taught his daughters this, as well as much more about their indigenous culture, while striving to reinvent that culture in a world undergoing the worst devastation imaginable.[62]

Second, it is clear that everyone involved in the story, from Isabel the storyteller to the three Real sisters, Victor, and even Harrington, who, after all, went back to Isabel a year later for clarification, all understood that the word *joto* was not a compliment. The infliction of homophobia as a result of earlier gendercide on California Indians was deeply fixed well before Isabel's comments and was no doubt something Victor himself was forced to deal with all of his life.

Except for a brief mention in another Harrington field note from May 1936 in which Isabel recalls Victor Acedo working as a cook for a man named Snively, I don't know what happened to Victor.[63] Records from 1850 to 1900 are scarce for Indian people, especially with the Catholic missions in limbo between Spain, Mexico, and the United States, and especially for someone who would not show up on Church registers as a groom or father. This short note is all we know about him: his name, his mother's resistant behavior, his sexual orientation, the implication that for a woman to be strong implied a mixing of masculine and feminine energy. But Victor's *presence* gives me hope; hearing via Isabel that he grew to adulthood, and knowing who his mother was, allows me to imagine him as having, at the very least, a sense of self complicated not just by shame but by some knowledge of his historical and cultural inheritance. As the sexual side of the spiritual-sexual splitting of the *joya* role, *jotos* like Victor survived—quietly, and at great cost, but they survived.

Reemergence of *Joyas* as "Two-Spirited" Peoples

Looking forward now, it is clear to me that indigenous California third-gender people are reemerging from attempted gendercide, which we survived by performing a division between spiritual and sexual roles in our communities. We are reemerging as contemporary Two-Spirit people. This name, Two-Spirit, allows the

reunion of spiritual and sexual roles into a whole and undivided gender role, a role still needed in human society. Claiming our roles as the caretakers of culture and spirituality, like Fernando Librado, as well as our sexual selves, like Victor Acedo, we focus our attentions on the nurturance of our communities.

One contemporary example of a Two Spirit is L. Frank Manriquez, a Tongva/Ajachmen artist and tribal activist. She is a board member of the California Indian Basketweavers Association, the Advocates for Indigenous California Language Survival, and the Native California Network, organizations involved in the preservation and revival of Native Californian cultures through conferences, workshops, traditional arts practice, and language immersion camps, as well as chronicling collections of Native Californian art. Manriquez is also a respected artist in several genres (drawing, painting, soapstone carving, and basketweaving). Her book of drawings, *Acorn Soup*, earned her the title of "the Indian Gary Larsen," and she was coeditor of *First Families: A Photographic History of California Indians*, widely regarded as a powerful testimony to the continuation of California Indian culture.[64] I believe that what Manriquez has been doing is deeply traditional and part of the reemerging *joya* or Two-Spirit renaissance: as a person with the energy of two genders balancing within her, and conscious of the value of her work with the dead to nurture the living, Manriquez performs the ancient role of undertaker as so many specially trained indigenous people have done before her—but she is doing it without that careful training and so must find her own way. "Because our people are considered extinct, it's hard to get information," Manriquez writes. "So there's really nobody you can go to except for your dreams, and your prayers, and your wishes, and your longings."[65] In 2001 Manriquez wrote that she had felt compelled to travel to museums outside the United States where artifacts from California Indian tribes had been taken. Led by her dreams (and a timely award from the Fund for Folk Culture), Manriquez visited the Musée de L'Homme, where "I walked into this room where there were boxes and boxes and boxes and boxes of my people's lives, and they were like muffled crying coming from these shelves and these boxes, and it was just heart-breaking. . . . but these pieces and I became friends. *I tried to touch as much as I possibly could*."[66] For California Indians, as for many indigenous peoples, touching artifacts stolen from Native communities has connotations both deeply spiritual and terribly dangerous. "There was a piece that really worried me when I photographed it," Manriquez says. "It was on display in the Musée de L'Homme and it said specifically, 'grave item.'"[67] Knowing that contact with the dead, or objects buried with the dead, was a hazardous spiritual act that could affect her well-being and balance, Manriquez was torn between the desire to reclaim what little was left of her culture and a

duty to follow traditional prohibitions set in place long before that culture became endangered. Ultimately, she decided, "Well, I may burn in Indian hell, but this is really important for me to see this, for me and my people." Later, showing slides of this and other burial items to a group that included the Cahuilla elder Catherine Saubel, Manriquez was again unsure about her choice, this time for reasons of community disapproval; "I was incredibly worried because here's a grave item and I'm dealing with it. But [Catherine] looked at me and she understood what I was saying and what I was doing in bringing it back and showing people, and so I could carry on other traditions without fear of long term reprisal."[68]

Unmarried, without children, Manriquez has said that her work is her legacy: reclaiming indigenous knowledge and passing it on to the coming generations. She acknowledges that reclamation work is spiritually risky: "There aren't many of us who will endure museums because sometimes there are things in there that you should not touch, you should not see, you should not be near, and so we risk a lot going to recover."[69] I do not believe that it is a coincidence that Manriquez also identifies as a woman whose primary sexual and emotional relationships are with other women; to deal with the powerful energy of the dead, she must also be able to draw on the creative energy inherent in sexual existence. When asked if I could include her Two-Spirit identity in this discussion, Manriquez replied, "I have no problem being out there," indicating that it is as much a part of her work as any research or artwork.[70]

Many other Two-Spirit Indians currently serve the recovery of their indigenous communities via the spiritual and cultural arts of poetry, fiction, visual arts, basketweaving, tribal leadership, and environmental activism; these people also assert and live their sexual identities as what Euro-Americans call queer. In fact, Janice Gould (Concow) has described the work that indigenous women poets like Chrystos (Menominee), Joy Harjo (Mvskoke), and Beth Brant (Mohawk) do in grieving, honoring, and writing our historical losses in terms of "a resurrection of history through writing. . . . This writing, I would say, amounts almost to an act of exhumation"—a statement that reinforces the necessity of the Two-Spirit involvement in survival of Native culture and communities.[71]

Reconstructing a Spiritual, Community-Oriented Role for Two-Spirit People

In conclusion, I suggest that contemporary California Two-Spirits are the rightful descendents of *joyas*.[72] Two-Spirit people did not cease to exist, they did not

cease to be born, simply because the Spaniards killed our *joya* ancestors. This, in fact, is a crucial point: the words *gay* or *lesbian* do not fully define a Two-Spirited person, because those labels are based on an almost exclusively sexual paradigm inherited from a nonindigenous colonizing culture. The Chumash *'aqi*, or *joyas*, fulfilled important roles as spiritual community leaders, so although genocide and gendercide worked to erase their bodies, neither their spirits nor the indigenous community's spiritual needs could be murdered. This is what comes down to us as Two-Spirit people: the necessity of our roles as keepers of a dual or blended gender that holds male and female energy in various mixtures and keeps the world balanced. Although Two-Spirit people often had children in the past, and continue to do so in the present, and will into the future, we do not expect or train our children to follow in our footsteps. A Two-Spirit person is born regardless of biological genealogy. Thus we will always be with you. We *are* you. We are not outsiders, some other community that can be wiped out. We come from you, and we return to you.

Simply identifying as both Indian and gay does not make a person Two-Spirit, although it can be a courageous and important step; the danger of that assumption elides Two-Spirit responsibilities as well as the social and cultural needs of contemporary indigenous communities in relation to such issues as suicide rates, alcoholism, homelessness, and AIDS. What steps can we take to reconstruct our role in the larger indigenous community? I look back at this research on my family and find guidance, examples, strategies, and lessons that converge around six key actions:

1. reclaim a name for ourselves;
2. reclaim a place for ourselves within our tribal communities (which means serious education and presence to counteract centuries of homophobia—a literary presence, a practical presence, and a working presence);
3. resist violence against ourselves as individuals and as a community within Native America;
4. work to determine what our roles as liminal beings might be in contemporary Native and national contexts;
5. work to reclaim our histories from the colonizer's records even as we continue to know and adapt our lives to contemporary circumstances and needs; and
6. create loving, supportive, celebratory community that can work to heal the wounds inflicted by shame, internalized hatred, and fear, dealing with the legacy that, as the Chickasaw poet Linda Hogan says, "history is our illness."[73]

With the adoption of the name "Two Spirit," we have already begun the work of our lifetimes. As Sue-Ellen Jacobs, Wesley Thomas, and Sabine Lang write, "Using the word 'Two-Spirit' emphasizes the spiritual aspect of one's life and downplays the homosexual persona."[74] Significantly, this move announces and enhances the Two-Spirit need for traditionally centered lives with the community's well-being at the center. Still, we face a great problem: the lack of knowledge or spiritual training for GLBTQ Native people, particularly the mystery of blending spiritual and sexual energies to manage death/rebirth. In traditional times, there would have been older *joyas* to guide inexperienced ones; there would have been ceremony, role modeling, community support, and, most importantly, there would have been a clear role waiting to be filled.

The name Two-Spirit, then, is a way to alert others, and remind ourselves, that we have a cultural and historical responsibility to the larger community: our work is to attend to a balance of energies. We are still learning what this means; there has been no one to teach us but ourselves, our research, our stories, and our hearts. Maybe this will be the generation to figure it out. Maybe this will be the generation to reclaim our inheritance within our communities. And if it is not, I take heart from the history of the *joyas*, the impossibility of their true gendercide, and the deep, passionate, mutual need for relationship between Two Spirits and our communities.

Notes

1. Paula Gunn Allen, "I Don't Speak the Language That Has the Sentences: An Interview with Paula Gunn Allen," *Sojourner: The Women's Forum* 24, no. 2 (1999): 26–27.
2. Paula Gunn Allen, "Some Like Indians Endure," in *Living the Spirit* (New York: St. Martin's, 1988), 9–13.
3. Elaine Mills, ed., *The Papers of John Peabody Harrington in the Smithsonian Institution, 1907–1957*, microfilm (White Plains, NY: Kraus International, 1981).
4. *Salvage ethnology* is a term coined by Jacob Gruber to refer to the paradoxical obsession of Westerners to collect artifacts, linguistic traces, and cultural knowledge of cultures that they had previously spent much effort to colonize or exterminate. Rather than basic ethnological research, the study of a culture, "salvage ethnology" was concerned with an almost fanatic search (and often the hoarding of) any remains of a colonized culture. See Jacob Gruber, "Ethnographic Salvage and the Shaping of Anthropology," *American Anthropologist*, n.s., 72 (1970): 1289–99.
5. I use this name as it was coined during the Third International Two Spirit Gathering, to provide a positive alternative to the unacceptable term *berdache*: Two-Spirit

people are "Aboriginal people who possess the sacred gifts of the female-male spirit, which exists in harmony with those of the female and the male. They have traditional respected roles within most Aboriginal cultures and societies and are contributing members of the community. Today, some Aboriginal people who are Two-Spirit also identify as being gay, lesbian, bisexual or transgender" ("Background and Recent Developments in Two-Spirit Organizing," International Two Spirit Gathering, intltwo spiritgathering.org/content/view/27/42/ [accessed July 28, 2009]).

6. The archaeology of sexuality refers to a fairly recent movement within archaeology that brings together theoretical work from gender and women's studies, science studies, philosophy, and the social sciences on sex and gender to study material remains and to approach questions often considered accessible only through texts or direct observation of behavior, such as gender or multiple genders. An excellent collection of articles on this topic is Robert Schmidt and Barbara Voss, eds., *Archaeologies of Sexuality* (London: Routledge, 2000).
7. My use of the term *third gender* relies on and refers back to work done by Will Roscoe, Sabine Lang, Wesley Thomas, Bea Medicine, and others as a way to identify a gender that is neither fully male nor fully female, nor (more importantly) simply "half and half," but a unique blend of characteristics resulting in a third or other gender. See Sue Ellen Jacobs, Wesley Thomas, and Sabine Lang, eds., *Two-Spirit People: Native American Gender Identity, Sexuality, and Spirituality* (Urbana: University of Illinois Press, 1997). As Brian Gilley summarizes, "The institution of the third gender [in Native American precontact societies] was less about an individual's sexuality and more about the ways their special qualities were incorporated into the social and religious life of their community" (*Becoming Two-Spirit: Gay Identity and Social Acceptance in Indian Country* [Lincoln: University of Nebraska Press, 2006], 11).
8. Father Gerónimo Boscana, a Franciscan priest who kept extensive notes about Native culture and customs during his stay at Mission San Juan Capistrano from 1812 until 1826, wrote that the "Indians of California may be compared to a species of monkey" ("Chinigchinich," in Alfred Robinson, *Life in California: During a Residence of Several Years in That Territory, Comprising a Description of the Country and the Missionary Establishments*, ed. Doyce B. Nunis Jr. [New York: Wiley and Putnam, 1846], 335). Postsecularization, perceptions had not changed much; in 1849 Samuel Upham commented on California Indian genealogy and eating habits: "Like his brother, the gorilla, he is a vegetarian and subsists principally on wild berries and acorns, occasionally luxuriating on snails and grasshoppers" (*Notes of a Voyage to California Via Cape Horn, Together with Scenes in El Dorado, in the Years 1849–50* [New York: Arno, 1973], 240). This attitude persisted when John Audubon wrote in his journal of a Miwok child "eating [acorns] with the judgment of a monkey, and looking very much like one." Although the journal covers the years 1840–1850, it was published in 1906, perpetuating the distorted view of California Indians into the twentieth century

(John Audubon, *Audubon's Western Journal: 1840–1850*, ed. Frank Heywood Hodder [Cleveland: Clark, 1906], 213).

9. Although most scholars still use the population estimates by Martin Baumhoff (*Ecological Determinants of Aboriginal California Populations* [Berkeley: University of California Press, 1963]) and Sherburne Cook (*The Population of the California Indians, 1796–1970* [Berkeley: University of California Press, 1976]), many contemporary scholars view their numbers (150,000–350,000) as greatly outdated. In *American Indian Holocaust and Survival: A Population History since 1492* (Norman: University of Oklahoma Press, 1987), Russell Thornton, for example, writes that California Indian precontact population was "approaching 705,000" (200). In private correspondence with the author about more current population data, William Preston writes that "at this point I think Thornton's high number is totally reasonable. In fact, keeping in mind that populations no doubt fluctuated over time, I'm thinking that at times 1 million or more Native Californians were resident in that state." William Preston, e-mail message to author, July 8, 2009.
10. Pedro Fages, *A Historical, Political, and Natural Description of California by Pedro Fages, Soldier of Spain*, trans. Herbert Priestley (Berkeley: University of California Press, 1937), 33.
11. Stanley Coren, *The Pawprints of History: Dogs and the Course of Human Events* (New York: Free Press, 2003), 67–80.
12. Coren, *Pawprints of History*, 76.
13. Coren, *Pawprints of History*, 72–73.
14. Coren, *Pawprints of History*, 74.
15. Peter Martyr d'Anghera, "The Third English Book on America" [*De Orbe Novo*], trans. Richard Eden, in *The First Three English Books on America: [?1511]–1555 A.D.*, ed. Edward Arber (Birmingham, 1885), 138.
16. Coren, *Pawprints of History*, 76.
17. Maureen Heibert, "'Too Many Cides' to Genocide Studies? Review of Jones, Adam, ed. Gendercide and Genocide," H-Genocide, H-Net Reviews, www.h-net.org/reviews/showrev.php?id=10878 (accessed December 17, 2008); emphasis added.
18. D'Anghera, "Third English Book on America," 138.
19. Herbert E. Bolton, trans. and ed., *Fray Juan Crespi: Missionary Explorer on the Pacific Coast* (Berkeley: University of California Press, 1927), 171.
20. Stephen Greenblatt, *Marvelous Possessions: The Wonder of the New World* (Chicago: University of Chicago Press, 1991), 83.
21. Wayne Dynes, "Gay Spanish," Homolexis, December 25, 2006, homolexis.blogspot.com/2006_12_01_archive.html.
22. Fages, *Historical, Political, and Natural Description of California*, 59.
23. Francisco Palóu, *Palóu's Life of Fray Junipero Serra*, ed. and trans. Maynard J. Geiger (Washington, DC: American Academy of Franciscan History, 1955), 33.

24. Leanne Hinton, *Flutes of Fire: Essays on California Indian Languages* (Berkeley: Heyday, 1994), 13.
25. Boscana, "Chinigchinich," 284.
26. Connie M. Toops, *Hummingbirds: Jewels in Flight* (Stillwater, MN: Voyageur, 1992), 15.
27. James Sandos, "Christianization among the Chumash: An Ethnohistoric Perspective," *American Indian Quarterly* 15 (1991): 71.
28. Nellie Van de Grift Sanchez, *Spanish and Indian Place Names of California: Their Meaning and Their Romance* (San Francisco: Robertson, 1914), 44.
29. Huntington Library, "Early California Population Project Database, 2006" (ECPPD), www.huntington.org/Information/ECPPmain.htm (accessed September 30, 2007).
30. ECPPD, Santa Barbara, Baptismal #04128.
31. ECPPD, San Jose, Baptism #04733.
32. ECPPD, San Francisco Solano, Baptism #00977.
33. Sandos, "Christianization among the Chumash," 71.
34. Irving Berdine Richman, *California under Spain and Mexico, 1535–1847* (Whitefish, MT: Kessinger, 2007), 442; emphasis added.
35. Boscana, "Chinigchinich," 245.
36. Palóu, *Palóu's Life of Fray Junipero Serra*, 214–15.
37. For a general survey, see Jacobs, Thomas, and Lang, *Two-Spirit People*; and Will Roscoe, *Changing Ones: Third and Fourth Genders in Native North America* (New York: St. Martin's, 1998).
38. J. Alden Mason writes, "That the mention of the dead was as serious an offence among the Salinans as with other Californian Indians is well illustrated by the incident that when asked jocularly for a Salinan word of profanity, Pedro Encinales gave ca MteL and translated it 'go to the devil' (ve al diablo). [Father] Sitjar writes chavmtel 'cadaver.'" Sitjar, who compiled a useful list of Salinan words and phrases, knew enough of the Indian language to make his own translation, which apparently Pedro Encinales, the indigenous speaker, wasn't comfortable speaking (J. Alden Mason, *The Ethnology of the Salinan Indians* [Whitefish, MT: Kessinger, 2006], 167).
39. Sandra E. Hollimon, "Archaeology of the *'Aqi*: Gender and Sexuality in Prehistoric Chumash Society," in *Archaeologies of Sexuality*, ed. Robert Schmidt and Barbara Voss (New York: Routledge, 2000), 193.
40. Holliman, "Archaeology of the *'Aqi*," 192.
41. Holliman, "Archaeology of the *'Aqi*," 182.
42. Palóu, *Palóu's Life of Fray Junipero Serra*, 193.
43. Palóu, *Palóu's Life of Fray Junipero Serra*, 445.
44. Linda B. King, *The Medea Creek Cemetery (CA-LAN-243): An Investigation of Social Organization from Mortuary Practices*, UCLA Archaeological Survey Annual Report, no. 11 (Los Angeles: University of California Press, 1969), 47. I call Solares a "con-

sultant" here rather than use the traditional ethnological term *informant* out of respect for all Native peoples who have retained and chosen to share their cultural knowledge and expertise; my purpose is to acknowledge that Indigenous knowledge puts Native consultants on an equal intellectual level with scientists and academics.

45. Hollimon suggests that "daughters" of male-bodied *'aqi* were probably fictive kinships (such as adoption) formed with other members of the same guild or role or premenopausal children of women who took up the *'aqi* role late in life, and when colonization had created a shortage in the usual mortuary profession (Holliman, "Archaeology of the *'Aqi*," 185).
46. For information about the life expectancy of mission-born children, see Robert H. Jackson and Edward Castillo, *Indians, Franciscans, and Spanish Colonization: The Impact of the Mission System on California Indians* (Albuquerque: University of New Mexico Press, 1995), 53–56.
47. Walter L. Williams, "The Abominable Sin: The Spanish Campaign against 'Sodomy,' and the Results in Modern Latin America," in *The Spirit and the Flesh* (Boston: Beacon, 1992), 129.
48. Williams, "Abominable Sin," 130.
49. Williams, "Abominable Sin," 129.
50. For a fascinating study of Librado's history, see John Johnson, "The Trail to Fernando," *Journal of California and Great Basin Anthropology* 4 (1982): 132–38.
51. Fernando Librado, *Breath of the Sun: Life in Early California as Told by a Chumash Indian, Fernando Librado, to John P. Harringon*, ed. Travis Hudson (Banning, CA: Malki Museum Press, 1979).
52. Librado, *Breath of the Sun*, 33.
53. Librado, *Breath of the Sun*, 33.
54. See King, *Medea Creek Cemetery*, 47. Hollimon says that "her identification may have been an intended insult based on personal animosity" ("Archaeology of the *'Aqi*," 192).
55. Mills, *Papers of John Peabody Harrington*, 73:282 B.
56. Multiple translations of *joto* exist: for example, *faggot*, *queer*, *homosexual*, *pansy*. After consultation with colleagues, I believe I have chosen the word most likely to carry Isabel's meaning.
57. Isabel's older half-brother Jacinto Meadows (San Carlos, Baptism #04279), a son from her mother's first marriage to Quirino (San Carlos, Baptism #02993X), married my great-great-great-grandmother Sacramento Cantua (San Carlos, Baptism #04202). As Jacinto's baptismal information lists no surname, it seems that Jacinto adopted the Meadows name when his mother married Englishman James Meadows in 1842. Sacramento and Jacinto, both previously married, had no children together; hence, this is a familial, not blood, relationship.
58. *ECPPD*, San Carlos, Baptism #04700.

59. "Real" was a name conferred by common community use on Estefana and her sisters, probably because of their association with Padre Jose Real, a well-known womanizer; his women were known as the "Real women" and mothers of the "Real children." Even their father, Fructoso Real Cholom, acquired and used the Real name.
60. Steven Hackel, *Children of Coyote, Missionaries of Saint Francis: Indian-Spanish Relations in Colonial California, 1769–1850* (Chapel Hill: University of North Carolina Press, 2005), 388.
61. Hackel, *Children of Coyote*, 401.
62. Estefana's "muchos maridos"—her many husbands and/or men—look quite different from this perspective. Rather than being a *bad Indian woman* who slept around a lot, a sinner, or a lewd and loose woman, as the priests saw her, Estefana was actually practicing a very California Indian form of resistance and cultural preservation: maintaining her right to choose her sexual partners and bear children by the men she preferred regardless of Catholic marriage ceremony. Hurtado notes that Father Serra recognized early on that "common Indian sexual behavior amounted to serious sins that merited the friar's solemn condemnation" (Albert Hurtado, *Intimate Frontiers: Sex, Gender, and Culture in Old California* [Albuquerque: University of New Mexico Press, 1999], 6). Worst of all, of course, were the *joyas*, but normative men and women were a close second, practicing premarital sex, polygamy for higher-status men, serial monogamy for everyone else (in which marriage and divorce were both accomplished quickly and without "legal" or spiritual repercussions), the taking of lovers while married to someone else (which had its own risks and costs but was not forbidden), the restrictions preventing sexual relations for up to two years after childbirth or a day or two before hunting, acceptance of masturbation, birth control, and so on. It seems to me that Estefana was resisting the countless rules, punishments, pressures, and basic colonization methods of the Spaniards via her woman's body. Therefore it is possible she would have had fewer issues with her son's status as a *joto* than many and may have even seen his sexual orientation as Victor's own form of resistance and self-fulfillment.
63. This field note, in transcription, was generously shared with me by Philip Laverty. It reads in full: "76:37B [Iz. May 36; Victor Acedo, el cosinero de Esnáyvli [Snively], used to put up aulones in frascos (mason jars); mussels, clams]."
64. L. Frank Manriquez, *Acorn Soup* (Berkeley, CA: Heyday, 1999); L. Frank Manriquez and Kim Hogeland, eds., *First Families: A Photographic History of California Indians* (Berkeley, CA: Heyday, 2007).
65. L. Frank Manriquez, "There Are Other Ways of Getting Tradition," *Museum Anthropology* 24, nos. 2/3 (2001): 41.
66. Manriquez, "There Are Other Ways of Getting Tradition," 41; emphasis added.
67. Manriquez, "There Are Other Ways of Getting Tradition," 42.
68. Manriquez, "There Are Other Ways of Getting Tradition," 42.

69. Manriquez, "There Are Other Ways of Getting Tradition," 43.
70. L. Frank Manriquez, e-mail message to author, December 21, 2008.
71. Janice Gould, "American Indian Women's Poetry: Strategies of Rage and Hope," *SIGNS: Journal of Women in Culture and Society* 20 (1995): 799. Gould's essay discusses poetry by eight Native women (Paula Gunn Allen, Luci Tapahonso, Janice Gould, Wendy Rose, Chrystos, Louise Erdrich, Linda Hogan, and Joy Harjo), four of whom have primary relationships with women as life partners, including Gould herself. I find this significant in light of the "exhumation" Gould speaks of; she also calls this "our imperative . . . to resurrect, sometimes hundreds of years after the fact, a history that has been buried, lost, or ignored" (799). As Gould's work points out, the liminal states of birth and death are strangely connected twins, whose mediators are often Two-Spirit people and women.
72. Other indigenous peoples around the world attributed special powers and rights to Two-Spirits within their tribes; although they were not always the mediators between life and death, similar patterns may be found. Because of the limitations of this essay, I leave that to future scholars and seekers.
73. Linda Hogan, *The Woman Who Watches Over the World: A Native Memoir* (New York: Norton, 2001), 59.
74. Jacobs, Thomas, and Lang, *Two-Spirit People*, 3.

POETRY AND SEXUALITY

Running Twin Rails

James Thomas Stevens (Akwesasne Mohawk)

I sit here at my window, looking out on the train tracks that run along the shore of Lake Erie. I've been considering the intersection, the overlap, and interstice of ethnicity and sexuality. Suddenly the house begins to shake; two trains approach from opposite directions, one heading to Buffalo and points east and one to Chicago and the wide Midwest. The sound is deafening for seemingly endless minutes, blocking out all else. For a time the trains share space side by side. This is the time my poetry occurs, when ethnicity and sexuality share these thunderous moments.

I look back some twenty years now and realize I have always been writing the same warning. I have been writing to warn myself against colonization, sometimes reminding myself not to become a victim of it, but more often reminding myself not to become the colonizer. I speak of colonization in terms of identity and relationships.

From my undergraduate days at the Institute of American Indian Arts (IAIA), I have been made to realize the identity that Anglo-America has constructed for Indian peoples. Santa Fe, New Mexico, is ripe with stereotypes; tourism thrives on it. Many times we, the students of IAIA, were asked to read during Indian Market season. We showed up in our T-shirts and jeans, inspired by the assigned writings of Galway Kinnell, Mei-mei Berssenbrugge, C. D. Wright, or Michael Palmer, and we read next to local Indian poets, who had learned to appear in buckskin for their readings. One poet, I remember, brought a drum to keep beat as he read. How quickly the audience dispersed when the drum ended, when they ceased to hear mention of Coyote or Raven, of how English was "like a razor slicing the indigenous tongue." We were simply Indians in T-shirts reading about who we are today.

Later that summer, while attending a very liberal poetics program in Colorado, I was asked to perform a blessing ceremony on July 4 at an "Interdepen-

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dence Day" celebration. When I declined, explaining that I was not an elder or an appropriate person to lead a blessing ceremony, I was handed a smudge-stick and told, "Just acknowledge the four directions and Mother Earth and Father Sky." Still, I declined, despite the kind instruction. I did not bother to explain the Ohén:ton Karihwatéhkwen, the Thanksgiving Address, or, literally, *The Words Before All Else*, or that once they found an appropriate speaker, it would be a good half hour of recital. While now I can look at this situation as comical, at the time I was angered by yet another affirmation of this identity that had been constructed for me. I spent the rest of the summer writing German-inspired poetry, missing my then partner, an Austrian national. How they had wanted a genuine Twin-Spirit to lead them in celebration and prayer.

Speaking of constructed identities — enter the Twin-Spirit. Since the mid-1970s, and the founding of GAI (Gay American Indians), those interested in sociosexual and anthropological/cultural research have taken up terms such as *berdache*, *Winkte*, *double-sex*, *Nadle*, *Hwame*, and *Twin-Spirit*. I will not go into the origins of these words, as they are well explored in countless other texts, such as Walter Williams's *The Spirit and the Flesh* and Will Roscoe's *Living the Spirit*, among others.[1]

Twin-Spirit is too often used as a pan-Indian term for queer-identified Native peoples, even where no such terms existed before. It glosses over the many autonomous views that individual nations held concerning their queer members. The above list of terms, one will find, comes from the nations of the west, where much later contact and missionizing occurred than in the east. There was study and record of the roles of queer peoples being done at that point in history. The nations of the east, having had such early contact with Christian Europeans and missionaries, suffered such great cultural losses that many are lucky to have maintained a record of their languages, let alone an understanding of the complex roles their queer members may have held, *if* such roles did exist among these tribes.

In my research of my own nation, I can find no documentation that this role of Twin-Spirit, for lack of a better term, ever existed as a sacred position. History has been unkind here, in the five hundred years of colonization. Queer Haudenosaunee poets have been identifying with their western counterparts since the 1970s and 1980s, when the poets Maurice Kenny and Beth Brant identified with the Winkte and a lesbian trickster Coyote. When elders are asked about the role of queer people, they speak only of tolerance and silence, not unlike that which I found in existence in small non-Native rural communities of Kansas when I lived in the Midwest.

It is impossible for me, personally, to identify with a role that has been recently constructed and to write as if I had lived that life, even if there did exist such a traditional role among Mohawks. Many Twin-Spirit writers find it necessary to adopt the first-person historical voice of the Winkte, Nadle, Hwame, regardless of tribal affiliation. I aim to honor the past but to write in the present. I have not suffered the oppression that my forefathers and foremothers, or my queer historical brothers and sisters, suffered. I can give voice to history and speak to what has happened, but I cannot speak as though it has happened to me. I must acknowledge that as a gay Indian academic today, I am in a place of privilege. Editors, publishers, and conference organizers seek out Native academics to read on panels, make presentations, and publish. I cannot write about how the White Man stripped my land out from under my feet while Mother Earth wept and screamed. That is not my reality. I will not colonize myself to become the angry, yet romantic, being-of-the-forest that the majority of non-Native readers still prefer, or the sacred queer entity.

I think of a quotation from an interview with Sherman Alexie, a Spokane/Coeur d'Alene author, with whom I disagree as often as I agree. In a 1999 interview in *Poets & Writers Magazine*, he stated, "I want us to write books about the way we live. When I see words like *the Creator*, *Father Sky*, *Mother Earth*, *Four Leggeds,* I almost feel like we are colonizing ourselves. These words, this is how we're supposed to talk—what it means to be Indian according to white America. But it's not who we really are; it's not what it means to be Navajo or Spokane or Coeur d'Alene."[2]

I would add to this that it is not who we really are as queer Native men and women. I cannot subscribe to the separatist notion that we as queer Natives are somehow more valid than other queer peoples because of a once sacred status, whether real or constructed. We are Ongwehonwe (Real People), and that is sacred enough.

The second colonization I mentioned in the opening of this essay is that of the *other* in a relationship. After spending two years at an all-Native arts college and reading and researching mainly Native issues, I went off to graduate school in Providence, Rhode Island. There, I would work for a brief time with the Narragansett tribal community on an after-school antidrug program. It was because of my work with Narragansett people that I began reading Roger Williams's *Key into the Language of America*. This lexicon of Narragansett language and customs became the basis for my first book, *Tokinish*, meaning "Wake them." I had been considering the effects of the English naming what was already named—"Asqútasquash,

their Vine aples, which the English *from them call* Squashes." I began to consider that every person, every partner, already has a name, a history, before contact. People are individual worlds, individual planets. When we speak of relationships in their early stages, we often hear, "That was back when we/they were just *discovering* each other." But did that discovery require a renaming of what already existed?

I have learned to say each word with caution,
your body or anybody,
I will not call mine.
Wuhock. The body.
Nohock: cohock. My body, your body.
The first to come
found baskets of corn
and brought them away without payment.
To know the feel and taste of a thing
as if knowing implies its ownership.

When if both employ the same word, *mine*,
familiarity with language blinds the user to contradiction,
action leads to reaction and consequence.

The next were met and assailed with arrows.[3]

The above section of *Tokinish* often comes back to haunt me in relationships. How quickly the other becomes *my* partner, *my* husband, *my* wife. Over and over, I see in my research that the point of exploration is the right to naming/claiming. When we take what is not ours (another's individuality), there are repercussions, "The next were met and assailed with arrows." It is human nature in relationships to colonize, regardless of gender. I most often write in the second person, hoping that this will function doubly to open the *you* up to any potential reader and to keep the reader from focusing too much on the specific *who* of whom I write. It is really only the descriptions of the male body in my work that designate it as queer. In that way, I do not see my sexuality as the ruling theme of my work.

In the series of poems titled *The Mutual Life*, a rewrite of an insurance book on accidents, emergencies, and illnesses, this theme of discovery/discoverer appears again. I was born in Niagara Falls, New York, and grew up hearing its

lore. I remember going on a field trip to the Niagara Power Project as a child and seeing the Thomas Hart Benton mural of Father Hennepin "discovering" Niagara Falls. There are Iroquois people in the painting (who had obviously led him there), but the teacher told us that Hennepin had discovered it. Small details like this come back years later in my writing. The following is from the section of *The Mutual Life* titled "Burns and Scalds."

> When clothing catches fire in the park or dew
> of nocturnal parking above the falls (I'd
> seen them a thousand times but
> when he saw them, they were discovered).
> Beneath the windshield, his fingers fanned out
> above the bush.
> The burn, superficial
> as far as depth is concerned,
> but his white hand hovering considered
> more serious than a burn, smaller, deeper
> but more complete.[4]

Here, those two trains are running side by side again, ethnicity and sexuality, and the walls of poetic memory begin to tremble.

My partner and I wrote a short manuscript last year. The poems have been published as a collaboration to show the dialogue that naturally happens between the work of two poets sharing a life and a home. The book is titled *Of Kingdoms & Kangaroo* and is published by First Intensity Press. While writing independently of each other, we were surprised at first by how many overlaps there were in our research. My half of the book, subtitled "Stir," is about the history of fruits and animals and objects from the New World that "caused a stir" when exhibited in the Old World, much like new love causes a stir. My partner was working on a series of poems on taxonomy, the effect of the namer on the namee. The conversation that occurs between the two series is obvious; it is one of Empire and the other. "Kingdoms" was chosen for its taxonomic relevance and "kangaroo" for its exotic otherness. I wrote the following canoe poem after reading about the dugout canoes unearthed in the British Isles. The British were surprised at their simple beauty, as Columbus had been in 1492, forgetting that they, themselves, had constructed these boats before being blinded by their own technology.

Burn Out

They came to the ship in small canoes, made out of the trunk of tree like
a long boat, and all of one piece and wonderfully worked. — Columbus

Amazed by the built thing
and the builders we've become.

In awe of our own mathematics,
we fashion the other
for smooth
sailing, safe passage.

Then awed again
by what we've forgotten, known once, felt once as simplicity.

There, in the mire of origin appearing.
You unearth the one piece, the self-worked
singular.

A log along the sluice — and natural
you move,
regardless of measure and math.

Me, surprised by
the simplicity
and solidarity of your craft.

All pithy burn-out, cleared by your own adze.

Chisel, gouge, wedge . . . how you work your way in.[5]

Once again, my self-warning is present. Do not "fashion the other" to suit your own need. Let the simplicity of his/her design awe you. It is not an easy thing to remember, but the history of exploration and colonization on this continent is a constant reminder. I am thankful for the knowledge of my Haudenosaunee ancestors, and I learn from it everyday. History is considered more of a lake than a river by Native peoples. Everything that has happened is there swirling around; it has not flowed past and been forgotten. I am a queer Native writer of today. I will con-

tinue to look to the past for guidance, but not for the anachronistic signifiers of a European constructed identity.

Notes

1. Walter Williams, *The Spirit and the Flesh: Sexual Diversity in American Indian Culture* (Boston: Beacon, 1986); Will Roscoe, ed., *Living the Spirit: A Gay American Indian Anthology* (New York: St. Martin's, 1988).
2. Susan Berry Brill de Ramirez, "Fancy Dancer: A Profile of Sherman Alexie," *Poets & Writers*, January–February 1999, 54–59.
3. James Thomas Stevens, *Tokinish* (Staten Island, NY: First Intensity/Toronto: Shuffaloff, 1994).
4. James Thomas Stevens, *The Mutual Life* (Alexandria, VA: Plan B, 2006).
5. James Thomas Stevens, "Burn Out," in *Of Kingdoms & Kangaroo*, by James Thomas Stevens and Nicolas A. Destino (Lawrence, KS: First Intensity, 2008).

Twin-Spirited Woman

Sts'iyóye smestíyexw slhá:li

SAYLESH WESLEY

Abstract Coast Salish people, particularly the Stó:lõ of the lower Fraser Valley, have lost much of their language, histories, and teachings as a result of colonization. One such important identity that has been forgotten or erased is the two-spirited role. The author wishes to revitalize the cultural roles of transgendered/two-spirit people within the Coast Salish territory and ways in which they historically contributed to their societies prior to colonization. Traditionally, the Stó:lõ are matriarchal and matrilineal, and only grandmothers can create any new laws for their descendants. Thus given the vital role played by the author's grandmother in her process, this essay is a long-overdue proposal to all living grandmothers not only to stand by and accept their two-spirited grandchildren but to call for a celebration of their coming out. This visionary work serves to inspire future generations of Stó:lõ to fully embrace *all* members of their community, especially two-spirits. The first *Sts'iyóye Smestíyexw Slhá:li*, or *Twin-Spirited Woman,* as this essay is about, offers an example to this sacred work.
Keywords two-spirit; transgender; gender; restoration; reconciliation; indigenous; twin-spirited woman; storytelling; queer; LGBTQ

> To decolonize our sexualities and move towards a Sovereign Erotic, we must unmask the specters of conquistadors, priests, and politicians that have invaded our spirits and psyches, insist they vacate, and begin tending the open wounds colonization leaves in our flesh. . . . A Sovereign Erotic is a return to and/or continuance of the complex realities of gender and sexuality that are ever-present in both the human and more-than-human world, but erased and hidden by colonial cultures.
> —Qwo-li Driskill, "Stolen from Our Bodies: First Nations Two-Spirits/Queers and the Journey to a Sovereign Erotic"

The Stó:lõ people of British Columbia's lower Fraser Valley have ancient stories, or *Sx̱wõx̱wiyám,* to turn to when seeking traditional knowledge or teachings; however, the vast majority of these stories have been forgotten due to the colonial effects of assimilation. As an mtf transgendered Stó:lõ citizen and PhD student in

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gender, sexuality, and women's studies, I have made every effort to locate any precontact stories of the Stó:lõ two-spirits, but to no avail so far. In this essay, I endeavor to re-member the past differently, marshal new traditions and language together in ways that create a new vision of the future. For the Coast Salish territory, I wish to illustrate how we historically contributed to our society prior to colonization. My grandmother has overcome the colonized homophobia imposed upon her enough to coin a title for me from our Halq'eméylem language. Given it has been her acceptance I wanted most of all, I would like to propose to all living Stó:lõ grandmothers, the *Sisele*, that as the traditional makers of all laws on our matriarchal lands, they support this long-overdue initiative to reclaim lost identities erased through Western gen[der]ocidal action. The restoration of lost identities back to the Stó:lõ nation would further reestablish the identities deleted by Western gen[der]ocidal actions. This essay is a movement toward personal healing and internal reconciliation for the Stó:lõ as a whole. I feel that what my grandmother has done for me is a perfect example for this.

As Canada currently seeks to reconcile[1] with its indigenous people against whom it practiced genocide, in my case, as an mtf person who has lost access to traditional knowledge about people like me, I feel the need for this country to atone for its gendercide. While this reconciliation is important, it is more crucial that indigenous people reconcile among themselves first.

Therefore, this essay is intended not only to regenerate the lost teachings and stories of all Stó:lõ two-spirits but also to offer a new beginning toward a new realization and acceptance for all indigenous people. As a member of the Stó:lõ nation, I have inquired with elders and consulted all published works for a Halq'eméylem translation, and I have found that *two-spirit* is not yet a part of the Halq'eméylem language, nor can it be found in the English-to-Halq'eméylem dictionary (First Voices 2013a). Upon my request, my grandmother has been the first to conjure a Halq'eméylem term for my transgendered identity. In the recounting of my grandmother's work, I follow the "story-work" methodology of Stó:lõ scholar Jo-ann Archibald, articulated in her *Indigenous Storywork* (2008), whereby personal experience is considered in relation to stories of the elders, to craft an analysis that takes indigenous knowledge seriously. This is my story and analysis woven together.

First, I share some of my history in order to clarify how I carry both Stó:lõ and Tsimshian bloodlines. Approximately three years before I was born, my maternal grandmother moved from the Fraser Valley, her traditional Stó:lõ territory situated in Southwest British Columbia, Canada.[2] During this time, she was still married to my late biological maternal grandfather, who was also Coast Salish from the Musqueam nation located in Vancouver's Point Grey area. Their marriage had dwindled at this point, and they agreed to separate and divorce. She was federally contracted at the time to travel around the province to promote and

help preserve all traditional fine arts that many nations were quickly losing. On one of these excursions, she landed in Terrace, a small north coast town of British Columbia. This is when she met and eventually married my late step-grandfather who was a resident of Terrace and a member of the Tsimshian nation. The Tsimshian territory spreads vastly across the Pacific Northwest Coast and geographically includes Terrace and Prince Rupert, British Columbia, as well as southern parts of Alaska. Her plan was to send for her children from her previous marriage once she was settled, and my mother, a teen at the time, was one of them. Before my grandmother had anticipated, my mother showed up on the Greyhound bus from Chilliwack, because she missed her mother too much to wait any longer. It was not long before she met my father, who was not only Tsimshian but also my step-grandfather's maternal nephew. Thus this new grandfather of mine was also my great-uncle by blood.

My parents eventually married and I was born on October 28, 1972, at the Terrace Mills Memorial Hospital. The time of my birth was 10:30 p.m. My mother almost bled to death after an extremely difficult three-hour labor, and she remained as a patient for another week to recover from a life-saving postdelivery surgery. As I was jaundiced and three weeks premature, I had to be incubated in hospital for another two weeks. This birth resulted in two quite profoundly different stories, one from my maternal (Stó:lõ) grandmother and one from my father. He tells that the night I was born, the northern lights danced across the clear night sky more brightly than he had ever witnessed, and they apparently lasted throughout the night. To him, this was a spiritual sign. What is more significant is that he was not a spiritual man. He took the northern lights as an omen that his first-born son was going to be special—which I feel I have proved true. In those days, and in a town like Terrace, a son had great expectations placed on him to become a "man of men." Terrace was, and still is, a very redneck little city; "Indians" must overcompensate for anything and everything they do. The racist attitudes toward the indigenous populations in this rural community have changed little over the years that I have visited, so I understand the double work any "Indian" has to do to fit in. I cannot imagine what my father envisioned for me as his potential "hero" of a son, but he responded to the northern lights with hope that I would do him proud and with a belief that something divine acknowledged his vision for my future. Though these hopes for me weren't necessarily achieved as he imagined they would be, I must share that he is now absolutely proud of who I have become.

My grandmother's story is different. She first told it to me when I was about thirteen years old. She shared that my mother had almost bled to death as a result of my delivery. She also explained that such a difficult birth foretells a difficult life for such a child (according to her elders). As both the Stó:lõ and

Tsimshian are matrilineal, it goes without saying that I am to identify as Stó:lõ even though my blood is a blend of the two, and to this day, she maintains political jurisdiction over me. Perhaps this is why she felt she had the right to share what she did, as hurtful as it might seem. Throughout the remainder of my teenage years, it seemed that what she had foretold in regard to how tumultuous my life would become had come true. I was nearing the end of puberty. I knew that I was not the *man* that I was expected to be. Every night I prayed that a supernatural force would transform me into a "normal boy." Over the course of my lifetime and despite my family's dismay over my apparent lack of masculinity, my grandmother did love me and played a critical role in bringing me up. I spent many weekends throughout my childhood under her loving care, and there are no sad stories I can tell, except for the time she told her version of my birth. I never again felt her angst toward me until I came out as transgender. In fact, when I was a child, she would allow me to play with dolls and dress up like a bride, and she would have tea parties with me when no one else would. It hurt her to see how my family would shame me to the soul for indicating in any way that I was not supposed to be a boy. Ultimately, I loved my grandmother from the day of my memories and still do today.

I was also close to my maternal auntie, almost ten years my senior and my grandmother's youngest child. She was genderqueer like me, except the polar opposite. She, in her own crass words, "was supposed to have a pecker." By the time I was courageous enough to come out, my aunt had yet to do so. My entire family knew that she was, as everyone thought, a "lesbian," even though she later confessed to also being "trans" like me. Her story is even more painful than mine, and I will not delve into it here. When I was twenty-three, I came out to her and to the rest of my family. I started off identifying as gay, since it seemed less scary than to say I was actually a woman; however, I announced my true trans identity over the phone to my aunt. She was incarcerated at the time for dealing drugs and prostitution. She warned me: "Don't tell anyone! I don't want you to go through what I did!" She was the first in our extended family to break the ground for homophobia internally, as one might well imagine, and she faced far worse consequences for being gay than I would. Against her plea, I went ahead with revealing the truth about my identity. I was willing to be cast out from my family, but I hoped for at least some acceptance. Otherwise, I would have had to find a way to end my life for the mistake that I felt I was. Over the next little while, my aunt was released from prison, and we became even closer. My seemingly smoother journey of coming out compared to hers years earlier gave her the courage to do the same.

All this time, my grandmother had remained as diplomatically mute as possible, I think for the sake of my aunt and me. In 1997, about three years after I

told our family I was gay, I phoned her: to tell her that I was transgendered and ask if she would host a "coming out" feast for us. She said she could not fathom how I came to be this deviant, and how I thought I should be blessed with such a celebration. Perhaps in her mind, I should have grown out of my feminine phase. Needless to say, the conversation ended with her hanging up the phone and me in tears. In 1999, my aunt passed away from a heroin overdose. As keen as she was to continue negotiating her queer identity, she did not survive her own demons. For my grandmother, this was a loss from which she never fully recovered. I have since prayed these words to her countless times:

> I invite you Grandmother, to shape-shift your own thought process and open your mind a bit more and see that I am still, essentially, the grandchild with whom you shared a reciprocal loving relationship. I am not asking you to change who you are in principle, but rather, that you attempt to enhance your ability to be more at peace with diversity given your late daughter's fate. Perhaps I can take this opportunity to point out metaphorically that you too are akin to being two-spirited. In your stories of your cultural immersion combined with your experience as a converted Catholic, and how you now dwell (to some degree) in both faiths, you too share your own duality. Albeit, it isn't about your gender or sexuality, but in your own words "To Thine Own Self Be True" you justify your biculturalism and I beg that you accept my two-spirit identity all the same. I am, after all, a descendant of your rich bloodline, so there must be something worthy I can offer. The creative juices within you that produce your baskets flow through me too. I am taking what you taught me and now weave my own stories. My baskets are not literal, but they are certainly coming out to be "masterpieces" that would be finished perfectly with your loving pride.

My grandmother is a world-renowned basket weaver who not only continues to pass on her mastery of Stó:lõ styles of weaving but single-handedly revived the lost Tsimshian cedar bark and spruce root weaving and taught it back to them. I have since rooted in Chilliwack because my parents also divorced after fifteen years of marriage. My mother took my sister and me back to her hometown, and here I stay. In April 2012, my grandmother's second husband tragically passed away. This event prompted her to return to Chilliwack, since it is where the bulk of her children and their families live. This was a difficult transition for her, given that she is at this point in her 80s and that she has lived in Terrace for nearly forty years. In the last two years since she returned, my relationship with her has been entirely reshaped. As well, I am now her primary caregiver. Our closeness has given me the opportunity to become her weaving apprentice. I have learned to gather and prepare strips of cedar and roots for weaving; sitting with her, I have

learned basic techniques for making baskets and shawls. And as she shares with me her most cherished indigenous knowledge, I also share with her my insights about being two-spirited and how I have learned about this concept in university. Though this is uncharted territory for her, her receptiveness has clearly developed. She places absolute priority on higher education for her children and grandchildren. She feels as though if she had had the opportunity to get a postsecondary education that she would have become a scientist. Instead, she only received a grade six education in an Indian residential school. Though she still wrestles with the idea that I am now a woman, she respects my academic achievements and my natural flare for weaving. Given that I have revealed the emotionally awkward aspects of our relationship here, I want to emphasize that it is the progress we have made, not the pitfalls, that I wish to spotlight. My grandmother's instinctual *trans*phobia is not her doing. This is the "good work" of the Catholic Church and the rest of the colonial project; but as mentioned, our budding friendship also works to reprogram her worldview.

While my grandmother speaks English, learned at residential school, her first language is Halq'eméylem (First Voices 2013b). And recently I asked if she could meditate and conjure a title for me as a male-to-female in our traditional language. As previously mentioned, no such thing exists in recorded history. I had already shared with her what I have learned in university about two-spirited identities and so she took some time to think about it. Eventually, she came up with a Stó:lõ two-spirited identity for me in our mother tongue—an exchange that remains surreal and miraculous. She coined the term *Sts'iyóye smestíyexw slhá:li*. When she handed the piece of paper to me with this title on it, she included the English translation, "Twin-Spirited Woman," and explained that I could interpret it as "two-spirited woman," or "twin-soul woman," or "same spirit as a woman." Ultimately, she left it open for me to decide how I would like to interpret it, given that our language is much more fluid than English. As a fluent speaker of Halq'eméylem, she has taught me that our words were able to wield various contexts and concepts depending on the discussion. Therefore, she gave me permission to decipher for myself how *Sts'iyóye smestíyexw* translates. This was truly a "HALLELUJAH!" moment. I then asked her if it would have made sense to introduce my late aunt as *Sts'iyóye Smestíyexw Swí:qe*, or "Twin-Spirited Man," and her response was something to the effect of "I guess if she would have wanted to."

As I state in the opening paragraphs of this essay, the Stó:lõ have lost much of their Halq'eméylem language, histories, and teachings to colonization. As a result, any such focus on gender transition challenges many perspectives, particularly for gender-normative kin who must adjust their worldview once a family member discloses that she or he will change gender. I share this because I have observed how those who loved me were tremendously bewildered by my dramatic

transition and how, fifteen years later, this shift is not yet finished for everyone. For the most part, my family and community members have come a long way. Many did not know how to perceive me in a literal sense; some still do not. I remain troubling and/or invisible in their presence. Most have come to a frame of mind where *I am* who *I am*. Or, "That's just the way she is," with no agenda or bias, just matter-of-fact acceptance. In other words, they have achieved true contentment with my identity and in some cases have found even more love and respect for me as a result of my transformation, given how they have witnessed my life-and-death struggle with it.

This leads to the complexities of the term *two-spirit* and how perplexing it is for everyone's psyche to negotiate. For instance, any given cisgender Stó:lõ person who identifies as a contemporary two-spirit may not feel like a "twin-spirited woman" (i.e., my aforementioned late aunt might have adopted "twin-spirited man"). It only makes sense for them to choose how they wish to identify in Halq'eméylem as I have. In the introduction to the anthology *Queer Indigenous Studies* (Driskill et al. 2011), the authors suggest that the continued use of the prototype *two-spirit* is problematic: like *lesbian*, *gay*, *transgender*, and other terms, *two-spirit* "inevitably fails to represent the complexities of Indigenous constructions of sexual and gender diversity, both historically and as they are used in the present" (3). However, they also contend that two-spirit is a starting point toward the decolonization of queer indigenous identity in general. This admittedly implies that all cisgender queer people have both male and female spirits; it seems important to keep two-spirit open for such individuals to self-identify as to whether or not they understand themselves to have "two" spirits (3). Moreover, I tell my story in order to isolate my specific "queer" Stó:lõ identity that makes space for other transfolk of my nation and subsequently for all queer indigenous people who remain unidentified and/or displaced from their home territory(s). In other words, I happily share the newly conceived *Sts'iyóye smestíyexw* status with any who feel it fits, though it is only an invitation. As each nonindigenous person who fits under the evolving LGBTQ spectrum has the right to self-determine where they fit and/or how they identify, it makes sense that the same goes for the Stó:lõ "LGBTQ." Should any of those who do not identify as transgender wish to quest for a customized Halq'eméylem title as I have, then all the power to them.

Qwo-Li Driskill and colleagues also tell me to "talk back" to Western scholarship and compile and publish my own story: to claim first-voice authority as a contribution to the academic mainstream. Their message encourages me to bring what remains still in the proverbial closet—the lost and stolen history(s) that, until recently, remained the work of white scholars to excavate (10). However, I am grateful to some of these scholars who have engaged in this work, especially for any recent work that attempts to capture accurate and articulate

accounts with clear integrity (Morgensen 2011; Rifkin 2012). However, I am fortunate to be able to bring a firsthand, lived experience to enrich this budding field. In this sense, I make every attempt to "link arms together" with other two-spirited theorists and philosophers to continue imagining what our scholarship should look like (Rifkin 2012: 18).

As previously mentioned, the term *two-spirit* is not in the English-to-Halq'eméylem dictionary. Thus it is necessary to work to reestablish the best or most appropriate "fit" to name this term and determine how it may serve as an addition to the Stó:lõ gender binary.[3] Coast Salish nations traditionally hold ceremonial gatherings to "stand-up" ones who are receiving such names or honors,[4] and as our systems of passing knowledge and title down are matrilineal, only the eldest woman can legitimize this sort of work. I would thus require my grandmother to endorse this vision and support the endeavor to gift these roles back to the Stó:lõ. I have truly become not only her granddaughter, but also her friend and teacher who helps to reshape her worldview, which includes my queer identity. She now understands that the "grandson" I once was remains very much alive through my female eyes. For a woman of her age and stature, this is no small feat.[5] The Catholic Church and the Canadian Indian Residential School system (which only closed in 1996[6]) have thoroughly accomplished their assimilationist goals in her. Coincidentally, it was the grandmother who raised the children prior to colonization. So, in effect, my grandmother and I have fallen back to ancestral ways of child rearing. I realize I am not a child, according to Western ideology, but I place myself in this stage given that I am "first-born" as *Sts'iyóye smestíyexw slhá:li*, and my legacy for the Stó:lõ has begun.

As a philosopher and dreamer, I have come to know that fantasies of how the past could have been different are senseless, but I *do* know that there are miracles yet to unfold and that there is a possibility that my writing of this essay may very well become one. With Archibald's notion of "storywork," which gives academic freedom to scholars to cite indigenous elders and the stories they share as legitimate sources, I am secure in the fact that my grandmother has full authority to contribute to my work as she has in this essay. Storywork also has "the power to educate and heal the heart, mind, body and spirit," which is the absolute goal I have attempted to harness since the onset of my transition through the writing of this essay (Archibald 2008: back cover). Also, my work aims not only to "share back" what I have come to know but to support the change of the Coast Salish cultural landscape toward a setting that continues to honor and fulfill whatever remains necessary to please our Ancestors and to include *Sts'iyóye smestíyexw slhá:li*—while continuing to cultivate what "culture" is, how it will continue to evolve and adapt to our ever-changing world, and to "gift back" (143) fully our traditional matriarchal systems of governance and title. In order to

reestablish such two-spirit roles, it is crucial that matriarchal systems replace the current Indian Act elected-chief system of governance,[7] given the grandmothers' role of making any new "laws" and/or "declarations" that hypothetically include the reclamation of *Sts'iyóye smestíyexw slhá:li*. I am certain the Ancestors have been wondering where we, as two-spirits, have been on "This Side."[8]

Current indigenous scholars such as Archibald and Driskill have contributed the use of indigenous words, names, and concepts. Many of these warriors may not have many more than my forty years, and though not all of these warriors are Stó:lõ, I instinctively follow my teachings as a *xwélmexw te Semá:th* (Sumas Nation member) and regard them as elders, meaning that I am respectful of their knowledge and courage to speak what is in their hearts. In one of my conversations with my grandmother, she mentioned how she still notices my former "male" self peeking through my female identity. In a way, it is as though I have developed two personalities: the beloved [but vulnerable] male child who finds refuge in the arms of the protective and much more competent big sister. My grandmother explained to me in that conversation she misses her grandson but that she has come to really respect the woman I have become. It does, however, make her happy that "he" comes out and will say something funny and/or endearing in a way that only he could. As "he," I was much more emotional and extreme, with melodramatic outbursts and passion. I was not able to function well in the world, but my effect on a crowd was undoubtedly appreciated, given my alleged sweet nature. As "she," I am much more focused, serious, and even ambitious. I am well aware that it is "she" who has taken "us" this far with regard to education: I am now in a PhD program. While he remains very much a child, she has become a fully functioning adult.

I am fully committed to meeting the need to "stand-up" all roles (restorer, empowerer, healer) for future and ongoing battles toward the seemingly infinite uphill climbs toward liberation, self-determination, entitlement, title, restoration, privilege, empowerment, and decolonization. As I currently live and work on my own traditional Coast Salish territory, then perhaps the Halq'eméylem terms *x̱éyt* (transform it) or *méa:ylexw* (revive; come back to life) would serve more appropriately and inclusively to the aforementioned ideologies. As such, the articulation process for this essay feels intrinsically off, as if I am attempting to fight fire with fire—though this may prove to be ironically effective in other instances. Speaking in my own Halq'eméylem language would make for as close to perfect a way as possible to honor any who have been invisibilized (i.e., Stó:lõ women and *Sts'iyóye smestíyexw slhá:li*). It would then seem as though I would be more effectively fighting fire with water.

In the beginning of August 2012, a number of years after the phone call story with which I introduced this essay, I had the opportunity to work with my

grandmother on a cedar bark shawl project I had wanted to do for a long time. As I mentioned above, she is a world-renowned Stó:lõ weaver known for her skills and genius as the person who also revitalized the lost Tsimshian basketry techniques. I asked her to teach me to weave my garment. In my mind, I envisioned myself dancing around a gathering floor cloaked by my proud *Syewá:l* (Ancestors), particularly those who have been waiting for *Sts'iyóye smestíyexw meá:ylexw* (twin-spirits to come back to life). This was not an easy task for either of us, as this became a dual mission for me: to learn to weave such a garment as well as to request a specific identity for me that comes from our Stó:lõ language and her Stó:lõ consciousness. If I can borrow Driskill's words, from "Doubleweaving Two-Spirit Critiques, Building Alliances between Native and Queer Studies": "By pulling together splints from both disciplines [native studies and queer studies], we can doubleweave Two-spirit critiques that challenge and sharpen our scholarship and activism" (2010: 79). Driskill's words help me understand this weaving project and its dual purpose. As such, my grandmother and I embarked on serious work: this work not only taught me the skills to craft such a piece but also worked to *re*story the two-spirit beings who have long disappeared from her elders' memories and give them back to her. As my mind has transformed from child to inquisitive adult, I have come to know that to ask her (or any other elder) questions regarding culture and history must be done very carefully and that I must accept a nonresponse when they do not wish to answer at the time. To question and/or comment intermittently while an elder speaks often hinders what they are sharing and can abruptly stop the story or teaching. Usually, learning happens when they simply start talking about the *old days* and the *old ways* and lose themselves in these inner dialogues. I just listen, pay very close attention, and do the best I can to carefully take follow-up field notes. Serendipitously, I had just completed a research methods course the day before my weaving education began, and I had acquired new ethnographic tools; thus I went in with brand new "participant observation/observant participation" lenses. Also, I quickly realized that when I signed myself up for my grandmother's "course," attendance and punctuality were key—even though she provided no syllabus indicating these parameters. I had to tread carefully, every day and every moment of my learning. I waited for an opportunity to present itself to propose again what I had attempted to do since that painful phone call nearly fifteen years earlier. As much time, space, and worldviews as had passed for everyone, and for those who I was and had remained connected to since I came out as transgendered, I knew shifts in perspectives had to take place. My grandmother was not excused from this critical shift. I knew she would have moments where she would be softer with me given that I pleased her with my weaving progress, or at the very least, I hoped for that. So far, she has accommodated this crucial endeavor of mine, and I could not be

more relieved. At this point, I can only offer limited, albeit significant, findings from my quest to determine what *Sts'iyóye smestíyexw slhá:li* truly means. I do know that it is nothing short of a miracle. It is a miracle that she coined this title for me specifically, even though it went painfully against her colonized "homophobic" way of thinking after her eighty-plus years of living.

In the summer of 2011 I was approached by a prominent Tsleil-Waututh (Burrard First Nation) family and received a very esteemed invitation to "open the floor" for the memorial gathering of their late two-spirited son. This role involves attendance as an honored guest: to witness how a family honors their belated, and also to dance ceremonially to honor the one who has passed. In a Coast Salish Memorial gathering such as this, the teachings say that as four years have passed since the loss, the family will gather and rejoice one last time, and from there on in, they will cry for them no more. As I am a "Dancer,"[9] and a two-spirited one at that, I was asked especially because the young man who passed was also two-spirited. For this reason, I knew I wanted to make a special cedar bark cape to do justice to his beautiful memory. I knew him personally and remember well his sweet and feminine nature, and so I wanted to do justice to the beauty with which he carried himself. This occasion was a milestone not yet achieved before this moment, given there had never been a "two-spirited theme" for any event of this nature in recorded history, so I had never felt so compelled as when I was asked to undertake this important project. It was unprecedented that the family would bring his two-spiritedness to the forefront of this gathering and felt surreal for them to ask me to perform in such an important role. I needed to dance for more than just this memorial—for five hundred–plus years of two-spirited ancestors and their deleted identities. Ceremonial dances of this kind require some physical exertion. The rigorous style of dance must keep in time to a steady drumbeat. My cape is very heavy; I knew I would have to dance with added weight. Added to this was my age: I was already forty. I was concerned that I would not be able to complete my dance around the floor: as the date of the gathering drew near, I jogged daily to get my wind up. While I ran to shape up, I prayed that I would have the strength to make it around the floor and finish strong. When the time finally came, I unveiled my garment, fastened it around my neck, and could only hope that my spirit and body would not fail me. I do not recall anything beyond that point. I do not remember feeling the weight of my cape, but I do know I was flying. Before long it was over and I was back at my seat. Though the cape was heavy, it turned out that I had made myself wings. I made it around and, according to others present at the event, my feet did not touch the ground. It was a momentous occasion, and I still feel butterflies when I think about it today. I wove the cape you see me wearing in figure 1 in the summer of 2012 under my

grandmother's mentorship. It took approximately two months to prepare the bark and only a few days to weave.

Figure 1. The author wearing a cedar cape she wove in the summer of 2012. Photograph by Charlotte Point

Although the Canadian government made a very successful attempt to erase *Sts'iyóye smestíyexw*, some of us live on to tell new stories and to re-generate an entire gender and sexuality category that has been put away for so long. I invite other self-identified *Sts'iyóye smestíyexw* to pray together, laugh together, and weave our stories into a new *their*story. This invitation, of course, includes all that represent the spectrum of difference as the acronym *LGBTQ* intends, given that not all will identify as a "twin-spirit-to-a-woman" as I do. There are many *Sts'iyóye smestíyexw* who have passed and who never experienced the emancipation of a true coming-out as those of us who are left behind now have the privilege to do.

My grandmother and I have come a long way since 1997. I have had to heal and spiritually strengthen myself for independence because, at that point in time, she was not able to accept my transgendered identity within her political gaze. I can now say that this has changed. *X̱ex̱a:ls* (four children of *X̱a:ls*, the Creator/Transformer) have had pity on me.[10] They helped her to shape-shift her mind to one that demonstrates that transformative thinking and learning stop at no age. Now this new chapter begins, and the Coast Salish people as a whole can continue flourishing in their feasts with this new story.

Saylesh Wesley (Stó:lõ/Ts'msyan) is completing her PhD in Simon Fraser University's Gender, Sexuality and Women's Studies Department. Her research aims to re-story the deleted queer and two-spirit identities of the Stó:lõ people as well more broadly for all Coast Salish.

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Notes

1. See Truth and Reconciliation Commission of Canada 2014. This website details how the federal government aims to make amends and rebuild relationships with the surviving students, whose attendance in residential schools was mandatory nationwide, as well as acknowledge the travesties to which it subjected all First Nations peoples in this legislated attempt.
2. See the working map showing the First Nations peoples of British Columbia and their territories (British Columbia Ministry of Education 2014).
3. As an example, see Wesley Thomas's (2010) categorization of Navajo gender systems.
4. Coast Salish people have adopted the idea of "standing-up" individuals to receive names, honors, or blessings at traditional longhouse gatherings.
5. She is an eighty-six-year-old hereditary "Big Woman" of the *Semá:th* (Sumas) Territory, located in the Fraser Valley along the Canadian/United States border. In other words, if we went back in time five hundred years, she would be the sovereign ruler and owner of the Fraser Valley, not unlike a queen.
6. See CBC News 2008 for more information on the history of residential schools in Canada.
7. See Aboriginal Affairs 2012 for more on elections under the Indian Act and Indian Band Election Regulations.
8. I refer to "This Side," or *third* dimension: those of us who are living in the flesh, as opposed to "The Other Side," or the Spirit world, where late Ancestors dwell, according to the Stó:lō.
9. For more information about spirit dancing and its importance, see Bergen and Kelly 2013.
10. For more information about the Stó:lō Transformer figure, sometimes referred to as "Creator," and his Divine Children (*X̱a:ls* and *X̱e̱x̱a:ls*), see Hanson 2014.

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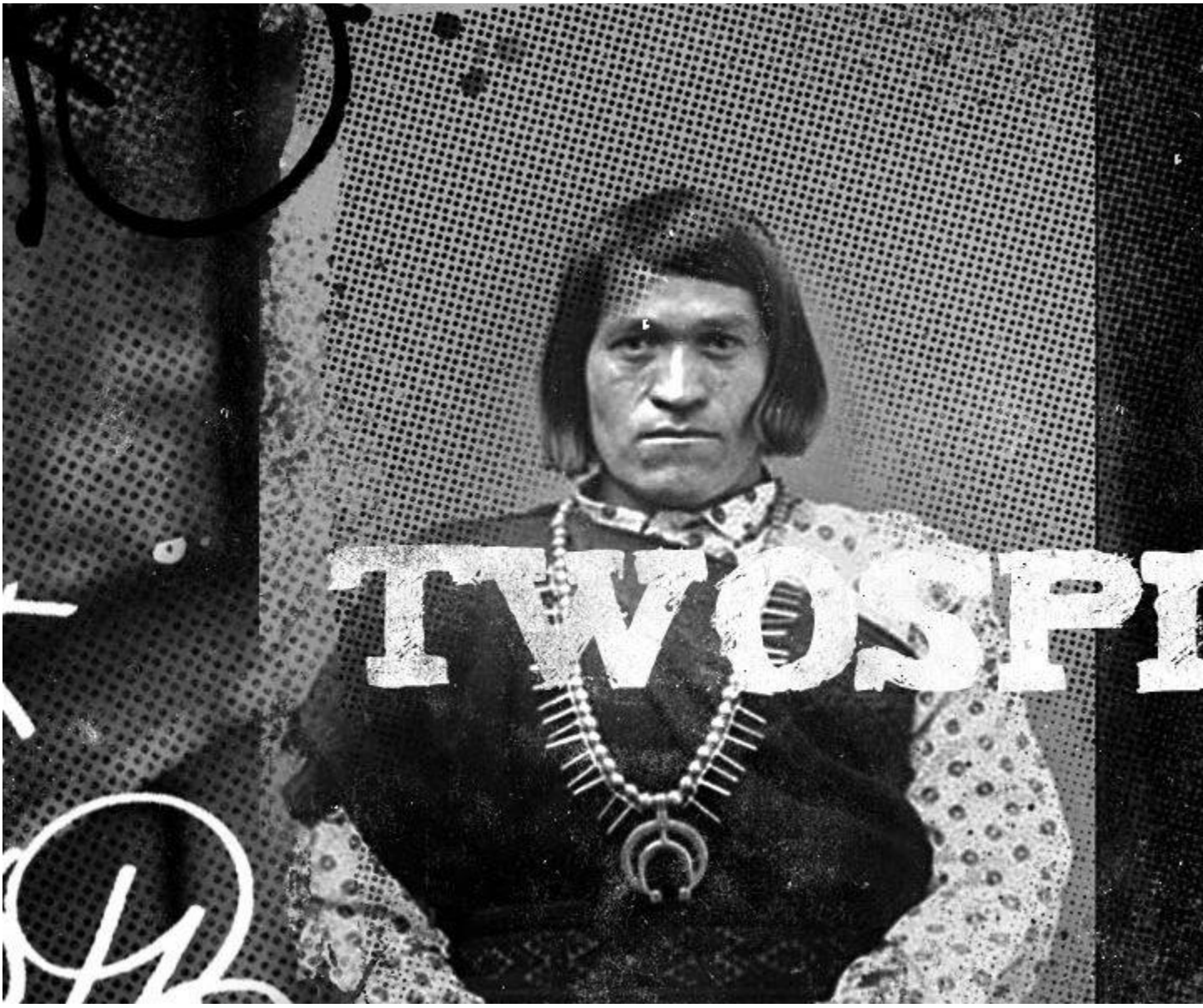
Two-spirit people, body sovereignty and gender self-determination

Red Rising Magazine
Alexandria Wilson September 21, 2015



As Cree people we understand that the nature of the cosmos is to be in balance and that when balance is disturbed, it must and will return.

Restoring balance

Two-spirit identity is one way in which balance is being restored to our communities. Throughout the colonial history of the Americas, aggressive assimilation policies have attempted to displace our own understandings, practices and teachings around sexuality, gender and positive relationships and replace them with those of Judeo Christianity. To recognize ourselves as two-spirit is to declare our connection to the traditions of our own people.
As a self-identifier, two-spirit acknowledges and affirms our identity as Indigenous peoples, our connection to the land, and values in our ancient cultures that recognize and accept gender and sexual diversity.

The recognition and acceptance of gender and sexual diversity is reflected in our languages, spirituality and cultures. Our Cree dialect does not include gender-distinct pronouns. Rather, our language is 'gendered' on the basis of whether or not something is animate (that is, whether or not it has a spiritual purpose and energy).

Cultural disruption and "Skirt Shaming"

Today some of our Elders and spiritual teachers have adopted and introduced understandings and practices and understandings that were not necessarily part of their own cultures prior to colonization and the imposition of Christianity. For example, a recent celebration in a community included a sweat lodge ceremony. When two-spirit and other participants arrived to take part in the ceremony, the person leading the ceremony demanded that some in the group change their clothing to conform with what he perceived their gender to be and added the warning that if he suspected that they had dressed inappropriate to their perceived gender, they would be required to prove their gender identity to him. In the face of this direct assault on their body sovereignty and gender self-determination, some people left the ceremony.. The role of Elders in our communities includes the sharing traditional teachings with youth that will help them understand their own experiences, including their expressions of gender identity and sexuality. However, in most of our Indigenous cultures where gender and sexual diversity were once accepted and valued, our traditional teachings, ways of being, spirituality, and languages were disrupted and displaced through the processes of colonization, Christianization and assimilation. The result (as the incident described above demonstrates) is that some of our own present-day cultural teachings and practices extend the continuum of violence that two-spirit people have been subject to since colonization began. "Skirt-shaming", excluding, policing or shaming trans, two-spirit people and women because they are not wearing long dresses in ceremonial settings, is increasingly common and is a continuation of the continuum of violence.

Two-spirit people are frequently subject to interconnected homophobia, transphobia and misogyny, and in the larger society they are additionally subject to structural and individual racism and classism. This has had devastating impacts on the two-spirit community. The suicide rate for LGBTQ Indigenous youth is ten times higher than that of any other group. Thirty-nine percent of two-spirit women and 21% of two-spirit men have attempted suicide . In a recent study of transgendered and gender non-conforming Indigenous people, nearly one-quarter lived in extreme poverty, elevated rates of HIV were found, and more than half of respondents (56%)

had attempted suicide . It is imperative that Elders and others consult with or rely on Two-Spirit leaders for teachings and direction regarding gender and sexual diversity.

Coming in

There is much work to be done, then, to undo the work that has been done upon us. When we call ourselves two-spirit people, we are proclaiming sovereignty over our bodies, gender expressions and sexualities. "Coming in" does not centre on the declaration of independence that characterizes 'coming out' in mainstream depictions of the lives of LGBTQI people. Rather, coming in is an act of returning, fully present in our selves, to resume our place as a valued part of our families, cultures, communities, and lands, in connection with all our relations.

Indigenous sovereignty over our lands is inseparable from sovereignty over our bodies, sexuality and gender self-expression.

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1. For the history of the term two-spirit please see http://www.twospiritmanitoba.ca/about.html

2. K. C. Fieland, K. L. Walters, & J. M. Simoni (2007). "Determinants of Health Among Two-Spirit American Indians and Alaska Natives," pp. 268-300 In I. H. Meyer, & M. E. Northridge, *The Health of Sexual Minorities* (Springer US).

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Dr. Alex Wilson (Opaskwayak Cree Nation) is an Associate Professor and the Academic Director of the Aboriginal Education Research Centre at the University of Saskatchewan.

www.twospiritmanitoba.ca

Gendered Violence and Settler Colonialism

CANADA

Stolen Sisters

A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada

Stolen Sisters:
A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada

> "It is important to honour the missing and murdered women. It is unacceptable to marginalize these women. The Creator did not create garbage. He created beauty." - elder Dan Smoke, closing a healing ceremony for his sister-in-law, Deborah Anne Sloss who died in Toronto on August 24, 1997 under suspicious circumstances.

Introduction

Helen Betty Osborne was a 19-year-old Cree student from northern Manitoba who dreamed of becoming a teacher. On November 12, 1971, she was abducted by four white men in the town of The Pas and then sexually assaulted and brutally murdered. A provincial inquiry subsequently concluded that Canadian authorities had failed Helen Betty Osborne. The inquiry criticized the sloppy and racially biased police investigation that took more than 15 years to bring one of the four men to justice. Most disturbingly, the inquiry concluded that police had long been aware of white men sexually preying on Indigenous women and girls in The Pas but "did not feel that the practice necessitated any particular vigilance."[1]

The murder of Helen Betty Osborne is one of nine case studies presented in this report. These stories of missing and murdered Indigenous[2] women and girls take place in three of the Western provinces of Canada over a period of three decades. In some cases, the crimes remain unsolved. In others, the perpetrators have been identified as intimate acquaintances, strangers or men encountered in the course of desperate efforts to earn a living. In every instance, it is Amnesty International's view that Canadian authorities should have done more to ensure the safety of these women and girls.

This report examines the following factors which, too long neglected, have contributed to a heightened -- and unacceptable -- risk of violence against Indigenous women in Canadian cities:

- The social and economic marginalisation of Indigenous women, along with a history of government policies that have torn apart Indigenous families and communities, have pushed a disproportionate number of Indigenous women into dangerous situations that include extreme poverty, homelessness and prostitution.
- Despite assurances to the contrary, police in Canada have often failed to provide Indigenous women with an adequate standard of protection.
- The resulting vulnerability of Indigenous women has been exploited by Indigenous and non-Indigenous men to carry out acts of extreme brutality against them.
- These acts of violence may be motivated by racism, or may be carried out in the expectation that societal indifference to the welfare and safety of Indigenous women will allow the perpetrators to escape justice.

These are not new concerns. Indigenous women's organizations, government commissions such as the inquiry into the murder of Helen Betty Osborne and the Royal Commission on Aboriginal Peoples, and United Nations human rights bodies have all called on Canadian officials to address the marginalisation of Indigenous women in Canadian society and to ensure that the rights and safety of Indigenous people are respected and upheld by police and courts.[3] Sadly,

[1] Report of the Aboriginal Justice Inquiry of Manitoba: The Deaths of Helen Betty Osborne and John Joseph Harper, Commissioners A.C. Hamilton and C.M. Sinclair, 1991.

[2] The term "Indigenous" refers to all descendants of the original inhabitants of the territories that now make up Canada. This includes the First Nations, the Inuit and the Métis. In Canada, the word "Aboriginal" has the same meaning and is more widely used. This report uses the term "Indigenous" because of its use in international human rights laws and standards.

[3] See, for instance, Report of the Royal Commission on Aboriginal Peoples (RCAP), 1996, http://www.ainc.inac.gc.ca/ch/rcap/sg/sgmm_e.html; and the Concluding observations of the United

fundamental measures that could help reduce the risk of violence to Indigenous women remain unimplemented. This is only one example of the way Canadian authorities have failed in their responsibility to protect the rights of Indigenous women in Canada.

Scope, Methods and Limitations of This Study

This report examines the role of discrimination in acts of violence carried out against Indigenous women in Canadian towns and cities. This discrimination takes the form both of overt cultural prejudice and of implicit or systemic biases in the policies and actions of government officials and agencies, or of society as a whole. This discrimination has played out in policies and practices that have helped put Indigenous women in harm's way and in the failure to provide Indigenous women the protection from violence that is every woman's human right.

Amnesty International acknowledges that there are many similarities between Indigenous women and non-Indigenous women's experiences of violence in Canada. More needs to be done to address violence against all women. This report is part of a larger, international campaign to stop violence against women.

This report focuses specifically on violence against Indigenous women because of indications of the scale of such violence in Canada, because the link between racial discrimination and violence against Indigenous women has not yet been adequately acknowledged or addressed, and because the victims of this violence are all too often forgotten.

Amnesty International reviewed published reports and the findings of inquests and government inquiries, interviewed survivors of violence and the family members of Indigenous women who have been murdered or who have gone missing, and met with key organizations and individuals who have worked on their behalf. Where possible, the researchers also spoke with police investigators or spokespersons.

The individual stories that form the major part of this report are retold with the permission of the families and friends. Many of the families of missing and murdered Indigenous women in Canada were unable to take this step. Some find it too emotionally difficult talk about their loss. Others have had negative experiences with the way their stories have been told by reporters and academics. There are countless stories that remain untold.

This report focuses primarily on cities in the Western provinces of Canada where there is a large and growing Indigenous population and where there have been a number of highly publicized incidents of violence against Indigenous women. There were regions of Canada that Amnesty International did not have the opportunity to visit in the course of this research and as a result many specific experiences, such as those of Inuit and other northern Indigenous women, the experiences of rural Indigenous women, and Indigenous women living on reserves, unfortunately are not adequately reflected. As was stated by many interviewees, this report is still only 'scratching the surface.' However, Amnesty International hopes that it will contribute to a fuller understanding of the issue from a human rights perspective.

Violence against women, and certainly violence against Indigenous women, is rarely understood as a human rights issue. To the extent that governments, media and the general public do consider concerns about violence against women, it is more frequent for it to be described as a criminal concern or a social issue. It is both of those things of course. But it is also very much a human rights issue. Women have the right to be safe and free from violence. Indigenous women have the right to be safe and free from violence. When a woman is targeted for violence because of her gender or because of her Indigenous identity, her fundamental rights have been abused. And when she is not offered an adequate level of protection by state authorities because or her gender or because of her Indigenous identity, those rights have been violated.

Nations Committee on Economic, Social and Cultural Rights: Canada, 10/12/98, E/C.12/1/Add.31.

I. The international human rights framework

This report addresses violence against Indigenous women as a human rights issue. The concept of human rights is based on the recognition of the inherent dignity and worth of every human being. Through ratification of binding international human rights treaties, and the adoption of declarations by multilateral bodies such as the United Nations, governments have committed themselves to ensuring that all people can enjoy certain universal rights and freedoms.

Amnesty International's research demonstrates that violence experienced by Indigenous women gives rise to human rights concerns in two central ways.

First, is the violence itself and the official response to that violence. When indigenous women are targeted for racist, sexists attacks by private individuals and are not assured the necessary levels of protection in the face of that violence, a range of their fundamental human rights are at stake. This includes the right to life,[4] the right to be protected against torture and ill treatment,[5] the right to security of the person,[6] and the right to both sexual[7] and racial[8] equality. Canada has ratified all of the key human rights treaties that guarantee these fundamental rights.

Notably Canada has not yet ratified the only international human rights treaty dealing specifically with the issue of violence against women, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará). Canadian ratification of this treaty would strengthen the legal and institutional framework for protecting Indigenous women in Canada. The treaty not only requires states to condemn, prevent, and punish violence against women, but also obliges them to undertake progressively specific measures to deal with the root causes of gender-based violence, including, *inter alia*, the provision of specialized shelters and social services for the victims of violence; education and training programs for all those involved in the administration of justice; the gathering of statistics and other relevant information relating to the causes, consequences and frequency of violence against women; and specialized programs aimed at countering social and cultural patterns of conduct "which legitimize or exacerbate violence against women".[9]

The cases in this report and other cases of violence against Indigenous women that are already on the public record[10] do not involve allegations of violence by police or other public officials. But that does not mean that the human rights obligations of governments are not engaged.

International law is clear; governments are of course obliged to ensure that their own officials comply with human rights standards. Governments are also obliged, though, to adopt effective measures to guard against private individuals committing acts which result in human rights abuses.[11] International human

[4] International Covenant on Civil and Political Rights (ICCPR), article 6.
[5] Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, article 2. ICCPR, article 7.
[6] ICCPR, article 9.
[7] Convention on the Elimination of Discrimination against Women (CEDAW), article 2, ICCPR, articles 2(1), 3.
[8] Convention on the Elimination of all forms of Racial Discrimination (CERD), article 2, ICCPR, 2(1).

[9] Inter-American Convention on the Prevention, Punishment and Eradication of Violence against women (Convention of Belém do Pará), article 8.
[10] Some of those cases are described in text found before and after footnote 68, Infra.
[11] CEDAW, article 2(e): "States Parties… undertake to take all appropriate measures to eliminate discrimination against women **by any person, organization or enterprise**." The United Nations' Declaration on the Elimination of Violence against Women requires states to "[e]xercise due diligence to prevent, investigate and…punish acts of violence against women, whether those acts are **perpetrated by the State or by private persons**." (ICCPR, article 2(1): "Each State Party…undertakes to respect **and to ensure** to all individuals…the rights recognized in the present Covenant…" ICCPR, article 2(2): "…each State Party…undertakes to take the necessary steps…to adopt such laws or other measures as may be necessary **to give effect to** the rights recognized in the present Covenant." CERD, article 2(1): "States parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a

rights bodies have made it clear that when governments fail to take such steps, often termed the duty of "due diligence", they will be held accountable under international human rights treaties. The Inter-American Court of Human Rights has described the duty of due diligence as follows:

> An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.[12]

The Court stressed that this duty of "due diligence" means that a state must take reasonable steps to prevent human rights violations, use the means at its disposal to carry out serious investigations, identify those responsible, impose the appropriate punishment and ensure that the victim receives adequate reparation.[13] The UN Human Rights Committee, has stressed that the duty in article 2 of the Covenant on Civil and Political Right to "ensure" the rights included in the Covenant requires appropriate measures be taken to prevent and investigate abuses perpetrated by private persons or entities, punish those responsible and provide reparations to the victims.[14] This concept of due diligence does not in any way lessen the criminal responsibility of those who carry out acts of violence, including murder, against women. However, the concept does underline the inescapable responsibility of state officials to take action.

In her 2003 report to the UN Commission on Human Rights, Radhika Coomaraswamy, the first Special Rapporteur on violence against women clearly described the content of the duty of due diligence when it comes to preventing violence against women.[15]

States must promote and protect the human rights of women and exercise due diligence:

(a) To prevent, investigate and punish acts of all forms of violence against women, whether in the home, the workplace, the community or society, in custody or in situations of armed conflict;

(b) To take all measures to empower women and strengthen their economic independence and to protect and promote the full enjoyment of all rights and fundamental freedoms;

(c) To condemn violence against women and not invoke custom, tradition or practices in the name of religion or culture to avoid their obligations to eliminate such violence;

(d) To intensify efforts to develop and/or utilize legislative, educational, social and other measures aimed at the prevention of violence, including the dissemination of information, legal literacy campaigns and the training of legal, judicial and health personnel;

(e) To enact and, where necessary, reinforce or amend domestic legislation in accordance with

policy of **eliminating racial discrimination in all its forms** …" Emphasis added.

[12] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment dated 29 July 1988, para. 172.

[13] Ibid, para. 174.

[14] Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13,(2004), para. 8.

[15] Radhika Coomaraswamy, Special Rapporteur on violence against women, Report to the Commission on Human Rights, UN Doc. E/CN.4/2003/75, 6 January 2003, para. 85.

international standards, including measures to enhance the protection of victims, and develop and strengthen support services;

(f) To support initiatives undertaken by women's organizations and non-governmental organizations on violence against women and establish and/or strengthen, at the national level, collaborative relationships with relevant NGOs and with public and private sector institutions.

Second, the range of concerns, some historical and some continuing, which Amnesty International's research has shown to be factors that put Indigenous women at heightened risk of experiencing violence also directly engage a number of fundamental human rights provisions. For instance, past policies revoking the legal Indigenous status of Indigenous women who married non-Indigenous men[16] have already been found by the UN Human Rights Committee[17] to have violated minority cultural rights under article 27[18] of the International Covenant on Civil and Political Rights. Certainly the decades long residential schools program raises a range of human rights concerns related to the physical, sexual and psychological abuse and ill-treatment of the children sent to the schools, but also such economic, social and cultural rights as the right to education.[19]

The UN Committee on Economic, Social and Cultural Rights has highlighted that the economic marginalization of Indigenous peoples in Canada is of concern with respect to Canada's obligations under the Covenant on Economic, Social and Cultural Rights:

> The Committee is greatly concerned at the gross disparity between Aboriginal people and the majority of Canadians with respect to the enjoyment of Covenant rights. There has been little or no progress in the alleviation of social and economic deprivation among Aboriginal people. In particular, the Committee is deeply concerned at the shortage of adequate housing, the endemic mass unemployment and the high rate of suicide, especially among youth, in the Aboriginal communities. Another concern is the failure to provide safe and adequate drinking water to Aboriginal communities on reserves. The delegation of the State Party conceded that almost a quarter of Aboriginal household dwellings required major repairs and lacked basic amenities.[20]

These concerns engage a number of internationally protected human rights, including the rights to housing,[21] work,[22] health[23] and an adequate standard of living.[24]

[16] See text at footnotes 34-36, Infra.

[17] Sandra Lovelace v. Canada, Communication No. R.6/24, U.N. Doc. Supp. No. 40 (A/36/40), at 166.

[18] article 27: " In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

[19] The Convention on the Rights of the Child (CRC), article 29(c): "… the education of the child shall be directed to … the development of respect for the child's…own cultural identity, language and values…" The Convention did not enter into force until 1990, by which time the residential schools, which had sought to deny Indigenous children their culture and language, had been closed. However the long-term and inter-generational impacts of residential schools continue to the present.

[20] Concluding observations of the Committee on Economic, Social and Cultural Rights: Canada, Supra, footnote 3, para.17.

[21] International Covenant on Economic, Social and Cultural Rights (ICESCR), article 11.

[22] ICESCR, article 6.

[23] ICESCR, article 12.

[24] ICESCR, article 11.

This report highlights some past and present concerns with respect to Indigenous children, such as residential schools and child protection policies as well as some cases involving violence against Indigenous girls. International human rights laws and standards recognize that children need and deserve special protection to ensure the full realization of their potential. The almost universally ratified United Nations Convention on the Rights on the Children establishes as an overarching principle that "in all actions concerning children… the best interests of the child shall be a primary consideration."[25] The Convention recognizes that there are instances where, in the best interests of the child, children must be removed from an abusive family situation. However, the Convention asserts that, in general, parents or legal guardians have the primary responsibility for ensuring the welfare of their children and should be supported by the state in meeting this responsibility.[26] Notably, the Convention also recognizes that every child has a right to preserve his or her cultural identity and family relations and that Indigenous children, in particular, "shall not be denied the right… to enjoy his or her own culture, to profess and practice his or her own religion, to use his or her own language."[27]

At the heart of the various human rights concerns documented in this report is discrimination. Amnesty International's research has found that Indigenous women in Canada face discrimination because of their gender and because of their Indigenous identity. The research highlights that this is compounded by further discriminatory treatment that women face due to poverty, ill-health or involvement in the sex trade.[28] Human rights experts have drawn attention to the interconnections between various forms of discrimination and patterns of violence against women.[29] Amnesty International's research has been conducted within a framework that recognizes the intersections between various forms of discrimination, and supports these findings.

In addition to these existing legal obligations, new and emerging international instruments, such as the UN's draft Declaration on the Rights of Indigenous Peoples, seek to clarify the specific measures needed to ensure the protection and fulfillment of the rights of Indigenous peoples.

II. Understanding violence against Indigenous women

Stolen generations: Colonization and violence against Indigenous women

The UN Declaration on Violence Against Women calls violence against women "a manifestation of historically unequal power relations between women and men" and a means by which this inequality is maintained."[30] Around the world, inequality between men and women in terms of wealth, social status, and access to power has created barriers to women seeking protection of their rights. These barriers include economic dependence on abusive spouses, fear of having their children taken away if they report the abuse, or knowing that they will not be taken seriously by the police and courts.

Moreover, both the perpetrators of violence against women and those who administer the criminal justice system - judges, prosecutors, police - often hold the pervasive view that women are responsible for violence committed against them or that they deserve to be punished for non-conforming behaviour. So even when a woman does overcome these barriers and report that she has been the victim of a violent attack, she may well meet with an unsympathetic or skeptical response. In the few cases in which a suspect is identified and brought to trial, cases of violence against women often founder unless there is clear and unavoidable evidence of force, illustrating to all that the victim "fought back". The perpetrators of violence against women can thus commit their

[25] CRC, article 3(1).
[26] CRC, articles 18, 19, 20.
[27] CRC, article 30.
[28] International law prohibits discrimination on the basis of gender and race. The protection against discrimination also extends to "social origin, property…or other status," ICESCR, article 2(2), ICCPR, article 2(2).
[29] Report of the Special Rapporteur on Violence against Women, Radhika Coomaraswamy, World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, A/CONF.189/PC.3/5, 27 July 2001, para. 49.
[30] United Nations Declaration on Violence against Women, 1993, fifth preambular paragraph.

crimes safe in the knowledge that they will not face arrest, prosecution or punishment. Impunity for violence against women contributes to a climate where such acts are seen as normal and acceptable rather then criminal, and where women do not seek justice because they know they will not get it.

For Indigenous women in Canada, violence often takes place in a context shaped, in the words of Canada's Royal Commission on Aboriginal Peoples (RCAP), by the power that the dominant society has wielded "over every aspect of their lives, from the way they are educated and the way they can earn a living to the way they are governed."[31] Historically, in most of the Indigenous cultures that are now part of Canada, there were distinct gender roles for women and men but relative equality between them. Through policies imposed without their consent, Indigenous peoples in Canada "have had to deal with dispossession of their traditional territories, disassociation with their traditional roles and responsibilities, disassociation with participation in political and social decisions in their communities, disassociation of their culture and tradition."[32] Colonialism, which has had a profoundly negative impact on Indigenous communities as a whole, has also affected the relations between Indigenous women and Indigenous men, and pushed many Indigenous women to the margins of their own cultures and Canadian society as a whole.[33]

While it is beyond the scope of this report to look at all the ways government policies have impacted on Indigenous women, two historic policies - the dispossession of Indigenous women who married outside their communities and the removal of children to be educated in residential schools - need to be examined because of their profound and lasting impact on social strife within Indigenous communities and on the marginalization of Indigenous women within Canadian society.

RCAP described the legislation governing Indigenous peoples in Canada as being "conceived and implemented in part as an overt attack on Indian nationhood and individual identity, a conscious and sustained attempt by non-Aboriginal missionaries, politicians and bureaucrats - albeit at times well intentioned - to impose rules to determine who is and is not 'Indian.'"[34] The first of these laws, passed in 1857, allowed Indigenous men to renounce their Indigenous status and the right to live on reserve lands in order to assimilate into non-Indigenous society. Women were not given the same choice: women's status would be determined by the choices made by her husband or father. A second law passed in 1869, stripped women of their Indigenous status and their place in their community if they married a man from another community, even if he was also Indigenous. In addition, children born to an Indigenous woman who married a non-Indigenous man would also be denied status. These laws remained in place for more than a century. Finally, in 1985, after a long struggle by Indigenous women, which included bringing a successful complaint to the UN Human Rights Committee,[35] the policies were repealed for being incompatible with protections against discrimination in the new Canadian Charter of Rights and Freedoms.

Over the next decade, more than 130,000 people - mostly women - applied to have their rights and status restored.[36] For the tens of thousands of women who had been affected over the previous century, losing their status meant the loss of independent standing in their community and increased dependence on their spouses. In many cases, the laws led to women losing all ties to their home communities.

During the same period that so many Indigenous women were being uprooted, the federal government was removing large numbers of Indigenous children from their families and communities to attend schools in predominantly non-Indigenous communities. The explicit purpose of providing education outside of the community was to foster assimilation of Indigenous children into European Canadian culture. The first residential schools were opened in the mid-1870s. In the words of the architect of the system, Canadian Member of

[31] RCAP, Supra, footnote 3.
[32] Beverley Jacobs, "Native Women's Association of Canada's submission to the United Nations Special Rapporteur investigating the Violations of Indigenous Human Rights", December, 2002.
[33] Ibid.
[34] RCAP, Supra, footnote 3.
[35] Sandra Lovelace v. Canada, Supra, footnote 17.
[36] RCAP, Supra, footnote 3.

Parliament Nicholas Flood Davin, the goal was to remove Indigenous children from "the influence of the wigwam" and keep them instead "constantly within the circle of civilized conditions."[37] The children attending residential schools were not allowed to speak their Indigenous languages or to practice their own customs, eroding their sense of identity and driving a wedge between the children and their parents.

Initially, the schools offered low quality education, geared to industrial trades for boys and domestic service for women. Beginning in the mid-twentieth century, they gradually became residences for Indigenous children attending schools in predominantly non-Indigenous communities. The school system was run in collaboration with Christian churches until 1969. Then, in a phase-out period that lasted through the mid-1980s, the system was run solely by the federal government.

Many children in the schools faced inhuman living conditions caused by chronic under-funding and neglect. Harsh punishments sanctioned by the school authorities included beatings, chaining children to their beds, or denying them food. Cloaked by society's indifference to the fate of these children, individual staff carried out horrendous acts of physical and sexual abuse.[38] Summarizing the history of the residential school system, the RCAP points out "head office, regional, school and church files are replete, from early in the system's history, with incidents that violated the norms of the day."[39] Yet even the most alarming reports of abuse and neglect were largely ignored by the church and government officials responsible for the care of these children:

> The avalanche of reports on the condition of children "hungry, malnourished, ill-clothed, dying of tuberculosis, overworked" failed to move either the churches or successive governments "to concerted and effective remedial action." When senior officials in the department and the churches became aware of cases of abuse, they failed routinely to come to the rescue of children they had removed from their real parents.[40]

In a climate of total impunity, staff carried out their crimes without fear of repercussion. However the consequences for many of the children exposed to repeated abuse stayed with them their whole lives and have impacted subsequent generations. Like other survivors of abuse, many of the residential school alumni have carried a sense of shame and self-loathing. Perhaps most harmfully, they were denied the opportunity to be exposed to good examples of parenting, and instead learned violence and abuse.[41]

With the end of the residential school system, survivors began to come forward to tell stories of abuse and demand justice. In the early 1990s, there were a number of prosecutions of staff who had abused children. Following the 1996 RCAP report the federal government established a $350 million dollar fund to provide healing programs for the victims and their families. Applications for support, however, have greatly outstripped the available resources. Indigenous peoples' organizations also argue that there has been inadequate redress for the loss of culture and identity and the intergenerational impacts of all the forms of abuse suffered in the schools. Although the federal government has apologized for the harm done by the residential school system, it has failed to act on RCAP's recommendation that a public inquiry be held so that the injuries suffered by Indigenous communities can be fully acknowledged.

Indigenous peoples' organizations have pointed out that the erosion of cultural identity and the accompanying loss of self-worth brought about, in part, through assimilationist policies like residential schools and the arbitrary denial of some women's Indigenous status, have played a central role in the social strife now faced by many Indigenous families and communities. In the course of researching this report, Amnesty International heard from many families who described the personal loss and hardship they have experienced as a consequence of these policies. Some described losing all contact with a sister or daughter who simply disappeared after being

[37] Ibid.
[38] Ibid.
[39] Ibid.
[40] Ibid.
[41] Ibid.

put into a foster home or marrying a man from another community. Other women described increasing desperate and dangerous lives shaped by loss of culture, community and self-esteem. These are two examples of the stories we have heard:

- Margaret Evonne Guylee's mother was from the Whitedog Reserve in northern Ontario but had been forced to give up her residence in the community in the early 1930s after getting involved with a non-Indigenous man. Margaret Guylee grew up in poverty in Toronto. She then raised six children herself while living on social assistance. She disappeared in 1965. No missing persons report was ever filed. Her daughter, Carrie Neilson, who was only four when her mother disappeared, says she still carries the pain and bewilderment caused by her mother's sudden and still unexplained disappearance. "We believed for years that we were not any good - after all, why would a mother abandon her children if they were good?"

- Edna Brass is a respected elder and counselor working with Indigenous women in Vancouver. As a child, Edna Brass spent 13 years in residential school. She remembers being teased by the other children about a cleft palate that left scars on her face. She remembers worse abuse at the hands of the staff running the school: "I was sexually abused, I was raped, I was beaten." As a consequence of what she endured, Edna Brass says she lost her ties to her culture and lost her own way in life. She entered into a life of substance abuse and living on the streets. Although she was eventually able to pull her own life together, she says her family still suffers the scars of her own uprooting. Edna Brass says, "I, myself, didn't have a home. I felt like I didn't belong anywhere and my children have felt the same. They don't know my family. They don't know my community. I never felt like my reserve is my reserve. I just try to fit in where I can. My daughter suffered because of this."

These personal accounts illustrate one of the central conclusions of the Royal Commission on Aboriginal Peoples. "Repeated assaults on the culture and collective identity of Aboriginal people have weakened the foundations of Aboriginal society and contributed to the alienation that drives some to self-destruction and anti-social behaviour," RCAP concluded. "Social problems among Aboriginal people are, in large measure, a legacy of history.[42]

It is important to emphasize that the disruption of Indigenous families and communities is not a thing of the past. Even as the residential school system was being transformed and eventually phased out from the late 1950s through the 1970s, provincial and territorial governments began to place a dramatically increased number of Indigenous children in foster homes and state institutions. One study found that the number of Indigenous children in state care in the province of British Columbia rose from 29 children in 1955 to 1,446 in 1965.[43] Despite many changes that have taken place in the field of Indigenous child welfare, the Canadian government recently estimated that Indigenous children are currently four to six times more likely than non-Indigenous children to be removed from their families and placed in the care of the state.[44]

These children are being removed from their families and communities to protect them from abuse and neglect. There are clearly circumstances where such measures are needed to protect the rights and welfare of the child. Unlike the residential school system, child welfare institutions are not intending to break children's ties to their families and communities. In fact, since the early 1980s child services in Indigenous communities are increasingly provided by Indigenous organizations funded by the federal government. However, many Indigenous peoples' organizations and other commentators have noted that Indigenous children are often removed from families who want to care for them, but for reasons such as poverty, substance addiction and other legacies of past government policies, are unable to do so. And they

[42] Ibid.
[43] Ibid.
[44] "Building a Brighter Future for Urban Aboriginal Children: Report of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities," June 2003, p.17.

question why there are not more resources available to help Indigenous families address situations of impoverishment, stress, and poor parenting before they reach the point where children are endangered.[45]

A joint study completed in 2000 by the Department of Indian Affairs and Northern Development and Assembly of First Nations found that on average Indigenous run child services programs receive 22 percent less funding than provincially-funded counterparts serving predominantly non-Indigenous communities. The study also found that there was not enough emphasis on funding early intervention programs so that children's welfare and safety could be assured without removal from their families.[46]

"You put a child into care and they get counseling immediately," one witness told a Parliamentary committee, "but when a biological parent is looking for those sources or that funding to maintain their own family and keep it together, it's not available to them."[47]

The painful loss of ties to family, community and culture is a common element of many of the stories of missing and murdered women that have been reported to Amnesty International, some of which are presented in the case studies that follow below. Such loss is not a necessary consequence of children being removed from their families, or even of being adopted into a non-Indigenous family. Some of these women were clearly raised with love and affection by caring foster or adoptive families. There are many ways that ties to their heritage and identity could have been maintained throughout their childhood or, if they had had the chance, rebuilt in later life. Nor is loss of culture a direct cause of violence. However, for young people in particular, a loss of a sense of identity, belonging and ultimately self-worth needs to be understood and addressed as a critical factor potentially contributing to self destructive behaviour and in vulnerability to exploitation by others.[48]

Indigenous women in Canadian cities: Displaced in their own land

The Canadian government's Royal Commission on Aboriginal Peoples acknowledged in its 1996 report that there have been widespread violations of Indigenous peoples' land and resource rights – including the erosion of more than two-thirds of the land base of Indigenous communities -- since the formation of the Canadian state.[49] The Commission warned:

> Without adequate lands and resources, Aboriginal nations will be unable to build their communities and structure the employment opportunities necessary to achieve self sufficiency. Currently on the margins of Canadian society, they will be pushed to the edge of economic, cultural and political extinction. The government must act forcefully, generously and swiftly to assure the economic, cultural and political survival of Aboriginal nations."[50]

With the loss of traditional livelihoods within Indigenous communities, the opportunities for education and employment in Canadian towns and cities have become a powerful draw for a growing number of Indigenous people. Almost 60 percent of Indigenous people in Canada now live in urban settings.[51] Critically, however, the majority of

[45] Cindy Blackstock, Sarah Clarke, James Cullen, Jeffrey D'Hondt, and Jocelyn Formsma. *Keeping the Promise: The Convention on the Rights of the Child and the Lived Experiences of First Nations Children and Youth*. First Nations Child and Family Caring Society of Canada. Ottawa. 2004.
[46] First Nations Child and Family Services Joint National Policy Review, June 2000.
[47] Claudette DeWitt, Ben Calf Robe Society, Testimony to the Subcommittee on Children and Youth at Risk, March 19, 2003 in "Building a Brighter Future for Urban Aboriginal Children", Supra, footnote 44, p.18.
[48] RCAP, Supra, footnote 3. Save the Children Canada, *Sacred lives: Canadian Aboriginal children and youth speak out about sexual exploitation*, National Aboriginal Consultation Project, Ottawa, 2000.
[49] RCAP, Ibid.
[50] Ibid.
[51] Andrew J. Siggner. "Urban Aboriginal Populations: An Update Using the 2001 Census Results." In David Newhouse & Evelyn Peters, eds. *Not Strangers in*

Indigenous peoples in Canadian towns and cities continue to live at a disadvantage compared to non-Indigenous people, facing dramatically lower incomes and a shortage of culturally appropriate support services in a government structure that has still not fully adjusted to the growing urban Indigenous population.

In the 1996 census, Indigenous women with status living off-reserve earned on average $13,870 a year.[52] This is about $5500 less than non-Indigenous women. Other groups of Indigenous women, such as Inuit and Métis women, recorded slightly higher average annual incomes, but all substantially less than what Statistics Canada estimated someone living in a large Canadian city would require to meet their own needs.[53] In fact, many Indigenous women living in poverty not only have to look after themselves but also must care for elderly parents, raise children or tend to loved ones in ill-health, often with only a single income to live on. Homelessness and inadequate shelter are believed to be widespread problems facing Indigenous families in all settings.[54]

The difficult struggle to get by is compounded by many Indigenous peoples' experience of racism, both subtle and overt, within the dominant society. As described by the Canadian Panel on Violence against Women: "most Aboriginal people have know racism first-hand - most have been called 'dirty Indians' in schools or foster homes or by police and prison guards. Aboriginal people have also experienced subtle shifts in treatment and know it is no accident."[55]

As a whole, Indigenous people living off-reserve move frequently, more so than other people living in Canada.[56] For some, this is movement to and from their home communities as they try to maintain a connection with their families and cultures. For others, this movement may be a reflection of a kind of rootlessness stemming from the fact that their ties to family and community were severed long ago, perhaps by their loss of membership in their home community or perhaps due to their removal to a residential school or some other form of state care. One consequence of this "churn factor", as it is sometimes called, is that many Indigenous people are not aware of -- or are unable to access -- the services available to them where they live.

In Canada, the federal government is responsible for health and social services on reserve and in Inuit communities, while the provincial and territorial governments provide services elsewhere. This has led to a gap in services for Indigenous people living in Canadian towns and cities. While Indigenous people living off-reserve have access to programs and services designed for the general population, these programs and services are not necessarily aligned to the specific needs of Indigenous peoples, or delivered in a culturally appropriate way.

Over the last decade, the federal government has increasingly recognized the need for programs and services for Indigenous people in predominantly non-Indigenous communities. Funding, however, lags behind the growth in the urban Indigenous population and the delivery of services through various government departments is often uncoordinated. The Federal Interlocutor for Métis and Non-Status Indians pointed out in 2003 that almost 90 percent of the funding for programs designed for Indigenous peoples is spent on reserves, while off-reserve programs for Indigenous people are delivered through 22 federal departments, as well as provincial and territorial agencies.[57] Responding to these comments, a federal subcommittee on Indigenous child welfare described a "jurisdictional

These Parts: Urban Aboriginal Peoples. Policy Research Initiative. Ottawa, 2003.

[52] Indian and Northern Affairs Canada. *Aboriginal Women: A Profile from the 1996 Census*, Ottawa, 2001.

[53] Statistics Canada. *Low income cut offs from 1994-2003 and low income measures from 1992-2001*, Ottawa, 2003.

[54] Mary Ann Beavis, Nancy Klos, Tom Carter and Christian Douchant. Literature Review: Aboriginal peoples and Homelessness. Institute of Urban Studies, The University of Winnipeg. January 1997.

[55] Freeman Marshall, Pat and Marthe Asselin Vaillancourt. *Changing the Landscape: Ending Violence –Achieving Equality: Final Report of the Canadian Panel on Violence Against Women*, Ottawa: Supply and Services Canada, 1993.

[56] *Aboriginal Women: A Profile from the 1996 Census.* Supra, footnote 52.

[57] "Building a Brighter Future for Urban Aboriginal Children", Supra, footnote 45, p.6

web" in which there is often little coordination or communication "within and between the municipal, provincial and federal levels of government."[58]

Indigenous people have formed a wide range of service organizations to help address the needs of the growing urban Indigenous population, including employment counseling, addiction services, health centers and shelters for women and girls escaping violence. However, most, if not all, report that their work is jeopardized by chronic under funding and the failure of government to provide funding on a stable, multi-year basis. Being dependent on short-term funding diverts energy from vital services to fundraising, or to managing crises when funds don't arrive. Without stable funding, long-term projects are difficult to plan and organizations fear they won't be able to keep their commitments to the people they serve.

In 2000, the Ontario Federation of Indian Friendship Centres - organizations that represent and provide support to Indigenous people outside their own communities - surveyed Indigenous families about their lives in Ontario cities. All those interviewed described the psychological hardship of their struggle to provide for themselves with little support from the larger community. "Words such as low self-esteem, depression, anger, self-doubt, intimidation, frustration, shame and hopelessness were used to describe some of the crushing feelings of Aboriginal children and parents living in poverty. Families are feeling despair as they cannot see any way to 'rise above' their situations."[59]

Prostitution is one means that some Indigenous women have resorted to in the struggle to provide for themselves and their families in Canadian cities. A survey of 183 women in the Vancouver sex trade carried out by the PACE (Prostitution Alternatives Counseling and Education) Society found roughly 40 percent of the women said they got into the sex trade primarily because they needed the money, and an additional 25 percent referred to drug addiction as part of the reason they starting selling sexual services, while many others referred to pressure from boyfriends or family members.[60] Almost 60 percent said they continued working in the sex trade to maintain a drug habit.[61] In the PACE study, more than 30 percent of sex workers surveyed were Indigenous women, although Indigenous people make up less than two percent of the city's population.[62] Indigenous women are believed to be similarly over-represented among sex workers in other Canadian cities.

The UN Committee on the Rights of the Child has expressed concern about "Aboriginal children [in Canada] who, in disproportionate numbers, end up in the sex trade as a means of survival."[63] The non-governmental organization, Save the Children Canada, spoke with more than 150 Indigenous youths and children being exploited in the sex trade. According to their report, almost all the youth and children interviewed described "the overwhelming presence of disruption and discord in their lives, accompanied by low self-esteem."[64] Other factors common to many of the young peoples' lives included a history of physical or sexual abuse, a history of running away from families or foster homes, lack of strong ties to family and community, homelessness or transience, lack of opportunities, and poverty. The report comments:

> Any trauma that detaches children from their families, communities and cultures increases the likelihood of involvement in commercial sexual exploitation. Once a child or youth loses such basic parameters as safety, shelter, and sustenance, their vulnerability forces them into situations whereby the sex trade can become the only viable alternative for survival. [65]

[58] Ibid. p.7
[59] Ontario Federation of Indian Friendship Centres, *Urban Aboriginal Child Poverty: A Status Report on Aboriginal Children & Their Families in Ontario*, Toronto, Ontario, October, 2000.

[60] PACE Society, Violence against Women in Vancouver's Street Level Sex Trade and the Police Response, Vancouver, 2000, p. 82, pp. 32-3.
[61] Ibid. pp. 32-3.
[62] Ibid. p. 6.
[63] Concluding Observations of the Committee on the Rights of the Child: Canada, CRC/C/15/Add.215, 27/10/2003, para. 52.
[64] Save the Children Canada, Supra, footnote 48, p.33.
[65] Ibid. p.34.

III. Violence against Indigenous women: widespread but poorly understood

According to a 1996 Canadian government statistic, Indigenous women between the ages of 25 and 44 with status under the federal Indian Act, are five times more likely than other women of the same age to die as the result of violence.[66] Indigenous women's organizations have long spoken out against violence against women and children within Indigenous communities – concerns that have still not received the attention they deserve.[67] More recently, a number of advocacy organizations, including the Native Women's Association of Canada (NWAC), have drawn attention to acts of violence perpetuated against Indigenous women in predominantly non-Indigenous communities. A number of high profile cases of assaulted, missing or murdered Indigenous women and girls has also helped focus greater public attention – in some instances, very belatedly – on violence against Indigenous women in specific cities. For example:

- A joint RCMP/Vancouver City Police Taskforce is investigating the disappearance of 60 women and one transgender person from Vancouver, British Columbia over the last decade. Sixteen of the missing women are Indigenous, a number far in excess of the proportion of Indigenous women living in Vancouver. A British Columbia man, Robert Pickton, is currently awaiting trial for 22 murder charges related to this investigation. Police and city officials had long denied that there was any pattern to the disappearances or that women were in any particular danger.

- In two separate instances in 1994, 15-year-old Indigenous girls, Roxanna Thiara and Alishia Germaine, were found murdered in Prince George in eastern British Colombia. The body of a third 15-year-old Indigenous girl, Ramona Wilson, who disappeared that same year, was found in Smithers in central British Columbia in April 1995. Only in 2002, after the disappearance of a 26-year-old non-Indigenous woman, Nicola Hoar, while hitchhiking along a road that connects Prince George and Smithers, did media attention focus on the unsolved murders and other disappearances along what has been dubbed "the highway of tears."

- In 1996, John Martin Crawford was convicted of murder in the killings of three Indigenous women, Eva Taysup, Shelley Napope, and Calinda Waterhen, in Saskatoon, Saskatchewan. Warren Goulding, one of the few journalists to cover the trial, has commented: "I don't get the sense the general public cares much about missing or murdered aboriginal women. It's all part of this indifference to the lives of aboriginal people. They don't seem to matter as much as white people."[68]

- In May 2004, a former British Columbia Provincial Court judge, David William Ramsey, pleaded guilty to buying sex from and assaulting four Indigenous girls, aged 12, 14, 15 and 16, who had appeared before him in court. The crimes were committed between 1992 and 2001. In June, the former judge was sentenced to seven years in prison.

- In Edmonton, Alberta, police are investigating 18 unsolved murders of women in the last two decades. Women's organizations in the city estimate that a disproportionate number of the women were Indigenous.

NWAC believes that the incidents that have come to light are part of a larger pattern of violent assaults, murders and disappearances of Indigenous women across Canada. The organization has estimated that over the past twenty years more than five hundred

[66] Aboriginal Women: A Demographic, Social and Economic Profile, Indian and Northern Affairs Canada, Summer 1996.

[67] See, for example, Claudette Dumont-Smith and Pauline Sioui Labelle, *National Family Violence Abuse Study* , Aboriginal Nurses of Canada, 1991. Pauktuutit (Inuit Women's Association), *No more secrets*, 1991.

[68] "Serial killer who roamed Saskatoon met with indifference by police, media: Journalist-author accepts award for book about slain aboriginal women." Edmonton Journal,. 29 November, 2003.

Indigenous women may have been murdered or gone missing in circumstances suggesting violence.

Unfortunately, while there is clear evidence that Indigenous women in Canada face an extraordinarily high risk of violence, significant gaps in how police record and share information about missing persons and violent crimes means that there is no comprehensive picture of the actual scale of violence against Indigenous women, of who the perpetrators are, or in what circumstances the violence takes place. Reports of violent crimes or missing persons may be investigated by municipal police forces, provincial forces, Indigenous police forces or the national police force, the Royal Canadian Mounted Police (RCMP). Police have said that they do not necessarily record the ethnicity of crime victims or missing persons when entering information into the Canadian Police Information Centre database, the principle mechanism for sharing information among police forces in Canada.[69] According to the Canadian Centre for Justice Statistics, in 11 percent of homicides in 2000, Canadian police did not record or report on whether or not the victim was an Indigenous person.[70]

An RCMP task force is currently investigating 40 unsolved murders and 39 long term missing persons cases in the province of Alberta. All but three of the victims are women. These cases were identified in the course of what the RCMP describes as a "comprehensive analysis" meant to identify possible links and create a profile of common risk factors. A spokesperson for the project interviewed by Amnesty International was unable to say how many of the missing women are Indigenous saying there was "not a lot of focus on this."

A 1999 report by the United States Department of Justice provides statistics on a range of violent crimes against Indigenous people in the U.S.A. According to this report, Indigenous women are more than twice as likely as white women to be the victims of violent crime overall and the rates of reported sexual assault are more than three times higher for Indigenous women than non-Indigenous women in the U.S. Roughly 15 percent of all violent attacks against Indigenous people in the US, and 25 percent of sexual assaults, were reported as being carried out by intimates and family members, while the vast majority of perpetrators were either acquaintances or strangers. This is very close to the experience of all other ethnic groups. What is unique about Indigenous women's experience, according to this report, is that fully 70 percent of all violent crimes against Indigenous people in the US - and 90 percent of sexual assaults - are reported to be carried out by non-Indigenous people.[71]

To Amnesty International's knowledge, similar statistics are not available in Canada. This is one example of the kind of information that would help better inform efforts to educate about and prevent violence against Indigenous women. As one study on sexual violence against Indigenous women in Canada concluded:

> Collection of race and crime statistics is encouraged on a larger scale than what is currently available in order that we may better understand trends in both Aboriginal offending and victimization patterns. Crime and victimization policy is often informed by such statistics in order to prevent crime and effect more efficient operation of the criminal justice system. Desperately needed, culturally sensitive and appropriate programming cannot be developed without the statistics to prove there is a need. Additionally, possible discrimination by criminal justice members cannot be pinpointed unless there are statistics that demonstrate there is overrepresentation within the system. By not collecting racial background information, Canadian policy may be reflecting an inherent bias of the racial majority, thereby potentially contributing to over-representation of Aboriginal

[69] Canadian Press, "Missing aboriginal women inspire national campaign," 22 March, 2004.
[70] *Juristat*, Vol 21, No.9, Canadian Centre for Justice Statistics, Statistics Canada, 2001.
[71] *American Indians and Crime.* Bureau of Justice Statistics, U.S. Department of Justice. 1991 p. 6.

peoples within the criminal justice system.[72]

Violence against Women in the Sex Trade

Whether or not prostitution is a criminal act, women in the sex trade are entitled to the protection of their human rights. Concrete and effective measures must be adopted to ensure their safety and to bring to justice those who commit or profit from violence against sex trade workers.

Working in the sex trade in Canada can be extremely dangerous for women, whether Indigenous or non-Indigenous. This is especially true for women who solicit on the streets. In the PACE study, one-third of the women said they had survived an attack on their life while working on the street.[73]

Women in the sex trade are at heightened risk of violence because of the circumstances in which they work, and because the social stigmatization of women in the sex trade provides a convenient rationale for men looking for targets for acts of misogynistic violence.[74]

There are additional concerns around police treatment of Indigenous and non-Indigenous women in the sex trade. The threat of arrest makes many women reluctant to report attacks to the police or cooperate with police investigations. As a result, the perpetrators may be encouraged by the belief that they are likely to get away with their crimes.

Under Canadian law, the act of prostitution is not illegal, but communicating in public for the purpose of buying or selling sexual services, as well as buying or attempting to buy the sexual services of someone younger than 18, being found in a place maintained for prostitution, and procuring or living off the proceeds of someone else's prostitution are all criminal acts.[75] Many in the sex trade say that the threat of enforcement of these laws is used to drive sex trade workers from neighbourhoods where affluent residents are likely to complain, into less visible, and therefore more dangerous areas.[76]

The threat of arrest places sex workers in an "adversarial relationship" with police.[77] Sex workers are reluctant to seek the protection of police for fear of being arrested. In turn, police tend to look on prostitutes with suspicion and mistrust, and may blame them for putting themselves in positions of risk.

The executive director of Regina's Sex Workers' Advocacy Project, Barb Lawrence, told Amnesty International about comments made by one police officer. A sex worker missed an appointment with a Crown Prosecutor to give testimony in the case of a murdered Indigenous woman in Regina. Lawrence, who had set up the meeting, eventually received a call from the sex worker. It turned out that the woman was being held by city police who wanted her to provide evidence on a separate case. The police had refused to believe that she had a meeting with the prosecutor's office. When Lawrence and the prosecutors went to the police station to meet the woman, the arresting officer reportedly said he had no reason to believe the woman's claims, saying "she's just a hooker on the street."

The isolation and social marginalization that increases the risk of violence faced by women in the sex trade is often particularly acute for Indigenous women. The role of racism and sexism in compounding the threat to Indigenous women in the sex trade was starkly noted by Justice David Wright in the 1996 trial of John Martin Crawford for the murder of three Indigenous women in Saskatchewan:

[72] Hannah S. Scott and Rebecca L. Beaman. "Sexual assault among Aboriginal and non-Aboriginal peoples in a Western Canadian city: A case for including race when collecting crime data." *Online Journal of Justice Studies*, Vol. 1, No.1, January 2003, http://ojjs.icaap.org/issues/1.1/scott-beaman.html.

[73] PACE Society, Supra, footnote 60, p.6.
[74] John Lowman. "Violence and the Outlaw Status of (Street) Prostitution in Canada,"Violence Against Women, Vol.6, No.9, September 2000, pp. 987-1011, at p.989.

[75] Criminal Code of Canada, ss. 212, 213.
[76] Pivot Legal Society. Voices for Dignity: A Call to End the Harms Caused by Canada's Sex Trade Laws, Vancouver, 2004.
[77] Lowman, Supra, footnote 74, p.1008.

> It seems Mr. Crawford was attracted to his victims for four reasons; one, they were young; second, they were women; third, they were native; and fourth, they were prostitutes. They were persons separated from the community and their families. The accused treated them with contempt, brutality; he terrorized them and ultimately he killed them. He seemed determined to destroy every vestige of their humanity.[78]

Racist Violence and Indigenous Women

The Manitoba Justice Inquiry said of the murder of Helen Betty Osborne:

> Her attackers seemed to be operating on the assumption that Aboriginal women were promiscuous and open to enticement through alcohol or violence. It is evident that the men who abducted Osborne believed that young Aboriginal women were objects with no human value beyond sexual gratification.[79]

As the inquiry recognized, racism and sexism intersect in stereotypes of Indigenous women as sexually "available" to men. This intersection of sexism and racism contributes to the assumption on the part of perpetrators of violence against Indigenous women that their actions are justifiable or condoned by society.

Frontline organizations contacted by Amnesty International confirmed that racist and sexist attitudes toward Indigenous women continue to be a factor in attacks on Indigenous women in Canadian cities.

[78] Transcript of trial, *R v Crawford*, May 31, 1996, p.87. Warren Goulding. *Just Another Indian: A Serial Killer and Canada's Indifference*, Calgary: Heritage House Publishing Company, 2001, p.188.
[79] Aboriginal Justice Inquiry of Manitoba, Supra, footnote 1.

Police, however, are inconsistent in their acknowledgement of this threat. Some police spokespersons told Amnesty International that they believe that "lifestyle" factors, such as engaging in the sex trade or illegal drug use are the most important risk factors, and that other factors such as race or gender are not significant enough to be considered in their work. Other police spokespersons told Amnesty International that they have seen that racism and sexism are factors in attacks on Indigenous women and that they consider Indigenous women as a whole to be at risk.

Over-Policed and Under-Protected

Numerous studies of policing in Canada have concluded that Indigenous people as a whole are not getting the protection they deserve.[80] This conclusion is supported by the testimony of many of the families interviewed by Amnesty International. A few described police officers who were polite and efficient and who, in a few cases, even went to extraordinary lengths to investigate the disappearance of their loved ones. Other families described how police failed to act promptly when their sisters or daughters went missing, treated the family disrespectfully, or kept the family in the dark about how the investigation – if any – was proceeding.

A number of police officers interviewed by Amnesty International insisted that they handle all cases the same and do not treat anyone differently because they are Indigenous. However, if police are to provide Indigenous people with a standard of protection equivalent to that provided to other sectors of society, they need to understand the specific needs of Indigenous communities, be able to communicate with Indigenous people without barriers of fear and mistrust, and ultimately be accountable to Indigenous communities. As some police officers acknowledged to Amnesty International, this is clearly not the case today.

Across the country, Indigenous people face arrest and criminal prosecution in numbers far out of

[80] See, for example: Saskatchewan Commission on First Nations and Métis Peoples and Justice Reform (Saskatchewan Justice Reform Commission), Final Report, Regina, 2004. Aboriginal Justice Inquiry of Manitoba, Supra, footnote 1.

proportion to the size of the Indigenous population. The Manitoba Justice Inquiry suggested that the over representation of Indigenous people in the justice system may partly stem from the predisposition of police to charge and detain Indigenous people in circumstances "when a white person in the same circumstances might not be arrested at all, or might not be held."[81] The Inquiry explained that many police have come to view Indigenous people not as a community deserving protection, but a community from which the rest of society must be protected. This has lead to a situation often described as one of Indigenous people being "over-policed" but "under-protected."[82]

Many Indigenous people feel they have little reason to trust police and as a consequence, are reluctant to turn to police for protection. Police forces were used to enforce policies such as the removal of children to residential schools that have torn apart Indigenous communities. Today, many Indigenous people believe police are as likely to harm as to protect them. Amnesty International has previously drawn attention to incidents in which police in Canada have been responsible for, or are apparently implicated in acts of violence against Indigenous people or apparent reckless disregard for their welfare and safety. These include the 1995 killing of land rights protestor Dudley George by an Ontario Provincial Police officer and the concern that police may have been involved in a series of freezing deaths of Indigenous men on the outskirts of Saskatoon.[83]

The Saskatchewan Justice Reform Commission noted that "mothers of Aboriginal youth have spoken about the apprehension they feel when their children leave the home at night. Their fears involve the possibility of police abusing their children."[84] One Indigenous woman, herself a professor at a Canadian university, told Amnesty International that she has instructed her teenage son to never talk to the police unless she is present.

Protesting against the absence of any permanent police force in many Northern communities, the Inuit Women's Association of Canada has said, "In order to serve all parts of the communities, the police have to know our communities, they must be a part of our communities."[85] Many police forces in Canada now require officers to take courses in cultural sensitivity, cross cultural communication or Indigenous history to help improve their understanding of Indigenous communities. Despite such requirements, the Saskatchewan Justice Reform Commission concluded, "police officers continue to be assigned to First Nations and Métis communities with minimal knowledge of the culture and history of the people they serve."[86]

Despite the efforts of many police forces to hire more Indigenous officers, Indigenous people are still underrepresented in police forces across Canada.[87] Greater effort must be made to hire more Indigenous officers, especially women.

More attention must also be made to integrate an understanding of Indigenous communities into core learning experiences of all officers. For example, the concerns, perspectives and needs of Indigenous communities should be reflected in the operational scenarios used in police training. Officers also need the time and the opportunity within their day-to-day duties to develop the necessary relationships of mutual understanding and trust with Indigenous communities. Unfortunately, many officers told Amnesty International that heavy workloads and frequent, often mandatory, rotations in and out of assignments, present real barriers to officers understanding and being trusted by Indigenous communities.

[81] Aboriginal Justice Inquiry of Manitoba, Supra, footnote 1.
[82] The Aboriginal Justice Implementation Commission, Final Report, Manitoba, 2001.
[83] Amnesty International, *The police killing of Dudley George: Eight years on -- many questions remain unanswered*, September 4, 2003, AMR 20/003/2003. Amnesty International, *Canada: Saskatchewan needs an independent body to investigate police*, May 19, 2003, AMR 20/C02/03.
[84] Saskatchewan Justice Reform Commission, Supra, footnote 80, pp. 5-3, 5-4.
[85] Pauktuutit (Inuit Women's Association of Canada), Inuit Women and Justice: Progress Report No. 1, Appendix, Violence Against Women and Children: The Concerns of Labrador Women pp.5-6.
[86] Saskatchewan Justice Reform Commission, Supra, footnote 84, pp. 5-8.
[87] Ibid, pp. 5-10, 5-11. The Aboriginal Justice Implementation Commission, Supra, footnote 82.

Police forces should work with Indigenous organizations to establish practices and policies that can support not only the learning of individual officers, but also an improved relationship between Indigenous communities and the force as a whole. The Saskatchewan Justice Reform Commission pointed to a number of positive practices within the Saskatoon police force that it felt should be emulated elsewhere. These included the creation of an Indigenous liaison post and regular cooperation with community elders, including having elders accompany officers on some patrols in predominantly Indigenous neighbourhoods.[88]

One of the critical areas for institutional reform highlighted by Amnesty International's research is the way police respond to reports of missing persons. Many Indigenous families told Amnesty International that police did little when they reported a sister or daughter missing and seemed to be waiting for the woman to be found. Police point out that the vast majority of people who are reported missing have run away or chosen to break off ties with family or friends. Most people who have voluntarily "gone missing" in this way do quickly turn up on their own.

However, this does not excuse incidents recounted to Amnesty International where, despite the concern of family members that a missing sister or daughter was in serious danger, police failed to take basic steps such as promptly interviewing family and friends or appealing to the public for information. These steps are particularly urgent when the missing person is a girl, as the State has special obligations to find and protect children at risk. However, every missing person report needs to be carefully assessed to determine the risk to the missing person. Unfortunately, even in large cities, many Canadian police forces do not have specialized personnel assigned to missing person cases. Instead, the task of assessing the risk and the credibility of the family's fears may fall to individual officers with little or no specific training or experience related to missing persons.

To Amnesty International's knowledge, few police forces have specific protocols on actions to be taken when Indigenous women and girls are reported missing. The national police force, the RCMP, does require that a specialized liaison officer be involved in the case when the missing person is Indigenous. All forces should work with Indigenous communities to develop and put in place more specific protocols that are sensitive to the particular concerns and circumstances in which Indigenous women are reported missing.

Because of the vital role they play in society, and the power they wield, it is critical that police be held accountable. That must include accountability for failing to fulfill their duties, as spelled out in official policies, to fully and impartially investigate all reports of threats to women's lives. That issue emerged as a clear concern in the course of research for this report. The families of missing and murdered women need to have greater formal access to the police, for example through the appointment of community ombudspersons, to ensure that their concerns are addressed in an appropriate manner.

The healing journey: justice for missing and murdered Indigenous women

All victims of violent crime have the right to justice. Under international human rights laws and standards, justice is not limited to the prosecution and punishment of the person who carried out the crime. Justice also includes a public acknowledgement of the crime, the opportunity and the ability for the victims of violence and their survivors to heal and to rebuild their lives, and assurance that the crime will not be repeated.

Although the formal court system cannot address all of these needs on its own, it nonetheless plays a vital role in assuring justice in the fullest sense of the word. The Saskatchewan Justice Reform Commission noted that the Canadian court system was imposed on Indigenous peoples without their consent and continues to be looked on with suspicion and mistrust by many.[89] To establish trust in the court system, and ensure that court proceedings reflect an awareness and appreciation of the specific circumstances of Indigenous peoples, the Commission recommended cross-cultural training for all judges and the appointment of Indigenous judges

[88] Ibid., p. A-34.

[89] Saskatchewan Justice Reform Commission, Supra, footnote 84, p.6-3.

in every level of court.[90] The Manitoba Justice Inquiry had early recommended increased recruitment of Indigenous judges and prosecutors and urged cross-cultural training "for all those working in any part of the justice system who have even occasional contact with Aboriginal people."[91]

It is important as well that Indigenous people who come in contact with the law, either as the accused or as victims, receive appropriate assistance in understanding the court system and having their voices heard. Amnesty International notes that in many jurisdictions across Canada a system of Indigenous court workers provides advocates to work on behalf of community members dealing with the justice system. Clear policies and protocols should also be established with respect to the timely provision of information, including autopsy results and coroners reports, to the families of missing and murdered persons.

Official indifference

In 1999, the Canadian government itself told the UN Human Rights Committee that the situation of Indigenous peoples is "the most pressing human rights issue in Canada."[92] Despite this admission, Canada has been repeatedly criticized by UN treaty bodies, including the UN Committee on Economic, Social and Cultural Rights,[93] the UN Committee for the Elimination of Racial Discrimination,[94] the UN Committee on the Rights of the Child,[95] and the UN Human Rights Committee,[96] for its failure to implement comprehensive reforms identified as critical by its own Royal Commission on Aboriginal Peoples. Furthermore, the UN Committee on the Elimination of Discrimination against Women has expressed concern about "persistent, systematic discrimination faced by aboriginal women in all aspects of their lives."[97]

While the federal and provincial governments in Canada can point to numerous programs undertaken to fulfill the rights of Indigenous peoples, the seriousness of these concerns requires that government do more.

Many of the families and frontline organizations interviewed for this report expressed concern and anger at the seeming indifference of Canadian officials and Canadian society for the welfare and safety of Indigenous women. This official indifference is well illustrated by the Canadian government's response to one of the most notorious killings of an Indigenous woman from Canada.

Anna Mae Pictou Aquash was a Mik'maq woman from Indian Brook First Nation, Nova Scotia. On February 24, 1976, in the midst of a protracted and violent conflict involving the American Indian Movement (AIM) and the US Federal Bureau of Investigation (FBI), her body was found on the Pine Ridge Reservation in South Dakota. An autopsy concluded that she had been killed by a single gun shot to the back of her head. Despite the high profile of her death, and intensive FBI operations targeting members of AIM, almost 30 years passed before anyone was charged in her killing.[98]

Anna Mae Aquash's family have expressed frustration that the Canadian government has done little to support them in their three decade long call for justice. Anna Mae Aquash's daughters, Denise and

[90] Ibid. p. 6-14.
[91] Aboriginal Justice Inquiry of Manitoba, Supra, footnote 1.
[92] Concluding Observations of the Human Rights Committee: Canada, CCPR/C/79/Add.105, 07/04/99, para. 8.
[93] Concluding Observations of the Committee on Economic, Social and Cultural Rights: Canada, Supra, footnote 3, para. 43.
[94] Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada, A/57/18, 01/11/2002, para. 329.
[95] Concluding Observations of the Committee on the Rights of the Child: Canada, Supra, footnote 63, para. 59.
[96] Concluding Observations of the Human Rights Committee: Canada, Supra, footnote 92, para. 8.
[97] Concluding Observations of the Committee on the Elimination of Discrimination against Women, A/58/38, 28th Session, 13-31 January, 2003, para. 361.
[98] While this report was being prepared, charges were brought against two former members of AIM in the killing of Anna Mae Aquash. One man was convicted of murder on February 4, 2004. As of October 2004, the second many was awaiting a hearing to determine whether he will be deported from Canada to stand trial in the US. Both men say they are innocent.

Deborah Maloney say they have sent several letters to all levels of the Canadian government but the only response they have ever received was a standard acknowledgement of receipt of their letters. Denise Maloney says, "Any direct contact from any Canadian authorities would be nice. The level of apathy from governmental authorities surrounding my mother's case is disturbing and insulting."

The case studies that follow illustrate some of the patterns of violence that threaten the lives of Indigenous women in Canadian towns and cities. Concrete measures that would reduce Indigenous women's vulnerability to such violence have already been clearly identified by Indigenous women's organizations and by official inquiries and commissions. What remains is for Canadian officials to acknowledge the seriousness of the problem and to commit themselves to immediate action.

IV. Nine Stolen Sisters: Case studies of discrimination and violence against Indigenous women in Canada

As has been noted above, no one knows how many Indigenous women have been murdered or gone missing in Canada over the past three decades. The information that would make it possible to answer that question is simply not available. In Amnesty International's research we have spoken with many women who have experienced violence firsthand, we have interviewed family and friends of women who have been killed or gone missing, and we have talked to front-line organizations who work on a daily basis with Indigenous women who are coping with violence.

The following nine cases have been selected because they represent common themes that have emerged in the course of Amnesty International's research. They have been chosen because they reflect the variety of factors that appear to put Indigenous women at heightened risk. The root causes of discrimination and violence are often complex and are invariably inter-connected. In some instances it is quite clear that Indigenous women are either attacked by individuals or inadequately protected by authorities expressly because of their Indigenous identity. In some cases the Indigenous women who have gone missing or been killed have been working in the sex trade and may have had addictions to alcohol or drugs. All women in such circumstances, not only Indigenous women, face an increased risk of violence and discrimination. The risk that Indigenous women face in these circumstances is often exacerbated by racism and discrimination because of their Indigenous identity.

Amnesty International's research has also pointed to a variety of historical and current factors that have led a disproportionate number of Indigenous women into the sex trade, where they face that heightened risk. A number of the cases recounted in this report demonstrate, in human terms, the disturbing connections among past policies such as residential schools, societal discrimination against Indigenous people, involvement in the sex trade, and deadly violence.

These cases also represent two critical aspects of the reality of violence and discrimination against Indigenous women. In some instances the violence itself is racist and sexist. In other cases it may be the response from the police, other authorities, the media and the general public that is racist and sexist. In yet other cases it is both.

Amnesty International is concerned that all of these dimensions to the problem of violence against Indigenous women give rise to serious human rights concerns, be it racist violence, discriminatory responses to violence, or the consequences of the many discriminatory laws, policies and practices, past and present, that have led to the marginalization of Indigenous peoples in Canada. These cases all speak to the painful human cost of government failure to address those human rights concerns. All dimensions to the problem demand a response from governments across Canada. Yet the first case, a murder occurring more than thirty years ago which resulted in a provincial inquiry into the Manitoba justice system, is a stark reminder of the failure of governments to take adequate action to date.

An unheeded warning:
Helen Betty Osborne - murdered November 12, 1971

> There is one fundamental fact: her murder was a racist and sexist act. Betty Osborne would be alive today had she not been an Aboriginal woman.[99]

Helen Betty Osborne was born in Norway House, a Cree community at the northern end of Lake Winnipeg in the province of Manitoba. In 1969, at the age of 17, she left her community to pursue her education, with the dream of becoming a teacher and helping her people.

At the time, Indigenous children who wanted to graduate from high school had no choice but to leave their communities. The federal government, pursuing a policy of cultural assimilation -- and having decided that Indigenous communities offered no future for young people -- wanted Indigenous children to get their education in predominantly non-Indigenous towns and cities. In Norway House, the local school only provided the first eight of the twelve grades of public school.

For two years, Helen Betty Osborne attended the Guy Hill Residential School outside The Pas. Then in 1971 she moved into The Pas to attend high school.

A provincial justice commission, which would later examine the circumstances surrounding the murder of Helen Betty Osborne, described The Pas, a town of about 6000 people in 1971, as being sharply divided between Indigenous and non-Indigenous residents. "At the movie theatre, each group sat on its own side; in at least one of the bars, Indians were not allowed to sit in certain areas; and in the school lunch-room, the two groups, Aboriginal and non-Aboriginal, ate apart."[100]

According to the Manitoba Justice Inquiry, tensions between the two communities often turned violent, with police failing to intervene. There was also a pattern of sexual harassment of Indigenous women and girls. Police officers who testified before the Inquiry described "white youths cruising the town, attempting to pick up Aboriginal girls for drinking parties and for sex." The Inquiry found that the RCMP failed to check on the girls' safety. The Department of Indian Affairs also ignored the practice, failing to work with the schools to warn Indigenous students of the dangers.

On Friday, November 12, 1971, Helen Betty Osborne went out with a number of friends to a dance. At around 2 am, as she was walking back to house where she was billeted, she was accosted by four non-Indigenous men.

According to the testimony of one of the men, the four had decided to pick up an Indigenous woman for sex. When Osborne refused, they forced her into their car. In the car, she was beaten and sexually assaulted. She was then taken to a cabin owned by one of the men where she was beaten and stabbed to death. According to the autopsy report, she was severely beaten around the head and stabbed at least 50 times, possibly with a screwdriver.

Twenty years later, the Manitoba Justice Inquiry concluded that the murder of Helen Betty Osborne had been fuelled by racism and sexism:

> Women in our society live under a constant threat of violence. The death of Helen Betty Osborne was a brutal expression of that violence. She fell victim to vicious stereotypes born of ignorance and aggression when she was picked up by four drunken men looking for sex.[101]

The Inquiry also pointed out that the life of Helen Betty Osborne might have been saved if police had taken action on a pattern of threats to Indigenous women's safety that was already evident in 1971:

> We know that cruising for sex was a common practice in The Pas in 1971. We know too that young Aboriginal women, often underage, were the usual objects of the

[99] Report of the Aboriginal Justice Inquiry of Manitoba, Supra, footnote 1.
[100] Ibid.
[101] Ibid.

> practice. And we know that the RCMP did not feel that the practice necessitated any particular vigilance on its part.[102]

According to the Justice Inquiry, racism also marred the initial RCMP investigation. Helen Betty Osborne's Indigenous friends were initially treated as suspects. Teenagers were interviewed without the consent or knowledge of their parents. One of Helen Betty Osborne's friends was taken out into the bush to be interrogated. When she hesitated in answering a question, police threw her over the hood of their car. They later took her to the morgue to see her friend's mutilated body. In contrast, police initially failed to act on a tip naming the four non-Indigenous men responsible who took part in the abduction. The men's car was not searched until at least a year later and the Justice Inquiry noted that the car's owner was treated with extreme deference. Although police were eventually convinced that these four non-Indigenous men were responsible for the murder, unlike the Indigenous youths, they were not brought in for questioning.

By the end of 1972, the police concluded that they did not have enough evidence to go to trial. The case then lapsed for more than ten years until an officer placed an ad in the local paper asking for information on the case. This ad resulted in the discovery of new evidence on the basis of which the first charges were laid in October 1986. After these charges were laid, media coverage resulted in new information coming forward. Finally the first of the men charged agreed to testify in return for immunity from prosecution.

In December 1987, one of the four men, Dwayne Johnston, was sentenced to life imprisonment for the murder of Helen Betty Osborne. A second man was acquitted, while the other two men who were present during the abduction and murder were never charged.

The Justice Inquiry determined that the most important factor obstructing justice in this case was failure of members of the non-Indigenous community to bring forward evidence that would have assisted the investigation. The Inquiry concluded that the community's silence was at least partly motivated by racism. The question remains, however, why the police waited more than 10 years to publicly seek the assistance of the community.

Dwayne Johnston has been released from prison on parole. The family of Helen Betty Osborne has brought him into a traditional healing circle so that he can better understand the crime he committed. The family has since become convinced that Johnston, although responsible for a terrible crime, was not the principle instigator of the attack on Helen Betty Osborne.

The Manitoba Justice Inquiry put forward an extensive list of reforms to be undertaken to ensure that the justice system would provide Indigenous people the protection they needed and not contribute to further victimization. The recommendations were wide-ranging and required action from all levels of government. Recommendations included recognizing Indigenous peoples' right to self-government, establishing Indigenous legal systems, addressing outstanding land and resource disputes, recruiting more Indigenous police officers, ensuring independent procedures for investigation and resolution of complaints against police, establishing a special investigations unit to take control of the investigation of possible incidents of serious police misconduct, and increasing services to women escaping situations of violence. Amnesty International is of the view that adopting these recommendations in a manner consistent with international human rights standards would provide Indigenous women with greater protection from violence.

In a book published ten years after the Inquiry made its final report, one of the former Commissioners complained that the federal government had not undertaken any of the recommended reforms within its jurisdiction while the provincial government was still at the stage of studying which recommendations to implement.

> The Aboriginal Justice Inquiry made over 150 recommendations. Almost none of them have been acted upon. There is either the inability to understand the need for improvements or the same century-long governmental inertia. The result is clear; Aboriginal people

[102] Ibid.

> continue to suffer at the hands of an inappropriate justice system.[103]

In 1999, the provincial government convened the Aboriginal Justice Implementation Commission to examine the status of the Inquiry's recommendations. That Commission made a further set of recommendations to the provincial government.[104] Amnesty International was repeatedly told by Indigenous peoples' organizations, lawyers, frontline service groups and others that they believe that the pace of implementation of the recommendations continues to be unacceptably slow.

Not knowing
Shirley Lonethunder - missing since December 1991

> "I also can't help wondering what kind of reaction there would be if these young women were white? What kind of value do we place on human life?"[105]

Shirley Lonethunder, is a Cree woman and mother of two children, from White Bear First Nations reserve in Saskatchewan. In 1991 she was 25 years old and living in Saskatoon. Her family knew she used drugs. According to her brother, she also occasionally worked in the sex trade to make enough money "to get by" and provide for her children. In late November 1991, she told her mother, Doris Lonethunder, she would be starting university in the New Year and asked her to look after her infant son and daughter. She told her brother a different story. She said she had to get out of Saskatoon to avoid the police. The last time her family saw her was on December 20, 1991.

The Lonethunder family didn't realize Shirley Lonethunder was missing until March 1992 when they were contacted by her lawyer, who said she had missed a court date. Until then, her mother thought Shirley Lonethunder simply "went away somewhere." Now Doris Lonethunder began to fear for her daughter. She and her son filed a Missing Person report with the Saskatoon Police that same day

The Saskatoon Police Service's missing persons policy states that investigators have a responsibility to "liaise with complainants" and should request media assistance, if necessary, to help locate a missing person. According to Doris Lonethunder, the police investigator was in regular contact with her at first, phoning every week for approximately a month, then phoning every two weeks. However, the police did not make any public appeals for assistance on the case and the family members felt the police were not very supportive. After about three months, the investigator stopped phoning. Approximately six months after having filed a Missing Person report, Shirley Lonethunder's brother contacted the Saskatoon Police to enquire about any progress in the case. He says that he was told there was no record of the Missing Person report. Saskatoon police declined to answer Amnesty International's questions about unresolved cases, such as Shirley Lonethunder.

In 1992 Doris Lonethunder spoke to an Indigenous healer from the United States who told her that he had had a vision of Shirley's body at a location south of Saskatoon, a short distance beyond the city's limits and therefore in the jurisdiction of the RCMP. At first, Doris Lonethunder hesitated to take this information to the police because she thought the police, who did not believe in "Indian ways", would not take her seriously. In the end, she spoke with an Indigenous officer stationed at the local RCMP detachment, who responded sympathetically and said she would look into this information. About a week later, the officer was transferred, "And that," says Doris, "was it." As far she knows, nothing happened with the information she provided. While internationally-recognized policing standards would not obligate police to act on information of this sort, the sensitivity and understanding that Doris Lonethunder experienced when dealing with the Indigenous officer helped build her trust and confidence. When that disappeared, the trust and confidence slipped as well.

In October 1994, another woman's remains were discovered in the general area where Doris Lonethunder had asked the RCMP to search for her

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[103] A.C. Hamilton, *A Feather, Not a Gavel: Working towards Aboriginal Justice*, Great Plains Publications, Manitoba, 2001.
[104] The Aboriginal Justice Implementation Commission, Supra, footnote 82.
[105] Janice Acoose, *Iskwewak: Neither Indian Princesses Nor Easy Squaws*, Toronto, Women's Press, 1995.

daughter's body. By the end of the month, RCMP had unearthed two other women's bodies at the same site. The three women were Eva Taysup, Shelley Napope, and Calinda Waterhen. All three were Indigenous women who had been reported missing in 1992 and 1993.

On 12 April 1995, a local newspaper quoted an RCMP officer as stating that the force was considering excavating the grove where the three bodies had been found.[106] The officer indicated more bodies might be out at the site. In almost immediate response the RCMP issued a press release denying having any plans to excavate, stating that they had no indication there might be other bodies at the site.[107] Amnesty International has now been informed by the RCMP that there has been a recent search of the area conducted by the Saskatoon Police Service, including with the use of Ground Penetrating Radar, and that there are plans to search further.

In 1996, John Martin Crawford was convicted of murder in the killings of Eva Taysup, Shelley Napope, and Calinda Waterhen. He was the sole person charged and convicted. Crawford had previously served seven years in prison for abducting and murdering another Indigenous woman, Mary Jane Serloin, age 35, in 1981.

The body of another Indigenous woman, 37-year-old Janet Sylvestre, was found outside Saskatoon in 1994. She had been raped and killed. No one has ever been convicted in her murder.

Commenting on the apparent public apathy over the disappearances and murders of Indigenous women in Saskatoon in the early 1990s, Janice Acoose, a professor at the Saskatchewan Indian Federated College in Saskatoon wrote in 1996:

> I have waited in agonized and frustrated silence for some kind of expression of concern (perhaps even outrage) from members of the community, women's groups, or political organizations. To date, few, if any, have come forward and spoken to the nature of this heinous crime or the need to protect Indigenous women who were so obviously the target of this murderer. And perhaps, most importantly, I waited for someone to come forward and respectfully acknowledge the lives of these four women.[108]

Shirley Lonethunder's family is raising her children. They remain sure that something terrible has happened to her. There is nothing else that would explain the 13-year-absence of a woman who was so close to her family. Her mother says "not knowing is a hard thing to actually deal with." According to Doris Lonethunder, the Saskatoon police have not contacted her directly about her daughter in at least 10 years.

She deserved to be safe
Pamela Jean George - Murdered April 17, 1995

Pamela Jean George was a 28 year-old Saulteaux woman with two young daughters. She was close to her family at Sakimay First Nation, located in southeastern Saskatchewan. Struggling with poverty, Pamela George occasionally worked in the sex trade in Regina.

Professor Sherene Razack of the University of Toronto has carried out a detailed review of the transcripts of the trial of the two men who were eventually convicted of Pamela George's murder. The following details emerge from Professor Razack's review of those transcripts.[109]

On the evening of 17 April 1995, Pamela George agreed to get into a car driven by a 20-year-old white man, Steven Tyler Kummerfield. A second 20-year old, Alexander Dennis Ternowetsky, was hiding in

[106] "Grove may harbour more bodies," Saskatoon Star-Phoenix, April 12, 1995.
[107] Goulding, Supra, footnote 78, at p. 133.

[108] Acoose, Supra, footnote 105.
[109] Sherene Razack, Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George, in Sherene Razack, ed., *Race, Space and the Law: Unmapping a White Settler Society*, Toronto, Between the Lines. 2002, pp. 125-147. Amnesty International has also reviewed the lengthy appeal court decision in this case, *R v. Kummerfield and Ternowetsky*, 163 Sask. R. 257 (C.A.)

the trunk. Both men were university students. They had been drinking, and neither had money to pay her. Kummerfield drove the car to a field two miles past the outskirts of Regina. There, the two men forced her to perform oral sex. They then beat her severely and left her lying face down in the mud. Her body was discovered the next morning in a ditch.

Media reports suggest that the police investigation initially focused on other Indigenous people and people living on the street. One Indigenous man was reportedly interrogated four times. One or two weeks after the murder of Pamela George the Regina Police Service received a tip from a woman who said one of the killers had confided in a friend of hers. She was able to provide the names of Kummerfield and Ternowetsky, who were eventually charged with first-degree murder.

Testimony at the trial indicated that on the night of April 17th the two men tried to pick up another Indigenous woman before they encountered Pamela George. At the trial, that woman testified that she had refused to go with them and they hurled racial slurs at her, reportedly calling her "Indian trash" and "squaw slut."

After the men returned from beating Pamela George to death, they reportedly bragged to friends that they had picked up an "Indian hooker." Both men admitted hitting Pamela George, but said they doubted they had killed her. According to a friend who testified at the trial, Ternowetsky said, "She deserved it. She was an Indian."

The case was tried before a white judge and all-white jury. Little attention was given to the life of the victim, apart from her work in the sex trade. The Crown prosecutor told the jury that Pamela George lived a life far removed from theirs, and they would have to consider the fact that she was a prostitute as part of the case.[110] Mr. Justice Malone instructed jurors before their deliberations to bear in mind that Pamela George "indeed was a prostitute" when they considered whether or not she had consented to sexual activity.[111] The Court of Appeal decision briefly considered the prosecutor and Judge's comments and concluded they "were not made for the purpose of conveying a negative view of the victim to the jury."[112]

Amnesty International is concerned that comments of this nature may reflect social attitudes faced by sex workers in general, and Indigenous sex workers in particular. Professor Razack comments:

> [Not] only did George remain the "hooker" but [the two defendants] remained the boys who "did pretty darn stupid things'; their respective spaces, the places of white respectability and the Stroll simply stood in opposition to each other, dehistoricized and decontextualized. If Pamela George was a victim of violence, it was simply because she was of the Stroll/ reserve, Aboriginal, and engaging in prostitution. No one could then be really held accountable for her death.[113]

The two men were convicted of manslaughter, and sentenced to six and a half years in prison.

A police officer working in Regina at the time told Amnesty International recently that he had been "disgusted" by the verdict. In his opinion, some of the people involved in the investigation and prosecution of the case saw Pamela as a sex trade worker, not a human being. He felt the treatment of this case reflected this attitude from start to finish.

Taken from her family
Janet Henry - missing since June 28, 1997

Janet Henry comes from the KwaKwaQueWak Nation in Kingcome Inlet in British Columbia. She was the youngest in a family of thirteen. Her siblings have many happy memories of their childhood together. Although their mother fell ill with lupis and rheumatoid arthritis and had to undergo many operations, the older children were able to look after their younger siblings. Their father, a logger and fisherman, ensured that the family never went

[110] Razack, Ibid., pp. 145, 151.
[111] Ibid,. pp. 151-152.
[112] *R v. Kummerfield and Ternowetsky*, Supra, footnote 110, p. 297.
[113] Sherene Razack, Supra, footnote 109, pp. 145-146.

without. The eldest daughter, Donna Henry, recalls growing up immersed in a very rich culture. When Janet Henry was young, Donna Henry practiced traditional dances and songs with her.

The security the family once enjoyed was short lived. The three oldest children were taken away to residential school. After the death of their father, their mother no longer had anyone to help her care for the younger children. Janet Henry and four of her brothers and sisters were placed in foster homes.

One of Janet Henry's sisters, Sandra Gagnon, describes the break up of the family as the beginning of "a living nightmare." Many of the siblings lost both their ties to their culture and their sense of self-esteem. Their years in residential school or foster homes were followed by alcoholism and depression. Their sister Lavina was raped and murdered when she was 19. Another sibling killed himself.

In the midst of all the trauma the family had been subjected to, Sandra Gagnon remembers how they always expected that Janet would have a bright future ahead of her. "Janet was really a brilliant young woman," she said. "I never could have imagined what happened to her." Janet Henry graduated from high school and attended hairdressing school. She got married and had a daughter, to whom she was devoted.

However, when Janet Henry's marriage broke up in the late 1980s, her husband gained custody of their daughter. Janet Henry was devastated. Donna Henry recalls, "I watched my baby sister spiral." Janet Henry eventually ended up living in Vancouver's Downtown Eastside, a low income neighbourhood known for drug and the street level sex trades. Her family learned that she had begun attending parties where she engaged in sex in exchange for drugs.

It was a dangerous life. Violence against sex workers in the Downtown Eastside is all too common. By 1990, however, women in the Vancouver sex trade, and the families of women who had gone missing from the downtown Eastside, had begun to suspect that there was more to this danger than random acts of violence.

Janet Henry was apparently aware of the danger and therefore phoned her brothers and sisters frequently to let them know she was okay. The last time they heard from her was in late June 1997.

Janet Henry's family quickly became worried about her when her usual telephone contacts with them ceased. Sandra Gagnon and her brother went to the Downtown Eastside neighbourhood looking for her. After a few days, they reported her missing to the police. Because the small amount of money that Janet Henry had was still in her bank account, the family feared the worst.

Sandra Gagnon believes the police initially had one or two suspects in mind and did what they could to follow these leads. However, once these suspects were ruled out, she says the family heard less and less from the police. She speaks positively of the officers who initially investigated her sister's disappearance. However, like other family members whose sisters and daughters disappeared from the Downtown Eastside during this time, Sandra Gagnon feels the city and the police force should have acknowledged the wider pattern of disappearances much sooner and taken concerted action to ensure the safety of women in the Downtown Eastside. "They never took the threat seriously," she says. "I can guarantee you that if it wasn't the Downtown Eastside and they weren't hookers, something would have been done in an instant."

In April 1999 family members of missing women called on the police to issue a reward for information about the women who were going missing in the Downtown Eastside. Although police had recently offered rewards for information about robberies in more affluent neighbourhoods of the city, they initially declined to do so in the case of the missing women. Instead the city suggested offering a $5000 reward for any of the missing women who came forward, implying that they did not believe they had been victims of foul-play. Mayor Owen said, "Police have said there is no indication of crimes. Why don't we start with [the $5000 reward] until we find out that someone is killing these women?"[114]

Under mounting pressure from the families and increasing media coverage of the issue, the police

[114] Maggie de Vries, *Missing Sarah: A Vancouver Woman Remembers Her Vanished Sister*, Penguin Books Canada, 2003, p.234.

force eventually changed its position. The first posters offering a reward for information on the missing women were distributed in July 1999. A small group of officers was assigned to work on the disappearances on an ongoing basis. In 2000, the RCMP joined the review of evidence. A larger task force was formed the following year.

On 6 February 2002, the Vancouver City Police/RCMP Task Force moved into a farm in Port Coquitlam, outside Vancouver and sealed it off. For 21 months, they conducted one of the largest police searches in Canadian history. On the basis of evidence collected at the farm, the Crown initially laid charges against Robert Pickton, the owner of the farm, for the murder of 15 women who had gone missing from the Downtown Eastside, the vast majority of which were women who went missing after 1997.

Robert Pickton's case is expected to come to trial in 2005 or 2006 on at least 22 charges. In the meantime, the investigation of other women missing from the Downtown Eastside continues. By April 2004, the number of cases under investigation by police had grown to 60 women and one transgender person. Nineteen of the missing women are Indigenous.

Janet Henry is not among the women whose DNA has found at the Port Coquitlam farm. One of Janet Henry's sisters went through the clothing and other belongings found by police at the farm but didn't recognize anything of Henry's. Family members continue to hope that their sister is still alive, but are slowly giving up hope. "I go into denial and just keep hoping that maybe she just went far away and she has been unable to get a hold of us," said Donna Henry. But deep down inside, I know. We will probably never see her again."

"A daily part of life"
Sarah de Vries - missing April 14, 1998; confirmed dead August 6

> So many women, so many that I never even knew about, are missing in action. It's getting to be a daily part of life.[115]

Sarah de Vries was born on May 12, 1969. Sarah's mother was an Indigenous woman from the West Coast of Canada, who was also of European and African Canadian ancestry. Her father was an Indigenous man from Mexico. During the first year of her life, Sarah de Vries lived with her mother on weekends and with another family during the week. After ten months, her birth mother decided to give her up for adoption. She was adopted by a white couple in Vancouver.

Her adoptive family remembers Sarah de Vries being a bright and happy child who was always eager for the attention of her parents and her three siblings. She loved to write stories and poetry and kept a journal most of her life. She also loved to swim and some of her happiest times growing up were at a family cottage in Ontario.

"I remember her as being a very happy little girl, adventurous and very interested in the whole world around her," her sister Maggie de Vries recalls. "She was athletic, creative and loved to tell stories."

Despite these happy memories, Maggie de Vries feels that her sister may have missed out on the sense of stability or belonging that she craved and needed as a child. By the time Sarah de Vries was six, her parents' marriage was in difficulty. They separated when Sarah de Vries was nine and two the two older children stayed with their father while de Vries and her younger brother went to live with their mother.

At the same time Sarah de Vries was beginning to think of herself as an outsider between cultures. She was self conscious about the fact that she stood out within her family and within the almost exclusively white neighborhood where she lived. She also struggled to understand why her birth mother had given her up for adoption. Maggie de Vries remembers one time her sister cried for hours when a teacher asked her to draw up her family tree.

In her twenties, Sarah de Vries wrote in her journal:

> Man, I don't understand how the adoption agency could let a couple

[115] This 1995 quote from Sarah de Vries' journal and all other quotations are drawn from her letters and journals as quoted in de Vries, Ibid. and cannot be reproduced without permission from Sarah's family.

> that are both of the opposite colour as the child become this child's legal guardians. I understand that they were not as strict as they are today on things of race, gender and traditions. But, come on, did they honestly think that it would have absolutely no effect on my way of thinking or in the way I present my persona? I'm not accepted into the Caucasian social circle nor am I accepted in the black social circle, for I am neither white nor black... I'm stuck in the middle and outside both. I have no people. I have no nation and I am alone.

At other times de Vries wrote about how much she loved her adoptive family and how conflicted she was about them. She was caught shoplifting near the end of grade five and ran away for the first time shortly before her fourteenth birthday. Yet that summer, she wrote in the family cottage guest book, "I really love you a lot and I am so glad to have been adopted into this family …" And that August she wrote in a letter to her sister,

> I really love you a lot, no matter how mean and nasty I am to you, and when I think how mean I was, I feel really bad, so I LOVE YOU. I wish I could tell Mom how unhappy I am, but I myself don't know. But I do know this. I love you and Mom so much that I start to cry when I think about you.

Over the following year, she ran away many times, often staying out for days at a time. Her parents would look for her but could not prevent her from running away again. She gravitated to downtown Vancouver where, still a child, she supported herself by selling sex.

She clearly struggled with a sense of dislocation and a need to define her identity. She felt lost between two worlds. On the street she found friends and a sense of community

Sarah de Vries began experimenting with drugs and gradually became addicted to heroin and later to cocaine. She also used crack cocaine. In one of her journal entries, she wrote: "Supporting a heroin and cocaine habit is not fun and games; you have to make the money. No money. No drugs. No drugs, you go sick. You go sick, forget trying to pull a trick."

Sarah de Vries kept coming home for brief periods of time until she was eighteen. She also spent time in group homes and in a youth detention centre. During her time on the streets, friends recall that she remained a kind and giving person. She would look out for younger girls, encouraging them to go home. She would also look after homeless people. Friends described her as having an effervescent personality that attracted many people to her.

In December, 1990, Sarah de Vries had her first child, a daughter, who was born addicted to heroin. The next year, 1991, she spent six months in prison. In May, 1996, she had her second child, a son. He was born addicted to heroin and cocaine and spent his first few months in foster care because neither Sarah de Vries nor social services informed de Vries' family about him. At about the same time that her son was born, Sarah de Vries discovered that she was HIV positive and that she had hepatitis C.

Sarah de Vries was aware that other women in the sex trade were dying violent deaths, from overdoses and physical violence. Or were going missing. In December 1995, she wrote in her journal:

> Am I next? Is he watching me now? Stalking me like a predator and its prey. Waiting, waiting for some perfect spot, time or my stupid mistake. How does one choose a victim? Good question, isn't it? If I knew that, I would never get snuffed.

However she could not overcome her drug habits or take other steps to get off the street. Toward the end of her life, she wrote,

> I've sentenced myself to life imprisonment, no chance of parole, no chance of release, no judge, no jury, no pre-sentence inquiry. …I made this big, empty cold, senseless cell, escape proof. And, of course, I

> left no mistakes; in no part of my brilliant architectural plan is there a way for anybody to get in and realize who I really am, not that I know the answer to that question.

Sarah de Vries had a padlocked room in a small house in the downtown eastside where she lived and could keep her things. Having a room of her own and a stable address helped to keep her safe. But in the fall of 1997 she moved out. She had plans to find an apartment with her then boyfriend, but that didn't work out. She then ended up living in hotels, as she had done in her teens and early twenties.

Through all of it, Sarah de Vries maintained contact with her family. She visited her son once in foster care, before he moved back east to live with his grandmother. She saw her daughter every summer when her daughter came to Vancouver and had started drawing an alphabet colouring book for her. She also saw her sister regularly when her sister took her to doctor's appointments.

Sarah de Vries was last seen on April 14, 1998. A close friend tried to report her missing, but he alleges that the Vancouver police refused to take the report because he was not a family member. He contacted de Vries' sister, Maggie de Vries, who filed the report. Maggie de Vries says the police did not interview her about her sister's disappearance until 10 more days had passed.

Maggie de Vries recalls that individual police officers were helpful and clearly working hard to find out what happened to her sister. However, like other relatives of women who disappeared at this time in downtown Vancouver, she is frustrated that the police and the city took so long to acknowledge there was a larger pattern beyond the individual cases and to mobilize a coordinated investigation.

On August 6, 2002, the family was informed by the Task Force that Sarah de Vries' DNA had been found on the Port Coquitlam farm which has been at the centre of the joint Vancouver Police Department/RCMP Missing Women's Task Force investigation into the abduction and murder of women from the Downtown Eastside. As of September 2004, no charges had been laid in her murder. Robert Pickton is expected to come to trial in 2005 or 2006 on at least 22 charges of murder stemming from that investigation.

A target of racism?
Cynthia Louise Sanderson - killed August 30, 2002

Cynthia Louise Sanderson, a 24 year-old Cree mother of two children, lived in the small town of Shellbrook, near Prince Albert, Saskatchewan. She was the youngest of three children. She had her own house and worked part-time jobs but, according to her sister Linda Pechawis "she just got tired of struggling with money" and realized she needed an education to get fulltime employment. In 2002, she was accepted into the Universal Career College, a post-secondary training institution in Saskatoon, Saskatchewan. She moved in with her sister, bringing her four year-old daughter and leaving her seven year-old son in her mother's care since he was still in school.

Cynthia Sanderson started at Universal Career College in April 2002 with the goal of becoming a legal assistant. By June, her attendance was steadily declining. Finally, at the end of the month she talked to her instructor about her alcohol abuse. She admitted herself to a Saskatoon detox centre in July and then a rehabilitation centre at Ahtahkakoop First Nation in August. On August 25th she went to stay with her mother for a week.

On the evening of August 30, 2002, Cynthia Sanderson went out with a friend and her cousin in Prince Albert, 134 kilometres north of Saskatoon. Around 1 a.m. they got into a dispute with a white man, Anthony Barr, outside a bar. Accounts of what happened next vary. According to Sanderson's friends, Barr called out a racist insult. The trio swore back and kept walking. The man followed them in a truck. As Barr drove slowly beside them, they argued and exchanged racial slurs. Barr challenged the two men to a fight. He stopped the truck and got out, but when the two men moved toward him, Barr jumped back into his truck and drove ahead a short distance. After this happened a second time, Cynthia Sanderson apparently ran up to the driver's side of the truck. This time he didn't pull away. One of her friends testified that he heard Barr call her something like "Indian whore." Another said Barr propositioned her. Barr then grabbed Cynthia Sanderson by her jacket and drove away, dragging her alongside the

truck for up to fifteen feet. When she lost her balance, Barr let go, ran over her and sped away. Cynthia Sanderson was taken to hospital where she died as a result of her injuries shortly after 4 a.m.

When Barr returned to the bar later that night, a witness pointed him out to police and he was arrested. After Cynthia Sanderson's death, Barr was charged with criminal negligence causing death and leaving the scene of a crime. The Federation of Saskatchewan Indian Nations (FSIN), an Indigenous advocacy organization, called on the Crown prosecutor to charge Barr with a "hate crime." The prosecutor decided this case did not meet the criteria, but did elevate the charge to manslaughter. At trial, the judge acquitted Barr of the manslaughter charge and convicted him of dangerous driving causing death and failing to remain at the scene of a crime. Barr was sentenced to three years in prison.

Cynthia Sanderson's sister Linda Pechawis says that no one at the hospital tried to contact Sanderson's family while she was still alive. Cynthia Sanderson had contact information for her mother and sister in her day-planner, which she used as a purse. "She didn't have to die alone and scared," stated Pechawis. Cynthia Sanderson's two friends traveled to Shellbrook to contact her mother and take her to the hospital in Prince Albert but they were too late. Prince Albert police informed Amnesty International that a communications "screw up" had occurred between them and the Shellbrook RCMP. The Prince Albert police had contacted the RCMP, who were supposed to inform Sanderson's mother that her daughter had passed away, but she was not told this news. When she arrived at the hospital, she was expecting to find her daughter alive. A police investigator broke the bad news to her.

Linda Pechawis has filed a complaint against the Prince Albert Police Service through the Special Investigations Unit of the FSIN. She says that police officers did later apologize to her for mistakes the force made in the handling of the investigation. While she appreciated their candour, she questioned whether racist attitudes influenced not only the crime but also the police response. "They knew that they didn't do their job," Linda Pechawis told Amnesty International. "Sometimes I really think that her being Native could've been a reason. I hate to say that, but P.A. [Prince Albert], they say, is a pretty bad place for racism."

The Prince Albert Police Service told Amnesty International that there were "never any racist attitudes shown by police in any component of the investigation" and that the first two officers at the scene were "visible members of the First Nation community." An officer with the force, who clearly is concerned that Indigenous women do face high levels of violence, which he termed "cold, racist and sexist" and added that he hopes there will be "positive changes for a seriously at-risk group."[116]

Not a priority
Maxine Wapass - Missing May 17, 2002
confirmed dead in February, 2003

Maxine Wapass was a 23 year-old Cree woman who was very close to her large family. As a little girl, she was raised by her grandfather at Thunderchild First Nation in Saskatchewan. After he died in 1987, when Maxine was eight, she was raised by an aunt.

As a young adult Maxine Wapass stayed with her cousin Marilyn Wapass in Saskatoon but enjoyed returning to Thunderchild First Nation on holidays and whenever the opportunity arose to visit. "All of us tried to be together at Christmas, Easter, Thanksgiving, whenever we can eat, we all get together," said Marilyn Wapass.

Maxine Wapass had no children, but was close to her nieces and nephews. She was especially close to Marilyn Wapass' children; when her cousin was attending university or working, Maxine Wapass would baby-sit them. From Marilyn Wapass' point of view, her cousin helped raise her children.

On 17 May 2002, Maxine Wapass phoned her cousin at work about a trip to the reserve they were planning. Marilyn Wapass told her as soon as she got home from work, they would drive to Thunderchild. Marilyn Wapass recalled that she "wanted to get [Maxine] away from the city" because "she was getting into her drugs pretty bad."

When Marilyn Wapass got home from work, Maxine Wapass was not there. She did not call and she never

[116] Letter to Amnesty International from Prince Albert Police Service, August 30, 2004.

returned. Marilyn Wapass was not worried at first. She knew that her cousin had a lot of friends and she could end up anywhere. Maxine Wapass had talked about getting back together with an ex-boyfriend who lived at Little Pine First Nation so she assumed her cousin had gone to his reserve. Two weeks later, however, he phoned, and asked where Maxine Wapass was. Marilyn Wapass went to Thunderchild and told her mother and everyone else there that she had not seen Maxine Wapass in approximately two weeks. Her mother advised her to go to the police.

From the beginning, Marilyn Wapass says she felt that she and the lead investigator did not have a very good relationship. She was calling the police regularly to pass on information about her cousin and to ask for updates. She says she felt that the investigator "was getting tired of me calling and he had told me that this case wasn't his priority." When the investigator went on holidays, two other officers became involved. Marilyn Wapass felt more at ease: "I felt like they were really doing the best job that they could and they were going out on the street and they were interviewing people and they really wanted to solve the case." In August 2002, the two officers did a television interview about Maxine's disappearance. Shortly after the interview was aired, the lead investigator returned to work and the two other officers did not continue.

Marilyn asked a band councilor from the Thunderchild First Nation, Irma Horse, to be the family's contact with the police. Ms. Horse in turn contacted the Special Investigations Unit (SIU) at the Federation of Saskatchewan Indian Nations (FSIN), a provincial Indigenous advocacy organization, for assistance.

The family also took it upon themselves to try to obtain information about Maxine's disappearance. In the fall of 2002 they raised $5000 for a reward for information, and distributed posters in Saskatoon, throughout Saskatchewan, including reserves, and Alberta. The Thunderchild First Nation paid for newspaper ads in Saskatoon and Edmonton, Alberta.

In November 2002, Maxine Wapass' remains were found in a rural area 16 kilometres west of Saskatoon. The police confirmed her identity three months later, and informed the family on 6 February 2003. Due to the location of the remains, the RCMP became involved in the investigation. A RCMP representative came to Thunderchild and met with the family after the closed-casket funeral.

The FSIN's Senior Special Investigator agreed to liaise with the police on the family's behalf because they felt they were having difficult experiences with the police. He reviewed the file and determined that work was being done, but had not been conveyed to the family. He went to Thunderchild First Nation and met with the family, and later set up meetings between them and the police. He added that, once the family began meeting regularly with the police, some good information came forward from the reserve that the police would not have received if the communication lines had not been opened.

Thunderchild councilor Irma Horse believes that if the FSIN's Special Investigations Unit had not become involved, the case would not have gone anywhere. "Nothing was being done," she said.

In June 2003, the RCMP laid charges against Maxine Wapass's ex-boyfriend. The trial is schedule to commence in late November 2004. Saskatoon police declined to comment on this case, so as to not "jeopardize either the prosecution or the defence."

A family torn apart for the second time
Felicia Velvet Solomon - 16 years old - missing, March 25, 2003 confirmed dead in October, 2003

Felicia Solomon was born on July 21, 1986 at Norway House Cree Nation in northern Manitoba. She was the oldest of six children and a cousin of the late Helen Betty Osborne.[117]

As a teenager, Felicia Solomon lived with her family in Winnipeg where she attended high school. On the evening of March 25, 2003, the 16-year-old did not return home and did not call. Her mother says she phoned the police that evening and again the next day, but the police did not investigate.

On March 27th, Solomon's mother learned that her brother had died. Although she was worried that she had still not heard from her daughter, she felt she had

[117] See case study, Supra, at footnote 100.

to return to Norway House for her brother's funeral. She returned to Winnipeg early on the morning of March 30th and called the police right away. The police did not come to her home until 1:00 a.m that night. She describes the officers as being inattentive, laughing and acting rudely. The officers filled out a missing person report at that time but told her that according to policy they would have to wait 48 hours before they could do anything.

A Winnipeg police spokesperson has told Amnesty that the force responds to missing persons reports based on an assessment of the risk to the missing person and does not have a policy of waiting 48 hours, as many in the public believe. Nonetheless, the family ended up making their own missing persons posters and began putting them up all over Winnipeg. They say they received no help from the police and that the police made no effort to publicize the disappearance. According to the family, the police simply told them "to keep looking around for her."

A little over a month after Felicia Solomon disappeared, the family contacted their Chief and Council at Norway House. One of the councilors, Mike Muswegon, contacted Child Find, a national non-governmental organization based in Winnipeg, which agreed to produce posters. Muswagon also contacted the Assembly of Manitoba Chiefs, the political body representing First Nations in Manitoba, and arranged a press conference.

On June 11th 2003 Winnipeg police river patrol officers found a severed thigh near the water's edge. On June 16th, a man who was walking along the north bank of the river spotted an arm that was severed near the shoulder. In October, DNA testing confirmed that the body parts were those of Felicia Solomon. The rest of her remains were never found. As of August 2004, the crime had not been solved.

Felicia Solomon's family remains frustrated by the attitudes of the police. The family believes they were treated differently than non-Indigenous people would have been. One of the family members commented, "When we listened to the news, when something happened to someone else's child, whether they are white or from any other kind of race or culture, they do everything. It's completely different when an Indian person goes missing. We see that."

Family members also take issue with the stated reluctance of the police they met with to take action as soon as Felicia Solomon's disappearance was reported to them. "In our culture, when a child is missing, you automatically look for that child. Especially when you know your child and you know that they phone." Solomon's mother knew her child. "We shouldn't have to had to wait 48 hours."

Felicia Solomon's grandmother complained that after the family's press conference the media had unfairly labeled her granddaughter a prostitute and gang member because the family was poor and because of the part of the city they live in. She feels that the police inaction was also influenced by these assumptions. "Just because our daughter was on welfare and she lived on the west side doesn't mean that Felicia was a prostitute, or a gang member or that she was a druggie. You know, they label Aboriginal people right away. That's the part that we didn't like and I can't say anything positive about the police because they were no help. We didn't get help. We still don't get help."

Unanswered questions
Moira Louise Erb - missing August 2, 2003; found dead September 17, 2003

Moira Erb was born Marilyn Latender at the Fort Alexander First Nation in Manitoba; she was taken away from her birth mother by a social service agency when she was one year old. Her sister Patsy Fontaine remembered being 7 years old in 1978 and carrying her baby sister out to the car that would take her to a foster family. She did not see Moira Erb again until they were reunited about twenty years later.

Just before she turned two, Moira Erb was adopted into a farm family who had two children of their own. She ran away from home at the age of 16. She passed through a series of youth centres and group homes before ending up living on the streets in Vancouver, where she got involved with illegal drugs and the sex trade. She eventually had a child and later got married. The marriage did not work out. When she left her husband, she started using heavy drugs again. She entered into a relationship with a man with whom she had two sons. This relationship also did not work out and Moira returned to the sex trade. She eventually returned to Manitoba.

A health worker who befriended Moira Erb in Winnipeg described her as "funny, smart, honest and generous." She loved her children and would try to send them a small amount of money whenever she could. Erb's friend said that her heart was breaking because she couldn't be a parent to her children all of the time. However, Moira Erb was also very sick. She had tested positive for HIV/AIDS but her drug addictions were interfering with her taking her medications.

In June, 2003, Moira Erb's daughter came to Winnipeg for a visit and stayed with Erb's father at his farm. Her two sons were also brought to the farm for a brief visit that month. Erb made a promise to get off drugs so that she could see her children more often. She ended up staying off drugs for the month of July and told a friend that she was applying to go back to school.

Moira Erb went missing on August 2, 2003. She told her roommate that she was going to go next door. Then she apparently asked a neighbour to take her downtown. Her roommate looked for her but couldn't find anyone who had seen her. Erb's roommate reported her missing a week later.

On September 17, 2003, Moira Erb's badly decomposed remains were found in a rural area north of the Winnipeg airport near train tracks. The police concluded that her injuries were consistent with being struck by a train. Police do not suspect foul play.

Patsy Lafontaine does not believe that is how it happened. Moira Erb's father also has his doubts. Both point to the isolated location. Both point to the fact that Erb's body was found without any shoes. Both ask: Who took her there? Why? What did they do to her?

Moira Erb's father last had a brief phone message from the RCMP in late January 2004 indicating the investigation was ongoing but providing no updates. Patsy Lafontaine has never heard from the police. Knowing some of the rough neighbourhoods her sister sometimes worked in Patsy Lafontaine has gone to those places herself, and "sat at the corner" to ask questions. She does not believe the police have followed those same leads. In September 2004 the RCMP informed Amnesty International that the case had been "meticulously investigated" and the conclusion reached was that "Ms. Erb died tragically as the result of being struck by a train." The family has no details of the specific findings of any such investigation and continues to have unanswered questions about Moira Erb's death.

V. Conclusions and Recommendations

No one should suffer the grief of having a sister, mother or daughter suddenly disappear never to be seen again. No one should have to live in fear that they will be the next woman or girl to go missing.

Canadian officials have a clear and inescapable obligation to ensure the safety of Indigenous women, to bring those responsible for attacks against them to justice, and to address the deeper problems of marginalization, dispossession and impoverishment that have placed so many Indigenous women in harm's way.

All levels of government in Canada should work urgently and closely with Indigenous peoples' organizations, and Indigenous women in particular, to institute plans of action to stop violence against Indigenous women. The following platform for action is based on the recommendations made by the families of missing women, frontline organizations working for Indigenous women's welfare and safety, and official government inquiries and commissions, as well as standard interpretations of the human rights obligations of governments.

1. Acknowledge the seriousness of the problem

All levels of government, including Indigenous governance structures, should:

-publicly condemn the high rates of violence against Indigenous women – whether within Indigenous communities and society as whole -- and make public their plans to address the crisis.

-undertake a review of outstanding recommendations from Canadian commissions, inquiries and inquests pertaining to the safety and welfare of Indigenous people with a view to ensuring their timely implementation.

- clearly outline the measures taken to address the problem of violence against Indigenous women in Canada in reports to relevant UN human rights bodies, including the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination and the Human Rights Committee.

2. Support research into the extent and causes of violence against Indigenous women

The federal government should ensure adequate funding for comprehensive national research on violence against Indigenous women, including the creation of a national registry to collect and analyze statistical information from all jurisdictions.

In consultation with Indigenous peoples' organizations and organizations representing ethnic minorities, protocols should be developed to ensure that police consistently record and appropriately use data on the ethnicity of the victims and perpetrators of violent crimes.

The federal government should request the United Nations' Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and Special Rapporteur on violence against women, its causes and consequences, to jointly study and document patterns of violence against Indigenous women, including in Canada.

3. Take immediate action to protect women at greatest risk

Federal, provincial and territorial governments should ensure adequate, sustained, multi-year funding to ensure the provision of culturally appropriate services such as shelters and counseling for Indigenous women and girls.

Police should work closely with Indigenous women's organizations and other frontline groups to identify and implement appropriate and effective protocols for action on missing persons cases, with a view to developing standards for police response in keeping with the risks to Indigenous women and girls.

Police forces should provide specialized staffing to review and coordinate responses to missing persons cases.

As part of ongoing review and implementation of laws regarding the sex trade in Canada, give police clear instructions to ensure that the fundamental rights of women involved in the sex trade are protected in the course of all law enforcement activities.

4. Provide training and resources for police to make prevention of violence against Indigenous women a genuine priority

All police officers should receive adequate training to ensure an understanding of violence against women in a range of settings including family violence, child sexual exploitation and violence against women in the sex trade.

The scenarios used in police training should incorporate issues of cultural sensitivity and violence against women.

Meetings with Indigenous women leaders and other community members should be organized to build understanding of the specific risks to Indigenous women in Canadian society and establish and strengthen relationships of trust between police and Indigenous communities.

All police departments should review issues of workload, staffing levels and job rotation to ensure officers have the opportunity to become familiar with and can develop relations of trust with the specific communities they are intended to serve and protect.

The actions of police, including compliance with policies on the investigation of missing persons cases, should be subject to independent civilian oversight.

Funding should also be provided for the creation of independent advocates and liaison workers for Indigenous people in contact with police.

Officers found to have failed to act on reports of missing women, or to have carried out biased or inadequate investigation of violence against women, should be subject to appropriate discipline.

Clear polices and practices should be established with respect to the timely provision of information, including autopsy results and coroners reports, to the families of missing and murdered persons.

5. Address the social and economic factors that lead to Indigenous women's extreme vulnerability to violence

The federal government should provide adequate, sustained, multi-year funding for initiatives to deal with the immediate and intergenerational impacts of both the physical and psychological abuse suffered at residential schools, including the loss of cultural identity.

Federal, provincial and municipal governments should subject all social programs to a periodic review to ensure the accessibility and resourcing of programs for Indigenous women and families is at least on a par with those available to non-Indigenous people in Canada.

Federal and provincial governments, with the full participation of Indigenous women, should organize a high level intergovernmental and interdepartmental meeting to ensure proper coordination and information sharing on initiatives to address the safety and welfare of Indigenous women and girls.

In collaboration with Indigenous representatives and organizations, the federal government should take urgent action to address the chronic unemployment and poverty faced by Indigenous women and men both on and off reserve.

The federal government should commit to fully implementing outstanding recommendations of the Royal Commission on Aboriginal Peoples which address poverty and social marginalization of Indigenous people in Canada, as has repeatedly been urged by United Nations treaty bodies.

6. End the marginalization on Indigenous women in Canadian society

All levels of government should work with Indigenous peoples to strengthen and expand public education programs, including within the formal school system, that acknowledge and address the history of dispossession and marginalization of Indigenous peoples and the present reality of racism in Canadian society.

All levels of government should adopt such measures as are necessary to ensure that Indigenous women are consulted in the formulation and implementation of any policy that could affect their welfare and status.


STOP
VIOLENCE
AGAINST
WOMEN

CRITICAL INDIGENOUS AND AMERICAN INDIAN STUDIES

Andrew Jolivette
General Editor

Vol. 1

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To all missing and murdered women
To survivors
And to all those who fight for justice

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CHAPTER THREE

Historicizing Jurisdiction in Indian Country

> Renee Brewer, a victim's advocate for the Citizen Potawatomi Nation remembers a woman who had been assaulted and called the police. With the attacker still hiding in the woman's closet, four different law enforcement agencies argued on the front lawn about whose case it was. As Brewer stated, "Then you wonder why these cases are not getting prosecuted—because the United States government made it as difficult as possible for us to handle our own prosecution on our own land."
>
> —Laura Sullivan[1]

When Europeans first arrived in the Americas, they were simultaneously confronted with a wealth of natural resources and the Native people who owned, occupied and managed these resources.[2] In order to justify the conquest of both the land and the people that they encountered, Europeans needed a way to legitimate the theft of resources from people with a pre-existing right to them. These first justifications came in the form of law.[3]

Using Papal Bulls (decrees from the Catholic Pope viewed as supreme law), the first Europeans in the Americas were able to legalize the colonization of Native lands and the enslavement of Native people.[4] With a legal justification for their presence secured, Europeans were able to continue to settle in the Americas, eventually forming the colonies that would become the United States. And throughout its development, the United States continued to use law to legitimate its own existence as a settler-state on Native land.[5]

The body of law that governs the relationship between Native nations and the United States of America is known as federal Indian policy. Federal Indian policy has defined and codified the legal relationship between Native people and the U.S. federal government through laws, executive orders, and Supreme Court cases.[6] Many Native legal scholars argue that while federal Indian policy may at times appear contradictory, it has always been designed to manage the problematic spaces that Native people occupy vis-à-vis the U.S. settler-state.[7] Because Native people have a pre-contact right to land, their existence has always been problematic in that it threatens American hegemony and stands in the way of complete colonization. In an attempt to remedy the "Indian problem," federal Indian policy has vacillated between policies of removal (relocating Native people "out of the way"), pbysical genocide (annihilating physical bodies) and assimilation (policies that use cultural genocide to assimilate Native people into the fold of American hegemony).[8]

It is against this backdrop of legal violence under colonization that we can begin to situate the emergence of jurisdictional conflicts in the prosecution of sexual violence against Native women. This chapter highlights five specific laws and policies that have directly led to the creation of modern jurisdictional conflicts in Indian country. By positioning these pieces within the trajectory of federal Indian policy, I contextualize the emergence of jurisdictional conflicts as part of a colonial narrative that seeks to divest Native people of their land, resources, and inherent sovereignty as part of managing the "Indian problem." By examining this process, I highlight additional themes that emerge from these specific laws and policies. In doing so, I theorize modern jurisdictional conflicts within a larger narrative of legal violence.

Ex Parte Crow Dog—1883: The Original Jurisdictional Conflict

On August 5, 1881, a Brulé Lakota man named Crow Dog (Kȟaŋǧí Šúŋka) shot and killed Spotted Tail (Siŋté Gleška, also Brulé Lakota) on the Rosebud Indian Reservation. Crow Dog was then tried and convicted for murder by the Dakota Territorial Court and sentenced to death. However, when Crow Dog arrived for his execution, he was told that he was free to go. His conviction had been appealed to the U.S. Supreme Court in *Ex Parte Crow Dog*, who ruled unanimously that the Dakota Territorial Court had no jurisdiction over the Rosebud Indian Reservation. Because this was a crime committed by a Native person, against another Native person in Indian country, the U.S. Supreme Court vacated U.S. territorial jurisdiction and returned it to the Lakota Nation.[9] Under Lakota jurisdiction, instead of the punitive measure of death, the Lakota people called for the restoration of

balance to the community. Lakota law dictated that Crow Dog care for Spotted Tail's family, which included financial and material compensation. Additionally, Crow Dog would no longer be allowed to participate in community activities.[10] Whereas Crow Dog's execution would have done nothing for the Lakota community, Lakota justice effectively addressed Crow Dog's actions while using his life to aid the family that Spotted Tail left behind.[11]

As is almost always the case, local jurisdiction and social control by communities who are most familiar with the needs of their members proved to be an effective mechanism of law and order. As historian Sidney Harring points out in the case of Crow Dog:

> Brule law was functioning and able to settle the dispute [...] It also made sound policy sense: the tribes were best able to adjudicate intertribal dispute [...] whatever the underlying reasons of the killings, the Brule Sioux were in a better position to know and judge them. They had a right to do so. That is the essence of tribal sovereignty.[12]

In addition to making sense from a policy standpoint, it was also the Lakota Nation's legal right to adjudicate the matter. By virtue of the 1868 Fort Laramie Treaty, the Lakota people had the sovereign right to exercise jurisdiction in their communities.[13] While the U.S. Supreme Court agreed, the neighboring white communities were incensed over what they perceived to be "primitive," "uncivilized" tribal justice.[14]

Ex Parte Crow Dog sparked intense outrage by white communities who saw Crow Dog as "getting away with murder."[15] Rather than understand Lakota law as one that was functioning and able to manage the dispute in a restorative way, the white community insisted on capital punishment as the only appropriate mechanism for social control. The unwillingness of the white community to incorporate a Lakota perspective into their understanding of law and order fueled intense fear of lawlessness in and around Indian country. As Native people were constructed as "savage" and "barbarous," Spotted Tail's murder and Crow Dog's subsequent release confirmed these suspicions.[16]

In addition to intense white anxiety over perceived "frontier lawlessness" in Indian country, discourse around *Ex Parte Crow Dog* demonstrates the emergence of a strong civilizing narrative in federal Indian policy. Here, Native justice systems were not only seen as dangerous to surrounding white communities, but also dangerous to Native communities themselves as they allowed savagery to triumph over civilization. As then-Secretary of the Interior Henry Teller noted of Crow Dog's case in 1883:

> [M]any of the [Indian] agencies are without law of any kind, the necessity for some role of government on the reservations grows more and more apparent each day. If it

> is the purpose of the Government [sic] to civilize the Indians, they must be compelled to desist from the savage and barbarous practices that are calculated to continue them in savagery [...][17]

Perceived notions of savagery presented a distinct problem for the federal government. At the time of *Ex Parte Crow Dog*, Indian country was seen as a lawless space that was dangerous to surrounding white communities.[18] In order to address this problem, Native people would need to be civilized. Therefore, white anxiety over Crow Dog's case was not just about fears of lawlessness, but also that the civilization of Native people, as part of remedying the so-called "Indian problem," would be disrupted if Crow Dog was to be left to "uncivilized" "tribal justice."[19] As Deloria and Lytle note:

> [...] to give compensation for a murder instead of invoking the death penalty, was considered a symbol of continued savage resistance to the overtures of a sincere "civilized" efforts to assist the Indians. All that people knew, or understood, was that the federal government was releasing rather than executing an admitted murderer.[20]

In Crow Dog's case, pervasive stereotypes of Native people and profound anxiety over lawlessness created a climate in which Native justice itself was constructed as a threat to proximate white communities and to American hegemony as a whole. As we see from Deloria and Lytle's commentary, there is a dichotomy between civilization and savagery in *Ex Parte Crow Dog* where the triumph of Lakota justice signaled a disruption in the civilizing mission of American law and policy. Within the narrative of perceived lawlessness in Crow Dog's case, a subtext emerges that integrally links the protection of non-Native bodies with a civilizing agenda. This transitory narrative in which Native people can evolve from savagery into civilization through the colonization of their governments by American law serves the dual purpose of addressing the "Indian problem" through assimilation, while also quelling white fears of perceived lawlessness in Indian country.

After *Crow Dog*, the federal government felt it had to act quickly to assuage white American fears of Indian country lawlessness while simultaneously repositioning Native peoples onto the trajectory of civilization. To accomplish these goals, Congress passed the Major Crimes Act.[21]

The Major Crimes Act—1885

Less than two years after the U.S. Supreme Court overturned Crow Dog's conviction, the Major Crimes Act was signed into law. The Major Crimes Act extends

jurisdiction over certain "major" crimes committed in Indian country to the federal government.[22] If the Major Crimes Act had been passed before the murder of Spotted Tail, Crow Dog would have almost certainly been executed. Though only two paragraphs long, the Major Crimes Act is a substantial encroachment on Native sovereignty that continues to impact Native communities today. As negative ideological constructions of Native people were codified into law, the fear of Native savagery facilitated the divestment in Native self-determination that laid the foundation for contemporary jurisdictional conflicts.

Though white fear over perceived lawlessness was central to the creation of the Major Crimes Act, the impetus behind the law was also deeply paternal. As legal scholar Philip Prygoski notes of the Major Crimes Act, "The underlying theory was that tribes were not competent to deal with serious issues of crime and punishment,"[23] signaling that both Native and non-Native communities could only be adequately protected from Indian country violence by the federal government. As Wayne Ducheneaux, former President of the National Congress of American Indians remarked in a 1991 Senate subcommittee meeting:

> [O]ur method of dealing with [murder] was Crow Dog should go take care of Spotted Tail's family, and if he didn't do that we'd banish him from the tribe. But that was considered too barbaric [...] so they passed the Major Crimes Act that said we don't know how to handle murderers and they were going to show us.[24]

Ducheneaux's statement highlights the idea that Native law was read as an absence of law, and that in order for the federal government to complete its civilizing mission, it was necessary to colonize Native justice systems themselves. Ducheneaux implicates the twin narratives of paternalism and civilization present in the creation of the Major Crimes Act. Here, the Act not only "protects" white people from the perceived lawlessness of Native communities, but it also "protects" tribes from themselves. While Native justice was considered "barbaric," Western-style justice would be able to show Native nations how to properly handle major crimes, thereby aiding in their civilization.[25]

Furthermore, in protecting tribes from their own barbarity while mollifying white communities, Congress was also able to address the "Indian problem," by readying Native nations for assimilation into the body of the American politic. As scholars Carol Lujan and Gordon Adams note, the Major Crimes Act was consistent with a trend towards "policies of dependency and systematic assimilation."[26] Here, the Major Crimes Act was not just about protecting the individual interests of neighboring whites who feared Native lawlessness, but it was also about protecting the United States' vested interests in assimilating Native people in the interest of resolving the "Indian problem."

Though passed over one hundred years ago, the Major Crimes Act is still the law of the land today and continues to be one of the first major inroads into Native jurisdictional sovereignty.[27] By trumping Native jurisdiction, the Major Crimes Act overrode treaties established between many Native nations and the U.S. government that stipulated jurisdictional autonomy. For example, though the Fort Laramie Treaty of 1868 guaranteed jurisdictional authority for the Lakota people (as demonstrated in *Ex Parte Crow Dog*), the Major Crimes Act effectively abrogated this provision without the consent of Native constituents. As such, the Major Crimes Act set the stage for further encroachments into tribal sovereignty.[28]

Through its effect on tribal sovereignty, the Act laid the foundation for modern jurisdictional conflicts. The Major Crimes Act drastically affects Native jurisdiction by introducing a separate sovereign into Indian country. As a result of the Major Crimes Act, when a crime occurs, one must first determine the type of crime (major or non-major). Then a two-pronged system of jurisdictional authority must be navigated in which Native nations and the federal government may have either exclusive or dual jurisdiction over the same crime.[29] And, as the following sections will show, subsequent laws and policies have exacerbated problems stemming from the Major Crimes Act, creating additional jurisdictional complexity.

The Dawes General Allotment Act—1887

During the same legislative era as *Ex Parte Crow Dog* and the Major Crimes Act, the General Allotment Act (Dawes Act) of 1887 was passed. While not specifically targeting reservation crime or jurisdiction, the Dawes Act had dramatic and enduring effects on the racial and spatial character of Indian country. Since jurisdiction is first predicated on location, the changing composition of reservation communities under Dawes continues to have deleterious effects on the ability of tribal communities to manage the activities on their land.[30]

The same desire to assimilate Native people into "civilized" Anglo-American society that was present in the Major Crimes Act is a major component in the creation and implementation of the Dawes Act.[31] Under this Act, reservation land that was guaranteed by right of treaty to Native nations as sovereign territory was divided into individual parcels by the federal government. These parcels were then distributed to individual Indian people. Rather than having a large area on which to live communally, many Native nations were divided and individual Indian people were allotted plots of land. The size of an individual Indian's parcel was usually 160 acres, often awarded to male heads of a nuclear household.[32] As former President Theodore Roosevelt put it, this strategy was designed as a "mighty pulverizing engine to break up the tribal mass," by replacing communal landholdings with individual ones.[33]

In an effort to remedy the "Indian problem," the Dawes Act was an assimilative effort to mold Native peoples into Euro-American farmers.[34] While the Major Crimes Act used "law and order" to "civilize" Native people, the Dawes Act used patriarchy and Euro-American gender roles. As Andrea Smith argues in *Conquest: Sexual Violence and American Indian Genocide*, land division under the Dawes Act was designed to inscribe hierarchies into non-hierarchical people in order to better control and assimilate the population as a whole.[35] If Native people could be civilized through agriculture and land privatization, the logic went, they could then be brought into the fold of white American hegemony and cease to be a cultural and financial burden on the United States. And, if Native men could be taught to control Native women under the Dawes Act (through male land ownership, patrilineal inheritance, shifting women out of the public and into the private sphere), then the U.S. could solve the "Indian problem" through dividing and conquering.[36]

While the assimilationist impulse behind the law was genuine, the desire to "civilize" Native people through the Dawes Act was a distant second to the primary goal of appropriating Native land for white settlement. As members of Congress who opposed allotment noted, "The real aim of [allotment] is to get at the Indian lands and open them up to settlement. The provisions for the apparent benefit of the Indian are but the pretext to get at his lands and occupy them."[37] Under the Dawes Act, after all individual Indian parcels were allocated, whatever land was "leftover" was conveniently freed up for the U.S. government to dispose of. This "surplus" land could then be used for railroads, extracting natural resources, and for white settlement.[38] When the Dawes Act was passed in 1887, Indian landholdings were estimated to be approximately 138 million acres. By the time the Allotment Era ended with the passage of the Indian Reorganization Act in 1934, this number had been reduced to 48 million acres—a total loss of approximately two-thirds or ninety million acres. This is an area about the size of Montana.[39]

Though the Allotment Era ended in the 1930s, the effects of the Dawes Act persist. In addition to illegally divesting Native peoples of the land guaranteed to them by treaty, the Dawes Act introduced a large population of white settlers into land previously occupied exclusively by Native nations.[40] Land that was once a large, relatively homogeneous space was divided into small parcels on which Native and non-Native families lived in close proximity. Allotments owned by Native individuals were interspersed with parcels owned by private American citizens, state governments, and the federal government. In jurisdictional terms,

this "checkerboarding" made the boundary between Native and non-Native land shift from being relatively distinct to impossibly entangled.[41] Inheritance policies written into the Dawes Act exacerbate this entanglement through a phenomenon called "fractionation." Because the Dawes Act divided Native parcels equally among children upon the death of the head of household, individual parcels have subsequently gotten smaller and smaller. Today, more than 100 years after the Dawes Act became law, some individual plots have been reduced to less than one square foot of ground.[42]

The implications of the Dawes General Allotment Act in Indian country jurisdiction are profound. As jurisdiction is predicated on the location of a crime, the Dawes Act has made determining whether a parcel in Indian country is governed by tribal, state, or federal entities exceptionally complex. Additionally, the inundation of Indian country with non-Native residents has complicated matters further, as increased interactions between white Americans and Native people form the foundation of subsequent federal Indian policy that challenges Native jurisdictional sovereignty.

Public Law 280–1953

Though policies of outright physical annihilation of Native peoples were abandoned by the middle of the twentieth-century, the U.S. federal government was still deeply entrenched in addressing what it continued to see as the "Indian problem." In exchange for vast tracts of land, the federal government entered into what is known as a "trust relationship" with Native peoples. Under the trust relationship, the federal government became the trustee of Native resources and, in exchange, guaranteed that it would provide vital services to Indian country and protect Native land and sovereignty.[43] While the federal government enjoyed the economic resources it acquired through treaties, by the 1950s it was reluctant to use any of these resources to make good on its responsibilities to Native people.[44] Under the trust relationship, the "Indian problem" endured as Native people stood in the way of complete American hegemony. In an effort to "solve" this "problem" Congress entered into what historians have dubbed the "Termination Era."

Starting in the late 1940s, Congress used federal Indian policy to "terminate" the relationship between the federal government and Native people to "get out of the Indian business."[45] To accomplish this, Congress ignored its own policies that recognized the sovereignty of Native people and the rights that they maintained through treaties, and began to sever the trust relationship, reduce funding to Indian

country, revoke federal recognition of Indian tribes, and relocate Native people to urban areas.[46] It is in this context that Congress created Public Law 280.[47]

Public Law 280 (PL 280) was a driving force in Termination Era policies. According to Deloria and Lytle, the goal of PL 280 was "terminating federal supervision over Indians and their property with the ultimate goals of assimilating them into American society and eliminating the reservation enclaves of Indian culture."[48] Central to this goal was the massive restructuring of criminal jurisdiction in Indian country. Without the consent of tribes or states, PL 280 transferred criminal jurisdiction in Indian country to state governments in six mandatory states: California, Minnesota (except the Red Lake Nation), Nebraska, Oregon (except the Warm Springs Reservation), Wisconsin (except later the Menominee Indian Reservation) and, upon its statehood, Alaska.[49] Although only six states were mandatory PL 280 states, these six states contained 359 of the over 550 federally recognized tribes at the time, affecting over 65% of Native nations.[50] Other states in addition to the mandatory PL 280 states were allowed to opt-in to the system, and since then Nevada, South Dakota, Washington, Florida, Idaho, Montana, North Dakota, Arizona, Iowa and Utah have adopted PL 280.[51] While previous legal statutes had guaranteed Native nations freedom from state jurisdiction,[52] Public Law 280—in its quest to dissolve the federal relationship with Native nations—iguored this and granted states sweeping criminal jurisdiction in Indian country.

Though financial motivations to dissolve federal relationships with Native nations were driving forces behind the law, PL 280 reveals familiar themes of lawlessness as central to its formation. After the Dawes Act ushered in large communities of white settlers in and around Indian country, the new non-Native residents were quick to express profound anxiety over the activities in Indian country, describing Native people as "disorderly and incapable of self-government"[53] and Indian country as places of "rampant crime and disorder."[54] Native justice systems were again constructed as weak and ineffective, while federal jurisdiction was considered distant and limited.[55] While the Major Crimes Act had intended to address concerns of lawlessness in Indian country, transferring jurisdiction to the federal government had merely created a system in which a distant and unresponsive federal government had failed to address law and order at all.[56] This was exacerbated by Termination Era policies that severely cut vital services to Native nations, impeding Native communities from maintaining law and order through the limited jurisdictional authority that they still maintained. Ironically the result was that the very system that had sought to address fears of lawlessness had, in reality, created a very real sense of lawlessness in Indian country.[57]

To address the reality of lawlessness that emerged as the result of its own policies, some scholars note that the federal government could have addressed the issue by strengthening tribal justice systems.[58] Native nations had always had fully functioning systems of law and order, and it wasn't until this system was disrupted that a true sense of lawlessness began to emerge.[59] However, funding Native nations did not fit with an assimilationist paradigm and was especially incongruent with Termination Era policies of dissolving federal relationships with tribes. Instead, the federal government decided to legislate over the problem by passing PL 280 and farming out federal jurisdiction to state agencies. This accomplished several goals of the Termination Era project: it saved the federal government money as it took steps to "get out of the Indian business," it severed federal relationships with Native nations, and it quieted white anxiety over perceived lawlessness by transferring jurisdiction to state authorities.[60]

While Congress acted ostensibly to address white fears of lawlessness, it was readily apparent that dissolving its financial responsibility to Native nations was more important than addressing concerns over law and order in earnest. As one publication put it, "Congress was concerned about satisfying the law and order demands of Anglos living on or near reservations, but only so long as the federal government did not have to pay."[61] The transfer of jurisdiction to state governments under PL 280 turned out to be an unfunded mandate. Under PL 280, state governments were forced to manage crime on reservations, yet did not receive any additional funding to do so. With no funding from the federal government, and with no tax revenues generated from reservations within their boundaries, state governments were reluctant to use any of their resources on law enforcement in Indian country. This had major consequences as Native infrastructure weakened and state governments refused to fill any law enforcement shortfalls. As Goldberg and Champagne note:

> Public Law 280 was supposed to provide the solution to the problem of "lawlessness" by empowering state civil and criminal courts to do what the tribal and federal systems supposedly could not. Ironically and tragically, however, Public Law 280 has itself become the source of lawlessness on reservations.[62]

Called "one of the most bold and discriminating actions against Natives in the legal and judicial system,"[63] PL 280 had devastating effects on Native nations, which continue to manifest today. As an unfunded mandate, state law enforcement in Indian country has become sporadic.[64] As a divestment in tribal sovereignty, Native nations have been unable to exercise local control over the activities in their own community.[65] While this contributes to an overall sense of lawlessness in general, PL 280 also contributes to the creation and maintenance of modern jurisdictional conflicts in particular.[66]

In an attempt to terminate federal responsibility over Native people, PL 280 introduced a third sovereign into the jurisdictional schema in Indian country. While the Major Crimes Act introduced the federal government as a second sovereign (sometimes competing with and sometimes usurping tribal jurisdiction), under PL 280, state governments became a third entity with which to negotiate jurisdiction. While these complications make crime in Indian country more difficult to adjudicate in general, it has a disproportionate impact on Native women, as cases of sexual assault often fall through the cracks.[67]

Oliphant v. Suquamish Indian Tribe—1978

As a direct result of Allotment Era policies, the Port Madison Indian Reservation located in northwest Washington is home to a large number of non-Native residents. By the 1970s, approximately 63% of the reservation was owned by non-Native individuals, living alongside Native families on a checkerboard of individual parcels.[68]

In August 1973, Mark David Oliphant, a non-Native resident, allegedly assaulted a Suquamish tribal police officer and resisted arrest. Oliphant was arrested and charged by tribal police.[69] Though Oliphant is a non-Native person, treaties with Native nations have consistently recognized Native jurisdiction over non-Native perpetrators. This jurisdictional language was often repeated in treaties with various tribes. For example Article V of the 1785 Treaty of Hopewell with the Cherokee states:

> If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the lands [...] which are hereby allotted to the Indians [...] such persons shall forfeit the protection of the United States, and the Indians may punish him or not as they please.[70]

After his arrest, Oliphant appealed his case to local courts who rejected it, citing the inherent sovereignty of the Suquamish to maintain law and order within their communities.[71] This was in accordance with previous case law, as well as with treaties signed by other tribes. Oliphant then appealed this decision to the U.S. Supreme Court in *Oliphant v. Suquamish Indian Tribe*, and on March 6, 1978, the Supreme Court reversed the lower court's decision. Ruling that Native nations do not have the legal right to arrest and prosecute non-Native offenders, the court sided in favor of Oliphant in a six to two decision.[72]

The Oliphant decision colonized the inherent (and dually codified) right of pre-constitutional Native nations to govern the people and activities on their own land, and was thus a devastating blow to tribal sovereignty.[73] Under *Oliphant*, Native nations were prohibited from exercising jurisdiction over non-Native individuals on Indian land. While the authority to maintain local control within a society is central to maintaining law and order, the Oliphant decision denies Native communities this basic tenet of self-determination. As Lujan and Adams note, "Oliphaut strikes directly at the heart of a tribe's ability to protect itself by institutionalizing discourses that deny tribal police the protection and authority that every other community in America bestows on their police."[74]

The background and discourse around the Oliphant case reveals familiar themes of racism and paternalism. At the time of Oliphant's arrest, the Suquamish had a fully functioning Western-style court system. Yet, as a white American, Oliphant was relieved of his responsibility as a Suquamish community member. Despite the fact that the Suquamish had "elevated" themselves to the level of American judicial hegemony, the federal government viewed them as somehow short of truly entering American civilization. The outcome of *Oliphant* indicates that even the "civilizing" project of previous federal Indian policy was not enough to trump the enduring myth of Native savagery, and begs the question: what, if anything, can?[75]

Paired with the myth of Native savagery, white anxiety over Native lawlessness endures in *Oliphant*. In the majority opinion, Justice William Rehnquist cited a previous case, *In re Mayfield* to justify his ruling against the Suquamish:

> In *In re Mayfield* (1891) the Court noted that the policy of Congress had been to allow the inhabitants of the Indian country "such power of self-government as was thought to be consistent with the safety of the white population with which they may have come in contact, and to encourage them as far as possible in raising themselves to our standard of civilization."[76]

In *In re Mayfield*, white fears of the perceived violence and danger of Native communities were enmeshed with the civilizing mission inherent to the assimilationist paradigm of federal Indian policy. *Mayfield* indicates that divesting Native nations of their inherent and pre-existing sovereign right to exercise jurisdiction in their own communities served a dual purpose: it protected white bodies, while also delivering Native people into civilization. Rehnquist's decision to use the racist language of *In re Mayfield* in *Oliphant* reflects this—his argument essentially being that since the U.S. Supreme Court has already acted in favor of protecting white interests and "civilizing" Native nations, that the current court must follow suit. Despite noting in *Oliphant* that "Congress never expressly forbade Indian tribes to impose criminal penalties on non-Indians,"[77] Rehnquist still insisted on leveraging

the power of the U.S. Supreme Court to effectively do so. Here, Rehnquist chose to engage with the vague and racist statute set in *In re Mayfield*, rather than uphold tribal sovereignty which had been clearly expressed in the form of many constitutionally binding treaties.

The Oliphant decision is one of the most significant blows to tribal sovereignty in American history and is a major factor in the development of modern jurisdictional conflicts. As one scholar notes, "Today, thanks to *Oliphant*, non-Indians know that practically no one has criminal jurisdiction over them on the Indian reservations,"[78] creating a climate in which violence against Native people is often met with impunity. Like PL 280, *Oliphant* illustrates the colonial irony that the *fear* of lawlessness by white communities creates a very *real* sense of lawlessness for Native people in Indian country.

Conclusion

The epigraph at the beginning of this chapter tells of a victim's advocate recounting a night when four different law enforcement officers chose to argue over jurisdiction rather than confront the perpetrator or address the needs of the survivor. The advocate states, "Then you wonder why these cases are not getting prosecuted—because the United States government made it as difficult as possible for us to handle our own prosecution on our own land."

This chapter argues that the U.S. government has, indeed, made it as difficult as possible for Native people to manage their own prosecutions on their own land. Though control over the activity on one's land is fundamental to community safety, the U.S. federal government has consistently encroached upon this sovereign right, transforming law and order in Indian country from something that was once local and efficient, to one that is distant and largely ineffective. While some legal scholars treat jurisdictional conflicts as collateral damage from a complicated yet necessary system needed to address the "unique" legal relationship between the federal government and Native nations,[79] I have demonstrated that this is not the case. Instead, jurisdictional conflicts are the direct result of federal Indian policy that has consistently used legal violence as a method to colonize Native land, assimilate Native people, and "solve" the "Indian problem."

Additionally, a closer examination of these five pieces of law and policy reveals more subtle themes. *Ex Parte Crow Dog*, the Major Crimes Act, the Dawes General Allotment Act, Public Law 280, and *Oliphant v. Suquamish Indian Tribe* each demonstrate that the policies most directly responsible for the creation of modern jurisdictional conflicts are also marked by paternalism, a civilizing mission,

investment in white American hegemony, protection of white bodies from the perceived threat of Native savagery, the protection of white economic and social interests, divestments in tribal sovereignty, and the colonization of Native justice systems. In turn, it becomes impossible to separate the motivations behind these policies from their results, as jurisdictional conflicts *themselves* emerge as marked by these themes. Thus, when four law enforcement agencies argue on the front lawn of a Native woman's home as her attacker remains hidden in the closet, hundreds of years of federal policy are inscribing legal violence on her and her community. Paternalism, divestments in tribal sovereignty, and investments in white American hegemony are literally part of the violation that this woman experiences as her attack is met with impunity. Jurisdictional conflicts, the history of federal Indian policy, and legal violence can therefore not be separated. While this affects all Native people in Indian communities, this type of legal violence often affects Native women in particular. The next chapter illustrates the way these laws shape the experience of Native women in Indian country, arguing that sexual violence against Native women today is structured by this history of legal violence against Native communities as a whole.

Notes

1. Laura Sullivan, "Legal Hurdles Stall Rape Cases on Native Lands," *National Public Radio* 26 Jul. 2007.
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15. Deloria and Lytle, *American Indians, American Justice* 169–170.
16. Perry, *Policing Race and Place* 36.
17. As quoted in Perry *Policing Race and Place* 36.
18. Thomas Biolsi, "Imagined Geographies: Sovereignty, Indigenous Space, and American Indian Struggle," *American Ethnologist* 32.2 (2005): 244.
19. Perry, *Policing Race and Place* 36.
20. Deloria and Lytle, *American Indians, American Justice* 169–170.
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22. When first passed, the Major Crimes Act included "major" crimes such as murder, manslaughter, kidnapping and rape. Since its passage, the Major Crimes Act was amended to include many other felony crimes including robbery, incest, sexual abuse of a minor, and assault with a deadly weapon (Pevar, *The Rights of Indians and Tribes* 144–145).
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26. Carol Lujan and Gordon Adams, "U.S. Colonization of Indian Justice Systems: A Brief History," *Wicazo Sa Review* 19.2 (2004) 16.
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28. Deer, "Sovereignty of the Soul."
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31. Biolsi, "Imagined Geographies" 244.
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33. Kevin Bruyneel, *The Third Space of Sovereignty: The Postcolonial Politics of U.S.–Indigenous Relations* (Minnesota: University of Minnesota Press, 2007) 94.
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37. "Lands in Severalty to Indians: Views of the Minority." *Index to the Reports of Committees of the House of Representatives for the First and Second Sessions of the Forty-Sixth Congress 1879–1880.* Volume 5—Nos. 1521–1793. Washington, D.C.: Government Printing Office, 1880: 10.
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40. Larson, "Making Sense of Federal Indian Law" 14.
41. Ibid., 20.
42. 1922 report from the General Accounting Office, cited by Brian Sawers, "Tribal Land Corporations: Using Incorporation to Combat Fractionation," *Nebraska Law Review* 88.2 (2009): 398.
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44. Vanessa J. Jimenez and Soo C. Song, "Concurrent Tribal and State Jurisdiction Under Public Law 280," *American University Law Review* 47.1627 (1998).
45. Luana Ross, *Inventing the Savage* (Austin: University of Texas Press, 1998) 24.
46. Ibid.
47. Frank Pommersheim, *Braid of Feathers: American Indian Law and Contemporary Tribal Life* (Berkeley: University of California Press, 1997) 122.
48. Deloria and Lytle, *American Indians, American Justice* 175.
49. Pevar, *The Rights of Indians and Tribes* 123–125.
50. Jimenez and Song, "Concurrent Tribal and State Jurisdiction" 1634.
51. Ibid.
52. *Worcester v. Georgia* (1832). For a discussion of this case see Joanne Barker, "For Whom Sovereignty Matters" *Sovereignty Matters*, ed. Joanne Barker (Lincoln: University of Nebraska Press, 2005): 6–11.
53. Carole E. Goldberg, "Public Law 280," *American Indian Treaties Publication* (Los Angeles: University of California, Los Angeles American Indian Culture and Research Center. Series No. 1, 1975) 4.
54. Goldberg and Champagne 1996, referenced in Sarah Deer, "Federal Indian Law and Violent Crime: Native Women and Children at the Mercy of the State," *The Color of Violence* 35.
55. Ross, *Inventing the Savage* 24.
56. Luna-Firebaugh, *Tribal Policing* 25.
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59. Ibid.
60. Luna-Firebaugh, *Tribal Policing* 117.
61. Goldberg, "Public Law 280" 3.
62. Quoted in Deer, "Federal Indian Law and Violent Crime" 35.
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64. Deloria and Lytle, *American Indians, American Justice* 176.
65. Deer, "Sovereignty of the Soul" 462.
66. Luna-Firebaugh, *Tribal Policing* 25.
67. This will be explored at length in Chapter Four.
68. *Oliphant v. Suquamish Indian Tribe.* 435 U.S. 191. U.S. Supreme Court, 1978.
69. Ibid.

70. Treaty of Hopewell as quoted in Kevin Meisner, "Modern Problems" 190. See also Article V of the 1785 Treaty with the Wyandot, Delaware and Others and Article IV of the 1830 Treaty with the Choctaw.
71. Bruce Duthu, *American Indians and the Law* (New York: Penguin Group, 2008) 19–20.
72. *Oliphant v. Suquamish.*
73. Luna-Firebaugh, *Tribal Policing* 31.
74. Lujan and Adams, "U.S. Colonization of Indian Justice" 19.
75. Please note that I am in no way encouraging the adoption of Western systems of government in Native communities. I am only using this example to demonstrate that even when Native nations complete the civilizing mission of American legal hegemony, they are still denied legitimacy as a governing body. For more on this, see my discussion of VAWA 2013 in Chapter Six.
76. *Oliphant v. Suquamish* 115–116.
77. Ibid.
78. Meisner, "Modern Problems" 206.
79. See for example Loy, "Criminal Law."

CHAPTER FOUR

Jurisdiction and Sexual Violence Against Native Women

> It's rape tourism, right here in Oklahoma, South Dakota, Alaska, and any place where the confusing mess of jurisdictional issues allow perpetrators to hide. Are there even words to describe this evil?
>
> —Andy Ternay[1]

Chapter Three demonstrates that legal violence has been used as a colonial tool to "solve" the social, political, legal, and physical aspects of the "Indian problem." However, to give the impression that law has been the *principal* tool of colonization would be incorrect. In fact, just as legal violence was present at first contact, so too was sexual violence against Native women.[2] While federal law constructed Native communities as unfit for political sovereignty, social constructions of Native women by colonizers portrayed Native women as having no right to corporal sovereignty.[3] By using sexual violence as a weapon, colonizers attempted to control Native nations as a whole by targeting Native women in particular. In this context, both sexual and legal violence became fused in a comprehensive colonial approach to address the problematic space that Native communities have always occupied vis-à-vis the American settler-state.

By reading sexual violence in tandem with law, I argue that non-Native criminal impunity in Indian country is not simply collateral damage from a legal system that by nature must be complex. Instead, I demonstrate the ways that modern

jurisdictional conflicts are the direct result of federal policy that has *always* been characterized by both legal and sexual violence against Native people. In this chapter, I theorize sexual violence in a colonial-legal context, while demonstrating the real effects that jurisdiction has on contemporary Native women. By highlighting the way that jurisdictional conflicts disproportionately affect Native women by allowing impunity for sexual assault, I support my thesis that the confluence of legal and sexual violence present since European contact continues to maintain and inscribe colonial violence on the bodies of Native women in Indian country today.

Determining Jurisdiction in Indian Country

Regardless of her racial identity, when a woman is sexually assaulted outside of Indian country, jurisdiction is relatively straightforward. If it happens on state land, for example, it generally falls under state jurisdiction and goes to a district court (see Figure 1).[4] When a woman is sexually assaulted in Indian country however, the jurisdictional scheme is quite different. In Indian country—because of the Major Crimes Act, Public Law 280, *Oliphant*, and recently the Violence Against Women Reauthorization Act of 2013—the type of crime, exactly where it occurred, the racial identity of the perpetrator and victim, and the nature of their relationship to each other and to the community all play key roles in determining jurisdictional authority.[5]

Because of the Major Crimes Act, when a crime is committed in Indian country, the type of crime (major or non-major) must be determined. Sexual assault is always considered a "major" crime and the Major Crimes Act applies.[6] Here, the Major Crimes Act immediately introduces a second sovereign in addition to the Native nation. While non-major crimes may fall under the sole jurisdiction of the tribe, major crimes introduce either the state or the federal government as a second sovereign that may have either sole jurisdiction over the crime or may share jurisdiction with the tribe. In cases of dual jurisdiction, double jeopardy does not attach because the crime falls under the jurisdiction of separate sovereigns.[7] To determine which second sovereign (the state or the federal government) is introduced under the Major Crimes Act, it is vital to determine exactly where the crime occurred.

If it is determined that all or part of a crime was committed in Indian country, it must then be determined whether or not the land on which the crime was committed is subject to Public Law 280 (PL 280). If it is determined that the assault occurred in Indian country subject to state jurisdiction under PL 280, then the Major Crimes Act introduces that state as a second sovereign. In these cases, depending on the racial identity of the parties involved and the nature of their relationship to each other and to the Native community, the state either maintains sole jurisdiction over the crime or dual jurisdiction shared with the tribe. If it is determined that the assault occurred on land not subject to PL 280, then the second sovereign introduced by the Major Crimes Act is the federal government. Then, depending on the racial identity of the parties involved and the nature of their relationship to each other and to the Native community, the federal government either maintains sole jurisdiction over the crime or dual jurisdiction shared with the tribe.[8]

Determining PL 280 status is often difficult. While the 1953 law initially forced the transfer of federal jurisdiction to six mandatory states, subsequently other states have been allowed to opt in and out of PL 280 status.[9] Some Native nations were once under PL 280 jurisdiction but retroceded from it, creating exceptions to state jurisdiction under PL 280 in some cases. This is the case in the Umatilla Reservation in Oregon, for example, that was once under PL 280, but has since retroceded Oregon state jurisdiction.[10] Also, many states have only limited jurisdiction under PL 280. This means that a state could technically be a PL 280 state, but only have jurisdiction over air and water pollution and no jurisdiction over sexual assault (as is the case in Arizona). Or, a state might have PL 280 jurisdiction over sexual assault, but only if it occurs on highways (as is the case in South Dakota). Alternatively, a PL 280 state might have jurisdiction over civil cases, but not criminal cases (as is the case in Iowa), in which a civil suit against a rapist would fall under state jurisdiction, but a criminal case would not.[11]

Additionally, some reservations are not entirely within the bounds of a given state, sometimes crossing between PL 280 and non-PL 280 states, and even crossing between national borders. Such is the case of the Navajo Nation that spans Arizona, New Mexico and Utah, and the Mohawk Nation of Akwesasne that falls within New York in the United States and the provinces of Ontario and Quebec in Canada. Because of numerous variations and exceptions, determining if state jurisdiction under PL 280 applies can be very complicated.[12]

Yet another difficulty in determining jurisdiction comes from the Dawes Act. The division of Native land under the Dawes Act not only introduced a large white population into Indian country, but also created a checkerboard pattern of land ownership. This process of "checkerboarding" means that the boundaries of Indian country often encompass many tracts of land that are not legally part of Indian country. Because of checkerboarding, even if a survivor knows exactly where she was assaulted within the bounds of a reservation, it is often extremely difficult to find out if that particular parcel of land is technically part of Indian country.[13] As one assistant U.S. attorney remarked, "If it's a parcel of property in a rural area, it may take weeks or months to determine if it's Indian land or not;

investigators usually cannot determine this, they need attorneys to do it by going through court and title records to make a determination."[14]

These difficulties are exacerbated for crimes where the survivor is unable to determine exactly where the assault took place. In cases in which women are blindfolded, drugged, intoxicated, knocked unconscious, and/or transported in moving vehicles, mapping the exact place(s) where the assault occurred can be nearly impossible. Such was the case for two Native women in Oklahoma in 2005:

> In both cases, the women were raped by three non-Native men [...] Because the women were blindfolded, support workers were concerned that the women would be unable to say whether the rapes took place on federal, state, or tribal land. There was concern that, because of the jurisdictional complexities in Oklahoma, uncertainty about exactly where these crimes took place might affect the ability of these women to obtain justice.[15]

Compounding the difficulty of using location as a determinant in Indian country are the identity politics at work in the wake of the Oliphant decision. After the U.S. Supreme Court stripped Native nations of their ability to arrest and prosecute non-Native perpetrators in *Oliphant v. Suquamish*, the racial identities of the parties involved in Indian country crime have become central to determining jurisdiction. Once the type of crime, the location of the crime, and the applicability of PL 280 are determined, the racial identity of the parties involved must be verified to determine jurisdiction.[16] If the perpetrator is non-Native, the victim is Native, and it is determined that the crime occurred in Indian country subject to PL 280, then the state has jurisdiction. If the perpetrator is non-Native, the victim is Native, and it is determined that the assault occurred in Indian country not subject to PL 280, then the federal government has jurisdiction. If both the perpetrator and the victim are non-Native, the state has jurisdiction regardless of PL 280 status. If the assault occurs in Indian country subject to PL 280, the perpetrator is Native, and the victim is Native, then both the state and the Native nation in which it occurred have concurrent jurisdiction. If the assault occurred in Indian country not subject to PL 280 and both the perpetrator and victim are Native, then both the federal government and the Native nation in which the crime occurred have concurrent jurisdiction (see Figures 2–6).[17] Each scenario is also shaped by the relationship between the perpetrator/victim and the perpetrator/Native nation in that in some cases the tribe may extend limited jurisdiction over non-Native perpetrators under Title IX of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) when it otherwise would not.

While determining the exact location of an assault and PL 280 applicability can be incredibly difficult, determining the racial identity of those involved can be equally problematic. Despite making sweeping regulations governing the authority to manage crimes that involve "Indians" and "non-Indians," both Congress and the U.S. Supreme Court have failed to provide a consistent definition of who an "Indian" is. In fact, there are dozens of different definitions of the term "Indian" under the law.[18] As Pevar notes:

> Each government—tribal, state, and federal—decides who an Indian is for the purposes of that government's laws and programs. This can result in someone being an Indian under tribal law but not under federal law, under federal but not tribal law, under tribal but not state law, and so forth.[19]

Native identity in the United States is complicated and is often found at the confluence of racial, social, ethnic, and political elements. Often, Indian identity is not simply a matter of blood quantum or enrollment, but also a complex matrix of representation, recognition and active participation[20] that is variously recognized by tribal, state and federal governments. Based on physical appearance, someone may be labeled as "White" or "Black" but may also be an enrolled member of a Native nation. Phenotypically, someone may appear to be Native but have no Native ancestry. Alternatively, someone might be of Yaqui or Tohono O'odham ancestry but was born on the Mexican side of their ancestral homelands, rendering them "non-Indian" in the eyes of the federal government. Similarly, someone might be enrolled in a Native tribe that is not federally recognized, possibly making them "Indian" for the purposes of a state government but not the federal government. Determining Native identity may take a serious investment in not only researching legal enrollment but also in talking to individuals, community members, as well as researching family and oral history. Despite this, law enforcement officials are required to determine the Indian/non-Indian racial identity of the parties involved in a crime in order to adjudicate it.

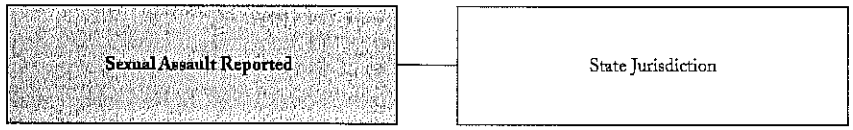

Figure 1. Jurisdiction for Sexual Assault on State Land.[21,22]

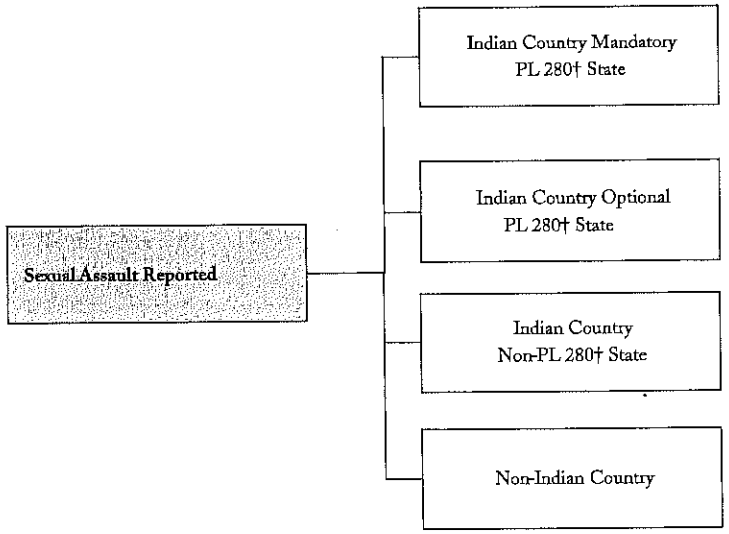

Figure 2. Types of Land In or Near Indian Country Used to Determine Jurisdiction.

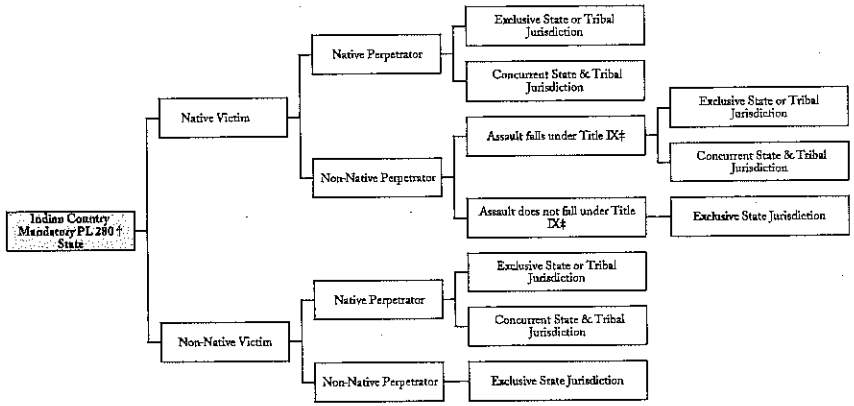

Figure 3. Jurisdiction for Sexual Assault In Indian Country, Mandatory PL 280† State.

† "PL 280" is Public Law 280.

‡ "Title IX" refers to crimes that qualify for special domestic violence jurisdiction under Title IX of the Violence Against Women Reauthorization Act of 2013.

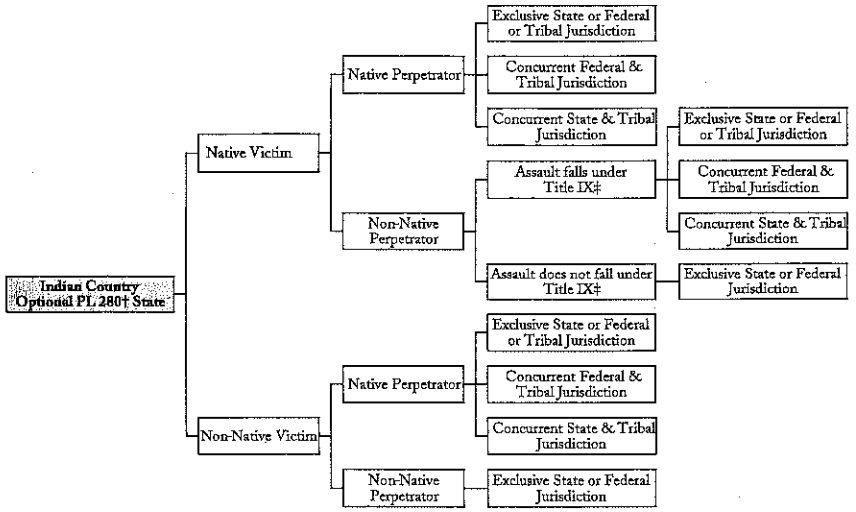

Figure 4. Jurisdiction for Sexual Assault In Indian Country, Optional PL 280† State.

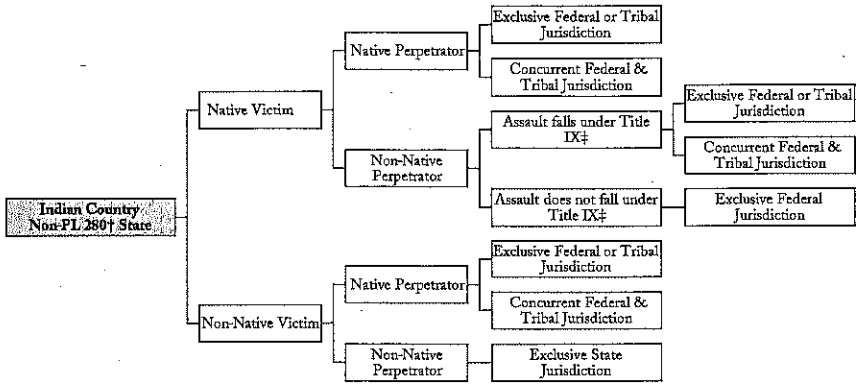

Figure 5. Jurisdiction for Sexual Assault In Indian Country, Non PL-280† State.

† "PL 280" is Public Law 280.

‡ "Title IX" refers to crimes that qualify for special domestic violence jurisdiction under Title IX of the Violence Against Women Reauthorization Act of 2013.

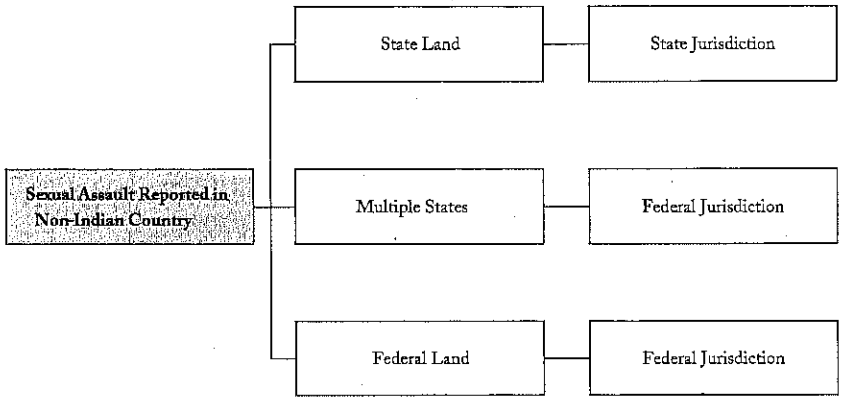

Figure 6. Jurisdiction for Sexual Assault In Non-Indian Country.[23]

Using racial identity as a criterion for arrest and prosecution is a significantly flawed approach to adjudicating crime. In addition to subjecting law enforcement officials to the complex task of determining a racial identity that is not clearly defined, using race as a jurisdictional determinant further marginalizes Native communities by collapsing ethnic identities while giving perpetrators another avenue to manipulate the criminal justice system.

The confusion created when ethnic and racial identities are enmeshed is readily apparent in the 1990 U.S. Supreme Court case *Duro v. Reina* in which Albert Duro of the Torres Martinez Desert Cahuilla Indians was accused of killing a teenage boy in the Salt River Pima Maricopa Indian Community. Here, Duro was clearly an "Indian" yet was not a member of the Native nation in which he committed the crime. This created confusion as it raised the question of whether or not non-member Indians were considered "Indians" for the purposes of jurisdiction.[24] In response, Congress passed the "Duro Fix," which provided that for the purposes of jurisdiction, all Native people—regardless of Native membership—share legal standing as "Indians" for the purposes of prosecution in Indian country.[25]

Considering that each Native nation has its own culture, history, laws and government, folding unique ethnic identities into a monolithic "Indian" racial identity is marginalizing for Native communities. On one hand, the collapse of ethnic identity is paradoxical in a jurisdictional scheme that clearly values the identity of perpetrators; on the other, it is predictable given the history of federal Indian policy. As noted in the previous chapter, federal Indian policy has been designed to protect the civilized "Us" from the savage "Other." The "Other" in this case was all "Indian" people whose savagery was defined simply by failing to be

Euro-American. Though each Native community is unique, they all became the "Indian" "Other" in the eyes of the federal government under the Duro Fix.

Using race as a jurisdictional determinate is additionally problematic when perpetrators use identity politics to avoid arrest. In some cases, suspects have exploited *Oliphant* and the Duro Fix by strategically enrolling or disenrolling themselves from their Native nations to manipulate jurisdiction and sidestep prosecution.[26] The idea that someone can be an Indian while committing a crime, and somehow be a non-Indian while being adjudicated for that crime, is a testament to the arbitrary nature of using racial identity as a criterion for prosecution in Indian country. Or, as was the case in *Oliphant*, the idea that someone could live in a community, assault a member of that community on community land, at an event hosted by that community, yet not be held accountable for their actions by that community, demonstrates the way that identity politics systematically strip Native peoples of their ability to exert meaningful control over the people and activities on their land.

Finally, since the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), the type of assault, the relationship between the perpetrator and the survivor, and the relationship between the perpetrator and the Native community must also be defined in order to determine jurisdiction. While Title IX of VAWA 2013 challenges *Oliphant* to allow tribes to prosecute some non-Native perpetrators, it continues to complicate matters by using the nature of the perpetrator/victim and perpetrator/community relationship as determinants in jurisdiction (see Figures 3–5). Under VAWA 2013, tribes may exert some limited jurisdiction over non-Native offenders if: the perpetrator is an intimate, dating or spousal partner; or if the perpetrator has ties to Indian country as a resident, employee, or romantic partner of a Native community member. This most recent development in Indian country jurisdiction is theorized at length in Chapter Six, however the jurisdictional mechanics resulting from VAWA 2013 will be considered throughout this chapter.

Federal Declination and Impunity

Sexual assault cases in general are difficult to prosecute, but Indian country jurisdiction has exacerbated this challenge, leading to exceedingly high declination rates.[27] In Indian country, criminal proceedings often start with a "mini-trial" to determine jurisdiction.[28] From these mini-trials it could take weeks or months to determine whether jurisdiction is federal, state, tribal, or a combination of two or

more sovereigns.[29] In the meantime, perpetrators can flee and evidence can be lost, mishandled, or degraded—all of which contribute to high declination rates.[30]

When criminal investigations focus on jurisdiction, evidence collection and interviewing people of interest are often postponed. And, if one sovereign entity does collect evidence, it may be thrown out by another agency that may have different standards for chain of custody, search warrants, and evidence collection. Until recently,[31] Indian Health Service (IHS) hospitals had no standard protocols for collecting sexual assault forensic information from Native women who had been raped, and often, this information was not collected at all. When evidence was collected, it was often mishandled or destroyed, and therefore inadmissible in court.[32]

Additionally, although the federal government has a responsibility for providing health care and other basic services to many Native communities, up until recently, IHS facilities often did not have sexual assault forensic examination kits. In some cases where Native women were raped in Indian country but taken to non-IHS hospitals, they were expected to pay for their own rape kits—which can cost between $700–$800.[33] This is a service that is usually provided free of charge for individuals who are part of a state investigation into sexual assault.

When evidence and investigation take a back seat to jurisdiction, it means that perpetrators are rarely arrested. In cases where a warrant is issued, often so much time has elapsed that perpetrators have fled.[34] In some cases, determining jurisdiction and collecting enough evidence for an arrest has caused law enforcement authorities to wait up to four years to arrest someone suspected of sexually assaulting a Native woman.[35]

As a result of Native advocacy around these disturbing trends, the federal government passed the Tribal Law and Order Act (TLOA) in 2010. This law was, among other things, designed to: increase intergovernmental communication by facilitating coordination between tribal, state and federal law enforcement bodies; prepare IHS facilities by developing uniform procedures and granting resources to manage sexual assault cases; and encourage accountability by tracking and publishing federal declination rates.[36]

The TLOA appears to have significantly lowered declination rates for sexual assault in Indian country.[37] However, while the TLOA signaled measured improvement in declination rates, they still remain disproportionately high. As Chapter Five will demonstrate, the TLOA legislated *over* the problem of jurisdictional conflicts without addressing the underlying issues that shape crime in Indian country. While the TLOA may have ameliorated some problems in the short term, it cannot dismantle the root problem in the long term, leaving us continuing to grapple with high rates of sexual assault against Native women.

Because of enduring problems with jurisdiction, often cases still do not result in arrests or referrals to state and/or federal governments. And even when jurisdiction can be determined, and enough evidence is collected for cases to be taken on by the federal government, attitudes and perceptions of Indian country also contribute to high declination rates. As former U.S. Attorney Margaret Chiara noted:

> I've had [assistant U.S. attorneys] look right at me and say, "I did not sign up for this" [...] they want to do big drug cases, white-collar crime and conspiracy. And I'll tell you, the vast majority of judges feel the same way. They will look at these Indian country cases and say, "what is this doing here? I could have stayed in state court if I wanted this stuff." [...] It's terrible indifference, which is dangerous because lives are involved.[38]

While the federal government colonized tribal jurisdiction under the rhetoric that Native people were incapable of managing serious crimes, today the United States often refuses to manage the duties it has appropriated. From a federal perspective, it appears that when crime in Indian country endangers white Americans sweeping legislation should be passed. However, when crime in Indian country affects Native women, it can be ignored in favor of what is seen as more important matters that primarily affect non-Native people. In other words, while crime in Indian country is too important to be left to Native people, it is not important enough to take resources away from white-collar crime. As federal prosecutors construct prosecuting sexual violence in Indian country as being inconsequential, they send the message that the lives and bodies of Native women are not valuable or worthy of protection. And, outside of the Native community itself, it appears that no one has heard this message louder than non-Native men.

Predatory Violence Against Native Women in the Wake of *Oliphant*

When traveling through Indian country, rather than falling under the jurisdiction of a sovereign by implied consent (such as when one crosses the border from one U.S. state to another, or travels from the U.S. to a foreign country), Indian country post-*Oliphant* is a space where the majority of non-Native people may enter a foreign sovereign, yet have no accountability to that sovereign. Jason O'Neal, the tribal police chief of the Chickasaw Nation, shows us what this reality looks like for tribal law enforcement in an interview with National Public Radio's Laura Sullivan. The interview takes place on Chickasaw land outside of a gas station convenience store:

Laura Sullivan:	Here's a guy walking into the store now. If he goes in there and he steals a carton of cigarettes, what happens to him?
Jason O'Neal:	If he's an Indian, he would go to jail.
LS:	If he is a non-Indian, what happens to him?
JO:	We would simply let him go and forward a report to the U.S. attorney.
LS:	And what happens to those reports?
JO:	Well, I really couldn't tell ya. I don't think I've ever been called back on one of them.[39]

Despite the fact that members of the federal government have recognized that "tribal justice systems are ultimately the most appropriate institutions for maintaining order in tribal communities,"[40] both state and federal governments continue to play competing roles in Indian country jurisdiction, creating a space in which law enforcement officers like O'Neal may be powerless to adjudicate crime committed by non-Native perpetrators. As one Native woman noted, because of this non-Native sexual predators have "targeted Indian country, reservations, rancherias and communities as the very best place to prey on Native women."[41]

In general, rape is an overwhelmingly intra-racial crime. For example, approximately 90% of Black women report being assaulted by a Black assailant and at least 70% of White women report being assaulted by a White assailant.[42] However, the Native community is the one glaring exception. For Native women, 86% of sexual assault is perpetrated by non-Native men, and four out of five Native survivors of sexual assault describe their attacker(s) as white.[43] This striking anomaly in sexual assault statistics does not exist in a vacuum. Rather, these statistics are dramatically shaped by the colonial context of jurisdiction in Indian country.

While all sexual assault is by nature violent, it does operate in different contexts. As discussed in Chapter One, the complicated system of jurisdictional authority in Indian country not only specifically privileges non-Native identity, but it also specifically marginalizes Native identity in cases of sexual violence. While jurisdiction over the sexual assault of *non*-Native women in Indian country defaults to the state, the involvement of a *Native* victim signals the interest of three separate sovereigns who may compete for jurisdiction—compromising the investigation of each—or decline to investigate, denying the Native survivor recourse for her assault.

As a result of the jurisdictional conflicts created by federal Indian policy, non-Native (overwhelmingly white) men become aware that their racial identity signals legal impunity, and in turn specifically seek out *Native* (as opposed to non-Native) women in *Indian country* as opposed to state land. One article in the *Native American Times* described sexual predators as viewing Indian country

as "feeding grounds,"[44] where white men "can do whatever they want."[45] Another blog states "if you want to rape [...] somebody and get away with it, do it on an Indian reservation."[46] Others have described Indian country as a "free-for-all,"[47] where "rapists are allowed to roam reservations, attacking women and young girls without real fear of being punished."[48] And as Deborah Blossom (Western Shoshone), acting director of the Great Basin Women's Coalition Against Violence stated, "Our women are open game. So many are violated and they tell us no one will do anything."[49]

The ease with which non-Native men may sexually violate Native women sends the message that the bodily integrity of Native women is not to be respected, that crime against Native women simply does not matter, and that Native women by their very racial and gender identities are inherently rapable. Viewing sexual violence through this predatory lens reveals that the disturbing rates of sexual assault against Native women today are in fact only contemporary manifestations of a colonial legacy hundreds of years in the making.

The Colonial Context of Sexual Violence: Constructing the Native "Other"

Sexual violence against Native women, while virtually unheard of prior to European contact, became an immediate reality in the first interactions between American Indians and Europeans.[50] Journal entries by early colonizers and letters from early settlers in the Americas detailed the ways that Native women were singled out for systematic rape.[51] Often, these assaults were characterized as collateral damage—that in the primary project of seizing Native land, European colonizers were also able to seize Native women. However, a more nuanced examination reveals that sexual violence against Native women was—and continues to be—central to the colonial experience.

As noted in Chapter Three, when Europeans first arrived in the Americas they confronted lands and resources that they were eager to make their own. At the same time, they also confronted Native peoples with distinct social, political and legal rights to these resources. Legal justifications thus quickly lent themselves as tools to legitimate the theft of the land and resources desired by European colonizers. However, just because something is legal, doesn't mean that it's moral.[52] For example, if murder were legal, most of us still wouldn't kill others because we recognize that other people share our humanity. Therefore appropriating Native land at the expense of Native people had to be naturalized through more than just law. It is in this context that ideological constructions of Native people emerged

as a corollary to moralize European conquest itself.[53] By portraying Native people as savage, barbaric, and sub-human, European colonizers were able to justify their legal actions.[54] As author Thomas Jimson notes:

> When you set about to dispossess a people of their land and source of livelihood, unless you have no conscious at all, one must find an excuse to safely hide from the truth of pain and suffering you are inflicting on innocent peoples [...] If, indeed, [Indians] were human beings [...] then they were in fact a lesser type of humanity who had no rights to life, land, or liberty.[55]

Jimson's passage demonstrates how ideology structured the legalization of what would otherwise be considered theft and murder. And, while these notions were levied against entire Native nations, they were highly gendered as narratives of conquest often focused on the perceptions of Native women.

At the same time that Europeans confronted Native communities with pre-existing rights to lands and resources, they also encountered Native women who were central political actors in the nations that governed these resources. And because many Native communities were matrilineal, women were often the ones who controlled and regulated the lands and resources that colonizers wanted.[56] Here, women's political and economic power threatened the primary goals of European colonization. Therefore, as Native activist Brenda Hill (Siksika Blackfeet) notes, "Attempts to destroy tribal sovereignty began with the destruction of women's sovereignty."[57]

As colonizers realized that divesting entire communities of their resources necessitated the disenfranchisement of Native women in particular, constructing the Native woman as a dangerous "Other" was a crucial tool of conquest. As political equals in their communities, Native women not only played central roles in civic life, but also made affirmative decisions about their bodies, gender expression, and sexuality. In contrast, Western Euro-patriarchy excluded women from the public sphere, and policed the bodies and sexuality of women.[58] As a result, European encounters with women who were not dominated by men became the foundation on which the subhuman status of Native women (and by extension entire Native communities) was built. In this context, European constructions of Native communities as savage were both gendered and sexualized, as many contact-era accounts indicate. For example in a 1525 letter to the Council of the Indies, Dominican Friar Tomas Ortiz remarked of Native people:

> They are more given to sodomy than any other nation. There is no justice among them. They go naked. They have no respect either for love or for virginity. They are stupid and silly. They have no respect for truth, save when it is to their advantage. They are unstable. They have no knowledge of what foresight means [...] They are incapable of learning.[59]

In this passage, Native communities were classified as having no justice, as unintelligent, and as sexually immoral. Such ideological constructions lent themselves to colonists eager to justify the appropriation of Native resources. If Native people had no justice, the logic went, they were by nature dangerous and violence against them became an act of self-defense. If they were unintelligent, then they were not able to manage their own resources, thus naturalizing European appropriation. If their bodies were not dominated by Christian morals, then they were available for domination by Western Europeans, which normalized gender violence against Native women. And indeed, from first contact, this mindset justified sexual violence against Native women, enslavement, and the appropriation of Native lands and natural resources.[60]

While Native people in general were seen as dangerous and sexually perverse, Native women were particularly vilified. Not only did Native women present a moral danger through perceived sexual perversion, but also their sexuality was presented as a physical danger to men. This is documented throughout the writings of Amerigo Vespucci, an Italian explorer, cartographer, and namesake of the Americas. From 1497 to 1504, Vespucci wrote a series of journal entries and letters regarding his alleged[61] voyages to the so-called New World. In one letter he described the unbridled lust of Native women as being so powerful that it led to the sterilization of men. Vespucci wrote, "[Native] women, being very libidinous" would engorge men's genitals to the point that they would "lose their virile organs and remain eunuchs."[62] Vespucci went on to illustrate that Native women's innate savagery and insatiable hunger for men drove them to literally consume European men. In a letter from his alleged third voyage, Vespucci recounted:

> [We] saw a [Native] woman come from the hill, carrying a great stick in her hand. When she came to where our Christian stood, she raised it, and gave him such a blow that he was felled to the ground. The other [Native] women immediately took him by the feet, and dragged him towards the hill [...] they all ran away towards the hill, where the women were still tearing the Christian to pieces. At a great fire they had made they roasted him before our eyes, showing us many pieces, and then eating them.[63]

Vespucci's piece communicates the savagery of Native communities as a whole through the cannibalistic appetite of Native women for European men. This narrative of consumption was highly sexualized throughout Vespucci's writings. In the same piece, he went on to portray Native women's desires as not only leading

to literal emasculation and consumption, but ultimately to the moral corruption of "Christian" (European) men:

> [Native men] marry as many wives as they please; and son cohabits with mother, brother with sister, male cousin with female, and any man with the first woman he meets.[64] [...] The women as I have said go about naked and are very libidinous, yet their bodies are comely; but they are as wild as can be imagined.[65] [...] When [Native women] had the opportunity of copulating with Christians, urged by excessive lust, they defiled and prostituted themselves.[66]

Vespucci's description of the perversion of Native people generally, is structured by the danger of Native women's sexuality specifically. The choice of Native women to "defile" and "prostitute" themselves, when framed through its impact on European men, shows that Native women not only posed a threat to men's physical bodies, but also to their Christian morals. In Vespucci's eyes, as Native women lusted after Christians, it threatened the morality of European men who may succumb to Native women's unrelenting sexual urges. And because Europeans perceived Native women as choosing to *embrace* this savage sexuality, they then became constructed as having no bodily integrity at all.

As Cherokee anti-violence activist Andrea Smith points out, prostitutes are rarely believed when they report that they have been raped.[67] This is because prostitutes are constructed as always inviting sex and therefore maintain no bodily integrity. Similarly, this construction of Native women as having no sexual mores appeared to invite sexual assault and naturalize rape by European colonizers. As Michele de Cuneo, an Italian nobleman on Columbus's second voyage wrote:

> While I was in the boat, I captured a very beautiful Carib woman, whom said Lord Admiral gave to me, and with whom, having taken her into my cabin, she being naked according to their custom, I conceived desire to take pleasure. I wanted to put my desire into execution but she did not want it and treated me with her finger nails in such a manner that I wished I had never begun. But seeing that, (to tell you the end of it all), I took a rope and thrashed her well, for which she raised such unheard of screams that you would not have believed your ears. Finally we came to an agreement in such manner that I can tell you she seemed to have been brought up in a school of harlots.[68]

In this passage, the very identity of this woman as Native played an active role in her rape. As a Native "Other" she was objectified and able to be "given" to the perpetrator. As it was her "custom" to be naked, and it was this nakedness that invited her rape, her very identity as a Native woman naturalized her sexual assault. Because she did not fit European gender roles and cultural norms, the

woman in this passage was constructed as having no bodily integrity and therefore her assault became justified in the eyes of her rapist. In fact, the author felt so vindicated by his actions he was able to conclude that despite her initial resistance, she ultimately enjoyed her violent assault.

Of course "enjoying rape" is a contradiction in terms, but the audacity of the author to frame his assault as such illustrates the extreme nature of colonial attitudes towards Native women. If Native women are seen as a threat to men, then violence against them becomes an act of self-defense. If Native women are constructed as lascivious, then all sexual activity is invited and ultimately enjoyed. And finally, if Native women appear to choose to live in bodies that are not yet subdued by patriarchy, then they are available to be dominated by European men.

Despite the notion of Native women "defiling" and "prostituting" themselves to European men while ultimately enjoying sexual assault, the reality is that Native women actively resisted rape. This was illustrated in the previous passage and is supported by many additional narratives. For example in 1552's *The Devastation of the Indies: A Brief Account,* Dominican Friar and Spanish historian Bartolomé De Las Casas recounted both the violence committed against Native women as well as the extent to which they were willing to resist it:

> One Spaniard took a maiden by force to commit the sin of the flesh with her, dragging her away from her mother, finally having to unsheathe his sword to cut off the woman's hands and when the damsel still resisted they stabbed her to death.[69]

This example, while tragic, shows the extent to which Native women resisted sexual violence.[70] And like the previous example, De Las Casas's account challenges the notion that Native women enjoyed or passively accepted sexual assault.

Over 200 years later, Franciscan Friar Junípero Serra recorded similar accounts as he presided over the missionary conquest of what would become the American state of California. During his tenure, he noted the rampant sexual assault of Native women by Spanish soldiers and attempted to intervene by documenting the attacks. One such document from 1773 reads:

> When both men and women at the sight of [Spanish soldiers] would take off running [...] the soldiers, adept as they are at lassoing cows and mules, would lasso Indian women who then became prey for their unbridled lust.[71]

Serra's advocacy ultimately made little difference in the lives of Native women who were terrorized by Spanish soldiers, as his dependence on them to police California Indian people outweighed his desire to end sexual violence.[72] Despite Serra's

ineffective campaign, his 1773 letter reveals a spirit of resistance as Native women actively engaged agency to avoid sexual assault.

Antonia Castañeda "Sexual Violence in the Politics and Policies of Conquest: Amerindian Women and the Spanish Conquest of Alta California" documents this and other forms of resistance throughout California's mission history in which Native women evaded sexual assault by fleeing, hiding, and campaigning against the missionary system in its entirety. For example, in 1785 a young Tongva spiritual leader named Toypurina was able to unite six disparate Native communities and organize an armed rebellion against the San Gabriel Mission. The rebellion centered on Native oppression under the missions as a whole, but was particularly inspired by the gendered persecution of Toypurina herself whose power as a cultural and political leader was seen as particularly threatening by Spanish colonizers.[73]

These passages not only show the prevalence of sexual assault during the early eras of colonization, but also the force with which Native women exerted agency against it. Yet, despite this clear tradition of resistance, colonial constructions of Native women continued to portray them as licentious and therefore lacking bodily integrity. As this next section will show, these initial perceptions of Native women have continued to impact their corporal sovereignty, as the trajectory of American colonial expansion continues to be structured by sexual violence.

Figure 7. Indian Female of the Arrowauka Nation.

John Gabriel Stedman, *Narrative of a Five Years' Expedition*—1796

The Taíno of the Arawak Nation were among the first Indigenous people to encounter Columbus. John Gabriel Stedman's written accounts of Arawak women include numerous references to nudity and to a perceived lack of bodily shame. Michele de Cuneo's journal entry from Columbus's second voyage (discussed earlier in this chapter) demonstrates how these perceptions of Native women justified sexual assault in the eyes of European men. Courtesy of the California State Library- Sutro Branch, San Francisco, California.

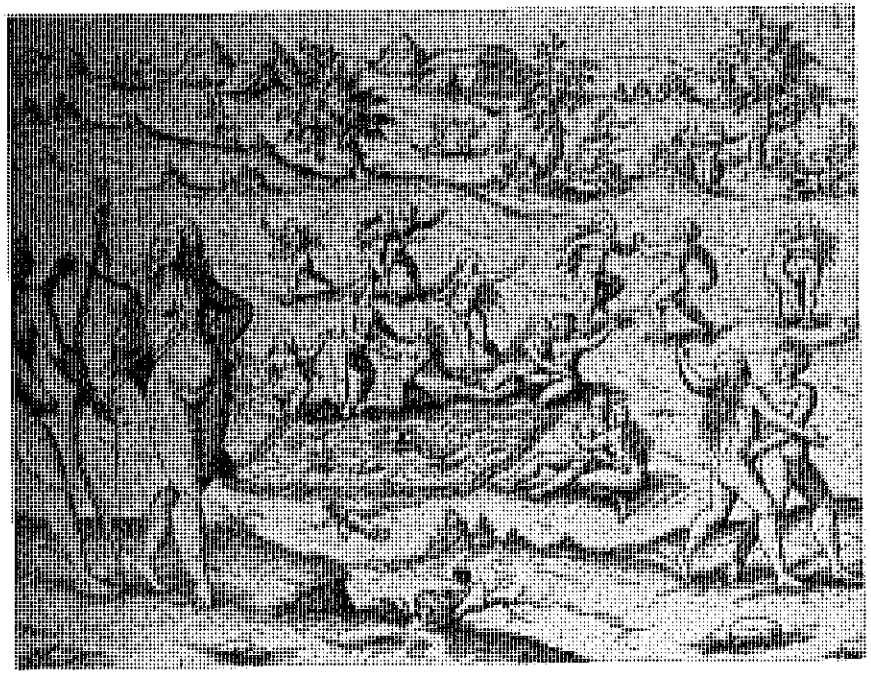

Figure 8. Engraving from Part Five.
Livinus Hulsius, *Collection of Voyages and Travels*—1599

(*Above*) This illustration from Livinus Hulsius' *Collection of Voyages and Travels* accompanies Sir Walter Raleigh's sixteenth-century account of the so-called New World. Here, a nude Native woman stands casually in the foreground. In the background, nude men and women are coupled in various stages of intimate encounters. The scene reflects European notions of Indigenous Americans as untamed and hypersexual. The perception that Native women willingly displayed their bodies, engaged in casual sexual relationships, and thus lacked sexual mores, contributed to the European assumption that they could then make no claims to bodily integrity. Courtesy of the John Carter Brown Library at Brown University.

(*Opposite*) *In The Four Continents* a bare-breasted, armed Native woman personifies America for a European audience. In her left arm she holds a human leg, severed at the thigh and ankle. In the background, Native people butcher a man and roast his leg on a spit—a common theme in contact era imagery used to communicate savagery and danger. A poem accompanying the image conveys America as a land of extraordinary wealth that is inhabited by a people of "barbarous rudenes [sic]." The author positions Christianity as a source of intervention where God's "Grace" will dress the nude barbarian and where the "Sunshine of Godds love [sic]" will cast out the "gloomy Shades of Death [sic]." © The Trustees of the British Museum.

Figure 9. America.
John Stafford, *The Four Continents*—1625–1635

Figure 10. America.

Adriaen Collaert after Maerten de Vos, *The Four Continents*—1588–89

(*Above*) Adriaen Collaert's sixteenth-century representation of America depicts an armed Native woman seated on an armadillo as a battle between Indigenous people and Europeans rages in the background. Behind her are Native people butchering a man and roasting his leg on a spit. The Latin inscription below the image refers to a land rich with gold but inhabited by a dangerous people. The Metropolitan Museum of Art, Gift of the Estate of James Hazen Hyde, 1959 www.metmuseum.org

(*Opposite*) Volume XI of *Atlas Maior* includes some of the earliest and most complete maps of the Americas. Opening the volume is this illustration of an armed Native woman standing on the decapitated, arrow-pierced head of a European man. In the background, Native men toil in a silver mine and present the precious metal at her feet. To Europeans, America represented both the promise of riches and the danger of Native women who controlled them. *Volume XI: America*, Tracy W. McGregor Library of American History, Albert and Shirley Small Special Collections Library, University of Virginia.

Figure 11. America.

Joan Blaeu, *Atlas Maior*—1665

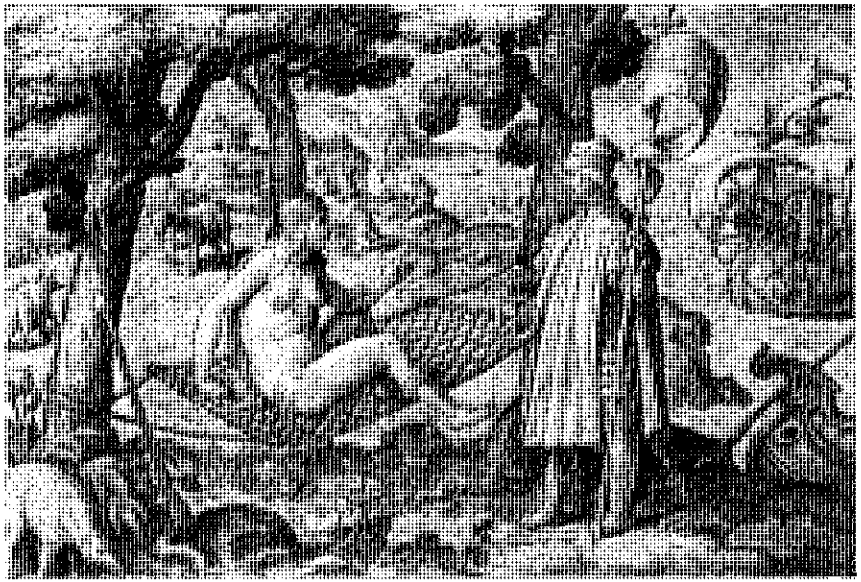

Figure 12. Discovery of America: Vespucci Landing in America.
Jan van der Straet (called Stradanus)—1587–89

(*Above*) Figure twelve depicts Amerigo Vespucci's so-called discovery[74] of America. The word "ACIREMA" in backwards letters bridges the Atlantic Ocean to what would become the United States. Here, Vespucci confronts a Native woman who represents both the promise and the danger of the New World. Though relaxing on a hammock, she has a club nearby and is surrounded by wild animals. In the distance, Native people roast a human leg on a spit. The Metropolitan Museum of Art, Gift of the Estate of James Hazen Hyde, 1959 www.metmuseum.org

(*Opposite*) Part Eleven of Theodor de Bry's *Indiae Orientalis* compiles Amerigo Vespucci's letters from his 1501 and 1503 voyages to America. The engraving illustrates a scene discussed earlier in this chapter in which Vespucci recalls Native women capturing European men, butchering their bodies, and publically consuming their flesh. Though the background of the image clearly portrays conflict between Native people and Europeans as a whole, the violence perpetrated by Native women against European men is at the forefront of Vespucci's narrative and de Bry's corresponding illustration. Courtesy of the John Carter Brown Library at Brown University.

Figure 13. Engraving from Part Eleven.
Theodor de Bry, *Indiae Orientalis*—1619

The Colonial Context of Sexual Violence: Gendering the Body, Gendering the Land

The social construction of Native women as sexually promiscuous and therefore sexually violable helps to contextualize the widespread rape of Native women within the larger project of colonization. As Europeans and later Euro-Americans conceptualized the "New World," it was envisioned in very gendered and sexualized terms. Through colonists' eyes, Native land was "virgin," "bountiful," "unbridled," "untamed," and "free for the taking."[75] Not coincidentally, the Indigenous female bodies on this land were imbued with the same sexualized discourse. Here, under Euro-American colonization, the construction of Native women as having no *corporal* sovereignty over their own bodies became fused with attitudes towards Native people as having no *political* sovereignty over their own land.

In Kirkpatrick Sale's *Conquest of Paradise: Christopher Columbus and the Columbian Legacy,* the author demonstrates the ways that the colonization of the Americas was seen largely in gendered terms as perceptions of Native land went hand-in-hand with perceptions of Native women's bodies. Sale notes that America became "the succulent maiden to be seduced, deflowered, and plundered by a virile Europe [...]"[76] Here, the technological prowess of Europe was substituted for male sexual prowess as the rape of Indian land became the rape of Indian women. Sale goes on to argue:

> [T]he masculine attitude toward the feminine, the acquisitive toward the desired, the dominant toward the weak, the civilized toward the natural: the women of America were as much a part of the bounty due the conquering Europeans as the other resources in which it luxuriated [...] attitudes toward sex and women [were] every bit as exploitative and instrumental as those toward nature: Mother Earth and earth mother were all one, and all to be used.[77]

As the author indicates, conflating Native land with Native sexuality was central to colonization, as the conquest of Native land was structured by the conquest of Native women.[78] As bodies became objects analogous to what was to be consumed, Native land—like Native women—became something to be conquered, domesticated and subdued by Euro-American men.

After the formation of the United States, European attitudes towards land became increasingly entrenched in federal Indian law. Perhaps the most significant example of this is the 1823 U.S. Supreme Court decision in *Johnson v. M'Intosh* where the court ruled that private citizens could not purchase land directly from Native people.[79] Chief Justice John Marshall who delivered the majority opinion in the case supported the ruling by arguing that Native nations did not have

complete legal authority over their own land because they had failed to privatize it.[80] After *Johnson,* Native people were henceforth considered merely "occupants" of lands that they wandered over but never actually owned.[81] By contrast, through the capacity to dominate the earth through extraction and privatization, Europeans (and later Euro-Americans who inherited the land after American independence) became the rightful "owners" of American land.

Under *Johnson,* Native people's rights to their land were minimized because of their failure to dominate it. Similarly, the logic of sexual violence is itself structured from these European perceptions of land and political sovereignty. Under Euro-American colonization, Native women were seen as having no bodily integrity and a savage sexuality that appeared to invite rape. As bodies were constructed as analogous to land that had yet to be dominated and was therefore for the taking, Native women were constructed as simply occupants of a body that was destined to be dominated by European power.[82] Because Native sexuality, like Native land, was "free" and "unbridled," it was not for Native women to control. Instead Native women's bodies became something that should be subdued at the hands of Euro-American men. Like land, ownership of Native bodies could only come from patriarchal domination and the inscription of violence.[83]

While the conflation of land and bodies may appear to portray sexual violence against Native women merely as an aspect of colonization, Native scholar Andrea Smith illustrates that instead it is central to it.[84] In *Conquest,* Smith cites Paula Gunn Allen to argue:

> [C]olonizers realized that in order to subjugate indigenous nations they would have to subjugate women within these nations. Native peoples needed to learn the value of hierarchy, the role of physical abuse in maintaining that hierarchy, and the importance of women remaining submissive to their men.[85]

Smith goes on to note, "Thus in order to colonize a people whose society was not hierarchical, colonizers must first naturalize hierarchy through instituting patriarchy."[86]

As Smith and Allen argue, in order for Euro-Americans to successfully colonize Native resources, they had to successfully subjugate Native women. Sexual violence against Native women thus became a tool with which to inscribe hierarchies on non-hierarchical peoples in order to control communities as a whole.

Sale, Smith, and Allen's analyses indicate the way that the early conflation of Native sexuality, Native bodies, and Native resources informed the colonial process. As Euro-American hegemony expanded, it continued to signal widespread sexual violence against Native women as rape became incorporated into colonial law and policy. Spanish Dominican Bartolomé De Las Casas, for example,

described how the wives of male Native leaders were strategically raped as a method to control entire Native communities.[87] Later, the Doolittle Report of 1867 issued by the U.S. federal government detailed the ways in which sexual violence against Native women was integrated as a weapon of war in the military conquest of Native peoples.[88]

Violence against Native women was in fact so extreme that Native women were not just sexually assaulted, but murdered and then mutilated. The federal government's own reports reveal that after the Camp Grant massacre of 1871, Native women were found "lying in such a position, and from the appearance of their genital organs and of their wounds, there can be no doubt that they were first ravished and then shot dead."[89] And after the Sand Creek Massacre of 1864, Lieutenant James Connor remarked that he "heard of numerous instances in which men had cut out the private parts of [slain Native women] and stretched them over their saddle-bows and wore them over their hats while riding in the ranks."[90]

As these examples show, Native women were not only raped and murdered, but their sexual organs literally became objects that were appropriated by white men as symbols of conquest. And as the federal government waged war against American Indians in westward expansion, large-scale violence against Native women became incorporated as an active strategy. For example, prior to ascending to the presidency, then General Andrew Jackson waged war against Native nations in the American South to free up land for the Southern plantation economy. As part of his military strategy, he is said to have instructed his troops to specifically kill women and children to "complete" the "extermination."[91] Similarly, as Colonel John Chivington prepared to invade Cheyenne and Arapaho land to protect the interests of white settlers during the Indian Wars, he advised his troops to specifically kill Native women and children because "nits make lice."[92]

Both Jackson and Chivington's statements illustrate the gendered aspects of colonization that identify Native women as the ultimate threat to the settler-state. As the colonization of the Americas has primarily been about the appropriation of Native resources and the expansion of Euro-American cultural hegemony, those who have stood in the way of this project were considered problematic and polluting to the body politic.[93] As the bearers of future generations who would continue to make claims over the economic resources of the Americas, Native women's fertility posed a constant threat.[94] Therefore solving the "Indian problem" necessitated targeting Native women and their ability to reproduce.[95]

In *Conquest*, Andrea Smith illustrates that reproductive violence against Native women is still part and parcel to federal Indian policy today. Her work shows the way that Native women's fertility has been targeted through environmental racism, forced/coerced sterilization and adoption, and medical testing of dangerous drugs.

Here, Smith shows how Indian Health Service policies sanctioned the widespread surgical sterilization of Native women without informed consent and also limited Native women's fertility by experimenting with dangerous contraceptives like Norplant and Depo-Provera.[96] Smith's research confirms my personal experience as a Case Worker for the Washoe Tribe in which I encountered clients who had been forced or coerced into medical procedures that rendered them sterile, as well as with my experience at Sacred Circle's *Women are Sacred* conference, in which Native women shared their stories of forced adoption. Andrea Smith also builds on existing environmental racism research to note that the colonization of Native land with toxic debris simultaneously colonizes Native women's bodies and reproductive organs.[97] As Smith and others show, when radioactive waste sterilizes Native women and/or causes debilitating birth defects and stillborn babies, the colonization of the land *is literally* the colonization of Native women's bodies.

Conclusion: Jurisdiction as Sexual Violence

As a settler-state, the United States—by definition—can only exist through the consumption of Native lands and resources. As such, the existence of Native people with rights to those lands and resources is an existential threat. As this chapter shows, "solving" the "problem" of Native political autonomy directed colonial violence towards Native women in particular. Here, the nation-state has attempted to disempower entire communities *politically* by attacking women *corporally*.

Nez Perce/Tejana scholar Inés Hernández-Avila tells us, "It is *because* of a Native American woman's sex that she is hunted down and slaughtered, in fact, singled out because she has the potential through childbirth to insure the continuance of the people"[98] (emphasis in original). Through their ability to reproduce, Native women may usher into the world successive generations of Native people who will continue to threaten the legitimacy of the settler-state. As such, the nation-state has consistently hunted down Native women to be demoralized, dismembered and disappeared.

Today, Native women continue to be singled out and, in fact, hunted down by non-Native men in the colonial space that is Indian country.[99] Today when white men target Native women for sexual violence in Indian country, this is both an individual action of sexual violence, as well as a larger, societal act of colonial violence. As individual men learn of their privileged racial statuses and use this privilege to specifically target and inscribe sexual violence on Native women, it becomes impossible to separate the individual predator from the predatory society that has preyed upon Native women since contact.

Euro-American colonization was made possible through legal violence that codified Native people as barbaric and incapable of maintaining control over their own lands and resources. As part of this process, in an attempt to "solve" the "Indian problem," federal Indian policy created modern jurisdictional conflicts. The Major Crimes Act, the Dawes Act, Public Law 280, and *Oliphant v. Suquamish Indian Tribe* are all acts of legal violence marked by investments in American hegemony and legitimated through the construction of Native people as savage and backwards. Similarly, the creation of Indian country and the establishment of a nation-state that may create such policies could not have occurred without violence against Native women. "Indian country" itself was forged from legal violence and warfare, both of which were structured by the logic of sexual violence as a tool to disempower entire communities. And it is in these spaces—created from the construction of Native women as savage and therefore rapable—in which they are again violated with impunity. Therefore, when a white man targets Native women for sexual violence in these spaces, he does so with the force of 500 years of colonial history.

In this way, we must see jurisdictional impunity in the prosecution of sexual violence against Native women not simply as the unintended consequence of a complex but necessary legal structure, but instead as a colonial phenomenon that actively *maintains* and *inscribes* colonial violence on the bodies of Native women. As such, addressing American jurisdiction and the sexual violence that characterizes it requires us to call Euro-American colonization itself into question. As jurisdictional conflicts and sexual violence continue to plague Indian country, Native women, Native communities, non-Native organizations and the U.S. federal government are crafting solutions. Based on our understanding of the way that sexual, legal, and colonial violence operate within jurisdictional schema in Indian country, the remainder of this book turns its attention to evaluating solutions in an attempt to contribute to the anti-violence movement in Indian country.

Notes

1. Andy Ternay, "How to Rape a Woman and Get Away With It." *Native American Net Roots.* Web. 21 Jul. 2008 <www.nativeamerican netroots.net/diary/130/> Accessed 12 Apr. 2011.
2. Deer, "Sovereignty of the Soul" 458.
3. Ibid.
4. Pevar, *Rights of Indians and Tribes* 119. There are some exceptions to this which are discussed in Figures 1–6 and their footnotes.
5. Meisner, "Modern Problems."
6. Major Crimes Act 18 U.S.C. § 1153 (1885).
7. Pevar, *The Rights of Indians and Tribes* 149.

8. Deer and Garrow, *Tribal Criminal Law* 87–93.
9. Perry, *Policing Race* 42–45.
10. Ibid., 43.
11. Ibid.
12. Ibid., 42–45.
13. Sullivan, "Legal Hurdles Stall Rape Cases."
14. Interview with an assistant U.S. attorney (identity withheld), quoted from Amnesty International, *Maze* 34. This is substantiated by reports from the *Native American Times* stating "In Oklahoma it can take weeks or even months to determine jurisdiction." ("US Authorities Fail to Protect Native American and Alaska Native Women from Shocking Rates of Rape, Reports Amnesty International," *Native American Times* 27 Apr. 2007: 1–2).
15. Interview with support worker May 2005. As quoted in Amnesty International, *Maze* 27.
16. Deer and Garrow, *Tribal Criminal Law* 87–93.
17. Ibid.
18. Hallie Bongar White et al., "2008 Final Report: Creative Civil Remedies Against Non-Indian Offenders in Indian Country," *Southwest Center for Law and Policy* (Tucson: 2008) 14.
19. Pevar, *The Rights of Indians and Tribes* 18.
20. Hallie Bongar White et al., "Final Report" 7.
21. All charts generated from data in Garrow and Deer's *Tribal Criminal Law and Procedure*, 93–94 and S. 47: Violence Against Women Reauthorization Act of 2013.
22. See Figure 6 for exceptions. U.S. military jurisdiction may also act as a fourth sovereign (as in the case of *Elk v. U.S.*).
23. There are some exceptions to this when the federal government shares jurisdiction with the state for certain crimes (e.g., hate crimes committed exclusively on state land that also violate federal civil rights laws). In that case, the state and the federal government would have concurrent jurisdiction as separate sovereigns and double jeopardy would not attach. As noted in Figure 1, U.S. military jurisdiction may also play a role for certain crimes.
24. Lujan and Adams, "US Colonization of Indian Justice" 12.
25. Ibid.
26. White et al., "Final Report" 8.
27. For example: between 1997 and 2006, the declination rate for federal crimes originating in Indian country was twice the rate of federally prosecuted crime in general; and in 2006, of the approximately 5,900 aggravated assaults referred to federal prosecutors only about 4% were prosecuted. See: Michael Riley, "Promises, Justice Broken: A Dysfunctional System Lets Serious Reservation Crimes Go Unpunished and Puts Indians at Risk," *Denver Post.* 11 Nov. 2007.
28. Amnesty International, *Maze* 62.
29. Ibid., 63.
30. Ibid., 27–28.
31. The passage of the Tribal Law and Order Act of 2010 implements sexual assault protocols in Indian Health Service hospitals. Pub L. No 111-211.
32. Amnesty International, *Maze* 58–59.

33. Amnesty International, *Maze.*
34. Ibid.
35. As Navajo Police Chief Jim Benally stated: "In the Navajo Nation, because violent crimes are investigated by FBI and prosecuted by US attorneys it can take up to 2–4 years for an arrest to be made." From Amnesty International *Maze of Injustice: The Failure to Protect Indigenous Women From Sexual Violence in the USA: One Year Update* (New York: Amnesty International Publications, 2008) 6.
36. Tribal Law and Order Act. Pub L. No 111-211. 29 Jul. 2010.
37. For example, recent Department of Justice reports show that declination rates for Indian country criminal cases rates have declined from about 50% to between 31% and 36% in the years since the signing of the TLOA. See United States Department of Justice, "Indian Country Investigations and Prosecutions." 2011–2012 and 2013.
38. Riley, "Promises, Justice Broken."
39. Sullivan, "Legal Hurdles Stall Rape Cases."
40. Janet Reno, "A Federal Commitment to Tribal Justice Systems," (79 Judicature 1995) 113–114.
41. Gray, "Protecting Indian Women" 8.
42. See USDOJ statistics as quoted in Amnesty International, *Maze* 4–5; and Steven Perry, "Measuring Crime and Justice in Indian Country," *Bureau of Justice Statistics*: 9–10, 18.
43. Ibid.
44. Gray, "Protecting Indian Women."
45. Quoting Chickasaw Tribal Police Chief Jason O'Neal in Sullivan, "Legal Hurdles Stall Rape Cases."
46. Wetzelbill, "I Was Witness to One on My Reservation," Comment on One in Three Native American Women Will Be Raped in Her Lifetime, 2007.
47. Sullivan, "Lawmakers Move to Curb Rape."
48. Chuck Cook, "Rape with Impunity: Police Shrug at 'Non-Emergency' Crime," *Indian Country Today* 70.20 (1987): 7.
49. Norrell, "Native Women Are Prey."
50. Mihesuah, *Indigenous American Women.*
51. See for example Bartolomé De Las Casas, *The Devastation of the Indies: A Brief Account* (Baltimore: The Johns Hopkins University Press) 1992. Originally published in 1542; and letters from Columbus's first and second voyages (1492–1496) published in John Cohen, *The Four Voyages of Christopher Columbus* (New York: Penguin, 1969).
52. As Martin Luther King Jr. reminded us in his letter from Birmingham jail as he sat incarcerated for protesting against civil rights violations of Black Americans, "We should never forget that everything Adolf Hitler did in Germany was 'legal.'" See Jonathan Rieder, *Gospel of Freedom: Martin Luther King Jr.'s Letter from Birmingham Jail and the Struggle that Changed a Nation* (New York: Bloomsbury Press, 2013) 68.
53. Mihesuah, *Indigenous American Women* 58–59.
54. Agtuca, "Beloved Women" 8.
55. Thomas Jimson, *Reflections on Manifest Destiny and Race.* Center for World Indigenous Studies, 1992.
56. Smith, *Conquest* 18.

57. Hill, "The Role of Advocates" 194.
58. See Mihesuah, "Colonialism and Disempowerment" in *Indigenous American Women.*
59. As quoted in Stannard, *American Holocaust* 217.
60. See generally, Howard Zinn *The People's History of the United States* (New York: HarperCollins, 2003); Smith, *Conquest*; and Kirkpatrick Sale, *Christopher Columbus and The Conquest of Paradise* (New York: Alfred Knopf, 1990).
61. In the introduction to *The Letters of Amerigo Vespucci*, translator Clements R. Markham discusses whether or not Vespucci actually made the journeys that he describes in his written accounts. Markham notes that many scholars (both contemporaries of Vespucci as well as modern historians) agree that some of Vespucci's letters were fabricated. For the purposes of this research, the veracity of Vespucci's accounts is somewhat moot. While his actual experiences may be questioned, there is no doubt that Vespucci's writing did significantly impact European/Euro-American attitudes towards the so-called New World. Since my discussion focuses on European/Euro-American *perceptions* of Native people, Vespucci's writing (fabricated or not) is therefore relevant. See Clements R. Markham trans. *The Letters of Amerigo Vespucci and Other Documents Illustrative of His Career* (New York: Burt Franklin, 2011).
62. Amerigo Vespucci, "Letter on his Third Voyage from Amerigo Vespucci to Lorenzo Pietro Francesco Di Medici" March (or April) 1503. From Markham *The Letters of Amerigo Vespucci.*
63. Vespucci, "Third Voyage of Amerigo Vespucci." From Markham *The Letters of Amerigo Vespucci.*
64. Vespucci as quoted in Kirkpatrick Sale, *Christopher Columbus and the Conquest of Paradise* (New York: Alfred Knopf, 1990) 141.
65. Vespucci, "Third Voyage of Amerigo Vespucci." From Markham *The Letters of Amerigo Vespucci* (alternative translation from Sale).
66. Vespucci as quoted in Sale, *Conquest of Paradise* 141.
67. Smith, *Conquest* 10.
68. As quoted in Stannard, *American Holocaust* 84.
69. De Las Casas, *Devastation* 77.
70. It is important to note that resistance to sexual assault can take many forms. Resistance does not have to involve a physical fight, or resisting to the point of death in order to be legitimate. All forms of resistance are important and valid.
71. Notes written by Junipero Serra circa 1773. Quoted in Antonia Castañeda, "Sexual Violence in the Politics and Policies of Conquest: Amerindian Women and the Spanish Conquest of Alta California," *Building With Our Hands: New Directions in Chicana Studies*, eds. Adela De La Torre and Beatriz M. Pesquera (Berkeley: University of California Press, 1993) 15.
72. Antonia Castañeda, "Sexual Violence in the Politics and Policies of Conquest."
73. Louis V. Jeffredo-Warden, "Perceiving, Experiencing, and Expressing the Sacred: An Indigenous Southern Californian View," *Over the Edge: Remapping the American West*, eds. Valerie J. Matsumoto and Blake Allmendinger (London: University of California Press, 1999) 330.
74. Though Columbus is credited with making first European contact with the so-called New World, it is Vespucci who is alleged to have made first landfall on what would become the

United States. Vespucci's first name (Latin: Americus) is the namesake of America. Ironically, the account of Vespucci's first voyage pictured above is likely a fabrication.

75. Deer, "Sovereignty of the Soul" 459; C. Richard King, "De/Scribing Squ*w: Indigenous Women and Imperial Idioms in the United States," *American Indian Culture and Research Journal*, UCLA American Indian Studies Center. 27.2 (2003): 6; Sale, *Conquest of Paradise* 141, 258; Albert Hurtado, "When Strangers Met: Sex and Gender on Three Frontiers," *Frontiers* 17.2 (1996): 57–59.
76. Sale, *Conquest of Paradise* 258.
77. Ibid., 141.
78. Perry, *Policing Race and Place* 33–34.
79. *Johnson v. M'Intosh* was the first of three U.S. Supreme Court cases known as "The Marshall Trilogy," which laid the foundation for modern federal Indian policy.
80. Barker, "For Whom Sovereignty Matters" *Sovereignty Matters:* 7–9.
81. Ibid.
82. Francis Jennings, "Virgin Land and Savage People," *American Quarterly* 23.4 (1971): 520–521.
83. Ibid.
84. Andrea Smith, "Not an Indian Tradition: The Sexual Colonization of Native Peoples," *Hypatia* 18.2 (Spring 2003): 70.
85. Quoting Paula Gunn Allen in Smith, *Conquest* 23.
86. Ibid.
87. De Las Casas, *Devastation of the Indies* 37.
88. *Condition of the Indian Tribes.* Report of the Joint Special Committee (Washington, D.C.: Government Printing Office, 1867). Commouly referred to as the "Doolittle Report" of 1867 for Senator James R. Doolittle, chair of the committee who prepared the report.
89. *Report of the Commissioner of Indian Affairs to the Secretary of the Interior.* (Washington, D.C.: Government Printing Office 1872) 72.
90. Ibid., 57.
91. Gale Toensing, "Indian-Killer Andrew Jackson Deserves Top Spot on List of Worst U.S. Presidents." *Indian Country Today Media Network.* 2012.
92. Ibid., 71.
93. Anne Waters, "Introduction: Indigenous Women in the Americas," *Hypatia* 18.2 (2003): xviii.
94. Smith, *Conquest.*
95. See generally: Smith, *Conquest*; Deer, "Sovereignty of the Soul"; Mihesuah, *Indigenous American Women*; Waters, "Introduction"; and Weaver, "The Colonial Context."
96. Smith, *Conquest* 79–108.
97. Ibid., 109–118.
98. Inés Hernández-Avila, "In Praise of Insubordination, Or, What Makes a Good Woman Go Bad?," *Chicana Cultural Studies Reader*, ed. Angie Chabram-Dernersesian (New York: Routledge, 2006) 198.
99. Gray, "Protecting Indian Women."

CHAPTER FIVE

Examining the Federal Response to Jurisdictional Conflicts in Indian Country: The Tribal Law and Order Act of 2010

> I know that too often, this community has heard grand promises from Washington that turned out to be little more than empty words. And I pledged to you then that if you gave me a chance, this time it would be different.
>
> —PRESIDENT BARACK OBAMA AT THE SIGNING OF THE TRIBAL LAW AND ORDER ACT[1]

On May 15, 1994, Lisa Marie Iyotte (Lakota) was brutally beaten and raped on the Rosebud Indian Reservation. She went to an Indian Health Services hospital to receive treatment for her injuries, but no doctors talked to her about her rape. Federal authorities did not interview her. Ms. Iyotte wanted to pursue her case, but federal attorneys declined to prosecute it. The man who attacked her went on to assault another woman and rape a teenage girl before he was finally arrested. He was never charged for the assault and rape of Ms. Iyotte.[2]

Sixteen years later, Lisa Iyotte found herself at the White House sharing her story in front of a national audience. In a devastating speech, Ms. Iyotte described the way that she was systematically denied justice in a society that let her case "fall through the cracks."[3] However, she remained hopeful that future legislation could help women like her find justice. As Ms. Iyotte concluded her speech, she introduced President Barack Obama who proceeded to sign the Tribal Law and Order Act of 2010 into law. At the signing, President Obama recognized the epidemic of sexual violence against Native women in Indian country stating, "when one in

three Native American women will be raped in their lifetimes, that is an assault on our national conscience; it is an affront to our shared humanity; it is something that we cannot allow to continue," and that despite a history of empty promises from the federal government, "this time it would be different."[4]

The Tribal Law and Order Act of 2010 (TLOA) is the result of advocacy from both Native and non-Native community organizations and individuals, as well as media attention from organizations like Amnesty International.[5] Hailed as an astounding victory by many,[6] the TLOA is the first comprehensive bill aimed at addressing jurisdictional conflicts in Indian country with a focus on addressing sexual violence against Native women. While most non-Native sources applaud the TLOA as "a huge victory for human rights,"[7] some in the Native community are reserved in their celebration of this new law. Highlighting the apparent contradiction of using federal Indian law to fix a problem created by federal Indian policy, many Native women problematize the Act. While the TLOA is variably supported and opposed by those in the Native community, many Native women conceptualize the TLOA as an important "step in the right direction" that will take continued advocacy to perfect. This chapter examines the ways that the TLOA addresses jurisdictional conflicts in Indian country as well as the way it is conceptualized by the Native community. In doing so, I measure the TLOA against a master narrative of federal Indian policy in order to discuss if—as President Obama promised—this time it will indeed be different.

Framing the Problem, Framing Solutions

This research demonstrates that jurisdictional conflicts are part of a master narrative of federal Indian policy characterized by divestments in Native sovereignty and investments in American hegemony. Here, even when trying to solve perceived issues in Indian country, the federal government often exacerbates problems for Native people by continuing to colonize Native justice systems. Public Law 280 is just one of many examples demonstrating that when legislation to address law and order in Indian country is done in a way that divests in tribal sovereignty, it may exacerbate the problem it is trying to solve, creating even more problems in Native communities. Keen attention to the TLOA is therefore vital as it can indicate if the federal government has broken with its tradition of compounding problems in Indian country. By measuring the TLOA against the backdrop of federal Indian policy that I have developed, while incorporating the perspectives of Native women and Native communities, we can begin to contemplate the possibility of legislating a solution to jurisdictional conflicts and sexual violence in Indian country in a way that both invests in and enfranchises Native communities. To do this, I examine the way that the TLOA frames problems and solutions to sexual violence in Indian country, as well as its efficacy as articulated by Native women and nations.

Though jurisdictional conflicts have been operating in the lives of Native people in Indian country for over a century, the extreme nature of this problem has only recently reached larger audiences. Though Native people have been lobbying members of Congress for decades to draft legislation to address this issue, it wasn't until the Amnesty International report *Maze of Injustice* was released in 2007 that lawmakers crafted such legislation in the form of the TLOA. In creating *Maze*, Amnesty International—a non-Native human rights organization—worked actively with Native women and Native community organizations to draft a Native-centered report. From this initial collaborative project, media outlets like National Public Radio, *The Denver Post*, and Current TV began publishing information on sexual violence against Native women in Indian country.[8] Increased awareness of the issue outside of Native communities helped pressure Congress to take action, and on July 29, 2010, the TLOA was signed into law.

Major findings identified in the Act include: rates of sexual violence against women are extremely high in Indian country; jurisdictional conflicts negatively impact public safety in Indian country, and these conflicts have been exploited by criminals; and tribal justice systems are "often the most appropriate institutions for maintaining law and order in Indian country."[9] To address these findings, the major goals of the TLOA are to: increase coordination between federal, state and tribal entities; empower tribal governments; and reduce the prevalence of sexual violence against Native women.[10]

In order to achieve these goals, the Act takes several approaches: grant making to tribal governments; information sharing between tribal, state and federal entities; implementing standardized procedures for data and evidence collection; creating new federal liaison positions; and increasing tribal sentencing authority.[11] The TLOA makes large grants available for Native nations to enhance their tribal justice systems by providing funding for the hiring and training of new police officers, the purchase of new equipment such as computers, weapons and vehicles, and the construction of detention facilities. To facilitate information sharing, the TLOA establishes a program where Native nations may gain access to national crime databases. Additionally, the TLOA requires the Department of Justice to publish declination rates for crimes originating in Indian country and improves the collection of reservation crime data in general. The TLOA implements standardized procedures in Indian Health Service facilities to respond to sexual assault cases and also requires specialized "family violence" training for law enforcement

officers and prosecutors to better work with Native survivors. The TLOA also establishes the Office of Tribal Justice and creates several new federal positions and committees that work to facilitate communication between the federal, state and tribal governments when handling cases that originate in Indian country. Furthermore, the TLOA allows Native nations in PL 280 states to call on the federal government when state governments do not adequately address crimes that originate in Indian country. And finally, the TLOA expands tribal sentencing authority to up to three years in jail and up to a $15,000 fine for any single offense (up from one year and $5,000 since the Indian Civil Rights Act was amended in 1986).[12]

The TLOA represents an important point of departure from the dominant narrative of federal Indian policy. Breaking from its decidedly non-democratic tradition of excluding Native people from creating the legislation that would then control their lives, members of Congress actively worked with Native leaders to craft the TLOA. Representative Herseth Sandlin from South Dakota and Senator Byron Dorgan from North Dakota convened several Senate committee meetings to hear from Native representatives about how they conceptualized problems and solutions to jurisdictional conflicts and sexual violence against Native women in Indian country.[13] Unlike the vast majority of federal Indian policy, the TLOA marks a distinct shift in that it begins to incorporate Native voices into the legislation that directly affects Native communities. This Native-centered shift in thinking is further indicated by the Act itself that requires many federal agencies to act "in consultation" with Native nations when making decisions about law enforcement in Indian country.[14]

While this may represent an important break from earlier federal policy, we must problematize the way that Native people were variously included and excluded from this process. While consultation with Native people marks an improvement from a tradition of deciding what is best for Native people without asking them, the Act fails at truly giving agency to Native communities themselves. Despite the TLOA's insistence that its goal is to "empower tribal governments [...] to safely and effectively provide public safety in Indian country,"[15] the federal government still had the final say in the authorship of this Act. The TLOA was written by non-Native legislators and was passed in a Congress with only one member who is enrolled in a Native nation.[16] While perhaps more familiar with the needs of Native nations through consulting certain Native leaders, Native communities did not shape this legislation in a way that truly reflects tribal sovereignty. As *Indian Country Today* recognized, "Much of the impact of the TLOA will be lost in bureaucratic regulations and administration if tribal communities and leaders do not have significant voice in the planning and organization of justice programs."[17] Whereas the TLOA offers mere consultation with a handful of Native leaders, a true method to empower tribal communities could have included joint or co-authorship of the bill by members of Native nations selected by the communities themselves.

Concern over complicated bureaucracy is frequently expressed in the Native community regarding the TLOA. One of the cornerstones of the TLOA is increased collection of reservation crime statistics as well as the publication of federal declination reports for crimes that originate in Indian country. While these statistics have been much sought after by Native women and Native communities who want to leverage them to draw attention to the problem of sexual violence against Native women, if the compilation of these statistics is not coupled with attention to the issues that produce sexual violence against Native women, this approach will do little to create meaningful change. As Carrie Garrow, Chief Judge of the St. Regis Mohawk Tribe noted, "Endless bureaucracy and more data collection is a way of *not* dealing with the problem" (emphasis in original).[18] Essentially, reporting how many cases are declined is not an effective measure to ensure that cases are prosecuted since compiling statistics and declination reports do nothing to address sexual violence at its source.

While "consulting" Native nations may be a step in the right direction, the Act does little to make Native nations full partners in the law. Again, though Native nations are to be "consulted" as the law is implemented, many of the aspects of the law that involve coordinating Native people do not actually involve Native people. For example, a central tenet of the TLOA is facilitating the adjudication of crimes that occur in Indian country between the federal, state, and tribal governments. To do this, the TLOA establishes the Office of Tribal Justice and creates several liaison positions to increase communication between these entities. Unfortunately, these positions are to be filled by assistant U.S. attorneys appointed by the U.S. attorney in each district that includes Indian country.[19] Rather than providing for Native nations to appoint their own liaisons that represent their nation's best interests, the TLOA insists on appointing more U.S. attorneys who may not be in touch with the needs of the Native community in that area, or accountable to the Native communities that they serve. Again, while creating these positions and consulting with Native nations may be seen as an improvement, it still highlights a common theme: while the federal government may intend to incorporate Native people in crafting solutions in Indian country, it continues to insist on centering itself in the formation and maintenance of these solutions.

Additionally, many Native women have called the funding for the Act into question. While the TLOA ostensibly makes millions of dollars available for Native nations to invest in their tribal justice systems, many remain skeptical as to whether or not this funding will actually become available. As Kimberly Craven

(Sisseton–Wahpeton Oyate) writes in an editorial in the *Indian Country Times*, "It is critical that Congress also appropriate the money that is needed to implement this law. Until that is done, these are probably just words on a piece of paper."[20] Virgil Wade, a criminal defender in the Salt River Pima-Maricopa Indian Community says, "I don't know that it has the teeth that it's going to need," referring to the fact that the funds to pay for the TLOA aren't guaranteed.[21] The skepticism towards fund allocation is warranted. For example, as Muskogee activist Sarah Deer points out, the Tribal Justice Act of 1993 was supposed to provide over fifty million dollars *per year* for tribal justice systems, yet when the act expired seven years later, only five million dollars had been appropriated *in total*.[22]

Appropriating funds for the TLOA can be problematic, not only because funding for the Act is not guaranteed, but also because, as with all federal grants, tribal nations must apply for them. This places Native nations in a position where they must meet certain—and often hegemonic—standards for fund allocation. While the TLOA does allow funds to be used for "alternatives to incarceration," the Act dedicates a large part of its funding towards the construction of new juvenile and adult detention facilities.[23] Other sections of the Act authorize grants for the purchase of police equipment such as weapons.[24] In this way, funding for Native nations is framed in terms of increased resources for Western-style law-and-order systems that value punishment and incarceration, along with increased police presence to guarantee safety. As Native activist Jessica Yee (Mohawk) notes:

> A thing that somewhat troubles me about the bill is a lot [sic] on criminalization and penalization. I'm a prison abolitionist in many senses and I'm very aware of how many Indigenous people are in the criminal justice system unfairly; but more importantly, that these entire systems are not our laws and not our systems.[25]

Here, many Native women agree that increased state violence will not help eradicate violence caused by the state. As one Native woman so succinctly noted, "We can't arrest our way out of this problem."[26]

Western Legal Hegemony

In addition to increased funding for police weaponry and detention facilities, the TLOA grants Native nations greater authority to make arrests, sentence perpetrators, and access national criminal databases. This is important because tribal police will now be able to run background checks to determine if someone is a convicted criminal or sex offender. However, access to these systems is predicated on tribal police becoming "consistent with standards" accepted by the federal government.[27] In other words, tribal police must subscribe to hegemonic standards of Western law enforcement procedures in order to have access to this vital information. Furthermore, while the Act encourages agreements between tribal law enforcement officers and local police, this is at the discretion of the attorney general who "may provide technical and other assistance to state, tribal, and local governments" to enter into "mutual aid, hot pursuit of suspects, and cross-deputization agreements."[28] While the TLOA is ostensibly about encouraging cooperation between the federal, state, and tribal entities, it does so with a top-down approach by appointing attorneys and federal liaisons to oversee relationships, rather than directly addressing cooperation on an everyday level. And the only section of the Act to directly address coordination between tribal and local police dictates that it will be at the attorney general's discretion. Here, the only way that tribal police officers may arrest non-Native assailants is through entering into a cross-deputization agreement with local authorities. Cross-deputization has been problematized by many Native women, notably Eileen Luna-Firebaugh (Choctaw/Cherokee), who notes that they force tribal police to adhere to Western legal standards in order to be seen as legitimate by local authorities.[29] In order for tribal police to exercise even a modified form of jurisdictional and local control under the TLOA, non-Native law enforcement officers must train and certify them. Here non-Native law enforcement agencies are modeled as ideal, thereby implying the inferiority of Native justice systems.

In addition to forcing Native nations to ascribe to Western notions of justice, the way that the TLOA structures sentencing authority is an example of the ubiquitous fear of Native justice systems that structures federal Indian policy. In 1968, the federal government imposed mandatory sentencing restrictions on tribal governments under the Indian Civil Rights Act of 1968 (ICRA).[30] Stemming from federal paternalism to protect Native people from their own governments, the ICRA initially limited tribal governments to imposing sentences of no more than six months in jail and a $500 fine per offense on those who were convicted in tribal court. The TLOA increased these limitations to three years and $15,000 respectively.[31] However, in order to hand down sentences in excess of one year and a $5,000 fine, the Tribal Law and Order Act states that a tribal court must provide the defendant with counsel "at least equal to that guaranteed by the United States Constitution," who is licensed to practice law in the United States, and that the judge presiding over the trial must also be licensed in the United States. All of this must be "at the expense of the tribal government."[32] Not only do sentencing limitations indicate the federal perception that Native people must be protected from their own governments, but the fact that in order to even operate within these limitations tribal nations must also subscribe to Western hegemonic systems of

justice, demonstrates that the federal government clearly does not intend to invest in tribal sovereignty in a meaningful way. As one Native woman in an *Indian Country Today* editorial blog observed:

> This piece of legislation contains sections that once again diminish tribal sovereignty! Tribes can only increase incarceration IF they provide certain protections for defendants. Specifically, judges and public defenders must be lawyers. Also, they must follow American legal procedures. Not all tribes currently provide these types of services in their tribal court systems, neither do they have the resources to comply with these requirements. Once again, another example of the guardian ward relationship being reinforced [emphasis in original].[33]

Another woman, identifying as Turtle Mountain Ojibwe observed:

> I applaude [sic] the passing of the new Law and Order Act for Indian country, however after reading through the act more carefully, discovered that in order for tribes to pass and enact this new Bill we once again lost more of our sovereignty. According to this ACT [sic], tribes who decide to implement this new Law and Order Act are required to follow State law and court procedures, rather then [sic] tribal laws and court procedures. Just one more example of the Federal Government taking our rights away in the disguise of helping, what a shame, but to be expected.[34]

In these quotes, Native women problematize the relationship between the federal government and Native nations as one that has been marked by paternalism and attacks on tribal sovereignty. Again, we see the common theme that Native governments become legitimate only when they become more like the hegemonic ideal of Western government. Despite stating that tribal justice systems are the best place to adjudicate crimes in Indian country, the TLOA frames them as effective only when these systems are shaped to mirror American models. Additionally, the fact that tribes are forced to pay the cost of conforming to Western justice systems leads many Native women to refer to the TLOA as an "unfunded mandate."[35] Furthermore, there is a provision under the increased sentencing section of the TLOA that describes how after four years the attorney general will recommend, "whether enhanced sentencing authority should be discontinued, enhanced, or maintained at the level authorized under this title."[36] In other words, once the federal government determines whether or not tribes have been "effective"[37] in their use of enhanced sentencing laws, the federal government will paternalistically decide whether or not they should be allowed to continue to have increased sentencing authority.

As Chapter Three demonstrated, federal law and policy has sought to manage the "Indian problem" by delivering Native people out of savagery and into

civilization. So far we have seen how the TLOA views "strengthening tribal justice systems" as synonymous with using federal funding to force tribal justice systems to mirror Western government, and that after a period of time the federal government will assess whether or not tribal governments can be trusted with increased responsibility. This not only reveals a paternal narrative, but also a civilizing one. From a federal perspective, the TLOA's efficacy is framed in part through its potential to create competency in tribal justice institutions through federal intervention. This by definition assumes the inherent *in*competency of tribal justice as it exists now, and places the TLOA on the colonial legal trajectory of using federal Indian policy to manage the "Indian problem" through Western law as a civilizing force.

Assimilation as part of the civilizing project of federal Indian policy is found throughout the non-Native legislative discourse around the TLOA. Rather than framing sexual violence as the direct result of colonization and the formation of the United States, sexual violence originating in Indian country is often divorced from its colonial context. Framed paternalistically in terms of delivering Native people into the safety of the America dream, the rhetoric around the TLOA is characterized by phrases such as all Native people deserve to enjoy the "fullest protection of *our* laws,"[38] (my emphasis) and that "every American has the right to live in a safe community," even our "First Americans."[39] At the 2009 Tribal Nations Conference where he announced his support for the TLOA, President Obama emphasized his commitment to the nation-to-nation relationship between Native nations and the federal government so that tribes can "be full partners in the American economy, and so your children and grandchildren can have an equal shot at pursuing the American Dream."[40] While this type of rhetoric may sound pro-Indian, it fails to be truly pro-sovereignty. As many Native scholars point out, the American economy could not have been built without the colonization of Native people, and as such, realizing the "American Dream" is not always a goal of Native peoples.[41] Additionally, framing the TLOA as something that gives Native people the fullest protection of American laws demonstrates the failure of the federal government to understand that federal laws have actually *created* the impunity through which Native women are preyed upon in Indian country. What many in the Native community are demanding is not equal protection *under* American law, but the right to protect themselves *from* American law, through self-determination and sovereignty over their own lands, laws, and justice systems.

Additionally, many in the Native community are skeptical of being forced to adopt a Western justice model that appears to be dysfunctional by its own standards. As noted in Chapter One, Cherokee scholar Andrea Smith argues that the Western criminal justice system generally functions at the point of crisis *after*

violence has occurred.[42] And Sarah Deer (Muscogee Creek) notes, "I'm always concerned about 'law and order' language. It certainly doesn't protect or help white women, so it's not going to help Native women. We have to make sure that the systems we set up are Native women-centered."[43] Full inclusion and equal protection under the law of the very institution that has divested Native people of their lands and resources are not necessarily the goals of Native communities. While the federal government may continue its mission to deliver Native people into civilization by incorporating them into American legal hegemony, Native communities articulate solutions in terms of sovereignty and centering Native women in their anti-violence strategies.

The Homogenization of Violence: Racial Identity and Predatory Violence

As this chapter indicates, while the TLOA is framed as being liberatory for Native people, it is in fact deeply hegemonic and fits within a narrative of federal paternalism. Yet this analysis stands apart from what is by far the most problematic aspect of the TLOA. Despite admitting that "tribal nations are the best place to handle issues of tribal law and order," and despite the fact that specific pieces of federal Indian law and policy have clearly created jurisdictional conflicts, the TLOA does absolutely nothing to address these policies or address the dynamics of interracial violence that characterize the majority of sexual assault against Native women.

The TLOA specifically acknowledges that more than one in three Native women will be raped in her lifetime and that violence against Native women is 2.5 times that of the national average.[44] American politicians quote these statistics in virtually every speech as they pledge their support of the TLOA. But despite being published in many of the same reports that reveal these startling facts, one statistic you will not find in federal political discourse is the fact that while rape is an overwhelmingly intra-racial crime in the United States, 86% of Native women who are raped report that their attacker is a non-Native man, 80% of whom are white. If politicians were to acknowledge that interracial rape is rare in non-Native communities yet routine for Native women, they would be forced to address the history that has created these disparate statistics. However, doing so would require a discussion of American colonization and is thus inconvenient to the settler-state. As such, the interracial aspect of sexual violence and jurisdictional conflicts is never addressed. While truly addressing jurisdictional conflicts would mean crafting legislation that bolsters a Native nation's ability to address *all* violence against Native women, the TLOA instead focuses on strengthening tribal policing of the

mere 14% of *intra*-racial sexual assault in Indian country. In ignoring the interracial aspect of sexual violence against Native women by racing the perpetrators of violence in Indian country as Native, the TLOA both strengthens tribal justice systems to police and incarcerate their own Native people disproportionately while continuing to deny Native nations the authority to exercise control over those who commit the vast majority of sexual assault against Native women.

One of the cornerstones of the TLOA is "strengthening tribal justice systems," accomplished primarily through increased funding for policing and prisons. However, because the Tribal Law and Order Act does not overturn *Oliphant*, all of the funding that would go to tribal governments under the TLOA would—by definition—only be used to police Native people. Here, all of the federal money used to "strengthen tribal justice systems" would specifically go to prosecuting and incarcerating Native people exclusively. As Native scholar Luana Ross points out, the criminalization of Native identity and legacies of historical trauma have led to an astounding over-representation of Native people in the criminal justice system as it is.[45] The TLOA would then only invest in tribal justice systems to the extent that they might further police and jail their own members, while doing little to address the root causes and realities of sexual violence against Native women.

Despite the fact that virtually every scholar points to federal Indian policy like the Major Crimes Act, the Dawes Act, Public Law 280 and *Oliphant v. Suquamish* as the cause of jurisdictional conflicts in Indian country, the TLOA refuses to address them. In fact, the Act *protects* and *strengthens* pre-existing law and policy by amending the Indian Civil Rights Act and by explicitly protecting the ruling in *Oliphant*. Without mentioning the case by name, Section 206 removes any doubt over the TLOA's impact on *Oliphant* by stating, "Nothing in this Act confers on an Indian tribe criminal jurisdiction over non-Indians."[46] In doing so, Section 206 affirms *Oliphant* as case law and reiterates the federal government's position that state and/or federal entities are the true arbiters of justice for the majority of crimes committed against Native women in Indian country.

Because the TLOA explicitly protects the root causes of jurisdictional conflicts, it can never adequately address them. Instead, the TLOA appears to be another case of legislating over the problem, rather than addressing it directly. This fits neatly into the master narrative of federal policy in which the government enacts a series of reactive policies out of a fear of Native justice systems, rather than meaningfully investing in these systems. As Native women and Native communities conceptualize the TLOA, they often comment on this tendency. For example, Diane Enos, president of the Salt River Pima-Maricopa Indian Community in Arizona, states of the TLOA, "You've got Congress people scared stiff of seeing tribes get authority over non-Indians. I'm not sure that they understand why, but

it's almost a knee-jerk reaction."[47] As Native activist Sarah Deer notes of the passage of the TLOA:

> I should just be satisfied with celebrating this victory, but I'd really like to see Congress take on this issue of non-Indian perpetrators [...] I think there's a fear that tribal governments will be harsher on non-Indians. I think that's a racist idea at its core [...] the idea that tribal people can't be fair. If you take racism out of the picture, then what the rule is doesn't make sense.[48]

Both Deer and Enos's statements frame true solutions to jurisdictional conflicts and sexual violence in terms of investments in tribal sovereignty, while positioning the TLOA as reactive to the fear of Native justice systems. Noting the reactionism and fear that characterizes aspects of the TLOA, Native women and Native community members consistently incorporate an analysis of sovereignty into their perceptions of the TLOA. As Rose from South Dakota comments in *Indian Country Today*:

> I feel confident the tribes can handle their own affairs and what would happen if we went to Senator Dorgan's home state and tried to enforce a law upon the citizens? It's so tragic for the Indian Nations. This is just another pretext of repressive policy and example of the guardian-ward relationship.[49]

Furthermore, Tsoo'woo Naibi comments in *Indian Country Today*:

> We are a strong people whose heritage is based on a balance between individual autonomy and strong community ties. We still have the power to achieve this, and can better achieve it if the U.S. steps out of our affairs.[50]

At the Tribal Nations Conference of 2009 when President Obama announced his intentions to sign the TLOA, he stated, "I believe that Washington can't—and shouldn't—dictate a policy agenda for Indian country. Tribal nations do better when they make their own decisions. That's why we're here today."[51] Yet one is left to wonder if a TLOA that purports to invest in tribal justice systems, and notes that tribes are the best institutions to maintain law and order in Indian country, actually incorporates the kind of self-determination that President Obama claims to support. At every turn Native women and Native communities articulate that sovereignty and self-determination is absolutely vital in shaping a better future for themselves. Yet the TLOA insists on continuing to invest in the "guardian"/"ward" relationship codified in the 1830s that defined Native people as child-like "wards"[52] of the paternal federal government.

Like federal Indian policy before it, the TLOA acts out of a colonial fear of the inferiority of tribal justice systems and paternalistically dictates the ways in which Native nations may exert authority over the people and activities on their land while increasing state violence against Native people through policing and incarceration. Despite President Obama's promise that "this time it would be different," it appears that the TLOA still embodies many of the problems of traditional federal Indian policy that sought to manage the "Indian problem" by divesting in Native sovereignty and investing in American hegemony. While the Act reveals an understanding of the issue that is congruent with the findings of this research—that sexual violence against Native women in Indian country has reached epidemic proportions and that jurisdictional conflicts play a major role in this violence—the solutions proposed in the TLOA do little to address the problem at its core. Instead, the federal government continues to vest federal and state authorities—often the most distant, unresponsive, and unaccountable entities—with jurisdictional authority over crimes in Indian country. At the same time, the interracial aspect of sexual assault is erased, as the federal government refuses to acknowledge its role in the creation and maintenance of these conflicts.

Despite the obvious shortcomings of this Act, it would be a mistake to universally condemn it. In spite of its limitations, Native women and Native organizations also offer praise of the TLOA. Native women like Lisa Iyotte, whose story we heard at the beginning of this chapter, describe how this act can help prevent cases from "falling through the cracks." Jessica Yee, a Native blogger for Ms. Magazine stated "As a Native feminist without apology, I'm thrilled that the Tribal Law and Order Act of 2010 has been passed to protect Native women from violence."[53] Other Native women have stated "I think now the women finally have a voice [...] I sit with women who cry and are mad because the feds didn't want to pick up the case. This bill, I think, would give women more of a right [...]"[54] These statements do not come as a result of ignorance of the true content of the Act, but instead support for the TLOA comes from a willingness to engage in what Chela Sandoval refers to as a "differential consciousness."

In *Methodology of the Oppressed*, Sandoval argues that social movements are often framed with an either/or approach of choosing one organizing strategy over another.[55] In the either/or paradigm, organizing within competing power structures often positions women as having to choose between adversarial approaches to social change. However, what Sandoval engages in *Methodology* is the idea that women of color can and do negotiate seemingly oppositional power structures, refusing to choose one or the other. Instead, they strategically navigate opposing spaces with a willingness to engage in multiple approaches even if these approaches may at first appear to conflict.[56] She refers to this type of consciousness as a "differential" in

that it "enables movement 'between and among' ideological positionings."[57] Much like a transmission differential in a car, activists can shift between different approaches in the face of changing terrain to strategically navigate contemporary institutions to shape a better world for themselves and their communities. So rather than completely embrace the TLOA as the ultimate solution to sexual violence and jurisdictional conflicts, or alternatively reject the TLOA as worthless because it fails to frame solutions in ways that are truly liberating for Native communities, Native women invoke a differential consciousness to leverage the potential benefits of the TLOA while also acknowledging and addressing its shortcomings.

We see differential consciousness employed by many Native women as they discuss the TLOA. As Nicole Mathews (White Earth Ojibwe), executive director of the Minnesota Indian Women's Sexual Assault Coalition stated, "I think that the Obama administration has really taken some great steps to improve safety for Native women in Native country [...] But there is more work ahead. Now we have to take steps to make it a reality."[58] Lucy Simpson (Navajo) an attorney for the Indian Law Resource Center continues, "The Tribal Law and Order Act that Obama just passed provides a little step in the right direction."[59] Muscogee activist Sarah Deer states, "[T]his took three years. It's really been 500 years, but three years of putting it on paper. There are ten or twelve more steps we need to do, of course, but now it feels like we can change the world." She goes on to say, "This [Act] is a very, very tiny beginning, but now I really believe it can be done. I don't know if I will see it in my lifetime, but I'm committed to making sure I do the work anyway."[60] In another piece, she also states, "I see the [TLOA] as a foundation [...] I worry sometimes that people expect a 'quick fix' to problems that have been ongoing for over a century. While the TLOA didn't contain all the fixes (or dollars) that would be ideal, we now have a starting point."[61]

By invoking a differential consciousness, Native women conceptualize the TLOA, not as a "quick fix," but instead as a framework from which they can base future activism both within *and* outside of existing institutions. These Native women acknowledge that there is still much more work to be done, but rather than reject a piece of legislation because it is problematic, they are willing to strategically leverage it to shape a better future. While many acknowledge that solutions to sexual violence in Indian country will likely not come from the very government that has consistently inscribed violence on Indian people, it doesn't necessarily preclude Native activists from using each potential asset as they work to create a world that is safe for Native women. And, as we look at other sites of activism, this ability to invoke a differential consciousness becomes central to framing solutions to jurisdictional conflicts and sexual violence.

Notes

1. Barack Obama. "Remarks By the President Before Signing the Tribal Law and Order Act." Office of the Press Secretary. The White House. 29 Jul. 2010. Print.
2. Lisa Iyotte. "Remarks Before Signing of the Tribal Law and Order Act." The White House. Washington, D.C. Video. 29 Jul. 2010. <http://www.whitehouse.gov/blog/2010/07/29/tribal-law-and-order-act-2010-a-step-forward-native-women> Accessed 12 Apr. 2011.
3. Ibid.
4. Obama, "Remarks by the President."
5. Non-Native advocates include Representative Herseth-Sandlin of South Dakota, Senator Byron Dorgan of North Dakota, the American Bar Association, and Amnesty International. Native advocates include Sarah Deer and Native community organizations like the Qualla Women's Justice Alliance, Strong Hearted Native Women's Coalition, Inc., and Mending the Sacred Hoop Technical Assistance Project. See Congressional Senate Hearing, "Examining S. 797, The Tribal Law and Order Act of 2009," 111th Congress. First Session. (Washington, D.C.: GPO, 2009) Print.
6. See for example Angela Chang of Amnesty International, "Victory! Tribal Law and Order Act Passes in the US Senate!" *Amnesty International USA Web Log*. Web. 1 Jul. 2010. <http://blog.amnestyusa.org/women/victory-tribal-law-and-order-act-passes-in-the-us-senate/> Jul 1 2010> Accessed 12 Apr. 2011.
7. Ibid.
8. See the work of Laura Sullivan of National Public Radio, Michael Riley of *Denver Post* and Current TV's *Vanguard* documentary "Rape on the Reservation" Jun. 2010.
9. Tribal Law and Order Act. Pub L. No 111-211. 29 Jul. 2010. Sec. 202.a.1–7.
10. Ibid., 202.b.1–6.
11. Tribal Law and Order Act.
12. Ibid.
13. See for example Senate Committee hearing *Examining S. 797*.
14. The TLOA uses the phrase "in consultation with Indian tribes" throughout the Act. See for example Sec 211.f.3, Sec 231.b.i.
15. Tribal Law and Order Act. Sec. 202.b.3.
16. Representative Tom Cole (Chickasaw) of Oklahoma's 4th district was the only member of the 111th Congress enrolled in a federally recognized tribe. ("111th Congress: Statistically Speaking," *CQ Today*. 6 Nov. 2008. Web. Accessed 12 Apr. 2011 <www.cq.com/graphics/monitor/.../mon20081105-5election-stats.pdf>
17. "Our Input Still Needed in Law and Order Act," *Indian Country Today*. Web. 2 Sep. 2010. <http://www.indiancountrytoday.com/internal?st=print&id=102101183&path=/opinion.editorials> Accessed 12 Apr. 2010.
18. As quoted in Mac McClelland, "A Fistful of Dollars," *Mother Jones* Nov-Dec. 2010: 65.
19. Tribal Law and Order Act. Sec. 13.a.
20. Article comment by Kimberley Craven, 30 Jul. 2010 in Gale Toensing, "Obama Signs 'Historic' Tribal Law and Order Act." *Indian Country Today*. Web. 30 Jul. 2010. <http://www.indiancountrytoday.com/home/content/Obama-signs-historic-Tribal-Law-and-Order-Act-99620099.html> Accessed 12 Apr. 2011.

21. McClelland, "Fistful of Dollars."
22. Deer, "Federal Indian Law and Violent Crime" 40.
23. Tribal Law and Order Act. Sec. 211.f.1.c.
24. "Summary of the Tribal Law and Order Act." United States Senate Committee on Indian Affairs. Mar. 2009. Web. Accessed 4 Oct. 2010. <www.indian.senate.gov/public/_files/TLOonepagerMar2009.pdf>
25. Jessica Yee, "How Native Women Built the Tribal Law and Order Act," *Ms. Magazine Blog* Web. 3 Aug. 2010. <http://msmagazine.com/blog/blog/2010/08/03/the-woman-behind-the-tribal-law-and-order-act> Accessed 12 Apr. 2011.
26. Pember, "Tribes Gain New Clout."
27. Tribal Law and Order Act. Sec. 231.a.1.B.i.
28. Ibid. Sec. 222.
29. Luna-Firebaugh, *Tribal Policing* 40.
30. The Indian Civil Rights Act (ICRA) of 1968 imposes many of the amendments in the U.S. Bill of Rights onto Native nations. While framed as benevolently granting the full protection of American laws to Native peoples, the ICRA inscribed Western hegemonic justice systems in Native communities. See Steven Pevar as quoted in Deer, "Federal Indian Law and Violent Crime" 35.
31. Tribal Law and Order Act. Sec. 234.C.
32. Ibid., Sec. 234.b.1–3.
33. Article comment by Honorindians, 31 Jul. 2010 in Toensing, "Obama Signs 'Historic' Tribal Law and Order Act."
34. Article comment by J. Charette (Turtle Mountain Ojibwe), 31 Jul. 2010. Ibid.
35. See for example Rosa Maria Cortez, senior attorney with the Navajo Nation: "We see [the TLOA] as an unfunded mandate." From "Tribes Question 'Unfunded Mandate' From Tribal Law and Order Act," *indianz.com* Web. 27 Aug. 2010. <http://64.38.12.138/News/2010/021398.asp accessed> Accessed 12 Apr. 2011.
36. Tribal Law and Order Act. Sec. 234.b.2.
37. Ibid., Sec. 234.b.1.
38. Obama stated that by passing the TLOA "I intend to send a clear message that all of our people—whether they live in our biggest cities or our most remote reservations—have the right to feel safe in their own communities, and to raise their children in peace, and enjoy the fullest protection of our laws." From Obama, "Remarks By the President."
39. Quoting Senator Byron Dorgan in Rob Capriccioso, "Tribal Law and Order Act Costly," *Tribune Business News* 28 Jul. 2010.
40. Remarks of President Obama at the White House Tribal Nations Conference of 2009. From Kimberly Teehee, "Forging a New and Better Future Together," Office of Public Engagement. The White House. Web. 21 Jul. 2010. <http://www.whitehouse.gov/blog/2010/06/21/forging-a-new-and-better-future> Accessed 12 Apr. 2011.
41. See for example the work of Haunani-Kay Trask, e.g. "Settlers of Color and 'Immigrant' Hegemony: 'Locals' in Hawai'i." *Amerasia Journal.* UCLA Asian American Studies Center Press. 26.2 (2000): 1–24.
42. Smith, *Conquest.* 169.
43. Yee, "How Native Women Built the Tribal Law and Order Act."

44. Tribal Law and Order Act. Sec. 202.
45. Ross, *Inventing the Savage.*
46. Tribal Law and Order Act. Sec. 206.
47. Jenny Gold, "Bill Bolsters Tribal Power to Prosecute Rape Cases," *National Public Radio.* 23 Jul. 2008.
48. Paul Schmelzer, "Overdue Indian Crime Bill Passes Without Support of Colo. Republicans," *Colorado Independent* Web. 28 Jul. 2010. <http://coloradoindependent.com/58201/overdue-indian-crime-bill-passes-without-support-of-colo-republicans> Accessed 12 Apr 2011.
49. Article comment by Rose 30 Jul. 2010 in Toensing, "Obama Signs 'Historic' Tribal Law and Order Act."
50. Article comment by Tsoo'woo Naibi, 30 Jul. 2010. Ibid.
51. Remarks by President Barack Obama in "Forging a New and Better Future Together: 2010 White House Tribal Nations Conference Progress Report." The White House. 23 Jun. 2010. Print.
52. See specifically *Cherokee Nation v. Georgia* (1831) in which U.S. Supreme Court Chief Justice John Marshall referred to Native people as "wards" of the U.S. government. *Cherokee Nation* along with *Johnson v. M'Intosh* (1823) and *Worcester v. Georgia* (1832) comprise the "Marshall Trilogy" of Supreme Court cases that form the foundation of federal Indian policy.
53. Yee, "How Native Women Built the Tribal Law and Order Act."
54. Georgia Littleshield, director of the Pretty Bird Woman House domestic violence shelter on the Standing Rock Sioux reservation in South Dakota. Quoted in Gold, "Bill Bolsters Tribal Power to Prosecute Rape Cases."
55. Chela Sandoval, "U.S. Third World Feminism: Differential Social Movement I," *Methodology of the Oppressed* (Minneapolis: University of Minnesota Press, 2000): 40–63.
56. Sandoval, *Methodology of the Oppressed* 57–60.
57. Ibid., 57.
58. Quoted in Sheila Regan, "Tribal Law and Order Act's XI Addresses Indian Women Sexual Assault Issues," *Twin Cities Daily Planet.* Web. 27 Oct. 2010. <http://www.tcdailyplanet.net/news/2010/10/11/tribal-law-and-order-act%E2%80%99s-xi-addresses-indian-women-sexual-assault-issues> Accessed 12 Apr. 2011.
59. Quoted in Jeanette Fordyce, "Safe Women, Strong Nations Project Combats Rape on Reservations," *Twin Cities Daily Planet.* 3 Aug. 2010. Web. <http://www.tcdailyplanet.net/news/2010/08/02/safe-women-strong-nations-project> Accessed 12 Apr. 2011.
60. Quoted in Yee, "How Native Women Built the Tribal Law and Order Act."
61. Quoted in Pember, "Tribes Gain New Clout."

ONE

Knowing through Numbers?

The Benefits and Drawbacks of Data

THE HEADLINES BEGAN TO APPEAR IN 1999. *American Indian and Alaska Native Women Experience the Highest Rates of Interpersonal Violent Crime in the United States.* During the past fifteen years, I have followed these headlines and their accompanying stories with great interest. It is irrefutable that, based on the available data, violent crime is experienced by Native women at per capita higher rates than almost all other groups in the United States. I have yet to see data that suggest otherwise. The most commonly quoted statistic is probably "1 in 3 Native women will be raped in her lifetime"—a figure originally derived from a 1998 report examining data from the National Violence Against Women Survey. This single statistic has garnered more attention than any other, inspiring investigative reporting, federal policy reform, a damning international human rights report, and an award-winning novel by renowned Ojibwe novelist Louise Erdrich, *The Round House.*

The data sets and corresponding reports that have been circulated throughout the nation have accomplished many things in the past fifteen years. Legislators made the issue a priority. Government agencies funded pilot projects. Journalists representing mainstream newspapers such as the *New York Times* and the *Washington Post* visited reservations to interview Native women. National Public Radio and PBS have broadcast extensive multipart reports about the problem. On July 29, 2010, President Barack Obama noted that the "one in three" reality "is an assault on our national conscie

it is an affront to our shared humanity; it is something that we cannot allow to continue."[1]

Numbers are powerful players in American politics; the statistics about violence against Native women are almost always referenced in federal reports about rates of crime in Indian country and have served as valuable sound bites during the past ten years of reform. Without the publication and circulation of somber statistics, the federal law reform of the past few years would likely not have happened. In that sense, the data are invaluable, but numbers in and of themselves offer nothing in the way of long-term solutions to the crisis. Because of that, it is critical to develop a tribal-centric analysis of the knowledge we have about Native women and rape. This chapter explores the origin, nature, and application of statistical data related to violence against Native women and is followed by a discussion of the intangible harm rape does to the psyches of Native women and the survival of tribal nations. In the end, I consider the value and utility of our "knowledge" and encourage the continued development of research initiated by and for Native women.

How Do We Know What We Know? The Challenges of Collecting Data in Indian Country

It is notoriously difficult to gather data about Native people—on any topic. The dearth of data on Native people is not simply the result of indifferent researchers. In practical terms, Native people make up such a small percentage of the American population that a valid random sample is difficult to come by. In national studies, if data do not constitute a "statistically significant sample," then they are simply pooled with data from other groups of people who do not constitute a statistically significant sample and categorized as "other." This is commonly seen in criminology studies that classify Americans as "White, Black, and Other."[2] In more recent decades, criminologists and other social scientists have determined that the "other" should be more delineated so as to reveal additional nuances about the variety of American experiences with crime. Native people, however, have been largely overlooked in criminology. This changed in 1999, when the Bureau of Justice Statistics, a subdivision of the U.S. Department of Justice, issued a report titled *American Indians and Crime*.[3] The report combined a

variety of different sources of federal data and noted a highly disproportionate level of victimization in the lives of Native people—specifically, the rate was two and a half to three times higher than for the nation generally. Since 1999 a variety of reports and studies have come to the same conclusion—namely, that Native women in particular suffer the highest rate of per capita rape in the United States.[4] Amnesty International investigated the high rates of rape, and media attention to the problem intensified after the release of its report *Maze of Injustice* in 2007.[5]

Where do the victimization data come from? Most of the data are collected by the federal government through surveys.[6] Prior to the development of victimization surveys, the government "counted" crimes by calculating the number of police reports that had been filed. However, because more than half of violent crimes in the United States are never reported to police, relying on law enforcement report data does not yield accurate results about the true extent of violent crime. Surveys such as the National Crime Victimization Survey (NCVS) and National Violence Against Women Survey (NVAWS) were designed to provide a more accurate picture of crime in the United States. The "victimization survey" method is produced by contacting a random sample of households in the United States and inquiring about their experience with crime.[7] If a survey respondent indicates that she has been a victim of crime, she is then asked a series of questions about the type of crime, the race of the perpetrator, the location of the crime, and other details.

The sample sizes for Native people in recent national surveys have become large enough that American Indian/Alaska Native (AI/AN) data have become "statistically significant" and some tentative conclusions can be drawn. Starting in 1999, the prevalence data have been consistent in concluding that there is a very high rate of crimes experienced by Native people generally, and Native women more specifically. I am not aware of a single study (federal, state, or tribal) containing a statistically significant group of AI/AN in which the data do not suggest that Native people suffer the highest rates of victimization in the United States. However, the data we have still leave part of the story unwritten. Below, I consider what the data have led investigators to conclude, and the significance and relevance of those findings.

Data Dump: What Do We Know?

Despite the strength of the data in affecting legal reform, we still know surprisingly little about the nature of sexual assault in the lives of Native women. Here's what we *do* know: the national data tell us that Native women experience the highest per capita rate of rape in the nation.[8] National Crime Victimization Survey data consistently reveal a very high rate of rape against Native women, an average annual rate of 7.2 per 1,000 persons, compared to 1.9 per 1,000 persons for all races. The "one in three" statistic was originally published in a 2000 report on the National Violence Against Women Survey, which concluded that 34.1 percent of Native women will be raped during their lifetime (meaning that the more accurate statement is *more* than one in three Native women).[9] In 2010 the Centers for Disease Control and Prevention issued a report on the results of the National Intimate Partner and Sexual Violence Survey, which found that 49 percent of Native women report a history of sexual violence.[10]

Dr. Ronet Bachman, a statistician at the University of Delaware, is the national expert on interpreting NCVS data as it relates to violence against Native women. She has published additional findings from the data that serve as an important supplement to the federal reports.[11] Using an aggregated data set covering the years 1992–2005, Bachman and her coauthors uncovered some important trends about the qualitative nature of the sexual assault Native women experience.[12]

For example, the level of physical violence Native women experience during rape is significantly elevated when compared to that experienced by other races. For example, when asked whether aggressors physically hit them during the assault, over 90 percent of Native women responded affirmatively, compared to 71 percent of white victims.[13] In a related question, 25 percent of Native women victims report that their perpetrator(s) used a weapon, compared to 9 percent of white women.[14] Thus, there appears to be a particularly brutal physicality in assaults on Native women—a significant elevation that warrants further attention.

Unfortunately, based on my experience, none of these numbers are shocking. Nor do many Native women find these numbers

shocking. Rape, in particular, is experienced at such high rates in some tribal communities that it becomes "normalized." Native women know that there is a high likelihood of experiencing rape at some point in their lives, and preparing for this inevitable violence resembles a full-time job. It is part of the daily lives of Native women, "normalized" but never acceptable. Charon Asetoyer (Comanche) and other women from reservations have explained the severity of rape this way: Native women "talk to their daughters about what to do when they are sexually assaulted, not if they are sexually assaulted, but *when*."[15]

In terms of the prevalence rates themselves, most experts I have spoken to (and by experts I mean the grassroots advocates and activists from tribal communities) almost universally assert that the federal statistics represent at best a very low estimate. Actual rates of sexual assault against Native American women are actually much higher. Through my work in Native communities, I heard more than once, *I don't know any woman in my community who has not been raped.*

Lingering Questions: What We Do Not Know

Despite the fact that fifteen years have passed since the initial release of *American Indians and Crime,* we still have remarkably little information about Native women and rape. Some generalized conclusions can be drawn from the available information but it must be remembered that the gatherers and publishers of these numbers are researchers from academia and the federal government. Australian criminologists Chris Cunneen and Simone Rowe refer to this kind of data as "legal-bureaucratic knowledge," and they maintain that it often does not consider the "implications of Indigenous approaches . . . to the production, analysis and presentation of quantitative, statistical Indigenous data."[16] It is as though Native women must repeatedly cite Western data for there to be a legitimate critique of the status quo.

Although the victimization survey method is a dramatic improvement over the older methodology of counting police reports, obvious shortcomings remain. The National Crime Victimization Survey has not typically included homeless people (or people living in shelters) as part of its population sample—and Native people

are overrepresented in the homeless population. Moreover, while victimization surveys certainly uncover more crime than do police reports, many victims likely will not disclose—even to a stranger—that they have been victims.

Using these data to describe the scope of the problem in individual tribal nations is problematic because each community is different. Tribal governments have struggled for over a century with the "one size fits all" federal approach to problem solving in tribal communities. Our tribal communities are often lumped into a single category (e.g., "Indian country" or "Native people"), which does not account for the wide disparity in specific problems faced by individual sovereign nations. Most of the time, we do not have specific data about individual tribal communities, and of course the crime rates vary widely among various tribal nations.

The Controversy over Interracial Rape Statistics

Much of the national conversation about statistics on violence against Native women has centered on the rates of "interracial" rape statistics, which become critically important when discussing legislative reform. As a baseline, the vast majority of rapes in the United States are intraracial, meaning that victims are usually attacked by persons of their own race. The only exception to this general rule is AI/AN women, who report that the majority of assailants are non-Native. The original 1999 Bureau of Justice Statistics report concluded that about nine in ten American Indian victims of rape or sexual assault had white or black assailants.[17] Another report indicated that over 70 percent of the assailants were white.[18] The numbers have fluctuated over the last decade, but the majority of Native women interviewed in these national studies consistently report that the majority of their perpetrators are non-Native.[19] This is an anomaly in American criminology; violent crime in America is almost always intraracial.[20]

Interracial statistics have significant policy implications for tribal criminal jurisdiction and all reform efforts related to tribal jurisdiction. As I discuss in-depth in chapter 3, tribal governments were stripped of power to prosecute and punish non-Indians for crimes committed in Indian country in 1978, when the Supreme Court

issued a notorious decision in *Oliphant v. Suquamish Indian Tribe*.[21] In *Oliphant*, the court relied on a curious doctrine known as "implicit divestiture" to conclude that tribal courts had lost certain attributes of sovereignty—in particular, the criminal authority over nonmembers—owing to historical presumptions of federal lawmakers. From a survivor's perspective, the *Oliphant* decision means that non-Native men who rape Native women on tribal lands completely escape tribal criminal sanctions. (One hole in *Oliphant*, by the way, was addressed in 2013 legislation for domestic violence victims, but not for rape victims. The 2013 legislation is the focus in chapter 7.) Many have asked whether *Oliphant* is the reason most Native women experience such a high rate of interracial crime. It is a compelling question, but I am not sure we have the precise answer, because we do not have pre-*Oliphant* data about the rate of interracial rape experienced by Native women.

There is a noteworthy amount of skepticism, cynicism, and confusion about the accuracy and utility of interracial statistics.[22] Some commentators simply claim that the data are wrong—that somehow a glitch in the data-gathering system is to blame. Some of that skepticism might be based on the fact that most violent crime in the United States *is* intraracial. Why would the experience of Native women be different? I have noticed that some skeptical politicians will try to claim the statistics are being manipulated to further tribal sovereignty interests, but these same politicians usually do not provide alternative data. Perhaps they are too uncomfortable with the fact that white men are still raping Native women with impunity.

Another important conversation in light of these statistics is the culpability of Native men as perpetrators of rape. A small number of tribal nations are so remote or closed that non-Native people are largely absent from the community. So when the data suggest most perpetrators are white, those tribal members may be understandably skeptical of the data's accuracy. If the data do not reflect the reality in a particular community, then that community's members view the data with skepticism. When we focus too heavily on interracial statistics, we may lose sight of the fact that there remain a significant number of Native men involved in these crimes. The colonial connection necessarily frames rape as a crime committed by colonizers against the colonized. But the reality is that Native

men and boys have also become perpetrators of sexual violence. We cannot absolve Native men from responsibility—even if they represent the minority of perpetrators. We also cannot forget that Native men and boys are also victims of rape—at a much higher rate than their counterparts in other races.

The other wrinkle is that the national interracial data often do not distinguish between on-reservation crime and off-reservation crime.[23] Knowing where these crimes occur is critical because, due to a complicated legal history, the jurisdiction of tribal governments is much more limited than the jurisdiction of the state and federal systems. Tribal governments currently have jurisdiction only over crimes committed in Indian country.[24] Some skeptical policy makers have challenged the accuracy of the non-Indian perpetrator statistics as reflecting the "urban" reality but not the reservation reality. Most Native people do not live on land subject to tribal jurisdiction. Those who are skeptical of federal reform will sometimes contend that since tribal nations do not have jurisdiction over crimes occurring off-reservation, the urban-based interracial statistics should not influence policy making. The argument is that if these numbers do not reflect what is happening on reservations, they pertain to what is happening off the reservation, so tribal jurisdiction is irrelevant and restoration of tribal authority is thereby not justified.

For me, it boils down to simple justice: even if one non-Native man rapes one Native woman on one reservation, the tribe should be able to assert criminal jurisdiction over that case. I do not see the need to "prove" that most perpetrators on reservations are non-Native. However, studies showing that most perpetrators of violence against Native women are non-Native are certainly a compelling reason to address the 1978 *Oliphant* decision directly. Ultimately we really cannot say for certain whether most Native women who experience crime on tribal lands are more likely the victims of Native people or of non-Native people. However, whether the rate is 20 percent non-Native or 80 percent non-Native, tribal nations should have full authority to respond to crimes committed by all persons. Future studies in this area should include this critical point so that we can address skepticism about the data.

Even when someone dismisses the data by suggesting that the numbers reflect the urban experience but not reservation settings,

we are still left with a problematic situation. If the data are more accurate in the urban settings, shouldn't we be concerned that most Native women in urban settings are reporting this high rate of interracial crime? Again, remember that most crime in the United States is intraracial. Since we know that Native women are reporting a high rate of interracial crime (this fact alone is difficult to rebut), this suggests there is a significant American problem regardless of tribal jurisdiction. At the very least, these numbers should justify further inquiry by social scientists and activist groups into the lives and experiences of urban Native women.

For example, what factors make it more likely than not that a Native victim in an urban setting will be attacked by a non-Native? If Native women are being targeted by rapists, there may very well be racially motivated components to some of these crimes. There is a sense that a "rapeability" factor stems from the United States' long history of anti-Indian and anti-woman policies, which have become part of the fabric of our society.[25] As Deborah Miranda notes, "Indian bodies are inferior bodies. Indian women's bodies are rape-able bodies. Indian bodies do not belong to Indians, but to those who can lay claim to them by violence."[26] Predators may target Native women and girls precisely because they are perceived as marginalized and outside the protection of the American legal system.

In short, the data we currently have do little more than "prove" that Native women experience extremely high rates of rape. But do we need more data in order to move forward? Bachman's report concludes: "We contend that new resources directed at counting 'how many' American Indian and Alaska Native women are victims are misguided. . . . The limited resources that are available would be better invested in developing intervention and prevention programs."[27] I agree with this sentiment because even if contradictory data came out next week suggesting that "only" one in four Native women will be raped in her lifetime and "only" 20 percent of the offenders were non-Native, we would still be faced with a serious harm to tribal nations that needs and deserves critical attention. A continued emphasis on the aggregate data about the rate of rape committed against Native women may serve to eclipse long-term victim-centered solutions.

The Ripple Effects of Trauma

I want to move now to a more important question: "What harm is rape doing to tribal nations?" Answering this question requires a more difficult inquiry than number crunching because each dehumanizing number in a data set represents a woman's life. Each woman's life is connected to many other women's lives—daughters, sisters, mothers, cousins, and friends.[28] Trying to conceive of the community harm that is done by extremely high rates of rape can be overwhelming. Louise Erdrich's novel *The Round House* tells the story of the rape of one Native woman from the perspective of the woman's thirteen-year-old son, a perspective that underscores the ripple effect. In the novel, both son and father suffer greatly in processing the experience that their mother and wife has suffered. Their lives are forever changed, which in turn, changes the other people in their worlds.

I approach this topic with some degree of trepidation because this kind of exploration has not always benefited Native people. Native communities are too often portrayed as traumatized, broken, and dysfunctional—all stereotypes of inferiority that neglect to honor the resilience and survival of the people by focusing on the bad rather than the good. Nonetheless, many of the challenges experienced by Native people today can be connected to the experience of rape, and the failure to confront these issues will be to the detriment of all Native people. There has been a growing trend among Native women's organizations to share painful information in ways that also celebrate and honor the strength in Native cultures. A prime example is the Barrette Project of the Minnesota Indian Women's Sexual Assault Coalition. MIWSAC, a grassroots coalition of tribal anti-rape organizations, created the project as a public awareness exhibit. The "living memorial" exhibit (and its companion book) is made up of beaded and quilled barrettes, each accompanied by the testimony of a Native woman or girl affected by rape. The exhibit thus contains elements and images of honor, beauty, and strength while simultaneously offering up difficult truths. MIWSAC's description of the project is particularly instructive in this regard:

> We utilize beaded barrettes because they represent so much to us as Native women; pride and beauty—a piece of our dance regalia—the love we feel when clipping a barrette in our daughters hair—or fear and helplessness, knowing that the same barrette may have been jerked from her hair as she was being assaulted. It is because we feel that beaded barrettes carry with them this strong symbolism that we wanted to use them as a physical representation of our stories, that we share on our traveling memorial—red, velvet covered boards with the stories and barrettes displayed.[29]

MIWSAC and related organizations have provided a platform for Native women to tell their stories on their own terms, and these perspectives, I believe, carry more significant information than any statistical report. LeAnn Littlewolf (Leech Lake Band of Ojibwe) describes the experience of widespread rape in the lives of Native women:

> The issue of sexual violence is too familiar. I can reach out around me and see so many faces of women I know who have lived through this incomprehensible experience. I can feel its deep reach into the lives of women and see the way it unfurls its effects into our families and to our communities. This is the Native way, as we find ourselves inextricably connected. And yet, being raped disconnects everything. The violation cannot be explained and this makes it impossible to reconcile. It changes the very reality of life.[30]

It is, of course, impossible for statistics themselves to convey the incredible amount of pain and trauma experienced by survivors of rape. The devastating long-term impact of rape has been well established in a variety of fields, including psychology, medicine, sociology, ethnography, and anthropology. Feminist philosopher Claudia Card writes that rape "breaks the spirit, humiliates, tames, [and] produces a docile, deferential, obedient soul."[31] The harm is simultaneously physical and spiritual, and is perhaps best captured by phrases like "soul murder"[32] and "spiritual murder."[33] Unresolved trauma can often be the source of substance abuse and addiction—frequently described as "self-medicating" in the world of anti-rape activism. Mainstream studies of the aftermath of rape have concluded that survivors are at a high risk for developing mental and

physical problems as a result of the assault.[34] For Native women, the widespread nature of rape infiltrates every aspect of life. Renowned psychiatrist Judith Lewis Herman, who has dedicated her career to studying the experience of sexual assault survivors, has described the impact of rape as having lifelong implications: "resolution of the trauma is never final; recovery is never complete."[35]

Context is always critical. Imagine living in a world in which almost every woman you know has been raped. Now imagine living in a world in which four generations of women and their ancestors have been raped. Now imagine that not a single rapist has ever been prosecuted for these crimes. That dynamic is a reality for many Native women—and thus for some survivors, it can be difficult to separate the more immediate experience of their assault from the larger experience that their people have endured through a history of forced removal, displacement, and destruction. All these events are attacks on the human soul; the destruction of indigenous culture and the rape of a woman connote a kind of spiritual death that is difficult to describe to those who have not experienced it. It is not only Native women who have been raped but Native nations as a whole.

Survivors not only struggle to cope with their own feelings but also bear the burden of society's judgment. There is no one "right" way to respond to being raped. Myriad reactions are justifiable and "logical" in the aftermath of an assault, and most of the counterintuitive behavior people observe is shrouded in the shame and confusion experienced by survivors. Victim blaming is not just external—feelings of self-blame and guilt can be even more overwhelming than the trauma itself. Survivor and professor Susan Brison explains this dynamic aptly when she writes, "It can be less painful to believe that you did something blameworthy than it is to think that you live in a world where you can be attacked at any time, in any place, simply because you are a woman."[36]

Several studies have found self-blame to be a significant factor in the recovery and general well-being of survivors.[37] If she was assaulted outside her home, a survivor may fear leaving her home, or if she was assaulted in her home, she may never want to return home. If someone she trusted raped her, she may doubt her own intelligence, decision-making ability, and sanity. Rape victims often struggle with "triggers" or memories of the assault associated with sight, smell, and sound. If the rapist was a doctor or nurse, a

survivor may avoid necessary medical care. If the rapist was a police officer, she may never call for help again (and may teach her daughters not to call, either—no matter how bad things may seem).

In short, rape affects more than the individual victims; it has an impact on the entire community. Women play significant roles in tribal communities, culturally, spiritually, and politically, and have been referred to as the "backbone" of tribal sovereignty.[38] Sovereignty thus suffers when the women suffer. The fact that over one-third of Native women have been traumatized by rape inhibits their ability to contribute productively to the community. The insidious and cyclical nature of sexual violence compounds the trauma, particularly in communities where there has been no effective intervention for centuries.

This is not to say that women who experience sexual assault are doomed to a life of despair and pain. On the contrary, Native women survivors who have shared their stories of survival with me have impressed upon me their strength of will and resolve in the face of brutality and oppression. Native women can indeed survive and heal after rape, but the immediate and lingering aftereffects of the crime can result in significant (if temporary) impairments in their lives. I seek to acknowledge and document the devastation left in the wake of rape, and to address how tribal legal systems might play a role in responding to this devastation.

What We Need to Know

The most important research being done on rape in the lives of Native women takes place under the auspices of locally initiated and implemented projects. The surveys, roundtable reports, and safety audits that are done in local communities are much richer in terms of information because of the depth that can be achieved with methodology that reflects the unique experiences of particular tribal communities.[39] These kinds of studies do not often appear in academic journals because the Native women who conduct and publish them are not particularly concerned with how the outside world understands their trauma. (Or, as one elder chided me, "It's nobody else's business.") These localized research projects are designed to craft customized, tribal-specific interventions. However, the distribution of such reports (when appropriate) can serve as examples or models for other tribal communities. For example,

in 2013 the White Buffalo Calf Woman Society (an organization dedicated to ending violence against women in the Sicangu Lakota nation) released two important reports that focused inward on the real experiences of Lakota women.[40] Tribal members developed the survey instruments with the assistance of social scientists. These kinds of reports typically contain much richer information about the unique needs of survivors in that community than any outside survey could ever capture. The WBCWS studies provide insight into what the community members are truly experiencing without revealing any private information. Consider the value of the following data points:

> The majority of those polled felt domestic violence (92.8%), sexual assault (92.8%), and teen dating violence (91.2%) were all problems on the Rosebud Reservation. A lower percent (82.0%) thought that stalking is a problem. . . . More than three-quarters (77.5%) of all female respondents who had experienced both domestic/dating violence and sexual abuse or rape had considered or tried hurting themselves.[41]

This information is far more valuable to the tribal leaders than aggregate national data available from the federal government. When Native women design studies that reflect their own concerns, then the research will truly advance change.

Conclusion: Categories of Knowledge

There are different categories of knowledge. There is the kind of knowledge we gain from years of careful study, consulting as many experts as possible and analyzing the empirical data. Then there is the kind of knowledge we gain from experiencing something; a visceral knowledge that can invoke the physical senses and the genius of memory. I find Athabascan scholar Dian Million's description of this dynamic as "felt theory" particularly worthwhile because it honors and values the real, lived experiences of Native women as legitimate sources of knowledge.[42] Both categories of knowledge are critical for addressing rape.

I hesitate to call one form of knowledge more "Western" and one more "Native." Such binary distinctions tend to oversimplify the worldview and reinforce the stereotype that Native people somehow

do not value quantitative scientific study. In my experience, Native people are no less interested in empirical data than other people.[43] Western science, however, has largely operated from a place of patriarchal oppression that both steals data and disrespects fundamental tenets of basic kinship protocol. If Native people distrust scientific data, it is because it has largely been used to critique Native society and reinforce dehumanizing stereotypes. As Linda Tuhiwai Smith explains, " 'Research' is probably one of the dirtiest words in the indigenous world's vocabulary."[44] The scientific process and the use of the data can seem dehumanizing, exploitative, and pointless.

So while gathering empirical, scientific data has been critical in convincing the outside world to take notice of the crisis, we must not forget local realities. National numbers are flat; they lack dimension and stifle future exploration. For Native women, surviving rape is a journey with texture and dimensions that are shaped by history, language, and ceremony.

TWO

What She Say It Be Law

Tribal Rape Law and Indigenous Feminisms

THE PEOPLE OF MY NATION, the Mvskoke, have always governed themselves pursuant to laws. Like most tribal nations, the Mvskoke people relied for millennia on sacred oral traditions and ceremonies both to establish and enforce legal standards. These laws were not written down. In fact, for many Native people, reducing laws to writing weakened their power by limiting accessibility to a few and losing the value of rhythm and intonation. Europeans utterly failed to understand this kind of system. Seeing no judges, courtrooms, or attorneys, settlers assumed that Native people were without law. This assumption made it morally palatable to impose foreign laws upon Native people, and also facilitated the application of racial epithets such as "uncivilized" and "savage." Starting in the early nineteenth century, federal Indian agents encouraged, cajoled, manipulated, and bribed Native people into reducing their laws to writing, while simultaneously mandating the development of an American-like system to replace tribal legal traditions. The earliest written laws of tribal nations thus provide fascinating case studies on how the clash of culture and ideas played out in everyday legal relationships.

Mvskoke leaders started writing down laws much earlier than most other tribes. By the early nineteenth century, Mvskoke people were largely intermarried and intermingled with Scottish immigrants. Federal officials encouraged and expected assimilation, and writing down laws (in English) was a central component of

these efforts. Some of the earliest known Mvskoke written criminal laws date to 1825, when Chilly McIntosh, the son of a well-known Mvskoke chief, handwrote fifty-six criminal laws in English to satisfy the local Indian agent that the Mvskoke people were law-abiding. The thirty-fifth law clearly addresses gendered violence. While the crimes were not labeled with any particular title, it is safe to say that this is the first written Mvskoke rape law:

> And be it farther enacted if any person or persons should undertake to force a woman and did it by force, it shall be left to woman what punishment she should satisfied with to whip or pay what she say it be law.[1]

Several interesting concepts emerge from this forty-three-word sentence, although the syntax is confusing and the word rape itself is never used. The word "force" (used twice) is an important clue that this passage describes a physical attack and the law clearly refers to women as victims (although it does not indicate the gender of perpetrators). There is a clear reference to corporal punishment ("whip or pay")—which is consistent with observed Mvskoke law in practice in the early nineteenth century. Perhaps most remarkable component of this law is the last six words: "what she say it be law." This phrase, suggesting a rape victim had legal standing to participate in sentencing decisions, is fundamentally inconsistent with Anglo-American rape law in the same time period.[2]

For most of American legal history, rape was framed as a *property* crime perpetrated against men.[3] In fact, the phrase "marital rape" was an oxymoron in American law until the early 1990s (married women had no legal right to deny sex to their husbands). In 1825, most state laws often required two eyewitnesses to convict a man for rape—a woman's word alone could never be sufficient. In addition, settler women were not allowed to be attorneys, judges, or jurors, meaning there could literally be no female voice to "say the law." Yet the 1825 Mvskoke law—in the same era—ends with the phrase "what she say it be law." Somehow, despite the persistent effort and pressure to develop an American-style government and legal system, the Mvskoke law suggests a legal tradition that acknowledged the decision-making capacity of women. This does not mean the Mvskoke people were feminists in the modern

sense of the word, but it does tell us the precolonial legal system likely operated with a fundamentally different worldview.

The pressure to assimilate laws and governments continued (and continues today), and less than fifty years later, the Mvskoke rape law read as follows: "Be it enacted, That should any person be convicted of rape, he shall for the first offense receive fifty lashes, for the second offense he shall suffer death."[4] Several fundamental changes are expressed in less than fifty years. Note that the gender-neutral 1867 law does not mention a victim at all. The voice of Mvskoke women appears to have been lost or at least eclipsed through the forced Americanization of the Mvskoke people.

With Mvskoke law as a starting point, this chapter considers the relevance of precolonial responses to sexual violence in tribal nations by exploring general foundational structures and belief systems about gender that existed prior to the imposition of foreign legal structures. This chapter will also consider the limitations of mainstream American feminism in developing solutions to violence against Native women and how Native women's perspectives can be muted by the dominant discourse about patriarchy. This chapter closes by exploring the role of contemporary tribal jurists in documenting and enforcing tribal-specific gendered justice.

Gender Equity in Traditional Law

Patriarchy is largely a European import. Native women had spiritual, political, and economic power that European women did not enjoy. That power was based on a simple principle: women and children are not the property of men. I am guarded about pan-Indian essentialisms suggesting tribal nations were all "matriarchal" and therefore rape free—Plains Cree Métis scholar Emma LaRocque cautions that "it should not be assumed that matriarchies necessarily prevented men from exhibiting oppressive behavior toward women."[5] I often provide forty-five- to fifty-minute lectures on Native women and rape, and I have sometimes been guilty of overgeneralizing and overromanticizing precolonial gender roles—if for no other reason than time constraints. Still, there are some common themes in tribal histories and epistemologies that serve as counterpoints to patriarchy. Women exercised power in ways that weren't always readily recognized by a non-Native observer

because they did not always perform tasks associated with European leadership.

Power should not be confused with pure equality. Tribal societies were generally not gender neutral. In fact, gender was often explicitly prescribed in the division of duties, based on a dualistic scheme with a significant emphasis on balance. Often, this duality is presented in a reductive way (e.g., "The women farmed while the men hunted"). In reality, it would be more accurate to say "most women farmed" and "most men hunted"—there were always exceptions based on personal abilities, ceremonial expectations, or the need to balance responsibilities.

Exploring a particular tribal epistemology can illuminate some specific ways in which this gendered balance was achieved. In Mvskoke culture, "The balance of male and female principles permeates all Creek thinking. The balances, therefore, involve the division of various powers, functions, and privileges."[6] This framework for gender can also be described as *nonbinary complementary dualism*, wherein binary gender lines are fluid without fixed boundaries. This is evidenced by the role that Two-Spirit or gender nonconforming people played. Sometimes a man would perform a woman's role, and vice versa.

In a gendered epistemology, all persons have valued roles and duties, which balance one another; "dualism embraces difference in principle, not as division but rather as complementarity."[7] It is a versatile description that continues "to offer exceptional sanctuary to an attitude about gender that cherishes a wide arena of personal autonomy and freedom."[8] Women and men often had separate duties, but the separation took the form of horizontal distinctions rather than a vertical hierarchy of authority. The gender lines, as part of a creation story or cosmology, are set up to complement each other, to provide "equilibrium."[9] In some cosmologies, gendered identity is transcended by those with particular spiritual gifts.[10]

Even the fundamental foundation for Native identity was women centered; many tribal kinship systems are organized around a matrilineal clan system whereby a child's primary identity is based on the mother. In matrilineal societies, women are often vested with the power to name the leaders of the clan who then execute the chosen laws of the people. Property was conveyed through women, and they often chose the leaders of their tribal councils. In some

political structures, like that of the Haudenosaunne, women held "veto" power over decisions to go to war based on their willingness to provide food for warriors.

Many traditional tribal gender laws have been lost or damaged through assimilation (particularly Christian assimilation). It is difficult to re-create or reimagine how precolonial systems adjudicated rape, but there are clues in historical records that affirm the presence of significant anti-rape sentiment in most tribal cultures. One of the most significant clues comes from tribal constructs of sexual autonomy and bodily integrity. In the Lakota culture, for example, Mark St. Pierre and Tilda Long Soldier write, "the woman owned her body and all the rights that went with it."[11] European settlers were fascinated and sometimes horrified by the sexual autonomy of Native women. Their journals and observations, especially those from the eighteenth and nineteenth centuries, provide important (though often flawed) information about women's sexuality in Native communities. In Europe and early America the legal system was used to limit, penalize, and punish sexual choices of women. Not so in tribal nations. In 1722 Diron D'Artaguiette, a French settler, wrote that young Native girls "are the mistresses of their own bodies" as though this were somehow a noteworthy observation.[12] Many European settlers judged cultural values about women's sexuality as savage and primitive if not altogether inhuman. French Jesuits, who were the primary European contact for many tribal nations, were "baffled and sometimes horrified" by the sexual and political autonomy exhibited by indigenous women.[13] Christian missionaries and federal agents used Native women's autonomy as justification for conversion and assimilation. Native women who expressed and celebrated their sexuality had no place in mainstream America and were often shamed and marginalized. Many Europeans were alarmed by the powerful role played by Native women within their nations, and efforts were made to reduce the status of Native women through numerous means.[14] Missionary records from throughout the continent indicate that many religious groups formally imposed severe consequences on Native women who dared exercise independence and sexual autonomy.[15]

Likewise, Europeans were often fascinated by the anti-rape cultures they encountered, particularly when they discovered that Native men did not rape women war prisoners.[16] For example,

Laurel Thatcher Ulrich (the Harvard historian who coined the phrase "well-behaved women seldom make history") writes that the Puritans were "amazed at the sexual restraint of Indian men, who never raped their captives."[17] Even Europeans who wrote disparagingly about Native people noted that Native people abhorred sexual violence. Brigadier General James Clinton of the Continental Army told his troops in 1779, "Bad as the savages are, they never violate the chastity of any women, their prisoners."[18] Another account comes from George Croghan, who testified about Indians in the Middle Atlantic colonies in the late eighteenth century: "I have known more than onest thire Councils, order men to be putt to Death for Committing Rapes, wh[ich] is a Crime they Despise."[19] Despite the proliferation of "captivity narratives" in the nineteenth century, which were framed with the intent to dehumanize the brutish behavior of Indians, there is very little historical documentation of Native men perpetrating rape against white women.

Precolonial Responses to Rape

There is, of course, no database of stories or laws that we can consult to understand how tribal nations articulated and enforced rape laws. We do have anecdotal evidence that tribal nations took rape seriously enough that punishments in some regions included corporal punishment, banishment, and even the death penalty.[20] Native women's activists have documented the traditional response of tribal communities to violence against women.[21] Ojibwe scholar Lisa Poupart explains:

> According to the oral traditions within our tribal communities, it is understood that prior to mass Euro-American invasion and influence, violence was virtually nonexistent in traditional Indian families and communities. The traditional spiritual world views that organized daily tribal life prohibited harm by individuals against other beings. To harm another being was akin to committing the same violation against the spirit world.[22]

While my research is generally consistent with Poupart's conclusion, I hesitate to claim that all tribal cultures were entirely 100 percent "rape free." But the frequency of the crime was low, in part

because of the immediate and severe consequences for disrupting balance in society. Evidence lies in both the experience of Native women prior to contact as well as the behavior of Native men, as recorded by European explorers, settlers, and traders.

Historically, tribal nations, as sovereigns, exercised full jurisdiction over crimes against women. Crimes such as rape, domestic violence, and child abuse may have been extremely rare, but when they did occur, tribal systems provided a powerful system of social checks and balances that held offenders accountable for their behavior.[23] Unlike the American legal system, wherein victims of violent crime have historically had no voice in the criminal justice process,[24] most indigenous legal systems were victim centered. Tribal governments strived to provide a sense of spiritual and emotional recovery from violent crime, by providing both material goods and spiritual sustenance designed to restore the victim to her previous place in life. Although no system is perfect, indigenous philosophies of justice generally provide more protection and healing to victims than the American system.[25] Moreover, many "responses" to rape were incorporated naturally as part of the way in which people lived. There were political consequences as well. In Iroquois culture, a man could not achieve a leadership position if he had ever raped a woman.[26] As Dakota scholar Elizabeth Cook-Lynn explains, "Men who caused stress in the community or risk to the survival of the tribe by dishonoring women were held accountable by the people. They could not carry the sacred pipe, nor could they hold positions of status."[27] Many of these principles need to be revitalized and enforced.

As tribes began to develop written laws in response to pressure from the U.S. government, it is possible that some of the values that had been transmitted orally found their way into the early written laws. The Mvskoke law described at the beginning of this chapter is one such example. When compared to the European and early American laws on rape, which often punished women for the actions of rapists, the tribal response to sexual assault was comparatively victim-centric and respectful of survivors.[28]

American Rape Law

Nineteenth-century American rape laws, based in large part on the common law of England, treated women as subordinate, at best, or as chattel at worst.[29] They were not intended to protect women as much as they were intended to control them, preserve chastity, and curtail their sexual independence. And as part of the colonial project, Europeans imposed their own expectations and standards for appropriate female sexuality on tribal people. In Spanish law, women were considered to be the legal subjects of their fathers, brothers, or closest male relative.[30] Through the process of assimilation and acculturation, many of these European constructs of gender and sexuality have become incorporated into some contemporary indigenous communities. Reclaiming an indigenous jurisprudence of rape, therefore, requires a reexamination of tribal conceptions of sexuality, independence, and autonomy. This is a topic that I discuss more thoroughly in chapter 8.

The origins of sexual assault law in the American system developed as an offshoot of property law.[31] The traditional American legal paradigm of rape (a stranger attacking a virgin) did not address the experience of most women, as rape law placed women in the same category as inanimate property. Legal scholar Michelle Anderson has carefully studied these early paradigms, and has a described a culture which is fundamentally at odds with sexual autonomy:

> Historically, [Anglo-American] rape law raised unique procedural hurdles for rape victims that victims of other crimes did not have to surmount. Derived from English common law and applicable in most jurisdictions until the mid to late 1970s, these formal rules embodied clear presumptions against women who complained of having been raped. These rules included absolute exemptions from criminal liability for men who raped their wives. They included requirements that the victim establish that she resisted her attacker to the utmost, freshly complained of having been raped and corroborated her testimony with other evidence. They included biased suppositions about victims who had previously engaged in sexual intercourse outside of marriage. Finally, they included special cautionary instructions read to the jury to warn them of the fallibility of the testimony of those who allege they have been raped.[32]

Until the mid-twentieth century, most state systems only criminalized rape when the victim was a white woman and left indigenous women and other women of color with no recourse.

At the same time, the colonial mind-set could not conceive of a legal wrong in raping a Native woman. As a result, Native women were devalued and debased, and their abuse was seen as being outside the law.[33] In a 1909 congressional debate regarding punishments for perpetrators of sexual assault against Native women, U.S. Representative George W. Norris of Nebraska stated on the floor of the House of Representatives, "the morals of Indian women are not always as high as those of a white woman and consequently the punishment should be lighter against her."[34] Accordingly, in 1968, the Ninth Circuit Court of Appeals (ruling on an Arizona case) upheld a law that imposed a harsher penalty for the rape of a non-Indian woman than for that of an Indian woman,[35] presumably because Congress viewed Native women as immoral and therefore unworthy of protection.[36] While this particular legal distinction is no longer on the books, the legacy of official disparate treatment is apparent from the statistics we see today.

Advancing Native Feminisms

Starting in the mid- to late twentieth century, Native women activists sometimes clashed with liberal feminists on the issue of "equality." Tribal cultural values often do not strive for the utopian ideals of pure equality in the form of a gender-neutral society. This contemporary tension between Native and non-Native feminists can be traced back to the "clash" between Europeans and Indians during colonial expansion over the two groups' fundamentally different epistemological views on the nature of gender and the appropriate roles of women in society.[37] Today's mainstream feminist theories about rape are often responding to a culture grounded in a patriarchy of European origin. When tribal governments respond to gendered violence, though, they are responding to a phenomenon fully entrenched in abusive colonial power. Thus, the many solutions proposed by mainstream feminists, who focus on patriarchy as the cause of gendered violence, are often a poor match for the responses of tribal societies.

Skeptics may contend that whatever matrilineal/matrilocal aspects of Native society existed have largely been abandoned or lost as a result of hegemony and assimilation, and it is merely hopeful idealism to suggest we could rekindle concepts of precolonial gender balance. In response to that concern, this chapter concludes by highlighting a few published tribal court decisions that offer evidence that women-centered values and practices still exist, in some form, in some of today's tribal legal systems. Such cases demonstrate that the effort to sustain and revitalize precolonial gender norms is not merely an academic exercise. Reviewing these cases can illuminate tribal courts as one avenue of confirming or reestablishing respect for women in contemporary tribal communities. Many tribal judges have, at least from outward appearances, based their legal analysis on standards established by American common law. What I have highlighted are cases in which tribal jurists have resisted this patriarchal tradition and tapped into unique tribal conceptions of gender to resolve disputes.

Contemporary tribal court cases addressing gender issues demonstrate a unique tribal perspective or way of thinking about legal cases dealing with gender that is based on tribal customs and traditions. The cases in this section focus on matrilineal clans, family law, criminal law, and property. Cases dealing with child custody, divorce, and sexual assault exemplify these principles of gender equity. These cases are not presented as tribal feminism in action but rather as acknowledgment of gendered law that could be explored further in the efforts to intervene in entrenched gendered violence.

Kinship Circles: Women at the Center

Matrilineal descent may be one of the salient gender characteristics that has survived over the centuries in some communities. Many Native people may not know much about their language or precolonial government structures, but still retain a strong connection to their clan and matrilineal ancestry. The following tribal court cases demonstrate that clan identity is still relevant enough to appear as a central focal point in some tribal judiciaries. If one is using a strictly Western lens, some of these custody/kinship cases may look like a

preference for women, but only if one characterizes gendered analysis as centered on rights as opposed to responsibilities.

Hepler v. Perkins is a 1986 child custody decision from the Sitka Community Association Tribal Court in Alaska.[38] The case ultimately turns on a Tlingit matrilineal society and values based on the mother's clan responsibilities. In *Hepler,* a Tlingit mother from Sitka attempted to regain custody of her child from the non-Indian father and grandparents. Both mother and child were Sitka tribal members. The descriptions of familial and clan relationships are distinctly those of the Sitka Tribe and are based on the role of mothers within the Sitka community. The mother and child were living away from the tribal community when the paternal grandparents went to the state of Washington to gain custody of the child. The mother asked the Tribal Court of the Sitka Community Association to rule on whether under customary tribal law the tribe continued to assume responsibility for her child even when she and her child were away from Sitka. The Tribal Court of Sitka referred the case to the Court of Elders to rule on this important issue of clan jurisdiction over children of female members.

The Court of Elders found that

> children of female members of a clan are children of the clan regardless of where or under what circumstances they may be found. Clan membership does not wash off, nor can such membership be removed by any force, or any distance, or over time. Even in death clan membership continues, and in re-birth is it renewed.[39]

Based on the tribal custom of female clan membership and their responsibility to care for children, the Tribal Court decided that it had inherent authority to protect the clan relationship, even when a child was not currently living within the tribal territory.

The Sitka case demonstrates the continued relevance of matrilineal descent, which is intertwined with the power Sitka women have in the tribal community. In a matrilineal society, clan membership is determined through the mother. As described by the elders, clan membership does not "wash off" and is not diluted by distance. The court ruled in favor of the Indian mother, based not on an assumption that the mother was a more nurturing or effective

parent but based rather on Sitka values about clan membership and clan responsibility for children.

In the Matter of JJS is a 1983 adoption case from the Navajo Nation with a similar acknowledgment of clan identity.[40] The District Court of Window Rock in the Navajo Nation located in northern Arizona made a decision to grant custody of a neglected child to the mother's extended family. After considering Navajo customary law, the court awarded custody of the neglected child to the maternal relatives, based on the principle that "the Navajo view of the relationship of children to parents is not one of a simple parent and child relationship, but an entire pattern of expectation and desirable action surrounding children."[41] There is a distinct relationship between Navajo children and their parents based on reciprocal expectations and relations. Children are highly valued in Navajo society as "an integral part of a functioning self-reinforcing and protecting group."[42] This group consists of a large extended family based on matrilineal society. A child can be adopted by the extended family for an indeterminate amount of time in order to retain the family and clan ties. The entire extended family is expected to care for the child as a natural part of community and clan obligations.[43]

Instead of using federal law to decide the case, the court relied on Navajo tradition that dictates the importance of the extended family in raising a child. The bonds between children and grandparents are extremely important, and the court reflected these values by allowing the child to stay with his or her extended family.

The Navajo Nation Supreme Court has also infused contemporary divorce law with traditional gender norms. One example is the 1997 case of *Naize v. Naize* in which the court ordered that the husband pay alimony and attorney's fees to the wife based on Navajo custom and tradition, which dictates that you "do not throw your family away."[44] In exploring these obligations, the court noted that in traditional Navajo marriage, the husband moves into the wife's home upon marriage, and the joint efforts of the man and woman work to benefit the family. Moreover, the court concluded:

> If the marriage does not survive, customary law directs the man to leave with his personal possessions (including his horse and riding gear, clothes, and religious items) and the rest of the marital property

> stays with the wife and children at their residence for their support and maintenance. Whatever gains the marital property generate[s] goes to support the wife and children and to a lesser extent the wife's close relatives.[45]

With these words, the court upheld the wife's request for spousal maintenance. The court decided to grant spousal support to the female divorcée based on Navajo customary law that indicates that the marital home, all possessions within, and the children belong to the women. The ex-wife's request for attorney fees was also upheld.

However, the Navajo Supreme Court reversed one aspect of the maintenance decision of the lower court, which ordered the ex-husband to provide wood and coal to his ex-wife for the remainder of her life. The Supreme Court referenced another Navajo custom in reversing this decree, noting that divorce should have "finality," and a lifetime obligation was inconsistent with this tradition. Customary law dictated that to restore balance and harmony after the divorce, each party should return to his or her own home and leave the other person alone. In this case, the Navajo court relied entirely on Navajo customary law and traditions regarding the position of women within Navajo society.

In 1993 the Tribal Court of Appeals for the Sicangu Lakota (Rosebud Sioux) Tribe in South Dakota carefully considered the role of gender imbalance in a child custody case captioned *Spotted Tail v. Spotted Tail.*[46] The court reviewed a custody decree in a domestic violence case and concluded that the trial court correctly awarded custody to the mother in a divorce case. The mother in this case was apparently accused of abandoning her children and thus of being unfit for custody. However, the court based its decision on the welfare of the children, which it ruled should never be subservient to the interests of the parents. In this case, the mother had to flee from the abuse of her children's father. She tried to make contact with her children, but her husband denied her access and demonstrated a pattern of dominion and vengeance over both the children and the mother.

The tribal court put the interests of the children first, instead of focusing on alleged shortcomings of the parents. Despite the fact that the mother had not been able to parent for several years, the court considered how domestic violence affected her access to the

children. Domestic violence cases are especially challenging for mothers who have suffered abuse at the hands of their partners, because judges often unfairly consider the mothers to be a threat to their children. But in *Spotted Tail*, the court noted that the evidence "reveals a father who was domineering, abusive, and revengeful, who seemed bent on keeping the children away from their natural mother."[47] This case alludes to the special place children and women hold within most tribal communities. Children's interests are of primary concern to the tribe, because they represent future generations and the continuation of the tribal community.

Contemporary Accountability: Rape in Tribal Court

Tribal courts have also considered gender norms in the context of rape cases. In *Winnebago Tribe of Neb. v. Hugh Bigfire* (1998), the Winnebago Supreme Court was asked to use the American concept of "equal protection" in a sexual assault case in which the tribal code differentiated between men and women. The male defendants argued that men and women should be treated equally under the law. The court rejected this argument, explaining that

> under traditional Winnebago customary law, gender differences commonly were drawn for the punishment of offenses related to sexual misconduct because of the natural biological differences in this area between the sexes, the different consequences of misconduct for men and women, and different roles ascribed by the tribal tradition to men and women (without creating any hierarchy or cross-gender disrespect). . . . Ho-Chunk tradition recognizes and respects different roles for males and females in the Winnebago Tribe, and particularly, tolerates and encourages different responses to sexual misconduct for men and women.[48]

After considering research into the tribal gender values through consultation with tribal members, elders, and research on Ho-Chunk customary law, the Winnebago Supreme Court concluded that gender differences constitute a natural part of Ho-Chunk life, and that men and women have different roles to provide for each other in relationships. The equal protection claims failed because the charges against the males made them more accountable, which

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coincided with traditional male roles of respecting women within the community.[49]

Fort Peck v. Martell (2000) is another tribal court case that involves interpreting tribal rape law.[50] The defendant, Martell, coerced a young girl to leave the reservation with him by promising her drugs and alcohol, and then he raped her outside tribal territorial jurisdiction. The defendant argued that the crime took place off-reservation (in Havre, Montana), thus falling outside the jurisdiction of the tribal court. The Fort Peck Court of Appeals ruled that key elements of the crime took place on the reservation, namely, the "coercive methodology" used by the defendant. This is an innovative analysis of the crime, framing rape as a series of actions for which the perpetrator should be held accountable, a ruling that reflects an understanding of rape that is typically absent from American law.

Conclusion: Reclaiming Indigenous Feminisms

The tribal cases in this chapter suggest that some contemporary tribal courts are seeking to address gender issues in a distinctly indigenous way. By reclaiming their own tribal perspectives on gender, they are engaging in a unique ethic of decolonization—an ethic that balances traditional views on morality with contemporary needs and problems. Of course, tribal courts are not the only tribal entities that continue to consider how precolonial conceptions of gender can inform contemporary issues. Tribal courts are, however, the living manifestation of tribal law, and the fact that women's roles are respected and valued is indicative of a larger movement to stop violence.

Analyzing the 1825 Mvskoke law is a useful exercise because it illuminates uniquely Mvskoke values that can help shape contemporary tribal rape law. While the actual substance of the law has little applicability today, it is through these traditions that tribal nations have the opportunity to revisit traditional gender roles and determine how the values of protecting women and holding perpetrators accountable have relevance for today's tribal laws.

THREE

At the Mercy of the State

Linking Rape to Federal Indian Law

IN NOVEMBER 2013, the Indian Law and Order Commission, a national bipartisan independent investigatory body created by language in the Tribal Law and Order Act of 2010, released a report titled *A Roadmap for Making Native America Safer.* Among its many conclusions was the assertion that "more lives and property can and will be saved once Tribes have greater freedom to build and maintain their own criminal justice systems." The report's recommendations are part of a larger contemporary movement to disentangle federal law from tribal law. Tribal governments have struggled to respond to rape because federal Indian law has placed both legal and practical barriers in the exercise of criminal jurisdiction.

Today's tribal legal systems operate under bizarre constraints imposed under even more bizarre conditions, creating a patchwork of various federal and tribal laws that work in tandem to utterly obfuscate justice. Nowhere does this patchwork affect the day-to-day lives of Native people more directly than in the area of criminal law. Native people are both overvictimized and overincarcerated at significant rates, and nearly everyone who has worked in Indian country can tell you that the criminal justice framework is to blame.

Tribal sovereignty is a critical component to addressing gendered violence in tribal communities today, because a sovereign political entity has duties to protect citizens from abusive power. Seneca legal scholar Robert Odawi Porter writes that political sovereignty for tribal nations is expressed through three core components: belief, ability, and recognition.[1] Using this structure in the

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context of rape, political sovereignty might be best articulated as, "Our tribal nation *believes* it has the legal and moral authority to respond to rape. Our tribal nation has a *strong system* in place to hold offenders accountable. Neighboring nations *recognize* our authority and respect our decisions about responding to rape."

All three aspects of Porter's construction of sovereignty have been damaged by colonialism. The federal government has systemically stripped power from tribal nations, leaving tribal nations without effective legal remedies that are grounded in tribal law. Understanding how this process has diminished the power of tribal governments is a critical step in the process of strengthening today's tribal criminal justice systems. I will explore the complicated calculus of contemporary criminal jurisdiction in Indian country and demonstrate how the dysfunction of federal Indian law has created barriers that continue to make Native women particularly vulnerable to rape. For the purposes of this chapter, I will limit the discussion to the most significant federal actions that have an impact on the tribal response to rape.

A Brief History of Federal Indian Law, from Columbus to Today's Reforms

Understanding the historical context in which federal Indian law developed is critical to any proposal for reform. In the context of rape in tribal communities, then, it is also necessary to examine the history of rape committed by European men against Native women. In raping Native women, European men were certainly breaking tribal law. This fact mattered little to the colonists and rapists, who completely misunderstood, ignored, and otherwise disrespected existing tribal legal systems.

We can begin our historical investigation with the arrival of Christopher Columbus in North American in 1492. An iconic symbol of colonization, Columbus's arrival represents not only the beginning of the destruction of indigenous cultures but also the moment when European men introduced rape as a major tool of that destruction. A passage from the diary of one of Columbus's aristocratic friends who accompanied him on the second voyage describes one such encounter:

> When I was in the boat, I captured a very beautiful Carib woman. . . . Having brought her into my cabin, and she being naked as is their custom, I conceived desire to take my pleasure. I wanted to put my desire to execution, but she was unwilling for me to do so, and treated me with her nails in such wise that I would have preferred never to have begun. But seeing this . . . I took a rope-end and thrashed her well, following which she produced such screaming and wailing as would cause you not to believe your ears. Finally we reached an agreement such that, I can tell you, she seemed to have been raised in a veritable school of harlots.[2]

The symbolism of this boastful passage and its arrogant entitlement is extremely important, for it exemplifies the logic of colonists who would continue to deploy rape as a tool of conquest. Historian Albert L. Hurtado notes of the nineteenth-century California gold rush, "Part of the invading population was imbued with a conquest mentality, fear and hatred of Indians that in their minds justified the rape of Indian women."[3] The same men who brought the trauma of rape with their physical presence also represented the powers that would ultimately put a stranglehold on the type of tribal authority they would recognize.

Indian "Uprisings" as a Response to Sexual Exploitation

Throughout the nineteenth century, tribal leaders often protested and resisted when women and children were mistreated. Indeed, many tribally initiated conflicts and "uprisings" were responses to kidnapping and sexual mistreatment of women. One example comes from the 1862 U.S.–Dakota War in Minnesota, popularly referred to as the "Sioux Uprising." While many historians describe the precursor to this war as hunger and anger about delays in distribution of treaty-promised annuities and supplies, a closer review of the record also reveals Dakota concerns that the Office of Indian Affairs had "failed to investigate charges of . . . mistreatment of Indian women by white men."[4] Jerome Big Eagle, one of the Dakota warriors condemned to die by the military after the war, received a reprieve from President Abraham Lincoln and was exiled to a prison camp in Iowa, where he was ultimately pardoned by President

Lincoln in 1864. He spoke to an author in 1894 and told him that just prior to the uprising, "some of the white men abused the Indian women in a certain way and disgraced them, and surely there was no excuse for that." Attacks on Native women and children aggravated the already tense relationships between frontier communities and Indian tribes. Violent "uprisings" often came after nonviolent attempts had failed and all legal procedures available to Native tribes were exhausted. Indians did kill whites, though clearly acts of violence were measures of last resort.[5]

The Problem of Jurisdiction

In law, jurisdiction is a term of art referring to government power, usually centering particularly on the power of the courts. There are three main categories of jurisdiction in the American legal system: territorial, personal, and subject matter. As sovereign nations, tribes exercised full jurisdiction in all three contexts. Tribal governments exercised inherent authority over territory, people, and relevant subject matters as developed through cultural practices and legal norms.

In the United States, tribal jurisdiction (at least that recognized by the federal government) has suffered greatly in the past 150 years at the hands of unilateral federal laws passed with no input or vote from tribal leaders. In a variety of contexts (including legislative and judicial), the federal and state governments have drastically diminished recognized tribal power. As a result of this complicated federal legal scheme, tribal governments have been denied jurisdiction over the vast majority of sexual violence that happens to Native women. This chapter focuses on four of the most significant laws in the lives of Native rape survivors today: the Major Crimes Act, a federal law passed in 1885;[6] Public Law 280 (PL 280), a federal law passed in 1953);[7] the Indian Civil Rights Act (ICRA), a federal law passed in 1968;[8] and the 1978 U.S. Supreme Court decision in *Oliphant v. Suquamish*.[9] This combination of federal laws and policies has created one of the most complicated jurisdictional frameworks in the American law.[10] Professor B. J. Jones, who has served as a judge for a variety of tribal courts in North Dakota, South Dakota, and Minnesota, notes that in the midst of jurisdictional uncertainty, the "security of women is compromised and the legal

system is diminished in the eyes of both victims and offenders."[11] The limitations I describe here are not unique to the crime of rape but rather apply to all criminal cases. However, I explore the ways in which Native rape survivors experience the criminal justice system, in order to highlight the ways in which the system can aggravate trauma for individual victims.

Federal Intrusion: Major Crimes Act

In 1885 Congress passed the Major Crimes Act (MCA), which forcibly imposed the federal criminal justice system on tribal communities and still has significant relevance for Native rape survivors today. The MCA provides the federal government with criminal authority on many contemporary reservations, meaning that a rape survivor will navigate a federal criminal justice system if she reports the rape to law enforcement.

The impetus for the MCA was non-Native outrage over a controversial 1883 U.S. Supreme Court case, *Ex Parte Crow Dog*.[12] *Crow Dog* did not involve rape on its surface, but the statutory response to the case changed the framework under which rape would be addressed by tribal nations. *Crow Dog* began as a Lakota homicide case in the Dakota Territory (now parts of Montana and western North and South Dakota), when Crow Dog, a Brulé leader, killed Spotted Tail, a rival Brulé leader. The Lakota people exercised their inherent authority over intratribal crime and adjudicated Crow Dog in a traditional setting, imposing traditional penalties. Unsatisfied with the perceived leniency of the tribal sanctions, federal officials subsequently arrested and prosecuted Crow Dog in the federal territorial court, a process that concluded with a death sentence. Crow Dog petitioned the Supreme Court, arguing that he was not subject to U.S. authority as a citizen of a foreign government accused of violating foreign law on foreign soil.

When I lecture about this case, at this point I usually ask the audience whether they think Crow Dog won or lost his case in front of the Supreme Court. Most people guess that Crow Dog surely must have lost the case given the hostile relationships between tribal and federal officials at that point in history. Most people are surprised when I tell them that Crow Dog actually won in front of the Supreme Court and was subsequently released from federal

custody. In freeing Crow Dog, the Supreme Court reviewed federal law (as it existed in 1883) and somewhat reluctantly concluded that tribal nations continued to operate as independent sovereigns. Ultimately, the court found that the only government with authority to respond to that particular homicide was that of the Lakota people. The non-Indian population was outraged and demanded that Congress intervene to change the laws governing tribal-federal relationships to ensure that Native defendants would be prosecuted in the Anglo legal system.[13] Responding to this public outcry, Congress passed the MCA, which unilaterally imposed the federal prosecutorial framework on the territories of tribal nations. The MCA provided the federal government with the authority it had requested in *Crow Dog*. The practical effect was that federal officials could now prosecute defendants like Crow Dog in federal court—because Congress said they could. A great article written by Judge B. J. Jones and attorney Chris Ironroad explains that laws like the MCA endorse a federal "tautological rationale" (we have jurisdiction because we say so).[14]

Although it is unlikely that Congress (or the outraged public for which it purported to speak) was particularly concerned with the plight of Native women who had been raped, the MCA included rape in its original list of offenses that could trigger federal prosecution (along with other "major crimes" like murder and kidnapping). The list of crimes over which the federal government can assert authority has been expanded over the years, but child sexual abuse was not added until 1986.[15]

Since the efforts of the government were designed to extinguish the very existence of tribal nations, it is more likely that Congress intended to infiltrate and control the indigenous populations through increased legal authority.[16] However, tribal nations have successfully sustained authority over rape (and other major crimes) by arguing that the doctrine of inherent sovereignty requires Congress to divest tribes of concurrent jurisdiction in clear language. The MCA never explicitly divested tribal nations of authority over the enumerated crimes.[17] Tribes therefore technically retain authority over *all crimes* (including those listed in the MCA), subject to the limitations noted later in this chapter. A tribal nation and the federal government thus share "concurrent" jurisdiction over the crimes, and in theory can operate independent of one another

Although some have argued that the MCA was meant to supplant tribal authority, tribal nations prosecuted crimes such as rape and homicide in the twentieth century, and federal courts have recognized that tribes retain inherent jurisdiction over crimes enumerated in the Major Crimes Act.[18]

The federal government has largely controlled the development of contemporary tribal legal systems, and tribal governments have not consistently exercised concurrent jurisdiction over violent crimes. Many tribes do not pursue cases against rapists, or will wait until a declination from a federal or state prosecutor before proceeding with an official tribal response. Thus, the practical impact of the Major Crimes Act is that few tribes have pursued prosecution of crimes such as murder and rape for more than one hundred years. Instead of a rape case being handled within a community that applies the laws, beliefs, and traditions of its people, rape cases became the domain of the federal government. Until recently, there was no acknowledgment of this critical obligation of the federal criminal justice system, and the vast majority of rape cases in tribal communities were rarely adjudicated in federal criminal court. A simple summary of the MCA from the perspective of Native rape victims is as follows: on reservations where the MCA applies, federal law enforcement agencies (FBI and BIA) work in conjunction with prosecutors from the U.S. Attorney's Office to respond to rape. This means a rape survivor who reports the crime will necessarily interact with federal representatives carrying the official badges of colonization.

State Intrusion: Public Law 280

Approximately seventy years after Congress passed the MCA, federal jurisdiction over criminal matters (as established by the MCA) was transferred in 1953 to some state governments through a federal law known as Public Law 280 (PL 280).[19] PL 280 was part of a larger mid-twentieth-century federal effort to ultimately "terminate" recognition of tribal nations—an official government policy that has since been abandoned. The termination policy was designed to eliminate federal recognition of Indian nations and force Native people to assimilate into the mainstream U.S. population. PL 280 relinquished federal control over Indian territories in certain states

(Alaska, Oregon, California, Nebraska, Minnesota, and Wisconsin), turning the law enforcement authority over to the state governments. In communities affected by PL 280 and similar laws, the federal government's authority to respond to rape has been replaced by the authority of the state government.

Neither the states nor the tribes, however, consented to this arrangement, and states were not provided with any additional resources with which to enforce crimes in Indian country. As a result, PL 280 has led to widespread criminal justice dysfunction in those states.[20] This dysfunction was exacerbated when the federal government decided not to fund the development of tribal courts in these states. Many reservations thus operated without any consistent criminal justice system.

Moreover, a history of hostile relations between states and tribes has limited the possibility of cooperative law enforcement ventures. Today, states and tribes are often engaged in protracted litigation about issues related to natural resources, taxation, gaming, and, increasingly, child welfare. Although the obligation to provide criminal justice services to tribal governments is not often questioned, it is understandable that victims of crime might see the state government as a political body that challenges the rights of Native people on a regular basis.

Though the termination policy of the 1950s has largely been abandoned, the legacy of PL 280 remains for many tribal governments. For tribal nations located within the boundaries of states affected by PL 280, criminal activity and violence fall under the authority of the state. However, many of the states have not responded with effective law enforcement, leaving tribal communities at the mercy of criminals who prey on the vulnerable. For all practical purposes, tribal governments in PL 280 states have historically been at a distinct disadvantage when it comes to crime control.

Like the MCA, PL 280 did not specifically divest tribal governments of concurrent jurisdiction over crime.[21] However, the practical impact of PL 280 has included a weakening of tribal justice systems and a lack of response to criminal behavior, leaving many victims of crime without recourse in either the state or the tribal system. Native rape victims affected by PL 280 are beholden to a state criminal justice system that may have expressed outright hostility to tribal rights such as treaty hunting and fishing rights.

Capping Tribal Sentences: Indian Civil Rights Act of 1968

A third federal law that has limited tribal governments' ability to address rape is the Indian Civil Rights Act of 1968, which places a cap on tribal sentencing authority. Congress passed ICRA in an era generally known for progressive legislation. Unfortunately, the Indian "Civil Rights" Act is largely a misnomer, for it actually restricts tribal court authority in several significant ways. ICRA serves as another example of federal statutory imposition of assimilated tribal justice systems because it requires that tribal governments enforce American legal norms as enshrined in the language of the Bill of Rights. The story of this federally imposed sentencing restriction is particularly noteworthy because of the context in which Congress passed the law.

Native people aligned with other social justice movements in the late 1960s to raise concerns about police brutality and disparate treatment in the American legal system. But the effort to address the inequities that Native people faced took a curious turn. Instead of concentrating on the racial discrimination and political disenfranchisement suffered by Native people in the state and federal systems, Congress focused on overstated abuses by tribal court systems—a legitimate problem, to be sure, but abusive tribal governments were no more or less common than abusive state governments. Federal lawmakers were motivated to pass ICRA when they learned that tribal governments are not bound by the U.S. Constitution (a principle confirmed by the U.S. Supreme Court in 1896).[22] Of course, tribal governments have never been hostile to civil rights; principles of individual autonomy and systemic checks on government are hardly the exclusive brainchild of the Western world. In truth, ICRA is a Eurocentric response to challenges that developed in tribal courts due to forced assimilation and hegemony.

ICRA mandates that tribal governments enforce certain individual rights in tribal court—and those rights are defined using selected language from the First, Fourth, Fifth, Sixth, and Eighth Amendments to the U.S. Constitution. Tribal courts are the primary enforcers of ICRA, but there is a mechanism for federal review in limited circumstances (thereby perpetuating colonial control over tribal courts). One practical outcome of ICRA is that defendants

actually have more protection in tribal court—because both ICRA and any tribal constitutional or statutory civil rights laws will apply.

In addition to the civil rights provisions, ICRA imposes a limit on the punishment a tribal court can impose. When the law first passed in 1968, incarceration was limited to six months and fines were limited to five hundred dollars.[23] Thus, from the American legal perspective, tribes were limited to misdemeanor (minor crimes) jurisdiction. Later, as part of drug control legislation, ICRA was amended to allow tribes to sentence offenders to one year of incarceration, a five-thousand-dollar fine, or both—which still amounts to a misdemeanor under American law.[24]

ICRA is almost always discussed in the context of a criminal defendant. I raise the issue from the perspective of a rape victim. Consider that almost all sex crimes in American law are categorized as felonies. Even though the MCA had not divested tribes of felony jurisdiction, the ICRA sentencing restriction reflected a common belief that tribal governments could not (and would not) exercise authority over serious, felony-level crimes (such as rape). While tribal governments did not typically rely on incarceration as a response to violence, American law responds to violent crimes with long periods of imprisonment; ICRA has furthered the myth that tribal governments have no power to respond to felony-level crimes. Assimilated tribal justice systems will often resist prosecuting extremely violent crimes, having internalized the Anglo-American belief that incarceration or monetary sanctions are the only possible response to violence. As with the Major Crimes Act and PL 280, however, there was no explicit divestiture of jurisdiction. Therefore, tribes can prosecute rape—but have not been able to imprison the defendant for more than one year per offense. This restriction was "lifted" again in 2010 (chapter 7 explores the Tribal Law and Order Act, which authorized tribal courts to impose sentences up to nine years in certain situations).

ICRA does not affect a tribal government's ability to impose alternate or traditional sentences, such as banishment, community service, probation, counseling, or public apologies. Nonetheless, the limitation on the ability to incarcerate has had a disparate impact on victims of rape and other violent crime. Native women who are victimized often discover that their tribal nation lacks strong contemporary laws or prosecutorial policies on felony-level

criminal behavior. If the federal or state systems choose not to prosecute, the victim is left at the mercy of the perpetrator.

Rehnquist on (non)Sovereignty: *Oliphant v. Suquamish*

A fourth jurisdictional barrier is the 1978 Supreme Court decision in *Oliphant v. Suquamish*, which divested tribal courts of criminal jurisdiction over non-Indians.[25] This decision has created a practical vacuum of justice for victims who have the misfortune of being attacked by a non-Indian. Since the *Oliphant* decision, tribal nations have lacked the power or authority to prosecute crimes committed by non-Indians—at least as far as the federal government is concerned. As a result, any tribal government that prosecutes a non-Indian for a crime risks a federal review and reversal of the conviction (basically, the federal courts will see such a conviction as void *ab initio*).

This decision has created a crisis situation in some tribal communities, because non-Indian sexual predators, drug manufacturers, pimps, and other violent people are attracted to Indian country as they perceive it as a location in which crimes can be committed with impunity.[26] Pedophiles and sexual predators also commit crimes within Indian country because of the vulnerability of the citizens and the jurisdictional gaps. If a non-Indian rapes a Native woman, the tribe has absolutely no criminal jurisdiction to punish the offender. Tribal police may be able to arrest a suspect if they are cross-deputized with a local or state government, but the tribal government cannot criminally prosecute that offender.

Tribal leaders and others have vocalized their concern about the federal government's low rates of prosecution of rape and other violent crimes.[27] Certainly there have been prosecutions of non-Indian rapists in federal and state courts since 1978, particularly in some areas where the federal or state government has developed strong relationships with the tribal governments.[28] But when comparing the numbers of Native women who are experiencing rape with the number of prosecutions, we find a significant disparity. In some cases, it is difficult even to gain access to prosecution statistics that specify Native victims, because American Indians and Alaska Natives are often classified in the "other" racial category. In

the case of the federal government, different bureaucracies located in various departments have completely separate ways of counting and classifying sexual violence against adults. The Tribal Law and Order Act and Violence Against Women Act were designed to enhance the federal government's approach (see chapter 7). The *Oliphant* decision does not limit the ability of a tribal government to impose civil sanctions on a non-Indian.[29] Civil sanctions are a weak substitute, however, for the important punitive power imposed by a criminal justice system for a crime such as rape.

Poverty and Sovereignty: How the Lack of Resources Undermines Legal Effectiveness

In addition to the multitude of legal barriers restricting tribal governments from responding to rape, there is an insidious practical limitation to stopping rape—tribal nations are notoriously underresourced. More than one Native woman has said to me, *even if jurisdiction is restored, my tribal government doesn't have the money to implement a comprehensive anti-rape strategy.* In the past fifteen years, multiple federal government reports have concluded that high tribal crime rates are due in part to the impoverished condition of tribal criminal justice systems. In particular, the United States Civil Rights Commission issued a report in February 2003 that strongly critiques the lack of resources allocated to tribal governments.[30] The report, however, covers many different kinds of resource limitations, including law enforcement and tribal justice systems. Despite the prevalence of crime, law enforcement in Native communities remains inadequate, with understaffed police departments and overcrowded correctional facilities. There are fewer law enforcement officers in Indian Country than in other rural areas and significantly fewer per capita than nationwide. In addition, per capita spending on law enforcement in Native American communities is roughly 60 percent of the national average.[31] These resource limitations have resulted in inferior systems of justice at the tribal level. Even a reported rape may not result in a comprehensive investigation, because staffing shortages and low morale at the tribal level can interfere with their respective counterparts at the federal or state level. Despite these limitations, a few tribal governments have successfully prosecuted rape, such as the Standing Rock Sioux Tribe and the Navajo Nation.[32] Overall,

tribal governments face numerous barriers in adopting strong anti-rape laws and procedures. The barriers are both legal and practical, and the solutions will require additional widespread reform of federal law to restore tribal authority over violent crime.

Aside from the problem of relying on the federal government to prosecute rapists who prey on Native women, there are numerous practical problems, including geographical distances and language and cultural barriers. The length of time between an assault and the sentencing, assuming a conviction is achieved, can be significant. Federal prosecutors are often very selective about the cases they pursue, leaving many victims without recourse. Federal prosecutorial decision making is "largely hidden from public scrutiny," and many victims feel abandoned.[33] Indeed, most rapes in the United States are never reported to law enforcement. Professor Michelle Anderson, who has studied the legal response to rape in America, writes that "women have little to no faith in the formal structures of police power to remedy violence motivated by gender animus."[34] Several General Accounting Office reports released during the past ten years also bear out this reality. In 2012 the GAO reported that U.S. Attorneys declined to prosecute 67 percent of sex crimes.[35]

It is clear that federal laws and policies are insufficient to address the fundamental needs of Native women living in tribal communities, who have not been able to trust the federal or state systems to respond to their experience. That is why deliberate restoration of tribal authority is crucial for long-term change. Decision-making authority and control over violent crime should be restored to indigenous nations to provide full accountability and justice to the victims. Even as systemic federal agency reform is taking place, there will always be the foundation of wide gaps created by a system originally designed to destroy, not heal. Tribal jurisdiction (both civil and criminal) must be completely restored without restriction. Nothing less will do.

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Indigenous girls and the violence of settler colonial policing

Jaskiran K. Dhillon
The New School, New York

Abstract
In cities and towns across Canada, Indigenous girls are being hunted, harassed, and criminalized by local law enforcement agents and the Royal Canadian Mounted Police. These normalized outbreaks of state control, often punctuated by the use of deadly force, are not isolated incidents in an otherwise just and fair social order. Rather, they are reflective of Indigenous girls' daily realities embedded within the structure of an *ongoing* settler colonial social context that has strategically invented the criminal justice system to secure and maintain settler sovereignty. As such, this paper aims to redirect our critical analysis of the policing and caging of Indigenous girls through the geopolitics of settler colonialism. In the wake of mass protests against colonial state violence throughout 2014, resistance decrying the justice system and insisting that #BlackLivesMatters and that Indigenous lives matter, I argue that we have an urgent need to listen to the stories that Indigenous girls have to tell. These are not just any stories, but narratives that profoundly destabilize the hubristic portrayal of Canada as a humanitarian nation cleansed of settler colonial rule.

Keywords: *Indigenous girls; settler colonialism; policing; colonial state violence; gender; criminality*

Introduction

> "Look with your wire / cutters, she / says. Look what the world has done to you."
> No'ukahau'oli Revilla, *Say Throne*

The rain was torrential. Hopscotching across puddles, we dashed through the umbrella-laden street until reaching the weighty doors of the Empire State Building. Iconic in its grandeur and notable for its ability to grant a striking aerial view of New York City, this structure houses the headquarters of Human Rights Watch (HRW), a prominent global organization documenting human rights violations worldwide.

I was accompanying Annabel Webb, co-founder of the Vancouver based NGO Justice for Girls, to a meeting with the Women's Rights Division of HRW. We were there to discuss the possibility of HRW conducting an investigation in Canada, specifically an inquiry into police violence in the lives of Indigenous girls. HRW had never before launched an examination of human rights abuses in Canada—the deceptive and widely circulating narrative equating this settler colony with a humanitarian nation imbued with justice and equality, ever present—and we were there to persuade them that this was both necessary and urgent.

The team at Justice for Girls, and a number of their allies, including scholars like myself as well as organizations such as the Native Women's Association of Canada, had been working diligently over many years to document instances of police brutality and failures in the protection of Indigenous girls by the Canadian state. However, despite all of the fierce advocacy and careful, meticulous research, including petitions to the international community, the staff at JFG felt as though they hit intractable institutional blockage whenever they attempted to draw attention to these issues in Canada, colonial walls that would simply not move. In the face of such barricades, they appealed to HRW to lend the organization's influential credibility and resources to reveal how Indigenous girls were under siege by police and other law enforcement agents—to offer a crucial corrective to the optics of erasure and make legible how police (state) violence has reached terrifying velocity under settler colonialism. Indigenous girls, we argued at that meeting, were living with incomprehensible colonial gender violence in their day-to-day existence, in the viciousness of everyday life taking place in the back alleys, shadowed corridors, *and* open streets of white settler society.

At one point during the meeting, when the Director of the Women's Division asked whether British Columbia, where the investigation would be carried out, was unique in its treatment of Indigenous girls, I spoke directly to instances of police violence that I have witnessed through my longstanding work in Saskatoon. "This is not just happening in BC," I told her, "this is an entire circulation of networked settler state power that targets Indigenous girls in egregious and insidious ways, wherever they are. Sometimes this is dressed up as "crime prevention"[1] and sometimes it is camouflaged under the guise of "community policing." Regardless of the way it is classified by the state, or the province in which it takes place, it is still

[1] See Dean (2005) for an analysis of "state protection."

abhorrent colonial gender violence." Eventually HRW agreed to carry out the investigation, resulting in the 2013 report *Those Who Take Us Away: Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada*.

Building on the foundation of this collective work and pushing its critique several steps further into the realm of critical praxis and decolonization, this article begins from the premise that in cities and towns across Canada, Indigenous girls are being hunted, harassed, and criminalized by local law enforcement agents and the Royal Canadian Mounted Police. These normalized outbreaks of state control, often punctuated by the use of deadly force, are not isolated incidents in an otherwise just and fair social order. Rather, I contend that they are reflective of Indigenous girls' daily realities embedded within an *ongoing* settler colonial social context that includes the strategic (historic) invention of the criminal justice system to police (quite literally) the borderlands of possession and dispossession. As such, this article aims to redirect our critical analysis of the policing and subsequent caging of Indigenous girls through the geopolitics and broader horizon of settler colonialism. In doing so, it offer alternative frames for interrogating this violence with the aim of dismantling it. In the wake of mass protests against colonial state violence throughout 2014, resistance decrying the justice system and insisting that #BlackLivesMatters and Indigenous lives matter, I argue that it is crucial for us to learn how to listen to the stories that Indigenous girls have to tell. These are not just any stories, but narratives that profoundly destabilize the hubristic portrayal of Canada as a humanitarian nation cleansed of settler colonial rule.

Before proceeding, I wish to clarify the social and political location from which I author this piece. I write this from the complicated position of a woman of colour born and raised on Cree territory in Saskatchewan, the daughter of immigrant parents fleeing from their own colonial inheritance in Northern India. Growing up on this land and being educated by its people has undoubtedly shaped the way I see and understand the world. I have learned a great deal over the years about the ways in which Indigenous histories and struggles have been elided within dominant anti-racism discourses of social change. People of colour are situated in and through incongruous terrain in Canada as collectives, marginalized by a white settler nationalist project while at the same time being invited to take part in the pervasiveness and harm of ongoing settler colonialism (Lawrence and Dua, 2005). Following Razack (2015), I contend that, "rather than focus on our individual histories of dispossession and migration, and thus handily avoid the question of what it means to live in a settler colonial state, people of colour and white settlers alike must confront our collective illegitimacy and determine how to live without participating in and sustaining the disappearance of Indigenous peoples" (p. 27). This is not simply a matter of "giving back" or offering patronizing charity in the face of grossly unjust social, political, and economic realities or a facile acknowledgment of the stolen land upon which settlers reside. Rather, it requires that we attempt to think through what it means to embody the practice of "standing with" Indigenous peoples, finding common ground with Kim TallBear's call for conceiving and enacting scholarship and advocacy that seeks a shared conceptual ground amongst a community of people working towards similar political ends (TallBear, 2014).

Decolonization can only happen in concert with Indigenous peoples, and this requires all of us to think long and hard about the relationships we have to these struggles. Perhaps more importantly, it requires that we be honest about them.

Working as an advocate for youth in both British Columbia and Saskatchewan for over a decade also created a host of moments through which I was able to bear witness[2] to colonial state violence enacted against Indigenous girls. In turn, I have been confronted with the question of what to do with this knowledge, knowing full well that inaction is complicity within the context of unequal power relations, regardless of how much you try to convince yourself otherwise. Brutal assaults on the lives of Indigenous girls continue while many of us willfully ignore what is happening. The isolation persists. The exploitation and violence continues to be positioned, strategically, as a problem of their own making. Thus, while the accounting I offer in the following pages is a partial and preliminary one, it is a first step towards a larger community-based research and advocacy project under development in Saskatoon (happening in the wake of a $4.3 million dollar increase in the police budget for the hiring of additional officers, I might add). I envision it as a provocation to expand and deepen how we think about the violence of settler colonial policing in the everyday lives of Indigenous girls and to inform future decolonial advocacy that centres their leadership, lived realities, and stories more robustly.[3] In doing so, I hope to contribute to, and augment, all of the important work that is already being undertaken by Indigenous women and youth in this area (see, for example, Clark, 2012; Hunt, 2015; Allooloo, 2014; L. Simpson, 2014; Wilson, 2013; Laboucan-Massimo, 2015; Smiley, 2012; Kingsley and Mark, 2001; and various initiatives through the Native Youth Sexual Health Network and the Indigenous Young Women's National Council) and to act in solidarity with Indigenous peoples resisting colonial state violence in its multiple forms.

The remainder of the article unfolds as follows. I begin by theoretically situating this critique within the frameworks of settler colonialism and critical anti-racist and Indigenous feminism, making clear how Indigenous girls' violent encounters with the police are intertwined with the politics of territorial seizure characteristic of settler colonies, as well as the maintenance of settler sovereignty. Next, I sketch a number of lived realities on the ground that demonstrate the gravity of settler colonial violence enacted against Indigenous girls through the institution of policing. This section draws on findings from the HRW report, my cumulative work as an advocate for Indigenous youth, as well as ethnographic research carried out on the prairies between 2006 and 2013. In the next section, I trace the linkages between settler colonial policing and the horrific reality of murdered and missing Indigenous women and girls in Canada; I push against portrayals of these material and political manifestations of colonial gender violence as separate issues. Finally, I conclude with a call to action that strategically positions the eradication of colonial gender violence at the epicenter of Indigenous critical praxis and decolonization.

[2] See Farmer (2005) for a more in-depth discussion of the politics of bearing witness (p. 25).

[3] For further information regarding this increase in the budget of Saskatoon City Police, see Waldner (2015).

Policing Indigenous bodies on stolen land

Building a deeper, anti-colonial critique of the violent policing of Indigenous girls requires being vigilant about the way we unravel the normative frameworks that structure the everyday in a settler colonial reality intent on mutilating Indigenous bodies, dislocating them, holding them in captivity, and ultimately, making them disappear.[4] It requires, in other words, adjusting the critical aperture through which we render competing truth claims about Canada and the stolen land where its contested sovereignty rests. "We know the happy stories that the settler state tells about itself," writes Billy-Ray Belcourt (2015), "stories about multiculturalism, about reconciliation, about nationalism, about gay-friendliness" (p. 9). In line with these "happy stories," the settler state of Canada also fashions tales about the safety, protection, and purported care for all of its citizens. Resurrecting social and political histories of conquest, territorial seizure, and dispossession, however, brings an alternative image into view—it forces us to think differently about what is really going on.

The (ongoing) need for positioning encounters between Indigenous peoples and the criminal justice system, including the police, within the larger context of settler colonialism is as urgent as it ever was. As a nation, we are masters of historical erasure, experts of institutional cover up. This crystalized for me, once again, at a conference about the criminalization and incarceration of Indigenous women and girls where I presented a talk on the violence of settler colonial policing in Saskatoon in May of 2015—the talk that became the foundation for this article.[5] Hosted by the College of Law at the University of Saskatchewan, the two-day event was designed to bring together scholars, activists, policy makers, government agents, and those with lived experiences to collectively consider the issues of racism within the justice system and the disproportionate representation of Indigenous women and girls in Canadian prisons. I listened to numerous presentations and, apart from a couple of exceptions, there was a surprising and notable absence of discussion about colonial state violence within the context of settler states. The majority of conversations focused on issues of over-representation (which while certainly important, misses the point about the historic role played by criminal justice system with respect to Indigenous peoples), how prison personnel needed to do a better job of treating "prisoners"

[4] Sherene Razack's (2015) *Dying from Improvement: Inquest and Inquires into Indigenous Deaths in Custody* deftly takes up the notion of the "disappearance" of Indigenous peoples in Canada. In her chilling words, "The idea of a disappearing race is also productive for settler subjectivities. Through it, settlers are able to feel Indigenous disappearance and to imagine their own superiority" (p. 5).

[5] The day following my talk, I was approached by a young white woman (she self-disclosed as an emergency room nurse at one of the local hospitals) who told me she found my critique of state violence and policing in the lives of Indigenous girls too "aggressive." She explained that she worked closely with many police officers, some of them were her friends, and that "they are trying their best to work with a community that has a lot of problems." I responded by arguing that my "aggressiveness" and anger was derived from years of bearing witness to the atrocities enacted against Indigenous girls by police and other state actors. From where I was standing, unapologetic, affective outrage to this ongoing colonial injury was the only response that reflected any kind of humanity. Her hostility towards me for bringing forth this critique, however, clearly indexed the power of settler colonial machinery to (re)instate notions of white settler benevolence, even in the face of mounting empirical evidence that clearly indicates otherwise.

with care, and strategies for making the criminal justice system more responsive to Indigenous communities. Even the conversations about the criminalization of Indigenous women and girls were noticeably truncated.

My aim here is not to unproductively criticize the organizational efforts aligned with this conference. Indeed, we need venues where we can think through the intellectual, political, and material problems of Indigenous peoples' encounters with the criminal justice system in rigorous ways. What I am concerned about, though, is that without an *explicit and deep* anti-colonial analysis we run the risk of reinscribing the narrative of white settler benevolence (the state is trying hard to improve the situation for Indigenous peoples) *and* a colonial subjectivity that keeps white settler power in tact. The dispersal and dissemination of ideas, theories, and notions of cause and effect about Indigenous women and girls' over-representation in prison generated in these spaces of authoritative knowledge production, then, serves a pedagogic function for both those in attendance and a wider public. It helps to determine what comes into view and what recedes or vanishes altogether, a decidedly vital camouflaging technique when a state has been built through occupation. Robert Nichols (2014) captures this succinctly when he says, "When the critique of incarceration rests upon the over-representation of racialized bodies within penal institutions, this tactically renders carcerality as a dehistoricized tool of state power—even if distorted by the pathological effects of a racist society—displacing an account of the continuity and linkages between carcerality, state formation, and territorialized sovereignty" (p. 444).

In step with these concerns, I contend that it is crucial to locate Indigenous girls' experiences with policing within the distinct political, ideological, and material formation of settler colonialism and to vociferously interrogate the colonial violence enacted against Indigenous peoples by state institutions—an anti-colonial spin on Weber's insight into state monopoloy over legitimate violence (Weber, 1994). Drawing on the work of scholars who have traced the itineraries of "the colonial present" (Gregory 2004) in settler nation states (Alfred, 2009; Coulthard, 2014; A. Simpson, 2014; Turner, 2006), then, I regard Canada first and foremost as a settler colony marked by the on-going dynamics of colonialism. In the tradition of this scholarship that ruptures the myth of the two founding fathers, the emergence of Canada is configured as a narrative of conquest based on the doctrine of *terra nullius,* the principle of "empty lands," and no longer as a mystical migration story. The principle of "empty" lands served, historically, to unlock the ideological gates and secure the secular and religious rationalizations leading to the "legal" dispossession of Indigenous peoples from their original territories and the subsequent implementation of laws and social policies that institutionalized the forced assimilation of Indigenous peoples and elevated the cultural and social status of white settlers.

The goal of settler colonizers is to create a new social and political order with the ultimate aim of securing a permanent hold on specific, conquered locales. Ongoing dispossession is also indexed by the persistent seizure of Indigenous land and displacement of peoples for the purposes of capital development and natural resource extraction which is carried out through, as Glen Coulthard (2014) in *Red Skin White Masks* indicates, "settler state policies aimed at

explicitly undercutting Indigenous political economies and relations to and with land" (p. 4). Structural decolonization, as both a political and practical undertaking, exists *entirely* outside the purview of a colonial social order—there is *no* intention to return stolen territory. Settlers come to stay.

To successfully build a settler colony, however, there is a surreptitious, recurring need to disavow the presence of the Indigenous "other" and effectively repress, co-opt, and extinguish Indigenous alterities (Povinelli, 2002). As Tuck and Yang (2012) remark, "the settler positions himself as both superior and normal; the settler is natural whereas the Indigenous inhabitant and the chattel slave are unnatural, even supranatural" (p. 6). The emergence of settler nation-states, in this sense, embodies a distinctly sovereign charge and claims a "regenerative capacity" to conquered territory (Veracini, 2010, p. 3) that aims to destroy, replace, rename, classify—to assimilate in all of the ways that mitigate threats or resistance to the process of growing settler dominance. Through this process, power is consolidated across social institutions and legal mechanisms that reorganize geography, access to land, cultural practices, family and kinship networks, spirituality, identity, and ultimately political subjectivity (Cannon & Sunseri, 2011).

Patrick Wolfe's (2006) work is especially instructive in illuminating the staying power of the settler colonial present. Tracing the footsteps of colonial settlement through what he calls the "logic of elimination," Wolfe argues that this logic, which seeks to contain and regulate all things Indigenous, may change in form, but ultimately remains continuous through time (p. 387). When explaining the variance in elimination strategies, he writes, "the positive outcome of the logic of elimination can include officially encouraged miscegenation, the breaking down of native title into inalienable individual freeholds, native citizenship, child abduction, religious conversion, resocialization in total institutions such as missions or boarding schools, and a whole range of cognate biocultural assimilations. All of these strategies, including frontier homicide, are characteristic of settler colonialism" (p. 388). Accordingly, "invasion is a structure rather than an isolated event" and the particular manner in which elimination takes place, both in terms of target and methods, changes with the specificity of the historical moment in which we find ourselves. At the heart of the matter, though, lies this reality: the continual existence of Indigenous peoples in Canada constitutes a direct conflict with settler control and the related political entitlements ensconced in settler governance. They have not been eliminated, nor wholly assimilated. They continue to fight for what is theirs.

With respect to undertaking a critical appraisal of violent policing in the lives of Indigenous girls, the lens of settler colonialism importantly serves to re-establish essential linkages between the everyday lives of these young women and the dynamics of colonial power in which they are entangled. In other words, while the lived realities of Indigenous girls may be positioned by state agents, youth workers, and law enforcement officers to be outside the scope of the larger political questions of Indigenous sovereignty and self-determination (characterized instead as a matter of immediate crisis response, individual failure, and fragility),[6] scholars of settler colonialism enable us to collapse the distance between these seemingly disparate sets of

[6] See, for example, Parliament of Canada's report from October 2003 called "Urban Aboriginal Youth Strategy."

issues and place them in direct conversation with one another. Indigenous girls, then, operate as young Indigenous people in a *distinctly* settler colonial space where their very resistance and survival stands in opposition to fully consummating settler ownership and legitimacy—they stand in the way of settler colonialism and question the existence of the settler state as *a fait accompli*.[7] Part of my preoccupation in this article, then, is with uncovering how forms of colonial state violence, including policing targeted at Indigenous girls, intertwine with the historiography of a Canadian settler state whose nationalist project continues to rest on stolen land.

It is also important to flag that when critiques of policing are absent of a settler colonial framing, it is much easier to position the actions of a few police officers as a case of "a few bad apples." Critique rooted in the social and political histories of Indigenous peoples places front and center the *fundamental* role the institution of policing has played in colonial state formation. Moreover, set against the broader reality of persistent occupation, displacement, dispossession and environmental wreckage, it follows colonial logic that the criminal justice system would only be extended, enhanced, and strengthened to further control, undermine, and terrorize Indigenous polities (Government of Saskatchewan, 2011). Policing is an essential state vehicle through which conquest becomes inscribed on the ground. Indigenous peoples, thus, experience policing itself as a colonial force, an apparatus of capture *imposed externally* by a government they have not authorized and do not have effective participation within—one of the indicators of militarized surveillance and discipline (Nichols, 2014, p. 446).

Repositioned through the channels of settler colonial social and political histories, the Royal Canadian Mounted Police (previously the North-West Mounted Police) can be viewed as a constitutive entity designed to carry out genocidal extermination, subjugation, and physical containment of Indigenous communities.[8] The actions of this police force were directed by Ottawa's policy of coerced assimilation (Jacobs, 2012; Dickason & McNab 2002). Mounties, as they are popularly known in Canada, were deployed on the Canadian frontier to facilitate Indigenous peoples subjection to colonial law and to "ensure the negation of Indigenous sovereignty and to implement effective policies of containment and surveillance" (Nettelbeck and Smandych, 2015, para. 3). The RCMP were well positioned for this task; Ottawa had invested in them the power to arrest, prosecute, judge, and sentence offenders, making any notion of the legal protection of Indigenous people under the British Crown a complete illusion (Graybill, 2007). In 1920 when residential school became compulsory, the RCMP was part of the settler state's front-line foot soldiers that guaranteed the attendance of Indigenous children. Gendered racism and the underlying colonial ideologies of white superiority and "Indigenous

[7] See A. Simpson (2014) for an excellent analysis of the politics of refusal and nested sovereignty.

[8] On this point, Razack (2015) explains, "from its inception as a colonial police force, the Northwest Mounted Police, which would become the Royal Canadian Mounted Police (RCMP), assisted in the securing the territory, ultimately transforming its largely military function into a domestic policing of the settler's town, a town surrounded by reserves (p. 14).

savagery," as fabricated by a newly emerging Kanata to legitimate the theft of land and natural resources,[9] are therefore encoded in the operation of the Canadian criminal justice system; they *are* the cruel, unjust, and bloody historical roots of its inception as a social institution *and* they are the roots that make possible the contemporary, ongoing reproduction of the desecration of humanity in the lives of Indigenous girls.

Bleeding out: Colonialism, gender and violence in the everyday

A critical analysis of settler colonial policing in the lives of Indigenous girls would be both harmful and limiting without emphasizing how colonial relationships are highly gendered and sexualized. And once we have established this understanding, it follows that contemporary police interactions with Indigenous girls are building on a historical pattern of gender violence. "The roots of sexual violence in Canada are as deep as colonialism itself," argues Sarah Hunt (2010, p. 27). Elsewhere, I have written that, if you are an Indigenous girl, these mephitic roots strangle life and sanction the invisibility of violence against you.[10] It is structural exploitation offered up in plain sight yet systematically denied, a deliberate bleeding out of decolonial futurity in both past and present.

Tracing the linkages between then and now brings to the surface how sexual violence, and the concomitant disempowerment of Indigenous women and girls, was an integral part of nineteenth-century strategies of domination and *carries forward* to the present day through the foundational violence of the state and state's complicity in sanctioning the invisibility of gender violence against Indigenous women and girls. The condoned invisibility works in concert with individual acts of male violence (Razack, 2002) and reinscribes a dehumanized and racialized Other (the Indigenous woman or girl) that can be violated at will with minimal or no consequences. Further, the Canadian regulation of Indigenous identity through the gendered notions of "Indianness" produced through the Indian Act has generated, as Bonita Lawrence (2003) writes, "unimaginable levels of violence, which includes, but is not restricted to, sexist oppression" (p. 5). This legislation also eradicated traditional leadership in Indigenous communities through the creation of band governments, which in turn systematically restricted Indigenous women's role in politics and reinforced politics as a strictly male domain.[11] In stark contrast to the highly patriarchal character of European society prior to colonization, Indigenous

[9] The *Report of the Aboriginal Justice Inquiry of Manitoba* speaks to the long history of punitive measures carried out by police and state agents against Indigenous populations in Manitoba and Saskatchewan, including the capturing and executing of "rebels" associated with the North-West Rebellion of 1885 (Aboriginal Justice Implementation Commission, 1991, p. 593).

[10] See Dhillon's (2014) "Eyes Wide Open" as part of the online compilation series *#ItEndsHere* created by Indigenous Nationhood Movement in response to the disappearance and murder of Loretta Saunders in New Brunswick, Canada.

[11] Sangster (2002) offers compelling insight into the preoccupation of the Canadian state with Indigenous girls' sexuality as well as the state's desire to limit Indigenous girls' exposure to cities.

societies for the most part were not male dominated. Women served as leaders across the domains of the political, spiritual, and military; many societies were matrilineal. In her book *Conquest: Sexual Violence and the American Indian Genocide*, Andrea Smith (2014) skillfully advances this argument when she says, "putting native women at the center of analysis compels us to look at the role of the state in perpetrating both race-based and gender-based violence. We cannot limit our conception of sexual violence to individual acts of rape—rather it encompasses a wide range of strategies designed not only to destroy peoples, but to destroy their sense of being a people" (p. 3). The project of colonial sexual violence, then, establishes the ideology that Indigenous women and girls' bodies are inherently violable and by extension, that Indigenous lands are available for the taking.

In *Mohawk Interruptus: Political Life Across the Borders of Settler States,* Audra Simpson (2014) explains how Indigenous girls' bodies have historically been rendered less valuable because of what they are taken to represent: land, reproduction, kinship and governance, an alternative to heteronormative and Victorian rules of descent. "Their bodies carry a symbolic load," she argues, "because they have been conflated with the land and are thus contaminating to a white, settler social order" (p. 156). State failures to respond to instances of abuse, and the implementation of social policies that eclipse the layered realities of Indigenous women and girls, brings into relief how the state itself is the driving force behind violence enacted upon Indigenous peoples historically and in the present, the primary perpetrator in fact (Clark, 2012). In a similar vein, Downe (2006) declares, "the abuses experienced by Aboriginal girls over the past 130 years are not isolated occurrences; they are connected through a pervasive colonial ideology that sees these young women as exploitable and often dispensable" (p. 3).

Augmenting this critique, scholars working in the field of girlhood studies are calling for the need to reconceptualize Indigenous girlhood in light of the way it is shaped under a western neocolonial state and in the midst of overlapping forms of colonial violence targeting Indigenous girls (de Finney, 2014, p. 8). This means exploring the ways that Indigenous girls themselves unpack persistent stereotypes of what it means to be an Indigenous young woman growing up in a settler state—and the paradox of invisiblity/hypervisibility that accompanies this existence—and situating their everyday processes of resurgence within and against this colonial matrix. In a critical webinar entitled "Self Governance for Our Bodies and Communities: Responding to Colonial Based Gender Violence," (part of the Idle No More series) representatives from the Native Youth Sexual Health Network and the Indigenous Young Women's National Council exemplify de Finney's (2014) emphasis on Indigenous girlhood. The young women in this webinar speak courageously and insightfully about Indigenous girls' experiences with colonial gender violence and the various forms of "unconventional leadership" that Indigenous girls are demonstrating in their communities to actively resist and respond to structural violence. They also outline the variance in colonial gender violence faced by Indigenous girls, both historically and in the present. Alexa, for instance, clarifies: "colonial gender based violence has many, many forms. Sometimes it's easier for me to try to think about it as a trickster and all of the many ways that a trickster appears. Colonial gender based violence is the state taking children away from

their homes, whether that was the child welfare system, the 60s scoop, residential schools, or even just when young Indigenous people have to move away from their homes to get access to supplies and education or resources. It's that deliberate removal of children and breaking down of family and rooting into our communities more hate and violence than love."

In concert with the voices of the Indigenous young women speaking out in the webinar, I contend that state violence directed at Indigenous girls is a mirroring back of the white settler society of Canada—a mediation between past and present, a jump between historical and lived. It is the material manifestation of the difference between "the truth that is told and the truth that is sold" (Marker, 2003, p. 362). I purposefully write in opposition, then, to those who would de-race and de-gender the experience of what it means to be an Indigenous young woman living in Canada.[12] Settler colonizers have inscribed hierarchy and domination on the bodies of Indigenous peoples through patriarchal gender violence and the day-to-day experiences of Indigenous girls are not exempt from this practice. Rather, as Leanne Simpson (2014) reminds us, "white supremacy, rape culture, and the real and symbolic attack on gender and sexual identity and agency are very powerful tools of colonialism, settler colonialism, and capitalism, primarily because they work very efficiently to remove Indigenous peoples from our territories and to prevent reclamation of those territories through mobilization" (para. 9). As such, Indigenous girls' experiences speak volumes to the power of colonial gender violence that has, from the point of first contact, systematically subjugated Indigenous women and girls and symbolically positioned them as bearers of a counter-imperial order and consequently, a direct threat to colonial rule (Smith, 2005). Their contemporary encounters with settler colonial policing only shatter the ostensible temporality of this violence.

Dispatching colonial power: Badges, guns, and flashing red and blue lights

As previously mentioned, this article builds on the collective work undertaken by Justice for Girls and Human Rights Watch. *Those Who Take Us Away* (Human Rights Watch, 2013) is a chilling testimony to the persistent usage of violence by law enforcement agents to capture and injure the bodies of Indigenous girls, to even take their breath away. Dissecting the relationship between the RCMP and Indigenous women and girls in ten towns across Northern British Columbia, it documents not only how Indigenous women and girls are *under-protected* by the police but also how they have been *subjected to* gross levels of state violence through the dispatching of colonial power vis-à-vis the institutional of policing—reports of physical abuse by both police and judges, sexual assault, the terrorizing of Indigenous communities through hyper surveillance, unjust detainment for intoxication, racist threats, and zero accountability for police misconduct litter the pages. As a case in point, a young Indigenous woman, Sophie, explains her

[12] These points are underscored by my previous research highlighting the problematics associated with the homogenization of the urban youth experience in general (Dhillon, 2011).

run-in with police after they showed up in a field where gang members were chasing her. The RCMP picked her up and dragged her to the back of a police car and the following unfolded:

> "I was yelling at them saying: "I was the one who called for help. Why are you guys chasing me?" And they didn't say anything else… They roughed me up. They handcuffed me and put me in the back of the police car and would not allow my mother to come and see me… One of them came and said [through the police car window], "keep kicking and see what happens"… He punched me in the face more than six times. Half of his body was in the police car. Both my mom and sister saw him punch me. Then they came over and saw my face swollen up. I said, "Look what they did to me!" (Human Rights Watch, 2013, p. 50).

What crystalizes into plain sight through this young woman's testimony radically dispels the myth that we live in a post-racial/post-colonial social reality.[13] Her story, and many others throughout the report, paint a clear picture that violent policing practices serve a profoundly regulatory function in settler states like Canada, a way to attach colonial power to the flesh and bones of Indigenous bodies.[14]

While I do not have space to provide an exhaustive overview within the limited scope of this article, there are several key points emerging from the report that merit restatement. I include these points as reminders of the stakes we are up against in thinking through strategies of critical praxis and decolonization. Moreover, as Nichols (2014) reveals, while North American settler colonies may be positioned as colonial spaces that "have moved from openly coercive and violent relations with [I]ndigenous communities towards a more flexible docile politics of recognition and assimilation," this move is "coeval with the growth of a whole shadow system of hard infrastructure that is every bit as material, physical, and coercive as ever" (p. 448). These findings are not just findings. They are grave windows into the capacious power of settler colonial governance and the tremendous harm that is incurred when we disregard the high degree of interaction between the everyday realities of Indigenous girls and the criminal justice system—it remains a primary locus of settler social control.

To briefly summarize the central insights set forth by *Those Who Take Us Away* regarding policing brutality and failures in protection of Indigenous women and girls by Canadian police:

- There is excessive use of force used against Indigenous girls by the police including physical beatings, the breaking of limbs, and attacks by police dogs during arrest and while in custody.

[13] Wang (2012) speaks to this point of collective delusion with respect to living in a post-racial/post-colonial world.

[14] In the parlance of Razack (2015), "The violence state actors visit on [I]ndigenous bodies imprints colonial power on the skin, as much as the branding of slaves or the whipping and abuse of children in residential schools did. Such a branding declares Indigenous bodies, and crucially their lands, to be settler property, and simultaneously announces that Indigenous people are subhuman, the kind that one can only deal with through force" (p. 6).

- The deployment of tasers—electric shock weapons—has been undertaken in response to threats deemed "low level."
- Inhumane conditions in city cells where Indigenous women and girls are held for public intoxication. They are kept for extended periods without food, in cold temperatures and can be released in the middle of the night inadequately clothed.
- Repeated allegations of rape and sexual assault by police officers, including one case where an Indigenous woman was taken to a remote location outside of town and raped by four police officers.
- Verbal denigration is commonplace, with repeated references to racist and gendered slurs.
- Failure to respond to calls from Indigenous women and girls regarding domestic abuse and shoddy investigative work, if it is carried out at all.
- Displacement of blame onto Indigenous girls by police officers in instances of violence, domestic and otherwise.

HRW, in partnership with Justice for Girls, launched the report in three cities across Canada in early 2013. Ottawa was first with the official press conference on Parliament and meetings at the RCMP headquarters. Prince George, the city in British Columbia's north that served as the geographical center of the study, with the support of the Carrier Sekani Tribal Council, was second. The third was a prairie launch (February 2013) I organized in Saskatoon in collaboration with the Elizabeth Fry Society and local Indigenous activists. Saskatoon was chosen, in part, because of the notorious reputation of the Saskatoon City Police as perpetrators of violence against Indigenous communities, including attacks on Indigenous youth, and the well cited statistics depicting the disproportionate representation of Indigenous peoples—men, women and children—in Saskatchewan jails.[15] It is a setter urban center well versed in the technologies of colonial statecraft where "policing remains devoted to evicting Indigenous bodies from the prairie city, and the imprinting of colonial power on both Indigenous men and women continues apace in gendered ways" (Razack, 2015, p. 22).

The launch took place at the Indian and Metis Friendship Center in Saskatoon's downtown in February of 2013. There were a number of speakers on the panel, including myself, Meghan Roads (the primary researcher from HRW and author of the report), representatives from organizations working on issues of murdered and missing Indigenous women and girls, one of the founders of Idle No More, and the executive director from the Elizabeth Fry Society. After brief opening remarks we opened the floor for a question and answer period. Over a hundred people, including police officers, were in attendance. Various media outlets covered the event ("Women's," 2013; Johnson, 2013; "Landscape," 2013; "Report," 2013).

[15] The infamous and horrific Starlight Tours are, of course, a central piece of this well-earned reputation. See Wright's (2004) *The Commission of Inquiry into the Matters of the Death of Neil Stonechild* and "Ten Years Later" (2014) for recent discussion of ostensible changes in the Saskatoon City Police as a result. Also see Hubbard's (2004) NFB film "Two Worlds Colliding."

Not surprisingly, after the formal presentation of findings numerous women and girls approached me to ask if HRW would be conducting a similar investigation in Saskatchewan. They also had stories to tell about police brutality and failures in protection that were occurring both in Saskatoon and outside of it, in the transit spaces between reserve and city. One Indigenous girl asked me for my phone number so she could call me to share her experience in private, out of the public exposure of the day's event. She was scared, she said, to say anything when the police were so close by. She called me the next day to explain how she had been severely beaten by a police officer when he came after her in the parking lot of a strip mall in Saskatoon's Westside. "I don't even know why he came after me," she said, "I think he thought I was planning to steal something. He called me a little bitch and threw me onto the ground and kicked me really hard. I was hurting all over." When I asked her if she had told anyone about this experience after it happened, she explained that she felt as though there was no where she could go for help. Apparently, no one was going to believe her anyway.

Prairie policing

The story of police violence recounted by this young Indigenous woman is consistent with my longstanding work as a youth advocate and ethnographer researching state interventions in the lives of urban Indigenous youth in Saskatoon.[16] In the remainder of this section, I share snapshots of my ethnographic fieldwork that reveal the gravity of settler colonial policing in the lives of Indigenous girls in this prairie city. To be clear, my interest here is in prioritizing the state's ongoing and manifold strands of assault on Indigenous girls in order to *make visible* the profound restrictions and harm that comes from everyday, routinized violence inherent in particular social, economic, and political formations, and in this case, specifically settler-colonial ones.[17]

Indigenous girls carry history, memory, and otherwise futures within their bodies, within their varied experiences of colonial occupation and their resistance to it. This came across loud and clear one morning when I entered a community and youth organization in Saskatoon where I was conducting a portion of my fieldwork. I walked into the office space that serves as a sort of headquarters for a program supporting Indigenous youth in custody (both open and secure). Case workers are assigned to each youth file and the case worker is supposed to offer support to the youth as she or he transitions from youth detention out into the "real world." This support can take the shape of assistance in enrolling into community education programs, finding housing, attending probation meetings, and seeking employment. On this particular morning, a young

[16] This ethnographic research has culminated in my first book titled *Prairie Rising: Indigenous Youth, Decolonization, and the Politics of Intervention*, forthcoming with University of Toronto Press.

[17] I am being attentive here, to Eve Tuck's (2009) important words about the danger of producing "damage-centered" research (p. 409). My aim in this article is to indict the state – not to create portraits of damage.

Indigenous woman named Sherry[18] was seated next to a desk when I stepped in the room. I had seen Sherry a few times before, but on this day she looked visibly different. There was a large, blackish bruise on her face, although her long brown hair concealed a part of it, and her arm was in a sling. She was dressed in jeans and a simple t-shirt, some kind of mobile device was clutched in her hand. She looked visibly upset, her eyes were narrowed, her mouth in a frown. She wasn't speaking. Sherry's caseworker, Pauline, was sitting behind her desk sipping coffee and typing on her keyboard.

When I saw Sherry, I immediately, of course, asked what happened. Pauline responded in a matter of fact tone, "Oh, it's the cops. They are harassing her again. It happens all the time once you get involved with Corrections and Public Safety." I learned that Sherry had been out walking in the Westside, later in the afternoon the previous day, when she was stopped by two male police officers and accused of breaching her probation orders. According to Pauline, Sherry had tried to explain that she was not in breach of her probation orders but the cops didn't believe her and started accusing her of lying. The situation "escalated," that is how Pauline described it, and Sherry eventually contacted Pauline from St. Paul's Hospital, where she ended up to get her arm and face examined after the altercation with the police. "They let her go, but they roughed her up before they did," Pauline told me. When I asked Pauline what she was going to do to take this matter up, she told me that the only recourse she had was to go to the police station and file a formal complaint. But that, she said, would be very time consuming and often didn't result in anything being done. During this conversation Sherry simply sat still. Dead silent.

What can we make of Sherry's silence? Was her silence imposed from above, from below? What is our role in witnessing these events and making sense of them? All of these questions are fundamental to how we think about what it means to place Indigenous girls' experiences at the centre of critical investigations into settler colonialism. At the moment in which all of this was unfolding, I did not feel like it was my place to ask Sherry to speak or to share her viewpoint on her violent interaction with the city police. I opted not to scratch at the surface of her silence, to be respectful of her decision to remain quiet on the matter. But, I also did not assume that her response reflected stoicism or a lack of awareness about what was happening. I did not assume that there was not a powerful eloquence about the situation that would be uttered if I ever had the opportunity to listen to her. My prior experiences alongside youth in the past suggested quite the opposite. In fact, this entire exchange further reinforced in my mind why it is so important to create avenues for Indigenous girls to speak out safely and with all of the necessary supports. The last thing I wanted to do in this situation was increase this Indigenous young woman's vulnerability and exposure. Nonetheless, I was left thinking about what we might learn from youth like Sherry about the ways Indigenous girls are creatively navigating and negotiating the terrain of state violence if there were more spaces for them to share their knowledge. How might this allow us to interrogate settler colonialism in more complex ways and, in turn, reveal different pathways to decolonization?

[18] All names in this section have been changed to preserve anonymity.

Reflecting further on this encounter, I would also like to suggest that the violence Sherry experienced in this instance contains two discrete parts. The first one relates to the violence she has endured at the hands of the Saskatoon City Police, an egregious violation in its own right. And the second is wrapped up in Pauline's individuation and dismissal of Sherry's encounter with settler colonial violence, thereby legitimating it as part of routine behavior and misrecognizing (Bourdieu & Wacquant, 2004) it because of its predictability and familiarity. In *Violence and War and Peace*, Scheper-Hughes and Bourgeois (2004) describe how "structural violence is generally invisible because it is part of the routine grounds of everyday life and transformed into expressions of moral worth" (p. 4). For Pauline, the experience of this young woman had become entirely normalized to the point that it did not warrant additional time or attention—or even a report to her Director of Programming. It was expected. It was simply what happened. Even when I pressed the issue further, asserting that this was happening to other Indigenous girls too, she didn't seem to think there was anything she could do. She offered no explanation beyond acknowledging that this was "the way things were," nor did she consider the possibility that her own actions of turning a blind eye to the young woman's experience may, in some way, be contributing to a lack of police accountability and in turn, the relentless and vigilant policing of Indigenous youth in the Westside. At best, the underlying message communicated to this young woman was: exercise fortitude when challenged by the onslaught of racist police provocation and coercive force. Suppress your feelings of anger and vulnerability. Keep your head down. Stay out of trouble.

My point here is not to direct all of the blame towards Pauline—she is one caseworker operating within a system of structural, colonial violence—but instead to draw attention to the blatant acceptance of violent policing practices enacted against Indigenous young women in Saskatoon and to redirect us back to the importance of looking at settler colonial gender violence through the social dynamics of everyday practices, which reveal how larger orders of social force come together with micro-contexts of local power to shape material realities on the ground (Kleinman, 1997). In fact, the violation of personal liberty and insidious debasement of human dignity recounted by this Indigenous young woman, in addition to her experience of racism and public humiliation, was not news to me. Having done research and advocacy in Saskatoon for years, this story while stunning in its level of injustice is also stunningly prosaic in its *repeated* occurrence as an act of settler colonial surveillance. On numerous occasions, I have found my senses met with the following scene: a Saskatoon City Police cruiser pulled over on the side of 20th Street (or on more isolated roads, in back alleys, next to forsaken train tracks) with an Indigenous youth standing in the shadow of circulating red and blue lights, arms raised above the head or clasped behind the back. Personal belongings, sometimes broken, have been strewn about the unforgiving ground. One or two police officers are usually engaged in some form of rough "questioning," voices are often raised. The interminable power of the criminal justice system well evidenced by the material presence of guns, slash resistant gloves, bulletproof vests, handcuffs, batons, and split second radio back up. Sometimes there are dogs. The potential use of deadly force by these public-safety sentries, in instances of perceived threat, imagined or

otherwise, looms large. They hold the authority to trigger the deployment of lethal violence to maintain the safety and protection of a white Canadian citizenry, to shut down by any means necessary those whose very presence threatens the social, political, and economic structures that have birthed white power and privilege.[19] They are the city's front line drones of white settler defense. And in moments like these, time becomes dilated. Anything can happen.

Numerous youth workers have corroborated the high incidence of racial profiling and surveillance by city police that has been revealed, anecdotally, by Indigenous youth in Saskatoon. When I interviewed a Cree worker involved in counselling Indigenous youth approaching the end of their prison sentence, he told me it was commonplace for Indigenous youth to recount instances of being stopped by the police to the point of feeling deeply harassed because of the style of their clothing and the colour of their skin. He revealed, "If you live in the *core*, it's almost a certainty. They [Indigenous youth] always seem to be conscious of the presence of police. It doesn't matter where we go in the city, they are always looking out for them."

The reference this youth worker made to the geographical specificity of heightened police surveillance also signals the way that the "core neighbourhood" in Saskatoon has become coded as "Indigenous space," a frontier where "law has authorized its own absence and where the police can violate Indigenous peoples with impunity" (Razack, 2015, p. 23). Idylwyld Drive is the borderline that cuts the city longitudinally, bisecting Saskatoon into the east associated with prosperity and wealth, and the west (also known as Alphabet City because the Westside avenues have no names, just letters) associated with poverty, crime, and suffering—often tagged "ghetto territory." "This spatialized relationship," remarks Joyce Green (2011) "maintains the focus on the [I]ndigenous as needing to be controlled, for racism suggests they are ultimately not fit for civilized society" (p. 238). The targeting of Indigenous girls, and Indigenous youth more generally, by police, then, is interlinked with a criminalization of the neighbourhoods where Indigenous families live, and a deliberate categorization of these communities as simultaneously "native and degenerative" (Razack, 2002). Whiteness is able to move freely into these "projected crime zones" as a matter of exercising power over "Indigenous deviance" and ensuring the quarantining of Indigenous bodies. In the words of Razack (2015), "to mark and maintain their own emplacement on stolen land, settlers must repeatedly enact the most enduring colonial truth: the land belongs to the settler, and Indigenous people who are in the city are not of the city. Marked as surplus and subjected to repeated evictions, Indigenous people are considered by settler society as the waste or excess that must be expelled" (p. 24). In Saskatoon, the processes of gentrification, the spatial politics of safety, and the ongoing displacement of Indigenous peoples on *Cree territory within the city*, have further fuelled white invasion into Indigenous urban space.[20]

[19] As Albert Memmi (1965) asserts, "privilege is at the heart of the colonial relationship" (p. xii).

[20] For a brief glimpse into gentrification on the Westside of Saskatoon, see Casey (2014).

Bringing the propensity of this ongoing domination into razor sharp focus, a Metis youth worker and activist disclosed the following during one of our interviews in 2007. His recitation of how the criminal justice system works as a mechanism of settler state control, and the ways Indigenous girls are particularly susceptible to the violence of this institution, warrants being quoted at length:

> "When it comes to the city police and the aboriginal youth I have worked with for close to fifteen years, or even longer… well, I have seen the abuse from city police. I've seen the ego, the attitudes, the complete injustice. I understand why young Indigenous people don't trust the police. It's all right to take some Aboriginal girl into a back alley and get a blowjob from her because what is she going to do? Because with most of these kids it's always us against them, it's us against the system. The judges don't care. The cops are a big part of the problem. The majority of the justice system in this province, in this city, is broken. I would love to see what would happen if a 14-year-old aboriginal girl told a white judge that it was me against the white cop. The cop is always going to win."

And of growing concern is the now swarming police presence in community spaces where Indigenous youth are *supposed to feel safe* through the model of "crime prevention through social development." Bronwyn Dobchuk-Land's (2015) research in Winnipeg lends considerable insight into this more recent configuration of settler colonial state power. Analogous to Winnipeg in this regard, community organizations in Saskatoon, including Indigenous organizations, are increasingly being asked to welcome police into the spaces they are trying to construct as "safe spaces" for youth.[21] Ironically, this means that Indigenous girls, and youth more generally, are encountering settler police agents even in the places where they are supposed to access youth programming—initiatives ostensibly designed to "help" them. Youth community organizations, emergency rooms, the office of a social worker, the corridors of school, recreational centers, and the street are all fair game. In Saskatoon, you can even find police, the very same state entity that was created to aid Indigenous extermination, *leading* rallies and discussions on murdered and missing Indigenous women and girls.

Thus, the persistent sensation of being hunted, of monitored movement, of freedom being truncated through institutional caging *is central to* the daily reality of being a young Indigenous woman in Saskatoon. It is not an anomaly. It is not the fictitious creation of a youthful imagination on overdrive. Through their existence as *Indigenous* girls, these young people constitute a direct threat to an already existing settler social order. A large part of the way this threat becomes contained is through state mechanisms of criminalization, policing, and incarceration that function as both regulators and producers of socially constructed notions of normativity and deviance against which Indigenous youth sociality can be measured. Judith

[21] This movement has intensified with police programs like such as the Serious Habitual Offender Comprehensive Action Plan (SHOCAP)—read targeted enforcement. The Saskatoon Police Service SHOCAP Unit, in partnership with agencies serving youth throughout the city, "*tracks* [emphasis added] the activity of a select group of young persons" (Saskatoon Police Service, n.d.).

Butler (2015) argues, within the context of black conquest in the United States, that "one way that this [white dominance] happens is by establishing whiteness as the norm for the human, and blackness as a deviation from the human or even as a threat to the human, or as something not quite human" (para. 22). Similarly, young Indigenous lives have been constituted by the Canadian state as "throw aways," lives that are expendable in the quest to maintain settler control, subaltern lives that represent everything Canada does not want to become. Racism's ratification as a way of seeing, as a mode of dominant "public perception" (para. 6) that is both recurrent and customary, everyday and systemic, gendered and sexualized (Jiwani, 2006), fuels the construction of these binaries of value on human life and, in turn, standardizes heinous state techniques of subjugation. Settler colonies are heavily reliant on the reproduction of this longstanding controlling technology because of their need to consistently extinguish Indigenous alterity—to stand firm in the march toward the endpoint of successful "elimination."

Hence, it comes as no surprise to anyone working with Indigenous girls that incidents of "conflict" with law enforcement agents are common markers of lived experience—this is where criminalization and caging enter the picture. In urban centers where Indigenous youth come into more direct and frequent contact with state institutions, clashes with the criminal justice system take on even more heightened levels. According to a report presented to The Commission on First Nations and Metis Peoples and Justice Reform:

> For Saskatchewan Aboriginal youth, conflict with the justice system was primarily urban. Similar to the Canadian data, most Aboriginal youth in Saskatchewan committed their offence of alleged offence in a city, and most planned on relocating to a city upon release. Many of the Aboriginal youth experienced conflict with the justice system in the city even though they lived on reserve. (Government of Saskatchewan, 2004, p. 104)

Incarceration rates mirror the intensity of settler colonial confrontation between Indigenous youth and the criminal justice system, although it is important to reinforce that incarceration is part of a *continuum of violence* in the criminal justice system as a whole, which begins with initial police "contact," followed by arrest, detainment, court proceedings, sentencing, jail time, and, eventually, probation orders. In 2004, the Canadian Department of Justice conducted a snapshot of Indigenous youth in custody. The report confirmed the disproportionate representation of Indigenous youth in prison, although scholars and youth advocates have been reporting this phenomenon for some time.[22] While they comprise only five per cent of the population, Indigenous youth make up 33% of young people in custody. The highest rates of incarceration are in northern and central Canada, and Saskatchewan is among the most punitive provinces, second only to the Northwest Territories (and Saskatchewan, along with Manitoba, holds the greatest number of police per capita across all of the provinces). In Saskatchewan, an astounding 87% of Indigenous women and girls make up the female prison population (Native

[22] For a list of publications regarding the criminalization and incarceration of Indigenous girls in Canada, please see Justice for Girls (n.d.).

Women's Association of Canada, 2012) and *young Indigenous youth are more likely to go to prison than finish high school* (Assembly of First Nations, 2012). Neve and Pate (2005) have argued, in fact, that the prairie provinces have witnessed some of the most egregious examples of criminalization of Indigenous women and girls. They note:

> Aboriginal women continue to suffer the devastating impact of colonization. From residential school and child welfare seizure, to juvenile and adult detention, Aboriginal women and girls are vastly over-represented in institutions under state control….in the Prairie Region most of the women and girls in prison are Aboriginal. (p. 27)

The concluding remarks emerging from Canada's 2012 periodic review, with regards to the country's adherence to the United Nations Convention on the Rights of the Child, also reiterated the criminal justice crisis signalled by the over-representation of Indigenous youth in Canadian jails (United Nations, 2012).

And the violence does not stop there.

This is not an unexplainable phenomenon

Tina Fontaine. Loretta Saunders. Cindy Gladue. Pamela George. Bella Laboucan-McLean. These names are the halting signposts of colonial gender violence in Canada. They are part of a growing, state-generated epidemic of murdered and missing Indigenous women and girls across Turtle Island. An unmistakable rendering of settler state power juxtaposed against its claims of benevolence and post-colonial calm.

In January of 2015, the Inter-American Commission on Human Rights (IACHR) released a 127-page document outlining the egregious levels of violence experienced by Indigenous women and girls in Canada. According to the report, the number of murdered and missing Indigenous women and girls is overwhelming in its scope, tallied at approximately 1200 cases. Indigenous women and girls are 8 times more likely to die of homicide than non-Indigenous women (2014, p. 49). Given that Indigenous women and girls comprise only 4.3% of the overall Canadian population, this revelation is particularly alarming.

I would caution, however, about the danger of getting caught in the numbers game—the constant focus on numbers does a particular kind of work in limiting the focus of the problem. It is vital, I would argue, that we remember that these numbers are not just abstract figures or horrific, sensationalized stories that appear in newspapers or across TV screens in the form of nightly news. Every single one of those 'numbers' corresponds to a life. These statistics are Indigenous girls and women who were integral parts of their communities, human beings who withstood brutal assaults on their bodies and spirits, and daughters, mothers, sisters, students, cousins, aunties, friends, and partners whose lives were extinguished in unconscionable ways. This vicious story of elimination, then, casts light on the devastation and collective wreckage endured by so many Indigenous families and communities across Turtle Island who are suffering

immense loss and righteously demanding justice for their loved ones, and for Indigenous peoples more broadly. But it also renders a clear, ominous picture of where Indigenous women and girls stand in the eyes of the settler colonial state of Canada.

It is my contention that Indigenous girls and women continue to "disappear" and be murdered in Canada because the state is actively engaged in ensuring this continues to happen. Violence against Indigenous women and girls is, after all, the *modus operandi* of the Canadian criminal justice system. This is not an unexplainable phenomenon. It is not a mysterious "crime problem." It is a reworking of the gender violence that has been targeting Indigenous girls and women since the point of first contact, since before Canada became Canada. It is the effect of a criminal justice system that was instrumental in the historical disempowerment of Indigenous women and girls, and a system that is relentless in its pursuit of colonial gender violence as a central feature of settler sovereignty. "Gender violence and murdered and missing Indigenous women are a symptom of settler colonialism, white supremacy and genocide," attests Leanne Simpson (2014), "symptoms of the dispossession of Indigenous peoples from our territories." The settler state of Canada has something very material to gain—the continual seizure of territory coupled with a dismantling of Indigenous political efforts centered on decolonial mobilization—with the continuance of colonial gender violence. And it is made real through a number of cunning technologies of governance, of which settler colonial policing plays an important part. Stated otherwise: as a central component of the criminal justice system, perhaps one of the most fundamental, settler colonial policing has a great deal to do with this epidemic of murdered and missing Indigenous women.

For example, state omissions lead to killings and disappearance without consequence—the complete and utter failure of the police, specifically, to respond to violence against Indigenous girls and women has created a culture of impunity for men to rape and murder at will. State actions (including violence) work in concert with targeted acts of male violence that are effectively borne of state neglect and complicity. Both the provincial police and the RCMP have failed to adequately prevent and protect Indigenous women and girls from a continuum of violence (the extinguishment of life itself being the concrete endpoint) and have aborted the responsibility to thoroughly investigate acts of violence when they are committed.[23] "Family members of murdered and missing women have described dismissive attitudes from police officers working on their cases, a lack of adequate resources allocated to those cases, and lengthy failure to investigate and recognize a pattern of violence" (Inter-American Commission on Human Rights, 2014, p. 12). Confirming allegations of Indigenous women and girls exclusion from state protection, the Report on the Aboriginal Justice Inquiry has also reiterated the ways that police have come to view Indigenous peoples not as a community deserving protection, but a community from which white society must be protected. This has led to a situation often described as one of Indigenous communities being "over-policed" but "under-protected"—

[23] The story of Bella Laboucan-McLean is particularly revealing in this regard. For the details of her case, please see Klein (2014).

positioning Canadian white society as in need of *protection from* Indigenous nations (Aboriginal Justice Implementation Commission, 1991).

Furthermore, as opposed to serving as sources of assistance and help, Indigenous women and girls are often scared to reach out to police for fear that they will be further violated through terrorizing policing practices or have to contend with the outright omission of their accounts of violence. In her exploratory research on girls in city cell lock up in Vancouver, Sue Brown (2011) heard a young Indigenous woman say,

> "So as far as just being like out on the street corner and running into police officers and stuff. They really treat women out there like shit. They really really do. And it is sad because most of the women out of there are so young. And it is like, you know, they are still very impressionable, and no one wants to be out there. I don't give a shit what anybody says. Nobody truly wants to be that way. And when you run into cops, you know, and they call you a "fucking whore" or… you know, tell you to "get your fucking ass off the street" well, I mean, that is not helping" (p. 151).

The projection of criminality cast onto Indigenous women and girls also further fuels state failure to protect them and solidifies the elision of their lived experience. During an interview of policing in the lives of Indigenous girls, Annabel Webb explained how the positioning of Indigenous girls as "criminals' makes them more prone to becoming targets of male violence. She remarks,

> "The criminalization of Aboriginal girls is defined by a pervasive assumption of delinquency, one that ensures that girls will come into frequent contact with police and are more likely to be questioned, searched, arrested, detained, and subjected to the brutality of criminal justice procedures such as strip searches, imprisonment and solitary confinement. *Perpetrators, whether they happen to be police officers or other men in the community, act with impunity because the positioning of Indigenous girls as "criminal" means that the first impulse of criminal justice response to her victimization will be to question the child's credibility.*"

Thus, breakdown in police protection and investigation, coupled with the projection of criminality onto Indigenous girls, *works to sustain* violence against Indigenous women and girls because male perpetrators believe they will be exempt from legal ramifications as a result of their actions (and they often are). Natalie Clark's intersectional based policy analysis of violence in the lives of Indigenous girls, which draws extensively on cases studies of indigenous girls' experiences, further reveals how state policies fail to protect Indigenous girls from victimization (Clark, 2012, p. 136).

The utter failure of the Canadian public to stand up and demand answers in relation to violence against Indigenous women and girls is an indication of the value Canadian society

places on their lives.[24] In many ways, they serve as the "unmournable bodies" (Cole, 2015), bearing the lethal consequences of Canada's quest to maintain the territorial power and the broad reaching control required to keep Canada a sovereign, industrial, and capitalist nation.[25] On the disposability of life in the context of relations of domination, Inuit/Taino writer Siku Allooloo (2014) attests, "the fact that society sees Indigenous women and girls as violable, as eligible targets of assault and domination, as "less than human" or, as weak, isolated and defenseless is, to my mind, the heart of the issue (para. 4).[26] It follows, then, that murder and other forms of colonial gender violence are the state's most concrete triumphs over Indigenous resurgence in the greater geopolitics of settler colonialism (Balfour, 2014).

Recasting decolonization and Indigenous freedom

A critical politics of encounter with settler colonial policing in the lives of Indigenous girls necessitates thinking through a sustained politics of decolonial transformation. Indeed, as eloquently captured by Ashon Crawley (2015) when reflecting upon Black life in the United States, "the quotidian, ordinary, everyday nature of these violent incidents should produce within us a restlessness, a desire to exist *otherwise*" (para. 4). What actions will we take to dismantle colonialism's death grip on the lives of Indigenous girls? How do we reimagine Indigenous critical praxis and decolonization when colonial gender violence sits at the center of strategies for political change? How do we ensure we are addressing the multifaceted dimensions of colonial gender violence vis-à-vis settler colonial policing in a manner that includes queer Indigenous bodies? What will Indigenous peoples' self-organizing and self-governing look like when Indigenous women and girls are leading the struggle against settler colonial rule? These are big questions, but they are questions we need to ask if we are in this fight for the long haul and if we are in it to win.

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[24] For a glimpse into white Canada's perception of Indigenous peoples' struggle for self-determination please see Angus (2013).

[25] Echoing this sentiment, Naomi Klein spoke the following words at a speech on murdered and missing Indigenous women and girls she delivered in Toronto, Ontario on December 18, 2014: "Here is one link to consider: the greatest barrier to our government's single-minded obsession with drilling, mining and fracking the hell out of this country is the fact that Indigenous communities from coast to coast are exercising their inherent and constitutional rights to say no. Indigenous strength and power is a tremendous threat to that insatiable vision. And Indigenous women really are "the heart and soul" of their communities. The trauma of sexual violence saps the strength of communities with terrifying efficiency. So let us not be naïve. The Canadian government has no incentive to heal and strengthen the very people that it sees as its greatest obstacle" (para. 45-47).

[26] Following in step, Judith Butler (2015) explains, "[w]hat we see is that some lives matter more than others, that some lives matter so much that they need to be protected at all costs, and that other lives matter less, or not at all. And when that becomes the situation, then the lives that do not matter so much, or do not matter at all, can be killed or lost, can be exposed to conditions of destitution, and there is no concern, or even worse, that is regarded as the way it is supposed to be" (para. 2).

As I mentioned at the start of this piece, as a non-Indigenous person growing up on Cree land in Saskatchewan I am in no position to be directive towards Indigenous nations about shifting political strategies and the multivariant forms of resistance to colonial occupation that already exist. What I can offer are some speculative points for consideration that I believe we should take seriously as we go about the hard work of decolonization and bending the light toward political actions and social practices that advance Indigenous freedom. These are thoughts based on important, vital lessons I have learned from Indigenous and non-Indigenous comrades alike, and are reflective of my own insights as a person of colour who knows she is living on stolen land. They are by no means exhaustive or complete. They are a series of loose starting points for deliberative dialogue about inciting the world to be otherwise than it is. And they are an ethical articulation of the political responsibility I have inherited as someone who carries a Canadian passport and calls Canada home. I hope we can build from them.

The first, and perhaps most obvious, point is that colonial gender violence is alive and well. It has not recessed into historical record or taken a back seat to other forms of violence enacted upon Indigenous nations. What all of the preceding pages tell us, rather, is that there is a war on Indigenous women and girls across Turtle Island. And an awareness of the material, everyday violence that is a core feature of being an Indigenous woman or girl in Canada pushes us, as Sarah Hunt (2015) adeptly urges, to rethink conceptions of what is politically significant within the context of Indigenous struggles for sovereignty and self-governance. It calls for a suturing together of the micro dynamics of daily life with macro political struggles for land. It demands that we bring gendered violence, police brutality, carcerality of everyday life, death of kids in care, and a willing negligence of Indigenous communities into the realm of the political and that our strategies of defense are always attentive to this materiality (Hunt, 2015, p. 4). In concrete terms, this also means that we must be moved to mobilize every time an Indigenous woman or girl is subjected to state violence and to support Indigenous communities to develop alternative pathways for addressing violence in their own communities in ways that minimize state contact. “It’s in all our best interests to take on gender violence as a core resurgence project, a core decolonization project, a core of any Indigenous mobilization,” says Leanne Simpson (2014, para.10). I believe this call to action is clear and also points to the way that those of us committed to eradicating colonial gender violence must operate in consensual allyship with the formidable Indigenous women and girls already paving the way.

A second and related point involves recognizing the importance of engaging critical praxis that exists outside the so-called justice and freedom offered through state mechanisms of recognition and redress. Glen Coulthard (2014) captures this succinctly when saying, “the politics of recognition in its contemporary liberal form promises to reproduce the very configurations of capitalist, racist, patriarchal state power that Indigenous peoples’ demands for recognition have sought to transcend” (p. 3). While I recognize the need for ongoing advocacy to change social policies and practices from within domestic government agencies and institutions (and this means we need people working in these spaces with a politicized understanding of Indigenous-state relations and the stronghold state institutions have on Indigenous girls), as well

as legal international bodies, I would argue it is shortsighted to assume that the state is simply going to step in and right its wrongs, regardless of how many more inquires are called or reports commissioned. If, as numerous scholars and activists have pointed out, the state is the chief perpetrator of violence in Indigenous nations, its institutions, agencies, and programs cannot be the place where justice is found, nor can strategies for eradicating colonial gender violence be rooted in these power structures. "There is no freedom to be found in a settler state, either one that would seek to give it or take it away," writes Jarrett Martineau (2014, para. 19). Alternatively, there must be a turning away from state prostrations of assistance and a *turning towards* the longstanding strength, artistic practice, intergenerational wisdom, and epistemologies that are central to Indigenous ways of life. There must be an arsenal of resistance to colonial gender violence that is rooted within nations themselves. A futurity and decolonial terrain, in other words, that operates on Indigenous frequencies.

And third, there is an urgent need to *decolonize* and *politicize* youth studies, youth programming, and almost every single initiative out there in Canada that addresses "the needs" of Indigenous youth in general, and Indigenous girls specifically. Youth studies scholars and social policy-makers have, in fact, paid very little attention to the ways that the distinct political and material formation of settler colonialism has mediated the scope and discourse through which we understand Indigenous youth experience in Canada (Lesko and Talburt, 2012). Decolonizing and politicizing this work includes a giant step away from the grossly homogenized renditions of Indigenous youth experience in the quest for Indigenous sovereignty—an elimination of the cursory, lip service attention paid to the diverse nature of the materiality of the social (Farmer, 2004). Settler colonialism impacts bodies differently depending on their social markings. Indigenous youth differentially experience injustice, a lack of protection, policing, social regulation, and state intervention, containment, and disciplinary punishment – these things operate in different ways depending on who you are. In a striking example of this diversity of experience, Billy-Ray Belcourt's (2015) recent talk, *Queer Indigenous Poltergeists*, at the North American Indigenous Studies Association Meeting in Washington D.C. in 2015, highlighted the fundamentally affective impact of settler colonialism on queer Indigenous bodies that serves as "an affective rupturing of our attachments to life, to each other, and to ourselves." In doing so, his incantation that summons the figure of the queer Indigenous poltergeist demands that we re-think the criteria for membership in a decolonial future and pay heed to the numerous ways that settler colonialism winds itself around Indigenous bodies, including through the destructive work of heteronormativity.

This also means decentering the author/researcher/advocate as the single voice of authority. If we are to understand the hidden and insidious dimensions of violent settler colonial policing in the lives of Indigenous girls, *then we need to listen to them*. If we are going take seriously the leadership role that can be assumed by Indigenous youth in the fight for Indigenous self-governance and ways of living, then we need to identify concrete ways to bring those opportunities into being. We need to take direction from the Indigenous young women in the Native Youth Sexual Health Network and the Indigenous Young Women's National Council

who are demonstrating, everyday, how Indigenous girls are *already* leaders in the struggle to end colonial gender violence, and we have to think strategically about how we can actively support them in expanding and growing this work.[27] A solid effort must be made, then, to avoid becoming tangled in Laura Berlant's (2011) web of cruel optimism and implementing tokenistic inclusionary efforts. Indigenous youth, after all, are the lived connections among history, extant colonial realities, and the unfolding of what comes next—they are, as Alexa from the Native Youth Sexual Health Network powerfully renders, the "bridges between our ancestors and the people that are ahead of us." It's time we back them in the fight for the future; a future, I would argue, that is intimately bound up with their fight for the present.

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[27] For an excellent example of this leadership, see the zine entitled, "Indigenous Young Women Lead: Our Stories, Our Strengths, Our Truths" which focuses on Indigenous young women's leadership, empowerment, solidarity building, and ending violence.

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POLICING THE PLANET

Jordan T. Camp is a Postdoctoral Fellow in the Center for the Study of Race and Ethnicity in America and the Watson Institute for International and Public Affairs at Brown University.

Christina Heatherton is an Assistant Professor of American Studies at Trinity College.

8. POLICING THE CRISIS OF INDIGENOUS LIVES: AN INTERVIEW WITH THE RED NATION

Christina Heatherton

The Red Nation is a Native-led council of Indigenous and non-Indigenous activists committed to the liberation of Indigenous people and the overthrow of colonialism and capitalism. Based in Albuquerque, New Mexico, the council centers Indigenous agendas in direct action, advocacy, mobilization, and education from the perspective of the Indigenous Left. Members Melanie Yazzie (Diné), Nick Estes (Lakota), Sam Gardipe (Pawnee/Sac and Fox), Paige Murphy (Diné), and Chris Banks were interviewed in June 2015.

Heatherton: As of 2014, New Mexico has led the nation with the highest rate of police killings. The Albuquerque Police Department has one of the highest rates of fatal police shootings, eight times as high as the NYPD. Native people are statistically most likely to be killed by law enforcement. How do you explain this violence against Native communities here in New Mexico?

Estes: The Red Nation was partially formed out of the anti–police brutality movement. All of us here were involved in some way. For Native people in Albuquerque, forms of everyday police brutality are largely about the policing of Indigenous bodies in a space. It follows the thinking that Native people don't belong in this space. The police, especially the Albuquerque Police Department, manage the crises of colonialism, colonization, and occupation through the constant criminalization of Indigenous bodies, especially homeless and poor people. Settlement and colonization are never complete processes; they always have to be reenacted. Policing this crisis of Indigenous lives happens in the present and also in the future.

Yazzie: Colonization presumes the disappearance and the finality of settlement, but Indians are ubiquitous. The fact that we're present makes us

anachronisms. We're not supposed to be here, but we're here in really large numbers. That increases the amount of violence necessary to contain us. This violence is not just from the cops, but also from citizens. Last summer two Diné men known as Cowboy and Rabbit were brutally beaten to death. This violence obviously doesn't only affect Native people; other homeless people and poor people of color especially are treated as totally disposable. Native people here experience the violence of anti-Indian common sense as an everyday thing. We call Albuquerque a border town since the city is surrounded by Indigenous land and has a large Indigenous population inside it—55,000 Native people, maybe more. As a border town it's also an important site in the production of anti-Indian common sense.

Heatherton: How do you define anti-Indian common sense?

Yazzie: Nick and I developed the concept by drawing on Dakota scholar Elizabeth Cook-Lynn, one of the most important scholars in Native American intellectual history in the last forty years. She coined the term "anti-Indianism," which she defines as "that which treats the Indians and their tribes as if they don't exist." She also describes it as that which disavows and devalues Indian nationhood—which demonizes and insults being Indian in America. Through the term, we can see how the weight of history is placed upon Native people's shoulders, as if anything bad that has transpired is our own fault.[1]

Estes: One way we use anti-Indianism as common sense draws from Antonio Gramsci, the Italian Marxist theorist who described "common sense" as an ideology not necessarily actively theorized but more like a knee-jerk response. People don't necessarily think that Indians aren't supposed to exist, it's just normalized in how they perceive their reality. People can celebrate and mourn the passing of the Indian, but they can't actually confront the existence or the persistence of Indigenous life in cities because Indians don't "belong" here.

Heatherton: How do you confront anti-Indian common sense here in Albuquerque?

Gardipe: For the Indian on the street, we don't have a place to actually exist or have social lives and hash things out within the Indian community.

We have a place here that's more or less a tourist attraction with Pueblos. It's basically full of artwork, pottery, and food supposedly made by Natives of the Southwest. However, if a street person walked in, he'd probably be turned away, because he's seen as an embarrassment to Natives. I get a little scrutinized when I walk in there because I have long hair and I'm obviously an Indigenous person, but I'm not a "mainstream Indian." They like to see the ones in suits and ties with short hair.

Heatherton: Your group often uses the term "unnatural deaths" to place the police killings within a larger political economy of extreme poverty, unemployment, and homelessness. How do you understand these connections?

Estes: Private property has more value and sanctity than Native lives. Unnatural deaths result from private property laws that prohibit everyday behavior in public. Whether it's eating, sleeping, defecating, urinating, having an untreated mental illness, for example, these behaviors are all criminalized because they are enacted on somebody else's property. Being unable to sleep, stop, drink, rest, or urinate are forms of what could be considered torture. When Native people enter Gallup or Albuquerque, they're made to stay in constant motion. Because of property laws, they can't loiter, panhandle, sleep in public, or perform basic bodily functions because these are all criminalized behaviors. As a consequence they have to constantly be moving. People walk up to ten or twenty miles a day. Often people can't sleep within the city where they have access to resources such as shelter, food, or other basic needs. They end up going to what people here call "the bush." We've found that a lot of people die as a result of this constant movement and constant policing because they are forced to live outside of society, on the outskirts of the city, while actually depending on the city for life.

An unnatural death can mean anything from dying from exposure, which happens quite frequently, to being beat up by vigilantes or by the police, possibly resulting in some sort of injury that means they can't work and therefore lose their job. It could mean getting their personal identification confiscated and destroyed by the police and losing the ability to work, access to medical services or secure housing. When we talk about unnatural deaths, it can be anything from the extreme forms of violence to the "slow death" of poverty or homelessness that always goes unaccounted for.

Banks: The pervasive view in Albuquerque is that the right place for Native people is on the reservation. If Native people are off the reservation, they seem to have no claim to rights or to citizenship. Police uphold this view that Native people have no rights they are bound to respect. Native people are seen as a disposable part of the population. This is related to the federal government's lack of respect for the sovereignty of Native land, which they view as existing for plunder. In their view, either the Native population will be exploited for their cheap labor or they will be absorbed by prisons. In that way, they have everything in common with other oppressed nations living in the United States, such as African Americans and Latinos. Thinking about them as a disposable part of the population explains their targeting by the police. The *Albuquerque Journal* recently reported that 12 percent of Native adults in Albuquerque experience chronic homelessness, which is a crisis if there ever was one. No one in the city is sounding the alarm or asking how we can mobilize resources to address this.

Murphy: I grew up in a border town in Gallup. It's common to see homeless Natives walking in the street. It's normal to see Natives sleeping on the street. In the news, it's normal to hear about homeless Natives dying due to exposure, especially in the wintertime, Native people freezing to death in the cold. No one really thinks twice about it, because it's an everyday normal thing—the violence that saturates a town like Gallup.

When I see Native people homeless in a town like Gallup, what I see are the failures of capitalism. You've got all of these different failures of capitalism: people who don't have access to jobs, people who don't have access to health care, people who don't have access to education. You just fall into these cracks. I guess you could call them pipelines to incarceration or to homelessness. Gallup is dire and decaying. When you see a town like that, you have to start questioning the system that allowed these things to happen, a system that will turn its back on Natives while they're in these dire circumstances. I see it in my families.

This is why I really like the Red Nation, because we all have these same stories. Every Native person that I meet knows what it's like to have alcoholism rip and tear your family apart. Every Native woman I have ever met has been sexually assaulted. They say that the statistic is three out of four Native women—

Yazzie: One in three.

Murphy: One in three. They say that one in three women are sexually abused in their lifetimes, but it's definitely higher than that. A lot of the Native people I know who have been sexually assaulted don't report it. I didn't report it when it happened to me. These numbers are extremely high. In a town like Gallup, a lot of women go missing. There are thousands of Native women who have gone missing and people don't talk about it. It's not breaking news. None of these problems get any attention. If they were to get attention, then you'd have to say, "Capitalism is failing." Capitalism has always failed Native people.

Yazzie: It's premised on our elimination.

Murphy: Exactly. These circumstances are dire. People are dying every day. Despite the rate of violence, there's no mobilization. No one is going out in the street. People are so used to it that their reaction isn't outrage. My mom tells me, "This is just the way it is. It's always gonna be this way." But by existing, we discredit the system and question the system. That's why I'm involved in the Red Nation.

Heatherton: Like the Black Panther Party, the Red Nation also has a ten-point program. Your fifth point is "an end to the discrimination, persecution, killing, torture, and rape of Native women." Can you say more about how this is central to your program?

Yazzie: I'm an Indigenous feminist. As I'm one of the co-founders of the Red Nation, there was no way this was not going to be in the agenda. That's the simple answer. All of the different subjects that we've included, whether it's LGBTQ2 (Lesbian, Gay, Bisexual, Transgender, Queer or Two-Spirited) people, women, the poor, the youth, and so forth, all of these groups are categories of Indigenous subjects under occupation by the United States that are completely marginalized and silenced. They are marginalized not just by the common sense of settler colonialism but also within Indigenous-led social movements. You never see young people or women or the poor or trans Native people at the helm of these movements. Traditionally, they are very patriarchal and quite sexist forms of social organizing. We are foregrounding these voices not as a simple politics of representation as though we merely needed someone with a uterus. We're feminists. That means we organize ourselves to confront the heteropatriarchy in organizing culture as well as in tribal government

structures. We recognize the logic of heteropatriarchy as a form of violence disproportionately enacted on feminized bodies, whether Native women's bodies, queer bodies, or other Indigenous bodies.

Estes: I've been involved in a lot of environmental movements back home, especially in the anti–Keystone XL Pipeline movement. One thing I find fascinating is how non-Native people gravitate towards Indigenous causes that are "safe." They go to sites of extraction where the exploitation and monetization of nature is comprehendible to them. But capital is also reproduced in urban centers like border towns. Four out of five Native people live in urban centers. What would it mean if those same allies who came out to places they consider "Native spaces" instead came to places that aren't considered Native spaces, like Albuquerque? What if they rallied around us every time a Native trans woman was murdered on the street? Or every time a child was victimized in school? What if they protested every time a woman was violated in some way? If there was that same kind of reaction, in a city or a border town, what would that mean? The reason why Native youth, Native LGBTQ, Native women are central to these struggles is that they are made vulnerable by capital, not just at the sites of extraction, but also at the sites of its reproduction, the urban centers where a majority of Native people live.

Yazzie: Capital is reproduced through colonial violence. If you center the life of a Native trans sex worker, and there are many in Albuquerque, that person will have a subject position that has been reproduced through colonial violence. The logic of capital as it's reproduced through that person, or through a Native woman's body, is going to be so much more visible than when it appears in a white man or in many cases a Native man. In the Red Nation we are forced to talk about all of these forms of violence at the exact same time, because that's literally how people live their lives.

Heatherton: Like the Black Panther Party, your ten-point program also includes a demand for appropriate education, health care, social services, employment, and housing, what you call a "living social wage." How is this demand central to your organizing against capitalist colonialism?

Estes: The first point of our ten-point program is the reinstatement of treaty rights. That's what makes American Indians, Native people, distinct.

Our treaty rights don't begin or end on the reservation boundary. When we cross the reservation boundary, we do not lose our rights. In Albuquerque alone there are 291 reasons why this is important, all based on treaties, because there are 291 federally recognized Native nations living in Albuquerque right now. That is a very powerful thing, politically speaking. Those are 291 guarantees for adequate health care, adequate education, and adequate social services. Those are basic human rights, and they aren't anything new. When we talk about the not-so-sexy battle for health care and education, it's based on treaties. That's where we're drawing our inspiration from when we talk about health care. Police brutality is more mainstream now. It's a really important struggle because of the ways in which we're having this conversation. We also need to do the hard groundwork of guaranteeing that these historic rights and historic obligations are fulfilled to keep a bare minimum of life and dignity for Native people.

Heatherton: The very last line of your ten-point program is "For Native peoples to live, capitalism and colonialism must die."

All: Yeah!

Banks: The Red Nation came into existence to fill a void. We wanted to provide a vehicle for struggle, to mobilize Native people, and, in a way, to be a catalyst to bring people into motion to fight. Like Paige said, homelessness, lack of access to health care, and poverty are often talked about as irrational outcomes of a rational system. Our perspective is the exact opposite, that these are actually quite rational outcomes of the irrational system that we live in.

This ten-point program, specifically the call for a living social wage, is a programmatic demand that serves the purpose of building into people's consciousness that these are not entitlements or the privileges of the few, but really human rights. We demand and fight for them, but we also believe that the current system will not actually be able to grant them. Our demands and our fighting will expose the system for what it is. They will expose the limits of the "democracy" that we live in and the limits of the capitalist system. That's really our goal.

Yazzie: Native people aren't living if we're living to die. We're produced so that we can reproduce the violence necessary for the accumulation of

capital that is never ours. The capital is for a small group of people. We use the term "meaningful standard of living" in point eight of our tenpoint plan. "Life" is at the root of that point because we mean it. Native people aren't living. In the capitalist-colonialist system, we are really only born so that we can be churned up, spit out, bludgeoned to death, killed by exposure, ripped apart by dogs, run over by cars, mangled by alcohol, or raped several times in our lives. That's really what life is like. That's not living. A meaningful standard of living would be a really basic step to allow Native people to begin to develop enough well-being to mobilize in any sort of way, and to create the kind of change we're envisioning in the Red Nation. We're not the kind of activists who say, "Our vision is to end colonialism and capitalism, and the way to do this is to burn down buildings, or whatever."

Murphy: Really? That's why I joined.

All: [*Laugh*]

Yazzie: We start where we're at. Where we're at sucks. It's incredibly violent. We want to allow Native people to live and to breathe just a little bit. We're genuinely interested in mobilizing poor people. We're a bunch of Marxists. We have a materialist approach, not an idealistic approach. We care about people. If you care about people then you have to deal with the messiness of life.

Estes: An idealized position envisions Native people as living this "authentic" Indigenous life, riding bareback in the mountains with the wind flowing through their hair, herding sheep, and hunting a buffalo, all at the same time. Despite the popular imaginary, four out of five Native people do not live on reservation land. That is a reality we have to confront. Albuquerque is Indigenous space. Gallup is Indigenous space. Rapid City is Indigenous space. The demands for reasonable housing, a living social wage, adequate social services, and adequate health care are not unreasonable. They are very, very reasonable. They are basic human rights that can be fulfilled. This is the richest, most powerful country in the world and it has people living in fourth world conditions. That's where Indigenous peoples are. To even begin to imagine an alternative future, an alternative to capitalism, an alternative to colonialism, and to facilitate that end, you have to have the ability to live. It's a future-oriented project. We're actually continuing a long struggle of Native people and moving it

into the future. We're very progressive in that sense. We also understand that we want to work from the material conditions in which we find ourselves, not some imagined, idealized past where we're riding bareback, herding sheep, and killing buffalo.

Heatherton: All at the same time.

Estes: All at the same time.

Heatherton: You have a wonderful saying that "solidarity is not hard." Why is this an important organizing principle?

Murphy: The labor movement in the 1930s started off with a program like ours. This was a time of intense struggle. Workers got together. They put a list of demands together, including unemployment benefits and social security. This was really the work of the communists. At the time, people thought that these demands were totally unrealistic. But they won them through intense struggle. When all the workers stand together, it radicalizes people. You're able to see the system in a real way. If workers withhold their labor, then the capitalists have no power. We're materialists. We're Marxists. This program is a starting block to what we're trying to achieve. People may see things like access to education, free health care, social services, unemployment, and think that it will never happen. Through intense struggle and by bringing people out into the streets, we will be able to turn these demands into reality.

Estes: We've all worked in solidarity with Palestine, with the #BlackLivesMatter movement, and with other police brutality movements as well. When someone puts out a call, you respond. It's not about serving yourself as an individual. It's about using your body as a vehicle, putting it in the street, or writing a letter, or whatever, and standing behind other oppressed groups of people. I don't know any other way to explain it except that "solidarity is not hard." Get your shit together and get out there.

Murphy: Now more than ever, people are starting to bridge struggles together. We've done a lot of work around Palestinian solidarity, Muslim solidarity against Islamophobia, and against police brutality. All of these struggles are related. Everyone is fighting capitalism in their day-to-day

lives whether they want to admit it or not. When you're struggling to make rent, you're fighting against capitalism. When you're looking for a job and you can't find one, you're struggling against capitalism. People every day are fighting against capitalism. When we link these struggles, that's when they're able to see it.

Yazzie: Another group we're building right now is Diné Solidarity with Palestine, since you can't end the occupation in Palestine unless you end the occupation of Indigenous land in the US. It's a globalized system of settler colonialism. If we're going to engage in solidarity, we have to center the Indigenous agenda. That's what the Red Nation is about. No one else centers the Indigenous agenda. It always gets lost or marginalized. If we actually center our own agenda and proceed with solidarity efforts from that position, what does that look like? I'm not terribly interested in solidarity paradigms that don't center Indigenous interests or an Indigenous critique of colonialism and capitalism.

Banks: We approach our work by thinking about how our activities can deepen the multinational character of an anti-racist struggle. We don't water down demands for self-determination, we try to raise the consciousness of the broader social justice movement. The Red Nation is trying to fill a vacuum, not just within society but also within the existing social justice movement that only pays lip service to the Native struggle. We're trying to build unity on a much different basis, on a deep understanding of self-determination, and that doesn't contradict in any way the need to build a broad-based, multinational, working-class movement.

Heatherton: Final thoughts?

Estes: Settlement is never a complete process, and we're here to make sure that it never gets completed. Colonization is a failed project, because they didn't kill us all.

Yazzie: That's why they have to constantly police us.

Estes: It's through 500 years of resistance that we have our existence in the present. That's what keeps us going. It's a beautiful thing, as much as it condemns us to this constant struggle. It's something that has to be fought. Otherwise, what did our ancestors die for?

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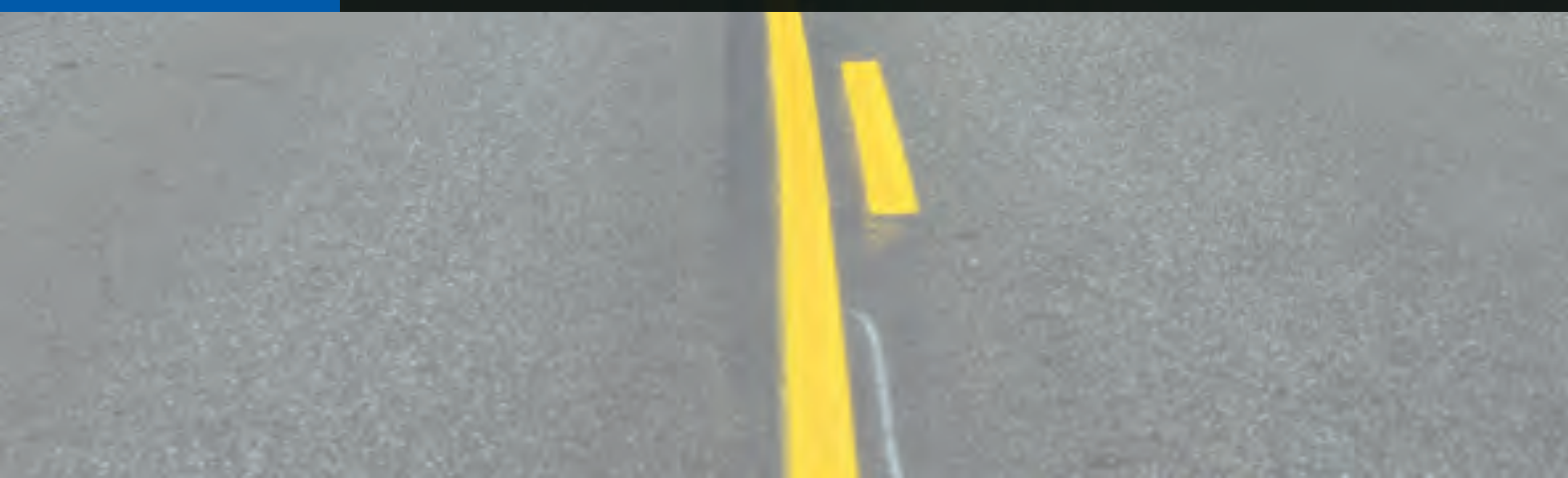
HUMAN RIGHTS WATCH

THOSE WHO TAKE US AWAY

Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada



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Summary and Recommendations

The Tachie reserve in northern British Columbia. In Carrier, the indigenous language in Tachie and many indigenous communities in northern BC, the literal translation of the word for police is "those who take us away." An RCMP report on the historical involvement of the police in Canada's residential school system found that "The police were not perceived as a source for help but rather as an authority figure who takes members of the community away from the reserve or makes arrests for wrong-doing."

THOSE WHO TAKE US AWAY

Photographs © 2012 Samer Muscati/Human Rights Watch

On December 5, 2012, a man walking his dog found the murdered body of 16-year old Summer Star (C.J.) Fowler in a ravine near the British Columbia (BC) town of Kamloops.[1] The Gitanmaax[2] teenager from Hazelton in northern BC, remembered as a sweet girl with a beautiful smile by her family, had been visiting friends a few days previously and was just hours away from taking a bus back home when she disappeared and was ultimately killed in circumstances still under investigation by police.[3] Speaking at a news conference, her father said, "We would just like to stop this violence … We want some answers and we don't want this case to be another they stick under the rug."[4]

A woman wears a T-shirt with a slogan about police brutality in Prince George, British Columbia. In ten towns across northern British Columbia, Human Rights Watch documented failures in policing and protection of indigenous women and girls.

(above) Photographs of a 17-year old girl's injuries after a member of the Royal Canadian Mounted Police repeatedly punched her while she was handcuffed in British Columbia in 2011.

(left) Dog bite wounds are shown on the left leg of a 12-year old girl who was attacked by a police dog in 2012 when police searched for and arrested her after she was reported to have sprayed someone with bear mace. [Photos provided by the girl's mother to Human Rights Watch for publication.]

(opposite page) A community worker in a northern British Columbia town holds underwear that she distributes to women on the street, some of whom reported to her having been raped by police and having their underwear taken.

C.J. Fowler is just one of several hundred indigenous women and girls who have been murdered or gone missing across Canada over the last several decades. By the time government funding for data collection on missing and murdered indigenous women and girls ended in 2010, the Native Women's Association of Canada (NWAC) had documented 582 such cases nationally. Many happened between the 1960s and the 1990s, but 39 percent occurred after 2000, or about 20 a year. If women and girls in the general Canadian population had gone missing or been murdered at the same rate, NWAC estimates the country would have lost 18,000 Canadian women and girls since the late 1970s.

The province of British Columbia has been particularly badly affected by violence against indigenous women and girls and by the failure of Canadian law enforcement authorities to deal with the phenomenon. Cutting through the small communities policed by the Royal Canadian Mounted Police (RCMP) in northern BC is the Highway of Tears, a 724-kilometer stretch of road which has become infamous for the dozens of women and girls who have gone missing or been murdered in its vicinity.

The high rates of violence against indigenous women and girls have drawn widespread expressions of concern from national and international human rights authorities, which have repeatedly called for Canada to address the problem. But these calls for action have not produced sufficient change and indigenous women and girls continue to go missing or be murdered in unacceptably large numbers.

The failure of law enforcement authorities to deal effectively with the problem of missing and murdered indigenous women and girls in Canada is just one element of the dysfunctional relationship between the Canadian police and indigenous communities. This report addresses the relationship between the RCMP and indigenous women and girls in northern BC and documents not only how indigenous women and girls are under-protected by the police but also how some have been the objects of outright police abuse. The report further documents the shortcomings of available oversight mechanisms designed to provide accountability for police misconduct and failure to protect.

In ten towns across the north, Human Rights Watch documented RCMP violations of the rights of indigenous women and girls: young girls pepper-sprayed and Tasered; a

12-year old girl attacked by a police dog; a 17-year old punched repeatedly by an officer who had been called to help her; women strip-searched by male officers; and women injured due to excessive force used during arrest.

Human Rights Watch heard disturbing allegations of rape and sexual assault by RCMP officers, including from a woman who described how in July 2012 police officers took her outside of town, raped her, and threatened to kill her if she told anyone. Human Rights Watch strongly urges an independent civilian-led investigation of these allegations with the aim of achieving criminal accountability for the alleged crimes. Human Rights Watch would eagerly cooperate with such an investigation to the extent we are able to without compromising the safety and privacy of victims.

For many indigenous women and girls interviewed for this report, abuses and other indignities visited on them by the police have come to define their relationship with law enforcement. At times the physical abuse was accompanied by verbal racist or sexist abuse. Concerns about police harassment led some women—including respected community leaders—to limit their time in public places where they might come into contact with officers. The situations documented in this report—such as a girl restrained with handcuffs tight enough to break her skin, detainees who had food thrown at them in their cells, a detainee whose need for medical treatment was ignored—raise serious concerns about tactics used in policing of indigenous communities in BC and about the police's regard for the well-being and dignity of indigenous women and girls.

Incidents of police abuse of indigenous women and girls are compounded by the widely perceived failure of the police to protect women and girls from violence. Not surprisingly, indigenous women and girls report having little faith that police forces responsible for mistreatment and abuse can offer them protection when they face violence in the wider community. As a community service provider told Human Rights Watch, "The most apparent thing to me is the lack of safety women feel. A lot of women, especially First Nations women we see never feel safe approaching the RCMP because of the injustices they've experienced … The system is really failing women."

One aspect of this is the apparent apathy of police towards the disappearances and murders of indigenous women and girls that has been such a persistent and well-publicized stain on Canada's human rights record. Less well-publicized but equally pernicious have been the shortcomings of the police in their response to domestic violence.

Two unidentified women hitchhike in northern British Columbia.

The RCMP has instituted progressive policies addressing violence in domestic relationships, but it appears the police do not apply those policies consistently when policing in indigenous communities. According to survivors of domestic violence and the community service providers who work with them, indigenous women and girls often do not get the protection afforded by these polices. Women who call the police for help may find themselves blamed for the abuse, are at times shamed for alcohol or substance use, and risk arrest for actions taken in self-defense. Similarly, despite policies requiring active investigation of all reports of missing persons, some family members and service providers who had made calls to police to report missing persons said the police failed to promptly investigate the reports.

When they experience abuse at the hands of the police or when the police fail to provide adequate protection, women and girls have limited recourse. They can lodge a complaint with the Commission for Public Complaints against the RCMP, but the process is time consuming and the investigation of the complaint will likely fall to the RCMP itself or an external police force. Fear of retaliation from police runs high in the north, and the apparent lack of genuine accountability for police abuse adds to long-standing tensions between the police and indigenous communities. The title of this report "Those Who Take Us Away," is a literal translation of the word for police in Carrier, the language of a number of indigenous communities in northern BC.

The Independent Investigations Office (IIO), a recently established provincial mechanism for civilian investigation of police misconduct, offers some promise, but most complaints will fall outside the office's mandate, which is limited to incidents involving death or certain serious bodily injuries. The exclusion of rape and sexual abuse from this definition represents an unacceptable discriminatory omission on the part of the provincial legislature. It sends a loud message that assaults on women are not important.

Canada has strong legal protections around violence against women and the federal and provincial governments have made some attempts to address murders and disappearances of indigenous women through studies, task forces, and limited funding initiatives. However, the persistence of the violence indicates a need for deeper, coordinated interventions to address the systemic nature of the problem.

In northern British Columbia, a highway sign warns girls of the dangers of hitchhiking along the Highway of Tears.

At a community center in Prince George, BC, Georgia I. (a pseudonym) said that she was raped by a member of the Royal Canadian Mounted Police almost 40 years ago as a 16-year old returning home from a pizza parlor. "I'm looking at filing an application to the Attorney General about the rape. He [the perpetrator] is still on the force...how many other young girls has he hurt, as he hurt me?"

A photo hangs in Phoenix House, a women's crisis shelter in Prince George, British Columbia, honoring Celynn Cadieux. Cadieux, now deceased, spoke out against the child sexual exploitation she and others experienced by provincial court judge David Ramsay, who died in jail after pleading guilty in 2004 to sexual assault, breach of trust, and buying sex from a minor.

A swing set stands on the former grounds of the Lejac Residential School, one of the compulsory boarding schools for indigenous children that operated until 1976 and a site of reported sexual and physical abuse.

A woman from Haida Gwaii said police detained her as a child in Prince Rupert and then shipped her to Port Alberni residential school where she survived physical and sexual abuse. "The cops took me right off the streets ... I was walking home ... I always remember, it was 5 after 9.... The cops grabbed me, threw me in their car. Grabbed me by the hair, threw me into their cell, and I was in there for about three days, almost got raped by a couple of ladies.... This was in the 50s. I got shipped to Port Alberni then."

Mabel Jack holds up a photograph of her son and his family who have been missing since 1989. “I want everyone to know what happened to my family.... I still miss them. Some people—friends—they ask me how I am. I said, “I'm okay, but I'm not ... I hurt more than anybody else.”

Community members participate in a spirit healing walk in Burns Lake, British Columbia, in remembrance of missing and murdered women.

In Terrace, British Columbia, a woman discusses how police told her it was “too early” for them to do anything when she reported that her grandniece (whom she considers her granddaughter) had been missing for 14 hours. She said she told the police: “There are enough girls missing out there already, I want to know where my granddaughter is.”

A woman shows a paper she has kept displaying the photos of women, some of whom she knew, who disappeared from the downtown eastside of Vancouver, British Columbia, in the 1990s.

The memorial stone for the Downtown Eastside's missing and murdered women located in Crab Park, Vancouver. The stone reads: "The heart has its own memory, dedicated July 29 2007. In honor of the spirit of the people murdered in the Downtown Eastside. Many were women and many were Native aboriginal women. Many of these cases remain unsolved. All my relations."

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[1] "National chief keeps up calls for inquiry after aboriginal B.C. teen's murder," *Canadian Press*, December 9, 2012, http://www.globaltvbc.com/national+chief+keeps+up+calls+for+inquiry+after+aboriginal+bc+teens+murder/6442768931/story.html (accessed December 17, 2012).

[2] Fowler was from the Gitanmaax First Nation, an indigenous community in northern British Columbia.

[3] "Funeral for slain First Nations teen Thursday," *CBC News*, December 20, 2012, http://www.cbc.ca/news/canada/british-columbia/story/2012/12/20/bc-cj-fowler-kamloops.html (accessed January 2, 2013).

[4] John Colebourn, "Grieving parents of murdered teen appeal for witnesses to come forward," *The Province*, December 12, 2012, http://www.theprovince.com/news/Grieving+parents+murdered+teen+appeal+witnesses+come+forward/7690642/story.html#ixzz2GqgcVoFv (accessed January 2, 2013).

RECOMMENDATIONS

TO THE GOVERNMENT OF CANADA

- **Establish a national commission of inquiry into the murders and disappearances of indigenous women and girls before the end of 2013; ensure the inquiry's terms of reference are developed with leadership from affected communities and that they include the examination of the current and historical relationship between the police and indigenous women and girls, including incidents of serious police misconduct, and the systemic socio-economic marginalization of indigenous women and girls that predispose them to high levels of violence;**
- **With leadership from indigenous communities, develop and implement a national action plan to address violence against indigenous women and girls that addresses the structural roots of the violence as well as the accountability and coordination of government bodies charged with preventing and responding to violence;**
- **Establish independent civilian investigations of reported incidents of serious police misconduct, including incidents of rape and other sexual assault, in all jurisdictions;**
- **Cooperate with the United Nations Committee on the Elimination of Discrimination against Women's inquiry into the issue of missing and murdered indigenous women and girls, including by granting permission for a site visit, and provide similar cooperation to other international human rights bodies that may seek to engage the government on these issues;**
- **Ratify the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará).**

TO THE PROVINCIAL GOVERNMENT OF BRITISH COLUMBIA

- **Ensure that a public inquiry takes place into the violence experienced by indigenous women and girls in northern British Columbia. The inquiry could be part of a national commission of inquiry or a standalone inquiry for the province. The inquiry should include both the murders and disappearances of indigenous women and girls along Highway 16 and police abuse of indigenous women and girls. The inquiry's terms of reference should be defined in cooperation with indigenous communities, and adequate financial and victim supports for non-government community participation and interests should proportionately equal those provided for government and police;**
- **Expand the mandate of the Independent Investigations Office to include authority to investigate allegations of sexual assault by police;**
- **Provide adequate shelters and social services for victims of violence, including in rural areas and with specific culturally-sensitive services;**
- **Renew the commitment to implementing the recommendations of the 2006 Highway of Tears Symposium, updated, as necessary, in cooperation with northern indigenous communities;**
- **Expand non-incarceration options for publicly intoxicated individuals, including sobering centers where medical personnel can provide appropriate care.**

TO THE ROYAL CANADIAN MOUNTED POLICE

- **Collect and make publicly available (as ethically appropriate) accurate and comprehensive, disaggregated data that includes an ethnicity variable on violence against indigenous women and girls in cooperation with indigenous community organizations and the National Centre for Missing Persons and Unidentified Remains (NCMPUR); the development of NCMPUR should be part of a national RCMP strategy for the elimination of violence against indigenous women and girls that ensures consistency in data collection, immediate reporting, and access to information by police, coroners, and medical examiners;**
- **Expand training for police officers to counter racism and sexism in the treatment of indigenous women and girls in custody and to improve police response to violence against women and girls within indigenous communities; such training should be developed through collaboration between indigenous and human rights organizations, the Canadian Police College, and the Department of Public Safety Canada; and focus specifically on Canada's colonial history that has predisposed indigenous women to suffer from gross levels of violence and on human rights norms, including women's and girls' rights to live free from violence and discrimination and be treated with dignity and respect in custody;**
- **Ensure that properly trained officers are stationed at detachments in the north for a sufficient amount of time to develop strong relationships with the local community;**
- **Eliminate searches and monitoring of women and girls by male police officers in all but extraordinary circumstances and require documentation and supervisor and commander review of any such searches; prohibit cross-gender strip searches under any circumstances;**
- **Prohibit the use of conducted energy weapons (Tasers) on youth and re-examine the rules for the use of police dogs and pepper spray on youth with a view to limiting their use to extraordinary circumstances that are then documented and subject to supervisor and commander review; all RCMP and municipal police policies on conducted energy weapons, police dogs and pepper spray should be made publicly accessible;**
- **Enforce existing rules mandating that parents or guardians be contacted immediately in the case of their child's arrest and that youth not be detained in cells with adults or children of the opposite sex;**
- **Consider, in consultation with indigenous communities in northern British Columbia, changing the criteria for cases to be investigated by the E-PANA task force to include a greater number of the murders and disappearances of women in the north;**

- **Develop a timeline for NCMPUR to complete and implement specialized and standardized protocols for police response when indigenous women and girls are reported missing or found murdered; these protocols should be part of the national RCMP strategy and be made in cooperation with indigenous organizations; protocols should include:**
  - **Oversight and accountability mechanisms that track a police investigation of a missing or murdered indigenous woman or girl from the time such an incident is reported;**
  - **Clear, publicly available communication standards for informing family and the general community about the progress of an investigation as it proceeds, and what they can or are expected to do to contribute to an investigation during its different phases;**
  - **Goals to involve an Aboriginal liaison officer in all cases of missing and murdered indigenous women and girls to work with affected families and the police;**
  - **Goals to review police response to missing and murdered indigenous women and girl cases at regular intervals to compile and make public a report on best practices and lessons learned that can then contribute to more successful police investigations and community response in the future.**

TO THE UN HUMAN RIGHTS COUNCIL

- **Raise the issue of violence against indigenous women and girls in Canada as part of the United Nations Human Rights Council's Universal Periodic Review;**
- **Encourage Canada to launch a national inquiry into the murders and disappearances of indigenous women and girls.**

Methodology

Human Rights Watch undertook the research on which this report is based after Justice for Girls (JFG), a Vancouver-based organization advocating for the rights of girls in British Columbia, submitted a briefing paper to Human Rights Watch in November 2011 describing human rights violations against indigenous teen girls in northern British Columbia.[5] In collaboration with JFG, Human Rights Watch conducted five weeks of field research in British Columbia in July and August 2012, most of which was spent traversing Highway 16 from Prince George to Prince Rupert, and Highway 97 between Prince George and Williams Lake. The Carrier Sekani Tribal Council passed a resolution welcoming Human Rights Watch into the territory and supporting the research. Human Rights Watch attended the annual general meeting of the Carrier Sekani and spoke with community members about police treatment of girls and women, and the murders and disappearances along Highway 16.

In total Human Rights Watch conducted 87 interviews for this report. We spoke with 42 indigenous women and 8 indigenous girls,[6] ranging in age from 15 to late 60s, in the communities we visited. The interviews were arranged with the assistance and coordination of advocates, organizations, and local community members who connected us to individuals they believed to have information pertinent to police treatment of indigenous women and girls. Human Rights Watch also interviewed19 community service providers, including staff at domestic violence transition houses and homeless shelters, and youth outreach workers; community leaders; and family members of victims of violence or police mistreatment. In addition, we spoke with seven current and former officers of the "E" Division of the Royal Canadian Mounted Police (RCMP) in three interviews arranged through unofficial channels.

Human Rights Watch researchers were assisted by two indigenous leaders and women's rights experts: Mavis Erickson and Sharon McIvor. Erickson is an attorney, former Elected Tribal Chief of the Carrier Sekani Tribal Council (CSTC), and representative for the CSTC on

[5] Justice for Girls, "Human Rights Violations against Indigenous Teen Girls in Northern British Columbia," November 2011, on file with Human Rights Watch.

[6] The term "girls" in this report refers to female persons under 18 years of age, consistent with the definition of child under article 1 of the United Nations Convention on the Rights of the Child. The age of majority in British Columbia, however, is 19 (*Age of Majority Act*, RSBC 1996, c 7, s 1(1)).

issues related to missing and murdered indigenous women. She is a Nadleh Whut'en band member and a citizen of Nak'azdii near Fort St James. McIvor is an attorney, co-founder of the Canadian Feminist Alliance for International Action, and an instructor at the Nicola Valley Institute of Technology. She is a Lower Nicola Band member and brought a ground-breaking constitutional challenge to sex-discrimination in the Indian Act in *McIvor v. Canada*.[7]

The individual women, girls, and family members interviewed for this report were fully informed about the nature and purpose of our research and how we would use the information they provided. Human Rights Watch obtained verbal consent for each of the interviews. No incentives were provided to individuals in exchange for their interviews. The majority of the interviews were conducted in private with only the researcher and a single interviewee present, but in a number of cases interviewees chose to speak with family members or advocates present. Four of the interviews were conducted by phone; the rest were in-person. The interviews with individual women and girls were open-ended discussions of the experiences the women, girls, and family members had had with the police and what, if any, recommendations they had for improvements in policing. Care was taken to ensure that interviews about past traumatic events did not further traumatize interviewees, and where appropriate, Human Rights Watch offered interviewees referrals to local organizations providing counseling and other services.

In several towns we visited, women and girls who expressed interest in meeting and talking to Human Rights Watch later withdrew their request to be interviewed. They cited fear of exposure and potential retaliation from police as inhibiting factors. Community service providers noted that the fear of exposure is particularly acute in the small towns of the north where police and community members would be likely to identify a person by a few details of their story. Consequently, Human Rights Watch has not identified the precise

[7] In 2009, the BC Court of Appeal ruled in *McIvor v. Canada* that section 6 of the *Indian Act* was unconstitutional and discriminatory under section 15 of the *Canadian Charter of Rights and Freedoms*. *McIvor v. Canada* (*Registrar of Indian and Northern Affairs*), 2009 BCCA 153, http://www.courts.gov.bc.ca/jdb-txt/CA/09/01/2009BCCA0153err2.htm (accessed December 18, 2012). This litigation resulted in 2010-2011 court-ordered legislative reform process that has made 45,000 indigenous women and their descendants newly eligible for status registration. Notwithstanding this ground-breaking litigation victory, thousands more were left behind by the 2011 legislative amendments to the *Indian Act*. The case of *McIvor v. Canada* is the subject of an ongoing petition under the complaints protocol of the International Covenant on Civil and Political Rights. Sharon McIvor and Jacob Grismer, "Communication Submitted for Consideration under the first optional protocol to the International Covenant on Civil and Political Rights," November 24, 2010, http://povertyandhumanrights.org/wp-content/uploads/2011/08/McIvorApplicantsPetition1.pdf (accessed December 18, 2012).

location of interviews, and where necessary we have also redacted details from victim and witness accounts in order to reduce the risk that they will be identified. We have also used pseudonyms for all victims and family members interviewed. Nonetheless, certain accounts in this report that have previously received public attention may be recognizable, a possibility which was discussed with the women and girls involved as part of their full and informed consent to their participation in the research. The names of community service providers and others have also been withheld where their relationship with police would otherwise have prevented them from speaking freely.

Due to concern for the privacy and security of interviewees, Human Rights Watch did not inform the RCMP of our intention to conduct the research in advance or approach detachments for interviews during the field research. In September 2012, Human Rights Watch wrote to the RCMP to advise the national headquarters and the "E" Division in British Columbia of our research and to solicit the police force's input to a series of questions raised by the research. The RCMP responded in November 2012 with answers to our questions and associated policy documents. Human Rights Watch reviewed those materials and they have been taken into account in the report's analysis. Human Rights Watch did not include details of particular incidents in its letter on September 2012 due to the deep seated fear of retaliation on the part of victims if they were identifiable to those accused of perpetrating the abuses. Human Rights Watch is committed to pursuing the issues raised by this report with authorities and to addressing particular situations of concern with British Columbia's Independent Investigations Office (IIO) to the extent we are able to without compromising the safety and privacy of victims.

We have also communicated with the British Columbia (BC) Minister of Justice and Attorney General Shirley Bond and IIO Director Richard Rosenthal regarding the limitations of the mandate of the IIO.

Terminology

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, their ethnic identity, as the basis of their continued existence as peoples in accordance with their own cultural patterns, social institutions, and legal systems.
>
> —Martinez Cobo, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, United Nations Commission on Human Rights[8]

This report primarily uses the term "indigenous" to refer to the women and girls interviewed for this report. We recognize, however, that other terms, such as "First Nations" and "Aboriginal" are commonly used in British Columbia and Canada. We also recognize that there are many unique identities and cultures within the indigenous communities of British Columbia which are not captured by a single term. We have chosen to use "indigenous" because it is the terminology used by the United Nations and applicable human rights standards.

In order to ensure accuracy, we have not changed the terms used by interviewees and in source material. For example, we refer to the number of Aboriginal women and girls in Canada, because that is the term used by Statistics Canada in the study cited. For ease of reference we include the following definitions of relevant terms, excerpted from a glossary provided by the government of Saskatchewan:[9]

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[8] UN Commission on Human Rights, Report of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Martinez Cobo, Study of the Problem of Discrimination against Indigenous Populations, E/CN.4/Sub.2/1982/21/Add.8, September 30, 1983, Chapter XXI-XXII Conclusions, proposals and recommendations, para. 379.

[9] Human Rights Watch reviewed definitions in a number of glossaries, including the guide to terminology published by the "National Aboriginal Health Organization. Terminology Guidelines," http://www.naho.ca/publications/topics/terminology/ (accessed December 26, 2012). The Saskatchewan provincial government's glossary largely shares those definitions and has been excerpted because it was most suited to a concise glossary of key terms used in this report. Government of

Aboriginal: The term "Aboriginal" is appropriate when referring to matters that affect First Nations (Indian) and Métis peoples. The word is most appropriately used as an adjective (e.g., Aboriginal person).

Aboriginal Peoples: Section 35 of the Constitution Act, 1982 recognizes three groups of Aboriginal peoples -- Indians, Métis and Inuit peoples.

Band: As defined by the Indian Act, a Band is a body of Indians for whose common use and benefit lands have been set aside or monies held by the Government of Canada or declared by the Governor in Council to be a Band. Today, many Bands prefer to be known as First Nations.

First Nation(s): A term that came into common usage in the 1970s to replace the word "Indian". Although the term First Nation is widely used, no legal definition of it exists. The term has also been adopted to replace the word "Band" in the naming of communities.

Indian: The term "Indian" is narrowly defined by the Indian Act. Indian peoples are one of three groups of people recognized as one of Canada's Aboriginal peoples in the Constitution Act, 1982. There are three legal definitions that apply to Indians in Canada: Status Indians, Non-status Indians and Treaty Indians.

Inuit: An Aboriginal people in northern Canada, who live above the tree line in the Northwest Territories, and in Nunavut, Northern Quebec and Labrador.[10] The word means "people" in the Inuit language - Inuktitut. The singular of Inuit is Inuk.

Métis: The term refers to Aboriginal people of mixed First Nation and European ancestry who identify themselves as Métis people, as distinct from First Nations people, Inuit or non-Aboriginal people. The Métis have a unique culture that draws on their diverse ancestral origins, such as Scottish, French, Ojibway and Cree.

Saskatchewan First Nations and Métis Relations, "Aboriginal Community Glossary", 2012, http://www.fnmr.gov.sk.ca/community/glossary/ (accessed December 10, 2012).

[10] Human Rights Watch inserted Nunavut in the definition provided by the Government of Saskatchewan. Nunavut became a separate territory from the Northwest Territories in 1999. The Inuit are 84 percent of Nunavut's population. (Statistics Canada, "2006 Census: Aboriginal Peoples in Canada in 2006: Inuit, Métis and First Nations, 2006 Census: Inuit," April 2011, http://www12.statcan.ca/census-recensement/2006/as-sa/97-558/p6-eng.cfm (accessed January 30, 2012).)

Native: A term used to refer generally to Aboriginal peoples. The term "Aboriginal person" is preferred to "native."

Non-status Indian: An Indian person who is not registered as an Indian under the Indian Act. This may be because his or her ancestors were never registered, or because he or she lost Indian status under former provisions of the Indian Act. Bill C-31 in 1985 has restored Indian status to those who lost it through marriage.

Status Indian (Registered Indian): Refers to an Indian person who is registered (or entitled to be registered) under the Indian Act. The Act sets out the requirements for determining who is a status Indian.

Reserve: Land set aside by the federal government for the use and occupancy of an Indian group or Band. Legal title rests with the Crown in right of Canada.

Treaty Indian: A person affiliated with a First Nation that has signed, or whose ancestors signed, a treaty with the Crown and who now receives land rights and entitlements as prescribed in a treaty.

Map of British Columbia

I. Background

Violence against Indigenous Women and Girls in Canada

Indigenous women and girls are far more likely than other Canadian women and girls to experience violence and to die as a result. Between 1997 and 2000, the rate of homicide overall for Aboriginal women was 5.4 per 100,000, compared to 0.8 per 100,000 for non-Aboriginal women – almost seven times higher.[11] The Canadian government has acknowledged to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) that the rate of spousal violence against Aboriginal women and girls is more than three times higher than for other Canadian women and that Aboriginal women are eight times more likely to be a victim of spousal homicide.[12] In 2012, the United Nations Committee on the Rights of the Child (CRC) expressed concern about the levels of sexual exploitation of Aboriginal girls and the failure of authorities to fully investigate when those girls have gone missing or were murdered.[13]

The Native Women's Association of Canada (NWAC) collected data showing that nationally, between the 1960s and 2010, 582 Aboriginal women and girls went missing or were murdered in Canada.[14] Data collected as of March 31, 2010, indicate that two-thirds of the cases logged were murders; one-fifth were disappearances; and the remainder were suspicious deaths or unknown.[15] Some cases date back to the 1960s and 70s, but 39 percent occurred since 2000.[16] NWAC's data indicates that the majority of the victims were under the age of 31 and many were mothers.[17] According to NWAC's data, Aboriginal women are more likely to be killed by a stranger than non-Aboriginal women, and nearly

[11] Vivian O'Donnell and Susan Wallace, "First Nations, Métis and Inuit Women," Women in Canada: A Gender-based Statistical Report, Statistics Canada Catologue no. 89-503-X, July 2011, http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.htm (accessed December 13, 2012), p. 43.

[12] Government of Canada, Combined sixth and seventh periodic reports of States parties Canada, CEDAW/C/CAN/7, August 17, 2007, http://www2.ohchr.org/english/bodies/cedaw/cedaws42.htm (accessed October 22, 2012), para. 29.

[13] United Nations Committee on the Rights of the Child, "Consideration of Reports Submitted by States parties under Article 44 of the Convention Concluding Observations: Canada," CRC/C/CAN/CO/3-4, October 5, 2012, http://www2.ohchr.org/english/bodies/crc/crcs61.htm (October 15, 2012), para. 48.

[14] Native Women's Association of Canada, "What Their Stories Tell Us," 2010, http://www.nwac.ca/programs/sis-research (accessed December 13, 2012), pp. 1, 20-21.

[15] Ibid, p. 18.

[16] Ibid, pp. 20-21.

[17] Ibid, p. ii.

half of the murders are unsolved.[18] Amnesty International published a report on Canada's missing and murdered indigenous women in 2004 that, among other findings, concluded that "Despite assurances to the contrary, police in Canada have often failed to provide Indigenous women with an adequate standard of protection."[19]

The collection of data about the levels of violence against indigenous women is essential for developing an effective response to the violence, but in 2010 the government stopped funding NWAC's data initiative on the murders and disappearances of indigenous women. The government is funding related initiatives as part of the "Missing and Murdered Aboriginal Women strategy," as well as the NWAC "Evidence to Action" project, but it did not renew funding for the organization's statistical monitoring of cases of missing and murdered indigenous women and girls.[20] As a result, no comprehensive sex – and race – disaggregated data to track the numbers of missing and murdered indigenous women and girls since 2010 are available. The government contends that the responsibility for continued data collection will be assumed by the National Centre for Missing Persons and Unidentified Remains (NCMPUR) run by the Royal Canadian Mounted Police (RCMP).[21] The NCMPUR, according to the government, will include "one resource, linked to National Aboriginal Policing *S*ervices, to ensure a focus on the specific issue of missing Aboriginal

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[18] Ibid.

[19] Amnesty International, "Stolen Sisters: A Human Rights Response to Discrimination and Violence against Indigenous Women in Canada," AMR 20/003/2004, October 2004, http://www.amnesty.ca/research/reports/stolen-sisters-a-human-rights-response-to-discrimination-and-violence-against-indig (accessed December 13, 2012), p. 2.

[20] "Letter from Minister Nicholson and Minister Ambrose to the Native Women's Association of Canada," Status of Women Canada news release, November 24, 2010, http://www.swc-cfc.gc.ca/med/news-nouvelles/2010/1124-eng.html (accessed December 13, 2012); Native Women's Association of Canada, "Small Steps on a Long Journey," December 2011, www.un.org/esa/socdev/unpfii/documents/EGM12_NWAC.pdf *(accessed December 13, 2012), p. 5; Native Women's Association of Canada, "Evidence to Action," undated,* http://www.nwac.ca/programs/evidence-action *(accessed December 13, 2012).*

[21] "Backgrounder A: Addressing the Issue of Missing and Murdered Aboriginal Women," Department of Justice Canada news release, October 2012, http://www.justice.gc.ca/eng/news-nouv/nr-cp/2010/doc_32564.html (accessed December 13, 2012); "Letter from Minister Nicholson and Minister Ambrose to the Native Women's Association of Canada," Status of Women Canada news release, http://www.swc-cfc.gc.ca/med/news-nouvelles/2010/1124-eng.html. The "National Police Support Centre for Missing Persons" noted in the Status of Women Canada news release refers to NCMPUR. (Royal Canadian Mounted Police, "Canadian Police Centre for Missing and Exploited Children," February 23, 2012, http://www.rcmp-grc.gc.ca/cpcmec-ccpede/index-eng.htm (accessed January 30, 2013).) On January 31, 2013, the RCMP launched a website, www.canadasmissing.ca, to "engage the public in reporting tips and information related to ongoing cases." The new site contains a sampling of missing persons and unidentified remains cases from across Canada. (Royal Canadian Mounted Police, "RCMP Launches National Public Website for Missing Persons and Unidentified Remains," January 31, 2013, http://www.rcmp-grc.gc.ca/news-nouvelles/2013/01-31-ncmpur-cnpdrni-eng.htm (accessed February 4, 2013).)

persons."[22] However, there is currently no precedent for the standardized collection of ethnicity data by police forces in Canada.[23] Consequently, it is unclear going forward how the government and the public will have access to information comparable to what NWAC had provided about the number and circumstances of these cases.

While the Canadian government has issued statements and undertaken studies indicating that it appreciates the gravity of the situation, it has stopped short of establishing a public national inquiry into the murders and disappearances of indigenous girls and women or developing a national action plan to address the issue. [24] An inquiry into this issue could provide an opportunity to examine through public hearings the root causes of the violence against indigenous women and girls as well as the law enforcement response, with the full participation of the affected communities. The Assembly of First Nations, the Native Women's Association of Canada, and Canadian Feminist Alliance for International Action are among the many groups that have called for a national inquiry.[25]

Government studies have found that violence against indigenous women and girls is linked to broader, long-standing patterns of discrimination faced by indigenous women and girls

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[22] "Backgrounder A: Addressing the Issue of Missing and Murdered Aboriginal Women," Department of Justice Canada news release, http://www.justice.gc.ca/eng/news-nouv/nr-cp/2010/doc_32564.html.

[23] Native Women's Association of Canada, "Small Steps on a Long Journey," www.un.org/esa/socdev/unpfii/documents/EGM12_NWAC.pdf, p. 5. The Department of Justice Canada "Backgrounder A: Addressing the Issue of Missing and Murdered Aboriginal Women," notes that the RCMP "has enhanced the Canadian Police Information Centre (CPIC) to capture additional missing persons data such as biological and cultural affinity." It is not clear that this will result in comprehensive race-disaggregated data for missing persons cases; further, this does not address the need for race-disaggregated data in homicide cases.

[24]House of Commons Standing Committee on the Status of Women (FEWO), "Ending Violence Against Aboriginal Women and Girls: Empowerment – A New Beginning," December 2011, http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5322860&Language=E&Mode=1&Parl=41&Ses=1 (accessed September 26, 2012), pp. 43-44; Missing Women Working Group, "Report and Recommendations on Issues Related to the High Number of Murdered and Missing Women in Canada," January 2012, http://www.ag.gov.bc.ca/missing_women_working_group/index.htm (accessed October 18, 2012). The report includes 52 recommendations, none of which call for a national public inquiry or a national action plan; Status of Women Canada, "Joint Statement by Ministers Nicholson and Ambrose on the fifth Annual Sisters in Spirit Vigils," October 4, 2010, http://www.swc-cfc.gc.ca/med/sta-dec/2010/1004-eng.html (accessed January 7, 2013).

[25] Assembly of First Nations, "Call for a Royal Commission on Violence Against Indigenous Girls & Women," Resolution no. 02/2011, adopted in Moncton, NB, July 12, 2011, http://www.afn.ca/index.php/en/policy-areas/i-pledge.-end-violence (accessed January 7, 2013), p. 4 of Resolutions; "Native Women's Association of Canada and Canadian Feminist Alliance For International Action Respond to Oppal by Calling for a National Public Inquiry and a Framework for Action to End Violence," Native Women's Association of Canada joint news release, December 17, 2012, http://www.nwac.ca/media/release/17-12-12 (accessed January 7, 2013).

in British Columbia and in Canada at large.[26] Although a thorough discussion of these well documented patterns is beyond the scope of this report, it is important to note that the context in which indigenous women and girls are subjected to violence is one of structural discrimination linked to social and economic inequality, according to government and academic experts.[27] In 2006, 35 percent of Aboriginal women over 25 had not completed high school, compared with 20 percent for non-Aboriginal women.[28] When asked why she did not complete high school, nearly one in five women cited "pregnancy or to take care of children," according to the 2006 Aboriginal Peoples Survey.[29] Also in 2006, 8 percent of Aboriginal girls aged 15 to 19 were parents, compared to 1.3 percent of non-Aboriginal girls in the same age bracket.[30] In British Columbia, the Ministry of Children and Family Development reported that, while Aboriginal children constitute only 8 percent of the province's children, they were 52 percent of all children in government care in 2007-08.[31]

This inequality carries over into women's adult lives, from poverty to unemployment to housing insecurity. In 2005, 30 percent of Aboriginal women were considered low income, compared with 16 percent of non-Aboriginal women.[32] The unemployment rate was twice as high for Aboriginal women as non-Aboriginal women in 2006, and Aboriginal peoples

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[26] Government of Canada, House of Commons Standing Committee on the Status of Women, "Ending Violence Against Aboriginal Women and Girls: Empowerment – A New Beginning," December 2011, 41st Parl., 1st sess., http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5322860&Language=E&Mode=1&Parl=41&Ses=1 (accessed September 26, 2012), p. 60; Government of Canada, House of Commons Standing Committee on the Status of Women, "Interim Report Call into the Night: An Overview of Violence Against Aboriginal Women," March 2011, 40th Parl., 3rd sess., http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5056509&Language=E&Mode=1&Parl=40&Ses=3 (accessed September 26, 2012), p. 6.

[27] Fiske, Jo-anne. "Political Status of Native Indian Women: Contradictory Implications of Canadian State Policy," in *In the Days of Our Grandmothers*, Mary-Ellen Kelm and Lorna Townsend, eds. (Toronto: University of Toronto Press, 2006), p. 338; Government of Canada, House of Commons Standing Committee on the Status of Women, "Interim Report Call into the Night: An Overview of Violence Against Aboriginal Women," March 2011, 40th Parl., 3rd sess., http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5056509&Language=E&Mode=1&Parl=40&Ses=3 (accessed September 26, 2012), p. 10, 31.

[28] Vivian O'Donnell and Susan Wallace, "First Nations, Métis and Inuit Women," Women in Canada: A Gender-based Statistical Report, Statistics Canada Catalogue no. 89-503-X, July 2011, http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.htm (accessed December 13, 2012), p. 35.

[29] Ibid.

[30] Ibid, p. 20.

[31] Anna Kozlowski, Vandna Sinha, Shawn Honey and Linda Lucas, "First Nations Child Welfare in British Columbia (2011)," Canadian Child Welfare Research Portal, http://cwrp.ca/infosheets/first-nations-child-welfare-british-columbia (December 13, 2012).

[32] Vivian O'Donnell and Susan Wallace, "First Nations, Métis and Inuit Women," Women in Canada: A Gender-based Statistical Report, Statistics Canada Catalogue no. 89-503-X, July 2011, http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.htm (accessed December 13, 2012), p. 34.

lost jobs at a higher rate than non-Aboriginal people during the 2008 economic downturn.[33] In 2006, 14 percent of First Nations women and girls lived in crowded homes, a rate more than three times higher than for their non-Aboriginal counterparts.[34] In addition, 28 percent of First Nations women and girls lived in homes in need of "major repairs," compared with 7 percent of non-Aboriginal women and girls.[35]

Residential Schools

The legacy of colonialism and the Canadian government's historical assimilation policy remain an open wound in the north, particularly the inter-generational effects of the so-called residential school system. The residential school system existed from the late 1880s to the 1990s in Canada, although some cite that residential schools existed in Canada as early as the 1830s.[36] Across Canada, approximately 150,000 children were removed from their families and communities and placed in schools where they were forbidden to speak their own languages or practice their culture.[37] Many were also subjected to physical and sexual abuse. In 1920, residential school attendance became compulsory, and the RCMP played a role in ensuring that indigenous children attended. As consequence, a report commissioned by the RCMP found, "The police were not perceived as a source for help but rather as an authority figure who takes members of the community away from the reserve or makes arrests for wrong-doing."[38]

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[33] Ibid, p. 30.

[34] [34] Ibid, p. 23; a "crowded home" is one that has more than one person per room (bathrooms, halls, vestibules and rooms used solely for work are not counted as rooms in the study). (Ibid, p. 22).

[35] Ibid.

[36] *The Canadian Encyclopedia*, undated, s.v. "Residential Schools," http://www.thecanadianencyclopedia.com/articles/residential-schools (accessed January 7, 2013); The University of British Columbia Library, "Chronology of Federal Policy Towards Aboriginal People and Education in Canada," undated, http://www.library.ubc.ca/edlib/canadian/chronology.html (accessed January 7, 2013); and Vivian O'Donnell and Susan Wallace, "First Nations, Métis and Inuit Women," Women in Canada: A Gender-based Statistical Report, Statistics Canada Catalogue no. 89-503-X, July 2011, http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11442-eng.htm (accessed December 13, 2012), p. 39.

[37] "RCMP 'herded' native kids to residential schools," *CBC News*, October 29, 2011, http://www.cbc.ca/news/canada/story/2011/10/29/truth-reconciliation-rcmp-report.html (accessed December 13, 2012).

[38] Marcel-Eugène LeBeuf on behalf of the Royal Canadian Mounted Police, "The Role of the Royal Canadian Mounted Police During the Indian Residential School System," undated, http://www.rcmp-grc.gc.ca/aboriginal-autochtone/irs-spi-eng.htm (accessed January 8, 2013).

In 2004, the RCMP issued an apology for the police force's part in the residential school system.[39] However, the history of the force's involvement looms large in the relationship between the RCMP and indigenous communities in the north. "My older brother still says that the RCMP is my enemy. They are still the enemy of my community when they come in," one interviewee, whose sister is among the missing and murdered, told Human Rights Watch.[40] In addition, residential school trauma often contributes to some social issues – such as dependence on alcohol or other substances and homelessness – that bring those involved into contact with the police. Beverly Jacobs and Andrea J. Williams write in their article on the links between residential schools and missing and murdered indigenous women and girls:

> Residential school attendance, particularly when accompanied by physical and sexual abuse, has been linked to problems of alcoholism, drug abuse, powerlessness, dependency, low self-esteem, suicide, prostitution, gambling, homelessness, sexual abuse, violence, and, as this paper argues, missing and murdered women. Some Survivors and/or their descendants have been in conflict with the legal system, including the criminal justice system and the child welfare system.[41]

Alcohol and substance use is a problem for indigenous communities in Canada, including in northern BC. Aboriginal youth are at two to six times greater risk for alcohol-related problems than non-Aboriginal youth, and the rate of death due to alcohol use in the Aboriginal population is double the rate in the general population.[42] Many of the police abuses documented in this report occurred in the context of the policing of public intoxication. While public intoxication can give rise to legitimate safety concerns, especially when children are involved, it is no justification for mistreatment of individuals

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[39] Royal Canadian Mounted Police, "RCMP apology," January 24, 2012, http://www.rcmp-grc.gc.ca/aboriginal-autochtone/apo-reg-eng.htm (accessed December 13, 2012).

[40] Human Rights Watch interview with Peter M., British Columbia, July 2012.

[41] Beverley Jacobs and Andrea Williams, "Legacy of Residential Schools: Missing and Murdered Aboriginal Women," in Marlene Brant Castellano, Linda Archibald, and Mike DeGagné, eds., *From Truth to Reconciliation Transforming the Legacy of Residential Schools* (Ottawa: Aboriginal Healing Foundation, 2008), pp. 119-142; also available online, *london.cmha.ca/download.php?docid=294 (accessed December 13, 2012), p. 126*.

[42] Deborah Chansonneuve, Aboriginal Healing Foundation, "Addictive Behaviours
Among Aboriginal People in Canada," 2007, http://www.ahf.ca/downloads/addictive-behaviours.pdf (accessed January 1, 2013), pp. 25-26.

in custody. Furthermore while incarceration may not always be the most appropriate and effective way of dealing with the problem, in many parts of BC the authorities have failed to provide alternative remedies. A report by the British Columbia Civil Liberties Association (BCCLA) noted the lack of sobering centers in the north, finding that "the challenge for police of dealing with those who are drunk or high in public is a major issue across the north…. Police have become *de facto* medical practitioners across the north for people suffering from alcohol overdoses or acute drug intoxication."[43]

The Shadow of Past Abuses

Beyond the legacy of the residential school system, to understand the relationship between the RCMP and indigenous girls and women in northern British Colombia today, it is important to acknowledge the impact that several historical policing failures have had on the lives of indigenous women and girls.

Judge Ramsay and the legacy of sexual exploitation in Prince George

David Ramsay, a provincial court judge, pleaded guilty in 2004 to sexual assault causing bodily harm, obtaining sexual services from someone under 18 and breach of trust by a public officer.[44] The plea came after indigenous girls came forward to report that the judge had hired them for sex off the street when they were between ages 12 and 17, and had violently abused them in a number of incidents.[45] In one such incident, Ramsay rammed a girl's head into his car's dashboard, raped her, and then left her without her clothes in an outlying area, forcing her to hitchhike into town in the nude.[46] Ramsay later died in prison in 2008.[47] His crimes continue to cast a shadow over law enforcement in Prince George, in

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[43] BCCLA, "Small Town Justice: A report on the RCMP in Northern and Rural British Columbia," March 22, 2011, http://bccla.org/our_work/small-town-justice-a-report-on-the-rcmp-in-northern-and-rural-british-columbia/ (accessed December 13, 2012), p. 21.

[44] *R. v. Ramsay*, 2004 BCSC 756, Oral Reasons for Judgment, June 1, 2004, http://www.courts.gov.bc.ca/jdb-txt/sc/04/07/2004BCSC0756err1.htm (accessed December 17, 2012).

[45] "Former B.C. judge denied parole," *CBC News*, September 12, 2007, http://www.cbc.ca/news/canada/british-columbia/story/2007/09/12/bc-ramsay.html (accessed December 18, 2012); Justice for Girls, "Court Case Summaries R. v. David William Ramsay," undated, http://www.justiceforgirls.org/justicesystemmonitoring/cc_Ramsay%20Updated.html (accessed December 18, 2012).

[46] See Justice for Girls, "Court Case Summaries R. v. David William Ramsay;" Petti Fong, "RCMP mistake halts B.C. sex case Mountie accused of buying sex from teens," *The Globe and Mail*, October 5, 2006.

[47] "Former judge David Ramsay dies in jail," *The Vancouver Sun*, January 20, 2008, http://www.canada.com/vancouversun/news/story.html?id=8de2faob-83co-48e3-a35d-3846e3d5f490&k=68738 (accessed December 18, 2012).

part because of the unresolved questions about who else was involved or knew of the abuse. Allegations were made that as many as ten RCMP officers were involved in sexually exploiting and abusing the girls.

At age 13, Celynn Cadieux became one of Ramsay's victims. She died in April 2007 at the age of 22.[48] Her father Bob Sandbach told Human Rights Watch that police officers were involved in the sexual exploitation of his daughter:

> We were sitting in the car driving to Rock Creek, going to church, she was starting to cry. The only way I can explain it is if your child came to you and said the neighbor's kid took her favorite toy. She is sobbing – the sincerity in her body told me exactly what she said happened… For sexual favors [the police] would stop her on the road and put their hands down her pants saying they were searching her [for drugs] ... She was 18, 17.[49]

The RCMP investigated the allegations of police involvement in the sexual exploitation but only after delays.[50] An RCMP review board dismissed disciplinary action brought against an officer who was alleged to have paid a child $60 for oral sex and then struck her in the face when she insisted he use a condom.[51] The board dismissed the action because it was taken more than one year after the commanding officer became aware of the allegations.[52] Other officers were investigated but none were criminally charged in the matter.[53] Calls from indigenous community leaders for a formal inquiry into the Ramsay situation were not

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[48] "Young woman who helped convict B.C. judge mourned," *CBC News*, Thursday April 12, 2007, http://www.cbc.ca/news/canada/british-columbia/story/2007/04/12/bc-woman.html (accessed December 18, 2012).

[49] Human Rights Watch interview with Bob Sandbach, British Columbia, July 2012.

[50] "RCMP's internal probe fizzled," *The Vancouver Province*, November 27, 2007, http://www.canada.com/story_print.html?id=601f98b1-eddd-43a0-9809-fd7e04f9a17a&sponsor (accessed December 18, 2012).

[51] "Suspended Mountie to return to duty," *The Vancouver Sun*, July 10, 2007, http://www.canada.com/vancouversun/news/westcoastnews/story.html?id=5d9f4899-2a62-470a-b57b-e1d09a61ac79 (accessed December 22, 2012).

[52] Ibid.

[53] The officer whose disciplinary action was dismissed and another who was investigated each sued the RCMP over the investigation. "2nd Mountie sues RCMP over sex crime probe," *CBC News*, September 17, 2008, http://www.cbc.ca/news/canada/british-columbia/story/2008/09/17/bc-rcmp-law-suit.html (accessed January 26, 2013).

heeded.[54] In the absence of a public review of the events, the community has little assurance that the guilty were held accountable.

Long after the Ramsay case came to light, reports continue to circulate in Prince George about connections linking the law enforcement and legal establishments with use of children in sex work and other forms of child sexual exploitation. An indigenous woman who had spent a lot of her youth in group homes for children in the custody of child welfare services told Human Rights Watch that four or five years ago she went with a girl from a group home to that girl's court appearance:

> My "sister" worked in the shacks [as a prostitute]. I was waiting for her for 45 minutes to say goodbye to people at the courthouse. I asked, "How do you know these people?" "They're my regulars," she said. Judges, lawyers, police… She killed herself a month before her 19th birthday.[55]

Earlier Incidents of Police Abuse

In the course of our research into the current relationship between police and indigenous communities in British Columbia, Human Rights Watch spoke to several women whose alleged experience of abuse at the hands of the police dated back decades, but who were still waiting for their cases to be taken seriously so they could see justice. The scarring of their experiences and determination to seek redress has not waned as the decades have passed. For example, Human Rights Watch interviewed Georgia I. who wants British Columbia's attorney general, in whose department the IIO is based, to provide justice for her rape almost 40 years ago:

> When I was 16 I was raped by a police officer and became pregnant. I got an abortion because otherwise I would have done it to myself with a coat hanger…. I was working for a police officer who had a pizza joint. Some of his young officers would come in to eat and one night one offered me a ride home. That was the first time he raped me. The second time he caught me. I didn't ask for a ride, but he got me…. I'm looking at filing an application to

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[54] "Ramsay case a lesson, say community activists," *CBC News*, June 2, 2004, http://www.cbc.ca/news/canada/british-columbia/story/2004/06/02/bc_judge_reax20040602.html (accessed December 18, 2012).

[55] Human Rights Watch interview with Ashley G., British Columbia, July 2012.

> the Attorney General about the rape. He [the perpetrator] is still on the force … how many other young girls has he hurt, as he hurt me....[56]

Likewise in a series of incidents in 1990 and 1991, Elaine H. said she was harassed by one police officer and then by a second officer. She described the daily harassment of the first:

> At the time I was a single aboriginal woman from here. I was freshly divorced.... I hadn't dated in 11 years. I went out to a pub with a friend. A gentleman came up trying to be really cute and I said, "I'm sorry, I'm not ready to meet anyone. I'm not interested in male companionship." He was a police officer and he stalked me for a year and a half. He would park outside of my house or pull up next to my car. He'd pull me over anytime.... It got so bad I couldn't go to the grocery store because he'd park behind my car ... if I was at the bank, he'd park behind my car ... if I was at the video store ... anywhere my vehicle went ... this man would pull behind me … he phoned me on my birthday to tell me he was leaving town and to apologize for being a nuisance, as he would call it, I said ... a nuisance ... you stalked me, I became a mom who couldn't even come out of my house because I was too scared to come out....[57]

Elaine H. reported the stalking to the Commission for Public Complaints against the RCMP, but they were dismissive of her complaint and failed to take remedial action.[58]

Human Rights Watch researchers were struck when carrying out this research by the high levels of fear of police among the women interviewed, levels of fear that Human Rights Watch normally finds in communities in post-conflict or post-transition countries such as Iraq where security forces have played an integral role in state abuses and enforcement of authoritarian policies. The palpable fear of the police was accompanied with a notable matter of fact manner when mentioning mistreatment by police, reflecting a normalized expectation that if one was an indigenous woman or girl police mistreatment is to be anticipated.

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[56] Human Rights Watch interview with Georgia I., British Columbia, July 2012.

[57] Human Rights Watch interview with Elaine H., British Columbia, July 2012.

[58] Ibid.

Missing and Murdered Women in BC and the Highway of Tears

The Native Women's Association of Canada documented 160 cases of indigenous women and girls who went missing or were murdered in British Columbia between the 1960s and 2010, significantly more than any other province or territory in Canada.[59] The province also had the highest unsolved rate of murders of indigenous women and girls.[60] The 724-kilometer stretch of Highway 16 that runs through small rural towns between Prince George and Prince Rupert has come to be called the Highway of Tears, because of the murders and disappearances that have occurred in its vicinity. Since 1969, dozens of women and girls – perhaps more than 40 – have gone missing or been murdered in close proximity to three highways in northern and central BC (Highways 16, 97, and 5).[61] The RCMP includes 18 murders and disappearances in its roster of Highway of Tears cases.[62] However, indigenous community estimates have always been higher than the numbers maintained by the RCMP due, in large part, to the RCMP's requirement for the disappearance or murder to have happened within a mile of Highway 16, 97, or 5 to be included in its E-PANA project, a special task force formed to investigate unsolved cases related to the Highway of Tears. A 2006 report by several indigenous groups about the Highway of Tears referenced community activities in memory of 32 victims.[63] Later estimates have topped 40.[64] Media reports highlight the fact that a number of the victims were hitchhiking at the time of their disappearance, but circumstances in other cases have varied.[65] Indigenous women are

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[59] Native Women's Association of Canada, "Fact Sheet: Missing and Murdered Aboriginal Women and Girls in British Columbia," 2010, www.nwac.ca/programs/sis-research (accessed December 13, 2012), p. 1.

[60] Ibid, p. 5.

[61] "The [Missing Women] Commission heard that the number ranges from 18 to 43 girls and women. What is clear is that the majority are Aboriginal and most were young, between the ages of 14 and 25." Linda Locke, QC, Missing Women Commission of Inquiry, "Standing Together and Moving Forward: Report on the Pre-Hearing Conference in Prince George and the Northern Community Forums," February 2012, http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Report-on-the-Pre-Hearing-Conference-in-Prince-George-and-the-Northern-Community-Forums-00263779.pdf (accessed January 8, 2013), p. 8.

[62] RCMP, "Project E-PANA," September 25, 2012, http://bc.cb.rcmp-grc.gc.ca/ViewPage.action?siteNodeId=1525&languageId=1&contentId=-1 (accessed December 13, 2012).

[63] Lheidli T'enneh First Nation, Carrier Sekani Family Services, Carrier Sekani Tribal Council, Prince George Native Friendship Center, and Prince George Nechako Aboriginal Employment & Training Association, "A collective voice for the victims who have been silenced: The Highway of Tears Symposium Recommendations Report," June 16, 2006, www.ubcic.bc.ca/files/PDF/highwayoftearsfinal.pdf (accessed January 30, 2013), pp. 10, 33.

[64] Canadian Feminist Alliance for International Action, "Disappearances and Murders of Aboriginal Women and Girls in Canada Submission to the United Nations Committee on the Elimination of Racial Discrimination," January 2012, http://www2.ohchr.org/english/bodies/cerd/cerds80.htm (accessed December 18, 2012), p. 11.

[65] Jessica McDiarmid, "B.C. Highway of Tears: RCMP accused of not taking women's disappearances seriously," *Toronto Star*, December 28, 2012, http://www.thestar.com/news/gta/article/1308261--b-c-highway-of-tears-rcmp-accused-of-not-taking-women-s-disappearances-seriously (accessed January 25, 2013); Wendy Leung, "B.C. Hitchhikers Left to 'Highway of Tears'

disproportionately represented among the missing and murdered. Of the 18 Highway of Tears victims identified by the RCMP, 10 are indigenous.

Investigations

Human Rights Watch did not conduct a case-by-case review of the Highway of Tears murders and disappearances. We interviewed family members of several victims and community members familiar with the cases (including some that are not on official Highway of Tears lists). We also reviewed media reports about the investigations of cases of missing and murdered indigenous women and girls in order to identify persistent problems in police response. Family members reported their experiences with the police, telling us that they felt the investigating officers were biased against the victims because they were indigenous women and girls. As indicated above, this distrust has roots in experiences of discrimination and neglect that stretch back decades. One woman whose sister was murdered in the late 1960s told Human Rights Watch that "[the police] assumed because she was Indian that she went out drunk and went out and asked for it. She had a tampon and they played it up that she used this for birth control.... Why not treat everyone's case the same way?"[66]

The sister of another young woman who went missing and was ultimately found murdered in the 1990s, said that discriminatory police assumptions misdirected the focus of the search:

> The police said, "Oh, she probably just needed a break from you guys. She probably just ran away." We tried to say that this was out of character, that she could leave any time she wanted and say where she was going. So they never believed us. They had my mom on this wild goose chase. She thought she was going to go to Vancouver because they put it into her head that she might be there. We would have looked local. That really threw things off, instead of looking in our own hometown where she was [found murdered].[67]

Mercy," *Women's eNews*, November 18, 2007, http://womensenews.org/story/the-world/071118/bc-hitchhikers-left-highway-tears-mercy (accessed January 25, 2013).

[66] Human Rights Watch interview with Irene P., British Columbia, July 2012.

[67] Human Rights Watch interview with Patricia L., British Columbia, July 2012.

A number of interviewees pointed to the disappearance of Nicole Hoar in 2002 as a turning point in the Highway of Tears cases. Hoar, a white, 25-year-old tree planter, disappeared after setting out from Prince George in June 2002 with plans to hitchhike to visit her sister. She has never been found. Some community members, including a former police officer, point to Hoar's race as the reason her case garnered extensive media attention, and say that the police also expended more resources on her case.[68] Hoar's family has stood in solidarity with the indigenous families who have lost loved ones on the highway. Some community members were quite pointed in their assessment of discrimination in the effort and approach of the police to the missing women cases. As one RCMP member commented, "The native girls on the highway – I was up there. If they're natives, nobody gives a shit."[69] An elected official told Human Rights Watch, "We may need a particular inquiry about Highway 16 to look at whether we are resourcing that particular investigation appropriately. It took too long for people to connect the dots between the incidents of women going missing."[70]

The police have made some significant improvements in the investigations of these cases. In 2006, the RCMP established Project E-PANA with a dedicated team of investigators to look into cases involving women who went missing or were murdered within one mile of Highways 16, 97, or 5. The 18 cases they identified as meeting that criteria span 1969 to 2006.[71] The RCMP reports that since it started the project, it has investigated 1,413 persons of interest, collected 750 DNA samples, administered 100 polygraphs, and conducted 2,500 interviews.[72] In September 2012, the project announced a major breakthrough in their investigations. DNA evidence conclusively linked a US man, Bobby Jack Fowler, to the murder of 16-year-old Colleen MacMillen in 1974.[73] Fowler died in an Oregon prison in 2006,

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[68] Human Rights Watch interview with RCMP officer, British Columbia, July 2012, community leader, British Columbia, July 2012; and community advocate, British Columbia, July 2012.

[69] Human Rights Watch group interview with five RCMP officers, British Columbia, August 2012.

[70] Human Rights Watch telephone interview with Bob Simpson, Independent Member of the Legislative Assembly of British Columbia (MLA) for Cariboo North, July 2012.

[71] RCMP, "Project E-PANA," September 25, 2012, http://bc.cb.rcmp-grc.gc.ca/ViewPage.action?siteNodeId=1525&languageId=1&contentId=-1 (accessed December 13, 2012).

[72] Lori Culbert, "Thirty-nine years later, family of Highway of Tears victim Gale Weys hopes for answers," *The Vancouver Sun*, September 26, 2012, http://www.vancouversun.com/news/family+highway+tears+victim+gale+weys+appeals+tips/7303801/story.html (accessed December 13, 2012).

[73] RCMP, "E-PANA Announce Significant Development and Request for Public Assistance," September 25, 2012, http://bc.cb.rcmp-grc.gc.ca/ViewPage.action?siteNodeId=1075&languageId=1&contentId=27095 (accessed December 13, 2012).

after being sentenced to 16 years in prison in 1996 for attempted rape, assault, and kidnapping convictions.[74] He is considered a suspect in two other Highway of Tears cases, a person of interest in seven, and he has been excluded as a suspect in eight.

Accountability

> Unless we have accountability there will be no justice, no closure, no equality.
>
> —Family member of a Highway of Tears victim[75]

A provincial Missing Women Commission of Inquiry that concluded in November 2012 provided important, but insufficient, insight into some of the issues related to missing and murdered indigenous women and girls including the underlying factors that put them at risk and the shortcomings of the authorities' response. The inquiry was established in 2010 to look into the police response to the cases of missing and murdered women in the Downtown Eastside of Vancouver between January 1997 and February 2002 – many of whom were indigenous women, sex workers, and/or drug users – and to make recommendations to improve investigations of missing and murdered women.[76] In his final report, Commissioner Wally Oppal concluded that "the initiation and conduct of the missing and murdered women investigations were a blatant failure."[77] Among other policing problems, he pointed to poor report-taking and follow up on reports of missing women; failure to consider and properly pursue all investigative strategies; and failure of

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[74] "Deceased U.S. convict linked to 3 B.C. cold cases," *CBC News*, September 25, 2012, http://www.cbc.ca/news/canada/british-columbia/story/2012/09/25/bc-highway-tears-macmillen-fowler.html (accessed December 13, 2012).

[75] Human Rights watch telephone interview with Cindy N., November 2012.

[76] Missing Women's Commission of Inquiry, "Terms of Reference," 2012, http://www.missingwomeninquiry.ca/terms-of-reference/ (accessed December 18, 2012). Many of these murders and disappearances were ultimately linked to serial killer Robert Pickton. Pickton was convicted of six counts of second-degree murder in 2009 and is currently serving a life sentence. In August 2010, the crown stayed the remaining 20 charges of murder against him. Reports of women missing from the Downtown Eastside of Vancouver started in the early 1980s and yet the police did not have their first discussion of the possibility of a serial killer until 1991. Pickton was arrested in 1997 for an attempted murder, yet the charge was dropped in 1998. Part of the Missing Women Commission of Inquiry's brief was to examine why the 1997 charge was stayed. For additional information, see *R v. Pickton*, 2009 BCCA 299, http://www.courts.gov.bc.ca/jdb-txt/CA/09/02/2009BCCA0299cor1.htm (accessed December 18, 2012); Wally T. Oppal, QC, "Forsaken: The Report of the Missing Women Commission of Inquiry," Executive Summary, November 19, 2012, http://www.ag.gov.bc.ca/public_inquiries/index.htm (accessed December 18, 2012), pp. 4, 29-40.

[77] Wally T. Oppal, QC, "Forsaken: The Report of the Missing Women Commission of Inquiry," Executive Summary, November 19, 2012, http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf (accessed December 26, 2012), p. 26.

internal review and external accountability mechanisms. The report identifies overarching reasons for these failures, including discrimination, system institutional bias, and political and public indifference.[78]

The commission included consultations in the north and a study based on those consultations, but the murders and disappearances in the north were not included as part of its formal mandate.[79] The commission's final report included a proposed "measure" that the government develop and implement an enhanced public transit system to provide a safer travel option connecting the Northern communities, particularly along Highway 16.[80] BC's Ministry of Transportation and Infrastructure has announced that it will be developing a targeted consultation plan to address this recommendation.[81] Nonetheless, the core findings of the commission, while illuminating, are specific to Vancouver's Downtown Eastside and do not necessarily translate to the rural north. As one family member of a Highway of Tears victim told Human Rights Watch, "The only thing I would like to see is a public inquiry into missing and murdered women in this area – Prince George to Prince Rupert specifically. There needs to be one specifically for the north. The dynamics are different and the demographics are different."[82]

The Missing Women Commission of Inquiry failed to ensure meaningful participation of indigenous and women's groups including the Native Women's Association of Canada. The commission floundered when many of the nongovernmental organizations (NGOs) granted standing in the inquiry were unable to partake due to the lack of provincial government funding for the legal representation the groups would have needed to participate in the public hearings and review the extensive documentation involved.[83] The majority of civil

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[78] Ibid, p. 28.

[79] See Missing Women's Commission of Inquiry, "Terms of Reference;" Missing Women's Commission of Inquiry, "The Study Commission," 2012, http://www.missingwomeninquiry.ca/reports-and-publications/ (accessed December 13, 2012).

[80] Wally T. Oppal, QC, "Forsaken: The Report of the Missing Women Commission of Inquiry," Executive Summary, November 19, 2012, http://www.missingwomeninquiry.ca/wp-content/uploads/2010/10/Forsaken-ES-web-RGB.pdf (accessed December 26, 2012), p. 160.

[81] British Columbia Ministry of Justice, "Government takes immediate action on missing women report," December 17, 2012, http://www2.news.gov.bc.ca/news_releases_2009-2013/2012JAG0324-002043.pdf (accessed December 23, 2012).

[82] Human Rights Watch interview with Patricia L., British Columbia, July 2012.

[83] "May 24, 2011 – Statement by Commissioner Wally Oppal, Q.C., Regarding BC Government Decision on Funding For Groups Participating in the Missing Women Inquiry," Missing Women Commission of Inquiry news release, May 24, 2011, http://www.missingwomeninquiry.ca/2011/05/may-24-2011-statement-by-commissioner-wally-oppal-q-c-regarding-bc-government-decision-on-funding-for-groups-participating-in-the-missing-women-inquiry/ (December 13, 2012).

society groups representing the interests of the missing and murdered indigenous women then refused to engage with the inquiry, citing concerns that the failure to involve the affected communities in determining the inquiry's terms of reference and the lack of representation for groups during the public hearings had made the process exclusionary and discriminatory.[84]

The resignation of Robyn Gervais, the inquiry's first appointed independent counsel for indigenous interests, over the lack of attention to indigenous communities' concerns – including the entrenched discrimination, poverty, and economic and social inequalities that contribute to indigenous women's exposure to violence – further undermined the inquiry's legitimacy.[85] Gervais told Human Rights Watch:

> We need a national inquiry that really looks at the issue of why are so many indigenous women going missing. We could hear strategies from different provinces, hear from First Nations around Canada about what will work in their communities. We could address the RCMP. Something like the truth and reconciliation commission around residential schools, in a format that would work for communities – meetings, not like a trial – to look at different needs of the communities. Transport and hitchhiking may be problems in one community but not in another.

Policing in British Columbia

Policing falls within the responsibilities of the provincial government. The province of British Columbia has chosen to contract policing in most areas to the Royal Canadian Mounted Police (RCMP), a national police force headquartered in Ottawa, Ontario. Eleven municipalities operate their own independent police departments, but in the rest of the province, where 70 percent of the population resides, the detachments of the British

[84] "Groups affirm boycott of discriminatory Missing Women Commission," British Columbia Civil Liberties Association news release, April 10, 2012, http://bccla.org/news/2012/04/groups-affirm-boycott-of-discriminatory-missing-women-commission/ (accessed December 13, 2012). For an analysis of the Missing Women Commission of Inquiry and its lessons for public inquiries, see British Columbia Civil Liberties Association, Pivot Legal, and West Coast Legal Education and Action Fund, "Blueprint for an Inquiry Learning from the Failures of the Missing Women Commission of Inquiry," 2012, http://bccla.org/our_work/blueprint-for-an-inquiry-report/ (accessed December 17, 2012).

[85] Ian Mulgrew, "MULGREW: Break with aboriginal community destroys inquiry's credibility," *The Vancouver Sun*, March 6, 2012, http://www.vancouversun.com/life/MULGREW+Break+with+aboriginal+community+destroys+inquiry+credibility/6262051/story.html (accessed December 13, 2012).

Columbia "E" Division of the RCMP serve as the provincial police force.[86] In April 2012, the province renewed its contract with the RCMP for twenty years.[87] Human Rights Watch conducted the research for this report in areas policed by the RCMP.

The "E" Division has been heavily criticized for its policing practices by civil liberties advocates and others. The British Columbia Civil Liberties Association conducted a series of workshops in communities across northern and rural BC and released a report in 2011 identifying problems in policing, including poor treatment of aboriginal people, inadequate police accountability, inadequate holding cells in police facilities, and a lack of de-escalation skills among officers for resolving confrontations with members of the public with a minimum use of force.[88] Human Rights Watch saw evidence of the persistence of all these problems while researching this report.

A recent class action law suit brought by RCMP officers alleges gender-based discrimination and sexual harassment within the national police force, raising added concerns about discrimination within police operations. More than 200 current or former female RCMP officers have reportedly sought to join the suit.[89] Corporal Catherine Galliford, who had been a spokesperson for the RCMP in BC, has filed a separate suit alleging harassment over two decades that included groping, unwanted sexual advances, and a range of verbal and physical harassment from other officers.[90] The RCMP has denied her claims. [91] A recent survey of 426 RCMP members found that female members do not have confidence in the process for addressing sexual harassment, fearing retaliation and

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[86] Braidwood Inquiry, "Part 5 British Columbia Police Department's Policies on Conducted Energy Weapon Use," 2008, http://www.braidwoodinquiry.ca/report/P1_html/05-PoliciesOnCEWUse.php (accessed December 13, 2012).

[87] "New B.C. RCMP contract empowers Province, municipalities," British Columbia Newsroom, BC Government Online News Source news release, March 21, 2012, http://www.newsroom.gov.bc.ca/2012/03/new-bc-rcmp-contract-empowers-province-municipalities.html (accessed January 9, 2013); "RCMP gets 20-year contract renewal in B.C.," *CBC News*, March 21, 2012, http://www.cbc.ca/news/canada/british-columbia/story/2012/03/21/bc-rcmp-contract.html (accessed December 13, 2012).

[88] BCCLA, "Small Town Justice: A report on the RCMP in Northern and Rural British Columbia, " March 22, 2011, http://bccla.org/our_work/small-town-justice-a-report-on-the-rcmp-in-northern-and-rural-british-columbia/ (accessed December 13, 2012).

[89] "High-profile former mountie joins RCMP harassment lawsuit," *CBC News*, August 2, 2012, http://www.cbc.ca/news/canada/british-columbia/story/2012/08/02/bc-rcmp-harassment-valerie-maclean.html (accessed January 30, 2013).

[90] "B.C. Mountie sues force for harassment," *CBC News*, May 9, 2012, http://www.cbc.ca/news/canada/british-columbia/story/2012/05/09/bc-galliford-civil-claim.html (accessed December 31, 2012).

[91] "RCMP says force is changing after sexual harassment allegations," *CBC News*, November 8, 2012, http://www.cbc.ca/news/canada/british-columbia/story/2012/11/07/bc-rcmp-galliford.html (accessed December 31, 2012).

lacking assurance that perpetrators will be held accountable.[92] A male indigenous police officer commented that he, too, was exposed to the misogynist attitudes of the police in BC: "They [other RCMP members] used to fax racist and sexist jokes around and wonder why I didn't laugh – I'm First Nations and I have sisters."[93]

Police Complaint Mechanisms

In British Columbia, three bodies with varying jurisdiction handle complaints of police misconduct. First, the provincial Office of the Police Complaint Commissioner addresses complaints against police officers belonging to members of municipal police forces.[94]

Second, the national Commission for Public Complaints against the RCMP (CPC) has jurisdiction over complaints against RCMP members. Since our research took place in areas policed by the RCMP, the CPC would be the option available to the women and girls interviewed for this report. The CPC's role is primarily to monitor the processing of complaints by the RCMP. The main investigative authority resides with the RCMP and the RCMP ultimately determines what remedial action will be taken. When a complaint is received, the RCMP arranges for an investigation according to its procedures (outlined below) and reports back to the complainant.[95] If the complainant is not satisfied, the CPC reviews the RCMP's report and if they find it unsatisfactory, they can investigate the complaint themselves, ask the RCMP to investigate further, hold a public hearing, or review the complaint without further investigation. After taking whichever step is chosen, the CPC prepares an interim report for the RCMP Commissioner who then informs the CPC what actions, if any, will be taken. That result is included in a final report by the CPC, which marks the end of the process.

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[92] Ibid.

[93] Human Rights Watch interview with RCMP officer, British Columbia, July 2012.

[94] *Police Act*, RSBC 1996, c 367, Part 9, available at http://www.qp.gov.bc.ca/statreg (accessed December 13, 2012). See also Office of the Police Complaints Commissioner, "About Us," 2012, https://www.opcc.bc.ca/aboutus/ (accessed December 13, 2012).

[95] Commission for Public Complaints Against the RCMP, "Complaint and Review Process Flowchart," December 7, 2012, http://www.cpc-cpp.gc.ca/cnt/srv/sta-norm/cp-pp-eng.aspx (accessed December 13, 2012). See also *RCMP Act*, RSC 1985, c. R-10, http://laws-lois.justice.gc.ca/eng/acts/R-10/ (accessed December 13, 2012). Parts VI and VII of the *RCMP Act* detail the duties of the CPC.

In 2011, the provincial legislature created a third body to handle serious allegations of police misconduct, the Independent Investigations Office (IIO).[96] Civil society has hailed the establishment of the IIO as a major step forward in ensuring police accountability. The office became operational in September 2012 and is currently mandated to provide independent civilian "criminal investigations regarding police-related incidents involving death or serious harm."[97] Serious harm is defined by statute to mean "injury that (a) may result in death, (b) may cause serious disfigurement, or (c) may cause substantial loss or impairment of mobility of the body as a whole or of the function of any limb or organ."[98] Significantly, this definition does not provide the office with jurisdiction in most cases of police rape and other forms of sexual assault.

The Canadian authorities need urgently to address this omission if they are to ensure accountability for the worst cases of officer misconduct. The legislation creating the office provided for a potentially broader mandate, stating that reporting to the IIO would be required when a police officer "may have contravened a prescribed provision of the *Criminal Code* or a prescribed provision of another federal or provincial enactment."[99]

However, no regulation exists prescribing the particular provisions, which means that portion of the act is not operational. Minister of Justice and Attorney General Shirley Bond has indicated that the government "will wait until the IIO has been in operation for a sufficient period of time to assess its workload and capacity before deciding whether to expand the IIO's mandate through regulations. Prior to January 1, 2015, a special committee of the Legislative Assembly will review the general operations of the IIO and make recommendations as it sees appropriate."[100]

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[96] *Bill 12 – 2011 Police (Independent Investigations Office) Amendment Act*, was given Royal Assent on June 2, 2011 (Votes and Proceedings of the Legislative Assembly of British Columbia, "Progress of Bills," October 3, 2011, http://www.leg.bc.ca/39th3rd/votes/progress-of-bills.htm (accessed December 13, 2012)). The duties of the IIO are now provided for in Part 7.1 of the BC *Police Act*.

[97] British Columbia Ministry of Justice, "Independent Investigation Office," 2012, http://www.pssg.gov.bc.ca/policeservices/iio/index.htm (accessed December 13, 2012).

[98] *Police Act*, RSBC 1996, c 367, s 76, available at http://www.qp.gov.bc.ca/statreg (accessed December 13, 2012).

[99] Ibid, s 38.09(1)(b) and 38.10(1)(c).

[100] Email communication from Shirley Bond, Minister of Justice and Attorney General of British Columbia, to Human Rights Watch, December 12, 2012.

The RCMP rules for the reporting and investigation of complaints of police misconduct recognize the jurisdiction of the IIO. The operations manual for "E" Division calls for reporting to the IIO in cases of a major police incident.[101] Where the IIO mandate does not apply or the office declines to investigate, the RCMP operations manual indicates that the preferred course of action is to have an external, non-RCMP police agency investigate.[102] In British Columbia, this could be one of the municipal police forces, or if there is no local force available, then an extra-provincial police force. If that is not possible, another RCMP division can be called in to investigate. In the event none of these resources are available, the independent external investigation will be delegated to the "appropriate 'E' Division resources."[103]

In June 2012, the government introduced legislation (Bill C-42) that would overhaul RCMP officer grievance and discipline procedures; revise the process for addressing sexual harassment complaints within the RCMP; and create a new Civilian Review and Complaints Commission to replace the Commission for Public Complaints Against the RCMP.[104] The new commission's procedures for investigations of serious incidents would largely follow the RCMP rules outlined above, in that the provinces would be given the opportunity to refer an investigation to their own independent bodies like the IIO, or else the RCMP would refer the investigation to an external police force or, as a last resort, investigate itself. The new commission would have the authority to appoint civilian observers to assess an investigation's impartiality if it were taken up by either the RCMP or an external police force.[105] The legislation is pending, and has been criticized by some for its failure to grant

[101] RCMP "E" Division Operational Manual, Chapter 54.1. RCMP External Investigation or Review, sec. 1.1.1 and sec. 3.8., on file with Human Rights Watch. The IIO and the RCMP also have a Memorandum of Understanding setting out their responsibilities. British Columbia Ministry of Justice, "Independent Investigation Office," 2012, http://www.pssg.gov.bc.ca/policeservices/iio/index.htm (accessed December 13, 2012).

[102] RCMP Headquarters Operational Manual, Chapter 54.1. RCMP External Investigation or Review, sec. 2.3., on file with Human Rights Watch; RCMP "E" Division Operational Manual, Chapter 54.1. RCMP External Investigation or Review, sec. 2.6.

[103] RCMP Headquarters Operational Manual, Chapter 54.1. RCMP External Investigation or Review, sec. 2.5; RCMP "E" Division Operational Manual, Chapter 54.1. RCMP External Investigation or Review, sec. 14.2.

[104] Parliament of Canada, LEGISinfo, "C-42, An Act to Amend the Royal Canadian Mounted Police Act and to make related and consequential amendments to other Acts," June 2, 2011-present, http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=5683261 (accessed January 9, 2013).

[105] Public Safety Canada, "Improving the Transparency and Public Accountability of Criminal Investigations of Serious Incidents involving RCMP Members," June 20, 2012, http://www.publicsafety.gc.ca/media/nr/2012/nr20120620-2-eng.aspx (accessed December 18, 2012).

sufficient information access powers to the new commission or for its lack of protection for whistleblowers.[106]

[106] See Paul Kennedy, "Bill C-42 fails to provide real accountability over the RCMP," *iPolitics.ca*, October 29, 2012, http://www.ipolitics.ca/2012/10/29/paul-kennedy-bill-c-42-fails-to-provide-real-accountability-over-the-rcmp/ (accessed December 18, 2012); Government of Canada, House of Commons Standing Committee on Public Safety and National Security, Minutes of Proceedings, 41st Parl., 1st Sess., Meeting No. 55, October 29, 2012, http://mppac.ca/wp-content/uploads/2012/09/Bill_C-42_MPPAC_Presentation_Committe_Oct_29_-2012.pdf (accessed December 18, 2012), p. 12.

II. Abusive Policing of Indigenous Women and Girls

The following chapter presents qualitative data about police abuse gathered by Human Rights Watch in 10 towns in northern British Columbia, from Prince George to Prince Rupert and as far south as Williams Lake. Human Rights Watch does not contend that this information proves a pattern of routine systematic abuse, but when such incidents take place in the context of an already deeply fractured relationship with the police they have a particularly harmful, negative impact. Some of the accounts of harm done to women and girls by police appear to be the result of poor policing tactics, over aggressive policing, and insensitivity to the welfare and vulnerability of the victims. Others however, such as the alleged sexual assaults of women by members of the police, are deliberate criminal acts and could only be perpetrated by the particular officers in the expectation that they will never have to answer for their crimes.

Obstacles to documenting police abuse include victims' fear of retaliation by police and fear of public exposure, particularly in small towns where victims who provide information may be easily identified. While the testimonies that Human Rights Watch gathered do not establish the prevalence of abuse, they do, together with other studies, raise serious concerns about police practices, police misconduct, and mistrust of police, all of which impact the safety of indigenous women and girls.

Indigenous Girls and Women in the Criminal Justice System

In British Columbia, as in Canada as a whole, disproportionate numbers of indigenous youth, and indigenous girls in particular, come into conflict with the criminal justice system.[107] According to Statistics Canada, in British Columbia Aboriginal girls, although 8 percent of the overall girl population,[108] make up 54 percent of girls held in pretrial custody, 50 percent of girls sentenced to custody, and 48 percent girls on probation.[109]

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[107] Christopher Munch, Statistics Canada, "Youth correctional statistics in Canada, 2010/2011," *Juristat*, catalogue no. 85-002-X, October 11, 2012, http://www5.statcan.gc.ca/bsolc/olc-cel/olc-cel?catno=85-002-X201200111716&lang=eng (accessed December 17, 2012), pp. 3, 7.

[108] Human Rights Watch calculations based on data in Statistics Canada, "2006 Census data products," March 15, 2012, http://www12.statcan.gc.ca/census-recensement/2006/dp-pd/index-eng.cfm (accessed January 16, 2013).

[109] See Paul Kennedy, "Bill C-42 fails to provide real accountability over the RCMP," iPolitics.ca, October 29, 2012, http://www.ipolitics.ca/2012/10/29/paul-kennedy-bill-c-42-fails-to-provide-real-accountability-over-the-rcmp/ (accessed December 18, 2012); Government of Canada, House of Commons Standing Committee on Public Safety and National Security,

Victims of abuse, as well as community activists interviewed by Human Rights Watch, believe that RCMP officers bring a general presumption of criminality to their interactions with indigenous girls in the north.[110] Sometimes police appear to target indigenous girls and women for the most trivial of reasons. "I used to use eye make-up and put dots and hearts around my eyes with liquid eyeliner," said Sophie B., a young woman who was punched by an officer in 2011 when she was 17.[111] After filing a complaint about the assault, "they [the police] were telling me that I was gang-related because I had tattoos on my face."

Police insisted on handcuffing a 17-year-old girl, Cara D., when transporting her to the hospital for medical attention after her mother choked her and her grandmother broke her nose during a fight in late 2011. "The cops were calling me 'a little bitch.' …. They told me I had to be handcuffed in the back of the car… The ambulance attendant saw me and was saying to the cops to take the handcuffs off me," Cara told Human Rights Watch.[112] She summed up the approach taken by police. "You're just native scum. Cops still treat great some members of society, but if you're teenage, female and native . . ."[113]

Harriet J., a victim service provider in another town, observed that police routinely incarcerate indigenous girls for intoxication if they are found to have consumed alcohol and are in need of transportation home (a particular challenge in northern communities with almost no public transportation), while white girls in the same situation are likely to be driven home by the police.[114] While it is appropriate for police to intervene when children are intoxicated in public because they are in a vulnerable state, the insistence on incarceration with respect to indigenous girls appears to reflect a discriminatory approach.

Evidence, 41st Parl., 1st Sess., Meeting No. 55, October 29, 2012, http://mppac.ca/wp-content/uploads/2012/09/Bill_C-42_MPPAC_Presentation_Committe_Oct_29_-2012.pdf (accessed December 18, 2012), p. 12.

[110] Human Rights Watch interview with Cara D. and Lisa E., British Columbia, July 2012; Human Rights Watch interview with Samantha T., British Columbia, July 2012; Human Rights Watch interview with community service provider (#2), British Columbia, July 2012; Human Rights Watch interview with community service provider (#14), British Columbia, July 2012.

[111] Human Rights Watch interview with Sophie B. and her mother, Kathryn S., British Columbia, July 2012.

[112] Human Rights Watch interview with Cara D. and Lisa E., British Columbia, July 2012.

[113] Ibid.

[114] Human Rights Watch interview with Harriet J., community service provider (#1), British Columbia, July 2012. The same difference in treatment was noted as happening with respect to adults by an indigenous woman whom police officers turned down a ride home and who later saw the same officers giving a ride to two young white women. Human Rights Watch interview with Cindy A., British Columbia, July 2012.

As indigenous girls grow into women, they remain under intense scrutiny from police. Government statistics from 2008 and 2009 show that 35 percent of women admitted to adult-sentenced custody identified as Aboriginal, even though Aboriginal women and men make up only 3 percent of the adult Canadian population.[115] In British Columbia, Aboriginal women account for more than 30 percent of all female admissions in 2008 and 2009, and yet only make up 4 percent of the general adult female population in the province.[116] In the small towns of the north, a woman's run-ins with the police as a girl, or even those of her older relatives, can set off a cycle of contact with the police. "We're a small community. When officers are new in town, they will take them around and show them which people are a problem. No one gets a fresh chance, even if you want to make a change," said one service provider.[117] An advocate in another town who works with women in prison noted, "Certain last names have been associated with crime for decades, so you're not presumed innocent by the RCMP."[118]

Stark as they are, the statistics on the disproportionate numbers of indigenous women in sentenced custody fail to capture the full extent of the problem. Not included in these numbers is the regular temporary detention of women in the "drunk tank" who are not charged. In community after community visited by Human Rights Watch, women, girls, advocates, and service providers reported that the police appeared to target indigenous people for public intoxication arrests. In some reported incidents, the police abused their discretion by detaining people who were not intoxicated.

One indigenous woman, Jennifer R., told Human Rights Watch:

> Three years ago we were coming home from fireworks. I was with my hubby [then boyfriend]. There were these cops picking on these native guys and

[115] At 35 percent, the disproportionate representation of Aboriginal women is greater than that of Aboriginal men who make up 23 percent of men admitted to adult sentence custody, according to Statistics Canada. Tina Mahony, "Women and the Criminal Justice System," February 24, 2012, http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11416-eng.htm (accessed December 17, 2012).

[116] Statistics Canada, "Chart 13 Proportion of adults admitted to sentenced custody who were Aboriginal, 2008/2009," February 24, 2012, http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11416/c-g/c-g013-eng.htm (accessed January 16, 2013); Human Rights Watch calculations based on data in Statistics Canada, "2006 Census data products," March 15, 2012, http://www12.statcan.gc.ca/census-recensement/2006/dp-pd/index-eng.cfm (accessed January 16, 2013).

[117] Human Rights Watch interview with community service provider (#2), British Columbia, July 2012.

[118] Human Rights Watch interview with community service provider (#16), British Columbia, July 2012.

girls and they were just throwing them around. They were yanking them around. One would go to walk away, saying, "I'm going home," and they'd pull her back. Another said, "Yeah, sure, I've had some drinks. I'm just trying to make my way home." The officers just talked over them… I've known [those girls] since I was a little girl. I know they are good girls…I felt for them. I know that they are fragile people.

I piped up – I should have listened to my boyfriend, but I knew them. I said, "Let me take them home with me. I'm sober, I don't do drugs." But they ended up taking me too. They held me to the next day (from 11:30 p.m. to 8am). It was cold. And I hadn't eaten and I was so hungry. Didn't give me any food. Just told me to shut up. Only thing she gave me was a cup for water. It just so happened to be me and my boyfriend's first date. Our first date and we went to the drunk tank and we weren't even drunk. They threatened to keep us over the weekend - said something about "fucking natives."[119]

Community service providers decried the reliance on jailing as a means of addressing public intoxication in communities plagued by high alcoholism rates linked to decades of trauma. "The former [head of the local police detachment] would just pick up intoxicated individuals and throw them in the drunk tank," said one provider who had seen the "drunk tank" become a revolving door. "What is going to happen down the road?"[120] The aggressive policing of public intoxication also breeds hostility and creates more occasions for outrage to boil over into violent confrontation. When survivors of the residential school system have interactions with police related to their alcohol use, those interactions may be particularly fraught given the abuse they have suffered by authorities.

Providers lamented that police did not have more knowledge of First Nations history, including residential schools, so that they could see individual behavior and current community problems in context. A lack of appreciation for the context was linked both to over-policing as well as to police misconduct. "When we talk about the RCMP and police brutality [against First Nations women], there is a lack of knowledge of the bigger picture,"

[119] Human Rights Watch interview with Jennifer R., British Columbia, July 2012.

[120] Human Rights Watch interview with community service provider (#1), British Columbia, July 2012.

said one social service provider in northern British Columbia working with the homeless and domestic violence survivors. "Why is she there? She's there because our system has failed her. She may be there just coping."[121]

Abusive Policing Tactics

Excessive Use of Force against Girls

Human Rights Watch documented eight incidents in which police physically assaulted or used questionable force against girls under the age of 18. In four of those cases, the girls themselves described the events to us; in the others, our information came from eye witnesses or from parents or service providers with knowledge of the events. The incidents occurred in seven different communities in the north, and four of the eight occurred in 2012. In two of the cases, the police injured girls who they had been called in to protect.

17-year-old girl assaulted by an officer in the back of a police car, 2011

Sophie B. reported to Human Rights Watch that she was walking through a field from a friend's house when she heard people screaming, and shortly after found herself being chased by gang members. Passing a woman on a balcony she asked her to call the police before she hid behind a fence. More than four police cars came, with at least two police officers in each car. "The cops came. They lifted me up and threw me to the ground… they put my arms behind my back and slammed me on the ground," Sophie said. Sophie's mother, Kathryn S., whom she had called earlier because of the gang, arrived at the area soon after. She told Human Rights Watch, "When I got there [Sophie] was laying down on the ground. I noticed she was in a panic attack. When she saw I was there, she calmed down. But the police officer wouldn't let me take her. That got her upset. They said she was violent because she was kicking around and intoxicated." The police officers then picked Sophie up and dragged her to the back of a police car.

Sophie told Human Rights Watch:

> I was yelling at them saying: "I was the one who called for help. Why are you guys chasing me?" And they didn't say anything else… They roughed me up. They handcuffed me and put me in the back of the police car and

[121] Human Rights Watch interview with community service provider (#4), British Columbia, July 2012.

> would not allow my mother to come see me… One of them came up and said [through the police car window], "Keep kicking and see what happens." … He punched me in the face more than six times. Half of his body was in the police car. Both my mom and sister saw him punch me. Then my mom came over and saw my face swollen up. I said, "Look what they did to me!" My mom said, "It's going to be okay."

But her mother was not sure it was all going to be okay. Following the beating Sophie endured while handcuffed in the back of the police car, the police took Sophie back to city cells for the night. "All that night I couldn't sleep wondering what was going to happen to her. I kept looking at the clock, counting the hours," she recalled. At city cells, male officers pulled the elastics out of Sophie's hair when they brought her in. She remembered that one said, "Stupid Indian," and that another laughed at her. The next day the family picked her up from jail and they went straight to the hospital. Young Sophie's face was swollen and there were cuts all over her gums and cheek from the impact of the punches hitting her face and shredding the inside of her mouth against the braces on her teeth. "I was walking around with a bandana over my face," she told Human Rights Watch. "It was pretty bad… My face was so bad that they let me go at my job at [a restaurant.]" [122] The family filed a complaint and the RCMP detachment initially retaliated by filing charges against Sophie B. for assaulting an officer. The charges were later dropped and, following an investigation by an external police force, the officer was charged with criminal assault. Those charges are currently pending.

A 15-year-old girl's arm broken by police officer during response to domestic violence call, 2012

> I will never forget that day. It's the worst thing I ever did. I wish I didn't call [the police].
>
> Lena G., British Columbia, July 2012

Lena G. called the police and asked for their help in the spring of 2012 when it seemed that an argument was out of control between her 15-year-old daughter, Emily G., and Emily's 22-year-old boyfriend who had a history of abusive behavior.[123] Police had previously been

[122] Human Rights Watch interview with Sophie B., British Columbia, July 2012.

[123] Human Rights Watch interview with Emily G. and Lena G., British Columbia, July 2012.

called regarding incidents in which Emily's adult boyfriend—the father of her infant daughter who had been committing statutory rape by having a sexual relationship with Emily—had strangled and assaulted her. On this occasion, Lena told the operator that her daughter had said that she would rather die than live in her mother's house, but Lena specifically told the operator that she believed this was a teenage expression of frustration rather than a genuine indication of suicidal feeling. By the time the police responded to the call, the argument had settled down, and Emily and her boyfriend were sitting on opposite sides of the room. Emily described how the situation escalated:

> One of the cops saw me and asked what was happening. I said it had calmed down. I was calm. The cop asked if I was taking anything. I guess he saw [my baby's] medicine on the ground. After [telling him no], I told him that I'm really mad, angry, and stuff and I needed to go for a walk. I went to get my purse and he told me to get my jacket so he could bring me outside. He said he was going to take me to mental health. I told him in a raised voice that I didn't need a jacket. I guess I raised my voice.
>
> The officer who had been talking to [my boyfriend], Constable [Name], told me to calm down. He stopped me by stepping front of me. He was holding the curtain open between the part of the room where I was and where [my boyfriend] was. He had his finger in my face in front of my eyes. I was yelling and telling him to fuck off. He just barely touched my face and I pushed it away. I barely moved his finger. He grabbed my arm and pushed me up against the wall. He pulled my arm way back and pushed it so I was up on my tip toes and that was when my arm broke… He let go and the cuffed arm fell with the cuff and then I felt all the pain. I yelled, "What did you do to my arm?" three times. He handed the cuff over to the other cop and he held it while we walked out.

After some discussion among the officers, an ambulance was called to take Emily to the hospital where an x-ray showed that her arm was broken. Later she had to travel with her family to another city for surgery on her arm. "When we left every single bump on the road was like killing me," Emily said.

Although Emily and Lena reported that police made no mention of concern for her mental state at the hospital, the RCMP subsequently told the press that the officers responded to a suicidal teenager and arrested her under the Mental Health Act as well as for assaulting an officer. An external police investigation into the incident is underway.

A 12-year-old girl injured in attack by police dog, 2012

Police arrested Mary H. after an incident in May 2012 in which she reportedly sprayed someone with bear mace at a fair. Her mother, Rachel H., who was present during Mary's police interview, told Human Rights Watch about the incidents surrounding the arrest, during which Mary was wounded by a police dog:

> I'm a mother of five. She's my youngest. She's had some trouble – run-ins with the police over the last year or two [for theft, mischief, non-violent offenses] ... She just turned 13, she was 12 at the time…With this incident, it seems that the police knew who they were looking for – they knew she was 12. They had to have talked to the people she allegedly assaulted, [who] knew her older sister… The officers knew that the bear mace had been used on the victims. She said she had thrown it away when she was running.
>
> She fled the scene and was hiding. She saw the cops with the dogs coming. She shouted, "I'm only 12 years old." The cops didn't give her an opportunity to give herself up. They didn't warn her that they were going to let the dog loose. The compound she was in was behind a locked fence. They had to use a bolt cutter. She was hiding inside a wooden box. She saw a handler with a ball cap. The dog jumped into the box. The officer looked into the box. The box fell over. The dog was on top of her and started to attack her leg… The photos show punctures from the dog's teeth. Her leg was so swollen. It was more than just a dog bite, it was an attack… She couldn't walk or even hop because of the pressure … She had to stay on the couch for a week and had to go to the hospital to have the bandages changed… the scars are going to be there (on her upper left leg) forever.[124]

[124] Human Rights Watch interview with Rachel H., British Columbia, August 2012.

According to Rachel, the police failed to immediately inform her that her daughter had been arrested, as required by law. After arresting Mary at about 11:30 p.m., the police transported her to the hospital where she requested the officers call her mother. They did not call her mother until she was transported to the jail around 2 a.m.

Investigators from a municipal police department – not part of the RCMP – are currently investigating the use of force in this case. Under RCMP use of force policy, police dogs are considered intermediate force. There are no restrictions on the use of police dogs with youth, despite calls from advocacy groups for the police to prohibit their use with children or severely restrict their use to situations presenting a threat of death or grievous bodily harm.[125] While the Vancouver Police Department has released information on police dog incidents involving youth, the RCMP has refused requests from advocacy groups to provide such statistics.[126]

Additional Cases

In addition to the incidents described above, Human Rights Watch learned of other cases of the use of force against girls. They include:

- In April 2012 police officers detaining a 13-year-old, applied the handcuffs "so tight it was peeling the skin off her hand," according to a witness. [127]
- In July 2012 police hit Grace F., a slight 16-year-old, on the back of the head and on both of her legs with a baton, after she and a friend had a verbal confrontation with a couple of officers.[128]
- In 2010, police pepper sprayed the then 14-year-old Hayley A. after a verbal confrontation with officers escalated. Hayley A. had yelled at police officers from the back of a car that had been pulled over during a traffic stop.[129] After they

[125] "Police Dogs Shouldn't be Used on Children, Youths," Carrier Sekani Tribal Council news release, August 1, 2012, http://www.carriersekani.ca/news/police-dogs-shouldnt-be-used-on-children-youths/http://www.carriersekani.ca/news/police-dogs-shouldnt-be-used-on-children-youths/ (accessed September 11, 2012).

[126] "12 year-old girl bitten by police dog sparks call for reform," Pivot Legal news release, August 1, 2012, http://www.pivotlegal.org/pivot-points/press-releases/12-year-old-girl-bitten-by-police-dog-leads-to-calls-for-reform (accessed December 16, 2012); see the accompanying document, "Backgrounder – Controversial Deployment of Police Dogs," to the news release.

[127] Human Rights Watch interview with Samantha T., British Columbia, July 2012.

[128] Human Rights Watch interview with Grace F., British Columbia, July 2012.

[129] Human Rights Watch interview with Hayley A., British Columbia, July 2012.

pepper sprayed her in response, Hayley A said, "I couldn't breathe and I couldn't open my eyes." [130]

Use of Tasers

Police use of Tasers[131] – electroshock weapons, frequently referred to as conducted energy weapons – which are considered firearms pursuant to regulations under the *Criminal Code* of Canada, in response to low level threats has drawn substantial criticism in recent years. Public Safety Canada guidelines state that use of a conducted energy weapon on a young child should be avoided.[132] However, the Commission for Public Complaints against the RCMP has documented extensive police use of Tasers on teenagers, with 194 recorded uses on youth aged 13 to 17 between 2002 and 2009. [133] In 2009, 8.3 percent of reports of the use of conducted energy weapons involved female youths.[134] The analysis did not disaggregate by ethnicity.

In 2007, a constable deployed a 50,000-volt Taser for a full 5-second cycle on a handcuffed 15-year-old girl at a facility for young offenders in Inuvik, Northwest Territories.[135] In 2009 the Commission for Public Complaints against the RCMP deemed the action unreasonable and found that it reflected a continuing "need for the RCMP to clarify to its members and to the public when it is permissible to deploy the Taser. It is clear that confusion in this area continues to reign."[136]

Following an investigation into the death of man Tasered at Vancouver International Airport in 2007, the RCMP reported that, among other steps, it was emphasizing de-escalation in training and that its April 2010 policy on conducted energy weapons clarified

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[130] Ibid.

[131] Taser® is the brand name of the conducted energy weapons authorized for use by the RCMP (Royal Canadian Mounted Police, "Operational Manual – Conducted Energy Weapon," April 29, 2010, http://www.rcmp-grc.gc.ca/ccaps-spcca/cew-ai/operations-17-7-eng.htm (accessed October 23, 2012).

[132] Public Safety Canada, "Guidelines for the Use of Conducted Energy Weapons," October 15, 2010, http://www.publicsafety.gc.ca/prg/le/gucew-ldrai-eng.aspx (accessed October 23, 2012).

[133] Commission for Public Complaints Against the RCMP, "RCMP Use of the Conducted Energy Weapon (CEW): January 1, 2009 to December 31, 2009," June 24, 2010, http://www.cpc-cpp.gc.ca/cnt/tpsp-tmrs/cew-ai/cew-ai-10-eng.aspx (accessed December 17, 2012).

[134] Ibid.

[135] Commission for Public Complaints Against the RCMP, "RCMP Taser use on handcuffed 15-year-old female not justified," December 11, 2009, http://www.cpc-cpp.gc.ca/cnt/nrm/nr/2009/20091211-eng.aspx (accessed October 22, 2012).

[136] Ibid.

they may only be used in situations in which a subject is causing bodily harm or when it is reasonably believed the subject will cause bodily harm imminently.[137]

Despite this a representative of an advocacy group who facilitated a meeting among indigenous girls, ages 12 to 15, reported that two of the girls said they had been Tasered in separate incidents between 2009 and 2011 when each was about 12.[138]

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[137] Commission for Public Complaints Against the RCMP, "Chair's Final Report After Commissioner's Notice – In-custody death of Mr. Robert Dziekanski, October 14, 2007, involving the use of a conducted energy weapon at the Vancouver International Airport," February 10, 2011, http://www.cpc-cpp.gc.ca/cnt/decision/pii-eip/dziekanski/facn-faac-eng.aspx (accessed October 23, 2012). See also, "Operational Manual – Conducted Energy Weapon," Royal Canadian Mounted Police, April 29, 2010, http://www.rcmp-grc.gc.ca/ccaps-spcca/cew-ai/operations-17-7-eng.htm (accessed October 23, 2012). The change came in response to the Tasering of Robert Dziekanski, a man who was acting erratically in the international arrivals section of Vancouver International Airport, after what the Commission for Public Complaints described as "a very brief encounter." Shortly after he was Tasered, the man died in custody. The Commission concluded that the Taser was deployed prematurely and without appreciation for its nature as a weapon "[b]ecause the RCMP positions the CEW as an intermediate weapon and trains its members that it is appropriate to use the CEW in response to low levels of threat because it is a relatively less harmful means of controlling a subject…" (Commission for Public Complaints Against the RCMP, Chair's Final Report After Commissioner's Notice – In-custody death of Mr. Robert Dziekanski, October 14, 2007, involving the use of a conducted energy weapon at the Vancouver International Airport, February 10, 2011, http://www.cpc-cpp.gc.ca/prr/rep/rev/chair-pre/dziekanski/facn-faac-eng.aspx (accessed October 23, 2012).) A provincial commission of inquiry also found that the use of force was unjustified. (Braidwood Commission of Inquiry, "Use of Taser on Robert Dziekanski not justified, says commissioner Thomas Braidwood," June 18, 2010, http://www.braidwoodinquiry.ca/whats_new/press_release_10-06-18.pdf#zoom=100 (accessed October 23, 2012).) The Braidwood Commission of Inquiry into the use of conducted energy weapons in British Columbia also concluded in 2009 that the threshold for use be revised from "active resistance" to the much higher standard of "causing bodily harm." Although this recommendation was made at the end of the first phase of the Braidwood Commission's Inquiry, which was supposed to exclude the RCMP, the Commissioner said that it would be incongruous for the recommendation not to apply in most of the province which is policed by the RCMP. (Braidwood Commission, "Commissioner's comments on phase one report of Braidwood Inquiry into Taser use in British Columbia," July 23, 2009, http://www.braidwoodinquiry.ca/whats_new/press_release_09-07-23.pdf#zoom=100 (accessed October 23, 2012).) In May 2012, the Legislative Assembly of British Columbia formed a special committee to monitor the implementation of the recommendations from the Braidwood Commission's phase one report (Legislative Assembly of British Columbia, "Special Committee to Inquire into the Use of Conducted Energy Weapons and to Audit Selected Police Complaints," Terms of Reference, December 3, 2012, https://www.leg.bc.ca/cmt/39thparl/session-4/rpa/5-39-4-41-2.htm (accessed October 23, 2012)). In addition, in April 2011, RCMP officers in Prince George, British Columbia, used a Taser on an 11-year-old indigenous boy after an altercation at a group home resulted in the stabbing of an adult employee. An investigation by an external police department found the officers acted appropriately, but no further details about the incident have been disclosed. The Commission of Public Complaints Against the RCMP and British Columbia's Representative for Children and Youth are conducting separate investigations into the incident. "RCMP Taser Case: No Charges For Using Device On 11-Year-Old B.C. Boy," *The Canadian Press*, September 15, 2011, http://www.huffingtonpost.ca/2011/09/15/no-charges-for-using-rcmp-taser-bc-boy_n_965098.html (accessed October 23, 2012).

[138] Human Rights Watch telephone interview with advocacy group representative, October 18, 2012.

Cross-Gender Searches

Human rights standards state that body searches by government authorities or medical personnel should only be conducted by persons of the same sex.[139] However, RCMP policy allows for male officers to search women and girls if another officer is present. "It's a hiccup in policy," said one community advocate for indigenous youth to whom indigenous girls have reported being touched inappropriately by police. "A number of female youth will tell you about being searched by male officers…. girls will say some officers searched them differently."[140]

Human Rights Watch interviews confirm that cross-gender searches take place, although it is unclear whether this is due to female staffing shortages or if the absence of female guards is used as a pretext in some situations.[141] In either case, reports of irregular, inappropriate searches of women by male officers point to the need to correct this policy "hiccup."

Police picked up Jan K. during an altercation in 2010 and took her to the "drunk tank." She told Human Rights Watch that at the police station two male cops took her to a room that appeared to be a janitor's closet where there were no cameras visible. They told her to remove her clothes except for undergarments. Afterwards they gave back the clothes but said she could either have her sweater or a t-shirt but not both.[142]

Conditions in City Cells

In interviews with Human Rights Watch, women and girls raised a number of issues related to conditions in city cells. Women detained in city cells for public intoxication reported being held for extended periods without food,[143] kept in cold temperatures without

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[139] UN Human Rights Committee, General Comment 16, The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17), U.N. Doc. HRI/GEN/Rev.9 (Vol. 1) (2008), http://www2.ohchr.org/english/bodies/hrc/comments.htm (accessed December 16, 2012), para. 8.

[140] Human Rights Watch interview with community service provider (#13), British Columbia, July 2012.

[141] Human Rights Watch interview with Nancy M., British Columbia, July 2012, Samantha T., British Columbia, July 2012, community service provider (#3), British Columbia, July 2012, Ashley G., British Columbia, July 2012; community service provider (#13), British Columbia, July 2012, and Naomi F., British Columbia, July 2012.

[142] Human Rights Watch interview with Jan K., British Columbia, July 2012.

[143] Human Rights Watch interview with Nancy M., British Columbia, July 2012 (reported being held for 19.5 hours without food). Others also reported extended periods without food. Human Rights Watch interview with Jan K., British Columbia, July 2012, and Jennifer R., British Columbia, July 2012.

blankets,[144] and released in the middle of the night, sometimes into arctic temperatures, inadequately clothed and in grave danger of hypothermia and frost bite.[145]

Community service providers said that women transferred to city cells for trial, among whom indigenous women are disproportionately represented, can be held four to five days without access to washing facilities. "That's a lot of abuse, especially when they're on their cycle [menstruating]," said one provider. "[They] wear the same clothes that length of time so they are not ready to go to court to defend themselves…You're a mess when you go into court and they're in the same cells as the drunk tank so you could get into a fight with a drunk and then you have more charges."[146]

Fights in city cells take place and women reported a failure on the part of guards to intervene.[147]:

> One night a week ago I ended up in the drunk tank... This lady attacked me in the same cell. There were three of us. She was talking something about her boyfriend and must have thought I said something and came and attacked me. She grabbed me by my hair and pounded me against the cement and I stopped her and then she kicked me and started dragging me around by my hair. And they didn't do anything. They have cameras there. The night guard didn't even come to see what was going on. It was loud. There was screaming... I yelled for help. Guess no cops were there and the night guard never did a thing.[148]

Women reported that they were placed in the cells after suffering injuries and were not provided with medical attention. Anna T. was "jumped" in May 2012 and knocked unconscious with a beer bottle. When the police responded, they took her to the city cells rather than the hospital. She told Human Rights Watch:

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[144] Human Rights Watch interview with Jan K., British Columbia, July 2012, Nancy M., British Columbia, July 2012, Brenda C., British Columbia, July 2012, Naomi F., British Columbia, July 2012, Abby C., British Columbia, July 2012, and Hayley A., British Columbia, July 2012.

[145] Human Rights Watch interview with Jan K., British Columbia, July 2012.

[146] Human Rights Watch interview with community service provider (#16), British Columbia, July 2012.

[147] Human Rights Watch interviews with Naomi F., British Columbia, July 2012, and community service provider (#2), British Columbia, July 2012.

[148] Human Rights Watch interview with Naomi F., British Columbia, July 2012.

> I woke up in cells, I'm covered in blood... A cop came over and said, "[Anna], you've been assaulted. We don't know what happened. You got verbal with one of the officers so we detained you." They let me out at 5 a.m. and said, "We'll give you a ride to the hospital." They let me out the door and then just shut it. I waited five minutes and no one came. My nose was broken. I had two black eyes. My hair was balled up in blood… If you have an injured woman, take her to the hospital.

Sexual and Physical Abuse by Police

Rape and Sexual Assault

In 5 of the 10 towns Human Rights Watch visited in the north, we heard allegations of rape or sexual assault by police officers. Human Rights Watch was struck by the level of fear on the part of women we met to talk about sexual abuse inflicted by police officers. Even though Human Rights Watch conducted outreach to women and girls through trusted service providers with long histories of working in these communities, on several occasions, women who initially expressed interest in talking with Human Rights Watch about their experiences of police sexual abuse later declined to speak or did not appear for interviews. Fear of retaliation, a frequent reason why women and girls do not report police abuse in general, is compounded by fear of stigma and feelings of shame in cases of sexual abuse. As a consequence, it was very difficult to gather first-hand testimony to support the allegations we heard.

However, in one town, Human Rights Watch met Gabriella P., a homeless woman, who reported that in July 2012 she had been taken to a remote location outside of the town and raped by four police officers whose names she knew but would not provide. "I feel so dirty," Gabriella said through tears, the first time she spoke with Human Rights Watch. "They threatened that if I told anybody they would take me out to the mountains and kill me and make it look like an accident."[149] Gabriella said that she had been raped by police in similar circumstances on previous occasions. Human Rights Watch was able to find and photograph the remote location, which is inaccessible by public transportation, that Gabriella described. In a brief second meeting with her almost a week later, Gabriella reviewed the photographs and reacted with visible fear and distress. Pointing to details in

[149] Human Rights Watch interview with Gabriella P., British Columbia, August 2012.

the photographs, she further explained that the officers had made her stand with her hands against the side of a building while she was being raped. Human Rights Watch is not publishing the photos or further details in order to protect her identity.

In addition, in the second meeting, Gabriella said that she had been raped by police again two days earlier in a different location outside of town and that the officers had taken her underwear after she was assaulted. Human Rights Watch was unable to ask for further details about this rape because Gabriella abruptly ended the conversation out of fear of being seen talking to the Human Rights Watch researcher.

A community worker in the town said that she keeps packages of underwear for women living on the streets because other women have reported to her that they have been sexually assaulted by police and had their underwear confiscated. These allegations are deeply disturbing and demand action. Respecting Gabriella's wishes that an individual complaint to authorities not be made on her behalf, Human Rights Watch coordinated with a community worker to ensure that Gabriella had housing through friends and family that would limit her risk of further abuse. However, the lack of faith that victims have in the safety and effectiveness of current complaint processes, coupled with the exclusion of rape and sexual assault from the mandate of the new BC Independent Investigations Office, leaves victims of egregious abuse without a place to turn. As it stands, it also limits the options that human rights groups have to take these matters to the authorities, including in situations that raise concerns about ongoing abuse. Due to victims' fears of retaliation, Human Rights Watch did not alert authorities to the details of these allegations. Human Right Watch strongly urges an independent civilian-led investigation of these allegations with the aim of achieving criminal accountability for the alleged crimes. Human Rights Watch would eagerly cooperate with such an investigation to the extent we are able to without compromising the safety and privacy of victims.

Another allegation of police rape and sexual assault involving multiple officers is in the public record. A civil suit filed in August 2012 alleges that in the city of Prince George in August 2010, members of the RCMP took a woman they had arrested to a basement where they physical and sexually abused her. The civil complaint alleges that in the basement of a private house, the woman was:

i) Forcibly confined in the basement against her will;
ii) Repeatedly struck, punched, and kicked while verbally denigrated and threatened with the death and disappearance from her family;
iii) Forcibly stripped to a state of nakedness, sexually assaulted and sodomised.[150]

After the officers allegedly drugged her and doused her with alcohol, the complaint states that the woman was taken to the Prince George RCMP detachment where she was "forcibly strip searched without purpose, legal justification and contrary to the procedural standards, if any, in force at the time of the search."[151] The civil suit follows an RCMP investigation and subsequent inquiry by the Vancouver Police which found the woman's report of abuse in the basement to be unfounded.[152] The search, however, was deemed to be in breach of RCMP protocol.

Human Rights Watch was also told of indigenous women and girls being sexually abused in city cells after passing out due to intoxication. In 2007, when Hannah J. was 25, police put her in city cells when she was intoxicated. She woke up to find herself naked from the waist down:

I remember [two male officers] putting me in the cells and I passed out. I woke up with my pants and panties off. I asked the lady guard if I could look at the cameras. She asked why. She didn't let me look at the tape…. My pants were in the cell beside me. My panties weren't there… I felt funny, wet down there [pointing to between her legs]. I just went home and cried... Why did this happen to me? Why didn't they just leave me on the street?[153]

Hannah said that she felt too ashamed do file a complaint or even seek medical attention.[154] Similar circumstances were described by secondary sources, involving victims whom Human Rights Watch was unable to interview. We present that information for context. We received a secondary report from a woman whose friend told her that she had

[150] Notice of Claim, Jennifer Alexander (Plaintiff) v. Her Majesty the Queen in Right of the Province of British Columbia, et. al.(Defendants) in the Supreme Court of British Columbia, No. 1241534, August 27, 2012.

[151] Ibid.

[152] DeLynda Pilon, "Investigation clears RCMP officers accused of wrongdoing," *Prince George Free Press*, August 17, 2011, http://www.pgfreepress.com/news/127973173.html?mobile=true (accessed January 23, 2013).

[153] Human Rights Watch interview with Hannah J., British Columbia, July 2012.

[154] Ibid.

awoken in police holding cells in 2012 to find herself being sexually assaulted by a police officer.[155]

A representative of an advocacy organization recounted a similar incident in another town reported by a young woman who had been between 13 and 15 years old when it happened to her between 2006 and 2008. The young woman said that it had happened when she had been brought to the cells while she was intoxicated. She described attempting to pull down her shirt to cover herself after regaining consciousness to find that she had nothing on her bottom half and was being watched by a male guard.[156]

Physical Abuse of Women

Human Rights Watch received 15 reports of police physically mistreating women in cells and on the street in the communities we visited in the north. The reports ranged from routine rough handling during arrest to an outright beating in cells. Abuse and mistreatment occurred at all stages of the women's interaction with the police, including when they were arrested, while they were in custody and upon their release. Eleven women told us directly about physical abuse and additional information was taken from eye witnesses and community service providers.

Abuse During Arrest

Women interviewed by Human Rights Watch reported varying levels of physical abuse when police took them into custody. Jan K., arrested in 2010, was thrown into the police wagon after she was handcuffed, smashing her legs against the bottom of the wagon, resulting in bruises all over her legs, wrists, and elbows.[157] Nancy M. showed us white scars on her wrist where handcuffs were fastened so tightly, they had broken the skin months earlier. She had asked the police to be careful because her collar bone was broken, but they pulled her arm back anyway and would not take her to obtain medical attention when she complained of pain.[158] Melinda B. was walking home from a bar in 2012 when two police officers called her over to their patrol car. She said she would be happy if they would offer her a ride home but they told her "the only ride you're getting is to the drunk

[155] Human Rights Watch interview with Ally F., British Columbia, July 2012.

[156] Human Rights Watch telephone interview with advocate, October 18, 2012.

[157] Human Rights Watch interview with Jan K., British Columbia, July 2012.

[158] Human Rights Watch interview with Nancy M., British Columbia, July 2012.

tank."[159] When she refused to go with them, the officers wrestled her to the ground with such force that they tore a ligament, causing her to lose three weeks of work and experience pain more than six months later.[160] Social service workers in one city praised the local police but said that women transferred from other detachments reported being punched, kicked, and having their hair pulled in custody by police.[161]

Service providers who hear the complaints of mistreatment are concerned about the issue of abuse during arrest, but sometimes need to turn to the police for assistance. "People come in often and share that they were pushed around in the drunk tank, or, 'that officer he hits me.' It happens often enough that it's become a normalized thing that women experience,"[162] said one homeless shelter staffer. Another staffer said that police officers kicked indigenous people found passed out on the streets in order to get them up. "There's nothing that gets done. It's an old boys club. [We] had a person picked up here and they were all nice and professional coming in, but then you see them being put in the car . . ."[163] In another town, a shelter worker had to call the police in mid-2012 because an intoxicated woman was threatening to beat her up. In the process of removing the petite woman, the police officer crushed her throat, injuring her. "I had to watch her being assaulted and the whole point [of calling the police] was to make everyone safe," the staffer told Human Rights Watch.[164]

Rough treatment during arrest at times results in injuries beyond bruises. In 2006, an ex-boyfriend of Dina A. called the police and on his own admission falsely accused her of being violent towards him. Officers arrived on the reserve, found Dina, took her into custody but did not tell her why. "A cop handcuffed one wrist and banged it against the bun wagon… [He] put me in handcuffs and put me in the back and took me to the station." They kept her at the station for 8 to 12 hours, a portion of which was spent with a woman who "was shouting and violent and enraged." They refused Dina's requests to be separated from the woman, as well as her request that they take her to the hospital for an x-ray. "I had to walk up there myself after I was released (about a kilometer walk). The x-ray

[159] Human Rights Watch telephone interview with Melinda B., December 2012.

[160] Ibid.

[161] Human Rights Watch interview with community service provider (#16), British Columbia, July 2012.

[162] Human Rights Watch interview with community service provider (#4), British Columbia, July 2012.

[163] Human Rights Watch interview with community service provider (#3), British Columbia, July 2012.

[164] Human Rights Watch interview with community service provider (#17), British Columbia, July 2012.

showed that the smaller bone was broken and the bigger bone was fractured. I had to have a cast for eight weeks."[165] When Dina complained, the police took eight months to investigate and concluded that the other woman in the cell had broken her wrist, even though Dina told them the woman had not touched her.

Abuse While in Custody

Women also reported aggressive treatment after the arrest, during the process of being searched and physically placed into holding cells. Joy I. described how her experience in 2011 went beyond a routine search:

> I was in a fight and getting beat up. [The police] picked me up. They tore my sweater off and jeans off in the holding cell. There were three or four of them – men – a female guard was watching. I tried to sit up and they pepper sprayed me twice. They kept pushing me down and tearing my clothes off. I was all dressed up before I went in there. They ripped off my jeans and put them in a bag.

She was left without her jeans, but with her underwear, that night. They released her the next morning without charges, and did not allow her to put her jeans back on. "The next day I had to walk back to my brother's like that – no pants; clothes in bag." [166]

In Anna T.'s case, the police told her that they were going to beat her before putting her in cells in early 2012. Anna had called the police because a friend was being beaten by her boyfriend. Intoxicated and angry because the police had failed to come out on another occasion, Anna spit on one of the officers when the police arrived. They took her into custody and brought her to the police holding cells. Anna explained to Human Rights Watch what happened:

> "Here's your choice, [Anna], you either get charged with assaulting an officer or you take the beating," [said one of the officers.] Stupid me I said, "I'll take the beating." She grabbed me, slammed me up on the wall and I hit my head. Then she slammed me on the ground. A male cop drove his

[165] Human Rights Watch interview with Dina A., British Columbia, July 2012.

[166] Human Rights Watch interview with Joy I., British Columbia, July 2012.

knee into my back while she stripped earrings out of my ears and elastics out of my hair. “Have you had enough?” “Yes, I’ve had enough. I’m sorry.”[167]

[167] Human Rights Watch interview with Anna T., British Columbia, July 2012.

III. Police Failures to Protect Indigenous Women and Girls

Women and Girls' Lack of Confidence in Police Protection

> What would they do to me if I need to call the cops? Police officers – you're supposed to look up to them. I needed help and they didn't help me. We've been having gang people come to our house. Who do we call? It's just pretty sad. We've got nobody to go to for help.
>
> —Sophie B., who was assaulted by a police officer when he responded to a distress call

Police abuse undermines women and girls' safety far beyond the direct physical consequences of any physical mistreatment. The impact is felt in the reticence of indigenous women and girls to call the police for help when they fear or have experienced violence. The problem is not limited to those who have experienced police abuse directly. According to a youth service provider, addressing the exploitation of girls by other youth in co-ed programs run by some organizations has been challenging because the girls do not trust the RCMP enough to report.[168] The possibility of abuse in cells also inhibits some community members from turning to the police when they see youth in a compromised position. One woman whose sister was raped by a police officer decades ago and who since has received periodic reports of police rape from others told Human Rights Watch:

> Every time we see drunk kids stumbling around the streets it's hard to know whether to let them stay on the street vulnerable to what can happen on the street or to call the RCMP, given my brother's and my sister's experiences. I remember all the things that have happened. What do you do? Leave them vulnerable to perverts on the street or call the RCMP and risk that they could be abused sexually or physically?[169]

[168] Human Rights Watch interview with community service provider (#13), British Columbia, July 2012.

[169] Human Rights Watch interview with Penelope N., British Columbia, July 2012.

Police Response to Disappearances and Murders

The E-PANA task force on the unsolved Highway of Tears cases is an important step forward. However, it does not on its own ensure that all cases of missing and murdered women in the north are handled with due diligence. As noted, some estimates put the number of cases of missing and murdered women along Highway 16 at more than 40, more than double the number taken up by E-PANA.[170] In addition, the task force does not reach cases that are mishandled at the point they are reported. A leader in the indigenous community with a law enforcement background told Human Rights Watch that he reported a 14-year-old girl missing from a group home in late 2011.[171] He said the officer taking the report initially reacted by asking: "Why are you calling us about this? What do you expect us to do?" The officer apologized after learning about his position in the community, and took steps to look for the girl, who was ultimately found safe. However, the leader was left concerned about how others without his standing in the community were treated.

This concern was echoed by others. According to a community provider of services to domestic violence survivors, the reaction of the police to missing person reports depends on the officer and whether the missing person is a repeat criminal offender or known to the criminal justice system.[172] The community service provider told Human Rights Watch about reporting a woman missing in 2011 who had previous contact with the criminal justice system:

> We reported a young aboriginal woman missing this past fall and it took three weeks before they even started to look for her. The police officer called and asked questions about her after three weeks. There was no explanation of why he'd taken that long. But all of a sudden he needed this and this. I thought: "Why am I doing your job for you?"[173]

[170] Linda Locke, QC, Missing Women Commission of Inquiry, "Standing Together and Moving Forward: Report on the Pre-Hearing Conference in Prince George and the Northern Community Forums," p. 8.

[171] Human Rights Watch interview with community leader, British Columbia, July 2012.

[172] Human Rights Watch interview with community service provider (#16), British Columbia, July 2012.

[173] Ibid.

RCMP policy states that people reporting a missing person should never be told they must wait a certain amount of time.[174] However, Rose L. told Human Rights Watch that in 2010 her sister's 16-year-old granddaughter (whom she considered and referred to as her granddaughter) went missing.[175] "She had a drug problem and was on probation. I called [the police] to find out where she was after she was missing for 14 hours and the police wouldn't do anything because it was too early." She later found out that her granddaughter had been in jail, having been arrested for allegedly beating up a man who witnesses said had attempted to sexually assault her.

For families whose loved ones have gone missing or been murdered, detailed information about the investigation's developments is critical. For the police, updating the families is important for maintaining their trust and cooperation. At the same time, releasing certain details could jeopardize the investigation. Human Rights Watch's interviews suggest that the RCMP still needs to find the right balance.[176] "One of the things they need to do is to explain what the investigative process is rather than just saying 'We're investigating,'" said one family member. "We need to be told point by point. Otherwise we don't understand and just feel like nothing is happening."[177]

Police Response to Domestic Violence and Sexual Assault

Domestic violence survivors and community organizations in northern British Columbia reported to Human Rights Watch that calls to the police by indigenous women and girls seeking help with violence are frequently met with skepticism and victim-blaming questions and comments, and that police often arrest victims of abuse for actions taken in self-defense. While these problems occur in many communities, service providers emphasized that indigenous women and girls are especially likely to be treated as blame-

[174] RCMP "E" Division Operational Manual, Chapter 37.3. Missing Persons, sec. 1.4: "Under no circumstances will a complainant be advised that he or she must wait a specific period of time before a report of a missing person can be made" (no emphasis added); the manual further reiterates that a missing person investigation must involve "a diligent early response" (sec. 37.3.1.2.1.), "the early and efficient gathering of witness accounts/leads/information/facts" (sec. 37.3.1.2.2."), and "no delays in collecting required information/facts" (sec. 37.3.1.2.3.). Missing children are considered high risk (sec. 37.3.1.3.1.) and high risk missing persons cases should "especially" be given prompt and thorough attention (sec. 37.3.1.3.).

[175] Human Rights Watch interview with Rose L., British Columbia, July 2012.

[176] Human Rights Watch interviews with Peter M., British Columbia, July 2012, and Patrice L., British Columbia, July 2012.

[177] Human Rights Watch interview with Patrice L., British Columbia, July 2012.

worthy by police.[178] This treatment was evident in the response of the police to Lena G.'s call regarding the dispute between her 15-year-old daughter and her abusive adult boyfriend, discussed above, which resulted in the police handcuffing and breaking her daughter's arm.[179]

The RCMP Operations Manual instructs officers responding to Violence in Relationships (VIR) calls to identify the primary aggressor and states that dual arrests should be rare.[180] In determining who the primary aggressor was, officers are supposed to consider the history of the relationship, among other factors, and to keep in mind that "An allegation of mutual aggression is often raised by the Primary Aggressor as a defense with respect to an assault against a partner."[181] Human Rights Watch learned of several incidents indicating that police fail to implement this instruction consistently. One service provider told Human Rights Watch that she had seen a number of indigenous women charged as first-time offenders because they defended themselves in the context of domestic abuse, including a woman who had recently been arrested after police found bite marks on her abuser's arm that she had left in attempt to free herself from a chokehold.[182] Service providers in different communities in the north said that police in general tend to side with the person who calls the police, and that abusers will manipulate that to their advantage.[183] "The man's the first one to the phone and she's arrested even when there is physical evidence of abuse," said one provider.

Several service providers told Human Rights Watch that RCMP officers responded dismissively to calls from indigenous women out of apparent frustration with seeing women remain in violent relationships.[184] They complained that the abuse was taken less seriously when the police had responded repeatedly to a particular household, and that officers lacked an appreciation for the financial and other barriers that make it difficult for women to leave abusive men.

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[178] Human Rights Watch interview with community service provider (#1), British Columbia, July 2012.

[179] Human Rights Watch interview with Emily G. and Lena G., British Columbia, July 2012.

[180] RCMP "E" Division Operational Manual, Chapter 2.4. Violence in Relationships, sec. 6.1.

[181] Ibid, sec. 5.3.

[182] Human Rights Watch interview with community service provider (#11), British Columbia, July 2012.

[183] Human Rights Watch interviews with community service provider (#2), British Columbia, July 2012, community service provider (#8), British Columbia, July 2012, and community service provider (#11), British Columbia, July 2012.

[184] Human Rights Watch interview with community service provider (#1), British Columbia, July 2012, and community service provider (#2), British Columbia, July 2012.

When women reporting violence have been using alcohol or drugs, getting the police to take their complaints seriously can be even more difficult. "Police still have the attitude: 'All he did was punch her,' and with Aboriginal women: 'Were you drinking? Using?'" said one community service provider.[185] Amy N. told Human Rights Watch that she had called the police for help with an abusive partner on two separate occasions in different towns during the years that she was in active addiction. She said both times the police were more interested in the drugs than the abuse.[186] On the second occasion in 2006, a police officer told her, "You're pretty much asking for it when you're high on that stuff." Amy N. concluded that "They're always going to ask if you're under the influence and once that information was available, I was treated much differently."[187] Dina A., from another town, was injured in an automobile accident deliberately caused by her cousin's boyfriend. When she went to the police to complain about her cousin's boyfriend's actions, the police dismissed her on the basis that she had been drinking prior to the incident:

> [My sister and I] got into my cousin's vehicle [which she was driving] – she was begging me to go for a ride. My cousin's boyfriend was there and he said to her, "Hey, you know how we were talking about suicide? Why don't we do it now with these two bitches in the car?" I buckled my sister's seatbelt in fast... He reached over and grabbed the wheel and turned us into the ditch… [After the crash,] my sister dragged me out of the vehicle. We went to the house of people we know and called a cab and went to the hospital. I was in and out of consciousness for 4 to 5 hours. I had a head injury – 24 stitches on the side of the head. I lost so much blood. They had to give me two and a half pints of blood...
>
> The next day I went to the police to report in the morning. There were three cops standing there. I said I'm here to give my report about the accident I was in last night because when [the police] came to the hospital they only asked about who was driving and whose vehicle it was. The police officer was just like, "You guys were intoxicated." They didn't even want to listen to me.[188]

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[185] Human Rights Watch interview with community service provider (#16), British Columbia, July 2012.

[186] Human Rights Watch interview with Amy N., British Columbia, July 2012.

[187] Ibid.

[188] Human Rights Watch interview with Dina A., British Columbia, July 2012.

Indigenous women and girls who survive sexual assault may face similar challenges to accessing effective protection from sexual violence. An elected official in the north said that in his location there is a general sense that cases of sexual abuse are a low priority for the RCMP detachment and that he has heard from community members on a nearby reservation that there is not a seriousness or timeliness to investigations into sexual abuse. He said that it may be a workload issue, and that cases could be de-prioritized because they take a lot of time to investigate and then may be dropped if the victim decides not to pursue it further.[189] According to victim advocates, the low priority placed on these cases acts as a disincentive to reporting for women, who believe their cases will not be taken seriously.[190]

When investigations do occur, victim-blaming by police officers is a problem. One service provider told Human Rights Watch:

> I had a woman about two years ago who decided to report to the RCMP – very rare. I have worked with many women sexually assaulted and only a handful go forward with charges. She was made to feel that she was to blame. "Why had you been drinking with him?" I had to work triple time to work through her natural feelings of guilt… You have a system of authority that puts the blame on the victim.[191]

Cara D., a 17-year-old victim of attempted rape in 2012, reported the crime to the police and became the subject of scrutiny. After an initial visit by a female officer who took pictures of bruises on her leg and arm, Cara received a succession of visits from male officers questioning her story:

> The cops came to the house to talk about it at all hours… earlier than 6 a.m.... Different cops, same questions. They were all male and you could tell they didn't believe me. They acted like they wanted to leave. "Are you lying to us?" They basically said I might have to do a lie detector test, but it didn't happen. They took [the perpetrator] in for questioning and he refused

[189] Human Rights Watch telephone interview with Bob Simpson, Independent Member of the Legislative Assembly of British Columbia (MLA) for Cariboo North, July 2012.

[190] Human Rights Watch interview with community service provider (#2), British Columbia, July 2012.

[191] Human Rights Watch interview with community service provider (#4), British Columbia, July 2012.

> to make a statement. They let him go. There was a two-month investigation and they dropped all the charges. The guy had charges of sexual assault before but it was still not enough for them to not drop the charges… What was I supposed to do – let him rape me so you would have evidence?[192]

The man who attacked Cara was originally charged with attempted rape but the charges were later dropped and temporary restrictions which had been imposed on his movements were lifted. However no one told Cara. "I found out that he got off because I saw him out," she said.

Anna T. was a prominent member of her community before the abuse by her white ex-husband climaxed in a rage one night in 2009. She told Human Rights Watch about her near escape and the police failure to gather key evidence:

We were walking home from the bar and we walked past my street. I got this bad feeling. I said to my friend, "Something's wrong. I need to go to my house." I got to the door and opened the lock. My ex was high on crack. "What are you doing? Where are the kids?" I asked. I had found him and a friend in the smoke room. Crack was on the table. I kicked out the friend. Me and my husband went upstairs and got into an argument about why he had disappeared for a week. He grabbed me by the neck and threw me up against a wall. He said: "The only reason I was gone for a week is because I wanted to kill you and the kids." He was choking me and I was slapping him. He dragged me by my hair toward the bedroom. We were weapons collectors. We had bows and swords all around the house. He grabbed a weapon and said, "You're not going to get out of this room. You're going to die tonight." He stumbled and I was able to get away. I was running down the street and he was chasing me all the way to my neighbor's house. There we called police. They said to stay inside. I said I was worried about the kids. "I'm afraid he's going to kill the kids because he's going back to the house," I said. Six cop cars came because of his criminal record. When cops got into the house they found that the kids were okay. Cops took him away and tried to charge him with assault…

Six to eight months later the charges against Anna's ex-husband had to be reduced because there was insufficient evidence of the attempt on her life. Anna faults the police for the reduced charge because they never interviewed the neighbor who helped her escape that night. With the reduced charge, her ex-husband's only punishment was a year probation. The limited accountability he faced for the attempt on her life has had ongoing implications. In coping with the trauma of the assault and seeing him set free, Anna turned to drugs and alcohol. Her substance use was a factor in her ex-husband getting primary custody of their daughter. He continues to behave violently, including choking a 14-year-old daughter from another marriage.

[192] Human Rights Watch interview with Cara D. and Lisa E., British Columbia, July 2012.

IV. Inadequate Complaint and Oversight Procedures

As noted in the background section of this report, most complaints of police misconduct are investigated by police themselves. RCMP policy calls for complaints of misconduct to be investigated by an independent provincial body or, failing that, an external non-RCMP police department. If neither of those is available, another RCMP detachment will investigate, or as a last resort, the detachment at issue will conduct an internal investigation.

Although a civilian complaints commission monitors the processing of public complaints against the RCMP and external police teams investigate the more serious allegations, the practice only provides an independent civilian accountability mechanism for a small portion of the complaints of police misconduct. Some hope that British Columbia's new civilian Independent Investigations Office will end impunity for police abuses in the province. But, as discussed, the limitations of the office's mandate mean that it holds little promise of justice for victims of sexual assault. Recourse for many complaints will be limited to the existing complaint mechanisms.

Five women and girls we interviewed filed complaints about RCMP officer misconduct, including physical assault and sexual harassment. Two of the complaints were being investigated by external, non-RCMP police forces at the time of the interview. Responses to the other complaints raise concerns about all the different types of investigative mechanisms. Dina A., whose wrist was broken by an officer during her arrest in 2006, made a complaint that was investigated by the local detachment. The investigation took more than eight months and the detachment did not question any witnesses at the scene of the arrest, instead blaming another woman held in city cells that night.[193]

Investigation by an outside RCMP detachment does not guarantee independence. Two RCMP officers who had experience investigating complaints against members in other detachments said that the process was hardly impartial. One remembered being told to go up to a particular northern town and "investigate this Tasering that didn't happen."[194] The

[193]Human Rights Watch interview with Dina A., British Columbia, July 2012.

[194] Human Rights Watch group interview with five RCMP officers, British Columbia, August 2012.

other said that he wrote up reports of investigations that were returned for revision when they did not reflect the outcome desired by his supervisors.[195]

As noted above, in Sophie B.'s case, an officer was eventually put on trial for assault following an investigation by an external police department. However, before that happened the detachment to which the officer belonged launched its own investigation and laid assault charges against the girl who had filed the complaint.[196] The charges were later dropped.

Many of those we interviewed did not file a complaint. Fear of retaliation obstructs access to complaint mechanisms, particularly for women and girls who live in small communities, are homeless, or have had multiple contacts with the criminal justice system. "I never filed a complaint," said Anna T. who was beaten by two officers in city cells, "because I'm well known and if you go back in its probably going to be worse."[197] Another woman who reported a serious sexual assault by police officers said the officers threatened to kill her if she told anyone.[198] She has chosen not to make any complaints against them.

Individuals interviewed by Human Rights Watch expressed skepticism about the independence and effectiveness of complaint processes through the RCMP itself and of the Commission for Public Complaints against the RCMP. An indigenous community leader anxious to see the Independent Investigations Office get up and running remarked of the RCMP complaint process, "How far is that going to get?"[199] The mother of a girl assaulted by a police officer told another officer standing by at the incident that she planned to complain and received the response: "You're Aboriginal, what is anyone going to do?"[200] Another woman said she told her friends about her experience waking up in a jail cell without her underwear in order to warn them. But she did not complain to the police because "they'll just lie for each other."[201] Service providers told us they informed their

[195] Human Rights Watch interview with RCMP officer, British Columbia, July 2012.

[196] Human Rights Watch interview with Emily G., British Columbia, July 2012.

[197] Human Rights Watch interview with Anna T., British Columbia, July 2012.

[198] Human Rights Watch interview with G. P., British Columbia, July 2012.

[199] Human Rights Watch interview with community leader, British Columbia, July 2012.

[200] Human Rights Watch interview with Emily G., British Columbia, July 2012.

[201] Human Rights Watch interview with Hannah J., British Columbia, July 2012.

clients about the complaint mechanisms but rarely, if ever, saw their clients use the mechanisms. One told Human Rights Watch:

> I have not seen the complaint process go forward. We have suggested that to people before. People don't trust that. Where's that going to go? There's great mistrust in that. No feeling of safety in doing that. When you don't have that sense of safety, I wouldn't want to come forward and complain. Who do you go to then?[202]

Elaine H. told Human Rights Watch that her local police told her to take her complaint about the officer who was stalking her to the Commission for Public Complaints against the RCMP:

> Well, there really aren't any systems in place because I phoned the police department, who then said, sorry this is happening to you, you need to call the police complaints center, so I called them and wrote several letters… On the phone the woman asked for a description. "Well I'm five feet eight inches, 130 pounds, I've got dark hair. I'm told I'm pretty attractive." The response was: "No wonder why this is happening."[203]

A year and a half later the officer was transferred, but it was not clear whether her complaint had triggered the transfer. Shortly after that, a second police officer began harassing her but she did not bother to make a complaint because after the response to the earlier situation "it seemed pointless to make a complaint."[204]

Human Rights Watch asked the RCMP how many complaints of police misconduct relating to interaction with indigenous women and girls had been lodged over the past five years. The RCMP responded that it "does not collect race data for purposes outside the legitimate police mandate" and that "Asking a victim or accused person to self identify may give rise to human rights and privacy concerns."[205] Although a requirement that complainants

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[202] Human Rights Watch interview with community service provider (#4), British Columbia, July 2012.

[203] Human Rights Watch interview with Elaine H., British Columbia, July 2012.

[204] Ibid.

[205] Email communication from the RCMP to Human Rights Watch, November 15, 2012.

provide information on their ethnicity would certainly be problematic, giving them the option of doing so would open up the possibility of tracking whether police interaction with certain groups has generated a disproportionate number of complaints. Notably, the Canadian government failed to provide complete information in response to a request from the Committee on the Rights of the Child (CRC) for the number of reported cases of abuse and maltreatment of children occurring during their arrest and detention.[206]

Video cameras comprise another component of RCMP oversight of police officer activity in detachment cells. Closed circuit video equipment monitoring (CCVE) is a part of British Columbia Provincial Policing Standards and the RCMP has stated its commitment to ensuring that all facilities achieve compliance by the effective date of January 30, 2015.[207] CCVE monitoring has been important for corroborating victims' accounts of abuse in some cases. However, it is not a complete solution. As RCMP officers who spoke with Human Rights Watch noted, there are always blind spots known to officers and there can be events like power outages that result in the loss of recordings.[208]

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[206] In the "List of issues concerning additional and updated information related to the third and fourth periodic reports of Canada," adopted by the Committee on the Rights of the Child in advance of the examination of Canada's combined Third and Fourth Report on the Convention on the Rights of the Child (CRC), the Committee calls for data on the number of reported cases of abuse and maltreatment of children occurring during their arrest and detention to be disaggregated by age, sex, ethnic group, and type of crime. CRC/C/CAN/Q/3-4, March 14, 2012, http://www2.ohchr.org/english/bodies/crc/crcs61.htm (accessed January 22, 2013), Part III, para. 7(g). See "Canada's response to the list of issues adopted by the Committee on the Rights of the Child in advance of the examination of Canada's combined Third and Fourth Report on the Convention on the Rights of the Child (CRC)(CRC/C/CAN/3-4)," CRC/C/CAN/3-4, September 2012, http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.CAN.Q.3-4.Add.1_en.pdf (accessed December 17, 2012), p. 120. In this response only information for the province of Newfoundland and Labrador is provided, and no disaggregated data is presented.

[207] Email communication from the RCMP to Human Rights Watch, November 15, 2012. See "British Columbia Provincial Policing Standards," PSSG11-015-December 2011, http://www.pssg.gov.bc.ca/policeservices/standards/index.htm (accessed January 22, 2013), Subject 4.1.1.

[208] Human Rights Watch group interview with five RCMP officers, British Columbia, August 2012.

V. Canada's Obligations under International Law

Canada's international treaty obligations require that the government take measures to prevent and address with due diligence violence against indigenous women and girls. They must also ensure that police do not treat individuals in violation of the prohibition on inhuman and degrading treatment, but treat them with respect and dignity in a non-discriminatory manner. United Nations human rights treaty monitoring bodies – including those committees addressing children's rights violations, torture, discrimination against women, and civil and political rights violations – have criticized Canada for the inadequate government response to violence against indigenous women and girls.[209] The United Nations Committee on the Elimination of Discrimination against Women (CEDAW) has gone even further and taken the exceptional step of announcing an inquiry with respect to disappearances and murders of indigenous women and girls.[210]

The Responsibility to Address Violence against Women and Girls

Among their most basic human rights, women and girls have the right to bodily integrity, to security of person, and to freedom from torture and cruel, inhuman, or degrading treatment. These rights are enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), acceded to by Canada in 1976,

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[209] Committee on the Rights of the Child, Concluding Observations on Canada's 3rd and 4th review, October 2012, CRC/C/CAN/CO-3-4, http://www2.ohchr.org/english/bodies/crc/crcs61.htm (accessed January 30, 2013), paras. 48; Committee on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Concluding Observations on Canada's 6th review, June 2012, CAT/C/CAN/CO/6, http://www2.ohchr.org/english/bodies/cat/cats48.htm (accessed January 30, 2013), para. 20; Committee on the Elimination of All Forms of Discrimination Against Women, Concluding Observations on Canada's 7th review, November 2008, CEDAW/C/CAN/CO/7, http://www2.ohchr.org/english/bodies/cedaw/cedaws42.htm (accessed January 30, 2013), para. 32; Human Rights Committee, Concluding Observations on Canada's 5th review, April 2006, CCPR/C/CAN/CO/5, http://www2.ohchr.org/english/bodies/hrc/hrcs85.htm (accessed January 30, 2013), para. 23. The Committee on the Elimination of Racial Discrimination has also expressed its concern that "Aboriginal women and girls are disproportionately victims of life-threatening forms of violence, spousal homicides, and disappearances," and recommended the Government of Canada "facilitate access to justice for Aboriginal women victims of gender-based violence, and investigate, prosecute and punish those responsible". Committee on the Elimination of Racial Discrimination, Concluding Observations on Canada's 19th and 20th review, March 2012, CERD/C/CAN/CO/19-20, http://www2.ohchr.org/english/bodies/cerd/cerds80.htm (accessed January 30, 2013), para. 17.

[210] "Press Release – For Immediate Release," Native Women's Association of Canada news release, December 13, 2011, http://www.nwac.ca/media/release/13-12-11 (accessed December 15, 2012).

and the Convention against Torture, ratified by Canada in 1987.[211] In addition, violence against women constitutes a form of discrimination, triggering government responsibilities under the Convention on the Elimination of All Forms of Discrimination against Women, ratified by Canada in 1981.[212] By agreeing to these international treaties, Canada assumed a positive obligation to address violence against women. Whether the violence is perpetrated by the government authorities or by others, international law requires that Canada exercise due diligence to prevent, investigate, prosecute, and punish acts of violence against women.[213] Canada has also assumed the obligation to take appropriate measures to protect children from physical or mental violence while in the care of their parents, guardians, or any other person.[214]

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[211] UDHR, adopted December 10, 1948, G.A. Res 217A(III), U.N. Doc. A/810 at 71 (1948), http://www.un.org/en/documents/udhr/index.shtml (accessed December 15, 2012), art. 3 and 5; ICCPR, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, http://www2.ohchr.org/english/law/ccpr.htm (accessed December 15, 2012), arts. 7 and 9; and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, http://www2.ohchr.org/english/law/cat.htm (accessed December 15, 2012), art. 2.

[212] CEDAW, adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, http://www2.ohchr.org/english/law/cedaw.htm (accessed December 15, 2012), art. 1; UN Committee on the Elimination of Discrimination against Women, "General Recommendation No. 19: Violence against women," (Eleventh session, 1992), http://www2.ohchr.org/english/bodies/cedaw/comments.htm (accessed December 15, 2012), paras. 1, 6.

[213] UN Committee on the Elimination of Discrimination against Women, "General Recommendation No. 19: Violence against women," (Eleventh session, 1992), http://www2.ohchr.org/english/bodies/cedaw/comments.htm (accessed December 15, 2012), para. 24(a) and (t); UN Human Rights Committee, "HRC, General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties: general legal obligation on states parties to the Covenant," U.N. Doc. CCPR/C/21/Rev.1/Add.13, (Eightieth session, 2004), http://www2.ohchr.org/english/bodies/hrc/comments.htm (accessed December 15, 2012), para. 8; UN Committee Against Torture, "General Comment No. 2: Implementation of Article 2 by States Parties," CAT/C/GC/2, (2008), http://www2.ohchr.org/english/bodies/cat/comments.htm (accessed December 15, 2012), paras. 1-3; UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, A/HRC/7/3, January 15, 2008, http://www2.ohchr.org/english/bodies/hrcouncil/7session/reports.htm (accessed January 23, 2013), paras. 30-32; UN Declaration on the Elimination of Violence Against Women, December 20, 1993, G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993), http://www.un.org/documents/ga/res/48/a48r104.htm (accessed January 30, 2013), art. 4(c); Fourth World Conference on Women, Report of the Fourth World Conference on Women ("Beijing Declaration and Platform for Action"), Beijing, 4-15 September 1995, A/CONF.177/20, October 17, 1995, , http://www.un.org/esa/gopher-data/conf/fwcw/off/a--20.en (accessed September 20, 2012), para. 124 (b); Inter-American Court of Human Rights, Velásquez-Rodríguez Case, Judgment of July 29, 1998, Inter-Am. Ct.H.R., (Ser. C) No. 4 (1988), para. 172.

[214] Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Canada on December 13,1991, http://www2.ohchr.org/english/law/crc.htm (accessed December 15, 2012), art. 19.

Determining whether Canada has exercised due diligence in this context requires assessing the government's performance of a number of duties. Chief among these is the duty to investigate cases of violence against women and girls. An effective investigation, according to international human rights tribunal case law, is one capable of leading to the identification and punishment of those responsible.[215] Police omission of basic steps like interviewing key witnesses or following up on tips limits the effectiveness of an investigation. International standards also apply to how authorities should treat victims and their families in the course of investigations. The Inter-American Commission on Human Rights (IACHR) has commented on the need for those involved to have access to information about the progress of an investigation[216] and to be treated with respect by authorities. [217] Young victims and witnesses are due particular attention and support appropriate to their age to avoid further trauma.[218] Victim-blaming in particular can alienate people from the justice system and deprive them of redress for violence. [219] The UN special rapporteur on violence against women recommends training of law enforcement personnel to sensitize them to the needs of women as one component of due diligence.[220]

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[215] See amongst others, the European Court of Human Rights' (ECHR) decisions in *Kaya v. Turkey*, judgment of 19 February 1998, (1998) Reports 1998-I, para. 107; *Hugh Jordan v. the United Kingdom*, judgment of 4 May 2001, no. 24746/94, ECHR 2001-III (extracts), para. 107; *Finucane v. the United Kingdom*, judgment of 1 July 2003, no. 29178/95, ECHR 2003-VIII, para. 69; *Isayeva v. Russia*, judgment of 24 February 2005, no. 57950/00, para. 212; *Adali v. Turkey*, judgment 31 March 2005, no. 38187/97, para. 223; all ECHR decisions available at http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Decisions+and+judgments/HUDOC+database/.

[216] IACHR, Application filed with the Inter-American Court of Human Rights in the case of Campo Algodonero: Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez (Cases 12.496, 12.497, 12.498) against the United Mexican States, November 4, 2007, http://www.oas.org/en/iachr/decisions/cases.asp (accessed December 15, 2012), para. 281: "The victims' next of kin should have full access and the capacity to participate in all the stages and instances of said investigations, in accordance with domestic law and the norms of the American Convention." Inter-American Court of Human rights, González et al. ("Cotton Field") v. Mexico, Judgment of November 16, 2009, Inter-Am.Ct.H.R., (Ser. C) No. 205 (2009), para. 424.

[217] IACHR, "Access to Justice for Women Victims of Violence in the Americas," OEA/Ser.L/V/II, Doc. 68, January 20, 2007, http://www.cidh.org/women/Access07/chap2.htm (accessed December 15, 2012), para. 134.

[218] See Economic and Social Council, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Resolution E/RES/2005/20, July 22, 2005, www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf (accessed October 11, 2012), preambulatory para. 6. In addition, article 7(a) recognizes girls' particular vulnerability.

[219] IACHR, "Access to Justice for Women Victims of Violence in the Americas," OEA/Ser.L/V/II, Doc. 68, January 20, 2007, http://www.cidh.org/women/Access07/chap2.htm (accessed December 15, 2012), para. 135.

[220] UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Erturk, Indicators on violence against women and State response, A/HRC/7/6, January 29, 2008, http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/AnnualReports.aspx (accessed December 15, 2012), paras. 110-111.

Holding police officers to account for demonstrating that sensitivity and following through with effective investigations constitutes another complementary piece.[221]

Effective and conscientiously conducted investigations serve a broader preventative function as well. They may not only prevent future crimes by the specific perpetrator, they signal to the community that violence against women and girls will not be tolerated. In contrast, police apathy in cases involving violence against women and girls – or violence against certain groups of women and girls – sends a message that such behavior is accepted and will carry no consequence for perpetrators.[222] It may, in effect, encourage the targeting of certain groups for violence. For this reason, in evaluation after evaluation of Canada's human rights record, expert bodies have called on Canada to fully investigate the murders and disappearances of indigenous women and girls, and to examine the reasons that full, transparent, and accountable investigations did not proceed from the outset.[223] Project E-Pana, an investigation into the Highway of Tears cases, and the Missing Women's Commission of Inquiry in British Columbia represent important efforts to heed those calls. However, there remains a clear need for a broader examination of police handling of

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[221] IACHR, Application filed with the Inter-American Court of Human Rights in the case of Campo Algodonero: Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez (Cases 12.496, 12.497, 12.498) against the United Mexican States, November 4, 2007, http://www.oas.org/en/iachr/decisions/cases.asp (accessed December 15, 2012), para. 156; UN General Assembly, "Declaration on the Elimination of Violence Against Women," Resolution A/RES/48/104, December 20, 1993, www.un.org/documents/ga/res/48/a48r104.htm (accessed October 3, 2012), art. 4(c), (f), and (i).

[222] IACHR, Maria Da Penha Maia Fernandes (Brazil), Case 12.051, Report no. 54/01, April 16, 2001, http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Merits/Brazil12.051.htm (accessed December 16, 2012), para. 55.

[223] UN Committee on the Rights of the Child, "Consideration of reports submitted by States parties under article 44 of the Convention Concluding Observations Canada," CRC/C/CAN/CO/3-4, October 5, 2012, http://www2.ohchr.org/english/bodies/crc/crcs61.htm (accessed October 15, 2012), paras. 48 and 49(b); UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, "Consideration of reports submitted by States parties under article 19 of the Convention Concluding observations of the Committee against Torture Canada," CAT/C/CAN/CO/6, June 25, 2012, http://www2.ohchr.org/english/bodies/cat/cats48.htm (accessed December 16, 2012), para. 20; UN Committee on the Elimination of Racial Discrimination, "Consideration of reports submitted by States parties under article 9 of the Convention Concluding observations of the Committee on the Elimination of Racial Discrimination," CERD/C/CAN/CO/19-20, March 9, 2012, http://www2.ohchr.org/english/bodies/cerd/cerds80.htm (accessed October 29, 2012), para. 17(b); UN Human Rights Council, Report of the Working Group on the Universal Periodic Review Canada, A/HRC/11/17*, (Eleventh Session, 2009), http://www.ohchr.org/EN/HRBodies/UPR/Pages/CASession4.aspx (accessed September 21, 2012), paras. 86 (33), (35), and (36); UN Committee on the Elimination of Discrimination against Women, "Concluding observation of the Committee on the Elimination of Discrimination against Women Canada," CEDAW/C/CAN/CO/7, November 7, 2008, http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-CAN-CO-7.pdf (accessed October 18, 2012), paras. 32 and 53; UN Human Rights Committee, "Consideration of reports submitted by states parties under article 40 of the Covenant Concluding observations of the Human Rights Committee Canada," CCPR/C/CAN/CO/5, April 20, 2006, http://www2.ohchr.org/english/bodies/hrc/hrcs85.htm (accessed October 22, 2012), para. 23.

violence against indigenous women and girls that provides for the meaningful participation of indigenous communities in identifying past failures and searching for solutions.

For these and all efforts aimed at addressing violence against women and girls, accurate data on the scope of the problem is essential. [224] Collecting comprehensive data on violence against women and girls is a key part of the government's due diligence obligation. [225] The Committee on the Elimination of Discrimination against Women commended Canada for funding the NWAC Sisters in Spirit data Initiative, which tracked cases of missing and murdered indigenous women across Canada. However, as detailed in the background section of this report, funding for that data initiative has since ended and it is not clear that data collection by the police will adequately track the specific number of murders and disappearances of indigenous women. The absence of race-disaggregated data will obscure the racial dimensions of the violence and inhibit efforts to identify discrimination in efforts to prevent and respond to violence.

Broader prevention efforts are also required that address domestic and sexual violence. The Declaration on the Elimination of Violence Against Women calls on governments to "[d]evelop, in a comprehensive way, preventative approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions."[226] The Canadian government has made some efforts in this regard but has yet to develop a national action plan to address the high levels of violence against indigenous women and girls.

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[224] UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Erturk, Indicators on violence against women and State response, A/HRC/7/6, January 29, 2008, http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/AnnualReports.aspx (accessed December 15, 2012), paras. 20, 21.

[225] Ibid, para. 30; UN Commission of Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Erturk, Integration of the Human Rights of Women and the Gender Perspective: Violence against Women, The Due Diligence Standard as a Tool for the Elimination of Violence Against Women," E/CN.4/2006/61, January 20, 2006, http://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/PDF_UN_Sp_Rapp_report_due_diligence_standard.pdf (accessed December 16, 2012), para. 32.

[226] UN Declaration on the Elimination of Violence Against Women, December 20, 1993, G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993), www.un.org/documents/ga/res/48/a48r104.htm (accessed January 30, 2013), art. 4(f).

The Responsibility to Protect the Rights of Persons in Custody

Women and girls taken into custody by the RCMP do not lose their fundamental rights. The International Covenant on Civil and Political Rights (ICCPR) provides that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."[227] The Human Rights Committee, which oversees the implementation of the ICCPR, has explained that governments have a positive obligation to see that individuals in custody suffer no "hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all of the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment."[228] Police brutality and risk of custodial sexual abuse, in addition to constituting criminal acts under Canadian law, violate those rights and in some cases may constitute torture or cruel, inhuman, or degrading treatment prohibited under the Convention against Torture.[229]

In addition to addressing the absolute prohibition on rape and sexual assault of persons in detention, international human rights bodies have specifically addressed the subject of body searches in custody. The Human Rights Committee has determined that preserving prisoners' rights to privacy necessitates that body searches by government authorities or medical personnel should only be conducted by persons of the same sex.[230] Under the UN

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[227] ICCPR, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 10(1).

[228] UN Human Rights Committee, General Comment No. 21, Replaces general comment 9 concerning humane treatment of persons deprived of liberty (Art. 10)," U.N. Doc. A/47/40 (1992), http://www2.ohchr.org/english/bodies/hrc/comments.htm (accessed January 23, 2012), para. 3.

[229] *Criminal Code*, RSC 1985, c C-46, s 271-273; UN Committee Against Torture (CAT) decision in *V.L. v. Switzerland* found that "sexual abuse [multiple rapes and other acts] by the police in this case constitutes torture even though it was perpetrated outside formal detention facilities," (CAT/C/37/D/262/2005, November 20, 2006, http://www.unhcr.org/refworld/docid/47975afd21.html (accessed December 16, 2012), para. 8.10); Inter-American Court of Human Rights, Raquel Martí de Mejía Case, Case 10.970, annual report 1995, OEA/Ser.L/V/II.91. Doc. 7. rev., endnotes, p. 9 (Report No. 5/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.91 Doc. 7 (1996)), see http://www.cidh.org/annualrep/95eng/Peru10970.htm (accessed December 16, 2012), endnote 47; and UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, Summary, A/HRC/7/3, January 15, 2008, http://ap.ohchr.org/documents/dpage_e.aspx?m=103 (accessed December 16, 2012), para. 34.

[230] UN Human Rights Committee, General Comment 16, The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17), U.N. Doc. HRI/GEN/Rev.9 (Vol. 1) (2008), http://www2.ohchr.org/english/bodies/hrc/comments.htm (accessed December 16, 2012), para. 8.

Standard Minimum Rules for the Treatment of Prisoners, women prisoners are to "be attended and supervised only by women officers."[231] The Committee on the Elimination of Discrimination against Women has called on Canada to "discontinue the practice of employing male guards as front-line staff in women's institutions" and to "ensure that girls are not held in mixed-sex youth prisons or detention centres."[232] Although this report concerns searches in holding cells and on the streets, rather than long-term imprisonment, the privacy concerns in these contexts are similar.

Specific protections apply to children in custody. As a preliminary matter, children should be deprived of their liberty only as a last resort.[233] According to the Committee on the Rights of the Child, "respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented"[234] and protection from violence must "extend to their contacts with police officers, as well as to custodial institutions and any other place of detention…"[235] The committee recently expressed concern that law enforcement in Canada lacked understanding and training on the Convention on the Rights of the Child.[236] When girls are taken into custody, international standards require that authorities provide for their specific protection needs, including protection from physical, sexual, and emotional abuse and exploitation.[237]

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[231] UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977, http://www2.ohchr.org/english/law/treatmentprisoners.htm (accessed October 2, 2012), Rule 53(3).

[232] UN Committee on the Elimination of Violence against Women, "Concluding observation of the Committee on the Elimination of Discrimination against Women Canada," CEDAW/C/CAN/CO/7, November 7, 2008, http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-CAN-CO-7.pdf (accessed October 18, 2012), para. 34.

[233] UN Rules for the Protection of Juveniles Deprived of their Liberty, adopted December 14, 1990, G.A. Res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990), http://www.un.org/Depts/dhl/resguide/r45.htm (accessed September 20, 2012), Rule 2.

[234] UN Committee on the Rights of the Child, General Comment No. 10 (2007), Children's rights in juvenile justice, U.N. Doc. CRC/C/GC/10, April 25, 2007, http://www2.ohchr.org/english/bodies/crc/comments.htm (accessed September 18, 2012), para. 13.

[235] UN Committee on the Rights of the Child, Day of General Discussion, "State Violence Against Children," CRC/C/97 (Twenty-fifth session, 2000), http://www2.ohchr.org/english/bodies/crc/discussion.htm (accessed September 18, 2012), p. 3.

[236] UN Committee on the Rights of the Child, "Consideration of reports submitted by States parties under article 44 of the Convention Concluding Observations Canada," CRC/C/CAN/CO/3-4, October 5, 2012, http://www2.ohchr.org/english/bodies/crc/crcs61.htm (October 15, 2012), para. 26.

[237] UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 87(d); UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), approved by the Economic and Social

Women and girls who feel that their rights have been violated while in government custody should have recourse to an effective complaint mechanism. The Convention against Torture provides that an individual alleging torture must have the "right to complain to, and to have his case promptly and impartially examined by, its competent authorities" and be protected against retaliation.[238] Under the ICCPR, individuals whose civil and political rights have been violated have a right to an effective remedy "notwithstanding that the violation has been committed by persons acting in an official capacity."[239] Further, principles developed by the United Nations regarding use of force, state that "Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process."[240]

The Responsibility to Address Discrimination

The disproportionate rates of violence against indigenous women and girls, as well as the socio-economic indicators and historical context that predispose those same women and girls to be at an increased risk for police abuse, call for an examination of the government's fulfillment of its duties to address discrimination.

Canada is party to a number of treaties that prohibit discrimination on the basis of race and sex, among other protected categories. The International Convention on the Elimination of Racial Discrimination, ratified by Canada in 1970, requires states to prohibit and eliminate racial discrimination and to guarantee equality before the law, particularly with regard to the "right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution."[241] Like many of the community service providers who spoke with Human Rights Watch, the Committee on the Elimination of Racial Discrimination has recommended that

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Council by its resolution 2010/16 of July 22, 2010, www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf (accessed October 9, 2012), Rule 36.

[238] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), art. 13.

[239] ICCPR, art. 2.

[240] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by theEighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990), Principle 23.

[241] International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, http://www2.ohchr.org/english/law/cerd.htm(accessed January 30, 2013), art. 5(b).

Canada "take effective measures to provide culturally-sensitive training for all law enforcement officers, taking into consideration the specific vulnerability of aboriginal women and women belonging to racial/ethnic minority groups to gender-based violence."[242] Also instructive is the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)[243]. The UNDRIP states that governments "shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination."[244] The need for joint action between government and indigenous organizations in Canada has been emphasized by indigenous groups, women's groups, and human rights organizations, which fault the government for failing to develop a comprehensive national action plan to respond to the violence.

The government has a responsibility to address any differential treatment of indigenous women and girls by law enforcement and the criminal justice system, especially when the over-policing of indigenous women and girls is linked to incidents of police abuse. In 2012, the Committee on the Elimination of Racial Discrimination expressed concern "at the disproportionately high rates of incarceration of Aboriginal people including Aboriginal women, in federal and provincial prisons across Canada" and recommended that the government "reinforce measures to prevent excessive use of incarceration of indigenous peoples."[245]

The violence against indigenous women and girls is integrally linked to the social and economic disadvantages that are the product of years of structural discrimination. The

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[242] Committee on the Elimination of Racial Discrimination, "Consideration of reports submitted by states parties under article 9 of the Convention Concluding observations of the Committee on the Elimination of Racial Discrimination Canada," CERD/C/CAN/CO/18, May 25, 2007, http://www2.ohchr.org/english/bodies/cerd/cerds70.htm (accessed October 22, 2012), para. 20.

[243] Canada issued a statement formally endorsing the UNDRIP on November 12, 2010, after voting against its passage in September 2007 at the UN General Assembly (Aboriginal Affairs and Northern Development Canada, "Canada's Endorsement of the United Nations Declaration on the Rights of Indigenous Peoples," May 2, 2012, http://www.aadnc-aandc.gc.ca/eng/1309374807748/1309374897928 (accessed December 16, 2012).

[244] United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted September 13, 2007, G.A. Res. 61/295, U.N. Doc. A/61/L.67 and Add.1 (2007), www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf *(accessed January 30, 2013),* art. 22(2).

[245] UN Committee on the Elimination of Racial Discrimination, "Consideration of reports submitted by States parties under article 9 of the Convention Concluding observations of the Committee on the Elimination of Racial Discrimination Canada," CERD/C/CAN/CO/19-20, March 9, 2012, http://www2.ohchr.org/english/bodies/cerd/cerds80.htm (accessed October 29, 2012), para. 12.

responsibility for addressing these social and economic disadvantages falls squarely within the state's international legal commitments to address discrimination and to fulfill the rights to work and education, social security, and an adequate standard of living, which are set out in the International Covenant on Economic, Social and Cultural Rights, ratified by Canada in 1976.[246] The House of Commons Standing Committee on the Status of Women observed that "addressing the violence against Aboriginal women will require interventions on a number of fronts in a strategic, coordinated effort" and cited to article 21(1) of the UN Declaration on the Rights of Indigenous Peoples: "Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining housing sanitation, health and social security."[247] The Committee on the Elimination of Discrimination against Women in its 2008 Concluding Observations has urged Canada to "develop a specific and integrated plan for addressing the particular conditions affecting aboriginal women, both on and off reserves….including poverty, poor health, inadequate housing, low school completion rate, low employment rates, low income and high rates of violence…"[248] Similar recommendations have been made by the Committee on Economic, Social and Cultural Rights, and the Committee on the Elimination of Racial Discrimination.[249] In 2009, during its first Universal Periodic Review by the United Nations Human Rights Council, recommendations were made to Canada to "study and address the root causes of domestic violence against women, in particular Aboriginal women" and to "take measures to combat socioeconomic discrimination, which is a cause

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[246] International Covenant on Economic, Social and Cultural Rights, 19 December 1966, 993 *U.N.T.S.* 3, Can. T.S. 1976 No. 46, 6 I.L.M. 360 (entered into force 3 January 1976) [ICESCR], http://www.unhchr.ch/html/menu3/b/a_cescr.htm (accessed December 19, 2012).

[247] Government of Canada, House of Commons Standing Committee on the Status of Women, "Interim Report Call into the Night: An Overview of Violence Against Aboriginal Women," March 2011, 40th Parl., 3rd sess., http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5056509&Language=E&Mode=1&Parl=40&Ses=3 (accessed September 26, 2012), p. 10.

[248] UN Committee on the Elimination of Violence against Women, "Concluding observation of the Committee on the Elimination of Discrimination against Women Canada," CEDAW/C/CAN/CO/7, http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-CAN-CO-7.pdf (accessed January 30, 2013), paras. 43-46.

[249] Committee on Economic, Social, and Cultural Rights, "Consideration of Reports Submitted by States Parties under articles 16 and 17 of the Covenant Concluding Observations, Canada," E/C.12/CAN/CO/4, E/C.12/CAN/CO/5, May 22, 2006, (accessed December 19, 2012), http://www2.ohchr.org/english/bodies/cescr/cescrs36.htm, para. 11(d), 15, 26; Committee on the Elimination of Racial Discrimination, "Consideration of Reports Submitted under article 9 of the Covenant, Concluding Observations, Canada," CERD/C/CAN/CO/18, May 25, 2007, http://www2.ohchr.org/english/bodies/cerd/cerds70.htm (accessed December 19, 2012), para. 21.

of continuous violence against Aboriginal women…"[250] Improvements to the criminal justice system's response to missing and murdered indigenous women and girls in Canada should be coupled with improvements in access for indigenous women and girls to adequate incomes, housing, food, water, education, and job opportunities.

[250] "Database of Recommendations: Canada," *UPR.info*, undated, http://www.upr-info.org/database/index.php?limit=0&f_SUR=31&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=25&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly (accessed December 18, 2012).

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Rullo. Jasmine Herlt, Canada director, and Kathryn Semogas, consultant, coordinated communications and advocacy outreach and strategy.

THOSE WHO TAKE US AWAY

Abusive Policing and Failures in Protection of Indigenous Women and Girls in Northern British Columbia, Canada

More than 582 indigenous women and girls have gone missing or been murdered across Canada over the last five decades. Indigenous women are almost seven times more likely to be murdered than non-indigenous Canadian women. *Those Who Take Us Away* documents the double failure of policing by the Royal Canadian Mounted Police (RCMP) in the western province of British Columbia: the failure to protect indigenous women and girls from violence and the responsibility of the police for abusive practices and behavior, including excessive use of force, and physical and sexual assault.

The report also documents the weakness of police oversight mechanisms. Complaints lodged with the Commission for Public Complaints against the RCMP are likely to be investigated by the RCMP itself or an external police force. A recently established provincial mechanism for civilian investigation of police misconduct offers some promise, but the office's mandate excludes investigations of rape and sexual abuse. Fear of retaliation from police runs high, and the apparent lack of genuine accountability for police abuse adds to long-standing tensions between the police and indigenous communities.

To address the high levels of violence against indigenous women and girls, Canada should establish an inclusive national public commission of inquiry into the murders and disappearances of indigenous women and girls. British Columbia should expand the mandate of the civilian Independent Investigations Office to include authority to investigate allegations of sexual assault by police. Among other steps, the RCMP, in cooperation with indigenous communities, should expand training for police officers to counter racism and sexism in the treatment of indigenous women and girls.

Highway 16, sometimes referred to as "the Highway of Tears" in recognition of the women and girls who have gone missing or been murdered in its vicinity, in northern British Columbia. July 2012.

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FROM

RACE, SPACE, and the LAW

Unmapping a White Settler Society

Razack - a professor of Sociology + Equity Studies in Education @ OISE
Author of Looking White People in the Eye.

edited by
Sherene H. Razack

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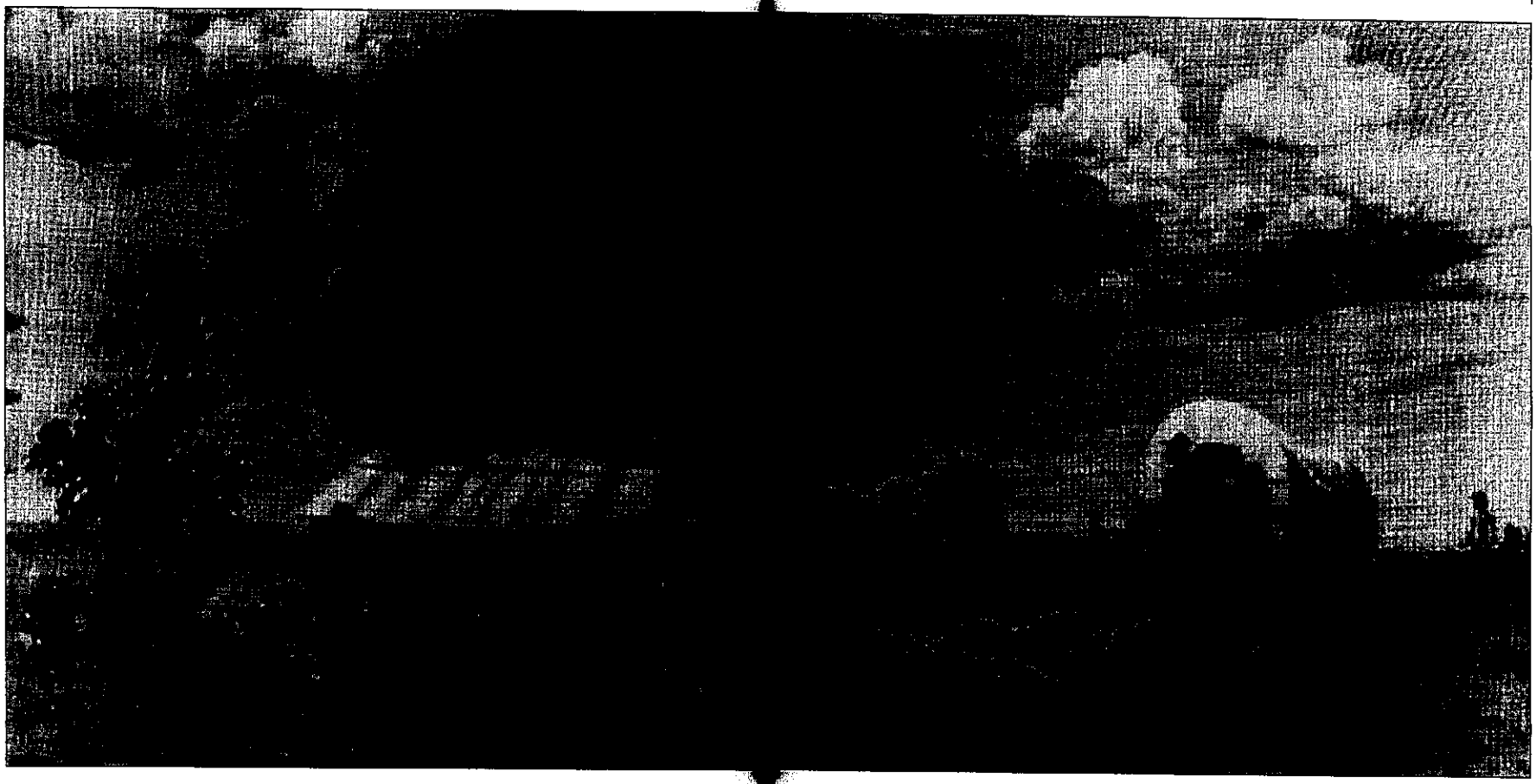
Between the Lines, Toronto
2002

CHAPTER 5

Gendered Racial Violence and Spatialized Justice

The Murder of Pamela George

Sherene H. Razack



Painting of "western scene," McCall Field, Calgary airport, 1960
[GLENBOW ARCHIVES NA-2399-76]

To unmap literally is to denaturalise geography, hence to undermine world views that rest upon it.

—Richard Phillips, *Mapping Men and Empire*

On Easter weekend, April 17, 1995, Pamela George, a woman of the Saulteaux (Ojibway) nation and a mother of two young children, was brutally murdered in Regina, Saskatchewan. Beyond the fact that Pamela George came from the Sakimay reserve on the outskirts of the city, and that she occasionally worked as a prostitute,

something she was doing that weekend, few details of her life or the life of her community are revealed in the court records of the trial of the two white men accused of her murder or in the media coverage of the event. More is known about her two murderers—young middle-class white men. Easter marked the first weekend since the end of their university exams. There was a week or so of freedom before summer jobs began, and nineteen-year-old university athletes Steven Kummerfield and Alex Ternowetsky set out to celebrate the end of term. They went out drinking in isolated areas under bridges and behind hockey arenas, and then cruised "the Stroll," the city's streets of prostitution. Eventually, after failing to persuade one Aboriginal woman working as a prostitute to join the two of them in the car, one man hid in the trunk. Approaching her twice and being refused twice, they finally succeeded in persuading another Aboriginal woman, Pamela George, to enter the car.

The two men drove George to an isolated area outside the city, a place littered with bullet casings and condoms. Following oral sex, they took turns brutally beating her and left her lying with her face in the mud. They then drove to a fast-food restaurant and later to a cabin on Saskatchewan Beach, which belonged to one of their grandfathers. The next morning, upon returning to town, they heard a radio report describing a body found outside the city. After both first confided their involvement in the murder to a number of friends and to one of their parents, one man left town to take up his summer job planting trees in the northern forests of British Columbia. The other man flew to the mountain resort of Banff, Alberta, where he joined other white male university athletes celebrating the end of term. In early May, nearly one month later, after following a tip and having exhausted the list of suspects who were mostly Aboriginal or of the "streets" of the Stroll, the Royal Canadian Mounted Police (RCMP) arrested both men for the murder of Pamela George. The arrest of two young middle-class white men for the murder of an Aboriginal woman working as a prostitute sent shock waves through the white population of this small prairie city. Pamela George's own family endured the pain of losing a loved one violently.

At the trial two years later, the defence at first tried to argue that Pamela George managed to walk away from the isolated field and was killed by someone else, an Aboriginal man. They also argued that since both men were highly intoxicated, they bore diminished responsibility for the beating. The boys did "pretty darn stupid things," but they did not commit murder. Both the Crown and the defence maintained that the fact that Pamela George was a prostitute was something to be considered in the case.[1] The judge sparked a public furor when he instructed the jury to bear this in mind in their deliberations. The men were convicted of manslaughter and sentenced to six-and-a-half years in prison, having already spent twenty months in prison. The objections of the Native community and some members of the white community stemmed from their belief that the crime was, at the very least, one of second-degree murder and that the judge acted improperly in directing the jury to a finding of manslaughter.[2] Alex Ternowetsky was paroled in 2000 after having served only two-thirds of his sentence. In August 2001, he faced new charges of assault, robbery, mischief, impaired driving, and refusing to take a Breathalyzer test.[3]

Why write about this trial as spatialized justice and this murder as gendered racial or colonial violence? Some readers of early versions of this essay have commented that the prison sentences for manslaughter meted out to the two accused were not highly unusual and therefore not indicative of the court's leniency. Others noted that a finding of murder would have required more evidence than was available. In agreement with this latter view, in 1998, the Saskatchewan Court of Appeal rejected an appeal by the Crown that the trial judge had failed to fairly present the Crown's position that the two men had murdered Pamela George. The Appeal Court concluded that Mr. Justice Malone had made it clear to the jury that a finding of murder, whether first or second degree, would require evidence that the accused intended to commit murder or knew that their actions would result in Pamela George's death. There is some indication, according to the Appeal Court, that the jury did indeed carefully consider whether there was enough evidence to convict on a charge of murder rather than manslaughter. Further, the Appeal Court continued, the trial judge's direction to the jury to consider that Pamela George was working as a prostitute the night of the murder did not degrade her in any way and thus cannot be considered to have led the jury to its conclusion that the men committed manslaughter and not murder.[4]

I propose to show that a number of factors contributed to masking the violence of the two accused and thus diminishing their culpability and legal responsibility for the death of Pamela George. Primarily, I claim that because Pamela George was considered to belong to a space of prostitution and Aboriginality, in which violence routinely occurs, while her killers were presumed to be far removed from this zone, the enormity of what was

done to her and her family remained largely unacknowledged. My argument is, in the first instance, an argument about race, space, and the law. I deliberately write against those who would agree that this case is about an injustice but who would de-race the violence and the law's response to it, labelling it as generic patriarchal violence against women, violence that the law routinely minimizes. While it is certainly patriarchy that produces men whose sense of identity is achieved through brutalizing a woman, the men's and the court's capacity to dehumanize Pamela George came from their understanding of her as the (gendered) racial Other whose degradation confirmed their own identities as white—that is, as men entitled to the land and the full benefits of citizenship.

In the same vein, I race the argument made by some feminist scholars that women working as prostitutes are considered in law to have consented to whatever violence is visited upon them.[5] While I wholeheartedly agree, I underline how prostitution itself (through enabling men to mark the boundary between themselves and degenerate[6] Others) and the law's treatment of it as a contract sustain a colonial social order. Finally, I reject the view that the spatialized justice I describe, the values that deem certain bodies and subjects in specific spaces as undeserving of full personhood, has more to do with class than it does with race. In this view, it is her poverty and her location in the inner city that most influenced how Pamela George was treated in life and in law.[7] A white woman in a similar circumstance and place would be treated the same way, or perhaps only slightly better. Again, while I would not disagree (indeed I would argue that a white woman working as a prostitute on the Stroll would be racialized), I emphasize here that race overdetermined what brought Pamela George *and her murderers* to this brutal encounter. Equally, race overdetermined the court's verdict that the men bore diminished culpability for their actions.

The racial or colonial aspects of this encounter are more prominently brought into view by tracing two inextricably linked collective histories: the histories of the murderers, two middle-class white men, and of Pamela George, a Saulteaux woman. Significantly, history is precisely what was absent in the trial. Pamela George stood abstracted from her history and remained for the court only an Aboriginal woman working as a prostitute in a rough part of town. The two men, Alex Ternowetsky and Steven Kummerfield, were also abstracted from their histories. They were simply university athletes out on a spree one Easter weekend. As abstractions, neither side could be seen in the colonial project in which each was embedded. The history of dispossession, and its accompanying violence, that brought both Pamela George and her murderers to the Stroll; white people's historic participation in and benefit from that dispossession and violence; and the law's complicity in settler violence, particularly through an insistence on racelessness and on contract, all remained invisible. At the end of the day, the record showed only that two white "boys" lost control and an Aboriginal woman got a little more than she bargained for. That an Aboriginal woman was brutally murdered sometimes seemed lost during the trial.

The collective histories I trace are also geographies. In examining the transcripts of the case, one can hardly miss the spatiality of the violence and its relationship to identity as well as to justice. The men leave the university and their families' and girlfriends' middle-class homes in the suburbs to spend time with each other, in places that are "outside" civilized society. From drinking under bridges, beside airports, and behind hockey arenas, they proceed to the Stroll, the streets of prostitution occupied by racial Others, and ultimately to the murder scene. In the elite spaces of middle-class life (the university, suburban homes, chalets, and cottages), they learn who they are, and, more important, who they are not. Moving from respectable space to degenerate space and back again is an adventure that confirms that they are indeed white men in control who can survive a dangerous encounter with the racial Other and who have an unquestioned right to go anywhere and do anything.

These journeys of transgression are deeply historical ones. White settlers displaced Pamela George's ancestors, confining her Saulteaux nation and others to reserves. Pamela George's own geographies begin here. Colonization has continued apace. Forced to migrate in search of work and housing, urban Aboriginal peoples in cities like Regina quickly find themselves limited to places like the Stroll. Over-policed and incarcerated at one of the highest rates in the world, their encounters with white settlers have principally remained encounters in prostitution, policing, and the criminal justice system. Given the intensity of this ongoing colonization, white men such as Kummerfield and Ternowetsky had only a very small chance of seeing Pamela George as a human being. When the court itself undertook the same journey from respectable to degenerate space during the trial, as it reviewed the events surrounding the murder, her personhood again remained invisible. White complicity in producing the harsh realities of her life never surfaced, and the men's own activities were subjected to very little critical scrutiny. The "naturalness" of white

innocence and of Aboriginal degeneracy remained firmly in place as the conceptual framework through which this incident of gendered racial violence could be understood.

I propose to unmap these journeys. That is to say, I want to denaturalize the spaces and bodies described in the trial in an effort to uncover the hierarchies that are protected and the violence that is hidden when we believe such spatial relations and subjects to be naturally occurring. To unmap means to historicize, a process that begins by asking about the relationship between identity and space.[8] What is being imagined or projected on to specific spaces, and I would add, on to bodies? Further, what is being enacted in those spaces and on those bodies? In the first section of this chapter, I discuss the factors that brought Pamela George to the Stroll and those that brought two white men to it. I suggest that the encounter between the white men and Pamela George was fully colonial—a making of the white, masculine self as dominant through practices of violence directed at a colonized woman. In the second section, I explore how various legal and social constructs naturalized these spatial relations of domination, highlighting in the process white respectability and entitlement and Aboriginal criminality. In the conclusion, I explore how we might contest these practices of domination through a resurrection of historical memory of colonization and its continuing effects. In essence, I suggest that we insist that in law, as in life, we inhabit histories of domination and subordination for which we are accountable.

Space, Gendered Racial Violence, and the Making of White Settler Societies

> Why was she prostituting herself when the Queen promised her a prosperous life on the reserve? . . . Why would she prostitute herself if the treaties had been fulfilled? . . . Many times I wonder at nights whether she screamed "Canada, Canada" like that Somalia kid that was killed by the Airborne Regiment.
>
> —Morning Child, commenting on the death of his daughter, Calinda Waterhen[9]

Two white men who buy the services of an Aboriginal woman in prostitution, and who then beat her to death, are enacting a quite specific violence

perpetrated on Aboriginal bodies throughout Canada's history, a colonial violence that has not only enabled white settlers to secure the land *but to come to know themselves as entitled to it*. In the men's encounter with Pamela George, these material (theft of the land) and symbolic (who is entitled to it) processes shaped both what brought Pamela George to the Stroll and what white men from middle-class homes thought they were doing in a downtown area of prostitution on the night of the murder. These processes also shaped what sense the court made of their activities.

In *Racist Culture*, David Goldberg writes about the spatial configurations of colonial societies, arguing persuasively that racial categories have been spatialized. Colonizers at first claim the land of the colonized as their own through a process of violent eviction, justified by notions that the land was empty or populated by peoples who had to be saved and civilized. In the colonial era, such overt racist ideologies and their accompanying spatial practices (confinement to reserves, for example) facilitate the nearly absolute geographical separation of the colonizer and the colonized. At the end of the colonial era, and particularly with urbanization in the 1950s and 1960s, the segregation of urban space replaces these earlier spatial practices: slum administration replaces colonial administration. The city belongs to the settlers and the sullying of civilized society through the presence of the racial Other in white space gives rise to a careful management of boundaries within urban space. Planning authorities require larger plots in the suburbs, thereby ensuring that larger homes and wealthier families live there. Projects and Chinatowns are created, cordoning off the racial poor. Such spatial practices, often achieved through law (nuisance laws, zoning laws, and so on), mark off the spaces of the settler and the native both conceptually and materially. The inner city is racialized space, the zone in which all that is not respectable is contained.[10] Canada's colonial geographies exhibit this same pattern of violent expulsions and the spatial containment of Aboriginal peoples to marginalized areas of the city, processes consolidated over three hundred years of colonization. Here, however, both colonial and slum administration persist. Reserves remain lands administered by the *Indian Act*, while city slums are regulated through a variety of municipal laws.

Regina, a city of almost two hundred thousand people in which Aboriginal peoples make up approximately 8 per cent of the population,[11] is estimated to have a higher urban Aboriginal population per capita than all other major Canadian cities. The Aboriginal population is also the

youngest one in Canada—43 per cent of Aboriginals are fifteen years old or younger.[12] However, the presence of a significant Aboriginal population in an urban centre is a relatively recent historical development. Canada's colonizing endeavours confined the majority of Aboriginal peoples to reserves by the second half of the nineteenth century, establishing in the process the geographical configuration of Regina today as a primarily white city in the midst of the reserves of the Qu'appelle Valley. This nineteenth-century spatial containment of a subject population was never secure and often required brutal policing and settler violence. In 1885, for example, white settlers of Regina who were fearful of Native rebellions organized a Home Guard and pressed vigorously for the North West Mounted Police (NWMP) to police Natives and to hang Native leaders arrested after the Riel Rebellion.[13]

Sexual violence towards Aboriginal women was an integral part of nineteenth-century settler strategies of domination. In her research on the appearance during this time of captivity narratives (stories about the abduction of white women and children by Aboriginal peoples), Sarah Carter documents the important role that stereotypical representations of Aboriginal women played in maintaining the spatial and symbolic boundaries between settlers and Natives. Prior to 1885 there had been relative co-existence between fur traders and Aboriginal peoples, but the Métis rebellion and general Aboriginal resistance to their spatial confinement, as well as the increasing presence of white women on the Prairies, led to powerful negative images of Aboriginal women that portrayed them as licentious and bloodthirsty. These images helped to justify the increasing legal regulation of Aboriginal women's movements and their confinement to reserves. As Carter demonstrates, "the squalid and immoral 'squaw'" helped to deflect criticism away from the brutal behaviour of government officials and the NWMP, and it enabled government officials to claim that the dissolute character of Aboriginal women and the laziness of the men explained why reserve land was not used to capacity and were pockets of poverty.

After 1885, the pass system was introduced and required Aboriginal peoples to obtain a pass from a government employee before leaving the reserve. One rationale was that the system would limit the numbers of Aboriginal women "of abandoned character" entering the towns. Relying on diaries of policemen, newspapers, and court records, Carter discusses a variety of oppressive practices towards Aboriginal women. For example,

government agents sometimes withheld rations to reserve communities unless Aboriginal women were made available to them. The NWMP often turned a blind eye to such practices, engaging in their own coercive relations with Aboriginal women. White men in positions of authority often beat Aboriginal women, sometimes fatally. Oral narratives of late-nineteenth-century Lakota women suggest that the NWMP had easy sexual access to Aboriginal women whose families were starving.[14]

Newspaper records of the nineteenth century indicate that there was a conflation of Aboriginal woman and prostitute and an accompanying belief that when they encountered violence, Aboriginal women simply got what they deserved. Police seldom intervened, even when the victim's cries could be clearly heard.[15] In one case explored by Sarah Carter, which bears an uncanny parallel to the trial of Ternowetsky and Kummerfield for the murder of Pamela George, a Cree woman, referred to in the newspapers as a squaw named Rosalie who was working as a prostitute, was murdered by William Fisk, a white man of a well-established family. Even when Fisk confessed to the murder, the Crown expressed his sympathy for Fisk as a man whose activities in capturing rebellious Natives clearly marked him as a patriot and an upstanding citizen. When a jury declared Fisk innocent, a judge ordered a retrial and, unusual for the period, urged the new jurors to forget the victim's race and consider the evidence at hand. Ultimately convicted of manslaughter, Fisk was initially given a life sentence, but this reduced to fourteen years of hard labour when testimonials of support for him poured in. Rosalie, as one newspaper boasted, had a "respectable burial" even though she was not white, an honour swiftly diluted when the church refused her burial in the mission's graveyard because she had died in "sin" while engaging in prostitution. The lesson of the case, one Calgary newspaper opined, was that it was important to "keep the Indians out of town."[16]

The nineteenth-century spatial containment of Aboriginal peoples to reserves remained in place until the 1950s. As professor Jim Harding of the University of Regina noted in his presentation to the Royal Commission on Aboriginal Peoples (RCAP), a white boy growing up in Regina in the 1950s would know Regina as almost exclusively white and as bordered by the reserves of the Qu'Appelle Valley: "two different worlds."[17] By the 1960s, however, a steady stream of Aboriginal peoples flowed from the reserves to the city. With a high birth rate, Aboriginal peoples left reserves in increasing numbers, impoverished among other things, by a series of

federal government cutbacks for housing. In 1971, the census indicated only 2,860 Aboriginal peoples living in Regina, but unofficial estimates placed the number closer to thirty thousand by mid-decade.[18]

This pattern of migration from reserves to cities is well documented for other Canadian cities. For example, Russell Lawrence Barsh studied the high rates of relocation from reserves to Lethbridge, Alberta, a city also bordered by reserves, in the 1990s and concluded that migration was primarily linked to housing rather than to the lure of economic activities in the city. Barsh suggests that housing shortages were created by cutbacks in federal grants to reserves during the 1980s.[19] These patterns are confirmed in the Ontario context by Allison Williams, who has reviewed a number of Canadian studies of migration of Aboriginal peoples to cities.[20] Between 1986 and 1991, the urban Aboriginal population in Canada increased by 55 per cent in contrast to the non-Aboriginal urban population increase of 11 per cent.[21]

Pamela George's homeland, the Sakimay reserve, is typical of the spatial configurations that emerged in Canadian colonialism and produced the migration from reserves to the city. The link between the material privilege of white settlers in the cities and Aboriginal marginalization is a direct one, as the Indian Claims Commission (an independent body set up by the federal government to aid in the settlement of land claims) established with respect to the Sakimay and other reserves in the area. The Commission found that, in the 1940s, the federal government failed to consult the six First Nations involved before passing the *Prairie Farm Rehabilitation Act*, which authorized the construction of dams and the flooding of reserve lands along the Qu'Appelle River. The government also failed to expropriate or obtain surrenders of affected reserve lands. These practices left the Sakimay reserve tremendously impoverished, while white farmers profited from the enhanced irrigation.[22]

The three Prairie cities of Winnipeg, Regina, and Saskatoon have a higher in-migration from reserves than other Canadian cities. Women form the majority of these migrants (58 per cent), relocating to the city for a variety of reasons, including loss of tribal status, violence, and lack of housing and employment. Once in the city, however, the majority of urban Aboriginal peoples are left in a "jurisdictional limbo" between the city and the reserve.[23] As the authors of a case study of the First Nations economy in Regina conclude, the urban Aboriginal population remains more marginal than their reserve counterparts, without access to social services and networks. Aboriginal people also remain outside the city's economy—only 2.8 per cent of the workforce is Native, while Aboriginal people constitute 8 per cent or more of the population. In Winnipeg, Regina, and Saskatoon, according to the 1991 census, 60 per cent of urban Aboriginal households live below the poverty line and, for single-parent households headed by women, the figure is 80 to 90 per cent.[24] In Regina itself, this picture is even worse: 81 per cent of Aboriginal households live in poverty and the high-school drop-out rate for Aboriginal children is 90 per cent—higher than in any other city.[25]

Despite three decades of significant urbanization, the spatial configuration of the nineteenth century and the social hierarchies it both engenders and sustains remain firmly embedded in the white Canadian psyche and in social and economic institutions. The Native Council of Canada put it directly to the Royal Commission on Aboriginal Peoples: "There is a strong, sometimes racist perception that being Aboriginal and being urban are mutually exclusive."[26] In their own testimonies to the Royal Commission and other bodies, Aboriginal peoples report on the considerable racism in their lives in the cities. Robin Bellamy, a front-line worker in inner-city Saskatoon, told commissioners of the fear Aboriginal people had described to him in entering white areas of the city. Bellamy also described in considerable detail the almost complete exclusion of Aboriginal people from Saskatoon's institutions—in banks, for example, Aboriginal people regularly encounter difficulties cashing cheques.[27]

There are perhaps no better indicators of continuing colonization and its accompanying spatial strategies of containment than the policing and incarceration of urban Aboriginal peoples, a direct continuation of the policing relationship of the nineteenth century. Between the late 1960s and the early 1970s, the number of Aboriginal peoples in Regina's jails increased by 10 per cent. In 1971 the city stepped up downtown patrols, and in 1975 created a special task force for the purpose of policing Aboriginal peoples. By 1994, the province of Saskatchewan (of which Regina is the capital) had the highest level of incarceration of Aboriginal peoples in Canada: 72 per cent of the population in the province's jails were Aboriginal.[28] According to a "One-Day Snapshot" survey taken in October of 1996, 76 per cent of Saskatchewan's inmates on register in adult correctional facilities were Aboriginal.[29] In 1999, Patricia Monture-Angus tells us that Aboriginal men made up approximately 80 per cent of the population at Saskatchewan Penitentiary.

The rates of incarceration are even more dramatic for Aboriginal women. Ten years ago it was estimated that in Saskatchewan a treaty Indian woman was 131 times more likely to be incarcerated than a non-Aboriginal woman, while Métis women were twenty-eight times more likely to be incarcerated. According to Jim Harding's 1993 testimony to the Royal Commission, Aboriginal women then made up 80 to 90 per cent of the prison population at Pinegrove, a correctional facility in Regina. Thus, while the number of admissions to correctional centres increased in Saskatchewan by 46 per cent between 1976 and 1992, the rate of increase for Aboriginal women was 111 per cent for the same period.[30] Looking to a national scale, and to more recent statistics, First Nations women (registered or "Status" Indians) made up only 1 to 2 per cent of the Canadian population in 1997, but represented 19 per cent of federally sentenced women.[31] Harding connected Saskatchewan's provincial carceral scene, in particular, to the history of colonization, reminding RCAP commissioners that it was in Saskatchewan that Louis Riel was hanged and eight Indian leaders were executed in 1885. Perhaps, he speculated, the lessons of 1885 remain "deeper in our psyche [and] in our social structure than we would like to realise."[32]

Not surprisingly, the encounter in policing between white people and Aboriginal people maintain all of the characteristics of the nineteenth-century colonial encounter. Commenting on the use of police dogs to terrorize Native youth, Professor Harding recalled witnessing the police unleashing a dog in the house of a Native woman engaging in prostitution. Describing to the commissioners the scene of terror that ensued, Harding underlined the fact that the typical offender is also the typical victim: a young Native woman. Indeed, Native women can seldom count on the police when assaulted. Harding estimated that in the decade preceding the RCAP hearings, at least ten Aboriginal prostitutes had been murdered in Regina. René Dussault, co-chair of the Royal Commission, aptly concluded that Harding's presentation described "the dark side of the city," a zone where Aboriginal women are particularly at risk.[33]

The evidence that Aboriginal peoples live in a state of colonization as direct and coercive as prevailed two centuries ago is nowhere better demonstrated than in the high rate of suicide among Aboriginal peoples in Canada. As a government report concludes, the suicide rate, one of the highest in the world and four times higher than that of the non-Aboriginal population, is an expression of the "collective anguish" of three hundred

years of colonial history. Illustrating the sources of this anguish and the depth of despair, one young Aboriginal woman told the report's authors of her own former life on the street, a past which included prostitution. Exemplifying what the report calls "a mixture of sexual and racial exploitation," "Missy" described how men from high-class communities go downtown to look for Native kids to rape and assault, knowing that the Native kids who survived would not talk. She commented on how she was generally perceived by such men: "One thing that really used to bother me was that men looked at me differently [from the other girls]. I always felt really dirty all the time. Men used to look at me and undress me with their eyes just anywhere, or try and pick me up thinking I was just easy. That used to really bother me." As Missy concluded: "So I felt really dirty being an Indian."[34]

Although there is no systematic study of the sexual violence Aboriginal women endure today on the streets at the hands of white men,[35] the cases that do surface suggest that the nineteenth-century perception of the Aboriginal woman as a licentious and dehumanized squaw (a perception described by Missy near the end of the twentieth century) continues to prevail. The Aboriginal Justice Inquiry's discussion of the 1971 murder of Helen Betty Osborne in The Pas, Manitoba, elaborates on its prevalence. Brutally murdered by two white men, Osborne, an Aboriginal student who was walking along a downtown street, was picked up in town and driven to a more secluded spot where she was assaulted and killed. As the Commissioners of the Aboriginal Justice Inquiry concluded, Osborne's attackers "seemed to be operating on the assumption that Aboriginal women were promiscuous and open to enticement through alcohol or violence. It is evident that the men who abducted Osborne believed that young Aboriginal women were objects with no human value beyond [their own] sexual gratification."[36]

Such assumptions often appear to be operating when the police fail to respond to the disappearance of Aboriginal women, citing their involvement in prostitution and their practices of moving from place to place. In the early 1990s, John Crawford, a white man, was convicted of murdering three Aboriginal women—Calinda Waterhen, Shelley Napope, and Eva Taysup. In each case, Crawford and another white friend began by drinking and having sex with the woman in question who was possibly working as a prostitute. The women's disappearance attracted little attention. When their families reported them missing, police appeared to assume that such women were simply transients on the move. As police sergeant Dave

Kovach told a reporter, the police don't look for transient adults because such individuals often go missing and often don't want to be found.[37] Crawford's victims were indeed, as Denise McConney has written, "caught up in the ongoing displacement, relocation, and search for a safe place that is a consistent theme in the lives of most native women."[38] Ironically, it is their very dispossession that is held against them when Aboriginal women encounter violence on the streets.

The Making of White Men: The Two Accused

Alex Ternowetsky and Steven Kummerfield's histories begin in the colonial practices described above. In their everyday life, they would have had almost no chance of encountering an Aboriginal person. Absent from the university, the ordered suburbs of their families, the chalets and cottages, Aboriginal bodies had to be sought out in the marginal spaces of the city. Why would white men seek out these bodies? Why would they leave their own spaces of privilege? How do young white men such as Alex Ternowetsky and Steven Kummerfield come to know themselves as beings for whom the definition of a good time is to travel to the parts of the city inhabited by poor and mostly Aboriginal peoples and there to purchase sexual services from an Aboriginal woman? I argue that the subject who must cross the line between respectability and degeneracy and, significantly, return unscathed, is first and foremost a colonial subject seeking to establish that he is indeed in control and lives in a world where a solid line marks the boundary between himself and racial/gendered Others. For this subject, violence establishes the boundary between who he is and who he is not. It is the surest indicator that he is a subject in control.

I have argued elsewhere[39] that the spatial boundaries and transgressions that enable the middle-class white male to gain mastery and self-possession are generally evident in his use of a woman in prostitution. When they purchase the right of access to the body of a prostitute, men, whether white and middle-class or not, have an opportunity to assert mastery and control, achieving in the process a subjectivity that is intrinsically colonial as well as patriarchal. Naturalized as necessary for men with excess sexual energy, prostitution is seldom considered to be a practice of domination that enables men to experience themselves as colonizers and patriarchs, that is, as men with the unquestioned right to go anywhere and do anything to the bodies of women and subject populations they have conquered (or purchased). Instead, the liberal idea that we are autonomous individuals who contract with each other is used to annul the idea that prostitution is non-reciprocal sex and thus a violation of the personhood of the prostitute. The contract cancels the violence, although we readily recognize the violence of other financial transactions (such as Third World youth who sell their corneas to First World buyers). The space of prostitution, which Malek Alloula describes as "*the very space of orgy*: the one that the soldier and the coloniser obsessively dream of establishing on the territory of the colony,"[40] is the space of license to do as one pleases, regardless of how it affects the personhood of others.

How did the two men enact their colonial histories? Race is not, at first glance, as evident as gender although neither exists independently. The men's behaviour bears some resemblance to the young hockey athletes researched by Laura Rohinson in her *book Crossing the Line: Violence and Sexual Assault in Canada's National Sport*. Robinson describes the masculinity that is actively fostered in the world of young athletes as one where violence and sexual aggression, and a hatred of the softness that is female, are positive signs of masculinity. The normalizing of abusive relationships and male-bonding rituals designed to foster team relationships help to produce men for whom relationships with other men become the primary source of intimacy. Drawing on the work of scholars researching sports and masculinity, notably Peggy Reeves Sanday, Robinson suggests that sexual violence collectively enacted enables the men to get as close to each other as they can without endangering their sense of themselves as heterosexuals. To debase and degrade a woman in the presence of other men secures the masculinity that must be aggressive and that must disavow sexual feelings for other men.[41]

Scholars pursuing these themes in the context of university-educated men on sports teams share Robinson's emphasis on the relational features of this masculinity. S.P. Schacht, for instance, concludes of male rughy players that a kind of "order-by-violence" often prevails in which the definition of a real man is someone who sexually harms women. The players resorted to a variety of violent practices to "distance themselves from the feminine," continually reminding one another what masculinity is.[42] Peter Donnelly and Kevin Young also note "the fragility of reputations" in sports subcultures, that is, the need to make and remake masculine identity and the constitutive role that violence plays in this cycle.[43] Laurence Wenner describes the male adolescent for whom excessive public drinking (as well as buying the services of a prostitute) is a rite of passage into manhood, an exposure of

oneself to a dangerous situation from which one emerges triumphant. Sport, Wenner suggests, works in a similar way, enabling men to establish their reputations with other men and to mark off the distinction between themselves and women.[44] As I show below, such practices also enable men to mark themselves as different from and superior to racial Others.

Kummerfield and Ternowetsky inhabited a world in which the homosocial bonding, drinking, and aggression were important features. Their counsel presented a unified picture of boys who started drinking at fourteen and who steadily progressed into a regular pattern of weekend and summer drinking. Both of the accused noted that as the youngest members of their university sports teams, they were initiated into more serious drinking by older teammates. Described as an "up and coming basketball star" of the University of Regina, Steven Kummerfield was cautioned about his excessive drinking by his basketball coach and saw an addictions counsellor while in his first year of university.[45] Kummerfield's drinking led on one occasion to his becoming a young offender, when in 1994 he damaged some unoccupied farm buildings.[46]

For his part, Alex Ternowetsky described socializing and drinking with his hockey teammates at the University of Northern British Columbia. Returning to Regina for a visit a few months after beginning his first year, Ternowetsky drank to excess with his friends (Tyler Stuart and Ryan Leier) and ended up at a convenience store in the early morning. While there, he tried to hug a girl emerging from a nearby vehicle and when confronted by her boyfriend proceeded to smash the latter's car with a golf club handed to him by his friends. He received a conditional discharge and his father paid the damages of $3,000. The assault charge was dropped. Shortly after, he sought some addictions counselling, although it is not clear if this was as a consequence of the court case.[47]

On the weekend of the murder, both men indulged in extensive drinking with their friends. Ternowetsky's account of his activities over the Easter weekend prior to the murder provides some idea of his social world. Arriving via Edmonton, he contacted a friend, Rod MacLeod, with whom he went drinking at one of their old haunts behind the Balfour hockey arena. Later, at a bar, his friend Eric Willrich got into a fight with a man he assumed was harassing Ternowetsky. Eric broke his leg during the fight. The following day, Ternowetsky continued drinking with MacLeod on the roof of the Optimist's arena.[48] Nostalgically sharing a bottle of rye in memory of a good time the summer before, the two also went drinking behind

Massey Pool. Finally, when neither Willrich nor MacLeod was available to continue partying, Ternowetsky arranged to meet Kummerfield at Rainbow Bridge and took a cab there, stopping at a bank machine en route to withdraw money for the night's activities.

Of the dozen or so male friends of the accused who testified, all were white male athletes attending university. In this remarkably homogeneous shared world of young, white, athletic, middle-class men (some of whom even had the same first Christian names), drinking and socializing occurred in isolated spaces outside their respectable homes. Parental surveillance and the financial costs of drinking in a bar were undoubtedly factors contributing to this pattern; during the Easter weekend, Ternowetsky was not allowed into the home of a friend and Kummerfield's parents refused to lend him the car to go out drinking. The men relied on their allowances to obtain drinking money. Their places of drinking and socializing were invested with special meaning, a testimony to the importance of their friendships. The accused testified that the places were secluded and a tradition, a place where they shared good times. A strip of gravel beside the airport runways was Alex Ternowetsky's favourite place and his friends named it the "Alport" in his honour. Steven Kummerfield's favourite place to drink was underneath Rainbow Bridge, a cement bridge over the Waskana Creek, which he described to a correctional officer as "a special place" for himself and Alex.[49] It was in this spot that "Allie" and "Stevie," as the accused called each other, began drinking on the night of the murder.

The sense of identity that both accused gained from their activities with other men was premised on a shared whiteness. Their sports activities cement white settler identity in ways I do not explore here,[50] but evidence of their shared whiteness is most apparent in their own and their friends' and families' responses to Pamela George and to the Stroll. The men told several of their friends about the events the night of the murder and received considerable support and advice. Alex Ternowetsky told at least four of his friends. One of these, Rodney McLeod, with whom he had been drinking at Massey Pool and whose fleece jacket he was wearing the night of the murder, reassured him that no one would find out. To another, Tyler Harlton, he confided that he had killed "an Indian hooker." Ryan Leier, with whom Ternowetsky had been in trouble before and to whom he confided the full details of the night while both were in a hot tub at a chalet in Banff, reassured his friend with the advice "you shouldn't assume you killed her." Finally, Ternowetsky told his fried Eric Willrich, whose jeans he

was wearing the night of the murder and at whose house he is alleged to have washed the blood stains off.[51]

Steven Kummerfield confided to his best friend Tyler Stuart, with whom he had once gone to the area of prostitution, that "we beat the shit" out of "an Indian hooker." In Tyler Stuart's account, Kummerfield also elaborated that he said to Pamela George, "If you don't give us head, we're going to kill you." Stuart, apparently mostly concerned about the transmission of disease to Kummerfield's white girlfriend, advised his friend to break up with her if he hadn't worn a condom the night of the murder.[52] In none of these conversations was there any indication that the men acknowledged that a woman had been brutally murdered; her death seemed almost incidental and simply inconvenient. The men seemed to possess a collective understanding of Pamela George as a thing, an objectification that their exclusively white worlds would have given them little opportunity to disrupt.

In contrast to these spaces of intense white male bonding, the men's relationships with white women and parents appeared to be less intense although no less supportive of their practices of white masculinity. Kummerfield had dinner with his girlfriend Shannon Johnstone before the murder and then went out drinking with Ternowetsky. Although each said they were in love, he never told her about the murder. Suspecting that he had been with another woman, she apparently interpreted his withdrawn manner in the days following the murder as irritation at her questioning about where he had slept on the night of the murder. Kummerfield did confide in his mother about his involvement in the murder, the morning after. Far from counselling her son to go to the police, she suggested that she could call Crimestoppers and provide the police with a false tip. His mother also washed his jeans and cleaned his shoes. Other parents were equally protective of their sons once they became aware of the gravity of the charges. For example, Tyler Harlton's father mailed newspaper clippings of the trial to his son but took care to return unopened a letter from Alex Ternowetsky.[53] Here, too, there appeared to be little anguish over the fate of Pamela George.

In addition to their own isolated spaces, the men also inhabited those of middle-class respectability—white spaces of the university and sports arenas. The suburban households out of which they came enabled them to wear expensive clothing, including the labels of Club Monaco, Nike, and Timberland; Kummerfield used his father's credit cards to withdraw money for prostitutes, and Ternowetsky used his own account to buy a plane ticket

to Banff.[54] There were cabins and chalets, the former owned by a grandfather who was formerly a member of the provincial legislature, the latter rented by hockey-playing friends. These privileged spaces provided the men with another male space for drinking. Alex Ternowetsky, who flew to Banff the day after the murder, was able to book himself into a hotel room in the resort town and to continue partying, activities that required cabs and money for the room, food, and alcohol.

The testimonies of the men staying at the chalet in Banff suggest that, at least in the all-male spaces, sexual aggression was normalized. Ternowetsky's drunken talk at the chalet did not strike his listeners as unusual. (He is reported as saying eight times in a half-hour period that "I want to go find a hooker and beat and rape her," and replying to a question about whether he had ever done this with "Yeah . . . it was fun and it was a rush.") They objected to his loudness but, as Curtis Doell testified, nothing struck him as unusual. The normal pattern was to ski and follow this up by eight hours or more of drinking. It was also typical to bring white women picked up in bars to the chalet.[55] Presumably, this talk about women and "Indians" was entirely normal.

In this all-white masculine world of privilege, the Stroll, the area of prostitution described in the trial as encompassing St. John and Ottawa Streets and involving a specific set of streets and hotels in between, represented the dangerous world of racial Others, a frontier on the edge of civilization. Police described the Stroll as a world of drugs and prostitution, and most of all, as a space of Aboriginality. Steven Kummerfield and his friends visited the Stroll "out of curiosity." Alex Ternowetsky and his friends took their girlfriends on an adventure to the Stroll, "sort of seeing who was there," as his lawyer put it.[56] The young women hid under blankets while the young men negotiated for the services of an Aboriginal prostitute: a thrilling excursion to the slums that would have helped these young white people to know their own place in the world.

On the night of the murder, after leaving Rainbow Bridge, Kummerfield and Ternowetsky drove to a place where they could buy liquor and then headed to the streets of the Stroll. They encountered Charlene Rosebluff, an Aboriginal woman working as a prostitute. In her account, they offered her $60, which neither of them had. Rosebluff refused to get in the car because there were two men and both were drunk. When she refused, the two men yelled at her using a string of racial slurs. At the trial, they acknowledged that this was possible and that they were likely to have used

racial epithets.[57] One man then got into the trunk of the car while the other drove around and tried to persuade Rosebluff twice again. (At the trial, it is unclear whether they recognize her to be the same woman.) She again refused. The men switched positions and tried once more. This time, when Pamela George agreed to get into the car, they drove her to a country field two miles outside the city.

When young white men enter racialized urban spaces their skin clearly marks them as out of place. They are immediately read as johns, as rich white men who have come "slumming." This visibility no doubt contributes to white (particularly more affluent) city dwellers' tendency to perceive themselves as likely targets of robbery or violence in racialized urban space.[58] Steven Kummerfield once paid for the services of a prostitute and alleged that she disappeared with the money without providing her service. Such perceptions of white vulnerability frequently exist in a manner disproportionate to actual documented incidence of crimes, violent crimes in particular.[59] It is perhaps the men's perception that they were marked and at risk on the Stroll that prompted them to drive Pamela George outside the city to a borderland between the country and the city, a no-man's-land that offers greater anonymity.[60] In this no-man's-land, violent acts can be committed without meaningful consequence. Although the accused both maintained that they did not know the area, the RCMP and the neighbouring farmers testified that it was isolated and that it was routine for prostitution to occur there.[61]

What normally happened in this space was mostly undisputed during the trial. The Crown referred to activities in the space as "romantic" activities, while a farmer stated that couples and prostitutes often used the area and that there was "necking or petting in vehicles." The defence lawyer Kovach asked an RCMP officer (who testified that he often stopped vehicles in this area) if "we're talking males, females, homosexuals, whatever, we don't know the kind of people—or you don't know the kind of people that frequent that road." The accused had no response when they were asked by the Crown why they would drive George to this area if all they wanted to do was have sex with her, a question the judge later directed the jury to ignore. Presumably, since Pamela George and the men were engaged in a contract of prostitution, something that occurred routinely in this space, the jury was directed to draw no special conclusion from their having taken George there.[62]

It is difficult to avoid both the historical and contemporary racial and spatial parallels between the murders of Helen Betty Osborne and Pamela George. Equally, newspaper reports in 1999 calling attention to cases of Aboriginal men found frozen to death after Saskatoon police apparently dropped them outside the city limits in the dead of winter, outline the tremendous violence of the eviction of Aboriginal peoples from urban space.[63] In each instance, white men forcibly and fatally removed Aboriginal bodies from the city space, a literal cleansing of the white zone. The violence is itself cleansing, enabling white men to triumph over their own internal fears that they may not be men in control. The evictions are to areas where white men are able to evade responsibility for their violent acts, areas where there are few witnesses and where, significantly, the norms of civility are suspended and violence by contract is known to occur.

Although there are several instances which neither of the accused can recall, they generally agreed that once at the country field, Pamela George was frightened and tried to defend herself. They talked to her and gave her false names. She ultimately agreed to perform oral sex and all three remained in the front seat of the car while this was in progress. While George was performing oral sex on Ternowetsky (having finished with Kummerfield), Kummerfield announced that they should leave. Ternowetsky asked that George be allowed to finish but a short time later, Kummerfield dragged her from the car and hit her. Ternowetsky, at first surprised, joined in. Neither recalled the extent of the violence but each remembered her face in the mud and the fact that she tried to defend herself. They later claimed that when they drove off (after having bent the license plate to conceal the numbers), Pamela George was still standing.[64]

During the trial, the murder scene and the Stroll were described as spaces somehow innately given to illicit and sexual activity. The bodies of Charlene Rosebluff, Pamela George, and a number of Aboriginal men were represented variously as bodies that naturally belonged to these spaces of prostitution, crime, sex, and violence. This degenerate space, into which Kummerfield and Ternowetsky ventured temporarily, was juxtaposed to the spaces of respectability. Each space required a different legal response. In racialized space, violence may occur with impunity. Bodies from respectable spaces may also violate with impunity, particularly if the violence takes place in the racialized space of prostitution.

Unmapping Law: Gendered Racial Violence in Anomalous Zones

When I identify Ternowetsky and Kummerfield's transgression into racial space as an identity-making process (the men entered the zone, came into close contact with its degenerate occupants, and survived to tell the tale), it is worth reiterating the important connection between prostitution, race, space, and justice. Prostitution emerged in its modern form as distinct and confined to sharply demarcated areas of the city at the historical moment when liberal nation-states emerged. Bourgeois subjects, the new citizens of the nation-state, knew themselves as respectable and civilized largely through a spatial separation from those deemed to be degenerate and uncivilized. Degenerate spaces (slums, colonies) and the bodies of prostitutes were known as zones of disorder, filth, and immorality. The inhabitants of such zones were invariably racialized,[65] evacuated from the category human, and denied the equality so fundamental to liberal states.

During the trial, Pamela George came to be seen as a rightful target of the gendered violence inflicted by Kummerfield and Ternowetsky. Put another way, her murder was characterized as a natural by-product of the space and thus of the social context in which it occurred, an event that is routine when the bodies in question are Aboriginal. This naturalizing of violence is sustained by the legal idea of contract, an agreement between consenting and autonomous individuals. Because she consented to provide sexual services, the violence became more permissible. The moment of violence is contained within the moment of the contract and there can be no history or context, for example the constraints on her choice and the historical conditions under which the bargain was made. Trapped in the moment in time of the contract, Pamela George remained simply "the prostitute" or the "Indian."

In the absence of details about George's life and critical scrutiny of the details of the lives of the accused, a number of subject positions remained uninterrogated. Thus, not only did George remain the "hooker" but Ternowetsky and Kummerfield remained boys who "did pretty darn stupid things"; their respective spaces, the places of white respectability and the Stroll simply stood in opposition to each other, dehistoricized and decontextualized. If Pamela George was a victim of violence, it was simply because she was of the Stroll/reserve, Aboriginal, and engaging in prostitution. No one could then be really held accountable for her death, at least not to the extent that there would have been accountability had she been of spaces within the domain of justice.

The Stroll and the Street

The perception that the Stroll and Aboriginal bodies are spaces of violence, while the university and white suburbs are spaces of civility, is first demonstrated by the candid responses of the police when questioned as to whom they initially pursued and why. The boundary between the streets and the university and suburbs was so firmly entrenched in the minds of the police that they spent the first three weeks after the murder "rounding up the usual suspects." The testimony of Corporal Torgunrud in reply to the Crown attorney's question as to who is a murder suspect is revealing in this respect:

Q Who do you usually suspect when you get a murder?
A Well – . . .
Q Let me give you a better example. If it's a woman who's killed and there is [sic] boyfriends, husbands, are those people often the suspects?
A Yes.
Q And that's simply because of the reality of life because oftentimes there is violence in relationships?
A That's right.
Q And do you often suspect associates?
A Yes.
Q And if a person happens to live a life on the street, involved in that type of world, you might suspect other associates in that area?
A That's right.
Q Did you suspect anybody who was attending the University of Regina when you first got the case?
A No.
Q And why not?
A Nobody had ever come forward or there was never anything to point to anybody there.
Q And why would you suspect somebody *far removed from Pamela George's life,* I take it?

A Right.

Q And did you get much, make much headway in this case pursuing the leads where the suspects were street people, people involved in sort of a lifestyle different, maybe, than most of us have?[66]

It is, of course, only possible to consider the world of the university as entirely apart from the world of the streets if one discounts that there are two parties in prostitution: the prostitute *and* the client. Pursuing suspects on the street, the RCMP interviewed a number of Aboriginal men, and the white man described as George's common-law husband. The suspects all speculated that George was murdered by a "bad Trick,"[67] but this made little impression on the police and they continued looking for Aboriginal men or men from the "streets." The police had to overcome a number of obstacles in order to keep their focus on suspects from the streets, obstacles that ultimately defeated them. For one thing, the shoe marks at the murder scene indicated that the murderer likely wore Caldera Nike hiking boots, expensive shoes that no suspect from the streets possessed. It was only when they followed up on Charlene Rosebluff's tip that the police considered the men who were most likely to possess such shoes: white middle-class athletes.

The first suspect the police pursued, George's common-law husband, Lenny Hall, was a white man who was consistently described by the defence as "an elusive character" whose "whereabouts are pretty scarce," a man with long greasy hair all the way to his mid-back. The police described Hall as extremely distraught when they told him of Pamela George's death. He later took a polygraph test and was cleared. In spite of being white, Hall was so thoroughly racially marked and identified as "of the street" that when the defence hired a private investigator to find him (on the strength that he was still a suspect), she looked in the downtown hotels, the salvation Army Hostel, the Souls Harbour Mission, the food bank, and the correctional centres. She asked "certain street people . . . that generally sort of keep tabs on each other" but did not think to ask George's family if they knew where Hall was.[68] At the trial, both she and the police concluded that Hall was unlocatable, a conclusion the Crown attorney quickly attempted to qualify with his own spatial assessment:

> . . . you can appreciate to some extent who we're dealing with here, this is someone who, from his background, has moved around a fair bit, he is an Ontario native to begin with. . . . Saskatchewan isn't home, he's not born and raised here . . . for example, Charlene Rosebluff's evidence, why people don't want to get involved in this, especially street people . . . the last thing Mr. Hall, quite frankly, wants to be doing is getting involved in this thing.[69]

In his awkward naming of Hall as an "Ontario native to begin with," the Crown attorney very nearly made an explicit and subtextual conflation of Hall and "Natives," a predictable slip given the extent to which Hall was invested with racial characteristics and regarded as degenerate and therefore not white enough.[70] One should not read anything sinister, the Crown attorney suggested, in Hall being difficult for the police and the private investigator to find: such people are hard to find and are reluctant to become involved with the police. Again, Hall's elusiveness was naturalized as an innate feature of someone of this background, almost a cultural characteristic (or an acquired racial one), and not in any way an effect of ongoing police violence towards individuals racialized and policed in urban Aboriginal spaces.

In contrast to Hall, the Aboriginal suspect, Lloyd Issac, was easy to find since in the weeks following the murder he was arrested and jailed for robbery. As with other Aboriginal suspects, Issac had no Caldera boots and his own running shoes were free of mud and blood. Nonetheless, the defence maintained throughout the trial that he was possibly the killer. With a history of encounters with the police, Issac was reported to be very agitated when asked if he would take a polygraph test. (He was earlier falsely accused on the basis of one.) Issac had several theories about the murder and had heard from other Aboriginal men in prison, including George's cousin, about some of the details of the investigation. In the retelling of the police's interview with Issac, the court heard details of how prisons, conflated with Aboriginal spaces, operate. They learned of prison networks of information, for example.[71]

The street thus remained, in the space of the courtroom, an aggregate of individuals who form a mass and who function according to their own rules. From this perspective, criminality sticks to the Aboriginal bodies, entrenching a view that such bodies can be associated with little else. In the court transcripts, we do not learn, as newspaper reports revealed, that Issac had been struggling to overcome a drug habit, that he had been subjected to several beatings by police, and had feared being

framed for the murder of Pamela George. He had been interrogated by the police four times in relation to the case and was unable to find legal assistance, circumstances that possibly contributed to the taking of his own life in March 1996.[72] Since the over-policing, incarceration, and high suicide rates of Aboriginal peoples were not brought to bear on the details, the stain that is Aboriginality could not be seen as socially constructed.

Aboriginal women did not fare any better than the men in failing to materialize as subjects during the trial. They too remained "of the streets" and therefore of the violence. Charlene Rosebluff, who was originally of the Sakimay reserve, as was Pamela George, and who the men first approached on the night of the murder, remained in the judge's mind as "the prostitute." When she was late for her second court appearance, the Crown attorney explained that she was upset by the way in which "her world" was being described. The judge instructed the jury to read nothing sinister into her failure to show. Kummerfield described her to his friend Tyler Stuart as a hooker and not very good-looking. As an expert on substance abuse revealingly suggested to the court, it was likely that the men were unable to positively identify Rosebluff as the person they approached three times, not because of their state of inebriation, but because they couldn't tell one Indian from another and viewed all Indians as being the same. Later pressed by the defence to explain once again what the men's failure to recognize Charlene Rosebluff might mean, the expert witness, Dr. Aubrey Levin, again suggested that while such behaviour might be explained by memory loss due to the effects of alcohol, the use of insulting language towards Rosebluff would more strongly suggest that the men were unable to recognise her because of "a certain attitude towards that kind of person," a person who is a prostitute.[73] His expertise, and thus his opinion of the source of the men's confusion, was later discredited by the judge in his address to the jury.

Apart from a few moments, such as when Charlene Rosebluff remembered her as a nice person and a mother with two children, and when her mother and sister recalled that she liked doing crafts, could cook anything and was a good mother to her ten- and five-year-old, Pamela George never left the racially bounded space of prostitution and degeneracy during the trial, a space that marked her as a body to be violated. We never learn of the Sakimay reserve and the extensive familial networks of her life there, nor do we learn anything about why she resorted to prostitution a few times a month, and why she left the reserve in the first place. It is

only in newspaper articles that we learn that she helped her father through his crisis with alcohol abuse, supporting him in his journey to become an addictions counsellor. When details of her life emerged, such as the fact that Pamela George had a cousin in prison, and her father had himself been falsely accused of a crime,[74] they only confirmed the equation of Aboriginality with violence, a state of affairs that remained unconnected to the violence of the colonizers. In place of details that might have given her personhood, there were a myriad of other details that instead reassured the court of her belonging to spaces of violence. The needle marks on her arm, the tattoos on her body with the words "Ed" and "I love Mom," the stories of her ripping off clients (stories the police report they heard from Lenny Hall), the mention of her sister who was also a prostitute, and the detailed descriptions of how prostitutes conducted their business (but not how clients participate) leave a powerful image of degeneracy. This degeneracy was clearly racial. She was described as a member of the Mongoloid or Mongolian race when a strand of her hair was classified in evidence. Stephen Kummerfield described her as "shuffling" away from him in fear when she saw Alex Ternowetsky jump out of the trunk.[75]

Perhaps most telling of all were the accused's sense of the crime they committed. Ternowetsky told his friend Tyler Harlton that they picked up an Indian hooker, got kind of mad at her, started to hit her and did it too much and so probably killed her. Tyler was asked on the witness stand how Ternowetsky regarded the murder, to which he replied: "He kind of glanced over it, looked at it sexually." When asked to clarify, he explained that his friend did not describe the sexual act but instead made a noise like grunting. Ternowetsky did not apologize to the George family until relatively late in the trial. Questioned by the Crown attorney as to why he felt he had to leave town quickly if all he thought he had done was hit someone a few times, Steven Kummerfield replied:

> I was basically disgusted with what took place that evening, and I really didn't want to be arrested or anything like that just because there are so many opportunities I had, you know, to be successful and stuff and, you know, I just felt so ashamed and things like that.[76]

Lost opportunities weighed more heavily on Kummerfield's mind than the thought that he might have severely injured if not killed a woman. Kummerfield's response to the violence parallels those of hockey players

like Jarret Reid, who described in his statements to the court the tragedy of the loss of his hard-won hockey career and his reputation as an adored and respected athlete.[77]

Ultimately, it was Pamela George's status as a prostitute, hence not as a human being, and her belonging to spaces beyond universal justice, that limited the extent to which the violence done to her body could be recognized and the accused made accountable for it. Although it was central to the defence to spatialize accountability in this way, neither the Crown attorney nor the judge contested these relations between space and justice. The defence naturalized the violence by framing it as merely something that happens in prostitution and in those spaces. Describing the murder scene as a "quiet" rather than isolated location in which to have sex,[78] defence attorney Kovach suggested at sentencing: "They were out in the country doing what happens apparently on that road on a regular basis. . . . This is a fairly common area for that type of activity to be taking place. . . . She wasn't stabbed forty times. There wasn't a hammer used."[79] In perhaps the most convoluted but revealing of arguments that prostitution lies beyond the space of universal justice, the defence lawyer for Alex Ternowetsky suggested that if the court was going to ignore that Pamela George was working as a prostitute (and thus consider the beating and murder as one would any other), then the same consideration must be extended to his client:

> But I think the same consideration has to apply when you look at the evidence as it applies to Alex Ternowetsky. Alex admits that he drank excessively, that he picked up a prostitute, that he hit her and he left her out in the country to walk back to the city on her own, and no one can blame you if you look at that and say that's disgusting behaviour. But the issue that you have to consider is whether or not he's guilty of murder. . . .[80]

Although it is difficult to follow his logic, defence lawyer Aaron Fox appeared here to be suggesting that if the court ignored that the violence occurred within the context of prostitution (and is thus a lesser violence), then it must also ignore that his client drove George to a place of prostitution and inflicted the violence that caused her death. The social meaning of places and bodies must all be studiously ignored even as the law depends on these meanings to evaluate the violence. Presumably, his client would then be guilty of disgusting behaviour but not of murder. A parallel was being made between George engaging in prostitution and his client's drinking, both being examples of risky and ill-advised behaviour. Prostitution in particular "may not be pleasant but that's the reality." Further, Pamela's alleged drug addiction can be equated to their client's drunkenness. It was indeed central to the defence's arguments that the accused were simply young men who went out drinking. As Fox sums up: "You come to realize how easy it is for two otherwise rather average young boys with a booze problem to find themselves in a whole pile of extremely serious criminal difficulty, difficulty that could indeed effectively wreck their lives for years to come." For the defence, if there was a problem to be named in this trial, it is "substance abuse,"[81] and not racial or sexual violence that ended in murder.

The defence had to go to considerable lengths to make the argument that their clients were drunk and incapable of formulating an intent to injure or kill. The accused performed a number of deliberate actions (hiding in the trunk, hiding the license plate, having oral sex, and so on). While one expert witness saw such actions as indicating consciousness of what they were doing, the defence's own expert on substance abuse declared the men "alcohol tolerant" to the point that they could perform intricate tasks while very drunk.[82] Drunkenness as a defence for what was being viewed as a temporary loss of control on the part of the men may have made sense to the court not only because of the men's firm belonging to their own social space but also because of the victim's position outside of it. In other words, given her status in the trial as an Aboriginal woman prostitute and thus of the space of violence, was Pamela George seen as having simply gotten what she deserved?[83]

In his summation, after noting that Pamela George worked as a prostitute, the Crown attorney reminded the court that everyone was entitled to the protection of the law.[84] He nevertheless concluded in his summary remarks, after sympathizing with the families of the accused, that "Pamela George obviously lived a lifestyle far removed, probably from yours and mine. . . . The fact that she was a prostitute obviously is a fact, and you have to consider that as part of the case."[85] In his address to the jury, the judge directed the jury as follows:

> Now, if you should find that Pamela George consented to the sexual activity of the two accused, notwithstanding Kummerfield's remark

> about killing her if she did not give them head, or if you should have a reasonable doubt as to whether the accused consented or not, bearing in mind that the evidence indicates that she indeed was a prostitute, then the Crown has not made out its case with respect to first-degree murder occurring during a sexual assault, and you must find the accused not guilty of first-degree murder but guilty of second-degree murder.[86]

He then clarified that forcible confinement was a separate and distinct issue from confinement for sexual assault. For there to be forcible confinement, Pamela George would have to be shown to have been dragged to the car and held against her wishes; she cannot simply have been forced to have sex. He directed the jury to remember that George consented to perform sexual acts and that the accused were within their rights to hire her. Even Kummerfield's remark that he would kill her if she did not perform the sexual acts had to be considered in light of the fact that he had in fact hired her to perform these acts. While George was to be judged for engaging in prostitution, the men were not to be judged for having purchased her services. Put more plainly, her activity was a crime which carried the risks of violence, while theirs was a contract. Taking her out to the country should then have no bearing on how the intentions of the accused were understood.[87] Presumably, this was all within the purview of the contract Pamela George made to sell her sexual service and within the limits of her lifestyle.

I suggest that it was difficult for the Crown to disturb the argument of drunkenness and disorderly conduct (as opposed to murder), primarily because of an implicit spatial underpinning which was never challenged and was indeed shared by the Crown. While Pamela George remained stuck in the racial space of prostitution where violence is innate, the men were considered to be far removed from the spaces of violence. She was of the space where murders happen; they were not. The men received support from several white people and were praised for their accomplishments. The RCMP reported that they got along well with the accused and a correctional officer conveyed that he related to Alex Ternowetsky like a father. Counsel received an anonymous note claiming that a juror flirted with the boys.[88] Steven Kummerfield's lawyer reminded the court at sentencing that Kummerfield had often been the most valuable player of the week and that his sports record "is some indication of who he is and more important who he is now and hopefully who he'll be able to become after he pays his debt."[89] At the trial's end, the judge defended his remarks to the jury by noting that the media did not report evidence that was favourable to the accused.[90] As Robinson shows in her review of cases involving hockey players accused of sexual assault, such evidence need hardly be mentioned since white male judges and lawyers alike often share the view that the loss of the young men's hockey career is a greater tragedy than the young woman's loss of her life.[91]

Race rarely surfaced explicitly in the trial but when it did, it was quickly disconnected from whiteness. For example, during a discussion of hair found in the car of the accused, the defence (using a nineteenth-century language of race) discussed negroid, caucasian, and Mongolian hair. The defence lawyer Kovach asked the expert witness on hair whether Kovach, as a Hungarian, would be Caucasian or Mongolian.[92] In this discussion, the word "white" was never mentioned. It was as though white people did not exist, only Caucasians and Hungarians, labels that have less association with racism than the term "white" does. When race threatened to disturb the raceless equivalences that were maintained (George's prostitution and the white men's drunkenness, her addiction and theirs), the attorneys drew attention to their own ethnicity in a bid to represent everyone as equally raced. Following a long exchange in which the expert witness Dr. Aubrey Levin maintained that the language used by the men (language that includes racist slurs but is seldom named as such) indicated their social attitudes rather than their state of inebriation, the defence then asked him whether one's true personality emerged when one was drunk. When Dr. Levin replied that what emerged when drunk was a facet of a person's personality, Kovach once again introduced his own ethnicity and asked:

> So that if one, inappropriately perhaps—and let me use the—we—the word Hungarian, because I am Hungarian and proud of it, but if one sees six drunk Hungarians, including myself, on the street corner and we're being rude to you and drunk to you and aggressive towards you, which we might not otherwise be, and if you walked by and described us as being six or seven rude, vulgar, drunken whatever, Hungarians in this case, you are saying that that is a true description of them, as opposed to how they might otherwise be; is that correct doctor?[93]

Hungarians once again replaced white in this exchange where the defence argued that it was unreasonable to consider "rude" conduct while drunk as having anything to do with underlying social attitudes. If the accused uttered racial slurs to Charlene Rosebluff, this could not then be taken as evidence of their racism since racial slurs uttered under the influence of alcohol were not evidence of racism. Instead, as Kummerfield's lawyer Kovach maintained, they were remarks made "out of character."[94] Interestingly, while it was argued that being drunk is out of character for white men, being drunk is more often than not seen as in character for Aboriginal peoples.[95] Alcohol abuse and its accompanying racial and sexual violence were described as temporary aberrant behaviour while Pamela George's "lifestyle" remained a permanent personal characteristic.

It is no small irony that racism, so rarely named during the trial, only emerged explicitly during sentencing. The defence reported that Alex Ternowetsky had taken a course on Native literature while in prison and had written a paper on Aboriginal–white relations that proved that he had "no clear motive of hatred towards someone of a particular racial origin."[96] Racelessness was pursued to the bitter end, however. When there were complaints made against him after the trial, Mr. Justice Malone confirmed (in a letter to Chief Justice Allan McEachern) that race overdetermined the trial, but noted that only a strategy of racelessness (ignoring everyone's race) countered it:

> I suspect the real basis for most of the complaints, including the two that I have dealt with, is the underlying feeling that because the two accused were white and the victim was a First Nations person they received special treatment and the jury's verdict [of manslaughter and not murder] was based on racism. This was certainly the reaction of several First Nations spokesmen and extensive media coverage was given to their remarks in this regard. Furthermore, both accused came from financially secure homes and enjoyed the material benefits associated therewith. Their position in life was in striking contrast to the position of the victim. Every effort was made during the trial by counsel and myself to deal with the case strictly on the basis of relevant evidence and not on the financial and social positions of the accused and their victim or their race.[97]

Here, colour-blindness as a legal approach, the belief that justice can only be achieved by treating all individuals as though they were the same, held full sway.

Race, social position, and, I would add, gender were indeed made to disappear during the trial and in sentencing. The social meaning of spaces and bodies was deliberately excluded as evidence that would contaminate the otherwise pure processes of law, evidence that was not relevant. It was not then possible to interrogate what white men thought they were doing in journeying to the Stroll to buy the services of an Aboriginal prostitute. It was also not possible to interrogate the meaning of consent and violence in the space of prostitution and between white and Aboriginal bodies. Since bodies had no race, class, or gender, the constructs that ruled the day, heavily inflected with these social relations, coded rather than reveal them explicitly. Thus "prostitute" and people of "the street" came to signify the racial Other and the spaces of violence. In contrast, the university, the chalet, the cottage, the suburban home, the isolated spaces in which the men socialized were unmarked. When Pamela George's mother Ina and her sister Denise respectively commented in their victim impact statements, "so what if she was a prostitute" and "it felt she was on trial because she was a prostitute," they were identifying two domains of law—the domain of justice and the domain beyond it.[98] This spatial configuration was explicitly geographical and quite deliberately mapped. It was also explicitly raced, classed, and gendered. Bodies that engage in prostitution and the spaces of prostitution are racialized, as I have argued elsewhere, regardless of the actual race of the prostitute. In this sense, it is possible, as Ternowetsky's lawyer suggested at sentencing, that Pamela George's race made no difference, but only in the sense that any woman engaging in prostitution loses her status as white. What a spatial analysis reveals is that bodies in degenerate spaces lose their entitlement to personhood through a complex process in which the violence that is enacted is naturalized. Even when the trial judge at sentencing acknowledged that Pamela George was the victim of mindless violence and that her murderers "cast her aside as if she were something less than human," these observations did not alter his ultimate position that the accused deserved a punishment of six and a half years, given the time of twenty months already served.[99]

Uncovering this spatialized view of justice helps us to see how race shapes the law by informing notions of what is just and who is entitled to justice. It

enables us to see how whiteness is protected and reproduced through such ideas as a contract between autonomous individuals standing outside of history. What would it mean to deliberately introduce history and social context into this trial? In the first instance, we would have to ask questions about the activities of the accused. How did they routinely conduct themselves? What is the role of violence against women in their activities? Who were the women who were seen as targets of the violence? These questions would have to be raised within the historical and social context of Aboriginal–white relations in Regina. Secondly, to appreciate that a person has been brutally murdered, details about Pamela George's life, once again historically contextualized, would have to be on the record to counter the historically produced response to her as a woman whose life was worth very little. Efforts to introduce these two lines of evidence would be thwarted by the notion that prostitution is a contract and not violence, and the notion that individuals must be judged as though they were not embedded in historical and contemporary relations of domination. These approaches would also be resisted by the deeply entrenched notion that colonization simply happened a long time ago, if at all, and that it has ended, without colonizers enacting it and benefiting from it and, most of all, without their continuing to do so. If this exploration of Pamela George's murder trial does anything at all, my hope is that it raises consciousness about how little she mattered to her murderers, their friends and families, and how small a chance she had of entering the court's and Canadian society's consciousness as a person.

ing by Aboriginal Women (Toronto: Sister Vision Press, 1993), pp.69–70.

11 C. Harris, "Whiteness as Property," *Harvard Law Review* 106,8 (1993), p.1707.

12 The Subcommittee on Multicultural Education, *Multicultural Teacher Education*, p.10.

13 Ibid., p5.

14 David Sibley, *Geographies of Exclusion: Society and Difference in the West* (London: Routledge, 1995), p.116.

15 See David Goldberg, *Racist Culture: Philosophy and the Politics of Meaning* (Oxford: Blackwell, 1993).

16 See Wetherell and Potter, *Mapping the Language of Racism*.

17 Drawn from interviews with participants in November 1995.

18 Ibid.

19 Chris, interview with author, November 12, 1995.

20 Ibid. Emphasis added.

21 Pat, interview with author, November 15, 1995. Emphasis added.

22 Ibid. Emphasis added.

23 Aída Hurtado, *The Color of Privilege: Three Blasphemies on Race and Feminism* (Ann Arbor: University of Michigan Press, 1996), p.149.

24 See Harris, "Whiteness as Property."

25 See M.L. Pratt, *Imperial Eyes: Travel Writing and Transculturation* (London: Routledge, 1992).

26 Chris, interview with author, November 4, 1995. Emphasis added.

27 Bev, interview with author, November 4, 1995. Emphasis added.

28 Jan, interview with author, November 12, 1995. Emphasis added.

29 Pat, interview with author, November 15, 1995.

30 See Michel Foucault, *The History of Sexuality: An Introduction*, trans. R. Hurley, vol. 1 (New York: Vintage Books, 1990).

31 Ann Laura Stoler, *Race and the Education of Desire: Foucault's History of Sexuality and the Colonial Order of Things* (Durham, NC: Duke University Press, 1995), p.110. Emphasis added.

32 See Toni Morrison, *Playing in the Dark: Whiteness and the Literary Imagination* (New York: Vintage, 1993).

33 Stoler, *Race and the Education of Desire*, p.53.

34 Ibid., p.54.

35 Ibid., p.69. Emphasis added.

36 Ibid.

37 See Rick Hesch, "Cultural Production and Cultural Reproduction in Aboriginal Preservice Teacher Education," in L. Erwin and D. MacLennan, eds., *Sociology of Education in Canada: Critical Perspectives on Theory, Research and Practice* (Toronto: Copp Clark Longman, 1994), pp.200, 210.

Chapter 5: Gendered Racial Violence and Spatialized Justice

1 *R. v. Kummerfield and Ternowetsky*, "Transcript of 12–15, 18–22, 25–28 November, and 2–5, 9–12, and 17–20 December 1996" [1997] (Regina, Sask. Prov. Ct. [Crim. Div.]), 3469, 4755 (hereinafter "Transcript").

2 B. Pacholik, "Relief, and Anger. Aboriginal Spokesman Demands Appeal," *Leader Post* (Regina), December 21, 1996, p.A1.

3 Barb Pacholik, "Ternowetsky in Ontario Jail, Facing New Charges," *Leader Post*, October 3, 2001, p.A1.

4 *R. v. Kummerfield*, [1998] 9 W.W.R. 619; *R. v. Kummerfield (S.T.) & Ternowetsky (A.D.)*, [1998] 163 Sask. R. 257.

5 See, for example, B. Balos and M.L. Fellows, "A Matter of Prostitution: Becoming Respectable," *New York University Law Review* 74 (1999). The authors write: "The unstated assumption is that if a woman enjoyed a benefit, she 'assumed the risk' and therefore bears responsibility for the violence, leaving the alleged perpetrator less accountable for his behavior" (p.1231).

6 I use the term "degeneracy" in this article to denote those groups Foucault describes as the "internal enemies" of the bourgeois state—women, racial Others, the working class, people with disabilities—in short, all those who would weaken the vigorous bourgeois body and state. For a discussion of the concepts of respectability and degeneracy, see Sherene Razack, "Race, Space and Prostitution: The Making of the Bourgeois Subject," *Canadian Journal of Women and the Law* 10,2 (1998), pp.335–52.

7 For a general argument of this kind, made with respect to Aboriginal people in the inner city, see C. La Prairie, *Seen But Not Heard: Native People in the Inner City* (Ottawa: Minister of Justice and Attorney General of Canada, 1994). La Prairie writes: "Overall, the research suggests that social stratification and the experience people have in their families dictate the role they play in cities. It is the ill-equipped who are mostly seen on the streets of the inner city" (p.19). Similar to the deficit model in educational theory, this view places the problems Aboriginal peoples have in cities squarely on their own shoulders, leaving little room for the ongoing effects of colonial practices emphasized in this article.

8 R. Phillips, *Mapping Men and Empire: A Geography of Adventure* (New York: Routledge, 1997), p.338.

9 Quoted in "The Victims: Life and Death on the Edge of Nowhere," *Star Phoenix* (Saskatoon), June 8, 1996, p.C3. Denise McConney cites this article and I am grateful to her for bringing it to my attention. Denise McConney, "Differences for Our Daughters: Racialized Sexism in Art, Mass Media, and the Law," *Canadian Woman Studies* 19, 1 and 2 (1999), p.213.

10 D. Goldberg, *Racist Culture: Philosophy and the Politics of Meaning* (Cambridge, MA: Blackwell Publishers, 1993), pp.185–205.

11 *Canada, Profile of Census Tracts in Regina and Saskatoon* (Ottawa: Statistics Canada, 1999). Regina's total population for 1996 was 193,652. Of that total 14,565 persons identified as Aboriginal. On the problems associated with Aboriginal census data, see J. Saku, "Aboriginal Census Data in Canada: A Research Note," *Canadian Journal of Native Studies* 19,2 (1999). In coming years Saskatchewan is expected to have a greater proportion of population with Aboriginal identity: 13 per cent by 2016. See M.J. Norris, D. Kerr, and F. Nault, *Projections of the Population with Aboriginal Identity, Canada, 1991–2016* (Ottawa: Statistics Canada and Population Projections Section, Demography Division, 1996).

12 D. Anaquod and V. Khaladkar, "Case Study: The First Nations Economy in the City of Regina," in *For Seven Generations: An Information Legacy of The Royal Commission on Aboriginal Peoples*, CD-ROM (Ottawa: Libraxus, 1997), p.6.

13 J.W. Brennan, *Regina: An Illustrated History* (Toronto: James Lorimer and Company and the Canadian Museum of Civilization with the Secretary of State, 1989), p.37; Sarah Carter, *Capturing Women: The Manipulation of Culturol Imagery in Canada's Prairie West* (Montreal: McGill-Queen's Press, 1997), pp.20–1. The brutality of the NWMP and the RCMP towards Aboriginal peoples and their sexual brutality towards Aboriginal women is described in L. Brown and C. Brown, *An Unauthorized History of the RCMP* (Toronto: James Lewis and Samuel, 1973), pp.143–81.

14 Carter, *Capturing Women*, pp.179–82, 187. In 1894, amendments to the *Indian Act* racially encoded the suspect morality of the Aboriginal woman, as well as the suspect obedience to spat[illegible]nfinement

of the Aboriginal man. That year Indian agents regained their criminal law authority over certain sexual offences committed by Aboriginal persons (first articulated in 1890), and two additional offences became law: Indian prostitution and Indian vagrancy. Canada, *Report of the Royal Commission on Aboriginal Peoples: Looking Forward, Looking Back*, vol. 1 (Ottawa: Supply and Services Canada, 1996), p.289.

15 Carter, *Capturing Women*, p.181.

16 Ibid, pp.189–90.

17 Jim Harding, "Presentation to the Royal Commission on Aboriginal Peoples," May 11, 1993, Regina, Saskatchewan, in *For Seven Generations*, p.321.

18 Brennan, *Regina*, p.165.

19 R.L. Barsh, "Aboriginal People in an Urban Housing Market: Lethbridge, Alberta," *Canadian Journal of Native Studies* 17,2 (1997), pp.203, 212.

20 A.M. Williams, "Canadian Urban Aboriginals: A Focus on Aboriginal Women in Toronto," *Canadian Journal of Native Studies* 17,1 (1997), p.75.

21 Canada, *Report of the Royal Commission on Aboriginal Peoples: Perspectives and Realities*, vol. 4 (Ottawa: Supply and Services Canada, 1996), p.603.

22 "Qu'Appelle Valley Indian Development Authority Inquiry Report on: Flooding Claim Cowessess First Nation, Muscowpetung First Nation, Ochapowace First Nation, Pasqua First Nation, Sakimay First Nation, Standing Buffalo First Nation." *Indian Claims Commission.* <http://www.indianclaims.ca/english/claimsmap/prov_sask.htm>. May 2000.

23 Canada, *Report of the Royal Commission on Aboriginal Peoples: Perspectives and Realities*, p.602.

24 Ibid., p.520.

25 Anaquad and Khaladkar, "Case Study: The First Nations Economy," pp.1–2; Canada, *Royal Commission on Aboriginal Peoples, Aboriginal Peoples in the Urban Centres: Report of the National Round Table on Aboriginal Urban Issues* (Ottawa: Supply and Services Canada, 1993), pp.77, 91; Canada, *Report of the Royal Commission on Aboriginal Peoples: Perspectives and Realities*, p.603.

26 Canada, *Report of the Royal Commission on Aboriginal Peoples: Perspectives and Realities*, p.518. The authors of the *Report of the Royal Commission on Aboriginal Peoples* are quoting the Native Council of Canada, *Decision 1992: Background and Discussion Points for the First Peoples Forum* (Ottawa: Native Council of Canada 1992), p.10.

27 Robin Bellamy, "Saskatoon Friendship Inn, 'Discussion Paper C,'" May 13, 1992, Saskatoon, Saskatchewan, *For Seven Generations*, p.366. For more general Aboriginal commentary on the pervasive quality of racism in urban life, see Canada, *Report of the Royal Commission on Aboriginal Peoples: Perspectives and Realities*, pp.367, 426–8.

28 Harding, "Presentation to the Royal Commission on Aboriginal Peoples"; Brennan, *Regina*, p.165; J. Hylton cited in *Royal Commission on Aboriginal Peoples, Bridging the Cultural Divide: A Report on Aboriginal People and Criminal Justice in Canada* (Ottawa: Supply and Services Canada, 1996), p.31n 41.

29 A. Finn et al., "Female Inmates, Aboriginal Inmates, and Inmates Serving Life Sentences: A One Day Snapshot," *Juristat* 19,5 (Ottawa: Canadian Centre for Justice Statistics /Statistics Canada, 1999), p.9. In addition, "at the provincial/territorial level, a larger proportion of Aboriginal than non-Aboriginal inmates were segregated from the rest of the inmate population (11 percent versus 4 percent)."

30 Patricia Monture-Angus, "Women and Risk: Aboriginal Women, Colonialism,

and Correctional Practice," *Canadian Woman Studies* 19, 1 and 2 (1999), p.28 n 3; Manitoba, *Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People*, vol. 1 (Winnipeg: Queen's Printer, 1991), p.498 In describing the Saskatchewan situation, Manitoba's commissioners were highlighting the fact that the disproportionate rate of Aboriginal women represented in Manitoba's Portage Correctional Institution (at that time 70 per cent) was by no means unique, particularly when considered within the prairie regional context; Harding, "Presentation to the Royal Commission on Aboriginal Peoples," p.323; Hylton cited in *Royal Commission on Aboriginal Peoples, Bridging the Cultural Divide*, pp.31–2 (notes omitted).

31 "Fact Sheets: Alternatives to Incarceration." *Elizabeth Fry Society.* <http://www.elizabethfry.ca/facts1_e.htm.> July 21, 2000. According to the Society, in 1998 "41 percent of federally sentenced women who are classified as maximum security women are Aboriginal, whereas Aboriginal women represent only 18.7 percent of the total population of federally sentenced women, and less than 2 percent of the population of Canada." See "Position of the Canadian Association of Elizabeth Fry Societies (CAEFS) Regarding the Classification and Carceral Placement of Women Classified as Maximum Security Prisoners." *Elizabeth Fry Society.* <http://www.elizabethfry.ca/maxe.htm>. July 21, 2000.

32 Harding, "Presentation to the Royal Commission on Aboriginal Peoples," pp.324–6.

33 Ibid., pp.327–8, 333–5; Canada, *Report of the Royal Commission on Aboriginal Peoples: Perspectives and Realities*, p.577.

34 Canada, *Royal Commission on Aboriginal Peoples, Choosing Life: Special Report on Suicide Among Aboriginal People* (Ottawa: Supply and Services Canada, 1995), pp.33–4.

35 Of course Aboriginal women also endure considerable violence from the men of their own communities. I would argue that such violence is of a different order than the violence discussed here, although the obvious link is that both emerge out of conditions of colonization. As Emma LaRocque so insightfully commented in her testimony to the Aboriginal Justice Inquiry of Manitoba, the squaw stereotype regulates relations between Aboriginal men and women as it does between Aboriginal women and white society. Emma LaRocque, "Written Presentation to Aboriginal Justice Inquiry Hearings, 5 February 1990," cited in Manitoba, *Report of the Aboriginal Justice Inquiry*, p.479. See also Sherene Razack, *Looking White People in the Eye: Gender, Race and Culture in Courtrooms and Classrooms* (Toronto: University of Toronto Press, 1998), p.69.

36 Manitoba, *Report of the Aboriginal Justice Inquiry of Manitoba: The Deaths of Helen Betty Osborne and John Joseph Harper*, vol. 2 (Winnipeg: Queen's Printer, 1991), p.52.

37 J.L. Sheane, "Life and Death on the Edge of Nowhere," *Star Phoenix* (Saskatoon), June 8, 1996, p.C3.

38 McConney, "Differences for Our Daughters," p.212.

39 Razack, "Race, Space and Prostitution."

40 Malek Alloula, *The Colonial Harem* (Minneapolis: University of Minnesota Press, 1986) cited in R. Bishop and L. S. Robinson, *Night Market: Sexual Cultures and the Thai Economic Miracle* (London: Routledge, 1998), p.151.

41 Laura Robinson, *Crossing the Line: Violence and Sexual Assault in Canada's National Sport* (Toronto: McClelland and Stewart, 1998), pp.39, 120, 151–2.

42 S.P. Schacht, "Misogyny On and Off the 'Pitch': The Gendered World of Male Rugby Players," *Gender and Sociology* 10,5 (1996), p.555. See also A.A. Boswell and J.Z. Spade, "Fraternities and Collegiate Rape Culture: Why Are Some Fraternities More Dangerous Places for Women?" *Gender and Sociology* 10, 2 (1996).

43 P. Donnelly and K. Young, "The Construction and Confirmation of Identity in Sport Subcultures," *Sociology of Sport Journal* 5 (1988), p.235.

44 L.A. Wenner, "In Search of the Sports Bar: Masculinity, Alcohol, Sports, and the Mediation of Public Space," in G. Rail, ed., *Sport and Postmodern Times* (Albany: Suny Press, 1998), p.301.

45 "Transcript," p.3515.

46 *R. v. Kummerfield and Ternowetsky*, "Transcript of Sentencing 30 January 1997" [1997] (Regina, Sask. Prov. Ct. [Crim. Div.]), p.49 (hereinafter "Transcript of Sentencing").

47 "Transcript," p.3811.

48 Ibid., pp.3818, 3821, 3824.

49 Ibid., pp.315–24, 852, 1009, 1394, 3829.

50 Although few scholars of sports masculinity discuss the role that race plays in the making of the white male athlete in the contemporary context, several scholars have noted the connections between sport masculinities and empire. See, for example, R. Morrell, "Forging a Ruling Race: Rugby and Masculinity in Colonial Natal, c.1870–1910," in J. Navright and T.J.L. Chandler, eds., *Making Men: Rugby and Masculine Identity* (London: Frank Cass, 1996), p.91; J. Rutherford, *Forever England: Reflections on Masculinity and Empire* (London: Lawrence and Wishart, 1997). Related Canadian work on sport and national identity has not been explicitly about race and the forging of identities in a white settler society. See, for example, R.B. Wamsley, "The Public Importance of Men and the Importance of Public Men," and A. Bélanger, "The Last Game? Hockey and the Experience of Masculinity in Quebec," in P. White and K. Young, eds., *Sport and Gender in Canada* (Don Mills, ON: Oxford University Press, 1999).

51 "Transcript," pp.315–24, 457, 595–615.

52 Ibid., pp.846–910.

53 Ibid., pp.463–4, 574–88, 869, 3588.

54 Ibid., pp.3757, 3843.

55 Ibid., pp.470–95, 3494.

56 Ibid., pp.892, 3760.

57 Ibid., p.3933.

58 At Public Hearings in Saskatoon for RCAP, Robin Bellamy contrasted this fear typical of (white) suburbanites ("people say that they are concerned about coming down there on a Saturday night at midnight") with Aboriginal citizens' fear of entering the "better areas of Saskatoon." Bellamy, "Saskatoon Friendship Inn."

59 "Transcript," p.3933. Recall Harding's assertion that the typical victim of violent crime in racialized urban space is young, female, and Aboriginal, not white and male. In 1990–91, Aboriginal persons comprised 31 per cent of the victims of reported crime in Regina, while they represented approximately 5 percent of the population. Harding, "Presentation to the Royal Commission," p.331.

60 This interpretation was suggested to me by Carol Schick.

61 "Transcript," pp.262, 304.

62 Ibid., pp.262, 280–2, 304, 1729–30, 4710.

63 Following press coverage of this incident, the Assembly of First Nations for the prairie region received nearly six hundred calls from Aboriginal men and women describing similar acts of violence towards them. M. O'Hanlon, "RCMP Investigate Deaths of Saskatoon Aboriginal's" *The Toronto Star*, February 17, 2000, p.A3.

64 "Transcript," pp.3574, 3888.

65 For example, Sander Gilman shows how prostitutes in nineteenth-century Europe were depicted with African features even though they were nearly all white. Sander Gilman, "Black Bodies, White Bodies: Toward an Iconography of Female Sexuality in Late Nineteenth-Century Art, Medicine and Literature," in J. Donald and A. Rattansi, eds., *"Race," Culture and Difference* (London: The Open University Press, 1992), p.171. Similarly, McClintock discusses the racialization of the Irish poor, routinely depicted with Black skin in nineteenth-century England. A. McClintock, *Imperial Leather* (New York: Routledge, 1995), pp.52–3.

66 "Transcript," pp.3281–2. Emphasis added.

67 Ibid., p.2922.

68 Ibid., pp.119–21, 2844–9.

69 Ibid., p.2883.

70 Hall is in this instance being read as his nineteenth-century counterpart would have been, that is, as a "squaw man." Carter notes that white lower-class men labelled in this way were often blamed by the police for crimes such as liquor offences. Carter, *Capturing Women*, p.184.

71 "Transcript," p.3008.

72 K. O'Connor, "Issac Felt Police Would Frame Him," *Leader Post* (Regina), December 23, 1996, p.A1.

73 "Transcript," pp.444, 846, 2114–16.

74 T. Sutter, "'She Was My Baby,'" *Leader Post* (Regina), May 13, 1995, p.1.

75 "Transcript," pp.33, 132, 2619, 2993, 3562, 4248.

76 Ibid., pp.457, 3763.

77 Robinson, *Crossing the Line*, p.44.

78 "Transcript," p.2139.

79 "Transcript of Sentencing," p.37.

80 "Transcript," p.3480.

81 "Transcript," pp.4632–3, 4525–7.

82 Ibid., p.4449.

83 Cynthia Lee speculates that this may be the case in cases where provocation is the defence used by men who kill unfaithful wives. Cynthia Lee, "She Made Me Do It! Killings in Response to Infidelity." Unpublished paper in author's possession.

84 "Transcript of Sentencing," p.69.

85 "Transcript," p.4755.

86 Ibid., p.4825.

87 Ibid., pp.4344, 4809, 4824, 4795.

88 Ibid., pp.406, 1409, 3205.

89 "Transcript of Sentencing," p.47.

90 Justice Malone, "Response to the Honourable Chief Justice Allan McEachern to Complaints by Ms. Sharon Ferguson-Hood and Ms. Ailsa Watkinson and Others, February 6, 1997" [1997] (Regina, Sask. Prov. Ct. [Crim. Div.]).

91 Robinson, *Crossing the Line*, p.44.

92 "Transcript," p.2550.

93 Ibid., p.2173.

94 "Transcript of Sentencing," p.50.

95 That Aboriginal peoples are stereotyped as drunk and criminal is acknowledged by the court in *R. v. Williams*, [1998] 1 S.C.R. 1128 at para. 58.

96 "Transcript of Sentencing," p.40.

97 Justice Malone, "Response to the Honourable Chief Justice Allan McEachern. Emphasis added.

98 "Transcript," p.5023.

99 Ibid., p.60. While I do not take a position on the value of long prison terms, I note here that they have been traditionally understood by society as an indicator of the severity of the crime.

Chapter 6: The Unspeakability of Racism

1 Manitoba, Legislative Assembly, *Debates and Proceedings* (30 May 1995), p.235 (G. Filmon) (hereinafter *Debates*).

2 *Debates* (1 November 1995), p.4449 (O. Lathlin).

3 I use the concept of "performance" here to describe the way in which the seemingly stable identities of subjects and of places (i.e., "Canadian," "Canada," "Man-

#MMIW: A critique of Sherene Razack's piece exploring the trial of Pamela George's murder

Naomi Sayers, *Kwe Today.*

https://kwetoday.com/2014/12/26/mmiw-a-critique-of-sherene-razacks-exploration-of-the-trial-of-the-murder-of-pamela-george/

This post is a critique of Razack's piece, "Gendered Racial Violence and Spatialized Justice: The Murder of Pamela George", who was an Indigenous woman and worked on the streets as a prostitute (this is the term employed by Razack in her article). I will outline Razack's assumptions and how they do not set out Razack's intentions: exploring the trial of a murder of an Indigenous woman who worked on the streets as a prostitute to introduce the idea of colonial violence within spatialized justice. Spatialized justice is defined as "violence against marginalized people in places like the Downtown Eastside are treated differently than those who live elsewhere and who are engaged in different work."[1] While her work provides a useful framework for discussing violence, the issue with this piece is the very thing that is has become useful for: discussion of violence against Indigenous women in colonized spaces.

Razack begins, "why write about this trial as spatialized justice and gendered racial or colonial violence?" (p. 125). Her answer to this question is to call attention to "a number of factors contributed to masking the violence of the two accused and thus, diminishing their legal culpability and responsibility for the death of Pamela George" (p. 125). Briefly, some of these factors include the erasure of colonial violence and treating prostitution as a contract which is both violence and negates violence. She asserts that Pamela George existed in spaces of prostitution and Aboriginality where "violence routinely occurs" (p. 125) (as if this violence is natural to prostitution and Aboriginality). She also maintains that this not an argument about generic patriarchal violence against women (as if patriarchal violence has ever been generic); rather, her piece is an argument about race, space and the law (p. 126). Overall, Razack plans to contests the reasoning that "women working as prostitutes are considered by law to have consented to whatever violence is visited upon them" (p. 126).[2]

Razack acknowledge the histories, where white men were/are historically the perpetrators of violence against Indigenous women within the context of domination and control, as what brings the encounters between Pamela and her two attackers together (p. 126). Razack submits that it is also history what is missing from the trial (p. 126). While it is very true that it is history, including Pamela's history that is missing from this trial, I would argue that it is George's indigeneity that is missing from the trial. I find this more of an issue with case law as a whole, regardless of whether the case is criminal or another area of law or whether the victim is Indigenous or the offender is Indigenous. This can be seen in the case of *R v Briscoe*, where the victim was a young Indigenous girl, and *Winnipeg Child and Family Services v. G(DF)* where G is an Indigenous mother. In the former, the Supreme Court of Canada (SCC) does not mention the victim's indigeneity and in the latter, G's indigeneity was acknowledged but the history of colonialism was not. Though the issue is that history is missing, this is part of a much larger problem as the issue exists within how law is formed and shaped. When case law carefully extracts certain facts as more relevant than others, it determines some facts as unimportant and these irrelevant facts tend to point to colonialism and indigeneity. So I will agree that this history is erased. But it is also important to acknowledge that this is a larger problem of the legal system as how law is both shaped and formed through case law.

Razack also recognizes the over-policing and over-incarceration in the lives of Indigenous peoples which play out through prostitution, policing and the criminal justice system (p. 127). Indigenous women who both live and work on the street report higher incidents of police violence and harassment.[3] If she accepts that Indigenous peoples are over-policed and over-incarceration, then she must acknowledge that it is the criminalization of prostitution that creates the space for over-policing and over-incarceration of Indigenous women, especially Indigenous women who work outdoors, like Pamela George. Through this

criminalization, these same women are then forced to work in isolated areas such as the field where Pamela was murdered, away from protection and safety. She agrees and affirms this reality that Pamela was forced to an isolated field where she was later murdered and that other Indigenous women were also driven to secluded areas for the purpose of murder (p. 142; 134; 135). But she does not recognize that it is this forced isolation and displacement that contributes to the violence *anywhere* in her piece. In fact, Razack ignores the reality that it is being displaced to isolated places like the field where Pamela was murdered that creates the environment for violence to occur. In her efforts to historicize Pamela's circumstances and tragic outcome, Razack fails on all counts. She focuses solely on the acts that occurred in the field and not the space that it occurred in (p. 142-144). She also fails to identify the isolated fields where she was murdered as an outcome of the criminalization of prostitution, though she acknowledges prostitution as a site of over-policing but not under-protection.

The "innate" violence in prostitution that Razack attempts to position as the *real* violence in prostitution also negates the personhood of women like Pamela. Razack refers to these women as simply passive bodies waiting to be penetrated, dominated and violated (p. 136-137). In other words, they are merely objects. In critiquing the objectification done by the Indian Agents and the NWMP (RCMP's predecessor), she disparages Pamela by reducing her to a body existing in space. For Razack, women in prostitution exist in spaces of prostitution as nothing more than bodies (p. 136). She continues with the reasoning that we, the reader, exist within histories of domination and subordination for which we are accountable (p. 128). But how is Razack being held accountable for her continued subordination of Indigenous women as passive bodies, or more appropriately, objects occupying colonial spaces? In an attempt to position Pamela as existing within a space of prostitution and Aboriginality, which we must remember Razack asserts as a space of routine violence, she positions Pamela as a body existing within these spaces. When she argues that the space of prostitution is where men use women in these spaces or purchase access to their bodies (p. 136), she argues that this is a violation of their personhood. Yet, she re-affirms this violation by reducing *all* women in prostitution to passive bodies.

It is hard to follow Razack's logic when she focuses on prostitution as innately violent and concedes that Indigenous peoples interactions with white settlers is situated within prostitution, policing, and the criminal justice system. She also admits that this over-incarceration and policing strategies is an indicator of the ongoing colonialization of Indigenous populations (p. 133). If this is what she submits, then she must also admit, as noted earlier, that the criminalization of prostitution as a result of the criminal justice system and policing initiatives and responses to prostitution ultimately contributes to the violence that she suggests is "innate" to prostitution. She contradicts herself by admitting that violence exists between Indigenous peoples and white settlers in the context of prostitution but ignores the on-going criminalization of prostitution through the criminal justice system, its legal regimes and policing agencies.

Further, in her discussion of spatial configurations of colonial societies through boundaries and through laws, she explicitly lists nuisance laws as a mark of spaces of settler and the native. She ignores the fact that, at the time, Canada's anti-prostitution laws policing outdoor workers were largely enacted to prevent nuisance (p. 129). At the moment, this has recently changed. Regrettably, the Canadian government enacted similar anti-prostitution laws, including a specific law that will police outdoor workers in the same manner that forced them to work in isolated places, like Pamela George, as the previously struck down laws. Additionally, this "new" communication law is enacted with the intention to help stop the impediment of traffic, as opposed to preventing nuisance. I guess the movement of traffic is more important than the lives of sex workers.[4]

Throughout the entire article, her discussion of violence is most troubling. She ignores the police violence when talking about Indigenous women in prostitution. She admits repeatedly that the violence in prostitution is natural ignoring the fact that it is through the criminalization of prostitution that this violence manifests itself. When she describes the incident of policing using dogs to force an Indigenous woman accused of prostitution out of her house, she does not name this as violence (p. 134). More explicitly, police using dogs to remove Indigenous women from their homes is *just* "natural." She does not even acknowledge that being forced to work in isolated places away from protection creates the environment for violence to take place. In fact, she erases this reality of under-protection, displacement to isolated places

and police violence altogether. Why does she not name this violence as police violence or more appropriately, colonial violence? She commits the offence she intends to call attention to by erasing this history and colonial violence; she talks about this violence as cleansing but her erasure of colonialism and history of police violence is cleansing of colonialism (p.143).

Another fallacy presents itself when she does not in fact contest the idea that women in prostitution call the violence into their lives. This is evident when she recognizes the fact that the field Pamela is murdered is isolated but ignores the fact that the criminalization of prostitution forces these women to work in isolated places. Even in her critique of prostitution where the law that treats prostitution as a contract, she reduces the violence that these women experience as existing only between individuals and not as a result of larger structures that govern and regulate their lives. She ignores how the criminal regulation of prostitution creates these spatial configurations in colonial societies. In an attempt to espouse the liberal idea of free, autonomous individuals she also reduces this violence as existing between individuals which erases colonial violence. (p.143). In her discussion of the trial, she states that the court viewed Pamela as a "rightful target" or a "by product" by arguing that this violence is naturalized when prostitution is reduced to a contract where the contract negates the violence that women in prostitution experience (p. 144). In the same breathe, however, she argues that when the law treats prostitution as a contract, this *is* violence itself (p. 144). How can something simultaneously be violence and negate violence?

Further, she does not distinguish between the treatment of prostitution as contract which is violence and prostitution as violence itself. Razack attempts to argue when the law treats prostitution as a contract it assumes the violence as something that happens in prostitution (p. 159). Something she also concedes in her argument that prostitution is innately violent (p. 152). If Razack admits that treating prostitution as a contract both is violence and negates violence, then calling prostitution innately violent works in a similar fashion. In other words, calling prostitution as innately violent is both violence and negates violence. This is demonstrated in Razack's negation of police violence or more suitably, colonial violence. On top of this, she argues that this treatment of prostitution as a contract erases Pamela's personhood (p. 127).

Razack intends that " a spatial analysis reveals is that bodies in degenerate space lose their entitlement to personhood through a complex process in which that is enacted is naturalized" (p. 155). This the very same loss of personhood that Razack maintains when women engaging in prostitution are merely bodies existing in space waiting to be violated as if they cannot say yes or no and if one says yes, they never *actually* said yes. She attempts to argue that accepting prostitution as a contract naturalizes the violence in prostitution but she also commits this same offence by postulating that prostitution is innately violent. Razack's ultimate goal, if not anything, was to introduce Pamela's murder and the unlikelihood of the court and Canadian's society treating her as a person (p. 156). Why then does Razack reduce women like Pamela to passive bodies, objects, waiting to penetrated and violated? Relegating Indigenous women, like Pamela George, to bodies waiting to be violated is colonial violence in itself.

Through this re-reading of Razack's article, I want to call attention to her failure to contest the idea that women in prostitution deserve the violence that they experience. She does very little to address this notion. Arguably, she re-affirms these notions that women deserve the violence that they experienced by calling the violence in prostitution innate. It is often these same statements that prostitution is innately violent which inform societal and legal reactions to prostitution and prostitutes. This can be seen with the most recent enactment of *Protection of Communities and Exploited Persons Act*, where supporters of the law called prostitution innately violent and the government accepted this understanding of prostitution as normal, proceeding to enact the same violent laws that contributed to the isolation and alienation of the most marginalized women in prostitution—women like Pamela George. We also seen from this recent passing of this new law that the government's goal was not to protect prostitutes[5] and throughout the entire *Bedford* constitutional challenge of Canada's anti-prostitution laws, where the AG argued that prostitution is innately violent and because of this innate violence, women who engage in prostitution assume the associated risks.[6] More fitting, the women deserve the violence that they experience because who in their right mind would consent to a violent activity.

Razack then presents the following question: did Pamela George get what she deserved as an Aboriginal woman prostitute? (p. 151) From Razack's assumptions about prostitution and Aboriginality, that they are spaces of routine violence, and her failure to contest the notion that women working as prostitutes are considered by law to have consented to whatever violence is visited upon them, Pamela George, and other women like George, accepted the violence that they experienced by engaging in prostitution. It is these same ideas that prostitution is innately violent that inform the very same legal response to prostitution: that women consented to the violence that they experienced. Razack argues that treating prostitution as a contract removes individuals from relations of domination, when colonialism is also a system of domination (p. 143). She is guilty of removing individuals from relations or systems of domination by reducing this violence as existing between individuals, not questioning how larger structures that govern and regulate prostitution as a criminal behavior. This is demonstrated when she admits that Indigenous women are 131 times more likely to be incarcerated than non-Indigenous women (p. 134). Yet she fails to question the criminalization of prostitution as creating a relation of domination within the larger system of domination, colonialism.

Razack presents a concluding question: what would it mean to deliberately introduce history and social context into trial? (p. 156) I propose to ask more correctly: what would it mean to introduce the history that Razack blatantly and explicitly left out, like the fact that the first bawdyhouse law and subsequent anti-prostitution laws were enacted under the *Indian Act*?[7] How are Razack's assumptions about prostitution contributing to colonial violence against Indigenous women? In talking about a historical contextualization, we have to be honest in how academics like Razack are touted as compelling and persuasive and how their assertions remain unquestioned and removed from critique and critical evaluation.

When we return to her original question: "why write about this trial as spatialized justice and gendered racial or colonial violence?" (p. 125) If Razack actually addressed colonial violence and the history of colonialism, like the history of Canada's anti-prostitution laws and the policing of Indigenous persons, as creating the environments for violence that she assumes is routine to the space of Aboriginality and prostitution, then a more appropriate framework for discussing violence against Indigenous women may have been produced. Instead what is (re)produced is colonial assumptions about Indigenous women as passive bodies waiting to be violated. In closing, I propose that people question how this piece and others like it, which call prostitution as innately violent, is colonial violence in itself and begin to question how the criminal regulation of Indigenous women's sexualities and bodies perpetuates the ongoing colonial violence in their lives. It is about time that this piece stops being recycled as a persuasive and compelling for discussing violence in the lives of Indigenous women and girls, especially those who engage in prostitution, when reducing Indigenous women to passive bodies, or objects, waiting to be violated is violence in itself.

[1] http://www.pivotlegal.org/pivot-points/blog/calling-out-spatialized-justice While this source refers to a specific area like the DTES, spatialized justice can also be applied to other areas like the slum in Regina, where Pamela's attackers found her and where they often were after they drank alcohol (as noted in Razack's article).

[2] This is also the same argument that informed the AG's arguments in Bedford (that women in prostitution accept the risk of violence because prostitution is inherently violent) which is also the same line of reasoning that informs the response to Bedford, *The Protection of Community and Exploited Persons Act.*

[3] https://kwetoday.com/2013/12/28/canadas-anti-prostitution-laws-a-method-for-social-control/

[4] http://www.pivotlegal.org/the_new_sex_work_legislation_explained

[5] https://www.youtube.com/watch?v=q18rMJ01YKw

[6] https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do @ para 73

[7] https://kwetoday.com/2013/12/28/canadas-anti-prostitution-laws-a-method-for-social-control/ To her defence, she does mention the criminal regulation of Indigenous women's sexualities and bodies although only in a footnoot at the end of her chapter. But not much is mentioned in the substance of her argument

The State is a Man: Theresa Spence, Loretta Saunders and the Gender of Settler Sovereignty

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Audra Simpson

ABSTRACT

This article examines the relationship between settler colonialism and Indigenous women's life and death. In it I examine the incredulity and outrage that obtained to a hunger strike of (Chief) Theresa Spence and the murder of Loretta Saunders. Both affective modes were torn from the same book of exhonerating culpability from a public that denied an historic and political relationship between Indigenous women's death and settler governance. The paper argues that in spite of this denial, these deaths worked effectively to highlight the gendered, biopolitical life of settler sovereignty.

This article makes two very simple arguments: one about settler statecraft, and the other about settler imperative. First: Canada requires the death and so called "disappearance" of Indigenous women in order to secure its sovereignty.[1] Two: that this sovereign death drive then requires that we think about the ways in which we imagine not only nations and states but what counts as governance itself. Underpinning these arguments is a crucial premise: in spite of the innocence of the story that Canada likes to tell about itself, that it is a place of immigrant and settler founding, that in this, it is a place that somehow escapes the ugliness of history, that it is a place that is not like the place below it, across that border. Canada is not like that place for many reasons[2] but it is especially exceptional now, because it apologized, it stood in the face of its history, it "reconciles" the violence of the past with its present and so, presumably, with this acknowledgment of wrongdoing, may move on. These emotional gestures, registered at an

institutionalized, state level are undermined by an extractive and simultaneously murderous state of affairs. And, in spite of those present-day discourses from Canadian political scientists and policy makers that imagine a process of equality through the space afforded to Indigenous political orders as the "third order of government", the evidence suggests that Canada is quite simply, a settler society whose multicultural, liberal and democratic structure and performance of governance seeks an ongoing "settling" of this land. The process of settlement is definitely *contra* equality. I will speak more of this evidence shortly. This settling thus is not innocent – it is dispossession, the taking of Indigenous lands and it is not over, it is ongoing. It is killing Native women[3] in order to do so and has historically done this to do so. It is this killing that allows me to also qualify the governance project as gendered and murderous.

Relatedly, Jodi Byrd's *Transit of Empire*[4] structures its intervention among two methodological axes: one of "cacophony" the other of "transit." It is through these axes that history is known, possibility is made and difference is rendered. With "cacophony" you have the possibility of multiple, sometimes competing and contestory narratives of truth and with this, possibility as well. But with that multiplicity, also the riot of noise that requires an ear, and a decipherment, an audibility but perhaps a willingness to listen. With these two axis/methodological modalities introduced to us we see her analytic commitments unfold, Indigeneity she argues operates as a transit, an emptying nodal point, or circuit, that allows for empire to move, geographically, politically, hermeneutically. With this, Indigeneity is moved well beyond the body and into a global heuristic. "Cacophony" more than acknowledges, in a thin way, the ways in which force structures the multiplicity of voices and truths that emerge out of the transit of this force, it

privileges the lives of multiple narratives and invites us to listen closely for those that may matter to us and remain unacknowledged.

In all of the acoustic mess of settlement, there is a clarity of one trumpeting discourse and that is of 'the state' and here I want to ground Byrd's transit in flesh, as the force that she describes and analyzes through texts, I will demonstrate, moves through bodies, through flesh. The state that I seek to name has a character, it has a male character, it is more than likely white, or aspiring to an unmarked center of whiteness, and definitely heteropatriarchal. I say heteropatriarchal because it serves the interests of what is understood now as "straightness" or heterosexuality and patriarchy, the rule by men.[5] As well, it seeks to destroy what is not. The state does so with a death drive to eliminate, contain, hide and in other ways "disappear" what fundamentally challenges is legitimacy: Indigenous political orders. And here is the rub, Indigenous political orders are quite simply, first, are prior to the project of founding, of settling, and as such continue to point, in their persistence and vigor, to the failure of the settler project to eliminate them,[6] and yet are subjects of dispossession, of removal, but their polities serve as alternative forms of legitimacy and sovereignties to that of the settler state.

Settler states do not narrate themselves in the following manner: "as settler states we are: founded upon Native dispossession, outright and unambiguous enslavement, we are tethered to capitalist modes of production that allow for the deep social and economic differences that takes the shape in the contemporary of "unequal" social relations. We now seek to repair these unequal social relations through invigorated forms of economic liberalism that further dispossess and some would say consensually enslave those who do not own their means of production or opt out

or fall out of this form of economic life." More often than not, and here I am thinking of the US (in its cagey political project), Australia and Canada fancy themselves as "multicultural, democratic, economically liberal," and committed to free trade among nations and sometimes, social policies that allow for forms of historical redress that correct or attempt to repair the fundamental and un-narratable violences that bring them into being. Their histories do not live fully within the present, do not enter into a cacophony of discourses, but instead take the form of supposedly good policy and good intentions, liberal, settler governance. Those good policies and intentions perform a kind of historical reckoning, but through Truth and Reconciliation commissions, discourses of "healing", Apologies – in general, the performance of empathetic, remorseful, and *fleetingly* sorrowful states. But states that are built upon violence and still act violently, either at a bureaucratic level, at an economic level (as we see saw with the former Prime Minister Stephen Harper's relentless drive to extract from land),[7] or through a violent indifference – which we saw as well with that governments unwillingness to launch an inquiry into the Murdered and Missing Indigenous Women (MMIW). This was an unwillingness that is absolutely of a piece with Harper's August 19, 2014 statement that the problem of murdered and missing Native women should be understood as a "crime" (rather than sociology).[8] As a crime it appears to have no context no structure animating it, no materiality besides a legal transgression – thus the appearance of death after a murderous act, with a perpetrator, a victim and a clear and punishable transgression of a moral and legal code. This is an individuated, judiciable act – justice can be served. But Harper uttered that as the bodies aggregated, and became something sturdy, something apparent, something hard to ignore, a cacophony of death, of grief and of outrage. Harper said this even though this density of native women's bodies, this aggregate of grief has been called a "phenomenon" of such statistical significance that it warrants reports,

warrants explanation. And yet in response to this phenomenon, sociological fact or crime, Stephen Harper replied to Peter Mansbridge's query on need for a national inquiry in December, 2014, with "… it isn't really high on our radar, to be honest."[9] This specificity of the Murdered and Missing Indigenous Women and Girls (MMIWG) is of a piece with the diffuse forms of violence that constitute a state: the intentions, the feelings, the capacities of its citizens, who can also, as we saw in the case of Loretta Saunders, and so many more, kill. States do not always have to kill, its citizens can do that for it.

How do the subjects of such states reach for life in the face of this death? How do they not lose themselves in the cacophony? What does this speak of for the future? I will consider two cases that stretch beyond a simple, monologic story of governmental sorrow, abandonment and ineptitude and into an opening into the ways we think about citizenships or publics, particularly the way they may be in active antagonism with the subjected, with those that are being made vulnerable. The arc of this article will be the following: bodies, sovereignty and what I see as the necessity of pedagogical practices of thoughtful antagonism and "contention" not "reconciliation."

Bodies

In December 2012 Theresa Spence announced that she would stop eating until the Prime Minister of Canada and the Governor General of Canada - the official representative of the Crown, met with her to discuss treaties, to discuss the deplorable conditions of life in her community as well as the broader and also deplorable conditions of life in the North. Each of

these men, as the embodiments of states, she said, had a hand in suffering, in the failure to meet their historic obligations to the land and the people upon the land who were living in contaminated conditions, were without clean water and proper housing, in legendarily cold and bitter winters. She described this Conservative political party in power as particularly "aggressive" and the Prime Minister Stephen Harper as exceptional in his willingness to withdraw the care and compassion that is supposed to mark a 21st century liberal, democratic state.

As with all spectacularized political cases, things were not what they seemed. The Hunger Strike was not a hunger strike in a strict sense of the term, and to be fair, which many were not at the time, a hunger strike under conditions of ongoing death deserve more interpretive flexibility than Theresa Spence or any indigenous or racialized woman in Canada would or could be afforded in those moments. But to continue with my other point, this was not a hunger strike in a "classic" sense – it was rendered a "soft" hunger strike. And as such we read in endless newspaper articles, blog posts, vicious comments sections, in twitter flame wars and heard on TV.[10] We heard in comparative terms that her campaign did not compare to the strike of Bobby Sands, or other, "successful" strikes – for example, the strikers at Guantanamo, who have had to be force fed, hers did not compare to these other declarations of a willingness to die because these other strikes nearly ended in death, or in fact, ended in death. She was drinking fish broth twice a day, and so, was "fudging" things (so to speak). And in fact, you would think she was actually eating fudge, as irate Canadians "weighed in" continuously on her insincerity, her avarice, her body, and in particular, her fat. Yet as the hours turned into days and the days turned into weeks, people caravanned to her camp across from Parliament to assemble around her, to offer strength

to her, to visit, – to pray with her. They did not care if she drank fish broth twice a day. In fact, they prayed for her continued life, and they celebrated her fortitude. Of this the Anishnaabe scholar Leanne Simpson argued in her crucial piece "Fish Broth and Fasting":

> We protect the faster. We do these things because we know that through her physical sacrifice she is closer to the Spiritual world than we are. We do these things because she is sacrificing for us and because it is the kind, compassionate thing to do. We do these things because it is our job to respect her self-determination as an Anishinaabekwe – this is the most basic building block of Anishinaabeg sovereignty and governance. We respect her sovereignty over her body and her mind. We do not act like we know better than her.[11]

Out of respect for her action and for her sovereignty, other Indigenous people stopped eating in solidarity, all repeating her "demand" to meet with the PM, to have the Treaties upheld, to make something happen in a governmental storm of complete and total indifference to the life of land and people in Canada. This indifference has a life of its own, of course, and its clearest embodiment and manifestation, Stephen Harper, sowed his own roots as a chief policy analyst for the Reform party in 1987 – a party that was resolutely opposed to any form of indigenous rights that was not based on the rights of the individual to acquire and accumulate property. This way of thinking about rights converted historic agreements signed between their country – Canada - and First Nations, what are in fact, *treaties*, to be in fact, "race-based" forms of recognition that were not tenable with the idea of equality-as-sameness that his particular political party advocated for. Hence, Harper's immediate shelving of the Kelowna Accord upon

coming into office. This is a gloss on a deeper history of reform/alliance party politics that take the form of conservative skepticism (and here I am being generous) towards Indigenous peoples in Canada, but it is enough to say for now that the intellectual and political project of neoliberal capital accumulation that marked Harper's ascent to the position of PM is what Theresa Spence walked in to. And in this time of aggressive moves into soil and subsurface soil, of governmental indifference if not abandonment, she stopped eating.

Here I want to gender this argument and move to her body. Theresa Spence's appearance, her fleshy appearance, was itself a site of ire by commentators on-line, in twitter flame wars, and in print journalism. She was too fat! We heard in different ways, over and over again, to be sincere, to be what she was supposed to be, which was a person in starvation. Yet her "excess" flesh, flesh that exceeds the western, normative Body Mass Index (BMI) of under 25, itself defies a logic of genocide and in this, settler domination. Why this link between fat, her fat in particular, and a resistance or refusal of domination? Because what she is required to do, with or without the starvation, is die. In fact, her very life, like the lives of all Indian women in Canada is an anomaly because since the 1870s they have been legally mandated to disappear, in various forms – either through the *Indian Act's* previous instantiation of Victorian marriage rules whereby an Indian woman who married a non-Indian man lost her Indian status (her legal rights based identity) and as such her right to reside on her reserve. With this legal casting out was the casting out as well of the possibility of transmitting that status to her children, a loss as well of governmental power with Indigenous governance itself, the political form that her body and mind signified.

Here I want to use an example to demonstrate this argument about symbolization, Indigenous political orders and settler governance. In the case of Iroquois or Haudenosaunee peoples (the peoples who signal North America's first "new world" democracy) this move to make Indian women white, to remove their status as Indians was a blow to the knees, if not a strangulation of Indigenous governance and political order, as Iroquois women appointed Chiefs, held property, counseled chiefs and de-horned them if necessary (removed them from their position of Chief). They divorced their men by placing their belongings outside of the Longhouse. They were the inverse of the settler colonial woman, they had legally mandated authority and power, and so, they represented an alternative political order to that which was in play or was starting to be in play in the late 19th Century. They embodied and signaled something radically different to Euro Canadian governance and this meant that part of dispossession, and settler possession meant that coercive and modifying sometimes killing power had to target their bodies. Because as with all bodies, these bodies were more than just "flesh" – these were and are sign systems and symbols that could effect and affect political life. So they had to be killed, or, at the very least subjected because what they were signaling or symbolizing was a direct threat to settlement.

Now I want to emphasize that the technique of elimination that I am emphasizing here is legal and the time that I am thinking of is the mid and late 19th Century, when the legal work of the Indian Act went into play and marriage rendered Indian women the property of their husbands. As such if Indian women "married out" they were disappeared into a white, settler body politic through a limited enfranchisement (here I say "limited" because as new white women and they would not vote in Manitoba until 1918 and Quebec by 1940). Nonetheless, when their Indigenous political order was overlaid by the Indian Act and specifically its gendered rules

recognizing only some forms of marriage, defining then, a notion of out-marriage and the simultaneous imposition of patrilineal descent. At that moment we see a white, heteropatriarchal and white setter sovereignty ascend and show us its face. It does so through the work that it does with this legal move to dispossess people of land, of territory, to kill traditional governance forms and in the Haudenosaunee (and other Indigenous) cases, supplant traditional Indigenous governance, sovereignty and political life. This was achieved through the imposition of Federal and state law in particular legislative moments[12] but also through slow processes of forced geographic removals, assimilation projects and citizenship itself. The move to patrilineal/patriarchal governance in Indian territories was a legal femicide of a sort – but not of fleshy bodies, of political form, as women are the political form of the Iroquois Confederacy.

Yet, it is this very instrument of Indian women's legal death or redefinition as subjects of white sovereignty, that makes Theresa Spence a "Chief." An elected, Indian Act "Chief," 136 years after the Act is imposed on Indians in Canada and 82 years after her Cree trapping community of Attawapiskat in Northern Ontario, enters into Treaty with Canada – Treaty 9 – this is 1930**.** They are among to the last to sign on, or be added to this Treaty. At that point this small "hunting band", one that lays at the mouth of James Bay, an important stopping point for travelers, fishermen and hunters, was brought into the legal life of an emergent state. Within 82 years the broader political order of "Cree" in James Bay (who are in both what is now Northern Ontario and Northern Quebec) have suffered at least one serious famine at the turn of the century due to beaver pelt over hunting, have resisted and then endured the construction of a hydro-electric dam in 1971 (for Quebec) have then Treated again in 1975 (JBNQA).[13] It was at that time that Mathew Coon-Come argued, "Under this Agreement… [we were] promised compensation,

schools, social services, health care, sanitation, housing, employment and training. We were also assured that our hunters and trappers would be able to continue their traditional way of life. As with other Indian treaties, many important commitments have not been honoured."[14] What appeared to be an exorbitant payment for their water at that time was actually paltry – as they cannot fish because of methylmercury poisoning, suffer obesity because of the sedentarization required of their forced relocation and reservationization, and then had to contest with every bit of energy imaginable, with a Public Relations firm in tow, a second hydroelectric project "Great Whale" (in 1992), which was to provide energy to sell to the United States.

Theresa Spence's people and community are literally, cousins to all this,[15] and seem to suffer even more, outside of recent Treaty and Provincial payments, it is as if they are outside of time, they suffered the same famines as their kin in Quebec, and live in what all accounts, sounds like a surreal, federally recognized zone of simultaneous emergency and abandonment. Spence has been on Council since 2010, there have been *three* states of emergency declared since 2009 because of flooding, because the houses are in such disrepair they are uninhabitable, because of sewage back up, because these conditions are not survivable anywhere but especially so in subzero temperatures. Here from Indian Affairs: ""only 46 of Attawapiskat's 316 housing units are considered adequate, while another 146 need major work and 122 are placement.[16] Further to this, Aboriginal and Northern Affairs representative revealed that of the 316 homes, 85 percent are "unfit for human habitation"[17] The Canadian Press – where they have alighted upon Attawapiskat – have zoned in on federal transfers to the community, totaling in every year, 31 million dollars, and requiring forensic auditing on where the money has gone – transfers in the shadow of a De Beers Victor diamond mine that starting extracting from the land next to

Attawapiskat in 2009 – something they have since protested vigorously, pointing to problems with a community consultation process and the signing a 2005 Impact Benefit Agreement (IBA), negotiated in secrecy, that did not result in housing, better health care services, jobs and improved recreation facilities for the youth.[18] Shiri Pasternak has argued in her meticulous analysis of the fiscal warfare against First Nations people and the case of Attawapiskat that these Impact Benefit Agreements are another strategy to gain access to Indigenous lands because they "sanitize a regime of accumulation" in new "frontiers like Attawapiskat (2015: 14). She elaborates, "[w]hile IBAs technically constitute a consultation process, since they imply consent from First Nations, these agreements contain confidential and non-compliance clauses that scholars refer to as a hostage situation of "indentured servants, who promise to work a certain number of years in exchange for their freedom, no matter how bad the working conditions" (Pasternak 2015: 21). [19]According to a 2013 APTN article, this problematic Impact Benefit Agreement provides Attawapiskat with roughly $2 million a year (1.5 percent) of their annual revenue and De Beers has transferred $10.5 million into a trust fund for Attawapiskat as of January 2011. The mine also generated $448.8 million in gross revenues by the same date.[20]

It is in this context as well that Theresa Spence, out of what some may say is desperation or deep strategy, stopped declaring states of emergency from the North and, while down south in their nation's capital – Ottawa, for an Assembly of First Nations General Meeting, decided to declare her own body an exception. In this, she declared her own body a space for the pronouncement of need, of sovereignty, the site of the decision *not* to eat. And to *not* eat solid food until the Prime Minister, Stephen Harper would meet with her to talk about the indifference his Conservative government had shown to Attawapiskat, but also to all communities in the North, to the land, to

the people on the land. She then started her fast in a traditional dwelling constructed parallel to Parliament and her body, her action became a piece with the "Idle No More" movement – what may be largest, broad based, grass roots social and political movement to unfold in Canadian history.[21] Its goals are literally and directly to (and I quote) "stop the [Stephen] Harper government from passing more laws and legislation that will further erode treaty and indigenous rights and the rights of all Canadians."[22] Further it stated "Idle No More calls on all people to join in a revolution which honors and fulfills Indigenous sovereignty which protects the land and water."[23]

With those objectives the movement has taken the form of "actions": flash mobs and round dances in public spaces that were peopled by at times, hundreds and thousands of participants who drummed and danced peaceably, as well peaceful road blockages. Although Spence's action was separate from the four women in Saskatchewan who first brought the serious implications of the government's Omnibus Bill C-45 to public attention[24] their actions drew strength from each other and shared similar concerns. The Omnibus Bill was a budget bill that would do many things but of most interest to native people and the environment, would amend the Indian Act so that reserve lands could be leased without a majority consent of the voting membership, amend the Navigational Protection Act so that major pipeline and power line projects did not have to prove their project won't damage or destroy a navigable waterway it crosses, unless the waterway is on a list prepared by the transportation minister and the Environmental Assessment Act, which in this Omnibus bill reduces further the number of projects that would require impact assessment under the old provisions. "Idle No More" describes itself as an ongoing movement that took and probably still takes exception to the lack of consultation that marked the passage of these acts, as

well as the way in which they over-rode existing treaty agreements and the Indian Act itself, not to mention fundamental issues of consent, as well as the abusive indifference of the Federal government to the lives and lands of Indigenous peoples. According to estimates by Idle No More, those amendments removed environmental protection for 72 to 99.9 percent of lakes and rivers in Canada.[25] It is because of this removal of legal protections (and probably other very good reasons) that the movement joined forces with those who want to simply end the prospect of tar sands extraction in Northern Alberta in order to transport and sell oil elsewhere – treating the land like a dead body to be extracted from. It is of no irony that, in that political moment and in the historical context that structures Canada, Theresa Spence's body would be treated with the callous indifference if not the ire that it was.

Flesh and Sovereignty

I want to explain why and to do so with recourse to her body and its relationship not so much with this movement but with death and its failure to die. Spence fasted for six weeks, drinking one cup of fish broth in the morning, one at night. During that time The Sarah Palin of electoral politics in Canada, then Conservative (Algonquin) Senator Patrick Brazeau declared at a fundraising dinner that he had the flu and lost more weight in one week than she did in six weeks. This prompted a heckler to chime in, (and be reported in the Press repeatedly), "I think she gained weight!"[26] Spence's fleshy body was not seen as a sign of resurgent Indigenous life to white Canada, it was not seen as a stubborn, resolute, and sovereign refusal to die, staying alive to *have that conversation* about Crown obligations, about housing and about historical obligations -- it was read as a failure to do what it was supposed to do – perish. Not only do

Conservative, neoliberal governments require extractive relationships to territory at all times, focusing upon surplus rather than social welfare or care of its supposed citizens (even if they are differently citizened, as Indigenous peoples are),[27] those that are Conservative settler regimes require a double move, to extract from land and kill land if necessary – it is metaphorically a resource that gives itself to you for this purpose. Harper's regime is most open about this way of viewing territory. Now all settler colonial regimes, some would argue (here I am thinking of Patrick Wolfe's work and those on his tail or trail) have territory as its irreducible element, a desire for territory, not labor, or exclusively labor for example. But Theresa Spence's two bodies, her Chiefly one and her Womanly one were especially untenable because they were both Indian bodies. An Indian woman's body in settler regimes such as the US, in Canada is loaded with meaning – signifying other political orders, land itself, of the dangerous possibility of reproducing Indian life and most dangerously, other political orders. *Other* life forms, other sovereignties, other forms of political will. Indian women in the aforementioned example of the Haudenosaunee Confederacy transmit the clan, and with that: family, responsibility, relatedness to territory. Feminist scholars have argued that Native women's bodies were to the settler eye, like land, and as such in the settler mind, the Native woman is rendered "unrapeable" (or, highly rapeable")[28] because she was like land, matter to be extracted from, used, sullied, taken from, over and over again, something that is already violated and violatable in a great march to accumulate surplus, to so called "production."

This helps us to understand the so-called "phenomenon" of the disappeared women, the murdered and missing Native women and girls in Canada. When we account for this way of looking at Indian women it is not a mystery, is not without explanation, their so called "disappearances" are consistent with this ongoing project of dispossession. And we can see that

this *is* sociology and this *is* criminal. Sherene Razack (2002), Andrea Smith (2005), Beverly Jacobs and Amnesty International (2004, 2009), the film-makers Christine Welsh (2006) and Sharmeen Chinoy (2006),[29] as well as countless activists and heartbroken, devastated family members who have marched and petitioned who have stayed on the police have all documented, theorized, and written about these deaths, these disappearances, which are explained not only by police ineptitude, by police racism, by gendered indifference, but by Canada's dispossession of Indian people from land. This dispossession is raced and gendered, and its violence is still born by the living, the dead, and the disappeared corporealities of Native women. The disappearance of Indian women now takes on a sturdy sociological appearance: "missing" in the past decade, gone from their homes, murdered on the now-legendary "Highway of Tears"[30]in Northern British Columbia, off streets or reservations. Indian women "disappear" because they have been deemed killable, rapeable, expendable. Their bodies have *historically* been rendered less valuable because of what they are taken to represent: land, reproduction, Indigenous kinship and governance, an alternative to heteropatriarchal and Victorian rules of descent. As such, they suffer disproportionately to other women. Their lives are shorter, they are poorer, less educated, sicker, raped more frequently, and they "disappear." Their disappearance thus is not an unexplainable phenomenon; like the so called "Oka Crisis" of 1990 in Mohawk territory, these not-so-mysterious disappearances are symptomatic of what administrators have called in Canada (and sometimes in the United States) "the Indian Problem." And the Indian's problem": dispossession and settler governance are not up for examination and scrutiny, as they were with INM and the pushbacks such as Oka, Ipperwash, Elsipogtog. Theresa Spence's fleshy life, disciplined in a spectacular declaration to not eat in order to effect a political end was a sovereign exception to the exception that Indian people find themselves in settler states of

occupation, Indigenous dispossession and right now, what may be qualified as neoliberal indifference and aggression to corporeal life. The Chief's two bodies signaled too much for a settler eye and imagination to hear let alone act upon, and were she to have died, her body would have been in fact, the eliminatory logic of the state laid bare, and made all too real. And in these times when the drive to death is apparent, when we are sent the memo repeatedly on the relationship between ideological degradation, gender, dispossession and governance, rendered in the bodies of the murdered and missing women, when Indigenous people are rising up all over, holding hands with settlers in absolute concern, grief and outrage, the language normatively should not be "reconciliation" since the historical violence of colonialism is not over, it is ongoing (Coulthard 2014).

Grief

I now want to turn now to a recent death, which was a grief filled, nerve ending in this. Loretta Saunders was a young Inuk woman who was killed in February 2014. I will unpack some of the details of her passing shortly but will say for now that this violent murder, which is actually unexceptional when considered against the larger corpus that I have been talking about: the sociological fact, the crime of "Murdered and Missing Indigenous Women in Canada" is one that was exceptional in that it that actually seemed to matter, it seemed to shock Canada. It was saturated with grievability and managed to rouse the murdered and missing women to settler (and Indigenous) consciousness in ways perhaps that it had not before.[31] But before talking of the specifics of her passing so I want to think first with the writing Darryl Leroux, her thesis

advisor, who attempted upon her death, to puncture common understandings of the murders and deaths of Indigenous women in order to offer historical and political context to these deaths.

After Saunders' death was confirmed and it was in fact, a "fact" that she was gone, Daryl Leroux made a careful, and simultaneously impassioned plea in the Huffington Post for white Canadians to think about the history that they inhabit, the benefits that they incur from Indigenous dispossession – as Indigenous dispossession is as I have just argued, foundational for Canada (and of course, the United States). And Indigenous women's vulnerability to harm, to violence is symptomatic of this dispossession. Before I get further into the crux of his argument I will just rehearse a few points. When we speak of dispossession we are speaking of the materiality of land. The land that Indigenous peoples own, care for, are related to and are moved from, by force or by fiat for settlement. Thus when we think about dispossession we have to think about it as an ongoing activity that the US and Canada are very involved in as these governmental projects also move Indigeneity – as a living thing, a corporeal thing and also a system of ideas and practices out of the way. These states have to be involved in this ongoing "moving away" because they fundamentally need this land and its resources to fuel themselves and keep producing themselves of course, as a political order but as systems that are attached to people who are not but who can invoke Indigeneity in different ways to suppose themselves, to construct themselves, as civil, as lawful, as the "not-that" (savage and prior other). This may seem a crude construction from various literatures but I want to ground my analysis though in the need for not only land, but also selfhood and statecraft to legitimate claims to governance. When we talk about dispossession, when we talk about settler colonialism or imperial colonialism we are not talking about prior events, or even just events, we are talking about ongoing processes,

and what the comparative historian Patrick Wolfe has called a sturdy, enduring "structure" and in this, not only an event.[32] Alyosha Goldstein has recently called for a nuancing of this further, as assemblage,[33] but the feature of a discernable will to eliminate over time and is born out in the Canadian case and especially so in relation to gender. Structures move through time and place and if you pay close attention, you can actually *see* structural activity.

The evidence for this, some of which was in Leroux's articles on the Saunders's murder, is a "termination plan" put forth by Harper's regime in September of 2013,[34] the ongoing tar sands[35] project in Northern Alberta, which strips the top soil of Northern Cree and Ojibway communities in order to extract oil from the stripped earth to pipeline through the United States and ship through, literally through, other Indigenous communities, and white communities through the trick of "eminent domain" – a legal manoeuver that Indians in the states are very familiar with because it was one of ways in which land was expropriated from them through an argument that targeted it as necessary "for the public good." The four phase Keystone Pipeline[36] in particular is a compact between big oil, (TransCanada Corporation based in Calgary) and local and federal Canadian and US governments, as state permits were required to start construction. Starting in 2008 private industry worked with public law to expropriate private and Indian land to route crude oil from Hardisty Alberta to Regina, Saskatchewan across the border down to Nebraska and on to Illinois. Later phases extended the pipelines from Nebraska to Oklahoma Liberty County Texas and "Phases 3 and 3a" onto Houston, Texas. Phase 4, called Keystone XL was rejected by the Obama administration after years of review.[37] The 1700 mile pipeline was also to start in Hardistay Alberta and route itself through Nebraska, down to the Gulf of Mexico where the oil would be reworked for domestic consumption and/or sold to markets in China, solely for

the profit of big oil, not the "public good." Indian land in Northern Alberta is being harvested as well as privately held acreage by white Americans in the Plains. White Farmers that till the earth in perfect, Lockean fashion, are being subjected to the legal concept of "eminent domain" in North Dakota.[38] It duplicates in precisely what happened to indigenous peoples whose land they now claim and is being taken from them.

So let me return to this person, the late Loretta Saunders and what her passing means in all of this. For those of you that don't know who Loretta Saunders is, she was a 26-year old Inuk student from Labrador who was studying at St. Mary's University in Halifax, Nova Scotia. She was writing her honor's thesis on the so called "phenomenon" of murdered and missing Native women in Canada, and during the course of her thesis research and writing, in February, 2014 her lifeless body was found in a hockey bag along the Trans-Canada highway in New Brunswick.[39] She was pregnant on multiple levels, pregnant with this thesis that she was researching and writing, and quite literally, three months pregnant. According to all accounts, she was a great student, working hard, looking forward to starting these new chapters in her life, and then was killed shockingly, suddenly by a white couple subletting her apartment when she went to collect the overdue rent from them.[40]

Loretta Saunders' murder really, really upset everyone, registering grievability and forms of action[41] in ways not seen before for reasons that are both predictable and yet, not. One, she was, like all of these Native women, killed in part of what looks like a vaporous crime spree that belongs to not one serial murder, but an entire citizenship. As mentioned earlier 1,060[42] Native women have disappeared or been killed in the past decade – there have been two Amnesty

International reports, calls for a national public inquiry, reports into police ineptitude, a municipal inquiry followed by an apology by the Vancouver police chief Jim Chu for years of doddering inaction regarding the murdered and missing women in that city and the specificity and particular heinousness of Robert Pickton's perfectly commodifying site of gendered pain and gendered elimination, the "piggy farm." At the so called "piggy farm" 49 women (he confessed to 49 and was charged for six) were murdered and ground, like meat. Like Saunders' body, found in a hockey bag, a container for the sport that seems to condense meaning, and hope, while sublimating white male violence in a civil form, to stand for Canada itself, Pickton's violence does perfectly disgusting, and unambiguous work to tell us, to scream at us, "Native women will be killed by this country and its people."

Yet in spite of these signs that scream, settler governance in those moments could not or would not hear them. In March 2014, one month after the Saunders murder, the conservative-led cabinet refused the call for a national inquiry into these deaths that crash through austere, Canadian silence the in the form of tears, marches, outrage congealing into one discourse of outraged grief, why are these women being targeted, who is the perpetrator, what do we do?[43]

When history and sensibility is "the perp" a lot has to get done. And the Saunders case agitated all that in ways not seen before. So that is the one way in which this fairly recent murder scrapes at whatever iota of patience Indigenous people have with the state of affairs. But I suspect the other reason is that Loretta Saunders looked like a white girl. She had fair skin, blond hair, light eyes, she could have infiltrated a KKK meeting without notice. Perhaps, and we will find more than likely, perhaps not. It isn't white skin privilege that upset people, in that she is more

precious than the darker ones among us – it is that her death demonstrates that *no one* is safe. Her violent passing is teaching us that one cannot "pass" – this structure, this assemblage, those people that articulate themselves through and for it, will find you, and subject you, it can kill you. You too can be emptied of your familial relations, your relationship to land, your signifying possibility as the ongoing project of Empire transits in Byrd's parlance, or plows through you. One's, life, one's land, sovereignty, one's body, emptied out, in order for other things to pass through. This includes fleshy bodies, this includes Theresa Spence's stubborn and life sustaining fat. This is because if you are an indigenous woman your flesh is received differently, you have been subjected differently than others, your life choices have been circumscribed in certain ways, and the violence it seems, and will find you, and choke you, and beat you, and possibly kill you. And Darryl Leroux tried to explain this to Canadians in the *Huffington Post*, where you will find the startling comments of Canadians who argued in the comments section (in various ways) 'she was not subjected to this violence because she was Inuk, she was subjected to this violence because she is a woman, because these are killers and *they* are wholly responsible.' Somehow the killers were outside of the state, they were imagined as outside of the history that structures them as well.[44] My favorite comment to Leroux's post was and is "You also just helped explain why the numbers for missing/murdered native women are so high. You count any woman with any amount of native blood as native" – completely misapprehending his argument about history and territory, and with that that phenotype. His crucial point being that skin color is not a matter of Indigeneity, that Loretta Saunders was an Inuk that she belonged to her people, she belonged to her family, and that they belong to specific territory. Here he argued that Indigeneity is actually this kind of specificity of place and people, and that in particular this so called "white Inuk" belonged to those people and she was claimed and loved and grieved by them. In the numerous

YouTube videos on this case you can see her distraught family plead the public for information, you can see her sister Delilah Saunders with tear stained cheeks calmly ask for information from the public about her sister, and then wait and ask and then organize a search for her body. When the news comes to the Saunders family, we see them embrace each other with the relief of knowing simply that her body had been found – frozen, in the hockey bag. They were happy simply that she had been *found* because so many of these women have not. And couple their sentiments, which are literally, heartbreaking, her murder enraging, with the cacophony of comments from the Canadian public to Leroux's blog posts with statements of remorse, because this case is so awful it is inspiring even grief in the trolls.

Pedagogies of Contention

When I first wrote an earlier version of this article I presented it in Austin, Texas for a graduate student conference on 'Violence and Indigenous Identity."[45] This was in April of 2014. Like many other people, I was thinking a lot about Loretta Saunders, about the other women, and Leroux's piece made me think about my students,[46] about my job as Professor but specifically as a research Professor that takes teaching very seriously. And as a research Professor, I should not work so hard on my teaching. But nonetheless, I take it seriously and push things to the point of almost total bodily collapse every year when I get a long, painful and relentless bronchitis. I can barely walk to work, let alone lecture, and I work across the street from my apartment. I say this not to dramatize a point about exertion, we all work very hard, but to talk about what I teach and its crucial capacity to exhaust. What I teach: violence, dispossession, Indigenous political life in the face of death, is high stakes and I know it. *Where* I teach is high stakes and I know it – in the

US a site of complete atrophied disavowal of dispossession and ongoing colonialism, disavowal of indigeneity itself. And the courses push up and expose the structures of that dispossession and disavowal to students while providing an historical narrative with analytics to help them along. Repeatedly I hear, and read from them in different ways, "we didn't know this" and from my Indigenous students, of which there are more than I ever expected, "this helps to put it all together." From all, "let's do something!" I don't seek to make a claim of an extraordinary status for native studies alongside other crucial, non-canonical and subaltern histories, all with their own very serious and searing urgencies, but let me make the modest claim that the material serves as a "surprise" that topples things and so I would say, is crucial. But because of its generally non-curricular nature if I don't get it right, if I don't ensnare my students with this information, they may never get it, and they may never get it because they may never even *hear* it. This is because we live in a place, in multiple places, that simply require a disappearance of Indians in order to make the meta claims of the state make sense, "We are a nation of immigrants" – this is not true. And even though Obama then quickly offers the exceptional qualifier "Unless you are one of the Native Americans" he does not explain the violence of settler colonialism, the ongoing violence of this all and how it is still going on and itself explains the minoritized, post-genocidal and yes, exceptional space of indigeneity. So unless people have the data of dispossession, the conceptual and analytical toolkit to work with these statements, they may take it as a fact, they may be compelled by it as something that is true and also virtuous. When they have the material of native studies and Indigenous studies to think with these statements are perceived differently, their own histories are perceived differently, they will have to think more robustly and critically about what is before them. And why is this not a matter for everyone to care about, to teach, to think with, to act upon? Because this

disappearance keeps things in its place, the narratives, the politics, the distributions in power that allow for land to still be taken, for Indigenous identities as well to be violated and stolen because it is presumed that Indigenous peoples are not here to claim each other, to stand up for each other and themselves. I have written about this in my first book, *Mohawk Interruptus* (2014) but you will find other examples of this clarity of Indigenous political will in other works in literary history (Monture 2014) ethnography (Nesper 2002, McCarthy 2016), political analysis and critique (Alfred 1999, 2005, 2008, Coulthard 2014, Bruyneel 2007, Moreton-Robinson 2002, 2007, 2015).[47]

The people I have written about (and belong to), the Haudenosaunee for example, insist on the life of Indigenous nationhood and sovereignty through time and express this in actions that are about *not* being American*, not* being Canadian, and in this it is holding these nation-states in a position of doubt, sometimes interrogation and sometimes refusal. Their political posture is, in short, saying *I am not playing with you. You are not the only political or historical show in town, and I know it.* I think of Loretta Saunders, of her sister's completely devastating blog that documents her love for her sister, the sadness and rage that she wakes up with, her hopes for the safety of other women, of life after her sister's murder,[48] and I think of the death grip that threatens to seize all of us, the death grip that is very much a part of a settler show. A show of strength, of callous indifference, of an ire that obtains to Indigenous women's bodies and how this attaches even to those of us that might think we are safe. Simultaneously I think of her thesis advisor, who tried to translate the very things he was surely teaching Loretta Saunders, learning from Loretta Saunders, to Canadians in the Huffington Post. Is this the cacophony of discourses that vie for a kind of truth telling? Force qualified as violence moves through us,

trying to empty us out, transiting through moving to the flesh that is the subsurface of "identity" as peoples possessing bodies with living histories of relatedness to territory that is constantly being violated, harmed, ignored – allowing some of us to be devalued to the point where we are denied bodily integrity, denied philosophical integrity, flattened, sometimes killed. The force of this is ongoing, and multileveled. I think now, after writing my first book and thinking through the politics of Kahnawà:ke which are at times extremely difficult but so very alive and vibrant, which resist and refuse this kind of process at every turn, the desire for reconciliation by the Canadian government is a curious one. I am not sure that this is possible or fair to attempt to "reconcile" with something that is so violent, so relentless, unless all people stand fully before the sorts of stories I have just assembled, the stories that circulate in our communities, the loss, the gains, the names, and think then about what peace means. The settler state is asking to forgive and to forget, with no land back, no justice and no peace. I find this request for forgiveness by a killing state with what we now know and continue to know to veer towards the absurd if not insult, in spite of its conciliatory intent. This is because historical, bodily and heuristic violence along with theft are among those things that are really impossible to forgive let alone forget.

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Notes

[1] For the reach of global, imperial and comparative analysis of settler colonialism see Bruno Cornellier and Michael Griffith's volume of *Settler Colonial Studies* (2016) 6: 4. See also Alyosha Alex Lubins edited volume of *South Atlantic Quarterly* (2008): 107 (4).

[2] See Paulette Regan *Unsettling the Settler Within: Indian Residential Schools, Truth Telling and Reconciliation* (2011) for an account and analysis of Canadian self perception, especially as international peacekeepers and in relation to the US

[3] And over-incarcerating Native men. Please see Sherene Razack's (2014) *Dying from Improvement: Inquiries and Inquests into Indigenous Deaths in Custody* (Toronto: University of Toronto Press) for a book length analysis of the over preponderance of deaths in custody, most are men.

[4] Minneapolis: University of Minnesota Press.

[5] This is argued in various ways by Aileen Moreton-Robinson in *The White Possessive: Property Power and Indigenous Sovereignty* (2014). Minneapolis: University of Minnesota Press.

[6] See Kevin Bruyneel *The Third Space of Sovereignty* (2007) and Audra Simpson, *Mohawk Interruptus* (2014) for related arguments.

[7] Trudeau cancelled the controversial Enbridge Northern Gateway project that would transport oil from the Alberta tar sands of the coast of British Columbia, He did so just 9 days after assuming office. He is, however supportive of the pipeline projects "Energy East" and "Trans Mountain" http://www.canadianbusiness.com/economy/how-the-trudeau-government-tore-up-the-rulebook-on-pipelines/ (last accessed 08/30/2016), because they are thought to offer a "cleaner" solution than pipelines that transport crude and are underway with more process and consultation with First Nations. The younger and presumably innovative and inclusive Trudeau was widely regarded at the point of his election as a departure from the Conservative party leader Stephen Harper's nine years in office.

[8] http://www.cbc.ca/news/canada/manitoba/harper-rebuffs-renewed-calls-for-murdered-missing-women-inquiry-1.2742845 [last accessed 09/20/2015].

[9] http://www.cbc.ca/news/politics/full-text-of-peter-mansbridge-s-interview-with-stephen-harper-1.2876934 (last accessed 09/20/2015).

[10] For an excellent summary please see http://www.huffingtonpost.ca/2013/01/31/patrick-brazeau-theresa-spence_n_2589799.html [last accessed 4/7/2013]

[11] Please note in his piece Simpson recasts the action of Spence in ceremonial terms, and as simultaneous enactment of the consequences of and critique of *Indian Act* colonialism. Simpson argued, "colonialism

has kept Indigenous Peoples on a fish broth diet for generations…" (2014: 155) "Fish Broth and Fasting" in *The Winter We Danced: Voices from the Past, the Future and the Idle No More Movment* The Kino-nda-niimi Collective. Winnipeg: ARP Books. Pp:154-157.

[12] The end of treaty-making for example in the United States (1871) and the imposition of the Indian Act in Canada (1876).

[13] This is "James Bay Northern Quebec Agreement, which affects Cree in what was once James Bay and is now referred to as "Eeyou Istchee." (http://www.gcc.ca/pdf/LEG000000006.pdf last accessed 09/19/2015)

[14]Mathew Coon Come "Remarks to the Canada Seminar." Harvard Center for International Affairs and Kennedy School of Government, Harvard University, Cambridge, MA, October 28, 1996. http://www.nativeweb.org/pages/legal/coon_come.html (last accessed 09/19/2015).

[15] This article is rich in its invitation for critical commentary, "Quebec Cree avoided the fate of Attawapiskatt" basically by controlling the process of "economic development" through techniques of political resistance until their terms were met. It is emphasized that they are not "opposed to development" but simply want to control it and to receive revenues from it. Time does not permit me to deconstruct the underlying principles of this discourse but later versions of this project will (http://www.cbc.ca/news/politics/story/2013/05/14/pol-james-bay-cree-northern-quebec-attawapiskat.html) (last accessed 09/20/2015).

[16] http://www.huffingtonpost.ca/2013/01/07/attawapiskat-spending-audit-theresa-spence_n_2425725.html (last accessed 09/20/2015)

[17] http://www.cbc.ca/news/politics/attawapiskat-chief-slams-audit-leak-as-distraction-1.1318113 (last accessed 09/20/2015).

[18] Please see the documentary "The People of the Kattawapiskak River (2011, National Film Board of Canada, Alanis Obomsawin, dir) for a documentary treatment of the housing crisis as well as a crucial account of their independent funding of their hockey rink.

[19] In footnote 101 of her article "The fiscal body of sovereignty: to 'make live' in Indian country" Shiri Pasternak (2015) provides a genealogy of IBAS as this accumulative technique and traces them back to *Haida Nation v. British Columbia (Ministry of Forests)* 2004 SCC 73). In a nutshell, there must be consulation with First Nations if Aboriginal Rights will be contravened, the cunning of IBAs is they imply consent and do not require it fully. Pasternak draws on Ken Caine and Naomi Krogman, "Powerful or Just Plain Power-Full? A Power Analysis of Impact and Benefit Sharing Agreements in Canada's North," *Organization and Environment* 23:1 (2010). For Pasternak see http://dx.doi.org/10.1080/2201473X.2015.1090525

[20] http://aptn.ca/news/2013/02/15/attawapiskat-councillor-accuses-de-beers-of-trickery-as-showdown-looms-on-diamond-mine-ice-road/

[21] This admittedly a difficult claim to prove as the INM movement was and perhaps still is amorphous and prone to spontaneous public actions and thus difficult to "calculate." Other "to the streets" and protests have been significant in demographic scale, notably the Winnipeg workers strikes of 1919. See Craig Heron, ed. (1998) *The Workers Revolt in Canada 1917- 1925*. Toronto: University of Toronto Press and the gendered consumer activism of "the Homemakers" organizations through out the 1930s who organized in vigorous protest against rising milk prices. See Julie Guard (2010) "A Mighty Power Against the Cost of Living: Canadian Housewives organize in the 1930's." *International Labor and Working Class History* 77: 27-47). I am grateful to Jarvis Brownlie for pushing me on this claim.

[22] http://www.cbc.ca/news/canada/9-questions-about-idle-no-more-1.1301843 (last accessed 09/20/2015).

[23] http://www.idlenomore.ca/vision (last accessed 09/20/2015).

[24] The Omnibus Bill was first brought to public attention by four women in Saskatchewan – Jessica Gordon, Sylvia McAdam, Sheelah McLean, Nina Wilson as well the woman that first started the hashtag

"Idle No More" (and thus intensive discussion and actions – Tanya Kappo). Theresa Spence was similarly acting in protest to what she called (and her people call) the "aggression" of the Conservative Government in Canada. In this, their callous indifference to the lives and lands of Native people in the North, in her community housing is abominable and water undrinkable. This is endemic to many reserves in the North. Please see Pasternak for a detailed legal history of Spence's action, placed within the larger context of Indigenous dispossession and Canadian lawmaking (2016) . For a multivocal, edited account of the "Idle No More Movement" please see The Kino-niimi Collective (eds.) *The Winter We Danced: Voices from the Past and the Future, and the Idle No More Movement* (2014).

[25] http://www.cbc.ca/news/canada/9-questions-about-idle-no-more-1.1301843 (last accessed 09/20/2015).

[26] The exchange as reported by Huffington Post Canada: "I look at Miss Spence, when she started her hunger strike, and now?" Brazeau asked. A spectator then cried out, "She's fatter," sparking laughter. (http://www.huffingtonpost.ca/2013/01/31/patrick-brazeau-theresa-spence_n_2589799.html) (last accessed 09/20/2015)

[27] See *Mohawk Interruptus: Political Life Across the Borders of Settler States* for an ethnographic account of this different citizenship (Simpson: 2014).

[28] See Andrea Smith, *Conquest* (2005), Jacki Rand, *Kiowa Humanity and the Invasion of the State,* (2008) specifically chapter 6, which links a degraded status of Kiowa women to settler capitalism. There is reference to sexual violence as well in Ned Blackhawk's *Violence over the Land* (2006) and James Daschuk's *Clearing the Plains* (2014) but they do not make the claim regarding gender and territory that Smith and Rand do.

[29] Amnesty International (2004) *No More Stolen Sisters: A Human Rights Response to Discrimination andViolence Against Indigenous Women in Canada*. London: Amnesty International.
Amnesty International (2009) *No More Stolen Sisters: The Need for a Comprehensive Response to Violence Against Indigenous Women in Canada*. London: Amnesty International Publications.
See also Sharmeen Obaid Chinoy (dir.) 2006 *Highway of Tears*. DVD. Al Jazeera International 26 mins., Razack, Sherene (2002) "The Murder of Pamela George" in *Race, Space and the Law: Unmapping a White Settler Society* (Sherene Razack, ed). Toronto: Between the Lines Press. Smith, Andrea (2005) *Conquest: Sexual Violence and Native American Genocide*. Boston: South End Press.
Pp: 121-147. Welsh, Christine (dir.) (2006) *Finding Dawn*. Ottawa: National Film Board of Canada.

[30] Highway 16 stretches across Northern British Columbia. Eighteen women have been murdered between Prince Rupert and Prince George, rendering that stretch "the Highway of Tears" (Chinoy 2006). On September 12, 2012 it was reported that Bobby Jack Fowler murdered one of these women in British Columbia and died in an Oregan jail in 2006.

[31] I will explain some of this shortly but let the attention paid to her death, shocking because of what Doenmez calls a "fatal symmetry" (2015), not override the sustained memorialization and activism of the families and other loved ones of the Indigenous women and girls or the grass roots community activism and documentation. Every February 14 is a day of remembrance for the women and girls which sees memorial marches all throughout Canada. Please consult as well http://www.itstartswithus-mmiw.com/ (last accessed 09/20/2015) for a "No More Silence" database that documents the missing women. This site works in partnership with "Sisters in Spirit" through the Native Women's Association of Canada. Defunded by the Conservative government, the Sister's in Spirit initiative documented the root causes of violence and harm in Native women's lives.

[32] The paradigmatic piece is Patrick Wolfe, (2006) Settler Colonialism and the Elimination of the Native. *Journal of Genocide Research* 8 (4): 387-409.

[33] Goldstein, Alyosha (2014) "Introduction: Toward a Genealogy of the US Colonial Present" in *Formations of United States Colonialism* (Alyosha Goldstein, ed.). Durham: Duke University Press. Pp: 1-32.

[34] See Russell Diabo (2014) "Harper Launches Major First Nations Termination Plan" As Negotiating Tables Legitimize Canada's Colonialism in *The Winter We Danced* Pp: 51-64.

[35] For an excellent summary of the Oil or Tar Sands projects in Northern Alberta, and the "catastrophic climate change that…[Keystone XL] would induce" as well as American lobbying efforts against it please see http://www.newyorker.com/magazine/2013/09/16/the-president-and-the-pipeline (last accessed 08/30/2016).

[36] The fourth phase was not approved by the American state department in November, 2015.

[37] Obama's November 06, 2015 statement can be found here https://www.whitehouse.gov/the-press-office/2015/11/06/statement-president-keystone-xl-pipeline (last accessed 08/31/2016).

[38] See the successful opposition in the courts to TransCanada's attempt to assert eminent domain in Nebraska http://www.forbes.com/sites/jamesconca/2014/02/24/foreign-company-tries-to-seize-u-s-land-for-keystone-pipeline/#4565e39a64ec (last accessed 08/30/2016)

[39] In her thesis *Already Disappeared: Interrogating the Right to Life of Indigenous Women in Canada* Caroline Doenmez has called the shock of Saunder's writing about what would befall her as a "fatal symmetry" in her analysis of the Canadian government's "failure to protect" in the case of Saunders (along side of analysis of the treatment Cindy Gladue and Tina Fontaine) (2015: 13).

[40] The details of her murder and the sentencing of Blake Legette and Victoria Henneberry, the couple that killed her may be found here http://www.cbc.ca/news/canada/nova-scotia/loretta-saunders-murder-was-despicable-horrifying-and-cowardly-1.3052465 (last accessed 08/31/2016).

[41] Hers is the only individual murder that occasioned a march on Parliament http://www.cbc.ca/news/canada/nova-scotia/loretta-saunders-vigil-draws-hundreds-to-parliament-hill-1.2561062 (last accessed 09/30/2015)

[42] These numbers are based on Royal Canadian Mounted Police data, which is flawed as it does not include cities where RCMP do not have jurisdiction, like Vancouver and Toronto (Doenmez ibid: 14-15).

[43] The Inquiry was launched on August 3, 2016 https://www.aadnc-aandc.gc.ca/eng/1448633299414/1448633350146 (last accessed 08/30/2016).

[44] http://www.huffingtonpost.ca/darryl-leroux/loretta-saunders-indigenous-_b_5007672.html (last accessed 9/19/2015).

[45] *Violence Against Native and Indigenous Identities: Unearthing and Healing Our Communities*, University of Texas – Austin, March 28, 2014.

[46] It was my former student, Lakota Pochedley who invited to me UT-Austin as she was then a graduate student there and had gone on after completing a thesis under my supervision at Columbia.

[47] Gerald R. [Taiaiake] Alfred (1995) *Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism*. Toronto: Oxford University Press.
(1999) *Peace Power and Righteousness: An Indigenous Manifesto*. Toronto: Oxford University Press. (2005) *Wasase: Indigenous Pathways of Action and Freedom*. Peterborough: Broadview Press. Kevin Bruyneel (2007) *The Third Space of Sovereignty.* Glen Coulthard (2014) *Red Skin: White Masks: Rejecting the Colonial Politics of Recognition.* Minneapolis: University of Minnesota Press. Theresa McCarthy (in press) *In Divided Unity: Haudenosaunee Reclamation at Grand River* (Tucson: University of Arizona Press). Rick Monture (2014) *We Share our Matters: Two Centuries of Writing and Resistance at Six Nations of the Grand River.* Winnipeg: University of Manitoba Press. Larry Nesper (2002) *The Walleye War: The Struggle for Ojibway Hunting and Fishing Rights.* Lincoln: University of Nebraska Press. Aileen Moreton-Robinson Moreton Robinson, Aileen (2002) *Talkin' Up To the White Woman: Indigenous Women and Feminism* Queensland: University of Queensland Press. Moreton-Robinson (ed.) (2007) *Sovereign Subjects: Indigenous Sovereignty Matters*. New South Wales: Allen & Unwin. (2014) *The White Possessive*.

[48] https://homicidesurvivor.wordpress.com/ (last accessd 09/20/2015).

CAPTIVE GENDERS

TRANS EMBODIMENT AND THE PRISON INDUSTRIAL COMPLEX

EXPANDED SECOND EDITION

ERIC A. STANLEY & NAT SMITH, EDITORS

FOREWORD BY CECE MCDONALD

From a Native *Trans* Daughter:

Carceral Refusal, Settler Colonialism, Re-routing the Roots of an Indigenous Abolitionist Imaginary

Kalaniopua Young

I am a racially mixed Native *trans* daughter.[1] I was born to Marilyn Ilima Aken-Young and Clifton Kaukawilaohaupu Young in 1982. My parents are working class and are of Hawaiian, Chinese, German, and Irish heritage, however, when asked how they self-identify, each responds with a simple, "I am Hawaiian." This claiming of Hawaiian as a specific nationality, today, is not new, although such identity formation disturbs contemporary notions about ethnicity, what it means to be a U.S. citizen, and the political classification of the 50th "state." The struggle for Hawaiian self-determination or sovereignty in the face of an ongoing U.S. military occupation is continually evolving; in particular, the internal movements for independence in Hawai'i transform and are transformed by the way people talk about and embody emerging histories and politics as well as evolving ideas about

race, gender, and sexuality as well as affective notions of belonging and territoriality.[2] This essay seeks to articulate these tensions as an interface for healing and solidarity between critical resistances aimed at undermining the colonial logic embedded within the prison industrial complex (PIC).[3]

This essay is informed by both a political and personal commitment towards ending the PIC through an anti-racist framework and the contextual challenges of ongoing trans/gender queer phobia and settler colonial violence.[4] I explore what it means to embody and be embodied by a state of carceral refusal, by which I mean an evolving state of being and becoming in which we advocate for the abolition of the PIC and the interrelated logics of police brutality and militarism that continue to disappear poor people, trans/gender queer people, Native peoples, and people of color.

My lived experiences enable me to write this more-than-survivor critique of the PIC. In 1989, at the age of seven, I watched helplessly as white police officers arrested my mom, a woman of color, on an allegation of forgery. Despite my screams and desperate attempts to resist the arrest, my mom was violently torn from my arms and forced into a cop car while attempting to pay our rent. At the time of the arrest, my dad was serving overseas as an active member of the U.S. Army, and was unable to take us with him. Luckily, my brothers and I were taken in by our paternal grandparents, Jenny Leialoha Keamo-Young and Clifford Munwai Keka Young, into an overcrowded house on Puhano Street located behind the Tamuras Supermarket in the hot and humid coastal town of Waianae,[5] on the island of Oahu, where the majority of our *ohana* (extended family/kinship network) currently reside.

My cousin Jacob, a child of my dad's youngest sister, became my best friend and sibling. Being the same age and *mahu* (trans/gender queer), Jacob and I were inseparable. We could trust one another to hold even the most sacred aspects of our lives. Under the careful tutelage of a sophisticated yet down-to-earth cadre of grandparents, aunties, uncles, siblings, and cousins, whose gossip and occasional spanking served as a form of social control, Jacob and I came to understand the importance of *kuleana*[6] (collective responsibility) and *ohana*. In 1994, at the age of eleven, when I moved from Hawai'i to Washington state with my parents and brothers, Jacob and I made every effort to stay in touch.

Then, in 2000, wanting to escape Waianae's growing meth epidemic and a saturated tourist and service industry, Jacob moved to Washington for new opportunities. I was able to get him a job with me at a nursing home. Here, we worked as nursing assistants, providing for the emotional

and physical needs of elders in the home. We helped coworkers with unexpected blowouts and crisis situations and made sure that elders were well cared for. The job, however, proved particularly demanding and, at some point following the death of a beloved elder at work, Jacob quit—perhaps finding teenage adventures outside the stresses of caring for the dying and abandoned a more appropriate use of his time at the age of eighteen.

By 2001, Jacob began to neglect his *kuleana* (collective responsibility). When he failed to return home with my car, I set out to find him. He had borrowed my car the night before, promising to return it in the morning. When he did not show up, the lack of a ride led to the loss of my job and I grew more concerned for his safety and wellbeing. When I finally located him later that evening at his boyfriend's apartment—a place that I was familiar with—he was drunk, high, and annoyed by my lecture about trust and *kuleana*. Things quickly devolved. In the end, I chased him into the apartment, spanked his back and bottom, retrieved my car keys, and left. No one was hurt, nothing was broken, and Jacob was laughing the whole time. However, because of these events, police later arrived at my parents' house and arrested me.

Police officers trumped up the charges. The white leaseholder of the apartment, a mutual friend, was told by one of the police officers to file a restraining order against me. Unable to afford a private attorney, I took my public defender's advice and settled for the plea bargain. I did not fully understand the severity of the charges being brought against me. Moreover, my public defender did not act in my best interest. I was charged with burglary in the second degree, a felony. The official report was that I entered a dwelling without permission with the intent to steal or to commit an assault. Extenuating circumstances including the intimate and personal facts of the case were erased from the official police and legal record. In a word, I was *railroaded* through the criminal justice system without the strength or support to challenge the legal framing of my case.

I should state from the outset that the nuances of my conviction and subsequent incarceration do not deny responsibility for the events of that night or demonize any one person's actions. Rather, as someone who values responsibility, I trace the institutional structuring of my subject positions. I argue that my cultural upbringing and nationality as a Hawaiian, my race as an ethnically mixed brown person of color, my being of a working-class background and my gender/sexual identity as trans/gender queer—far from being outside the legal framing of justice—served precisely as categorical monikers for the forms of discipline and punishment I received.

In "Incarceration and the Imbalance of Power," Angela Davis points out that, "Class and racial bias, although often unintentional and unconscious, exist at every step of the [criminal justice] process."[7] Noting fundamental changes—significant increases in prosecutorial power, the minimization of public defense functions and a decrease in judicial discretion—Davis connects systemic failures to disproportionate rates of incarceration among the poor/working class, and communities of color. Additionally, she describes the current criminal system as "assembly-line justice" whereby one's freedom is placed in competition with prosecution ratings, underfunded public defense teams and restricted judicial powers. In other words, criminal convictions like mine are primarily based on a prosecutor's ability to secure convictions, a public defender's workload and pay rate, and a mandatory sentence requirement. In addition, because these charges unfairly impact historically disenfranchised communities in different ways, there is a pressing need to queer settler colonialism and gender racial violence within the contextual interstices of the PIC. According to Scott Lauria Morgensen, "Settler colonialism produced a colonial necropolitics that framed Native peoples as queer populations marked for death."[8]

After my arrest, I was taken to the Thurston County Jail in Olympia, Washington, where I was booked, fingerprinted, cavity searched, and forced to remove the breast enhancements from my bra, stripping naked in front of several white men. These police officers and correctional staff were incredibly rude, moving the in-take process from uncomfortable to unbearable. As a non-op trans woman new to the carceral system, I wanted sympathy. I imagined that after hearing me out, the officers, being of sound mind and judgment, would see the error of their ways and simply let me go. Instead, I was placed in community custody for twenty days. Community custody, according to one of the guards, was reserved for sex offenders, the mentally ill, and those with special needs.

In community custody, safety was precariously mitigated but never guaranteed. Facing daily, threats of physical and sexual abuse by both jail guards and cellblock recidivists, I befriended several inmates who protected me from physical violence in exchange for sexual favors. After a while, I began to notice something strange about the nature of incarceration; in particular, its imposition on the minds and bodies of the imprisoned, prompting a number of inmates to take personal responsibility for a system of failure beyond their control—a system built on hiding in plain sight the institutional, historical, and material limits of personal choice.

I remember my cellmate blaming himself for being poor and unable to find employment to support his family. Another inmate blamed himself for having severe depression. Taking on the failures of a system without critically examining the limits of personal choice often led a number of cellmates to conflate their sense of responsibility with issues beyond their control.

The criminal justice system's failure to incorporate more than penal options for offensive behavior continues to structure a settler colonial penal code that carries with it two harmful effects. First, it reduces people's needs for healing and justice to a carceral logic premised on domination, isolation, and criminalization. Second, it denies culturally appropriate healing practices that incorporate the *ohana* and the lived wisdom of elders. Despite the tumultuous nature of our relationship at any given time in the past, Jacob and I have learned much from each other. Certainly, as cousins, we have had many disagreements, fights, and problems. Nonetheless, we have always managed to resolve our grievances outside the legal system, particularly with the help of those who actually love and care about us.

As a convicted felon and Native trans woman of color, I am aware that multiple stigmas and intersecting oppressions attempt to circumscribe my will to empowerment. As a Hawaiian nationalist, I encounter this in the form of erasure. Erasure conditions the illegal occupation of my country by the United States.[9] It restricts my ability to claim a Hawaiian national citizenship. This means that I am inoculated into a U.S. Nation-State citizenry by force and not by choice. Likewise, a felony charge places restrictions on employment. At the university level, I have received several rejection letters that read: "Unfortunately, because of your criminal conviction, you are not eligible to apply for x position." Troubling as it may be, university employers are all too willing to take money for tuition and related expenses from working-class students with criminal backgrounds, but will be the first to deny these same students gainful employment.

Once convicted, it is difficult to escape the moral suspicion of a settler state legal system, a legal system premised on the oppression and elimination of underserved communities, Native peoples and peoples of color, particularly Native trans/gender queer people of color. Regarding my conviction, I recall an employer once telling me, "We all do things we regret," just before denying me a job to work with struggling LGBTQ youth.

Anthropologist Patrick Wolfe uses the term "settler colonialism" to define a network of consolidated power and the formation of a community

by settlers without regard for the Native inhabitants. Accordingly, settlers are complicit in the forced removal of indigenous populations from the land they claim. By eliminating and alienating indigenous peoples and their cultural practices, a settler colonial society can then claim ownership over territory without engaging in actual struggles that center indigenous peoples and their needs. The legal system has long been the site for legitimizing this process of land and cultural dispossession and ongoing indigenous alterity. According to this logic, at any point one can be silenced and forcibly pushed into camps and reserves and be labeled threatening to a liberal sensibility that sees itself as progressive, civil, modern, and multicultural.

As counter-neoliberal activists combat police brutality and the concomitant forces of administrative and racial gender violence,[10] critical and intellectual scholarship must articulate what it means to exist within and resist against multiple, intersecting sites of oppression and a transhorizontal push for solidarity among multiple lived fronts of oppression and exploitation. As Princess Harmony Rodriguez points out in *Whose Lives Matter?: Trans Women of Color and Police Violence*, "We must expand the conversation surrounding police brutality to include trans women who have been victimized or murdered by police."[11] Rodriguez highlights the case of Nizah Morris, a black trans woman from Philadelphia who died after being hit in the head with a gun by police officers. She continues, "Black and/or Latinx transgender people often find ourselves the target of increased police hostility, because of white supremacist, transphobic policing being distinctly opposed to our continued existence." In line with Rodriguez's critique of white supremacy and transphobia, more collective work must also historicize and archive the lived experiences of indigenous trans women of color in the PIC, particularly within the context of settler colonialism, which involves the elimination of Native bodies, cultures, and territories to make room for a settler state. As Judith Butler reminds us, "dispossession is precisely what happens when populations lose their land, their citizenship, their means of livelihood, and become subject to military and legal violence."[12] To add to Butler's observation, dispossession is also intimately tied to settler colonial violence and the de-personalization of this violence through cultural and lived experience.

The historical and political ideologies of settler colonialism naturalize the abusive forces of the police through families, communities, private and public organizations. For example, celebrated newspaper clippings and photos of my great grandmother, herself a *Hapa Haole* (half Hawaiian/half White)—the first woman to serve in the Honolulu Police Depart-

ment—reinforced the notion in my mind that the police were family and were there to ensure community and individual safety.

However, over time, particularly after observing and experiencing the destructive power of incarceration and police violence firsthand—most notably, the imprisonment of my mother and then later my own incarceration—I abandoned my liberal empathy for a police state. This is not to say that I have a deliberate disdain for all police officers. However, a major concern for me rests in the interests spawned by private enterprise, militarism, and settler police enforcement and brutality. We draw attention to settler colonialism and the historical linkages between surveillance, criminalization, incarceration, and Native dispossession to illustrate the underpinnings of ongoing U.S. Imperialism in Hawai'i.

Since the 1840s, white Christian missionaries from the U.S. have used surveillance to discipline gender, sexual, and family-making practices among indigenous peoples. Unfortunately such penal operations continue unabated today.[13] According to RaeDeen Keahiolalo-Karasuda, the public hanging of Chief Kamanawa II in 1848 introduced a "spectacle of morality" and the dismembering of Hawaiian political leadership. In this spectacle, eight hundred Hawaiians were held at gunpoint and forced to observe the hanging of a well-respected Hawaiian chief. Dubiously charged by missionaries for the murder of his wife, the chief was hung as an "object lesson for evil-doers." According to the author, the spectacle provided an important historical analytic from which to observe carcerality and the "selective definition and prosecution of Hawaiians as criminal."[14] The spectacle of the chief's death represented a dramatic shift in the order of things. Most notably, in the Hawaiian context, it further exalted White hetero-patriarchy and Christian domination for restoring public order in the islands and, by extension, alienated Hawaiians from central positions of political power, further codifying Hawaiian bodies as queer, criminal, sinful, and failed.

In recent findings, the Office of Hawaiian Affairs (OHA), in an executive summary entitled *The Disparate Treatment of Native Hawaiians in the Criminal Justice System*, observes that, while Hawaiians only make up 24 percent of the general population of Hawai'i, they comprise 39 percent of the incarcerated population.[15] A laudable achievement for a State-based institution like OHA, the summary documents stories of those who are inoculated into the abysmal state of Hawaiian incarceration. Though the study does an important job of raising awareness about Hawaiians and their experiences in the U.S. criminal justice system, its

occlusion of *mahu* (trans/gender queer) and *aikane* (gay queer) emphasizes the need for an indigenous analysis of gendered captivity narratives in order to challenge the entrenched ideologies of white hetero-patriarchy and settler sexual colonialism both within and without Native communities and communities of color.

Stories by and about *mahu* incarceration challenge romantic ideas about Hawaiian national solidarity. Because trans/gender queer individuals are criminalized, incarcerated, and imprisoned at a higher rate than our cisgender (non-trans) relatives, our stories provide a meaningful critique of prisons, camps, and reservations as temporal and spatial sites that reinforce a white heteronormative and cissexist hierarchy. It is within these spaces that the bodies of Native trans/gender queer peoples and people of color are brutalized and codified as disposable. Stories by, for, and about *mahu* also subvert the dominant narrative about *ka lahui* (the Hawaiian nation) as a puritanical project, pressing scholars to indigenize and decolonize our theorizations of gender captivity and indigenous self-determination; that is, the ways in which race, sexuality, and gender structure and subvert the colonial mapping of our relations to community, land, and ideas about the body, justice, and wellbeing.

Angela Davis reminds us that prisons "relieve us of the responsibility of thinking about the real issues afflicting those communities from which prisoners are drawn in such disproportionate numbers."[16] Centering Davis's observation within our analyses for prison abolition is key to emboldening social responsibility rather than hiding settler colonial processes, institutional racism, trans-queer phobia and poverty. By deflecting the responsibility of institutional failures onto poor, trans/gender queer and communities of color, possessive whiteness goes unchecked and the hegemonic forms of ignorance proliferate. Subsequently, the stories of Black, Latino, and Native young people who now have a greater chance of going to prison and war than getting a decent education remain under-theorized.[17] In addition to existing within the dangerous nexus of race, class, and gender, indigenous peoples and peoples of color are disproportionately inoculated into service for a white-dominated U.S. imperial project.

According to Linda Tuhiwai Smith, there are four key ways to conceptualize imperial domination: (1) imperialism as economic expansion, (2) imperialism as subjugation of others, (3) imperialism as an idea or spirit with many forms of realization, and (4) imperialism as a discursive field of knowledge.[18] Aiding imperialism within the U.S. context is the

Military Industrial Complex or MIC, which, like the PIC, refers to the complex policy relationships between governments, the armed forces, and the industrial sector in maintaining dominion and control over natural resources belonging to brown and black nations. What are important to critique here are narratives of imperial patriotism and nationalism that proclaim to make the world safer or better. Similarly, the PIC refers to the contractual relationships between the various businesses and organizations that promote correctional facilities and their related services. Similar in nature, both the MIC and the PIC require dispossession and exploitation of historically and economically disenfranchised populations to sustain capitalist goals. A dialogical tool for critiquing both the MIC and the PIC is to illustrate how these institutions actually make life less secure and more hostile despite purporting to do otherwise. One of the hidden realities of the PIC, in particular, is the fact that it is more concerned with creating jobs and filling up cells for profit than actually making communities safer. Hence, the war on drugs is a political and militaristic move to excite the economy, to create more jobs for junior partners while remaining remarkably unsuccessful in addressing underlying problems of historical trauma, institutional violence and poverty.

The war on drugs conditions the cultural and material underpinnings of settler colonial violence against indigenous and racialized trans/gender queer communities. Keahiolalo-Karasuda recounts the triangular connections between opium scandals, U.S. militarism in Hawai'i, and the overthrow of Hawai'i's last monarch, Queen Liliuokalani.[19] In the 1890s, the children of the missionaries in Hawaii participated in the opium economy much to the disapproval of Queen Liliuokalani, who, in response, considered legislation to license opium, understanding that decriminalizing the drug would allow the government to decrease its punitive practices. However, this move only threatened the interests of the American businessmen, who, by this time, opposed all forms of Hawaiian taxation and publicly caricatured the Queen as immoral, indolent, and unintelligent. They continued their assault by threatening to kill all of the Queen's supporters if she did not abdicate her throne. With no other choice, the queen yielded her authority hoping that the injustices against her and the people of Hawai'i would soon be resolved. As the first woman of color to head a modern nation-state, Queen Liliuokalani was a direct threat to ideas of white supremacy and heteropatriarchy. Spending nearly eighteen months in captivity, the queen maintained her rightful claim to the kingdom and its lands. In 1898, on the steps of the 'Iolani Palace, American

annexationists, however, had other plans. Pouring salt on an already festering wound of occupation, they lowered the Hawaiian flag, cut it into pieces and replaced it with the American flag. Shortly following this event, the Hawaiian language was banned in public schools. By 1920, under the Hawaiian Homelands Act, American paternal politics rose to define a blood quantum policy—further reducing Hawaiians from an indigenous people with national autonomy to an ethnic minority bound by a U.S. nation state framework of multiculturalism.[20]

By implicating the modern nation state, aka civil society, as enforcer of continued sexual violence against women of color, "Our strategies to combat violence within communities (sexual/domestic violence) must be informed by approaches that also combat violence directed against communities, including state violence—police brutality, prisons, militarism, racism, colonialism, and economic exploitation."[21] As a former rape crisis counselor, Andrea Smith observed the ways in which sexual abuse suffered by women of color was both gendered and racialized: "When a Native woman suffers abuse, this abuse is an attack on her identity as a woman and an attack on her identity as Native because she links the abuse to her cultural group. The issues of colonial, race and gender oppression cannot be separated."[22] In the same vein, she notes how patriarchal gender violence inscribed hierarchy and domination on the bodies of the colonized. She writes, "Ironically, while enslaving women's bodies, colonizers argued that they were actually somehow freeing Native women from the 'oppression' they supposedly faced in Native nations."[23] We can expand Smith's analysis of paternalism as co-constitutive of U.S. nation-state relations with native peoples by observing how hetero-patriarchy and the particular subjugation of Native and trans/gender queer people of color support a possessive investment in white supremacy and empire building.

Though it is difficult to envision a world without prisons, let alone racism and sexism, the deconstruction process of these systems begins with critical resistance. Frantz Fanon wrote, "In the colonial context, as we have already pointed out, the natives fight among themselves. They tend to use each other as a screen, and each hides from his neighbor the national enemy."[24] In other words, as oppressed people fight over day-to-day struggles, placing blame on one another, attention is detracted from the larger conceptual foundations that reproduce continuing symbolic, cognitive, and social oppressions. It is imperative in our struggles for liberation that we challenge possessive investments in whiteness,[25] heteropatriarchy, capitalism, and settler colonialism.

Under colonial rule, racialized and gendered bodies are assigned specific roles to maintain the modern state of capitalism and are alienated from indigenous ways of relating to each other and to the world. Consequently, the alienation of racialized and gendered bodies conditions governmental and private agents to surveil populations as if we are the internal threats to national security. Implicitly, we are marked by the prison system as jaded stockpiles of vengeance-seekers looking to exact revenge for past wrongs, people who are in need of control, discipline, and paternalism. In order to combat these reductive and over-deterministic images, it is important that we continue to share our stories, tell our truths, and make visible the interconnected articulations between our struggles while making room for acknowledging the incommensurability of our individuated circumstances, differences, histories, lived experiences, and cultural traditions.

In 2015, as a doctoral candidate in anthropology at the University of Washington Seattle, my incarceration in 2001 seems worlds away. Nonetheless, I still embody the spirit of that young Native trans woman, the girl who refused to deny her womanhood in the face of carceral violence, the young girl who scratched police officers for taking her mother away and then used those same fingernails to maintain her eyebrows while in the dimly lit cellblock bathroom of the Thurston County Jail. At the corner of NE 45th Street and 16th Avenue NE, near my academic department in Denny Hall, she appears in street art: "No More Prisons" and "Don't Let Your Dreams Die Here," reminding me that the work of abolition must intimate a deeper decolonial framework of solidarity and critical resistance that moves through and against institutional barriers and impositions. She reminds me that an articulation of shared liberation for all oppressed peoples—a desiring subjectivity in continual remaking—must also take to heart an indigenous abolitionist imaginary, one rooted and routed to evolving ideas about self-determination, anti-racism, trans/gender queer empowerment, de-militarism, and prison abolition.

NOTES

1 The title of this article pays homage to Hawaiian feminist scholar-activist Haunani-Kay Trask, and the coveted title of her polemical work *From A Native Daughter: Colonialism and Sovereignty in Hawaii* (Honolulu: University of Hawaii Press, 1999), a critical examination of feminist, Native, and ethnic tensions within and without the contextual frameworks of Hawaiian sovereignty and related movements for self-determination and autonomy.

2 For a more detailed read on the evolving notions of Hawaiian sovereignty, read *A Nation Rising: Hawaiian Movements for Life, Land and Sovereignty*, eds. Noelani Goodyear-Kaopua, Ikaika Hussey, and Erin Kahunaawaika'ala Wright (Durham: Duke University Press, 2014).

3 PIC, or the Prison Industrial Complex, refers to the contractual relationships between the various businesses and organizations that promote correctional facilities and their related services. For more about the PIC and the problems of a police state—particularly for trans/gender queer people and folks of color—see Dean Spade's *Normal Life: Administrative Violence, Critical Trans Politics and the Limits of Law* (Brooklyn: South End Press, 2011). Also, for further readings on the prison as an interface for conflicting ideologies, visions, and power dynamics, see Ruth Wilson Gilmore's *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007).

4 I'd like to thank Janet Mock and Maile Arvin who speak to the issue of anti-black racism in Hawai'i and raise the need for indigenous engagements with critical race, ethnic, and trans/gender queer studies. For further reading see Maile Arvin's piece "Possessions of Whiteness: Settler Colonialism and Anti-Blackness in the Pacific," which was published in the online journal *Decolonization: Indigeneity, Education & Society* on June 2, 2014 (https://decolonization.wordpress.com). Also, read Janet Mock's *New York Times* Bestseller, *Redefining Realness: My Path to Womanhood, Identity, Love & So Much More* (New York: Atria Books, 2014) for more on the lived experiences of anti-black racism and transgender subject formation in Hawai'i. While I agree that anti-black racism conditions everyday life in Hawai'i, it is imperative that mixed Hawaiian scholars continue to reclaim our indigenous epistemologies from the grips of possessive whiteness, erasure, and marginalization as a radical act of decolonial refusal and collective solidarity with all oppressed and exploited groups.

5 Waianae, Hawai'i is known for having the largest Hawaiian Kanaka Maoli, or indigenous Hawaiian population, anywhere in the world. It is also known for a population burdened with disproportionate rates of unemployment, disease, poverty, and low life expectancy due to a number of ecological, public health, and political factors. For more on Waianae, read *Potent Mana: Lessons in Power and Healing* (Albany: SUNY Press, 2012) by Wende Elizabeth Marshall, and Kali Fermantez's "Re-Placing Hawaiians in dis Place We Call Home," *Hūlili* 8 (2012): 97–131.

6 The term *Kuleana*, or collective responsibility, describes the labor practices invested into one's extended relational network. These obligations often involve generating cultural and material resources and reinvesting these resources into the wellbeing of relationships of self, family, community, nation, and more-than-human.

7 Davis's article can be found in *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*, eds. Marc Mauer and Meda Chesney-Lind (New York: New Press, 2002), 62.

8 Scott Lauria Morgensen's "Settler Homonationalism: Theorizing Settler Colonialism Within Queer Modernities" was published in *GLQ: A Journal of Lesbian and Gay Studies* 16, no. 1–2 (2010): 105–131. The article explores both the limits of homonationalism as a specific project of queer modernity and seeks to queer the discursive limits of settler colonial theory.

9 The Apology Bill (1993), signed by former U.S. president, Bill Clinton, which acknowledges the illegal overthrow of the Hawaiian kingdom by the United States, for example, erases responsibility for settlement claims on behalf of Hawaiian national subjects, including claims to 1.8 million acres of land and self-governance on a non-blood quantum basis.

10 For more information on the concept of racial gender violence, read Matt Richardson and Enoch Page, "On the Fear of Small Numbers: A 21st Century Prolegomenon of the U.S. Black Transgender Experience" in *Black Sexualities: Probing Powers, Passions, Practices, and Policies*, eds. Juan Battle and Sandra L. Barnes (New Brunswick, NJ: Rutgers University Press, 2010).

11 Princess Rodriguez published this article through the blogsite *Black Girl Dangerous*, December 9, 2014, http://www.blackgirldangerous.org/2014/12/whose-lives-matter-trans-women-color-police-violence/.

12 Judith Butler and Athena Athanasiou, *Dispossession: The Performative in the Political* (Cambridge: Polity Press, 2013).

13 Marriage was not a customary practice in pre-colonial Hawai'i. As Hawaiian scholars like Leilani Basham and Kehaulani Kauanui point out, in the days of *ka poe kahiko* (ancient Hawaiians, those who lived in Hawai'i before European arrival), there was no need for marriage. As some in the Hawaiian community joke, divorce translated to simply moving one's sleeping mat to the other side of the *hale* (Hawaiian house) or next to someone else. Also, read more about the colonial imposition of blood quantum in Hawaiian politics as a form of social and political control in J. Kehaulani Kauanui, *Hawaiian Blood: Colonialism and the Politics of Sovereignty and Indigeneity* (Durham: Duke University Press, 2008).

14 RaeDeen Keahiolalo-Karasuda, "A Genealogy of Punishment in Hawai'i: The Public Hanging of Chief Kamanawa II," *Hūlili* 6 (2010): 147–167.

15 Office of Hawaiian Affairs (OHA), *The Disparate Treatment of Native Hawaiians in the Criminal Justice System*, 2010, accessed February 2, 2015, http://www.oha.org/research.

16 Angela Y. Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003), 16.

17 Davis, *Are Prisons Obsolete?*.

18 Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London: Zed Books, 2012), 21.

19 RaeDeen Keahiolalo-Karasuda, "Carceral Landscape in Hawai'i: The Politics of Empire, the Commodification of Bodies, and a Way Home," in *Abolition Now!: Ten Years of Strategy and Struggle Against the Prison Industrial Complex*, ed. The CR10 Publications Collective (Oakland: AK Press, 2008).

20 Kauanui, *Hawaiian Blood.*

21 Andrea Smith, *Conquest: Sexual Violence and American Indian Genocide* (Cambridge, MA: South End Press, 2005), 25.

22 Ibid., 26.

23 Ibid.

24 Frantz Fanon, *Black Skin, White Masks* (New York: Grove Press, 1952), 13.

25 Read George Lipsitz's *Possessive Investment in Whiteness: How White People Profit from Identity Politics* (Philadelphia: Temple University Press, 1998) for further analysis on the ways that whiteness structures modernity and concurrent ideas of ownership and belonging.

Indigenous Activism and Contemporary Solidarity and Struggle in North America

Black Lives Matter Stands In Solidarity with Water Protectors at Standing Rock

Members of the Black Lives Matter Network join resistance at Standing Rock

In the state of North Dakota, there is a movement for all of us. A movement for the recognition that water is life. A movement led by warriors, women, elders, and youth. A movement made possible by the actions taken by those who came before us, steeped in the wisdom of elders. A movement anchored by Indigenous women who put their bodies on the line for our liberation.

Over the past weekend, members of the Black Lives Matter Network traveled to North Dakota to stand in solidarity with Indigenous peoples who are putting their bodies and lives on the line to protect our right to clean water. The Dakota Access Pipeline could carry more than 400,000 barrels of crude oil a day from western North Dakota across South Dakota and Iowa to connect with an existing pipeline in Illinois. It is a 1,100-mile pipeline, estimated to cost $3.7 billion, and is about halfway complete. The water protectors who are protesting the Dakota Access Pipeline are engaged in a critical fight against big oil for our collective human right to access water. To be clear, this is not a fight that is specific only to Native peoples– this is a fight for all of us and we must stand with our family at Standing Rock.

Though the gathering of folks at Standing Rock began in April, it was approximately two weeks ago when the situation escalated as four women risked their bodies to physically stop construction on the pipeline. While construction was halted at that point, it continues on the pipeline right now, and hundreds of people have joined, donated to, and amplified the cause. Mainstream media is doing its part to ignore this resistance; it is not in the interests of large corporations or the federal government for the world to see Indigenous peoples in America working together to protect the land and water we all need to survive. The gathering at Standing Rock is a testimony against capitalism– we do not have to destroy the world and our resources for money to provide for one another. In fact, we must do the complete opposite. Scarcity is a myth and if we take care of the Earth, our family that comes after us will be taken care of by the Earth.

The Indigenous peoples leading this work have traveled from towns and reservations from all over the country, representing over seventy Nations and making this the largest gathering of Indigenous Nations since 1973. This is a critical moment in our history, where we must decide if we want to stand together for our collective well being or ignore what is happening– the further corruption of our water sources and the intentional disregard of the treaty rights and self determination of Indigenous folks in North Dakota.

Black Lives Matter stands with Standing Rock. As there are many diverse manifestations of Blackness, and Black people are also displaced Indigenous peoples, we are clear that there is no Black liberation without Indigenous sovereignty. Environmental racism is not limited to pipelines on Indigenous land, because we know that the chemicals used for fracking and the materials used to build pipelines are also used in water containment and sanitation plants in Black communities like Flint, Michigan. The same companies that build pipelines are the same companies that build factories that emit carcinogenic chemicals into Black communities, leading to some of the highest rates of cancer, hysterectomies, miscarriages, and asthma in the country. Our liberation is only realized when all people are free, free to access clean water, free from institutional racism, free to live whole and healthy lives not subjected to state-sanctioned violence. America has committed and is committing genocide against Native American peoples and Black people. We are in an ongoing struggle for our lives and this struggle is shaped by the shared history between Indigenous peoples and Black people in America, connecting that stolen land and stolen labor from Black and brown people built this country.

Black Lives Matter affirms that our lives do matter on Indigenous Land. We affirm our family's right to land and clean water, a right that does not change based on the whims of American companies who wish to make more money off poisoning the waters that we depend on to live. We affirm our right to live takes precedent over corporations' prerogative to make a profit.

Currently, water protectors are awaiting a decision from the courts. This decision is expected to be made by September 9th, and Black Lives Matter will continue to stand with Indigenous peoples throughout that time and beyond. Water is life, and we must all fight to

protect it.

#NODAPL #WaterIsLife

To support:

Red Warrior Camp, in partnership with the Camp of the Sacred Stones, has put out an official Call to Action for all allies to stand in solidarity. Please join the #NoDAPL Global Weeks of Solidarity Action which will run from September 3rd through September 17th. Please join this Indigenous led movement to stop the Dakota Access Pipeline by planning or joining an action near you! For more information about the weeks of action or to join an action, please visit www.NoDAPLSolidarity.org. (http://l.facebook.com/l.php?u=http%3A%2F%2Fwww.NoDAPLSolidarity.org%2F&h=IAQE_51FKAQHbZ45OfTAc6HMs_k7uslek1F6mDMwAa2BUpw&enc=AZPzn9YN_3au12SJnvcyJ2xGBv4GGvGJBuBVXX0o6Zs4-ihf2oCN6ThXJzhp0QI7OtjLDfbLjbtTrxqEqiQtOhgeww7vjvwEGtG3lpGeuBFBRY--6Q_H8aY2tJPNjU0s7N7obHcDe1P_sK1mKdei5OUoBo0Em671qMroG05TuvjDFpDdZOEYGTX-DJgwLCI3oU8&s=1)

- Donate to Sacred Stone legal fund: https://fundrazr.com/d19fAf (https://www.facebook.com/l.php?u=https%3A%2F%2Ffundrazr.com%2Fd19fAf&h=rAQER06Xz&s=1)
- Donate to Camp fund: https://www.gofundme.com/sacredstonecamp (https://www.gofundme.com/sacredstonecamp)
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Here is a list of some of the most recent needs for Red Warrior Camp:

- Gift Cards
- Visa Gas Cards

CAMPING SUPPLIES:

- Tents
- 1 person pup tents
- Camp stoves
- Propane tanks (lg & sm)
- Lighters/matches
- Flashlights
- Lanterns
- Sleeping bags
- Blankets
- Heat blankets
- Rain Coats/rain gear
- Wool Socks
- Winter gear
- Shades/canopies
- Chem lights
- Tarps
- Folding tables (Various Sizes)
- Lg Coolers
- Cell phone boosters
- Solar powered chargers/lights
- Walkie talkies
- Fire wood
- Parachute cord
- Jumper Cables
- Storage Bins
- CB Radios
- Police scanners

COOKING SUPPLIES:

- Industrial sized pots
- Pans
- Cooking sheets

BULK FOOD:

- Rice
- Flour
- Beans
- Meat
- Non-perishable food

ART SUPPLIES:

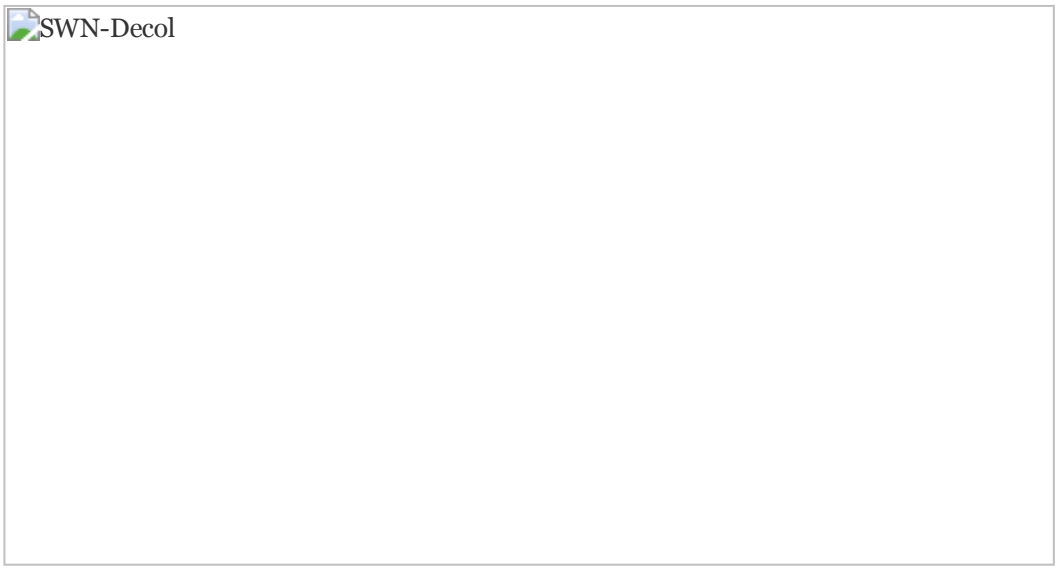
- Canvas
- Poster board
- Paint
- Paint rollers
- Spray paint
- White flat sheets
- Screen printing materials
- Drawing ink
- T-shirts
- Sweaters
- Large Tote/storage boxes

KITCHEN SHADE MATERIALS:

- Lumber
- Metal shelving units
- Nails
- Hammers
- Screws
- Battery powered drill

For Our Nations to Live, Capitalism Must Die

Posted on November 5, 2013 | 4 Comments



By Glen Coulthard, Voices Rising (Indigenous Nationhood Movement)

There is a significant and to my mind problematic limitation that is increasingly being placed on Indigenous efforts to defend our rights and our lands. This constraint involves the type of tactics that are being represented as morally legitimate in our efforts to defend our land and rights as Indigenous peoples on the one hand, and those which are viewed at as morally illegitimate because of their disruptive and extra-legal character on the other.

With respect to those approaches deemed "legitimate" in defending our rights, emphasis is often placed on formal "negotiations" – usually carried out between "official" Aboriginal leadership (usually men) and representatives of the Crown (also usually men) – and if need be coupled with largely symbolic acts of peaceful, non-disruptive protest that must abide by Canada's "rule of law."

Then there are those approaches increasingly deemed "illegitimate." These include but are not limited to forms of protest and direct action that seek to influence power through less mediated and sometimes more disruptive measures, like the slowing of traffic for the purpose of leafleting and solidarity-building, temporarily blocking access to Indigenous territories with the aim of impeding the exploitation of First Nations' land and resources, or in rarer cases still, the re-occupation of a portion of Indigenous land (rural or urban) through the establishment of reclamation sites that also serve to disrupt, if not entirely block, access to Indigenous territories by state and capital for prolonged periods of time.

Regardless of their diversity and specificity, however, most of these activities tend to get branded in the media in a wholly negative manner: as reactionary, threatening, and disruptive.

Blockades and beyond

What the recent actions of the Mi'kmaq land and water defenders at Elsipogtog c the form of Indigenous blockades are both a negation and an affirmation. They a as they seek to impede or block the flow of resources currently being transported lumber mills, mining operations, and hydro-electric facilities located on the disp nations to international markets. These forms of direct action, in other words, se economic infrastructure that is core to the colonial accumulation of capital in set Canada's. Blocking access to this critical infrastructure has historically been qui gains for Indigenous communities. Over the last couple of decades, however, sta become quite skilled at recuperating the losses incurred as a result of Indigenous leaders off the land and into negotiations where the terms are always set by and

What tends to get ignored by many self-styled pundits is that these actions are also an affirmative gesture of Indigenous resurgence insofar as they embody an enactment of Indigenous law and the obligations such laws place on Indigenous peoples to uphold the relations of reciprocity that shape our engagements with the human and non-human world – the land. The question I want to explore here, albeit very briefly, is this: how might we begin to scale-up these often localized, resurgent land-based direct actions to produce a transformation in the colonial economy more generally? Said slightly differently, how might we move beyond a resurgent Indigenous politics that seeks to inhibit the destructive effects of capital to one that strives to create Indigenous alternatives to it?

Rebuilding our nations

In her recent interview with Naomi Klein, Leanne Betasamosake Simpson hints at what such an alternative or alternatives might entail for Indigenous nations. "People within the Idle No More movement who are talking about Indigenous nationhood are talking about a massive transformation, a massive decolonization"; they are calling for a "resurgence of Indigenous political thought" that is "land-based and very much tied to that intimate and close relationship to the land, which to me means a revitalization of sustainable local Indigenous economies."

Without such a massive transformation in the political economy of contemporary settler-colonialism, any efforts to rebuild our nations will remain parasitic on capitalism, and thus on the perpetual exploitation of our lands and labour. Consider, for example, an approach to resurgence that would see Indigenous people begin to reconnect with their lands and land-based practices on either an individual or small-scale collective basis. This could take the form of "walking the land" in an effort to re-familiarize ourselves with the landscapes and places that give our histories, languages, and cultures shape and content; to revitalizing and engaging in land-based harvesting practices like hunting, fishing, and gathering, and/or cultural production activities like hide-tanning and carving, all of which also serve to assert our sovereign presence on our territories in ways that can be profoundly educational and empowering; to the re-occupation of sacred places for the purposes of relearning and practicing our ceremonial activities.

Although all of these place-based practices are crucial to our well-being and offer profound insights into life-ways that provide frameworks for thinking about alternatives to an economy predicated on the perpetual exploitation of the human and non-human world, at the micro-political level that these practices tend to operate they still require that we have access to a mode of subsistence detached from the practices themselves. In other words, they require

that we have access to a very specific form of work – which, in our present economy depends on the expropriation of our labour and the theft of our time for the profit of others – in order to generate the cash required to spe[illegible] regenerative time on the land.

A similar problem informs self-determination efforts that seek to ameliorate our through resource revenue sharing, more comprehensive impact benefit agreemer employment strategies negotiated through the state and with industries tearing though the capital generated by such an approach could, in theory, be spent sub cultural traditions and practices, in the end they would still remain dependent c entirely at odds with the deep reciprocity that forms the cultural core of many In with land.

Developing Indigenous political-economic alternatives

What forms might an Indigenous political-economic alternative to the intensific our territories take? For some communities, reinvigorating a mix of subsistence- contemporary economic ventures is one alternative. In the 1970s, for example, the Dene Nation sought to curtail the negative environmental and cultural impacts of capitalist extractivism by proposing to establish an economy that would apply traditional concepts of Dene governance – decentralized, regional political structures based on participatory, consensus decision-making – to the realm of the economy. At the time, this would have seen a revitalization of a bush mode of production, with emphasis placed on the harvesting and manufacturing of local renewable resources through traditional activities like hunting, fishing, and trapping, potentially combined with and partially subsidized by other economic activities on lands communally held and managed by the Dene Nation. Economic models discussed during the time thus included the democratic organization of production and distribution through Indigenous co-operatives and possibly worker-managed enterprises.

Revisiting Indigenous political-economic alternatives such as these could pose a real threat to the accumulation of capital on Indigenous lands in three ways. First, through mentorship and education these economies reconnect Indigenous people to land-based practices and forms of knowledge that emphasize radical sustainability. This form of grounded normativity is antithetical to capitalist accumulation. Second, these economic practices offer a means of subsistence that can over time help break our dependence on the capitalist market by cultivating self-sufficiency through the localized and sustainable production of core foods and life materials that we distribute and consume within our own communities on a regular basis. Third, through the application of Indigenous governance principles to non-traditional economic activities we open up a way of engaging in contemporary economic ventures in an Indigenous way that is better suited to foster sustainable economic decision-making, an equitable distribution of resources within and between Indigenous communities, Native women's political and economic emancipation, and empowerment for Indigenous citizens and workers who may or must pursue livelihoods in sectors of the economy outside of the bush. Why not critically apply the most egalitarian and participatory features of our traditional governance practices to all of our economic activities, regardless of whether they are undertaken in land-based or urban contexts? Cities are on Indigenous land too, and a hell of a lot of us currently live in them.

New alliances, new opportunities

The capacity of resurgent Indigenous economies to challenge the hegemony of settler-colonial capitalism in the long term can only happen if certain conditions are met, however. First, all of the colonial, racist, and patriarchal legal, political obstacles that have been used to block our access to land need to be confronted and removed. Of course capitalism continues to play a core role in dispossessing us of our lands and self-determining authority, but it only does so in concert with axes of exploitation and domination configured along racial, gender and state lines. Given

the resilience of these equally devastating relations of power, our efforts to decolonize must directly confront more than just economic relations; they must account for the complex ways that capitalism, patriarchy, whit supremacy, and the state interact with one another to form the constellation of power relations that sus patterns of behavior, structures, and relationships. Dismantling these oppressiv require that we continue to assert our presence on all of our territories, coupled w with the forces of colonization through the forms of direct action that are current communities like Elsipogtog.

Second, we also have to acknowledge that the significant political leverage requi economic exploitation of our people and homelands while constructing alternati generated through our direct actions and resurgent economies alone. Settler-colo populations too small to affect this magnitude of change. This reality demands t if not actively seek out and establish, relations of solidarity and networks of trad transnational communities and organizations that are also struggling against th capital, including other Indigenous nations and national confederacies; urban In organizations; the labour, women's, GBLTQ2S, and environmental movements; ethnic communities that find themselves subject to their own distinct forms of economic, social and cultural marginalization. The initially rapid and relatively widespread support expressed both nationally and internationally for the Idle No More movement last spring, and the solidarity generated around the Elsipogtog anti-fracking resistance today, gives me hope that establishing such relations are indeed possible.

It's time for our communities to seize the unique political opportunities of the day. In the delicate balancing act of having to ensure that one's social conservative contempt for First Nations doesn't overwhelm one's neoconservative love of the market, Prime Minister Harper has erred by letting the racism and sexism of the former outstrip his belligerent commitment to the latter. This is a novice mistake that Liberals like Jean Chrétien and Paul Martin learned how to manage decades ago. As a result, the federal government has invigorated a struggle for Indigenous self-determination that must challenge the relationship between settler-colonization and free-market fundamentalism in ways that refuse to be co-opted by scraps of recognition, opportunistic apologies, and the cheap gift of political and economic inclusion. For Indigenous nations to live, capitalism must die. And for capitalism to die, we must actively participate in the construction of Indigenous alternatives to it.

—

Glen Coulthard is a member of the Yellowknives (Weledeh) Dene First Nation and an assistant professor in the First Nations Studies Program and the Department of Political Science at the University of British Columbia. This piece is drawn in part from his forthcoming book, Red Skin, White Masks: Rejecting the Colonial Politics of Recognition (University of Minnesota Press, summer 2014). Follow him on Twitter: @denerevenge

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For those who danced...
and are still dancing.

#IDLENOMORE IN HISTORICAL CONTEXT

Glen Coulthard

Much has been said recently in the media about the relationship between the inspiring expression of Indigenous resurgent activity at the core of the #IdleNoMore movement and the heightened decade of Native activism that led Canada to establish the Royal Commission on Aboriginal Peoples (RCAP) in 1991. I offer this short analysis of the historical context that led to RCAP in an effort to get a better sense of the transformative political possibilities in our present moment of struggle.

The federal government was forced to launch RCAP in the wake of two national crises that erupted in the tumultuous "Indian summer" of 1990. The first involved the legislative stonewalling of the Meech Lake Accord by Cree Manitoba MLA Elijah Harper. The Meech Lake Accord was a failed constitutional amendment package negotiated in 1987 by then Prime Minister of Canada, Brian Mulroney, and the ten provincial premiers. The process was the federal government's attempt to bring Quebec "back in" to the constitutional fold in the wake of the province's refusal to accept the constitutional repatriation deal of 1981, which formed the basis of the *The Constitution Act, 1982*. Indigenous opposition to Meech Lake was staunch and vocal, in large part due to the fact that the privileged white men negotiating the agreement once again refused to recognize the political concerns and aspirations of First Nations. In a disruptive act of legislative protest, Elijah Harper initiated a filibuster in the days immediately leading up to the accord's ratification deadline, which ultimately prevented the province from endorsing the package. The agreement subsequently tanked because it failed to gain the required ratification of all ten provinces within three years of reaching a deal.

The second crisis involved a 78-day armed "standoff" beginning on July 11, 1990, between the Mohawk nation of Kanesatake, the Quebec provincial police (SQ), and the Canadian armed forces near the town of Oka, Quebec. On June 30, 1990, the municipality of Oka was granted a court injunction to dismantle a peaceful barricade erected by the people of Kanesatake in an effort to defend their sacred lands from further encroachment by non-Native developers. The territory in question was slotted for development by a local golf course, which planned

on extending nine holes onto land the Mohawks had been fighting to have recognized as their own for almost 300 years. Eleven days later, on July 11, one hundred heavily armed members of the SQ stormed the community. The police invasion culminated in a 24-second exchange of gunfire that killed SQ Corporal Marcel Lemay. In a display of solidarity, the neighbouring Mohawk nation of Kahnawake set up their own barricades, including one that blocked the Mercier Bridge leading into the greater Montreal area. Galvanized by the Mohawk resistance, Indigenous peoples from across the continent followed suit, engaging in a diverse array of solidarity actions that ranged from leafleting to the establishment of peace encampments to the erection of blockades on several major Canadian transport corridors, both road and rail. Although polls conducted during the standoff showed some support by non-Native Canadians outside of Quebec for the Mohawk cause, most received their information about the so-called "Oka Crisis" through the corporate media, which overwhelmingly represented the event as a "law and order" issue fundamentally undermined by Indigenous peoples' anger and resentment-fuelled criminality.[2]

For many Indigenous people and their supporters, however, these two national crises were seen as the inevitable culmination of a near decade-long escalation of Native frustration with a colonial state that steadfastly refused to uphold the rights that had been recently "recognized and affirmed" in section 35 (1) of the *The Constitution Act, 1982*. By the late 1980s, this frustration was clearly boiling over, resulting in a marked rise in First Nations' militancy and land-based direct action. The following are some of the more well-documented examples[3] from the time:

1. The Innu occupation and blockade of the Canadian Air Force/NATO base at Goose Bay, Labrador. The occupation was led largely by Innu women to challenge the further dispossession

2 On the lasting signifance and impact of the Mohawk resistance at Kanesatake, see Leanne Betasamosake Simpson and Kiera Ladner (Eds.), *This is an Honour Song: Twenty Years Since the Blockades* (Winnpeg: Arbeiter Ring Press, 2012).

3 For a useful discussion of these and other examples of First Nations activism of the time, see Boyce Richardson (Ed.), *Drumbeat: Anger and Renewal in Indian Country* (Ottawa: Published by Summerhill Press and The Assembly of First Nations, 1989).

of their territories and the destruction of their land-based way of life by the military industrial complex's encroachment onto the Innu peoples' homeland of *Nitassinan*;

2. The Lubicon Cree struggle against oil and gas development on their traditional territories in present-day Alberta. The Lubicon Cree have been struggling to protect a way of life threatened by intensified capitalist development on their homelands since at least 1939. Over the years, the community has engaged in a number of very public protests to get their message across, including a well-publicized boycott of the 1988 Calgary Winter Olympics and the associated Glenbow Museum exhibit, *The Spirit Sings*;
3. First Nations blockades in British Columbia. Throughout the 1980s, First Nations in B.C. grew extremely frustrated with the painfully slow pace of the federal government's comprehensive land claims process and the province's racist refusal to recognize Aboriginal title within its borders. The result was a decade's worth of very disruptive blockades, which at its height in 1990 were such a common occurrence that Vancouver newspapers felt the need to publish traffic advisories identifying delays caused by First Nation roadblocks in the province's interior. Many of the blockades were able to halt resource extraction on Native land for protracted periods of time;
4. The Algonquins of Barriere Lake. By 1989, the Algonquins of Barrier Lake were embroiled in a struggle to stop clear-cut logging within their traditional territories in present-day Quebec because these practices threatened their land and way of life. Under the leadership of customary chief Jean-Maurice Matchewan, the community used blockades to successfully impede clear-cutting activities affecting their community.
5. The Temagami First Nation blockades of 1988 and 1989 in present-day Ontario. The Temagami blockades were set up to protect their nation's homeland from further encroachment by non-Native development. The blockades of 1988-89 were the most recent assertions of Temagami sovereignty in over a century-long struggle to protect the community's right to land and freedom from colonial settlement and development.

From the vantage point of the colonial state, by the time the 78-day standoff at Kanesatake had begun, things were already out of control in Indian Country. If settler-state stability and authority are required to ensure "certainty" over lands and resources to create a climate friendly for expanded capitalist accumulation, then the barrage of Indigenous practices of disruptive counter-sovereignty that emerged with increased frequency in the 1980s was an embarrassing demonstration that Canada no longer had its shit together with respect to managing the so-called "Indian Problem." On top of this, the material form that these expressions of Indigenous sovereignty took on the ground—*the blockade*, explicitly erected to impede constituted flows of racialized capital and state power from entering Indigenous territories—must have been particularly troubling to the settler-colonial elite. All of this activity was an indication that Indigenous people and communities were no longer willing to wait for Canada (or even their own leaders) to negotiate a just relationship with them in good faith. There was also growing concern that Indigenous youth in particular were no longer willing to play by Canada's rules—especially regarding the potential use of political violence—when it came to advancing their communities' rights and interests. As then National Chief of the Assembly of the First Nations, Georges Erasmus, warned in 1988: "Canada, if you do not deal with this generation of leaders, then we cannot promise that you are going to like the kind of violent political action that we can just about guarantee the next generation is going to bring to you." Consider this "a warning," Erasmus continued, "We want to let you know that you're playing with fire. We may be the last generation of leaders that are prepared to sit down and peacefully negotiate our concerns with you."[4]

In the wake of having to engage in one of the largest military operations since the Korean War, the federal government announced on August 23, 1991 that a royal commission would be established with a sprawling 16-point mandate to investigate the abusive relationship that had clearly developed between Aboriginal peoples and the Canadian state. Published two years behind schedule in November 1996, the $58 million, five-volume, approximately 4,000-page *Report of the Royal Commission on Aboriginal Peoples* (RCAP) includes 440

4 "Act or Face threat of violence, native leader warns Ottawa," *Toronto Star* (June 1, 1988), A1.

recommendations which call for a renewed relationship based on the core principles of "mutual recognition, mutual respect, sharing and mutual responsibility." The material conditions that informed the decade of Indigenous protest that led to the resistance at Kanesatake created the political context that RCAP's call for recognition and reconciliation was supposed to pacify—namely, the righteous anger and resentment of the colonized transformed into an insurgent reclamation of Indigenous difference that threatened to *un-settle* settler-colonialism's sovereign claim over Indigenous people and our lands.

With respect to the emergent #IdleNoMore movement, although many of the conditions that compelled the state to undertake the most expensive public inquiry in Canadian history are still in place, a couple of important ones are not. The first condition that appears to be absent is the perceived threat of political violence that was present in the years leading to the resistance at Kanesatake. #IdleNoMore is an explicitly non-violent movement, which accounts for its relatively wide spectrum of both Native and non-Native support at the moment. However, if the life of Attawapiskat Chief Theresa Spence continues to be recklessly put in jeopardy by a Prime Minister who negligently refuses to capitulate to her reasonable demands, it is my prediction that the spectre of political violence will re-emerge in Indigenous peoples' collective conversations about what to do next. The responsibility for this rests solely on the state. The second condition that differentiates #IdleNoMore from the decade of Indigenous activism that led to RCAP is the absence (so far) of widespread economic disruption unleashed by Indigenous direct action. If history has shown us anything, it is this: if you want those in power to respond swiftly to Indigenous peoples' political efforts, start by placing Native bodies (with a few logs and tires thrown in for good measure) between settlers and their money, which in colonial contexts is generated by the ongoing theft and exploitation of our land and resource base. If this is true, then the long-term efficacy of the #IdleNoMore movement would appear to hinge on its protest actions being distributed more evenly between the malls and front lawns of legislatures on the one hand, and the logging roads, thoroughfares, and railways that are central to the accumulation of colonial capital on the other. For better and for worse, it was our peoples' challenge to these two pillars of colonial sovereignty that led to the recommendations of

RCAP: the Canadian state's claim to hold a legitimate monopoly on use of violence and the conditions required for the ongoing accumulation of capital. In stating this, however, I don't mean to offer an unqualified endorsement of these two challenges, but rather a diagnosis of our present situation based on an ongoing critical conversation about how these differences and similarities ought to inform our current struggle.

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WHY ARE WE IDLE NO MORE?

Pamela Palmater

The Idle No More movement, which has swept the country over the holidays, took most Canadians, including Prime Minister Stephen Harper and his Conservative government, by surprise. That is not to say that Canadians have never seen a native protest before, as most of us recall Oka, Burnt Church, and Ipperwash. But most Canadians are not used to the kind of sustained, coordinated, national effort that we have seen in the last few weeks—at least not since 1969. 1969 was the last time the federal government put forward an assimilation plan for First Nations. It was defeated then by fierce native opposition, and it looks like Harper's aggressive legislative assimilation plan will be met with even fiercer resistance.

In order to understand what this movement is about, it is necessary to understand how our history is connected to the present-day situation of First Nations. While a great many injustices were inflicted upon the indigenous peoples in the name of colonization, indigenous peoples were never "conquered." The creation of Canada was only possible through the negotiation of treaties between the Crown and indigenous nations. While the wording of the treaties varies from the peace and friendship treaties in the east to the numbered treaties in the west, most are based on the core treaty promise that we would all live together peacefully and share the wealth of this land. The problem is that only one treaty partner has seen any prosperity.

The failure of Canada to share the lands and resources as promised in the treaties has placed First Nations at the bottom of all

Declaring War on KXL: Indigenous Peoples Mobilize

by Nick Estes

We're going to declare war on the Keystone XL Pipeline," Oglala Sioux Tribe President Bryan Brewer told a crowd of several hundred Natives and non-Natives on March 29 at the opening ceremony of the Rosebud Sioux Tribe's (RST) Oyate Wahacanka Woecun ("shield the people") camp. The next day, at the "Stand Sacred Ground" meeting in Lower Brule, South Dakota (SD), RST President Cyril Scott similarly stated, "It's time for a declaration of war." A five-year limbo of uncertainty about KXL has prompted outrage from the Oceti Sakowin ("The Great Sioux Nation"). It has even galvanized an unlikely "Cowboy-Indian Alli-ance" with non-Native Nebraskan landowners. Thousands of members of this alliance recently marched and camped on the Washington National Mall in honor of Earth Day on April 22—just days after the State Department announced an "indefinite" delay on making any decision on KXL.

In spite of continued political foot dragging, anti-KXL actions continue to unite communities along the proposed pipeline corridor, across the nation, and even with Canadian First Nations, whose lands and communities are most directly affected by the highly exploitive oil sands extraction. Urgency grips the Oceti Sakowin, who make up a majority of the populations in six of the ten poorest counties in the U.S. Social and economic precarity, however, has not stopped grassroots organizations such as the Owe Aku, Wica Agli, and Protect the Sacred from creating protest camps at Witten, SD on the Rosebud Reservation and Bridger, SD on the Cheyenne River Reservation. Debra White Plume of Owe Aku has for the last several years offered training workshops in non-violent direct action against heavy machinery that would be used to construct the pipeline. Other grassroots organizations have begun planning and setting up protest camps to thwart construction plans.

Regardless of strategy, the Oceti Sakowin, among North America's most disenfranchised populations, have pledged to halt TransCanada's pipeline, which spans 875 miles from Montana to Nebraska alone, at all costs. Stakes are high. KXL's planned path would cross ancestral Lakota territory protected under the 1868 Fort Laramie Treaty, which includes 24 million acres comprising all of Western South Dakota and parts of Nebraska, Wyoming, North Dakota, and Montana. Treaty rights have reignited claims to defend what many consider tribal national territory protected under international law, even if that land was dispossessed.

TransCanada, however, has neglected these rights. The Final Supplemental Env-ironmental Impact Statement for the Keystone XL Project requires programmatic agreements with tribal nations regarding culturally and historically sensitive sites and rights of way for ancillary infrastructure that would cross tribal trust land, but many argue that the way TransCanada carried out tribal consultation directly violates UN Declaration on Rights of Indigenous Peoples' provision of "prior and informed consent" and undermines tribal sovereignty. For example, the 2010 and 2013 tribal programmatic agreements set up a

three-tiered system of "consent," determining certain privileges in negotiating tribal rights to cultural resource management and rights of way. Non-participating tribes are completely exempt from negotiations. This presents a double-bind for tribes opposed to KXL: only by consulting with TransCanada can a tribe negotiate cultural resource management and its rights of way.

Tribal Nations' flags line the Rosebud Sioux Tribe's Oyate Wahacanka Woecun ("shield the people") camp.

Many are also concerned that leaks or spills would contaminate vital freshwater resources. KXL would slurry toxic and high viscosity oil sands bitumen (830,000 barrels per day) heated to 150°F across tribal freshwater utility services, the Mni Wiconi Rural Water Supply; across approximately 357 rivers and streams, all direct or indirect tributaries to North America's largest drainage system, the Mississippi River; and across the Ogallala Aquifer, one of the world's largest aquifers that provides a major source of freshwater for agriculture and individual consumption in eight states (South Dakota, Nebraska, Wyoming, Colorado, Kansas, Oklahoma, New Mexico, and Texas). The contamination of these highly fragile, interconnected water systems could be catastrophic for all plants, animals, and humans (an estimated 30 million) dependent on them for life.

While Canadian First Nations have called for a moratorium of oil sands extraction in the Western Canadian Sedimentary Basin in province of Alberta, U.S.-based Native nations are mounting legal and political resistance against KXL, a pipeline that would connect Alberta oil sands extraction with refineries in the Gulf of Mexico. "Declaring war" on KXL and TransCanada should not be taken lightly. Grassroots organizations and tribal governments are leading the opposition against KXL on the Northern Great Plains, but they need resources and legal support. The Obama's administration's ambivalent stance on KXL only raises the stakes for tribal communities, whose lands and lives are most vulnerable. A district court recently ruled Nebraska's state government's approval for KXL "unconstitutional," revealing avenues for legal resistance and challenge.

However, the challenge of building effective opposition is also contingent upon grassroots action. While many of the grassroots organizations are plugged into the large anti-KXL movement, they do not have the financial and legal support necessary to carry out sustained resistance. Many operate on a volunteer basis and also work on community-based projects, such as providing social and economic services, cultural and language revitalization, environmental protection and conservation, defending tribal lands and resources,

and working on international Indigenous human rights. Immediate action and financial resources are desperately needed for these small-scale, tribally-based movements for not only anti-KXL work, but also sustained community development programs that provide much needed services and resources in the U.S.'s poorest counties. If these movements are to succeed beyond stopping KXL, they will require financial and legal support to continue their projects.

For more information on the work our organizations do or to get in touch with people on the ground, go to our websites:

Wica Agli: www.wicaagli.org, Owe Aku's: www.oweakuinternational.org), and Protect the Sacred's: www.protectthesacred.org.

-Nick Estes is an enrolled member of the Lower Brule Sioux Tribe and a PhD student in American Studies at the University of New Mexico. He is involved with his tribal nation's anti-KXL and constitutional reform movement.-

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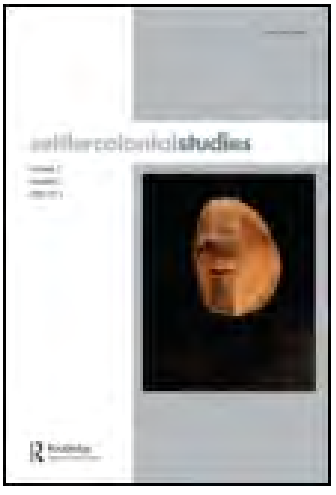

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Accumulation of the primitive: the limits of liberalism and the politics of occupy Wall Street

Sandy Grande[a]
[a] Education Department, Connecticut College, New London, CT 06320, USA
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Accumulation of the primitive: the limits of liberalism and the politics of occupy Wall Street

Sandy Grande*

Education Department, Connecticut College, New London, CT 06320, USA

This article examines the Occupy Wall Street (OWS) movement and its basic elision of Indigenous peoples as the first and already "occupied" peoples of this land; illuminating the so-called 99% as not simply united in their collective indignation, but also their settler status. Thus, by deploying the discursive trope and strategy of "occupation" as its central organizing principle, OWS reconstitutes (territorial) appropriation as the democratic manifest and fails to propose something distinct from or counter to the settler state. In so doing, the movement dissolves colonialism into capitalism by courting a limited and precarious equality predicated on (or more pointedly in exchange for) the "elimination of the Native". In contradistinction, critical Indigenous theories disrupt the colonial architecture that frames Indigenous/state relations in ways that not only mark the (Foucauldian) shift from sovereign to discursive forms of power, but also insist upon the conciliatory and accommodationist discourses of liberalism as equally, if not more, effective in reproducing settler hegemony.

You can almost see Ground Zero from Zuccotti Park. Where there was once an eerie void in the lower Manhattan skyline, the "Freedom Tower" now looms spectacular. The Tower's twin reflecting pools are edged with bronze panels featuring the 2,983 names of every person who died in the 2001 and 1993 attacks on the World Trade Center. The roughly 16-acre site (re)named Memorial Plaza is designed to serve as a, "powerful reminder of the largest loss of life resulting from foreign attack." The other edifices of lower Manhattan – the U.S. Customs House, the World Financial Center, the American International Building – serve as the quotidian backdrop to this spectacle and stand as memorials of a different sort. They are the monuments of American Empire, the eliminate-to-replace markers of settler colonialism. Missing are the names of the millions of men, women, and children who were sacrificed – killed but not murdered – at the altar of primitive accumulation.

Within days of the initial occupation of Zuccotti Park in lower Manhattan a number of Indigenous scholar-activists took to the blogosphere to register their critiques. Most notably, John Montano's (Nishnaabe) *Open Letter to the Wall Street Activists*; Jessica Yee's (Mohawk) *The Game of Colonialism and Further Nationalism to be Decolonized from the Left;* and, Joanne Barker's (Lenape) *Manna-hata* posts[1] each called attention to the inconvenient truth that Wall Street, New York and, for that matter all of the Americas were/are already in the perennial state of occupation. Together they challenged the Occupy Wall Street (OWS) movements' basic elision and erasure of Indigenous peoples as the first and already "occupied" peoples of this land. These critiques among others put OWS immediately on the defensive, compelling passionate refutations of the movement as too White, too elitist, too patriarchal, too colonialist.

*Corresponding author. Email: smgra@conncoll.edu

My purpose here is not to rehearse these central antagonisms but rather to deepen them – to recover the Indigenous critique from the bankrupt and distortional field of "identity politics" (where it has been improperly relegated) and undertake the wider problem that OWS represents: liberalism's underwriting of settler colonialism. From the standpoint of Indigenous peoples the so-called 99% are not simply united in their collective indignation, but, more significantly, by their settler status. This is Indigenous Land.

While this work is informed by the familiar theorizations of Arendt, Foucault, Fanon and Agamben[2] on state power and colonial subjectivities, it builds more closely upon the growing body of critical literature that brings liberal and/or continental political philosophy to bear upon questions of colonialism and Indigeneity.[3] Such work examines the colonial architecture that frames Indigenous/state relations in ways that not only mark the (Foucauldian) shift from sovereign to discursive forms of power but also insist upon the conciliatory and accommodationist discourses of liberalism as equally, if not more, effective in reproducing settler hegemony. The forthcoming analysis of OWS is one example of such discourse.

To begin, the discursive trope and strategy of "occupation" reconstitutes (territorial) appropriation as the democratic manifest and, in so doing, fails to propose something distinct from or counter to the settler state. Indeed, activists are adamant in their assertions that OWS is not a protest (one time event) but rather a form of "place-based activism" contingent on local (re)possession. As such, "occupiers" take over public spaces, constructing virtual homesteads complete with kitchens, outdoor classrooms, libraries, sleeping areas, etc.; a strategy that presupposes a colonialist logic that not only proffers its citizens the right to assemble but also the freedom to settle.

As Patrick Wolfe[4] articulates, settler colonialism is distinctive from other forms of colonialism in that it is "first and foremost a territorial project" where land (as opposed to natural or human resources) is the precondition.[5] Since the priority is to eradicate, dissolve, and remove Indigenous peoples in order to expropriate their lands, Wolfe defines "the logic of elimination" as the central organizing principal of settler colonialism.[6] In other words, he writes, "invasion is a structure not an event".[7] Thus, the central argument of this essay is that while OWS may be the largest social movement to take on class or economic inequality in a long time and, thus, presumes a "radical" or "revolutionary" politics, it ultimately retains a liberal (which is to say Eurocentric) center. Specifically, it dissolves colonialism into capitalism by courting a limited and precarious equality predicated on the "elimination of the Native".

The OWS protestor as liberal-subject would undoubtedly contest their complicity with (settler) state power and authority. Indeed, they have been victims of state power and its abuses (i.e. police sweeps, arrests, and imprisonment). The issue here is not to minimize such violations of citizen rights but rather to call attention to the distinction between the liberal, protestor-subject and Indigenous or "other" non-subjects that are discussed later as "surplus subjects".[8] The aim is to work beyond a simple rehashing of the philosophical limits of liberalism and examine the *political function* of liberal discourse in solidifying settler colonialism.[9]

To begin, I provide an analysis of OWS as a fundamentally liberal project preoccupied with: the fetishization of diversity, spectacle and the spectacular,[10] and a conciliatory, multicultural rhetoric. All of which works together to fashion a politics of inclusion that seeks to absorb Indigenous peoples. That is, accumulate the primitive. In the second section, the so-called "place-based"[11] activism of Occupation is interfaced/contrasted with the land-based resistance movements of Indigenous peoples who confront primitive accumulation as the pre- and ongoing condition of the settler colonial state. This essential "difference" marks the irreducible distinction between the OWS protestor and Indigenous subject as well as the politics of liberal democracy and decolonization.

The makings of a movement (an event)

The one-year anniversary of OWS was recently celebrated with minimal fanfare; the thousands have dwindled to hundreds. This was quite an anemic showing for a movement that was, at its height, hundreds-of-thousands deep, attracting the hot media spotlight and celebrity[10] attention. If nothing else, OWS pulled back the curtain from the global capitalist class, creating opportunities for political engagement, public intellectualism, and popular education. Through these efforts, awareness of the socio-economic gulf between the 99% and 1% has been forever etched into the collective consciousness of the "average American". Despite these accomplishments, unsustainable rates of (un)der-employment, foreclosure, bankruptcy and job loss endure for the working class while CEO salaries and multi-national profits continue to rise.[13] When considered alongside the withering state of OWS, the persistent inequalities have raised questions about the efficacy and sustainability of the movement.

Many point to Occupy's lack of a coherent agenda and explicit demands as the reason for its "failure".[14] But it's deeper than that. I argue that the consensus, demand-free platform and collectivist politics of OWS inherits a liberal philosophy that not only neuters the formation of substantive alternatives to the status quo but, more significantly, fails to disrupt liberalism's justifications for the settler-state. While the loss of traction is undoubtedly also an effect of the forces of state repression (e.g. harassment, arrests, surveillance, and eviction), the movement's refusal to relinquish the fantasy of the liberal state (and its collaboration with it) is what ironically or, perhaps predictably, rendered it vulnerable to such forces. To better understand this outcome, it is useful to examine the beginnings of the movement.

In July 2011, long-time activist, anthropologist, and self-described anarchist David Graeber posted a blog entry in the reader-supported Canadian magazine, *Adbusters*. Inspired by the events in North Africa and the Middle East, Graeber wondered aloud if the USA was due its own Tahir moment. Following Graeber, Kalle Lasn the editor and co-founder of *Adbuster,* created the hashtag #OccupyWallStreet, registered the domain name, and chose the date – 17 September 2011.[15] In a few short weeks, Graeber and other on-the-ground organizers developed the basic framework for OWS by holding a series of consensus building "general assemblies" that were galvanized under the tagline, "We are the 99%". Less than two months later, about 2000 people converged on Zuccotti Park, the small plot of land in lower Manhattan just north of Wall Street.

The non-affiliated, non-programmatic, grass-roots movement that emerged on that day is described on their official website as follows:

> Occupy Wall Street is a leaderless resistance movement with people of many colors,[16] genders and political persuasions. The one thing we all have in common is that We Are The 99% that will no longer tolerate the greed and corruption of the 1%. We are using the revolutionary Arab Spring tactic to achieve our ends and encourage the use of nonviolence to maximize the safety of all participants.[17]

Despite the rhetoric, rumblings about the lack of racial diversity emerged almost immediately, particularly from the Black, Native, and Latino communities. In terms of the actual statistics, the earliest online survey reported that the protestors were 81.2% White while another (conducted about a month later) reported that they were 68% White; 61% male; 55% college educated; with a mean age of 33.[18] Beyond the numbers, however, the exclusionary *experience* of folks of color also began to circulate. For example, a mere two weeks into Occupy, an editorial appeared in *The New York Times*, "Occupy Wall Street Struggles to make the '99%' Look Like Everybody".[19] The article recounted the story of a group of Bronx community organizers who rode down to Zuccotti Park "only to find a 99% that bore little resemblance to them".[20]

One of the group members, Rodrigo Venegas, described the OWS massive as "white, liberal, young people who for the first time in their life are feeling a small percentage of what black and brown communities have been feeling for hundreds of years".

The absence of racial diversity was further codified when the General Assembly drafted their "Declaration of the Occupation of New York City". On that day a small group of activists of color present at the assembly reported being "appalled" by the proposed first sentence of the declaration: "As one people, formerly divided by the color of our skin, we acknowledge the reality: that there is only one race, the human race." Sonny Singh, a Sikh musician from Brooklyn New York who became an early leader among Occupiers of color expressed his outrage and dismay stating "(that sentence) was obviously not written by a person of color … Race is a reality in the lives of people of color, you can't put out a statement like that without alienating them". Eventually the phrase was changed to read:

> As one people, united, we acknowledge the reality: that the future of the human race requires the cooperation of its members; that our system must protect our rights, and upon corruption of that system, it is up to the individuals to protect their own rights, and those of their neighbors; that a democratic government derives its just power from the people, but corporations do not seek consent to extract wealth from the people and the Earth; and that no true democracy is attainable when the process is determined by economic power.[21]

Nevertheless, the experience prompted Singh and others to form the "People of Color Working Group" with the aim to build a "racially conscious and inclusive movement".[22] Similarly, Malik Rhasaan from Queens, New York and Ife Johari from Detroit took action after seeing the "whiteness" of OWS, starting an "Occupy the Hood" movement. Johari states, "They're gonna have a problem with people of color [getting involved] if they don't connect effects of capitalism to racism".[23] While the categorical dismissal of OWS activists as a bunch of white, middle-class, hippie kids is problematic, the early emergence of distinct, OWS affiliate groups defined by race and class is also problematic.

Beyond issues of racial homogeneity, Kenyon Farrow[24] of the *American Prospect* summarizes the ways in which the discursive and semiotic fields of the movement served to alienate people of color:

> Comparing debt to slavery, believing police won't hurt you, or wanting to take back the America you see as rightfully yours are things that suggest OWS is actually appealing to an imagined white (re) public. Rather than trying to figure out how to diversify the Occupy Wall Street Movement, white progressives need to think long and hard about their use of frameworks and rhetoric that situate blacks at the margins of the movement.[25]

Farrow's critique of Occupy's "frameworks and rhetoric" came on the heels of the equally vigorous intervention by Indigenous scholars and activists who had already raised the specter of race framed by colonization. Joanne Barker's (Lenape) *Manna-hata* post succinctly summarizes the general critique. She writes:

> "Wall Street" is only possible because of (the) history of land fraud and treaty violation.
>
> The "United States" is only possible because of its still imperial-colonial relations with Native peoples. What "Wall Street" and the U.S. have become – an imperial-colonial power over the world's economics and the laws that protect it – is a direct legacy of the fraud and violence committed against Native nations. Perhaps those who now claim to OCCUPY WALL STREET in the name of reforming America's economy could remember their history and call it something else. *Wall Street is, after all, already an occupied territory.* (emphasis in original)[26]

The OWS response to the mounting criticisms? Further entrenchment in the key ideals of liberalism: individual rights, freedom, unity, tolerance, and an unproblematized multiculturalism. For instance, in an article for *The Nation,* entitled "Compassion is Our New Currency", Rebecca Solnit,[27] one of the movement's key sympathizers and long-time activist-author, defends the multicultural merits of the movement:

> Occupy has created a shared space, in which people of all kinds can coexist, from the homeless to the tenured, from the inner city to the agrarian. Coexisting in public with likeminded strangers and acquaintances is one of the great foundations and experiences of democracy, which is why dictatorships ban gatherings and groups—and why our First Amendment guarantee of the right of the people to peaceably assemble is being tested more strongly today than in any recent moment in American history. Nearly every Occupy has at its center regular meetings of a General Assembly. These are experiments in direct democracy that have been messy, exasperating and miraculous: arenas in which everyone is invited to be heard, to have a voice, to be a member, to shape the future. Occupy is first of all a conversation among ourselves.

Solnit's musings exude the liberal fantasy that "democracy" proceeds from the absence of (substantive) difference, a space where the "homeless" seamlessly coexist with the "tenured". Moreover by contextualizing the occupation as a space for the public expression of (guaranteed) rights, she constructs OWS as a *nomos* for the enfranchised citizen to speak out and against in a collective assertion of their grievances, rights and perceived just dues. There is no mention of the differentiated landscape for the "surplus-subject" in these spaces: the undocumented, subaltern, *homo sacer,* refugee, the dispossessed.

In other words, Occupiers foreclose any deep engagement with race/colonization by simply reinvigorating their commitment to create a more inclusive, pluralistic space. In the context of such radical "inclusion" political conflict is dismissed as either misrepresentation (by the media) or misunderstanding (among activists) or, most problematically, as the problem of certain individuals. Consider the following blog entry posted by "occupier" Tammy Kim in direct response to Farrow's critique:

> If you don't agree with the messaging, it's on you to change it. If you feel it's not diverse enough, add your body to the mix. In this consensus-based process, participation is our most valuable critical faculty. One should also recognize the instability of OWS as observable spectacle. It's an evolving, self-made, messy space whose signs, statements, and local demographics change day-to-day, hour to hour".[28]

While this is one response, by one activist, at one time and may not be representative of OWS as a whole – that's the whole point. OWS refuses representation at the same time it has built an entire movement around a deeply representative claim: "We are the 99%".[29]

This is not surprising since the construction of the settler state has, at every stage, relied on identity and cultural politics for its reconsolidation.[30] Specifically, it requires and solicits certain ways of being, desiring, and knowing at the same time as it destroys others.[31] In this instance, the (OWS) protestor-subject is both solicited and required by the liberal state – employed as examples of "democracy-at-work" – to legitimate business as usual. The question is, "what bodies, desires, and longings must be criminalized and annihilated to produce" the (desirable) protestor-subject in order to destroy the (undesirable) non-subject – the "human surplus".[32]

Journalist Maya Schenwar graphically concretizes the distinction between the protestor-subject and the "surplus-subject" in her powerful piece "35,948". She reports that on the

same day the NATO 3 were spectacularly arrested in Chicago, 35,948 "others" were arrested across the USA:

> Unlike the NATO 3 (or the Chicago Seven, or the Haymarket Eight), these people will go on to become part of a vast, near-voiceless crowd of 2.3 million incarcerated Americans, most of whom … will be charged, convicted, prosecuted and jailed … For them, there is no grass roots bail fund, Facebook or Twitter. They can't attend town hall meetings, call Congress, boycott corrupt corporations and they certainly can't march in the streets. For these 2.3 Million, all signs point to a devastating conclusion: they're not only punished, violated, dehumanized and ignored – they are abandoned.[33]

Similarly, while 7263 "occupiers" have been arrested since the movements' inception, over 10 million "others" have been arrested nationwide, with no fanfare. Such statistics are not intended to belittle the gross violations of civil rights that have been enacted upon OWS protestors, but rather to urge and put forth the distinction that makes a difference. It also serves to illustrate the difference between (abandonment by?) the political projects of the liberal-progressive class (including folks of color, women and queers through the homonationalist turn) and the more revolutionary and redistributive politics of decolonization.

If OWS was sincere in its commitment to construct a new social order, it would begin by abandoning the presupposition that the just principles of a new social order can be arrived at deductively from a liberal theory of justice.[34] They would interrogate the ways in which deployment of "spectacle as social critique" ultimately serves to solidify state power and ask how the movement tactically and optically remains a space reserved for some at the cost of others.

In the following section, beginning with a history of lower Manhattan, I continue to draw the distinction between the "place-based activism" of OWS and the land-based resistance movements of Indigenous peoples, many who have disappeared in defense of their homelands. There are no celebrities here.

The makings of settler colonialism (a structure)

Geographically, Zuccotti Park is located in the Financial District at the intersection of Broadway, Trinity Place, Liberty and Cedar Street. This public space is actually privately owned by Brookfield Properties; a transnational real estate company that works with high-end assets in North America and Australia. It acquired the property in 2006 and after some renovations (re)named the park after Brookfield's CEO, John Zuccotti. At least, that's the settler narrative. In actuality, "the park", isn't a park at all but rather Indigenous land and, more specifically, Lenape territory. The land only became a "park" through successive acts of dominion-as-domination all legitimated under the legal fiction of the Doctrine of Discovery.[35]

The Dutch (1626) were the first colonizers, ostensibly buying Manhattan for the mythic $24 worth of trinkets and beads and subsequently renaming it (New) Amsterdam.[36] In order to protect their bounty from outside encroachment, they purportedly built a wall along the northern boundary of the settlement. Over the next century, the wall served as the line of demarcation in several skirmishes between the Dutch and other European interlopers, particularly English.[37] Eventually, the English prevailed and promptly presumed the right of dominion, renaming the territory (New) York.

By the time the Americans came on the scene, the original fortifying wall had been torn down, paved over and, in commemorative fashion, renamed "Wall Street". The prior elimination and removal of thousands of Lenape at the hands of their European forebears, allowed the Americans to adopt the more "civilized" strategy of domination through juridical means. Specifically, they entered into the first-ever formal treaty between the USA and an Indian nation: the Treaty of Delaware (1778). In letter, the Treaty recognized Lenape sovereignty and even included a proviso for the possible formation of a Delaware state (likely used as the inducement to sign). In practice, however, it was mainly an agreement of alliance, providing Americans safe passage through Lenape territory during times of war with the British. Even so, less than a year into the agreement, the Lenape filed formal grievances with the Continental Congress, citing US violations of terms.

As noted by Barker (2011), this essential fraud would be enacted again and again over the course of history. Until, by the end of the Civil War, the Americans had all but completed elimination of the Native from *Manna-hata*. In its place, they built Manhattan, a spectacular display of US economic virility and global competitiveness.[38] By the 1930's Lower Manhattan was already piercing the skyline, with each multi-story tower built to be bigger than the last. In the late 1960's United States Steel (one of the original conglomerates of JP Morgan) set its sights on being the biggest and tallest and proposed a spectacular 54-story skyscraper. Since the size exceeded existing zoning laws, the company brokered a deal with the city; in exchange for permission to build it agreed to develop an adjacent plaza for public use. Once permits were secured, the corporation razed all the buildings between Broadway, Liberty, Cedar and Church, replacing them with Liberty Plaza Park (built, 1972).

On 11 September 2001, in the wake of the attack, Liberty Plaza Park served as a central staging area for rescue workers and, at times, a makeshift morgue. Eventually, the sheer weight of all the vehicles required for the various rescue–demolition–construction processes proved too much for the Plaza and it cracked. Four years later, Brookfield properties commenced the requisite renovations and when it re-opened in 2006, the Plaza was (re)named Zuccotti Park. And so ends the latest episode in the continued occupation of Lenape territory, for over 500 years it has been callously violated and exchanged, passed from settler to settler. As Deborah Bird Rose points out, "to get in the way of settler colonization, all the Native has to do is stay at home" (as cited in[39]).

In contrast to Wolfe's observation that the logic of elimination maintains the refractory imprint of the Native counter-claim, if nowhere else, than on the symbolic level – there are no traces of Native peoples in lower Manhattan – not in street name, structure, architecture or motif.[40] There are no monuments, commemorative plaques, or statues to mark the quotidian removal and dispossession of the Lenape peoples. Apparently, "cadastral effacement" pays in spectacular dividends. Property in the financial district is currently worth about $1500 per square foot, with the average residential property selling for over $1.2 million. Meanwhile, according to the last US census, the median income of American Indian peoples in the United States is estimated at $35,000 a year, well below the $50,046 for the nation as a whole.

This is the soil upon which OWS (carelessly? arrogantly?) launched its "occupation". The movement's continued denial of the racialized landscape of inequality and history of settler colonialism inheres the logic of elimination. Moreover, its dismissal of the Indigenous call to "unoccupy" or decolonize as "unrealistic" and "too complicated" reflects its deeper commitment to the imperatives of the settler state. The question should not be *if* a praxis of decolonization is relevant to OWS and, other reformist struggles, but *how* and *why* it is.[41] These glaring aporias of OWS illuminates the more general abandonment of grand narratives/explanatory frameworks (i.e. hegemony) within the liberal project, opting instead for the "messiness" of so-called direct democracy where the agenda is made and remade on a daily basis. Meanwhile,

the conservative Right has been more than happy to fill this void with their very un-messy brand of "us" vs. "them" Manichean politics.[42] All of which suggests that the left needs to resuscitate the binary – not in a way that rehearses or reifies the Manichean worldview – but, rather, helps to articulate Indigenous specificity.

That being said, it seems insufficient to simply unveil the liberalism that underlies OWS. A decolonial project requires a more complicated mapping of the geopolitical configurations and contemporary articulations of the Indigenous political horizon: If not inclusion, then what? Sovereignty? Autonomy? After all, Indigeneity is not simply the dialectical underbelly of the modern nation state nor is it simply outside, excluded, or abandoned by it. And, the Indigenous subject is not the same as – is more than – the colonized subject.

In their efforts to map the borders of Indigeneity, critical scholars (e.g. Coulthard, Nichols, Rifkin, and Simpson)[43] target liberalism itself, recognizing it as the philosophical and ideological viscera of settler consciousness. Their collective works reveal the ways in which the undetermined, messy, multicultural, politics of "occupation" undermine the prior, definitive, Indigenous politics of (home)land-based activism. It is the difference between working to "build a new society in the shell of the old" (OWS Handbook[44]) and fighting for the sovereign right to maintain societies that are autonomous from the shell. In so doing, some of the key antagonisms raised by Indigenous scholar-activists pertain to: questions of self-formation, governance and political power; the disruption of normative conceptions of justice; the articulation of Indigenous structures within the grammar of empire (i.e. sovereignty, nationhood, and recognition); the desirability of statist/electoral forms of governance vs. autonomist forms; and, the dialectics between governance and economic systems (i.e. capitalism, socialism, and non-monetized systems of reciprocity).

As an educator I am also interested in examining the ways in which settler colonialism inheres a continuous *episteme.* That is, how settler colonialism encodes a positivist discourse that crystallizes the dynamic flux of experience into static, observable blocs that render other knowledges either invisible or disappeared.[45] Consider for example how the past 500 years of state sanctioned language suppression has led to 80% of existing American Indian languages to be classified as "moribund" and, over the next century, 90% of the world's languages are predicted to be "extinct", with most supplanted by the colonizers tongue.[46]

Epistemicide is a structure not an event.

Within this context, I am particularly interested in the processes by which relations of mutuality are eroded by capital and in exploring competing forms of epistemic disobedience. The hope is to imagine political/pedagogical strategies that go beyond simply resisting settler relations of power and work instead to redefine the epistemological underpinnings through which the colonial world order is conceived. More specifically, I am to contribute to the development of an Indigenous counter-claim that engages knowledge and, knowledge making, for the purposes of well-being not contingent on the management or control of imperial interest.

In the end, the OWS moment refracted through an Indigenous lens, compels us to be attentive to both the larger ontological and epistemic underpinnings of settler colonialism; to discern the relationship between our struggles and others; to disrupt complicity and ignite a refusal of a capitalist promise built upon a series of non-promises for Indigenous peoples; and, to more appropriately theorize the relationship between "spectacular" and "surplus" subjectivities. The aim, as urged by Mark Rifkin, is to discern and map the relationship between biopolitics (and the production of race) and geopolitics (the production of space).

Thus, in response to the question provocatively posed by the OWS poster: "What is our one demand?" My answer is: abandon "occupy" and take up "decolonization". Such a shift would bring the colonial present into sharper relief and, more significantly, allow us to *reframe* what is happening to workers in Detroit; public school children in Newark, NJ; and, brown, black and poor folks in the nations urban centers as not simply about racism, unemployment, outsourcing, downsizing, and privatization – but as *removals.* A dispossession executed by an elite class still intent on the eliminate-to-replace vision of settler colonialism.

Notes

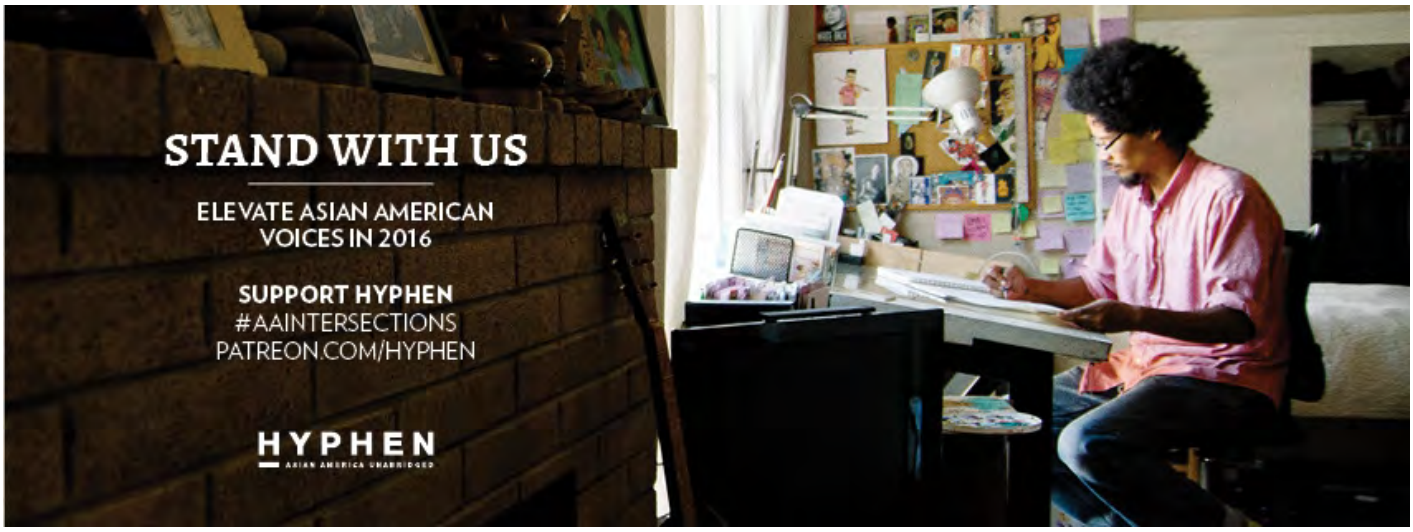
1. John Montano's post was the first to come out on 24 September 2011, http://www.zashnain.com/2011/09/open-letter-to-occupy-wall-street.html; then came Jessica Yee's on 30 September, http://www.racialicious.com/2011/09/30/occupy-wall-street-the-game-of-colonialism-and-further-nationalism-to-be-decolonized-from-the-left/ and, finally, Joann Barker's on 2 October 2011, http://tequilasovereign.blogspot.com/2011/10/manna-hata.html.
2. See G. Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005).
3. D. Ivison, 'Locke, Liberalism and Empire', in *The Philosophy of John Locke: New Perspectives*, ed. Peter R. Anstey (London: Routledge, 2003), 86–105; E. Povinelli, *The Cunning of Recognition:*

Indigenous Alterities and the Making of Australian Multiculturalism (Durham, NC: Duke University Press, 2002); R. Nichols. 'Realizing the Social Contract: The Case of Colonialism and Indigenous Peoples', *Contemporary Political Theory* 4, no. 1 (2005): 42–62; P. Wolfe, 'Settler Colonialism and the Elimination of the Native', *Journal of Genocide Research* 8, no. 4 (December 2006): 387–409; G. Coulthard, 'Subjects of Empire: Indigenous Peoples and the "Politics of Recognition" in Canada', *Contemporary Political Theory* 6 (2007) 437–60; and M. Rifkin, *When Did Indians Become Straight?: Kinship, The History of Sexuality, and Native Sovereignty* (London: Oxford University Press, 2010).

4. Wolfe, 'Settler Colonialism'.
5. Ibid., 388.
6. According to Wolfe, 'Settler Colonialism' strategies of elimination not only include genocide but also "officially encouraged miscegenation, the breaking down of Native title into alienable individual freeholds, Native citizenship, child abduction, religious conversion, resocialization in total institutions such as missions or boarding schools, and a whole range of cognate biocultural assimilations" (388).
7. Wolfe, 'Settler Colonialism', 388.
8. Angela Davis develops the notion of "human surplus" in reference to those aberrant subjects "cordoned off" and criminalized by the capitalist imperatives of the "new world order". See also A. Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003).
9. Robert Nichols makes the important distinction regarding the political function of discourse in his paper, R. Nichols, 'Indigenity and the Priority of the Settler Contract Today' (unpublished paper presented at 'The Governance of the Prior' Workshop, Center for the Comparative Study of Ethnicity and Race, Columbia University, 2010).
10. The idea of spectacle and the spectacular here refers to the aura of OWS – that has attracted intellectual and Hollywood celebrities, costume, confetti, balloons, dances, flash mobs – that suggests more of a party than protest. It also marks the asymmetries of power that privilege "Whites" over other racialized bodies as they engage in various acts of civil disobedience. The circulating privilege calls attention to their plight, which in turn makes it/them "newsworthy", rendering the whole "experience" as "exhilarating" for participants. Such sentiments inspired *Adbuster* editor Kalle Lasn to proclaim in an interview with NPR that it is once again, "cool to be a leftie" http://www.npr.org/2012/02/09/146649883/occupy-wall-street-the-future-and-history-so-far. See also N. Conan, 'Occupy Wall Street, the Future and History, So Far', *Talk of the Nation*. National Public Radio, February 9, 2012. http://www.npr.org/2012/02/09/146649883/occupy-wall-streetthe-future-and-history-so-far
11. While "place-based activism" occurs on "land" the distinction is that there is no a priori relationship between the activist-subjects and the "place" they occupy. In contrast, the land-based resistance movements of Indigenous peoples occur on their own homelands.
12. For further reading on "Occupy" and the culture of celebrity see Max Chafkin, 'Revolution number 99', *Vanity Fair*, February 2012, http://www.vanityfair.com/politics/2012/02/occupy-wall-street-201202.
13. According to a study conducted for *The New York Times* by Equilar, a compensation data firm based in Redwood City, CA, the median pay among the nation's 200 top-paid CEO's is $14.5 million, up 5% from 2011.
14. While there is great debate about whether OWS was a "failure" or "success", this analysis is more concerned with the discursive and semiotic field of OWS.
15. For further insight to David Greaber's non-leadership see D. Bloomberg Bennett, 'David Graeber, the Anti-Leader of Occupy Wall Street', *Business Week Magazine*, October 26, 2011, http://www.businessweek.com/magazine/david-graeber-theantileader-of-occupy-wall-street-10262011.html.
16. In the statement, "color" is a hyperlink that takes you to the page of the "People of Color/#Occupy Wall Street".
17. The full site can be viewed at http://occupywallst.org/
18. The first survey was based on data compiled by advertising analyst Harrison Schultz and Ford Foundation sociologist Dr Héctor R. Cordero-Guzmán, the second survey was conducted by Fordham University and can be found at http://www.fordham.edu/images/academics/graduate_schools/gsas/elections_and_campaign_/occupy%20wall%20street%20survey%20results%20102611.pdf
19. A. Speri, 'Occupy Struggles to Make the 99% Look Like Everybody', *New York Times*, October 28, 2011. file:///Users/smgra/Desktop/OWS%20race.webarchive
20. Speri, 'Occupy Struggles'.
21. The full declaration can be viewed at http://www.nycga.net/resources/documents/declaration/
22. Speri, 'Occupy Struggles'.

23. Darren Sands, 'Black Occupy Protestors Start Occupy the Hood'. http://www.loop21.com/content/black-occupy-protesters-start-occupy-hood (accessed August 19, 2012). Originally published 2011.
24. K. Farrow, 'Occupy Wall Street's Race Problem'. *The American Prospect,* October 24, 2011.
25. Farrow, 'Occupy Wall Street's Race Problem'.
26. Joanne Barker, Tequila Sovereign: Manna-hata. tequilasovereign.blogspot.com/2011/10/manna-hata.html (accessed August 19, 2012). Originally published October 2, 2011.
27. R. Solnit, 'Compassion is Our New Currency', *The Nation*, December 22, 2011. http://www.thenation.com/article/165325/compassion-our-new-currency?page=0,1
28. Tammy Kim, 'Race-ing Wall Street', submitted November 8, 2011. http://www.hyphenmagazine.com/blog/archive/2011/11/race-ing-occupy-wall-street (accessed August 19, 2012).
29. Simon Tormey, 'Occupy Wall Street: From Representation to Post-Representation', *Journal of Globalisaton Studies* 5 (2012): 132–6.
30. L. Duggan, *The Twilight of Equality? Neoliberalism, Cultural Politics, and the Attack on Democracy* (Boston, MA: Beacon Press, 2003).
31. A. Agathangelou, M.D. Bassichis, and T. Spira, 'Intimate Investments: Homonormativity, Global Lockdown, and the Seductions of Empire', *Radical History Review* 100 (2008): 120–43. See also T. Spira, 'Neoliberal Captivities Pisagua Prison and the Low Intensity Form', *Radical History Review* 112 (2012): 127–46.
32. Agathangelou et al., 'Intimate Investments', 124.
33. See Shenwar, '35,948 Arrested Yesterday', http://truth-out.org/opinion/item/9333-yesterday-35948-arrested
34. Robert Nichols, 'Indigeneity and the Settler Contract today', *Philosophy & Social Criticism* 39, no. 2 (2013): 165–86.
35. For a more thorough discussion of the Doctrine of Discovery consult any of the major works by Robert J. Miller, one of the most recognized scholars on the subject: 'The Doctrine of Discovery in American Indian Law', *Idaho Law Review* 42, no. 1 (2005). http://ssrn.com/abstract=721631
36. The "sale" was a gross "misunderstanding" engaged by a people who "did not believe that land could be privately owned, any more than could water, air, or sunlight" (Georgetta Stonefish Ryan as cited in Barker, 2011). As such, the Lenape failed to "realize that the Dutch claimed the lands for their *exclusive* use" a right they would later violently defend (Barker, 2011).
37. The British invoked the Discovery principle of contiguity, which allowed a European settlement to not only claim a particular territory but also a large area around its vicinity. Since the English had already "discovered" lands from Virginia to Newfoundland they contested Dutch claims to New Amsterdam on the principle that they were there first.
38. Among the first corporate settlers were the Lidgerwood Manufacturing Co., American Telegraph Co., and Western Union. In testament to the level of newly amassed wealth, two of the tallest buildings were the Washington Life and Title Insurance Co. of New York; the original twin towers.
39. Wolfe, 'Settler Colonialism', 388.
40. The word "seemingly" here is operative as it suggests more of a nuance to Wolfe's work than a contestation. In his seminal article, "Settler Colonialism", Wolfe draws a distinction between settler colonialism and genocide with regard to the act of "renaming". He observes that while "the prospect of Israeli authorities changing Hebrew place-names … back to their Arabic counterparts is almost unimaginable", in settler societies, renaming is essential. He explains the contradiction as follows: First, the settler state is faced with undertaking the practical elimination of the Native as means of establishing itself and then it must seek to "recuperate indigeneity in order to express its difference – and, accordingly, its independence – from the mother country". Given that "Indian" names exist in virtually all other locations of the USA but remain absent form lower Manhattan indicate that both genocide and settler colonialism are activated in this space. Or perhaps suggest that settler colonies retain a kind of "ground-zero" where erasure is essential in order to maintain the legitimacy of the broader state.
41. Agathangelou et al., 'Intimate Investments'.
42. Jason Hickel, 'Liberalism and the Politics of Occupy Wall Street', *Anthropology of this Century* 4 (2012).
43. See also K. Kilibarda, 'Lessons from #Occupy in Canada: Contesting Space, Settler Consciousness and Erasures within the 99%', *Journal of Critical Globalisation Studies* 5 (2012): 24–41; E. Povinelli, 'The Governance of the Prior', *Interventions: International Journal of Postcolonial Studies* 13, no. 1 (2011): 13–30; M. Rifkin, 'Settler States of Feeling: National Belonging and the Erasure of Native

American Presence', in *A Companion to American Literary Studies*, eds. C.F. Levander and R.S. Levine, 1st ed. (Chichester: Wiley, 2011).
44. Janet Byrne, ed. *The Occupy Handbook* (New York: Little, Brown, 2012).
45. Karen Bennett, 'Epistemicide! The Tale of a Predatory Discourse', 13, no. 2 (2007): 151–69 (Special Issue of *Translation and Ideology: Encounters and Clashes*); reproduced in *Translation Studies: Critical Concepts in Linguistics* (Vol. 3), Mona Baker (Ed.), Routledge, 2009, 151–69.
46. These statistics are reported in the (2007) monograph "Stabilizing Indigenous Languages" (ed.) Gina Cantoni. The Center for Excellence and Education, Northern Arizona University. Flagstaff, AZ.



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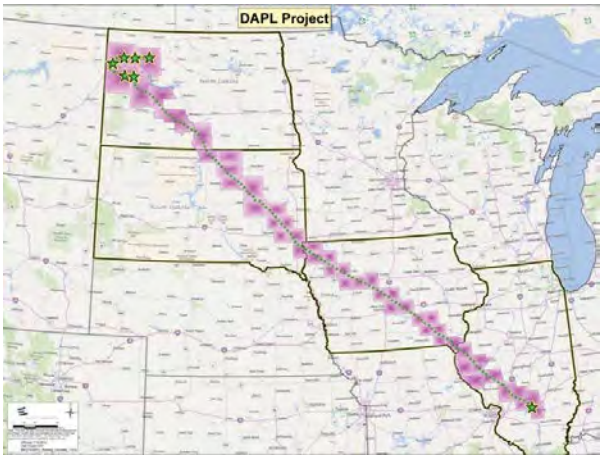
WE NEED TO BE TALKING ABOUT STANDING ROCK

Ari Laurel
September 6, 2016

Photo by Robyn Beck. Youths hold signs in English and the Navajo language before the start of a march to a burial ground that was disturbed by the building of the Dakota Access Pipeline.

What is going on at Standing Rock right now is historic, and if you need a moment to catch up, here's your chance. Not unlike the Keystone XL proposal, The Dakota Access Pipeline (DAPL) is comparable in length, and would begin at the border of Eastern Montana, cutting through North Dakota, South Dakota, Iowa, and Illinois. If built, the pipeline will transport up to 570,000 barrels of crude oil daily. For the Standing Rock Sioux Tribe this is simply the latest slight against tribal lands and the people who inhabit them. Current laws prohibit the tribe from doing little more than assessing the safety of construction and having a cultural dialogue around the effects of a project this massive. At this point, dialogue is useless when construction is already underway. This $3.8 billion project is the government's decision to further assert its power over Native lands and is sure to damage the community during its construction and onward. The United States has had a horrible track record with tribal nations. Between 1779 and 1871, the US entered over 500 treaties with Native American tribes, all of which have been broken or nullified. One of the largest acts of abuse was the Dawes Act, which allowed the federal government to divide land for Westward expansion and began a period of forced assimilation by turning Native Americans into subsistence farmers and removing tribal governments. The consequences of this act carried on into the 1970s during the Boarding School Era, where Native American children were taken from their families, made to cut their hair, change their names, and relinquish their language and traditions, often while facing physical and sexual abuse. Today, the Bakken oil boom has turned Montana and North Dakota into areas of economic prosperity, promising employment and opportunity to laborers from out of state. However, it is also one of the latest offenses, as the consequences of the boom have negatively impacted the surrounding tribes. It has invited the setup of what people have colloquially called "man camps," or work sites for drilling that are largely inhabited by men. It is in these areas where a high number of sex crimes take place, especially against Native women and girls. When Native women are subject to these crimes, there is little faith in seeking justice. Native women are murdered at more than 10 times the national average, and neither federal government nor local law enforcement have acted to investigate or even track the many murders and disappearances.



The greatest concern is that the pipeline will affect the drinking water as it runs under the Missouri River. This concern isn't unfounded; pipelines leak all the time. In 2016 alone, the US experienced 15 pipeline accidents, including the Shell Oil leak in Tracy, California, which let 21,000 barrels of crude into the soil. Shell waited three days to report the spill, the line's second rupture in 8 months, at which point there began a hefty cleanup, moving over 6,500 tons of polluted soil to a nearby landfill. California's Central Valley is another area largely inhabited by migrant workers who work on farms where 8% of the nation's agriculture is grown, and investigations are still in progress. When it comes to pipeline accidents, it is not a question of if, but a question of where and when. The quality of the Missouri River is critical to the health and economic well being of the tribe. One cannot help but think of the crisis in Flint, Michigan, where families are now struggling with lack of filters, the high cost of bottled water, dangerous levels of lead exposure over the course of years, no mobility for evacuation, and little support from local and state government. While witnessing Flint, we now have the opportunity to better understand and even address the Standing Rock Sioux's concern over a vital resource—water.

At least 30 tribes have come together over this issue, setting aside many years of conflicts. In addition, Black Lives Matter has shown up to protest with them in solidarity. Black Lives Matter organizer Miski Noor commented in *Truthout*:

> "As Black Lives Matter, we have built power and we have a platform. And as a movement, we have a duty to uplift and amplify the stories and struggles of all marginalized folks, as our liberation is intertwined."

Asian Americans, especially young activists, have taken to working in solidarity with Black Lives Matter. We have no hesitation to say that Black folks are our friends, teachers, mentors, coworkers, neighbors—it is easier for us to extend our empathy and work within communities we inhabit. However, as a political community, we have been largely quiet on the matter of #NoDAPL. For as many articles, open letters, and organizations that voice support of Black Lives Matter, few to none can be found in support of #NoDAPL. This may be due to the fact that Cannon Ball, North Dakota is miles away from many of our communities, which tend to be urban and coastal. The topographic distance perhaps extends to mental and emotional distance—but this is no excuse. Black Lives Matter was quick to respond, and so must we be.

It is a running joke that high school graduates claim Native identity on their college applications to reap the financial "benefits" that Native Americans purportedly receive. Living in Montana, I hear insensitive remarks all the time about Native Americans living off government assistance. For Asian Americans, the model minority myth comes with perceptions that that obscure our oppressions. A hard look at our communities shows how we still struggle: we face rapidly increasing evictions from gentrification, immigration laws which harm undocumented families, voter suppression, trafficking, and the exploitation of migrant workers. For Native Americans, many tribes suffer from high mortality rates, unemployment as high as 95%, and with more than 80% of people living below the federal poverty line. Racial profiling, sexual assault, trafficking, and lack of access to adequate healthcare is common among marginalized communities. The truth is that the challenges faced by Standing Rock and communities like it are not so different from ones we know to exist in ethnically diverse cities all over the US. We are now witnessing a continuation of this shameful history. However, it's not the only history we need to consider.

It is easy to succumb to the desire to focus on our own communities, our own challenges. Among marginalized groups, anxieties crop up about resource scarcity, the feeling that certain groups will be advocated and provided for, while others will not be. This makes us less willing to throw our support behind other groups who may be struggling. Asian Americans worry about being forgotten, a side effect of listing ourselves as "other" in official documents. To echo Miski Noor, our labor, our histories, and our freedom are connected, and therefore we have a responsibility to uplift one another. Hyphen has compiled rich histories and key figures of Asian American solidarity, a tradition which younger generations of Asian American activists are boldly carrying on. In this case, we must put our money where our mouth is if we are to continue this radical tradition of solidarity work. Asian Americans are the fastest growing minority in the US, and when possible, we have the power to rally our communities in numbers, instead of taking comfort in them.

SO WHAT CAN WE DO?

- Protesters at Standing Rock are in need of supplies, including pots, pans, utensils, blankets, non-perishable food, tents, batteries, and drinking water. You can find an entire list of needs here. Supplies may be sent to the following address:

  Bldg #1, N. Standing Rock Ave
  PO Box D
  Fort Yates ND, 58538

- You can also donate to the DAPL Fund on their site to help with supplies and legal defense.
- You may also adapt the sample letter here for the use of your organization to support the efforts of #NoDAPL and the Standing Rock

festival features over 65 artists from multiple disciplines exploring the landscape of Asian Pacific American art, identity, and

You may also adapt the sample letter here for the use of your organization to support the efforts of #NODAPL and the Standing Rock Sioux Tribe.

- Call North Dakota governor Jack Dalrymple at (701) 328-2200. You can leave a message stating your thoughts.
- Call the White House at (202) 465-1414.
- Sign the petition to the White House to stop the DAPL.
- Lastly, do not let news of this be drowned out by the theater of national politics. Regardless of who is elected, this $3.8 billion project will want to advance.

Categories: Activism Race Social Issues Social Justice

ARI LAUREL

Blog editor

Ari Laurel grew up in Oakland, CA and has lived near the ocean for most of her life.

SUGGESTED READS

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WOMEN'S HISTORY MONTH PROFILE: VINEETA RASTOGI

MORE WILL SING THEIR WAY TO FREEDOM

INDIGENOUS RESISTANCE AND RESURGENCE

edited by Elaine Coburn

FERNWOOD PUBLISHING
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Chapter Ten

RHYTHMS OF CHANGE
MOBILIZING DECOLONIAL CONSCIOUSNESS, INDIGENOUS RESURGENCE AND THE IDLE NO MORE MOVEMENT

Jarrett Martineau

On the evening of the 2012 winter solstice, I was up late editing a post written by Anishinaabe comedian and media producer Ryan McMahon for the Indigenous music platform Revolutions Per Minute. According to the Western world's dubious and anxious misreading of the Mayan calendar, it was the day before the world was supposed to end — the eve of the apocalypse. But the apocalypse was the furthest thing from my mind. The week prior, Chief Theresa Spence of the Attawapiskat First Nation began a hunger strike, demanding a meeting between Indigenous leaders, the Crown, and the Harper government "to meet with First Nation leaders and engage in meaningful dialogue on our rights" (IPSMO 2012) and to discuss the broken treaty relationship between Canada and Indigenous nations. Spence began her hunger strike "in protest of continuing governmental abuses against First Nations," contending that "Canada is violating the right of Indigenous peoples to be self-determining and continues to ignore our constitutionally protected Aboriginal and treaty rights in their lands, waters, and resources" (IPSMO 2012). Her calls went unanswered, however, and as her fast deepened into its first week, Grand Chief Derek Nepinak, head of the Assembly of Manitoba Chiefs, boldly declared that "The 'long silent war drums' of First Nations people will pound again if [Chief] Spence dies from her hunger strike" (APTN 2012: 1). But the drums had already started.

Idle No More was exploding all around us. Ryan's piece, appropriately titled "The Round Dance Revolution," tried to make sense of this spontaneous unfolding of Indigenous cultural and political action and the "mind-boggling confusion, anger, sadness and happiness" that it invoked (McMahon 2012: 1).

Ryan and I messaged back and forth as I was editing to compile a list of flash mob round dances being planned in the days ahead. More than two dozen events were being organized in urban centres and Indigenous communities across Turtle Island in that week alone. An update blinked across my timeline. The Indigenous DJ crew A Tribe Called Red had just released a new song on its SoundCloud. I clicked through to listen. It began with the drums. "The Road" is an introspective instrumental with a haunting lead melody, an insistent rhythm and a pow-wow–sampled vocal chorus that departs from the group's more overtly dance floor–oriented club tracks. It reverberated with a prescient sense of the movement's evolving form and affective potency: at once melancholic and triumphant, longing, hopeful and defiantly resistant. It captured in sound and carried in spirit the essence of the movement's resonant tension between force and restraint, outrage and introspection; it pushed and pulsed with a determined, rhythmic insistence and restless *motion* — an intangible, dynamic and energetic flow that, haunted by memory, resounded a renewed presence. It was moving. Inevitably, relentlessly forward. "The Road" was the calm before the storm, the anticipation of a *future anterior* world that will have already arrived. The world was not ending; it was beginning again.

We published Ryan's "Round Dance Revolution" piece late that evening, and I woke up the following morning to find the world still very much intact, albeit synchronously transformed. I woke up to the news that the Zapatistas had re-emerged. Masked-clad and silent, they mobilized 40,000 strong and marched through five towns in Chiapas, marking exactly 20 years to the day since the EZLN had first taken them over by military force. But this time there were no weapons. There was only the sound of their steps and the occasional cries of support from local villagers. Their message was clear: *To be heard, we march in silence.* Later in the day, the EZLN issued a brief communiqué that stated, simply:

> To whom it may concern:
> Did you hear it?
> It's the sound of your world crumbling.
> It's ours re-emerging.
> The day that was the day, was night.
> And night will be the day, that will be day
>
> —*Translation Collective 2013: 1*

This is a story of re-emergence.

Idle No More

#IdleNoMore flashed onto screens and then exploded into public consciousness in the late fall of 2012. Its hashtag origin belied the fact that the movement marked the resurgent transformation of Indigenous activism on Turtle Island, forged in the mediatized spaces of the digital, that bloomed into a wave of resistant action shaped by a heady mix of spectacular protest, cultural assertion and spirited dissent. Idle No More not only gave renewed voice to the long continuum of Indigenous resistance struggles against colonialism and the ongoing, lived oppression of our peoples but also to our continued survival, presence and fugitive movement to "break *from* and *through* colonial enclosures to (re)discover ... open spaces of imagination and creativity" (Martineau and Ritskes 2014: X). Critically, it was a movement conceived and organized by the leadership of Indigenous women, operating outside of the mainstream Canadian political establishment and Indian Act governance structures and organizations. Idle No More grew rapidly: virally accelerating across media platforms and through flash mob round dances staged in shopping malls across Turtle Island and around the world. Striking simultaneously at the heart of capitalist consumerism at the height of the holiday shopping season and at the contemporary state of Indigenous absence in the public imaginary — in which Indigenous peoples have been disappeared, forcibly erased or rendered invisible — Idle No More signalled a collective rejection of colonial abjection and dispossession, a communal return to presence. The movement gave form and force to long-standing currents of Indigenous frustration against Settler society's biopolitical push to force us into the margins of bare-life survival (Agamben 1998: 65).

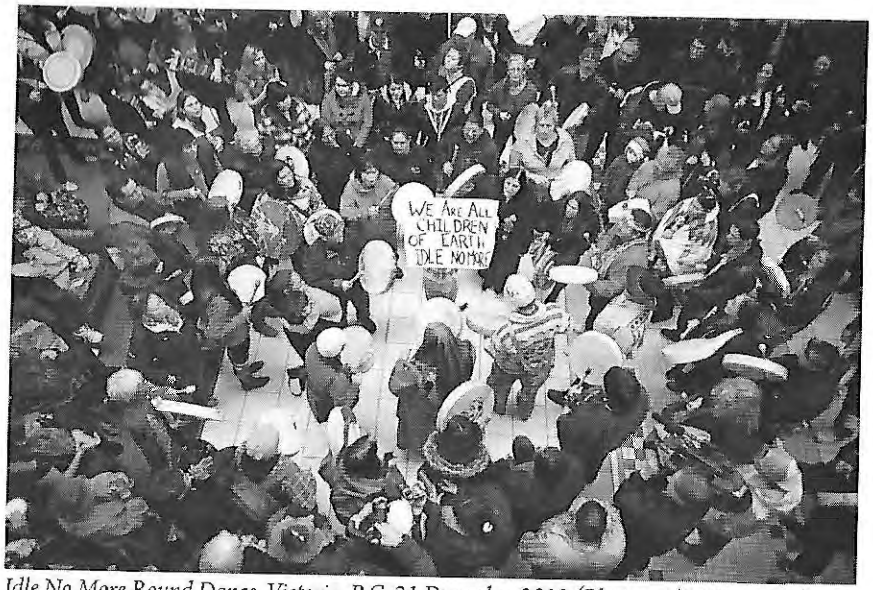
Idle No More promised an affirmative politics of presence in resistance to the imminent encroachment of death by neglect wrought by the destruction of our lands, waters and air through large-scale, transnational corporate development and resource extraction; and institutionalized forces of colonialism advanced by Settler governments through legislation and policy. Idle No More embodied the corporeal represencing of our peoples in a collective *becoming together* enacted through the Indigenous reoccupation and reclamation of public space. The movement drew inspiration, in tactical form if not in purpose, from recent contemporary global social movements that have also performed resistance through place-based actions discursively framed in the language of occupation. "Occupation," as W.J.T. Mitchell suggests, "is not only a visual and physical presence in a space but a discursive and rhetorical operation ... It is a demand in its own right, a demand for *presence*, an insistence on being heard" (2012: 10). Idle No More occupied multiple spaces and modalities of Indigenous resistance that were rooted in, and dynamic expressions of, Indigenous cultural, political, artistic and ceremonial praxis.

In this chapter, I argue that the Idle No More movement was mobilized in conflicted and contradictory sites of visibility and vulnerability in which its technologically coded communicative forms enabled, but also limited, its transformative political potential. I trace the movement's mediatization and concurrent attempts to forge resurgent languages of decolonial struggle constituted in flux and motion. "To create new forms of politics," which Saul Newman suggests "is the fundamental theoretical task today — requires new forms of subjectivity" (2012: 147). Idle No More sought to mobilize decolonial consciousness and grounded collective action, but its reliance on communicative technologies both precoded and limited its efficacy and potential. Although the movement initially created an affective transformation of public consciousness in Canada among both Indigenous and non-Indigenous populations, Idle No More's spontaneity produced an unsustainable aesthetics of immediacy, urgency and intensity. The movement thus reconfigured the temporality of Indigenous resistance according to the flow of code and the logic of the network, where circulation and movement are both generative and restrictive; powerfully immediate, yet deeply mediated. As Federico Campagna and Emanuele Campiglio note, "Politics of rebellion seem increasingly to incorporate the struggle between the voice and the limiting conditions in which it can be heard, between resistance and the annihilating counter-revolution of its spectacle" (Campagna and Campiglio 2012: 3). Idle No More occupied the dialectical space of this contested opening; where the ruptural performance that gives the struggle voice and spectacular visibility simultaneously marks its discursive limits and re-enclosure within the networked logics of colonial-capitalism.

The Round Dance Revolution

The Round Dance Revolution was both a representational gesture of Indigenous resistance and performance, and a self-affirmation of Indigenous continuity, presence and struggle. It operated at both levels and frequencies simultaneously, making visible the disparity between Settler colonial realities and the lived experiences of Indigenous peoples, dispossessed from our homelands and territories. The round dances were an evocative interimage of indigeneity that reterritorialized Indigenous presence beyond the normative borders in which it is often inscribed (reservation and rural communities), or otherwise erased. The dual character of the round dance form was underscored by its repetition in public spaces: shopping malls, main intersections and government buildings.

The first Idle No More teach-in was organized by a group of Indigenous and non-Indigenous women in Saskatchewan in November 2012 to discuss the impending passage of omnibus Bill C-45 — which proposed unilateral changes to the Indian Act, the Fisheries Act, the Canadian Environmental Assessment Act and the Navigable Water Act — all with serious implications for Indigenous nations, treaty rights and the radical reduction of environmental protection for lakes and rivers (Coulthard 2014: 160). Following the teach-in, the flash mob round dance was mobilized as a tactical form of resistant performance that self-authorized Indigenous presence in public spaces and brought Indigenous cultural and ceremonial practices into the view of Settler society. The round dance is a cultural form that originates among Indigenous nations of the prairies, but finds parallels and equivalence in the tea dances and drum dances of the north, and social and ceremonial dance forms among many Indigenous nations (Martin, 2013: 1). The form's inherent variability and transmutability, with its emphasis on social inclusion, participation and healing, encouraged broad-based participation; and the round dances spread rapidly and virally from urban centres to far-reaching and remote communities throughout Turtle Island. In one week in December 2012, for example, movement organizers in the greater Vancouver area mobilized more than one thousand people daily, in a wave of round dances held throughout the city.



Idle No More Round Dance, Victoria, B.C. 21 December 2012 (Photo credit: Keri Coles)

The technique was simple: Create a Facebook event page, call local drummers and singers to perform, and invite community members and supporters to attend at a specific time and place. Gather, sing, disperse. In the early weeks of Idle No More, hundreds and then thousands of Indigenous bodies filled shopping malls across Turtle Island for temporary gatherings, where the sound of our hand drums and traditional songs echoed through the hallways of capitalist consumption, interrupting shoppers' attention, and bringing new acoustic resonance into the semipublic and Muzak-filled banal spaces of the everyday. The round dances brought spirit,

energy and music *inside* the atriums of capitalism; and our songs and dances into auditory contact and visible dialogue with Settler society and government. And many did not know what to make of these simultaneously defiant and celebratory actions. Were they acts of resistance? Performance? Celebration? Or all the above?

The Idle No More round dances performed what Stephen D'Arcy calls a "disruptive convergence," in which "a crowd physically overruns a space, so that it can no longer be used in the way required by [a governing] institution or system" (2014: 91). The round dances ruptured both physical and symbolic spaces by transforming them through ceremony and bodies. This convergent technique of "disruptive outburst," as D'Arcy suggests, took "the form of insurgent street theatre performances in unauthorized spaces" (2014: 91) that disrupted the quotidian rhythms of the colonial-capitalist status quo by calling attention to asymmetries of power and the irrepressible spirit of Indigenous presence.

The heartbeat of Idle No More was, is and remains the drum. In the many territories in which round dances were held, the drum was the centre; the organizing principle and rhythmic force by which resistance was given voice in song. The songs performed at the round dances ranged from warrior songs and ceremonial chants to social and contemporary songs, thereby making visible not only the intergenerational survival and continuance of the songs themselves — and the song carriers who bring them forth in the present — but also their resilience and adaptability to new contexts and iterations. In this way, the round dances performed an apposite movement through remembrance and futurity, presence and return. As one CBC news report noted: "The Idle No More flash mobs are a part of ... returning a beat, a song and a dance to the heart of the territories where they were born, and where they still thrive" (Martin 2013: 2).

The round dances' spirit of defiance against colonial erasure and self-affirmative celebration of Indigenous resistance called on Settler society to witness them as *performance*, join them in *celebration* of Indigenous resilience and survival, and to heed them as a *call to responsibility* — to account for historical injustice and to literally join hands with our people in building new relationships of solidarity and mutual understanding. For our own nations and peoples, this spectacularized performance brought Indigenous Peoples into mutual visibility for *each another*, thereby reaffirming and recognizing our shared presence and resistance.

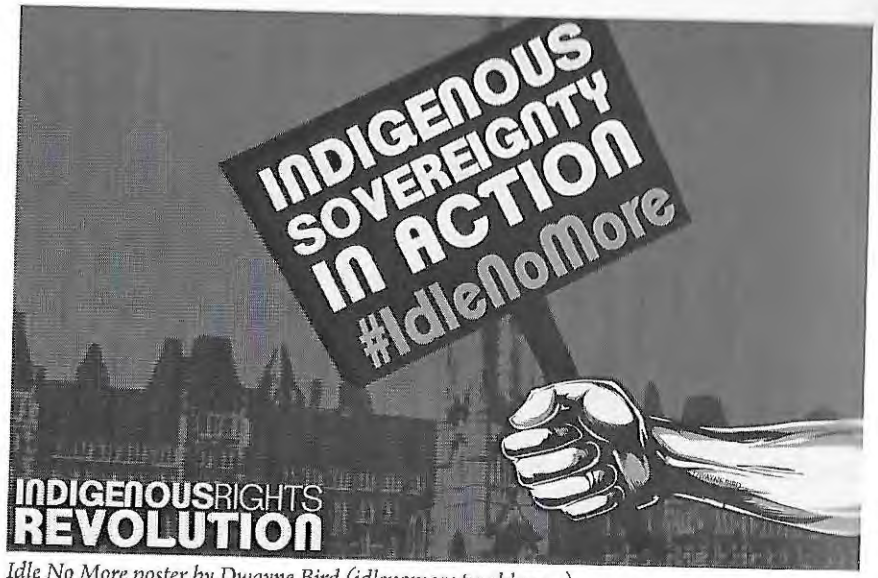
Although the Idle No More movement was extensively documented and shared on social media, while its dynamic archive of evolving digital content was distributed across these channels, its techniques of circulation also called attention to the fleeting temporality of "disruptive outbursts," in which autonomous assertions of indigeneity (like the round dances) produced affective appeal, but not systemic change. Although the round dances were at once irruptive, eruptive and disruptive, their détourning of popular consciousness could only temporarily reconfigure

the transit of indigeneity in the public mind. Indigenous struggles that had long remained marginalized or invisible were now brought into hypervisibility, thereby making them legible (and susceptible) to power, control and surveillance. In this conflicted push to give voice to our struggles and bring attention to our grievances, the movement was recast within an aestheticized regime of political performance, drawn into the machinic gaze of technology, and encoded according to the representational logic of spectacle.

Networked Resistance

Idle No More embodied the dialectical nature of contemporary social movements that are bolstered by digital technologies of distribution and dissemination. They provide multiple actors with voice, influence and access to audience beyond established political channels and structures, yet such movements remain subject to the privatized strictures of code that dictate their spectacularized rise and fall in the public imagination. Although movements that are accessible to diverse publics and ostensibly to democratic or horizontal organizational forms are lauded for their inclusive and participatory forms, the metrics used to celebrate their success can also be used to denigrate their failure as they decline in public presence and pageviews. To this extent, mediatized movements remain vulnerable to shifting public sentiment and criticism by virtue of the form of their articulation and the techniques used in their creation and dissemination. Idle No More — as digitally encoded hashtag and social movement — was already subject to a latent potential for formal "collapse," even at the height of its online popularity.

But the movement moved within and beyond the limits of the digital to create an affective experience of potentiality among participants: the *sense* that change was imminent (despite this not being borne out by reality). Idle No More refused the confinement and enclosure of coloniality and cultivated decolonial consciousness: "the freedom to imagine and create an elsewhere in the here; a present future beyond the imaginative and territorial bounds of colonialism ... a performance of other worlds, an embodied practice of flight" (Martineau and Ritskes 2014: IV). The movement was born out of the common experience of lived crisis that is coextensive with Indigenous survival under colonialism, but with the desire to transform it through performance and practice. Campagna and Campiglio describe this spontaneous re-visioning of the present as "the direct practice of *an affective necessity*" (2012: 4, emphasis added), in which the sense of emotional urgency and critical agentic capacity engendered by Idle No More compelled a young generation of digitally connected Indigenous youth and non-Indigenous allies to heed its calls to action. As we asserted our cultural practices, aired our grievances, proclaimed our desires and raised our voices in song, new political potentialities emerged in the discursive break that Idle No More had opened and claimed.



Idle No More poster by Dwayne Bird (idlenomore.tumblr.com)

Idle No More poster by Andy Everson (idlenomore.tumblr.com)

Like the Occupy Wall Street movement before it, Idle No More both welcomed and encouraged *multiplicity*, without conflating plurality and difference into the nebulous rhetoric of an inchoate multitude. The movement was Indigenous-centred, but neither exclusive nor exclusionary. Idle No More called on "all people," from every background and walk of life, "to join in a peaceful revolution, to honour Indigenous sovereignty, and to protect the land and water" (Idle No More 2013: 1). These broadly stated goals enabled organizers to interweave a vibrant evolving network of intergenerational, intercommunal and international participants. In a literal refusal of "idleness," Idle No More called for collective action against the stasis of the status quo; embodying a self-reflexive call to physical, symbolic, spiritual and cultural *movement* that mobilized supporters around the world.

The movement also sparked a wave of Indigenous cultural production. Art, music and media creation proliferated. Digital content went viral. Videos, visual art, posters, images, slogans and digital memes were continuously published, reproduced, and shared across social media. And the round dances brought our traditional songs into a newly emergent public lexicon. Idle No More took digital and Indigenous cultural forms and remixed them: détourning and repurposing photography, news stories and other artwork as the source material for shared social content and resistant truth-telling. But the movement's virality and memetic diffusion were possible only to the extent that Indigenous participation in digital and online media had reached a necessary critical mass.

Cultural production in contemporary social movements offers a recursive form of creativity that refigures individuated speech acts and communicative action within and through emergent networked collectivities. During Idle No More, Facebook and Twitter provided focal points for the amplification of movement messaging and the real-time coordination of public actions, but the movement enabled a dialogic interplay of forces and voices to be absorbed and reincorporated into its representational flows. These incorporative strategies are tactically effective because of their mobility and fluidity: their adaptive, formless and continuously reforming figuration of *movement* is expressed as constitutive of contemporary resistance. However, movement is also coded by the networks within which it circulates. Idle No More amplified Indigenous participation online, but this also contributed to a disjunction between the perception of the movement's digital reach and influence and its asynchronous impact within "offline" communities and place-based sites of struggle.

Mediatized Subjects and Spectacular Dissent

In contemporary social movements, temporality and spatiality work both in concert and in conflict. Insofar as the contemporary injunction of social media is to *participate* (users are compelled to write, to represent, to speak), this injunction is primarily temporal: demanding one's *time* (within an economy of attention) rather than a specified *place* of participation. Hardt and Negri have observed that although in previous eras "political action was stifled primarily by the fact that people didn't have sufficient access to information or the means to communicate and express their own views[1] ... today's mediatized subjects suffer from the opposite problem, stifled by a surplus of information, communication, and expression" (2012: 9). This communicative surplus overwhelms us with limitless data and communicative possibilities, and the temporal occupation of our attention becomes spatialized through mediatization, the occupation of consciousness. Mediatization is an emblematic form of contemporary subjectivity in which we are "subsumed or absorbed in the web" (Hardt and Negri 2012: 10). In this view, the "mediatized subject" is not so much alienated, as perpetually *occupied*:

> The consciousness of the mediatized is not really split but fragmented or dispersed. The media, furthermore, don't really make you passive. In

> fact, they constantly call on you to participate, to choose what you like, to contribute your opinions, to narrate your life. The media are constantly responsive to your likes and dislikes, and in return you are constantly attentive. The mediatized is thus a subjectivity that is paradoxically neither active nor passive but rather constantly absorbed in attention. (Hardt and Negri 2012: 9)

To effect social transformation without becoming fully "absorbed" by technologically mediated engagement, new subjectivities must be generated through collective action. "Facebook, Twitter, the Internet, and other kinds of communication are useful," Hardt and Negri suggest, "but nothing can replace the being together of bodies and corporeal communication that is the basis of collective political intelligence and action" (2012: 11). Although we would be wise to question the incontrovertibility of this claim, it is clear that one of the subsuming effects of mediatization is to displace other forms of collective action. A central challenge for the Idle No More movement was to navigate (and renegotiate) the tension between digital engagement and "offline" community-based organizing.

The movement first entered this representational regime on Twitter in late November 2012. Within weeks of its first mention, #IdleNoMore took hold of a massive public conversation online. The hashtag trended repeatedly on Twitter, reaching a precipitous height of 58,000 mentions in a single day on January 11, 2013 (Blevis 2014: 1). Until mainstream media reports began to amplify its signals, however, knowledge about the movement and its objectives and goals remained limited. But if access to influence can be redeployed to diffract the focus and intensity of a movement's demands, under mass media scrutiny and attention the movement's internal contradictions and limits can also be brought to light and exaggerated. Online debates routinely degenerate into futile flame wars between and among movement participants and dissenting voices. And the platforms used to coordinate movement planning and resistant actions can be, and are, continuously searched and surveilled by the State and its agencies.

The dual logic of the contemporary aesthetic regime of politics in the digital age is to order space and data as sites of visibility and access. The digital space of circulation is the grid of code, the matrix of big data. In Rancièreian terms, this involves the discursive partitioning of space, the distribution of the sensible; where the normative order is governed by the police, which "disavows ruptures, seams, sutures, gaps because the police is a horizon or landscape of continual continuity" (Gharavi 2011: 2). Social movements like Idle No More, which seek to disrupt this matrix of asymmetrical power must contend with the repressive force of the State (and, by extension, the regime of the police), who work to control circulation and surveil communication to prevent precisely those "ruptures, seams, sutures,

[and] gaps" that movement participants aspire to create. Representational practice within networked movements must be necessarily self-reflexive and attuned to this fraught relationality with power. "Rather than being spectators in a mediated struggle," the South London Solidarity Federation claims, "we must act for ourselves and represent ourselves" (SLSF 2012: 190). Yet self-representation is no guarantor of state-recognized self-determination. Like the Occupy Wall Street movement that preceded it, Idle No More's twinned tendencies toward self-affirmation and external recognition were deeply conflicted. Although Idle No More brought Canadian colonialism into stark focus and public view, it also engendered a significant public backlash.

As the movement circulated, the latent racism of Canadian society became plainly, painfully visible. Indigenous women were increasingly targeted by acts of gendered violence in many communities, including Thunder Bay, Ontario, in which Idle No More was perceived to have "inflame[ed] long-standing tensions between Aboriginal and non-Aboriginal communities" (CBC 2013b). In late December 2012, an Indigenous woman from the Nishnawbe-Aski Nation was brutally sexually and physically assaulted, an attack that was linked directly to Idle No More and investigated by local authorities as a racially motivated hate crime. Following the attack, the survivor, whose name has been protected, issued a public statement in which she urged Indigenous community members to be careful: "Right now with the First Nations trying to fight this Bill [C-45] everyone should be looking over their shoulder constantly because there are a lot of racists out there" (Kappo 2012: 1). Following the attack, and with rising racial tensions and violence in Thunder Bay, "more than a dozen [Indigenous] parents from remote communities chose not to send their children back to Thunder Bay for school [in the winter 2013] semester" (CBC 2013b).

For many movement organizers and participants, contending with increased threats of physical violence and responding to vicious debates in blog comment sections, racist editorial pieces in mainstream media, and a seemingly endless parade of anti-Indigenous "trolls" waging war on social media became a constant preoccupation. The terrain of struggle had been shifted, but an important transformation had also taken place: The movement had forced colonialism into view and, in so doing, into new spaces of discursive contention.

Idle No More made Indigenous resistance to colonialism a front-page story in every major newspaper and media outlet across the country by calling on the State, the Crown, and Settler society to account for ongoing injustices against our peoples and "the broken relationship" (CBC 2013b) between Indigenous Peoples and Canada. The movement successfully interrupted the State's narrative ordering of the colonial present by using embodied acts of performative resistance and communicative dissent to bring attention to the continuity of Indigenous presence

amid the state's parallax push to consign colonialism to a "closed chapter" in its soon-to-be-reconciled mythic Settler history. These actions demonstrated that Indigenous Peoples were prepared to contest the State's (re)conciliatory objectives and resist the assimilative passivity of the status quo. And it *represented* this resistant capacity as an "affective necessity" (Campagna and Campiglio 2012: 4). But despite its spontaneous flourishing, Idle No More could not translate its power into sustained transformations of the juridico-political regimes against which the movement had first been mobilized.

After the Storm

Idle No More's explosive spectacle crested in the early winter of 2013, due in no small part to the increasing urgency of Attawapiskat First Nation Chief Theresa Spence's hunger strike. Her fast continued for six long weeks. Chief Spence stated that she would continue to fast until the Harper government and representatives of the Crown met with Indigenous leaders to discuss the repeated violation of treaty agreements and Indigenous inherent and treaty rights. She boldly declared that until a meeting was set, she would remain "ready to die for my people" (COO 2013: 1). Flaunting its disregard for her life and well-being, the Harper government refused to respond or agree to a meeting. Protests continued in the streets. Highways, railways and borders were shut down. Round dances were held around the world. Marchers and walkers began spiritual journeys to Ottawa. Others fasted in solidarity with Chief Spence. And the media storm began to swirl around Idle No More.

But after widespread debate and outcry over her prolonged fast and its unmet demands, Chief Spence decided to end her hunger strike on January 24, 2013. Following two months of massive public protests, and a disastrously inconsequential January 11th meeting between Prime Minister Harper and First Nations Chiefs (many of whom boycotted the meeting), Spence signed a defanged declaration in partnership with opposition party leaders and Assembly of First Nations Chiefs that called for thirteen points of action. Intended to outline steps for Canada and Indigenous nations to work "towards fundamental change," the declaration was met, instead, with skepticism and disappointment. The movement's first wave of energetic force had been depleted. Idle No More had expected immediate action on its demands, but none had occurred. Although subsequent "days of action" were called for; and more demonstrations, rallies and marches were organized, the movement shifted from its intensifying crescendo of outrage and defiance to a decidedly more moderate (and modest) advocacy for incremental political reform.

The Spence declaration marked a passage from Idle No More's first phase, a cry of urgent protest emphasizing external representation toward a differential spatial configuration of protest actions recentred in place-based knowledge and

community. The movement turned away from the overt spectacle of mass protest actions and toward self-affirmative, self-valorizing actions. But for witnesses to the communicative rise of Idle No More through its signifying practices and representational forms, its collapsing statistical metrics were quantified and equated with the movement's veritable "decline." Idle No More began as a spontaneous, horizontal and autonomous movement with organizers distributed across a wide geography of urban, rural, reservation and remote communities. There was no defined leadership, central hierarchy or organizing platform; actions were spontaneously organized through decentralized networks; and anyone could participate. As the movement progressed, there was much discussion of the so-called "grassroots" people, whom Idle No More claimed to represent. But as the movement continued from winter 2012 into spring 2013, Idle No More ignited a debate over the revolutionary subject of the movement's resistance and the question of its leadership. *Where* and *who* were the "grassroots" people? Who has the right and authority to *represent* Indigenous Peoples?

Mainstream media pundits used these questions as evidence of internal "divisions" within the movement. But as Anishinaabe scholar Hayden King wrote, "While we all may dance to a similar beat, our footwork can take us in different directions. And there is nothing wrong with that" (King 2013: 1). Nevertheless, perceived divisions and contestations over representational authority within the movement led some participants and organizers to disengage from and disidentify with Idle No More. Despite two months of unprecedented global mobilization on Indigenous issues that sought to reconfigure the very terms and form of our collective organizing, action and representation, what had been accomplished? The political unrest generated by the movement had intensified and continued, albeit unresolved. Chief Spence's demands remained unmet. Bill C-45 passed into law. And Idle No More kept moving, seeking new ways to sustain the momentum of the "Native Winter."

"Reactivism" and Sustaining Momentum

For many Indigenous communities, the political status quo functions through a colonial modality of governance in response and reaction to crisis. Necessarily short-term and highly localized, this strategy demands that resources and action be mobilized in situations of immediacy, often with limited jurisdiction. Idle No More called attention to this crisis–based mode of governance by confronting multiple colonial temporalities and contexts simultaneously: the *immediate* (the imminent passage of Bill C-45), the *historical* (the abrogation of treaty and inherent rights) and the *present* (continuing forms of social suffering, colonial racism and violence). As such, it was a crisis-based response to crisis-based governance: a

cross-temporal and multivalent expression of indignation that captured historical and contemporary Indigenous *ressentiment*, or "righteous resentment" (Coulthard 2014: 126), against evidence of our continued state of collective, colonial abjection. Dene scholar Glen Coulthard names this affective response to colonialism as necessary for overcoming colonial disempowerment; that is, "our bitter indignation and persistent anger at being treated unjustly by a colonial state both historically and in the present," is not only a valid response to colonial injustice but it is also "a sign of our critical consciousness" (2014: 126) and our love for our lands and people.

Although Idle No More mobilized this righteous form of resentment as a form of collective catharsis, it also operationalized a *reactive* mode of resistance that reinscribed indigeneity as the injurious site of "wounded subjectivity" and politicized identity (Brown 1995: 65). As an exclusively *oppositional* political practice, this mode of resistance risks reproducing the very "injury" it seeks to refuse. But "states of injury" cannot be the only basis from which to re/articulate Indigenous political claims. To be effective and transformative, decolonial struggle must move beyond a definitional frame determined exclusively by colonial interference and imposition. Resurgent forms of resistance that revalue and revitalize Indigenous governance systems, natural laws and self-valorizing political practices are equally necessary. Idle No More sought creative contention with the State and Settler society, but also posited alternate pathways of self-affirmative action that did not seek recourse to colonial authority for validation or recognition. As Coulthard notes, Indigenous resistance actions (such as blockades and, to a lesser extent, round dances) that disrupt the normative order (by blocking the flow of capital, access to infrastructure or the rote procession of consumerism) are also "affirmative gesture[s] of Indigenous resurgence insofar as they embody an enactment of Indigenous law and ... uphold the relations of reciprocity that shape our engagement with the human and nonhuman world — the land" (2014: 170). Indigenous resistance, even in its most defiant, oppositional forms — *as the negation of domination* — always suggests the possibility of an affirmative counterpart hidden within.

By creating new networks of interconnected actors and rapidly increasing public consciousness *en masse* through social media, Idle No More effected a profound shift in the speed of *conscientization*. These networks created new spaces in which to coordinate collective action and strengthened existing connections between Indigenous communities and movement organizers. But the movement also captured the imagination and energy of a rising generation of Indigenous youth who were mobilized into action, many for the first time. Idle No More cut across territorial borders and nation state–based identifications: it was intergenerational, intercommunal and geographically distributed. On the #J11 Global Day of Action held on January 11, 2013, for example, 265 events were organized in more than 17 countries (J11Action 2013). But despite the movement's global expansion,

Idle No More needed to relocalize action and organizing at the community level by reprioritizing local struggles and longer-term political transformation. The movement refocused around three key areas. First, it shifted emphasis from direct contention with the State to the imminent ecological and political threats posed by large-scale resource development projects and extractive industries (pipelines, tar sands expansion, mining and hydraulic fracturing, and so on) to Indigenous homelands. Second, the movement turned to a self-reflexive analysis of challenges internal to Indigenous communities. Third, movement organizers began reorienting around shared commitments to the resurgence of Indigenous nationhood and governance. Idle No More has since directed much of its energy toward addressing these interrelated and contested sites of engagement.

Idle No More's "winter of discontent" expressed a collective surfacing of decolonial consciousness that shifted the terrain of struggle by refusing established modalities of resistance — lawful, expected and existent forms of "protest" — and creatively interjecting new forms of collective action into public discourse. The movement disrupted the expected terms of Indigenous engagement with Settler society, and brought Canada's colonial foundation into full view and contestation. In resistance, Indigenous Peoples affirmed our continuance and coherence as viable political communities that refused to be silenced. As journalist Stefan Christoff noted, "Canada's political landscape now faces an alarm on colonial questions commonly evaded in the halls of power" (2013: 1). But Idle No More could not transform this foundation; it could only call attention to it. Although it remained affectively powerful, the movement proved incapable of compelling the State to respond to its demands. And in the face of Idle No More's bold calls to action, the Harper government has remained intransigent.

Communicative Capitalism and Possible Politics

Social media theorist Zeynep Tufekci argues that the disjunction between the spectacle of mass protests and their inability to produce substantive institutional and policy transformations is characteristic of contemporary social movements:

> Protests ... fueled by social media and erupting into spectacular mass events, look like powerful statements of opposition [and] ... pundits speculate that the days of a ruling party or government, or at least its unpopular policies, must be numbered. Yet often these huge mobilizations of citizens inexplicably wither away without the impact on policy you might expect from their scale. (2014: 1)

According to Tufekci, the seemingly contradictory and "muted effect" of the massive popular uprisings in Turkey, Egypt and the Ukraine — to which I would

add the Idle No More movement — is not a result of their inherent inefficacy; it is a constitutive feature of their architecture. Social media–fuelled movements prioritize immediacy and networked communicative action over sustained and incremental infrastructural development:

> Digital tools make it much easier to build up movements quickly, and they greatly lower coordination costs. This seems like a good thing at first, but it often results in an unanticipated weakness: Before the Internet, the tedious work of organizing that was required to circumvent censorship or to organize a protest also helped build infrastructure for decision making and strategies for sustaining momentum. Now movements can rush past that step, often to their own detriment. (2014: 1)

Movements like Idle No More can collapse under the temporal "weight" of their speed-driven dissemination and metric "success," resulting in a vacuum of strategies for sustaining momentum after spectacular forms of public protest have exhausted their communicative currency. Tufekci argues that media is a powerful force for activism seeking to claim legitimacy in the public sphere, but she rightly points out that contemporary social movements and activists "who have made such effective use of technology to rally supporters, still need to figure out how to convert that energy into greater impact. The point isn't just to challenge power; it's to change it" (2014: 1).

To this end, it is critical to consider how communicative praxis circulates within global capitalist networks. Movements like Idle No More make use of available digital technologies to mobilize consciousness, action and resistance; however, these same technologies operate within tightly regulated circuits of power and control. Jodi Dean describes this technological entanglement, in which circulation usurps content, as *communicative capitalism:*

> Communicative capitalism designates that form of late capitalism in which values heralded as central to democracy take material form in networked communications technologies ... Ideals of access, inclusion, discussion and participation come to be realized in and through expansions, intensifications and interconnections of global telecommunications. But instead of leading to more equitable distributions of wealth and influence, instead of enabling the emergence of a richer variety in modes of living and practices of freedom, the deluge of screens and spectacles undermines political opportunity and efficacy for most of the world's peoples. (2005: 56)

The foreclosure of politics that Dean suggests inheres under communicative capitalism is the product of techniques wherein "communicative exchanges rather than being fundamental to democratic politics, are the basic elements of capitalist production" (2009: 56). The commodified circulation of information in and for itself displaces "on-the-ground" political struggle: content becomes secondary to the process of circulation that "is crucial to the ideological reproduction of capitalism" (2009: 59). This effects a depoliticization of networked communication "because the form of our involvement ultimately empowers those it is supposed to resist" (2009: 61).

Idle No More's ostensibly liberatory digital forms (tweetstorms, trending hashtags and Facebook petitions, and so on) did not compel power to respond and risked displacing forms of grounded place-based political struggle, that contended directly with oppressive institutions and policies, into "imaginary site[s] of action and belonging" (Dean 2005: 67). Further, this displacement tacitly supported the circulation of capital rather than its disruption. Movement organizers recognized the contradiction between making revolutionary calls for social change on social networks and being unable to realize such changes within the disciplinary spaces of privatization, commodification, surveillance and control instantiated by communicative technologies. This perception also risked reproducing the false binarism of "digital dualism," in which the online and offline worlds are understood as "separate" and "virtual," rather than enmeshed within lived reality under capitalism. As Nathan Jurgenson argues, "our reality is both technological and organic, both digital and physical, all at once. We are not crossing in and out of separate digital and physical realities ... but instead live in one reality, one that is augmented by atoms and bits" (2011: 1). Rather than perceiving the digital as a discrete site of "virtual liberation," it is necessary to consider the ways in which networked action, communication and activism are inscribed within pre-existing social and power relations.

Indeed, as Astra Taylor suggests, the digital intersects with the analog in ways that can actually "magnify inequality" and exacerbate asymmetries of power:

> Despite proclamations to the contrary, the online and off-line worlds are not separate; the digital is not distinct from "real life," a realm where analog prejudices are abandoned. While the Internet offers marginalized groups powerful and potentially world-changing opportunities to meet and act together, new technologies also magnify inequality, reinforcing elements of the old order. Networks do not eradicate power: they distribute it in different ways. (2014: 108)

As Idle No More and other contemporary movements have effectively demonstrated, the network is a site of contradiction and contestation that marks the

discursive battleground in a war over representation, influence and communicative control. For Idle No More, serious considerations began to arise over the long-term strategic utility and efficacy of mass mobilizations coordinated through social media: What alternative pathways could the movement pursue to break from this discursive trap of self-enclosure?

Idle No More's diverse tactics and open-ended goals were not coherently organized, and its multiform digital articulations subtended resistance actions oriented beyond the State. As the movement worked to address both the immediate states of crisis in our communities and ongoing forms of colonialism, there was a marked discursive turn among some organizers away from viral memes and mass mobilizations, and toward the strategic reaffirmation of Indigenous nationhood and the reclamation and reoccupation of our homelands and sacred sites. In late January 2013, Kanien'kehaka scholar Taiaiake Alfred observed that the movement had "plateaued," noting that "the kind of movement we have been conducting under the banner of Idle No More is not sufficient in itself to decolonize this country or even to make meaningful change in the lives of people" (2013: 1). Although Alfred recognized that the movement had drawn broad-based support from many Indigenous nations and Settler society, he argued that in order for the movement to revive its initial momentum for "fundamental change," Indigenous peoples

> need to focus our activism on the root of the problem facing our people collectively: our collective dispossession and misrepresentation as Indigenous peoples. Now is the time to put ourselves back on our lands spiritually and physically and to shift our support away from the Indian Act system and to start energizing the restoration of our own governments ... *Restoring our nationhood in this way is the fundamental struggle. Our focus should be on restoring our presence on the land and regenerating our true nationhood.* These go hand in hand and one cannot be achieved without the other. (2013: 1, emphasis added)

Alfred said that to break out of the echo chamber enclosure of social media's endless calls to action,

> we need to alter our strategies and tactics to present more of a serious challenge on the ground to force the federal government to engage our movement and to respond to us in a serious way ... we need to go beyond demonstrations and rallies in malls and legislatures and on public streets and start to reoccupy Indigenous sacred, ceremonial and cultural use sites to re-establish our presence on our land and in doing so to educate Canadians about our continuing connections to those places and how important they are to our continuing existence as Indigenous peoples. (2013: 2)

Although Idle No More continued to organize public demonstrations, rallies and marches of precisely the kind Alfred criticized, the movement also began to reterritorialize. Idle No More's reterritorialization marked the movement's need to relocalize and reground its organizing and action *within* Indigenous communities and homelands. Although the strategic reorientation of the movement made sense among participants and organizers, mainstream Canadian media used the opportunity to declare the death of Idle No More. Other recent social movements have been subjected to a similar critique, however, as they effect strategic reterritorializations following a first wave of mass mobilization:

> Since the intention is to transform not just the occupied [square or shopping mall] but society as a whole, movements have gradually shifted into spheres more directly related to the lives of their participants, such as neighbourhoods and workplaces, where local needs can be addressed. Generally, this is when the media and many on the institutional left tend to declare the movements "dead," but ... this is no reliable guide to the life of the movement." (Sitrin and Azzelinni 2014: 12)

To relate directly to the lives of its Indigenous participants, Idle No More sought out new forms of organizing that could be deployed at the local level in support of community struggles for nationhood and autonomy.

The Indigenous Nationhood Movement and Reclaiming PKOLS

In May 2013, Indigenous community members, organizers, activists, academics and allies gathered at the University of Victoria to participate in an Indigenous Leadership Forum (ILF). Over the course of the week-long gathering, participants discussed the wave of resurgent action catalyzed by Idle No More and the possibility of building an Indigenous Nationhood Movement to carry the movement's momentum forward. ILF participants developed a collaborative framework and set of movement principles oriented toward long-term anticolonial social transformation and supporting Indigenous communities and community members in the restoration and reassertion of Indigenous laws, languages, governance and political autonomy.

The Indigenous Nationhood Movement (INM) was launched with a sacred act of reclamation and reoccupation on May 22, 2013. Under the guidance and leadership of hereditary chiefs and elders from the WSÁNEĆ nations, INM supported the reclamation and reinstatement of PKOLS: the original SENĆOTEN place name of a

sacred site at the summit of a promontory in Saanich, B.C. PKOLS, which can be translated as "White Head" or "White Rock," was formerly known by its colonial name, Mount Douglas, after Captain James Douglas (Reclaim PKOLS 2013). It is a sacred site for the WSÁNEĆ people and a historic meeting place for the Indigenous nations in the area; it is part of the WSÁNEĆ creation story and the site where the WSÁNEĆ first entered into treaty with Douglas in 1852 (Lavoie 2013: 1). Hereditary chief WEC'KINEM (Eric Pelkey) of STÁUTW (Tsawout) First Nation led the reclamation with support from Indigenous and non-Indigenous volunteers, who worked with the local Indigenous nations to build public support for the campaign. The reinstatement of the original name fulfilled a long-standing request by local elders to "bring back the names we have always used to where they belong" (IC 2013: 1). I was fortunate to have been asked to participate and help with the reclamation. Following several months of planning, WEC'KINEM and the WSÁNEĆ nations led close to eight hundred supporters and community members to reclaim PKOLS.

On the evening of May twenty-second, marchers gathered at the base of the mountain and hiked to the summit, where they joined in a ceremony to reinstate the original name. The signing of the Douglas Treaty was re-enacted by a volunteer group of performers at the site where it was originally (and coercively) signed, but the inscribed colonial violence of dispossession was *inverted*: Instead of ceding land and territory to the invading colonial power, local Indigenous leaders presented and signed a new declaration honouring the restoration and reinstatement of PKOLS and committing to the future reclamation of other traditional place names throughout the WSÁNEĆ and neighbouring territories. The PKOLS declaration asserted WSÁNEĆ and LEKWUNGEN nationhood in terms consistent with their natural laws, traditions, inherent authority over their homelands, and rights as Indigenous Peoples and Nations (PKOLS Declaration 2013). Coast Salish master carver TEMOSEN (Charles Elliott) of WJOŁEŁP (Tsartlip) First Nation designed a large PKOLS sign from yellow cedar that was carried to the summit and installed at a high viewpoint — overlooking the surrounding mountains, ocean and the city of Victoria. Participants from the Indigenous Leadership Forum wore T-shirts identifying themselves as members of the INM and worked with local organizers to provide security; assist community members and elders; help carry and install the PKOLS sign; and liaise with civic authorities, media and law enforcement. During the reclamation ceremony, WSÁNEĆ community members recounted the story of PKOLS, first in SENĆOŦEN and then in English. After the declaration was signed, the event concluded with the sharing of food, songs and drumming by the local nations.

Having generated high-profile endorsements and support from intellectuals and organizations including Noam Chomsky, Naomi Klein, Tom Hayden, Greenpeace and the Sierra Club (PKOLS 2013), the reclamation gathered communicative momentum across social media channels; and photo, video and audio content

shared online during the event provided witnesses who were unable to attend the event in person with a vicarious experience of immediacy and presence.

The reclamation of PKOLS was a potent assertion of Indigenous nationhood and autonomy that signalled new possibilities for Indigenous-Settler alliances, collective action and decolonizing praxis. The WSÁNEĆ did not seek permission from the State; they took action in alignment with their natural laws, customs, and inherent rights. In doing so, they were supported by a large community of local Indigenous nations, Indigenous visitors to their traditional territory and Settler allies. Against the strictly delimited forms of "permissible" Indigenous activism, the reclamation of PKOLS was empowering and emboldening, not only for the local nations but also for communities and supporters in solidarity across Turtle Island. The reclamation of PKOLS was simultaneously a symbolic, communicative and embodied enactment of autonomous movement within and against the colonial demarcations of "settled" territory and in refusal of Indigenous *displacement*. In literal terms, PKOLS refuted the dispossession of original place names by *re-placing*, or returning, the name to its rightful originary place.

In this way, PKOLS worked to overturn the binarism of Settler colonial relations by enacting a participatory process of renewal that inverted the colonial frame and proposed an "affirmative *enactment* of another modality of being, a different way of relating to and with the world" (Coulthard 2014: 169). This resurgent return to an originary form of place-based knowledge — rooted in the SENĆOŦEN language — presupposes the alterity of an *Indigenous* ontoepistemic foundation that comes from the land and is, quite literally, *of* that place. In reclaiming PKOLS, treaty-making was re-visioned as a processual form of collective action in the present. Demanding both an understanding of interdependent relationality and respect for WSÁNEĆ forms of life derived from millennia of embodied praxis in place, PKOLS marked multiple forms of embodied resurgence and return: It recuperated the spiritual force of Idle No More's round dance revolution and refigured resistance through ceremony. The return of original names to "where they belong" is, as Anishinaabe author Leanne Simpson suggests, not simply a symbolic action, but "a mechanism for reconnecting our peoples to the land, our histories and our cultures ... Building a strong, connected Indigenous Nationhood Movement rests on reclaiming the lands and sacred sites we have been removed from" (2013: 1). Reconnection, reclamation and renaming are essential acts of decolonization.

PKOLS thus provided a resonant example of prefigurative decolonial politics in motion—a gesture of renewal that affirmed the critical potentialities inherent in affirmative forms of resistance that seek to make structural and historical injustice *visible* while self-valorizing Indigenous forms of life on our own terms and in our own languages. As one speaker declared during the reclamation: "We're Idle No More [and] acting outside the confines of Indian Affairs ... *we are acting this time,*

The Reclamation of PKOLS, May 22, 2013 (Photo credit: Amos Scott)

not reacting." PKOLS pointed a pathway forward that drew from a long continuum of Indigenous resistances against colonialism, and reaffirmed the efficacy and power of an embodied praxis of presence made visible through *reclamation* and *reoccupation*. Although the reclamation of PKOLS was not a new form of resistance, it was a generative provocation that inspired other Indigenous people and communities to see the continuity and interconnections in our struggles to decolonize.

As Leanne Simpson observed:

> We all have within our territories our PKOLS, many PKOLS — sacred places waiting to be restored to their place within the fabric of Indigenous societies. Whether it is a mountain, burial ground, hot springs or spring water, buffalo rubbing stone, tipi ring, teaching rocks, a medicine picking spot, or a travel route or a city street, *the PKOLS reclamation provides us with impetus to not just feel inspired, but to act.* (2013: 2)

Against colonial legacies of dispossession and displacement, PKOLS embodied and compelled action: "to take up our responsibilities to our homelands ... to inhabit them, to maintain relationships with their features and to pass that presence down to our children and grandchildren" (Simpson 2013: 2). This dual movement of refusal and affirmation did not stop with the rejection of colonial naming; it renewed a place-based vision of Indigenous presence and continuity. And it is this "place-based imaginary," Coulthard argues, that "serves as the ethical foundation from which ... Indigenous peoples and communities continue to resist and critique the dual imperatives of state sovereignty and capitalist accumulation that constitute our colonial present" (2010: 82). PKOLS was not unique, but it was "an extraordinarily important act for the STÁUTW, Songhees and the WSÁNEĆ because it physically connects them to a powerful place, alive with story, and breathing with history" (Simpson 2013: 1). PKOLS reinstated a new history of the *Indigenous* present. "This action to reclaim #PKOLS is truly one of the most exciting I've seen in Canada," said one observer on Twitter. "This is the beginning of something" (Martineau 2013: 2).

Conclusion: New Beginnings

Idle No More is about beginnings, not origins. It was a moment of rupture, a movement of return, a break in our collective consciousness that awakened new possibilities for creative resistance. The struggle to resurge and decolonize is continuous; and our survival compels our action. But resistance reaffirms our force and power; and resurgence reminds us why we are fighting. Idle No More marked both this continuation as well as the search for new languages and practices of struggle. By rejecting stasis and refuting fixity, the movement set in motion new rhythms of change. Idle No More was a movement of *movement* that mobilized decolonial consciousness among Indigenous people and newcomers alike, and it has enabled us as Indigenous Peoples to reorient our political practices toward rebuilding power and autonomy. Decolonization demands that we forge new political subjectivities through self-affirmative and transformative resurgent praxis. And as our lives and lands continue to be threatened by Settler colonial dispossession and capitalist exploitation, decolonization remains our critical imperative. The transformative becoming of resistant subjectivity is activated by affirming Indigenous ontological priorities and practices (Indigenous land-based knowledges, lifeways, natural laws, songs and ceremonies) and by navigating the shifting terrain of struggle. Our movement demands continual creative transformation.

Indigenous peoples must struggle *within and against* regimes of representation by mobilizing collective action on multiple fronts: through technology, art, music, culture and ceremony. Demands for accountability from the State and Settler society and to protect the land and water, to uphold treaty relationships, to renew balanced Indigenous-Settler relations, and, perhaps most importantly, for colonialism to end, have yet to realized. But Idle No More's *politics in motion* drew from the power of our collective ancestral and historical memory to bring a renewed sense of urgency to our ongoing struggle for decolonization. In so doing, new rhythms of resistance began to sound. New forms of transformative praxis began to be forged. And an emergent force of Indigenous resurgence was sparked that will resonate in the generations to come. Melancholic and triumphant, hopeful and defiant, with Idle No More we begin again. We continue. We move. We rise.

Note

1. It is important to note that within Settler colonialism, Indigenous "political action" is consistently "stifled," silenced and delimited by State-sanctioned forms of violence and repression. For more on the effects of framing Indigenous political action as a threat to the state, see Craig Proulx (2014), "Colonizing Surveillance: Canada Constructs an Indigenous Terror Threat." *Anthropologica* 56, 1, 83–100.

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What began as a movement based out of Canada has grown and erupted across landscapes, through rivers and oceans, and eventually into the hearts and minds of those we never thought it possible to reach. Demonstrations against enslaving the earth to create mining corporations; round dances showcasing how honouring the treaties within Canada can create viable, healthy relationships; and blockades significantly valuing the land for what it truly is—a living entity—are growing globally. It is through these demonstrations that we begin to see how strong the heartbeat of mother earth truly is, how this prophecy will never sleep, and how all Indigenous peoples around the world are honouring their realities, their truths, and the lives of their ancestors.

An international community is quite difficult to contain. Yet, while stepping onto the land of the Maori, and hearing the stories of how they feel the same struggle we do, or listening to the truth from a young Sami man, discussing the fights they fight based on the life of the land, the truth unfolds. No matter how large the distance is between us as Indigenous peoples, we live similar realities. Not only has this movement proved this true, but it has allowed us to join in complete solidarity, to reach out to one another, and to share in a way we may have never shared before.

Because of this movement, an understanding of global Indigenous issues has developed outside of using the United Nations system. We do not need a declaration to show us that treaties in other countries are not being honoured, we do not need a United Nations system to provide us space to share stories of our traditional livelihoods, we do not need governmental bodies trying to tell us they are fixing the problems, we need one another. There is strength in numbers, as this movement is showing us. We gain partnerships without colonial, indoctrinated processes. We gain unity through ceremony, through traditional knowledge, through language, through storytelling. We are continuously honouring our oral traditions globally in spite of the difficulties we are facing throughout the development of this movement. And we stand side by side with our future generations and ancestors, honouring one another internationally and decolonizing public spaces universally.

There is one more thing that stands out within this international revolution: the voices of youth. These youth are leading the way by speaking up at the rallies, by organizing the demonstrations, and by

transforming public space into traditional space. Partnered with ceremony, the youth are truly the voices behind, and in front of, the movement. Whether the event is taking place on a small reservation in Northwestern Ontario, on the steps of Parliament in the capital city, coordinating events for Sami Parliament, or in an academic space within a university in New Zealand, we see the youth at the microphone. It is through this that we know that this movement is prophecy, but it hasn't been encased within the colonized borders of Canada—it has surpassed those borders, it decolonizes those borders, and it reaches out to the brothers and sisters globally.

The youth are engaging in global prophecy, global ceremony, and global traditions. This revolution embodies traditional livelihoods, oral traditions, stories from our ancestors, and the heartbeat of mother earth in a multitude of ways; and this is why it's growing and thriving. This movement has become us, we have become this movement. International barriers implemented by colonial governments will not keep us apart and we have united by indigenizing and decolonizing global space. The strength and power stems from ceremony and traditions, and the voices that are heard around the world come from our younger generations, understanding why they're doing what they're doing, and why we fight the same fight globally. For this we put our hands together, and recreate the war cry that was so often portrayed in Hollywood movies. This war cry is our truth, and this movement is our reality.

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THE RISE OF THE NATIVE RIGHTS-BASED STRATEGIC FRAMEWORK:

Our Last Best Hope to Save our Water, Air, and Earth

Clayton Thomas-Muller

Years ago I was working for a well-known Indigenous environmental and economic justice organization known as the Indigenous Environmental Network (IEN). During my time with this organization

I had the privilege of working with hundreds of Indigenous communities across the planet who had seen a sharp increase in the targeting of Native lands for mega-extractive and other toxic industries. The largest of these conflicts, of course, was the overrepresentation by big oil who work—often in cahoots with state, provincial First Nations, Tribal and federal governments both in the US and Canada—to gain access to the valuable resources located in our territories. IEN hired me to work in a very abstract setting, under impossible conditions, with little or no resources to support grassroots peoples fighting oil companies, who had become, in the era of free market economics, the most powerful and well-resourced entities of our time. My mission was to fight and protect the sacredness of Mother Earth from toxic contamination and corporate exploration, to support our Peoples to build sustainable local economies rooted in the sacred fire of our traditions.

My work took me to the Great Plains reservation, Three Affiliated Tribes of Fort Berthold to support a collective of mothers and grandmothers fighting a proposed oil refinery, which if built would process crude oil shipped in from a place called the tar sands in northern Canada. I spent time in Oklahoma working with Sac and Fox Tribal EPA under the tutelage of the late environmental justice warrior Jan Stevens, to learn about the legacy of 100 years of oil and gas on America's Indian Country—Oklahoma being one of the end-up points of the shameful indian relocation era. I joined grassroots on the Bay of Fundy, in an epic battle against the state of Maine and a liquefied natural gas (LNG) producer who wanted to build a massive LNG terminal on their community's sacred site known as Split Rock. The plant, had it been built, would have provided natural gas to the City of New York for their power plants.

I worked extensively witb youth on the Navajo reservation in America's Southwest, who were fighting the Peabody Coal mining company, trying to stop the mining of Black Mesa, a source of water and a known sacred site in the Navajo Nation. On the western side of the Navajo Nation, I worked to support Dine/Navajo who were fighting an attempt to lift the ban on uranium mining, which would have seen the introduction of a dangerous form of uranium mining called in situ or "in place" extraction that could've poisoned precious groundwater resources in the desert region. Uranium had already left a devastating legacy on

the Dine/Navajo in the 40s and 50s. I worked in the Great Lakes at a community of Walpole Island (Bkejwanong First Nation) to stop an oil company from drilling for oil in their community—a place where First Nations peoples harvest for wild rice, muskrat, and fowl grains. It had also become a place of local economic importance as ecotourism from American duck hunters, providing income to the community. Walpole Island was already dealing with the impacts of 60 petrochemical facilities within 60 kilometres of their nation. I worked to support groups in Montana's Northern Cheyenne and Crow Indian reservations who were fighting massive expansion of coal bed methane in their region. The encroachment was decimating local ground water resources. I worked in Alaska and was a co-founder of the powerful oil-busting network known as Resisting Environmental Destruction on Indigenous Lands (REDOIL) that was created to take on the corrupt Alaska Native Corporations and big oil who had been running roughshod trying to start development in fragile places like the Arctic National Wildlife Refuge (ANWR). I worked with groups in British Colombia's Nortbeast, where natural gas companies were ripping apart the landscape with massive gas developments. I worked in dozens and dozens of other territories and places across the globe, many not mentioned in this story.

During my five years as an IEN Indigenous oil campaigner (2001–2006) I learned that these fights were all life and death situations, not just for local communities, but for the biosphere; that organizing in Indian Country called for a very different strategic and tactical play than conventional campaigning; that our grassroots movement for energy and climate justice was being led by our Native women and, as such, our movement was just as much about fighting patriarchy and asserting as a core of our struggle the sacred feminine creative principle; and that a large part of the work of movement building was about defending the sacredness of our Mother Earth and helping our peoples decolonize our notions of government, land management, business and social relation by going through a process of re-evaluating our connection to the sacred.

In the early years I often struggled with the arms of the non-profit industrial complex and its inner workings, which were heavily fortified with systems of power that reinforced racism, classism, and gender discrimination at the highest levels of both non-profit organizations

and foundations (funders). It was difficult to measure success of environmental and economic justice organizing using the western terms of quantitative versus qualitative analysis. Sure, our work had successfully kept many highly polluting fossil fuel projects at bay, but the attempts to take our land by agents of the fossil fuel industry—with their lobbyists pushing legislation loopholes and repackaging strategies—continued to pressure our uninformed and/or economically desperate Tribal Governments to grant access to our lands.

The most high-profile victory came during the twilight of the first Bush/Cheney administration when our network collaborated with beltway groups like the Natural Resources Defense Council and effectively killed a harmful US energy bill containing provisions that would kick open the back door to fossil fuel companies, allowing access into our lands. The Indian Energy Title V campaign identified that if the energy bill passed, US tribes would be able, under the guise of tribal sovereignty, to administer their own environmental impact assessments and fasttrack development in their lands. Now this sounds like a good thing, right? Well, maybe for tribal governments that had the legal and scientific capacity to do so, but for the hundreds of US Tribes without the resources, it set up a highly imbalanced playing field that would give the advantage to corporations to exploit economically disadvantaged nations to enter into the industrialization game.

Through a massive education campaign and highly negotiated and coordinated collaborative effort of grassroot, beltway, and international environmental non-governmental organizations (eNGOs)—as well as multiple lobbying visits to Washington DC, led by both elected and grassroots Tribal leaders—we gained the support of the National Congress of American Indians who agreed to write a letter opposing the energy bill to some of our champions in the US Senate, most notably the late Daniel Akaka who was Hawaii's first Native Senator. Under the guidance of America's oldest Indian advocacy group he would lead a vote to kill the energy bill in the Senate. This was my first view into the power of the Native rights-based strategic and tactical framework and how it could bring the most powerful government on earth (and the big oil lobby) to its knees. Of course upon the re-election of the Bush/Cheney administration we lost the second reincarnation of the energy bill and the Title V was passed.

What I learned in these battles is that our sacred treaties outlining our priority rights and the fiduciary obligations governments have to us, are an important tool in this fight. We are the keystones in a hemispheric social movement strategy that could end the era of big oil and eventually usher in another paradigm from this current destructive time of free market economics.

The challenge would be to get people with power, both real and falsely perceived, to understand this reality. It is a task not easily accomplished. For example, with the passing of the US energy bill under the second Bush/Cheney administration, the US climate movement began to ramp up its attempts to have the administration pass a domestic climate bill. A massive investment by the administration focused on strategies developed by the foundations and individual donors; most of it was earmarked for policy makers instead of building an inclusive movement for climate justice that would take into account the environmental and economic justice framework in the struggle to force the US to lead the world in emissions reductions.

This movement saw the rise of mega-labour/eNGO coalitions like the Blue/Green Alliance, Apollo Alliance and mega-eNGO groups like 1sky and 350.org. Citizen groups like the US Public Interest Research Group (US PIRG) received millions of dollars to try to organize people to put pressure on President Bush, and later President Obama, to adopt some form of climate policy. However, the strategy screamed that age-old saying "what goes around comes around." There would be no climate bill under Bush and, to the surprise of the people who voted for him, no climate bill under Obama (yet).

The groups that ended up receiving resources from that limited pot of climate funding did what they did best, which was to invest in top-heavy policy campaigns. They did not focus on mobilizing the masses to get out in the streets to target and stop local climate criminals or build a bona fide social movement rooted in an anti-colonial, anti-racist, anti-oppressive foundation to combat the climate crisis. Instead, they kept the discourse focused on voluntary technological and market-based approaches to mitigating climate change, such as carbon trading or carbon capture and storage. I would argue that this frame is what kept this issue from bringing millions of Americans into the streets to stop the greenhouse gangsters from wrecking Mother

Jean Sock from Elsipogtog and Shelley Young from Eskasoni begin fasting to protest a lack of leadership in their communities. March 1, 2013, Millbrook, NS. (BRYSON SYLIBOY)

Earth. Groups like the Indigenous Environmental Network, Southwest Workers Union and others fought tooth-and-nail to try and carve out pieces of these resources to go towards what we saw as the real carbon killers, which were local campaigns being led by Indigenous Nations and communities of colour to stop coal mining, coal-fired power, and big oil (including gas).

During the early hours of the Obama administration there was a massive effort to "green" the economic stimulus, a package of job creation funding that was to be doled out by the Obama administration to counter the recession which had crippled the US economy. I had the opportunity to sit with some of the leaders of some of the biggest NGOs and foundations at a New York City round table, including members of the Obama White House team. High-profile individuals like former Green Jobs Czar Van Jones, and Energy Action/Mosaic Solar founder Billy Parish were also in attendance. At this table I told a story.

In the 80s and 90s America was in the grips of a recession, and groups rose up from all sectors to create a strategy to combat the crisis. Alliances were formed between the trade unionists and the NGOs and social justice groups. When the negotiated target of funding was in sight and Congress was about to write a cheque, groups became divided, and what was plentiful turned to scarcity and in the end AmeriCorp was born. Unions, NGOs, and social justice groups. And more importantly, the unity they had created, was shattered. Political games and divisive tactics were used by those in power. They used race, class and gender politics to divide a movement. I said that we were in the exact same moment in time, that we were seeing big oil ram through an energy bill loaded with corporate welfare for the one percent during the collapse of Americas middle-class and the stalling of a US climate bill, would impact the most vulnerable to our rapidly destabilizing climate—poor communities of colour and Native American communities.

America's wealth, and more directly, America's energy infrastructure was built on our backs. Efforts should be made to invest locally first—from training green jobs workers locally to using local building materials to producing energy locall. This would close the financial loop and help revitalize Native America's strangled economies, making them less vulnerable to volatile external costs while maximizing the positive impact of the new green revolution.

A green jobs economy and a new, forward-thinking energy and climate policy would transform tribal and other rural economies, and provide the basis for an economic recovery in the United States. In order to make this possible we had to encourage the Obama administration to provide incentives and assistance to actualize renewable energy development by Tribes and Native organizations and our allies.

I made the argument that we could use the attributes of a predatory economic paradigm that had disproportionately targeted our communities, to flip the script on our enemies and that Native Americans, with our unique rights-based and trust relationship with the US government, could be a strategic and tactical asset to a diverse social movement trying to lobby for an economic stimulus bill that would actually help empower the most vulnerable while not exacerbating an ecological crisis. For this to work we would have to make moral agreements and not, under any circumstances, be denied. On the table was $750 million earmarked for green jobs and the task at hand was to determine how to equitably share the pot. In the media, the numbers of jobs created versus the amount of workers unemployed went from one million to five milliou and then back to one million and again. Once we got to the point where Congress was ready to write a cheque, we saw the downfall of mega groups like the Apollo Alliance and the absorption of 1SKY by 350.org. Many groups that started off at the table fell, one by one, with the first being groups representing racialized constituencies. Meanwhile in Indian Countty, Tribes saw Congressional allocations from this economic stimulus packaged in the billions (rightfully so) and kept on keeping on.

The point of the story was that if we could truly understand the aspects of our struggle that kept us united, and more importantly, understand our unique contributions to a successful social movement paradigm, we could effectively expand the pot from $750 million to billions. By converging struggles in a solidarity framework rooted in anti-racism, anti-oppression, and anti-colonialism and by creating economic and political initiatives uniting urban and rural centres, we could wield a power never seen by our oppressors and actually gain economic independence and community self-determination. We could develop economies that didn't force people to have to choose between clean air, water, and earth or putting food on the table. I did not attend this meeting to ask for handouts, but rather as an ambassador of a strategic framework that I had come to know as the Native rights-based approach, which could be used to bring to an end what Native American activist, author, and Vice Presidential candidate Winona LaDuke described as "predator economics" and what activist and author Naomi Klein rightfully describes as "shock doctrine" economics.

Little did I know that all of these experiences were preparing me for what would be one of the biggest battles of my life. During the IEN Protecting Mother Earth Summit in 2006 in Northeru Minnesota, three women from a small mostly native village called Fort Chipewyan, Alberta came to share their Dene people's struggle. Years later it would be known as the most destructive industrial project on the face of the earth, the tar sands mega-project. These three women were related to each other and represented three generations of one prominent family in Fort Chip known as the Deranger clan. They listened to the dozens of stories told in the energy and climate group about the injustices happening because of oil companies and complicit governments across Turtle Island. They told us about a project so large, so devastating that you had to see it to believe it. They spoke of a wild west of sorts, one of the last bastions of earth were big oil was ramping up, and they spoke of the deaths in their community from rare cancers, auto-immune diseases, and boomtown economics that plagued people living downstream from the tar sands. They said that we needed to go up to Fort Chipewyan and help.

I was taking time off from organizing and living in Ottawa with my wife and newborn son, Felix. My lifetime mentor and friend Tom Goldtooth, Executive director of the Indigenous Environmental Network, took this invitation from the Deranger matriarch Rose Desjarlais very seriously. IEN immediately organized a fact-finding mission in the Athabasca region of the tar sands with our Native energy and climate director, Jihan Gearon, and Rainforest Action Network campaigner, Jocelyn Cheechoo, from the James Bay Cree in Northern Quebec. I was invited because of my experience in fighting big oil across Turtle Island.

When we flew into Fort McMurray, the boomtown in the heart of the tar sands, I was immediately struck by how much it reminded me of Anchorage, Alaska. That was the only other city I had ever been to

that also reeked of oil money. The town had an infrastructure to support 35,000 people but was bursting at the seams with a population of 75,000. Most were men between the ages of 18 and 60 and all working directly or indirectly for the tar sands sector. We took a tour of the infamous Highway 63 loop to Fort McKay Cree Nation that carves though man-made desert tailings ponds so big you could see them from outer space. We marvelled at the 24-hour life of the city and the incredible traffic jams at shift change. I think what struck me most was the level of homelessness in a town where there was a six-figure salary for anyone who wanted it. To see the tar sands themselves was devastating, to fly over endless clear cuts, open-pit mines and smokestacks surrounded by pristine Cree and Dene peoples' homelands was gut-wrenching. When we drove through and walked in the tar sands the smell of bitumen filled our noses and lent to the trauma that locals live with every day.

We got on a bush plane at the Fort McMurray airport and flew to Fort Chipewyan. We flew the route of the Athabasca River—a critical life path of the people of that land, a source of water, fish, and transportation and a spiritual connection to a past. We were told of how the river had changed, become poisoned, was no longer safe and how every year the water levels became lower due to industry use. When we got to Fort Chip we were well taken care of, and we met many elders, the elected leadership and youth who all told the same stories of hardship, the untimely sickness and death, and the destruction of a subsistence way of life—all by the tar sands. We heard about the history of the peoples going out into the Athabasca Delta and on to Lake Athabasca for food and medicine and how that was becoming impossible due to the massive regional contamination by industry. Again, we were told that we needed to help local grassroots people magnify this scandal to the world by amplifying their voices as the face of the issue.

After we took in the horrifying science fiction of the tar sands—and more importantly the power, beauty, and resiliency of the people of this land they call Athabasca—Tom Goldtooth asked me to build the Canadian Indigenous Tar Sands Campaign. The first thing we did was raise funds for an action camp in Fort Chip where we could do a proper power mapping and skill share with community members who were leading local campaigns and wanted to scale them up. Our first action camp had around 15 community members, including tar sands

warriors and climate movement folk heros like former Mikisew Cree Nation Chief George Poitras, local Dene activists Mike Mercredi and Lionel Lepine, Melina Lubicon Massimo, a Lubicon Cree activist, and Eriel Deranger, a Dene woman also of Fort Chipewyan.

We brought in resource people from the NGO sector. With the direction of local Indigenous leaders we organized a series of workshops on Aboriginal law, organizing, campaign planning, power mapping, and the Native rights-based approach. The outcome of the camp formed directives to launch a Native-led campaign to stop the expansion of the tar sands; to utilize a treaty and Aboriginal rights-based framework; to ensure that Indigenous peoples on the front line were the face of the campaign; to raise the human health impacts as a moral issue; and to follow the money financing the tar sands and to target those controlling it. Also, we were to advocate in the non-profit industrial complex that a meaningful proportion of funding and resources earmarked for tar sands work go directly to First Nations.

What came next would consume most of my waking time on Mother Earth for the next seven years. When IEN launched our tar sands campaign we knew that this issue was about to become one of, if not the most, visible campaigns on the planet. The local grassroots peoples were engaging with the most ruthless, powerful, well-resourced, and just plain old evil corporate entities on the face of the planet. We knew that these companies had bought every level of colonial government, and many were in bed with our own First Nations governments. But we knew that if executed properly we would see victory. This multi-pronged campaign would contain elements of legal intervention, base-building, policy intervention (at all levels of government, including the United Nations), narrative-based story-telling strategies in conventional and social media, civil disobedience and popular education, and a whole lot of prayer and ceremony.

Again, I found myself at a table of funders and eNGO directors discussing a massive campaign that would impact every segment of our society including our biosphere. I found myself viewed by my peers as without power and that perhaps I was at the table for handouts rather than with something to offer. The same old tricks of top-heavy, policy-focused pitches by the usual suspects happened again. And I found myself repeating the need to take the time to understand and work in

solidarity with the Native rights-based strategic framework. I talked about how in the last 30 years of Canadian environmentalism there had not been a major environmental victory won without First Nations at the helm asserting their Aboriginal rights and title. This included many of the victories that those in the room counted in their own personal careers. I argued passionately that we should agree on the fact that we needed to dedicate meaningful resources to this approach and the decision would mean the difference between a fight lasting years or decades. During that meeting the facilitator representing the collective of foundations and donors that had contributed to a pot of money to fund anti-tar sands work became noticeably frustrated with our platform and things escalated to a point where he was yelling and swearing that our IEN campaign was "in the way" of plausible strategies that were actually going to work. Once the chastising was over I proceeded to say, "Well, now that I know where you're coming from and you know where IEN is at, how much of this funding are we going to get?" We walked out of that meeting with $50,000 seed money to start our campaign.

From that moment to now, our Indigenous heroes, or should I say, "Sheroes," have successfully built an international movement to stop the Canadian tar sands. Supported by thousands of Native and non-Native allies, the campaign is now active in the United States, Canada, and Europe with hundreds of First Nations, unions, NGOs, private-sector companies, municipalities, foundations, and individuals participating and elevating First Nations and our rights-based strategic approach as the keystone to the campaign. Part of this success was achieved through some seriously gutsy moves, one being a visit of high-profile Hollywood director James Cameron to tour the tar sands right when his blockbuster movie *Avatar* had become the highest grossing film in history.

Cameron's tour was done at the time when IEN was pushing hard for our Keystone XL campaign to be funded. It was an uphill battle since everyone knew that pipeline fights historically have usually been defeats. We had done an analysis on the viability of victory in a Keystone XL campaign for the funders, because we were one of the few groups that had taken on the Keystone pipeline. Our analysis told us a couple of things. In the US, the Oglala aquifer would be the primary ecological card, as millions depended on this source of water and the pipeline was right through the heart of it. We knew that the dozen or so US Tribes could

be educated to use the power of their unique rights-based approach to fight the pipeline. We also knew that no one in the US, especially in the heartland of the Dakota states, Nebraska, Oklahoma, and Texas knew what the tar sands were. We knew by bringing James Cameron to the tar sands, and by having him talk about the human rights scandal unfolding in First Nations communities, during a time when *Avatar* was on every theatre screen on the planet, would be huge boost to our cause.

Jim Cameron came, he saw, he met with the tar sands industry, the Alberta government, and with First Nations. He made a lot of promises about direct support of the legal strategies of First Nations against the oil sector and the government of Canada. As an avid supporter of technological remedies, he did not condemn the tar sands. He spoke highly of nuclear energy as an alternative—as well as the emerging theoretical carbon capture and storage technologies. What he did do was to say in front of the international press "I did not make *Avatar* until the technology was available for me to tell the story right, and the Canadian government should not develop the tar sands until they have the technology to not poison and kill First Nations people with cancers."

Avatar parts 2 and 3 are set to come out in 2015. I have a feeling that Cameron and his commitments to First Nations about directly funding the rights-based strategic framework are yet to be tested. The fallout from his visit was that every newspaper, television, computer, and smartphone in America was comparing the story of *Avatar* to the real-life situation unfolding between First Nations in the tar sands. The result was the emergence of the Keystone XL campaign as the lightning rod of the US environmental movement, a fight that's still raging today and it was done through the lens of human rights.

The tar sands campaign of IEN started at a time when direct community funding was in the tens of thousands but over time and through pressure it is now in the millions. We're still dealing with a non-profit industrial complex that is its own worst enemy. But Harper's corrupt, totalitarian federal government—with its extremism—is pushing a larger base of non-Native allies to our side of the equation.

With the current Harper government and the passing of recent omnibus legislation, Canada has seen 30 years of environmental, social, and economic policy thrown out. In response, we seen the rise of Idle No More, a catchy social media and education campaign launched—again

by First Nations woman—and the result was a quickening of Canadian reconciliation with its own violent history of colonization as well as the rapid politicization of tens of thousands of Indigenous peoples occurring not just in Canada, but in all occupied lands across Mother Earth. Left without a pot to piss in, the conventional non-profit industrial complex and their supporters are trying to figure out their next steps in dethroning Harper, a daunting task after the unsuccessful bid to elect the New Democratic Party in British Colombia.

The one area where the Harper government has not been able to stack the cards is the courts, and a Native rights-based tactical and strategic framework—supported by labour, NGOs, students, and other social movements scaled up to the proportions of the 1960s US civil rights movement—is what's going to not only dethrone Harper, but is the last best effort to save our resources from Canada's extractive industries sector and the banks that finance them. This rights-based approach has been tested time and time agaiu, it is enshrined in section 35 of the Canadian constitution, it has been validated by more then 170 supreme court victories, it is validated by all of the Indian treaties, it is validated by the United Nations Declaration on Indigenous Peoples, it is validated by the ILO convention 169 and many, many other legal instruments. The racism that Idle No More has met in the media, reminiscent of a 1950 Mississippi era, toward Native peoples and our winning rights-based strategy has driven even the most conservative of Canadians to our side and even toppled some of the biggest architects of the free market neoliberal agenda such as the infamous US-trained lawyer and mentor to Canadian Prime Minister Harper, Thomas Flanagan. We have come too far as Indigenous peoples to give up who we are. We have always been kind and again we will share the wealth and abundance of our homelands with our relatives from across the pond. Instead of lessons on how to survive the harsh winters of our lands, today we are offering lessons on how to be resilient and to overcome the oppression from the archaic oil sector and in our own government who have lost their minds with power.

We are faced with tremendous odds, the end of the era of cheap energy, the loss of ecosystems to sustain unfettered economic growth and, of course, the global climate crisis. We must understand that these are all symptoms of a much larger problem called capitalism. This

economic system was born from notions of manifest destiny, the papal bull, the doctrines of discovery, and built up with the free labour of slaves, on stolen Indian lands. We have much to do in America and Canada to bring our peoples into a meaningful process of reconciliation. I have learned that our movement is very much led by women. This is something I am very comfortable with given the fact that I am a Cree man and we are a matriarchal society. There is a powerful metaphor between the economic policies of this country Canada and the US and their treatment of our Indigenous women and girls. When you look at the extreme violence taking place against the sacredness of Mother Earth in the tar sands, for example, and the fact that this represents the greatest driver of both Canadian and US economies, then you look at the lack of action being taken on the thousands of First Nations women and girls who have been murdered or just disappeared, it all begins to all make sense. It's also why our women have been rising up and taking power back from the smothering forces of patriarchy dominating our economic, political, and social, and I would say spiritual institutions. When we turn things around as a people, it will be the women who lead us, and it will be the creative feminine principle they carry that will give us the tools we need to build another world. Indigenous peoples have been keeping a tab on what has been stolen from our lands, which the creator put us on to protect, and there is a day coming soon where we will collect. Until then, we will keep our eyes on the prize, organize, and live our lives in a good way. we welcome you to join us on this journey.

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THIS IS A CEREMONY

Tara Williamson

The children and adults are scattered across the small clearing gathering wood. There is the sound of crunching leaves and the snapping of twigs and branches, mingled with laughter, and the soft soothing voices we use to teach our children. Every dried-out twig that fell has a purpose

Idle No More arose with scant planning—using social media and tapping into the deep sense of unfairness and the political abandonment of their voice felt by educated Aboriginal women. It has resonated with many others, including men, and generations young and old, because it speaks a bitter truth about Canada—it has failed to deliver on human rights and equal opportunity for Aboriginal peoples.

This brings us back to the key point about the Indian Act. Why hasn't it changed or transitioned into a more meaningful government regime designed to be effective or responsive to the needs of First Nations citizens, especially those in crisis? I reflect back on the failed constitutional renewal process that followed the conclusion of the Charlottetown Accord. This accord offered a transition process out of the Indian Act to a new arrangement that preferred an obligation for a negotiated settlement but clearly recognized a legally enforceable and existing inherent right of self-government, as well as a fiscal arrangement to support that transition. Those provisions, and the protocols that supported them, would have represented a new path forward, but it was quickly put to rest when constitutional reform politics was shut down.

Some First Nations women had deep suspicions about the Charlottetown Accord at the time and felt they were mistreated when the Native Women's Association of Canada was not represented at the discussion table. They worried self-government might not address issues such as caregiving support and equality, or redress their grievances about their treatment at the hands of band leadership. They were right to be worried. Twenty years later there is still no improvement in meaningful government services or policies to make caregiving and raising children easier than it was then.

I'm not advocating a new constitutional round. The constitutional discussions ended because of the unworkable amending formula and a lack of public appetite for them. The *Report of the Royal Commission on Aboriginal Peoples* recommended a nonconstitutional reconciliation approach with a negotiated process for change. Its recommendations have merit and deserve thoughtful consideration, but it too has been ignored, either because of the scope of change required or a lack of political will at the national level. Crucial issues about the scale and viability of First Nations communities and economies require a broad and pragmatic discussion in an appropriate political forum.

So where does that leave us? The Prime Minister and his government do not appear to have suffered any major setback in popular opinion from Idle No More and other protests. But not even the most Machiavellian of strategists can be sanguine about the uncertainty that now characterizes the relationship between Aboriginal leaders and their grassroots. We are in uncertain terrain and a state of stasis, and the system that maintained it can no longer be counted on to keep the peace. The failed policy of the Indian Act era has run its course, and no one can make a deal without the support of the people.

The glimmer of hope lies with the women. They understand that solutions lie in forging relationships that respect the rights of all and that address the social and economic issues that blight the lives of so many of our most vulnerable. With Idle No More, they have shown they are prepared to make noise. Canadians would be unwise to think the drumming and celebratory atmosphere of Idle No More has no substance or will soon subside. Aboriginal politics will never be the same.

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IDLE NO MORE:
Strong Hearts of Indigenous Women's Leadership

Wanda Nanibush

On January 26, 2012, I found myself marching down a busy Toronto street beside grandmother Pauline Shirt and a number of Indigenous women in front of hundreds of marchers. As a water carrier, I was holding a part of lake Ontario in my hands. This water walk and ceremony was called together to bring attention to the Idle No More movement and the fight against the changes to the Navigational Waters Protection Act under Bill C-45 that legalized resource development's precedence over environmental protection. We weren't protesting—we were speaking the spirit of the water. We were attempting to heal her from the pollution choking her life force, which in turn chokes our own.

The actions under the Idle No More banner have largely been peaceful and ceremonial in nature, thus markedly different from any other massive international Indigenous-led movement in history. It is a movement led largely by grassroots Indigenous women. The movement exhibits a post-Cartesian Indigenous ethos where the mind, body, spirit, and emotions are engaged together. Like the drum at the centre of the round dances is the heart of the mother earth, the women maintain the heart at the centre of the movement. It's a rare feeling to go to a political action and want to hug every stranger around you, to feel vulnerability at the centre of life and a desire to protect it.

Indigenous women's leadership has always been at the grassroots level, having historically been shut out of Indian Act-based leadership until 1952. Many have forged their leadership skills in ceremonial spaces where pre-contact cultural values around the roles of women have allowed us significant influence and power. The teachings gathered at the skirts of our grandmothers have also required a different set of principles for working cross-culturally. While a return to and education about the Nation-to-Nation relationship that exists between Canada and the many Indigenous nations on whose soil this country was birthed has been the centre of the movement, it has also required understanding how we are to work together now and in the future. When the relationship is not defined from thought alone but also includes the spirit and the heart the work takes on a different character. Wampum belts hold the history of our treaties with other Nations and speak of these Nation to Nation relationships being based on peace and friendship with the values of trust, integrity, honesty, and truth as the basis for interaction. This is not a written contract to be analyzed and assessed but a contract of spirit and heart to be lived together.

Women who have worked at the ground level healing their communities from historical trauma, who deal with large socio-economic disparities and have counteracted cultural discontinuity—all brought on by colonialism and racism—bring a considerable knowledge base to the movement. Cross-cultural conflicts that are quite common in Canada come to the fore in an Indigenous-led movement like Idle No More. Canadians have been denied access to an education, which leads to deep mistrust and misunderstanding between Indigenous and Non-Indigenous participants in a struggle to protect the earth and water.

Unity has been stressed and yet unity in difference is the goal. For this movement to work we must remain unified. This means no behind-the-back talk against each other. It means putting aside petty jealousies, envy, dislikes, and old grudges. It means not having an ego. Indigenous concepts of the human that are non-ego based become important. It means true humility that listens before speaking, and that understands before judging, it means letting go of negativity and holding the fragility and dignity of fellow humans close.

It does not mean that we will all agree but the way we disagree is the main question. If I disagree I choose to disagree openly in front of the person, without anger or passive aggression as a form of peace offering towards understanding. I choose to ask questions and seek understanding, to deliberate before forming opinion. I choose to care for strangers. I choose to set aside my own desires for the larger picture. I choose to step forward and shate my knowledge and skills for others. I choose to take the heat. I choose peaceful disobedience. I choose to obey ancient laws of respect. These tenets, if you will, are women's teachings that they bring to the movement and affect how it operates. The earth, for us, is considered a mother; mothering and creation is foregrounded for our identity. This does not mean that women cannot choose men's roles or have sexual relations with women. It does mean that there are specific knowledges within the acts of creation for both earth and women that are essential to the sustenance of our world and humanity. Creation is also an act of futural imagining which is what is at the heart of women's work. The creativity of the actions and the focus on our children's children's etc. future is part of what is expected of a woman living in a good way. Humanity is the weakest link in all of creation because it relies on all of creation to exist—that is why they must ultimately protect it. The focus on male leadership under colonial rule has not quieted the voices of Indigenous women leaders. There is a strength derived from the attempted silencing in their closeness to the community, ceremony, children, and creativity.

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Khelisilem Rivers, an Idle No More Vancouver organizer, cracks up the crowd during the January 11 Day of Action, 2013. (STEPHEN HUI)

WE ARE FREE HUMAN BEINGS, PART TWO

Lori M. Mainville

"We do this for our future generations" are words describing legacies. It suggests presence and, depending on the tone and inflection, it suggests action. These words are sounds of life, of choice, of freedom.

I was privileged to listen to the late elder Peter O'Chiese, who spoke of such things as the power of sound. Our original language had this built right within it, it was co-relational to the vibration of sound of the land. Our words not only sound like the world around us, but so did the spaces between the words. One need only sit in silence near water or trees to understand the deep sense of connection we carry in sound.

Our voices are sacred binds with one another. The oral tradition demonstrates that to us, it is a relational reciprocity of speaking, listening, and witnessing as a group. It also demonstrates how a nation can interact with another nation. Language connects us, it teaches us to maintain our social connections with living beings from all over the world, and the universe. Sometimes we speak different words, but we must keep trying to communicate. We can close that gap of understanding with action.

Part of this is found in Idle No More, an awakening of this very opportunity. The past months have been challenging. This may have been by the leaderless nature of the movement, which made it at times tough to negotiate and communicate widely. It may have been the challenging nature of bringing so many nations into a complex discussion involving so many key issues. Another might have been some of the concerns around "copyrighting" the movement. It's impossible to control energy and harness it under a couple sets of fingers. Our original governance resided with clans, societies, and collectivities, not a few.

It is now that we have opportunities to make sounds of our own, and explain these to others. They must understand too. It is time to think of what will happen next to ensure that we do this for our future generations. It is my prediction that in the coming months we will:

- Reflect and discover the lessons learned from the movement.

An Indigenous View on #BlackLivesMatter

I was reminded over and over this week that black and indigenous communities of struggle are deeply connected through our experiences with colonialism, oppression, and white supremacy.

Indigenous activists participate in the People's Climate March in September 2014. Photo by Allan Lissner / Flickr.

posted Dec 05, 2014

Like many others, I watched the live stream of St. Louis County Prosecutor Robert McCulloch delivering what was clearly a public relations campaign, justifying the grand jury's decision not to indict white police officer Darren Wilson in the murder of 18-year-old Michael Brown.

Although few were surprised by the decision, McCulloch's orchestrated performance contributed to the systemic expression of anti-blackness that began on Turtle Island, when African people were violently stolen from their indigenous homelands and brought by white

> I have seen an expression of tremendous black love for children and family.

people to ours. It is an anti-blackness intrinsically linked to the genocide, white supremacy, hetero-patriarchy, and colonialism used to maintain the dispossession of indigenous people from our homelands on Turtle Island and to erase our bodies from society. That anti-blackness is just as real and alive in Canada as it is in the United States.

As black communities respond to the Ferguson decision in cities across the United States this week, their rage resonates with me in a familiar way because it comes from a similar place as my own. On the streets that night and in the days that have followed, rage.

I have seen an expression of tremendous black love for children and family, a tremendous black love for culture, body and people, coupled with a tremendous outrage against a colonial system that is designed at its core to destroy black and indigenous love. This same fertile ground birthed the so-called "Oka Crisis" and the Idle No More movement. This same ground compels the ongoing resistance of indigenous women and Two Spirit people—an indigenous term for queer or LGBT people—to all forms of colonial gendered violence.

Amid the mainstream media's coverage of these events, it seems difficult for Canadian and American society to see that love and rage are justified—to see indigenous and black people as fully human. I am repeatedly told that I cannot be angry if I want transformative change—that the expression of anger and rage as emotions are wrong, misguided, and counterproductive to the movement. The underlying message in such statements is that we, as indigenous and black people, are not allowed to express a full range of human emotions. We are encouraged to suppress responses that are not deemed palatable or respectable to settler society.

But the correct emotional response to violence targeting our families is rage.

> Policing in Turtle Island was born of the need to suppress black and indigenous resistance to colonialism and slavery.

We have survived 400 years of racialized, gendered violence designed to remove us from our lands and assimilate us into the colonizer's agenda. The idea that we should all remain positive and calm, while 1,200 indigenous women and girls are disappeared in Canada, while black people are gunned down in the streets by white police officers, security guards, and vigilantes every 28 hours, while the legal system will not even provide a trial to the perpetrators of violence, is unfathomable.

I've asked myself more than once this week, why is there more outrage in American and Canadian societies over property damage than toward the state-sanctioned violence that is normalized in the everyday lives of indigenous and black people? I believe that our lives matter more than a burned police car, even if the state and other narratives do not.

I was reminded over and over this week that black and indigenous communities of struggle are deeply connected through our experiences with colonialism, oppression, and white supremacy. Indigenous and black people are disproportionately attacked and targeted by the state, and, in fact, policing in Turtle Island was born of the need to suppress and oppress black and indigenous resistance to colonialism and slavery.

Indigenous and black women are consistently decentered from our communities and targeted by four centuries of gendered violence, while black queer and indigenous Two-Spirit communities are targets of multiple sites of oppression, violence, and erasure. Black and indigenous children have been stolen from their families throughout colonial history through the institutions of slavery, and in Canada the residential schools and the child welfare system. We are interconnected through systems of oppression that would prefer us not to exist unless it can exploit us as commodities for labor.

In both of our communities of struggle, however, youth are brilliant leaders in resistance and resurgence. The work of the Native Youth Sexual Health Network and the Dream Defenders—just two of many for-youth, by-youth organizations—remind me to nurture our relationships to each other by creating decolonizing constellations of resistance and love as a mechanism to ensure that we are no longer complacent in the oppression of each other. These young leaders are showing us through their lives that, by collaborating with each other, we can build collective power and grow mutually caring communities of support and resistance.

> I have a responsibility to center and amplify black voices.

I was also reminded that my liberation as an indigenous woman is linked to the liberation of black women and the Two Spirit and queer community, and I've learned by listening to black feminists like Audre Lorde, bell hooks, Angela Davis, Luam Kidane, and Hawa Y. Mire that resurgent indigenous and black feminisms are the spine of our collective liberation.

The hashtag #BlackLivesMatter is "an online platform developed after the murder of Trayvon Martin, designed to connect people interested in learning more about and fighting back against anti-black racism," according to the three black queer women who created it: Alicia Garza, Patrisse Cullors, and Opal Tomet. I am grateful to them for the platform, discussion, and action their work has inspired because it is a reminder that in the face of a system that seeks to also erase us, #IndigenousLivesMatter too.

To me, Ferguson is a call not only to indict the system but to decolonize the systems that create and maintain the forces of indigenous genocide and anti-blackness. I have a responsibility to make space on my land for those communities of struggles, to center and amplify black voices, and to co-resist.

We both come from vibrant, proud histories of mobilization and protest, and it is the sacrifices of our elders and our ancestors that ensured that our communities of struggle continue to exist today. They believed in their hearts that there is no justice and no peace until we are all free, and so must we.

Thanks to Jarrett Martineau, Tara Williamson, Glen Coulthard, Eric Ritskes, and especially Luam Kidane for comments on previous drafts.

Leanne Simpson wrote this article for her blog, where it originally appeared. Leanne is a writer, spoken-word artist, and indigenous academic.

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Roundtable on Glen Coulthard's Red Skin, White Masks and Audra Simpson's Mohawk Interruptus – Leanne Simpson

News

The Misery of Settler Colonialism: Roundtable on Glen Coulthard's Red Skin, White Masks and Audra Simpson's Mohawk Interruptus

January 4, 2016
American Studies Association Annual Meeting
October 8, 2015

Aaniin Kina Wiya, Segoh

I'm so very honoured to be on this panel in Chi Aangiikeyang, which is the name my people, the Mississauga Nishnaabeg, have for Toronto. I'm also very grateful to be on this panel and for the opportunity to engage in the consideration of RSWM and MI together because they are both groundbreaking interventions in their own right, and there is an interesting synergy between these two minds and therefore between these two works. Both Glen and Audra have very clearly demonstrated Indigenous excellence in not only their chosen fields but within the collective intelligence of their respective Indigenous nations.

So to begin with I say Niawen kowa/Mahsi Cho to Audra and Glen for the sacrifice, the bravery, the worry, the fierceness, the confidence and the sheer intellectual labour of resistance that dances off of each these pages. I come out of your books a better Anishinaabe person, and to me that's the ultimate test of excellence in Indigenous thought and writing.

Both of these works have been taken up in extensively in the academy particularly in Indigenous Studies and I also want to point out that the front covers of both have images from the Idle No More movement. This makes complete sense to me because I see a tremendous potential for these two works to carry weight and influence both inside and outside the academy. That's far too rare, but crucial for Indigenous peoples because not all of us have the privilege of thinking through the insidious and ubiquitous nature of settler taken up colonialism and it's strangulation to use Audra's word, of our bodies, minds and nations, primarily because we are being strangled by it and basic survival necessarily, comes first.

And so while each of these books yield a tremendous responsibility to academics in the transformation of the fields of Anthropology, Political Science and Theory, & Indigenous Studies, from colonizing entrenchment to decolonial practices, they also make crucial interventions on the ground in terms of Indigenous struggle and how we chose to frame the issues we respond to and mobilization around. Red Skin White Masks does this through its meticulous discussion of recognition, reconciliation, resentment and the example of the Dene nation and Mohawk Interuptus accomplishes this through its discussion of refusal with extensive examples from the Mohawk nation of Kahnawake.

The aftermath of the Idle No More movement clearly demonstrates that the ways we are organizing and mobilizing are simply not working. Those of us involved in the movement learned very acutely that we desperately need different strategies and approaches to movement building because the state's infrastructure of surveillance, of the policing and the criminalization of dissent, the entrenchment of the mass media in a parroting function rather than a critical or analytical one, and the use of policy and negotiation as a mechanism to neutralize resistance has simple caught up to and I'd argue surpass what we can achieve with our current set of tools whether it's through the normal strategies of direct action or the normal tools of democratic protest. Yet, it is clear to many of us and evidenced in history, that mass mobilization is the only mechanism through which we can bring about the significant transformation we need to spark in Canada in order to ensure that our children will be able to live on their lands as Indigenous peoples.

As a starting point, both RSWM and MI are crucial interventions into how we account, frame and tell the truths of the political and cultural lives of Indigenous peoples that moves away from a constriction of our intelligence within the confines of western thought and the dumbing down of the issues for the non-Indigenous outside and takes a meticulous, critical, robust and layered approach that accurately contextualizes and reflects the lives and the thinking of Indigenous peoples on our own terms. As an example, Audra re-embeds membership issues into a living Haudenosaune matrix of relatedness and tension over membership and belonging in Kahnawake, by naming the root: fear of disappearance – a basic, terrifying, omnipresent reality of being Indigenous and particularly of being an Indigenous woman or queer person and occupied by Canada. She re-embeds belonging in a productive place of refusal, which I read as a spectacular animation of Mohawk theory as Mohawk life and Mohawk land, a productive place of refusal is one that generates grounded normativity, to use Glen's term. If we mobilize around "fear of disappearance" rather than encoding that fear into policy in the form of a membership code, what does that mobilization look like? What happens when we build movements that refuse colonial recognition as a starting point and turn inwards building a politics of refusal that isn't just productive, but that is generative – you get things like the Dene Declaration, you get things like the Iroquois Nationals refusing to participate in the World Lacrosse League Championship tournament in Manchester because the UK refused to recognize their sovereignty.

At this point, one of the biggest out come of the Idle No More movement has been an increased interest in Canadian electoral politics. That's heartbreaking to me, as someone who dedicated a significant amount of time and energy to that movement during the fall of 2012 and the winter of 2013. At the time, there was a diversity of organizing under the umbrella of Idle No More – everything from resurgent-based organizing focused on sovereignty and nation building to very recognition based organizing focusing on state legislation. There was Chief Theresa Spence's ultimate act of refusal that was then co-opted by the male Indian Act Chiefs into an ultimate act of seeking recognition, which was by all accounts, how the state brought down the movement. Again. This continual pattern of the gutting of mass mobilization by royal commissions, national inquiries, or this time, the promise of a couple of "high level meetings", is not a trick we can continually fall for and RSWM clearly outlines why. Here we are two years later, with the components of the movement that were begging for colonial recognition continuing to act out that approach by appealing to the moral compass of Canadians to act on the social ills that plague "the poor Indigenous peoples", a foster parent's plan approach to organizing. Attention is now focused on facilitating change through voting or running for office, which seems so ridiculous to me it matters how change is achieved. Movement building is a productive or generative politics of refusal when we are building and reinvigorating and embodying and amplifying our instance of acting as peoples who belong to

specific Indigenous nations. We are creating the alternative on the ground and in real time. You can sign a petition and stage a demonstration because you don't want a Canadian passport or you can make your own passports and travel on them. No one is going to give you tenure or pay your rent or stroke your ego or give you a medal at the World Lacrosse League Championship for creating the alternative on the ground and real time, and that's why we have to do it.

Building movements that reject the politics of recognition and centre generative refusal inherently create bodies more connected to each other, the land, and that act out, through relationality, Indigenous thought. They inherently amplify grounded normativity, which is the basis of Indigenous political existence. In a sense both books asked the same question to me as a reader: What the best way to ensure we do not disappear as unique distinctive Indigenous peoples and placed-embedded nations? Or asked another way how do I live free in this Indigenous body? Or asked another way, how do I live in a way, as an individual and as part of a collective that ensures I recognize my great great great grandchildren as Indigenous peoples?

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My favorite part of Audra's book, the part I've thought the most deeply about is a tiny moment shared between two Mohawk nationals in a bar in Greenwich Village. The researcher, Audra, asks her interviewee "What is the ideal form of membership for us? What do you think makes someone a member of the community?" (p.168) He looks her squarely in the eye, and doesn't answer. Instead he says, "When you look in the mirror, what do you see?"

Brilliant.

When I look into the mirror, what do I see? How do I recognize myself as an Michi Saagiig Nishnaabekwe? Do my ancestors recognize me as one of their own? How does Audra, as a Mohawk woman recognize me as a Mississauga Nishnaabeg woman? How are we related? When I am hunting does the spirit of the moose see me and recognize me in the same way she recognized my Ancestors? Does the moose see me as someone who is seeking their consent through my offerings, prayers and practices to harvest their body so that my family can live? Does that moose see me as someone who is engaging with them in the relational terms set out in our diplomacy? Do they feel respected and that they have sovereignty and agency over the act of harvesting? Or have my actions made them feel like a resource? Do they see me as the enemy? Do they feel exploited? Unseen? Unrecognized? Hunted?

What do I see when I look in the mirror?

What does my nation see when we look in the mirror?

Let's talk about how relationality plays out in Indigenous contexts. Part of being in a meaningful relationship with another being is recognizing who they are, it is reflecting back to them, their essence and worth as a being, it is a mirroring. Positive mirroring creates positive identities, it creates strong, grounded individuals and families and nations within Indigenous political systems. So at the same time I am looking into the mirror, I am also am the mirror. What do I mirror back to my kin? Dysfunction? Criticism? Cynicism? What do this two books mirror back to Dene and Haudenosaunee peoples? That's easy – they mirror back strength, pride, connection, beauty, love, fierceness, courage, bravery and the very best parts of being Dene or Haudenosaunee.

I started my talk today by saying the word Aaniin, which is a way of saying hello that is common for Mississauga Nishnaabeg people to use. I spent some time with my Elder Doug Williams from Curve Lake First Nation last week, sitting around a fire talking about Anishinaabeg conceptualizations of recognition. We talked about the word Aaniin. He told me the Ah sound place us in a spiritual context, in the context of the Anishinaabe universe. The Ni is “a taking notice as sound”. When put together, he understands the word to be asking how do you see yourself in all of this? Or put another way, taking in all the thought and feeling of your journey in the universe how do you see or recognize yourself?

This conversation was really sparked by RSWM because Glen made me think a lot about recognition with inside Anishinaabeg thought. My people recognize through song, when spirits enter our lodges and ceremonies. We recognize our family members who have passed on to the Spirit World through particular ceremonies. We recognize and greet the sun every morning, and the moon each night through prayer and ceremony. We recognize when particular animals return to our territory in the spring, and when plants and medicines reappear after winter rests. Recognition for us is about presence, about profound listening and about recognizing and affirming the light in each other, as a mechanism for nurturing and strengthening internal relationships to our Nishnaabeg worlds. It is a core part of our political systems because they are rooted in our bodies and our bodies are not just informed by but created and maintained by relationships of deep reciprocity. Our bodies only exist in relation to Indigenous complex, non-linear constructions of time, space, and place which are continually rebirthed through the practice and often coded recognition of obligations and responsibilities within a nest of diversity, freedom, consent, non-interference and a generated, proportional, emergent reciprocity.

In our language, Basil Johnson uses the term Maa maa ya wen du moowin to means the process or the art of recognizing, of understanding of fully comprehending, of being aware, cognizant and enlightened, literally it means the blending of all thoughts and feelings into recognizing another being . When I took this word to Doug, he talked about the wendamoowin part meaning “what is your thought process as you move through life?” He talked about the first maa in maa maa ya meaning “it’s in my heart” He made a distinction between Baamaaya, meaning searching for recognition and maamaaya – have it, finding, fully understanding yourself or another being.

I want to think about that for a minute. Recognition within Anishinaabeg intelligence is a process of seeing another being’s core essence, it is a series of relationships. It is reciprocal, continual and a way of generating society. It amplifies Anishinaabewin- all of the practices and intelligence that makes us Anishinaabeg. It cognitively reverses the violence of dispossession, because what’s the opposite of dispossession in Indigenous thought again? Not possession because we’re not suppose to be capitalists, but connection– a coded layering of intimate interconnection and interdependence that creates a complicated algorithmic network of presence, reciprocity, consent, & freedom.

When another Native person recognizes and reflects back to me my Nishnaabe essence, when we interact with each other in an Nishnaabeg way, my Indigeniety deepens. When my Indigeniety grows I fall more in unconditional love with my homeland, my family, my culture, my language, more in line with the idea that resurgence is my original instruction, more inline with the thousands of stories that demonstrate how to live a meaningful life and I have more emotional capital to fight and protect what is meaningful to me. I am a bigger

threat to the Canadian state and it's plans to build pipelines across my body, clear cut my forests, contaminant my lakes with toxic cottages and chemicals and make my body a site of continual sexualized violence.

One of the things about Indigenous movements in Canada is that the state actually has to do very little to bring them down and they've figure this out. Basically, if you wait long enough, Indigenous movements will bring down themselves through in fighting. Go check twitter from the late winter of 2013. When the Indian Act Chiefs disappeared Thersea Spence's generative space of refusal, by engaging in recognition politics, they facilitated the collapse of the movement. And because we had no internal process of Maa maa ya waendumoowin, because Idle No More was not a movement that thoroughly embraced the generative politics of refusal, because we were not tightly connected to each other in bonds of trust, the pain of that betrayal was too much for us to survive and we ended up replicating it within our communities in micro and macro ways. Because we weren't significantly engaged in Indigenous reciprocal recognition that has been such a key component of Indigenous mobilizations in the past. Pontiac walk around for several years visiting, building relationships of trust, recognizing and affirming the bodies and minds that would make up his mobilization, expanding the base, conversing with and acknowledging people in the most acutely difficult positions of colonialism. Nurturing leadership.

What then happens if collectively and fully reject the politics of recognition in politics with the Canadian state? What if we collectively and fully reject the politics of recognition in our mobilizations and organizing? Why have we not used RSWM and MI to ask these questions?

Let's go back to this idea of mirroring. Right now, to a great degree in Indigenous life we are looking into the colonizers mirror and that mirror is reflecting back that we are shameful, that we are not good enough, that we are not smart, or successful or rich enough or white enough or Canadian enough or together enough to organize. And much, much worse if we are Indigenous women.

Why is the colonizer the mirror? Because the colonizer will always reflect back to me what the state wants to see: An Aboriginal that shops at the gap, votes in the election, skips happily to Revenue Canada on income tax day, perhaps knows her language and participates in a ceremony instead of church on Sunday, perhaps even attends a vigil for MMIW, because wow, those poor Indigenous peoples just can't get their shit together. But they certainly do not reflect back anything that has to do with land, sovereignty or my power as an Anishinaabekwe.

Yet, collectively we still keep looking and begging, and educating and appealing to the morality of benevolent Canada. If only they knew better.

Look where that has got us.

Fuck benevolence and fuck misery.

Let's take the brilliance of RSWM and MI, and the Indigenous excellence of these two scholars and use it the way I believe these two intended, to build a generation of Indigenous nationals from varies Indigenous nations who think and act from within side their own intelligence systems, who generate viable Indigenous political systems, who are so in love with their land, they are the land, who simply refuse to stop being themselves, who

refuse to let go of this knowledge and who use that refusal as a site to generate another generation who enact that with every breath, birth, political engagement and in every moment of their daily existence.

Let’s use the intelligence of RSWM and MI to create a future that never has to ask how do I live free, because they’ve never known anything else.

Chi’miigwech

in Aboriginal budgets that cannot be tied down. In 2010, the Aboriginal Healing Foundation lost funding, an organization that financed community-based programs to address abuse suffered at residential schools. That same year, Harper's Conservatives cut funding to the Sister in Spirit research project that brought to light hundreds of cases of missing and murdered Indigenous women. Most recently, Department of Aboriginal Affairs Minister John Duncan announced upcoming budget cuts to his department amounting to a $100 million slash.

The wealth of the nation still depends fundamentally on land. Financial investment for resource development projects is funneled through the same banks protested against across the U.S. and Canada, such as RBC Royal Bank that funds tar sands development on Treaty 8 lands. Global structural inequality can only be addressed then by questioning the sources of authority by which resources are bought and sold. If you don't own it, Canada, how can you give it away?

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DECOLONIZING TOGETHER:
Moving Beyond a Politics of Solidarity Toward a Practice of Decolonization

Harsha Walia

Canada's state and corporate wealth is largely based on subsidies gained from the theft of Indigenous lands and resources. Conquest in Canada was designed to ensure forced displacement of Indigenous peoples from their territories, the destruction of autonomy and self-determination in Indigenous self-governance, and the assimilation of Indigenous peoples' cultures and traditions. Given the devastating cultural, spiritual, economic, linguistic, and political impacts of colonialism on Indigenous people in Canada, any serious attempt by non-natives at allying with Indigenous struggles must entail solidarity in the fight against colonization.

Non-natives must be able to position ourselves as active and integral participants in a decolonization movement for political liberation,

social transformation, renewed cultural kinships, and the development of an economic system that serves rather than threatens our collective life on this planet. Decolonization is as much a process as a goal. It requires a profound recentering on Indigenous worldviews. Syed Hussan, a Toronto-based activist, states: "Decolonization is a dramatic reimagining of relationships with land, people, and the state. Much of this requires study. It requires conversation. It is a practice; it is an unlearning."

Indigenous Solidarity on its Own Terms

A growing number of social movements are recognizing that Indigenous self-determination must become the foundation for all our broader social justice mobilizing. Indigenous peoples in Canada are the most impacted by the pillage of lands, experience disproportionate poverty and homelessness, are overrepresented in statistics of missing and murdered women, and are the primary targets of repressive policing and prosecutions in the criminal injustice system. Rather than being treated as a single issue within a laundry list of demands, Indigenous self-determination is increasingly understood as intertwined with struggles against racism, poverty, police violence, war and occupation, violence against women and environmental justice.

Incorporating Indigenous self-determination into these movements can, however, subordinate and compartmentalize Indigenous struggle within the machinery of existing leftist narratives. Anarchists point to the antiauthoritarian tendencies within Indigenous communities, environmentalists highlight the connection to land that Indigenous communities have, anti-racists subsume Indigenous people into the broader discourse about systemic oppression in Canada, and women's organizations point to the relentless violence inflicted on Indigenous women in discussions about patriarchy.

We have to be cautious not to replicate the Canadian state's assimilationist model of liberal pluralism, forcing Indigenous identities to fit within our existing groups and narratives. The inherent right to traditional lands and to self-determination is expressed collectively and should not be subsumed within the discourse of individual or human rights. Furthermore, it is imperative to understand that being

Indigenous is not just an identity but a way of life, which is intricately connected to Indigenous peoples' relationship to the land and all its inhabitants. Indigenous struggle cannot simply be accommodated within other struggles; it demands solidarity on its own terms.

The Practice of Solidarity

One of the basic principles of Indigenous solidarity organizing is the notion of taking leadership. According to this principle, non-natives must be accountable and responsive to the experiences, voices, needs and political perspectives of Indigenous people themselves. From an anti-oppression perspective, meaningful support for Indigenous struggles cannot be directed by non-natives. Taking leadership means being humble and honouring frontline voices of resistance as well as offering tangible solidarity as needed and requested. Specifically, this translates to taking initiative for self-education about the specific histories of the lands we reside upon, organizing support with the clear consent and guidance of an Indigenous community or group, building long-term relationships of accountability, and never assuming or taking for granted the personal and political trust that non-natives may earn from Indigenous peoples over time.

In offering support to a specific community in the defence of their land, non-natives should organize with a mandate from the community and an understanding of the parameters of the support being sought. Once these guidelines are established, non-natives should be proactive in offering logistical, fundraising and campaign support. Clear lines of communication must always be maintained, and a commitment should be made for long-term support. This means not just being present for blockades or in moments of crisis, but developing an ongoing commitment to the well-being of Indigenous peoples and communities.

Organizing in accordance with these principles is not always straightforward. Respecting Indigenous leadership is not the same as doing nothing while waiting around to be told what to do. "I am waiting to be told exactly what to do" should not be an excuse for inaction, and seeking guidance must be weighed against the possibility of further burdening Indigenous people with questions. A willingness to decentre oneself and to learn and act from a place of responsibility

rather than guilt are helpful in determining the line between being too interventionist and being paralyzed.

Cultivating an ethic of responsibility within the Indigenous solidarity movement begins with non-natives understanding ourselves as beneficiaries of the illegal settlement of Indigenous peoples' land and unjust appropriation of Indigenous peoples' resources and jurisdiction. When faced with this truth, it is common for activists to get stuck in their feelings of guilt, which I would argue is a state of self-absorption that actually upholds privilege. While guilt is often a sign of a much-needed shift in consciousness, in itself it does nothing to motivate the responsibility necessary to actively dismantle entrenched systems of oppression. In a movement-building round table, long-time Montreal activist Jaggi Singh said: "The only way to escape complicity with settlement is active opposition to it. That only happens in the context of on-the-ground, day-to-day organizing, and creating and cultivating the spaces where we can begin dialogues and discussions as natives and non-natives."

Sustained Alliance Building

Sustaining a multiplicity of meaningful and diverse relationships with Indigenous peoples is critical in building a non-native movement for Indigenous self-determination. "Solidarity is not the same as support," says feminist writer bell hooks. "To experience solidarity, we must have a community of interests, shared beliefs and goals around which to unite, to build Sisterhood. Support can be occasional. It can be given and just as easily withdrawn. Solidarity requires sustained, ongoing commitment."

Who exactly one takes direction from while building networks of ongoing solidarity can be complicated. As in any community, a diversity of political opinions often exists within Indigenous communities. How do we determine whose leadership to follow and which alliances to build? I take leadership from and offer tangible support to grassroots Indigenous peoples who are exercising traditional governance and customs in the face of state control and bureaucratization, who are seeking redress and reparations for acts of genocide and assimilation, such as residential schools, who are opposing corporate development

"Idle No More Peguis" at the Manitoba Legislature Winter Solstice Rally, December 21, 2012. (DAWN THOMAS)

on their lands. I support those who are pushing back against the oppressions of hetero-patriarchy imposed by settler society, who are struggling against poverty and systemic marginalization in urban areas, who are criticizing unjust land claims and treaty processes and who are affirming their own languages, customs, traditions, creative expression, and spiritual practices.

Alliances with Indigenous communities should be based on shared values, principles, and analysis. For example, during the anti-Olympics campaign in 2010, activists chose not to align with the Four Host First Nations, a pro-corporate body created in conjunction with the Vancouver Olympics organizing committee. Instead, we took leadership from and strengthened alliances with land defenders in the Secwepemc and St'át'imc nations and Indigenous people being directly impacted by homelessness and poverty in the Downtown Eastside. In general, however, differences surrounding strategy within a community should be for community members to discuss and resolve. We should be cautious of a persistent dynamic where solidarity activists start to fixate on the internal politics of an oppressed community. Allies should avoid trying to intrude and interfere in struggles within and between communities, which perpetuates the civilizing ideology of the white man's burden and violates the basic principles of self-determination.

Building intentional alliances should also avoid devolution into tokenization. Non-natives often choose which Indigenous voices to privilege by defaulting to Indigenous activists they determine to be better-known, easier-to-contact or "less hostile." This selectivity distorts the diversity present in Indigenous communities and can exacerbate tensions and colonially imposed divisions between Indigenous peoples. In opposing the colonialism of the state and settler society, non-natives must recognize our own role in perpetuating colonialism within our solidarity efforts. We can actively counter this by theorizing about and discussing the nuanced issues of solidarity, leadership, strategy, and analysis—not in abstraction, but within our real and informed and sustained relationships with Indigenous peoples.

Decolonizing Relationships

While centring and honouring Indigenous voices and leadership, the obligation for decolonization rests on all of us. In "Building a 'Canadian' Decolonization Movement: Fighting the Occupation at 'Home,'" Nora Burke says: "A decolonization movement cannot be comprised solely of solidarity and support for Indigenous peoples' sovereignty and self-determination. If we are in support of self-determination, we too need to be self-determining. It is time to cut the state out of this relationship, and to replace it with a new relationship, one which is mutually negotiated, and premised on a core respect for autonomy and freedom."

Being responsible for decolonization can require us to locate ourselves within the context of colonization in complicated ways, often as simultaneously oppressed and complicit. This is true, for example, for radicalized migrants in Canada. Within the anticolonial migrant justice movement of No One Is Illegal, we go beyond demanding citizenship rights for racialized migrants as that would lend false legitimacy to a settler state. We challenge the official state discourse of multiculturalism that undermines the autonomy of Indigenous communities by granting and mediating rights through the imposed structures of the state, and that seeks to assimilate diversities into a singular Canadian identity. Andrea Smith, Indigenous feminist intellectual, says: "All non-Native peoples are promised the ability to join in the colonial project of settling indigenous lands. In all of these cases, we would check our aspirations against the aspirations of other communities to ensure that our model of liberation does not become the model of oppression for others." In B.C., immigrants and refugees have participated in several delegations to Indigenous blockades, while Indigenous communities have offered protection and refuge for migrants facing deportation.

Decolonization is the process whereby we create the conditions in which we want to live and the social relations we wish to have. We have to commit ourselves to supplanting the colonial logic of the state itself. Almost a hundred years ago, German anarchist Gustav Landauer wrote: "The State is a condition, a certain relationship between human beings, a mode of behaviour; we destroy it by contracting other relationships." Decolonization requires us to exercise our sovereignties differently and to reconfigure our communities based on shared

experiences, ideals, and visions. Almost all Indigenous formulations of sovereignty—such as the Two Row Wampum agreement of peace, friendship, and respect between the Haudenosaunee nations and settlers—are premised on revolutionary notions of respectful coexistence and stewardship of the land, which goes far beyond any Western liberal democratic ideal.

I have been encouraged to think of human interconnectedness and kinship in building alliances with Indigenous communities. Black-Cherokee writer Zainab Amadahy uses the term "relationship framework" to describe how our activism should be grounded. "Understanding the world through a Relationship Framework ... we don't see ourselves, our communities, or our species as inherently superior to any other, but rather see our roles and responsibilities to each other as inherent to enjoying our life experiences," says Amadahy. From Turtle Island to Palestine, striving toward decolonization and walking together toward transformation requires us to challenge a dehumanizing social organization that perpetuates our isolation from each other and normalizes a lack of responsibility to one another and the Earth.

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HARPER LAUNCHES MAJOR FIRST NATIONS TERMINATION PLAN:

As Negotiating Tables Legitimize Canada's Colonialism

Russell Diabo

On September 4, the Harper government clearly signalled its intention to:

1. Focus all its efforts to assimilate First Nations into the existing federal and provincial orders of government of Canada;
2. Terminate the constitutionally protected and internationally recognized Inherent, Aboriginal, and Treaty rights of First Nations.

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Learning from the land: Indigenous land based pedagogy and decolonization

Matthew Wildcat
University of British Columbia

Mandee McDonald
Dechinta Bush University

Stephanie Irlbacher-Fox
University of Alberta

Glen Coulthard
University of British Columbia

Abstract
This paper introduces the special issue of *Decolonization* on land-based education. We begin with the premise that, if colonization is fundamentally about dispossessing Indigenous peoples from land, decolonization must involve forms of education that reconnect Indigenous peoples to land and the social relations, knowledges and languages that arise from the land. An important aspect of each article is then highlighted, as we explore the complexities and nuances of Indigenous land-based education in different contexts, places and methods. We close with some reflections on issues that we believe deserve further attention and research in regards to land-based education, including gender, spirituality, intersectional decolonization approaches, and sources of funding for land-based education initiatives.

Keywords: *land based education; Indigenous Knowledge; Indigenous Resurgence; decolonization*

Introduction

What does it mean to think of land as a source of knowledge and understanding? How do our relationships with land inform and order the way humans conduct relationships with each other and other-than-human beings? How do we offer education to people on the land in ways that are grounded in Indigenous knowledge? What does it mean to understand "land" – as a system of reciprocal social relations and ethical practices – as a framework for decolonial critique? These are a few of the central questions that have been answered by contributors to this special edition on land-based education, in *Decolonization: Education, Indigeneity and Society*.

Settler-colonialism has functioned, in part, by deploying institutions of western education to undermine Indigenous intellectual development through cultural assimilation and the violent separation of Indigenous peoples from our sources of knowledge and strength – the land. If settler colonialism is fundamentally premised on dispossessing Indigenous peoples from their land, one, if not the primary, impact on Indigenous education has been to impede the transmission of knowledge about the forms of governance, ethics and philosophies that arise from relationships on the land. As Leanne Simpson argues in the feature article of this issue, if we are serious about decolonizing education and educating people within frameworks of Indigenous intelligence, we must find ways of reinserting people into relationships with and on the land as a mode of education.

Key to the set of inquiries contained in this special issue is moving from *talk* about the land within conventional classroom settings, to studying instances where we *engage* in conversations with the land and on the land in a physical, social and spiritual sense. In addition to the comprehensive theoretical engagement with land based practices, the ten articles in this issue provide us with a specific examples of how land based activities are occurring on and with the land. What is gained from moving the classroom to the land? As Leanne Simpson, in a recent interview conducted by Eric Ritskes with her and Glen Coulthard, summarizes, land-based education sustains and grows Indigenous governance, ethics and philosophy – and life:

> We're practicing conflict management, agency and transparency and the things that Indigenous political cultures value. We're asking students to engage in a fairly rigorous process from a Dene perspective, in an intellectual, emotional and a spiritual and a physical way… we have to remember the ways that we replicated our nations through education and what were those critical components that produced people who could embody our political cultures and survive in our lands and think within Nishinaabeg or Dene thought and live a life where they were promoting more life in the coming generations. (Simpson & Coulthard, 2014)

In that same interview, Glen Coulthard also reflects on how land based education has been fundamental to his own understanding of Dene knowledge:

> I had learned as much as I could in the archive, talking to people, and reading about that history, but it was only when I started to commit myself to re-learning those practices and re-embedding myself in those social relationships with place, that I understood in a more concrete and embodied way, what was wrong with the forms of economic development that have come to be dominant in the North and elsewhere. (Simpson & Coulthard, 2014)

Land-based education, in resurging and sustaining Indigenous life and knowledge, acts in direct contestation to settler colonialism and its drive to eliminate Indigenous life and Indigenous claims to land.

In their own unique ways, each contribution to this volume aims to sever the historical and contemporary relationship between education and the reproduction of settler-colonial power and associated forms of knowledge. On the one hand, the pairing of colonial domination with western education has had a devastating effect on Indigenous students, contributing to a contemporary educational deficit that expresses itself in lower academic success rates and experiences of racism and alienation in the classroom. On the other, institutions of mainstream education have fostered high levels of ignorance regarding Indigenous issues within the non-Native student and educator community. In different ways, each paper in this collection takes stock of what settler colonialism makes lost, damaged, and destroyed, as well as what is being and can be changed, gained and restored through various forms of land-based resurgence. In doing so, the examples of Indigenous land-based pedagogy discussed in this volume all offer a way of fostering individual and collective empowerment for students by re-embedding them in the land-connected social relationships that settler-colonialism, through education and otherwise, sought to destroy. The initiatives discussed in this issue, each focused on resurging Indigenous knowledges, leaves us with room for optimism despite the stranglehold that colonial education currently has in Canada and other settler nations. But, contrary to mainstream discourse, ours is not an optimism grounded in the ideal or hope of reconciliation through inclusion. Our optimism is grounded in a call for Indigenous resurgence and settler reckoning.

This issue highlights the diversity of land-based education and is a major contribution to the *Indigenous Resurgence* paradigm of intellectual thought. For scholars working on Indigenous political issues within Canadian universities and elsewhere, Indigenous resurgence has become one of the most robust scholarly paradigms to study Indigenous politics from. The term owes its intellectual origin to Taiaiake Alfred's (2009) work in *Wasase: Indigenous Pathways of Action and Freedom* and is now widely used by many scholars in the field including many of the editors and contributors to this journal issue. For Alfred, the resurgence paradigm was a way of theorizing how a shift in the consciousness of Indigenous peoples, away from reconciliation and towards decolonization, would provide the foundation of an Indigenous social movement capable of transforming Canadian society.

To create this social movement, what was needed was initially a *regeneration* of Indigenous cultural, spiritual and political practices. This revitalization would provide the

personal and collective strength necessary for a confrontation with Canadian society. Having undergone cultural regeneration, an Indigenous resurgence would engage in an outward, disciplined confrontation with settler society. Due to the protracted struggle and engagement with this Indigenous movement, settler society would be forced into reckoning with its colonial past and present and undertake in its own decolonizing journey.

This issue can then be read as a useful contribution to the resurgence paradigm in its emphasis on both the importance of cultural regeneration, as well as outward resurgence and contestation with settler colonial incursions and violence in the realms of education, and more broadly against Indigenous peoples, knowledges, languages, and the relationships with the land that sustain these. This issue is a reminder that Alfred's original formulation equally emphasized regeneration of Indigenous knowledges and ways of being in the world, as well as their necessary contestation with settler colonial power.

The issue begins with a feature article by Leanne Simpson and then traverses ten articles, two creative writing pieces, a video and a poem. We encounter Mohawk lives disrupted by industrial pollution and Métis landscapes transformed through the rise of industrial capitalism; Tlingit and Mono places whose names, stories and ecological realities have been overwritten by colonial relations; contributions from three Anishnaabe authors who discuss land as both culturally grounding and contested; the social relations of Chisasibi Cree; stories from the land provided by a Swampy Cree author and a Tłı̨chǫ author; and we see the perspective of a Maori knowledge keeper in film. Many of these contributions include collaborations between settler scholars working in the academy and Indigenous community members, and we also have two great contributions from settler scholars working in collaboration with Indigenous peoples of Denedeh/NWT. Including the cover from a Coast Salish artist and the work of Plains Cree and Yellowknives Dene editors, we have here an edition with contributions from Indigenous people from 12 different nations.

Taken together, we believe the issue offers a nuanced and diverse appreciation for the significance of land based pedagogy and practices as a catalyst for regenerating Indigenous social, spiritual and physical land-connection. In lieu of descriptions of each piece, our introduction will highlight important insights provided by the ten articles and two creative writing pieces. These insights provide only a small sample of the theoretical complexity and empirical richness developed by the authors. We conclude by examining areas for further exploration and inquiry in land-based education.

Issue overview

Leading off the issue, Leanne Simpson's article prompts deeper thinking about ways in which mainstream education is at odds with resurgent life ways. Simpson provides a compelling argument for the necessity of raising Indigenous youth who are strongly connected to the land and the Indigenous cultures and languages that the land sustains. Employing the story of Kwezens, she anchors her argument within a Nishnaabeg intellectual framework. Using this

frame provides a "critical intervention into current thinking around Indigenous education, because Indigenous education is not Indigenous or education from within our intellectual traditions unless it comes through the land, unless it occurs in an Indigenous context using Indigenous processes" (p. 9). For people working in Indigenous education at any level or locale, this article represents one of the most definitive statements on the importance of land-based education for Indigenous cultures and the resurgence of them.

As Simpson states in her opening footnote, her paper was generated "inside a community of intellectuals, artists, Elders and cultural producers to whom I am both influenced by and accountable to" (p. 1). While her article did not go through a standard academic peer review process, it is important to note that drafts were peer-reviewed by four prominent Nishnaabeg thinkers. Given that the majority of our articles in this issue were written or co-written by Indigenous scholars, and written in conversation and collaboration with Indigenous communities and educational projects, Simpson's approach is a powerful challenge to how peer review is conducted in the context of land-based education and Indigenous resurgence. Namely, we should not assume that 'peers' in these circumstances are university professors, nor demand that the review process require submitting papers for anonymous feedback. It is a challenge to think about how we create review processes that involve people from the communities that support and foster these land-based initiatives. As Coulthard points out about his role as an academic in collaboration with community, "we're not renegades that are dropped into territories and determine what the most radical and transformative educational experiences *we* think would be relevant for *them*; it's done in a spirit of reciprocity, with community engagement and input" (Simpson and Coulthard, 2014). This requires academics to think further about how we can practice and foster reciprocity with communities in order to create land-based sites of education.

Aldern and Goode, in part, focus on how Indigenous intellectual thought can be mobilized in land management decision-making. Their article provides an account of ways that land-based methods influence ecological policy in the traditional territory of the North Fork Mono peoples, in what is today known as the Sierra National Forest area in central California. They expertly outline a method that combines traditional Mono narratives with site visits that happen with the leadership and presence of Mono elders and other knowledge holders. They discuss how this method is applied to government policy decisions with respect to the endangered Pacific Fisher (weasel). Critically, Aldern and Goode demonstrate that including Mono knowledge within ecological decision-making is not done solely for the sake of fulfilling requirements of consultation. Rather, Mono knowledge arises from deeply rooted land relationships that can improve ecological outcomes, while at the same time transforming settler-privilege, which is further discussed by Irlbacher-Fox in her contribution. After a site visit to the forest with author Ron Goode, a federal biologist "remarked that he saw the forest in a new way …something that was not easy to imagine without getting out onto the land" (p. 43). Being present on the land provides powerful ways of seeing one's relationships to the land and other-than-humans, as well as new ways in contesting settler colonialism and its sense making mechanisms.

While Goode and Aldern's article offers an example of ways to challenge settler colonialism's formula of Indigenous dispossession, Jennifer Adese provides a careful account of ways in which industrial modes of production structure Métis relations to land. Adese relies on Métis Elders' life stories to illustrate changing relationships with land. She shows that industrial life ways have fundamentally and negatively impacted Métis relations with land. Importantly, this argument avoids any reliance on tropes that believe contact with modernity renders Indigenous peoples 'inauthentic' (see Raibmon, 2005) by bringing forward descriptions from Métis autobiographies about their changing relationship with land and the various ways in which Métis peoples navigate these changes. Quoting from the biography of Elmer Ghostkeeper, Adese describes the transition as moving from "living with the land to living off the land," requiring Ghostkeeper to deny and suppress "his inclination to understand the world around him through the prism of relatedness, leading to his detachment from the land" (p. 62). Building on the work of Chris Andersen and Adam Gaudry, this contribution is also a counter to Métis histories authored by non-Indigenous writers that essentialize the Métis and their histories through racialized understandings of 'mixedness', without reference to how Métis actually understood their own lifeways through relationship to place and land.

Erin Freeland Ballantyne, in her article, positions Dechinta Bush University as a site of decolonizing praxis in her analysis of settler colonial capital and the history of the public education system in Denendeh. Arguing that Indigenous-led land-based education has the potential to undermine petrocapitalism in the north, she draws from Dechinta's five years of land-based programming to demonstrate that land-based learning supports individuals and communities ability to live and envision life outside of the enclosures of capital. While self-identifying as a settler and calling for settler people to take responsibility for settler colonialism, the site of decolonizing praxis she describes is inclusive of people and families who are both Indigenous and non-Indigenous. She articulates a site of multi-cultural decolonizing praxis where all students learn from the land in a shared space in which Indigenous epistemologies are central. She writes, "Building strong relationships of reciprocity with the land results in the crumbling of settler capitalism because it fundamentally shifts the relationships people experience and what they believe about who they are, how they are in relation to and with land, and what they believe to be true" (pp. 76-77).

Equally intriguing, Ballantyne argues that settler capital can and should be realigned and reconfigured to serve the resurgent goals of Indigenous communities. This is an important and probably contentious point in the world of anti-colonial activism, as many organizers and activists are vocally apprehensive about 'buying into' what's termed the non-profit industrial complex or funding mentality. This article addresses this question in an important way by grounding this dilemma within a space of learning that is reliant on funding from social innovation funders, but that has also consistently received evaluations from students who speak of Dechinta as providing a transformative experience.

One of the most comprehensive overviews of land-based programming is provided by Radu, House, and Pashagumskum. The three-year old "Chisasibi land-based healing program"

provides a space for those seeking to overcome addictions and mental health issues. Participants learn from two elders who combine counselling methods with "teaching Indoh-hoh[1] (Cree bush skills) and values embedded in the Cree language" (p. 88). This article shows how combining land-based activities can work in conjunction with other institutional requirements. The authors make two valuable theoretical contributions. First is an exploration of how ecological connectedness promotes good health. For Eddie Pash, one's connection to nature encourages reflection upon what healthy relationships look like. He states: "All through these traditional ways of living we respect nature. If you respect nature, you have to respect each other too, and you have to respect yourself… Respect is a gift in our traditions, because it is the way to be happy" (p. 94). Second, the article positions healing as a central component of decolonization. For the authors, healing is a "relational process that fosters spaces in which social and familial bonds are strengthened and make possible community conversations about what is needed to mend local relationships that is in line with Indigenous life-worlds" (p. 97). While this is important for the decolonizing journey of the community, it also creates a situation where: "healing fosters decolonization by empowering individuals and communities to engage in transforming the Indigenous-State relationship" (p. 97).

The article by Schreyer, Corbett, Gordon and Larson describes the development of a place names website using participatory mapping and crowd sourcing techniques. The website was created through a collaboration between the Taku River Tlingit and a team from University of British Columbia – Okanagan. The authors provide a description of their website, where users can manually upload place names onto the traditional territory of the Taku River Tlingit. This approach is guided by a commitment to stewardship as a guiding principle of decision making and promoting an appreciation of the close connection between the Tlingit language and the landscape. The authors describe the application of these values as being able to "talk to the land." The website has only recently been completed and the authors also provide a useful discussion of the potential pitfalls in such a project, such as the possible decontextualization of Indigenous knowledge from place. In response, they also point out how the website can be used in conjunction with people engaging in land based activities. In doing so, their honest and reflexive description of their project animates the kinds of difficulties encountered in the course of land-based initiatives which is instructive for others considering similar approaches to foster language learning and land-based connections.

Taiaiake Alfred details a cultural apprenticeship program in the Mohawk community of Akwesasne. For those familiar with the work of Alfred, this piece provides an important corrective to those who claim Alfred's theorizing is impractical in the face of societal and institutional constraints. Alfred details his work as principle consultant for the Mohawks of Akwesasne as they moved through the Natural Resources Damages Assessment process, remediation projects that are more commonly known as "Superfund" sites. While the Mohawks of Akwesanse clearly face legal and legislative barriers in undertaking the process, they were also able to "put forward and defend their understanding of cultural loss within the context of

[1] See the glossary at the end of their article for a detailed definition of the term.

their nationhood" (p. 135). The "superfund" process asks groups to negotiate settlements that remediate the natural environment and establishes a monetary settlement to compensate for lost economic opportunities. The Mohawks of Akwesasne were able to alter the terms of compensation to focus on how 'cultural injury' caused by pollution would be addressed by instituting measures and mechanisms aimed at restoring "relationships that are crucial to the expression of Mohawk identity" (p. 139). Alfred summarizes how the restoration plan for the Mohawks of Akwesasne created a land-based cultural apprenticeship program targeting youth, instead of the typical approach that asks groups to simply negotiate a monetary figure that will compensate for past harm.

Irlbacher-Fox focuses on what decolonization requires in settler colonial contexts. Drawing on a combination of personal experience and scholarly thought, Irlbacher-Fox traces the role settler privilege plays in blocking the establishment of structures that enable Indigenous peoples from having effective political power and control. Here we see how self-reckoning with settler privilege is fundamental to creating spaces of respect, in order to work towards creating a context of co-existence in which Indigenous knowledge and practice can safely circulate. Many of the contributions in this special issue describe Indigenous-funded or controlled and/or Indigenous generated initiatives; here, Irlbacher-Fox provides an important addition by focusing on a conceptual framework for how settler people can work towards enacting decolonization. For Irlbacher-Fox, in order to achieve respectful co-existence in the future, settlers must engage in forms of co-resistance that challenge settler privilege in the present. Irlbacher-Fox provides us with an important conceptual framework for settlers attempting to tear down institutional barriers, such as those described by Leanne Simpson's observations on mainstream education or Goode and Aldern's on curriculum and policy development.

The final two articles deal with sites of Anishnaabe resurgence. Unlike the other land-based programs described in the edition, both of these sites do not receive funding or material support from government, non-profit or corporate sources. Yerxa provides us with an examination of a recent resurgence project she is involved in. For the past two years, Anishnaabe from multiple communities have come together to Gii-kaapizigemin (we roast) manoomin (wild rice) neyaashing (at The Point). In this article, Yerxa characterizes this collective organizing as a 'Manoomin Movement' and, building on the work of Avery Kinew, Yerxa outlines how "making manoomin is a ceremonial act, as much as it is a practical act, as much as it is a political act" (p. 108). Roasting manoomin at the point is a political act because it foregrounds a history of dispossessing Anishnaabe jurisdiction in the area. In 2009, a ninety-nine year lease expired on The Point and Anishnaabe moved to reassert ownership and control. Four Anishnaabe Nations are pursuing the matter through the specific land claims process to regain control of The Point, an approach Yerxa problematizes. She states: "Through this process we automatically negate what we are trying to assert - Anishinaabeg nationhood - because we grant authority to the Canadian state to decide matters over our lives and our lands" (p. 109). As an alternative, people from four communities have come together to roast wild rice and 're-presence' themselves on their traditional territory. Yerxa calls for a 'Manoomin movement', where roasting wild rice at

The Point every fall provides the basis of a resurgence that has the ability to overwrite the land with Anishnaabeg law.

Continuing the themes explored by Yerxa, Gardner and Giibwanisi discuss the creation and maintenance of the Oshkimaadziig Unity Camp. The authors describe the camp as a land reclamation conducted in the same spirit as other camps such as Grassy Narrows, Kitchenuhmaykoosib Inninuwug, or Elsipogtog. One notable difference is that this camp arose in response to the settlement of a Specific Land Claim by four surrounding First Nations, instead of in response to incursions by resource extraction projects, and the authors contextualize the camp within Canada's attempt to retroactively legitimize its claimed sovereignty through the specific land claims process. Although the Oshkimaadziig Unity Camp is meant to challenge the legitimacy of Canadian law over the claim area, an action that aligns with Audra Simpson's (2014) theorizing on 'refusal', the camp is equally focused on internal acts of regenerating Anishnaabe connections to land. From this standpoint, the authors concisely discuss four modes of internally directed regeneration. First, establishing connection with land as a necessary aspect of Anishnaabe ceremony and governance. Second, the camp as a method of passing on teachings to the next generation. Third, the camp as a method of establishing just relations between Indigenous and settler peoples. And, finally, the camp as a source of alternative social relations and practices that model a more just world.

To conclude, the special issue takes a more creative turn. Tłı̨chǫ writer and storyteller Richard Van Camp and our editor, Maskîkow graduate student and Dechinta Program Manager Mandee McDonald, provide us with two pieces of creative writing, fiction and non-fiction respectively. Van Camp's story introduces us to two young cousins, recent high school graduates facing the next stage of life. We follow the young men on a hunting trip with their Father/Uncle. Van Camp's piece is an important illustration of how spending time on the land allows generations to connect and form bonds, but it also depicts the land as a source of joy and happiness for the characters. This same theme illuminates the creative non-fiction piece written by Mandee McDonald. Her story telling approach is enlivened by the emotions of her experiences on the land, which in turn determines the flow of her narrative: Moose Hides, Bears, Fish, and Hunting. McDonald's account of her experiences on the land brings some of the broad theoretical insights from the issue into focus as they circulate in her lived experience. Her story situates the land as an animating force of teaching and learning. McDonald also reminds us that to build self-determining futures, Indigenous peoples must find ways to practice governance that centres love for the land and each other as the basis of the courage necessary to see it through.

Future directions

Although the contributions made in this issue are substantial and important, many readers will no doubt have questions or concerns about the lack of discussion on some issues. We would like to reflect on three issues that deserve further attention in future research on land-based education. These are gender, spiritual values, and intersectional approaches to settler colonialism.

Gender is touched upon by a number of the authors, but it is not the primary focus of any author. Discussing the story of Kwezens, a young girl discovering maple syrup, Simpson points out how the discovery could only be made in a context where observation and creativity are fostered in young children, and trust is reciprocated between the young girl, her family and other community members. In this story, trusting the teaching of the young girl is central to Nishnaabeg intelligence. Many other contributions bring forward and value the voices of women, and those wanting to think about those issues will find important contributions to think about, especially in the contributions of Adese, McDonald and Irlbacher-Fox. Yet, as a whole, the issue reveals rather than addresses the need for more thoughtful consideration towards gender. These considerations include focusing on gender relations in contemporary land-based contexts, how we might queer land-based pedagogy, and discussing the role gender plays in understanding the land as a source of knowledge.

Such analyses might illustrate how the internalization of colonial patriarchy and heteropatriarchy in Indigenous communities informs contemporary gender relations, values and roles when it comes to land-based practices - specifically regarding ceremony and harvesting protocols. The prevalence of violence against women in land-based contexts is also an unfortunate reality requiring critical attention, support and awareness, as land-based educational settings are often remote and novice learners or practitioners can be in vulnerable positions of dependence and isolation.

Spirituality or spiritual beliefs are clearly infused throughout the issue, or at least seem to inform many of these articles. In particular, Radu, House and Pashagumskum speak to the spiritual healing that occurs at Chisasibi's land-based healing program, stating that "the reciprocal and dialogic relationship with nature provides not only the material needs but also the ethic, moral and spiritual underpinnings of living a good life" (p. 93). Spiritual healing and grounding is an important benefit that comes with cultivating a strong relationship to land. This is more than a fortunate by-product of engaging in land-based practices. Teachings and practices based in spiritual values are critical components of learning and teaching on the land. Protocols that demonstrate respect and reciprocity, such as putting down tobacco, making offerings, ceremonies, or particular ways of harvesting or treating unused animal parts, are a part of Indigenous land-based education. The question that arises from this discussion is, how does the internalization and adoption of Euro-western religious values impact our abilities to pass on traditional land-based knowledge that is rooted in Indigenous spiritual values, and how are the knowledge and practices themselves potentially altered?

Many of the articles in this issue deal with settler-Indigenous relations, and the impact of settler colonialism in our contemporary context. The discussions of settler colonialism within the issue implicitly revolve around white settler – Indigenous relations. We do not have contributions that broach the much discussed topic of how non-Indigenous people of colour do or do not fit into the concept of settler and how this impacts discussions of land-based education and solidarity against colonialism. Nor does the issue deal with how Indigenous critiques of settler colonialism intersect with other anti-colonial critiques and radical traditions connected to

place. Various other intersections with other axes of oppression could be pointed out here, such as racism, heteronormativity, ablelism or ageism and the list could go on. It might be easy to write these concerns off as beyond the scope of discussing Indigenous land-based pedagogy but recent scholarship on settler colonialism and within critical Indigenous studies has continued to make it clear that we must bring intersectional and nuanced approaches to the fore of our analysis.

Land-based education and funding

Finally, we cannot ignore the issue of funding and institutional capacity for land-based initiatives. One of the reasons we believe Leanne Simpson's article is a vital read for people working in Indigenous education is because she calls on us to increase the energy we devote to fostering sites of land-based education. Yerxa and Gardner & Giibwanisi show us how it is possible for people to undertake these activities without funding from mainstream institutions. These and other grassroots initiatives provide us with an important baseline for those who may argue that we lack the funds to undertake land-based practices.

Yet, simply saying funding is not an issue ignores how economic disparities within Indigenous communities gives those with resources greater access to the land. This is a tension brought to light by Eden Robinson (2008), "For instance, you have to be fairly well-off to eat traditional Haisla cuisine. Sure, the fish and game are free, but after factoring in fuel, time, equipment, and maintenance of various vehicles, it's cheaper to buy frozen fish from the grocery store than it is to physically go out and get it" (pp. 214-215). Freeland also discusses this phenomenon, in her discussion of students who have grown up in northern communities, where histories of dispossession have hindered young people from acquiring bush skills and denied them access to the land.

This brings us to the dilemma outlined by Coulthard (2013) in regards to land-based practices:

> Although all of these place-based practices are crucial to our well-being and offer profound insights into life-ways that provide frameworks for thinking about alternatives to an economy predicated on the perpetual exploitation of the human and non-human world, [these practices require participation in capitalist economies] in order to generate the cash required to spend this regenerative time on the land.
>
> A similar problem informs self-determination efforts that seek to ameliorate our poverty and economic dependency through resource revenue sharing, more comprehensive impact benefit agreements, and affirmative action employment strategies negotiated through the state and with industries tearing-up Indigenous territories. [Although these resources could be spent on cultural revitalization, they are] entirely at odds with the deep reciprocity that forms the cultural core of many Indigenous peoples' relationships with land.

Freeland-Ballentyne makes a valuable first foray into addressing this dilemma but more work needs to be done to explore the forms of education that are capable of fostering Coulthard's call for the creation of "Indigenous political economic alternatives." At the very least, this will mean creating forms of education that allow us to teach people within Indigenous philosophies and pedagogies, that in turn will guide how we select economic activities to engage in, how we organize work and labour within our economic activities, and how we distribute the products and resources generated through our economic activities.

To create these sites of education we must also think about how we can push forward institutional capacity. Although Indigenous peoples as a whole remain in an impoverished condition and resources are scarce, furthering land-based education is a necessary undertaking. Increasing capacity to offer land-based education is going to require a discussion of how various First Nation governments and organizations might cooperate with each other in order to foster these sites of learning. This is going to require moving beyond a practice where individual First Nations governments undertake programs and services in isolation from each other, as well as in isolation from other parts of the Indigenous political landscape such as urban communities, and Métis and non-status people. As Giibwanisi states in regard to the Oshkimaadziig Unity camp, "We want to be a connector between the city and the land. The broader work of being a connector is bringing together community-building strategies in urban areas and community building work at Oshkimaadziig. Settler colonialism, here and now, affects and implicates us all" (p. 173).

Of course, this does not mean centralizing or standardizing the delivery of land-based education. While we will learn from each other, the delivery of land-based education must always be rooted in place and the histories of Indigenous peoples from those places. Rather, the call to consider how we foster cooperation in service of furthering land-based education is a call to consider how we practice forms of governance between communities. While grassroots initiatives will always remain important within land-based learning, the institutional funding that Indigenous peoples do have control of must also contribute to land based initiatives. Typically, Band Councils in Canada have political authority over a membership and territory (both reserve and traditional) that is held in exclusion to other Band Councils and other aspects of the Indigenous political landscape. If we maintain these rigid boundaries, First Nations governments will not only limit their ability to support land-based education, but we will hinder traditional forms of governance that fostered connections between communities. As James Anaya (2004) argues: "Any conception of self-determination that does not take into account the multiple patterns of human association and interdependency is at best incomplete and more likely distorted" (p. 103). In short, we need to find ways for multiple communities to weave their authority together in service of fostering sites of land-based education.

Conclusion

Although we feel this issue is a valuable and important contribution to the literature on land-based education, it only represents a beginning. Rather than filling a gap in the literature on Indigenous land-based education – a gap far too large for any one volume to fill – we hope this issue provides a platform for further study. The research of the editors, as well as the editorial process of this issue, has made it clear that further studies and publications focusing on land-based education are required. Longitudinal evaluations of existing land-based healing and education programs that indicate the impacts these experiences have on participants would be incredibly useful research. Such findings would prove useful for organizations in their efforts to secure funding for programs already known and understood to be vitally important. While a diverse range of land-based initiatives is contained in this special issue, this edition only represents a small sample of efforts that we are aware of. This means there is a great need to continue and further the conversation moving into the future.

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Environmental Racism and Dispossession

"But I Know It's True": Environmental Risk Assessment, Justice, and Anthropology

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"But I Know It's True": Environmental Risk Assessment, Justice, and Anthropology

Melissa Checker

Few social issues depend as heavily on scientific information as environmental problems. Yet activists, governmental officials, corporate entities, and even scientists agree that much of the science behind environmental risk assessments is controversial and uncertain. Using a low-income African-American neighborhood as a primary case example, this paper illustrates in concrete terms how environmental risk assessments can exclude the experiences of the poor and people of color. Further, race and class experiences intensify a community's susceptibility to, and perceptions of, risk. These experiences and perceptions underpin the ways that communities contest scientific biases in everyday practice. After discussing alternative approaches to contemporary risk assessment that combine ethnographic research with other kinds of scientific expertise, I conclude by offering a four-fold model for resolving some of the problems raised by this essay. This model draws upon multiple kinds of knowledge bases and includes research, advocacy, policy recommendations, and theoretical innovation.

Key words: environmental justice, science and culture, racism, United States

In September 1993, over 200 residents living in the Hyde Park area[1] of Augusta, Georgia gathered in the Jenkins Elementary School cafeteria. Residents had come together that night to attend a meeting with officials from the Environmental Protection Agency (EPA). The meeting's purpose was to announce the results of a $1.2 million EPA study of the area's air, groundwater, and soil. Data from this study had provided the basis for a health consultation, compiled by the Agency for Toxic Disease Registry (ATSDR), the results of which were also to be discussed that evening. The health consultation was of primary concern to meeting attendants, as it would determine whether and to what degree their health was at risk from environmental contaminants. Although most of the people living in the area were homeowners, they could not afford to move unless they sold their homes for a competitive price. Rumors of contamination and the area's general economic and social decline (Hyde Park was especially known to be a drug-dealing hub) made selling homes extremely difficult. The results of the ATSDR's risk assessment would determine whether or not residents would find assistance—either from the U.S. government or through legal action—to move out of a neighborhood that they firmly believed was contaminated by the surrounding industries.[2]

The EPA's Field Investigation divided the Hyde Park area into five neighborhoods. Investigators found high levels of arsenic, chromium, and dioxin in the surface soils and groundwater of two of those. In all five neighborhoods, they found significant levels of PCBs and lead. However, the ATSDR announced that night that these chemicals did not constitute a significant threat to residents' health unless they "inadvertently ingested it on a daily basis for many years" (Health Consultation Final Release 1994).[3] Residents received this news in a fury. At one point in the meeting, one man presented the EPA's division director with a four-gallon bucket of sludge he had just taken from the ditch in his backyard. Offering the EPA official the sludge, the man asked him to smell it and then say whether he would want to live anywhere close to it. The crowd in the packed cafeteria shouted, "Answer, answer," and the official replied, "No." Over the next few minutes, tensions continued to escalate until one man threw a chair onto the Jenkins stage, marking the culmination of three year's worth of mounting frustrations, tensions, and fear.

When they tell this story, Hyde Park residents shake their heads and chuckle. They argue for a little while over who threw the chair. Yet, eight years later, they still puzzle over why the EPA and its sister agency, the ATSDR, are unable to correlate unusually high levels of contaminants with high

Melissa Checker is assistant professor of Urban Studies at Queens College, City University of New York. *She is eternally indebted to the residents of Hyde Park and others who participated in this research. She also acknowledges that she received crucially helpful comments on earlier drafts of this essay from Laura Helper Ferris, Satish Kedia, Katherine Lambert Pennington, Charles Utley and Nora Haenn, who of course, bear no responsibility for the final result. She is also appreciative of anonymous reviewers' insightful critiques. An earlier version of this paper was presented Environment, Resources, and Sustainability: Policy Issues for the 21st Century Policy Conference organized by Peter Brosius and Kendall Thu. A grant from the National Science Foundation (Doctoral Dissertation Improvement Award 9806988) made on-site ethnographic research possible. Support while analyzing the research was provided by a New York University Dean's Dissertation Award and a Morris K. Udall Dissertation Fellowship.*

local rates of certain illnesses. "But I know it's true" is the oft-repeated refrain of environmental justice communities across the country, who similarly find dangerous chemicals in their soil, air, or water. Although these people know that they and their neighbors suffer from uncommon health problems, they have been unable to secure scientific proof that the chemicals are the cause. Because governmental and legal decision makers rely on environmental science to determine whether they are going to assist environmental justice communities, scientific methods and procedures are for some people, a matter of "life and death."

Over the past two decades, the environmental justice movement has called attention to the disproportionate siting of hazardous waste facilities in neighborhoods of color. In so doing, environmental justice activists have expanded their definition of the environment to include all of the resources (i.e., adequate housing, education, employment, etc.) to which they have historically been denied access (Adams, Evans, and Stein 2002; Checker 2002, 2005; Cole and Foster 2001; Novotny 2000). Similarly, environmental risks include an array of social categories—health, justice, science, and community—all of which are culturally contingent and socially constructed (Haenn 2003). Because it is beyond the scope of this paper to address all of these categories in depth, I limit my focus to science, environment, and justice. From that vantage point, I also problematize the ways that hazards and risks are currently defined. It is my contention that, as it is currently practiced and conceptualized, environmental science does not necessarily serve environmental justice (Brullel and Pellow 2006).

Few social issues depend as heavily on scientific information as environmental problems (Kriebel et al. 2001). Yet activists, governmental officials, corporate entities, and even scientists agree that many scientific aspects of environmental risk assessment are uncertain, mainly because they are based upon probabilistic information (see Cutter 2002; Finkel 1994; Israel 1995; Kroll-Smith and Floyd 1997; Montague 2003; Scoones 1999). Such uncertainties are all too clear to members of communities struggling for environmental justice, whose perceptions of risk contrast sharply with official evaluations of risk. In recent years, environmental anthropologists have begun to examine the subject of risk more closely. In particular, much important work has been done on how different societies (especially on a national level) perceive, categorize, and prioritize risk.[4] Fewer anthropologists, however, have entered debates over risk-assessment methodologies and practices.[5]

This paper demonstrates how an ethnographic methodology complements studies of risk analysis and risk perception. Ethnographic research cannot replace epidemiological studies. However, as I will show, it sheds light on some of the biases that shape risk assessment and environmental science. Such research becomes a valuable tool in developing less biased, more accurate assessments of risk (see also Brown 1992, 1995; Brown and Mikkelsen 1997; Brullel and Pellow 2006; Clapp 2002; Griffith 1999).[6] Using a low-income African-American neighborhood as a primary case example, I first illustrate how risk assessments often fail to account for the experiences of poor people and people of color. Second, I show how, aside from varying internationally, risk perceptions also vary intranationally, according to socioeconomic factors. More specifically, I contend that race and class experiences intensify a community memebers' susceptibility to risk and their risk perceptions. By demonstrating how such experiences underpin the ways communities contest environmental science, I illustrate the cultural contingency of conceptions of environmental justice.

I conclude that eventually, environmental justice necessitates the reformulation of certain environmental science practices and conceptualizations. I thus finish the paper by exploring how anthropologists can build upon and facilitate the efforts of community groups in developing more holistic and comprehensive means of assessing environmental risk in contaminated communities. While we work to reform risk assessment, I also propose that anthropologists and other environmental scholars draw upon their combined research and knowledge to theorize new paradigms that obviate the need for risk assessments and find alternative, realizable avenues for an environmentally just society.

Anthropological Perspectives on Risk Assessment

Hyde Park residents joke that they live on the wrong side of *two* tracks. In other words, their neighborhood is lined on both its east and west sides by railroad tracks. For approximately 30 years, a large, unsightly junkyard abutted the backyards of residents living on Walnut, Hyde Park's westernmost street. Just down the street from the junkyard is a Georgia Power plant, and beyond it rises a large smokestack belonging to Thermal Ceramics, an industrial ceramics factory. About a half a mile away lies the site of a former wood preserving factory, which closed in 1988 several years after it was found to be leaking chemicals into its immediate vicinity. Two auto repair shops and a brickyard complete the neighborhood's industrial perimeter. Inside that perimeter, the homes of approximately 200 mostly low-income African-American families spread across seven streets. It is no wonder that Hyde Park residents refer to their neighborhood as a "toxic donut."[7]

Hyde Park's development began in the 1940s. Only six miles from the heart of downtown Augusta, the neighborhood lay on the edge of the city and was within walking distance of a number of local industries. Because the land was swampy and had extremely low value, African-American sharecroppers from nearby rural areas could afford to buy it. Lots were relatively large, and families were able to raise enough vegetables to sustain them while working in the surrounding factories, or as domestics in Augusta's wealthier neighborhoods. As people settled in, they invited relatives from the country to join them, and many households in Hyde Park remain "kin" to one another.

Despite its proximity to downtown, Hyde Park did not have running water, gas lines, streetlights, or paved roads until 1970. Residents pumped their own water and used outhouses. This lack of infrastructure, however, paled in comparison to the fact that the neighborhood would flood with each heavy rain. Floods were so bad that residents could not get in or out of the neighborhood and children could not get out to attend work or school until the waters receded. In 1968, one resident initiated the formation of a neighborhood association called the Hyde and Aragon Park Improvement Committee (HAPIC) to lobby for improved living conditions. Within two years, HAPIC had made itself known to county commissioners and other local lawmakers and successfully secured running water, paved streets, street lights, sewer lines, and drainage ditches.

Throughout the 1970s and 1980s, however, as the blue collar jobs that had helped keep Hyde Park families afloat left Augusta, the neighborhood began to decline. In 1998, approximately 61 percent of Hyde Park's 200 families owned their homes; yet, 77 percent of them earned less than $20,000 per year (Sociology Research Methods Students 1998). Some younger residents had turned to drug dealing, and the neighborhood became a popular place to purchase crack cocaine. Hyde Park also appeared rundown: while some houses were freshly whitewashed, others had fallen into startling states of disrepair.

In 1988, routine soil tests at Southern Wood Piedmont (SWP), a wood preserving factory located approximately one-half mile from Hyde Park, revealed unsafe levels of arsenic, chromium, and lead in the soil surrounding the plant (Governor's Task Force 1996). Soon after, the EPA ordered a major cleanup of the factory area. Some time around 1990, HAPIC leaders discovered that the mostly white residents of Virginia Subdivision (another neighborhood bordering SWP) had filed a lawsuit charging SWP with contaminating their properties. The plaintiffs in this lawsuit had just received a small settlement. Recognizing that ditches from SWP's property ran directly into Hyde Park, HAPIC leaders began alerting their neighbors to possible contamination. Soon after, two local attorneys approached them and started to organize a class action lawsuit. Hyde Park residents believed that they had been left out of the initial settlement because they were black.[8] HAPIC, which had always considered itself a civil rights organization, now made environmental justice its main priority.

Methods

Eight years later, in September 1998, I began 14 months of fieldwork in Hyde Park. During that time, I volunteered as a full-time staff member for HAPIC and focused my research on that organization. I found that in maintaining the broad definition of the environment I described earlier, HAPIC tackled a host of neighborhood problems including education, unemployment, crime, and drug trafficking. They also held after school tutoring and summer youth programs for children, neighborhood cleanups, and holiday food giveaways. In short, nearly all residents of the neighborhood came into contact with HAPIC in one way or another. Although, HAPIC's membership is open to anyone, most of its participants live in Hyde Park.[9]

Participation in the group tends to wax and wane. For example, the 1993 meeting I described earlier was packed. In 1998 and 1999, when public officials were scheduled to appear or when large-scale projects (such as a $200,000 EPA Brownfield Grant, which I will describe later) were addressed, as many as 50 members attended. On the other hand, when there were no specific or pressing issues being discussed, I attended meetings with a dozen people. In all, a cadre of approximately ten residents stayed consistently active.

As a volunteer staff member, I participated in all of HAPIC's events and spent many hours working and socializing in the neighborhood. My volunteer position also allowed me access to HAPIC's records, including meeting minutes, notes, past newsletters, flyers, and correspondence. During fieldwork, I got to know many members of the Hyde Park community, as well as a number of environmental justice activists from across the United States (and especially the South), with whom HAPIC had affiliations. Since the official end of fieldwork in 1999, I have returned to Hyde Park eight times to continue my research. I have also continued to develop my relationships with environmental justice activists in other parts of the South and Northeast. In addition to numerous informal conversations about the matters discussed here, I have conducted approximately 26 interviews with key informants, several of whom I have interviewed two or three times. Interviews have taken place in people's homes, in the Hyde Park community center, and over the telephone. With permission, all interviews have been tape recorded. To develop my history of environmental justice in the area, I collected newspaper articles on neighborhood events both past and present and analyzed them along with examining HAPIC's archival records. The critique I turn to in the following section is based upon this ethnographic and archival research, as well as academic literature on environmental risk assessment.

Risky Business: Critiquing Environmental Science Methodologies

When the EPA conducted its 1993 study to determine the degree to which Hyde Park had been contaminated, testers took 93 soil samples and 14 groundwater samples. They then isolated the chemicals they found and measured them. Next, they compared chemical levels to EPA/ATSDR standards for toxicity. While most levels fell below the toxicity threshold, one area had an arsenic level of 59 mg/kg (ATSDR 1994). The ATSDR has determined that a cancer risk exists at 1.5 mg/kg of arsenic, ingested per day; however, their final assessment was that there were not enough instances of levels in the hazardous range to constitute a significant health risk. The agency based its conclusions upon a typical four-stage risk

assessment methodology: hazard assessment or identification; hazard characterization or dose-response analysis; exposure assessment; and risk characterization. The final stage in this process deals with consolidating and communicating the findings of the first three, which are ostensibly its most objective. Yet, as I will argue in the following section, each of these phases can be biased or based on uncertain assumptions.

Lab v. Real World: Determining Which Chemicals are Hazardous

Hazards identification determines whether a particular substance causes a disease or other adverse health effect. Generally, hazard identification focuses on one health effect at a time, called an "endpoint." Endpoints can include cancer, reproductive and developmental disorders, central nervous system symptoms, trauma, infections, and rashes (Israel 1995:483). Currently, it is up to individuals (who may be subject to a variety of influences) to decide which endpoint to use. For example, because it tends to be particularly sensitive, is easy to identify and is a prominent public concern, cancer is frequently chosen as an endpoint over other possible harms (Anglin 1998; Israel 1995).

The next stage of the risk assessment process moves to a lab to study dose response. These experiments are primarily based on animal studies and then extrapolated to humans, despite the fact that animals and humans can react very differently to chemicals. The tests are also performed at high doses and then extrapolated to low dose situations; yet, this process, too, is plagued with uncertainty. First, because the costs of such tests are high, only a few hundred animals are used. Second, individual chemical sensitivities vary widely in both animals and humans—many chemicals often leave large segments of a population untouched (Dark 1998; Tesh 2000:27-28). The smaller the pool of animals, the more difficult it is to spot adverse health effects. Third, many lab rodents are bred to be genetically similar. This uniformity makes them even less comparable to genetically and geographically diverse people (Douglas and Wildavsky 1982; Schettler, et al 2002;).

Most studies extrapolate using healthy white male workers as a standard (Israel 1995:486). The ATSDR study on Hyde Park, for instance, analyzed fish samples from a nearby fishing pond. Estimating the likelihood that a 70 kg adult who consumed 18 grams of fish a day for more than one year would get sick, they found that the fish posed no danger (Agency for Toxic Disease Registry 1994). However, it is well-known that people of color (including children, the elderly, and sick people) consume closer to 20 to 24 grams of fish per day (West et al. 1992). In other words, standard comparison techniques fail to provide information on the range of ways women, children, elderly, or already sick people—far more susceptible subgroups—might react to a chemical.

Fourth, environmental hazards are studied under "normal" conditions in laboratories rather than as they are released or disposed of. As a result, scientists often base their assessments of risk on conditions that are actually very different from those a particular community is experiencing (Novotny 1998:141). Finally, high dose studies concentrate on immediate responses to exposures. But, many diseases have long latency periods and their link to harmful chemicals may not become evident for many years. For example, birth defects have especially delayed onsets, and many cancers do not show up for 20 to 40 years. Thus, it is difficult to estimate a chemical's potential for harm without studying it over long periods of time (Fitchen 1988). In sum, although scientists might be able to establish cause and effect relationships between one chemical and one disease under controlled conditions, the chances of establishing definitive cause and effect relationships in the real world are slim (Montague 2003).

A Matter of Multiplicity: Assessing Exposures

As difficult as it is for scientists to resolve the precise level at which a chemical will pose a risk to humans (Wigley and Shrader-Frechette 1996), perhaps the most significant problem with risk assessment comes in its third phase—exposure assessment. When asked to evaluate environmental exposures in a particular community, environmental scientists follow the same procedures I mentioned earlier, isolating data and focusing on one chemical at one time (Anglin 1998; Bryant 1995; US EPA 2003; Wigley and Shrader-Frechette 1996). This procedure thus emphasizes the determination of whether one chemical is harmful, at what dose it is harmful, and whether community members are exposed to the chemical at that dose (Kriebel et al. 2001). However, many environmental justice communities are exposed to dozens of different chemicals from a number of different existing and abandoned factories, not to mention particles emitted from cars, trucks, and trains (Novotny 1998).

For example, because Hyde Park is located between two sets of railroad tracks and adjacent to a highway, its residents inhale truck and car emissions on a daily basis. As I mentioned, approximately six factories and plants surround Hyde Park, and nearly all of them produce some kind of toxins. In addition to living in the middle of these factories, many residents have worked in them. According to these people, their working conditions were far from hazard-free. For example, those who worked in the industrial ceramics factory report leaving their jobs covered in a fine, white dust. As one man said, "black as I am, I used to come out white." Others who worked at the wood preserving factory complained of frequent headaches and suspicious tasting water at the plant.[10]

Up until 1970, when the neighborhood received access to public utilities, a common chore for Hyde Park children was to go into SWP's field, gather leftover creosote-treated wood chips, and then take them home to fuel wood-burning stoves. And, until Hyde Park got its water lines, residents pumped bathing and drinking water from underground wells in their backyards. Annie Wilson, one of Hyde Park's first residents recalled: "That water one year, it was stinking. And we really hadn't paid it that much attention.... In Aragon Park, my niece

was living over there, one time, that water was so stinking they couldn't take a bath in it."[11]

Regular exposure to groundwater occurred outside of people's homes as well as inside. As I mentioned, Hyde Park is a flood plain, and major floods have been so bad that residents have literally had to leave the neighborhood by boat. Particularly severe floods often left suspicious debris in their wake. Hyde Park resident David Jackson remembered: "My yard used to flood out more than anybody in this whole area because all the water from the junkyard would flow right in my yard. And when it leave, it leave all kinds of grease-filled and black looking dirt with the oil and stuff that just shot up in here."

Jackson and his neighbors, however, did not seriously question the effects of these floods and their debris for a number of reasons. First, they had grown used to the inconveniences of living in a neighborhood surrounded by industry. Second, historically, issues other than the environment have traditionally been a priority issue for African Americans (Checker 2002, 2005). Third, the industries producing flood debris and odiferous water had for many years, put food on residents' tables and paid their bills.

However in 1990, a particularly bad flood swept over Hyde Park and left in its wake a foul smelling bluish-white mud and houses full of corroded furniture. Johnnie Mae Brown remembered the "high water" of 1990: "Most people in the neighborhood didn't even think about [the environment] until we had that flood. After the flood we knew that something was wrong because that water, everything that the floodwater touched, it was no good no more." Hyde Park residents were thus exposed to chemicals in their workplaces, in their homes, and outside of their homes over a period of several decades before they began to agitate for environmental justice.

The reason for this is that many residents did not link the everyday nuisances described above to local health problems. Often, residents told me they "were too busy trying to live" to address such issues. In addition, activists of color traditionally did not prioritize the environment on their agendas for social change–rather, they were more concerned about housing, schools, and employment (Checker 2002, 2005). However, once they heard about the wood preserving factory's closing, Hyde Park residents realized that their natural resources were subject to the same discrimination as other urban resources. Thus, they began to frame "the environment" as another civil rights issue. As I demonstrate later in this essay, these framings then shaped how residents disputed scientific claims and interacted with agency officials. For now, I will return to my arguments about the biases of risk assessment procedures.

Not only do risk assessments generally overlook the kinds of multiple exposures that Hyde Park residents faced, but even if those exposures were included, scientists are still only beginning to learn about the cumulative effects of toxins. In recent years, the EPA has acknowledged the need to address cumulative risk, and has begun to develop mechanisms for its inclusion in the risk assessment process (these steps are discussed later in this essay). However, the EPA also recognizes that it has only taken initial steps, partly because methodologies for the quantification of combined risks are only in their nascent stages (US EPA 2003).

Making things even more complex, the illnesses that many environmental justice communities like Hyde Park complain of, such as developmental disorders, asthma, and circulatory and respiratory problems generally result from a range of genetic, environmental, and social factors. Indeed, in some cases, they may not be directly related to a particular chemical; but these health disorders are exacerbated by toxic exposure. For example, two common health problems in low-income African-American communities are hypertension and diabetes. Hypertension can lead to kidney disease, and diabetes creates metabolic impairments. Both situations then inhibit the body's ability to process toxic exposures (Israel 1995:506). In sum, measuring whether the level of contaminants in one ditch on one particular day is linked to one particular disease provides little insight into the cumulative picture of whether, and to what degree, a community's health is at risk, especially if that community faces a host of other risks related to their socioeconomic status.

Scientific Slants

Despite all of the uncertainties and biases I have mentioned, our social valuations of science persistently overestimate its abilities to provide an objective resolution to issues like environmental risk assessment. In part, because capitalism underlies the production of scientific knowledge (especially in the area of hazards research), its accumulation is both materially and socially valued (Escobar 1994). Moreover, societies that place a high value on science see scientific knowledge as a one-way process, where information flows from scientists to passive recipients (Martin 1984). Rather, as environmental justice activists frequently point out, science is embedded in power relations and subjective interests (Brullel and Pellow 2006:103). Questions about the neutrality of science are not new (Bryant 1995; Dove 2001; Franklin 1995; Haraway 1989, 1991; Janasoff et al. 1995; Nelkin 1987, 1992; Satterfield 1997). However, it is worth briefly revisiting this well-trod terrain to reiterate the degree to which environmental science, in particular, can be influenced and thus biased by cultural, political, and economic factors.

As mentioned earlier, much of environmental science is based on probabilities that certain chemicals will cause harm. But as Mary Douglas and Aaron Wildavsky emphasize in their classic cultural analysis of risk, "There is a delusion that assigning probabilities is a value-free exercise" (1982:71). Other studies clearly affirm this point. For example, in addition to choosing which endpoints to study, risk assessors also choose from a variety of toxic indices as they develop their analyses. A recent study conducted by several geographers and reported in the *American Journal of Public Health* applies six toxic indices to the same area and finds that they yield widely varying results. The study concludes that "comparing

findings across studies and developing generalizations about levels of risk to low-income and minority populations is difficult, if not impossible" (Cutter et al. 2002:420). The fact that individual risk assessors can choose which indices and models they will base their evaluations on raises important questions about cultural constructions of science and the biases that may lie hidden in those constructions (Oliver-Smith 1996:320). For instance, when assessors estimate the risk that a contaminant poses to a community, in addition to making assumptions about the age and size of the "typical" exposed individual, they must also presume what kind of clothes that person wears and how sensitive he or she will be to that pesticide. If assessors are unfamiliar with the community they are evaluating, they may rely upon cultural stereotypes when determining such factors.

More concrete biases also underlie risk assessments and the development of research on toxic chemicals more generally. For example, most risk assessments are prepared when a business, an agency, or a corporation seeks to initiate or continue a hazardous activity. These entities hire the risk-assessment agency to conduct their evaluations, making assessors highly vulnerable to pressure (O'Brien 2000). Political motivations can also weight scientific testing. In 2006, this issue came to an unprecedented head when union leaders representing EPA scientists issued a letter to the EPA administrator alleging that pesticide-industry officials and agency managers were pushing them to skip steps in their testing, compromising "the integrity of the science upon which agency decisions are based" (Fialka 2006: ; Griffith 1999).[12]

If politics and economics can substantially influence the evaluation of a community's environmental risks, it is not surprising that we find significant disjunctures between community risk perceptions and official risk assessments. The next section addresses those disjunctures and how one local community contested them.

Through the Magnifying Glass: Local Perceptions of Risk

Over the years, Hyde Park residents have recognized that environmental science can be biased. Early on in their environmental justice struggle, they realized that, as Revered Charles Utley said, "If I set up the test and the test instrument, I can pretty well dictate the outcome." Accordingly, HAPIC activists disputed environmental science in a variety of ways. Such challenges exemplify how residents and activists of Hyde Park perceive environmental risk through the lens of their race and class experiences.

Challenging and Critiquing Science

HAPIC activists did not passively accept the EPA's 1993 test results. First, they investigated the consulting firm that conducted the study and discovered it had contracted with the polluting factory in the past. They then filed a complaint with the EPA. Second, the EPA designed its tests according to the protocols I have described, which do not generally include community input. Hyde Park residents immediately called attention to this fact, arguing that it skewed the test's results. For instance, in many cases, in collecting surface soil samples, testers had actually sampled new dirt that residents had imported and put over their old, contaminated dirt. David Jackson explained, "They sent out some people to do that testing out here and they scooped a little bit of dirt with spoons on the ground. Hey, I done put dirt on top of dirt trying to get rid of the floods and things we been having out here for years." As Jackson describes, he "put dirt on top of dirt" to protect his home and his family. After this instance, Hyde Park activists found their own testing agency and conducted another set of soil studies to counter the EPA's. This time, they directed boring depths and locations, indeed, these tests yielded much more dangerous chemicals levels, which were later determined to be hazardous to human health. Here, activists recognized the limitations of scientific objectivity and accuracy; yet they also recognized that science is often best contested on its own terms.[13] By combining local knowledge with scientific expertise, they believed that, at the very least, they could raise the level of the tests' accuracy.

Activists also found that health officials seemed to be biased against them. Reverend Bobby Truitt, for example, described how at an early visit to the Richmond County Health Department, officials acted "hostile" and told residents that their health complaints were "a figment of [their] imagination." Similarly, other environmental justice activists I have worked with find that health officials often allow stereotypes about the poor eating, smoking, and exercise habits of low-income minorities to cloud their willingness to link health problems with toxic contamination (Checker 2001). As one man succinctly put it, "Often those [health officials] who are passing judgment on the community do not live in the community."

In 1991, Richmond County hired an African-American health commissioner. Activists immediately believed that, because he was black, the new commissioner would be more sympathetic to their situation. Indeed, after presenting him with their case, they convinced him to conduct a mortality study that compared death rates in Hyde Park to those in other neighborhoods with similar socioeconomic demographics. The study concluded that Hyde Park had higher than average death rates due to cancer and circulatory and respiratory diseases (Dever 1991). Activists also lobbied their black elected officials on a local and national level with some success. In 1992, state representative Ron Brown persuaded the governor to appoint a 13-member task force to look into the Hyde Park situation. Brown oversaw the appointing of task force members. He assigned the new health commissioner as its chair and included four neighborhood residents along with several doctors and a member of the Georgia Environmental Protection Division.

In the end, the Task Force concluded that it could not find sufficient evidence to support claims of contamination.

However, an appendix to the report, which is almost as long as the report itself, contains 10 rebuttals—half are written by physicians or researchers and one is from the Task Force Chair himself. In that rebuttal, the health commissioner notes that he has "heard about too much illness and observed too much death" in the Hyde Park area. He also criticizes the EPA's soil testing study pointing out that EPA scientists themselves implied that their model may have been inadequate. And he highlights the fact that initially the ATSDR found no exposure from well water, but after community complaints, the agency retested the water and reversed its findings. Finally, the commissioner pointed out flaws in environmental science more generally. He asks,

> Has it occurred to anyone that, just maybe, science is too far behind to adequately address the effects that hazardous chemicals have on humans?...Is 10 parts per million (ppm) of a chemical normal for me who weights 195 pounds and also my daughter who weighs 40 pounds, and is normal the same whether we are exposed one year or ten years? (Governor's Task Force 1996:2).

In his official recommendations to the governor, the health commissioner calls for a full medical evaluation of the residents of these neighborhoods, and for their relocation while the studies are conducted. Subsequent to the report's publication, he applied for and received a grant from ATSDR to conduct a long-term health study.[14]

A Heavy Knot

The fact that HAPIC activists found African-American health officials and politicians more supportive of their cause was not surprising to them. Nor were they surprised to recognize scientific expressions of bias. As their difficulties in securing water, sewer, and gas lines illustrate, residents were used to not receiving governmental assistance without concerted and sustained agitation for it. This history, combined with the daily struggles they continue to face as poor, black Americans, lead Hyde Park residents to perceive their risks as multiple. In other words, not only are they being exposed to toxic chemicals on a daily basis, but also, due to biases against them, they do not believe that they will find much relief or remedy for their problems.

Toxic exposures and institutional barriers to accessing relief from those exposures are only two aspects of the total risks that Hyde Park residents faced. For instance, when they develop asthma, or experience skin conditions from lupus or arsenic keratosis, many residents have to rely on Medicaid, which in Augusta is inefficient and does not usually cover the full cost of expensive inhalers or skin creams. In addition, as the years wore on and they increasingly realized that they were unable to leave a neighborhood which they strongly believed was contaminated, residents' mental health was compromised. Certain activists, who had devoted themselves to the cause of relocation throughout the 1990s, fell into severe depressions. In the late 1990s, mental health disorders in the neighborhood were becoming of such concern that the health department added psychiatric studies to its health assessment.

Ill health in Hyde Park also led people to lose educational and employment opportunities. Developmental delays and severe bouts of asthma caused some children to miss school. In turn, parents had to stay home from work to care for sick children. One mother, whose middle child developed a rare cancer at the age of seven and whose youngest child was born with debilitating asthma, quit a stable job in 1996 to care for her children and lived on public assistance. Finally, as I mentioned earlier, with news of contamination the property that Hyde Park residents had invested in became valueless. Residents had extreme difficulty selling their homes, and they complained that they had problems getting home insurance as well as bank loans.[15] Because many people either worked in low-wage jobs or lived on fixed incomes, they teetered on the edge of impoverishment. In short, Hyde Park residents face a "heavy knot" of risks that derive from both ecological and social circumstances (Cernea 2000:31).

Economically and politically marginalized communities like Hyde Park often depend upon social institutions, especially those that might bring them out of their current environmental predicament. One resident said, "When we first heard about the EPA study, it was like the cavalry was coming in." Instead of controlling their risks, however, these institutions compound them by denying community claims. As a result, residents' extant mistrust of governmental agencies increases. For instance, in 1990 and 1999, when they spoke about their distrust of scientists, some people brought up the notorious Tuskegee syphilis experiments. Anthropologists have termed this magnification of mistrust "risk perception shadows," which can be defined as "a predisposition to distrust projects involving potential adverse health or social impacts and to doubt agency or company statements regarding the potential dangers associated with these projects" (Stoffle et. al 1988:6). Given their historic exposures as poor, black Southerners, such shadows certainly loomed over Hyde Park and were only darkened during the risk communication process. Moreover, their experiences of race and class exclusions were foundational to activists' ideas that environmental justice meant engaging in a participatory and holistic process.

Yet agency communication tends to be unidirectional. In other words, not only do they deny community claims, but they neglect to solicit community input or recognize the value of local knowledge (Liebow 1988; Wolfe 1988). "Risk perception shadows" and cultural experiences then combine with agencies' top-down communication techniques to fuel community-agency conflagrations like the one I described at the beginning of this essay. The need to avoid such debacles is all too clear to governmental officials. Over the past few years, the EPA and the ATSDR in particular have taken steps to improve risk communication and to develop somewhat more holistic accounts of community environmental problems. In the following section, I discuss some of these steps and how environmental justice activists have responded to them.

Towards Remedies

As early as the late 1980s, the EPA began to develop a comparative risk assessment methodology for prioritizing and addressing risk situations. This method evaluates two or more risks simultaneously to prioritize the allocation of resources to control or manage that risk. Data used in comparative risk falls into two categories—"hard" and "soft." The former focuses on quantifiable factors such as predicted numbers of fatalities, or the size of affected areas, and then compares them to the costs of reducing those risks. In contrast, the latter is premised on the idea that risk is multidimensional and socially constructed; thus, it gives public values equal weight to scientific facts, and it includes factors such as mistrust and the equity of how various subgroups bear each risk (Finkel 1994a:7-8). Although comparative risk is mainly used to set priorities for allocating governmental resources, and reports find that the EPA continues to rely more heavily on hard than soft data (Finkel 1994b:336-338), in its combination of data comparative risk illustrates some significant institutional shifts toward a broader conception of risk.

In 1993 these shifts took shape again in the EPA Brownfield Redevelopment program. Brownfield grants generally fund environmental assessments of unused, abandoned sites, and they facilitate cleanup and redevelopment plans. The grants are geared toward low-income areas and they include job training, community outreach, and environmental justice components. Significantly, the program defines brownfields as having "actual or perceived contamination and an active potential for redevelopment or reuse" (Governor's Task Force 1996: Appendix C). That this definition includes *perceived* contamination comes as the result of heavy lobbying by national environmental justice activists. Indeed, it has opened doors for some communities like Hyde Park, which are in officially indeterminate situations. In 1999, Hyde Park activists persuaded the city of Augusta to apply for a Brownfield Pilot Grant to assess and redevelop the scrap metal yard that bordered their neighborhood. The application was successful and although the project, which is still underway, does not provide residents with their ultimate goal of relocation, it has facilitated the cleanup of the scrap yard, which initial investigations found to be highly toxic.[16]

Further inroads have been made in the area of cumulative risk assessment. Responding to several reports (including the National Research Council's 1994 report "Science and Judgment in Risk Assessment" and a 1997 report by the Presidential/Congressional Commission on Risk Assessment and Risk Management entitled "Risk Assessment and Risk Management in Regulatory Decision-Making") as well as to sustained pressure from grassroots environmental justice groups, the Clinton administration began exploring cumulative risk assessments. In 2003, the EPA released the results of this exploration in its "Framework for Cumulative Risk Assessment," which offers guidance for the cumulative risk assessment process. In acknowledging the importance of understanding the accumulation of risks from multiple environmental stressors, the document represents a critical first step. However, it does not lay out protocols; nor is it attached to any regulatory requirements. The framework also notes that some of the methodologies and techniques for doing the risk analysis discussed may not yet exist (U.S. EPA 2003:17).[17]

To reiterate, sustained pressure and input from environmental justice groups has expedited progress on cumulative risk assessments. The National Environmental Justice Advisory Council (NEJAC), which provides advice, consultation, and recommendations to the EPA administrator leaders on matters related to environmental justice[18] (and includes national environmental justice leaders), designated two working groups to address some of the issues raised in this essay. One of them proposed ways for the EPA to implement Cumulative Risk Assessments. The other has recommended ways "to achieve more effective, integrated community based health assessments, intervention and prevention efforts" as well as how to improve communications with community members and how to consider socioeconomic and cultural factors in community health assessments.[19] Among other things, the work group recommended that the government let affected communities know how it can help them, even if a causal relationship between health and environmental toxins cannot be proven. The work group also called for the consideration of socioeconomic and cultural factors in community health assessments. It is interesting to note that the crux of the NEJAC Work Group's recommendations is the implementation of all the findings and plans set up in the various workshops, reports, and guidelines I have mentioned. In other words, reports sit on shelves and change happens extremely slowly, if at all. Many environmental justice activists have thus concluded that reforming risk assessment is a dead-end and declined to serve on NEJAC.[20]

Instead, some people have devoted their energies toward advocating alternatives that would reduce our reliance on the science of risk assessment and emphasize more participatory and citizen-centered conceptions of justice. For instance, a number of activists promote the implementation of the Precautionary Principle. Very briefly, the principle is based upon the idea that precautionary measures should be taken when an activity raises threats of harm to human health or the environment, even if scientific cause and effect relationships are not fully established. Importantly, the initiator of such an activity bears the burden of proving that an activity is safe. This reverses the current standard, where the public must prove that a particular activity is risky (Montague 2003).

A second alternative is an autonomy paradigm that capitalizes on local knowledge and self-determination by advocating for local communities' rights and abilities to manage and protect natural resources themselves. Pena, for instance, cites a successful example in Colorado where local farmers formed a partnership with their county government in the design and implementation of a long-term watershed monitoring system. In addition, they received EPA funding to develop restoration ecology projects (Pena and Valdez 1998; Pena 2003). Another successful and oft-cited autonomy model is the case of the

Dudley Street neighborhood in Boston, Massachusetts, where in the late 1980s, activists convinced the city government to grant them the power of eminent domain. Under community control, the neighborhood has been able to transform over 1,300 abandoned parcels into affordable housing, gardens, and public spaces.[21]

Those activists still participating in NEJAC certainly agree that prevention and autonomy models are a necessary and important part of the environmental justice process, and they have worked hard to ensure that such principles are included in NEJAC documents. But, they also recognize that proposed alternatives do not necessarily address the immediate needs of communities like Hyde Park, which are desperate to move out of their contaminated circumstances. Therefore, they are not yet willing to relinquish the idea of risk reform. Concurrently, NEJAC members note that EPA-generated reforms are only half the battle: The rest will consist of convincing industries to accept changes in risk-assessment procedures and of making sure that regional EPA's enforce them.[22] Fundamental to this latter effort is the valuing of local knowledge equally with expert "facts." In other words, what is required is a far more holistic and comprehensive approach to science itself.

As environmental justice activists work toward engendering paradigmatic shifts in the prevention, management, and control of environmental risks, and as government agencies move toward broader conceptions of risk, anthropologists have ample opportunities to contribute by combining their expertise with those of others. The next section describes some specific ideas for such applications.

Into the Breach: Roles for Anthropologists

Anthropological research demonstrates how ethnographic information can offer an important complement to the risk-assessment process (Griffith 1999). Anthropologist Michael Cernea, for instance, studies risk among refugees and displaced people in various parts of the world and calls for on-the-ground assessments that account for the multiple contexts in which people experience risk. As Cernea cautions, however, risk identification is not enough: it must also lead to risk reversal (Cernea 2000). Accordingly, Cernea has developed the impoverishment risks and reconstruction (IRR) model, which has a dual emphasis on assessing risks to be prevented *and* on implementing reconstruction strategies and policies (ibid:20). I would argue that we might address environmental risk assessment in the United States from a similar perspective and add to it a third component of theoretical innovation. Below, I outline my recommendations for a three-pronged anthropological approach to the problem of risk assessment and environmental justice.

On the reform side, anthropologists can continue to advocate for the expedited implementation of cumulative risk assessment strategies. In other words, until federal officials relinquish the idea of risk assessment, and while environmental justice communities continue to reside in life-threatening conditions, anthropologists can work together with environmental scientists to develop more comprehensive and accurate assessments of risk. One means of doing this is to facilitate the pairing of scientific and lay expertise in developing risk assessments (Brown 1992, 1995; Brown and Mikkelsen 1997; Brullel and Pellow 2006; Clapp 2002; Dove 2001; Scoones 1999).

For, not only do community members hold invaluable local knowledge about their risk exposures and histories, but they also have the greatest motivation for compiling that knowledge and monitoring their environmental conditions. As anthropologists Ben Wisner (1997:277) writes, "Residents themselves are not only capable of contributing considerably to [hazard identification and mitigation], but in many cases they are the primary actors by default." In Hyde Park, community residents could be trained to collect cumulative exposure data, create records of neighborhood health complaints and illnesses, and track signs of contamination such as foul odors, discolored water, or changes in local fauna.

In addition, residents and scientists could partner to draw random samples, design questionnaires, and collect and analyze data according to more empirical traditions (Brown 1992, 1995; Brown and Mikkelsen 1997; Brullel and Pellow 2006; Bryant 1995:589; Clapp 2002; Kroll-Smith and Floyd 1997). Community members can then present the final research product to the EPA and ask it to reconsider their eligibility for federal assistance. The end result is that residents share control of the research process.[23] A community-based, participatory research model not only improves the quality of the risk assessment, but it also increases community members' environmental literacy. In other words, participating in environmental research equips community members with the knowledge and awareness they need both to remedy their current conditions and to develop prevention strategies.

Another benefit of participatory research is that it can help communities improve their relations with governmental agencies. As they conduct research in partnership with scientific and governmental agencies, greater understandings between communities and officials will develop and solidify. But, more immediately, anthropologists can strengthen the quality of community-agency communications to prevent scenes like the EPA meeting debacle I described earlier. For instance, federal and state offices are highly segmented and can only address specific issues. However, community members often grow frustrated that various departments and agencies do not cooperate with one another to create more effective resolutions. When governmental officials encounter such frustrations, they may view community members as irrational, overly angry and/or uninformed. One way that anthropologists can apply their research to this problem is by "studying up," or investigating the practices of scientists, extension agents, field managers, and governmental officials (Scoones 1999: 479).[24]

Returning to Hyde Park, for example, there is much to learn about the various entities—Georgia Environmental Protection Division, EPA Region IV, the ATSDR, and

industries—that affect the neighborhood's situation. Ethnographic study with these entities enables the researcher to gain a greater understanding of how environmental issues are conceptualized and acted upon. The tools of ethnography are especially important here in that they elicit a diversity of perspectives that may not be evident in more quantitative surveys and questionnaires. Anthropologist Terre Satterfield (2002:170) notes, environmental values are "typically articulated discursively; they are embedded in the contextually, emotively, and morally rich stories and conversations through which we define ourselves and our actions in relation to natural systems" (see also Griffith 1999). After developing a better understanding of all aspects of a particular issue, anthropologists can work with each side to find some basis for negotiation and compromise.

Once again, the kinds of intervention I am proposing here represent only a first step toward building the communication capacity of both communities and agencies. Community members can and should speak for themselves. However, until federal, state, and local officials are willing to value community perspectives and voices to a much greater extent than they currently do, some communities may still find it helpful to have a mediator. At a recent environmental justice workshop I attended, for instance, one grassroots African-American activist from Chicago explained that she and some of her neighbors have backgrounds in science, so they understand the technical words that EPA officials use, and they can "translate" them back to other community members who do not have scientific backgrounds. At the same time, this activist pointed to the need for education on the EPA's side so that officials might better understand community perspectives. Often, such insights come from outsiders. Or, as Hyde Park activists have argued, because I do not live in the neighborhood and have not grown up there, my analysis of its conditions pulls more weight with various institutional bodies.[25] Simultaneously, anthropologists and residents can lobby for the meaningful inclusion of community members in environmental decision-making processes. For, as other anthropologists have noted, efforts to incorporate a diversity of "stakeholder" voices in such decisions often fail because the standards for which voices are heard are determined by those setting the terms of discussion (Brosius 1999; Satterfield 2002).

This move toward more inclusive, democratic action leads to the policy arena, which constitutes the final prong in Cernea's reform-oriented research model. Here, anthropologists can combine their research findings with those of "hard" scientists and residents and work preemptively to make specific recommendations and strategies for how to reduce a community's current risk exposure. Creative and preventive policy solutions are a particularly important component of risk-assessment reform. If we succeed in convincing decision makers and corporations to accept cumulative assessments of risk that give local knowledge equal status with scientific knowledge, it follows that a far greater number of communities will be classified as "at risk." In turn, such classifications mean that some entity becomes responsible for alleviating that community's risk—a potentially expensive process. We may stand a better chance of substantively reforming risk assessment, therefore, if we can develop and promote less costly ways to relocate or clean up communities.

Finally, innovative policy solutions serve as a point of departure for new theories of environmental justice. In this paper, I have problematized conceptions of both science and justice and presented ways that each is culturally contingent. However, we have much more to learn about how "justice" is constructed cross-culturally if we are to develop new environmental justice paradigms.[26] Here again, by investigating how different groups of people understand and perceive justice, anthropological research can combine with other forms of local and professional scientific expertise to contribute to broadly conceived and workable solutions for abating disproportionate environmental risk and creating a more environmentally just society.

Notes

[1]The five adjacent neighborhoods that comprise what I refer to as "the Hyde Park area" have no official designation. Individually, they are Hyde Park, Virginia Subdivision East, Virginia Subdivision West, New Savannah Road and Gravel Pit Road. Together, they comprise approximately a three-square mile area just south of downtown Augusta.

[2]Some of the information in this article is also found in Checker 2005.

[3]Although this "term of art" is commonly used, the African American residents of Hyde Park interpreted it as a racial slur, implying that they routinely ate dirt.

[4]See for example Cernea and McDowell 2000; Douglas and Wildavsky 1982; Griffith 1999; Stoffle, et. al. 1988; Pollnac 1998; Wolfe 1988. See also Renn and Rohrmann 2000 for a more psychological perspective on cross cultural risk perceptions.

[5]For some exceptions to this see Dove 2001; Gerlach and Rayner 1988; Fitchen 1988; Liebow 1988.

[6]Griffith's study notably offers a counterpoint to many of the examples provided in this paper. In the case of Pfiesteria, Griffith argues that local and pervasive ideas about the organism's danger prevailed over scientific evidence about its relative safety.

[7]It should be noted that this term was originally coined by Hazel Johnson of People for Community Recovery, a grassroots environmental justice organization in Chicago, Illinois.

[8]Southern Wood Piedmont representatives disagree with this assumption and contend that the Hyde Park neighborhood has in no way been affected by wood preserving chemicals.

[9]The organization does not require dues, so no official membership records exist.

[10]It should be noted that there is no conclusive evidence that SWP workers were exposed to harmful toxins in the workplace.

[11]Aragon Park used to be part of Hyde Park until the early 1950s and the building of the Gordon Highway, which divided the neighborhoods in two.

[12]See also Griffith 1999, detailing how politics similarly influenced scientific outcomes in the case of Pfiesteria.

[13]For further information on the use of science by environmental activists, see Brown 1992, 1995; Brown and Mikkelsen 1997; Brullel and Pellow 2006; Clapp 2002; Satterfield 1997.

[14]The Study's main conclusion was to call for further study.

[15]See Governor's Task Force 1996, Appendix C.

[16]Some cities have also recently taken serious steps towards recognizing the problems with risk assessment methods. In 2003, both the city of San Francisco and Berkeley adopted Precautionary Principle resolutions stating that if there is reasonable suspicion of harm and scientific uncertainty, then anticipatory action must be taken to prevent harm.

[17]These can be found at http://www.epa.gov/OSP/spc/2cumrisk.htm.

[18]See http://www.epa.gov/compliance/environmentaljustice/nejac/.

[19]This quote is taken from the cover letter to the National Environmental Justice Advisory Council's report entitled, "Environmental Justice and Community-Based Health Model Discussion: A Report on the Public Meeting Convened by the National Environmental Justice Advisory Council, May 23 - 26, 2000." The letter and the report, itself, are available at www.epa.gov/compliance/environmentaljustice/nejac.

[20]Interview with Devon Pena, November 11, 2003.

[21]For more information on Dudley Street, see their website www.dsni.org. For a more scholarly account of the neighborhood's transformation, see Medoff and Sklar 1994.

[22]Interview with Connie Tucker, November 13, 2003.

[23]For a similar research model whereby residents of contaminated neighborhoods collect their own health data, see Brown's (1992) description of "popular epidemiology".

[24]This idea stems from a short, untitled presentation given by Professor Bunyan Bryant at a workshop entitled, "Crossing the Divide: Anthropologists and Effective Environmental Justice Policy Intervention" held at the 2003 American Anthropological Association Annual Meetings.

[25]See also Halperin 1998 for a more detailed discussion of the anthropologist's role as advocate.

[26]For a notable effort in this direction, see Haenn 2003.

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JUST OIL? THE DISTRIBUTION OF ENVIRONMENTAL AND SOCIAL IMPACTS OF OIL PRODUCTION AND CONSUMPTION

Dara O'Rourke[1] and Sarah Connolly[2]
[1]*Department of Environmental Science, Policy, and Management, 135 Giannini Hall, University of California, Berkeley, California 94720; email: orourke@nature.berkeley.edu*
[2]*Department of Urban Studies and Planning, Massachusetts Institute of Technology, 77 Massachusetts Avenue, Room 7-337, Cambridge, Massachusetts 02139; email: sarahc@mit.edu*

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■ **Abstract** This review presents existing data and research on the global distribution of the impacts of oil production and consumption. The review describes and analyzes the environmental, social, and health impacts of oil extraction, transport, refining and consumption, with a particular focus on the distribution of these burdens among socioeconomic and ethnic groups, communities, countries, and ecosystems. An environmental justice framework is used to analyze the processes influencin the distribution of harmful effects from oil production and use. A critical evaluation of current research and recommendations for future data collection and analysis on the distributional and procedural impacts of oil production and consumption conclude the review.

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I. INTRODUCTION

The National Energy Policy of the United States asserts that the country currently "faces the most serious energy shortage since the oil embargoes of the 1970s,"

which has been precipitated by "a fundamental imbalance between supply and demand" (1). The National Energy Policy Development Group (NEPDG), the panel convened by Vice-President Dick Cheney to develop the national energy policy, argues this crisis is driven by declining reserves in the United States and by "overly burdensome" and "often excessive and redundant" regulations that hinder new exploration and production of oil.

This panel asserts that the answer to today's oil problems lies in supporting more domestic oil exploration, increasing access to overseas oil, and developing more refinin capacity in the United States. The NEPDG thus calls for (a) streamlined and more fl xible regulation of oil exploration, production, and refinin and (b) the opening of oil exploration in the National Petroleum Reserve-Alaska, the Outer Continental Shelf coastal regions, and the Arctic National Wildlife Refuge; it further recommends "an Executive Order to rationalize permitting for energy production . . . to expedite permits and other federal actions necessary for energy-related project approvals" (2).

President Bush has made this one of his top policy priorities, arguing that "It is in our nation's national interest that we develop more energy supplies at home" (3). Vice-President Cheney has added, "One of the things we need to do is to build more refineries (4).

The administration is thus advancing energy policies that will significantl increase oil production and refinin in the United States and that facilitate increased U.S. access to and investment in oil production and refinin overseas. It is worth noting that the Bush administration is not the firs to pursue increased access to oil as a matter of national interest. In January 1980, the Carter Doctrine identifie the Persian Gulf as a "vital interest" of the country and declared that "an attempt by an outside force to gain control of the Persian Gulf region would be regarded as an assault on the vital interests of the United States." The Carter administration subsequently established a Rapid Deployment Force for use in the Middle East, deployed a permanent U.S. naval force in the Persian Gulf, and acquired new military bases in the region (5).

Although the case for the economic and political benefit of increased production and control over oil has been clearly articulated, the environmental, health, and social costs of increased oil fl ws are largely absent from government policy deliberations. And perhaps more importantly, the actual distribution of costs and benefit of increased oil production among countries, communities, and individuals is almost completely absent from public discourse.

Clearly, there are very real trade-offs resulting from increased oil production and consumption. But how well do policy makers and the public understand the costs and benefit of such a commitment to oil? What data are available to evaluate the impacts of oil production and consumption at different stages in the oil life cycle? What evidence and analysis are available to compare trade-offs in security, economic development benefits energy dependence, environmental harm, health costs, and cultural consequences of increased oil production? The purpose of this review is to examine these trade-offs and to assess the distribution of economic, environmental, and health impacts of petroleum production and consumption.

Oil obviously provides significan benefit to society. Oil serves a wide diversity of purposes, which include transportation, heating, electricity, and industrial applications, and is an input into over 2000 end products (6). Oil is a high energy density abundant fuel, which is relatively easy to transport and store, and is extremely versatile in its end uses (7).

Oil is also the most valuable commodity in world trade. As Doyle (8) notes, "Roughly two billion dollars a day now change hands in worldwide petroleum transactions. It is the world's firs trillion-dollar industry in terms of annual dollar sales." The oil industry is phenomenally profitabl for some corporations and governments. Taxes from oil are a major source of income for some 90 governments. Petroleum is the largest single item in the balance of payments and exchanges between nations and a major factor in local level politics regarding development, jobs, health, and the environment. For many countries, oil is crucial to national economic viability, accounting for upwards of 80% of total national exports for Libya, Iran, Kuwait, Saudi Arabia, and Venezuela (9).

The global oil industry also provides significan jobs, profits and taxes. As the International Labour Organisation (ILO) notes (6) the oil industry directly employs more than 2 million workers in production and refining The ILO further estimates that each job in oil production or refinin generates one to four indirect jobs in industries that either supply needed inputs or benefi from value added activities.

Interestingly, there are limited public data on the benefit of oil. Revenue and investment data from oil producing regions are sparse. This lack of transparency on oil's benefit has, in fact, motivated an international "Publish What You Pay" campaign (10) to require oil companies to disclose their payments to developing country governments for oil concessions. Dispersed information sources indicate that some countries, such as Ecuador and Angola, receive up to 50% of their revenue from oil taxes and profi sharing (11, 12).

Oil, also, obviously creates significan and varied negative impacts and costs to human health, cultures, and the environment. Thus, it is critical to evaluate the costs as well as the benefit of oil. Although the NEPDG report encourages more oil development, it provides little information on the negative consequences of this development. Instead, the report cites only technological advances that have minimized the impacts of oil exploration and refining

Past analyses of the oil industry have fallen into several categories. First, there are a wide number of industry sources of data and analysis on the locations, production levels, technological challenges, and economics of oil production and refinin (13, 14). There have also been a wide range of historical analyses of political and economic developments in the oil industry around the world (15–17). And more recently, there have emerged a growing number of exposes and reports on the environmental and social impacts of oil exporation, transport, and refining

Unfortunately, there is no comprehensive source of data available to analyze the global distribution of impacts of oil production and consumption. A wide range of sources—government data, academic analyses, media coverage, nongovernmental organization (NGO) reports—must be consulted to evaluate the costs and benefit of oil.

II. ENVIRONMENTAL JUSTICE FRAMEWORK

This review presents existing data and analyses of the global distribution of the impacts of oil. Using an environmental justice framework (18, 19), we describe and evaluate the environmental, social, and health impacts of oil extraction, transport, refining and consumption. This perspective seeks to provide a lens through which to examine the distributional and procedural impacts (and inequities) of oil extraction, transport, refining and consumption among socioeconomic and ethnic groups, communities and countries, and ecosystems. Within this conceptualization, major concerns include the distribution of control over oil, the distribution of environmental and socioeconomic costs of oil, the hazards and risks from oil, and the procedures and politics surrounding the regulation of these risks.

The environmental justice framework stresses the need to evaluate power in driving the distribution of benefit and costs of industrial activities. In industries such as oil, it is not just ownership, as we will discuss below, but rather control over key stages of the oil chain that significantl influence who benefit and who pays the costs of oil development. Thus, we begin with an inquiry into current patterns of control over oil resources, infrastructure, and refinin and follow with an assessment of the distribution of power and influenc over government decisionmaking and regulation of the industry (Section III).

Next, we evaluate the distribution and regulation of environmental and health hazards from oil production and consumption. We are interested particularly in the distribution of risks and costs, both at the local and global level, of oil exploration, drilling, and extraction (Section IV), transport (Section V), refinin (Section VI), and consumption (Section VII).

We also seek to analyze whether existing regulatory systems adequately protect impacted communities at each stage in the life cycle of oil. Extensive regulations govern oil exploration and refining However, there is also wide variation in the implementation of these regulations, weak enforcement in many locales, and failures of regulation in certain arenas. We are thus interested in whether enforcement is effective at different stages in the oil supply chain and whether regulatory mechanisms are sufficien to motivate remediation and prevention of future impacts (Section VIII).

The review concludes with a critical evaluation of current research and data and with recommendations for further analysis of the distributional and procedural impacts of oil production and consumption.

III. CONTROL OVER OIL

Perhaps the most critical and historically contentious questions related to oil are simply who owns, controls, or has access to this resource? Control over reserves, production, distribution, and refinin is critical to the distribution of benefit and costs of oil and to deeper global, economic, and political dynamics.

Approximately 90 countries produce oil, although a few major producers account for the bulk of world output. The Energy Information Agency estimates

that the eleven Organization of Petroleum Exporting Countries (OPEC) members (Algeria, Indonesia, Iran, Iraq, Kuwait, Libya, Nigeria, Qatar, Saudi Arabia, the United Arab Emirates, and Venezuela) account for roughly 77% of the world's proven oil reserves and 40% of world oil production (20). The Persian Gulf contains approximately 680 billion barrels of proven oil reserves, which represents approximately 66% of the total world oil reserves (21). The Persian Gulf maintains 31% of the world total oil production capacity (just over 22 million barrels per day) (22).

In 2001, Persian Gulf countries had oil exports of approximately 16.8 million barrels per day of oil. As would be expected, Saudi Arabia exported the most oil of any country in 2001, with an estimated 7.4 million barrels per day (22). Major non-OPEC oil producing countries include the United States, Mexico, Denmark, Norway, the United Kingdom, the Russian Federation, China, and Vietnam.

Proven reserves—the most basic measure of who has the oil, and how much—have actually changed over the past 20 years. Proven reserves increased 54% between 1980 and 1990, largely due to improvements in exploration and drilling, but were then stagnant between 1990 and 2000 with an increase of only 1.4% globally (23). As would be expected, many countries' reserves are declining significantl . In the United States for instance, proven reserves declined from 36.5 billion barrels in 1980 to 30.1 billion barrels in 2000 (24). Table 1 presents basic information on oil reserves, production, and exports from leading oil producing nations.

While the physical location of oil does not change, systems of control over oil have changed significantl over the past two decades. In particular, there has been a

TABLE 1 World oil reserves, production, and exports in 2001 (25, 26)

Country	Total oil reserves (billion barrels)	Total oil production (million barrels per day)	Net oil exports (million barrels per day)
United States	22.0	9.02	0.9
Saudi Arabia	261.7	8.73	7.38
Russia	48.6	7.29	4.76
Iran	89.7	3.82	2.74
Mexico	28.3	3.59	1.65
Norway	9.4	3.41	3.22
China	24.0	3.30	0.1
Venezuela	76.9	3.07	2.60
Canada	6.6	2.80	1.8
United Kingdom	4.9	2.59	1.7
Iraq	112.5	2.45	2.00
United Arab Emirates	97.8	2.42	2.09
Nigeria	22.5	2.26	2.00
Kuwait	96.5	2.15	1.80

major restructuring and concentration of ownership in the global oil industry. This change in power and control has had significan implications for the distribution of benefit accruing to oil producers and refiner and for the distribution of costs to oil producing regions and consumers.

Historically, state-owned companies controlled most oil in the world. The four largest state oil companies, Saudi Aramco, Petroleos de Venezuela, Iran's NIOC, and Mexico's Pemex, produce 25% of the world's oil and hold 42% of the world's reserves (27). Physical ownership over oil, however, may not be as important as mechanisms of control and distribution. Access to and control over oil is as important today as actually owning it, and increasingly, private oil companies are exerting critical control over the industry. In this regard, privatization has progressed rapidly during the 1990s. In virtually every region of the world, an industry that was previously considered critical to economic and physical security and that was owned by the government has been partly or wholly sold to local and foreign private investors.

A recent wave of mergers, worth over $200 billion, has further changed the face of the industry during the 1990s (28). A top echelon of "super majors" has been created that far surpasses other publicly traded oil companies by any measure of size. "The scale of the super majors puts them on a par with the largest state companies. The four super majors—ExxonMobil, Royal Dutch/Shell, BP-Amoco, and Total Fina Elf—have a preponderance in the downstream, with about 32 percent of global product sales and 19 percent of refinin capacity. This counterbalances to a large extent the dominant upstream positions of the four large state oil companies, Saudi Aramco, Petroleos de Venezuela, Iran's NIOC, and Mexico's Pemex. With the super majors and the largest state oil companies, the industry is now dominated by a handful of 10 or 12 giant concerns that dwarf those immediately beneath them" (27).

The recent concentration of the industry is particularly stark among firm operating in the United States. By 2001, fi e corporations (ExxonMobil, BP-Amoco-Arco, Chevron-Texaco, Phillips-Tosco, and Marathon) controlled 61% of the U.S. retail gas market, 47% of the U.S. oil refiner market, and 41% of U.S. oil exploration and production. These firm currently control 15% of world oil production—more than Saudi Arabia, Yemen, and Kuwait combined (29).

This change in control over oil extraction and distribution has had significan impacts on the very countries that own oil. The economic strength of a nation directly affects its ability to negotiate with the super majors and in turn to benefi from selling or leasing oil. Poor nations that are dependent on oil sales for key revenues are often adversely affected by their ownership of the resource (30). As Ross (12) has shown, poor countries that are oil dependent often have slower rates of economic development, higher levels of corruption, higher military spending, worse performance on reducing child malnutrition and adult illiteracy, and are more vulnerable to economic shocks.

There are also clear inequities in the distribution and consumption of oil. Advanced industrialized countries use orders of magnitude more oil than many

TABLE 2 World oil net importers in 2001 (25)

Country	Net oil imports (million barrels per day)
United States	10.8
Japan	5.4
Germany	2.7
South Korea	2.1
France	2.0
Italy	1.7
China	1.6
Spain	1.5
India	1.3

developing countries. Table 2 shows that the United States is by far the largest importer and consumer of oil in the world.

The United States imports almost 11 million barrels of oil per day. Interestingly, the United States currently only imports approximately 24% of its oil from the Persian Gulf; Canada is its top source of imported oil (15%), followed by Saudi Arabia (14%), Venezuela (14%), Mexico (12%), and Nigeria (6%) (31).

The United States is also the largest refine of oil in the world, with overall refinin capacity of approximately 16.6 million barrels per day. The average capacity of U.S. refinerie increased from 70,000 barrels per day in 1985 to 115,000 barrels per day in 2001 (32). However, during this period, the number of U.S. refinerie actually decreased by half from 324 to 143, further concentrating control in a handful of corporations and impacts in fewer communities. Russia, Japan, and China are the only other countries with refiner capacities exceeding 3 million barrels per day. Russia's refiner capacity stands at an estimated 5.4 million barrels per day, Japan's at 4.8 million, and China's at 4.5 million (25).

IV. IMPACTS OF EXPLORATION, DRILLING, AND EXTRACTION

Oil exploration, drilling, and extraction are the firs phase—or what the industry calls the "upstream" phase—in the long life cycle of oil. There are currently approximately 40,000 oil field in the world, (33) and there have been over 4000 new oil exploration licenses granted in the past 10 years (34). Increasingly complicated and expensive processes for locating oil deposits in remote and inhospitable locations, bringing the oil to the surface, and then getting it to a market have major environmental, cultural, and health impacts (35–37).

On- and off-shore exploration, drilling, and extraction activities are inherently invasive and affect ecosystems, human health, and local cultures. Oil companies combine the use of remote sensing and satellite mapping techniques with seismic testing to identify potential oil reserves. When reserves are identifie remotely, companies build roads, platforms, and pipelines, bring in crews and vehicles, and drill exploratory test wells. Once oil is discovered, exploration activities are expanded for commercial-scale extraction, which requires more wells and infrastructure. Techniques for oil extraction include a range of drilling techniques and the use of subsurface explosives (including in a few historical cases the use of nuclear charges) (38).

The physical alteration of environments from exploration, drilling, and extraction can be greater than from a large oil spill. Major impacts include deforestation, ecosystem destruction, chemical contamination of land and water, long-term harm to animal populations (particularly migratory birds and marine mammals), human health and safety risks for neighboring communities and oil industry workers, and displacement of indigenous communities.

Exploration requires moving heavy equipment (mobile rigs for temporary drilling can weigh over 2 million pounds) into remote environments. Clearing land for roads and platforms can lead to deforestation and erosion (38). Drilling during both exploration and extraction phases uses significan quantities of water, which are contaminated through drilling and then discharged along with cuttings into the environment. These discharges result in chemical contamination of land and water from petroleum waste, drilling fluids and by-products of drilling such as water, drill cuttings, and mud. As Epstein & Selber assert, "The general environmental effects of encroachment into natural habitats and the chronic effects of drilling and generating mud and discharge water on benthic (bottom-dwelling) populations, migratory bird populations and marine mammals constitute serious environmental concerns for these ecosystems" (38).

The oil and gas industry in the United States alone creates more solid and liquid waste than all other categories of municipal, agricultural, mining, and industrial wastes combined. Oil and gas drilling and pumping produce most of the sector's waste. Approximately 20% of nonhazardous waste produced in the United States every year comes from oil and gas exploration and production. However, the majority of production waste from the industry is the hazardous and toxic effluen known as *produced water*. Produced water is extracted from the ground along with oil and is often reinjected into wells under high pressure to force more oil to the surface. Produced water not reinjected is discharged into surface waters (8). As Doyle explains, this "produced water is at least four times saltier than ocean water and often contains 'industrial strength' quantities of toxins such as benzene, xylene, toluene, and ethylbenzene. Heavy metals such as barium, arsenic, cadmium, chromium, and mercury have also been found in produced water. Produced water can also be radioactive—in some cases, as much as 100 times more radioactive than the discharge of a nuclear power plant" (8).

In 1995, it was estimated that 15 billion barrels of produced water were extracted annually in the United States. Over 90% of onshore produced water is reinjected

into wells (39). Reinjection is permissible under the Resource Conservation and Recovery Act (RCRA), because Congress conditionally exempted drilling fluids produced waters, and other wastes from crude oil production (39).

Water used in oil production can also be contaminated by chemicals used during extraction. For example, the oil industry uses millions of tons of barium, a toxic heavy metal, in drilling fluid each year. Common components of drilling fluid can solubilize the barium, creating hazardous waste, which is often discharged into the environment from leaks of reinjected materials (8).

Exploration and extraction also produce voluminous amounts of solid wastes known as *drilling wastes* and *associated wastes*. In 1995, the U.S. sector produced 146 million barrels of drilling waste and 22 million barrels of associated wastes (39). Although associated wastes constitute a relatively small proportion of total wastes, they are most likely to contain a range of chemicals and naturally occurring materials that are of concern to health and safety. Each year 58% of associated wastes in the United States are reinjected, 9% are sent to commercial facilities, and 8% are disposed of through evaporation pits (39). In oil fields virtually every stage in production has a waste pit. As Doyle notes, during drilling, "various muds, oily fluids lubricants, and other chemicals are used to cool the drill bit, stabilize the walls of the bore hole, or liquefy earthen cuttings. These fluid and additives accumulate in large quantities during the drilling process, and are often stored or finall disposed in waste pits" (8). Exposed waste pits pose a danger not only to aquifers but also to animals and birds that mistake the pits for water holes and become coated with toxic wastes (8).

In addition to operational leaks, oil spills also occur during extraction. In 2002, the National Academy of Sciences estimated that 38,000 tons of petroleum hydrocarbons were released into the world's oceans each year during the 1990s as a result of oil and gas operations (40). On- and offshore oil production can also create significan air pollution. Emissions from drilling equipment, hydrocarbons escaping from wells, flarin of natural gas, and emissions from support vehicles can degrade local air quality (41).

Oil exploration, drilling, and extraction can also lead to a range of acute and chronic health impacts. These risks occur through exposure to naturally occurring radioactive materials brought to the surface during drilling, as well as through the bioaccumulation of oil, mercury, and other products in mammals and fis that humans consume (38). Noise, vibration, and exposure to toxic chemicals are also issues in upstream and downstream operations. Many of the substances used in daily extraction work cause adverse dermatologic and pulmonary reactions among workers. The most common dermatologic conditions are contact dermatitis and acne, but other conditions include keratotic facial and neck lesions, neoplastic change from exposure to oil and sunlight, and acquired perforating disease and calcinosis of the hands and fingers Adverse pulmonary reactions to hard metal (a mixture of tungsten carbide and cobalt used for oil well drilling bits) include asthma, hypersensitivity pneumonitis, and interstitial pulmonary fibrosi (38).

The risk of explosions, injuries, and fatalities during exploration and extraction are also cause for concern. Virtually every segment of oil and gas production

involves risk of fire and explosions, particularly offshore drilling operations that are vulnerable to blowouts. The handling of heavy pipes and other equipment also creates safety risks. Thus, oil workers around the world face significan occupational hazards. Oil exploration and drilling is the most dangerous sector of the oil industry. Recently, the oil and gas sector has experienced a series of major fire and explosions in both extraction installations and refineries For example, in 1998 in Africa and the Middle East, there were 54 fatal incidents in onshore operations and 17 fatal incidents offshore (6).

Oil exploration often occurs in remote and harsh environments, such as deserts, jungles, the Arctic, and far offshore. Workers live in or near these harsh workplaces for long periods. These working conditions can create additional risk during transport, and stress from long shifts and social isolation.

There are no good international data or comprehensive analyses of the distribution of impacts from oil exploration, drilling, and extraction. However, a number of recent studies have shown that current oil exploration has a disproportionate impact on indigenous populations and sensitive, remote ecosystems (42). Kretzmann & Wright, for instance, report that indigenous groups in 6 continents and 39 countries "face an immediate to medium-term threat from new oil and gas exploration" (42). In the western Amazon alone, at least 50 indigenous groups, many of which are the world's last isolated indigenous peoples, live within oil and gas concessions that are under exploration or preproduction. These groups include the Tagaeri and Huaorani of Ecuador; the Mascho-Piro, Nahua, and Kugapakori of Peru; and the Nukak and U'Wa of Columbia. Beyond the Amazon, oil exploration, drilling, and extraction affect the Baka, Bakoli, and Ogoni of Central Africa; the Tavoyans, Mon, and Karen of Burma; the Eastern Khanty peoples of Western Siberia; and the Gwich'in of Alaska (42).

Oil production activities not only disrupt sensitive environments, but threaten the survival of indigenous populations that live in these ecosystems. Kretzmann & Wright argue that "territorial integrity and control are necessary for the cultural reproduction and ultimately the survival of Amazonian indigenous populations whose way of life and well being are closely tied to a thriving rainforest" (43). Throughout the Amazon basin, road building causes deforestation, which contributes to the loss of territory and displacement of native groups. The opening of access roads allows settlers with competing interests such as logging and mining to enter indigenous communities and colonize the areas (43). This colonization can also bring infectious diseases to previously unexposed native populations (38).

The contentious nature of these interactions can often lead to conflic over oil resources and infrastructure. At least four types of conflict occur over oil: (a) conflic with indigenous groups over oil development; (b) civil unrest or war that uses disruption of oil operations as a tactic; (c) superpower geopolitics (e.g., control over Middle East oil reserves); and (d) terrorism targeting oil facilities. Table 3 summarizes examples of just one type of conflict incursions into indigenous lands to control oil. Though by no means comprehensive, this table demonstrates the widespread impacts of oil development on indigenous peoples.

TABLE 3 Incursions into indigenous lands to control oil (44–46)

Location	Indigenous group	Companies and agencies involved
Alaska	Gwichin	BP Amoco ExxonMobil Chevron Phillips Petroleum
Australia	Aboriginal	Dept. of Mineral and Petroleum Resources
Bolivia	Chiquitano Ayoreo Guaraní Weenhayek	Andean Development Corporation British Gas Enron Gas TransBoliviano SA Inter-American Development Bank Pan-American Energy Petrobras Repsol YPF Shell Transredes United States Overseas Private Investment Corporation World Bank
Brazil	Apurina Paumari Deni Juma	Brazilian National Development Bank El Paso Energy GasPetro (Petrobras) Halliburton
Burma	Karen	Unocal Total Fina Elf
Colombia	Uwa	British Petroleum Occidental Shell AirScan Ecopetrol
Ecuador	Sarayacu Kichwa Shuar Achuar Huaorani	Agip Oil Alberta Energy Burlington Resources ChevronTexaco Kerr McGee Occidental Petroleum Repsol-YPF Westdeutsche Landesbank
Indonesia	Aceh	Exxon
Nigeria	Ogoni Ijaw	Shell Nigerian National Petroleum Company
Peru	Kirineri Nahua Nanti	Hunt Oil Inter-American Development Bank Shell United States Export-Import Bank

Migration of oil crews to new reserves also creates socioeconomic and human rights concerns, especially in the Middle East and other regions of the developing world, because poor and lower class populations move both by choice or are motivated (sometimes forcibly) to relocate to oil development centers. In Saudi Arabia, for example, 35% of the population is composed of immigrant workers. In addition, foreign workers account for 61% of the total workforce of Oman, 83% in Kuwait, and 91% in the United Arab Emirates (47).

This supply of cheap foreign labor, primarily from South Asia, is essential to the profitabilit of oil production in the Middle East. Countries, such as India, Pakistan, Nigeria, Egypt, Sudan, Bangladesh, Sri Lanka, Thailand, Indonesia, and the Philippines, provide both skilled and unskilled labor to the Middle East. In several Persian Gulf states, these temporary immigrant workers outnumber citizens by a factor of two to one or even three to one. Their presence in the region underscores the wealth disparity between those who bear the costs and those who benefi from oil production. Although the ruling classes in these kingdoms are among the richest people in the world, much of the citizenry does not benefi from the significan profit earned by the industry (48).

Even the most basic workplace rights and health and safety protections are abridged in some of the largest oil-producing countries. In Saudi Arabia, labor laws prohibit the right of workers to organize unions or bargain collectively and grant employers extensive control over foreign workers' movement. Human Rights Watch reports that many foreign workers suffer under oppressive working conditions and are denied legitimate claims to wages, benefits and compensation (49).

V. IMPACTS OF OIL TRANSPORT

The current separation between the location of oil reserves and the location of oil consumption necessitates that crude oil be transported great distances to refinerie and consumer markets. This has led to the development of increasingly complex transportation systems that allow oil to be delivered virtually anywhere in the world. Major oil routes now stretch from the Middle East to Japan, from South America to Europe, and from Africa to the United States. Transport of oil occurs via supertankers, barges, trucks, and pipelines. Oil tankers are currently the primary means of transportation, but oil is increasingly being transferred through pipelines. Today, oil makes up over half of the annual tonnage of all sea cargoes, and there are now more miles of oil pipelines in the world than railroads (50).

Transportation of oil results in regular oil spills throughout the world. Although large oil spills are well publicized, smaller but cumulatively significan spills from shipping, pipelines, and leaks often go undocumented. As Doyle explains, "oil transport—by pipelines, railcar, or truck—generates an unknown and untabulated amount of waste, including tank bottom sludges, contaminated water from storage tanks, oil/water separator sludge, solvent degreasers, used oil, contaminated

product, product that does not meet specifications lubricants, spent antifreeze, and clay filtratio elements" (8).

Accidents occur along all segments of the transport system and at each point of transfer. Since the 1960s, large-scale oil spills have occurred almost every year. Transport by water is currently more likely to result in a spill than transport by pipeline. Ocean transport of crude oil and petroleum products accounted for 3000 gallons spilled per billion ton-miles in 1983 and nearly 8000 gallons per billion ton-miles in 1984. Pipeline spills contributed less than 100 gallons per billion ton-miles for both years (41).

In the past 20 years, there have been over 30 oil spills of 10 million gallons or more each. One to three spills of this size occur each year (50). In fact, a few very large spills are responsible for a high percentage of oil spilled annually. From 1990 to 1999 there were 346 spills over 7 tons, which totaled approximately 1.1 million tons, but 830,000 tons (75%) were spilled in just 10 incidents (just over 1% of incidents). Annual figures therefore, can vary greatly depending on the number of large spills. For example, in 1999, 29,000 tons were spilled, but in 2001 only 8000 tons were spilled (51).

A key to the size of spills has been the trend in tanker construction toward massive ships. In the 1930s, large tankers carried about 20,000 tons of oil. By the early 1970s, tankers could carry 800,000 tons of oil. This increase in size (some tankers are over three football field long) also increases the likelihood of accidents because supertankers are harder to maneuver (50). Table 4 highlights the largest oil spills on record.

To provide some perspective, the *Exxon-Valdez* spill, which released 12 million gallons of oil (53), was the largest U.S. spill recorded to date, but only the 28th largest oil spill in world history (38). The *Prestige* oil tanker that split in half off

TABLE 4 Ten largest oil spills in history ranked by volume (52)

Rank	Name	Year	Volume in gallons
1	Persian Gulf: tankers, pipelines and terminals, offshore Saudi Arabia	1991	240,000,000
2	Ixtoc I oil well, Ciudad del Carmen, Mexico	1979–1980	140,000,000
3	Nowruz Field, Persian Gulf	1983	80,000,000
3	Fergana oil well, Uzbekistan	1992	80,000,000
5	*Castillo de Bellver* tanker, offshore Cape Town, South Africa	1983	78,500,000
6	*Amoco Cadiz* tanker, offshore Brittany	1978	68,670,000
7	*Aegean Captain* tanker, offshore Tobago	1979	48,800,000
8	Production well D-103, Tripoli, Libya	1980	42,000,000
9	*Irenes Serenade* tanker, Pilos, Greece	1980	36,600,000
10	Kuwait storage tanks	1981	31,170,000

TABLE 5 Hot spots for tanker oil spills since 1960 (55)

Location of hot spot	Number of spills
Gulf of Mexico	267
Northeastern United States	140
Mediterranean Sea	127
Persian Gulf	108
North Sea	75
Japan	60
Baltic Sea	52
United Kingdom and English Channel	49
Malaysia and Singapore	39
West Coast of France/North and West Coasts of Spain	33
Korea	32

the coast of Spain in 2002, causing major ecological and economic damage, was carrying approximately 22 million gallons of oil.

Oil spills occur literally all around the world. The Oil Spill Intelligence Report has documented spills of at least 10,000 gallons in the waters of 112 nations since 1960. However, they also note that spills occur more frequently in certain areas (54). Table 5 shows a number of "hot spots" for oil spills from tankers.

In recent years there has been a steady increase in number of small spills while large-scale spills have stayed relatively constant. The cumulative impact of small spills of less than 100,000 gallons adds up to about 10 million gallons per year worldwide (50). Table 6 shows that the greatest quantity of oil from marine transport is actually released in the form of bilge and fuel oil. In fact, emissions of

TABLE 6 Sources of oil spills from marine transport, 1990 (56)

Emission source	Tons per year
Bilge and fuel oil	250,000
Tanker operations	160,000
Tanker accidents	110,000
Nontanker accidents	10,000
Marine terminal operations	30,000
Dry-docking and scrapping of ships	10,000
Total	570,000

bilge and fuel oil are equivalent to approximately fi e *Exxon-Valdez* spills per year. For many years, it has been common practice to dump oil-contaminated ballast water and tank washings directly into the sea. So while most of the large-scale spills result from grounded tankers or tanker collisions, the cumulative contamination from numerous relatively small accidents, leaks, and intentional discharges can actually surpass that of large spills from shipping (38).

Pipelines, which are highly prone to corrosion, are also a source of spills, leaks, and fires Many pipelines are used long after their engineering life span (an estimated 15 years) (38). Using the U.S. Offic of Pipeline Safety database, Nesmith & Haurwitz have estimated that 67 million gallons of crude oil, gasoline, and other petroleum products leaked from U.S. pipelines in the last decade. However, "there is consensus—among the industry, its regulators and its critics—that the database underrepresents the quantity of oil products that escapes from pipelines." The actual amount of leakage is potentially twice as high as the annual reported average (57). Even the U.S. government, in the National Energy Policy, acknowledges that inland oil spills are a major source of oil emissions and that these spills appear to be on the rise. As they report, "the federal government receives many more inland oil spill notification (9,000 notification a year in the early 1990s versus 10,000 to 12,000 a year in the late 1990s)" (2).

The main impacts of vessel oil spills obviously fall on marine ecosystems and coastal communities. A number of factors influenc the scale of these impacts, including the size of the spill, the kind of oil, the season of the spill, and the vulnerability of local plants and animals (40). The spill size often determines the area affected, whether it reaches the shore, and how much of the shore it covers. The extent of contamination also depend on the nature of the coastal ecosystems and the types of birds and mammals affected (58). Some ecosystems, such as mangroves, salt marshes, coral reefs, and polar bear habitats, are particularly sensitive to oil spills and can take years to recover (59).

Oil spills also threaten human health through illness and injury during the spill, during cleanup, and through consumption of contaminated fis or shellfish Drinking water supplies can also be contaminated through spills (50). But as Burger notes, "There are remarkably few studies of the health responses of local people exposed in the months following a spill" (50). In one study in Scotland following an oil spill, community members reported increased health problems, including increased psychiatric symptoms (50).

Oil spills can also have long-lasting economic consequences by damaging fish eries, excluding fisherfol from fishin grounds, fouling fishin gear, and reducing fis stocks in succeeding years (50). Commercial fisherie can also be negatively impacted by the simple perception of tainted fish Public concern about eating fis exposed to oil spills can damage the market for fis from an affected region. Even a few oiled fis can taint an entire region's catch. In the case of the *Exxon Valdez* oil spill in Alaska, closing the fisherie in Prince William Sound resulted in a season's loss of income for commercial fisherme and an estimated $135 million in lost revenues (50).

Subsistence communities are often even more severely harmed by oil spills. Unfortunately, there is no global database on impacts of oil releases on indigenous communities or sensitive ecosystems. Recent cases, however, highlight troubling impacts. The *Exxon Valdez* oil slick covered shorelines used by the Chugach people of Alaska for subsistence hunting, fishing and gathering. Fifteen Aleut communities in Prince William Sound and the Gulf of Alaska were affected by the oil spill. Subsistence harvests came to a virtual halt after the oil spill. Communities decreased their harvests between 14% and 77% depending on whether they had access to oil-free upland species. One community on Chenaga Bay on the Prince William Sound reduced its harvest from 342 to 148 pounds per person per year. Another community in English Bay on the Kenai Peninsula reduced consumption from 289 to 141 pounds per person per year. The variety of species harvested also declined from 23 to 12 (50).

Oil pipelines have also caused disproportionate impacts on low-income and minority communities in the United States and been connected to human rights violations around the world. In the United States for example, the Pacifi Pipeline, a project constructed by a consortium of Chevron, Unocal, and Texaco in the late 1990s, faced a lawsuit from the City of Los Angeles that alleged their routing of the pipeline constituted an environmental injustice. Pacifi Pipeline is a 132-mile long heavy crude pipeline that transports 130,000 barrels per day of oil from Bakersfield California, through the heart of Los Angeles, into the refiner district on the Pacifi Coast (60). In transit through the City of Los Angeles, it bisects 75 neighborhoods. Analysis conducted by Impact Assessment Inc. for the City of Los Angeles demonstrated that 74 of the 75 communities had minority populations higher than the national average; 72 of the 75 had minority populations higher than the California average; 42 of the 75 had minority populations over 90% of the total tract population; all of the tracts had a higher percentage of non-English speakers than the national average; and 62 of 75 had per capita income lower than the national, state, county, and city levels (61).

Construction of oil pipelines in developing countries has also been associated with human rights abuses. The current debate regarding the construction of the Chad-Cameroon Pipeline highlights the potential for corruption and violations of human rights in such projects. The project, sponsored by an international consortium lead by ExxonMobil and ChevronTexaco involves the development of the Doba oil field in southern Chad and the construction of a 1070-kilometer pipeline to an offshore oil-loading facility on Cameroon's Atlantic coast. Advocacy groups such as Rainforest Action Network (RAN) have raised concerns about increasing violence and human rights abuses, corruption, and devastation of the Bakola (or Pygmie) peoples who live along the pipeline. RAN notes that "both the US State Department and Amnesty International have documented serious human rights abuses by Chad and Cameroon governments, including extrajudicial killings, torture, abuse, rape, limiting freedom of the press and arresting opposition politicians and other civilians. Many believe that there has already been an increase in violence and human rights abuses in Chad as a result of the pipeline project" (62).

VI. IMPACTS OF OIL REFINING

Oil in its crude form has limited uses. It must be separated, converted, and refine into useful products such as gasoline, heating oil, jet fuel, and petrochemical feedstock. The basic oil refinin process involves thermal "cracking" which applies both pressure and intense heat to crude oil in order to physically break large molecules into smaller ones to produce gasoline and distillate fuels. Any crude-oil constituents that are not converted into useful products during this process, or captured by pollution-control technologies, are released to the environment (63). Refinerie produce huge volumes of air, water, solid, and hazardous waste, including toxic substances such as benzene, heavy metals, hydrogen sulfide acid gases, mercury, and dioxin (64).

There is no single source of data on global refiner emissions or impacts. However, U.S. refiner emissions are reported by the Environmental Protection Agency (EPA) through the Sector Facility Indexing Project (SFIP) and the Toxic Release Inventory (TRI). Several independent studies have also examined refiner emissions in the United States (63, 65, 66). In the 1990s, the U.S. EPA targeted oil refinerie as their top enforcement priority (64). According to the EPA, in 1999, 54% of refinerie were in "significan non-compliance" (meaning they have committed persistent, serious violations) of the Clean Air Act; 22% were in significan noncompliance with the Clean Water Act; and 32% violated the Resource Recovery and Conservation Act (67).

The Emergency Planning and Community Right-to-Know Act of 1986 requires that manufacturing facilities above a certain size provide information about toxic chemical releases and offsite waste transfers to the national TRI. The oil refinin sector, but not exploration or extraction, is required to report to the TRI. Each refinin facility in the United States must report annual emissions of roughly 600 listed chemicals. Unfortunately, as Epstein et al. note, "Of the hundreds of toxic chemicals in crude oil and refiner products, only a few are typically reported to TRI. Many of those not included have similar structural, physical, and toxicological properties to those that are reported . . . . According to the Amoco Yorktown study, this refinery s TRI report forms cover only 9% of the total hydrocarbons released" (63).

Local environmental impacts from oil refinerie result from toxic air and water emissions, accidental releases of chemicals, hazardous waste disposal, thermal pollution, and noise pollution. Analysis of the TRI data reveals that the petroleum refinin industry releases 75% of its toxic emissions to the air, 24% to the water (including 20% to underground injection and 4% to surface waters), and 1% to the land (39). The primary hazardous air pollutants released by the industry are benzene, toluene, ethyl benzene, mixed xylenes, and n-heptane (39). The accumulation of refiner air emissions such as hydrocarbons, sulfur dioxide, and particulates in the atmosphere also contributes to acid rain (38). U.S. refinerie are the second largest industrial source of sulfur dioxide, the third largest industrial source of nitrogen oxides, and the largest U.S. stationary source of volatile organic

compounds (VOC) emissions, producing more than twice as many VOCs as the next sector, organic chemical plants. Refinerie are also the fourth largest source of toxic air pollutants (65). Paul Templet, former head of the Louisiana Department of Environmental Quality and professor at Louisiana State University's Institute for Environmental Studies, has measured jobs and tax subsidies per pound of pollutants emitted and shown that petroleum refinin produces 1048 pounds of pollution per job, as compared to 460 pounds of pollution per job for paper manufacturing, 222 pounds for plastics manufacturing, 61 pounds for tobacco production, and 28 pounds for food production (68).

The majority of refiner emissions actually occur through leaks rather than through regulated smokestacks or effluen pipes. In 1999, Congressman Henry A. Waxman commissioned an investigation into fugitive emissions from oil refinerie by the minority staff of the House of Representatives Government Reform Committee. The study found that oil refinerie significantl underreport leaks from valves to regulators and that these fugitive emissions add millions of pounds of pollutants to the atmosphere each year, including 80 million pounds of VOCs and 15 million pounds of toxic pollutants (65). Production pressures in the oil industry are such that it is more economical to allow fugitive emissions and to lose some oil than to close down leaky facilities for repair (8).

An EPA study of the Amoco oil refiner in Yorktown, Virginia, demonstrated that the cumulative effects of refiner leaks can lead to major impacts. Although only 0.3% by weight of crude oil by-products from the Amoco refiner was released into the environment, this led to over 11,000 gallons of oil components released (66). Because the oil refinin industry in the United States processes more than 16 million barrels of crude oil each day, approximately 50,000 barrels of byproduct likely are released per day.

Refinerie also use thousands of gallons of water per day for production and cooling processes. Treatment of liquid effluen does not entirely eliminate contaminants such as aromatic hydrocarbons (benzenes and napthenes) that enter waterways utilized by humans, fish and wildlife (38). For example, one recent study of water pollution from oil refinerie found significan levels of aromatic hydrocarbons that contributed to important differences in the diversity and abundance of fis between stations located up- and downstream from refinerie (38). Thermal pollution from the release of refiner effluent which is warmer than surrounding waters also disrupts marine ecosystems.

The operation of refinerie results in fires explosions, and chemical spills. In California, for example, refinerie are responsible for over 90% of all accidental releases in the state. Hazardous-waste disposal from refiner facilities also threatens nearby communities. According to the EPA, oil refinin is one of the top hazardous waste producing industries: "Disposal methods for toxic refiner wastes have tended to take advantage of wide open spaces instead of environmentally sound waste management techniques" (8). In fact, approximately two thirds of solid wastes from U.S. refinerie are disposed of through burial in onsite reserve pits (39).

Wastes from oil refinerie can create health risks to facility workers and surrounding communities. Workers are at risk of accidents involving fires explosions, and chemical leaks and spills. Health hazards include exposure to heat, polluted air, noise, and hazardous materials, including asphalt, asbestos, aromatic hydrocarbons, arsenic, hexavalent chromium, nickel, carbon monoxide, coke dust, hydrogen sulfide lead alkyls, natural gases, petroleum, phenol, and silica. Epstein & Selber (38) report a number of health impacts from exposure to these materials; these include the following:

1. severe burns or skin and eye irritation from high levels of benzene and hydrogen sulfid fumes, which may lead to dermatitis, bronchitis, and chemically induced pneumonia;
2. headaches and mental disturbances from carbon-monoxide exposures;
3. chronic lung disease from long-term exposures to coke dust, silica, and hydrogen sulfide
4. psychosis and peripheral neuropathies from exposures to lead alkyls used as gasoline additives; and
5. increased cancer risks from exposures to carcinogenic materials such as benzene, xylene, arsenic, and hexavalent chromium.

Management of refinerie and their impacts are also increasingly being outsourced to service companies. Conoco and ExxonMobil, for example, have contracted Philip Services to operate and maintain oil refineries which minimizes the actual owners' liability and keeps contract employees' wages low. Contract workers are usually nonunion and often poorly trained; this results in more accidents and more risk to workers and surrounding communities.

Philip Services also operates landfill and other treatment, storage, and disposal (TSD) facilities for the oil industry and has disposed of waste materials at more than 200 third-party disposal facilities. Many of these sites have been declared superfund sites, although Philip's liability for cleanup of these sites is unknown. Even tracking Philip's current pollution record is difficult given the loopholes in disclosure for TSD operations and as Philip has dozens of subsidiaries. In fact, in June 1999, Philip declared Chapter 11 reorganization.

Health impacts extend outside the walls of refineries where studies have demonstrated the relationship between proximity of communities to refinerie and cancer. For example, a 1994 analysis of 264 childhood leukemia clusters in the United Kingdom showed relative, nonrandom proximities to oil refinerie (38). A similar study of all 22,458 children aged 0–15 years dying from leukemia or cancer in England, Wales, and Scotland between 1953 and 1980 found increased incidence of leukemia and other cancers near industrial facilities, particularly oil refineries oil storage facilities, and railside oil distribution terminals (38).

A 1995 report by the Environmental Defense Fund, which used 1992 TRI data on the refinin industry, developed a ranking of refinerie throughout the United States. The study compared the pollution produced per barrel refine at each

facility. Through this comparative analysis, it showed wide variation in emissions (and thus impacts) from facilities on local environments and human health. The report identifie West Virginia, Kansas, Texas, Mississippi, and Wisconsin as the fi e worst states in terms of emissions per pound of product. Nevada, Georgia, New York, Alaska, and New Jersey were ranked as the fi e most efficien states (63).

The EPA SFIP brings together similar types of comparative environmental performance data on refineries The SFIP reports production levels, compliance and inspection data, chemical releases and spills, and, interestingly, demographics of the surrounding population. By combining TRI data with inspection reports and demographic data, the SFIP is a unique resource for evaluating the distribution of impacts from oil refineries These data show for instance that 56% of people living within three miles of refinerie in the United States are minorities—almost double the national average.

Anecdotal evidence from areas surrounding particularly polluting refinerie seems to confir that low-income and communities of color are disproportionately affected by these facilities. For instance, predominantly African-American communities in Louisiana report long-term exposures to toxics and general disregard for health impacts from refinerie located in the so-called Cancer Alley region along the Mississippi River. The residents of Saint Charles Parish in Louisiana provide graphic examples of these problems. At just one refiner , the Shell Norco facility, there have been repeated explosions that have claimed workers' and community members' lives, including a boy mowing a lawn and an older woman sleeping inside her house (personal interview with M. Richards member of Concerned Citizens of Norco, February 28, 2001). An explosion of a catalytic cracker at the refiner in 1988 resulted in the death of seven workers and the destruction of millions of dollars in property (69). In addition to these major events, numerous episodes of leaks, fires tank car derailments, flares and other problems have plagued the community. An entire website, funded by the Sierra Club Legal Defense Fund, has been established to track incidents of flarin in Norco (70).

Oil refinin also has major impacts on poor communities in developing countries. In his recent book *Riding the Dragon* (71), Doyle documents environmental injustices observed at Shell's South African Petroleum Refiner (SAPREF) in Durban. Doyle's inventory of pollution concerns and major accidents at this one facility is staggering: underreporting of as much as 10 million pounds of sulfur dioxide per year; massive unreported oil leaks; explosions and fire releasing tons of hydrogen fluoride More specifi reports in 2001 include two fires a chemical solvent spill, and a fuel spill all in January; a March leak of 25 tons of tetra-ethyl lead; a July underground pipeline leak of 1,000,000 liters of gas into the ground; a June failure of a refiner flar resulting in the release of unburned gases, including substantial amounts of hydrogen sulfide a mid-August failure of the asphalt plant at the refinery a September, marine fuel oil pipeline leak and about ten days later, another flar failure; and an October spill of 2000 liters of oil into Durban Harbor during a ship refueling operation.

Community organizing and monitoring in response to these events has led to documentation of emissions, contamination levels, and disease incidence in neighborhoods adjoining the SAPREF refiner . Residents have documented "very high benzene levels in the air—levels 30 times those permitted in the US . . . . In Durban, leukemia rates are 24 times the South African national average. Respiratory problems there are four times the national average" (71). Residents report ongoing acute health effects such as coughing, burning eyes, headache, dizziness, and nausea. They also complain about cases of severe asthma in the community, as well as cases of rare immune diseases, such as teenage lupus erythematosus and childhood kidney cancer.

Unfortunately, here again, no national or international agencies currently collect or publish data on community health impacts from oil activities. Data on mortalities from oil accidents are collected by different agencies depending on whether a worker or community member is killed and whether the accident is caused by a pipeline explosion, a refiner accident, or a tanker. The best data currently available, and even these are limited, cover workplace injuries and deaths in oil production and refinin (72, 73). However, virtually no data are available on chronic health impacts among communities living close to refineries

VII. IMPACTS OF OIL CONSUMPTION

The combustion of petroleum products contributes to numerous environmental impacts including air pollution, water pollution from gasoline and gasoline additives, and global warming. All three of these problems often disproportionately affect low-income, minority populations and developing nations.

Gasoline is composed of hydrocarbons, which as we have noted, include a number of carcinogenic compounds. In addition, substances, such as alkyl lead, oxygenates, and additional aromatic hydrocarbons (which include benzene, xylene, and toluene) are added to gasoline to improve its performance during combustion. The acute and chronic health effects from exposure to gasoline and its additives have been documented and include cancer, central nervous system toxicity, and poisoning from additives. These impacts tend to be concentrated particularly among lower-income populations that live closer to service stations, refineries and transfer or storage facilities (38).

The combustion of oil results in six primary air pollutants: VOCs, oxides of nitrogen (which combine with VOCs to produce low-level ozone), carbon monoxide, particulate matter, oxides of sulfur, and lead. Although gasoline in the United States is now required to be unleaded, lead emissions from combustion of gasoline in the developing world are still common.

The International Center for Technology Assessment has quantifie the externalized costs of using internal combustion engines with gasoline. According to their calculations, the unquantifie environmental, health, and social costs of gasoline usage in the United States total between $231.7 and $942.9 billion per year. The cost

of damage from automobile fumes is estimated to be between $39 and $600 billion per year. The estimate of the annual uncompensated health costs associated with auto emissions is $29.3 to $542.4 billion, which may be low given that auto pollution has been conclusively linked to increased health problems and mortality (74).

The environmental and health impacts of air pollution from gasoline combustion tend to occur disproportionately among low-income communities, communities of color, and poorer populations in developing nations. For example, although leaded gasoline is banned in the United States, its use is still widespread throughout the developing world where residents living in congested, high-traffi areas are exposed to lead emissions. In the United States, diesel emissions pose a similar risk to inner-city populations that face the highest level of exposure to diesel exhaust emissions from buses and trucks. Furthermore, "within cities, the highest density of buses and bus stations are found in the poorest neighborhoods, and poverty, race, and asthma rates are positively correlated" (38).

A study by Gotlieb et al. further demonstrates that asthma morbidity and mortality disproportionately impact minority populations, pointing out that in the early to mid-1980s the asthma mortality rate among black residents of the United States, aged 5 to 34 years, was three to fi e times as great as the rate among whites. This study, which was conducted in 1992, concluded that the asthma hospitalization rate in Boston was positively correlated with poverty rates and percentages of nonwhite residents and inversely correlated with income and educational levels. The asthma rate varied significantl within the city, from a low of 0.7/1000 persons in the Kenmore Square area to a high of 9.8/1000 in Roxbury (75).

It is now widely believed that human activities, primarily the burning of fossil fuels, are modifying natural atmospheric processes and contributing to global warming. Approximately three quarters of the anthropogenic emissions of carbon dioxide to the atmosphere have come from the combustion of fossil fuel (76). The Intergovernmental Panel on Climate Change has forecast major changes in ecological systems (and agricultural systems) and particularly stark impacts in some of the poorest countries in the world.

The United Nations Environment Program (UNEP) has also warned that the populations most vulnerable to climate changes are the landless, poor, and isolated. UNEP explains that "poor terms of trade, weak infrastructure, lack of access to technology and information, and armed conflic will make it more difficul for these people to cope with the agricultural consequences of climate change. Many of the world's poorest areas, dependent on isolated agricultural systems in semi-arid and arid regions, face the greatest risk. Many of these at-risk populations live in sub-Saharan Africa; South, East and Southeast Asia; tropical areas of Latin America; and some Pacifi island nations" (77). It is also anticipated that low-lying islands may become totally uninhabitable, and entire populations will become environmental refugees (78). As some advocacy groups have argued, "On a global scale, climate change is likely to be the biggest environmental justice issue ever. The reason is simple: the poor are most vulnerable to the effects of climate change" (78).

The impacts of changes in global climatic patterns have already been witnessed throughout the developing world. Examples of devastating episodes include

Hurricane Mitch in Central America in 1998, which killed over 10,000 and created hundreds of thousands of environmental refugees; floodin in Bangladesh in 1998 that affected millions of people in one of the poorest nations on Earth; severe storms and floodin in Venezuela in 1999 that killed an estimated 20,000 and left 150,000 homeless; and extensive flood in Mozambique in 2000 and 2001 (38, 78).

VIII. REGULATING THE OIL INDUSTRY

The oil industry is regulated at each stage of its life cycle through a patchwork of environmental, health, and safety laws. The current U.S. administration and the oil industry itself have argued that the industry is actually "over-regulated" (1, 79). Environmental advocacy groups argue, conversely, that while the industry is subject to many formal regulations, the implementation of these regulations is often inadequate, particularly in poor communities and developing countries (8).

As each nation has its own regulations, it is not possible here to summarize global oil regulation. Instead, we focus on the regulatory framework of the United States and look in particular at the effectiveness of these regulations and their implementation.

The U.S. oil industry is regulated under a dispersed, fragmented, and sometimes overlapping set of statutes (39), which include the Federal Land Policy and Management Act; the Federal Oil and Gas Leasing Reform Act; the Outer Continental Shelf Lands Act; the National Environmental Policy Act; the Oil Pollution Act; the Clean Air Act's National Emission Standards for Hazardous Air Pollutants, National Ambient Air Quality Standards, New Source Review (NSR), and New Source Performance Standards; the Clean Water Act's National Pollutant Discharge Elimination System and Spill Prevention Control and Countermeasure Requirements; the Emergency Planning and Community Right-to-Know Act; and the Underground Injection Control program of the Safe Drinking Water Act.

Several states have also implemented local environmental standards for oil extraction and refining which, in general, are stricter than federal standards. California, for instance, has implemented regulations for reformulated gasoline that are stricter than the Clean Air Act; an Air Quality Maintenance Plan which seeks to reduce emissions from stationary sources such as refineries and comprehensive leak identification maintenance, and inspection programs (80).

Both the production processes and the products of oil refinin are regulated for their impacts. The formulation and composition of fuels is thus regulated to prevent environmental and health impacts (81). U.S. fuel regulation programs include the Oxygenated Fuels Program, the Highway Diesel Fuel Program, the Reformulated Fuels Program, and the Leaded Gasoline Removal Program.

Workplace hazards from oil production and refinin are regulated by the Occupational Safety and Health Administration (OSHA). OSHA regulates occupational exposures to chemicals such as benzene, a common emission in petroleum refine - ies. OSHA has also developed safety management rules requiring refinerie to

conduct detailed reviews of their processes to determine workplace risk and injury potentials to workers (81).

Not withstanding this long list of statutes and agencies, the oil industry also benefit from a number of exemptions, or what their critics call loopholes, from federal environmental laws. A coalition of community groups in the United States recently complained that "despite a broad patchwork of regulations on refinin operations, numerous loopholes allow refiner operators to skirt the law and operate their plants in a manner dangerous to public health" (82).

For instance, there is a "petroleum exclusion" exemption under the Comprehensive Environmental Response, Compensation, and Liability Act (81). Petroleum and the toxic components of crude oil, such as benzene, are exempted from classificatio as hazardous substances unless the concentration of these substances is increased by contamination or by addition after refinin (39). The oil extraction industry is exempted from reporting toxic chemical releases to the TRI (39). Under the 1980 Amendments to the RCRA, Congress conditionally exempted drilling flu ids, produced waters, and other wastes associated with exploration, development, or production (39). Oil exploration and production activities in offshore waters of Texas, Louisiana, Mississippi, and Alabama are exempt from Clean Air Act standards (39). Oil stripper wells are exempt from the Clean Water Act's standards. Crude oil gathering pipelines under six inches in diameter are exempt from the Hazardous Liquid Pipeline Safety Act. Oil barges are exempt from double hull requirements of the Oil Pollution Act (39).

The Bush Administration also recently loosened a major regulatory burden on oil refinerie by rescinding "new source review" requirements when refinerie upgrade technology or expand their capacity (83). By eliminating this regulatory requirement, oil refinerie can now significantl expand capacity without applying for new permits or undergoing additional evaluations of Clean Air Act compliance. Environmental groups have criticized this change, arguing that the initiative "will allow virtually all pollution increases from old, high-polluting sources to go unregulated and public participation to be excluded" (84).

Another exemption in U.S. regulation relates to grandfathering of old refine ies. Grandfathered plants, those built before environmental laws came into force, can operate without meeting current federal emissions standards (64). Accidental releases, upsets, and flaring which the Waxman report documented, occur quite frequently at oil refineries these allow significan emissions to go unregulated during nonpermitted events (64, 65). For example, the EPA has reported incidents of sulfur-dioxide releases through flarin in a single day that exceed annual permitted releases (65).

As we have noted, the EPA itself reports significan levels of noncompliance of the industry with air regulations, water standards, and solid waste regulations (85). But EPA enforcement resources have recently been cut back, thereby reducing the EPA's ability to police this noncompliance. The EPA's top enforcement office recently resigned in frustration over the agency's reduction in inspections and fines In an unusual public critique, he lamented, "We don't have an EPA anymore. We just have the White House and the energy lobby" (86).

Oil pipeline regulation is also limited in a number of regards. The U.S. government relies on an underfunded, understaffed agency, the Offic of Pipeline Safety, to monitor over 2 million miles of oil and gas pipelines (enough to reach around the Earth 88 times). The agency has only 55 inspectors, and it rarely imposes fine for leaks, explosions, or even worker deaths. As Jim Hall, the former chairman of the National Transportation Safety Board, stated, "there is almost an absence of regulation" for oil pipelines (57).

The Offic of Pipeline Safety reported annual leaks of approximately 6.7 million gallons of oil and gas per year during the 1990s, the equivalent of over one *Exxon Valdez* spill every two years. There were also 23 reported fatalities from pipeline accidents during the 1990s, which included several children (87). Because federal inspectors cannot monitor all 2.2 million miles of pipeline, the government asks industry to self-report pipeline problems. Unfortunately, industry metering systems are not accurate enough to detect most leaks or spills. This has led to the operation of leaking pipelines, unreported spills, and an increase in spills and incidents over the last 10 years (57). According to an audit conducted for the California State Assembly, actual pipeline spills outnumbered industry reported spills by ten to one (57).

As mentioned, levels of compliance and performance of oil refinerie vary widely across the United States (63). Community groups have documented, largely through anecdotal reports, accompanying variations in regulatory enforcement. Some assert that Texas and Louisiana, the largest oil refinin states, have the weakest enforcement agencies (64). California agencies appear to be stricter and more effective. A simple analysis of data from the EPA's SFIP shows that high minority communities (those communities with over 30% minority populations within 3 miles of a refinery were subject to fewer inspections and enforcement actions than refinerie in predominantly white communities. Figures 1 and 2 present simple trend lines of variations in inspections and enforcement actions with respect

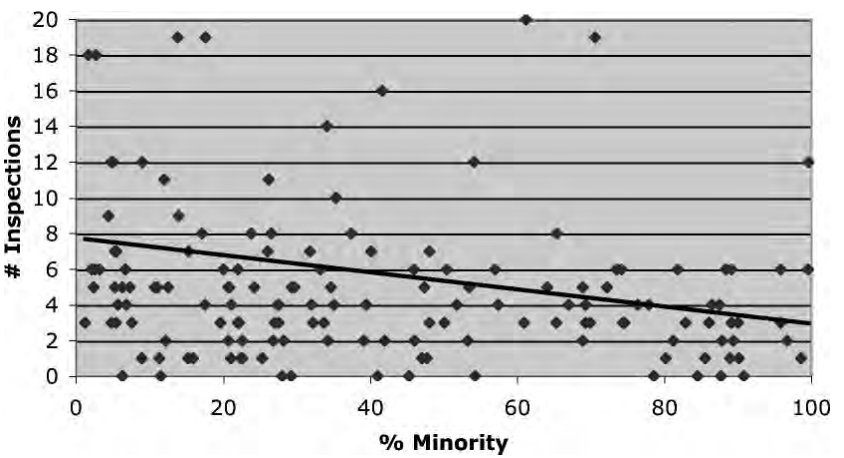

Figure 1 Incidence of inspections shown using least squares fit

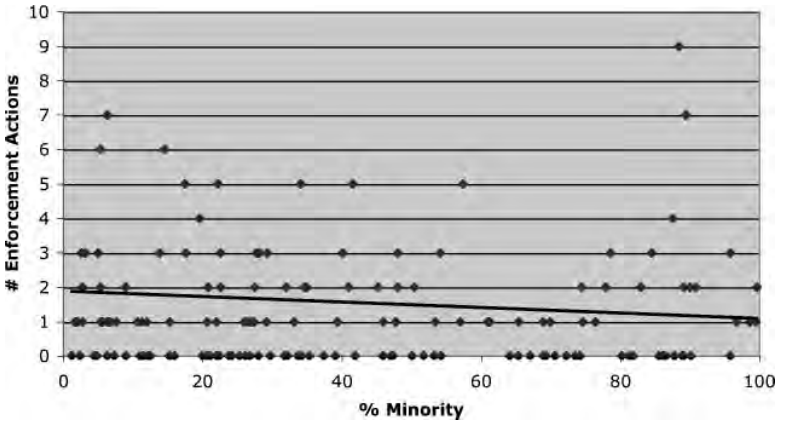

Figure 2 Incidence of enforcement.

to minority populations living in proximity to refinerie in the United States. These data, while preliminary, seem to indicate a correlation between race and regulatory enforcement and, at a minimum, makes clear the need for further analysis of variations in the implementation of environmental regulations.

Environmental and health regulations in developing countries, although almost impossible to evaluate systematically, appear to be even weaker and more variable than U.S. regulations. A number of key oil-producing countries have either weak environmental laws, weak enforcement of these laws, or no environmental policies at all. The U.S. Energy Information Administration reports that "Nigeria does not have a pollution control policy" (88), and the laws that do exist are not enforced. Ecuador lacked environmental regulations until 1990, and dependence on oil revenue has since hindered environmental enforcement (11). Saudi Arabia did not have an environmental protection agency until 2001 (89).

IX. CONCLUSIONS, FURTHER RESEARCH, AND POLICY IMPLICATIONS

The impacts of oil production, transport, refining and consumption are significan and widespread. From environmental impacts on fragile ecosystems, to cultural impacts on indigenous groups, health impacts on workers and communities, global climatic impacts, and military conflicts oil is perhaps the single most controversial and influentia commodity in the world. Our analysis of existing data has shown that oil's adverse impacts, which spread out virtually everywhere oil fl ws, appear to disproportionately affect groups such as indigenous communities, migrant workers, and poor communities living near refineries pipelines, and gas stations. However, further research is needed to specify the distribution of environmental and social impacts from oil.

Although numerous studies have analyzed individual, discrete impacts of oil, little data or analysis is available assessing the overall distribution or cumulative impacts of oil. Current research and government data fail to evaluate the global distribution of benefit and costs from oil. It is virtually impossible to access even basic data on the spatial or demographic distribution of impacts from oil. One exception is the EPA's SFIP, which provides data on the demographics of populations living in proximity to oil refinerie in the United States. But even these data are limited to simple measures of environmental performance of refineries

Past studies have also failed to evaluate critical issues influencin the distribution of these impacts. Changing systems of control over the industry are particularly important in determining both who makes decisions over oil production, transport, and refinin and who benefit from these decisions. The super-major oil corporations control an increasing percentage of oil extraction and refinin and increasingly set the terms of oil's distribution and impacts. There is also very little information available to evaluate the implementation and effectiveness of government regulation of oil.

Thus, significan research is required to better measure and evaluate impacts of oil. There is a need for more and better data on environmental releases from oil extraction, transport, and refining And there is a need for more and better analysis of the distribution of these impacts. Most governments currently rely on industry self-reporting of emissions, leaks, and accidents. Even in the United States, inspectors for key segments of the industry are scarce; ambient air sampling around facilities is limited; and monitoring of point sources, leaks, and accidents is minimal. Additionally, virtually no epidemiological or toxicological data are available on exposed communities, such as those living near refineries

Greater public disclosure of data on the environmental, social, and financia impacts of oil exploration, production, and refinin is also needed. Greater transparency regarding the performance of the oil industry would, at a minimum, help alert stakeholders to the true costs of oil consumption. A number of groups have called recently for reporting of oil revenues and payments to developing country governments and of the social and environmental impacts of these investments. Nongovernmental organizations and community groups around the world have also been calling for increased government inspections and enforcement authority over the oil industry. Even in the United States, exemptions and loopholes specifi to the oil industry create a range of problems in environmental regulation. Finally, governments will have to engage and struggle with regulating oil companies if they are to seriously advance mechanisms to regulate global carbon emissions and mitigate climate impacts.

Oil is clearly at the center of current industrial development and economic activities. However, oil is also at the heart of some of the most troubling environmental, health, and social problems we face. How we manage both the benefit and costs of oil production and consumption will help determine the wealth, health, and safety of the planet. Understanding the distribution of impacts of oil and the effectiveness of current systems of regulation over these impacts is critical to advancing more

democratic control over oil and to maximizing the benefit of oil while minimizing its adverse impacts. More open and robust debates in the United States and around the world regarding oil extraction, transport, refining and consumption are critical to making our oil economy more just, equitable, and sustainable.

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TOWARD A CRITICAL ENVIRONMENTAL JUSTICE STUDIES

Black Lives Matter as an Environmental Justice Challenge

David N. Pellow
Department of Environmental Studies, University of California, Santa Barbara

Abstract

In this paper I expand upon the recent use of the term "Critical Environmental Justice Studies." This concept is meant to capture new developments in Environmental Justice (EJ) Studies that question assumptions and gaps in earlier work in the field. Because this direction in scholarship is still in its formative stages, I take this opportunity to offer some guidance on what Critical Environmental Justice (CEJ) Studies might look like and what it could mean for theorizing the relationship between race (along with multiple additional social categories) and the environment. I do so by (1) adopting a multi-disciplinary approach that draws on several bodies of literature, including critical race theory, political ecology, ecofeminist theory, and anarchist theory, and (2) focusing on the case of Black Lives Matter and the problem of state violence.

Keywords: Environmental Justice, Black Lives Matter, State Violence, Racism, Speciesism, Scale, Expendability, Indispensability

INTRODUCTION

Black Lives Matter (BLM) is a social movement centered on the problem of state-sanctioned racist violence. The movement began as a response to the acquittal of George Zimmerman, a man who killed Trayvon Martin, a seventeen-year old African American boy in Sanford, Florida, in 2012. From that moment on, social media, mainstream media, and the Black Lives Matter movement would routinely intensify the national focus on racialized state-sanctioned violence when yet another video or testimony surfaced featuring an African American being shot, beaten, choked, and/or killed by police or White vigilantes. The role of social media technology was pivotal. As one writer put it, "Social media could serve as a source of live, raw information. It could summon people to the streets and coordinate their movements in real time. And it could swiftly push back against spurious media narratives . . ." (Bijan 2015).

BLM co-founder Alicia Garza explained what the movement stands for: "Black Lives Matter is an ideological and political intervention in a world where Black lives are systematically and intentionally targeted for demise. It is an affirmation of Black

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folks' contributions to this society, our humanity, and our resilience in the face of deadly oppression" (Garza 2014).

In this paper, I draw links between what I view as the most important insights and questions that emerge from the Black Lives Matter movement and the struggle against environmental racism. This is a connection that many scholars might not make at first glance because police brutality and environmental politics would appear to be only tangentially related, but I argue they are in fact closely intertwined and that we must explore their myriad connections in order to excavate the roots of racist violence no matter the form it takes. The questions I explore here include: How can Black Lives Matter's emphasis on police violence against African American communities inform our understanding of the scourge of ecological burdens facing those same communities? Conversely, what can the violation of Black bodies and spaces by ecologically destructive agents produced by states and corporations tell us about the violation of those same bodies by police and law enforcement agents? I find that a "first-" and "second-generation" Environmental Justice Studies framework can assist in this effort, but can only take us so far. Therefore, I propose that a Critical Environmental Justice Studies framework can more fully address these pressing concerns.

ENVIRONMENTAL JUSTICE STUDIES

The Environmental Justice (EJ) movement is composed of people from communities of color, indigenous communities, and working-class communities who are focused on combating environmental injustice—the disproportionate burden of environmental harm facing these populations. For the EJ movement, social justice is inseparable from environmental protection.

In the early 1970s, researchers in the United States found strong correlations between social class status and air quality in the United States. As a result of social movement activism, however, the focus began to broaden from social class to race and from air pollution to a range of environmental hazards (Pulido 1996; Walker 2010). For example, in 1982, hundreds of civil rights leaders and community activists protested a toxic waste dump in the majority African American community of Warren County, North Carolina. That action sparked the discourse of environmental racism and the growth of Environmental Justice Studies, and since that time, scholars and other researchers have documented the reach of environmental racism/inequality in the United States and around the globe, as well as the social movement that has emerged to highlight and challenge this phenomenon (Bullard 2000; Cole and Foster, 2000; Pellow and Brulle, 2005).

Thus, hundreds of studies have documented that people of color, people of lower socioeconomic status, indigenous and immigrant populations, and other marginalized communities are disproportionately affected by ecologically harmful infrastructures, such as landfills, mines, incinerators, polluting factories, and destructive transportation systems, as well as by the negative consequences of ecologically harmful practices, such as climate change/disruption and pesticide exposure (Ringquist 2005). Much of this work has documented the troubling depths and breadth of environmental injustice's impact on the lives of people—including public health and mental health effects—and on how these communities make meaning out of these assaults while organizing for environmental justice. And while EJ Studies may have earlier focused on the United States, scholars are also documenting environmental inequalities and EJ movements' responses to them around the globe (Agyeman et al., 2010; Pellow 2007;

Roberts and Parks, 2006). A small but growing group of researchers—including and especially environmental humanities scholars—have focused on the ways that gender, sexuality, citizenship, indigeneity, and nation shape the terrain of ecological inequalities, but those areas of scholarship remain in need of further development (Adamson 2011; Bell 2013; Buckingham and Kulcur, 2010; Gaard 2004; Smith 2005).

TOWARD A CRITICAL ENVIRONMENTAL JUSTICE STUDIES

Recent scholarship divides EJ Studies into two phases: (1) the "first-generation," which was focused primarily on documenting environmental inequality through the lens of race and class; and (2) "second-generation" studies that extend beyond questions of distribution to incorporate a deeper consideration of theory and the ways that gender, sexuality, and other categories of difference shape EJ struggles (Buckingham and Kulcur, 2010; Walker 2010). In our book *Power, Justice, and the Environment*, Robert Brulle and I used the term "Critical Environmental Justice Studies" (Pellow and Brulle, 2005), which has since been adopted by other scholars working to expand the academic field and politics of environmental justice (Adamson 2011; Holifield et al., 2010). This concept is meant to build on recent scholarship in EJ Studies—"second-generation" writings—that questions assumptions and gaps in earlier work in the field by embracing interdisciplinarity and methodologies and epistemologies including and beyond the social sciences. As this direction in scholarship is still in its formative stages, I take this opportunity to offer some guidance for what a Critical EJ Studies might look like.

Critical EJ (CEJ) Studies is a perspective intended to address a number of limitations and tensions within EJ Studies. These include, for example: (1) questions concerning the degree to which scholars should place emphasis on one or more social categories of difference (e.g., race, class, gender, sexuality, species, etc.) versus a focus on multiple forms of inequality; (2) the extent to which scholars studying EJ issues should focus on single-scale versus multi-scalar analyses of the causes, consequences, and possible resolutions of EJ struggles; (3) the degree to which various forms of social inequality and power—including state power—are viewed as entrenched and embedded in society; and (4) the largely unexamined question of the *expendability* of human and non-human populations facing socioecological threats from states, industries, and other political economic forces.

On the first point above, EJ scholars have a tendency to focus on only one or two forms of social inequality in studies of environmental injustice. For example, some scholars continue to debate the relative importance of race versus class in terms of which category is most important with respect to the distribution of environmental hazards, while only a small group of scholars have explored the role of gender and sexuality in EJ Studies (Buckingham and Kulcur, 2010; Smith 2005). Moreover, the key social category *species* remains, at best, at the margins of the field of EJ Studies, despite the fact that, generally, when and where humans suffer from environmental inequalities, so does the more-than-human world (and vice versa) and often as a result of ideological frameworks that link marginalized humans to "nature." My point here is that since multiple forms of inequality drive and characterize the experience of environmental injustice, the field would do well to expand in that direction. Thus CEJ Studies brings greater attention to how multiple social categories of difference are entangled in the production of environmental injustice, from race, gender, sexuality, ability, and class to species, which would attend to the

ways that both the human and the more-than-human world are impacted by and respond to environmental injustice.

With respect to the second point above concerning *scale*, the EJ Studies literature tends to be characterized by research at one scale or another, rather than a multi-scalar approach. In other words, most researchers focus on the local, regional, national, or sometimes transnational or global scale, but few studies attempt to grasp how EJ struggles function at multiple scales, from the cellular and bodily level to the global level and back (Herod 2011; Sze 2016). Some scholars have addressed this important question by exploring cases in which pollutants produced in one part of the world travel across national borders and impact human and ecological health in another hemisphere (Sze 2006). Scale is of critical importance because it allows us to understand how environmental injustices are facilitated by decision-makers who behave as if sites where hazards are produced "out of sight and out of mind" are somehow irrelevant to the health of people and ecosystems at the original sites of decision-making power and consumption. Attention to scale also assists us in observing how social movement *responses* to environmental injustices draw on spatial frameworks, networks, and knowledge to make the connections between hazards in one place and harm in another. CEJ Studies thus advocates multi-scalar methodological and theoretical approaches to studying EJ issues in order to better comprehend the complex spatial and temporal causes, consequences, and possible resolutions of EJ struggles.

Regarding the third point above—the degree to which various forms of inequality and power are viewed as entrenched in society—this concern stems from my conclusion that the vision of change articulated by EJ Studies scholars and most EJ activists generally looks to the state and capital to accommodate demands via legislation, institutional reforms, and other policy concessions. The concern here is that such an approach leaves intact the very power structures that produced environmental injustice in the first place. Yes, it names those institutions and structures as sources of the problems and seeks to reform them, but by working in collaboration with those entities, such efforts ultimately risk reinforcing their legitimacy. CEJ Studies urges a deeper grasp of the entrenched and embedded character of social inequality—including speciesism and state power—in society and therefore a reckoning with the need for transformative (rather than primarily reformist) approaches to realize environmental justice. In other words, Critical EJ Studies seeks to push our analyses and actions beyond the human, the state, and capital via a broad anti-authoritarian perspective.

Regarding the fourth point above, EJ Studies suggests that various marginalized human populations are treated—if not viewed—as inferior, and less valuable, to society than others. This point is largely undertheorized in the literature (Mills 2001; Pulido 1996). Critical EJ Studies makes this theme explicit by arguing that these populations are marked for erasure and early death, and that ideological and institutional othering is linked to the more-than-human world as well. Moreover, CEJ counters that dominant perspective with a framework that contends that these threatened bodies, populations, and spaces are *indispensable* to building socially and environmentally just and resilient futures for us all.

The above constitute what I call the four pillars of CEJ Studies. CEJ Studies draws from the work of scholars across numerous fields that only periodically intersect, such as Environmental Justice Studies (Adamson 2011; Bell 2013; Bullard 2000; Cole and Foster, 2000), Critical Race Theory (Goldberg 2002), Critical Race Feminism (Hong 2006; Smith 2005), Ethnic Studies (Márquez 2014), Gender and Sexuality Studies and Ecofeminism (Buckingham and Kulcur, 2010; Gaard 2004), Political Ecology (Bennett 2009), and Anti-Authoritarian/Anarchist Theory (Scott 2010; Smith 2011). Furthermore, CEJ Studies is interdisciplinary, multi-methodological, and

is activist-scholar inspired in that it seeks to bridge and blur the boundaries and borders between the academy and community, theory and practice, analysis and action. Critical EJ Studies is only intended to be *one* of many possible approaches to environmental justice scholarship and action. It is neither prescriptive, nor is it a declaration of where the field should be headed.

In the following sections, I apply a CEJ Studies framework to the Black Lives Matter movement to demonstrate the importance of encouraging scholars and activists to think through linkages across theory and social change politics that might not usually emerge from "traditional" EJ Studies or from within many social change movements.

CRITICAL EJ STUDIES AND BLACK LIVES MATTER

In order to examine Black Lives Matter as a CEJ case study, I gathered data from the BLM website, archives, and social media, as well as major essays published in national and international media outlets by BLM advocates and supporters. This selection of data is not intended to be strictly representative, but rather, as a purposive sample it speaks to the core BLM frames and the four pillars of CEJ Studies.

The First Pillar: Intersectionality and the Racial Discourse of Animality

CEJ Studies recognizes that social inequality and oppression in all forms intersect and that members of the more-than-human world are subjects of oppression and agents of social change. Black Lives Matter is a social movement organized primarily around the social category of race, but extends the analysis to multiple categories of difference, reflecting an emphasis on *intersectionality*. Intersectionality is a concept intended to explain the ways that many identities and social categories work together to produce advantages and disadvantages across bodies and space, and that inequalities do not act independently of one another (Collins 2008; Hong 2006).

The founders of BLM present a deeply intersectional approach to the problem of devalued Black life that is inclusive of class, gender, sexuality, immigration status, citizenship, age, ability, and other differences and social categories. All three founders of BLM are women of color. One of them—Alicia Garza—identifies as a queer woman of color, while another—Opal Tometi—is the daughter of Nigerian immigrants and works for an organization focused on the human rights of Black immigrants. The third founder—Patrisse Cullors—who also identifies as queer, organizes support for incarcerated persons and their families, with a focus on mental health. Thus their political and professional work itself is a study in intersectional theory and practice. As BLM co-founder Alicia Garza writes, "Black Lives Matter affirms the lives of Black queer and trans folks, disabled folks, Black-undocumented folks, folks with records, women, and all Black lives along the gender spectrum" (Garza 2014).

Critical EJ Studies speaks to the ways in which various social categories of difference work to place particular bodies at risk of exclusion, marginalization, erasure, discrimination, violence, and othering. These insights are important for building an understanding of the ways that intra-human inequality and oppressions function and how they intersect with human-nonhuman oppression. As David Nibert and Michael Fox put it, "[T]he oppression of various devalued groups in human societies is not independent and unrelated; rather, the arrangements that lead to various forms of oppression are integrated in such a way that the exploitation of one group frequently augments and compounds the mistreatment of others" (Nibert and Fox, 2002, p. 13). "Various devalued groups in human societies" frequently include women, immigrants,

LGBTQ persons, people of color, indigenous peoples, disabled persons, the elderly, low-income people, and nonhuman species. And while the *experiences* of these groups are qualitatively distinct (i.e., not equivalent), the logic of domination and othering as practiced by more powerful groups, the state, and capital provides the common thread of intersectionality through each of their oppressions.

Law enforcement personnel routinely engage in violent acts against humans and nonhumans, even when no threat is evident, thus revealing the ways that state violence produces intersecting oppressions. A 2015 *Baltimore Sun* investigation of the Baltimore, Maryland Police Department (the same town where Freddie Gray was murdered), detailed numerous incidents in which vulnerable people and nonhumans were the subjects of brutal and sometimes lethal force at the hands of police in that city. The report notes that young African American males were the targets of such violence, and so were elderly people, women, children, and nonhuman animals (Friedersdorf 2015). The report discusses, for example, the use of a dead rat to intimidate a police officer working on a police brutality case and the murder of a dog by an officer to intimidate his girlfriend. The *Baltimore Sun* investigation appears to reflect what scholarly studies have long revealed: that there is a well-documented link between the use of violence against nonhuman animals and efforts to exert control over other humans, whether in the destruction of livestock and other food sources during wartime and conquests or through domestic violence directed primarily at women, children, and nonhuman companion animals or pets (Adams 2010; Ascione 1997; Smits 1994).

This brings us to what I call the *racial discourse of animality*, a term meant to capture the language that people use to describe human behavior using nonhuman references and analogies, signaling a set of assumptions surrounding what we view as acceptable "human" versus nonhuman behavior and how different bodies are valued. It reveals the means through which we discuss race, racism, and racial politics in more-than-human terms, as a way of defining the limits and boundaries of the human. This discourse is common in discussions around racial politics and flared up many times around BLM protests against police brutality. What is fascinating is that people on *all* sides of the issues—activists, lawyers, and agents of the state—use this language. In other words, people deploy the racial discourse of animality in the service of White supremacy *and* in the service of racial justice. Consider the following examples:

Lesley McSpadden, the mother of Michael Brown (an African American teenager killed by a police officer in Ferguson, Missouri) spoke to reporters at a public demonstration to call attention to the tragedy of her son's death. She spoke to the bleak outlook of young African Americans facing police brutality: "You took my son away from me! You know how hard it was for me to get him to stay in school and graduate? You know how many Black men graduate? Not many! Because you bring them down to this type of level where they feel they don't got nothing to live for anyway!" While other protesters around McSpadden peacefully raised their hands in symbolic surrender, a police officer's voice was heard and recorded yelling at them, calling them "animals" (Fantz et al., 2014).

In early 2015, Freddie Gray, a twenty-five year old African American man was taken into police custody in Baltimore, Maryland, and, in the process, incurred severe spinal cord and neck injuries and died shortly afterward, sparking nationwide protests. In Baltimore, the protests, led by African Americans and many supporters of the BLM movement, were mainly peaceful but were marred by property destruction, looting, and a number of police officers being injured. Many Whites took to social media—including Baltimore County police officer Jennifer Lynne Silver—and displayed their views on the matter referring to the people involved as "animals" and, in her words, a "disgrace to the human race" (Change.org 2015).

The racial discourse of animality is also used to combat racism. An article in *The Guardian* responded to Jennifer Silver's epithets regarding protesters in Baltimore by arguing that police and society often treat nonhuman animals better than African Americans:

> But 'animals' is a misnomer. People—including police officers—are punished for killing or doing harm to domestic animals. Baltimore has busted dog fighting rings and sent offenders to prison for animal cruelty. In 2014, former Baltimore City police officer Alec Taylor was sentenced to a year behind bars for killing a dog. That might not seem like much, but it is longer than the sentences given to the killers of Michael Brown, Eric Garner, Trayvon Martin, Rekia Boyd, or seven-year old Aiyana Stanley-Jones (Nichols 2015).

In the spring of 2015, a police officer shot Walter Scott, an unarmed African American man in North Charleston, South Carolina, after he fled his car during a traffic stop. Malik Shabazz, president of Black Lawyers for America and former chairman of the New Black Panther Party, appeared on "CNN Newsroom" and stated, "Black men are being killed and hunted down like deer and like dogs" (Griswold 2015). That same month, Democratic Congressman Hank Johnson of Georgia took to the floor of the House of Representatives to urge his colleagues to confront police brutality. Drawing on a phrase usually reserved for hunting nonhuman animals, he stated, "It feels like *open season* on Black men in America" (Griswold 2015, emphasis added).

In these last examples, references to nonhumans are used to communicate the sentiment that African Americans—like all human beings, presumably—should not be treated like nonhuman animals. The assumption here is also problematic because it is speciesist in that it implies that it is acceptable to wantonly hunt and slaughter nonhumans, even if the primary aim is to counter racist violence. My point is that we cannot understand racist violence, and the way we think, talk, and enact it, without paying attention to the relationship between humans and nonhumans, as these examples illustrate.

Finally, the role of *agency* is key to the first pillar of CEJ, since African Americans and other marginalized populations are not just the targets of oppression but also regularly resist their subjugation. While traditional elements of what sociologists call "resource mobilization" (Morris 1984) are on full display with the Black Lives Matter movement—including the mobilization of human bodies, ideas, words, discourses, tactics, and strategies in protest—it is also the case that the urban built environment, information technology, and other forms of more-than-human objects and natures are also integral to that agency and therefore central to making this vision and practice of social change possible (Bennett 2009).

The Second Pillar: Scale, Race, and Difference

CEJ Studies embraces multi-scalar methodological and theoretical approaches in order to better comprehend the complex spatial and temporal causes, consequences, and possible resolutions of EJ struggles.

Scale is deeply racialized, gendered, and classed. The impacts of climate change offer a telling example of how environmental racism reflects this fact. While the conclusions of climate scientists are remarkably clear that anthropogenic climate change is occurring at a dramatic pace and with increasing intensity, this is also happening unevenly, with people of color, the poor, indigenous peoples, peoples of

the global South, and women suffering the most (Harlan et al., 2015). Thus, while climate change matters for all of us, it impacts people and nonhumans with different levels of intensity. If one only pays attention to the global scale, it appears that the worst effects of climate change are not yet upon us. But if one examines what is occurring in neighborhoods, *barrios*, indigenous peoples' lands, and much of the global South, the picture is quite different because the impacts are extensive and ongoing. As Keith Ellison and Van Jones (2015) put it, "[O]ur kids are being poisoned by the air they breathe. Environmental injustices are taking Black lives—that's why our fight for equality has to include climate and environmental justice too."

Social cognition studies find that "implicit bias" among White research subjects results in perceiving threats to their wellbeing when they see Black and Brown people when no such threat exists (Kang 2005). While this research is highly consequential for everyday microsociological interactions across the racial spectrum (especially in the case of gun violence in the name of White "self defense"), it has major macrosociological implications as well. Therefore I find that implicit bias is useful for thinking more deeply about the intersection of race and scale. In other words, if these studies find that people of color are implicitly viewed as threatening, then their presence is perceived to be much *larger* in the social-cognitive terrain of Whites.

Thus race and scale intertwine to reveal also that when Black people respond to racism (whether by police or via environmental racism), their actions may be viewed as a threat that is disproportionate and outsized. We can see this, for example, in the militarized response by police departments when interacting with the Black Lives Matter movement. Many supporters of the Black Lives Matter movement, and even military veterans, decried these practices when disturbing images of police and protesters clashing in Ferguson, Missouri, in response to the police killing of Michael Brown, seemed to be indistinguishable from media images of civilians being repressed by an occupying military force in some far away land. This fact begs for a scalar analysis that links militarized oppression of African Americans to the U.S. military's treatment of people of color elsewhere in the world—in Afghanistan, Iraq, Syria, Pakistan, Yemen, Palestine, and many other nations where the United States uses military force directly or by proxy to protect its interests. This is also an environmental justice issue because the U.S. military is one of the largest sources of pollution on earth (Nazaryan 2014) *and* because militarism and masculinist politics tend to go hand in hand and both tend to result in socially and ecologically harmful practices.

Finally, BLM's work speaks to the myriad ways that scale can be thought of and articulated *temporally*. In fact, the entire point of the BLM movement is, in some ways, an intervention to remind us that blatant acts of anti-Black violence are not a thing of the past and are still quite rampant in what some observers had hoped would be a "postracial" era. BLM co-founder Alicia Garza uses time as an indicator of the intersection of race, sexuality, and scale's intersections, but does so linking history to an imagined future:

> But what I can say to my child, just like my mom says to me, is that there was a time when it wasn't OK for people to be out [about their sexuality]. There was a time when black people were being slaughtered. And I hope that the end to that story is, 'and then we organized, and we built a vibrant international movement, and we really changed conditions for black people in this country, and for everybody.' And I'm hoping that the story that I'm also able to tell is that our demands went beyond 'stop killing us,' to ensure the quality of life for everybody. And that we won that (Brydum 2015).

The Third Pillar: An Anti-Statist/Anarchist Reading of BLM

Social inequalities—from racism to speciesism—are not aberrations, but rather are deeply embedded in society and reinforced by state power and market systems. Therefore, the current social order stands as a fundamental obstacle to social and environmental justice. A logical conclusion of this observation is that social change movements may be better off thinking and acting beyond the state and capital as targets of reform and/or as reliable partners.

Racism, for example, is a foundational component of the political, legal, economic, and cultural systems in the United States. African Americans, for instance, enjoy fewer rights and significantly lower social value than Whites, suffering deep economic, educational, public health, and environmental inequalities; earning far less income and owning far less wealth and property than Whites; and being more likely than Whites to attend low quality, segregated schools and live in residentially segregated communities marked by financial disinvestment, a brutal occupying police force presence, and environmental racism (Bullard 2000; Cacho 2012; Gilmore 2007; Vargas 2010). Public health disparities impact African Americans dramatically, as homicides, infant mortality, life expectancy, asthma, and a range of other illnesses and life events reveal a much lower statistical value of Black life (Williams and Collins, 1995). And millions of African Americans are either confined to prisons via mass incarceration or subjected to routine surveillance and control through the system of mass probation. Thus, racism is, for Black Lives Matter co-founder Alicia Garza, "a disease that this country has in our very DNA" (Garza 2015).

In a statement posted on the Black Lives Matter website, activists contend that the current state of racist violence against African Americans is a core component of American life, a form of oppression that Blacks have consistently challenged: "Rooted in the experiences of Black people in this country who actively resist our de-humanization, #BlackLivesMatter is a call to action and a response to the virulent anti-Black racism that permeates our society" (BlackLivesMatter.com 2016).

Debates often center on whether social movements should seek to reform or transform the legal system. BLM is an important part of that conversation because it is a movement whose participants often embrace the state, but frequently do so in a critical fashion. For example, much of the chanting and protest calls at BLM events include demands to "prosecute the police" and implement stronger laws against hate crimes and police brutality (Furst 2016).[1] The BLM's "National Demands" document reads, in part, "We will help develop a network of organizations and advocates to form a national policy specifically aimed at redressing the systemic pattern of anti-Black law enforcement violence in the U.S." (Moore and Cullors, 2014). In November 2015, after a group of White supremacists shot and wounded several activists who were protesting the police killing of an unarmed African American man named Jamar Clark in Minneapolis, BLM released a statement declaring, "The Black Lives Matter Network urgently calls upon the Department of Justice to investigate this shooting as a hate crime" (BlackLivesMatter.com 2015). Finally, BLM activists have regularly called for greater oversight over police and for increased presence of Black people in government decision-making bodies. For example, in the wake of numerous police killings of African Americans in recent years, the Los Angeles chapter of BLM demanded that the mayor appoint activists from the Black community to key city commissions, and a number of BLM activists are running for political office.

When BLM demands inclusion in governmental bodies and invokes the language of hate crimes and terrorism, such efforts may appear to reflect the power of grassroots movements to move state actors on important progressive issues, but it also indicates the movement's willingness to expand troubling, controlling, authoritative, and

lethal state power. BLM is therefore not asking how we might build safe communities *beyond* the state, but rather how we might do so with *greater* state intervention. BLM co-founder Patrice Cullors' vision of social change includes a plan to "divest from policing and divest from this prison system . . . and reinvest into poor communities, reinvest into allowing us to have access to healthy food, access to jobs, access to shelter" (Cullors 2015).

From a pluralist perspective, states are sites where citizens and other stakeholders converge to elect representatives and make their voices heard and shape public policy (Dahl 2005). Departing from that view, a power elite perspective casts states as sites of power struggles, where certain interest groups tend to dominate others, setting public policy agendas and unevenly shaping life chances for members of society (Domhoff 2013). From Women of Color Feminist, Critical Race Theory, and Anarchist perspectives, states are also institutions that, by definition, practice exclusion, control, and violence (in addition to their other functions) (Goldberg 2002; Hong 2006; Mills 2001; Scott 2010; Smith 2011). Thus, the very purpose of a state is to exert dominance over populations, resources, and territory, among other things.

If Black Lives Matter was founded to challenge state-sanctioned violence then it makes sense to extend the reach of this movement's analysis and action to the problem of environmental racism. Since environmental racism is often a form of state-sanctioned violence via the harm that state agencies and state-regulated companies perpetrate in communities of color, then BLM might do well to pay greater attention to this issue. If we think of environmental racism as a form of violent control over bodies, space, and knowledge systems then we can more effectively theorize it as a form of state violence, a framework that is absent from most EJ scholarship.[2] Moreover, as some BLM activists urge us to think about how to make our communities safe "beyond policing" (Tometi 2015), both BLM and EJ activists and scholars might begin to think about how to make our communities sites of EJ and racial justice *beyond the state*. In fact, the BLM movement, the EJ movement, and EJ scholarship generally look to the state and its legal systems to deliver justice and to regulate industry. Thus far, however, the track record of state-based regulation and enforcement of racial and environmental justice policies in communities of color has been abysmal (Cole and Foster, 2000; Gilmore 2007; Lombardi et al., 2015).

The Fourth Pillar: Indispensability

Critical EJ Studies centers on the concepts of *racial* and *socioecological indispensability*. In *Black and Brown Solidarity* (2014), John Márquez introduces the concept "racial expendability" to argue that Black and Brown bodies are, in the eyes of the state and its constituent legal system, generally viewed as criminal, deficient, threatening, and deserving of violent discipline and even obliteration. Márquez and other ethnic studies scholars contend that, in a White supremacist society, people of color are constructed as and rendered expendable (Cacho 2012; Márquez 2014; Mills 2001; Vargas 2010). Ruth Wilson Gilmore speaks to this point in her book *Golden Gulag* (2007), in which she argues that the massive build up of prisons to warehouse people of color in the state of California and the United States nationally was a public policy decision designed to contain and control populations whose very existence is viewed as troubling. Extending this logic to the problem of environmental racism, philosopher and critical race theorist Charles Mills argues that people of African descent are considered "trash" by policy makers and institutions promoting discriminatory environmental policies because these populations are associated with filth, waste, and uncleanliness in the popular imagination—thus locating pollution in their communities actually makes cultural common sense (Mills 2001).

Critical EJ Studies builds on the work of these scholars by countering the ideology of White supremacy and human dominionism and articulating the perspective that excluded, marginalized, and othered populations, beings, and things—both human and more-than-human—must be viewed not as expendable but rather as *indispensable* to our collective futures. This is what I term *racial indispensability* (when referring to people of color) and *socioecological indispensability* (when referring to broader communities within and across the human/more-than-human divide and their relationships to one another). Racial indispensability is intended to challenge the logic of racial expendability and is the idea that institutions, policies, and practices that support and perpetrate anti-Black racism suffer from the flawed assumption that the future of African Americans is somehow de-linked from the future of White communities. People of color are members of our society, are core participants in our social systems, and are members of our socioecological systems, and are therefore key to ensuring the continued functioning, sustainability, and resilience of our society and planet.

The idea of indispensability is distinct from an assimilationist perspective, which seeks to (often involuntarily and violently) incorporate "others" into one's own vision of a society (Smith 2005). Rather, indispensability honors key EJ and ecological principles by seeing all communities (more-than-human and human) as interconnected, interdependent, but also sovereign and requiring the solidarity of others. Indispensability should also not be confused with a Functionalist view of society and socioecological relations as it recognizes that social roles, positions, and behaviors among various populations can and do conflict and change over time, and that the character of inequality and state and market power in most societies is highly unjust and must be confronted. Functionalism, on the other hand, posits that whatever the character of inequality, social roles, and behaviors may be, it must be positive for society and therefore is in no need of change (Parsons 1954). Indispensability argues against that logic because CEJ Studies is fundamentally focused on securing justice and sustainability in a highly unjust and unsustainable system. Thus indispensability demands dramatic change but does so from the perspective that all members of society and socioecological systems have something to contribute to that process and to our collective futures.

Socially, politically, philosophically, and ecologically, what this means is that we are all linked in webs of social interdependence, so that what happens to one group affects, in some way, all others. As Dr. Martin Luther King, Jr. famously wrote in his landmark "Letter from Birmingham Jail" with regard to racism and the future of the United States: "Injustice anywhere is injustice everywhere. . . . In a real sense all life is inter-related. All men are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly. Never again can we afford to live with the narrow, provincial 'outside agitator' idea . . ." (King 1963).

Thus the importance of CEJ studies here is to underscore that social systems predicated on the annihilation of Black life reveal a self-defeating error. In other words, the idea that Whiteness can only triumph and survive via the annihilation of Black life commits the classic ecological error of *dualism* or *separation*. Dualism is the idea that we see various categories of existence as separate and arranged in oppositional hierarchies, such as culture/nature, man/woman, European/non-European, human/animal, White/Black, heterosexual/homosexual, etc., when in fact these categories are constantly blurred, transgressed, and revealed to be socially constructed and highly fluid and malleable. So CEJ Studies facilitates an understanding that a vision of White supremacy premised on the destruction of people of color is as illogical and self-defeating as a vision of an economy and a nation-state premised on the destruction of ecosystems. In a sense, this observation demonstrates a reality of social systems as ecosystems, and vice versa: that everything in the universe is hitched to everything

else, so that what affects one member or element affects all of them. The destruction of people of color harms White people and it harms the more-than-human world, and vice versa, so CEJ Studies affirms that Black lives, the lives of people of color, are *indispensable*. Going further, the idea of *socioecological indispensability* reflects the CEJ Studies perspective that the wellbeing of all people, species, and ecosystems is *indispensible*. This is both a socioecological reality and an affirmation of a politics of solidarity and coalition building that firmly states "All of us or none!"

Black Lives Matter activists routinely speak to this issue as well. In 2015, BLM issued a "State of the Black Union" in which they wrote, "None of us are free until all of us are free" (DeclarationProject.org 2015). This is a variation on a quote that has been attributed to the likes of the poet Emma Lazarus, the Reverend Dr. Martin Luther King, Jr., and many others. It is also articulated powerfully in the Barry Mann song "None of Us Are Free," which includes the chorus, "None of us are free, none of us are free, if one of us is chained, none of us are free."

Expressing this view more than a century ago, African American historian Anna Julia Cooper told a group of Black clergymen in 1892, "Only the Black woman can say 'when and where I enter, in the quiet, undisputed dignity of my womanhood, without violence and without suing or special patronage, then and there the whole . . . race enters with me'" (Bailey 2004, p. 56). A year later, making this claim even stronger, at the 1893 World's Congress of Representative Women, Cooper stated:

> Let woman's claim be as broad in the concrete as the abstract. We take our stand on the solidarity of humanity, the oneness of life, and the unnaturalness and injustice of all special favoritism, whether of sex, race, country, or condition. If one link of the chain is broken, the chain is broken. A bridge is no stronger than its weakest part, and a cause is not worthier than its weakest element. Least of all can woman's cause afford to decry the weak. We want, then, as toilers for the universal triumph of justice and human rights, to go to our homes from this Congress demanding an entrance not through a gateway for ourselves, our race, our sex, or our sect, but a grand highway for humanity (Cooper 1892).

BLM co-founder Alicia Garza echoes and articulates this idea as follows:

> #BlackLivesMatter doesn't mean your life isn't important—it means that Black lives, which are seen as without value within White supremacy, are important to your liberation. Given the disproportionate impact state violence has on Black lives, we understand that when Black people in this country get free, *the benefits will be wide reaching and transformative for society as a whole.* When we are able to end hyper-criminalization and sexualization of Black people and end the poverty, control, and surveillance of Black people, every single person in this world has a better shot at getting and staying free. *When Black people get free, everybody gets free*. This is why we call on Black people and our allies to take up the call that Black lives matter. . . . Our collective futures depend on it (Garza 2014, emphasis added).

DISCUSSION AND CONCLUSION

Critical Environmental Justice Studies seeks to expand the field of EJ Studies to move beyond its conceptual, theoretical, disciplinary, and methodological limitations. Since that path is still very much in formation, this paper is an effort to chart one course in that direction with greater specificity. Critical EJ Studies draws from numerous fields

of scholarship in order to produce more robust accounts for why environmental injustices occur and persist, for how human and nonhuman forces shape and are shaped by them, and for what environmental justice might look like. That is, the promise of CEJ Studies lies in its capacity to more fully explain the sources and consequences of our socioecological crises and develop more generative analyses of how social change efforts within and across species may meet those challenges.

Finally, CEJ Studies can aid scholars and advocates in thinking through a *redefinition of the concept of environmental justice itself*. Perhaps any discussion regarding the future of EJ Studies and the EJ movement might begin by connecting early EJ scholarship, which centers primarily around the intersection of social inequality and environmental harm, with the concept of *ecological justice*, which centers on the relationship of human beings to the broader nonhuman world. By the term ecological justice, I mean to suggest a more respectful and egalitarian relationship of human beings to one another and to the greater more-than-human world. This model of analysis and politics begins with humans taking responsibility for practicing transformative socioecological political work and extends to understanding inequalities within and across species and space to imagine and struggle for a more democratic multispecies world. Nonhuman species and ecosystems may not engage in politics the way humans tend to, but they can and do exert influence and power over the world (Bennett 2009): for example, consider the impacts of fossil fuels on the daily lives of human beings and on the political systems and economies of every nation on Earth. Ecological justice destabilizes the notion of the human as a biological category at the apex of a human/nature hierarchy and, instead, embraces it as a political category that engages with the broader ecological community. This model of politics also rejects the state as an arbiter of justice and inclusion. The state has managed, included, excluded, homogenized, and controlled humans and nonhuman natures for the benefit of a small elite. That should be reason enough to consider the merits of an anarchist or anti-authoritarian approach to socioecological change. Curiously, this concept of ecological justice closely mirrors and parallels the Principles of Environmental Justice—a sort of founding document of the U.S. EJ movement, suggesting that, in many ways, the EJ movement and EJ Studies have yet to catch up to the vision of the movement's founding principles, which are largely aligned with a CEJ Studies perspective.

In this paper, I applied a Critical Environmental Justice perspective to the phenomenon of the Black Lives Matter movement, demonstrating how attention to multiple categories of difference and inequality (including more-than-human species and the built environment); an emphasis on the role of scale as a way of understanding the violence of racism and the promise of resistance movements; a focus on linking the entrenched character of social inequalities with transformative, anti-authoritarian and anarchist perspectives; and an application of the concepts of racial and socioecological indispensability can produce an enriched account of that movement's core concerns, its limitations, and its possibilities. Black Lives Matter challenges the scourge of state-sanctioned violence against diversely constituted communities of African descent, with a primary emphasis on police brutality and mass incarceration. I argue that if we think of environmental racism as an extension of those state-sanctioned practices—in other words a form of authoritarian control over bodies, space, and knowledge systems—then we can more effectively theorize it as a form of state violence, a framework that is absent from most EJ scholarship.

***Corresponding author*:** David N. Pellow, Environmental Studies Program, University of California Santa Barbara, 4312 Bren Hall, Santa Barbara, CA 93106-4160. E-mail: pellow@es.ucsb.edu

NOTES

1. After the November 2015 police killing of Jamar Clark, an unarmed African American male in Minneapolis, Minnesota, Black Lives Matter protesters demanded that the state prosecute the officers involved. The state declined to do so.
2. For exceptions, see, e.g., Liam Downey (2015) and Andrea Smith (2005).

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Geographies of race and ethnicity II: Environmental racism, racial capitalism and state-sanctioned violence

Laura Pulido
University of Southern California, USA

Abstract
In this report I argue that environmental racism is constituent of racial capitalism. While the environmental justice movement has been a success on many levels, there is compelling evidence that it has not succeeded in actually improving the environments of vulnerable communities. One reason for this is because we are not conceptualizing the problem correctly. I build my argument by first emphasizing the centrality of the production of social difference in creating value. Second, I review how the devaluation of nonwhite bodies has been incorporated into economic processes and advocate for extending such frameworks to include pollution. And lastly, I turn to the state. If, in fact, environmental racism is constituent of racial capitalism, then this suggests that activists and researchers should view the state as a site of contestation, rather than as an ally or neutral force.

Keywords
environmental racism, racial capitalism, state violence

I Introduction

We need to rethink environmental racism. The environmental justice (EJ) movement arose in the early 1980s and over the last 35 years activists have succeeded at blocking both new projects and the expansion of existing ones. However, it is questionable if the environments of vulnerable communities have actually improved through EJ. There is compelling evidence that environmental disparities between white and nonwhite communities, what I call the environmental racism gap, have not diminished and that the situation may have worsened (Bullard et al., 2007). EJ scholars have hinted at why the movement has failed to achieve substantive results, including industry capture of the state (Faber, 2008; Lievanos, 2012; Holifield, 2007); state co-optation of EJ activists (Harrison, 2015); and a less oppositional EJ movement (Carter, 2014; Benford, 2005). Yet, I argue a fundamental problem characterizing both EJ activism and research is the failure to theorize environmental racism as a constituent element of racial capitalism. Numerous problems stem from not conceptualizing the problem accurately, including not giving sufficient weight to the ballast of past racial violence, and

Corresponding author:
Laura Pulido, University of Southern California, Los Angeles, CA, USA.
Email: lpulid@gmail.com

assuming the state to be a neutral force, when, in fact, it is actively sanctioning and/or producing racial violence in the form of death and degraded bodies and environments.

My goal in this essay is to reposition environmental racism so that it is recognized as fundamental to contemporary racial capitalism. Although the environmental justice movement is global, I focus on the US. Besides originating in that country, it is in the US that EJ has most fully articulated a racial framework and relied heavily on the state. Hopefully other researchers will apply and modify this framework to other parts of the world as appropriate. Developing a more radical analysis of EJ places it in closer conversation with political ecology (Holifield, 2015; Heynen, 2015), the environmentalism of the poor (Nixon, 2011), and other radical streams emanating from the Global South. In addition, I hope to further acquaint geographers with research on racial capitalism coming from critical ethnic studies scholars, such as Jodi Melamed, Lisa Cacho, and John Marquez, as well as geography's own Ruth Wilson Gilmore. Although I focus on environmental racism, I believe other parts of the social formation share structural parallels that might benefit from a similar analysis.

In order to build my argument I first briefly demonstrate the limited gains of the EJ movement. I then consider how racial capitalism produces environmental racism by elaborating on three points. First, I emphasize the centrality of the production of social difference in creating value. Second, I review how the devaluation of nonwhite bodies has been incorporated into economic processes and advocate for extending such frameworks to include pollution. And lastly, I turn to the state. If environmental racism is indeed a function of racial capitalism, then the state immediately becomes problematic in new ways. This is crucial because in the US most activists and researchers are steeped in a liberal politics in which they work *with* the state. Instead, the state must become a site of opposition, as it sanctions racial violence. In order to move forward both as a movement and scholarly field, we must rethink environmental justice.

II The environmental racism gap

While nobody has compared the difference in environmental quality between white and nonwhite communities, numerous researchers have assessed the efficacy of state-based EJ initiatives. Key to understanding EJ efficacy is what I call the 'environmental racism gap'. Recent scholarship has called attention to 'environmental privilege', which seeks to problematize the environmental quality enjoyed by more privileged populations (Park and Pellow, 2011). In contrast, the environmental racism gap highlights the persistent *inequality* between white and nonwhite communities. This gap, which is manifest in practices, regulations, and outcomes, requires discerning between universal and EJ regulations. Universal regulations seek to improve the environment across the board, such as the Clean Air Act. Despite neoliberal deregulation (Faber, 2008), there has been some progress over the last 40 years. For example, researchers have documented significantly increased lung function in youth as air pollution has declined (Gauderman et al., 2015). In contrast, EJ initiatives are intended to protect vulnerable populations and address the problem of differential exposure, especially concentrations (Noonan, 2015). This requires different tools, often called environmental justice.

Below, I present some of the key avenues in which EJ activists have sought relief from the state (see Pulido et al., 2016, for a fuller discussion). Studies typically are narrowly focused in order to produce a rigorous and detailed analysis. Though such an approach is the norm and entirely appropriate, seen individually it obscures larger patterns. Seen collectively, however, it is difficult to escape the conclusion of failure.

The first arena in which activists have appealed to the state is through lawsuits. To date, eight EJ lawsuits have been filed based on the Equal Protection clause of the 14th amendment to the US Constitution. All have failed. The primary problem is the inability to prove discriminatory intent – a requirement of a 2001 Supreme Court decision (*Alexander v Sandoval*), which contracted the definition of discrimination. A second register is Title VI Complaints. Under the Civil Rights Act, public agencies receiving federal funds are prohibited from discriminating. As of January 2014, activists had filed 298 Title VI complaints with the EPA, yet only one has been upheld – a success rate of 0.3% (see also Deloitte Consulting, 2011; Mank, 2008; Gordon and Harley, 2005).[1] A third and distinct sphere of state engagement is Executive Order 12898. This order, issued by President Clinton in 1994, requires all federal agencies to consider the EJ implications of their activities. A 2003 Civil Rights Commission evaluation of the implementation of EO 12898 by the EPA, Housing and Urban Development, and the Departments of Transportation and Interior found that all four agencies had failed to fully incorporate EJ into their activities (see also Gross and Stretesky, 2015; Guana, 2015; Noonan, 2015).

A fourth site for the reproduction of environmental racism is regulatory enforcement. Though definitive assessments cannot yet be made, there is strong evidence to suggest discriminatory enforcement along racial lines, especially in Latina/o communities (Konisky, 2009; Konisky and Reenock, 2013; Lynch et al., 2004; Mennis, 2005).[2] Finally, EJ initiatives have been developed in over 30 states (Targ, 2005). These offer a microcosm into the consistent refusal and/or inability to reduce the environmental racism gap. This was apparent, for example, in California's Global Warming Solutions Act (AB 32), in which it was knowingly decided to continue allowing pollution concentrations' in vulnerable communities as part of a larger effort to reduce global warming (London et al., 2008, 2013; Lievanos, 2012).

III Environmental racism and racial capitalism

Failure on such a scale cannot be resolved by tinkering with policy. While geographers typically attribute such dynamics to neoliberalism (Faber, 2008; Holifield, 2007), this is only part of the story. For instance, what is the connection between court decisions that contract the definition of discrimination and neoliberalism? Pellow (2007) is one of the few to combine political economy and race in his analysis of transnational pollution, although Heynen (2015) has made some important moves in this direction. I build on Pellow's work as well as research from critical ethnic studies to argue that environmental racism is part of racial capitalism.

Ethnic Studies scholars have long grappled with the relationship between racism and capitalism (Barrera, 1979; Marable, 1983; Almaguer, 1994). Cedric Robinson coined the term racial capitalism in *Black Marxism: The Making of the Black Radical Tradition*. First published in 1983, he argued that racism was a structuring logic of capitalism. His work did not initially circulate beyond a small circle of scholars (e.g. Kelley, 1990; Gilmore, 2007), but the rise of critical ethnic studies (Márquez and Rana, 2015) has introduced a new generation to it. While this is new to some (Bonds and Inwood, forthcoming; Driscoll Derickson, 2014; Ruiz, 2015), there is, in fact, older geographic scholarship that sees capitalism as deeply racial (Wilson, 1992; Blaut, 1993; Woods, 1998; Gilmore, 2002). Thus, the ideas are not necessarily new. What *is* new is the term, the intellectual moment, and the political urgency. The time is ripe for a deep engagement with racial capitalism.

A focus on racial capitalism requires greater attention to the essential processes that shaped the modern world, such as colonization, primitive

accumulation, slavery, and imperialism. As McKittrick notes, 'the geographic management of blackness, race, and racial difference (and thus nonblackness) hinges on a longstanding but unacknowledged plantation past' (2011: 953). By insisting that we are still living with the legacy of these processes, racial capitalism requires that we place contemporary forms of racial inequality in a materialist, ideological *and* historical framework.

Dominant historical narratives of racism locate its origins in European colonization. Robinson (2000) challenges this notion by documenting its prior roots in Europe. This is key, because although he and others, such as Melamed (2015: 77), insist that, 'capitalism *is* racial capitalism', this historicization suggests that racism predates capitalism and therefore can be used by diverse economic systems, including colonization and slavery. Indeed, to treat colonization, for example, as solely an economic process is not to fully grasp its human impact, logic, or legacy (Said, 1979; Blaut, 1993; Fanon, 1965; Galeano, 1973; Blackhawk, 2008). We can never overlook the fact that racial ideology (along with guns) enabled colonization. Though conquest and domination were not always the sole motives, the elaborate ideology that constructed indigenous people as less than fully human was entirely necessary for the colonial project. Indeed, Smith (2012) has suggested the genocide is the core logic driving colonization. In the case of the US and other settler societies, colonization led to massive land theft, which was not only a form of primitive accumulation, but also became the basis of those countries' national territories at the cost of native nations (Hixson, 2013).

Earlier debates sought to reconcile racism and capitalism (Wilson, 1992; Barrera, 1979; Almaguer, 1994), but critical ethnic studies and its precursors insist that race cannot always be contained by capitalism (Omi and Winant, 1986; HoSang et al., 2012; Roediger, 2008; Lipsitz, 2006). Though racism has been and is deployed to facilitate maximum accumulation, racism can also exceed the desires of various fractions of capital. Consider the overt racism of the contemporary US Republican Party, which is arguably counter to the desires of much of multicultural corporate America (Melamed, 2011). Given the variability of racism to capitalism, I consider the production of difference and value as the most fundamental point of connection. Accordingly, this should be the starting point for EJ analyses.

I Producing difference and value

The centrality of value to capitalist production is well-known. But there are multiple ways of conceptualizing value, and by extension, differential value. Differential value refers to the production of recognized differences that result in distinct kinds of values. These differences in value become critical in the accumulation of surplus – both profits and power (Cacho, 2011; see also Gilmore, 2002). Just as uneven space is essential to the unfolding of capitalism (Harvey, 2001), human difference is essential to the production of differential value.

Relationality is key to the production of differential value (Cacho, 2012: 13). For example, whiteness derives its meanings and value from various forms of nonwhiteness, which Cacho and Barrett call a kind of negativity. Negativity is important because it 'forms the ground of possibilities for value' (Barrett in Cacho, 2012: 13). While this is familiar terrain for critical human geographers (Anderson, 1987; Kobayashi and Peake, 1994), it is rarely reflected in empirical geographic work. Instead, most of us examine racial outcomes without considering racial production. Analyzing racial production is not merely a theoretical exercise however. Rather, it informs how a problem is conceptualized, and thus shapes political strategy. Indeed, focusing on a particular racial/ethnic group, rather than racial capitalism, per se, may lead to improved conditions for some,

while overlooking capitalism's incessant need to actively produce difference *somewhere*.

> Capital can only be capital when it is accumulating, and it can only accumulate by producing and moving through relations of severe inequality among human groups – capitalists with the means of production/workers without the means of subsistence, creditors/debtors, conquerors of land made property/the dispossessed and removed. These antinomies of accumulation require loss, disposability, and the unequal differentiation of human value, and racism enshrines the inequalities that capitalism requires. (Melamed, 2015: 77)

By theorizing the racialized production of differential value, racial capitalism illuminates not only the inevitability of environmental injustice, but the structural challenges facing activists.

2 Operationalizing nonwhite devaluation

Theories of racial capitalism highlight how racial difference is produced and how that relative valuation gets operationalized. This means not only how ideas and practices of devaluation circulate, but how they become institutionalized, and the implications for the racially subordinate and dominant. There are many ways racism can be harnessed by economic processes. I will mention two that are widely-acknowledged as manifestations of racial capitalism: land and labor.

Land is thoroughly saturated with racism. There are at least two primary land processes to consider: appropriation and access. Appropriation refers to the diverse ways that land was taken from native people, as previously mentioned. Once land was severed from native peoples and commodified, the question of access arose, which is deeply racialized. Numerous laws and practices reserved land ownership for whites. Indeed some groups, such as Asians, actually lost land they once owned (Ruiz, 2015; Curry, 1921).

Differential value is also produced and extracted via racialized labor systems – black chattel slavery being one of the most profound examples. Smith (2012) asserts that slavery is one of the key logics of white supremacy: the ability to commodify human beings. Understanding slavery's history and ballast enables us to appreciate the extent to which devalued black bodies, to paraphrase Ta-Nehisi Coates, have financed both whiteness and the American Dream (2015: 132), and I would add global white supremacy (da Silva, 2007). Recent research reveals the economic contributions of slavery to the US economy and infrastructure, as well as the extreme violence necessary to maintain such a system (Baptist, 2014; Johnson, 2013; Wilder, 2013; for a critique, see Hudson, 2016). Upon slavery's conclusion, numerous legal and de jure forms of labor discrimination and exploitation limited the life chances of nonwhite workers while boosting the opportunities and status of white ones (Roediger, 1991). Dual-wage systems, racially-exclusive labor unions, racialized divisions of labor, share-cropping, and related practices ensured a vulnerable supply of low-wage workers (Barrera, 1979; Saxton, 1995; Almaguer, 1994; Kelley, 1990; Woods, 1998). Racialized economic policy has amplified these effects, as seen in the 1935 National Labor Relations Act's limited protections for occupations dominated by African American, Mexican, and Asian workers. More recently, Gilmore (2007) has shown how the problem of surplus labor, which is disproportionately nonwhite, has been 'solved' by the rise of the prison industrial complex.

Just as labor arrangements and economic and social policy are constituitive of economic formations, so too are ecologies of resource extraction, processing, and disposal. Many EJ policies and scholarship conceptualize both racism and waste practices as externalities, rather than as fundamental to the very fabric of racial capitalism. Yet if racism is continually creating differential value, it is only logical that capital (and

other nondemocratic economic systems) would incorporate this uneven geography of value into its calculus. As Pellow has noted,

> the production of social inequalities by race, class, gender, and nation is not an aberration or the result of market failures. Rather, it is evidence of the normal, routine, functioning of capitalist economies. Modern market economies are supposed to produce social inequalities and environmental inequalities. (2007: 17)

Industry and manufacturing require sinks – places where pollution can be deposited. Sinks typically are land, air, or water, but racially devalued bodies can also function as 'sinks'. Taking this a step further, Moore (2015) has argued that capitalism is a way of organizing nature. Specifically, capitalism functions by restructuring nature. And since humans are nature, we must recognize that capitalism is reproducing itself by restructuring humans on a cellular level. This has nothing to do with malicious intent (Pulido, 2000) and other liberal conceptions of racism. Rather, this is capital acting upon a larger differential valuation (Pellow, 2007), or, in the recent case of lead-contaminated water in Flint, Michigan, the neoliberal state, both of which are part of the 'ecology of capitalism' (Moore, 2015).

3 Environmental racism as state-sanctioned racial violence

This brings us to the state. If environmental racism is part of racial capitalism, then its regulation becomes the province of the state. Kurtz (2009) has observed that the racial state has been overlooked by EJ scholars. Fortunately, researchers have begun analyzing state programs and practices, showing how the state needs to be problematized (Holifield, 2007; Harrison, 2015; Konisky, 2015). Earlier I presented literature indicating that the state has not seriously sought to intervene in the environmental racism gap. Indeed, the state is deeply invested in *not* solving the environmental racism gap because it would be too costly and disruptive to industry, the larger political system, and the state itself. Instead, the state has developed numerous initiatives in which it goes through the motions, or, 'performs' regulatory activity, especially participation (London, Sze, and Lievanos, 2008; Kohl, 2015), without producing meaningful change. The problem is not a lack of knowledge or skill, but a lack of political will that must be attributed to racial capitalism. Environmental racism must be seen in the context of a long line of diverse forms of state-sanctioned violence that facilitates racial capitalism.

The fact that it is disproportionately people of color who are bearing the burden of industrial pollution enables industry to continue despite a mounting death toll. Márquez calls this devaluation of people of color a 'racial state of expendability', which he describes as '[a] fundamental and existential life devaluation, a perpetual susceptibility to obliteration with legal impunity' (2013: 44). This concept illuminates how racism underwrites industrial activity not only through profits, but also through subsidized goods and services for all. Legal impunity is key, as it helps explains why there is no meaningful action to address the environmental racism gap which, in turn, underscores the centrality of environmental racism to racial capitalism. As scholars are beginning to show – the state refuses to implement *meaningful* initiatives in order to maintain racial capitalism. Capital does not have to actually address environmental justice issues because it knows there will be minor, if any, sanctions. Indeed, bureaucrats seek to avoid the anger of conservatives by not enforcing the law (Kates, 2014). The state is not about to dismantle this 'ecological service' that allows firms to remain competitive in the global marketplace. When we put together these two facts – the devaluation of people of color, plus capital acting with legal impunity – environmental racism must

be understood as state-sanctioned racial violence.

So what does this mean for EJ? There are implications for both scholars and activists. In terms of activism we need to change how we view the state and our relationship to it. Far too often the state is seen as an ally, or neutral force. Indeed, even when people lose faith in the state, they often still turn to it because there is no other apparent alternative. Much of the EJ movement has become too implicated in the state itself. What is needed is to begin seeing the state as an adversary that must be confronted in a manner similar to industry. This suggests a two-pronged struggle, against both polluters and the state, which will certainly not be easy.

For researchers, our task is not only to develop a research agenda that recognizes the degree to which environmental racism is a function of racial capitalism, but one that is also linked to the needs of vulnerable communities. Environmental racism will not be solved by a research agenda that reaffirms the boundaries and frameworks established by the Environmental Protection Agency. Indeed, we should help expose the fraudulent nature of the state, how it has sought to co-opt EJ communities, its support of racial capitalism and its willingness to forsake poisoned communities. Together, we can generate new strategies to rebuild a movement that truly works towards environmental justice.

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1. Calculated from the EPA website, 'Complaints Filed with EPA under Title VI of the Civil Rights Act of 1964'. Available at: http://www2.epa.gov/ocr/complaints-filed-epa-under-title-vi-civil-rights-act-1964 (accessed 15 July 2015).
2. For contrasting views see Ringquist (1998); Atlas (2001).

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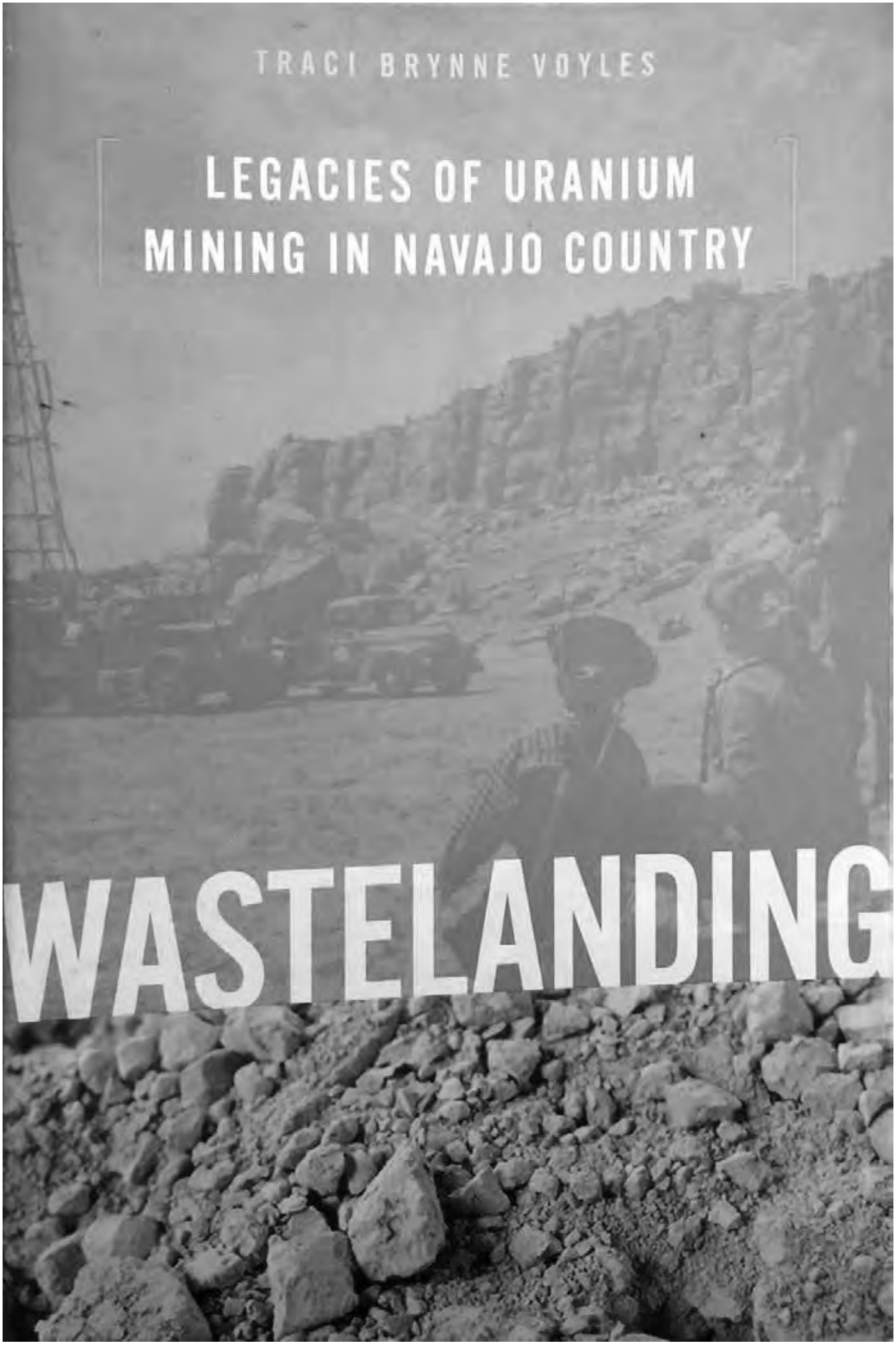

PREFACE

In Search of Treasure

In early August of 1864, a contingent of thirty-six U.S. soldiers, led by an army captain named John Thompson, left Fort Defiance in the northeastern corner of Arizona Territory and trudged north under the hot sun through the sprawling homeland of the Navajos. Diné Bikéyah, as Navajos call their land, spreads over mountain ranges, arid plateaus, and desert lands across what is now the Four Corners region of the United States where New Mexico, Arizona, Utah, and Colorado meet. Captain Thompson and his men were not the only military personnel traipsing through Navajo country—not by a long shot. He and his men were merely a small part of a much larger U.S. military campaign commanded by one General James Carleton, a ramrod straight military man who loved the "frontier" and despised the Navajos, and carried out by the famous scout-turned-army colonel Christopher "Kit" Carson. The larger U.S. campaign had one goal: to rout the Navajos from their homeland and march them some 300 miles southeast to Fort Sumner, which was, for all intents and purposes, a military concentration camp. The Diné, as Navajos call themselves, were known throughout the Southwest for their long and storied history of resistance to colonial invaders, a reputation (and reality) that the U.S. colonizers found none too pleasing.[1] Additionally, settlers in New Mexico and Colorado were keen to discover whether Diné Bikéyah was as rich in mineral resources as it was rumored to be; the age-old colonial apologia for conquest, it seems, was just as alive in 1864 as it had been in 1492, when Columbus wrote back from the New World to Spain that he had discovered a land with a marvelous abundance of minerals, metals, and mines.

Captain Thompson had, by that August of 1864, already proven himself up to the task of forcibly removing the Diné from their homeland. The previous March, he had rounded up 2,400 Diné on behalf of Colonel

Carson, and led them in a forced march to Fort Sumner, a journey dubbed "the Long Walk" by Navajos. In those early weeks of August, however, Thompson's mission was of a different sort. He and his thirty-six men headed straight from Fort Defiance to the deep gorge at the heart of Diné Bikéyah—Tséyi' or Canyon de Chelly,[2] the now-famous canyon lined with swaying cottonwoods and pockmarked with ancient Pueblo ruins.[3] As Thompson and his men marched through the canyon, digging here and there for the pools of fresh water running just below the surface of the sandy canyon floor, they engaged in a fierce, and roundly victorious, battle against an unlikely enemy: the peach orchards that had been cultivated over hundreds of years by Diné families. In the course of his march, Thompson and his soldiers felled a remarkable 4,150 fruit-bearing peach trees and, for good measure, "effectually destroyed" at least eleven acres of corn and beans. Oddly, these binges of violence against Navajo peaches, corn, and beans came *after* the majority of Diné in the area had already surrendered to the army, following an aggressive and violent campaign for their removal from the canyon.[4] In fact, an expedition six months earlier, led by Captain Asa Carey, had declined to destroy the Canyon's peach orchards precisely because most of the Diné in this area had already surrendered—to put it simply, there was no point in ruining the food supplies of people who were no longer there. Yet the army's desire to make war against the peach trees endured even after Thompson's campaign. Not long after Thompson returned to Fort Defiance, leaving a trail of rotting peaches in his wake, a third group of soldiers was sent into Canyon de Chelly under the leadership of Captain John Butler, slashing another 1,000 trees to the apparent satisfaction of his superiors.

We can ask, of course, just what it was about these peach trees, corn stalks, and bean plants that invited such unnecessary violence, such "systematic eradication" of fruits, grains, and legumes.[5] Historian Peter Iverson muses, "perhaps the army simply wanted to remove evidence that contradicted the image of Navajos as full-time nomadic wanderers," which had provided the (quite effective) rationale for their removal in the first place.[6] Perhaps, too, the orchards and fields evidenced a Diné proficiency at agriculture in the high arid climes of the New Mexico territory that surprised Americans who expected Navajo country to be useless for agricultural purposes, a sprawling wasteland described in 1868 by William Tecumseh Sherman, the general of Union Army fame, as "utterly unfit for white civilization."[7] It is not implausible to venture a guess that these binges of violence against peach trees occurred as proxy to settler and soldier frustrations about the newly conquered Southwest and the challenges it presented to American notions of what good agricultural land should look like. Indeed,

ideas about landscape and people, throughout this notorious removal campaign, served as the primary and most powerful impetus for colonial violence against people and peaches alike. Notions that the Colorado Plateau was uninhabited wasteland unfit for farming draw us quite a clear map of how we get from Thompson and his vexed tree felling to more contemporary cases of the interplay between nature, people, colonization, and power.

In this book, I explore the ways in which resources come to enact, enable, and sometimes embody colonial relationships between the U.S. settler colonial state and Native nations, focusing on the ways in which discourses about lands and the peoples who inhabit them shape how colonial violence occurs. In Captain Thompson's expedition, peach trees played a significant role in how the U.S. military sought to subdue the Navajo landscape, which military personnel and white settlers often took to be desert, deserted, and agriculturally barren (but potentially rich in minable resources). The primary focus of this book, uranium mining on Navajo land, takes us a century past Captain Thompson's expedition, but the themes crystallized in his assault on peach trees, corn stalks, and bean plants remain ever present. The power exerted over environmental resources, and the ways in which those in power construct knowledge about landscapes, are a central part of how what we now call social injustices are produced. In this work, I bring together environmental history and environmental justice studies to build what Sylvia Hood Washington calls an *environmental justice history* of uranium mining: a history undertaken with an eye toward building environmentally and socially just futures.[8] This does not mean only giving a more detailed historiography of how uranium mining, and indeed the relationship between the United States and the Diné and their land, developed over time. It also means to situate environmental injustice in larger historical context and to think historically about the role of this story—and how it is told—in shaping how we understand the relationships between coloniality, nature, and, ultimately, decolonization.

Diné Bikéyah is mapped by the Diné as being situated within four sacred mountains: Tsisnaajinii (Blanca Peak) to the east, Tsoodzil (Mount Taylor) to the south, Dook'o'ooslíid (San Francisco Peak) to the west, and Dibe' Ntsaa (Mount Hesperus) to the north.[9] Ranging from the solidified lava flows of Yé'iitsoh Bidił (El Mapaís National Monument) to the forested Ch'óóshgai (Chuska) mountain range, to the stark red rock formations of Tsé bii'nidzisgai (Monument Valley), this landscape contains a remarkable diversity of ecosystems as well as plant and animal life. Currently, the Navajo Nation encompasses more than 25,000 square miles of land, on which more than 170,000 Diné live, while an additional 130,000 Diné live in other parts of the United States.[10] The Diné emerged into this land, the

fifth world, from worlds below, bringing with them the *dzilleezh*, or mountain soil, that would make up the four sacred mountains.[11] In their long tenure within these four mountains, the Diné maintained agricultural and sheepherding practices that sustained their large population, migrating seasonally through Diné Bikéyah in a way that maintained spiritual and environmental *hózhǫ́*, or "balance, beauty, harmony, health."[12] In a very strong sense, the Diné are a land-based nation: their culture, history, geography, religion, and economy are derived from a particular landscape (Diné Bikéyah) and set of natural resources. These connections to landscape are both deeply rooted and evolving.[13] The peach orchards of Canyon de Chelly, laid to waste by Thompson and his contemporaries, exemplified the Navajo proficiency in using pastoralism to maximize the environmental resources of their land: while only roughly 300 denizens of the canyon country lived in the canyon year-round, each fall Navajos would travel from all over Diné Bikéyah to attend the peach harvest,

FIGURE 1. Diné Bikéyah comprises the land within the four sacred mountains, as well as what are sometimes called the four sacred rivers (the Rio Grande River to the east, the Zuni River to the south, the Little Colorado and the Colorado Rivers to the west, and the San Juan River to the north). Marsha Weisiger, *Dreaming of Sheep in Navajo Country* (Seattle: University of Washington Press, 2011), 62.

distributing the fruit—a food source and a commodity—among a wide swath of the Diné population.[14]

The relationship of the United States to Diné Bikéyah has most consistently been organized around resources: the desire for them, the management of them, the perceived dearth of them in this high, arid landscape. Indeed, from the onset of formal U.S. relations with this land, when U.S. troops invaded in 1846 to seize the northern third of Mexico's territory, the Diné were seen primarily as a problem in direct relationship to resources. Navajos were perceived as ruthless and violent raiders, who made their living by stealing livestock and crops from nearby Pueblo and Nuevomexicano settlements. The subtext, frequently, was that Diné land was not of high enough quality to support the Diné people. They had to steal to survive, and they were happy, it would seem from U.S. accounts, to do so. The complex relationship of Diné to their resources and land base, cultivated over centuries of experience, was rarely if ever in evidence in hegemonic historical narratives.[15]

The history of changing constructions of Diné land and resources is embedded in the very etymology of the name "Navajo." Spanish explorers and settlers were the first to call the Diné "Navajos"—although the Diné have adopted the name and often use it interchangeably with "Diné," "Navajo" has no origin in the Diné language. Most scholars attribute the adoption and use of "Navajo" by the Spanish to Franciscan friar Alonzo Benavides's 1630 reference to the Diné as the "Apaches de Navahu" in his *Memorial to the King of Spain*.[16] Benavides and his fellow Spaniards borrowed "Navahu" from the nearby Tewa-speaking Pueblo tribes, for whom the word meant "large area of cultivated fields," a reference to Diné reliance on and talent for agriculture as well as sheepherding. In the twentieth century, however, scholars began to question the veracity of this etymology for "Navajo," some arguing that "a more likely claim" for the name's origin "is made for a Spanish derivation," from the Spanish "nava, meaning flat piece of land, plus the suffix ajo," lending the name a "depreciative" air in which "Navajo would mean a large, more or less worthless field."[17] A handful of years later, Clyde Kluckhohn and Dorothea Leighton concurred, making reference in their influential 1947 monograph *The Navaho*, to "some support for deriving 'Navajo' directly from the Spanish in the sense of . . . a large, more or less worthless, flat piece of land."[18]

The social construction of the high, arid landscapes of the Southwest as "more or less worthless" has been a fundamental component of colonization of the Diné, as well as other southwestern and Great Basin tribes.[19] In fact, the inhabitation of dry, arid landscapes by Native nations was used as evidence of their low status on the Western hierarchy of civilization,

following a kind of environmental determinism that posited that "barren" landscapes supported villainous and savage peoples. In his 1849 reconnaissance survey of Navajo country, for example, Lieutenant James Simpson wondered whether his contemporaries were correct in assigning the blame for "the curse of barrenness" of land to "the wickedness of the people who inhabit it."[20] Classic Western histories resurrect the image of the Navajos as "wicked" people on a "barren" land; as Diné historian Jennifer Nez Denetdale points out, Navajos have consistently been portrayed as a vicious people who relied almost exclusively on raids of nearby Spanish villages for sustenance.[21] Historians and archeologists have roundly debunked this mythology surrounding the Navajo practice of raiding and its presumptions about the poverty of Diné land leading to a need to steal to survive. As ethno-archeologist Klara Kelley notes, Navajo raids on Mexican settlements were almost always undertaken as retribution for the lively trade that existed in northern New Mexico for Navajo slaves, supported by the Spanish and then Mexican colonial governments and continuing into the period of U.S. colonization after 1848.[22] Cebolleta, the oldest settled land grant community in the borderlands of Diné Bikéyah, had particularly well-known Sunday slave markets, specializing in the sale of Diné women.[23] Kit Carson himself had three Navajo children in his household, two of whom had been purchased from slave parties.[24]

The power of thinking about Navajos as violence-prone nomads and of their land as barren desert country was in evidence not four years after Thompson's march into Canyon de Chelly, when the horrendous conditions at Fort Sumner compelled U.S. military leadership to admit that the camp was a failed experiment in Indian policy. Between their removal in 1863 and the closure of Fort Sumner in 1868, the interned Navajo population went from 12,000 to 9,000 people; the 3,000 who died in the camp perished largely from starvation, malnutrition, untreated infections, and interpersonal violence. The surviving Diné were to return to Diné Bikéyah, and General Sherman, who made the final decision to permit the Diné to return to their homeland, did so believing that he was sending them to what he considered, as one historian put it, a "waterless worthless waste"—certainly not the kind of land, we would imagine, that would support fine orchards of thousands of fruit trees and scores of acres of beans and corn.[25] In fact, upon returning to Diné Bikéyah, the Navajos of Canyon de Chelly masterfully regrew their orchards and, by the 1880s, were harvesting peaches once more.

Before allowing the Diné to return to their homeland General Sherman made an ominous prediction. The Navajo claims to their homeland, he believed, would, "sooner or later, be interfered with by people from Colorado

and New Mexico in search of treasure."[26] Sherman was eventually proven partly correct and partly mistaken. Over the course of the next century and a half, prospectors and mining companies made repeated incursions into Diné life, interfering, to be sure, with Navajo connections to their homeland. A rapid succession of energy resources, ranging from oil to hydropower and from coal to uranium, and other in-demand metals, such as vanadium, shaped the twentieth-century relationship between the United States and the Navajo Nation. In the 1920s, the discovery of oil on Diné Bikéyah led to the formation of the first federally recognized Navajo governing body, which was needed to approve oil leases.[27] In the 1930s, Navajo sheepherding was seen as a potential barrier for successful completion of the Hoover Dam, which would go on to provide hydroelectric power to the cities of California and the Southwest. Thus ensued a mass roundup and slaughter of Diné sheep, goats, horses, and cows. Intensive coal mining on and around Navajo country began in the 1960s and continues to be a hotly contested industry with high stakes for Navajo people in terms of both economic development and environmental health. Hundreds of billions of dollars in coal profits have gone to coal companies, rather than to the tribe or families forced off their lands by coal companies. Coal mines and power plants have produced catastrophic environmental problems, and wrangling over coal mining rights has resulted in major struggles over land and environmental quality.[28]

Uranium mining, the subject of this book, has likewise had a massive impact on the Diné and their land. Within the four sacred mountains, the radioactive ore was mined between 1942 and the mid-1980s, first for the secret Manhattan Project and then for the Atomic Energy Program. Currently, renewed interest in nuclear energy has kickstarted what is being called the "new uranium boom." Uranium companies have increased pressure to open new mines and reopen old mines in environmentally sensitive and tribally sacred areas, from the Grand Canyon to Tsoodzil (Mount Taylor), the sacred Diné mountain of the south. In the course of nearly five decades of uranium mining and milling in and near the Navajo Nation, over 2,500 mines employed more than 3,000 Diné. As they provided the labor that in turn provided more than half of the country's domestic uranium reserves, Navajo miners and millers were often relegated to the lowest paid, least protected positions.[29] Increasing evidence, already well known in the early 1940s, of uranium's toxic effects on miners' lungs was actively kept from the miners and their families.[30] The largest spill of radioactive waste in the United States took place on July 16, 1979, when 93 million gallons of radioactive waste was released from a mill site into the Río Puerco. All the while, the primary incentive for the Navajo Tribal Council to

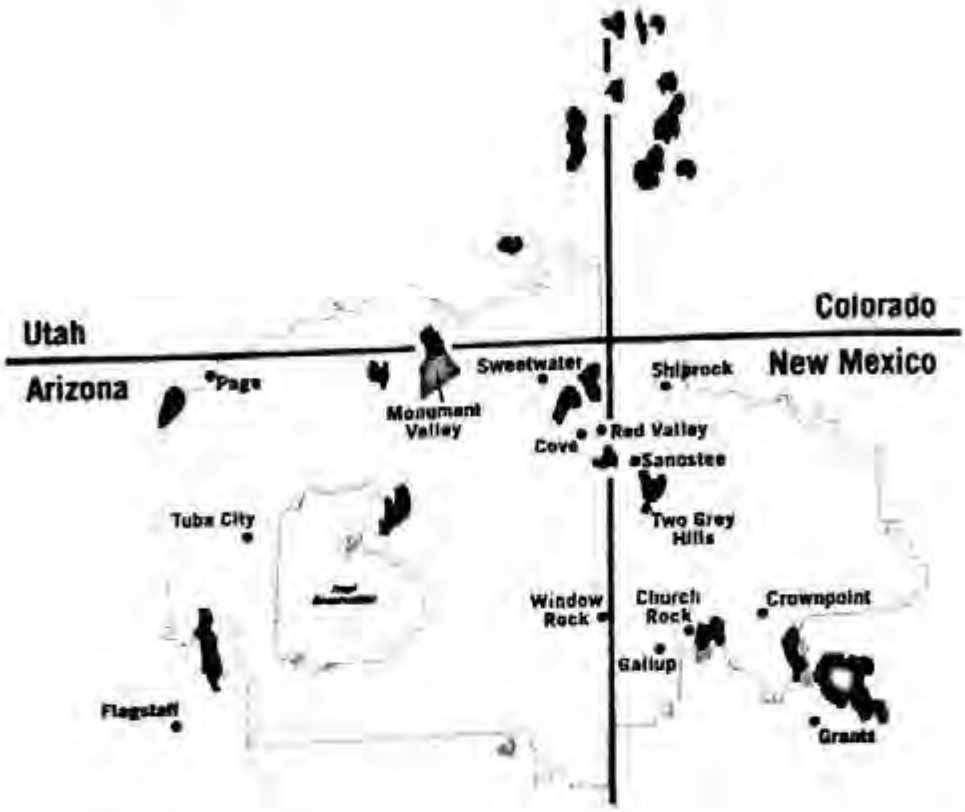

FIGURE 2. Areas of major uranium activity on and near the Navajo Nation from 1942 to 1985 are shown here in black. Doug Brugge, Timothy Benally, and Esther Yazzie-Lewis, *The Navajo People and Uranium Mining* (Albuquerque: University of New Mexico Press, 2007), 28.

permit uranium mining on their land, economic development, was never realized in large part because royalties for uranium ore obtained from tribal lands were kept artificially low.[31] The devastating environmental and human health conditions that ensued from these decades of uranium mining have been at the center of struggles over resource extraction and environmental injustice in Diné Bikéyah.

Despite these repeated incursions into Navajo land and life for the purposes of resource extraction, these incessant interferences "by people in search of treasure," the Diné have consistently contested and resisted colonial imposition and environmental violence. Diné environmentalist and environmental justice organizations have worked on a wide range of issues and had considerable success. In 1979, Navajos together with a coalition with other New Mexico indigenous activists, as well as white and Chicana/o activists, organized a three-day occupation of Tsoodził (Mount Taylor) to protect the mountain from renewed uranium mining. In 1988,

Diné activists successfully blocked the siting of a toxic waste incinerator in Dilkon, Arizona, forming Diné Citizens Against Ruining Our Environment (Diné CARE), an organization that has been internationally recognized for its rigorous work on behalf of grassroots environmental justice.[32] In 1990, with considerable participation from Diné CARE, Navajos hosted a national meeting of indigenous activists that went on to become the Indigenous Environmental Network (IEN), an organization with powerful influence in environmental justice struggles worldwide. Several long-standing groups, such as the Eastern Navajo Diné Against Uranium Mining (ENDAUM), the Dooda (No) Desert Rock Committee, and the Multicultural Alliance for a Safe Environment (MASE), have made considerable progress in preventing new environmental incursions by mining industries on and near Diné land. The work of organizations like these, and the legacy of Diné environmental activism, lends support to a Navajo Nation Council moratorium on uranium mining that was put in place in 2005. By working with and leading local and transnational environmental justice and indigenous sovereignty movements, these organizations chart the ways in which the local and global are intimately intertwined in struggles over the environment, indigenous nations, and natural resources. This work contradicts long-standing notions that the colonial desire for Navajo resources would *ever* go uncontested by a people who draw on centuries of labor to maintain their connections to their land.

INTRODUCTION

Sacrificial Land

> The Colorado Plateau was one of the last areas in the United States to be developed economically. Before the 1880s it was virtually empty except for Indians.
>
> —ROBERT DURRENBERGER, *ANNALS OF THE ASSOCIATION OF AMERICAN GEOGRAPHERS*, 1972

Empty Except for Indians: Wastelanding, Race, and Space

Long before uranium was commonly known for its associations with both nuclear power and nuclear bombs, and long before atomic power took hold of the American public imagination as a fearsome signifier of new human relationships to technology, to the environment, and to each other, uranium was mostly considered waste. Miners came across it when they blasted apart carnotite, a composite rock that can often be recognized by characteristic streaks of red, black, and bright yellow, to get at the real prize: vanadium, which was used to strengthen steel alloys in a range of products, from automobile parts to gun barrels.[1] Vanadium alloys were integral to the design of the Ford Model T, Henry Ford claiming to have discovered vanadium's uses while sifting through the innards of a wrecked French racecar.[2] The peak of vanadium's marketability came during World War II, when the federal government formed the Metals Reserve Company to encourage metal mining for war armaments. Vanadium, it turned out, was a highly sought-after ingredient of President Roosevelt's arsenal of democracy. In the vanadium mines scattered throughout Arizona, New Mexico, Utah, and Colorado, carnotite rock was blasted apart, the vanadium recovered, and the rest of the rock—uranium included—thrown into piles of waste

materials (more commonly called *tailings*). Sometimes the uranium from these mines was salvaged for use in glazes for dishes and glassware, which were manufactured and sold everywhere from Woolworth's to Tiffany's.[3] Uranium oxide glazes were responsible for the orange-red color of the popular Fiestaware dishes. Uranium, like vanadium, could have been used to strengthen steel alloys but was much too costly. Manufacturers were hard pressed to find a use for uranium that was "of a sufficiently distinctive character to make it a commercial product."[4] In 1917, when the global market for radium hit its pre–World War II peak and uranium's radioactivity was discovered, a white trader to the Navajo Nation named John Wetherill hauled some uranium-bearing carnotite ore to Flagstaff, Arizona, to be sent to France for Marie Curie's radiological experiments.[5] By 1920, an Arizonan named John Wade was operating a company called Carriso Uranium Company, which had forty claims in the eastern Carrizo Mountains, mining both vanadium and uranium.[6]

Mostly, though, the uranium was tossed.

That changed forever on October 9, 1941, when President Roosevelt held a secret meeting to deputize the Army Corps of Engineers to take on an atomic program. What came to be known as the Manhattan Project was charged with the development of an atomic bomb, using an element radioactive enough to render it "unsteady as a reeling drunk": uranium.[7] The Manhattan Project sought domestic supplies of uranium from the only source of which it was aware, the vanadium mines in and around the Navajo reservation. With that, uranium went from being a waste by-product of vanadium to the most sought-after ore of the twentieth century.

By 1945, when newspaper headlines blared declarations that unmasked the secret Manhattan Project, like that of the *Santa Fe New Mexican*—"Los Alamos Secret Disclosed by Truman: Atomic Bombs Dropped on Japan"—the government had acquired roughly 10,000 tons of fissionable uranium.[8] Most of that tonnage, however, had been shipped in from foreign sources, a process that was both expensive and fraught with potential security risks.[9] Only 15 percent of the ore had come from the continental United States, much of it secreted from the vanadium mines on and near the Navajo reservation and pulled from vanadium tailings piles.[10] Between 1943 and 1945, an estimated 44,000 pounds of uranium were secretly recovered from Vanadium Corporation of America (VCA) East Reservation Lease area—the site of John Wade's Carriso Uranium Company claims in the Carrizo Mountains.[11] Monument Valley mines, also run by VCA, provided an additional 489 tons of ore.[12] Despite these sources, and despite stepping up its exploratory drilling on the Colorado Plateau to a rate of 200,000 feet per year, the AEC "continue[d] to receive most of its uranium from the

Belgian Congo and Canada."[13] "Our own country," the commission conceded in 1949, "has produced little uranium."[14]

Half a century later, Diné land hosts upward of 2,000 now-abandoned uranium mines, mills, and tailings piles, in which over 3,000 Navajo miners wrenched and blasted raw uranium ore from the ground and then processed it into yellowcake. Abandoned mines sit open, poorly covered, or insufficiently marked.[15] Radioactive tailings piles litter the Navajo landscape, leaching radon gas into the air and water and scattering radioactive debris throughout the ecosystem.[16] In addition to being radioactive, these piles are littered with other toxic contaminants, including arsenic, vanadium, and manganese. The combined environmental contamination of mines, mills, and tailings piles has caused dramatic problems for the water quality of a landscape where water is already in short supply. Expensive water pipelines have yet to be built to serve the estimated 30 percent of Diné people who live near and use unregulated water sources, many of which are contaminated with uranium or arsenic.[17] Homes have been built out of debris from mines, including chunks of rock blasted into neatly squared-off blocks, often at the encouragement of mine operators. These "hot homes" were occupied by multiple generations of families before someone thought to test them for radiation.[18] The U.S. Environmental Protection Agency (EPA) has identified nearly 800 structures and residential areas contaminated with uranium; fewer than forty of the structures had been demolished as of 2014, and only seventeen of those demolished had been rebuilt.[19] Whereas most of the mines were closed by the mid-1980s, when uranium was no longer profitable, a rise in uranium prices has led to a new uranium boom since 2005. The Navajo Nation, still grappling with environmental and human health disasters from its first three decades of experience with the uranium industry, responded by passing the Diné Natural Resources Protection Act (DNRPA) in 2005, which placed a moratorium on new mines in Navajo country. Companies seeking permits to mine in the uranium-rich eastern borderlands of the reservation have denied that the land in question can be considered "Indian Country" despite being overwhelmingly populated by Navajos and being formally represented in the Navajo Nation government.[20]

Although there was ample evidence by the 1950s of the deadly nature of uranium mining, particularly because of the risk of lung cancer, miners were not informed of these health risks, nor were they provided adequate protection from them. High death rates among miners in the uranium-rich Erz Mountains on the border of Germany and the Czech Republic were reported as early as the mid-1500s. As the U.S. Public Health Service itself reported in 1952, "it has been known for centuries that the [Erz] miners

die in the prime of life with symptoms of damaged lungs."[21] From the late nineteenth century on, uranium was identified as the primary culprit in these high death rates, and by the 1930s Erz miners experienced a mortality rate of up to 70 percent, largely due to lung cancer.[22] Further suggesting the deadly nature of radiation exposure, Marie Curie herself died of radium poisoning in 1934.[23] By 1952, radon, a radioactive gas released in the uranium mining process, had been singled out as the primary culprit in these elevated lung cancer rates among miners, although other health problems, including silicosis, tuberculosis, pneumonia, and emphysema, also contributed to high death rates for miners.[24] These discoveries, however, did not lead to changes in mine safety for workers or for the people living near uranium districts.

Rates of lung cancer and respiratory disease have skyrocketed for the Diné, a population described as recently as the 1950s by public health experts as being "immune" to lung cancer.[25] By the mid-1980s, researchers found astronomical rates of cancer deaths among former uranium miners. Miners contracted lung cancer at rates 56 times higher than the national average, and had an average life expectancy of only 46 years.[26] Rates for stomach cancer were 82 times the national average. Miners were more than 200 times more likely to get liver cancer, almost 50 times more likely to get prostate cancer, and over 60 percent more likely to have cancers of the bladder or pancreas.[27] Nor were cancers the only health problems among former miners and their families: researchers also found increased incidents of tuberculosis, fibrosis, silicosis, and birth defects, all linked to exposure to uranium from mines and mills. Radiation-related diseases are now endemic to many parts of the Navajo Nation, claiming the health and lives of former miners to be sure but also those of Navajos who would never see the inside of a mine. Diné children have a rate of testicular and ovarian cancer fifteen times the national average, and a fatal neurological disease called Navajo neuropathy has been closely linked to ingesting uranium-contaminated water during pregnancy.[28] Studies have also found that uranium has genotoxic and mutagenic effects; that is, uranium poisoning can change the genetic material of a chronically exposed population, even further expanding uranium's influence on future populations in ways that are yet unknown.[29] While studies have long suggested a relationship between congenital defects and uranium exposure, a Navajo Birth Cohort Study seeks to measure outcomes for 1,500 Diné newborns in highly contaminated parts of the Navajo Nation.[30]

When uranium remains encased in carnotite rock and in underground ore bodies, it poses little threat to human health or to the environment. Clearly, once released its impacts have been catastrophic. Moreover, one

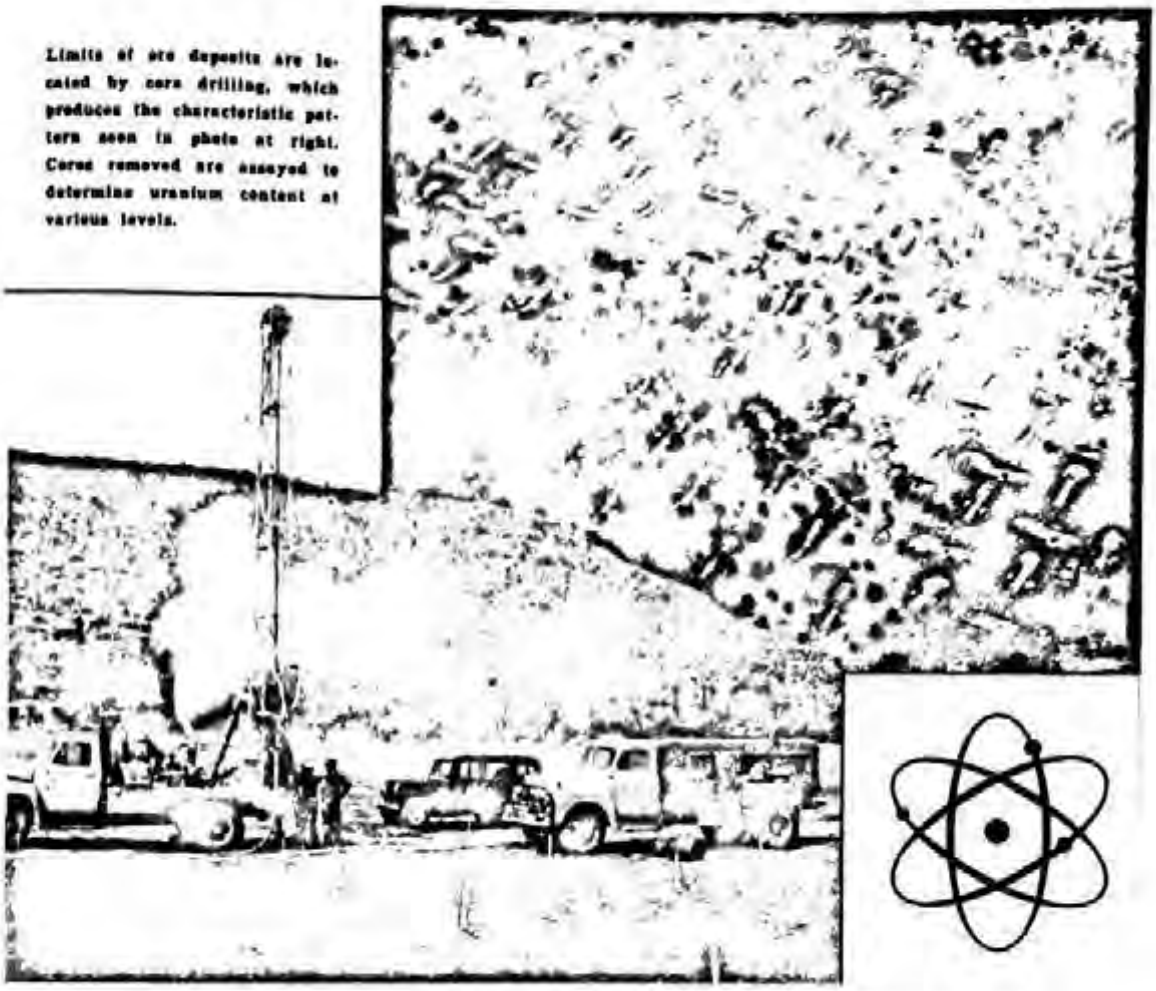

FIGURE 3. The aerial photograph at the top right shows the patterns created on the landscape as core drilling holes pockmark potential mine sites. The ore samples removed from these holes were then tested to determine their uranium content. The image at the bottom left shows a core drilling crew hard at work. Albuquerque National Bank, *Albuquerque Progress*, 22, no. 5 (May 1955). Courtesy of The Albuquerque Museum Photoarchives—Albuquerque Progress Collection.

of the most problematic components of the struggle for justice over nuclearism has been that, except in extreme circumstances, the ill effects of radiation exposure take ten, fifteen, sometimes twenty years, and sometimes multiple generations, to manifest. This makes uranium mining in Diné Bikéyah a kind of "slow violence" or "delayed destruction" that emerges over time.[31] In uranium country, which, like so many mining industries, is governed by the rule (or lack of rules) of boom and bust, this has meant that by the time many miners got sick, the companies that employed them were long gone. Now, the responsibility for cleaning up mine and mill sites

has been taken on by the Navajo Nation itself. Of the six regions of the Navajo Nation that host the highest concentration of abandoned uranium mines, the Navajo and federal EPAs have prioritized the most heavily contaminated: the eastern borderlands, near the communities of Church Rock and Crownpoint, New Mexico; the area surrounding Cameron, Arizona, in the southwestern corner of the Navajo Nation; Monument Valley in the north; and the area surrounding Cove, Arizona, where mines are scattered across the Chuska Mountains and Red Valley. Now, three decades after the uranium market hit a precipitous decline in the Southwest and the last mines operating on the Navajo Nation were shuttered, life-saving cleanup of abandoned mine sites is only recently underway.[32] Before cleanup was even considered by federal agencies, Navajo families and the Navajo Nation spent decades seeking recognition of the very real connections between uranium mining and the environmental health impacts with which they lived.[33]

The state of environmental and human health problems in the Navajo Nation as a result of the uranium industry, and the fact that uranium was so disproportionately mined on and near Native land, makes this a clear-cut case of environmental racism, which occurs whenever communities of color are disproportionately exposed to or deliberately targeted for environmental harm.[34] Examples of environmental racism are diverse and varied: to name just a few, there are the petrochemical processing facilities that share fence lines with historically African American communities in Louisiana; the overwhelming tendency of toxic waste facilities to be located in and near African American, Latino, Asian American, and Native communities; and the "food deserts" in inner cities, where fresh produce cannot be found for miles.[35] The basic premise behind environmental justice as a social movement and as a field of academic inquiry is that our growing environmental problems—polluted air, water, soil, changing climate, accelerating industrialism, and so on—are disproportionately born by racially and economically marginalized communities both in the United States and globally and moreover that these marginalized communities are often targeted for environmental degradation.[36]

Feminist scholars hasten to add that even within these marginalized communities, environmental problems tend to be borne differently by women than men.[37] Women occupy the socially constructed role of caretakers; women are most likely to live in poverty, to experience hunger, and to bear the financial and care responsibilities for children and elderly or sick family members. Women are also often most likely to be in close contact with environmental resources: they haul water, grow and cook food, and wash clothes. By virtue of this close contact, women can be seen as "the first environment," not as essentialized Mother Earth but rather as occupants of

socially constructed roles in the home and family that often place them in a unique relationship to environmental ills.[38] Women's exposure to toxins in the domestic sphere, moreover, illustrates the unbounded ways in which toxins move between industry and home. In the case of uranium mining, women were exposed to radioactive and chemical toxins from the mines and mills when workers came home wearing contaminated clothes. Women also worked in the mines, lived in hot homes built with radioactive tailings, and bore severe economic hardship when their husbands were hospitalized and later died of radiation-related diseases. The widows of uranium workers became the first and often most effective activists against mining when the adverse health effects of the industry began to take shape, reflecting a larger pattern in environmental justice organizing in which women often make up the majority of participants in environmental justice struggle.[39]

Although scholars of environmental justice studies most often focus on contemporary (post-1982) examples of environmental injustice,[40] Native Americans are quick to note that the tendency of those in power to exert their power by manipulating resources and degrading the natural environment is something with which colonized people are all too familiar; in fact, "the most workable date for the founding of the Native [environmental justice] movement . . . is 1492."[41] This close relationship between environmental justice and Native Americans derives from the similarly close relationship between environmental racism and settler colonialism. Settler colonialism is a distinct form of colonial power, with a very particular relationship to resources and land. Whereas we might think of colonialism as tending to be mainly invested in the extraction of resources—labor, goods, or raw materials—for the benefit of a metropole, or colonizing home country, settler colonialism adds a layer of complexity: it is a form of colonial power that involves the settler making a home in a land that is already home to indigenous peoples. To quote Deborah Bird Rose, indigenous peoples "got in the way" of settler colonialism "just by staying at home," because *home* is precisely what the settler colonial state seeks to occupy and remake.[42] Remaking Native land as settler home involves the exploitation of environmental resources, to be sure, but it also involves a deeply complex construction of that land as either always already belonging to the settler—his manifest destiny—or as undesirable, unproductive, or unappealing: in short, as wasteland.

No one driving down the curvy switchbacks of Narbona Pass would be particularly inclined to think of Navajo country as wasteland—or even desert. Carving through the verdant Chuska Mountains just on the New Mexico side of the New Mexico–Arizona state line, Narbona Pass links the towns of Crystal, on the east side of the Chuskas, with Sheep Springs, on

the west. The Chuskas here are a rich palette of mauve and burgundy, sage and peridot green. The air is thick with the piney smell of evergreens, and the air is sharp and cool even in the summer months. The Chuskas are the heart of Diné forest resources, and Narbona Pass puts these resources on full display.[43] The rich woodlands of the pass speak neither to the long-standing image of Diné Bikéyah as austere desert country nor to the underlying conditions of drought, water shortage, and tree death (from foresting, global climate change, and invasive species) with which the Diné have been contending.[44] The realities of environmental conditions, and the complex relationships of the Diné to their environment, are made invisible in settler discourses that construct this land as unqualified desert country or claim that it is "empty except for Indians."

In this book, I argue that the history of the uranium industry on and near Diné Bikéyah demonstrates how landscapes of extraction are, to borrow from geographer Gillian Rose, forms of representation as well as empirical objects.[45] Notions of Navajo country as "uninhabited" wasteland create a representational criterion by which ideas about the land have been formed. When prospectors, mining companies, and the Atomic Energy Commission (AEC) identified the Four Corners area as what one newspaper called "the scenic topsoil of America's vast energy storehouse,"[46] extractive industrialism was naturalized as indigenous to the landscape itself, and indigenous inhabitants of the land were placed under erasure to be "always disappearing" in the face of settler colonialism's advance.[47] The land, occupied and claimed by tribes, with its own unique sets of ecological conditions and realities, ceased to be an empirical object—the material conditions of Narbona Pass, with its shimmering greens and crisp air, is forgotten in favor of an interpellation of Navajo country writ large as wasteland. This book is a history of contested representations of landscapes, representations that produce starkly urgent material conditions with high stakes for humans, animals, air, water, and earth. Following Valerie Kuletz, who argues that deserts are targeted for environmentally destructive industries because they are understood as worthless in a Euro-American worldview, I explore the mapping of Navajo land and, by extension, other kinds of lands rendered pollutable through discourses of race, gender, class, and/or sexual difference as "wasteland." The wasteland discourse, as Kuletz framed it, is a current in the American environmental imagination that sees deserts as threatening, marginal, and—revealing the distinctly gendered framework of this marginalization—"barren" places predisposed to what she calls deterritorialization.[48]

Environmental sociologists have outlined the ways in which environmental problems in the context of contemporary industrialism (the post–World

War II period of "late modernity") are imbricated in a treadmill of production, in which extraction of raw materials and dumping of material waste are expanding with markets, often exponentially.[49] The treadmill requires "wastelands" from which resources are increasingly extracted and where (often toxic) waste is increasingly dumped. Patterns of environmental racism tell us that race has become a primary way by which those landscapes of extraction and pollution are marked as racialized spaces excluded from or ignored by the regulatory protection of the state.[50] Because environmental inequality is an inherent feature of the way in which industrialism operates contemporarily—raw materials for products, after all, must come from somewhere, and toxic waste must go somewhere—the wasteland is the "other" through which the treadmill of production is constituted. In this way, just as civilization has been constituted on and through savagery, environmental privilege is made out of the discursive process of rendering a space marginal, worthless, and pollutable.[51] This produces a strong relationality between environmental injustice and environmental privilege as mutually constituted phenomena. For the energy industry in the United States, which has been disproportionately reliant on indigenous resources,[52] the extraction of energy's raw materials (uranium, coal, oil, natural gas, water, and, increasingly, wind and sunshine) has devastated Native lands while Native people often benefit the least in terms of economic development and cheap energy—a phenomenon that can be shorthanded as energy injustice.[53] Here, the treadmill of production can quite clearly be seen as being built on and through the degradation of Native land and life; as one Diné resident of Black Mesa noted, "Somewhere far away from us, people have no understanding that their demand for cheap electricity, air conditioning and lights twenty-four hours a day have contributed to the imbalance of this very delicate place."[54] To put it another way: if, as historian Ned Blackhawk has argued, the indigenous body in pain is the ultimate symbol of colonial progress and modernity, indigenous land laid waste is its territorial corollary.[55]

I call this process *wastelanding*.

Wastelanding, I argue, has been a key and underexplored component of environmental racism. The "wasteland" is a racial and a spatial signifier that renders an environment and the bodies that inhabit it pollutable.[56] The problem of land laid waste is complicated by the fact that environmental degradation is not only relegated to lands that Americans find aesthetically distasteful; quite to the contrary, while we find radioactive tailings piles in the desert, we also find leaking barrels of Agent Orange on Bahamian beaches, dioxin-releasing copper mines near the shores of the Great Lakes, and strip mines in the rainforests of South America.[57] Thus, it is not only a

matter of a Euro-American distaste for dusty arid locales that renders deserts "wastelands" but rather a condition in which even the most marvelously abundant of jungle-scapes can come to be seen as just so much waste of space. This book, therefore, argues that colonial epistemologies do not just look on deserts as wastelands but that wastelands of many kinds are constituted through racial and spatial politics that render certain bodies and landscapes pollutable. Wastelanding builds on Kuletz's "wasteland discourse" to explore how this convergence of discourse and space has been deployed in multiple contexts, including nondesert landscapes, and how environmental racism can be theorized at multiple scales.

Wastelanding takes two primary forms: the assumption that nonwhite lands are valueless, or valuable only for what can be mined from beneath them, and the subsequent devastation of those very environs by polluting industries. Hydroelectric dams in James Bay, Canada, for instance, would, according to the National Audubon Society, "'make James Bay and some of Hudson's [*sic*] Bay uninhabitable for much of the wildlife dependent on it.'"[58] This very pollution results in the common designation of wastelanded spaces, including those of the uranium industry on Diné land, as "sacrifice" zones. As sacrificial lands, these landscapes of extraction allow industrial modernity to continue to grow and make profits. In scholarly parlance, these two forms of wastelanding can be termed *social construction* and *reification*: first, a culturally agreed-upon logic that derives from taken-for-granted categories of difference, which we then understand as natural and common sense, and second, the process of materializing, of making real, or of acting on those constructions.[59] Wastelanding reifies—it makes real, material, lived—what might otherwise be only discursive. Like race, which is a social construction made material by the embodied consequences of racism (threats and acts of violence, foreshortened life expectancy, incarceration, under and uncompensated labor, inequalities in wealth accruement, and so on), ideas about the value of environments are manifested by the material consequences of environmental destruction (or, in the inverse, by environmental protection[60]). Patterns of environmental racism make clear the connections between race and wastelanding. Race and space are connected through a social construction of difference that becomes spatialized through segregation and unequal distribution of resources. As Allan Pred puts it, through racism, "The socially barred become locationally removed from opportunity-yielding social, economic, and political networks." By a "feat of ontological magic," the "idea-logics of cultural racism are—abracadabra, hocus-pocus, simsalabim—concretized."[61] Wastelanding is a primary one of these "feat[s] of ontological magic," wherein racialized lands are made to seem uninhabited or unimportantly inhabited, represented as

worthless, and then—"abracadabra, hocus-pocus"—systematically stripped of their material and ideological worth.

Nuclearism makes a fitting site to study wastelanding because it is so clearly a multiscalar problem. Radiation is spatially multiscalar, with impacts that can be measured at the bodily, the ecosystemic, or the planetary level; it holds potential to change our very cells or affect the ways in which organs change over time. Its effects can be traced from the subatomic to the ecosystemic and everything in between (from cells and organs to sheep and corn). It can be as unimaginably small as the split nucleus or as nightmarishly large as the mushroom cloud. Likewise, nuclearism is temporally multiscalar: its impacts range from the moment an explosion initiates a nuclear chain reaction, to the tedious process of a miner chipping away at an ore body, to the limits of the human temporal imagination (uranium 238, for example, uranium's most common isotope and the one that is used to produce plutonium, has a half-life of 4.46 billion years). Nuclearism's deadliness can manifest in the immediacy and violence of acute radiation exposure or, more commonly, in the slow growth of tumors in lungs and genetic mutations passed down through generations. And because its effects are not always felt immediately, because the causal relationship of radiation to health outcome is a moving and precarious target, and because is it impossible to see, feel, or taste your exposure to radiation, nuclearism triggers human anxiety to an almost incomparable extent. Nuclearism's affective multiscalarity has produced gut-wrenching fear in communities downwind of nuclear test shots, defiant rage in environmental activists, and apocalyptic bravado in the culprits behind the Cold War's mad doctrine of mutually assured destruction. These multiscalar natures of nuclearism—environmental, spatial, temporal, and affective—make it a particularly apt site for exploring wastelanding as a racial and spatial process of signification that makes extreme environmental degradation possible.

Wastelanding, too, is multiscalar: in uranium country, destroying the environment through uranium mining does not just mean destroying the nonhuman world and ecosystems. It means to wasteland, to render pollutable, the lungs, the cells, and the respiratory tracts of everyone involved in the nuclear cycle. It also means to wasteland Navajo worldviews, epistemology, history, and cultural and religious practices. In order for uranium mining to occur on the level it did (and still does), indigenous ways of knowing landscapes and their worth must be themselves rendered pollutable, marginal, unimportant.[62] To borrow from poet Adrienne Rich, in wastelanding—rendering an environment pollutable in ways that are both ideational and material—"The words are purposes. / The words are maps."[63]

The Words Are Purposes: The Wasteland as Floating Signifier

On July 4, 2008, I pulled into the town of Kayenta, Arizona, in the northwestern corner of the Navajo Nation, on an empty gas tank. I was less than thirty miles away from where I had stopped on the side of the road to gape open-mouthed at the 200-yard section of the Black Mesa coal conveyor belt visible from Highway 160—a highway, not incidentally, built to usher uranium ore out of Tsé bii'nidzisgai (Monument Valley) and usher tourists in. The coal conveyor stretched forbiddingly across the highway, angling up to a leering tower on the east side of 160. To the west, it cut into the face of Black Mesa, stretching to the mesa's horizon in the oddly linear negative space of cleared trees. Four miles to the west, at the intersections of Indian Route 41, Peabody Coal Company Access Road, and Haulage Road (more inscriptions of resource extraction on the built environment of Navajo country), were the headquarters of the coal mining operation, which I could not see but knew was there from the crinkled topographic map spread out on my passenger seat. Making a sudden turn up a dirt road that sent my dog lurching onto the floorboards in the back of my Jeep, I wasted most of the quarter tank of gas I had left seeking a better angle from which to view this coal mining monolith.

Thirty miles later, I coasted into Kayenta on fumes to fill up my tank at the dusty gas station that presides over the town's single major intersection. Filling a tank with gas, during this particular summer, was an even more politically charged activity than usual, especially in the Navajo Nation, where people regularly drive large pickups long distances over hard roads to fill water tanks, get groceries, visit family, or attend to livestock located in remote parts of the country. During the summer months of 2008, the price for a tank of gas shot up to almost $5 a gallon; oil companies raked in record profits, and a barrel of oil cost an unprecedented $145 dollars. Global political–economic forces of resource extraction and transnational corporate capitalism occupied an elephantine presence in every gas station in the continental United States, and this particular 7-Eleven was no exception. That summer the *Navajo Times* was full of articles and editorials that had a central, driving focus: the incapacitating effects of gas prices on the Diné.

This part of Diné Bikéyah is not just home to coal mines but is also a major access point to the western reservation's uranium mine sites, which were abandoned after the climax of the uranium boom and left unreclaimed, with the radioactive guts of the mines exposed nakedly to the surrounding air, earth, water, animals, and human population. The mines in nearby Monument Valley were among the first to be exploited in the early years of the

Manhattan Project, and they left behind some of the most dangerous environmental legacies in the form of uncovered mine shafts, polluted water, and hot homes. During the early uranium booms, Diné workers arrived at these mine sites from across Diné Bikéyah, taking advantage of any opportunity for wage work during decades (the 1940s and the 1950s) when poverty gripped the reservation more than it had since the years after their removal to Bosque Redondo. Navajos tended to prefer jobs in the mines to other options—railroad work or venturing to California as farm laborers—because the mining jobs were close to home. Over the course of the 1940s, 1950s, and 1960s, uranium mining and milling in the western reaches of the reservation dramatically changed the geography of Monument Valley and the area surrounding Kayenta: new roadways were mapped and paved and new bridges built to sustain the traffic of heavy uranium haulers. Entire mesas in Monument Valley were blasted out of existence, and mills operated twenty-four hours a day to transform ore rock into yellowcake.

Not three hours north of Monument Valley, where I gazed at the familiar mesas and buttes with a sense that I had been there before—a symptom of my "imagined intimacy" with this postcard-ready landscape[64]—I arrived in a very different kind of southwestern desert town: Moab, Utah. Here, the gas was just as expensive, but the sheen of a thriving, well-developed tourist destination in the height of the summer season posed a stark contrast to Kayenta, despite the fact that both towns sit in equally striking landscapes, and each has intimate history with the uranium industry. In Moab during the uranium boom years, some of the largest and most famous uranium strikes made this town among the most famous of the Colorado Plateau's "yellowcake towns."[65] In total, three-quarters of all uranium miners during the booms of the 1950s to 1960s were non-Native and worked in mines in yellowcake towns like Moab: Grand Junction and Uravan, Colorado; Marysvale and Monticello, Utah; and so on.[66] Now, the legacy of uranium is remembered quite differently in these non-Native yellowcake towns than in Kayenta, a difference illustrated perhaps nowhere so clearly as in downtown Moab, where the Uranium Bike Shop hosts racks of high-end mountain bikes and a three-foot-tall graffiti-style mural of its name. Farther along Moab's Main Street, an antique-looking sign on an office building reads matter-of-factly "Uranium Offices, 11 N. Main," named thus during the height of the uranium frenzy and left unchanged, presumably, out of nostalgia for those boomtown days.

These two experiences of two very different towns, so closely juxtaposed, would eventually come to frame my own personal take on mine country, how uranium was inscribed on landscapes differently, and how the

FIGURE 4. The Uranium Bike Shop sits near downtown Moab, Utah, illustrating one of the many ways in which the legacy of uranium mining is inscribed on the built environments and political economies of former uranium boomtowns. In this image, the shop's name is painted in a three-foot-tall faux graffiti tag over the display windows. Photo by the author.

radioactive ore came, over time, to acquire very curious meanings. In Kayenta, and in the Navajo Nation in general, uranium is one of a litany of metals and minerals that have been extracted from the land to a devastating extent, leaving behind scarred earth and ongoing environmental health disasters. In Moab and former uranium boomtowns like it, such as Grand Junction, Colorado, mining has assumed an oddly nostalgic affect, a history that lends local flavor to ski areas, camping hot spots, and mountain biking destinations. In and around the Navajo Nation, mining is a very contemporary site of struggle over land, jobs, and sovereignty; in other parts of mine country, it is a colorful narrative of national history, its museums offering tourists an alternative activity on rainy days.

The contrast between Kayenta and Moab suggests that deserts have shifting meanings. These towns, less than 200 miles apart, have radically different histories with energy-extractive industrialism. This difference is, to a large extent, the very unnatural evolution of starkly different political–economic

histories of mining in different places. These different evolutions of pollution and geography in turn suggest that that wastelanding—a racial and spatial signifier that renders landscapes pollutable—is only *incidentally* about deserts. The wasteland, I argue, is a floating signifier in the Western environmental imagination: it does not always have a specific somatic or material referent, but rather it flexibly (floatingly) marks different objects, landscapes, and bodies. Deserts, thus, are not the reason for wastelanding. They are, rather, its frequent but not exclusive target. Just as race is a discursive technology with often deadly material effects, so too is wastelanding the process by which pollutability is materialized.

My explorations of the wasteland are thus very much about race, not only because environmental racism and wastelanding are conceptual intimates, but also because race is a discourse that is only incidentally a referent to different human body types. Just so, wastelanding is a discourse that is only incidentally a referent to different kinds of landscapes (including deserts). Race is quite deeply involved in wastelanding the environments that are deemed resource-rich for settler industrialism, just as certain human bodies are deemed productive reserves of labor (itself a resource) for settler industrialism and rendered exploitable via race. One might go so far as to say that racialized bodies are in many ways themselves wastelanded. Race intersects with the environmental imagination, even as it intersects with gender and sexuality, to produce wastelands: places that are marked, physically and ideologically, for exploitation, resource extraction, and national sacrifice. Just as race is embodied, often violently, despite being in essence strictly a discourse (as I tell my students, race is a *discourse* powerful enough to make *genocide* possible), "wastelanding" is a discourse-made-material through the degradations of targeted environments and their human and nonhuman denizens. It is through this process that even verdant landscapes—or nonlush places that are nonetheless aesthetically pleasing or otherwise fitting for American environmentalist affect—can be rendered pollutable, and desertscapes embraced as protectable. The referent of wastelanding is inconsistent; the outcome is not.

As scholars of ethnic and women's studies have long pointed out, we can recognize categories of human difference as being socially constructed by the ways in which their meanings change over time, space, and culture. Race, for example, can be recognized as a social construct rather than an expression of essential, or inherent, human difference by the ways in which racial categories are constantly in flux: what it means to be white has changed dramatically over the course of just the twentieth century, often in response to negotiations between legal and cultural constructions of whiteness;[67] for

Mexicans in the Southwest in the aftermath of the Treaty of Guadalupe Hidalgo, legal race status was tied to citizenship and differed from cultural or "common sense" race status;[68] for African Americans in the Jim Crow South, race status could change by the simple act of crossing state borders; and so on. As these examples attest, race is not a reflection of essential or innate difference but a malleable structure of feeling and exclusion that organizes populations' life experiences and outcomes and access to resources. Feminist scholars have likewise demonstrated how gender and sex are social constructions, on the basis of their malleability over time, space, and culture.[69] The argument here is that social constructions are not always, or even *initially*, about bodies themselves. Race, gender, and sexuality are structures of exploitation that are only most spectacularly about organizing social resources according to types of human bodies. They are an intersecting web that renders exploitable, negligible, and marginal a range of symbolic, psychical, and physical entities—in other words, a multiscalar range of materialities and symbols.[70] This is how scholars of race come to talk about the myriad things, bodies, ideas, and feelings that can become, as we say, *racialized*: they take on or seem to inhere raciality precisely because race is a discourse made material rather than a materiality made discursive. Bodies can be racialized; so too can voices, ideas, clothes, places, costs of labor, gestures, words, foods, jobs, sexualities, and so on.

If we extend this analysis of the relationship between social construction and materiality to spaces, we can see how wastelanding is not so much about the inherent value of wastelanded places as it is about the *meaning*—social, cultural, ecological, or juridical—that we make out of them. Consider the inner-city "ghetto" that becomes gentrified by upper-middle-class white settlement: the meaning of the space shifts through discursive and material meaning-making practices, as well as racialized and classed repertoires of dispossession and displacement. In that shift in meaning, the "ghetto" moves from being *pollutable* to being *protectable*—from urban wasteland to "Back Yard" (as in, Not in My Back Yard). There is nothing essential or inherent to the urban space itself that invites disdain; the material conditions of the place derive from the hegemonic meaning that is ascribed to it.

Just so, there is nothing about the desert itself that invites disdain, even white Western disdain with its clear cultural preferences for lush and verdant landscapes.[71] This is precisely because that preference is culturally and historically constituted and contingent on the particularities (and peculiarities) of how the white Western environmental imagination has evolved in the "New World." Environmental historians have pointed out how wilderness

areas, lush forests included, have in the past been understood as distinctly evil locales precisely because they were seemingly uncultivated—"wild"—the same quality that now marks out "wilderness" areas for environmental protection.[72] Those lush, verdant landscapes have likewise been themselves seen as "Desarts [*sic*]," in the sense of being uncultivated and vacant to the eye of a European settler.[73]

Deserts as we now understand them have been differentially interpellated as sacred or profane, as *constitutive* of the white masculine settler subject or as his demise. Particularly in the saga of nineteenth-century Western exploration, deserts constituted the geographic barrier to the mythical land of California; no matter what route overland travelers chose to get to California's storied gold mines, beautiful coasts, and rich agricultural lands, they had to first pass through deserts that threatened, and often took, their lives. Thus, deserts came to be imagined as an environmental specter threatening the white masculine settler and the larger project of settlement itself. When John C. Frémont, the Great Pathfinder, looked upon the deserts of the West, he saw them as "'forbidding,' 'inhospitable,' 'desolate,' 'bleak,' 'sterile,' 'dreary,' 'savage,' 'barren,' 'dismal,' 'repulsive,' and 'revolting.'"[74] Environmental determinism coupled with biological theories of race meant that the desert tribes were particularly reviled by settlers, their desert lands seemingly evidence of a distinctly savage nature. Deserts as "environments of scarcity" led explorers and settlers to develop a view of desert tribes, in Frémont's words, as "the nearest approach to the mere animal creation."[75] Ironically, the fact that desert tribes survived—in fact flourished—in "environments of scarcity" in which white settlers so struggled could have been evidence, by the same racialist (il)logic, of the tribes' superiority rather than inferiority, an excellent example of the ways in which, when it comes to social constructions, "logic is in the eyes of the logician."[76]

As the desert came to be incorporated in the American environmental imagination, however, it came to acquire a range of cultural meanings, not all of them negative. When John Muir visited Arizona in 1905 and beheld what is now, thanks in large part to his advocacy, the Petrified Forest National Park, he included this desert-scape as part of the sacred "wilderness" that helped to constitute the Progressive-era American preservationist (what we now call environmentalist) movement. This category of protected wilderness had, until that point, largely revolved around mountainous, or at least *green*, landscapes that more closely fit American aesthetics of the wild places of the Western continent. With that, the American environmental imagination began to see deserts as protectable wilderness, too, a trend that grew as arid canyon country, particularly the Grand Canyon, became a centerpiece of environmental tourism and wilderness conservation legislation.

The Canyon, in particular, went in a very short space of time from "an 'unprofitable locale' to the 'sublimest thing on earth.'"[77]

The image of deserts changed most dramatically, perhaps, during the mid-twentieth century, as cultural representations of the "frontier" and "winning the west" centered on narratives that, quite often, took place in desert locales, thanks in large part to the rise of the Hollywood western.[78] Picture a pair of Old West gunslingers headed into a saloon, and your imagination will more than likely call up a dusty town scene in the middle of desert country, a place surrounded by sagebrush, piñon pines, and craggy mountain passes—a place, in short, "no more specific than 'the Southwest.'"[79] If these narratives are part of what "America" now means, then we can rightly say that the settler state has grounded itself in the desert Southwest, making the desert central to how we understand our history and ourselves. During the uranium booms, in which uranium was closely conflated with nothing less than the very survival of the nation-state, the nation was, materially and ideologically, remaking itself through the resources of desert country.

In Monument Valley, just outside of Kayenta, the valorization and degradation of the desert occurred simultaneously in the 1940s and 1950s; even as film crews shot the westerns that would underscore white Americans' collective "imagined intimacy" with this part of Navajo country as the symbolic setting for their imagined community, uranium companies were busily blasting its famous red mesas into nonexistence for the uranium encased inside. This simultaneity of valorization and degradation is perhaps symbolized nowhere so well as in the story of Monument Valley's Cly family, told in the 2000 documentary film *The Return of Navajo Boy*. The Cly family was first captured on film in the 1950s by director Robert J. Kennedy, who depicted them herding sheep, weaving Navajo rugs, and cooking meals outside of their hogan. Kennedy's work, however, made no reference to the enormous changes under way for Monument Valley Diné in the 1950s, Clys included, coming from both the film and the uranium industries. Over the course of subsequent decades, the Cly family came to embody those changes: the family's matriarch, Happy Cly, once described as "the most-photographed woman in America" for the widely circulated postcards bearing her image,[80] died of lung disease in 1960, which her family attributed to nearby uranium mines.[81] Upon her death, her youngest grandchild was adopted away from his family in what the Clys thought would be temporary missionary foster care. The child was never returned, and his connection to his family serves as the primary emotional draw of the film. (His eventual return to them as an adult, moreover, gives the film its name.)

That youngest son bears an uncanny name: John Wayne Cly, a name given him by John Wayne himself while the actor was in the valley on one

of his several film shoots. John Wayne Cly grew up on and near the reservation, working, among other wage work, in uranium mines, before finally finding his family again in Monument Valley—a family much changed by the environmental health problems attendant with unregulated uranium mining.[82] The Clys were thus multiply marked by settler colonialism: they witnessed the death of family members from radiation-related diseases, were archived in photography and film as archetypal western "Indians," and lost a child—named after an American icon in an iconic American landscape—to the assimilative practice of adopting out Native children to white families. *The Return of Navajo Boy,* therefore, tells a story of the multiscalar implications of the uranium industry within a larger context of settler colonialism, reflecting the powerfully complex interweavings of the colonial, familial, bodily, and ecosystemic causes and consequences of resource extraction for nuclearism in desert country.

Deserts, clearly, are more complex than mere wastelands: they are home to both John Wayne *and* John Wayne Cly, home to Kayenta's unregulated mine sites and Moab's Uranium Bike Shop. Wastelands, in turn, are floating signifiers deeply joined to race, class, gender, sexuality, and coloniality in their demarcation of spaces as pollutable.

The Words Are Maps: Colonial Cartographies, Borderlands, and the Production of Justice

In 1955, in the midst of a booming uranium rush in the northeastern part of the state, the New Mexico State Mapping Agency released its annual report. The cover bore an image of a plane hauling away a mountain and leaving behind a smooth, flat topographic map—in effect doing away with nature in favor of charts. The image serves as a powerful representation of the false universalism of modern colonial episteme, what Donna Haraway calls the "god trick of seeing everything from nowhere," and a reminder that maps are a powerful means by which states exert control over peripheral spaces, particularly those that are rich in resources.[83] In the mid-1950s, when the image was produced, mapping the uncharted domain of the state was a project of critical importance to the state as a whole; mapping projects, after all, were kindled by the desire to locate potentially minable ore deposits, and uranium occupied no small part of that imperative. By 1955, uranium was widely considered the state's golden ticket into the modern industrial age.

Cartographic practice in the mid-twentieth century was, of course, not a "view from nowhere"; it was a view from deeply embodied—and very specific—perspectives on space. In exploring the evolution of these wasteland discourses in the twentieth century, and how they connect to the

environmental degradations of the uranium industry, my central questions revolve around the subjectivity of dominant cartographic discourses and the construction of Diné Bikéyah as peripheral, distant, marginal, desert, or deserted: "empty except for Indians." Geography and notions about space have, of course, long been matters "of considerable imperial significance."[84] Colonized terrain has been representationally contained and restrained in maps, just as the practice of surveying and cartography, the productive labor of mapping, represents a *repertoire* of colonial action—a practice of power relations.[85] Central to the work of understanding settler colonialism, then, is the project of explicating the ways in which the production of knowledge about space is historical, social, and deeply leaden with power.[86] Suffice to say: as Ann Laura Stoler calls historians to turn from "archive-as-source to archive-as-subject," so must those of us who are geographically inclined begin to read cartographic discourses as revelations of colonial ontology and technology, as *subjects* of our research and theory, rather than as objective representations of the natural, social, or political world.[87]

In the Southwest, cartographic discourses and articulations of territoriality are deeply complex. This region is in multiple senses spatially and ideologically liminal—in other words, it is a borderland. The history of uranium mining aptly illustrates this liminality: uranium country is simultaneously Navajo country, which, more often than not, is also claimed by Pueblo nations, by Nuevomexicano land grant communities, and by multiple state and federal agencies. Uranium mining, moreover, has existed at multiple kinds of ideological or affective borders. As such, each chapter of the book addresses spatiality and borderlands in a different way. In chapter 1, I explore how the pre-uranium mining history of federal relations to the Diné constituted a kind of economic borderland: during the period of livestock reduction in the 1930s, in which Diné herds were "reduced" (a euphemism, often, for slaughter) by tens of thousands, Navajo poverty was treated as a result of what was deemed irrational land use. The Navajos came to be seen as occupying the space between rational conservation practice and abject poverty during a time when both conservation and poverty were crucial concerns for Americans in general. During this period, the Navajo herd owner as a "social problem" constituted a grim counterpoint to the trope of the "ecological Indian," and Diné poverty was seen as the direct result of the tribe's failure to understand its land base and resources.

Chapter 2 explores the early years of the uranium boom, looking to the ways in which uranium in the Southwest seemed to constitute a *temporal* borderland between the anachronistic past and the technological (nuclear) future. As *Time* magazine so artfully put it in 1952, "For years, the parched, mountainous wastelands of the Colorado Plateau were known for their scattering of dinosaur bones and the ruined homes of prehistoric cliff-dwelling

Indians. But now the area is known for something far more important: uranium."[88] Crediting uranium with creating what the magazine called "the wasteland's glorious new reputation," this kind of rhetoric created a tension between the anachronistic space of "dinosaur bones" and "prehistoric cliff-dwelling Indians" and the "far more important" technological futurity promised by uranium.[89] Similarly, chapter 3 explores how the Diné and other southwestern tribes were placed, often through little or no action of their own, in a position of manning this temporal borderland between past and future—ushering in the uranium booms of the future and then quietly disappearing into the past. This chapter also traces the transmogrification of Diné country from "waterless, worthless waste" to spectacular tourist attraction and star of the Hollywood western, making it a kind of *affective* borderland between cowboy and Indian (self and other) in the U.S. popular imagination.

In chapter 4, I examine the ways in which the spatiality of risk in Diné Bikéyah shattered the imagined division between public and private in the uranium wage economy. Despite the fact that uranium companies and other industrialists touted the importance of wage work in assimilating Navajo workers (in large part because wage work was predicated on normative gender roles and binary gender spheres—men laborers in the uranium mines bringing wages home to wives and children), the impacts of uranium in the 1960s and 1970s increasingly obviated such a division between public and private spaces. The risks of radiation crossed the borders between industrial and domestic spheres, violating that public/private "fiction of gender."[90] By the late 1960s, when more than 200 Diné miners and millers had died of radiation-related diseases, women and children were also beginning to experience the adverse health effects of the industry; their appeals to industry and government for compensation, moreover, were largely denied or ignored because radiation risk was officially understood to end at the borders of the work site.[91] Thus women's activism for environmental justice has revolved in large part around counter-mapping, or using maps "to delineate and formalize claims to . . . territories and resources," in two senses: counter-mapping their claims to land taken over by the uranium industry, and counter-mapping the transboundary nature of radiation's risk.[92]

In chapters 5 and 6, I follow the general geographic trend that the uranium industry took beginning in the late 1960s: off of the reservation proper to the eastern reaches of Diné Bikéyah near Tsoodzil (Mount Taylor). Uranium activity in other parts of Diné Bikéyah slowly ground to a halt in the latter half of this decade; all mines in Monument Valley were closed by 1968. The East Reservation Lease mines in the Carrizo Mountains were closed by 1967. The Kerr McGee Shiprock mill shut down in 1968,

leaving behind a fearsome amount of radioactive tailings directly adjacent to the reservation's largest population center. The land of northwestern New Mexico, just to the east of the Navajo Nation border, was easily the largest producer of uranium in the United States. Despite being outside of the official boundaries of Navajo Nation, it is quite clearly Navajo country, home to multiple Navajo communities and central to Diné worldviews and history. Adding to its analytic and material complexity, this area is also claimed by multiple Pueblos, Nuevomexicano land grant communities, ranchers, and federal and state land management agencies.

In moving from west to east, the uranium industry, and by extension the narrative trajectory of this book, goes against the way that Navajos most often articulate geographical knowledge. Although each of the four cardinal directions are crucial to Diné geography (as represented by the four sacred mountains), "east is the direction Navajos emphasize."[93] Hogans, six- or eight-sided Navajo homes, have one eastern-facing door; and more often than not, Diné creation stories often begin in the east.[94] When Navajos list the four sacred mountains, they generally begin in the east with Tsisnaajinii (Blanca Peak) and then move south, west, and end in the north. The uranium industry, perhaps fittingly given its deeply destructive relationship to the Diné, goes against this geographical grain, moving from the early mines in Monument Valley, to the Carrizo Mountains near the Arizona–New Mexico state line, to Shiprock, to the eastern reaches of Diné Bikéyah in the area surrounding Tsoodzil. Just as east to west is important, so too is below to above. While Diné geographies are generally oriented east, then south, then west and north, they also emphasize emerging into this world from worlds below. Here, too, the uranium industry has inverted Diné geographies: uranium deposits were, more often than not, discovered via aerial surveys of the land, and cartographic practice in the twentieth century in general relied heavily on views of the land from above, as did the New Mexico State Mapping Agency in its 1955 cover. This book is thus, in large part, a project of mapping out these conflicting perspectives on landscapes as they emerge in the history of uranium mining, all the while keeping a close eye on what is at stake when toxins meet tissues.

Mines that remain to be sufficiently cleaned up are called, poetically enough, "legacy mines." On the Navajo Nation, this designation gestures to the larger colonial imaginary in which the history of uranium mining is entrenched. The "legacy" of these mines comes to be tangled up with pollution, environmental decline, and the material and ideological depredations of race as it is constructed and practiced under conditions of ongoing settler colonialism. The "legacy" of mining in Navajo country and elsewhere might indeed stand in for what race scholars have called the

"sedimentation" of racism over time, which occurs when inequalities and privileges alike accrue over time in ways that compound, rather than alleviate, the effects of racism in social structures.[95] It is an appropriately material metaphor. As legacies and sedimentations do, mining has come to shape the *affect* of power relations between colonizer and colonized; it has shaped the experiences, bodily health, and life expectancy of the Diné long after the problem should have been rectified; and it has altered the very landscape, real and ideological, of Diné Bikéyah. The wasteland, desert or otherwise, becomes a place where pollution and environmental degradation collect, settle, and form sediment that makes a lasting impact on human and nonhuman bodies. Likewise, wasteland discourses collect and sediment to give shape to power relations between peoples and geographies, creating a highly spatialized set of power relations that invoke place as well as race.[96]

This book contends that settler colonialism is so deeply about resources that environmental injustices, whether on Native lands or lands of other others, must always be viewed through the lens of settler colonialism. While the connections between the two forms of power are various, the body is a good place to start—just as race and racial power are organized at the level of the body, so too are the functions of environmental violence.[97] Theorizing environmental justice at the level of settler colonialism, slavery, for example, can be seen as the degradation of the racialized environment of the body, the radical devaluation of the resource of black labor for colonial economies, and directly tied to contemporary manifestations of the ways in which blackness is racialized (for example, the structural and cultural ghettoization of urban communities, subjection of the black body to environmental violence and sanctioned state violence, as well as the more commonly cited cases of environmental racism, such as the disproportionate siting of toxic waste dumps or petrochemical plants in black communities). All of these manifestations derive from the bodily or material effects of racialization and speak to the ways in which "race" can be seen as an arbiter of resources, if resources are defined as ranging from access to clean air, water, and food to clean jobs, state services, community self-determination, or even what sociologist Avery Gordon calls complex personhood.[98] In the context of extreme and ongoing environmental violence, decolonization cannot be imagined outside of environmental justice, and vice versa. They are twinned projects. I argue in this book that, although uranium mining provides a powerful, and pulsing, explication of the twinned interests of environmental justice and decolonization, it is but one piece of a much larger system of power relations.

This is not such a radical leap. The study of environmental injustice is the study of race, resources, and power and their intersections with gender

and sexuality. Although the context for many studies of environmental justice cases is temporally and geographically local out of necessity, as these struggles are born of life-and-death urgency in local communities, most derive from a larger context of colonial power relations. While the degradation of the natural world has been a constitutive component of modern capitalist economies, race has been a central technology by which that degradation has occurred.[99] By the same token, race is and has often been performed through environmental degradation. The raciality of Natives in the "New World," for example, was marked precisely through the desire for resources and through the mythic degradation of the imagined Native body ("animallike," hyper- or asexualized, unclean, monstrous, "red").[100] What followed was actual degradation of real Native bodies: rape, mutilation (often sexualized), mass slaughter, military aggression, and so on. Native encounters with settler colonialism are so deeply entangled with environment and resources that even the phrase "environmental racism" can seem to lose all meaning in a tribal context, quite simply because "racism" has *always* meant environmental violence for Native peoples. The desire for indigenous resources is the primary way in which colonialism marks the indigeneity, whether the desired resources are the land of the North American continent, or uranium, oil, and natural gas, or more intangible resources like Native spiritual and cultural practices (here, think of "resources" as dream catchers, Blessing Way ceremonies, hippie beads, hipster headdresses, and the myriad other ways in which non-Natives have sought to constitute whiteness through "playing Indian"[101]). In Patrick Wolfe's estimation, "Whatever settlers may say—and they generally have a lot to say—the primary motive for [genocide] is not race (or religion, ethnicity, grade of civilization, etc.) but access to territory." "Territoriality," he concludes, "is settler colonialism's specific, irreducible element."[102] As settler colonialism has progressed in the twentieth and twenty-first centuries, Wolfe's use of "territory" might helpfully be substituted with "resources," of which territory is one of many.

Wastelanding is thus a fully colonial project of rendering resources extractable and lands and bodies pollutable, rather than merely a problem of distribution of environmental "bads." Thanks in no small part to mainstream narratives that posit environmental justice cases as problems of unjust distribution that are best solved through the legal system, environmental justice activists and scholars have had to grapple with a purely juridical model of justice: the notion that, like lawyers in a grand class action lawsuit, scholars and activists offering overwhelming *evidence* of damage and disproportion will lead to the redress of environmental injustice.[103] This juridical model derives from the deeply liberal notion that justice is the

natural condition of modern political systems and that offering evidence of *injustice* will produce the requisite distributional changes. Andrea Smith calls this kind of reasoning "the liberal myth that the United States was founded on democratic principles . . . rather than a state built on the pillars of capitalism, colonialism, and white supremacy."[104] This liberal myth denies the reality that, as David Pellow puts it,

> The production of social inequalities by race, class, gender, and nation is not an aberration or the result of market failures. Rather, it is evidence of the normal, routine functioning of capitalist economies. Modern market economies are *supposed* to produce social inequalities and environmental inequalities.[105]

Environmental justice activists, moreover, are presumed to be concerned merely with the presence of toxins rather than with the larger structures of power that produced these toxins and funneled them into wastelanded communities in the first place. Quite to the contrary, these activists are most often "*not simply* challenging the distribution of toxins within communities of color" but "also challenging the justice of oppressive . . . institutions *themselves.*"[106] In the context of uranium mining, the disproportionate distribution of the uranium industry on Native land can be seen as a deadly component of the larger structures that organize Native relationships to the settler colonial state: heteronormativity, patriarchy, sexual violence, racism, land dispossession, and resource exploitation. Doing environmental justice work in this way calls into question not only the unjust distribution of environmental harm but also the capacity of the settler colonial state—"a state built on the pillars of capitalism, colonialism, and white supremacy"—to create and distribute more acceptable kinds of rights.[107]

The distributive model of justice operates from the kind of "theory of change" that imagines an impossible future: one *with* the environmental contamination built into the modern risk society distributed along "just" lines (to each according to their consumption).[108] This world is impossible because modern forms of capitalism, industrialism, and environmental contamination cannot exist without technologies of racial and colonial domination. Put simply, the treadmill of production relies on artificially cheapened resources and labor—artificially cheapened through the discourses of race, class, gender, and coloniality.[109] Thus, the distribution of toxins is merely the *signifier* of the foundational, enabling modalities of modernity: "capitalism, colonialism, and white supremacy."[110] To ask for "just" distribution of industrial pollution, waste sites, mines, unsustainable and toxic labor, and so on, is not to ask for redistribution but rather to ask for modernity to throw up its hands and dismantle itself.[111] This kind of

rearticulation of the distributive model has been shorthanded by environmental justice activists as a move from the politics of NIMBY (Not In My Back Yard) to the politics of NOPE (Not On Planet Earth);[112] Winona LaDuke perhaps said it best: "we don't want a bigger piece of the pie. We want a different pie."

Approaching environmental justice at the level of settler colonialism rather than distribution changes the nature of what we mean by *justice* and *injustice*. If the injustice in question is primarily articulated as being about problems of distribution, "justice" is limited to the fictive notion that redistribution of environmental harm solves the problem of environmental racism. Quite to the contrary, a state that has structurally excluded populations of color, the queer, immigrants, and others is not compatible with meting out justice for those communities, precisely because it is constituted on and through their exclusion.[113] These others, as Charles Mills puts it, "mark the limits of the sovereign's full responsibilities"; in other words, they come to inhabit the sovereign's borderlands.[114] By extension, industrialized capitalism cannot function without designating landscapes pollutable. The exclusion of wastelanded geographies from state protection and the structural reliance on the treadmill of production combine to make the settler state a likewise unfavorable source of justice for nonhuman nature.

Environmental justice holds potential for helping us rethink and remap these questions of justice and injustice outside of the frame of rights discourse because of the transformative ways in which it theorizes *environment* as wherever humans "live, work, play, and pray" and *environmentalism* as a political practice deeply invested in class, race, and gender justice. This kind of analysis moves environmental justice studies, particularly studies of environmental injustice on Native land, to a more complex understanding of nature and justice in the past, present, and future of settler colonialism. It is precisely this more complex understanding of nature and justice that this book seeks to engage. In looking closely at the representations of the territory on which settler colonialism is grounded, we find, more often than not, wastelanding at work. Through wastelanding, the logic of settler colonialism denies that its "wastelands" could be sacred, could be claimed, could have a history, or could be thought of as home. Instead, to wasteland a space is to defend the notion that the land is, always has been, and always will be "empty except for Indians": to mark it and make it, ultimately, sacrificial land.

Resources, Infrastructure, and Settler Colonialism

SOVEREIGNTY FOR SURVIVAL

AMERICAN ENERGY DEVELOPMENT AND INDIAN SELF-DETERMINATION

JAMES ROBERT ALLISON III

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Introduction

IN THE SPRING of 1973, in the heart of the same Powder River Country of Montana where George Armstrong Custer met his death a century earlier, a modern-day Indian revolution erupted. Much like the nineteenth-century conflict sparked by white prospectors seeking gold in the sacred Black Hills of Dakota, the twentieth-century version featured an impassioned revolt against the incessant intrusions of non-Indians hoping to extract precious minerals. Also as in the earlier conflict, Indian resistance was fueled by fear that losing control over an indigenous land base would produce the end of the People, erasing the unique social customs and cultural values that distinguished their group from others. Survival once again hung in the balance. And as in the earlier conflict, this revolt would fundamentally alter the relationship between the federal government and Native American tribes.

There were, of course, important differences. For one, rather than seeking yellow gold in the Black Hills, white prospectors during the 1970s desired the "black gold" of the Yellowstone Country known as low-sulfur, subbituminous coal. Changing patterns in world energy production and domestic consumption following World War II had combined with new environmental legislation during the early 1970s to transform this once overlooked energy source into a highly valuable commodity. And vast quantities of this desirable resource happened

to lie tantalizingly close to the surface of the Northern Cheyenne and Crow Reservations in southeastern Montana. To access this coal, non-Indians once again worked through and with the federal government. But rather than employing military force, as was done during the nineteenth century, multinational companies exploited a broken and outdated legal regime that sought to promote the development of western resources at the expense of tribal sovereignty, ecological health, and simple equity.

Although the tactics differed, the initial results of this late twentieth-century grab for Indian resources were comparable to nineteenth-century efforts. By 1973, energy firms had gained control of hundreds of thousands of acres of Indian land and millions more were threatened. On the Northern Cheyenne and Crow Reservations alone, the combined acreage opened for mining exceeded 600,000 acres, allowing energy companies to prospect over half the Northern Cheyenne's total land mass. It is no surprise, then, that Indian leaders such as the Northern Cheyenne's John Woodenlegs drew parallels to their tribes' nineteenth-century battles. As Woodenlegs explained, "Our Cheyenne people fought hard to be allowed to live in Montana. Our whole history has been a struggle for survival. The impact of uncontrolled coal development could finish us off."[1]

But unlike the tragic, if also heroic, nineteenth-century battles that relegated Northern Plains tribes to small parcels of their once vast homelands, circumscribing their control over daily activities and all but eliminating the tribes' political sovereignty, the postwar contest ultimately expanded tribal powers. It left Indians better positioned to capitalize on their abundant natural resources, if they chose to do so. This story, then, is not another romantic account celebrating valiant but largely unsuccessful fights for freedom on the Northern Plains. It is, instead, a powerful tale of tribes becoming skilled negotiators, sophisticated energy developers, expert land managers, and more effective governing bodies. In this story, Indians worked meticulously to increase their understanding of the complicated legal, political, and economic mechanisms governing their lands and created a sovereign space where tribes decide the fate of their resources. These tribal governments asserted control over reservation resources to ensure their communities' survival. And the story begins in the same remote corner of south-

eastern Montana where a century earlier the Northern Cheyenne and Sioux dealt the United States military its most crushing Indian defeat.

At its most essential, what happened on the Northern Plains in the 1970s was that energy tribes—those American Indian groups possessing substantial energy resources—expanded their governments' *capacity* to manage reservation land, and as a result, there came a belated recognition of the tribes' legal *authority* to govern communal resources. Indian people seized the skills necessary to protect their sovereignty because sovereignty was crucial to protecting tribal lifeways and land. To accomplish this, energy tribes had to first dismantle a century-old legal regime built on the premise of inherent tribal sovereignty but corrupted with an ideology of Indian inferiority. As far back as the 1830s, the Supreme Court had articulated a seemingly expansive view of tribal sovereignty that should have afforded Indian groups control over their own affairs. In *Worcester v. Georgia* (1832), for instance, Chief Justice John Marshall explained, "The Indian nations had always been considered as distinct, independent, political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial." President Andrew Jackson's infamous retort, however, that "the decision of the Supreme Court has fell still born" set the tone for how local, state, and federal authorities would respect this and other early holdings favorable to Indian rights. With few exceptions, nineteenth-century government officials and non-state actors ignored federal case law, enacted statutes overriding judicial decisions, or reinterpreted Marshall's opinions to eviscerate their holdings. Whites desired Indian land and resources, and they'd be damned if an impotent federal judiciary would stop them.[2]

To justify this taking of indigenous lands, nineteenth-century Americans constructed complicated and evolving ideas about Indians' inferior capacity to manage their own affairs. Early, ambivalent views of Native Americans as either noble savages or ignoble beasts rendered eastern tribes beyond the pale of Euro-American civilization, supporting an Indian removal policy thinly veiled as a humanitarian mission to protect unprepared Indians from encroaching American settlers. These efforts to separate a supposedly inferior people gradually gave way by midcentury to more benevolent, if misguided, assimilation policies designed to indoctrinate Indians with the civilizing values of settled

agriculture and Protestantism. By the end of the century, however, the dominant conception had changed once again, as pseudo-scientific racial theories emerged to challenge the efficacy of this cultural uplift program, claiming race permanently relegated Indians to the periphery of American society. Discouraged by the persistence of Indian culture, eastern policy makers gladly handed over responsibility for "the Indian problem" to western politicians, who employed more "realistic" views of Indians' inability to evolve in order to justify an imperial land policy. Recast as people doomed by their race, Indians now became "assimilated" through industrial education, federal wardship, partial citizenship, and the loss of more land and resources.[3]

The "Indian New Deal" of the 1930s supposedly changed all this. Orchestrated by the social crusader John Collier, whom Franklin Roosevelt appointed commissioner of Indian Affairs in 1933, the federal government set about reversing its Indian policy of the past 150 years. Collier ended the disastrous program of allotting tribal lands to individual Indians—which had also opened "surplus" areas to white settlers—and sought to empower tribal governments to protect communal holdings. As we will see, however, Collier himself was not immune to paternalistic assumptions of Indian inferiority. The scion of a prominent southern family, Collier turned from his capitalist roots to fight for the preservation of Indian culture because he believed it offered vital lessons in communal living to a spiritually bankrupt, individualistic America. Still, Collier's Progressive faith often overrode his benevolent intentions. Under his tenure, the Office of Indian Affairs constructed a legal regime that gave tribal governments some tools to protect their land base yet also ensured that decisions over how to manage reservation assets remained largely in the hands of federal experts.[4]

Nowhere was this Progressive, paternalistic impulse more evident than in the laws governing Indian minerals. Prior to the 1930s, a hodgepodge of narrow and often conflicting statutes left the development of these resources in disarray. Collier and his colleagues within the Department of the Interior sought to provide a uniform system for Indian mineral development, but they differed in approaches. In particular, a young assistant solicitor named Felix Cohen resurrected John Marshall's early nineteenth-century opinions on inherent tribal sovereignty to advocate for tribal governments making their own development decisions, free of federal influence. For Collier, however, the risk

of allowing unprepared tribal leaders to develop reservation resources by engaging in the cutthroat world of industrial capitalism proved too much. Instead, the Office of Indian Affairs adopted an approach used for public minerals: federal officials would survey reservation lands, judiciously select tracts for development, and then require competitive bidding to determine which mining companies could prospect and lease Indian minerals. Tribes had to consent to the extraction of their minerals, but federal law gave them no specific authority to develop these resources themselves. The regime fit Collier's twin goals perfectly. Federal officials would help tribes develop reservation economies to support their communities, and in doing so they would insulate indigenous lifeways from capitalism's divisive influence.[5]

It was within this legal context that most tribes first encountered multinational energy companies seeking to extract reservation minerals to feed America's post–World War II energy demands. Driven by stubborn ideologies that cast doubt upon Indian capacity for managing tribal resources, statutory law failed to provide explicit authority for tribes to develop their own resources. Instead, Native Americans were forced to rely on their federal trustees, who had been tasked with surveying reservation land and selecting appropriate tracts for development. These officials, however, were completely unequipped to do so. The results were predictable. Energy firms, not federal agents, surveyed Indian reservations, proposed which areas to open for development, and then secured permits to prospect and mine. They also accomplished this under a veil of secrecy, careful not to attract competition from other developers that would drive up the price of Indian minerals. By 1973, energy companies had opened millions of acres of Indian land to prospecting and mining, yet tribal governments had collected miniscule payments for this privilege.

That is, until the Northern Cheyenne took action to ensure the survival of the tribe. Located at the epicenter of a booming new trade in western, low-sulfur coal, Cheyenne tribal members saw the grandiose scale of mining proposed for their reservation and envisioned hordes of non-Indian coal miners descending on their lands, disrupting the social customs and cultural norms that sustained their unique indigenous community. Many Cheyenne lamented the potential environmental impacts of massive strip mines, but far more feared becoming minorities on their own reservation. Tribal members of all stripes thus mobilized

to fight for what they believed to be their tribe's survival, organizing a grassroots campaign to protest potential mining that prompted tribal leaders to take legal actions to protect the reservation. Here, the tide of energy companies exploiting Indian minerals turned.

What follows is a "movement history" that explains how this small group of American Indians organized to halt a specific mining project they viewed as a threat to their indigenous community and then mobilized similarly situated energy tribes into a national coalition to educate tribal leaders and demand changes to federal law. The tale begins in Lame Deer, Montana, but travels quickly to the adjacent Crow Reservation, then to reservations and courtrooms across the West, corporate boardrooms in the East, federal agency headquarters in Washington, D.C., and ultimately, the United States Congress. The Northern Cheyenne and the Crow tribes are featured prominently, but this is not a tribal history. These two groups were the first to successfully challenge reservation energy projects, thus a tribal-level investigation is warranted into the reasons why these communities, and not others, were able to halt mining until their governments controlled reservation resources. Such an analysis is provided, as is an explanation of how heated intratribal fights over mining wrought important changes within the Northern Cheyenne and Crow communities. But what happened after these tribes asserted control over reservation mining had a far greater impact on tribal sovereignty nationwide. The explanation for that sea change in federal Indian law is the true burden of this book. By organizing disparate energy tribes into a national coalition focused on increasing tribal capacity to govern reservation land, the efforts begun in southeast Montana ultimately delivered a new legal regime—anchored by the 1982 Indian Mineral Development Act—that recognized tribal, not federal, control over reservation development.

Scholars of Native America should have little trouble fitting this remarkable tale into the broader trajectory of federal Indian policy at the close of the twentieth century. After all, the 1970s began with President Richard Nixon publicly rebuking the existing Indian policy of "Termination," which sought to end the government's special trust relationship with Indian tribes, and proclaiming "a new era in which the Indian future is determined by Indian acts and Indian decisions" rather than federal agencies. Labeling this new policy "Indian Self-Determination," the president affirmed his goal was not to assimilate Indian people into

the larger American mass, but to empower tribal governments so that they may "strengthen the Indian's sense of autonomy without threatening his sense of community." The move fit clearly within Nixon's burgeoning New Federalism philosophy to transfer responsibility and power for social welfare from federal to local governments. With respect to Native Americans, Nixon also sought to end what many viewed as an unhealthy dependence on the federal government. For American Indians who had been clamoring for more control over their lives and land since the reservation system began in the mid-nineteenth century, the message could hardly have been more welcomed. These people had never stopped working to determine their own fate, but now the president provided rhetorical cover for their actions. A policy window to effectuate real change had opened.[6]

Yet despite the lavish attention paid to Nixon's message by both contemporary observers and historians, the self-determination policy was not self-executing. There was no sudden transfer to tribal governments of authority and responsibility over reservation land, people, and programs. Simply put, no white man could grant Indian sovereignty; tribal governments themselves would have to fill in the contours of the self-determination policy. Even Nixon's legislative proposals to hand over federally funded programs required tribal governments to first request such authority and demonstrate their capacity to run these programs effectively. Many tribes seized this opportunity to take over programs related to reservation housing and education, as authorized by the 1975 Indian Self-Determination and Education Act, but Indians also pursued self-determination through other measures not anticipated by federal policy makers, most famously Indian gaming.[7]

In pursuing these paths to power, then, tribal actors worked within the political and legal structure crafted by non-Indians, but they also took extralegal actions to shape that structure to address the issues most important to them. And no issue was more important than control over reservation land and resources. Yet there are no histories explaining how tribes reclaimed authority over these items. This book tackles this crucial, and as yet unexplained, transition, demonstrating how energy tribes worked beyond the existing legal structure to transform the promise of sovereignty contained in the self-determination policy into actual control over reservation development. In doing so, tribes greatly enlarged a third area of sovereignty within the federal system where

tribal, not federal or state, governments now hold primary authority over reservation land and resources.[8]

There are also important lessons here that transcend interests in American Indian history and policy, and none is more important than demonstrating how control over *energy* confers *power*. To state as much sounds axiomatic, but this book reveals the complicated, underlying material and social forces that make such a statement appear self-evident. On the material side, we know that energy underlies power. Physicists have long told us that energy is the life force of all activity, that it exists in all matter, and every organism uses energy, mostly derived from the sun, to accomplish tasks. Energy is the capacity to do work. In converting energy into useful motion, scientists describe organisms as exhibiting power. Power is thus energy put to work, and all beings exercise some form of it. Of course, one of the greatest conversions of energy into power has come with the ability to burn fossil fuels to produce electrical and mechanical power.[9]

But energy also produces power in the social realm. Older sociological conceptions of power, dating back to Max Weber, defined the term as a function of social position or status. More recently, sociologists of science and technology, environmental historians, and historians of technology have come to recognize that "social power" has a material, energetic basis as well. The ability of humans to effectuate their desires, often by shaping the actions of others, derives not from their position in society but is produced through their increasing ability to control material inputs, mostly by exhibiting mastery over social structures governing those inputs. As Bruno Latour explains, "This shift *from principle to practice* allows us to treat the vague notion of power not as a cause of people's behavior but as the consequence of an intense activity of enrolling, convincing, and enlisting." Power, in other words, is not the result of status and does not explain how people achieve their ends. Instead, it is created though the process of acquiring capacity to control matter—and thus energy—and must itself be explained.[10]

Throughout the 1970s, American Indians increased their capacity to control energy and thus grew more powerful. They secured energy experts to review potential mining projects, educated tribal leaders so they could negotiate better mineral contracts, and passed tribal ordinances to shape how energy resources would be extracted. They improved their mastery over those social structures governing access to

energy. Ultimately, as we will see, this increased capacity produced changes in federal law that recognized tribes' legal authority over reservation resources. Again, increasing capacity to control energy expanded tribal power within the federal structure. Lawyers call such power "sovereignty."

Precisely because control over energy produces power, this book also demonstrates the far-reaching impacts of local conflicts over natural resources. Environmental historians, in particular, have spent years explaining how the pursuit of valuable resources structures relations between developed cores and distant peripheries. The incorporation of outlying commodities into global markets, we are told, renders faraway places dependent on urban regions, while producing untold environmental destruction and social dislocation at the point of extraction. Influenced by anthropologists, the best of these studies complicate the story by recognizing how local actors shape the implementation of seemingly "universal" forces like global capitalism or the high modernist ideology of nation building. Instead of an easy, top-down application of these forces to extract resources, peripheral elites, peasants, wage workers, indigenous communities and their laws, customs, and norms all influence development. In the creative space where universals and local influence meet—what Anna Tsing calls "friction"—resources often get extracted, but on compromised terms.[11]

These nuanced investigations into global resource development, however, still tend not to follow the trajectory of impacts outward, from local to regional, national, or global implications. Environmental and social effects are felt in the periphery, and perhaps local actors influence the method of extraction, but their actions rarely alter the larger structures shaping development. This book demonstrates the opposite, that local efforts to control how development unfolds in particular places produces power at the periphery, which can radiate beyond those locales. Certainly, changes in the global energy industry and antiquated federal laws created pressures to develop energy minerals on Native American reservations, where energy firms were forced to negotiate with increasingly knowledgeable tribal leaders to get deals done. But local concerns over tribal survival not only informed the types of development Indians would allow, they also shaped the overriding economic and legal structures that first brought energy firms to their reservations. To ensure survival, energy tribes increased their

control over tribal resources and authorized only mining projects in which their governments could control the pace and scale. This then affected regional development schemes from the American Southwest to the Northern Plains. But when federal law seemed to prohibit even this type of tribal control over reservation mining, energy tribes set out to change the national legal structure governing their resources. Ultimately, the tribes succeeded in securing new legislation granting tribal authority over reservation minerals, and in doing so they encoded local concerns over tribal survival into federal laws governing energy development nationwide. The local emanated outward to shape regional mining projects, national laws, and global energy flows.[12]

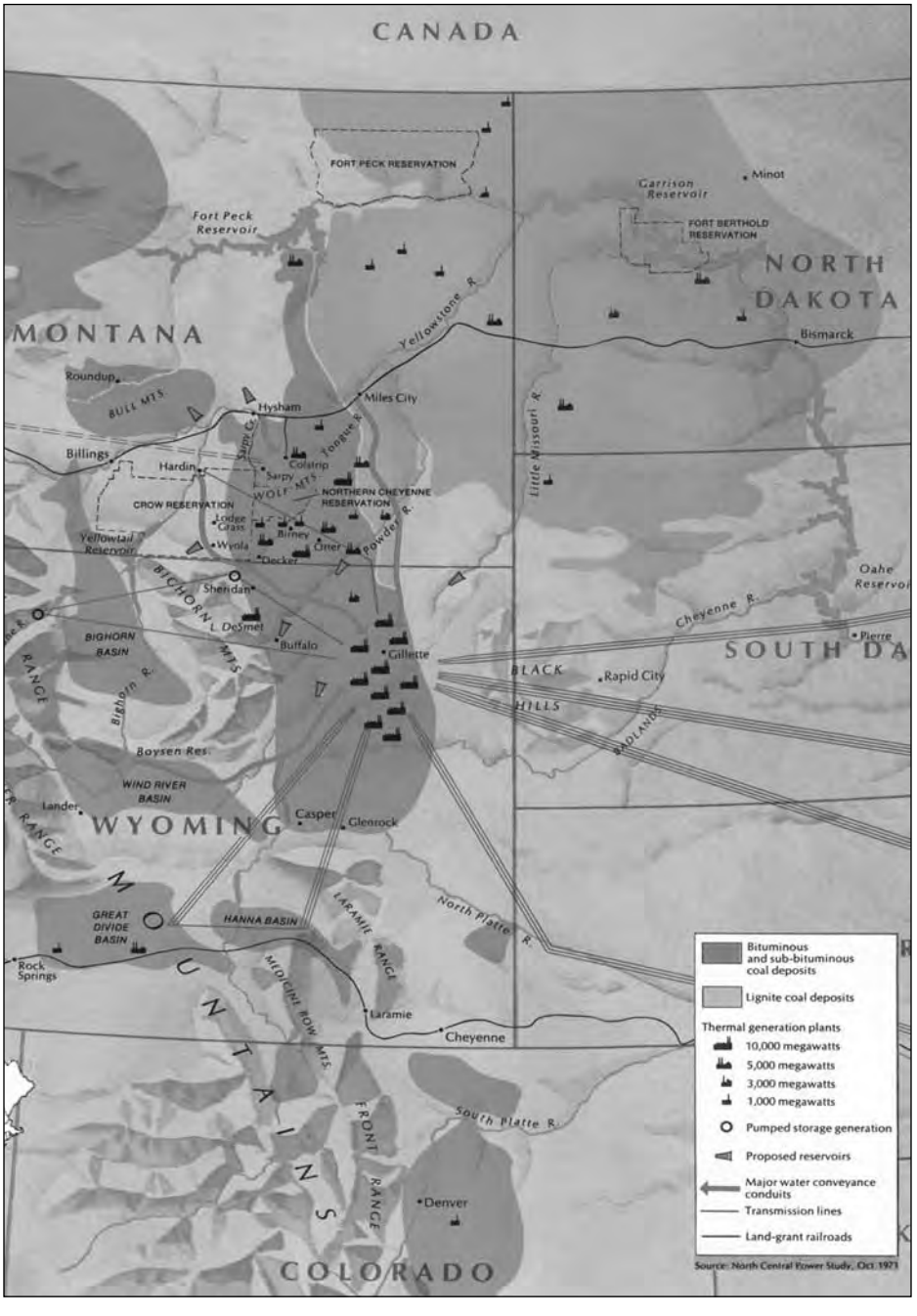
The final lesson drawn from this book involves the intimate connections between a group's physical and social landscape, its approach to governance, and how the community defines itself. Arthur McEvoy stresses the mutability of a society's legal and political structures, explaining how they "evolv[e] in response to their social and natural environments even as they mediate the interaction between the two." For McEvoy, the manner in which a group decides how to govern itself reflects cultural choices made over the best method for mediating social relations and managing the surrounding nonhuman environment. Groups value certain behavior between their members and toward their land and thus establish political institutions and pass laws to achieve those desired results. But these social structures are not all-controlling. Physical and social environments change due to external or internal forces, and when they do, the people often change their governments to better align with the altered conditions. Laws and political institutions are simply culture manifested, with roots in both the physical and social environment.[13]

To McEvoy's apt description of the basis of governance, I would add that once group members establish their governing principles and procedures, they then partly define their community based on these decisions. They might say, for example, "We are Crow, thus we manage the environment this way"; or, "As Northern Cheyenne, we believe this is the best manner to police ourselves." Changing governing structures, such as ratifying new constitutions or placing power over natural resources in new government bodies, is thus an incredibly disruptive event for the community because it fundamentally alters how the group has previously defined itself. Some members may support the move as

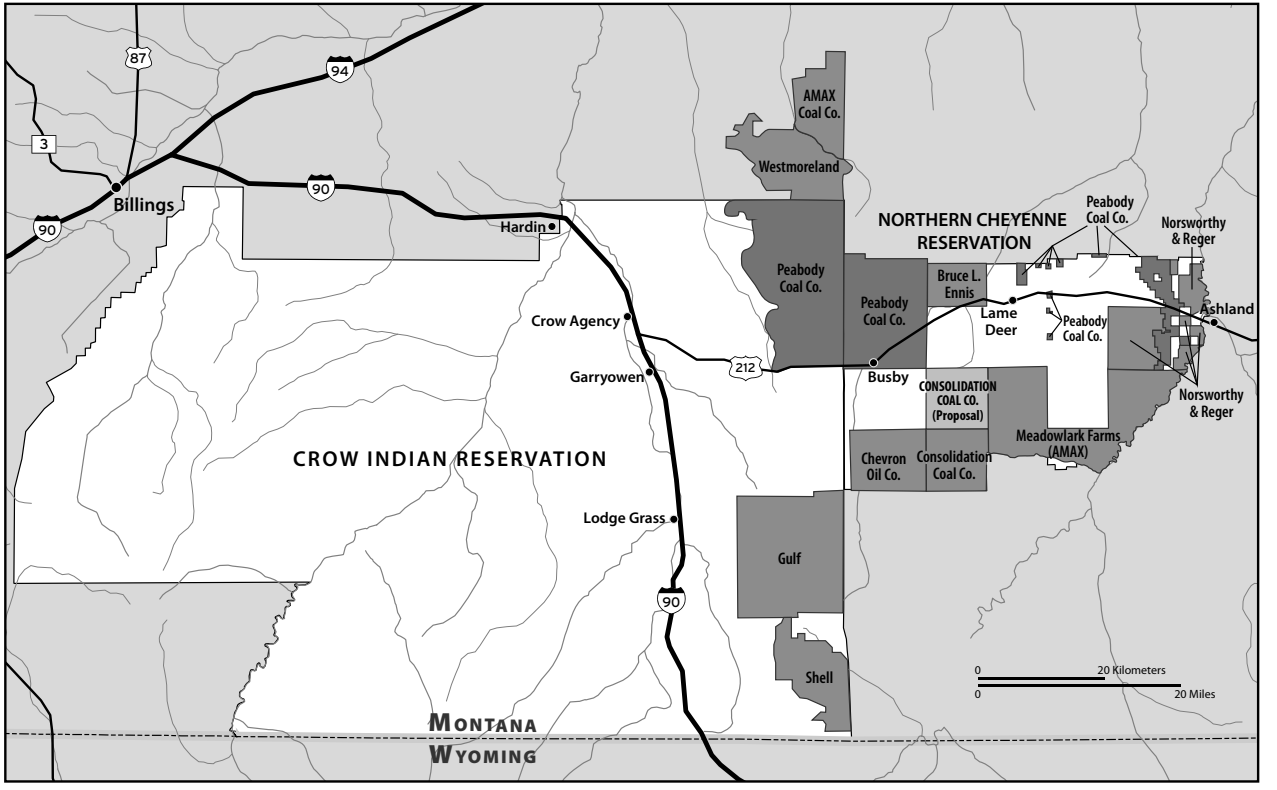
a reasonable extension of the community's belief system, but for others the change is a threat to the group identity they subscribe to. These members ask the fair question: "Are we still Crow if we no longer govern ourselves and our resources the way the Crow used to?"

For many American Indian communities wrestling with the prospect of reservation energy development, these contentious internal struggles over natural resource governance and identity left the most lasting legacies. Groups like the Crow and Navajo altered their governments to take advantage of development opportunities and better control mining's impacts, but these changes deeply divided their communities. These divisions, in turn, often made it difficult to form the consensus necessary to capitalize on their abundant resources. Tribal factionalism is, of course, nothing new, and scholars have sometimes explained these conflicts in terms of internal groups vying for control over valuable resources. But few studies explain the ferocity of these debates in terms of changes to the legal structures governing natural resources. Under the auspices of "modernizing" or improving the "efficiency" of their tribal governments, energy tribes altered their governments and increased their capacity to manage reservation land. For some, however, these changes signified much more than improvements to governance. They represented a revaluing of an essential component of tribal culture (how the group manages its environment) and thus a redefining of tribal identity. Governance, the environment, and culture were inextricably entwined. As the cultural geographer Don Mitchell explains, "Moments of intense political and economic restructuring . . . are also moments of intense cultural restructuring."[14]

The remarkable tale of Indian agency that follows, then, not only explains how energy tribes reconfigured the legal relationship between tribal and federal governments, it also demonstrates how this process wrought fundamental changes within tribal communities. Considering the intimate relationships between the environment, law, and culture, how could it be any other way?



Map 1. Projects proposed by the *North Central Power Study.* Map detail, adapted, reproduced with permission from Alvin M. Josephy, Jr., "Agony on the Northern Plains," *Audubon* 75, no. 4 (July 1973), 76–77.



Map 2. Potential coal development on the Northern Cheyenne and Crow Reservations, circa 1972. Map by Mapping Specialists, Ltd.

3

THE NATIONAL CAMPAIGN

6 Taking the Fight National

BY THE SUMMER of 1974, the view from southeastern Montana was improving. Responding to perceived attacks on the homeland, both the Northern Cheyenne and Crow had taken control of reservation mining and were exploring options to develop their resources in ways that ensured their communities' survival. The Northern Cheyenne's successful petition to the Department of the Interior had halted reservation mining and put the tribe in a position to extract the coal itself. The community was unified and prepared to reverse American Indians' historical role as passive observers to the development of their own resources. Next door, the Crow would soon fracture over the issue of reservation mining, but in summer 1974, the tribe's newly elected chairman, Patrick Stands Over Bull, had established a reservation mining moratorium and was focused on developing only the Ceded Strip. All Crow agreed that tribal control over energy projects was necessary to mitigate harmful social, cultural, and environmental impacts. Benefiting from difficult lessons learned elsewhere, both tribes stood ready to reap economic benefits from development pursued only on tribal terms.

Yet as important as these actions were for the Crow and Northern Cheyenne communities, those involved in these battles recognized that the war over Indian energy could not be won solely in southeastern Montana. Events beyond regional and national boundaries ensured

continual pressures to develop reservation resources across the West, pressures that could be met only with a similarly broad campaign to equip tribal leaders with the tools and knowledge needed to control development. Thus, in the months following President Nixon's November 1973 announcement of Project Independence—an ambitious response to OPEC's October oil embargo that called for expanding domestic production to make the country "energy independent" by the end of the decade—tribal leaders made several attempts to mobilize a consortium of similarly situated tribes to share experiences, consultants, and funding to prepare for the coming onslaught in energy demand. If the country wanted Indian resources, energy tribes could facilitate the process, but they had their own set of demands. These groups organized to ensure their communities received the bulk of benefits from reservation development.

STANDING GROUND: "A DECLARATION OF INDIAN RIGHTS"

Ironically, the federal government planted the seeds for the first pan-tribal association to defend Indian energy rights. On October 3, 1972, Interior Secretary Rogers Morton announced a joint, interagency, federal-state task force "to assess the potential social, economic and environmental impacts which would result from future development of the vast coal deposits and other resources in the five Northern Great Plains States." Involving a dozen federal agencies and a handful of states, the Northern Great Plains Resource Program (NGPRP) followed two previous attempts in the decade to coordinate energy development in the region. Like its predecessors, which included the ill-fated *North Central Power Study,* the NGPRP explored the possibility of a massive, interjurisdictional, region-wide development scheme to transform the thinly populated Northern Plains into an "energy belt" to meet the nation's growing needs. But unlike the previous studies, which focused solely on maximizing the rate of production for valuable resources, the Department of the Interior intended the NGPRP to take a more holistic approach. Multiple scenarios for regional development would be studied, and potential impacts assessed across a wide range of economic, social, and environmental values. In fact, in explaining the NGPRP as "an outgrowth of public concern in the region [over] prior

studies of the region's resources by Federal and State governments as well as private organizations," Secretary Morton left little doubt that his agency had heard the complaints of Northern Plains' ranchers and environmentalists who feared energy development would disrupt their livelihoods and landscapes. Responding to these concerns, the secretary promised a more thoughtful approach to regional development.[1]

The same attention, however, was not paid to the region's first occupants, as once again, no one had bothered to solicit Native American input for the proposed plans. Anxious tribes could only watch as the Interior secretary promised other constituencies a more calculated approach to Northern Plains' development while declaring confidently that "these major coal deposits will be developed, that is inevitable, but how they are developed is of national interest." Excluded from the process, Indians felt their apprehension over the potential use of tribal resources increase as President Nixon delivered a series of unprecedented addresses in 1973 that stressed the need to expand domestic energy production, particularly from the nation's vast coal reserves. Never before had a president featured energy policy in a message to Congress or the American people. Now, even before the October 1973 Arab oil embargo, Nixon was highlighting the disparity between the amount of coal the country possessed—according to him, over half the world's reserves—and the amount being used to meet domestic energy needs—again by the president's estimate, less than 20 percent. To remedy this disparity, in his April 1973 address the president urged "that highest national priority be given to expanded development and utilization of our coal resources," including those along the Northern Plains. When Nixon again emphasized these vast untapped coal reserves in his November 7 announcement of Project Independence, the message from the top was clear. Energy development was coming to the Northern Plains and the federal government was paving the way.[2]

The nation's newfound commitment to Northern Plains coal development was on a collision course with indigenous peoples' commitment to community survival. Sensing tribal resources would again be sacrificed for the good of the country, Indian leaders reacted to Nixon's call for energy independence by organizing a historic gathering of Northern Plains tribes for December 18, 1973, on North Dakota's Fort Berthold Reservation. The one hundred plus delegates who arrived at the reservation shared by the Mandan, Hidatsa, and Arikara tribes

planned initially to discuss the NGPRP's impact to tribal water rights. The conversation broadened quickly, however, to include a general denunciation of the regional development program and a plan for a coordinated defense. Unable to ignore a gathering of this many disgruntled stakeholders, especially those with precious water and mineral rights, NGPRP Director John Vanderwalker scrambled to attend the meeting and placate Indian concerns. He did not receive the reception he had hoped for. Instead, the gathered tribal leaders made clear their strong resolve to oppose regional development without Native input, leaving the director with little choice but to bring the tribes into the NGPRP process. Yet Vanderwalker's view of the tribes' appropriate role was telling of the government's notion of tribal sovereignty, even under the new self-determination policy. Labeling these groups as special "consultants," the NGPRP director invited the tribes merely to submit formal comments on the final report. Apparently, the insensitivity of belatedly asking American Indians to "consult" on a plan that would deeply impact their resources and communities was lost on Vanderwalker.[3]

The insult was not missed by tribal delegates. Those in attendance seized the opportunity to submit comments on the NGPRP as a chance to organize collectively and articulate broader concerns regarding the expropriation of Indian resources. Before disbanding at Fort Berthold, delegates established a temporary committee to draft their comments and enlisted the assistance of Native American Rights Fund (NARF) attorney Thomas Fredericks, himself a Mandan tribal member. At the time, NARF attorneys were already busy on the nearby Northern Cheyenne and Crow Reservations restructuring or canceling existing mining projects. This experience, combined with NARF's earlier work on behalf of Hopi and Navajo tribal members, positioned Fredericks's relatively small public-interest law firm as the nation's foremost expert on protecting Indian mineral rights. It also allowed NARF attorneys to develop a common legal strategy that entailed first asserting tribal control over natural resources—and defending this claim in legal or administrative actions, if necessary—before entertaining proposals to develop them. Fredericks shared this message with his new clients, several of whom, like committee member and Northern Cheyenne President Allen Rowland, were already fighting their own tribal battles to control reservation mining. Under Fredericks's guidance and with Rowland's support, the temporary committee's task to provide specific comments

on the NGPRP morphed into a general defense of indigenous rights over all Northern Plains resources guaranteed by past treaties.[4]

As the broader scope of this undertaking became clear, those involved understood that a simple declaration of rights was not sufficient to defend legal claims to highly valuable resources. A formal organization was required to carry the fight. Thus when the Northern Plains tribes gathered again in Billings, Montana, on January 17, 1974, to review their draft statement on Indian resources, delegates formed another ad hoc committee to not only finalize the statement but also draft a constitution and bylaws for a new federation to protect tribal rights. None other than Northern Cheyenne Tribal President Allen Rowland chaired this new committee. Working throughout the winter, Rowland and his fellow delegates returned to Billings in March to approve what was now titled the "Declaration of Indian Rights to the Natural Resources in the Northern Great Plains" and finalize founding documents for the Native American Natural Resources Development Federation (NANRDF). By May, the new organization had elected former and future Rosebud Sioux Tribal President Robert Burnette as its chairman. In addition to his tribal duties, Burnette also was the former executive director of the National Congress of American Indians and the visionary behind the Trail of Broken Treaties. Clearly, he possessed the leadership qualities and experience necessary to make NANRDF a force to be reckoned with on the Northern Plains. Within a few short months, the indigenous outrage at being excluded from the NGPRP process had blossomed into a full, pan-tribal alliance to protect tribal resources and communities.[5]

Much like the Northern Cheyenne and Crow revolts, organizers of this pan-tribal alliance understood their mission as a desperate defense of tribal homelands, and the Native American Rights Fund made sure to make this point in terms all Americans could understand. Dedicating its spring 1975 newsletter to the formation of NANRDF, NARF staff drew explicit comparisons between the saga unfolding on the Northern Plains and the American Revolution. The Northern Cheyenne and Crow, NARF explained, were the Sons of Liberty that ignited the insurrection. The Billings meetings played as a modern-day Second Continental Congress, producing a Native Declaration of Independence and a confederation to manage the anticolonial war. And just as the complaints of the Boston patriots had found their fullest expression in the

exalted prose of the Founding Fathers, the arguments first articulated by the Northern Cheyenne and Crow were now being expounded upon by the twenty-six founding members of NANRDF. Their Declaration of Indian Rights explained how the international energy crisis "makes the vast coal resources of [the Northern Plains] very appealing for immediate development," and that such pressure to develop "threatens the viability of our environment and the continued existence of the 26 tribes which occupy the Northern Great Plains." Defiant in its defense of these communities, NANRDF put the world on notice that its members intended to "maintain their ownership to the priceless natural resources which are geographically and legally related to their reservations" and warned federal agencies that any attempt to divert or use tribal resources "shall be at their own risk." The line in the sand had been drawn.[6]

To defend its position, NANRDF set out not only to represent its members' interests in federal and state planning efforts but also to construct an indigenous network of knowledge to help tribal leaders make sound resource development decisions. In fact, of NANRDF's four founding purposes—(1) to coordinate efforts to describe and quantify Northern Plains Indians' cultural and natural resources, (2) to develop scientific data and expertise to make informed management decisions for these resources, (3) to represent affected Indians in federal and state planning programs, and (4) to provide assistance to individual tribes in managing their resources—three were dedicated to generating and sharing information on appropriate resource management techniques. This focus on gathering knowledge about minerals and markets and educating tribal leaders on the nuances of energy development mirrored the approach taken by the Crow and Northern Cheyenne. The affinity was no accident. The very same leaders and advisors involved in those struggles were applying similar tactics in this concomitant effort to build a pan-tribal alliance.[7]

ON THE OFFENSIVE: CREATING THE COUNCIL OF ENERGY RESOURCE TRIBES

By the summer of 1974, the revolution launched in Lame Deer had gained solid footing in tribal communities across the Northern Plains. The government's latest coordinated efforts to tap regional energy re-

serves triggered indigenous resistance among numerous potentially affected communities. Conditioned by the Cheyenne, Crow, and southwestern experiences, the Northern Plains groups issued a declaration of rights drawing attention to the government's latest exploits and formed a pan-tribal organization to combat them. NANRDF was the first entity of its kind, uniting dozens of tribes behind the single purpose of protecting valuable tribal minerals.

But for all of its importance, the Northern Plains' coalition was still regional in scope and defensive in nature. It was an appropriate response, for it reflected the particular threat posed. The Department of the Interior's actions to exploit Northern Plains' resources represented an older, Progressive-era approach to western development, one where the government directed resource management and reflexively ignored tribal input. In the 1970s, however, new federal agencies were exploring innovative partnerships with groups outside the federal bureaucracy that could increase domestic energy production nationwide. If Interior's actions on the Northern Plains called for a defensive response, this novel approach provided common ground for energy tribes and federal officials to work together. It also provided a platform to expand the Northern Plains alliance into a national consortium to represent the interests of all energy tribes. Tribal leaders formed NANRDF to fight Department of the Interior actions in the North, but they would establish the Council of Energy Resource Tribes (CERT) in partnership with new federal efforts to cooperatively expand domestic energy production.

A familiar warrior triggered the search for common ground between energy tribes and the federal government. On February 13, 1974, George Crossland, the Osage attorney who had first counseled the Northern Cheyenne to tear up their coal leases, wrote to Stuart Jamieson of the National Congress of American Indians (NCAI) advocating for a "tribal energy coalition" to help tribes maximize the long-range benefits of their energy resources. Crossland was not involved in NANRDF's creation, but he understood what Project Independence meant for Native resources. He warned Jamieson that the country's excessive growth would continue to place extreme pressures on these resources and argued that tribes needed a common strategy to protect their minerals or else "we shall see the experiences of the Osages and Navajos-Hopis repeated: the depletion and consumption of the

resources base." Following up a month later, Crossland submitted a more extensive memo to NCAI Executive Director Chuck Trimble that included data on the nation's increasing energy use and quotes from its top energy policy makers. According to the longtime tribal rights advocate, these indicators "lead inevitably to the conclusion that the Bureau [of Indian Affairs] and [the Department of the] Interior are quite willing to sacrifice Indian people, in the first instance, for the gain of the energy industry." "Therefore, if the 'past is prologue,'" Crossland continued, "the tribes must be more informed than ever before if they determine to utilize their natural resources. In the headlong rush to meet the nation's energy demands, it is entirely conceivable that the loss of tribal viability will be considered just one of the nation's 'social costs.'" One of the nation's foremost experts in defending tribal resource rights was raising the alarm to the country's largest Indian rights group and asking the NCAI to organize its members for a mutual defense.[8]

As it turns out, Crossland's plea fit perfectly with an important policy shift occurring within the NCAI to empower tribes to develop their own, Indian-led reservation economies rather than relying on outside capital to build non-Indian enterprises on the reservations. Founded in 1944 to fight federal efforts to terminate the special trustee relationship between tribes and the federal government, the NCAI had consistently worked "within the system" to protect tribal treaty rights and enhance indigenous communities. During the 1960s, this approach meant largely eschewing the combative tactics of more militant groups, such as the National Indian Youth Council or the American Indian Movement, to focus on extending President Lyndon Johnson's Great Society programs to impoverished American Indians. To stimulate reservation economies, the NCAI thus obtained status as a national Community Action Agency and administered an Indian Economic Development Program designed to bring industrial activity to rural reservations. As the NCAI explained in a proposal to the Economic Development Administration, this approach involved "a series of 'industrial show-type' seminars wherein Indian Tribes would set up booths extolling the benefits of locating industry on their respective reservations . . . and booths were [also] provided for industries to display their products for consideration by the Tribes." To develop reservation economies, the NCAI acted essentially as a national Chamber of Commerce seeking to site private industries on Indian reservations.[9]

By the early 1970s, however, the organization was reexamining this model. Member tribes were rejecting the "industrial show" approach due largely, as the NCAI noted, to the "growing nationalistic emphasis of the Tribes on the development of Tribal government and development of their natural resources." Proposing a shift in tactics to the Economic Development Administration in 1974, the NCAI explained that in this "year of national introspect[ion]" caused by the Arab oil embargo, tribes "are engaged in widespread governmental and economic development, and are beginning to look increasingly to the development of their [own] human and natural resources." To lead this transition to Indian-centered reservation economies, the NCAI proposed a series of intensive, multiday seminars that would educate tribal leaders on the specific industries most appropriate for their reservations. These included commercial fishing seminars for Pacific Northwest tribes and agribusiness primers for those in the Great Plains, but the NCAI argued that "potentially the most important seminar on the proposed schedule" was a panel on energy resources intended for the "Indian 'Energy Belt' extending from western North Dakota diagonally southwestward through Arizona." In this time of soaring energy demands and limited international oil supplies, the NCAI looked to Indian energy development as the potential flagship for its new approach to reservation economies.[10]

And, of course, who knew more about the intricacies of the Indian energy industry than the tribes and consultants currently fighting to control their minerals? NCAI staffers thus reached out to the Northern Cheyenne, Crow, and other Northern Plains tribes to help organize the first ever "Indian energy conference" for late summer 1974. Dan Israel and Thomas Fredericks—NARF attorneys who represented the Crow and NANRDF, respectively—responded with a series of memos to conference organizer Stuart Jamieson, sharing their extensive experience with Indian energy development and outlining everything from general topics to be addressed to specific panel structures and suggested participants. Unsurprisingly, the issues topping NARF's discussion points reflected their experience on the Northern Plains, including developing tribal capacity to control reservation resources, educating tribal leaders on how to negotiate contracts that retained tribal ownership over mining ventures, and discussing the role of the recently formed NANRDF. When the NCAI announced details of the August 1974

energy conference in its national newsletter, the proposed agenda mirrored the format and topics suggested by the NARF attorneys. And if the influence of the Northern Plains energy tribes was not clear enough, the conference was scheduled to take place in Billings and would be cohosted by Northern Cheyenne President Allen Rowland and Crow Chairman Patrick Stands Over Bull.[11]

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The NCAI-sponsored Indian Energy Conference marked an important transition in the movement for tribal control over reservation resources. Coming together for several days of debate and discussion, tribal leaders began to reconceive their mission as not only defending reservation resources against perceived threats to tribal survival but also proactively using these assets to expand tribal sovereignty and reservation economies. Of course, both the defensive and proactive strategies were needed to replace non-Indian mining with tribal-led ventures, and both views were represented at this conference. Allen Rowland, for instance, opened the meeting by deriding the federal government's failure to uphold its trustee duty and explaining that NANRDF had been formed specifically to fight federally led development. "Where's our trustees?" Rowland asked the audience rhetorically, "Well by God, that's a damned good question. I've been looking around for them for a hell of a long time now, about 15 years. And every place I go, I find them working against us. . . . [S]o what's got to happen, the way I look at it, is the Indian people got to band together to save what we have left." Rowland was not alone in his continued calls for a mutual defense. Suggesting specific tactics to strengthen tribal resistance, Crow activist Dale Kindness warned that coal development would spell the end of many indigenous communities unless tribes established reservation zoning ordinances and environmental codes to shape planned mining. Kindness pleaded, "If we are to continue as Indian people with our own values, society and culture, we have to stand up straight and get our stuff together." Clearly, the experience of the Crow and Northern Cheyenne as the test subjects for Northern Plains' energy development had produced powerful sentiments against non-Indian mining.[12]

But the other message offered at this unprecedented gathering moved beyond defensive posturing and suggested an innovative approach to capitalize on the tribes' vast resources. Interestingly, this view was artic-

ulated most clearly by an outsider, Arjun Makhijani, who was a project specialist at the Ford Foundation's Energy Policy Project. Since 1971, the Ford Foundation had been committing its substantial resources to resolving what it saw as an unsustainable rate of American energy consumption. As part of this effort, Makhijani worked with a group of distinguished economists, scientists, engineers, and policy experts to explore the range of available energy choices and to suggest new policies for responsible energy use. Completing its final report, entitled *A Time to Choose,* earlier in 1974, this team recommended a "conservation oriented energy policy" to reduce America's energy demand, which would address the associated problems of energy shortages, environmental and social concerns arising out of increased domestic production, and the growing power of Middle Eastern oil exporters. At the end of their three-year study, the Ford Foundation group represented perhaps the country's foremost gathering of energy experts. They had the knowledge energy tribes lacked.[13]

Recognizing the need for expert assistance, the NCAI had approached the Ford Foundation for help on its Indian Energy Conference. Directed to Makhijani, NCAI Director Chuck Trimble met with the energy expert and explained the tribes' predicament. "We're ground zero on this," Trimble acknowledged. "We don't know what we have, and therefore we don't know where we're going, and that's what this conference is about." Makhijani responded by admitting he knew very little about American Indians, but he nevertheless accepted Trimble's invitation to apply his vast knowledge of the global energy industry to reservation development. The indigenous network of knowledge was expanding.[14]

Arriving in Billings as the featured speaker on the opening panel, Makhijani captivated the conference by offering the stunning suggestion that energy tribes model their approach after the Organization of Petroleum Exporting Countries (OPEC). The Ford Foundation's energy expert first explained the central role energy held in the global economy and then walked the attending tribal leaders through OPEC's history from exploited colonial states to "one of the most dominant economic forces in the world." This remarkable transition, Makhijani explained, was due to its collective management of oil, and energy tribes could do the same with coal.[15]

Of course, evoking the specter of an "a Native American OPEC" less than a year removed from the October 1973 Arab oil embargo and the infuriating fuel shortages it produced was a dangerous proposition.

Makhijani thus was careful not to emphasize OPEC's cartel power in withholding oil and setting prices. Instead, similar to the benefits NANRDF organizers touted, he argued OPEC's biggest attribute was its ability to collect and share information on global energy projects to ensure its members pursued similar strategies with their oil company partners. The same type of an organization, Makhijani argued, could serve the tribes well by "permit[ting] you to get a lot of knowledge about what your resources are [and] what the relation of those resources [are] to the U.S. and world energy picture." Once these data were obtained, Makhijani continued, "it should be relatively easy for Indians to go into business for themselves, rather than lease to coal companies from which they're usually not deriving adequate benefit." Clearly encapsulated, this was the message of Indian-led economic development the NCAI had gathered the tribes to hear.[16]

With Makhijani articulating the path forward, subsequent speakers focused on the specific steps to carry out this project. Northern Cheyenne and Crow attorneys reviewed the actions they had taken to halt existing mining, but then focused their comments on how to develop reservation codes to shape future mining. George Crossland bashed existing federal regulations that restrained Indian entrepreneurship before he and others proposed changes to federal law that could give tribes flexibility to enter into promising commercial ventures beyond the standard lease form. Each of these suggestions reflected a new, forward-looking perspective that envisioned Indians controlling their own resources, and each called for a collective effort to make this goal a reality. Barney Old Coyote, a Crow tribal member and president of the American Indian National Bank, created to finance tribal ventures, used a football analogy to support the strategy. "You can have the best defensive unit in football," Old Coyote told the audience, "but if you don't have the ball, and you're on the defensive all the time, you're never going to win the ball game." The energy tribes were ready to go on the offensive.[17]

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At the end of the two-day Indian Energy Conference, Barney Old Coyote continued his football analogy by announcing that one of the offensive "plays" he and others had been exploring was a partnership

with the Federal Energy Office. Created in the wake of the Arab oil embargo to allocate reduced oil supplies and control prices, this temporary crisis-management office had become the hub of energy policy and planning under the Nixon administration. When the president and Congress created the permanent Federal Energy Administration (FEA) in summer 1974, the new agency largely absorbed the responsibilities and expertise of the Energy Office, including the search for ways to make the country energy independent. To carry out this goal, the FEA started exploring partnerships with groups outside the federal government, offering grants to fund private, domestic energy projects.[18]

And here is where Old Coyote and his fellow tribal leaders saw an opening. Rather than have this new agency support mining projects designed by energy firms that rarely owned mineral resources yet profited greatly from their development, Old Coyote questioned the gathered tribes, "Why not have the Energy Office . . . start dealing [directly] with the Indian owners of resources and of energy in this country?" It was a question worth considering, even for a group conditioned to be wary of federal involvement in the development of their resources. Those in attendance began to recognize that they, as individual tribes or a consortium, could contract directly with the federal government to obtain funding to support mineral studies and development plans to produce energy for the nation and revenue for themselves.[19]

The idea of forming a national coalition of energy tribes that would interface with the federal government to gather and share energy information quickly gained momentum. Six weeks after the energy conference in Billings, many of the same participants gathered at the NCAI's national convention in Denver to share their insights with a broader audience. Arjun Makhijani, who, as NCAI Director Chuck Trimble explained, had "become famous overnight" within the Indian community, once again offered OPEC as a template for shifting "your tactics in a very fundamental way from defensive battles to assertion and recognition of your rights before anything happens [to your resources]." Makhijani cautioned, however, that in order to assert these rights, the energy tribes first needed to know exactly what resources they possessed. "You first of all have to know what you have got," he warned. "If you don't have this knowledge, then you will be at the mercy of the government and the companies, from the very start, as you have been in the past." George Crossland echoed these comments, arguing

the tribes' first step was to coordinate a national inventory of Indian resources, particularly those water rights so precious to any western development scheme.[20]

Makhijani's and Crossland's warnings took on added importance in the winter of 1974–75 as it seemed that some federal agencies still planned to appropriate Northern Plains' resources for Project Independence. On February 24, 1975, the Department of the Interior and the Army Corps of Engineers entered into a memorandum of understanding to market Upper Missouri River Basin water—much of which was committed to Indian reservations—for industrial purposes. Sensing their fears were coming to pass and that Indian resources would be auctioned away without their input, the energy tribes launched into action. Northern Plains' tribal leaders traveled to Washington, D.C., to lodge their objections with federal officials and then submitted a formal letter of protest to President Gerald Ford, threatening a lawsuit that could tie up valuable water rights in litigation for years. It was the standard defensive tactic, but it was complemented by NANRDF's and NCAI's outreach to the new FEA Administrator Frank Zarb. Hoping to head off the federal appropriation of tribal water rights, these organizations requested that Zarb provide "heavy federal funding of engineering, economic, and socio-cultural studies to determine the presence and quantity of natural resources and the social and economic impact of development of those resources on Indian resources."[21]

Tasked with exploring all options to increase domestic production, FEA officials were eager to engage tribes possessing significant energy resources. On April 22, 1975, at an FEA "consumer workshop" in Denver, Deputy Administrator John Hill met with tribal groups from both the Northern Plains and the Southwest who had formed a unified "Indian caucus" to press their concerns. After meeting with Hill, this group issued a formal statement demanding that the president reaffirm the federal trustee duty to protect Indian assets and develop these resources "only with the informed consent, concurrence, and the active participation of each tribe." Days later, many of these same caucus members then flew to Washington, D.C., to attend a meeting arranged by the NCAI between FEA Administrator Zarb and NANRDF representatives. While the Northern Plains group had scheduled the meeting to discuss FEA assistance to tribes in their region, when NANRDF members made their play for federal funds, the southwestern tribes

demanded their fair share as well. The hoped-for unity among energy tribes was being tested over the allocation of federal support, and the FEA began to understand how difficult it could be to formulate national policy for a diverse Native America.[22]

Despite the lack of unity displayed by the energy tribes—or because of it—this April 25 meeting set in motion the process that would produce the Council of Energy Resource Tribes. Once the diverse interests of the energy tribes became clear, Zarb commissioned an FEA task force to develop a comprehensive Indian energy position paper that evaluated the role of all Indian resources in meeting national energy goals and considered the environmental and socioeconomic impacts of reservation resource development. In typical bureaucratic fashion, the resulting position paper suggested an additional "interagency/Indian tribes task force" to obtain more tribal input for FEA's national Indian energy policy. After a meager attempt to organize this new task force in San Francisco in June 1975 attracted only a handful of tribes, the FEA pushed for a much larger gathering in Washington, D.C., the following fall. This time, with both FEA Administrator Zarb and Bureau of Indian Affairs Commissioner Morris Thompson scheduled to attend, and travel expenses provided, representatives of more than twenty energy tribes from across the country arrived to discuss how the FEA could facilitate tribal energy development.[23]

In the halls of the Federal Energy Administration, the Council of Energy Resource Tribes was born. On September 16, 1975, attendees at this latest round of meetings spent a long opening day hearing from federal officials about how the FEA intended to increase domestic energy production and where Indian resources could fit into this goal. Tribal representatives understood the need for collective action, but as individual groups with diverse interests and concerns, the tribes debated how to respond. After spending two more days trying to organize themselves and develop a unified position, LaDonna Harris of the Americans for Indian Opportunity decided to aim for something lower. Seeing the tribes struggle to agree on substance, she gathered a small group of volunteers to focus on process. This group, which included NARF attorney Charles Lohah and Jicarilla Apache attorney Robert Nordhaus, then drafted an organizational charter to provide energy tribes with an institutional mechanism for communicating tribal desires to federal officials. The organization would be a mouthpiece but little

more. By the end of the day on September 18, fourteen of the twenty-three tribes present had signed the two-page charter drafted by Harris and company. They then proceeded to elect the charismatic chairman of the Navajo tribe, Peter MacDonald, as their leader. Common ground had been found over procedure, but not all were sure of the impact of their actions. Leaving the FEA's Washington headquarters at one o'clock the following morning, LaDonna Harris recalls Charles Lohah turning to her and asking point blank, "What have we done?"[24]

GROPING TOWARD AN IDENTITY: CERT'S FORMATIVE DAYS

CERT had been birthed by the federal desire to develop domestic energy sources but driven by energy tribes' determination to take charge of reservation development. Its founding documents reflected the confused nature of its origins. Along the lines of the OPEC-style organization Arjun Makhijani proposed, CERT's organizational charter envisioned a coalition of similarly situated tribes that would share energy information and cooperate to "promote the general welfare of the Energy Resource Tribes." But issued concurrently with this charter was a longer list of recommendations to the FEA that emphasized the need for partnership between CERT and the federal government to respond to "the present 'Energy Crisis' and potential 'Energy Disaster.'" This second document called for the creation of yet another task force under the newly created, cabinet-level Energy Resources Council—which Frank Zarb also directed—that would include the leaders of all energy tribes. This task force would work with the federal government to review the needs and practices of Indian resource development, make available federal assistance to support such projects, and monitor reservation mining. It seemed a worthy proposal, but together the two documents suggested conflicting organizations. On one hand, CERT's charter called for an independent coalition of mutual interest to share information and strengthen each member's negotiating position with energy companies and federal agencies; on the other, the position paper proposed an intimate, institutional connection between energy tribes and the federal government that blurred the lines between the two. Certainly, the tribes took momentous actions in Washington

that September, but it was hard to ascertain exactly what these actions meant.[25]

The creation of CERT confused even those tribes and tribal leaders that spearheaded the movement for a national coalition of energy tribes. Writing to NCAI Executive Director Charles Trimble a week after the FEA meetings, Northern Cheyenne President Allen Rowland noted that his and a few other important energy tribes had not signed the organization's founding documents and suggested an Indian-only meeting, free of federal interference, to clarify CERT's purpose. Like NARF attorney Charles Lohah, Rowland was not sure what CERT was. Responding dutifully, the NCAI brought the energy tribes back to the same Billings facility where Rowland and Crow Chairman Patrick Stands Over Bull had hosted the inaugural Indian energy conference a year earlier to better define the new organization.[26]

At this latest gathering of the energy tribes, confusion reigned. Was CERT an independent organization of energy tribes or simply a task force of the FEA? If an independent organization, what was its relationship to the Northern Plains federation known as NANRDF? Did their purposes align or would the organizations compete for federal funding and tribal membership? Would CERT subsume NANRDF? After hours of debate, NARF attorney Thomas Fredericks, who was now NANRDF's executive director, attempted to clear the air. Believing CERT and NANRDF had similar goals but different functions, Fredericks recounted the series of meetings that led to CERT's creation and then argued that "both groups can co-exist" because CERT's only purpose was to act as "the organization or the vehicle to supply the administration with the consensus . . . of the Indian community as to what they feel about energy development on reservation lands and Indian country." According to Fredericks, CERT was not an independent cartel but rather served as an important advisory body to federal policy makers, especially those agencies with money to invest in domestic energy production. "I think the whole concept of CERT," Fredericks explained, "was that by having a voice in the administrative arm of government, that the monies that were available to really develop this energy could be . . . channeled to the Indian tribes because of the potential that exists on most reservations." Fredericks and others used organizational charts depicting the federal bureaucracy to point out where

CERT would give Indians "a voice in the upper echelons of the energy policy makers to [force them to] come up with programs that would be relevant to the Indians' needs." The explanation seemed to quiet the controversy. After making his case, Fredericks then focused the meeting back on CERT's demands to the FEA, walking the audience through a line-by-line analysis of its earlier list of recommendations. If CERT truly was a mouthpiece to provide Indian input into federal energy policy, crystallizing these demands was its most important task.[27]

This interpretation that CERT's primary role was to work within the federal government to advise policy makers and lobby for aid in Indian energy development set the organization's early agenda. Cultivating federal connections, CERT requested $1 million in federal seed money to conduct a resource inventory study and then opened offices in Denver and Washington, D.C., to give the organization one foot in Indian Country and another in the Beltway. The organization also used federal funds to hire its first executive director, Ed Gabriel, an FEA staff member who was instrumental in forging the federal-tribal partnership. Apparently, raiding the federal bureaucracy to lead a pan-tribal organization charged with developing indigenous resources barely raised an eye. As Marjane Ambler explains, Gabriel "was a logical choice" due to the closeness of the CERT-FEA relationship. Be that as it may, tribal leaders that had been inspired a year earlier by calls for a "Native American OPEC" to wrest back control over reservation development must have wondered how their cause became so intimately entwined with the federal government.[28]

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Fortunately for those desiring a more independent federation, the honeymoon between federal policy makers and CERT was short-lived. In March 1977, with a new Democratic administration prioritizing energy policy and promising a comprehensive energy program within its first ninety days, CERT Chairman Peter MacDonald challenged Jimmy Carter to address Indian energy concerns or else risk losing access to these valuable minerals. During the previous year and a half, MacDonald and his fellow tribal leaders had worked their federal connections to advance CERT's mission, but they were becoming frustrated with the lack of results. The organization's $1 million initial request,

for instance, had not been met, and the BIA was blocking the FEA's encroachment onto their traditional bureaucratic turf. MacDonald complained publicly, "We have gone to [multiple federal agencies] and pleaded for resources to inventory our minerals—pleaded for the kind of technical assistance necessary to achieve self-sufficiency," but to no avail. Now, with the change in administration, MacDonald determined the time was right to deploy alternative tactics to secure the support tribes needed. Delivering a public speech in Phoenix, the Navajo and CERT chairman issued a not-so-veiled threat to federal officials:

> Now, as some of you know, a dozen Indian nations have formed a domestic OPEC. We call it CERT. . . . We ask [for assistance] now quietly and constructively. We will not ask much longer. We will withhold future growth at any sacrifice if that is necessary to [tribal] survival.

In a few short lines, MacDonald made public an option energy tribes had been discussing for years. If the federal government would not willingly provide the tools energy tribes needed to intelligently and responsibly manage their resources, the Indians would convert CERT into an OPEC-style cartel to withhold desperately needed energy sources.[29]

Reflecting this bold, new approach, CERT members moved quickly to reframe their relationship with the federal government. Meeting days before President Carter's April 18, 1977, "unpleasant talk" with the nation wherein he described the present energy crisis as the "moral equivalent of war," CERT members issued a revised statement of demands that omitted any reference to the energy tribes acting as a task force within the executive bureaucracy. Instead, the statement repositioned CERT as an independent coalition of resource owners controlling "55 percent [of the nation's] uranium, 30 percent of coal and 3 percent of petroleum and natural gas." Considering this substantial tribal stockpile, CERT demanded "direct and constant" access to the secretary of energy. Never willing to give up on the federal-tribal partnership, though, CERT also dangled the possibility of cooperation if the federal government took four specific actions: (1) fund a comprehensive energy resource inventory, (2) help energy tribes construct alternative development agreements to the standard lease contracts, (3) provide capital for energy tribes to develop their own resources, and (4) educate tribal leaders in proper energy resource planning. Although not new requests, energy tribes' crystallized their most crucial demands

for tribal control. And if the demands were not new, the negotiating strategy certainly was. If the feds wanted access to Indian resources, they now would have to engage with an independent cartel threatening to withhold energy resources crucial to the country's growth.[30]

Apparently, federal officials were unmoved by the new tactic, and so in the summer of 1977 MacDonald dramatically upped the ante by transforming the OPEC analogy into a potential partnership with the oil-exporting countries. In July, the CERT chairman met with several OPEC members in Washington, D.C., of all places, to discuss how these former colonial nations had gained control over their valuable resources. Noting that "federal red tape and foot dragging" had left him no other options, MacDonald assured national reporters covering these meetings that he was "not looking for advice on how to impose an embargo" but instead "our purpose is more long range," seeking technical assistance on how to structure mineral development deals, plan for sustainable development, and market Indian minerals. Still, news of Arab and tribal leaders meeting in the nation's capital to discuss potentially withholding valuable energy resources garnered much attention, which was exactly what MacDonald intended. On his own reservation, the Navajo tribal chairman had made a political living framing energy projects as a colonial appropriation of Indian resources to feed American growth. For years, he had even compared the Navajo nation to the exploited OPEC states and advocated that his tribe follow a similar anticolonial approach to resource management. "From now on," MacDonald had announced in the *Navajo Times* in March 1974, "the Navajos intend to use the same kind of tactics that oil-rich Arabs have employed. Our goal is the same: a bigger take from our desert Kingdom." Now, in 1977, the CERT chairman hoped that by cementing a formal relation with these Middle Eastern states—or at least appearing to—he could goad the federal government into following through on promises of support for all energy tribes.[31]

Seeking a partnership with OPEC and, more important, cultivating CERT's public image as the "Native American OPEC" was a bold move with, at best, mixed results. The strategy got the federal government's attention and perhaps produced initially a few more federal dollars. But as Marjane Ambler reports, it also ignited a public backlash against "unpatriotic Indians" who appeared to be withholding American energy. This anti-CERT sentiment hit a fever pitch in January 1979, when

an exiled zealot named Ruhollah Khomeini led an Islamic Revolution that toppled the Iranian monarchy. The loss of oil from the world's second largest exporter disrupted global markets, and although other Middle Eastern states worked to offset the deficit, panic quickly set in. Oil companies and consumers alike rushed to obtain the petroleum they feared would not be available the next day. In a repeat of the 1973 energy crisis that had heightened demand for Northern Plains' coal, the nation endured its second bout of frustrating fuel shortages. America's disdain for foreign oil producers had never been higher.[32]

The same was true of the country's feelings toward energy tribes. CERT continued to request more and more federal dollars throughout late 1970s, including $2 million in 1978 and an astonishing $60 to $70 million in 1979. But in the wake of the second energy crisis, these requests now appeared to most Americans as blackmail during the country's time of need. As the *Denver Post* editorialized in 1979: "Supposedly we are to pony up cheerfully so the noose of escalating energy prices can be tightened around our necks? The energy crisis is too important for confrontational politics, which, if pursued likely will boomerang and hurt the Indian cause rather than help it." This is exactly what happened. CERT kept requesting money, but federal officials could not justify supporting an organization touting its ties to the Middle East.[33]

Peter MacDonald was not deaf to the events capturing the nation's attention and understood the need for another shift in strategy. Writing to President Carter days after his famed July 15, 1979, "crisis of confidence" speech, wherein the president challenged the nation to fight "on the battlefield of energy [so] we can win for our nation a new confidence," MacDonald maintained his defiant tone but recommitted Indian energy to the fight. Telling the president he was disheartened Native Americans had not been included in Carter's new energy program, the CERT chairman nevertheless affirmed, "Today I offer my support, and that of the 24 other CERT energy-producing tribes, to the president and his Administration, and will await his direction." Of course, that support would come with a price, but MacDonald was reaching out to change the trajectory of federal-tribal relations.[34]

Carter soon took the CERT chairman up on his offer to provide Indian energy to the nation. Within the month, Charles Duncan, the newly confirmed secretary of energy, met with Peter MacDonald

and then dispatched his assistant director, Richard Stone, to CERT's December 1979 annual meeting. At that gathering, CERT members unveiled proposals for several new reservation energy projects, including two large coal-fired generating plants, an oil refinery, and a coal gasification facility. Impressed by the Indians' efforts, Stone responded with the federal commitment CERT had been seeking. His $24 million pledge included $10 million for specific tribal projects, $7 million for an Indian resource inventory, and another $2 million to cover CERT's day-to-day operations. In the heat of a yet another "energy crisis," MacDonald and his fellow tribal leaders learned that playing the role of an independent broker for Indian energy resources worked far more effectively than the alternative of an antagonistic cartel threatening to withhold valuable minerals.[35]

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With this lesson learned, the 1979 CERT annual meeting should have presented a scene of congratulatory celebration for the young organization. Instead, reaching its goal of obtaining federal support caused yet another round of deep introspection by CERT's members. Those Indians, like many within the chairman's own Navajo tribe, who had adopted a nationalistic stance toward controlling their minerals now questioned CERT's authority to speak for their tribal governments and commit reservation resources to the American market. According to Marjane Ambler, other tribal members who desired to halt all reservation mining protested what they saw as CERT's new position as "an elitist broker of Indian resources . . . prostituting its members' land and people in exchange for energy agency dollars." Winona LaDuke even describes one group of "traditional people" from the Navajo Reservation crashing the 1979 Phoenix meeting, demanding "that the indigenous members of CERT realize their traditional and spiritual ways of survival and their responsibility to the earth and their people." Ironically, at the height of its influence with federal officials, CERT appeared to be crumbling from the inside. As CERT's executive director, Ed Gabriel, later admitted, "We got what we asked for [at the 1979 Phoenix meeting], but it took us more than a year to recover."[36]

To restore legitimacy in the eyes of all its constituents, CERT shifted focus from selling the benefits of Indian energy development to federal

officials and toward proving the organization's value to tribal leaders and members. The first step was to clarify that the bulk of federal dollars CERT secured would go directly to benefit tribal energy programs, not into the organization's coffer. Thus, just days after the Phoenix meeting, CERT explained in its newsletter that the government's $24 million pledge would fund specific reservation inventories and feasibility studies "and not be channeled through CERT." The organization then focused its activities on providing consulting services to individual tribes desiring development—which, of course, could be paid for with these new funds—rather than assume the role as spokesperson for all energy tribes. To do so, CERT grew its technical assistance center in Denver, where by 1981 two-thirds of its sixty employees were located, leaving only a small lobbying team in Washington. The geologists, energy consultants, and former federal employees in the Denver office understood the type of information tribes needed to pursue development, and most important, they knew how to obtain funds to gather that information. Through assisting tribes in putting together federal grant applications and private lending documents, CERT officials claimed that, by 1981, they had secured $17 million for tribal energy projects that would not have been available otherwise. Federal bureaucrats also recognized CERT's value in this endeavor. Energy Department official Richard Stone explained that in this period of unprecedented federal investment in energy development, federal money "goes to those who produce good paper, [and] the paper CERT has produced on behalf of the tribes has been of consistently good quality."[37]

By producing "good paper" to secure funding for potential energy projects, CERT was positioning energy tribes to finally capitalize on their vast and valuable resources if they chose to do so. A voluntary coalition of independent sovereigns, CERT itself had no authority to commit Indian resources. Instead, the grants and loans it helped secure would fund reservation inventories and feasibility studies to allow tribal leaders to make their own informed decisions. Of course, CERT often benefited by conducting these studies itself, getting paid with the same federal dollars it secured for tribal governments. The individual projects CERT helped evaluate included a natural gas refinery on the Jicarilla Apache Reservation; a hydroelectric facility for the Nez Perce; oil, gas, and geothermal projects with the Cheyenne River Sioux; and the nation's first synthetic fuel facility on the Crow

Reservation. Clearly, CERT worked to develop tribal energy, but by the start of the new decade, the OPEC template was dead. In its place was something more closely resembling a professional consulting firm. CERT had become a pan-tribal organization with the business experience and technical expertise to empower tribal governments to manage their own resources.[38]

Not all American Indians, however, were happy with this outcome. CERT's close ties with—and some would say, dependence on—the federal government continued to draw criticism that the organization was a pro-development entity ignoring the concerns of ordinary Indians. Winona LaDuke, the Ojibwe environmental activist and future Green Party vice presidential candidate, complained that of the approximately one hundred studies CERT was conducting or had completed by 1980, only five focused on mineral development's harmful impacts. The rest, she concluded, supported "non-renewable, extractive, and technologically-advanced development scenarios." When CERT officials defended its focus on development by reminding LaDuke that "CERT does only what the tribal chairmen request," the activist responded by reminding them that "the choices and options presented to each tribe originate in reports from the CERT staff." Those studies, of course, overwhelmingly supported large-scale energy projects oriented toward exporting Indian resources off-reservation.[39]

The criticism was fair, but it failed to resonate widely. For a majority of American Indians who knew only suffocating poverty, the chance to develop reservation minerals under the control of their tribal governments was too great an opportunity to forego. In the end, disgruntled Indians like LaDuke were not CERT's clients; the tribal governments were. The organization thus focused on expanding tribal capacity by securing funds to study energy projects and educate elected officials on the institutional controls necessary to shape mining operations. Ed Gabriel admitted freely that his goal was to transfer his organization's expertise over to the tribes so that CERT could close its technical assistance center by the mid-1980s and focus purely on lobbying. Its members shared this goal, as Hugh Baker, director of energy for the Three Affiliated Tribes of the Fort Berthold Reservation, explained:

> People who have problems with CERT should think of the concept behind forming it. I continually remind the CERT staff, "You're here to put yourselves out of business by teaching me. When we, [the tribes] get

rich on [energy resources], maybe you can come work for us. Until then, help us get rich." [40]

CERT worked in many ways to transfer knowledge to its tribal clients, but perhaps the greatest lesson it offered was that tribal governments must control the pace and scale of mining to ensure profits without sacrificing community. Gathering mineral and market data was an important first step, but mainly because this information better positioned tribes to negotiate the mineral agreements that controlled mining operations and profits. As for these agreements, CERT consultants constantly hammered home the need for tribal leaders to reject mineral "leases," which afforded tribes little control, and instead pursue "alternative contracts" that retained tribal ownership over mining ventures. Ownership, they lectured, guaranteed control.

And at least initially, the federal government seemed to agree. BIA officials tentatively supported the use of alternative contracts as a way to open reservations to development under tribal terms. As we will see, however, these officials eventually questioned whether federal law provided tribal governments with the authority to develop their own resources under these alternative contracts. The old concerns about Indian capacity to responsibly manage their assets, which were embedded in the 1938 Indian Mineral Leasing Act, came back to the fore. Energy tribes, facing the possibility that they would be denied the right to exercise their newly developed capacity, once again would have to mobilize to protect this most basic principle of sovereignty. This time their fight would take them all the way to the halls of Congress.

7 Recognizing Tribal Sovereignty

AS THE ENERGY tribes gathered for the September 1980 annual meeting of the Council of Energy Resource Tribes, they had good reason to be optimistic. Earlier that year, the federal government had made good on its $24 million pledge to support Indian energy development. The tribes had put these funds to work developing an extensive Indian resource inventory, conducting feasibility studies for new energy technologies, breaking ground on tribal mining projects, and continuing to educate tribal leaders on resource management techniques. In addition to the flow of federal dollars, the Department of the Interior had also just proposed new regulations for mining on Indian lands that promised to minimize "any adverse environmental or cultural impact on Indians, resulting from such development" as well as guaranteeing the tribes "at least, fair market value for their ownership rights." The key to delivering these results was a new provision authorizing Indian mineral owners to enter into flexible mineral agreements that "reserve to them the responsibility for overseeing the development of their reserves." These "alternative contracts" to the standard lease form would finally provide tribes with the control necessary to ensure mining did not threaten their indigenous communities.[1]

Reflecting the improved relationship with the federal government, CERT held its 1980 annual gathering in Washington, D.C. There, Chairman Peter MacDonald explained that the meeting's purpose was

to further explore "how to go about building a truly meaningful energy partnership between the tribes and the federal government." Federal officials played their part enthusiastically: Energy Secretary Charles Duncan delivered the keynote address, and numerous governors, senators, and members of Congress attended the event to endorse the strengthening tribal-federal relationship. The three presidential candidates—Jimmy Carter, Ronald Reagan, and the independent congressman John Anderson—either personally attended or sent congressional delegates to voice their support for tribal autonomy and lobby for CERT's endorsement. Speaking at the concluding press conference, Senator John Melcher of Montana captured the shared sentiment: "No longer can the federal government dictate the terms of energy development on Indian lands [and] no longer can the government decide what is good for the Indian people." All the years of work seemed to be paying off. Again, optimism abounded.[2]

But to those paying close attention, there were rumblings of trouble in the recesses of the conference's meeting hall. In fact, despite the recent contribution of funds, promising new regulations, and supportive messages, Wilfred Scott, CERT's vice chairman, noted "mixed signals" coming from federal officials over whether tribes had the legal authority to manage their own minerals. The specific source of these concerns was a recent oil and gas deal struck between the Northern Cheyenne and the Atlantic Richfield Company (ARCO) that deviated from standard lease form and procedure. This agreement, like a lease, conveyed exploration and production rights to the oil company, but it retained for the Northern Cheyenne certain ownership interests in the project. Moreover, the Northern Cheyenne procured this alternative oil and gas contract through private negotiations rather than via the standard public notice and bidding process. Government officials wondered aloud whether federal law allowed a deal that failed to comply with the 1938 Indian Mineral Leasing Act, even if it represented a clear exercise of tribal sovereignty. After delaying approval until a tribal referendum established that a majority of Northern Cheyenne supported the project, the Department of the Interior grudgingly authorized the arrangement only after ARCO agreed to assume the risk should a court later invalidate the contract.[3]

More troubling than the reluctant approval, however, was Interior's announcement made shortly after CERT's annual meeting. The Northern Cheyenne contract had forced the agency to review the law

governing reservation mineral rights, and the department's new lead attorney, Clyde O. Martz, did not like what he saw. A former University of Colorado law professor and oft-described "father of natural resource law," Martz reasoned that "the Indian Nonintercourse Act prohibits contracts that convey interest in land unless they meet the requirements of the 1938 Mineral Leasing Act." Finding no other statutory authorization for alternative contracts like the one just entered into by the Northern Cheyenne, the solicitor told CERT staff that any contract conveying Indian minerals "other than the traditional lease, may currently be illegal." Once again, the federal government threatened to constrain tribal sovereignty.[4]

Martz's statement regarding the legality of alternative contracts sent shockwaves through the energy tribes' community. Peter MacDonald called it the "final betrayal," rendering "everything CERT tribes have been doing or want to do . . . illegal." This strong reaction stemmed from the fact that tribes had come to view alternative agreements as the linchpin for exerting control over reservation development. They were the mechanism that allowed tribal leaders to apply their increasing expertise to secure desirable terms and oversee mining operations. Without non-lease contracts, the progress of the previous decade could be lost, turning back the clock to the days of federally run bidding procedures, standard lease terms, and minimal tribal control. Martz's opinion even threw the legality of his own agency's recently proposed rulemaking into question. How could an executive agency promise to allow tribes "to enter into contracts which reserve to them the responsibility for overseeing the development of their [mineral] reserves" if federal statutes limited energy contracts to the standard lease form? Federal officials had promised Indian self-determination but now seemed poised to invalidate clear exercises of tribal sovereignty. Certainly, energy tribes had come a long way in developing the *capacity* to manage their own resources. Now, it appeared, there was work left to be done to ensure that federal law recognized their *authority* to do so.[5]

"THE MOST IMPORTANT TRIBE IN AMERICA," REPRISE

The Northern Cheyenne's measured pursuit of energy development forced federal officials to address the disconnect between federal laws governing Indian resources and tribes' increasing capacity to manage

these assets. Since the Northern Cheyenne's successful 1974 challenge to its inequitable coal leases, the tribe had been working to develop its vast energy reserves in a manner that balanced the need for revenue with the desire to preserve its indigenous community and environment. The first step in this process was ensuring that the tribe, not individual allottees, actually owned the minerals underlying the reservation. Like the Crow's allotment law, the Northern Cheyenne Allotment Act had reserved subsurface mineral rights to the tribe, but only for a period of fifty years. The intent was to provide the initial means for an economic base but ultimately to have these rights flow to individual landowners. Prior to the 1960s, however, there was no viable market for Cheyenne oil, gas, or coal. Sensing the tribe had missed its opportunity to capitalize on communal resources, both federal and tribal officials lobbied to have the mineral rights transferred to the tribe in perpetuity. In 1968, Congress obliged, passing a law effectuating this permanent transfer.

But federal support for tribal ownership of mineral rights came with conditions. Not wanting to create liability from an unconstitutional taking of private property rights, the 1968 law conditioned the permanent transfer on a determination by a federal court that the 1926 Northern Cheyenne Allotment Act had not created vested mineral rights in allottees. In other words, Congress practically demanded litigation, placing the Northern Cheyenne in the unenviable position of having to sue its own members to settle property rights. Seeing little alternative, the tribe commenced legal action in summer 1970 against several allottees who stood to gain mineral rights at the end of the fifty-year period. By 1976, the case had made its way to the United States Supreme Court, where, in *Northern Cheyenne Tribe v. Hollowbreast,* the court upheld the permanent transfer of minerals to the tribe. Specifically, the unanimous opinion found that the conveyance conformed to the 1926 act's original intent that the tribe benefit from their minerals, which clearly had not yet happened.[6]

In the same year the Northern Cheyenne confirmed tribal rights over reservation minerals, the tribe also forged new legal ground to shape regional energy projects threatening its reservation. Recall that in 1972, the planned construction of the Colstrip Power Plant at the reservation's border had helped unite the tribe with area ranchers and environmentalists against regional coal development. This partnership spread concerns about impending energy projects and produced the Northern

Cheyenne's historic petition to cancel all reservation leases. It did not, however, stop construction at Colstrip. By 1976, two coal-fired boilers were in operation with plans announced for two additional units that were twice the size of the originals. All told, this facility had the potential to produce 2,100 megawatts of electricity, making it larger than the country's dirtiest power plant, the Four Corners facility, located on the edge of the Navajo Reservation.[7]

With a massive power plant planned at the reservation's border, and just beyond the reach of the tribal government, the Northern Cheyenne got creative. The tribe turned to new relief offered by the 1970 Clean Air Act and announced in July of 1976 that it would reclassify the air above its reservation as a Class I air shed. Under the pioneering 1970 environmental law, the Environmental Protection Agency had established a nationwide area classification system to prevent the deterioration of air quality in regions with relatively clean air. Initially the EPA designated all air sheds as Class II areas, which would allow for some air quality degradation due to light industry. The implementing regulations, however, gave state and tribal governments the option to protect specific areas from virtually any change in air quality by requesting an upgrade. In June 1976, the state of Montana approved the Colstrip plant's expansion based on modeling that showed its air emissions would not violate the region's Class II standards. Two weeks later, Northern Cheyenne President Allen Rowland announced plans to reclassify his downwind reservation to the higher, cleaner standard.[8]

As the first land manager in the nation, whether state or tribal government, to request an upgrade in air quality protection, the Northern Cheyenne garnered many accolades from the environmental community. One publication even named the tribe "Environmentalist of the Year" for 1976. But more than a defense of the natural environment was at play. The tribe took action primarily to ensure the integrity of its social and cultural community. This was the same concern that rallied tribal members to halt on-reservation mining. Massive energy development on *or* near the reservation would despoil the Cheyenne's land, air, and water, but even more so, it would bring outsiders to disrupt social customs and cultural norms that defined the tribe. Numerous tribal members and groups, including the Northern Cheyenne Landowners Association, made this exact point to the state of Montana during Col-

strip's permitting process. The tribal government's official comments warned that development on the reservation's border "portend[s] nothing but adverse environmental, social and cultural consequences for the People of the Northern Cheyenne Tribe, their way of life, and the natural resources of their Reservation Lands." These comments further explained the tribe's opposition within the context of its long and difficult history to secure the reservation:

> Not only is the Reservation the Northern Cheyenne Tribe's Home Land; as a Tribe, as a People, it is their *only* place in this world. The Tribe's life as a People, as the Tribe knows and desires to maintain it, is unqualifiedly dependent upon maintaining its Reservation free from outside environmental insult and destructive social and cultural impact.

But these pleas went unheeded and the state of Montana issued Colstrip's permit. The tribe was now forced to take its argument to the federal level. Writing to the EPA to request the redesignation of the reservation's air shed, Allen Rowland was clear about Cheyenne intentions:

> We are not requesting this redesignation because we are against progress, either here or anywhere else. Our Tribe has been struggling for progress and self-determination for years. . . . For us, progress means developing *our* environmental resources in renewable and compatible manners. . . . Not only are such activities our livelihood, they are the cores of our value systems as a people.

The Northern Cheyenne did not oppose energy development per se, just projects beyond tribal control because they threatened the community. The tribe thus exercised its sovereign rights under the Clean Air Act to prevent a project that would change the fabric of its region and reservation.[9]

As powerful as this argument was, the Northern Cheyenne could only shape, not preclude, regional energy development. The EPA granted the tribe's request to upgrade their air designation and stepped in to halt Colstrip's expansion based on expected impacts to the new Class I air shed. Colstrip's owners responded, however, by adding new pollution control technologies that they claimed would drastically reduce emissions. The move satisfied EPA officials, whose focus remained on protecting environmental quality. In fall 1979, the agency approved the issuance of Colstrip's long-awaited expansion permit.[10]

But again, the Northern Cheyenne had broader concerns than just the environment. The tribe filed a legal challenge to the EPA's approval, and the longtime head of the Natural Resources Committee, Edwin Dahle, began exploring a negotiated settlement that would allow for Colstrip's construction *and* alleviate tribal fears over the unhealthy influx of non-Indians and pollutants. Ultimately, Colstrip's owners and the Northern Cheyenne settled on what CERT Executive Director Ed Gabriel described as "a precedent-setting, multi-faceted agreement" whereby the facility would install more stringent pollution controls, fund reservation air quality monitoring, provide $350,000 to the tribe for continued socioeconomic impact analyses, and guarantee employment and job training at Colstrip for tribal members. Certainly the outcome did not please all Cheyenne, but these concessions addressed the tribe's major fears. As Dahle explained, the agreement reduced the threat of unwanted people and pollutants and meant "wealth will be coming into the reservation, not just flowing out, as it has in the past." Dahle also believed the agreement would help the tribe "develop a trained workforce for the day when the Cheyenne might develop our own coal."[11]

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The Northern Cheyenne's willingness to negotiate and tailor the Colstrip facility to address specific tribal concerns signaled a shift in the tribe's approach to energy development. Throughout much of the 1970s, the tribal government had found itself on the defensive, fighting to prevent projects it did not control rather than pursuing energy ventures that could bring wealth. This approach began to change, however, with the fall 1978 election of new council members eager to explore development options. This rush of new blood coincided with mounting debt accrued through the tribe's various legal battles and the real possibility of reduced federal support for tribal programs. Now that the tribe had secured its authority over reservation resources—not to mention demonstrated its ability to shape off-reservation development—the time had come to exercise this power to produce revenue. As Allen Rowland explained, "We've made millionaires out of several lawyers"; now it was the tribe's turn.[12]

This shift toward a more assertive pursuit of tribal-controlled development was evident on the very first day the new council members took office. Sworn in on September 13, 1978, by none another than Marie Sanchez, who by now was a tribal judge, the newly elected leaders endured a crash course in reservation energy development. CERT consultants were brought in to lead a three-day orientation program featuring CERT Executive Director Ed Gabriel, National Congress of American Indians President Chuck Trimble, Native American Rights Fund attorneys John Echo Hawk and Scott McLaroy, and the tribe's own attorney, Steven Chestnutt, who had spearheaded the petition to halt uncontrolled reservation mining. The new officers also heard from Dick Monteau, director of the Northern Cheyenne Research Project (NCRP) that had been established after the first round of harmful coal leases in 1973 to investigate coal mining's impacts. Supported by federal funds, the NCRP was a quasi-independent arm of the tribal government that gathered economists, geologists, anthropologists, and energy consultants to inventory Cheyenne resources and evaluate mining proposals. It provided the internal, institutional expertise the Northern Cheyenne had lacked when the tribe eagerly auctioned away reservation coal rights in the early 1970s. In evaluating potential energy projects, the NCRP also was guided by the founding principles of "maintaining survival [of the Northern Cheyenne] as an ethnic group" and "aiding in the maintenance of Tribal identity and sovereignty."[13]

With the Northern Cheyenne's renewed interest in energy development, it did not take long for the NCRP to prove its worth. In summer 1979, several energy companies approached the tribe with new coal mining ventures, and the tribe referred these proposals to the NCRP for analysis. The staff there quickly concluded that although cloaked in the language of joint partnerships, these latest deals shared similar deficiencies with the previous leases. Namely, they provided no tribal control over the pace and scale of development. Without such control, the NCRP warned the tribe would be unable to protect its community and environment. Hearing these critiques, the Northern Cheyenne rejected the offers out of hand.[14]

But more than tribal control was now required for on-reservation energy projects. Among the general membership, concerns about coal development's impacts had grown so strong that even when a proposal

provided control, tribal members were wary to authorize strip-mining. In response to the deficient 1979 deals, for instance, tribal consultant George Crossland—the Osage attorney who initially found fault with the Northern Cheyenne's earlier coal leases—introduced a coal mining proposal from the Fluor Corporation that would have allowed the tribe to retain complete ownership over the venture. Fluor, the world's largest construction firm, offered to operate the proposed mine under a service contract. But even this was too much. The wounds of the recent coal mining wars were fresh, and tribal members rejected this promising deal structure. Council member Joe Little Coyote explained the reaction: "Because of the impact on our socio-economic and cultural development, coal mining is not an option at all at this point." Tribal members simply could not overcome the idea that massive strip mines would disrupt community relations and despoil their landscapes.[15]

With reservation coal mining a dead issue, pro-development tribal leaders quickly turned to the seemingly less invasive option of oil and gas drilling as the vehicle for economic growth. Ironically, the initial push for this form of development came from the NCRP, which, according to employee James Boggs, typically operated under "a policy of caution and skepticism towards large-scale leasing." Considering this viewpoint, the organization's director, Richard Monteau, had for some time been exploring the possibility of a small, tribally owned and operated oil and gas project as an alternative to massive strip-mining. When tribal members rejected all coal mining offers in the fall of 1979, pro-development council members appropriated the idea for oil and gas production and expanded the scope of Monteau's small proposal to fit their larger objectives. In December 1979, these leaders then consolidated authority over energy development decisions by passing a resolution bringing the NCRP under the direct supervision of the tribe's Planning Committee, which was controlled by the pro-development wing. In protest, much of the NCRP's staff, including Director Monteau, resigned. With the cautious NCRP eviscerated, the path was cleared to pursue large-scale oil and gas projects.[16]

To land such a deal, the Northern Cheyenne turned the typical, federally controlled process for soliciting and evaluating energy proposals on its head. Rejecting the standard public notice and bidding process, the tribe advertised directly for mining partners in national oil and gas trade journals. By February 1980, Tribal President Allen Rowland

could report that the response was "very good . . . proposals are coming in daily." But to evaluate these offers, the Northern Cheyenne turned not to federal officials; instead, it relied largely on its own expertise, augmenting this knowledge where necessary with some Bureau of Indian Affairs technical assistance. Several tribal members argued that the loss of the NCRP had left the tribe unprepared to effectively evaluate drilling proposals, but Harvard-educated tribal member Joe Little Coyote skillfully led negotiations with potential energy partners. In May, the tribal government settled on an agreement with the independent oil firm Atlantic Richfield Company that gave the tribe a $6 million upfront bonus and a 25 percent production share. Beyond these unprecedented financial benefits, the contract also stipulated that the Northern Cheyenne would retain joint ownership over all geological data and would hold approval authority over all operating plans, and that ARCO would fund a Tribal Oil and Gas Office to monitor drilling activities. This was not your typical lease. Instead, it resembled more a service agreement in which the drilling company would prospect and produce reservation oil and gas in exchange for a share of the profits. Importantly, the Northern Cheyenne retained control.[17]

Most, though certainly not all, tribal members viewed the ARCO deal as a sensible compromise between all-out development and none at all. Opponents pointed to the relatively hasty manner in which the deal was constructed and the absence of the NCRP to evaluate its impacts. But when these concerns were put to the entire tribe in the form of two referenda on the ARCO agreement, an overwhelming majority sided with their tribal government (82 percent in the first, 88 in the second). Yes, the tribe would open its reservation to an outside developer, but most were comfortable with the tribal government retaining oversight over drilling operations and ownership of geological data. Furthermore, many defended the deal on environmental grounds. Allen Rowland noted simply that drilling pads leave smaller holes in the ground than do coal mines, and Joe Little Coyote concurred that oil wells "are a lot more environmentally acceptable than coal mining." The Department of the Interior also agreed, describing the ARCO project in its environmental assessment as "the first major energy development on the reservation, but it is small-scale when compared to other energy development alternatives such as strip-mining." In a world of trade-offs, the impoverished Northern Cheyenne determined that some

energy development, operating under the supervision of its Tribal Oil and Gas Office, was better than none at all.[18]

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The Northern Cheyenne's increasing sophistication in managing its valuable energy resources was emblematic of advances occurring throughout Indian Country. Since 1975, numerous tribes had positioned themselves to negotiate alternative contracts that included better financial terms than the BIA's standard leases. Although not all deals resulted in tribal-led mining ventures, each evidenced the tribes' increasing capacity to tailor contracts to reflect specific reservation conditions. For example, on the Navajo Reservation, where the tribal government had the most experience with mineral development and possessed ample geological and market data, the tribe brokered a 1977 uranium deal with the Exxon Corporation that netted a $6 million bonus and included the option for a joint venture operation. On the Blackfeet Reservation, however, where less geological information existed, tribal leaders willingly gave up bonus payments in favor of an oil and gas agreement with the Damson Oil Corporation that included percentage royalties plus half of all production revenue once the company recouped its start-up costs (potentially 58 percent of all profits). In this case, Blackfeet leaders may not have secured ownership over the energy project, but they understood that a back-loaded service contract was necessary to encourage the small, independent oil company to prospect in a relatively unproven area. And like other tribes, the Blackfeet knew federally orchestrated leases did not meet tribal demands. As one BIA area director explained, "The difference [now] is that the tribes are fully informed about the market value of their holdings and the [problems with the] leasing strategy." Kenneth Black, the director of the National Tribal Chairman's Association, summed up the demands of these newly enlightened leaders: "No more leases—we want a percentage of the deals."[19]

Tribal efforts to secure more beneficial agreements certainly indicated a rising level of sophistication, but their alternative contracts also put the Department of the Interior in the difficult position of trying to support Indian self-determination while also enforcing the letter of the law. Federal agents did their best to juggle these competing duties,

employing a host of innovative legal theories to approve negotiated contracts that deviated from the 1938 Indian Mineral Leasing Act. One such theory applied a broad reading of the term "lease" contained in the statute, rationalizing that the 1938 Congress surely intended to authorize whatever form of mineral contract was favored by industry standards, and thus joint ventures must be allowed. Another approach justified non-lease mining agreements based on an obscure federal statute authorizing tribes to enter into "service contracts," though this law had been previously applied only to approve contracts for tribal attorneys. By 1980, then, the Interior Department had approved a handful of alternative contracts based on these legal theories, but the piecemeal approach left the law unsettled. Serious concerns remained as to the authority of tribes to negotiate their own contracts and participate directly in the development of reservation resources.[20]

With the Northern Cheyenne–ARCO agreement, Interior Solicitor Clyde Martz had seen enough. After first delaying his review of the contract until the September 1980 tribal referendum confirmed that a strong majority supported the deal—again, more than 80 percent were in favor—Martz then suspended federal approval until two issues could be resolved. One, the solicitor questioned whether the contract conveyed a property interest in Northern Cheyenne minerals, making it a "lease" that then failed to comply with the 1938 Indian Mineral Leasing Act. Two, Martz wondered whether any other laws beyond the 1938 act authorized such a mineral agreement. Hoping to slap a pragmatic solution onto a sticky legal question, the Northern Cheyenne and ARCO quickly executed a "Statement of Intent" noting the parties themselves did not consider the agreement a lease but instead a service contract authorized by existing law. For good measure, ARCO also agreed not to sue the federal government if a court later invalidated the agreement.[21]

This stop-gap solution eased some of Martz's immediate concerns, but the former law school professor was most interested in a long-term fix that could clarify tribal authority once and for all. Martz was sympathetic to tribal aims, but his hands were tied without further congressional action. Pulling in Montana Senator John Melcher, all parties thus agreed to support legislation that would, according to Northern Cheyenne Vice President George Hiwalker, Jr., "remove any uncertainty that may exist regarding the Secretary's . . . authority to approve such

agreements, and to provide Indian tribes with a clear alternative to the 1938 Minerals [*sic*] Leasing Act." With a legislative solution proposed, and ARCO's promise not to sue, Interior Secretary Cecil Andrus had enough assurances to approve the Northern Cheyenne–ARCO agreement on September 23, 1980. A few days later, Martz made the startling announcement that, without clarifying legislation, other alternative agreements may be illegal. As he did so, however, both Senator Melcher and the Solicitor's Office had already begun work on legislation to recognize tribal authority to enter into these vital contracts.[22]

"DOING BUSINESS WITH INDIAN TRIBES": THE 1982 INDIAN MINERAL DEVELOPMENT ACT

Just as it had done in stopping inequitable leasing practices earlier in the decade, the Northern Cheyenne provided the specific impetus for changing federal law to recognize tribes' sovereign control over reservation development. But the tribe, of course, did not operate in a vacuum. Broader changes in federal Indian affairs created a sense of urgency that helped push the new legislation through Congress. These changes were set in motion barely a month after the Department of the Interior approved the Northern Cheyenne–ARCO agreement when the country elected Ronald Reagan as its fortieth president. A California conservative who sought to extend many of the policies of his fellow Californian Richard Nixon, Reagan proclaimed his support for Nixon's Indian self-determination policy and its goal of strengthening tribal governments so as to lessen federal dependency. But like Nixon, Reagan inherited a sputtering national economy and a burgeoning federal bureaucracy, two problems he aimed to remedy with deep cuts in government spending. Perhaps unsurprisingly, Indian programs topped the list of expendable items. The president's first budget proposed more than $1 billion in cuts to the 1982 federal Indian budget, representing a 34 percent reduction. These cuts included a 77 percent reduction in economic development programs and a 46 percent reduction to programs assisting Indian energy resource management.[23]

But the real blow to Indian energy development was actually much worse. The only Indian energy programs Reagan proposed to leave intact were those run by the BIA to inventory Indian minerals and oversee mineral leasing; the Department of Energy's entire tribal energy

program, which provided the backbone of support for CERT and specific Indian energy projects, was on the chopping block. Adding insult to injury, the president also appointed western attorney James Watt as the new Interior secretary. As president of the Mountain States Legal Foundation, Watt had just filed an amicus brief to the Supreme Court challenging tribal rights to tax energy companies operating on their reservation. The multifront attack on tribal-controlled energy development so alarmed energy tribes that CERT Chairman Peter MacDonald immediately wrote to Congress complaining that the new administration seemed determined to "return to an era of . . . giveaways of tribal oil, gas and coal resources."[24]

Energy tribes fought hard against Reagan's budget cuts in Congress, but the unmistakable trend of diminishing federal support forced tribal leaders to reassess their strategies for pursuing energy development. With 74 percent of CERT's 1981 budget pegged to federal funds, energy tribes could not simply wait and hope that Congress would reverse the trend. These groups needed immediate cash to continue consulting services and capital for mining projects already in development. To fill the financial gap left by a retreating federal government, CERT reached out to private industry. Styling its 1981 annual meeting as "Doing Business with Indian Tribes," CERT's Executive Director Ed Gabriel pressed hard for industry attendance, touting the tribes' vast natural resources and assuring potential investors that "the Indian people are amenable to bold, innovative business proposals of all types." The only stipulation, Gabriel noted in his letter to industry invitees, was that the deals must "recognize and respect [the tribes'] own cultural, environmental, and economic values and priorities."[25]

The 1981 meeting featured speakers who continued the message that tribal leaders stood ready to consider serious business proposals. In his opening remarks, Peter MacDonald implored the assembled tribal leaders and corporate officers to demonstrate the power of private investment by turning economically depressed reservations "into new growth zones that would transform the economy, the nation, and the future for us all." "I encourage you to gamble," the CERT chairman continued, as "the odds are much better here than at Las Vegas. There is risk—but the risk is far less than the danger we face if we fail to seize the opportunity of the moment." MacDonald's call for investment was followed by energy consultants explaining the procedures for doing business in

Indian Country and by testimony from corporate executives already working with tribes extolling the potential for profits. And as if on cue, the keynote speaker at the conference, Houston oilman Michael Halbouty, a close energy advisor to President Reagan and a member of Secretary Watt's Commission on Fiscal Accountability of the Nation's Energy Resources, concluded the meeting by telling the audience, "It is about time that the entire business community of the United States realize that it can do business with the Indian tribes."[26]

This shift by energy tribes toward actively courting private investment was certainly not the first time these groups looked outside the federal government to support their quest for economic self-sufficiency. The tribes had made similarly eager overtures in the 1960s, when energy companies first descended on western reservations looking for low-sulfur coal. This time, however, tribal leaders understood what was needed to make the tribal-private partnership work for both parties. Years of work by CERT and others to educate tribal leaders and provide market and geological data created negotiators well equipped to demand fair royalties. But as Peter MacDonald explained at the 1981 CERT meeting, "Simply bargaining for higher royalty rates is not enough and [the energy tribes] must explore issues involving ownership, management, up-front payments, and differentiation of agreements to authorize development." The tribes were hungry to strike deals, but this time they understood that the agreements must give Indians an active role in the ensuing ventures.[27]

To ensure the outcome they desired, CERT members concluded their annual meeting with a series of resolutions supporting measures that would give energy tribes the authority to control reservation resource development. In emphatic terms, MacDonald declared these initiatives would inaugurate "the dawning of a new era for [the federal-tribal] relationship: an era of recognition of our right to freedom from the shackles of federal restrictions on our ability to do business, to look after the needs of our people and to shape our own future." After first demanding that tribes receive the same regulatory status as states in every "federal program that delegates authority," tribal delegates turned their attention to the ongoing efforts to amend the 1938 Indian Mineral Leasing Act. Clearly, energy tribes supported any action enlarging—or more accurately, recognizing—their sovereign authority over reservation

resources. But CERT had not been consulted on this important piece of new legislation and the energy tribes wanted a voice in the process. The organization's lawyers at the Native American Rights Fund opined that tribes "probably" already possessed the legal authority to negotiate alternative agreements, but like Senator Melcher and the Department of the Interior, CERT began drafting its own piece of clarifying legislation. Until its version was considered and its officers consulted, the organization resolved to oppose the other bills. The energy tribes would go it alone, if necessary, working their congressional connections to promote their own legislative proposal.[28]

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By fall 1981, then, no less than three different versions of legislation to amend the 1938 Indian Mineral Leasing Act were in circulation. While they differed in the details, all shared the goal of clarifying tribal authority to negotiate alternative mineral contracts. The proposals drafted by Senator Melcher and by CERT were similar in that they offered a clear, straightforward authorization for tribes to enter into whatever type of agreement they desired, subject only to the federal government's subsequent approval. This shared approach provided ground for dialogue between the energy tribes and the senator, dissolving CERT's opposition to his bill. When the Department of Justice endorsed Melcher's proposal, finding "no reason to differentiate between lease and non-lease arrangements" in the law, the senator introduced his bill to Congress on November 30, 1981. Rather than supplant the old 1938 Indian Mineral Leasing Act, however, the proposal left that statute intact to give tribes the option of using competitive bidding procedures and standard lease forms if they so desired. The bill also included a provision retroactively ratifying all previous alternative agreements.[29]

Energy tribes and their corporate partners quickly rallied to support the proposed legislation. At special on-site hearings held in Billings in February 1982, nine western tribes—including the Northern Cheyenne, Crow, and Navajo—voiced their support for the legislation's general concepts. They argued again that increased tribal sophistication meant their governments deserved the flexibility to craft deals meeting their specific needs. As Navajo spokesman Gilbert Harrison explained,

> In the last decade, the Navajo Nation has upgraded its internal capacity to plan, evaluate and develop various energy projects. No longer is the Navajo Tribe satisfied with the old standard federal leases, which only emphasized and relied on royalty return. New concepts which could be formalized will address alternative forms of agreements keyed to assumption of control and efficient development of its energy resources and these agreements will pay a higher return to the tribe.

Knowledgeable mining companies agreed, noting, as ARCO representative Curtis Burton did, that the days of Indian ignorance in energy negotiations were gone:

> Our recent experience in conducting business with representatives of Indian tribes is that the tribes, represented by their elected authorities and by retained experts, bring to the negotiating table a level of sophistication and trading skill that rebuts any alleged need for a status resembling guardianship for the protection of tribal assets.

Witnesses expressed similar sentiments a month later when these hearings continued in Washington, D.C. There, Peabody Coal Company, Amoco, and oil and gas prospector Mission Resources added their names to the list of corporate supporters.[30] Existing law may have treated American Indians as incapable wards, but business people engaged with tribal enterprises understood how inaccurate that perception was.

Not all interested parties, however, supported a bill designed to ease the tribes' ability to develop reservation resources. Indian allottees formed the most forceful opposition to Melcher's proposal, arguing the new law would subject them to the same pressures and unbalanced negotiations that had produced inequitable coal leases with tribal governments a decade earlier. Norman Hollow, chairman of the Assiniboine and Sioux tribes on the Fort Peck Reservation, where 90 percent of minerals were owned by individual allottees, distilled their complaints:

> The fundamental thing wrong with [the bill] is that it provides the tribes and individual Indians with no protection or advice during the most important time; that is, when the company or its agent is soliciting a lease or contract from the individual Indian. Perhaps most tribes will have the means and will to hire independent consultants. But [Melcher's bill] leaves the uneducated and uninformed Indian on his own.

Tribal governments may have come a long way in developing the expertise to manage reservation resources, but many believed the same could not be said for individual Indians who happened to own valuable mineral rights.[31]

This allottee opposition reflected the diversity of Indian experience with mineral development and the differing ownership structures on reservations. But energy tribes had come too far in developing their institutional capacities to allow individual Indians to now derail the expansion of tribal authority. The fix, they proposed, was not to discard the new law but to tie the fate of allottee mineral owners to their presumably better-equipped tribal governments. Melcher's Senate select committee thus amended the bill to remove allottees' authority to negotiate their own alternative agreements and give these individuals only the right to join a tribal agreement. As the committee report explained, everyone agreed allottees should receive the same flexibility to develop their minerals as the tribes themselves, but there was no way to ensure they would be adequately prepared and protected. Therefore, since "it is, of course, expected that tribes are in the best position to protect their own members from exploitation," the committee amended the bill to "retain the Secretary's authority to approve the inclusion of allottees in a tribe's negotiated agreement." For allottees on the Northern Cheyenne, Navajo, Fort Peck, and other reservations whose plans for mineral development differed from their tribal governments, the response to their fears of being exploited must have provided cold comfort.[32]

With allottee concerns addressed, though perhaps not alleviated, supporters refocused the debate on the proposed legislation's primary benefit: recognizing tribal *authority* over reservation resources to match the tribes' expanded *capacity* to craft smart energy deals. At the bill's final hearings, CERT Executive Director Ed Gabriel reiterated that his members were prepared to govern their own minerals and that energy tribes "were no longer content to sit on the sidelines while their resources were being taken from them under unfair terms." This law, Gabriel argued, was thus "a critical element" for Indian self-determination, not to mention for "all Americans, as our country strives to become more independent of foreign energy resources." The Department of the Interior concurred, sending letters of support to both the Senate and House

committees explaining that the flexible mineral agreements authorized by the legislation would "provide the vehicle by which tribes can become directly involved in management decisions," thereby "enabling them to gain management experience and contributing significantly to the goal of self-determination." Tribal capacity and authority thus formed a mutually constitutive relationship. Increased tribal skills and knowledge justified tribes' having the authority to strike their own deals and participate in mineral development, and this participation would further increase tribal capacity to effectively manage reservation resources. Capacity without authority, however, thwarted the goals of Indian self-determination.[33]

With the support of federal agencies, mining companies, and energy tribes, Melcher's bill gathered bipartisan support as it worked its way through Congress. Reported unanimously out of the Senate Select Committee on Indian Affairs, the full Senate passed the measure on June 30, 1982. On the House floor, Arizona Democrat Morris Udall and Nebraska Republican Douglas Bereuter coordinated the easy passage of a slightly amended bill, which they explained updated antiquated federal laws passed early in the twentieth century when tribes did not have the capacity to effectively manage their minerals. Melcher and Udall avoided a time-consuming conference between the Senate and House by negotiating mutually agreeable amendments that both chambers passed unanimously on December 8 and 10, respectively. As Melcher explained on the Senate floor, the new law would provide the flexibility Indians needed to develop their resources, which "should help tribes to become economically self-sufficient and the rest of the Nation to become less dependent upon foreign energy sources." On the House side, Congressman Bereuter agreed, noting the law "is strongly supported by Indian tribes, the administration, and by companies interested in working with tribes to develop reservation mineral resources. It represents a large and positive step toward the future economic well-being of a large segment of the Nation's Indian population."[34]

With all parties in support, on December 22, 1982, President Reagan signed the bill into law as the Indian Mineral Development Act. The bill's sponsor, Senator Melcher, hailed the act as an opportunity for tribes "to play an active role as opposed to the passive role permitted under the 1938 Act." He further explained that "in the last de-

cade, many Indian tribes, under self-determination, have begun to build solid governmental infrastructures, as well as trained management and planning personnel." The president followed up one month later with his administration's first, and only, formal statement on Indian policy. In it, Reagan reaffirmed Nixon's self-determination approach and pledged "to assist tribes in strengthening their governments by removing the federal impediments to tribal self-government and tribal resource development." The statement announced the transfer of the White House's Indian affairs personnel from the Office of Public Liaison to the Office of Intergovernmental Affairs, thereby recognizing the tribe's "rightful place among the governments of this nation." Then, in a clear nod to the recently passed Indian Mineral Development Act, the president noted:

> Tribal governments have the responsibility to determine the extent and the methods of developing the tribe's natural resources. The federal government's responsibility should not be used to hinder tribes from taking advantage of economic development opportunities. . . . The federal role is to encourage the production of energy in ways consistent with Indian values and priorities. To that end, we have strongly supported the use of creative agreements such as joint ventures and other non-lease agreements for the development of Indian mineral resources.

Almost a half century after the 1938 Leasing Act coded into law paternalistic assumptions of Indians' inability to manage their affairs, tribes finally secured explicit federal authority to develop reservation resources however they deemed fit.[35]

The ground for this remarkable expansion of tribal sovereignty was prepared over the previous decade by energy tribes' coordinated efforts to increase their capacity to responsibly and effectively manage reservation assets. Once adequately prepared, tribal leaders pursued innovative deal structures meant to realize their desire for tribal-controlled development. The Northern Cheyenne were both leaders in and emblematic of this movement. After first confirming ownership over reservation minerals and asserting legal rights to shape regional development, the tribe negotiated a sophisticated oil and gas agreement that promised both revenue from and control over drilling operations. But the deal also forced federal officials to reckon with an outdated and ineffective law that seemed to foreclose the Cheyenne's and other energy tribes'

chosen path to self-determination. Undeterred, these groups redirected their energies toward changing that law. Working under the pressures of massive federal budget cuts and with a consortium of federal officials and energy executives, energy tribes orchestrated the passage of the 1982 Indian Mineral Development Act to provide the legal authority to match the tribes' recently expanded governing capacity.

Epilogue
New Era, Similar Results

IRONICALLY, AS FEDERAL policy makers, energy executives, and tribal leaders collectively hailed the 1982 Indian Mineral Development Act as a momentous victory for tribal sovereignty, several of those most responsible for its passage were not present to share in the celebration. One month before President Reagan signed the act into law, at the Council of Energy Resource Tribes' annual meeting in Denver, the organization announced plans to replace its longtime director, Ed Gabriel. A former Federal Energy Administration official, Gabriel had led CERT from the beginning, using his contacts to secure federal support and push through legislative changes that empowered tribal governments. Gabriel had tactfully guided the organization's evolution from an Indian advisory body for federal policy makers to the polemical "Native American OPEC" and ultimately into a professional association dedicated to improving tribal governance. He was an integral player in CERT's rapid rise to becoming a formidable national institution capable of empowering tribal leaders and enlarging tribal sovereignty.[1]

But Ed Gabriel's departure signaled a shift within an organization that had come of age. His replacement, David Lester, was the current commissioner of the Department of Health and Human Services' Administration for Native Americans and could match Gabriel's understanding of the federal bureaucracy. He also possessed attributes

his predecessor did not. As an enrolled member of the Creek Tribe of Oklahoma, Lester would be CERT's first Native American director. The move held great symbolic meaning, representing the passage of responsibility and expertise for reservation energy development from federal to Indian hands. Yet David Lester's hiring was more than just a symbolic act. His unique skill set would shape CERT's new direction. As commissioner of the Administration for Native Americans, Lester had administered a multimillion-dollar federal grant program to aid social and economic development on reservations. He also was a former economic development specialist for the National Congress of American Indians and former director of the United Indian Development Association. His experience in growing reservation economies replaced Gabriel's aptitude for lobbying for federal support, and over the next several years, Lester would oversee the closing of CERT's Washington, D.C., office to focus on providing technical assistance to tribes seeking to develop their resources. With tribal governments now possessing clear legal authority over tribal minerals, energy tribes shifted their attention from the nation's capital back to the reservations. More than at any time in their history, the tribes were well positioned to capitalize on their vast resources.[2]

Sadly for these groups, forces beyond their control would thwart the successful execution of their recently clarified authority over reservation development. Not only did Ronald Reagan's budget cuts inflict financial woes on CERT and its members, but the same president who signed into law the Indian Mineral Development Act also pursued energy and economic policies that made the development of Indian energy, particularly low-sulfur coal, economically nonviable. Reagan accelerated President Carter's deregulation of oil prices, which produced a temporary surge in domestic oil supplies as producers moved reserves into the unregulated market to take advantage of higher prices. The expected increase in domestic output, however, was matched by an unexpected rise in global exploration and production by non-OPEC countries seeking to capitalize on higher international oil prices following the "energy crisis" of 1979. In the face of higher international prices, OPEC's discipline broke down, and its members raced to capture the economic windfall. By 1983, OPEC was frantically trying to regain control of global supplies and prices by lowering its production quotas, but the damage was done. The world was flooded with oil, and

the demand required to consume this across-the-board increase failed to materialize. Reagan's austere fiscal and monetary policies exacerbated a global recession, and conservation measures instituted during the Ford and Carter administrations contributed to an overall decline in energy consumption. With demand waning and production soaring, the "energy crises" of the 1970s turned into the "oil glut" of the mid-1980s.[3]

Cheap oil collapsed the market for Indian energy just as tribes had secured the authority to develop their minerals. Low-sulfur Indian coal development was particularly hard hit—why buy coal when oil was so cheap? Tribes struggled to find development partners to invest in reservation coal mines, and those that had negotiated potentially lucrative deals now saw the projects shelved. In 1980, for instance, the Crow had secured the nation's first alternative coal agreement with the Shell Oil Company, but by 1985 Shell had determined that the project was economically infeasible. In a curt letter to the tribal government, the multinational energy firm explained that due "to the current status of the coal market," it must surrender all rights to Crow coal. The Westmoreland Coal Company had reached a similar conclusion a few years earlier, releasing rights to portions of its Crow coal lease.[4]

Tribes possessing oil and gas deposits faced similar struggles. Many rushed to exercise their newfound flexibility to negotiate energy deals only to find their bargaining position undercut by the oil glut. In these altered economic conditions, the new negotiated contracts began to resemble the old leases. Better-informed tribal leaders were able to secure important concessions like tribal hiring preferences, environmental protection clauses, and fluctuating royalties tied to market prices, but energy companies now refused to give up control over mining operations. With an abundance of oil, developers had little reason to begin new projects in which they could not dictate the pace and scale of development. Without control, tribes remained subject to corporate decisions over whether or not to develop and at what scale. The glutted market meant reduced oil and gas production, and the drilling that did occur produced diminished revenue because royalties were now tied to declining market prices. Tribal revenue from oil and gas development reached its peak of $198 million in 1982, then plummeted by 60 percent over the next four years. The same energy tribes that had successfully increased their governing capacity and altered federal law

to authorize tribal control of reservation development found mastery over a shifting global energy market to be more elusive.[5]

Ongoing intratribal disputes over whether to pursue development, and on what terms, also continued to challenge energy tribes. The Crow example is again instructive, for after the contentious July 1977 impeachment of Tribal Chairman Patrick Stands Over Bull, the Crow community shuffled through a series of leaders as it debated energy development. In fact, of the five tribal chairmen elected in the twenty years following the first serious coal proposal in 1966, only Edison Real Bird (1966–1972) escaped calls for impeachment. Two leaders, Stands Over Bull (1972–1977) and Donald Stewart (1982–1986), were either forcibly removed from office or had all executive powers stripped by tribal resolution. And in every impeachment episode—each of which mirrored in intensity the debates surrounding Stands Over Bull—the driving argument for removal was the alleged mismanagement of tribal energy resources.[6]

These passionate internal debates both did violence to communal relations and drove away potential energy partners. Firms desiring Crow minerals found the tribe's constantly changing political landscape confusing and too risky for business. After Stands Over Bull's impeachment, energy companies pleaded with the Department of the Interior to provide clarity as to which Crow faction held the authority to strike coal deals. Mindful of the new policy of Indian self-determination, however, federal officials responded by refusing to "substitut[e] [their] judgment for that of the tribe's in an internal dispute of this sort." Without clarity, several energy firms abandoned development plans, and those that continued to pursue Crow minerals pushed the tribe to restructure its government to provide a more stable negotiating body.[7]

Ultimately, the Crow tribe responded to pressures to develop by, once again, altering its governing structure. In 1980, a new majority disbanded the cautious Coal Authority and authorized the tribal chairman to aggressively pursue development projects. But as indicated by Shell's and Westmoreland's surrender of Crow coal rights, market conditions hampered these efforts. Ongoing battles within the tribal council, which still included all adult members of the tribe, also continued to drive away potential investors. By 2001, a frustrated majority had seen enough and took dramatic action to overhaul the entire tribal government structure. The Crow ratified a new constitution that replaced

its hyper-democratic tribal council with a system based on the United States' model of representative government, including separation of powers and a strong executive branch.[8]

Finally, with this new governing structure in place and oil prices again skyrocketing due to disruptions in global supply, the Crow negotiated a 2004 agreement with the Westmoreland Coal Company to allow the first commercial coal mining on the reservation. The deal, in fact, merely extended the company's ongoing operations in the Ceded Strip southward onto the reservation proper. Most years, revenue from this enlarged Absaloka Mine provides two-thirds of the tribal government's nonfederal budget—more than $20 million in 2010. The mine also employs a 70 percent tribal workforce. The relationship between the Crow and Westmoreland has become so strong that Tribal Chairman Darrin Old Coyote recently affirmed to a congressional subcommittee that "without question, [the Absaloka Mine] is a critical source of jobs, financial support, and domestically produced energy. [Westmoreland] has been the Crow Nation's most significant private partner over the past 39 years."[9]

But on a reservation with 47 percent unemployment and a per capita income less than half the U.S. average ($11,987 to $27,334), coal mining's benefits still do not reach all tribal members. The tribal government thus continues to explore more development opportunities, largely with the blessing of the tribal majority. Since Westmoreland's extension, the Crow have granted the mining firm more coal rights in the Ceded Strip and also announced three new energy ventures with other companies on the reservation itself. One of these projects could be the nation's first mine-mouth, coal-to-liquids gasification plant; the others look to export Crow coal to Asia. Billions of tons of coal and millions of dollars of tribal revenue are once again on the table. Of course, not all are thrilled about the prospect of impending development and some tribal members continue to fear the potential impacts. The tribe will continue to wrestle with these decisions. But while it is too early to judge the effects of these potential projects on the Crow community and landscape, it is clear that a restructured tribal government, informed by decades of energy development experience, possesses the clear legal authority to make the deals.[10]

With global oil prices remaining relatively high in recent years, the Crow tribe is not alone in using its sovereign authority to once again

explore tribal-led energy projects. On the Navajo Reservation, where the postwar exploitation of tribal minerals began and rampant poverty remains, the tribe has taken a two-step approach to exerting control. First, the community has acted largely in unison to shut down dirty and unwanted projects. Second, some portions of tribe have pushed for tribal-controlled ventures to replace them. In 2005, for instance, the tribal government passed a moratorium on uranium development and, in partnership with the Hopi Tribal Council, withdrew tribal water rights necessary to operate Peabody Coal Company's Black Mesa Mine. That same year, Indian and non-Indian environmental groups forced the closure of the Mohave Generating Station after the facility failed to install costly pollution control technology. These actions delivered death blows to some of the reservation's more notorious energy projects, but Navajo energy development was far from dead. Starting in 2003, the Diné Power Authority, a tribal enterprise, pursued plans to build its own coal-fired power plant on the reservation, the Desert Rock Energy Project. This facility was proposed to provide electricity to another ambitious tribal endeavor, the Navajo Transmission Project, which would have provided the infrastructure needed to carry reservation-produced electricity to distant markets. Neither project, however, was realized. Local environmental opposition emerged from the outset and the requisite permits were never obtained.[11]

Undeterred, the Navajo tribal government now has gone back to the infamous mine that began the tribe's tumultuous experience with commercial coal development. On December 31, 2013, the Navajo Transitional Energy Company, another tribal enterprise, bought the Navajo Mine from the world's largest mining firm, BHP Billiton. This massive facility—once the planet's biggest strip mine—had fed coal for over fifty years to the Four Corners Generating Station—once the country's dirtiest power plant. Now the Navajo own it. But the community cannot agree on whether this is a good thing. Proponents point to the protection of Navajo jobs and the secure revenue stream gained by continuing to sell coal to the Four Corners plant, which would have likely shut down had Billiton not found an interested buyer to keep the mine open. These supporters also hail the deal as a victory for tribal sovereignty, positioning the tribe to control the future of these coal reserves, whether that be exploring cleaner coal gasification technology or exporting coal to Asian markets. Opponents, of course, question the

sanity of now participating in an industrial process that has brought so much harm to the community. Detractors also fear the environmental liabilities the tribe has inherited and argue that buying a worn-out coal mine to supply an outdated power plant makes little business sense. The arguments on both sides are fair. But these are the dilemmas faced by a sovereign government representing diverse constituencies and attempting to wield its power to participate in a risky global energy industry.[12]

In the thirty-four years since the Northern Cheyenne negotiated the oil and gas deal with the Atlantic Richfield Company that triggered fundamental changes to federal Indian law, the tribe's reservation has seen little development. In the early 1980s, ARCO drilled dozens of prospecting wells, but most came up dry. By 1984, the company was forced to walk away, leaving behind unreclaimed drill sites and a community becoming more, not less, impoverished. Two years after ARCO shuttered its operations, reservation unemployment reached 60 percent—up from 34 percent in 1979. It has remained there ever since. According to the 2000 census, the per capita income was only $7,247, and more than 50 percent of the population was mired below the poverty line. No doubt, the Northern Cheyenne's 1970s actions allowed the tribe to maintain control of its resources and protect the reservation. That place is still the Cheyenne homeland, free of the non-Indian interlopers tribal members worried so much about. But it is also free of desperately needed economic development.[13]

Further, the Northern Cheyenne's success in keeping its land a distinctly tribal space has not protected the community from the pernicious influences of the outside world. Today, the reservation is completely encircled by coal development. A dozen miles to the north, the Colstrip Power Plant continues to burn coal extracted from a massive adjacent strip mine. On the eastern border, Arch Coal, Inc., the nation's second largest coal company, is developing the vast Otter Creek Tracts, which span more than 8,000 acres and are estimated to hold over 1,200 million tons of coal. Twenty-five miles to the south, several strip mines operate in the vicinity of Decker, Montana, and the reservation's the western boundary is flanked by the Crow Reservation and its impending development. Testifying to Congress in 2014, Tribal President Llevando Fisher complained that the surrounding activity puts constant pressure on the Northern Cheyenne's inadequate public services and

facilities and "produces major influxes of newcomers to the area [that] leads to undesirable socio-economic effects on the Tribe, including on-reservation crime, traffic, and accidents." But the tribe reaps none of the financial rewards that would help combat coal mining's ill effects. As Fisher explained, "We suffer the impacts of development but receive no revenues that would allow us to minimize the ills inflicted by this development."[14]

For this reason, the Northern Cheyenne—the tribe that halted the exploitation of tribal energy resources and was labeled as the anti-development tribe—will soon vote on whether to pursue reservation coal mining once again. Already once, in 2006, a tribal referendum directed the tribal government to do just that. Intervening elections, however, have placed a succession of alternating pro- and antidevelopment leaders in the tribe's highest office. The community is clearly divided on the issue. On February 13, 2014, President Fisher, once a coal mining opponent, asked for clarity. Explaining that "the bleak financial future facing our nation" had persuaded him to now personally prefer development, Fisher announced that he would nevertheless "let the people decide." "We may not all agree," he warned, "but we'll let the majority decide . . . [and] if the Northern Cheyenne vote yes by a majority for coal development on our reservation, we will go strongly in that direction." Considering the mountains of coal underlying the Cheyenne Reservation and the tribe's historical importance to Indian energy development nationally, federal officials, energy executives, and other tribal leaders look on anxiously as the tribe deliberates its decision.[15]

In each of these cases of potential reservation development, the debates over tribal survival continue. The infighting is particularly intense when changes to tribal governing practices are proposed to facilitate energy development, as they often are. Some Indians hail the creation of tribal enterprises or new governing committees endowed with the authority to dispense tribal property as necessary improvements to tribal governance. Employing modern and efficient management techniques, they argue, will help the tribes conduct business and alleviate poverty. Others deride the new governing methods as an affront to traditional tribal practices and a threat to the continued existence of the tribe. Of course, the labels of "modern" and "traditional" forms of governance are deeply problematic. Both assume the authenticity of a particular governing structure and then argue that exterior forces either demand

change or require its preservation. The labels are, in essence, ahistorical. But the point here is that the battles over resource development, tribal governance, and indigenous identities continued unabated after energy tribes secured authority to control development. Changing the law to recognize tribal sovereignty was an incredible victory; taking back control over reservation development saved the tribe. But this victory was not the end of the struggle to capitalize on reservation resources. Tribal communities remain subject to the same national and global pressures that first brought energy companies to their doorstep. For that matter, so do indigenous peoples worldwide. Here in the United States, these communities sometimes have been able align the desires of the tribal majority with market forces and reap mining revenues. More often, they have not. Their responses to these forces, however, continue to shape their communities, their landscapes, and the tribal governments that patrol both.[16]

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In yet another example of the inner turmoil that often accompanies tribal energy development, CERT's 1982 annual conference not only witnessed the departure of Executive Director Ed Gabriel, but it also marked the last meeting for CERT and Navajo Tribal Chairman Peter MacDonald. Just two weeks before the Denver gathering, the Navajo Nation voted MacDonald out of office in favor of Peterson Zah, the head of the DNA People's Legal Services, which represented individual Navajos fighting energy projects often supported by MacDonald's administration. Zah's position with DNA had given him a political base to attack MacDonald's pro-development policies, and MacDonald's defeat meant the longstanding chairman could no longer serve as CERT's leader. At exactly the moment energy tribes secured authority to develop their own minerals, CERT was faced with replacing its entire leadership team.[17]

Like its new director, David Lester, CERT's new chairman, Wilfred Scott, brought a different perspective to Indian energy development. Scott's Nez Perce tribe did not possess substantial hydrocarbons and showed little appetite for pursuing large-scale energy projects. In fact, the Nez Perce had recently rejected a hydroelectric facility due to potential harm to its tribal fishery. In addition to this different perspective,

Scott also brought a different leadership style, replacing MacDonald's combative bluster with a conciliatory approach that cultivated cooperative relationships between member tribes, CERT officials, and federal agencies. The new leadership tandem of Scott and Lester continued to advocate for tribal control of mining projects and made available CERT's consulting services to tribes desiring development. But in contrast to their predecessors, they did not push mineral development as a panacea for tribal problems. More wary of the potential social and environmental impacts of development, CERT's leaders counseled tribal governments to take calculated approaches to reservation development that considered their preparedness to manage potential projects and their community's support for them.[18]

The difficult market conditions of the 1980s also meant there was little upside to pushing hard for development until tribes were ready to manage and support it. In the interim, energy tribes focused on improving their capacity to regulate mining and consolidated legal authority over tribal resources. CERT continued to provide technical assistance to help tribes determine their resource inventories, improve accounting systems to better track royalties, and, with the increasing support of the Environmental Protection Agency, monitor environmental impacts of existing development.[19]

To match this continued growth in capacity, the tribes pushed through a series of new federal laws designed to further extend tribal control over reservation development. The 1992 Indian Energy Resources Act directed the Department of the Interior to help tribes develop a "vertically integrated energy industry on Indian reservations," and the 2003 Energy Policy Act provided grants and technical assistance to achieve this end. Tribal control over energy development reached its legal apogee in 2005 with the passage of the Indian Tribal Energy Development and Self-Determination Act, which authorized tribes to completely forego federal approval of development projects once they had established a "tribal energy resource agreement" (TERA). Serving as "master agreements" between individual tribes and the federal government, TERAs must include adequate procedures for constructing tribal energy deals, provisions related to the tribe's economic return, lists of all tribal laws governing reservation mining, and assurances of the tribe's capacity to monitor and manage environmental and social impacts. Once a TERA is approved, a tribe has complete regulatory author-

ity over reservation energy development, from contract negotiations to enforcement of the deal's terms. Critics argue that TERAs remove important federal protections for tribal lands—such as the requirements of the National Environmental Policy Act and the National Historic Preservation Act—but these agreements represent the fullest manifestation yet of Indian self-determination. Such autonomy has always come with risks, as well as benefits.[20]

The significant change in CERT's leadership that accompanied the passage of the 1982 Indian Mineral Development Act thus ushered in a new era in the tribes' approach to energy development. New leaders counseled a more measured, though still active, pursuit of development, and energy tribes continued to expand their knowledge of and sovereignty over reservation resources. Distant market forces and intratribal turmoil, however, stifled potential projects, leaving the end results, for now, largely unchanged. Energy tribes continue to wait for the day when they can capitalize on their valuable minerals, which they now possess the capacity and authority to do.

Beyond ushering in a new era in Indian energy development, the 1982 changeover in CERT's leadership also provided an opportunity to reflect on how far the tribes had come. Seizing the moment, outgoing chairman Peter MacDonald delivered a farewell address at CERT's annual meeting that recounted the entire history of the organization he helped create. The flamboyant leader did not disappoint. Applying a Star Trek metaphor to characterize CERT's voyage as a long-imperiled mission with little hope of success, MacDonald began by listing the many challenges facing "Starship CERT" at its outset. These included the energy tribes' immense diversity, their lack of geological and market data, and the resistance of federal agencies to relinquish control over Indian resources. He also noted the universal hostility created "just by dubbing ourselves the 'Native American OPEC'" and the criticism CERT received from some American Indians when it obtained "the thing that we feared most . . . a federal grant, and not just one federal grant, but numerous federal grants." The early days of CERT, the chairman recalled, were characterized by confusion over its mission, the ignorance of its members, and the reluctance of federal officials to faithfully carry out their trustee duty.[21]

But the message MacDonald hoped most to convey was that despite these long odds, CERT survived in the same way American Indians had

survived since European contact, by adapting to constantly changing circumstances. In his words, the organization "evolved from a MEANS to increase bargaining leverage to an END in itself—a forum for giving tribes power in national politics." Now that CERT and its allies had exercised their power to change federal law and clarify the tribes' expansive sovereignty, MacDonald predicted:

> CERT will become a SYMBOL for the next voyage of the human species—a voyage to a post-industrial world. It is a voyage which Native Americans are uniquely equipped to make. . . . We retain our traditions, our sense of community, and the medicine bundles of sacred soil, brought from previous worlds and preserved to enable us to achieve harmony in a new world, yet unknown. . . . Spaceship CERT is ready for its next five-year voyage—ready to create the think tanks, the social experiments, the new institutions, and the new linkages for our peoples, the First Americans. We are equipped by long tradition and practice to adapt, adjust, and yet survive with our identity miraculously preserved.[22]

MacDonald's last point was the most important to American Indians. The onslaught of demand for tribal resources had brought the world's largest energy firms to reservation borders, where a flawed legal regime invited them in. Proposed mining not only imperiled reservation landscapes, but it threatened to erase established customs and norms that defined the communities living there. Yet, as alluded to by MacDonald, the energy tribes survived with their identities intact. Belying perceptions encoded in federal law that American Indians were incapable wards, these tribes mobilized a defense of their homeland and developed the institutional capacity to regulate industrial activities within that land. Based on this increased capacity, the 1982 Indian Mineral Development Act recognized tribal authority to direct reservation development, which subsequent laws strengthened. Now equipped with the legal authority to pursue development in line with their communities' desires, only the successful execution of that power is left unfinished. The fact that external, often global, structures continue to limit the exercise of this sovereignty—while internal debates rage over how to respond to these pressures—does not diminish the energy tribes' accomplishments. Rather, it makes them historical actors like any other, operating among forces they can shape but not fully control.

Notes

INTRODUCTION

1. "Proceedings of the Native American, Environmentalist, and Agriculturalist Workshop" (Northern Rockies Action Group, December 10, 1975), 15, in author's possession.

2. 31 U.S. 515 (1832), 559. A staunch federalist, Marshall limited his defense of tribal sovereignty to internal tribal matters within tribal lands, maintaining that the federal government held superior authority over the tribes' external relations. In fact, he followed the quote about Indian nations being distinct and independent with the words "with the single exception of that imposed by irresistible power" of a conquering nation. This recognition of federal supremacy, however, does not affect Marshall's legal opinion that tribes retained the right to manage resources within their lands. As to Jackson's quotes, see Felix S. Cohen, *Cohen's Handbook of Federal Indian Law* (Newark: LexisNexis, 2005), 50, n. 304; Ronald N. Satz, *American Indian Policy in the Jacksonian Era* (Lincoln: University of Nebraska Press, 1974), 49, n. 31; Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* (Lincoln: University of Nebraska Press, 1984), 212, n. 61. Most historians agree on the accuracy of Jackson's quote, though the more popular version holds that the president replied, "John Marshall has made his decision, now let him enforce it." Regardless of his actual words, subsequent federal actions made clear Jackson's policy to ignore the Supreme Court's holding. Finally, the literature on non-Indians divesting Indians of their land and resources in the nineteenth century is voluminous. Francis Paul Prucha provides the classic introduction to the many ways in which this was accomplished (Prucha, *Great Father)*. For the more specific point of how non-Indians used the legal system

to erode tribal sovereignty, see Charles F. Wilkinson, *American Indians, Time, and the Law: Native Societies in a Modern Constitutional Democracy* (New Haven: Yale University Press, 1987), esp. 56–57; Sidney L. Harring, *Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century* (Cambridge: Cambridge University Press, 1994); David E. Wilkins, *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice* (Austin: University of Texas Press, 1997), esp. chapter 3; and Lindsay Gordon Robertson, *Conquest by Law: How the Discovery of America Dispossessed Indigenous Peoples of Their Lands* (New York: Oxford University Press, 2005).

3. For early views and policies of European colonials and Americans toward American Indians, see Prucha, *Great Father,* esp. 5–9 and parts 1–2; Robert F. Berkhofer, *The White Man's Indian: Images of the American Indian from Columbus to the Present* (New York: Alfred A. Knopf, 1978); Brian W. Dippie, *The Vanishing American: White Attitudes and U.S. Indian Policy* (Middletown, CT: Wesleyan University Press, 1982), esp. parts 1–2; Bernard W. Sheehan, *Savagism and Civility: Indians and Englishmen in Colonial Virginia* (Cambridge: Cambridge University Press, 1980). For the mid-nineteenth-century emphasis on assimilation, and the later turn toward race as a marker of inferiority, see Frederick E. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880–1920* (Lincoln: University of Nebraska Press, 1984). David Rich Lewis explains the prominent role of settled agriculture in the project to "civilize" Indian cultures. *Neither Wolf nor Dog: American Indians, Environment, and Agrarian Change* (New York: Oxford University Press, 1994), esp. 3–21.

4. The literature on Collier is extensive. A particularly helpful work explaining Collier's motivation to protect Indians' communal ethic is E. A. Schwartz, "Red Atlantis Revisited: Community and Culture in the Writings of John Collier," *American Indian Quarterly* 18, no. 4 (Autumn 1994): 507–31; see also Lawrence C. Kelly, *The Assault on Assimilation: John Collier and the Origins of Indian Policy Reform* (Albuquerque: University of New Mexico Press, 1983); Kenneth R. Philp, *John Collier's Crusade for Indian Reform, 1920–1954* (Tucson: University of Arizona Press, 1977); Elmer Rusco, *A Fateful Time: The Background and Legislative History of the Indian Reorganization Act* (Reno: University of Nevada Press, 2000); Graham D. Taylor, *The New Deal and American Indian Tribalism: The Administration of the Indian Reorganization Act, 1934–45* (Lincoln: University of Nebraska Press, 1980); and Stephen Kunitz, "The Social Philosophy of John Collier," *Ethnohistory* 18, no. 3 (Summer 1971): 213–29. For an explanation of how Collier's Office of Indian Affairs effectively retained control over Indian assets through its use of "technical assistance" to the tribes, see Thomas Biolsi, *Organizing the Lakota: The Political Economy of the New Deal on the Pine Ridge and Rosebud Reservations* (Tucson: University of Arizona Press, 1992), esp. chapter 6.

5. As I discuss in chapter 1, Felix Cohen's position stemmed from his normative vision of America as a legally pluralistic society with power decentralized to local authorities. For Cohen's concept of legal pluralism and his efforts to apply it to American Indian law, see Dalia Tsuk Mitchell, *Architect of Justice: Felix S. Cohen and the Founding of American Legal Pluralism* (Ithaca: Cornell University Press, 2007). For additional explanations of Cohen's approach to Indian law, particularly

how legal realism influenced his work, see Christian McMillen, *Making Indian Law: The Hualapai Land Case and the Birth of Ethnohistory* (New Haven: Yale University Press, 2007), 128–33; Jill Martin, "The Miner's Canary: Felix S. Cohen's Philosophy of Indian Rights," *American Indian Law Review* 23 (Summer 1999): 165–79; Martin P. Goldberg, "Realism and Functionalism in the Legal Thought of Felix S. Cohen," *Cornell Law Review* 66, no. 5 (1981): 1032–57; and Stephen M. Feldman, "Felix S. Cohen and His Jurisprudence: Reflections on Federal Indian Law," *Buffalo Law Review* 35, no. 2 (1986): 479–515. Chapter 1 also covers how the 1938 Indian Mineral Leasing Act provided a uniform mineral leasing system whereby tribes, through the Bureau of Indian Affairs, could solicit offers to extract reservation minerals, but they could not develop these resources themselves. Instead, the federal government would oversee the work of outside developers who "leased" Indian minerals for production. Indian Mineral Leasing Act, Public Law 75-506, 52 Stat. 347 (1938), codified as amended at 25 U.S.C. § 396a–f [2006]; Cohen, *Cohen's Handbook of Federal Indian Law,* 2005 ed., 1091.

6. Richard Nixon, "Special Message to Congress on Indian Affairs," July 8, 1970, The American Presidency Project, ed. Gerhard Peters and John T. Woolley, http://www.presidency.ucsb.edu/ws/index.php?pid=2573. For Nixon's Indian policy conforming to his New Federalism approach, see George Pierre Castile, *To Show Heart: Native American Self-Determination and Federal Indian Policy, 1960–1975* (Tucson: University of Arizona Press, 1998), 80–86. Nixon's self-determination policy actually continued a trend begun with President Lyndon Johnson's Office of Economic Opportunity to provide tribal governments direct control over reservation funds and resources. See Castile, *To Show Heart,* and Thomas Clarkin, *Federal Indian Policy in the Kennedy and Johnson Administrations, 1961–1969* (Albuquerque: University of New Mexico Press, 2001). As George Castile argues, "The rhetoric, the language of self-determination, had long been around; what was new [under the Johnson administration] was a practical mechanism to transfer authority to the tribes—the [Office of Economic Opportunity] system of compacting with local Indian community action agencies to carry out federal programs." George Pierre Castile, *Taking Charge: Native American Self-Determination and Federal Indian Policy, 1975–1993* (Tucson: University of Arizona Press, 2006), 14. According to Castile, Nixon simply carried forth this model and proposed new federal legislation that authorized the Bureau of Indian Affairs to transfer some of its responsibilities to tribal governments, again following the template already established by the Office of Economic Opportunity.

7. For a discussion of Nixon's original legislative proposals to effectuate his policy, how the Watergate scandal hampered the passage of these bills, and the Democratic Congress's embrace of the Indian Self-Determination and Education Act after Nixon's resignation, see Castile, *To Show Heart,* chapters 4 and 6–7. There is a robust and growing literature on Indian gaming. See, e.g., W. Dale Mason, *Indian Gaming: Tribal Sovereignty and American Politics* (Norman: University of Oklahoma Press, 2000); Angela Mullis and David Kamper, eds., *Indian Gaming: Who Wins?* (Los Angeles: UCLA American Indian Studies Center, 2000); Duane Champagne and Carol Goldberg, "Ramona Redeemed?: The Rise of Tribal Political Power in California," *Wicazo Sa Review* 17, no. 1 (2002): 43–63; Eve

Darian-Smith, *New Capitalists: Law, Politics, and Identity Surrounding Casino Gaming on Native American Land* (Belmont, CA: Thomson/Wadsworth, 2004); Steven Andrew Light and Kathryn Rand, *Indian Gaming and Tribal Sovereignty: The Casino Compromise* (Lawrence: University Press of Kansas, 2005); and Jessica R. Cattelino, *High Stakes: Florida Seminole Gaming and Sovereignty* (Durham: Duke University Press, 2008).

8. My notion of a "third area of sovereignty" is related to, but different from, Kevin Bruyneel's concept of a "third space of sovereignty." In *The Third Space of Sovereignty,* Bruyneel demonstrates how Euro-American legal institutions and cultural constructions continuously limited American Indians both to a place outside the American polity (spatial boundary) and to a time before the emergence of a modern American state (temporal boundary). However, while careful to note these limitations, Bruyneel also finds ambiguity in the application of these principles, stemming largely from the multifaceted nature of the American people and its state. The lack of uniformity in views and policies toward American Indians produces what Bruyneel calls "colonial ambivalence," creating a space within which American Indians could operate historically to exercise some sovereignty and extract benefits from the federal government. It is here, in this "third space of sovereignty," where American Indians are neither wholly within nor outside the American state, that Bruyneel finds Indian agency and the explanation for the continued resiliency of American Indian groups today. Kevin Bruyneel, *The Third Space of Sovereignty: The Postcolonial Politics of U.S.–Indigenous Relations* (Minneapolis: University of Minnesota Press, 2007), 1–25. While greatly influenced by Bruyneel's work, my use of the "third area of sovereignty" is less amorphous and stands simply for that area within federal jurisprudence where tribal governments, rather than federal or state governments, maintain primary authority.

9. Joseph F. Mulligan, *Introductory College Physics* (New York: McGraw-Hill, 1985), 138 and 157.

10. For Weber's understanding of social power, see H. H. Gerth and C. Wright Mills, eds., *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1962), 180. The literature on power from historians of technology and the environment has been reviewed recently by a group of scholars at the University of Virginia that includes myself, Edmund Russell, Thomas Finger, John K. Brown, Brian Balogh, and W. Bernard Carlson. The claims made here regarding the energetic basis of social power derive from that collective effort. See Edmund Russell et al., "The Nature of Power: Synthesizing the History of Technology and Environmental History," *Technology and Culture* 52, no. 2 (April 2011): 246–59. Latour's quote is in Bruno Latour, "The Powers of Association," in *Power, Action, and Belief: A New Sociology of Knowledge,* ed. John Law (Boston: Routledge and Keegan Paul, 1986), 273.

11. Immanuel Wallerstein's "world systems theory" provides the most influential analysis of these core-periphery relations. For a cogent summary of this theory, see Immanuel Maurice Wallerstein, *World-Systems Analysis: An Introduction* (Durham: Duke University Press, 2004). Representative examples of environmental histories that apply the theory to international development in the modern era include Richard P. Tucker, *Insatiable Appetite: The United States and the Ecologi-*

cal Degradation of the Tropical World (Berkeley: University of California Press, 2000), and John F. Richards, *The Unending Frontier: An Environmental History of the Early Modern World* (Berkeley: University of California Press, 2003). For studies of American development in this mold, see, e.g., Richard White, *The Roots of Dependency: Subsistence, Environment, and Social Change Among the Choctaws, Pawnees, and Navajos* (Lincoln: University of Nebraska Press, 1983); William Cronon, *Nature's Metropolis: Chicago and the Great West* (New York: W. W. Norton, 1991); and William G. Robbins, *Colony and Empire: The Capitalist Transformation of the American West* (Lawrence: University Press of Kansas, 1994). Influential anthropologies demonstrating the difficulties in applying universal ideologies in foreign, local contexts include James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1998), and Anna Lowenhaupt Tsing, *Friction: An Ethnography of Global Connection* (Princeton: Princeton University Press, 2005).

12. A major exception to the statement that environmental histories have tended not to follow the trajectory of impacts outward from the periphery is Richard Grove's work, *Green Imperialism.* In it, Grove demonstrates how the incorporation of local knowledge of the natural world, generated in colonial peripheries, influenced scientific knowledge in the metropoles, leading ultimately to powerful scientific critiques of colonialism. Richard Grove, *Green Imperialism: Colonial Expansion, Tropical Island Edens, and the Origins of Environmentalism, 1600–1860* (New York: Cambridge University Press, 1995).

13. Arthur F. McEvoy, *The Fisherman's Problem: Ecology and Law in the California Fisheries, 1850–1980* (New York: Cambridge University Press, 1986), 13.

14. Studies that explain tribal factionalism in terms of resource conflicts include White, *Roots of Dependency,* esp. 109–17; Lewis, *Neither Wolf nor Dog,* esp. 41 and 154–55; Larry Nesper, *The Walleye War: The Struggle for Ojibwe Spearfishing and Treaty Rights* (Lincoln: University of Nebraska Press, 2002), chapter 8; and Paul C. Rosier, *Rebirth of the Blackfeet Nation* (Lincoln: University of Nebraska Press, 2001). Mitchell's quote is at Don Mitchell, *Cultural Geography: A Critical Introduction* (Malden, MA: Blackwell, 2000), 77.

PROLOGUE

1. According to the coal industry's leading trade journal, in 1972, Consolidation trailed only the Peabody Group in American coal production. "Top 15 Coal-Producing Groups in 1972," *Coal Age,* April 1973, 39. For details on Consolidation's proposal, see K. Ross Toole, *The Rape of the Great Plains: Northwest America, Cattle and Coal* (Boston: Little, Brown, 1976), 63–64; Marjane Ambler, *Breaking the Iron Bonds: Indian Control of Energy Development* (Lawrence: University Press of Kansas, 1990), 64–65; Michael Wenninger, "$1 Billion Coal Plant Discussed," *Billings Gazette,* November 29, 1972; and Michael Wenninger, "Battle Brews over Reservation's Coal," *Billings Gazette,* April 2, 1973.

2. Dell Adams to Northern Cheyenne Tribe, July 7, 1972 (quoted in Ziontz, Pirtle, Moresset, and Ernstoff, "Petition of the Northern Cheyenne Indian Tribe to Rogers C. B. Morton, Volume II: Appendix," January 7, 1974, A-142 to A-144,

K. Ross Toole Papers, series V, box 28, folder 2, Mansfield Library, University of Montana). For the Northern Cheyenne's average per capita income, see "Northern Cheyenne Highlights, Calendar Year 1969," 1970, 1, 8NN-75-92-206, box 14, folder "Evaluation of Ten Year Goals," National Archives, Denver, CO.

3. The few existing studies of Indian energy development generally portray tribal leaders as passive observers to a BIA-controlled system of exploitation. See Toole, *Rape of the Great Plains;* Ambler, *Breaking the Iron Bonds;* Donald Fixico, *The Invasion of Indian Country in the Twentieth Century American Capitalism and Tribal Natural Resources* (Niwot: University Press of Colorado, 1998); and Charles F Wilkinson, *Fire on the Plateau: Conflict and Endurance in the American Southwest* (Washington, DC: Island Press, 1999). A recent collection of essays, however, demonstrates how "from the beginning of energy development on Indian lands, Indian people have been actively engaged: as owners and lessees of resources, workers in the industries, consumers of electricity and gasoline, and developers of tribal energy companies, as well as environmentalists who sometimes challenge these enterprises." Sherry L. Smith and Brian Frehner, eds., *Indians and Energy: Exploitation and Opportunity in the American Southwest* (Santa Fe: SAR Press, 2010), 5. This work follows in the latter mold, explaining how through active engagement in energy development projects, tribal governments gained the knowledge and legal tools necessary to manage their own resources.

CHAPTER 1. THE TRIBAL LEASING REGIME

1. John Artichoker to James Canan, December 28, 1965 (quoted in Ziontz, Pirtle, Moresset, and Ernstoff, "Petition of the Northern Cheyenne Indian Tribe to Rogers C. B. Morton, Volume II: Appendix," January 7, 1974, A-1, K. Ross Toole Papers, series V, box 28, folder 2, Mansfield Library, University of Montana [hereafter Ziontz et al., "Northern Cheyenne Petition"]).

2. Ibid. To be clear, a small coal mine already existed on the reservation by the time Krueger submitted his proposal. This mine, however, supplied heating coal to reservation residents and did not export coal off reservation for industrial uses. Krueger's offer was the first proposal to develop Cheyenne coal in commercial quantities to be used for the industrial production of electricity. For the response from Billings BIA officials, see Ned O. Thompson, memo, January 7, 1966 (found in Ziontz et al., "Northern Cheyenne Petition," A-1 to A-2).

3. The quote describing the trustee duty as a cornerstone of Indian law comes from *Dept. of Interior v. Klamath Water Users Prot. Ass'n,* 532 U.S. 1, 11 (2001). In that opinion, the court merely affirmed the description of this duty as it appeared in Felix S. Cohen, *Cohen's Handbook of Federal Indian Law,* 2005 ed. (Newark: LexisNexis, 2005), 221. For further description of this trustee duty being akin to the common law duty of any fiduciary to responsibly manage a trust corpus for beneficiaries, see *United States v. Mitchell,* 463 U.S. 206, 225 (1983). John Marshall first acknowledged the United States' superior title to Indian lands in *Johnson v. M'Intosh,* reasoning the country's "discovery and conquest" of a new but inhabited land provided this right. Although he characterized the federal claim as an "absolute ultimate title," Marshall also admitted that Indians still possessed

the "legal as well as just" right of occupancy, which granted them certain sovereign rights within that territory. 21 U.S. 543, 592, 574 (1823). Later, in *Cherokee Nation v. Georgia,* Marshall elaborated that this unique indigenous land right did not create full sovereign Indian nations within the territory of the United States but instead made the tribes "domestic dependent nations . . . in a state of pupilage," likening their relationship to the United States as "that of a ward to his guardian." 30 U.S. 1, 17 (1831). This special status of Indian nations as "domestic dependent nations" forms the basis the United States' trustee duty to responsibly manage Indian land and resources. The last quote holding the federal government to the most exacting fiduciary standards comes from *Seminole Nation v. United States,* 187 U.S. 286, 297 (1942); see also Cohen, *Handbook of Federal Indian Law,* 2005 ed., 419–20, and Christian McMillen, *Making Indian Law: The Hualapai Land Case and the Birth of Ethnohistory* (New Haven: Yale University Press, 2007), 89–90.

4. Lyn Fisher, "Transcript of Notes of Conversation with J. Canan of the BIA Regarding the Northern Cheyenne Petition," June 15, 1979, 8, K. Ross Toole Papers, series V, box 28, folder 3, Mansfield Library, University of Montana.

5. Act of July 22, 1790, Public Law 1–33, § 4, 1 Stat. 137 (1790). The 1790 Non-Intercourse Act specifically prohibited the transfer of Indian land unless "duly executed at some public treaty, under the authority of the United States." As to major shifts in federal Indian policy, their justifications, and the impact on Indian land holdings, see notes 3–5 to introduction, above, and accompanying text.

6. As to John Collier's Indian New Deal, see generally notes 4–5 to introduction, above, and accompanying text.

7. E. A. Schwartz, "Red Atlantis Revisited: Community and Culture in the Writings of John Collier," *American Indian Quarterly* 18, no. 4 (Autumn 1994): 507–31. Schwartz argues that Collier's concept of a "Red Atlantis," which he developed after his first visit with the Taos Pueblo Indians in 1920, initially captured both the idea that Indians could offer lessons to white America on the values of group cohesion and also the recognition that this reservoir of knowledge required federal protection from capitalist attacks. Schwartz goes on to note, however, that Collier gradually subjugated the former concept to the latter, as he increasingly viewed his mission to slowly integrate—but not assimilate—Indians into American society and became less concerned with the direct transfer of Indian knowledge to whites. Other helpful works on Collier's life and his perception of American Indians include Lawrence C. Kelly, *The Assault on Assimilation: John Collier and the Origins of Indian Policy Reform* (Albuquerque: University of New Mexico Press, 1983); Kenneth R. Philp, *John Collier's Crusade for Indian Reform, 1920–1954* (Tucson: University of Arizona Press, 1977); Elmer Rusco, *A Fateful Time: The Background and Legislative History of the Indian Reorganization Act* (Reno: University of Nevada Press, 2000); Graham D. Taylor, *The New Deal and American Indian Tribalism: The Administration of the Indian Reorganization Act, 1934–45* (Lincoln: University of Nebraska Press, 1980); and Stephen Kunitz, "The Social Philosophy of John Collier," *Ethnohistory* 18, no. 3 (Summer 1971): 213–29.

8. For Collier's views on indirect administration, see Rusco, *Fateful Time,* 160–63 and 176. For a discussion of how, in practice, BIA's "technical assistance" could often preempt tribal decision making, see Thomas Biolsi, *Organizing the*

Lakota: The Political Economy of the New Deal on the Pine Ridge and Rosebud Reservations (Tucson: University of Arizona Press, 1998), 128–32.

9. Initially, two young attorneys, Cohen and Melvin Siegel, worked on the draft legislation. Little is known of Siegel, but Elmer Rusco reports that Lucy Cohen, Felix's wife, remembers Siegel remaining at the Department of the Interior for only a few months, and thus he could not have been a major contributor to Indian policy debates. Rusco, *Fateful Time,* 193. For the quotes describing Cohen's views on legal pluralism, see Dalia Tsuk Mitchell, *Architect of Justice: Felix S. Cohen and the Founding of American Legal Pluralism* (Ithaca: Cornell University Press, 2007), 57.

10. Mitchell, *Architect of Justice,* 82–90. The original bill's quotes are taken from ibid., at 83. It should be noted that Felix Cohen strongly opposed the BIA's position that the Indian Reorganization Act authorized only the federal government to issue corporate charters to Indian tribes. Cohen's stance, consistent with the argument he would make throughout his tenure, was that the right to incorporate was a fundamental right of any sovereign power. Because Congress had not explicitly extinguished this right for Indian tribes, they thus retained the authority to define their own powers through corporate charters. Felix Cohen to Frederic Kirgis, April 14, 1937, National Archives II, College Park, MD (hereafter NAII), RG 48, entry 809, box 12.

11. For the deliberations over Interior's bill, see Vine Deloria, Jr., and Clifford M. Lytle, *The Nations Within: The Past and Future of American Indian Sovereignty* (Austin: University of Texas Press, 1984), 66–79; Mitchell, *Architect of Justice,* 90–101; and Rusco, *Fateful Time,* 192–209. The final statute is at Indian Reorganization Act (IRA), Public Law 73-383, ch. 576, § 16 48 Stat. 984, 987 (1934), codified at 25 U.S.C. § 476 (2006). The quote from the Solicitor's Opinion is at Nathan Margold, U.S. Department of the Interior, "Powers of Indian Tribes," in *Opinions of the Solicitor: Indian Affairs* (Washington: Government Printing Office, 1946), 446. As to the novelty of Cohen's argument that tribal powers originated with the tribal sovereign, Charles Wilkinson demonstrates how this articulation of inherent sovereignty simply echoed sentiments expressed by Chief Justice John Marshall in *Worcester v. Georgia.* In that famous opinion, which Cohen cited liberally in his Solicitor's Opinion, Marshall stated that the "Indian nations had always been considered as distinct, independent, political communities, and the settled doctrine of the law of nations is that a weaker power does not surrender its independence—its right to self-government—by associating with a stronger, and taking its protection." 31 U.S. 515, 559 (1832). See also Charles F. Wilkinson, *American Indians, Time, and the Law* (New Haven: Yale University Press, 1987), 54–59. Marshall thus was first to advance the theory that tribes possessed all the powers of a sovereign, surrendering only their external sovereignty by virtue of Euro-American conquest, but Cohen resurrected this foundational principle after decades of its subjugation to the federal government's plenary power. See also David E. Wilkins, "The Era of Congressional Ascendancy over Tribes," in *American Indian Sovereignty and the U.S. Supreme Court* (Austin: University of Texas Press, 1997). Deloria's and Lytle's point about tribal powers is found at *Nations Within,* 159. These two authors also argue that when Congress slashed the Department of the Interior's original list

of tribal powers down to three it unwittingly expanded tribal sovereignty. They reason that although Interior's proposal included a long list of *potential* powers, these powers had to first be granted by the federal government in the form of a corporate charter tailor-made to the specific situation of each tribe. The final IRA, however, granted these three enumerated powers to any tribe organized under the statute, not to mention recognizing "all powers vested . . . by existing law." Thus, in the final law, although the BIA retained the right to approve tribes' organizing constitutions, once accepted it could not deny these powers. Deloria and Lytle, *Nations Within,* 142.

12. This premise of Indian powers mirrors the first principle Cohen would later articulate in his seminal work, *Handbook of Federal Indian Law.* Cohen, *Handbook of Federal Indian Law,* 2005 ed., 2. ("Nonetheless, there are some fundamental principles that underlie the entire field of federal Indian law. First, an Indian nation possesses in the first instance all of the powers of a sovereign state." Emphasis removed.) As to the debates within Interior, the Solicitor's Office itself was also divided over the proper interpretation of tribal powers. Within that office, the most prominent members of the divided camps were Assistant Solicitor Frederick Wiener and William Flannery, who invariably offered legal interpretations limiting tribal powers and affirming BIA's oversight role, versus Cohen, Solicitor Nathan Margold, and Charlotte Westwood, who offered consistently expansive interpretations of tribal sovereignty. On resolving inconsistencies between the Northern Cheyenne constitution and Interior's regulations relating to grazing leases, see William Flannery, memorandum to file, February 27, 1936, NAII, RG 48, entry 809, box 9; and Felix Cohen, memorandum to file, March 6, 1936, NAII, RG 48, entry 809, box 9. On disagreements over whether tribal governments can issue timber contracts, mineral leases, or agricultural leases to Indian cooperatives at a nominal sum, see William Flanery, memorandum to file, October 22, 1936, NAII, RG 48, entry 809, box 11; and William Flannery to Frederick Wiener, November 14, 1936, NAII, RG 48, entry 809, box 11. On whether a conflict of interest justifies the BIA's denial of a timber contract entered into by the Flathead Indians, see William Flanery to Frederick Wiener, December 1, 1936, NAII, RG 48, entry 809, box 11; and Charlotte Westwood to Frederick Wiener, December 1, 1936, NAII, RG 48, entry 809, box 9. On a dispute over whether the Paiute Indians of the Pyramid Lake Reservation can veto a mineral lease issued prior to the tribe's organization under the IRA, see Frederick Wiener to Nathan Margold, March 6, 1937, NAII, RG 48, entry 809, box 12; and unsigned memo to Assistant Secretary of the Interior, March 9, 1937, NAII, RG 48, entry 809, box 12.

13. The National Archives does not contain a copy of the BIA's initial proposal to streamline the process for developing Indian minerals, but it is referenced at Charles Fahy to the Geological Survey, August 8, 1933, NAII, RG 48, entry 809, box 2. No further action appears to have been taken on this proposal until 1935, when Felix Cohen drafted a memo on behalf of Solicitor Nathan Margold detailing the impacts of the proposed legislation. Nathan Margold to John Collier, February 6, 1935, NAII, RG 48, entry 809, box 6.

14. Cohen's "fiery retort" that was later amended to soften its tone can be found at Nathan Margold to John Collier, January 24, 1935, NAII, RG 48, entry 809,

box 6 (draft memorandum authored by Felix Cohen). Assistant Solicitor Rufus Poole's memo questioning the Solicitor's Office's role is at Assistant Solicitor Poole to Nathan Margold, January 28, 1935, NAII, RG 48, entry 809, box 6. Finally, as to Cohen's amendments, compare Nathan Margold to John Collier (draft memorandum authored by Felix Cohen), January 24, 1935, NAII, RG 48, entry 809, box 6 with Nathan Margold to John Collier, February 6, 1935, NAII, RG 48, entry 809, box 6. Cohen wrote in the margins of both the original draft and the memo from Poole, "revised as to form."

15. The final bill, along with Senate and House reports, can be found at S. 2638, H.R. 7681, 74th Cong. (1935). It is interesting to note the statutory language governing the secretary's veto authority is different for oil and gas leases than for other minerals. With respect to oil and gas, the final statute specified the secretary could reject bids for development "whenever in his judgment the interest of the Indians will be served by so doing." With other minerals, the statue authorized tribes to lease their interests only "with the approval of the Secretary of Interior." Compare 25 U.S.C. § 396(b) with § 396(a) (2006). For Interior's position that the 1938 IMLA controlled all transfers of Indian minerals, see Senate Select Committee on Indian Affairs, *Permitting Indian Tribes to Enter into Certain Agreements for the Disposition of Tribal Mineral Resources and for Other Purposes,* 97th Cong., 2d sess., June 10, 1982, 8–12; House Committee on Interior and Insular Affairs, *Permitting Indian Tribes to Enter into Certain Agreements for the Disposition of Tribal Mineral Resources and for Other Purposes,* 97th Cong., 2d sess., August 13, 1982, 9–13; and Senate Select Committee on Indian Affairs, *Hearings Before the Select Committee on Indian Affairs on S. 1894*, 97th Cong., 2d sess., 1982, 70–77.

16. Elmer Thomas's quote is found at S. 2638, 74th Cong., 1st sess., *Congressional Record* 79 (May 28, 1935): S8307. As for passage on the House's consent calendar, see H.R. 7626, S. 2689, 75th Cong., 3rd sess., *Congressional Record* 83 (May 2, 1938): H6057. Wiener's quotes are found at Frederick Wiener to Nathan Margold, March 5, 1936, NAII, RG 48, entry 809, box 9. Finally, the 1938 Indian Mineral Leasing Act is found at 25 U.S.C. § 396a–396g (2012). The act's implementing regulations in effect during the events detailed here are at 25 C.F.R. § 171.2 (1966).

17. Mining Act of 1866, 14 Stat. 251 (1866); Charles F. Wilkinson, *Crossing the Next Meridian: Land, Water, and the Future of the West* (Washington, DC: Island Press, 1992), 40–50; Samuel P. Hays, *Conservation and the Gospel of Efficiency: The Progressive Conservation Movement, 1890–1920* (New York: Atheneum, 1972), 67. For a discussion of the specific problems related to coal, see ibid., 82–83.

18. Hays, *Conservation and the Gospel of Efficiency,* 82–90; see also Wilkinson, *Crossing the Next Meridian,* 50–54. The 1920 Mineral Leasing Act is found at Mineral Leasing Act of 1920, Public Law 93–153, 41 Stat. 438 (1920), codified at 30 U.S.C. § 181 et seq. (2006).

19. Charles Fahy to the Geological Survey, August 8, 1933, NAII, RG 48, entry 809, box 2. The 1938 Indian Mineral Leasing Act is codified at 25 U.S.C. § 396a–g (2006), and the controlling regulations at the time of the Northern Cheyenne coal sales are at 25 C.F.R. § 171 (1966).

20. Richard White, *"It's Your Misfortune and None of My Own": A New History of the American West* (Norman: University of Oklahoma Press, 1991), 399.

21. James S. Cannon and Mary Jean Haley, *Leased and Lost: A Study of Public and Indian Coal Leasing in the West* (New York: Council on Economic Priorities, 1974), 21–23. Chapter 2, below, provides much greater detail of public officials' failure to carry out the mandates of the 1920 Mineral Leasing Act. See chapter 2, notes 7–12 and accompanying text.

22. The 1938 act's public bidding requirement for oil and gas is at 25 U.S.C. § 396b (2006). Nowhere in the act does it require bidding for minerals other than oil and gas, yet the controlling regulations requiring that all Indian minerals be "advertised for bids" are at 25 C.F.R. § 171.2 (1966).

23. The tribal resolution is at Northern Cheyenne Tribal Resolution No. 9 (66), February 10, 1966 (found in Ziontz et al., "Northern Cheyenne Petition, A-1 to A-2). Thompson's communication to BIA headquarters is located at Ned O. Thompson to Commissioner of Indian Affairs, April 2, 1966, Central Classified Files, 1958–75, Northern Cheyenne, decimal #332, box 21, RG 75, National Archives, Washington, DC. It is also described at Ziontz et al., "Northern Cheyenne Petition," A-3; and Toole, *Rape of the Great Plains,* 62.

24. The fixed royalty rate was provided in Charles Corke to James Canan, March 15, 1966 (found in Ziontz et al., "Northern Cheyenne Petition," A-4).

25. Interior put in place an acreage limit for Indian coal leases to prevent mining firms from securing a mineral development monopoly on any given reservation. The limitation, however, could be waived if a "larger acreage is in the interest of the [tribe] and is necessary to permit the establishment or construction of a thermal electric power plant or other industrial facilities on or near the reservation." 25 C.F.R. 171.9(b). For the rationale behind the acreage limitation, see Myron E. Saltmarsh, "Acting Area Realty Officer to Area Director," March 12, 1974, K. Ross Toole Papers, series V, box 28, folder 3, Mansfield Library, University of Montana. Washington officials actually authorized such a waiver for Northern Cheyenne development on numerous occasions. Fryer to James F. Canan, May 11, 1966, Central Classified Files, 1958–75, Northern Cheyenne, decimal #332, box 21, RG 75, National Archives, Washington, DC; and Ziontz et al., "Northern Cheyenne Petition," A-4. For further description of the acreage limit waiver and the reduction in royalties for coal burned on reservation, see Ziontz et al., "Northern Cheyenne Petition," A-4 to A-9.

26. The life of John Woodenlegs's famed grandfather is detailed in Wooden Leg and Thomas Bailey Marquis, *Wooden Leg: A Warrior Who Fought Custer* (Lincoln: University of Nebraska Press, 1962). Both the *Lincoln Star*'s editorial and Woodenlegs's reply ("From the President") were reprinted in the March 18, 1966, edition of the Northern Cheyenne newsletter, the *Morning Star News* (in author's possession). For Metcalf's introduction of Woodenlegs's letter on the Senate floor, see *Progress on the Northern Cheyenne Reservation,* 89th Cong., 2d sess., *Congressional Record* (February 21, 1966): S3391–92. Jim Canan describes his meeting with John Woodenlegs and reservation superintendent John Artichoker at the Billings, Montana, Northern Hotel to hear their strong support for coal development. Fisher, "Transcript of Notes of Conversation with J. Canan of the BIA Regarding

the Northern Cheyenne Petition," 2. Thompson's additional request for immediate action on the Cheyenne coal auction is found at Ned O. Thompson to Commissioner of Indian Affairs, May 6, 1966, Central Classified Files, 1958–75, Northern Cheyenne, decimal #332, box 21, RG 75, National Archives, Washington, DC. For a general description of Cheyenne actions to move along the process, from the Cheyenne's own attorneys, see Ziontz et al., "Northern Cheyenne Petition," A-5.

27. Steven H. Chestnut, "Coal Development on the Northern Cheyenne Reservation," in Commission on Civil Rights, *Energy Resource Development: Implications for Women and Minorities in the Intermountain West* (Washington, DC: Commission on Civil Rights, 1979), 162–63.

CHAPTER 2. POSTWAR ENERGY DEMANDS AND THE SOUTHWESTERN EXPERIENCE

1. For the tripling of American oil consumption from 1948 to 1972, see Daniel Yergin, *The Prize: The Epic Quest for Oil, Money, and Power* (New York: Simon and Schuster, 1991), 541.

2. As to the post–World War II deals that brought Middle Eastern oil to the world, see ibid., chapter 21. For the broad societal impacts of cheap oil, see ibid., 541–60; and Rudi Volti, *Cars and Culture: The Life Story of a Technology* (Westport, CT: Greenwood Press, 2004), 105–13.

3. Ivan Given, "Toward Energy Entity," *Coal Age,* November 1966; "The Coal Industry Makes a Dramatic Comeback," *Business Week,* November 4, 1972, 52–53; James S. Cannon and Mary Jean Haley, *Leased and Lost: A Study of Public and Indian Coal Leasing in the West* (New York: Council on Economic Priorities, 1974), 3 and 9–11; Bureau of Competition and Bureau of Economics, *Staff Report to the Federal Trade Commission on the Structure of the Nation's Coal Industry, 1964–1974* (Washington, DC: Federal Trade Commission, 1978), 159–61; and Peter Galuszka, "1911–1986: Coal's Rise and Fall and Rise," *Coal Age,* June 1986, 52–53.

4. "The Coal Industry's Controversial Move West," *Business Week,* May 11, 1974; Cannon and Haley, *Leased and Lost,* 3–6; and Bureau of Competition and Bureau of Economics, *Staff Report to the Federal Trade Commission,* 37–39, 156.

5. Alfred E. Flowers, "Energy and Security," *Coal Age,* August 1968, 59. The Clean Air Acts of 1963 and 1967 were the first statutes to focus on controlling air emissions, though they established a research regime to determine the best pollution control techniques, rather than setting specific air emission limits. Clean Air Act of 1963, Public Law 88–206, 77 Stat. 392 (1963); Air Quality Act of 1967, Public Law 90–148, 81 Stat. 48 (1967). The 1970 Clean Air Act, however, greatly expanded the federal government's role in regulating air pollution by establishing emission limits for both stationary and mobile sources. Clean Air Act of 1970, Public Law 91–604, 84 Stat. 1676 (1970); see also Office of Air and Radiation, Environmental Protection Agency, "History of the Clean Air Act," http://epa.gov/air/caa/caa_history.html (accessed April 2, 2013). For the federal government's increasing concern over sulfur emissions and industry's response, see "HEW Slaps Low Sulfur Limits on Fuel," *Coal Age,* January 1967; Alfred E. Flowers, "Cleaning the Air," *Coal Age,* November 1967; "Keys to Big Markets for Coal: Research and

Pollution Control," *Coal Age,* November 1967; and Alfred E. Flowers, "The Sulfur Question," *Coal Age,* April 1968. For the impacts of the 1967 oil embargo and 1970 Clean Air Act on promoting western coal, see "Western Coal Is Booming, but Serious Problems Lie Ahead," *Coal Age,* September 1971; "The Challenges and Opportunities in Mining Western Coal," *Coal Age,* April 1973; "Western Coal . . . Important Element in National Energy Outlook," *Coal Age,* April 1973; and "The Coal Industry's Controversial Move West," *Business Week,* May 11, 1974.

6. The figure noting that 80 percent of western coal underlies federal or tribal land comes from Cannon and Haley, *Leased and Lost,* 2. For more detailed description of the existing legal regime, and the wasteful practices it replaced, see, above, chapter 1, notes 17–18 and accompanying text.

7. Bennethum's quote is found in Cannon and Haley, *Leased and Lost,* 22. The historical data on the mineral leasing program are ibid., 4, and the figures on coal's average market value are ibid., 27. In 1975, the Federal Trade Commission issued a report on Indian mineral leasing that confirmed the general pattern of industry-led development, though it noted the Navajo tribe had nominated its own tracts of land for energy development. Federal Trade Commission, *Staff Report on Mineral Leasing on Indian Lands* (Washington, DC: Federal Trade Commission, October 1975), 20–23.

8. Cannon and Haley, *Leased and Lost,* 2–3.

9. Ibid., 4–6. As to coal lease concentration among large oil companies, see ibid., 9–11.

10. The quotes from both the General Accounting Office and the Council for Economic Priorities are found at Canon and Haley, *Leased and Lost,* 22.

11. Details of the moratoriums are found ibid., 24; and Sally Jacobsen, "The Great Montana Coal Rush," *Bulletin of the Atomic Scientists* 29, no. 4 (April 1973): 41. As to Interior's decision to lift the moratorium and impose new policies and procedures, see Thomas Kleppe, "Press Release: New Federal Coal Leasing Policy to Be Implemented under Controlled Conditions" (Department of the Interior, January 26, 1976), series 6: NCAI Committees and Special Issues, box 234, "Coal Regs. [II]," National Congress of American Indians Collection, National Museum of American Indians Archive Center, Suitland, MD (hereafter NCAI Collection).

12. Thomas Clarkin, *Federal Indian Policy in the Kennedy and Johnson Administrations, 1961–1969* (Albuquerque: University of New Mexico Press, 2001), 2–3; and Harvard Project on American Indian Economic Development, *The State of the Native Nations: Conditions under U.S. Policies of Self-Determination* (New York: Oxford University Press, 2008), 114–15. American Indian income levels are taken from Alan Sorkin, "Trends in Employment and Earnings of American Indians," in *Toward Economic Development for Native American Communities: A Compendium of Papers Submitted to the Subcommittee on Economy in Government of the Joint Economic Committee, Congress of the United States* (Washington, DC: Government Printing Office, 1969), 107, 109, 111, and 114–15. Educational statistics can be found at Margaret Connell Szasz, *Education and the American Indian: The Road to Self-Determination* (Albuquerque: University of New Mexico, 1999), 134. Mortality rates are located in Helen Johnson, "American Indians in Rural

Poverty," in *Toward Economic Development for Native American Communities,* 21–22. Some experts placed the life expectancy rate for reservation Indians even lower, at an astonishing forty-two years. House Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs, *A Review of the Indian Health Program: Hearing Before the House Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs,* 88th Cong., 1st sess., 1945, 21.

13. The BIA's assessment of tribal coal possessions is found at Federal Trade Commission, *Staff Report on Mineral Leasing on Indian Lands,* 6. The Geological Survey's estimate is found at Comptroller General of the United States, *Indian Natural Resources: Part 2, Coal, Oil, and Gas: Better Management Can Improve Development and Increase Indian Income and Employment: Report to the Senate Committee on Interior and Insular Affairs* (Washington DC: Government Printing Office, March 31, 1976), 2. Tribal assessments can be found in Joseph Jorgensen, ed., *Native Americans and Energy Development II* (Boston: Anthropology Resource Center and Seventh Generation Fund, 1984), 6; and Joseph Jorgensen, ed., *Native Americans and Energy Development* (Cambridge, MA: Anthropology Resource Center, 1978), 6.

14. Oil, gas, and uranium figures can be found in Comptroller General of the United States, *Indian Natural Resources: Part 2, Coal, Oil, and Gas,* 1–2; Federal Trade Commission, *Staff Report on Mineral Leasing on Indian Lands,* 8; and Marjane Ambler, *Breaking the Iron Bonds: Indian Control of Energy Development* (Lawrence: University Press of Kansas, 1990), 94, n. 8. The Harris quote is found in Ambler, *Breaking the Iron Bonds,* 94.

15. American Indian Policy Review Commission, *American Indian Policy Review Commission Final Report Submitted to Congress May 17, 1977,* vol. 1 (Washington, DC: Government Printing Office, 1977), 7.

16. For the Navajo's and Hopi's long knowledge of their energy minerals and how such knowledge influenced the formation of their tribal governments, see Peter Iverson, *Diné: A History of the Navajos* (Albuquerque: University of New Mexico Press, 2002), 133–36; Lawrence C Kelly, *The Navajo Indians and Federal Indian Policy, 1900–1935* (Tucson: University of Arizona Press, 1968); Kathleen P. Chamberlain, *Under Sacred Ground: A History of Navajo Oil, 1922–1982* (Albuquerque: University of New Mexico, 2009); and Charles F Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (New York: Island Press, 2005), 284–87. As to the rapid growth of the American West after World War II, see Lisa McGirr, *Suburban Warriors: The Origins of the New American Right* (Princeton: Princeton University Press, 2001), esp. 25–29. For World War II and the effect of the Cold War on the American West generally, see Gerald D. Nash, *The American West Transformed: The Impact of the Second World War* (Bloomington: Indiana University Press, 1985); and Gerald D. Nash, *World War II and the West: Reshaping the Economy* (Lincoln: University of Nebraska Press, 1990).

17. The numbers on postwar energy demand in the American Southwest come from Brian Morton, "Coal Leasing in the Fourth World: Hopi and Navajo Coal Leasing, 1954–1977" (PhD diss., University of California, Berkeley, 1985), 49. Alexander's quote is found in Alvin M. Josephy, Jr., "The Murder of the Southwest," *Audubon,* July 1971, 54.

18. Peter Iverson covers Navajo oil and uranium mining in *The Navajo Nation* (Westport, CT: Greenwood Press, 1981), 77–80; and Iverson, *Diné,* 220. Benally's quote is found at Iverson, *Diné,* 219. For uranium mining impacts to the Navajo, see also Judy Pasternak, *Yellow Dirt: An American Story of a Poisoned Land and a People Betrayed* (New York: Free Press, 2010); Doug Brugge, Timothy Benally, and Esther Yazzie-Lewis, *The Navajo People and Uranium Mining* (Albuquerque: University of New Mexico Press, 2007); Peter Eichstaedt, *If You Poison Us: Uranium and Native Americans* (Santa Fe: Red Crane Books, 1994); and Ward Churchill and Winona LaDuke, "Native America: The Economics of Radioactive Colonization," in *Review of Radical Political Economics* 15 (Fall 1983): 9–19.

19. Jones's 1956 quote is found in Morton, "Coal Leasing in the Fourth World," 189. The 1959 quote is at Peter Iverson and Monty Roessel, eds., *For Our Navajo People: Diné Letters, Speeches and Petitions, 1900–1960* (Albuquerque: University of New Mexico Press, 2002), 253.

20. Todd Andrew Needham, "Power Lines: Urban Space, Energy Development and the Making of the Modern Southwest" (PhD diss., University of Michigan, 2006), 145–46.

21. Andrew Needham and Allen Dieterich-Ward, "Beyond the Metropolis: Metropolitan Growth and Regional Transformation in Postwar America," *Journal of Urban History* 35, no. 7 (2009): 950–51. For background on the Four Corners Plant and the Navajo Mine, see Iverson, *Navajo Nation,* 79–80; Morton, "Coal Leasing in the Fourth World," 7–8; and Josephy, "Murder of the Southwest," 55. To be clear, Utah International obtained its coal mining lease prior to entering an agreement to supply coal to the Four Corners Plant. As Andrew Needham demonstrates, however, from at least 1957 onwards, the power plant intended to use Navajo coal as its fuel source. Needham, "Power Lines," 219–20.

22. Information on WEST's Grand Plan is provided in Josephy, "Murder of the Southwest," 62–64; and Charles F. Wilkinson, *Fire on the Plateau: Conflict and Endurance in the American Southwest* (Washington, DC: Island Press, 1999), 220–22. The WEST official's quote is found in Wilkinson, *Fire on the Plateau,* 212. While Wilkinson does not provide a source for this quote, the same statistics on the size of this regional project appear in other contemporary accounts, e.g., Josephy, "Murder of the Southwest," 61; and "Power: WESTward Ho!," *Time* (October 2, 1964).

23. The decision to combine private and federal systems is covered in Needham, "Power Lines," 245–56. Needham also explains in great detail the environmental opposition to more federal dams in the Southwest and thus Udall's move to interconnect federal hydroelectric and irrigation systems with the WEST network. Ibid., chapter 7. Udall's first quote comes from John Redhouse, *Geopolitics of the Navajo Hopi Land Dispute* (Albuquerque: Redhouse/Wright Prod., 1985), 16 (quoting Suzanne Gordon, *Black Mesa: The Angel of Death* (New York: John Day, 1973)). His second quote is at "Udall Pledges Cooperation with Utilities: Prophecies Great Future," *Arizona Republic,* June 24, 1965.

24. Morton, "Coal Leasing in the Fourth World," 7–12.

25. Ibid., chapter 5. Morton blames the suboptimal leases on an overriding federal policy to develop the nation's coal at all cost. I question whether he confuses

policy goals with executive agency actions, as a close reading of his analysis reveals that federal agents simply failed to uphold the intent of mineral leasing legislation, which was to thoughtfully and systematically develop the nation's resources so as to avoid waste, prevent monopolies, and regulate mining in the public interest. For Morton, this failure to perform indicates that the 1920 Mineral Leasing Act and the 1938 Indian Mineral Leasing Act did not substantially alter nineteenth-century policies that encouraged, and failed to regulate, private exploitation of public and Indian resources. My view is different, as these Progressive reforms were intended to curtail many of the excesses of Gilded Age mining, but the federal agencies tasked with carrying out these directives simply were not provided the tools and resources for doing so. Still, we both arrive at the same conclusion: that the federal regime failed to efficiently develop western resources for the good of public and Indian owners. See Morton, "Coal Leasing in the Fourth World," chapter 7.

26. Lynn A. Robbins, "Energy Development and the Navajo Nation," in Jorgensen, *Native Americans and Energy Development,* 43. Smith's quote is found in Josephy, "Murder of the Southwest," 64.

27. Josephy, "Murder of the Southwest," 67.

28. Lynn A. Robbins, "Energy Development and the Navajo Nation," in Jorgensen, *Native Americans and Energy Development,* 43.

29. Josephy, "Murder of the Southwest," 64; Federal Trade Commission, *Staff Report on Mineral Leasing on Indian Lands,* 22–23.

30. For detailed accounts of Hopi villagers' struggle to prevent Black Mesa mining, see Wilkinson, *Fire on the Plateau;* Josephy, "Murder of the Southwest," 64–67; and Richard O. Clemmer, "Black Mesa and the Hopi," in Jorgensen, *Native Americans and Energy Development.* At the time the Black Mesa lease was issued, only six of the eighteen Hopi Tribal Council slots were filled validly. Josephy, "Murder of the Southwest," 66; Jorgensen, *Native Americans and Energy Development,* 26–27. Alvin Josephy's quote is found at Josephy, "Murder of the Southwest," 66. Charles Wilkinson uncovered John Boyden's clear conflict of interest. See Wilkinson, *Fire on the Plateau,* 169–71. The quote from the Hopi leader is found in Clemmer, "Black Mesa and the Hopi," in Jorgensen, *Native Americans and Energy Development,* 30.

31. Comptroller General of the United States, *Indian Natural Resources,* 11. Federal Trade Commission, *Staff Report on Mineral Leasing on Indian Lands,* 21 and 95.

32. Redhouse, *Geopolitics of the Navajo Hopi Land Dispute,* 16. The Peabody permit revoked by the tribal council was designed to provide coal to the proposed Mohave Generating Station, owned by the WEST-affiliated Southern California Edison Company.

33. Redhouse, *Geopolitics of the Navajo Hopi Land Dispute,* 16–17. Udall's quote is found in "News about Navajo Country," *Navajo Times,* July 29, 1965 (quoted in Redhouse, *Geopolitics of the Navajo Hopi Land Dispute,* 16). Littell's first quote comes from "Norman M. Littell Makes Statement," *Navajo Times,* November 18, 1965. The second quote is found in "Norman M. Littell, General Counsel for the Navajo Tribe, Makes Statement on Conflicting Claims of Navajo and Hopi Tribes," *Navajo Times,* January 6, 1966 (both are quoted in Redhouse, *Geopolitics of the Navajo Hopi Land Dispute,* 17).

34. Iverson, *Navajo Nation,* 105.

35. For environmental opposition to Grand Canyon dams and thus need to construct the Navajo Generating Station, see Needham, "Power Lines," chapter 7.

36. Wilkinson, *Blood Struggle,* 303–4; Josephy, "Murder of the Southwest," 62–64; and Redhouse, *Geopolitics of the Navajo Hopi Land Dispute,* 18–22. In 1948, the states of Wyoming, Colorado, Utah, New Mexico, and Arizona signed the Colorado River Compact to allocate water rights to this valuable western water source. Arizona received 50,000 acre-feet, but no provision was made for Navajo rights even though the majority of state land adjoining the river was on the reservation. Although these specific Navajo water rights had not been determined, the 1908 Supreme Court *Winters v. United States* decision held that the creation of Indian reservations implied a reserved right to the water flowing through or adjacent to them in order to fulfill the purpose of the reservation system, which was to provide a self-sufficient homeland to transform Indians from "wild" hunters and gatherers to "civilized" agricultural and pastoral people. 207 U.S. 564 (1908); and Cohen, *Federal Indian Law,* § 19.02 (2005). Under the *Winters* doctrine, the Navajo thus had a strong legal claim to a majority of Arizona's allocated Colorado River water. The deal orchestrated by the Department of the Interior and WEST, however, required the Navajo to give up this legal claim to 34,100 acre-feet of water, plus an additional 3,000 acre-feet for the town of Page, Arizona, where the Navajo Generating Station would be built.

37. Josephy's quote is found at Josephy, "Murder of the Southwest," 64. For more on the unfairness of the deal to supply water and coal to the Navajo Generating Station, see Philip Reno, "High, Dry, and Penniless," *The Nation* (March 29, 1975), and Wilkinson, *Fire on the Plateau,* 212–23. Josephy's presidential report, commissioned by President Nixon's chief of staff Bob Haldeman, is found at "The American Indian and the Bureau of Indian Affairs: A Study with Recommendations, February 11,1969," in *Red Power: The American Indians Fight for Freedom,* ed. Alvin Josephy, Jr. (New York: McGraw-Hill, 1971). As George Pierre Castile shows, Haldeman's memo requesting this report conveyed Nixon's desire to "show more heart, and that we care about people, and [Nixon] thinks the Indian problem is a good area for us to work in." Castile, *To Show Heart; Thomas Clarkin, Federal Indian Policy in the Kennedy and Johnson Administrations, 1961–1969* (Albuquerque: University of New Mexico Press, 2001), 76.

38. For the Navajo's Committee to Save Black Mesa, see Josephy, "Murder of the Southwest," 64. The quote from Hopi elders is found at Clemmer, "Black Mesa and the Hopi," in Jorgensen, *Native Americans and Energy Development,* 29. Clemmer's assessment of the Senate hearings is at Clemmer, "Black Mesa and the Hopi," in Jorgensen, *Native Americans and Energy Development,* 30.

39. For discussions on the rampant news coverage of Navajo and Hopi coal development, see Needham, "Power Lines," 312; and Clemmer, "Black Mesa and the Hopi," in Jorgensen, *Native Americans and Energy Development,* 28. The *New York Times* quote is found at Stan Steiner, "The Navajo vs. the Bulldozer," *New York Times,* March 20, 1971.

40. For Peter MacDonald's efforts to tap into rising nationalist sentiment among younger Navajo and his actions to control, not suspend, energy development, see Needham, "Power Lines," 309–39; and Andrew Needham, "'A Piece of the

Action': Navajo Nationalism, Energy Development, and Metropolitan Inequality," in Sheri L. Smith and Brian Frehner, *Indians and Energy: Exploitation and Opportunity in the American Southwest* (Santa Fe: School for Advanced Research Press, 2010), 210–14. The anticolonial quote comes from "Candidates for Chairman," *Navajo Times,* October 19, 1970, and the quote about reclaiming Navajo control of their resources is mentioned in Josephy, "Murder of the Southwest," 64.

41. Andrew Needham is especially helpful in understanding MacDonald's new approach to reservation development. As he explains, "By the time the tribe began questioning the electrical development on their land, most of the projects needed to generate electricity—strip mines, railroads, slurry pipes, power plants, and transmission lines—were already in place. As fixed capital, this geography resisted change imposed from the outside, leading Navajos to pursue regulatory instead of transformative change." Needham, "Power Lines," 261.

CHAPTER 3. "THE BEST SITUATION IN THEIR HISTORY"

1. Federal Trade Commission, *Staff Report on Mineral Leasing on Indian Lands* (Washington, DC: Federal Trade Commission, 1975), 41–43.

2. Ibid., 5; and James S. Cannon and Mary Jean Haley, *Leased and Lost: A Study of Public and Indian Coal Leasing in the West* (New York: Council on Economic Priorities, 1974), 31. To reiterate, these lease acreages represented only a tiny fraction of Indian lands actually opened to energy companies because the prospecting permits that led to leases gave mining firms access to much larger areas of the reservation to drill and explore. Once locating particularly desirable deposits, the coal companies then held exclusive rights to convert the large prospecting permit into a smaller lease, which authorized the actual removal of coal. As we will see in chapters 4 and 5, for American Indians, the presence of outside energy developers scouring their reservations for precious minerals was often as disturbing as the actual mining activities.

3. The lease royalty figures come from Cannon and Haley, *Leased and Lost,* 4; and Federal Trade Commission, *Staff Report on Mineral Leasing on Indian Lands,* 83–84. The Montana coal excise tax is discussed at K. Ross Toole, *The Rape of the Great Plains: Northwest America, Cattle and Coal* (Boston: Little, Brown 1976), 62–64. Ultimately, the Ninth Circuit Court of Appeals found Montana's taxation of tribal mineral revenues to be an unlawful infringement on tribal sovereignty. *Crow Tribe v. Montana,* 819 F.2d 895, 903 (9th Cir. 1987). The Supreme Court later clarified, however, that Montana's excise tax was unlawful not because states lacked the authority to tax non-Indian development of reservation resources but because Montana's tax was "extraordinarily high" and unfairly discriminated against the tribe's ability to market their coal. *Cotton Petroleum Corp. v. New Mexico,* 490 U.S. 163, 186–87, n. 17 (1989); for further clarification see also *Montana v. Crow Tribe,* 523 U.S. 696, 715 (1998) ("Montana, *Cotton Petroleum* thus indicates, had the power to tax Crow coal, but not at an exorbitant rate."). The Supreme Court thus left open the possibility of states imposing reasonable taxes on non-Indian operators extracting minerals from Indian reservations.

4. Charles P. Corke to William G. Lavell, November 3, 1966, Central Classified Files, 1958–75, Northern Cheyenne, decimal #332, box 21, RG 75, National Archives, Washington, DC; F. F. DuBray, Realty Officer to Realty Files, July 14, 1966 (found in Ziontz, Pirtle, Moresset, and Ernstoff, "Petition of the Northern Cheyenne Indian Tribe to Rogers C. B. Morton, Volume II: Appendix," January 7, 1974, A-9, K. Ross Toole Papers, series V, box 28, folder 2, Mansfield Library, University of Montana [hereafter Ziontz et al., "Northern Cheyenne Petition"]).

5. John R. White to Area Office Realty Files, May 9, 1973, 3, K. Ross Toole Papers, series V, box 28, folder 3, Mansfield Library, University of Montana; John Woodenlegs, "Statement Presented by John Woodenlegs, President, Northern Cheyenne to Conference called by Robert L. Bennett," October 5, 1966, Lee Metcalf Papers, General Correspondence, Collection No. 172, box 237, folder 237–1, Montana Historical Society, Digital Library and Archives.

6. Ziontz et al., "Northern Cheyenne Petition," A-11 to A-14. The first document that directly discusses Peabody's takeover of Sentry's interests is a May 18, 1967, letter from the coal company's attorneys to the BIA's Northern Cheyenne office. But several other documents make it clear that discussions for this takeover were ongoing between Peabody and the Northern Cheyenne since the end of 1966. For instance, on December 17, 1966, Tribal President John Woodenlegs told President Lyndon Johnson's National Advisory Committee on Rural Poverty that his tribe had recently "advertise[d] for coal prospecting, resulting in a very hopeful negotiation with the largest coal mining company in America." Similarly, early in 1967, Peabody Vice President Richard Miller wrote Senator Lee Metcalf of Montana to thank him and fellow Montana Senator Mike Mansfield, for their "offer to assist us with federal departments and agencies that may be helpful in the development of [Northern Cheyenne coal]." Metcalf's subsequent correspondence makes clear that the parties involved understood that Peabody's goals included the construction of a power plant on or near the reservation. John Woodenlegs, "Statement Presented to President's Johnson's National Advisory Committee on Rural Poverty," December 17, 1966, Lee Metcalf Papers, General Correspondence, Collection No. 172, box 237, folder 237–1, Montana Historical Society, Digital Library and Archives; Richard Miller to Lee Metcalf, February 15, 1967, Lee Metcalf Papers, General Correspondence, Collection No. 172, box 237, folder 237–1, Montana Historical Society, Digital Library and Archives; Lee Metcalf to Oakley Coffee, February 25, 1967, Lee Metcalf Papers, General Correspondence, Collection No. 172, box 237, folder 237–1, Montana Historical Society, Digital Library and Archives. The Northern Cheyenne's approval of the permit expansion is found at John Woodenlegs, "Resolution No. 70 (67)," October 16, 1967, Central Classified Files, 1958–75, Northern Cheyenne, decimal #332, box 21, RG 75, National Archives, Washington, DC. John White's quote is found in Ziontz et al., "Northern Cheyenne Petition," A-20.

7. James Canan to Commissioner of Indian Affairs, November 9, 1967, Central Classified Files, 1958–75, Northern Cheyenne, decimal #332, box 21, RG 75, National Archives, Washington, DC; Charles Corke to James Canan, November 16, 1967, Central Classified Files, 1958–75, Northern Cheyenne, decimal #332,

box 21, RG 75, National Archives, Washington, DC; A. F. Czarnowsky, memo, November 16, 1967 (found in Ziontz et al., "Northern Cheyenne Petition," A-21).

8. John R. White to Area Office Realty Files, 3. For a thorough description of the Peabody extension negotiations, see Ziontz et al., "Northern Cheyenne Petition," A-14 to A-23.

9. For the tribal council taking the initiative to offer more land for mining and Rowland's leadership in opening the entire reservation, see John R. White to Area Office Realty Files, 4. ("It is my belief that no one in the Bureau up to that point [of the Northern Cheyenne resolution] had suggested that another coal sale be held.") The actual tribal resolution authorizing the reservation-wide lease sale is found at John Woodenlegs, "Resolution No. 37 (68)," April 22, 1968, Central Classified Files, 1958–75, Northern Cheyenne, decimal #332, box 21, RG 75, National Archives, Washington, DC.

10. Reinholt Brust, memo, May 6, 1968 (found in Ziontz et al., "Northern Cheyenne Petition," A-55, n. 165); A. F. Czarnowsky, handwritten note, April 30, 1968 (found ibid., A-57).

11. Ziontz et al., "Northern Cheyenne Petition," A-63 to A-64. Rowland's quote is found in Toole, *Rape of the Great Plains,* 52.

12. A. F. Czarnowsky to Superintendent, Northern Cheyenne Agency, August 1, 1969 (found in Ziontz et al., "Northern Cheyenne Petition," A-80).

13. As to Peabody pressure, see "Northern Cheyenne Highlights, Calendar Year 1969," 1–2; and Ziontz et al., "Northern Cheyenne Petition," A-30 to A-31, A-82. At the same meeting where the tribal council considered Peabody's second bid, company executive J. H. Hobbs announced that his firm planned to exercise the lease option on its first permit and extract coal, but only if the tribe allowed Peabody to construct a railroad line to the coal fields. No doubt the implied assertion was that Peabody's willingness to continue the entire project also hung on the council approving Peabody's second bid. Tribal council actions to accept Peabody's second bid, issue a lease on the first coal permit, and negotiate for transportation infrastructure across the reservation can be found at Northern Cheyenne Tribal Resolution No. 20 (70), August 18, 1969 (found in Ziontz et al., "Northern Cheyenne Petition," A-81); Northern Cheyenne Tribal Council Resolution No. 10 (71), July 20, 1970 (found in Ziontz et al., "Northern Cheyenne Petition," A-35); and Northern Cheyenne Tribal Council Resolution No. 24 (70), August 31, 1970 (found in Ziontz et al., "Northern Cheyenne Petition," A-43).

14. W. H. Oestreicher to Allen Rowland, June 1, 1970, Central Classified Files, 1958–75, Northern Cheyenne, decimal #332, box 21, RG 75, National Archives, Washington, DC. For tribal council efforts to renegotiate royalty terms, see Ziontz et al., "Northern Cheyenne Petition," A-38 to A-44. The original August 1970 deal terms included minimum royalty payments that would commence in the third year of the contract to insure Peabody actively pursued production rather than simply sitting on the coal deposits until the market improved. The tribal council successfully negotiated an increase in these minimum royalty terms and secured a promise from Peabody to start paying them in the contract's first, not third, year. The BIA official assisting the tribe in these negotiations was Donald Maynard, and his quote regarding immediate tribal needs is found at Donald Maynard to Acting

Director, Economic Development, September 28, 1970, Central Classified Files, 1958–75, Northern Cheyenne, decimal #332, box 21, RG 75, National Archives, Washington, DC. There were also numerous other incidents where the Northern Cheyenne pushed back against Peabody and demanded amendments to their existing contracts, with the BIA's blessing. For instance, when Peabody's second permit came up for renewal in fall 1971 and it became clear the coal company needed Cheyenne water to fully develop the coal resources, the two sides hammered out an agreement where the tribe promised certain water rights in exchange for more advanced royalties. Ziontz et al., "Northern Cheyenne Petition," A-50 to A-55, A-84 to A-87. The new BIA superintendent Alonzo Spang—himself, an enrolled member of the tribe—encouraged the tribe's hard negotiating tactics, writing to President Rowland, "The Tribal Council has every right and power to request that leases be re-negotiated. Our [BIA] action would be required once negotiations are complete. We are in full agreement with the Council's request to have Peabody Coal Company become involved in a re-negotiation of the cited leases." Alonzo T. Spang to Allen Rowland, November 26, 1971 (found in Ziontz et al., "Northern Cheyenne Petition," A-85).

15. Maurice W. Babby to A. F. Czarnowsky, February 3, 1971 (found in Ziontz et al., "Northern Cheyenne Petition," A-89 to A-90). As to interest generated for Northern Cheyenne coal, see Allen Rowland to John R. White, October 1, 1970 (found in Ziontz et al., "Northern Cheyenne Petition," A-103).

16. Allen Rowland to John R. White, October 1, 1970 (found in Ziontz et al., "Northern Cheyenne Petition," A-103); Allen Rowland to John R. White, December 4, 1970 (found in Ziontz et al., "Northern Cheyenne Petition," A-105).

17. Ziontz et al., "Northern Cheyenne Petition," A-111 to A-113, A-121 to A-123.

18. Compare Regional Mining Supervisor to Superintendent, Northern Cheyenne Agency, April 28, 1971 (found in Ziontz et al., "Northern Cheyenne Petition," A-123) with John J. V. Pereau to Allen Rowland, April 30, 1971; and Office of Area Director to Superintendent, Northern Cheyenne Agency, May 18, 1971 (both found in Ziontz et al., "Northern Cheyenne Petition," A-123 to A-124). Final contract figures come from Rogers Morton, "Decision on Northern Cheyenne Petition," June 4, 1974, 2, Eloise Whitebear Pease Collection, 10:31, Little Bighorn College Archives, Crow Agency, MT; Ziontz et al., "Northern Cheyenne Petition," A-124 to A-127, A-136; and Alvin M. Josephy, Jr., "Agony of the Northern Plains," *Audubon* 75, no. 4 (July 1973): 92. These numbers include the previous Peabody permits.

19. Ziontz et al., "Northern Cheyenne Petition," A-126.

20. Ibid., A-137 to A-139. For further details of Consolidation's proposal, see chapter 1, above, notes 1–2 and accompanying text. Toole's quote is found at Toole, *Rape of the Great Plains,* 49.

CHAPTER 4. "THE MOST IMPORTANT TRIBE IN AMERICA"

1. U.S. Department of the Interior, *North Central Power Study* (Billings, MT: Bureau of Reclamation, 1971), 5; see also K. Ross Toole, *The Rape of the Great*

Plains: Northwest America, Cattle and Coal (Boston: Little, Brown, 1976), 19–20; and Marjane Ambler, *Breaking the Iron Bonds: Indian Control of Energy Development* (Lawrence: University Press of Kansas, 1990), 67–68. As for analyses of the projects' potential impacts, see Alvin M. Josephy, Jr., "Agony of the Northern Plains," *Audubon* 75, no. 4 (July 1973); Alvin M. Josephy, Jr., "Plundered West: Coal Is the Prize," *Washington Post,* August 26, 1973; and Lynton R. Hayes, *Energy, Economic Growth, and Regionalism in the West* (Albuquerque: University of New Mexico Press, 1980), 24. The National Academy of Sciences first articulated the concept of a "national sacrifice area" to meet the nation's energy needs in their 1974 report, *Rehabilitation Potential of Western Coal Lands*. Examining the coal industry's recent trend to locate mines on public and tribal lands in the western United States, this report noted vast difficulties in reclaiming strip mines in arid regions. Concluding that restoration of such lands to their previous ecological state "is not possible anywhere," the report suggested bluntly that the United States declare certain regions "National Sacrifice Areas," where reclamation would not even be attempted. James S. Cannon and Mary Jean Haley, *Leased and Lost: A Study of Public and Indian Coal Leasing in the West* (New York: Council on Economic Priorities, 1974), 7–8. Two years later, K. Ross Toole first applied the label of "national sacrifice area" to the Northern Plains. Toole, *Rape of the Great Plains,* 4.

2. Toole, *Rape of the Great Plains,* 52.

3. The letter is quoted in both Ambler, *Breaking the Iron Bonds,* 65; and Josephy, "Agony of the Northern Plains," 96.

4. This portion of the letter is quoted at Ziontz, Pirtle, Moresset, and Ernstoff, "Petition of the Northern Cheyenne Indian Tribe to Rogers C. B. Morton, Volume II: Appendix," January 7, 1974, A-144 to A-146, K. Ross Toole Papers, series V, box 28, folder 2, Mansfield Library, University of Montana (hereafter Ziontz et al., "Northern Cheyenne Petition").

5. Bert W. Kronmiller to Don Maynard, July 26, 1972 (found in Ziontz et al., "Northern Cheyenne Petition," A-126).

6. Interview with William L. Bryan, Jr., June 13, 2011, Bozeman, MT, in author's possession; and William L. Bryan, Jr., "Report on the July 1972 Activities of William L. Bryan, Jr., Northern Rocky Mountain Environmental Advocate," July 1972, in author's possession. Bryan's dissertation is found at William LaFrentz Bryan, Jr., "An Identification and Analysis of Power-Coercive Change Strategies and Techniques Utilized by Selected Environmental Change Agents" (PhD diss., University of Michigan, 1971).

7. Toole, *Rape of the Great Plains,* 52.

8. Bryan's first quote is from William L. Bryan, Jr., "The Northern Rocky Mountain Environmental Advocate," September 1, 1972, 3, in author's possession. His second quote and Gordon's warning come from William L. Bryan, Jr., "Report on the August 1972 Activities of William L. Bryan, Jr., Northern Rocky Mountain Environmental Advocate," August 1972, 4, in author's possession.

9. Interview with William L. Bryan, Jr., August 15, 2008, Bozeman, MT, in author's possession; William L. Bryan, Jr., "September Report on the Activities of William L. Bryan, Jr., Northern Rocky Mountain Environmental Advocate," September 1972, 1, in author's possession.

10. Interview with Marie Brady Sanchez, August 24, 2009, Lame Deer, MT, in author's possession; National Park Service, "Sand Creek Massacre Project, Volume 1: Site Location Study," 2000, 268–69, home.nps.gov/sand/parkmgmt/upload/site-location-study_volume-1-2.pdf (accessed December 30, 2014). Allotment came late to the Northern Cheyenne Reservation, and as a result the tribe retained a sizeable portion of their reservation in communal ownership. The 1926 Northern Cheyenne Allotment Act authorized allotment, but tribal rolls were not completed and the reservation was not fully surveyed until the early 1930s. At that time, there were only 1,457 qualified allottees, meaning 234,732.56 acres were apportioned to these individuals in lots of 160 acres or less, leaving 209,791.90 acres in tribal ownership. The 1934 Indian Reorganization Act ended the practice of allotment, and subsequent opening of "surplus" land to white settlers, before this additional land could be distributed. Over time, the tribal government reacquired 46,781 allotted acres, giving the tribe 62 percent ownership by the 1970s. Of the remaining 38 percent, much of it had not been granted to the allottees in outright fee, thus the BIA retained trust oversight over this allotted land. See Testimony of Bert W. Kronmiller, Tribal Attorney, "To Grant Minerals, Including Oil, Gas, and Other Natural Deposits, on Certain Lands in the Northern Cheyenne Indian Reservation, Montana, to Certain Indians," Hearings Before the House Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, March 28, 1968, 11–12, folder "Northern Cheyenne 14," box 257, no. 1 (reel 167), Native America: A Primary Record, series 2: Assn. on American Indian Affairs Archives, General and Tribal Files, 1851–1983, microfilm collection published by Primary Source Media, filmed from the holdings of the Seeley G. Mudd Library, Princeton University (hereafter Assn. on American Indian Affairs Archives); Petition of Writ of Certiorari at 8, n. 5, *Northern Cheyenne v. Hollowbreast,* 425 U.S. 649 (1976) (No. 75–145).

11. Interview with Marie Brady Sanchez, August 24, 2009, Lame Deer, MT, in author's possession.

12. For a concise discussion of federal funding increases for Indian programs during the 1960s, including Indian higher education, and its contribution to increased Indian activism, see Joane Nagel, *American Indian Ethnic Renewal: Red Power and the Resurgence of Identity and Culture* (New York: Oxford University Press, 1996), 122–30. Nagel also provides an apt description of AIM's strategic shift, ibid., 166–68. Marie Sanchez's meeting with Russell Means is detailed in Michael Parfit, *Last Stand at Rosebud Creek: Coal, Power, and People* (New York: E. P. Dutton, 1980), 85–86.

13. Bryan, "September Report on the Activities of William L. Bryan, Jr.," 2.

14. Parfit, *Last Stand at Rosebud Creek,* chapters 20–21 and 23–24.

15. Josephy, "Agony of the Northern Plains"; David Earley, "Group Forms to Battle Strip Mining," *Billings Gazette,* April 27, 1972. Charter's quote is found at Calvin Kentfield, "New Showdown in the West," *New York Times,* January 28, 1973.

16. Earley, "Group Forms to Battle Strip Mining"; see also Northern Plains Resource Council website, "History," http://www.northernplains.org/about/history. McRae's quote is at Parfit, *Last Stand at Rosebud Creek,* 96.

17. Denise Curran, "Voice of Land Speaks Up," *Billings Gazette,* November 16, 1972.

18. Northern Plains Resource Council, "Newsletter," Billings, MT, June–July 1972, in author's possession; Northern Plains Resource Council, "Newsletter," Billings, MT, October–November 1972, in author's possession; Curran, "Voice of Land Speaks Up"; Parfit, *Last Stand at Rosebud Creek,* 91; Bryan, "September Report on the Activities of William L. Bryan, Jr."; Glenn Fowler, "Harry M. Caudill, 68, Who Told of Appalachian Poverty," December 1, 1990, *New York Times.*

19. Northern Plains Resource Council, "Newsletter," Billings, MT, October–November 1972; Northern Plains Resource Council, "Newsletter," Billings, MT, December–January 1972, 1973; interview with William L. Bryan, Jr., June 13, 2011, Bozeman, MT, in author's possession; and William L. Bryan, Jr., "October Activities of William L. Bryan, Jr.," October 1972, in author's possession.

20. Mining firms with prospecting crews active on the Northern Cheyenne Reservation in fall 1972 included Peabody, Consolidation, Chevron, and AMAX, as well as local speculators Bruce Ennis and Norsworthy & Reger, Inc. As to damages caused by some of these companies, see Ziontz et al., "Northern Cheyenne Petition," A-131 to A-134 and A-143. For the actual formation of the NCLA, see Bryan, "October Activities of William L. Bryan, Jr.," 3.

21. Bill Bryan notes how the AIM caravan's arrival disrupted the first attempt to organize the NCLA. Bryan, Jr., "October Activities of William L. Bryan, Jr.," 2. Organized by several Indian activist groups but led by AIM, the Trail of Broken Treaties was part of AIM's transition away from focusing on the civil rights of urban Indians and toward a broader message of enforcing tribal treaty rights. Ward Churchill and James Vander Wall, *Agents of Repression: The FBI's Secret Wars against the Black Panther Party and the American Indian Movement* (Boston: South End Press, 1990), 121–22. For more on the Trail of Broken Treaties and AIM's leadership, see Vine Deloria, *Behind the Trail of Broken Treaties: An Indian Declaration of Independence* (New York: Dell Publishing, 1974); Paul Chaat Smith and Robert Allen Warrior, *Like a Hurricane: The Indian Movement from Alcatraz to Wounded Knee* (New York: New Press, 1996), part 2; and Charles F. Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (New York: Island Press, 2005), 139–43. For a history of the Red Power Movement that began before AIM's ascendance, see Bradley Shreve, *Red Power Rising: The National Indian Youth Council and the Origins of Native Activism* (Norman: University of Oklahoma Press, 2011).

22. Rising Sun's first quote and Bixby's response are found at Nagel, *American Indian Ethnic Renewal,* 169. For a discussion of generational differences between American Indians' reactions to the Trail of Broken Treaties, see ibid., at 136–37. Rising Sun's second quote is ibid., 41–42. For the Northern Cheyenne's condemnation of the BIA takeover, see Allen Rowland, "Northern Cheyenne Resolution No. 64 (73)," November 14, 1972, John Melcher Papers, series 1, box 115, folder 5, Mansfield Library, University of Montana. Two years after this condemnation, dozens of AIM members returned to the Northern Cheyenne Reservation after the organization's armed standoff with federal agents at Wounded Knee, South Dakota. AIM members declared that their mission was only to establish a legal aid center and

perhaps organize a Lame Deer chapter, but once again Cheyenne residents harassed the activists. This time, federal agents had to be called in to protect the peace. Jim Crane, "AIM to Aid in Opposing Coal Development," November 24, 1974 *Missoulian* (Missoula, MT); "AIM Organizing at Lame Deer," August 15, 1974, *Missoulian;* and "Most AIM Backers Leave Lame Deer," August 25, 1974, *Missoulian*. Interestingly, the visiting AIM activists camped at the home of Marie and Chuck Sanchez, who participated in the protest at Wounded Knee and then hosted Russell Means, Leonard Peltier, and about thirty other AIM members after the event. Marie Sanchez dismissed the publicity this second visit generated, explaining, "They [local reporters] just wanted to sell papers." In her recollection, AIM's presence on the reservation was a non-event and its contribution to the anti-coal cause minimal. Interview with Marie Brady Sanchez, August 24, 2009, Lame Deer, MT, in author's possession.

23. Results from the Northern Cheyenne Research Project and the tribal members' quotes are found at Jean Nordstrom et al., *The Northern Cheyenne Tribe and Energy Development in Southeastern Montana* (Lame Deer, MT: Northern Cheyenne Research Project, 1977), 174–75.

24. Ibid. Woodenlegs's statement is at "Proceedings of the Native American, Environmentalist, and Agriculturalist Workshop" (Northern Rockies Action Group, December 10, 1975), 14, in author's possession.

25. Tribal quotes regarding disruptions to the community are found at Nordstrom et al., *Northern Cheyenne Tribe and Energy Development,* 166, 164, and 161, respectively. For comparison sake, only 9 percent listed environmental impacts as coal mining's worst possible effect; another 7 percent feared most the loss of land and water that could be used for other industrial development. Rising Sun's and Sootkis's quotes come from George Wilson, "Indian Coal Fight Tests U.S. Policies," *Washington Post,* June 11, 1973.

26. For years, George Bird Grinnell's tome provided the primary account of the Northern Cheyenne's flight from Indian Territory back to Montana. *The Fighting Cheyennes* (New York: Scribner's, 1915), 383–411. Recently, James Leiker and Ramon Powers have supplied a much-needed update to this dramatic tale that includes recollections of the event and its contested meaning along the Great Plains. This work is especially instructive for understanding how the Northern Cheyenne's collective memory of this nineteenth-century ordeal serves to unite the tribe. *The Northern Cheyenne Exodus in History and Memory* (Norman: University of Oklahoma Press, 2011), esp. 183–195. Several other books relay the events as remembered by the participants. Edger Beecher Bronson, *Reminiscences of a Ranchman* (New York: McClure, 1908) 139–97; E. A. Brininstool, *Dull Knife: A Cheyenne Napoleon* (Hollywood: E. A. Brininstool, 1935); Thomas Marquis, trans., *Wooden Leg: A Warrior Who Fought Custer* (Lincoln: University of Nebraska Press, 1957), 321; and John Stands in Timber and Margot Liberty, *Cheyenne Memories,* (New Haven: Yale University Press, 1998), 232–37. Other secondary works dedicate substantial focus to the flight, including Stan Hoig, *Perilous Pursuit: The U.S. Cavalry and the Northern Cheyenne* (Boulder: University Press of Colorado, 2002); John H. Monnet, *Tell Them We Are Going Home: The Odyssey of the Northern Cheyennes* (Norman: University of Oklahoma Press, 2001); Orlan J. Svingen, *The*

Northern Cheyenne Indian Reservation, 1877–1900 (Niwot: University Press of Colorado, 1993), 19–24; Tom Weist, *A History of the Cheyenne People* (Billings, MT: Montana Council for Indian Education, 1977), 80–87; and Verne Dusenberry, "The Northern Cheyenne: All They Have Asked Is to Live in Montana," *Montana: The Magazine of Western History* 5 (Winter 1955): 28–30. For an alternative account arguing the Northern Cheyenne were awarded a reservation due to the tribe's selective adoption of settled agriculture, see James Allison, "Beyond the Violence: Indian Agriculture, White Removal, and the Unlikely Construction of the Northern Cheyenne Reservation, 1876–1900," *Great Plains Quarterly* 32, no. 2 (Spring 2012): 91–111.

27. Bill Parker's quote is found in "Proceedings of the Native American, Environmentalist, and Agriculturalist Workshop," 9–10. The tribe's comments opposing the Colstrip Power Plant are at Tom Scheuneman, "Statement of the Northern Cheyenne Tribe before the State of Montana Department of Natural Resources and Conservation," December 30, 1974, 3–4, Montana Energy Division Records, 1972–1990, record series 328, box 15, DNRC Public Hearings on Colstrip 3 and 4, Montana Historical Society, Digital Library and Archives (emphasis removed). Tribal comments related to air shed redesignation are at the Northern Cheyenne Research Project, "The Northern Cheyenne Air Quality Redesignation Request and Report," December 11, 1976, 3–10, in author's possession. Text on the tribe's official stationery is noted at Ambler, *Breaking the Iron Bonds,* 8. And finally, the last quote from the young tribal member comes from Nordstrom et al., *Northern Cheyenne Tribe and Energy Development in Southeastern Montana,* 174.

28. The text from Bill Bryan's pamphlet is found at Michael Wenninger, "$1 Billion Coal Plant Discussed," *Billings Gazette,* November 29, 1972; and William L. Bryan, Jr., "Northern Rocky Mountain Environmental Advocate, November Activities of William L. Bryan, Jr.," November 1972, 2, in author's possession. Bill Bryan provided the "Coal: Black Death" poster, and it is in the author's possession.

29. Unfortunately, Toole cites no sources for this meeting between Dahle and Crossland, and subsequent accounts simply cite Toole. Thus it is difficult to verify the meeting took place or assess its impact on tribal leaders. Toole, *Rape of the Great Plains,* 53–55; and Ambler, *Breaking the Iron Bonds,* 65. For the subsequent NCLA meetings and Rowland's and Spang's support, see Wenninger, "$1 Billion Coal Plant Discussed"; Michael Wenninger, "Cheyennes Eye Coal Proposal," *Billings Gazette,* November 30, 1972; Michael Wenninger, "Indians Mull Coal Referendum," *Billings Gazette,* December 1, 1972; and Bryan, "November Activities of William L. Bryan, Jr."

30. Attendees at this December 7 meeting are detailed in William L. Bryan, Jr., "Northern Rocky Mountain Environmental Advocate, December Activities of William L. Bryan, Jr.," December 1972, in author's possession; and Betty Clark to William Byler, December 1972, folder "Northern Cheyenne 16," box 257, no. 1 (reel 167), Native America: A Primary Record, series 2: Assn. on American Indian Affairs Archives, General and Tribal Files, 1851–1983. For NARF's founding and experience defending southwestern Indians, see Native American Rights Fund, *Announcements* 1, no. 1 (June 1972), 3–4 and 13. Brecher's personal involvement

with NARF is detailed in Michael Wenninger, "Northern Cheyenne to Fight Coal Complex," *Billings Gazette,* January 27, 1973.

31. Wenninger, "Northern Cheyenne to Fight Coal Complex."

32. For the suspension of drilling activities, see Ziontz et al., "Northern Cheyenne Petition," A-177. Rowland's and Dahle's quotes come from Wilson, "Indian Coal Fight Tests U.S. Policies." Gardner's quote is at Ben Franklin, "Indian Tribe in Montana Weighs Major Offer to Strip Mine Coal as Profitable but Perilous," *New York Times,* February 5, 1973.

33. As to Joseph Brecher's alienating style, see interview with William L. Bryan, Jr., June 13, 2011, Bozeman, MT, in author's possession. For tribal council efforts to draft tax and reclamation codes, see Franklin, "Indian Tribe in Montana Weighs Major Offer to Strip Mine Coal as Profitable but Perilous." The resolution canceling all existing coal deals is at Allen Rowland, "Resolution No. 132 (73): A Resolution of the Northern Cheyenne Tribal Council Relating to the Cancellation and Termination of All Existing Coal Permits and Leases on the Northern Cheyenne Reservation," March 5, 1973, Eloise Whitebear Pease Collection, 10:31, Little Bighorn College Archives, Crow Agency, MT.

34. To be clear, the Northern Cheyenne's initial grounds for terminating its leases rested on the BIA violating 25 C.F.R.§ 177.4, but once the tribe hired the Seattle law firm of Ziontz, Pirtle, Moresset, and Ernstoff, it greatly expanded its legal arguments. Filed on January 7, 1974, the official petition listed thirty-six violations of the law, each of which the tribe argued provided grounds to void the coal contracts. Steven Chestnutt, "Coal Development on the Northern Cheyenne Reservation," in Commission on Civil Rights, *Energy Resource Development: Implications for Women and Minorities in the Intermountain West* (Washington, DC: Government Printing Office, 1979), 165–71. Rowland's comparison of the Northern Cheyenne's situation to the Navajo and Hopi tribes is found in Allen Rowland to James Canan, March 9, 1973, 3, Lee Metcalf Papers, General Correspondence, Collection No. 172, box 219, folder 219–3, Montana Historical Society, Digital Library and Archives. Dahle's quote is in Nancy Cardwell, "Cheyenne's Last Stand?: Indians Fight New Battle in Montana, To Limit Coal Mining on Reservation," *Wall Street Journal,* September 10, 1975.

35. 25 C.F.R. § 177.4(a)(1) (1970); National Environmental Policy Act, Public Law 91–190, § 102, 83 Stat. 853, 854 (1970) (codified at 42 U.S.C. § 4332 (2006)). In 1972, the comptroller general failed to find documentation of the required "technical examinations" for any Indian mineral leases previously approved by the BIA. United States General Accounting Office, *Administration of Regulations for Surface Exploration, Mining, and Reclamation of Public and Indian Coal Lands* (Washington, DC: Government Printing Office, 1972), 13. In response, the BIA took the position that staff need not physically perform the technical examination as long as this requirement could be fulfilled by the "data available in the offices of the USGS and BIA plus the familiarity of the field offices employees with the land." John Crow to BIA Area Directors, November 17, 1972, Lee Metcalf Papers, General Correspondence, Collection No. 172, box 219, Montana Historical Society, Digital Library and Archives. Only after offering this post hoc rationale did the

Billings area office direct the Northern Cheyenne and Crow reservation superintendents to document how they fulfilled the technical examination requirements for leases and permits already issued. Maurice Babby to Superintendents, Crow and Northern Cheyenne Agencies, December 12, 1972, Lee Metcalf Papers, General Correspondence, Collection No. 172, box 219, folder 219–3, Montana Historical Society, Digital Library and Archives. K. Ross Toole argues this was "a blatant attempt, *ex post facto,* to doctor the files." Toole, *Rape of the Great Plains,* 59. For the Department of the Interior's position that NEPA did not apply to agency actions for Indian assets, see United States General Accounting Office, *Administration of Regulations for Surface Exploration, Mining, and Reclamation of Public and Indian Coal Lands;* and Harrison Loesch to John Dingell, November 12, 1971, folder "Natural Resources," box 147, no. 4 (reel 71), Native America: A Primary Record, series 2: Assn. on American Indian Affairs Archives, General and Tribal Files, 1851–1983. In 1975, the Ninth Circuit Court of Appeals rejected this argument, making clear NEPA applied to federal actions managing Indian resources. Further, although no federal court has determined whether compliance with the "technical examination" of 25 C.F.R. part 177 satisfies NEPA's procedural requirements for an environmental review of any major federal action, the Ninth Circuit held that BIA's compliance with NEPA's requirements renders the requirements of part 177 moot. *Davis v. Morton,* 469 F.2d 593 (10th Cir. 1972). Ambler's quote comes from Ambler, *Breaking the Iron Bonds,* 69.

36. Richard Nixon, "Special Message to Congress on Indian Affairs," July 8, 1970, The American Presidency Project, ed. Gerhard Peters and John T. Woolley, http://www.presidency.ucsb.edu/ws/index.php?pid=2573. For Nixon's message as just a continuation of the previous administrations' Indian policy, see Thomas Clarkin, *Federal Indian Policy in the Kennedy and Johnson Administrations, 1961–1969* (Albuquerque: University of New Mexico Press, 2001); and George Pierre Castile, *To Show Heart: Native American Self-Determination and Federal Indian Policy, 1960–1975* (Tucson: University of Arizona Press, 1998), chapters 1–3. In fact, Lyndon Johnson provided his own message to Congress two years earlier, which contained some of the same policy language: "I propose a new goal for our Indian programs: A goal that ends the old debate about 'termination' of Indian programs and stresses self-determination; a goal that erases old attitudes of paternalism and promotes partnership self-help." Lyndon B. Johnson, "Special Message to the Congress on the Problems of the American Indian: 'The Forgotten American,'" March 6, 1968, The American Presidency Project, ed. Gerhard Peters and John T. Woolley, http://www.presidency.ucsb.edu/ws/index.php?pid=28709#axzz1ckaZdTec.

37. Rogers Morton, "Decision on Northern Cheyenne Petition," June 4, 1974, Eloise Whitebear Pease Collection, 10:31, Little Bighorn College Archives, Crow Agency, MT. Morton actually denied most of the Northern Cheyenne's claims but did find that the BIA violated acreage limitations placed on the size of mineral leases and that the agency had not yet conducted the proper environmental analyses required by NEPA. On the original question of whether the BIA conducted the proper technical examination, Morton punted, requesting more information on agency actions to fulfill this requirement. The point, however, was moot since Morton already demanded a NEPA-style environmental analysis before mining could

commence. Rowland is quoted in John J. Fialka, "The Indians, the Royalties, and the BIA," *Civil Rights Digest* (Winter 1978): 29.

38. Ambler, *Breaking the Iron Bonds,* 69. For Northern Cheyenne meeting with Montana's congressional delegation, see Roger, "Memo on the Meeting on Northern Cheyenne Coal Lease," August 1, 1973, Lee Metcalf Papers, General Correspondence, Collection No. 172, box 218, folder 218–4, Montana Historical Society, Digital Library and Archives; Dorothy Tenenbaum, "Memo to File," September 7, 1973, Lee Metcalf Papers, General Correspondence, Collection No. 172, box 218, folder 218–4, Montana Historical Society, Digital Library and Archives; and Mike Mansfield and Lee Metcalf to Roy E. Huffman, September 12, 1973, Lee Metcalf Papers, General Correspondence, Collection No. 172, box 218, folder 218–4, Montana Historical Society, Digital Library and Archives. For tribal efforts to develop a mining enterprise business plan, see Alonzo Spang to Allen Rowland, August 28, 1973, 8NN-75-92-206, box 14, folder "Comprehensive Plan for the Northern Cheyenne Res.," National Archives, Denver; and Northern Cheyenne Tribal Council, "A Proposal to Develop a Preliminary Business Plan for the Development of Coal Reserves and Related Industry on Tribally Owned and Controlled Lands on the Northern Cheyenne Reservation," February 1974, Bradley H. Patterson Files, box 4, Northern Cheyenne-Coal, Gerald R. Ford Library, Ann Arbor, MI. The tribal council's tour of Peabody facilities is detailed in Fialka, "Indians, the Royalties, and the BIA," 22.

39. Northern Cheyenne Tribal Council, "A Proposal to Develop a Preliminary Business Plan for the Development of Coal Reserves and Related Industry on Tribally Owned and Controlled Lands on the Northern Cheyenne Reservation," 2.

CHAPTER 5. DETERMINING THE SELF

Epigraph. Washington Irving, *The Adventures of Captain Bonneville* (New York: John B. Alden, 1886), 138–39.

1. H. J. Armstrong to Commissioner of Indian Affairs, March 24, 1882, 6491, Letters Received—Office of Indian Affairs, RG 75, National Archives (quoted in Frederick Hoxie, *Parading through History: The Making of the Crow Nation in America, 1805–1935* [New York: Cambridge University Press, 1995], 21).

2. The quotes come from Hoxie, *Parading through History,* 29. Hoxie's coverage of the Sword Bearer incident is found ibid., 154–64. Other accounts of this incident are summarized in Colin Calloway, "Sword Bearer and the 'Crow Outbreak' of 1887," *Montana: The Magazine of Western History* 36, no. 4 (Autumn 1986): 38–51.

3. Patrick Stands Over Bull, "Statement from the Crow Tribal Chairman, Patrick Stands," August 29, 1975, 1, Joseph Medicine Crow Collection, 24:12, Little Bighorn College Archives, Crow Agency, MT (hereafter LBC Archives).

4. Ibid., 6.

5. Crow Coal, Inc.'s proposal is at Joseph Rawlins to Crow Industrial Development Commission, May 10, 1966, Eloise Whitebear Pease Collection, 16:54, LBC Archives. For background on the company and its formation, see "Articles of Incorporation of Crow Coal, Inc.," January 7, 1966, Eloise Whitebear Pease

Collection, 16:54, LBC Archives; Joseph Rawlins to Eloise Pease, October 6, 1966, Eloise Whitebear Pease Collection, 16:54, LBC Archives; and A. F. Czarnowsky, Deputy Regional Mining Supervisor, to Superintendent, Northern Cheyenne Reservation, February 4, 1965, 8NN-075-91-008, box 8, folder "Coal Leasing and Permit (Sene and Scott)," National Archives, Denver.

6. The federal government's 1910 assessment of Crow Reservation land and resources is found in House Committee on Indian Affairs, *Sale of Certain Land, etc. within the Diminished Crow Reservation, Mont.,* 61st Cong., 2d sess., 1910, H. Rep. 1495, 2. Yellowtail is quoted in Megan Benson, "The Fight for Crow Water: Part 1, The Early Reservation Years through the New Deal," *Montana: The Magazine of Western History* 57, no. 4 (Winter 2007): 36. The Crow Allotment Act is at Act of June 4, 1920, Public Law 66-239, 41 Stat. 751 (1920).

7. For oil and gas activity on the Crow Reservation, see Superintendent, Crow Indian Agency, to Area Director et al., Re: The Ten Year Goals of the Crow Reservation, July 13, 1964, 2–3, 8NN-75-92-206, box 9, folder "Res. Programs—Crow Res.," National Archives, Denver; and John Cummins and Otto Weaver, "Application to Lease Tribal Lands for Oil and Gas Purposes," May 17, 1963, 8NS–075–97–341, box 11, folder "Confidential Crow Requests for Oil and Gas Lease Sale," National Archives, Denver. As of 1967, the Department of the Interior reported the tribe had received only $3,665,000 in mineral revenue since 1920, with 40 percent of this coming over the previous five years. Senate Committee on Interior and Insular Affairs, *Granting Minerals, Including Oil and Gas, on Certain Lands in the Crow Reservation, Mont., to Certain Indians, and for Other Purposes,* 90th Cong., 1st sess., 1967, S. Rep. 690, 3. The law transferring reservation minerals to the Crow in perpetuity is at *An Act to Grant Minerals, Including Oil and Gas, on Certain Lands in the Crow Indian Reservation, Montana, to Certain Indians, and for other Purposes,* Public Law 90–308, 82 Stat. 123 (1968). In passing this law, Congress thwarted the expectation of individual allottees and surface owners who, under the 1920 Allotment Act, would have received mineral rights at the conclusion of the fifty-year period reserving these rights to the tribe. Despite this sudden change in future ownership, no widespread opposition seems to have materialized on the Crow Reservation. On the neighboring Northern Cheyenne Reservation, however, allottees challenged a similar law passed the same year transferring their minerals to tribal ownership. As discussed in chapter 7, the Supreme Court ultimately upheld the law, affirming that all reservation minerals belonged to the Northern Cheyenne, and by implication, the Crow as well. *Northern Cheyenne v. Hollowbreast,* 425 U.S. 649 (1976); see chapter 7, note 6 and accompanying text.

8. As to tribal governance under the 1948 constitution, see Crow Tribe, *Crow Tribal Report, Presented to the American Indian Policy Review Commission* (Crow Agency, MT: Crow Tribal Council, 1976), 77–78 and 86–87. For how this "open council" form of government led to Crow factionalism, see ibid., 76–87, and Hoxie, *Parading through History,* chapter 8.

9. The resolution creating the Oil and Gas Committee is at Fred Froze, "Resolution," November 13, 1952, Eloise Whitebear Pease Collection, 16:54, LBC Archives. Subsequent clarification of this committee's powers is found at John Cummins, "Resolution No. 64–09, Resolution of the Crow Tribal Council Granting

Power to the Oil and Gas Committee to Transact Business and for Other Purposes," July 13, 1963, Eloise Whitebear Pease Collection, 16:54, LBC Archives; and James Torske to Westmoreland Resources, February 18, 1972, Eloise Whitebear Pease Collection, 16:54, LBC Archives.

10. For local media coverage of the emerging demand for Crow coal, see "Indians Could Be Big Winners in Coal Boom," *Billings Gazette,* September 14, 1967. The resolution conferring unilateral powers to the tribal chairman is at Edison Real Bird, "Resolution No. 68–2: A Resolution of the Crow Tribal Council Authorizing the Crow Tribal Council Chairman to Issue Prospecting Permits and to Grant Mining Leases of Coal Resources of the Crow Tribe of Indians and for Other Purposes," October 31, 1967, Eloise Whitebear Pease Collection, 16:20, LBC Archives.

11. Thomas Kleppe, "Decision of the Secretary of the Interior Relating to Crow Tribe v. Kleppe, Et Al.," January 17, 1977, 1–3, Eloise Whitebear Pease Collection, 14:37, LBC Archives. Peabody's bonus was $1.00 an acre, Gulf's was approximately $3.50, and Shell paid $12.00 per acre. These figures are not insignificant, but as we well see, none of the companies ever developed their coal rights and thus never provided a steady, lucrative revenue stream to the Crow tribe.

12. The act transferring Crow land in the Ceded Strip to the federal government is at Act of April 27, 1904, Public Law 58–183, 33 Stat. 352 (1904). Although negotiated in 1899, this transaction was not formalized until several years later, when Congress unilaterally adjusted the payment terms. For the negotiations leading to the land cession and Congress's alteration of the terms, see Hoxie, *Parading through History,* 233–39. The act transferring mineral rights back to the Crow is at Act of May 19, 1958, Public Law 85–420, 72 Stat. 121 (1958). For a helpful review of the Ceded Strip's convoluted history, see *Crow Tribe of Indians v. U.S.,* 657 F. Supp. 573 (D. Mont., 1985), 575–78. To be clear, though the tribe owned mineral rights in the Ceded Strip and the federal government acted as a trustee over these subsurface rights, the surface area was not part of the reservation. See *Crow Tribe v. Montana,* 650 F.2d 1104, 1107 (9th Cir. 1981) (noting the opinion in *Little Light v. Crist,* 649 F.2d 682, 685 [9th Cir. 1981]) that "the ceded area is not a part of the reservation").

13. For the negotiations between Norsworthy & Reger, the Crow tribe, and the BIA that resulted in an oral auction for Crow coal rights, see Jase Norsworthy to J. O. Jackson, September 5, 1969, Central Classified Files, 1958–75, Crow, decimal #323, box 38, RG 75, National Archives, Washington, DC; Office of Area Director to Commissioner of Indian Affairs, September 29, 1969, Central Classified Files, 1958–75, Crow, decimal #323, box 38, RG 75, National Archives, Denver; A. F. Czarnowsky, Regional Mining Supervisor, to Area Realty Officer, September 30, 1969, Central Classified Files, 1958–75, Crow, decimal #323, box 38, RG 75, National Archives, Washington, DC; and George Hubley, Commissioner of Indian Affairs to Area Director, Billings Area, October 20, 1969, Central Classified Files, 1958–75, Crow, decimal #323, box 38, RG 75, National Archives, Washington, DC. To be clear, oral bidding was available only to firms that had first submitted sealed, written bids. Bruce Ennis to Louis R. Bruce, July 17, 1970, Central Classified Files, 1958–75, Crow, decimal #323, box 38, RG 75, National Archives, Washington, DC. Recall that the following month, in October 1970, Northern

Cheyenne Tribal President Allen Rowland demanded the same oral auction procedure for his tribe's third, final, and most lucrative coal sale. See chapter 3, note 16 and accompanying text. The results of the Crow's third coal sale are at Bureau of Indian Affairs, "Abstract of Sealed and Oral Bids on Coal Sale #3," September 16, 1970, Central Classified Files, 1958–75, Crow, decimal #323, box 38, RG 75, National Archives, Washington, DC; and BIA Regional Office to Commissioner of Indian Affairs, September 22, 1970, Central Classified Files, 1958–75, Crow, decimal #323, box 38, RG 75, National Archives, Washington, DC.

14. For the various per cap distributions following the Crow's coal sales, see Edison Real Bird, "Resolution No. 68–21: A Resolution Providing for the Appropriation of Tribal Funds for Social and Economic Purposes," April 13, 1968, Eloise Whitebear Pease Collection, 16:20, LBC Archives; Edison Real Bird, "Resolution 68–31: A Resolution of the Crow Tribal Council Providing for the Appropriation of Tribal Funds for Social and Economic Purposes," April 26, 1968, Eloise Whitebear Pease Collection, 16:4, LBC Archives; and James Canan to Edison Real Bird, October 16, 1970, John Melcher Papers, series 1, box 113, folder 12, Mansfield Library, University of Montana.

15. For Westmoreland's acquisition of Norsworthy & Reger coal rights and Crow water rights, see A. E. Bielefeld to Norsworthy & Reger, May 19, 1971, Westmoreland Coal Company Records, Acc. #1765, "Sarpy Creek, Land Questions, 8–71–6-73, WE3FEB2," box 830, Hagley Museum and Library, Wilmington, DE (hereafter Hagley Museum); United States Bureau of Reclamation, "Contract among the United States, Norsworthy & Reger, and Westmoreland Resources to Assist Contract No. 14–06–600–329A for Furnishing Water for Industrial Use," July 22, 1971, Westmoreland Coal Company Records, Acc. #1765, "Sarpy Creek, Land Questions, 8–71–6-73, WE3FEB2," box 830, Hagley Museum; R. L Freeman to Charles Stewart, October 22, 1971, Eloise Whitebear Pease Collection, 17:8, LBC Archives; Lucille Cooke to Walter Fenney, November 16, 1971, Eloise Whitebear Pease Collection, 17:8, LBC Archives; and Clarence Stewart, "Resolution of the Crow Tribal Mineral Committee," January 25, 1972, Eloise Whitebear Pease Collection, 17:8, LBC Archives. For constructing a railroad line to the Ceded Strip and unifying Westmorland's leases, see Eloise Pease, "Annual Overall Economic Development Program Progress Report (For the Calendar Year 1971)," 1972, 4, Eloise Whitebear Pease Collection, 7:7, LBC Archives; Eloise Pease, "Meeting of Mineral Committee [Handwritten] Minutes," February 4, 1972, Eloise Whitebear Pease Collection, 16:57, LBC Archives; Ralph E. Moore to Mineral Committee, June 2, 1972, Westmoreland Coal Company Records, Acc. #1765, "Misc. Correspondence, 1974–76," box 837, Hagley Museum; and United States Bureau of Indian Affairs, "Coal Mining Lease Indian Lands, Contract No. 14–20–0252–3863," June 6, 1972, Eloise Whitebear Pease Collection, 16:66, LBC Archives. For coverage of the royalty negotiations and the tribe's rejection of the amended terms, see Pease, "Meeting of Mineral Committee [Handwritten] Minutes"; Minturn Wright to Pemberton Hutchinson, May 8, 1972, Westmoreland Coal Company Records, Acc. #1765, "Sarpy Creek, Land Questions, 8–71–6-73, WE3FEB2," box 830, Hagley Museum; Theodore Voorhees to Louis R. Bruce, May 9, 1972, Westmoreland Coal Company Records, Acc. #1765, "Sarpy Creek, Land Questions, 8–71–6-73, WE3FEB2," box 830, Hagley Museum; and "Memorandum:

Westmoreland Resources," October 22, 1972, Westmoreland Coal Company Records, Acc. #1765, "Land Questions, 7–73 to 3–75, WR3FEB2," box 830, Hagley Museum. To be clear, Westmoreland was not the only energy company that elected to transform its prospecting permit into a lease. Shell and AMAX also decided to "go to lease" in summer 1972, but these companies were much further away from beginning actual mining operations. With their prospecting permits set to expire, it appears AMAX and Shell determined to take leases and simply pay the Crow penalties under their contracts' minimum production requirements in lieu of forfeiting all rights to Crow coal. United States Bureau of Indian Affairs, "Coal Mining Lease Indian Lands, Contract No. 14–20–0252," June 5, 1972, Eloise Whitebear Pease Collection, 17:26, LBC Archives; United States Bureau of Indian Affairs, "Coal Mining Lease Indian Lands, Contract No. 14–20–0252–3863"; and United States Bureau of Indian Affairs, "Coal Mining Lease Indian Lands, Contract No. 14–20–0252–3917," September 12, 1972, Eloise Whitebear Pease Collection, 16:66, LBC Archives.

16. Internal Westmoreland correspondence documents this dispute within the tribe over the terms of their deal. According to Westmoreland officials, the BIA was especially wary of approving any lease terms that might contradict the desires of a large portion of the Crow tribe, thus Westmoreland executives expended considerable efforts to demonstrate to the BIA why the amendments to their coal contract were necessary to make their projects viable and that the Crow tribe was fully informed and supported these changes. Minturn Wright to Pemberton Hutchinson, May 4, 1972, Westmoreland Coal Company Records, Acc. #1765, "Sarpy Creek, Land Questions, 8–71–6-73, WE3FEB2," box 830, Hagley Museum; Minturn Wright to Pemberton Hutchinson, May 8, 1972; and Theodore Voorhees to Louis R. Bruce, May 9, 1972. David Stewart's new list of demands to Westmoreland are detailed at "Memorandum: Westmoreland Resources," October 22, 1972, Westmoreland Coal Company Records, Acc. #1765, "Land Questions, 7–73 to 3–75, WR3FEB2," box 830, Hagley Museum.

17. In *Davis v. Morton,* the Tenth Circuit Court of Appeals rejected the BIA's stance that the National Environmental Policy Act did not apply to the issuance of Indian mineral leases. 469 F.2d 593 (10th Cir. 1972). Westmoreland communication with BIA officials, who then were tasked with preparing the required environmental analyses, makes clear that the BIA was prepared to delay its report due to Crow dissatisfaction with the current royalty. Theodore Voorhees to Pemberton Hutchinson, March 15, 1973, 2 and 6, Westmoreland Coal Company Records, Acc. #1765, "Legal Correspondence, 1974–76," box 836, Hagley Museum. As for Crow intervention into the Sierra Club suit, Westmoreland's payment of attorney's fees, and Crow demands for advanced royalties, see Charles Brinley, "Westmoreland Resources Meeting Minutes," September 13, 1973, Westmoreland Coal Company Records, Acc. #1765, "Directors' Meetings, 1–71 to 9–81, #58.04," box 831, Hagley Museum; Pemberton Hutchinson to Evalyn Carson, September 21, 1973, Westmoreland Coal Company Records, Acc. #1765, "Sierra Club v. Morton, et al., 9/73–1/76, #350.10" box 832, Hagley Museum; and Pemberton Hutchinson to Partners, September 21, 1973, Westmoreland Coal Company Records, Acc. #1765, "Sierra Club v. Morton, et al., 9/73–1/76, #350.10," box 832, Hagley Museum. Hutchinson's comment about not wanting the Crow to develop Cheyenne

attitudes is at Pemberton Hutchinson to Partners, June 18, 1973, 2, Westmoreland Coal Company Records, Acc. #1765, "Land Questions, 7–73 to 3–75, WR3FEB2," box 830, Hagley Museum; see also Charles Brinley, "Westmoreland Resources Meeting Minutes," May 17, 1973, 3, Westmoreland Coal Company Records, Acc. #1765, "Directors' Meetings, 1–71 to 9–81, #58.04," box 831, Hagley Museum. Additional correspondence making clear tribal support for the Ceded Strip's environmental impact statement depended on securing higher royalties is at Daniel Israel to Pemberton Hutchinson, January 30, 1974, Westmoreland Coal Company Records, Acc. #1765, "Land Questions, 7–73 to 3–75, WR3FEB2," box 830, Hagley Museum; Charles Brinley to Partners, February 1, 1974, Westmoreland Coal Company Records, Acc. #1765, "Land Questions, 7–73 to 3–75, WR3FEB2," box 830, Hagley Museum; Pemberton Hutchinson to Daniel Israel, February 14, 1974, Westmoreland Coal Company Records, Acc. #1765, "Land Questions, 7–73 to 3–75, WR3FEB2," box 830, Hagley Museum; and Charles Brinley, "Westmoreland Resources Meeting Minutes," March 13, 1974, Westmoreland Coal Company Records, Acc. #1765, "Misc. Correspondence, 1974–76," box 837, Hagley Museum. This correspondence also makes clear that the federal government was withholding final issuance of the environmental analysis until the tribe secured satisfactory royalties.

18. "Coal (Crow) Agency," October 1973, 1, Joseph Medicine Crow Collection, 24:12, LBC Archives.

19. Crow Tribe Community Action Program, "Crow Coal Survey and Preliminary Social Impact Report," October 1973, 2–3, Eloise Whitebear Pease Collection, 16:52, LBC Archives.

20. David Stewart, "Resolution No. 74–09: A Resolution of the Crow Tribal Council Providing for the Election of a Mineral Committee of the Crow Tribe, Defining the Powers and Duties of Said Mineral Committee, Rescinding and Repealing Any and All Resolutions Heretofore Passed and Adopted by the Crow Tribal Council Which Are in Conflict with the Provisions of This Resolution, and for Other Purposes," October 13, 1973, 2, Eloise Whitebear Pease Collection, 22c:3:1, LBC Archives. Although the enacting resolution unambiguously charged the Minerals Committee with handling all mineral development, a subsequent resolution gave the committee more specific directions for negotiating with Westmoreland. Tribal attorney Thomas Lynaugh later argued that this subsequent resolution limited the Minerals Committee's authority to dealing only with the Westmoreland lease. "Resolution No. 74–17: A Resolution of the Crow Tribal Council Authorizing the Mineral Committee of the Crow Tribe to Take Certain Actions, and for Other Purposes," January 12, 1974, Eloise Whitebear Pease Collection, LBC Archives; and Thomas Lynaugh to Bud Lozar, November 8, 1976, Eloise Whitebear Pease Collection, 16:19, LBC Archives.

21. Israel's first meeting with the Mineral Committee is documented in Eloise Pease, "Mineral Committee Meeting [Handwritten] Minutes," December 4, 1973, 1, Eloise Whitebear Pease Collection, 16:52, LBC Archives. As to Israel's coordination with the Crow's community action program, see Daniel Israel to Ken Toineeta, December 13, 1973, Eloise Whitebear Pease Collection, 16:57, LBC Archives. In July 1973, the Crow had received a $125,000 grant from the Department of Health,

Education, and Welfare to study the best method for managing their coal resources. Caspar Weinberger to Lee Metcalf, January 23, 1974, Eloise Whitebear Pease Collection, 16:52, LBC Archives. The hired consultants' assessment of past deals and their advice to the Crow is at Daniel Israel, "Memorandum: Meeting with Carmel Patton on November 28, 1973," November 29, 1973, 1, Eloise Whitebear Pease Collection, 16:57, LBC Archives.

22. For the Crow's strategy to focus on the Westmoreland deal and use it as the basis for subsequent negotiations, see Daniel Israel to Crow Mineral Committee, December 20, 1973, Eloise Whitebear Pease Collection, 16:57, LBC Archives. For the actual negotiations, see Daniel Israel to Pemberton Hutchinson, February 8, 1974, Westmoreland Coal Company Records, Acc. #1765, "Land Questions, 7–73 to 3–75, WR3FEB2," box 830, Hagley Museum; Pemberton Hutchinson to Partners, February 8, 1974, Westmoreland Coal Company Records, Acc. #1765, "Land Questions, 7–73 to 3–75, WR3FEB2," box 830, Hagley Museum; Pemberton Hutchinson to Daniel Israel, February 14, 1974; Pemberton Hutchinson to Partners, March 1, 1974, Westmoreland Coal Company Records, Acc. #1765, "Land Questions, 7–73 to 3–75, WR3FEB2," box 830, Hagley Museum; Pemberton Hutchinson to Dan Israel, March 11, 1974, Eloise Whitebear Pease Collection, 16:54, LBC Archives; and Eloise Pease and Pemberton Hutchinson, "Memorandum of Understanding," March 13, 1974, Eloise Whitebear Pease Collection, 16:35, LBC Archives. Israel's quote is at Dan Israel and Dale Emling to Crow Mineral Committee and Crow Tribal Leaders, May 20, 1974, Westmoreland Coal Company Records, Acc. #1765, "Land Questions, 7–73 to 3–75, WR3FEB2," box 830, Hagley Museum. For tribal meetings that resulted in postponing a decision on the Westmoreland amended contract, see Pemberton Hutchinson to Partners, March 25, 1974, Westmoreland Coal Company Records, Acc. #1765, "Land Questions, 7–73 to 3–75, WR3FEB2," box 830, Hagley Museum; and Pemberton Hutchinson to Partners, April 9, 1974, Westmoreland Coal Company Records, Acc. #1765, "Land Questions, 7–73 to 3–75, WR3FEB2," box 830, Hagley Museum. For additional consultants advising the Mineral Committee and Crow candidates, see P. J. Stevens to Robert Howe, April 10, 1974, Westmoreland Coal Company Records, Acc. #1765, "Misc. Correspondence, 1974–76," box 837, Hagley Museum; Charles Beasley to Alex Birdinground, April 16, 1974, Eloise Whitebear Pease Collection, 16:48, LBC Archives; Pemberton Hutchinson to Partners, April 18, 1974, Westmoreland Coal Company Records, Acc. #1765, "Land Questions, 7–73 to 3–75, WR3FEB2," box 830, Hagley Museum; Charles Brinley to Partners, May 2, 1974, Westmoreland Coal Company Records, Acc. #1765, "Land Questions, 7–73 to 3–75, WR3FEB2," box 830, Hagley Museum; and Dan Israel and Dale Emling to Crow Mineral Committee and Crow Tribal Leaders, May 20, 1974. The decision to postpone any vote on Westmoreland's deal until after tribal elections is at Eloise Pease to Crow Tribal Members, May 3, 1974, Eloise Whitebear Pease Collection, 16:54, LBC Archives. Finally, Howard Frey's bloody tomahawk is found in Pemberton Hutchinson to Partners, April 9, 1974.

23. For the May 1974 election turnout, see Eloise Pease to Members of the Crow Tribe, May 14, 1974, Westmoreland Coal Company Records, Acc. #1765, "Land Questions, 7–73 to 3–75, WR3FEB2," box 830, Hagley Museum. Stands Over

Bull's quote is in Donald Fixico, *The Invasion of Indian Country in the Twentieth Century: American Capitalism and Tribal Natural Resources* (Boulder: University of Colorado Press, 1998), 146. The mining moratorium resolution is at Patrick Stands Over Bull, "Resolution No. 75–06A: A Resolution Providing General Direction on Matters Concerning Pending Coal Development on Tribally Owned Coal Resources and on All Coal Resources within the Boundaries of the Crow Indian Reservation," July 13, 1974, Apsaalooke Nation Council and District Records, Crow Tribal Government Building, Crow Agency, MT. For Stands Over Bull's private negotiations with Westmoreland, see Pemberton Hutchinson to Partners, July 8, 1974, Westmoreland Coal Company Records, Acc. #1765, "Misc. Correspondence, 1974–76," box 837, Hagley Museum; and Patrick Stands Over Bull, "Resolution No. 75–12: A Resolution Authorizing a Delegation of the Crow Tribal Council to Negotiate Specific Matters in Order to Obtain a Final Agreement on Tracts 2 and 3," October 12, 1974, Apsaalooke Nation Council and District Records, Crow Tribal Government Building, Crow Agency, MT.

24. For the amended agreement's terms, see Crow Delegation to Crow Tribal Council, November 3, 1974, Joseph Medicine Crow Collection, 24:12, LBC Archives; Charles Brinley to Partners, November 4, 1974, Westmoreland Coal Company Records, Acc. #1765, "Legal Correspondence, 1974–76," box 836, Hagley Museum; and Patrick Stands Over Bull, "Resolution No. 75–17: A Resolution Approving a Final Agreement between the Crow Tribe of Indians and Westmoreland Resources with Respect to Coal Leases on Tracts 2 and 3," November 23, 1974, Apsaalooke Nation Council and District Records, Crow Tribal Government Building, Crow Agency, MT. The actual tribal council vote was 343 for the amended Westmoreland deal versus 33 opposed.

25. Daniel Israel, "Report on the Shell Coal Lease," December 4, 1974, 2–3, 21–22, Eloise Whitebear Pease Collection, 17:13, LBC Archives (emphasis in original).

26. The tribal poll is at "Crow Tribal Coal Survey, 1975," *Hardin Herald,* April 6, 1975, 1.

27. For Shell's reliance on Crow coal, see Israel, "Report on the Shell Coal Lease," 23–24. Shell's letter to tribal members is at N. J. Isto to Joe Medicine Crow, June 30, 1975, Joseph Medicine Crow Collection, 24:12, LBC Archives; see also Richard H. Geissler, "Crows Criticize 'Fraudulent' Offer," *Billings Gazette,* July 9, 1975.

28. The Coal Office's mandates are at "Crow Tribal Coal Survey, 1975," 1. Examples of information sheets can be found at Office of Coal Research, "Information Sheet #1–75," February 17, 1975, Eloise Whitebear Pease Collection, 17:13, LBC Archives; Office of Coal Research, "Information Sheet #2–75," April 25, 1975, Eloise Whitebear Pease Collection, 16:49, LBC Archives; and Office of Coal Research, "Information Sheet #3–75," June 25, 1975, Eloise Whitebear Pease Collection, 16:1, LBC Archives.

29. Angela Russell to Joe Medicine Crow, August 22, 1975, Joseph Medicine Crow Collection, 24:12, LBC Archives. The participants' survey is at Office of Coal Research, "Black Mesa Site Visit," November 8, 1975, 6–10, Joseph Medicine Crow Collection, 24:12, LBC Archives.

30. Edmund Littlelight, Jr., to *Hardin Herald* Editor, December 17, 1975, Eloise Whitebear Pease Collection, 22c:3:1, LBC Archives.

31. Stands Over Bull's first quote comes from Patrick Stands Over Bull to N. J. Isto, July 3, 1975, Lee Metcalf Papers, General Correspondence, Collection No. 172, box 161, folder 161–5, Montana Historical Society, Digital Library and Archives, Helena, MT. The chairman's public statement is at Patrick Stands Over Bull, "Statement of Patrick Stands Over Bull, Chairman Crow Tribal Council," September 19, 1975, 3, Eloise Whitebear Pease Collection, 16:11, LBC Archives; see also Patrick Stands Over Bull, "Statement from the Crow Tribal Chairman, Patrick Stands," August 29, 1975, 1, Joseph Medicine Crow Collection, 24:12, LBC Archives; and Patrick Stands Over Bull, Tyrone Ten Bear, Jiggs Yellowtail, and Oliver Hugs to Crow Tribal Members, September 19, 1975, Joseph Medicine Crow Collection, 24:12, LBC Archives. For helpful reviews of the tribal ordinances enacted to control coal mining, as well as interpretations of their legality, see Kent Frizzell to Patrick Stands Over Bull, March 22, 1976, Eloise Whitebear Pease Collection, 16:11, LBC Archives; and Department of the Interior Solicitor, "Solicitor to Secretary," October 13, 1976, Joseph Medicine Crow Collection, 4:31, LBC Archives. Stands Over Bull's preconditions for further agreements are found in Patrick Stands Over Bull to Keith Doig, March 12, 1976, Eloise Whitebear Pease Collection, 16:11, LBC Archives; and Patrick Stands Over Bull to Amax Coal Company, March 19, 1976, Eloise Whitebear Pease Collection, 16:11, LBC Archives.

32. Formal protests lodged against the October 1975 Mineral Committee election show that tribal members disputed whether Stands Over Bull properly noticed the special election or instead simply forced through his preferred candidates. "Crow Tribal Response to Protest of the October Quarterly Council Meeting Filed by Robert Howe, Jr.," October 1975, Eloise Whitebear Pease Collection, 22d:1:2, LBC Archives.

33. In spring 1976, Stands Over Bull was negotiating with at least four different coal companies: Westmoreland, Shell, AMAX, and Gulf. See Keith Doig to Pat Stands Over Bull, February 12, 1976, Eloise Whitebear Pease Collection, 17:26, LBC Archives; Patrick Stands Over Bull to AMAX Coal Company, March 19, 1977; R. B. Crowl to Patrick Stands Over Bull, March 24, 1976, Eloise Whitebear Pease Collection, 16:11, LBC Archives; Patrick Stands Over Bull to Charles Brinley, March 25, 1976, Eloise Whitebear Pease Collection, 16:11, LBC Archives; Keith Doig to Patrick Stands Over Bull, March 29, 1976, Eloise Whitebear Pease Collection, 16:11, LBC Archives; Charles Brinley to Patrick Stands Over Bull, March 30, 1976, Eloise Whitebear Pease Collection, 16:11, LBC Archives; and R. J. Gocken to Patrick Stands Over Bull, March 30, 1976, Eloise Whitebear Pease Collection, 16:11, LBC Archives. For tribal members complaining at the spring council meeting about these on-reservation mining negotiations, see "Public Hearing at Crow Tribal Building," March 16, 1976, Eloise Whitebear Pease Collection, 16:11, LBC Archives. As for attacks on Stands Over Bull's coal policy and allegations of public drunkenness, see John Pretty On Top, "So the People May Know!," May 1976, Joseph Medicine Crow Collection, 4:16, LBC Archives. The four candidates opposed to reservation mining were Sargie Howe, Andy Russell, John Pretty On Top, and Jiggs Yellowtail, the last being Stands Over Bull's vice chairman. Joseph Medicine

Crow, "May 8, 1976 Tribal Election Results [handwritten]," May 8, 1976, Joseph Medicine Crow Collection, 4:16, LBC Archives.

34. For a complete history of the fight over the Bighorn River dam, see Megan Benson, "The Fight for Crow Water: Part 1, The Early Reservation Years through the New Deal," *Montana: The Magazine of Western History* 57, no. 4 (Winter 2007): 24–42; and Megan Benson, "The Fight for Crow Water: Part 2, Damming the Bighorn," *Montana: The Magazine of Western History* 58, no. 1 (Spring 2008): 3–23. Ultimately, neither side could claim victory; the tribe decided to sell the land for a dam but never received the full agreed-upon payment. Meanwhile, Northsider leader Robert Yellowtail suffered the indignity of having the dam he opposed named after him. As for pre-reservation Crow divisions, see Hoxie, *Parading through History,* chapter 2. The third major group was a subgroup of the Mountain Crow, known as the Kicked In the Bellies. For the division between and characteristics of the River Crow/Southsiders versus Mountain Crow/Northsiders, see Timothy P. McCleary, "An Ethnohistory of Pentecostalism among the Crow Indians of Montana," *Wicazo Sa Review* 15, no. 1 (Spring 2000): 123; and Mardell H. Plainfeather, "Factionalism among Contemporary Crow Indians," n.d., unpub. manuscript, Little Bighorn College Library, Lame Deer, MT.

35. For Sonny Yellowtail's vote against his father, see Constance J. Poten, "Robert Yellowtail, the New Warrior," *Montana: The Magazine of Western History* 39, no. 3 (July 1, 1989): 40.

36. Frederick Hoxie also argues that generational differences greatly influenced Crow positions on reservation allotment during the early twentieth century. According to Hoxie, older, "long hairs" generally opposed the breakup of communal land, while younger, "short hairs" were more comfortable with individual plots and believed allotment to be the only way to preserve Indian land. Hoxie, *Parading through History,* 260–63. Kindness's quote is found in National Congress of American Indians, *Proceedings from the National Congress of American Indians, Indian Energy Conference, Billings, Montana, August 28–29, 1974,* August 28, 1974, folder "Natural Resources," box 147, no. 4 (reel 71), 30, Native America: A Primary Record, series 2: Assn. on American Indian Affairs Archives, General and Tribal Files, 1851–1983.

37. Kindness's quote is at National Congress of American Indians, *Proceedings from the National Congress of American Indians, Indian Energy Conference,* 29.

38. For details on this protest and quotes of the participants, see Bryce Nelson, "Custer Relative Has No Role in Helping Mark 100th Anniversary of 'Last Stand,'" *Los Angeles Times,* June 26, 1976; Bryce Nelson, "Indians Stalk Custer Ghost: After 100 Years Wounds of Bighorn Still Festering," *Los Angeles Times,* June 25, 1976; and *Akwesasne Notes,* August 1976, 21. For a discussion of the changing and various meanings attached to the Battle of the Little Bighorn site, see Edward Tabor Linenthal, "Ritual Drama at the Little Big Horn: The Persistence and Transformation of a National Symbol," *Journal of the American Academy of Religion* 51, no. 2 (June 1, 1983): 267–81.

39. Lipton's recommendation to establish a Crow operating company is at Charles Lipton to Patrick Stands Over Bull, October 1, 1976, Eloise Whitebear Pease Collection, 16:8, LBC Archives. The Coal Authority's enacting resolution is

at Patrick Stands Over Bull, "Resolution 77–08: A Resolution Setting Forth Terms for Discussions with Off Reservation Energy Companies: Establishing a Crow Coal Authority, Setting Qualifications and Duties for Said Authority: Protecting the Crow Reservation: And Providing for a Per Capita Distribution," October 9, 1976, Apsaalooke Nation Council and District Records, Crow Tribal Government Building.

40. Eloise Pease to Stephen Lozar, October 19, 1976, 3, Eloise Whitebear Pease Collection, 22c:4, LBC Archives; see also Patrick Stands Over Bull to Stephen Lozar, November 12, 1976, Eloise Whitebear Pease Collection, 16:38, LBC Archives. As to the competing bodies negotiating with different mining firms, see Stephen Lozar to Eloise Pease, October 29, 1976, Eloise Whitebear Pease Collection, 22c:4:4, LBC Archives; Thomas Lynaugh to Bud Lozar, November 8, 1976, Eloise Whitebear Pease Collection, 16:19, LBC Archives; and Thomas J. Lynaugh to Crow Tribal Officers, Members of Executive and Minerals Committees, December 13, 1976, Eloise Whitebear Pease Collection, 16:44, LBC Archives. Varying accounts of the violent December 22 meeting are found in Phillip White Clay, "Crow Tribal Special Council Meeting Minutes," December 22, 1976, Eloise Whitebear Pease Collection, 16:43, LBC Archives; Eloise Pease, "Statement of Eloise Pease, Parliamentarian at the Council of December 22, 1976," Eloise Whitebear Pease Collection, 14:15, LBC Archives; and Urban Bear Don't Walk to Ben Reifel, January 24, 1977, 8, Eloise Whitebear Pease Collection, 14:15, LBC Archives. This special council meeting was called after Stands Over Bull's supporters gathered a petition to create yet another minerals committee to conclude negotiations with Shell. At the December 13 executive council meeting that considered the petition, however, anti-coal opponents countered with their own petition to suspend Stands Over Bull. "Executive Committee Meeting Minutes," December 13, 1976, Eloise Whitebear Pease Collection, 14:15, LBC Archives. As to Stands Over Bull's actions to adjourn and leave the meeting, see Patrick Stands Over Bull to Stephen Lozar, December 27, 1976, Eloise Whitebear Pease Collection, 22c:4:4, LBC Archives.

41. The BIA order invalidating Stands Over Bull's suspension is at *Patrick Stands Over Bull and Urban J. Bear Don't Walk v. Billings Area Director, BIA,* 6 IBIA 98 (June 6, 1977), 110. In a clear nod to tribal sovereignty, the Board of Indian Appeals held that the question of Stands Over Bull's suspension was a parliamentary issue that only the tribe could resolve. Because the tribal council never affirmed this action and, in fact, voted down a subsequent suspension resolution on January 8, 1977, the appeals board found the suspension ineffective. The January and April meetings' minutes are at Phillip White Clay, "Quarterly Crow Tribal Council Meeting Minutes," January 8, 1977, Eloise Whitebear Pease Collection, 2c:4:4, LBC Archives; and Phillip White Clay, "Crow Tribal Council Minutes, April 9, 1977," April 9, 1977, Eloise Whitebear Pease Collection, 2c:4:1, LBC Archives. Pease's quote comes from the January meeting, at 2.

42. *Patrick Stands Over Bull and Urban J. Bear Don't Walk v. Billings Area Director, BIA,* 6 IBIA 98 (June 6, 1977), 109.

43. Philip Whiteclay, "Crow Tribal Council Meeting Minutes," July 9, 1977, 2–4, 8, 9, 11, 12, and 17, Eloise Whitebear Pease Collection, 2c:4:2, LBC Archives. The opposition argued the popular practice of walking "through the line" to support

a resolution pressured individuals to follow clan lines rather than vote their conscious, which was at odds with their conception of sovereignty emanating from the free will of the people.

44. Ibid., 15.

CHAPTER 6. TAKING THE FIGHT NATIONAL

1. Department of the Interior News Release (October 3, 1972) (found in *Kleppe v. Sierra Club,* 427 U.S. 390 [1976], Appendix, 132 and 134). For a concise description of the overall project, see *Kleppe,* 427 U.S. at 396–97.

2. Morton's quote is located in Department of the Interior News Release (October 3, 1972) (found in *Kleppe,* 427 U.S. at Appendix, 133). Nixon's April energy address can be accessed at Richard Nixon, "Special Message to Congress on Energy Policy," April 18, 1973, The American Presidency Project, ed. Gerhard Peters and John T. Woolley, http://www.presidency.ucsb.edu/ws/?pid=3817. In his first energy message to Congress, on June 4, 1971, the president called for an increased supply of domestic, "clean" energy. In 1973, the president repeated this call for increased domestic production in dozens of addresses, though the emphasis on clean energy had conspicuously disappeared. The most significant of these 1973 messages were delivered on April 18, June 29, November 7, and November 25. These speeches and remarks are available online at The American Presidency Project, ed. Gerhard Peters and John T. Woolley, www.presidency.ucsb.edu.

3. Native American Rights Fund, "An Unfinished Drama: The Declaration of Indian Independence," *Announcements* 3, no. 2, part 1 (April–June 1975): 28; Native American Natural Resource Development Federation, "Native American Natural Resources Management Program: A Proposal to Provide Management-Development Plans to the Member Tribes of the Native American Natural Resource Development Federation," April 1, 1975, 2–3, series 6: NCAI Committees and Special Issues, box 236, "Energy (General) 1975 [1 of 2]," National Congress of American Indians Collection, National Museum of American Indians Archive Center, Suitland, MD (hereafter NCAI Collection).

4. Native American Rights Fund, "Unfinished Drama," 28–31.

5. Ibid.; Native American Natural Resource Development Federation, "Native American Natural Resources Management Program," 2–5. For Burnette's involvement with the NCAI and his own tribal political career, see Thomas W. Cowger, *The National Congress of American Indians: The Founding Years* (Lincoln: University of Nebraska Press, 1999), 141–48. As for Burnette being the first to conceive of the Trail of Broken Treaties, see Robert Burnette and John Koster, *The Road to Wounded Knee* (New York: Bantam Books, 1974), 195–98; and Paul Chaat Smith and Robert Allen Warrior, *Like a Hurricane: The Indian Movement from Alcatraz to Wounded Knee* (New York: New Press, 1996), 139. For more on the Trail of Broken Treaties and its influence, or lack thereof, on the Northern Cheyenne's protest against energy development, see chapter 4, notes 21–22 and accompanying text.

6. Native American Rights Fund, "Unfinished Drama," 9–35; Native American Natural Resources Development Federation "A Declaration of Indian Rights to the Natural Resources in the Northern Great Plains," quoted ibid., 29.

7. Native American Natural Resource Development Federation, "Native American Natural Resources Management Program," 5.

8. George Crossland to Stuart Jamieson, February 13, 1974, series 6: NCAI Committees and Special Issues, box 238, "Surface Mining Legislation, etc. (Strip Mining) 1974," NCAI Collection; George Crossland to Chuck Trimble, March 25, 1974, 4 and 9, series 6: NCAI Committees and Special Issues, box 235, "Energy (General) 1974 [1 of 2]," NCAI Collection.

9. For the NCAI's founding and early tactics, see generally Cowger, *National Congress of American Indians*. For NCAI's moderate approach in the early 1960s, see ibid., 146–49; and Bradley Shreve, *Red Power Rising: The National Indian Youth Council and the Origins of Native Activism* (Norman: University of Oklahoma Press, 2011), 119 and 208. For a discussion of how the 1964 election of Vine Deloria, Jr., as NCAI's executive director reenergized and redirected the organization toward a more activist bent, see Charles F. Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (New York: Island Press, 2005), 106–12. To be clear, even though the NCAI consistently disavowed direct action protests, it was instrumental in forging the Red Power Movement, most specifically by organizing the American Indian Chicago Conference that launched the National Indian Youth Council. Cowger, *National Congress of American Indians,* 133–41; and Shreve, *Red Power Rising,* 89–93. The NCAI's own description of its "industrial show" type approach is at National Congress of American Indians, "A Proposal to the Office of Native American Programs and the Economic Development Administration to Develop and Implement a National Indian Economic Development Program," April 15, 1974, 3, series 6: NCAI Committees and Special Issues, box 235, "Energy Resources Seminar—NCAI," NCAI Collection.

10. National Congress of American Indians, "Proposal to the Office of Native American Programs and the Economic Development Administration," 1–5. NCAI Executive Director Chuck Trimble repeated this explanation for his organization's change in reservation development strategy at the first Indian Energy Conference held in Billings, Montana, on August 28, 1974. National Congress of American Indians, *Proceedings from the National Congress of American Indians, Indian Energy Conference, Billings, Montana, August 28–29, 1974,* August 28, 1974, 7, folder "Natural Resources," box 147, no. 4 (reel 71), Native America: A Primary Record, series 2: Assn. on American Indian Affairs Archives, General and Tribal Files, 1851–1983.

11. Dan Israel and Tom Fredericks to Stu Jamieson, July 19, 1974, series 6: NCAI Committees and Special Issues, box 235, "Energy—Energy Seminar, Billings, Mont., August 28–29, 1974," NCAI Collection; and Dan Israel and Tom Fredericks to Stu Jamieson, July 24, 1974, series 6: NCAI Committees and Special Issues, box 235, "Energy—Energy Seminar, Billings, Mont., August 28–29, 1974," NCAI Collection. As to NARF's influence on the Indian Energy Conference's agenda, compare Dan Israel and Tom Fredericks to Stu Jamieson, July 24, 1974, with "NCAI Sponsors National Indian Energy Resources Conference," *Sentinel: National Congress of American Indians Bulletin* (July–August 1974).

12. National Congress of American Indians, *Proceedings from the National Congress of American Indians, Indian Energy Conference,* 6 and 29.

13. Ford Foundation, Energy Policy Project, *A Time to Choose: America's Energy Future* (Cambridge, MA: Ballinger, 1974), 325. Specifically, the report concluded that, among a host of possible alternatives, "a conservation oriented energy policy provides benefits in every major area of concern—avoiding shortages, protecting the environment, avoiding problems with other nations, and keeping real social costs as low as possible."

14. National Congress of American Indians, *Proceedings from the National Congress of American Indians, Indian Energy Conference,* 8.

15. Ibid., 10–11.

16. Ibid., 16.

17. Ibid., 128.

18. As for the creation of the Federal Energy Office, see Executive Order No. 11748 (December 4, 1973); and Richard Nixon, "Remarks Announcing Establishment of the Federal Energy Office," December 4, 1973, The American Presidency Project, ed. Gerhard Peters and John T. Woolley, http://www.presidency.ucsb.edu/ws/index.php?pid=4060. For the Federal Energy Administration's creation and its duties, see Federal Energy Administration Act of 1974, Public Law 93–275, 88 Stat. 96 (1974); and Executive Order No. 11790 (June 25, 1974), The American Presidency Project, ed. Gerhard Peters and John T. Woolley, http://www.presidency.ucsb.edu/ws/index.php?pid=59130. For background on these and other 1970s energy agencies, see Jack M Holl, *The United States Department of Energy: A History* (Washington, DC: Department of Energy, 1982). As Holl explains, the Energy Reorganization Act of 1974 redefined the roles of several energy agencies and created another entity, the Energy Research and Development Administration, to coordinate federal support of energy research and development. However, despite the seeming transfer of research and development responsibility to this new institution, the FEA continued to support nonfederal efforts to expand domestic production, particularly those taken by energy tribes.

19. Old Coyote's quote is at National Congress of American Indians, *Proceedings from the National Congress of American Indians, Indian Energy Conference,* 129.

20. Trimble's quote is found ibid., 131. Mahkijani's quote is found in National Congress of American Indians, *Proceedings from the 31st Annual Convention of National Congress of American Indians, Workshop Five: Tribal Natural Resources,* October 23, 1974, 9, folder "Natural Resources," box 147, no. 4 (reel 71), Native America: A Primary Record, series 2: Assn. on American Indian Affairs Archives, General and Tribal Files, 1851–1983. Crossland's comments are ibid., 4 and 19.

21. The meetings in Washington, DC, and the letter to President Ford is described in Bob Hanfling, "Final Edition of the Indian Position Paper for John Hill," May 8, 1975, 1, series 6: NCAI Committees and Special Issues, box 236, "Energy (General) 1975 [1 of 2]," NCAI Collection. The request to Zarb is described in Wilkinson, Cragun and Barker, "General Memorandum No. 75–36," April 30, 1975, 1, series 6: NCAI Committees and Special Issues, box 236, "Energy (General) 1975 [2 of 2]," NCAI Collection.

22. The Indian Caucus, "Position Paper of the Indian Caucus, The Federal Energy Administration Consumer Workshop," April 22, 1975, 2, series 6: NCAI Committees and Special Issues, box 238, "FEA [Federal Energy Administration] Energy Meeting 1975," NCAI Collection. The Washington, DC, meeting with Zarb is described in Hazel Rollins to [numerous recipients], June 1975, series 6: NCAI Committees and Special Issues, box 238, "FEA [Federal Energy Administration] Energy Meeting 1975," NCAI Collection; Wilkinson, Cragun and Barker, "General Memorandum No. 75–36"; and Hanfling, "Final Edition of the Indian Position Paper for John Hill," 2.

23. Hazel Rollins to [numerous recipients], June 1975; Wilkinson, Cragun and Barker, "General Memorandum No. 75–36"; "Indian Energy Task Force Forms," *Sentinel: National Congress of American Indians Bulletin* (July 1975); and Hanfling, "Final Edition of the Indian Position Paper for John Hill," 1–3.

24. The Council of Energy Resource Tribes to Frank G. Zarb, September 16, 1975, series 6: NCAI Committees and Special Issues, box 236, "Energy Meeting—Billings, Montana (Ramada Inn) 10/13–14, 1975 I," NCAI Collection; "Indian Energy Tribes Task Force Meeting," September 16, 1975, series 6: NCAI Committees and Special Issues, box 236, "Energy Meeting—Billings, Montana (Ramada Inn) 10/13–14, 1975 II," NCAI Collection; Wilkinson, Cragun and Barker, "General Memorandum No. 75–50," September 24, 1975, series 6: NCAI Committees and Special Issues, box 239, "Task Force on Indian Resource Development and FEA," NCAI Collection; and Marjane Ambler, *Breaking the Iron Bonds: Indian Control of Energy Development* (Lawrence: University Press of Kansas, 1990), 91–94. Lohah's quote is ibid., 91.

25. Compare Council of Energy Resource Tribes, "Organization Charter of Council of Energy Resource Tribes (CERT)," September 16, 1975, 1, series 6: NCAI Committees and Special Issues, box 236, "Energy Meeting—Billings, Montana (Ramada Inn) 10/13–14, 1975 I," NCAI Collection with the Council of Energy Resource Tribes to Frank G. Zarb, September 17, 1975, 1–2. For a brief description of the two separate documents, see also Wilkinson, Cragun and Barker, "General Memorandum No. 75–50." The FEA's influential role in organizing CERT is further evidenced by the fact that agency officials took responsibility for gathering final versions of these foundational documents and circulating them to the energy tribes for final approval. Hazel Rollins to Participants of the September 16 Indian Energy Tribes Task Force Meeting, September 24, 1975, series 6: NCAI Committees and Special Issues, box 236, "Energy Meeting—Billings, Montana (Ramada Inn) 10/13–14, 1975 I," NCAI Collection.

26. Allen Rowland to Charles E. Trimble, September 23, 1975, series 6: NCAI Committees and Special Issues, box 236, "Energy Meeting—Billings, Montana (Ramada Inn) 10/13–14, 1975 I," NCAI Collection.

27. "National Congress of American Indians, Energy Meeting, Billings, Montana, October 13–14, 1975," October 13, 1975, 19, 33, 35, 37, series 6: NCAI Committees and Special Issues, box 236, "Energy Meeting—Billings, Montana (Ramada Inn) 10/13–14, 1975 II," NCAI Collection. Frederick's line-by-line analysis is found ibid., 29–41. This conversation continues in part 2 of the proceedings,

and a marked-up copy indicating the changes is attached as a "supplement." All documents are found in the same location in the archives.

28. Ambler, *Breaking the Iron Bonds,* 95–96. CERT initially requested $1 million in federal funds for its resource inventory but received only $200,000. As we will see, the reluctance of the federal government to fully fund CERT's endeavors pushed the organization to look elsewhere—including to OPEC—for additional support.

29. For Carter's emphasis on energy policy during his first ninety days in office, see Daniel Yergin, *The Prize: The Epic Quest for Oil, Money, and Power* (New York: Simon and Schuster, 1991), 661–64. For MacDonald's frustration with the lack of federal support and the conflict between FEA and BIA, see Ambler, *Breaking the Iron Bonds,* 95; Bill Strabala, ""Indian Tribes Seek to Form OPEC-Style Energy Cartel" *Denver Post,* July 10, 1977; "U.S. Indians Ask OPEC, Third World Nations to Help in Developing Resources," *Washington Post,* July 10, 1977; and William Greider, "Indians Organize Own Energy Combine: Patterned after OPEC," *Washington Post,* July 17, 1977. According to Ambler, the BIA argued it was already conducting an inventory of Indian resources and that such an action was not within the FEA's mandate. Ultimately, the FEA would provide $250,000 for this initial resource inventory, and the BIA reluctantly offered an additional $200,000 for establishing an "energy information clearinghouse." MacDonald's quotes are at Strabala, "Indian 'OPEC' Formed; Navajo Leader Tells Why," *Denver Post,* July 10, 1977.

30. The full text of Carter's April 1977 address can be found at Jimmy Carter, "Address to the Nation on Energy," April 18, 1977, The American Presidency Project, ed. Gerhard Peters and John T. Woolley, http://www.presidency.ucsb.edu/ws/?pid=7369. The CERT statement is at Council of Energy Resource Tribes, "Statement of the Council of Energy Resource Tribes (CERT)," April 8, 1977, series 6: NCAI Committees and Special Issues, box 239, "Energy Meeting—White House, 4/8/77 and Related Energy Material," NCAI Collection.

31. Numerous reputable newspapers reported on the CERT-OPEC meetings, though it is unclear whether MacDonald was their only source. Bill Strabala, "Indian Tribes Seek to Form OPEC-Style Energy Cartel" *Denver Post,* July 10, 1977; "U.S. Indians Asks OPEC, Third World Nations to Help in Developing Resources," *Washington Post,* July 10, 1977; William Greider, "Indians Organize Own Energy Combine: Patterned after OPEC," *Washington Post,* July 17, 1977; and William Endicott, "Indians Seek Help from OPEC: Ask for Advice on Development of Energy Resources," *Los Angeles Times,* October 16, 1977. Winona LaDuke later questioned whether these meetings ever took place or whether rumors of the meetings were spread by MacDonald as part of his grand strategy to gain federal support. Winona LaDuke, "The Council of Energy Resource Tribes," in Joseph Jorgensen, *Native Americans and Energy Development II* (Boston: Anthropology Resource Center and Seventh Generation Fund, 1984), 59. MacDonald's quote on "federal red tape and foot dragging" comes from Endicott, "Indians Seek Help from OPEC." MacDonald's insistence on seeking long-range technical help comes from "U.S. Indians Asks OPEC," *Washington Post,* July 10, 1977, wherein MacDonald also noted: "We've found how (energy) companies have dealt with [OPEC nations]

in the past—bad leases and one-sided operations. We wanted to see if they could give us some technical assistance we can't get from the United States government." For MacDonald's use of anticolonial rhetoric to bolster his support on the Navajo Reservation, see Todd Andrew Needham, "Power Lines: Urban Space, Energy Development and the Making of the Modern Southwest" (PhD diss., University of Michigan, 2006), 326–30; see also chapter 2, notes 40–41 and accompanying text. MacDonald's quote to the *Navajo Times* is at Jim Benally, "Navajos, Arab-Style, to Cash in on Resources," *Navajo Times,* March 13, 1974 (quoted in Needham, "Power Lines," 335).

32. For the public backlash against CERT generally, see Ambler, *Breaking the Iron Bonds,* 96–99. For the various causes and impacts of this Second Energy Crisis, see Yergin, *Prize,* 674–98.

33. For CERT's 1978 financial requests to the federal government, see Gaylord Shaw, "Tribes Put Off on Bid for Resource Aid: Indians May Go Back to OPEC," *Los Angeles Times,* February 15, 1978; see also "Tribes Seek Fuel-Catalog Grant," *Arizona Republic,* November 20, 1978. As to CERT's 1979 requests, reports differ whether the organization sought $700 million over ten years or $60 million per year. Compare Council of Energy Resource Tribes, "$24 Million," *CERT Report* 2, no. 5 (March 17, 1980): 3, with Mark Potts, "Tribes Mining Independence: Energy Resource Bring Change," *Chicago Tribune,* February 3, 1980. The *Denver Post* editorial is at "Indians in OPEC?" *Denver Post,* August 13, 1979.

34. Carter's full address is at Jimmy Carter, "Address to the Nation on Energy and National Goals: 'The Malaise Speech,'" July 15, 1979, The American Presidency Project, ed. Gerhard Peters and John T. Woolley, http://www.presidency.ucsb.edu/ws/?pid=32596. Peter MacDonald's correspondence is at Peter MacDonald to President Carter, July 20, 1979 (quoted in Ambler, *Breaking the Iron Bonds,* 100).

35. Ambler, *Breaking the Iron Bonds,* 100–101; and Council of Energy Resource Tribes, "$24 Million," *CERT Report* 2, no. 5 (March 17, 1980): 3. CERT and others quickly pointed out that not all the $24 million represented new federal commitments and that much of this money was simply redirected from other Indian programs. Still, earmarking these funds specifically for Indian energy development represented a major coup for the energy tribes.

36. Ambler's quote is at Ambler, *Breaking the Iron Bonds,* 102. LaDuke's description of disgruntled Navajo tribal members is in Winona LaDuke, "The Council of Energy Resource Tribes," in Jorgensen, *Native Americans and Energy Development II,* 60. Gabriel's quote is at Ambler, *Breaking the Iron Bonds,* 101.

37. CERT's statement that federal funds would flow directly to tribes is at Council of Energy Resource Tribes, "$24 Million." For CERT's shifting tactics to focus on technical assistance, including moving staff to the Denver office, and their success in obtaining funds, see Marjane Ambler, "Uncertainty in CERT," in Jorgensen, *Native Americans and Energy Development II,* 71–74. Stone's quote also comes from ibid., at 74.

38. Even though CERT helped obtain the funding and feasibility studies for several Indian energy projects, many, like the Crow's synthetic fuel facility, were never constructed. Council of Energy Resource Tribes, "Synfuels Awards," *CERT Report* 2, no. 13 (July 18, 1980): 4–5; Dan Jackson and Charlene McGrady, "Mine

Development on U.S. Indian Lands," *Engineering and Mining Journal* (January 1980); and Ambler, "Uncertainty in CERT," in Jorgensen, *Native Americans and Energy Development II,* 75–76.

39. Winona LaDuke, "The Council of Energy Resource Tribes," in Jorgensen, *Native Americans and Energy Development II,* 62–63.

40. Gabriel's comments and Baker's quote are in Ambler, "Uncertainty in CERT," in Jorgensen, *Native Americans and Energy Development II,* 73, and 76–77.

CHAPTER 7. RECOGNIZING TRIBAL SOVEREIGNTY

1. For putting the federal grant money to work, see Daniel Israel, "New Opportunities for Energy Development on Indian Reservations," *Mining Engineering* (June 1980): 652. The 1980 proposed regulations are found at Indian Mineral Development Regulations, 45 Fed. Reg. 53164 (proposed August 11, 1980) (to be 25 C.F.R. § 171.4 and § 182.9), 53166 and 53175. To be clear, these proposed regulations did not include a section on coal mining on Indian lands, as the DOI determined to separate out this mineral for regulation under a separate provision. The agency, however, did not issue proposed new regulations for coal until after the passage of the 1982 Indian Mineral Development Act, when the entire regulatory structure was amended to comply with new tribal powers afforded by that act. Council of Energy Resource Tribes, "BIA Indian Minerals Rules," *CERT Report* 2, no. 14 (August 29, 1980): 1–2; and Mining Regulations, 48 Fed. Reg. 31978 (proposed July 12, 1983) (to be codified at 25 C.F.R. § 211).

2. Council of Energy Resource Tribes, "CERT Board Meeting," *CERT Report* 2, no. 17 (September 12, 1980): 1 and 3–4.

3. Wilfred Scott's quote comes from ibid., at 1. As for Interior's position on the Northern Cheyenne/ARCO agreement, see Council of Energy Resource Tribes, "ARCO–N. Cheyenne," *CERT Report* 2, no. 18 (September 26, 1980): 2–3.

4. For Martz's qualifications and standing as a leader in natural resource law, see Senate Committee on Energy and Natural Resources, *Clyde O. Martz Nomination,* 96th Cong., 2d sess., May 12, 1980; University of Colorado–Boulder Law School, "Clyde Martz Passes," http://lawweb.colorado.edu/news/showArticle.jsp?id=606 (accessed July 7, 2014); and "Clyde Martz Was Natural-Resources Expert, Who Served Two Presidents," *Denver Post,* June 7, 2010. Martz's statement on the legality of alternative contracts is at Council of Energy Resource Tribes, "Alternative Minerals Contracts Disputed," *CERT Report* 2, no. 18 (September 26, 1980): 1–2.

5. MacDonald's statement is at Council of Energy Resource Tribes, "Alternative Minerals Contracts Disputed," at 2.

6. The 1926 Northern Cheyenne Allotment Act reserved to the tribe all "timber, coal or other minerals, including oil, gas, and other natural deposits" found on the reservation, but provided that after fifty years, these resources "shall become the property of the respective allottees or their heirs." Northern Cheyenne Allotment Act of June 3, 1926, 44 Stat. 690, 691 (1926). As to the 1968 law, see Public Law 90–424, 82 Stat. 424 (1968); Senate Committee on Interior and Insular Affairs, *Granting Minerals, Including Oil, Gas and Other Natural Deposits, on Certain*

Lands in the Northern Cheyenne Indian Reservation, Mont., to Certain Indians, 90th Cong., 2d sess., 1968, S. Rep. 1145,esp. 4–5. For the Supreme Court decision, see *Northern Cheyenne Tribe v. Hollowbreast,* 425 U.S. 649 (1976), esp. 655–56.

7. Compare Alvin M. Josephy, Jr., "Agony of the Northern Plains," *Audubon* 75, no. 4 (July 1973): 87, with Alvin M. Josephy, Jr., "The Murder of the Southwest," *Audubon,* July 1971, 55.

8. The 1970 Clean Air Act's initial implementing regulations are at 40 C.F.R. § 52.21(c)(3)(i), 39 Fed. Reg. 42509 (December 5, 1974). For an explanation of these regulations' impact to tribal governments, see Wilkinson, Cragun and Barker, "General Memorandum No. 74–59," December 27, 1974, series 6: NCAI Committees and Special Issues, box 235, "Energy (General) 1974 [1 of 2]," National Congress of American Indians Collection, National Museum of American Indians Archive Center, Suitland, MD (hereafter NCAI Collection). For Montana's approval of the Colstrip expansion, see Grace Lichtenstein, "Montana Ruling Won by Utilities: 2 Plants Using Strip-Mine Coal Are Approved," *New York Times,* November 22, 1975; and *New York Times,* "Montana Allows 2 Power Plants," June 26, 1976. Allen Rowland's announcement that the Northern Cheyenne intended to reclassify the reservation to Class I standards is at Allen Rowland to Department of Intergovernmental Relations, July 2, 1976, Montana Air Quality Bureau Records, Subject Files, record series 38, box 4, Tribal Assistance Northern Cheyenne Reservation: Prevention of Significant Deterioration (PSD) redesignation (1976–1981), Montana Historical Society, Digital Library and Archives.

9. As to the Northern Cheyenne being the first land manager to request an upgrade in air shed status, see Marjane Ambler, "Northern Cheyenne Ask for Class 1 Air," *High Country News,* August 1976. For the Northern Cheyenne's title of "Environmentalist of the Year," see Elliot Rockler, "Environmentalists of the Year," *Borrowed Times,* January 1977. Transcripts of tribal members testifying in opposition to Colstrip's expansion can be found in the Montana Energy Division Records, 1972–1990, record series 328, box 18, vol. 38, Montana Historical Society, Digital Library and Archives; see also David Robinson, "Northern Cheyenne Landowners Association Statement to the Montana Department of Natural Resources and Conservation Concerning the Proposed Generating Plants, Colstrip 3 and 4," December 14, 1974, 2, Montana Energy Division Records, 1972–1990, record series 328, box 15, Public Hearing File: Colstrip 3 and 4 Proposal—Ashland, Montana Historical Society, Digital Library and Archives. The tribe's official comments are at Tom Scheuneman, "Statement of the Northern Cheyenne Tribe before the State of Montana Department of Natural Resources and Conservation," December 30, 1974, Montana Energy Division Records, 1972–1990, record series 328, box 15, DNRC Public Hearings on Colstrip 3 and 4, Montana Historical Society, Digital Library and Archives (quotes at 3 and 4, emphasis in original). Rowland's quote is found in Northern Cheyenne Research Project and Richard Monteau, *The Northern Cheyenne Air Quality Redesignation Report and Request,* December 11, 1976, in author's possession (emphasis in original).

10. For EPA's denial of Colstrip's expansion permit, see Alan Merson to William H. Coldiron, September 30, 1977, Montana Energy Division Records, 1972–1990, record series 38, box 28, Colstrip Units 3 and 4—Federal Corresp.,

Environmental Protection Agency, Montana Historical Society, Digital Library and Archives; Bill Richards, "Indians Block Electric Plant in Montana," *Washington Post,* June 13, 1978; and "Cheyenne Indians Block Construction of 2 Power Plants," *New York Times,* June 13, 1978.

11. For the Northern Cheyenne's lawsuit and negotiations with Colstrip's owners, see Patrick Dawson, "Is Cheyenne Air for Sale?," *Billings Gazette,* October 1979. Gabriel's comment is at Ed Gabriel, "News and Views," *News and Views* 1, no. 4 (May 5, 1980), folder "Council of Energy Resource Tribes," box 85, no. 11 (reel 26), Native America: A Primary Record, series 2: Assn. on American Indian Affairs Archives, General and Tribal Files, 1851–1983. Dahle's first quote is in Council of Energy Resource Tribes, "Northern Cheyenne," *CERT Report* 2, no. 8 (April 28, 1980): 3. Dahle's second quote comes from Clara Caufield, "Northern Cheyenne Tribe Saw Victories on Energy," *Indianz.com,* April 9, 2014, at http://www.indianz.com/News/2014/013181.asp.

12. For the 1978 shift in the Cheyenne's approach to energy development, see James Boggs, "The Challenge of Reservation Resource Development: A Northern Cheyenne Instance," in Joseph Jorgensen, ed., *Native Americans and Energy Development II* (Boston: Anthropology Resource Center and Seventh Generation Fund, 1984), 221–23. Rowland's quote is in Steve Jessen, "Northern Cheyenne Tribe Fights Mines, Woos Drillers," *Billings Gazette,* September 21, 1980.

13. For the 1978 orientation program, see *Tsistsistas Press* (Lame Deer, MT), September 1978; "Official Agenda: Orientation for the New Tribal Council," September 13, 1978, series 7: U.E.T. (United Effort Trust), box 9, "UET Northern Cheyenne," NCAI Collection. For the background and objectives of the Northern Cheyenne Research Project, see Northern Cheyenne Research Project and Robert Bailey, *Northern Cheyenne Research Project: Life Support Systems, First Annual Report* (Lame Deer, MT: Northern Cheyenne Research Project, 1974), esp. 31–32; and Joe Lamson, *Northern Cheyenne Research Project: Second Annual Report* (Busby, MT: Northern Cheyenne Research Project, 1975), esp. 3–5.

14. Boggs, "Challenge of Reservation Resource Development," in Jorgensen, *Native Americans and Energy Development II,* 221–22.

15. Ibid., 221–23. Little Coyote's quote comes from Len Ackland, "Mineral Wealth Gives Indians a Bargaining Tool to Shape the Future," *Chicago Tribune,* February 22, 1981.

16. Boggs, "Challenge of Reservation Resource Development," in Jorgensen, *Native Americans and Energy Development II,* 223–27.

17. As to Northern Cheyenne advertising for development partners, the response received, and the request for BIA technical assistance, see Allen Rowland to James Badura, February 27, 1980, Select Committee on Indian Affairs, 97th Congress, Legislative Files, box 97–2, Records of the United States Senate, RG 46, National Archives, Washington, DC. For the Northern Cheyenne using its own expertise to evaluate these proposals, see Allen Rowland to Members of the Northern Cheyenne Tribe, December 5, 1980, Select Committee on Indian Affairs, 97th Congress, Legislative Files, box 97–2, Records of the United States Senate, RG 46, National Archives, Washington, DC. As to disputes whether the loss of the NCRP left the tribe with adequate expertise to evaluate proposals, see Boggs, "The

Challenge of Reservation Resource Development," in Jorgensen, *Native Americans and Energy Development II,* 227–29; Ackland, "Mineral Wealth Gives Indians a Bargaining Tool to Shape the Future"; and Len Ackland, "U.S. Lets Indians Make Their Own Deals," *Chicago Tribune,* March 4, 1981. The details of the ARCO deal can be found at Boggs, "Challenge of Reservation Resource Development," 206–8; and Council of Energy Resource Tribes, "ARCO—N. Cheyenne," *CERT Report* 2, no. 18 (September 26, 1980): 2–3. As to the duties of the tribal Oil and Gas Office to monitor ARCO's activities, see Allen Rowland to Bill Benjamin, November 25, 1980, Select Committee on Indian Affairs, 97th Congress, Legislative Files, box 97–2, Records of the United States Senate, RG 46, National Archives, Washington, DC.

18. As to the two referenda, see Senate Select Committee on Indian Affairs, *Hearings on S. 1894,* 97th Cong., 2d sess. (Washington DC: Government Printing Office, February 12, 1982), 86–89; and Council of Energy Resource Tribes, "ARCO—N. Cheyenne," 3. Rowland's and Little Coyote's statements are in Steve Jessen, "Northern Cheyenne Tribe Fights Mines, Woos Drillers," *Billings Gazette,* September 21, 1980. Interior's environmental assessment is summarized in Council of Energy Resource Tribes, "Northern Cheyenne," *CERT Report* 2, no. 19 (October 10, 1980): 5.

19. For a review of the various federally approved alternative contracts since 1975, see Senate Select Committee on Indian Affairs, *Hearings on S. 1894,* 1982, 72; see also Council of Energy Resource Tribes, "Energy Agreements Affected by Joint Venture Bill," *CERT Report* 4, no. 11 (September 13, 1982): 19–20. For details on the Navajo and Blackfeet deals, and the BIA quote, see "Indians Want a Bigger Share of Their Wealth," *Business Week,* May 3, 1976, 100. Black is quoted in Molly Ivins, "Indians' Tribal Chairmen's Group Demanding a Voice in Energy Policy," *New York Times,* August 4, 1979.

20. Senate Select Committee on Indian Affairs, *Hearings on S. 1894,* 70–77. At these spring 1982 hearings, Interior officials identified six negotiated agreements that had been approved under various legal theories. These involved energy projects on the Navajo, Jicarilla Apache, Blackfeet, Crow, and Wind River Reservations and included four oil and gas agreements, one coal contract, and one uranium project. Later that fall, however, CERT identified fifteen negotiated agreements between western tribes and energy companies, eight of which the Department of the Interior had approved, and seven that were being held up until Congress clarified tribal authority to negotiate energy contracts. As opposed to Interior's list of approved contracts, CERT noted that the Crow's 1980 negotiated coal agreement with Shell Oil was never formally approved. Council of Energy Resource Tribes, "Energy Agreements Affected by Joint Venture Bill."

21. Senate Select Committee on Indian Affairs, *Hearings on S. 1894,* 87 and 92; Council of Energy Resource Tribes, "ARCO—N. Cheyenne," 3; and Ackland, "U.S. Lets Indians Make Their Own Deals."

22. For Martz's view on the legality of the Northern Cheyenne-ARCO deal, see Ambler, *Breaking Iron Bonds,* 87. Ambler actually interviewed Martz shortly after his decision. Hiwalker's quote is at Senate Select Committee on Indian Affairs, *Hearings on S. 1894,* 87. As to the process that produced the legislative solution,

see Council of Energy Resource Tribes, "'Alternative Agreements' Bill Passes Both Houses, Awaits Final Actions," *CERT Report* 4, no. 11 (September 13, 1982): 17. Although both the Department of the Interior and Senator Melcher drafted their own versions of the proposed legislation, the two sides shared draft bills and worked cooperatively. See Tim Vollman to Ginny Boylan, May 5, 1981, Select Committee on Indian Affairs, 97th Congress, Legislative Files, box 97–2, Records of the United States Senate, RG 46, National Archives, Washington, DC; Senate Select Committee on Indian Affairs, *Hearings on S. 1894,* 87; and Ambler, *Breaking the Iron Bond,* 88.

23. For Reagan's views on Indian Policy, see George Pierre Castile, *Taking Charge: Native American Self-Determination and Federal Indian Policy, 1975–1993* (Tucson: University of Arizona Press, 2006), esp. 50–52. After pledging to support the Indian self-determination policy as a candidate, President Reagan did not issue a formal Indian policy statement until 1983. In that message Reagan confirmed his commitment to Indian self-determination, though he noted that "there has been more rhetoric than action." "To reverse this trend," the statement continued, the president would "remov[e] the obstacles to self-government by creating a more favorable environment for the development of healthy reservation economies." In other words, Reagan viewed free markets as the key to self-determination. Ronald Reagan, "Statement on Indian Policy," January 24, 1983, The American Presidency Project, ed. Gerhard Peters and John T. Woolley, http://www.presidency.ucsb.edu/ws/?pid=41665. For Reagan's cuts to federal Indian programs, see Council of Energy Resource Tribes, "Indian Programs Hit Hard in Proposed Budget Cuts," *CERT Report* 3, no. 5 (April 3, 1981): 1–3. These cuts extended beyond agencies typically charged with administering Indian programs, like the BIA and the Indian Health Service, and included deep cuts at the Department of Energy that would remove support for Indian energy projects. See Council of Energy Resource Tribes, "Planned Energy Department Cuts Hit Tribes Hard," *CERT Report* 3, no. 6 (April 24, 1981): 3–4.

24. The Energy Department's cuts and MacDonald's quote are covered in Council of Energy Resource Tribes, "Planned Energy Department Cuts Hit Tribes Hard," 3. For James Watt's recent work with the Mountain States Legal Foundation, see Council of Energy Resource Tribes, "Interior Secretary," *CERT Report* 2, no. 22 (December 19, 1980): 4–5; and Council of Energy Resource Tribes, "Watt Approved as Interior Secretary," *CERT Report* 3, no. 1 (January 23, 1981): 1–2. The case for which Watt filed the amicus brief involved the Jicarilla Apache tribe's authority to tax oil and gas companies operating on their reservation. In a landmark decision for tribal sovereignty, the Supreme Court held that tribal authority to tax "is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management." *Merrion v. Jicarilla Apache Indian Tribe,* 455 U.S. 130 (1982), 130.

25. For energy tribes' fight against Reagan's proposed cuts, see Council of Energy Resource Tribes, "Indian Programs Hit Hard in Proposed Budget Cuts"; Council of Energy Resource Tribes, "Planned Energy Department Cuts Hit Tribes Hard"; Council of Energy Resource Tribes, "House Panel Proposes to Restore Indian Budget," *CERT Report* 3, no. 6 (April 24, 1981): 1–2; and Council of Energy

Resource Tribes, "Tribal Leaders Angry over Budget Cuts," *CERT Report* 3, no. 7 (May 26, 1981): 1–2. For tribal reaction to Reagan's proposed reduction in federal Indian programs generally, see Castile, *Taking Charge,* 51–56. For the percentage of CERT's budget tied to federal support, see Ambler, *Breaking the Iron Bonds,* 106. Gabriel's letter is at Ed Gabriel, "Open Letter from Ed Gabriel," September 1981, series 5: Records of Indian Interest Organizations, box 149, "C.E.R.T.," NCAI Collection.

26. Peter MacDonald, "Statement, CERT 1981 Annual Meeting," October 26, 1981, 4 and 9, folder "Council of Energy Resource Tribes," box 85, no. 11 (reel 26), Native America: A Primary Record, series 2: Assn. on American Indian Affairs Archives, General and Tribal Files, 1851–1983. At this gathering, MacDonald also addressed the recent cuts in federal spending. A staunch Republican, Reagan supporter, and proponent of free market principles, the CERT chairman did not oppose the transition from federal to private support for Indian energy development, but he feared the drastic reduction in federal funding could so damage tribal communities as to shake Indians' faith in the private sector. Thus, MacDonald tacitly supported some budgetary "belt-tightening," but he argued for "a little bit of realism, a little bit of political pragmatism with the [free market] ideology that all of us were willing to try out." "I buy the ideology of the private sector and am prepared to back governmental efforts to apply that ideology," MacDonald explained, but "there comes a point when the disparity between reality and ideology is so great that people throw out the baby with the bath water." Ibid., at 4. For other speakers at the CERT annual conference and Halbouty's quote, see Council of Energy Resource Tribes, "It's Time the Private Sector Discovered Indian America, Speakers Tell Tribal Leaders at 1981 CERT Annual Meeting," October 26, 1981, folder "Council of Energy Resource Tribes," box 85, no. 11 (reel 26), Native America: A Primary Record, series 2: Assn. on American Indian Affairs Archives, General and Tribal Files, 1851–1983; and Lynn A. Robbins, "'Doing Business with Indian Tribes': The 1981 Annual Meeting of the Council of Energy Resource Tribes," in Jorgensen, *Native Americans and Energy Development II,* 52–57.

27. MacDonald, "Statement, CERT 1981 Annual Meeting," 1. For more on tribal leaders' improving knowledge of the energy industry and their desire to employ this expertise in private-tribal projects, see Jim Hendon, "Indian Tribes Hope for More Energy Flexibility," *Rocky Mountain News,* October 25, 1981.

28. For coverage of the concluding resolutions and MacDonald's statement, see Council of Energy Resource Tribes, "CERT Board of Directors Calls for an End to Economic Dependence for Indian Tribes," October 28, 1981, folder "Council of Energy Resource Tribes," box 85, no. 11 (reel 26), Native America: A Primary Record, series 2: Assn. on American Indian Affairs Archives, General and Tribal Files, 1851–1983. NARF's opinion regarding tribes' existing authority to enter into alternative contracts is at Richard B. Collins to Council of Energy Resource Tribes, October 13, 1981, Select Committee on Indian Affairs, 97th Congress, Legislative Files, box 97–2, Records of the United States Senate, RG 46, National Archives, Washington, DC. The resolution opposing Melcher's and Interior's bills is at Council of Energy Resource Tribes, "Resolution No. 81–10, Amendment of the 1938 Indian Mineral Leasing Act," October 28, 1981, Select Committee on Indian Affairs,

97th Congress, Legislative Files, box 97–2, Records of the United States Senate, RG 46, National Archives, Washington, DC.

29. In contrast to CERT's and Melcher's proposals, Interior proposed a convoluted process for approving alternative contracts. The agency's bill authorized tribes to negotiate deals, but before they could be approved, the federal government would have to determine whether an agreement conveyed an interest in land. If it did, under Interior's approach, the old 1938 Leasing Act would determine the deal's validity. If, however, Interior found the agreement was not a lease—meaning it did not convey a property interest—then the agency would follow the new law's procedures to determine whether to approve the negotiated contract. Compare Tim Vollman to Ginny Boylan (Interior's draft) with "Senator Melcher of Montana," *Congressional Record* (November 30, 1981): S14127–28 (Melcher's draft), and Richard B. Collins to Council of Energy Resource Tribes, October 13, 1981 (CERT/NARF's draft). The Department of Justice's endorsement is at Robert McConnell to David Stockman, October 20, 1981, 2, Select Committee on Indian Affairs, 97th Congress, Legislative Files, box 97–2, Records of the United States Senate, RG 46, National Archives, Washington, DC. For further details of Melcher's bill, see "Senator Melcher of Montana," *Congressional Record* (November 30, 1981): S14127–28; Council of Energy Resource Tribes, "Sen. Melcher Introduces 'Alternative Agreements' Bill for Tribal Minerals," *CERT Report* 3, no. 16 (December 21, 1981): 1–2; and Association on American Indian Affairs, Inc., "Memorandum No. 81–36, Proposed Tribal Mineral Rights Legislation," December 30, 1981, folder "Legislative and Administrative Memoranda, 1976–1982," box 293, no. 1–6 (reel 3), Native America: A Primary Record, series 3: Assn. on American Indian Affairs Archives, Publications, Programs and Organizational Files, 1851–1983.

30. Harrison's and Burton's quotes are at Senate Select Committee on Indian Affairs, *Hearings on S. 1894,* 34 and 10, respectively. For additional corporate support, see ibid., at 106, 111, and 162.

31. Ibid., 57. For additional opposition to Melcher's bill based on the fear that uneducated Indians would be taken advantage of, see ibid., 121–36; Paul Frye to Jennie Boylan, May 11, 1982, Select Committee on Indian Affairs, 97th Congress, Legislative Files, box 97–2, Records of the United States Senate, RG 46, National Archives, Washington, DC; and Paul Frye to Debby Brokenrope, May 25, 1982, Select Committee on Indian Affairs, 97th Congress, Legislative Files, box 97–2, Records of the United States Senate, RG 46, National Archives, Washington, DC. In addition to opposition based on this fear, other detractors of the bill included a minority faction of Northern Cheyenne opposed to all mineral development, an energy company seeking to ensure that federal courts, not tribal judges, retained jurisdiction over disputes arising from alternative contracts, and state officials seeking to clarify their ability to tax mineral proceeds generated by alternative agreements. Senate Select Committee on Indian Affairs, *Hearings on S. 1894,* 20–26 and 93–103; Terry O'Conner, "Testimony of Terry O'Conner, Director of Legal and Governmental Affairs, Rocky Mountain Division, Peabody Coal Company, on S. 1894," July 27, 1982, series 6: NCAI Committees and Special Issues, box 238, "Mineral Resources—S. 1894," NCAI Collection; Chris Farrand to John Melcher, August 27, 1982, Select Committee on Indian Affairs, 97th Congress, Legislative

Files, box 97–2, Records of the United States Senate, RG 46, National Archives, Washington, DC; and Ted Schwinden to John Melcher, June 15, 1982, Senate Select Committee on Indian Affairs, 97th Congress, 1st sess., Bill Files, box 17, Records of the United States Senate, RG 46, National Archives, Washington, DC. Further, the Northern Cheyenne tribal government opposed the retroactive authorization provision as written because they feared it could be interpreted to imply their ARCO agreement was invalid without congressional approval; or alternatively, the new law could preclude the Northern Cheyenne from later challenging certain provisions of its agreement. Senate Select Committee on Indian Affairs, *Hearings on S. 1894,* 17–19, 86–92; Allen Rowland to John Melcher, March 2, 1982, Senate Select Committee on Indian Affairs, 97th Congress, 1st sess., Bill Files, box 17, Records of the United States Senate, RG 46, National Archives, Washington, DC; and George Hiwalker, "Statement of George Hiwalker, Jr., Vice President, Northern Cheyenne Tribal Council," July 27, 1982, series 6: NCAI Committees and Special Issues, box 238, "Mineral Resources—S. 1894," NCAI Collection. For similar reasons, energy companies with previously executed alternative agreements also opposed the proposed retroactive authorization clause. See Mary Anne Sullivan to John Melcher, September 10, 1982, Select Committee on Indian Affairs, 97th Congress, Legislative Files, box 97–2, National Archives, Washington, DC; and Forest Gerard to William S. Cohen, October 20, 1982, Select Committee on Indian Affairs, 97th Congress, Legislative Files, box 97–2, Records of the United States Senate, RG 46, National Archives, Washington, DC. Ultimately, this provision was amended to establish a set of guidelines the Department of the Interior must use to evaluate past deals for approval, rather than simply providing blanket authorization for all existing alternative agreements. *Indian Mineral Development Act of 1982,* S. 1894, 97th Cong., 2d sess., *Congressional Record* (December 8, 1982): S14194–96; and *Permitting Tribal Agreements to Dispose of Mineral Resources,* S. 1894, 97th Cong., 2nd sess., *Congressional Record* (December 10, 1982): H9440–41.

32. Senate Select Committee on Indian Affairs, *Permitting Indian Tribes to Enter into Certain Agreements for the Disposition of Tribal Mineral Resources and for Other Purposes,* 97th Cong., 2d sess., 1982, S. Rep. 472, 7. Paradoxically, existing law arguably allowed "competent" allottees to negotiate their own mineral leases, even though this new bill would not authorize them to negotiate alternative agreements. Act of March 3, 1909, 35 Stat. 781 (1909), codified as amended at 25 U.S.C. § 396 (1980), implementing regulations at 25 C.F.R. § 172.1–172.33 (1980); see also Senate Select Committee on Indian Affairs, *Hearings on S. 1894,* 121–22 and 126–27.

33. Gabriel's testimony is at Senate Select Committee on Indian Affairs, *Hearings on S. 1894,* 84. The Department of the Interior's letters in support are at Ken Smith to William S. Cohen, March 15, 1982, 2–3, Select Committee on Indian Affairs, 97th Congress, Legislative Files, box 97–2, Records of the United States Senate, RG 46, National Archives, Washington, DC; and Roy H. Sampsel to Morris K. Udall, August 9, 1982, 2–3, Select Committee on Indian Affairs, 97th Congress, Legislative Files, box 97–2, Records of the United States Senate, RG 46, National Archives, Washington, DC.

34. The difference between the Senate and House versions of the bill related largely to the retroactive authorization of past alternative contracts and did not

affect the general thrust of the legislation to recognize tribal authority to negotiate alternative agreements. See Association on American Indian Affairs, Inc., "Memorandum No. 82–20, S. 1894 Status Report," July 30, 1982, folder "Legislative and Administrative Memoranda, 1976–1982," box 293, no. 1–6 (reel 3), Native America: A Primary Record, series 3: Assn. on American Indian Affairs Archives, Publications, Programs and Organizational Files, 1851–1983; Council of Energy Resource Tribes, "'Alternative Agreements' Bill Passes Both Houses, Awaits Final Actions"; and John Melcher to Morris Udall, September 23, 1982, Select Committee on Indian Affairs, 97th Congress, Legislative Files, box 97–2, Records of the United States Senate, RG 46, National Archives, Washington, DC. For Udall's and Bereuter's explanation of the need for an updated law, see *Indian Mineral Development Act of 1982,* S. 1894, 97th Cong., 2d sess., *Congressional Record* (August 17, 1982): H6044–46; and Council of Energy Resource Tribes, "'Alternative Agreements' Bill Passes Both Houses, Awaits Final Actions." Melcher's quote is at *Indian Mineral Development Act of 1982,* S. 1894, 97th Cong., 2d sess., *Congressional Record* (December 8, 1982): S14196. Bereuter's is at *Permitting Tribal Agreements to Dispose of Mineral Resources,* S. 1894, 97th Cong., 2d sess., *Congressional Record* (December 10, 1982): H9440. Also, the House Committee on Interior and Insular Affairs held abbreviated, and largely redundant, hearings in July 1982. No transcript of these hearings was published, but according to staff notes from the National Congress of American Indians, only representatives of the Department of the Interior, the Ute Mountain Utes, the Northern Cheyenne, and Peabody Coal testified. All supported the legislation. Naomi Iizuka, "Notes on House Interior and Insular Affairs Cmte Hearing on Tribal Indian Mineral Resources Agreements," July 27, 1982, series 6: NCAI Committees and Special Issues, Box 238, "Mineral Resources—S. 1894," NCAI Collection.

35. Melcher's quote is in "Sen. Melcher Explains New Indian Mineral Bill," *Williston Basin Report,* January 19, 1983. Reagan's quotes are at Reagan, "Statement on Indian Policy," January 24, 1983, The American Presidency Project, ed. Gerhard Peters and John T. Woolley, 2 and 3–4, at http://www.presidency.ucsb.edu.

EPILOGUE

1. Marjane Ambler, *Breaking the Iron Bonds: Indian Control of Energy Development* (Lawrence: University Press of Kansas, 1990), 107. CERT officials labeled the 1982 annual conference "Indian Energy Development in the New Economic and Legislative Environment" to reflect the major legislative changes working their way through Congress and the altered energy economics caused by a rising glut of global oil supplies. In addition to the impending passage of the 1982 Indian Mineral Development Act, Congress had established a new Minerals Management Service to better track tribal oil and gas production and to ensure tribes received their share of royalties. Ed Gabriel, "Open Letter from Ed Gabriel," October 1982, series 5: Records of Indian Interest Organizations, box 149, "Council of Energy Resource Tribes (CERT)," National Congress of American Indians Collection, National Museum of American Indians Archive Center, Suitland, MD.

2. Council of Energy Resource Tribes, "David Lester Becomes New Executive Director of the Council of Energy Resource Tribes," November 17, 1982, box 43, folder 10, LaDonna Harris Papers and Americans for Indian Opportunity Records, 1953–2010, University of New Mexico, Center for Southwest Research; Marjane Ambler, "New CERT Director Has Made Career Out of Indian Economic Development," *Denver Post,* December 16, 1982. Marjane Ambler argues Reagan's budget cuts greatly influenced CERT's decision to close its DC offices, forcing the organization to prioritize tribal technical assistance over federal lobbying. Ambler, *Breaking the Iron Bonds,* 109–11.

3. Daniel Yergin, *The Prize: The Epic Quest for Oil, Money, and Power* (New York: Simon and Schuster, 1991), 717–22.

4. The Shell decision is at R. M. Rice to Crow Coal Commission, 30 1985, Eloise Whitebear Pease Collection, 17:13, Little Bighorn College Archives, Crow Agency, MT (hereafter LBC Archives). Shell officials also noted that the "continuing uncertainty regarding the application of Montana's severance tax to Crow coal" was another factor inhibiting their ability to proceed. The Supreme Court later clarified that states have the right to impose additional state taxes on Indian resources so long as the tax is not so high as to unfairly damage the marketability of tribal minerals. *Cotton Petroleum v. New Mexico,* 490 U.S. 163 (1989). As to Westmoreland's release, see C. J. Presley to Forest Horn, March 16, 1981, Eloise Whitebear Pease Collection, 16:49, LBC Archives.

5. Ambler, *Breaking the Iron Bonds,* 241–43; see also Garrit Voggesser, "The Evolution of Federal Energy Policy for Tribal Lands and the Renewable Energy Future," in Sherry L. Smith and Brian Frehner, eds., *Indians and Energy: Exploitation and Opportunity in the American Southwest* (Santa Fe: SAR Press, 2010), 69. Voggesser reports the 1982 peak of tribal oil and gas revenues to be $198 million but then notes the drastic fall over the next four years.

6. As to the attempted removal of David Stewart (1972–74), see Pauline Small, "Crow Tribal Council Minutes, January 13, 1973," January 13, 1973, Eloise Whitebear Pease Collection, 22c:3:1, LBC Archives. In chapter 4, I cover in detail the impeachment of Patrick Stands Over Bull (1972–77). For Forrest Horn (1977–82), see "Article of Impeachment against Crow Tribal Chairman Forest Horn," April 1979, Eloise Whitebear Pease Collection, LBC Archives. For Donald Stewart (1982–86), the removal of his executive powers, and a helpful summary of previous impeachment proceedings see Roger Clawson, "Crow Council Deposes Chairman," *Billings Gazette,* April 16, 1985.

7. For energy firms' appeal to the Department of the Interior for clarity, see Joan Davenport to John Bookout, November 15, 1977, Eloise Whitebear Pease Collection, LBC Archives; Joan Davenport to Lowry Blackburn, November 15, 1977, Eloise Whitebear Pease Collection, LBC Archives; and James Joseph to Cale Crowley, November 15, 1977, Eloise Whitebear Pease Collection, LBC Archives. Interior's almost identical response to the energy firms is found at Joan M. Davenport, Department of the Interior acting secretary, to Lowry Blackburn, AMAX Coal Company president, November 15, 1977; Joan M. Davenport, Department of the Interior acting secretary, to John F. Bookout, Shell Oil Company president, November 15, 1977; and Joan M. Davenport, Department of the Interior acting

secretary, to Cale Crowley, attorney for Gulf Oil Corporation and Peabody Coal Company, November 15, 1977, Eloise Whitebear Pease Collection, LBC Archives. The Westmoreland Company continued its mining on the Ceded Strip but supported efforts to have the Department of Energy restructure the Crow's apparatus for dealing with energy companies. Charles Brinley to James Joseph, November 17, 1977, Eloise Whitebear Pease Collection, 7b, LBC Archives. In the Crow's petition to the Energy Department for assistance in amending its government, the tribal attorney actually derided the federal government's reluctance to get involved with internal tribal politics: "The doctrine and the policy of the Congress is to grant 'self-determination' to the Indian people, which quite frankly, is a policy of saying 'go paddle your own canoe.' The canoe won't float with so many holes in it." Harold G. Stanton, Crow attorney, to James Furse, Department of Energy, November 17, 1977, Eloise Whitebear Pease Collection, 7b, LBC Archives.

8. For the disbandment of the Coal Authority, see Forest Horn, "Resolution No. 80–16: A Resolution Pertaining to Coal Negotiations with Shell Oil Company and to Clarify Which Committee and Entity within the Tribe Has the Authority to Continue Negotiations with the Shell Oil Company," January 24, 1980, Apsaalooke Nation Council and District Records, Crow Tribal Government Building, Crow Agency, MT. For passage of the 2001 constitution and the new governing structure, see "Takeover Marks Crow 'New Beginning,'" *Billings Gazette,* January 11, 2001; and "New Crow Constitution Wins Federal Approval," *Helena Independent Record,* December 2, 2001.

9. For Westmoreland's expansion onto the reservation proper, see Shelley Beaumont, "Absaloka Mine South Extension Approved," *Big Horn County News,* October 23, 2008; and Susan Gallagher, Associated Press, "Proposal Would Move Mining onto Crow Reservation," *Helena Independent Record,* April 4, 2008. Old Coyote's quote and revenue figures from the Absaloka Mine are at Darrin Old Coyote, "Testimony of Crow Nation Tribal Chairman Darrin Old Coyote," 3, in House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources, *Oversight Hearing on "Mining in America: Powder River Basin Coal Mining the Benefits and Challenges,"* 113th Cong., 1st sess., July 9, 2013, available at http://docs.house.gov/meetings/II/II06/20130709/101096/HHRG-113-II06-Wstate-OldCoyoteD-20130709.pdf.

10. The Crow Reservation economic figures come from the Harvard Project on American Indian Economic Development, "On Improving Tribal-Corporate Relations in the Mining Sector: A White Paper on Strategies for Both Sides of the Table," April 2014, 87, available at http://hpaied.org/images/resources/general/miningrelations.pdf. In 2013, the Crow granted Westmoreland another lease for an additional 145 million tons of coal adjacent to the company's existing mine in the Ceded Strip. Susan Olp, "Crow Tribe Leases 145 Million Tons of Coal," *Billings Gazette,* April 11, 2013. In 2008, the Crow announced a partnership with the Australian-American Energy Co. to build a coal-to-liquids plant on the reservation that would extract 38,000 tons of Crow coal per day. Fluctuating global oil prices, however, once again caused that project to be restructured to reduce its scale, and as of February 2013, it is unclear whether the tribe will pursue the liquefication project. Erica Gies, "Rich in Coal, a Tribe Struggles to Overcome Poverty," *New*

York Times, October 25, 2011. In January 2013, the Crow announced an agreement with Cloud Peak Energy that would authorize the Wyoming mining company to excavate 1.4 billion tons of coal from the reservation. This coal, which is more than the United States consumes in a year, is earmarked for export to Asian markets, pending approval and construction of coal export ports in the Pacific Northwest. Sue Olp, "Crow Tribe Signs 1.4B Ton Coal Deal with Cloud Peak Energy," *Billings Gazette,* January 24, 2013. Finally, in March 2013, the Crow reached another agreement with Signal Peak Energy to prospect 400 million more tons on the reservation. Associated Press, "Signal Peak Energy Eyes Coal on Crow Reservation," *Billings Gazette,* March 19, 2013.

11. For the uranium moratorium and closures of Black Mesa Mine and Mohave Generating Station, see Dana E. Powell and Dáilan J. Long, "Landscapes of Power: Renewable Energy Activism in Diné Bikéyah," in Sherry L. Smith and Brian Frehner, eds., *Indians and Energy: Exploitation and Opportunity in the American Southwest* (Santa Fe: SAR Press, 2010), 235; and Enei Begaye. "The Black Mesa Controversy," *Cultural Survival Quarterly* 29, no. 4 (Winter 2005). For the failed Desert Rock Energy Project and Navajo Transmission Project, see Powell and Long, "Landscapes of Power," 236–43; Laura Paskus, "The Life and Death of Desert Rock," *High Country News,* August 16, 2010; and Sierra Crane-Murdoch, "On Navajo Nation, Power Authority Slips Away," *High Country News,* April 7, 2011.

12. Winona LaDuke, "Monster Slayers: Can the Navajo Nation Kick the Coal Habit?," *Indian Country Today,* July 31, 2013; Noel Lyn Smith, "Navajo Nation Enters the Coal Mining Business," *Daily Times,* November 2, 2013; Emily Guerin, "Navajo Nation's Purchase of a New Mexico Coalmine Is a Mixed Bag," *High Country News,* January 7, 2014; and Rebecca Fairfax Clay, "Tribe at a Crossroads: The Navajo Nation Purchases a Coal Mine," *Environmental Health Perspectives* 122, no. 4 (April 2014): A104–A107.

13. For ARCO's abandonment of the project and the impact to the tribal economy, see Jim Bruggers, "Energy Slump, Isolation and Turmoil: The Plight of the Northern Cheyenne," *Great Falls Tribune,* November 16, 1986. Tribal President Llevando Fisher recently testified to Congress that Northern Cheyenne unemployment remains above 60 percent. Llevando Fisher, "Statement of Llevando 'Cowboy' Fisher, President, Northern Cheyenne Tribe," 6, in House Committee on Natural Resources, Subcommittee on Indian and Alaska Native Affairs, *Hearing on H.R. 4350: The Northern Cheyenne Lands Act,* 113th Cong., 2d sess., May 7, 2014, available at://naturalresources.house.gov/uploadedfiles/fishertestimony5-7-14.pdf. The 2010 census figures are provided on the tribal government-endorsed blog "A Cheyenne Voice," available at http://acheyennevoice.com/northern-cheyenne.

14. Fisher, "Statement of Llevando 'Cowboy' Fisher," at 5–6.

15. United States Surface Transportation Board, "Section 106 Consultation Meeting for the Tongue River Railroad Construction Project: Transcript of Proceedings," February 13, 2014, 74–75, available at http://www.tonguerivereis.com/documents/021314_section_106_transcript.pdf. In this meeting, Llevando Fisher discusses the tribe's 2006 referendum, in which tribal members were asked whether they would rather pursue traditional coal mining or coal bed methane

development. The tribe chose the former. See also David Melmer, "Northern Cheyenne to Vote on Resource Extraction," *Indian Country Today,* November 1, 2006, available at http://indiancountrytodaymedianetwork.com/2006/11/01/northern-cheyenne-vote-resource-extraction-128945. For additional coverage of the impending referendum, see Clara Caufield, "Northern Cheyenne Tribe to Vote on Coal Project," *Indianz.com,* February 24, 2014, available at http://www.indianz.com/News/2014/012639.asp; and Clara Caufield, "Northern Cheyenne Tribe Remains Split on Coal," *Indianz.com,* April 1, 2014, available at http://www.indianz.com/News/2014/013086.asp.

16. Passions over the new constitution ran so high that opponents forcibly, though temporarily, took over tribal offices to prevent its implementation. "Takeover Marks Crow 'New Beginning,'" *Billings Gazette,* January 11, 2001. To those opposed to reservation mining during the 1970s, the biggest concern with the new constitution was that it stifled public participation, preventing tribal members from raising concerns about energy projects negotiated by their leaders. In fact, members of the opposition group that orchestrated Patrick Stands Over Bull's 1977 impeachment claim that had the 2001 constitution been in place during the 1970s, the Crow "would be nonexistent now" because their faction would not have been able to "inform the people" of the dangers of development. John Doyle, Urban Bear Don't Walk, Larry Kindness, Dale Kindness, Dewitt Dillon, interview by the author, August 17, 2009, Crow Agency, MT, in author's possession.

17. Peter Iverson, *Diné: A History of the Navajos* (Albuquerque: University of New Mexico Press, 2002), 250–52; Peter Iverson, *The Navajo Nation* (Westport, CT: Greenwood Press, 1981), 187; and Ambler, *Breaking the Iron Bonds,* 102, 111–12.

18. Ambler, *Breaking the Iron Bonds,* 109–11.

19. Ibid., 113–16.

20. Voggesser, "The Evolution of Federal Energy Policy for Tribal Lands and the Renewable Energy Future," in Smith and Frehner, *Indians and Energy,* 69–72; see also the Harvard Project on American Indian Economic Development, *The State of the Native Nations: Conditions under U.S. Policies of Self-Determination* (New York: Oxford University Press, 2008), 165.

21. Peter MacDonald, "Remarks by Chairman Peter MacDonald, 1983 Annual CERT Meeting," November 18, 1982, 3–5, folder "Council of Energy Resource Tribes," box 85, no. 11 (reel 26), Native America: A Primary Record, series 2: Assn. on American Indian Affairs Archives, General and Tribal Files, 1851–1983.

22. Ibid., 12–13 (emphasis in original).

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The Corporation and the Tribe

JOANNE BARKER

A PROLOGUE

> The system ain't broke. It was built to be this way.
> Tom B. K. Goldtooth (Diné/Dakota)

This article examines how the foundational legal definitions of the "corporation" and the "tribe" between 1790 and 1887 worked together to establish and protect imperialist social relations and conditions in the United States between powerful financial interests, both government and corporate, and Indigenous peoples. While the analysis is focused historically, I want to frame it by the current political debates and organizing efforts against government and corporate collusion and fraud represented by Occupy Wall Street (OWS) and my engagement with Occupy Oakland. I hope this will help to better understand how the history of the territorial dispossession and collusive fraud enacted by the US government and corporate interests against Indigenous peoples clarifies the kinds of issues of government and corporate collusion and fraud that OWS has addressed. To be clear, the 1 percent did not show up in 2008. They have been around all along, targeting Indigenous peoples and their territories over which the US empire was built and continues to operate.

On September 17, 2011, OWS began in Zuccotti Park (Liberty Plaza) in Manhattan's financial district with the goal of "fighting back against the corrosive power of major banks and multinational corporations over the democratic process, and the role of Wall Street in creating an economic collapse that has caused the greatest recession in generations."[1] From

my particular viewpoint in Oakland, California, it seemed that OWS had swiftly coalesced the demands of a wide array of grassroots-based organizations and individuals for solidarity against and open debate about the more insidious legal protections of government and corporate collusion. For instance, discussions facilitated by OWS exposed the gross misrepresentations of congressional representatives and energy industry CEOs about job creation and public safety in Canada's Keystone XL Pipeline and its proposed extensions through the United States and then linked these lies to the ongoing struggles of Indigenous peoples for environmental justice.[2] When so many Occupy Oakland participants began showing up in solidarity at Indigenous actions in the Bay Area, such as the Chochenyo Ohlone's Annual Emeryville Shellmound Protest on Black Friday, I genuinely believed that the OWS movement had succeeded in opening a critical space for much-needed discussions about the structural, ideological, and social links between the foreclosure of many blacks, Asian Americans, and Latina/os from their homes and the US dispossession of Indigenous peoples from their territorial homelands. I was optimistic—unusually so for me—that these discussions would facilitate meaningful solidarity and transformation.

Many things happened that changed my mind and thinking so much that I began the research that informs this article. The first occurred on October 27, 2011, when a group of us failed to convince those present at an Occupy Oakland General Assembly to change the name of Occupy Oakland to Decolonize Oakland in recognition of the fact that Oakland is already on occupied lands. While the assembly did pass a rather nonthreatening statement of solidarity with Indigenous peoples, they accused us then and in the Bay Area press of trying to "guilt trip" them into some larger-than-life demand for Indigenous land reparations that went far beyond, they argued, the urgent issues of the foreclosure crisis and the militarized crackdown on OWS in Oakland that they cared about. They argued with us more sincerely, and ironically, that changing the name from Occupy to Decolonize would result in them losing "brand recognition" and so affiliation with the broader movement.[3]

We responded by organizing a series of teach-ins to more carefully work people through the historical, legal, and social connections between the foreclosures on black, Asian American, and Latina/o homes and the dispossession of Indigenous peoples in the Bay Area. Along with several other mostly Indigenous women, we hosted the teach-ins

just before the General Assembly from mid-December 2011 through early May 2012 at Oscar Grant Plaza and then at community centers within walking distance of the plaza. Initially the teach-ins gathered a diverse range of individuals. But almost immediately Indigenous peoples—particularly Ohlone—stopped attending. This seemed to be because of the hostile resistance we experienced against the historical links we argued existed between the foreclosure crisis and the dispossession of Ohlone people. The most severe expression of this hostility occurred when a man who identified himself to me as a "member of the black community" accused me of having a "hidden agenda" to move "Indians" into the "family homes of black people" that the banks had foreclosed on.

The intergenerational consequences of foreclosure and the pain and frustration of the rampant evictions of black families from their homes in Oakland were real and vicious. After several such exchanges, I came to believe that those involved in the Occupy movement had not done so well (including myself) at fulfilling the core pedagogical mandate of movements like it to provide the historical and social contexts needed for non-Indigenous communities to understand why Indigenous peoples might perceive the foreclosure crisis as merely (though importantly) the most recent representation of a long history of collusive and fraudulent land issues defining the US economy as an imperialist one.

This article results from my reflection on the pedagogical approaches and content needed within movements like OWS to build lasting solidarities across the very community divides—perceptual, structural, and other—on which the US imperial formation depends. These approaches must be characterized by compassion, generosity, reciprocity, and responsibility and must be historical, social, and legal. Working to reform a bad set of laws that protect Wall Street banking interests from taxation or bringing criminal charges against banking executives will not—on their own—adequately address the needs of our diverse communities. Corrections or amendments or enforcement, in other words, do not demand any real structural change. The kind of social transformations needed can only happen from a place of genuine understanding—compassionate, respectful, and informed—about *all* of the historical and social complexities of oppression and exploitation that inform the perceptions and experiences of our communities.

AN INTRODUCTION TO "CORPORATIONS" AND "INDIAN TRIBES"

How does the historical and ongoing dispossession of Indigenous peoples clarify the "corrosive power of major banks and multinational corporations over the democratic process" within the United States? How is "the role of Wall Street in creating an economic collapse that has caused the greatest recession in generations" more effectively understood in relation to ongoing Indigenous struggles against jurisdictional and territorial dispossession than within its more popular frame of reference to the Great Depression?

This article, divided into two main sections, considers these questions by examining how the core foundational definitions of the legal status and rights of "corporations" and "Indian tribes" worked in concert to establish and protect imperialist social relations and conditions between powerful financial interests, both government and corporate, and Indigenous peoples. The first part of the article examines the limitations of the status and rights of "Indians tribes" to trade—commercially and in lands and resources—by the US Congress through treaties between 1778 and 1871, the six Acts to Regulate Trade and Intercourse with the Indian Tribes between 1790 and 1834, and the pivotal decision of the Supreme Court of the United States (SCOTUS) in *Johnson's Lessee v. McIntosh* of 1823. I compare the consequences of these laws to the SCOTUS decisions regarding corporate rights in *Fletcher v. Peck* of 1810 and *Trustees of Dartmouth College v. Woodward* of 1819. Therein, SCOTUS ruled that the US Constitution provided that (1) states were restricted from invaliding contracts that carried out the sale and acquisition of tribally treatied lands, irrespective of any fraud or the possession of proper title on which those contracts were based; and (2) corporate charters qualified as contracts between private parties with which states could not interfere.

In the second part of the article, I examine how the legal status and rights of "Indian tribes" were all but decimated by the US Senate's unilateral suspension of treaty making in 1871 and the terms and administration of the General Allotment Act of 1887. I link the loss of treaty-making powers and territorial dissolution to the SCOTUS decision in *Santa Clara County v. Southern Pacific Railroad Company* of 1886. In that decision, SCOTUS ruled that corporations possessed Fourteenth

Amendment rights analogous to those of "persons," a stark contrast to the way concurrent law was stripping tribes of any and all legal protections to governance and lands.

Focused historically between 1790 and 1887, this article provides a legal analysis of core US statutes and court decisions in the definition and provision of corporate and tribal status and rights. While focused historically, it anticipates a readership that cares about how this history matters in thinking through the sociolegal importance of the questions raised by OWS and movements like it in relation to Indigenous strategies for political coalition and legal revolution. It assumes that the US dispossession of Indigenous peoples clarifies the "corrosive power of major banks and multinational corporations over the democratic process" as well as "the role of Wall Street in creating an economic collapse that has caused the greatest recession in generations" by bringing into sharp relief the collusive and fraudulent relations between the US Congress, courts, and corporations.[4] In doing so, it does not presume the current system's catastrophes—marked by the 2008 foreclosure crisis—are aberrations or abnormalities of US democracy. Rather, as Tom B. K. Goldtooth (Diné/Dakota), executive director of the Indigenous Environmental Network, said during a 2012 Toronto symposium entitled "The Occupy Talks: Indigenous Perspectives on the Occupy Movement," "The system ain't broke. It was built to be this way."[5]

PART 1: INDIAN TRIBES AND CORPORATE ARTIFICIALITY

The Trade in "Indian Tribes"

"Indian tribes" appear only once in the US Constitution. Article 1, section 8 enumerates the powers of the US Congress, including jurisdiction over taxation; the national debt and borrowing; naturalization law; bankruptcy and counterfeit law; coinage; post offices and roads; copyright protections; appointment of tribunals; prosecution of crimes on the high seas and offenses against foreign nations; the declaration of war and the commission of armies, naval forces, and militia; and the construction of public buildings. It provides that Congress will "make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer

thereof." Clause 3 provides specifically that Congress has the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

Congressional power to regulate commerce with Indian tribes was enacted in 371 ratified treaties between 1778 and 1871 and six separate statutes in 1790, 1793, 1796, 1799, 1802, and 1834 titled An Act to Regulate Trade and Intercourse with the Indian Tribes. In ratified treaties, Congress established the boundaries of tribal territories and secured tribal rights to governance within them, excepting jurisdiction over US citizens and slaves or Indians who committed crimes against them. The ratified treaties frequently provided for forms of economic self-sufficiency unique to the tribal signatory/ies, such as protecting hunting and fishing rights in "usual and accustomed places." They often provided for annuities, including payments and goods, in compensation for land cessions. They explicitly guaranteed that no US citizen would be permitted to illegally settle, hunt, or fish within tribal territories. They affirmed congressional authority in tribal trade and protected tribal rights to trade with US citizens.

The Act to Regulate Trade and Intercourse with the Indian Tribes of 1790 established a federally regulated licensing system for US citizens wanting to trade with tribes, strict punishments for crimes committed against tribes on tribal lands by US citizens, the prohibition of liquor sales on tribal lands, and restriction against tribal land sales to anyone but Congress by treaty: "That no sale of lands made by any Indians, or any nation or tribe of Indians the United States, shall be valid to any person or persons, or to any state, whether having the right of pre-emption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States."[6] In response to rampant treaty violations, the 1793 and 1796 acts provided stricter measures for federal oversight and licensing and for horse sales and an affirmation of treaty provisions respecting tribal boundaries. Anyone attempting to settle on tribal lands was to be expelled, fined up to $1,000, and imprisoned up to one year.[7] These measures were strengthened in 1799, 1802, and 1834.

Established by the Indian Trade and Intercourse Acts (as they were known), trading houses or posts operated under federal oversight from 1796 to 1822 "to supply the Indians with necessary goods at a fair price and offer a fair price for the furs in exchange" (at the time, furs were the most common trade item).[8] The superintendent of Indian trade, a

position established in 1806, and the agents at the posts were appointed through the Office of the President, and their accounts were managed by the secretary of the treasury.[9] The posts were closed in 1822 in large part because fur traders had so effectively circumvented the posts' oversight that they became obsolete.[10] In 1824 the secretary of war created the Bureau of Indian Affairs (BIA) in part to oversee trade with the tribes.[11] The BIA was transferred to the Department of the Interior in 1849.

Even while the US Congress recognized and protected the rights of Indian tribes to commerce and trade over/within their territories by ratified treaties and the Indian Trade and Intercourse Acts, it subjected the terms and exercise of those rights to its own plenary authority. This subjugation coalesced in the SCOTUS decision in *Johnson's Lessee v. McIntosh* of 1823.[12] On the surface, the case involved competing claims to the same eleven thousand acres of land in the state of Illinois. The lands fell within the unique territorial boundaries of the Piankeshaw Nation, whose particular borders had been affirmed by 1773 and 1775 treaties with the Crown. Even SCOTUS argued that the United States inherited the obligations of these treaties from the Crown by the Treaty of Paris in 1783.

The plaintiffs were the legal heirs of Thomas Johnson, who along with several other British citizens claimed to have lawfully purchased the acreage and neighboring areas from the Piankeshaw and Illinois Nations. The defendant was William McIntosh, who claimed to have acquired a deed to the land in 1818 from the US Department of the Interior. The question before the SCOTUS, as Chief Justice John Marshall framed it, was what kind of title the Piankeshaw Nation held in the lands. But before deciding, the Court had to address two facts: (1) the US Congress had acknowledged in its ratified treaties with Indian tribes—as had all European nations before it—that tribes possessed a land title that they could treat upon; and (2) the treaties themselves referred to Indian tribes as sovereign nations with all commensurate jurisdictional rights over and within their territories.

While not missing the import of treaty language, SCOTUS sided with McIntosh on the grounds that Indian tribes had never been recognized as equal "sovereign, independent states."

> The uniform understanding and practice of European nations, and the settled law, as laid down by the tribunals of civilized states, denied the right of the Indians to be considered as independent

> communities, having a permanent property in the soil, capable of alienation to private individuals. They remain in a state of nature, and have never been admitted into the general society of nations.

This understanding, SCOTUS maintained, was reflected in the treaties:

> All the treaties and negotiations between the civilized powers of Europe and of this continent . . . have uniformly disregarded their supposed right to the territory included within the jurisdictional limits of those powers. Not only has the practice of all civilized nations been in conformity with this doctrine, but the whole theory of their titles to lands in America, rests upon the hypothesis, that the Indians had no right of soil as sovereign, independent states.

Effectively, SCOTUS rewrote treaty history to find that treaties with Indigenous nations functioned internationally in a way contrary to the precepts of international law. Instead of recognizing Indigenous sovereignty, nationhood, and territorial rights, the Court argued that the treaties had, all along, "disregarded" Indigenous legal status and rights as sovereign nations. The Court argued that the evidence for this fact of disregard was discovery:

> Discovery is the foundation of title, in European nations, and this overlooks all proprietary rights in the natives. The sovereignty and eminent domain thus acquired, necessarily precludes the idea of any other sovereignty existing within the same limits. The subjects of the discovering nation must necessarily be bound by the declared sense of their own government, as to the extent of this sovereignty, and the domain acquired with it. Even if it should be admitted that the Indians were originally an independent people, they have ceased to be so. A nation that has passed under the dominion of another, is no longer a sovereign state. The same treaties and negotiations, before referred to, show their dependent condition.

The Court claimed that by virtue of their relationship to the land as Lockean hunter-gatherers, having *always already* passed into a Hegelian subservience to dominant sovereigns owing to their need for the master's protection, Indigenous peoples had been made "subject to the sovereignty of the United States." These were well-established facts, the Court contended, of colonial law, which had wisely understood Indige-

nous people "as an inferior race of people, without the privileges of citizens, and under the perpetual protection and pupilage of the government" on the basis that they were not in full possession of the lands over which they "wandered."

In lieu of full title or property in the lands, SCOTUS offered "aboriginal title" as the kind of title and so rights Indigenous people possessed in the lands. Essentially, aboriginal title was the right to use and occupy lands, "a mere right of usufruct and habitation." It was not a right of ownership—with the implied "power of alienation." Consequently, the title could be extinguished if found to be in lack. In other words, tribes not making adequate use or occupation of their lands forfeited all claims to the lands. The *Johnson* decision nullified the rights of Indigenous peoples to own and trade over/within their territories by subjecting the terms and conditions of all commerce in goods and lands to the plenary authority of Congress in evaluating whether or not tribes were properly and adequately using and occupying their lands.

In *Conquest by Law: How the Discovery of America Dispossessed Indigenous Peoples of Their Lands*, Lindsay G. Robertson provides an exceptional analysis of the collusions informing *Johnson's Lessee v. McIntosh*.[13] Johnson's and McIntosh's attorneys were hired by the same land development company operating out of New England and for decades illegally buying up lands from Indigenous nations all over North America. Even the particular plot of land in question was not in dispute; Johnson and McIntosh held title to lands in Illinois that were fifty miles apart. The case, however, served to create the legal fiction Congress and SCOTUS needed about tribal land title amounting to nothing more than a benefit of federal guardianship, the terms of which were left to the discretion of federal authorities in assessing "use and occupancy" in relation to their own and corporate interests in development.[14]

The Contract in "Artificial Beings"

The unilateral suspension of treaty making, the Indian Trade and Commerce Acts, and the *Johnson's Lessee v. McIntosh* decision are but one cluster of the myriad efforts by US officials to decimate Indigenous territorial rights. Simultaneously, there was a steady centralization and entitlement of corporate rights to buy, lease, develop, and extract from tribal lands and natural resources. In other words, legally contorting Indig-

enous nations into the function and operation of "Indian tribes" in all matters of trade under congressional authority worked to subject Indigenous peoples and their territories to corporate interests altogether indistinguishable from congressional ones by goal and office.

In the early laws of European kingdoms and nation-states, a king, a parliament, or a pope issued charters to establish institutions such as municipalities, universities, guilds, and churches that were considered self-governing, able to hold property, and enter into contracts.[15] Virtually absent from these early charters were business entities; almost always the charters were aimed at civic bodies that would provide some form of public service. They were called corporations, "from the Latin word corpus, meaning body, because the law recognized that the group of people who formed the corporation could act as one body or one legal person."[16]

By the seventeenth century, charters began to be issued to trading companies that operated as finite partnerships that dissolved at the conclusion of a specifically commissioned job, usually entailing naval exploration and a guaranteed monopoly, such as in the spice trade.[17] Different from earlier chartered entities, these companies did not have the "features of perpetual succession, identifiable persona, and asset separation."[18] Because they proved to be financially risky, they were stabilized by England in 1600 with the charter of the East India Company and by the Netherlands in 1602 with the charter of the Dutch East India Company, both of which were soon granted charters *in perpetuity* to protect their "building, populating, and governing" of the colonies.[19] In other words, by the early 1600s, chartered corporations were entirely enveloped within the colonial projects of empire building, invested by their respective kingdoms and then nation-states with the powers of government and military.[20] In fact, corporate executive officers were often given state titles (governors) and corresponding authority to purchase land, administer trade, and wage war.

The US Constitution provided that state legislatures take over the responsibility of respecting preconstitutional charters and the task of issuing new ones.[21] The legal veracity of state charters was established by article 1, section 10, clause 1 of the US Constitution, known as the contract clause, which provided that "no State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in

Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

The first US Supreme Court decision, issued under Chief Justice John Marshall, on the legal import of the contract clause was in *Fletcher v. Peck* of 1810.[22] In *Law and Politics in the New Republic: Yazoo: The Case of* Fletcher v. Peck, C. Peter Magrath provides an important examination of the collusions and fraud that informed the landmark decision and so anticipated those involved in *Johnson's Lessee v. McIntosh*.[23]

In 1789 three land companies formed in Georgia with the purpose of buying land in the Yazoo River area, then included within the treatied boundaries of the Cherokee Nation. The governor signed a deal to sell nearly sixteen million acres of these lands to the companies for $200,000 (1 cent per acre). In 1790 President George Washington issued a stern warning to Georgia regarding the treaty rights of the Cherokee Nation to the lands and the potential of the deal to solicit armed conflict with the Cherokees and their allies among the neighboring Chickasaw, Choctaw, and Creek Nations. Undeterred, the state passed a resolution requiring that the payment for the lands be made in gold and silver, which the companies could not do. The deal fell through.[24]

Several years later, four new land companies formed, again with the purpose of buying lands in the Yazoo River area. These companies included speculators from Georgia and Pennsylvania, as well as two senators (one from Georgia and one from Pennsylvania), two members of the House (one from Georgia and one from South Carolina), three judges (including Supreme Court Associate Justice James Wilson), and the Tennessee territorial governor. Between 1794 and 1795, several Georgia legislators received large grants of land in the eastern part of Georgia. In 1795 they passed the Yazoo Land Act. By the act, Georgia claimed fee title to thirty-five million acres of land and sold them to the four companies for $500,000 (1.4 cents per acre). The act likewise directed a resolution to the US president requesting that the necessary treaty be made with the Cherokee Nation securing the extinguishment of the Cherokees' land title and so allowing the sale to proceed.[25]

By this time, the Cherokee Nation had entered into treaties with the United States in 1785 and 1791 that delineated the nation's boundaries in lands within and bordering Georgia. The 1791 boundaries were reaffirmed by treaty in 1794. The boundaries were not redrawn until the treaty of 1798 and then again in treaties of 1804, 1805, 1806, 1816, 1817, and 1819. By

each treaty Georgia sought further and further land cessions from the Cherokees. Georgia would achieve its goal for the complete cession of Cherokee land title with the Cherokee removal treaty of 1835.[26]

Meanwhile, the Yazoo Land Act of 1795 was exposed in state politics as a collusion and taken up in debates between Georgian Federalists and Republicans as the 1796 state election approached. The result was felt when Georgia's voters, enraged by the state's creation of large land monopolies, rejected most of the incumbents. The newly elected officials worked quickly to pass a law that repealed the 1795 act and so the titles issued under its provisions. However, the land companies had already begun selling Yazoo lands throughout the country, in some cases making nearly 650 percent profit on their original investments. One of the most important of these sales was of eleven million acres to the New England Mississippi Land Company, which included wealthy merchants, former elected officials and judges, and land speculators in the New England region. When Georgia legislators repealed the Yazoo Land Act in 1796, the company mobilized its network to challenge the state's repeal law and secure its land claims. Failing to secure passage of a congressional law that would have compensated it for alleged financial losses incurred as a result of the repeal act, the company took its complaints to federal court.[27]

The complaint was orchestrated by the New England Mississippi Land Company in 1803 between land speculator Robert Fletcher (of New Hampshire) and the company's director, John Peck (of Massachusetts). Fletcher alleged that he had bought fifteen thousand acres from Peck and that Peck breached the contract of sale by not having legal title.[28] Peck contended that Georgia's repeal act was invalid. In 1810 the US Supreme Court agreed with Peck.[29]

SCOTUS conceded that there had been fraud underlying the original sale of the Yazoo River lands but rejected Fletcher's argument that Georgia had the power to repeal the 1975 act on the grounds of the fraud. It argued instead that Peck had entered into two valid contracts—one when purchasing and one when selling the land—and that those contracts operated outside the original fraud: "When a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights." Fletcher's claim was dismissed, and Georgia's law repealing land titles was nullified.[30]

While the ruling made frequent passing remarks about "Indian title,"

it failed in all regards to address the substantive questions of the state's claim to fee title in the lands, the state's rights to sell the lands, the fact that tribal title had not been extinguished by treaty when the claim and sale were enacted by state law, and the fact that the US Congress was not a party to the sale in violation of the Constitution. Instead, SCOTUS sashayed over "Indian title" as if it posed no legal challenge whatsoever to the question of whether or not a state could breach a contract between individuals without violating the Constitution. This fundamentally shifted the significance of the contract clause away from its implication of tribal treaty rights—"No State shall enter into any Treaty . . . or Law impairing the Obligation of Contracts"—and toward service to corporate interests. It allowed, if not outright encouraged, collusive investment practices in land speculation that could be easily legalized by the exchange of money and contractual signatures between those parties committing the fraud.[31]

The second US Supreme Court decision on the legal import of the US Constitution's contract clause was in *Trustees of Dartmouth College v. Woodward* of 1819.[32] The New Hampshire legislature amended Dartmouth's charter to change it from a private to a public institution with trustees to be appointed by the governor. The trustees challenged whether or not the state could unilaterally amend the terms of the school's charter.

The suit raised the question about whether or not charters—the mechanism by which corporations were created—fell under constitutional protections. SCOTUS ruled that they did. However, it explained that the entities created by charters—corporations—were created under state authority:

> A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it either expressly or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created.

These "properties" included the right of the individuals making up corporations to "act together as a single person for purposes of holding property, entering into contracts, and suing and being sued in court." The court ruled that charters

> enable a corporation to manage its own affairs and to hold property without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities that corporations were invented, and are in use.[33]

The artificiality of chartered entities pretended that corporations were overdetermined by constitutional law and state jurisdiction. It so invested and protected corporate property rights *in perpetuity*, figuratively clothing male executives in liberties and freedoms from having their corporate-held property and individual investments (and so profits) divided, taxed, or otherwise burdened by regulation.[34] Protected as a constitutional right, corporate property rights trumped tribal territorial claims, even when secured by a treaty, and even when corporations acquired the lands by fraud. *Fletcher* and *Dartmouth* thereby represented the rearticulation of "Indian tribes" into a legal and economic structure predicated on imperialist capitalism without any corporate accountability.

PART 2: INDIAN TRIBES AND PERSONS

The legal status and rights of "Indian tribes" were all but decimated in the Reconstruction period by Congress's unilateral suspension of treaty making in 1871 and the consequences of the General Allotment Act of 1887, which brought about both the privatization of tribal lands and an expansive yet inefficient system of federal administration over remaining tribal lands, natural resources, and financial assets. This virtual obliteration of tribal rights contrasts sharply with the juridical expansion of corporate rights by the SCOTUS decision in *Santa Clara County v. Southern Pacific Railroad Company* of 1886. SCOTUS ruled that corporations possessed Fourteenth Amendment rights analogous to those of "persons," including due process and equal protection. This emboldened, entitled position—and the surrounding rhetoric of the overburdened regulation and taxation borne by corporations—evaded public and federal accountability for the role of railroad and related companies in the dispossession and genocide of Indigenous peoples.

Reconstruction

During and after the Civil War, Congress enacted a series of laws meant to suspend the secession of the Confederacy, emancipate African slaves, prohibit racial discrimination, and stimulate a free labor economy. The Thirteenth Amendment of 1865 and the Fourteenth Amendment of 1868 required that southern states, and the tribes that had aligned with them in part or in whole during the war, modify their constitutions and bylaws to abolish slavery and prohibit racial discrimination. For southern states, these requirements were satisfied technically but met with grossly uneven implementation and conflict marked by fiercely contested elections, such as within Georgia over its constitutional revisions in 1865 (when it repealed secession and abolished slavery), 1868 (when it extended suffrage to all male citizens), and 1877 (when previous provisions were strengthened). Conflict was also marked more popularly by the formation of the Ku Klux Klan in 1865, initially in Tennessee, and state-sanctioned practices condoning and facilitating all manner of racial segregation, including those within education and voting.

For tribes, particularly those who had been removed from the South and into Indian Territory, the requirements of Reconstruction were imposed through treaties, such as those ratified in 1866 with the Cherokee, Choctaw and Chickasaw, Creek, and Seminole Nations.[35] The treaties provided that the tribes abolish slavery, enfranchise African freedmen, reintegrate those factions that had fought for the South, and restore property confiscated from those factions during the war. The treaties also provided that tribal territories were to be subjected to the "right of way" of railroads but for the first time required that federally issued licenses to individual and corporate traders be approved by tribal governments (up to then, the BIA issued licenses, often without consulting with tribes). The provisions of abolition and enfranchisement of blacks were deeply contested in intra- and intertribal politics, including those that denied the existence of black-Native lineage, property, and voting rights.[36] These provisions also engendered multiple forms of opposition to allotment and statehood, including armed militia and subversive acts of defiance.[37]

The complexities of postwar national politics included many social movements against racial discrimination and segregation and for the enfranchisement of women, as well as intertribal military and unarmed alliances against US treaty violations. At the same time, there was an

explosive growth of business-minded corporations: from 7 in 1780, to 335 in 1800, to several thousand in 1850, to over half a million in 1900.[38] Many of these corporations were aimed at the development of tribal territories (railroad tracks, postal routes, townsites, cattle grazing) and the extraction of tribal resources (timber, oil, coal, gold) and directly or implicitly involved in violence and fraud against non-Indigenous people and Indian tribes that resisted.[39] In an effort to protect their often illegal investment/development schemes against opposition, corporate boards and their attorneys worked to claim constitutional protections, particularly through the Fourteenth Amendment of 1868.

The Fourteenth Amendment modified article 1, section 2, clause 3, which enumerated the powers of the House of Representatives and determined the apportionment of representatives and taxes. It is the only appearance of "Indians" in the Constitution: "Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed." It provided that

> all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In 1870 the Fifteenth Amendment provided that the "right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."[40] Together, the amendments attempted to address the social politics of abolition and enfranchisement, as well as protecting the rights of all citizens to be represented fairly in Congress and protected against unlawful government actions or deprivations of "life, liberty, or property, without due process of law."

As the amendments were being debated and passed, so too was Congress assessing its financial obligations to tribes by treaty, no doubt in immediate concern over the nation's economy following the war but also in looking forward to the expansion of its territories into the Pacific and Caribbean. In 1871 the House of Representatives took the ini-

tiative in adding a rider to the annual Indian Appropriations Bill before it moved to the Senate:

> No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired.[41]

The US Senate agreed. "Indian tribes" were no longer to be recognized as independent authorities with whom the United States would "contract by treaty" and so incur any further debt, though existing treaties and financial obligations were to be fulfilled.

The suspension of tribal treaty making invited corporate collusion with federal efforts to subject remaining tribal territorial rights to the goals of capitalist development, coalescing in the perfect sociolegal storm of the privatization of tribal lands and the vast extension of federal administration over remaining lands by the General Allotment Act of 1887 and its amendments by the Curtis Act of 1898, the Burke Act of 1906, and the Omnibus Act of 1910.[42] The acts provided for reservations to be broken up in severalty and issued to members as parcels, which ranged from forty to six hundred acres each based on the value of the lands and the members' marital and dependent status.[43] The issuance of title was supposed to be based likewise on assessments of individual "competency." Those deemed incompetent were given trust titles, their property held in trust by the BIA for a period not supposed to exceed twenty-five years, during which time they were to get educated in proper land use. Despite the suspension of trust titles by the Burke Act of 1906, there are 10.6 million acres of individually owned lands that are held in trust even now.[44] The gross mismanagement of these lands was addressed by the largest class-action suit in US history, *Cobell v. Salazar* of 1996, which was concluded by the Claims Resolution Act of 2010.[45] Meanwhile, those who were deemed competent were issued fee titles, awarding them with US citizenship and so subjecting them to property taxes. Almost 60 percent of lands issued in fee were lost within a decade, the majority of them to state property tax foreclosure.[46]

Surplus lands, or lands unassigned to tribal members, were sold to nonmembers. Allotted and surplus lands were divided by the practice of

checkerboarding and fractionated heirship. Checkerboarding scattered tribal allotments in between nontribal lands to disrupt tribal governance and collective forms of economic self-sufficiency. It rendered shared-use practices such as collectively operated agriculture and forest conservation impossible. Fractionated heirship divided allotments among heirs who share an undivided interest in the land. Over time, this has meant that an allotment can have thousands of owners. In most cases, heirs are absentee leaseholders, with leases that render them without the ability to use the lands for their own economic self-sufficiency, little financial benefit, and no collateral for developing credit.[47]

While total tribal and individual landholdings were reduced by about two-thirds through allotment (from 148 to 48 million acres), many of these lands were configured in such a way by checkerboarding and heirship that nonmembers came to dominate the use if not the control of tribal lands. This was furthered by the fact that even before but especially after allotment of a given reservation, corporations had secured thousands of leases for grazing and licenses for resource extraction from both reservations and allottees whose titles were held in trust.[48] Allotment's "Indian tribe" was no match for *Santa Clara County*'s corporate "person." The tribe had suspended rights to treaty making and was left only with an option to agree or not with federal mandates, sometimes but not always negotiated through finite contracts, but both of which were overshadowed by corporate interests in expansive development and figured entirely through an "Indian tribe" that was all but stripped of legal status.

The Equal Protection of "Persons"

In what are known as the *Slaughterhouse Cases* of 1872, the US Supreme Court issued its first opinion on the legal merits of the Fourteenth Amendment.[49] The cases emerged from three suits in New Orleans, Louisiana, where residents had suffered eleven cholera outbreaks and related ill health as a result of animal matter from slaughterhouses polluting the city's drinking water. In 1869 the state legislature passed a law that allowed New Orleans to charter a single corporation (the Crescent City Livestock Landing and Slaughterhouse Company) with the promise that it would centralize all slaughterhouse operations in the city, confine butchers to areas that kept them away from the city's water supplies, and facilitate

better regulatory oversight. Represented by former Supreme Court justice John A. Campbell (whose Confederate loyalties had forced him to resign from the Court), over four hundred members of the Butchers' Benevolent Association sued to stop the city's takeover of the slaughterhouse industry on the basis of the Fourteenth Amendment's protections for due process, equal protection, and the privileges and immunities clause (section 1, clause 2: "The Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each state all *privileges and immunities* of citizens in the several states" [emphasis added]). Issued by Justice Samuel Freeman Miller, the SCOTUS held to a narrow interpretation of the amendment, arguing that due process applied only to procedure, that equal protection applied only to former slaves ("Freedmen"), and that the privileges and immunities clause applied only to national and not state citizenship rights.

The *Slaughterhouse* decision was overturned in *Santa Clara County v. Southern Pacific Railroad Company* in 1886.[50] In 1879 the California legislature ratified a new state constitution that among other things outlined strict rules for the assessment of railroad property values and taxes. In 1882 Santa Clara and Fresno Counties assessed the "franchises, road-ways, road-beds, rails, and rolling stock" of the Southern Pacific Railroad Company and the Central Pacific Railroad Company to recover taxes for the previous fiscal year, 1881–82, under the new rules. The court found that "the state board of equalization, in making the supposed assessment of said roadway of defendant, did knowingly and designedly include in the valuation of said roadway the value of fences erected upon the line between said roadway and the land of coterminous proprietors. Said fences were valued at $300 per mile." The railroad companies appealed, claiming that they were protected from such taxes under a federal statute of 1866, affirmed by an 1870 state law, that established "a right of way over the public domain" with liberal access to "public lands" in order to construct and maintain a continuous railroad line from Missouri to the Pacific "subject to the use of the United States for postal, military, naval, and all other government service, and to such regulations as congress might impose for restricting the charges for government transportation."

SCOTUS found that in neither federal nor state law were fences to be assessed differently from the railroads and adjacent lands and that therefore the state board did not have the power to include the fences

in its assessment of the railroads' property values. The Court concluded that "upon such an issue, the law, we think, is for the defendant. An assessment of that kind is invalid, and will not support an action for the recovery of the entire tax so levied."

In framing its conclusion, the Court claimed that corporations were protected against such actions under the Fourteenth Amendment: "One of the points made and discussed at length in the brief of counsel for defendants in error was that 'corporations are persons within the meaning of the Fourteenth Amendment to the Constitution of the United States.' Before argument, Mr. Chief Justice Waite said: The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it does." SCOTUS thereby overturned the strict interpretation of *Slaughterhouse* on the questions of procedural due process and equal protection for "former slaves" not by extending those protections to substantive due process and other racialized groups but by assuming that the protections applied to corporations. This almost dismissive caveat—"We are all of the opinion that it does"—would be the first time SCOTUS ruled that corporations possessed Fourteenth Amendment rights analogous to those of "persons."

Irrespective of the Court's intent, which has been much debated in legal scholarship, the opinion served as precedence for the application of Fourteenth Amendment protections to corporations. So consequential was the decision that it created what has since been referred to as "corporate personhood."[51] The rationale was that the US Constitution upheld the rights of individuals, so their individual guarantees of due process, et cetera, should extend naturally to corporations as mere amalgams of those individuals.[52]

Nowhere within *Santa Clara County* is there any reckoning—even to an imaginary of conquest as a fait accompli—for Indigenous territorial rights, either within the counties suing the railroad for back taxes, more broadly within the state of California, or within the US imperial formation plummeting the nation forward into global capitalism marked by the illegal annexation of Hawai'i and the war with Spain over Pacific colonies in 1898. This lack of reckoning underscores the way "Indian tribes" were perceived to be so thoroughly situated under a federal plenary authority serving corporate interest as to be locally irrelevant.

What changes in our understanding of "corporate personhood" if we insist on an account of Indigenous territorial rights within it?

When Spain began its imperial efforts in the region where California was to become a state, it is estimated conservatively that the tribal population was around three hundred thousand. Forced into slavery and starvation by the Spanish military and Catholic Church working in concert to bring about Spanish-Catholic power, about one hundred thousand people died between the first mission of 1769 and Spain's cession of the territory to Mexico in 1821. At the close of the US-Mexican War and the acquisition of California as part of the Treaty of Guadalupe Hidalgo of 1848, another fifty thousand died as slavery, starvation, and armed conflict characterized tribal-Mexican relations as they had tribal-Spanish. After the gold rush of 1848, US miners, agriculturalists, and railroaders settlers quickly outnumbered everyone else. Tribes were aggressively removed from their territories in violation of the 1848 treaty, which had provided that the United States would protect tribal land grants. Undeterred, US citizens displaced and outright murdered tribal peoples to gain hold of their lands and coerce survivors into servitude.[53]

California was admitted to the United States as a free state in 1850. In 1851 the legislature passed the Act for the Government and Protection of the Indians, which allowed any "white" to force into work any "Indian" found to be "vagrant." Since Mexicans were then classified as "whites" in state law, this facilitated the enslavement of tribal peoples by all property owners in the state. Since "Indians" could not testify against "whites" in court, tribal people had no recourse to challenge either their forced removal or enslavement or the physical and sexual violence that often came with it. For despite its status as a free state, California permitted the open sale and indenture of tribal people for labor and sex trade purposes.[54]

In 1851, in his inaugural address to the legislature, Governor Peter H. Burnett promised that "a war of extermination will continue to be waged between the two races until the Indian race becomes extinct."[55] In 1853 the legislature ordered the "extermination" of all Indians. Reimbursed by the federal government, state bounties were paid per Indian scalp or severed head, and all expenses related to the efforts were reimbursed, including the cost of ammunition, guns, and horses. Within two years, California paid out about $1 million to individuals who submitted claims. It was inhumane. Whole tribes, bands, and families were massacred.

Describing this campaign in *Native Americans of California and Nevada*, Jack D. Forbes emphasizes that it was not merely military or state officials who participated in it: "The sequence of events is all the more distressing since it serves to indict not a group of cruel leaders, or a few squads of rough soldiers, but, in effect, an entire people; for the conquest of the Indigenous Californian was above all else a popular, mass enterprise."[56] By 1860 no more than twenty thousand of the tribal population had survived. Those who did were almost entirely dispossessed of their territories and living in conditions of gross poverty and ill health. Many had begun to identify as Mexican to secure paid work as farmhands, passing into an other, analogously complicated status in hopes of survival.

In 1851 the US Congress sent a commission to California to negotiate treaties with tribes for land cession. By 1852 eighteen treaties had been negotiated with more than one hundred tribes. The treaties would have provided the tribes with approximately 8.5 million acres divided into eighteen reservations. However, California's governor and senate actively opposed the treaties, seeing them as excessively generous and cumbersome to the state's goals. They, along with several private citizens (mostly ranchers and miners), lobbied hard to stop the ratification process. As a result, the US Senate put an "injunction of secrecy" on the treaties, which held until 1905. But the tribes were never notified that the treaties had not been ratified. Federal and state agents and militia moved many onto smaller reservations (often from several different tribes) under the auspices of carrying out treaty provisions while they purchased the "deserted" lands for themselves.[57]

In his definitive historical study of imperialism, *Violence over the Land: Indians and Empires in the Early American West*, Ned Blackhawk demonstrates how each invading power directly created the economic and social conditions in which the next prospered and all at Indigenous peoples' expense.[58] Spain and Mexico and then the immigrants who would form California and join the Union in 1850 flourished as a direct result of the genocide and dispossession that they enacted on Indigenous peoples, producing the very conditions through which miners, agriculturalists, and the railroad could lay claim to unfettered access and development of tribal territories and natural resources.

In other words, the "corporate persons" of *Santa Clara County* were able to claim tribal lands, resources, and bodies in California as a result

of their involvement in the genocide and dispossession of tribal peoples. *Santa Clara County* legitimated this history and then protected the "persons" involved as corporations with full constitutional rights. *Santa Clara County* was thereby consistent with the historical work of corporations in imperialism and its colonial projects as the entities through which the "building, populating, and governing" of the empire were enabled.[59]

A CONCLUSION

> Got land? Thank an Indian.
> Jeff Manard (Pine Creek First Nation)

The legal precedent set by the congressional statutes and court rulings read above deeply informed the re-formation of Indigenous governments into corporations of a particular kind. The Hawaiian Homes Commission Act of 1920, the Indian Reorganization Act of 1934, and the Alaska Native Claims Settlement Act of 1971 configured "Native Hawaiian organizations," "American Indian tribes," and "Alaska Native villages" as bodies possessing analogous rights between them to enter contracts. But by the time these statutes were passed into law, tribes had long since been stripped by SCOTUS of the ability to own and alienate the lands they used and occupied or to enter into contractually binding agreements with each other or other political and economic entities without federal oversight and approval. These serious limitations underscore the core capitalist ideologies and practices that undergird the United States as an imperialist power and social formation. In a state whose capitalism is *always already* reaching out globally, of course Indigenous peoples cannot have equal or commensurate claims to any lands and resources that might compete with corporate-as-the-government's interests to expand, extract, and profit some more. Of course.

The problematic erasures of the historical contextualization of Indigenous territorial rights within the pedagogical mandates of OWS is not about a forgetting of an imperial-colonial past that can be fixed with a liberalist project of recovery or memorandum of solidarity.[60] As if we just included the facts about the historic wrongs of corporate-federal collusion and fraud in the dispossession and genocide of Indigenous peoples, all would be righted in radical social justice efforts against "the

corrosive power of major banks and multinational corporations over the democratic process."

The erasures of Indigenous territorial rights and historical experiences of corporate-government collusion and fraud are, rather, a politic of epistemology—an ideology and practice of knowledge making—that takes the imperial-colonial narrative for granted in its understanding of US imperialism and in its thinking through strategies of opposition against its injustices. That narrative believes in its own success story—that Indigenous peoples are conquered, disappeared, lost, gone. Tragically but nonetheless as an objective truth: the Indigenous has been eliminated from the lands and resources of the empire and so from relevance to current political debate.

The question for OWS and related movements is why any effort against the US empire needs a scandal of corporate-federal collusion and fraud like that of the Wall Street foreclosure and securities crisis around which to organize. Why OWS so early figured that scandal as a battle of the 1 percent against the 99 percent. Why OWS's resolutions have often been about arrest and redistribution and not a radical transformation of the system. Why Wall Street's current behavior is exceptionalized. As if the US "democratic process" has been merely corrupted and would otherwise not be but for the selfish greed of a few.

It seems Jean Baudrillard's *Simulacra and Simulation* is important again for understanding that the public performance of scandal is really an act of concealing that there is no scandal at all—that the social relations and conditions registered by the scandal-performed are the norm.[61] This is especially difficult to confront from any political perspective predicated on contrasting the altruism of US democracy with the collusive fraud of Congress and Wall Street. But what if US democracy has only ever been a façade, a mask, a costume? A performance that conceals? That the formative values at work in the US Constitution were not liberty, freedom, and equality as celebrated but were aimed at establishing and protecting government and corporate power of a government invested? What if it is "US democracy" that is "the truth which conceals that there is none"?

This would certainly seem to be the case in the story of the multiple kinds of racialized and gendered inequalities between "artificial entities" and "Indian title," "persons" and dis-treatied "Indian tribes" that have been articulated historically through corporate, court, and congressio-

nal racketeering in Indigenous territorial rights. An epistemological practice that begins with the presumption of the centrality of Indigenous territorial-based claims to sovereignty and self-determination in the constitution of the US political-economic system might more directly expose not only that the "man behind the curtain" has *always-already* been there but that all along there has been a meaningful role of the audience in maintaining the theater of democracy's performance. Leaving behind the goal of trying to fix or correct that which is broken or corrupted, of trying to revenue share our way into social justice, we might be able to think more productively together about the necessity for meaningful and substantive social reformation if we insisted on the empire's accountability to the territorial rights of Indigenous peoples.

NOTES

1. See http://occupywallst.org/about.

2. Naomi Klein, Michael Moore, William Greider, Rinku Sen, and Patrick Bruner, panel discussion, "Occupy Everywhere: On the New Politics and Possibilities of the Movement against Corporate Power," November 10, 2011, the New School, New York, http://www.thenation.com/video/164494/watch-michael-moore-naomi-klein-and-others-owss-possibilities.

3. For a record of the resolution, see Occupy Oakland General Assembly Resolutions, https://occupyoakland.org/2011/11/general-assembly-resolutions.

4. Occupy Oakland General Assembly Resolutions.

5. Tom B. K. Goldtooth, "The Occupy Talks: Indigenous Perspectives on the Occupy Movement," January 3, 2013, Toronto, Canada, http://www.ienearth.org/occupy-talks-indigenous-perspectives-on-the-occupy-movement-media-wrench-toronto.

6. An Act to Regulate Trade and Intercourse with the Indian Tribes, 1 Stat. 137 (July 22, 1790).

7. Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press, 1994), 100–102.

8. Felix S. Cohen, *Handbook of Federal Indian Law* (Washington, DC: Government Printing Office, 1942), 10.

9. Cohen, *Handbook of Federal Indian Law*, 10.

10. Prucha, *American Indian Treaties*, 102.

11. Cohen, *Handbook of Federal Indian Law*, 10.

12. Johnson's Lessee v. McIntosh, 21 U.S. 543, 5 L. Ed. 681, 1823 U.S. LEXIS 293 (1823).

13. Lindsay G. Robertson, *Conquest by Law: How the Discovery of America Dispossessed Indigenous Peoples of Their Lands* (Oxford: Oxford University Press, 2005).

14. The "Marshall Trilogy," as it has been referred to historically, also included the

SCOTUS decisions in The Cherokee Nation v. The State of Georgia (30 U.S. 1, 8 L. Ed. 25, 8 L. Ed. 2d 25, 1831) and Worcester v. Georgia (31 US 515, 8 L. Ed. 483, 8 L. Ed. 2d 483, 1832). Together, these decisions defined "Indian tribes" as having passed under the juridical dominion and so protection of the United States as dependent "wards."

15. Margaret M. Blair, "Corporate Personhood and the Corporate Persona," *University of Illinois Law Review* 3 (2013): 785–820, see esp. 788.

16. Blair, "Corporate Personhood," 788–89.

17. Blair, "Corporate Personhood," 790.

18. Blair, "Corporate Personhood," 791.

19. Blair, "Corporate Personhood," 791.

20. See Vine Deloria Jr., "Self-Determination and the Concept of Sovereignty," in *Economic Development in American Indian Reservations*, ed. Roxanne Dunbar Ortiz (Albuquerque: University of New Mexico Indigenous American Studies, 1979), 22–28; S. James Anaya, *Indigenous Peoples in International Law* (Oxford: Oxford University Press, 2004).

21. Blair, "Corporate Personhood," 793.

22. Fletcher v. Peck, 10 U.S. 87, 3 L. Ed. 162, 3 L. Ed. 2d 162 (1810).

23. C. Peter Magrath, *Law and Politics in the New Republic: Yazoo: The Case of* Fletcher v. Peck (Cambridge, MA: Brown University Press, 1966). See also Robertson, *Conquest by Law*.

24. Magrath, *Law and Politics*, 4–5.

25. Magrath, *Law and Politics*, 6–9.

26. Treaty with the Cherokee, 7 Stat. 39 (July 2, 1791).

27. Magrath, *Law and Politics*, 15, 34, 38.

28. Magrath, *Law and Politics*, 54–55, 64–65.

29. See Robertson, *Conquest by Law*, 29–44.

30. It would not be until 1934 that the US Supreme Court would rule that a state could alter the terms of a contract so long as the alteration was rationally tied to protecting the public's welfare (Home Building & Loan Assn. v. Blaisdell, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413).

31. See Robertson, "Harper," in *Conquest by Law*, 29–44.

32. Trustees of Dartmouth College v. Woodward, 17 U.S. 250, 4 L. Ed. 629 (1819).

33. See Beth Stephens, "Are Corporations People? Corporate Personhood under the Constitution and International Law," *Rutgers Law Journal* 44, no. 1 (2013): 1–38; Carl J. Mayer, "Personalizing the Impersonal: Corporations and the Bill of Rights," *Hastings Law Journal* 41 (1990): 577–667; Lyman Johnson, "Law and Legal Theory in the History of Corporate Responsibility: Corporate Personhood," *Seattle University Law Review* 35 (2012): 1135–64.

34. For analysis of the impact of gendered ideologies and property rights on Indigenous women, see Bethany Ruth Berger, "After Pocahontas: Indian Women and the Law, 1830 to 1934," *American Indian Law Review* (1997): 1–62; Theda Perdue,

Cherokee Women: Gender and Culture Change, 1700–1835 (Lincoln: University of Nebraska Press, 1999).

35. Treaty with the Cherokee, 14 Stat. 799 (July 19, 1866); Treaty with the Choctaw and Chickasaw, 14 Stat. 769 (April 28, 1866); Treaty with the Creek, 14 Stat. 785 (June 14, 1866); Treaty with the Seminole, 14 Stat. 755 (March 21, 1866).

36. Circe Sturm, *Blood Politics: Race, Culture, and Identity in the Cherokee Nation of Oklahoma* (Berkeley: University of California Press, 2002).

37. Angie Debo, *And Still the Waters Run* (Princeton, NJ: Princeton University Press, 1940); Sidney L. Harring, *Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century* (New York: Cambridge University Press, 1994).

38. Johnson, "Law and Legal Theory," 1145.

39. Craig H. Miner, *The Corporation and the Indian: Tribal Sovereignty and Industrial Civilization in Indian Territory, 1865–1907* (Norman: University of Oklahoma Press, 1989).

40. However, it retained this right for men. It would not be until 1920 that the Nineteenth Amendment extended voting rights to women. The Twenty-Sixth Amendment of 1971 would lower the voting age to eighteen.

41. Indian Appropriations Bill, 25 U.S.C., § 71.

42. The collusions were initially conflicted. Some corporations affirmed tribal sovereignty and treaty rights, while some argued for their annulment. The differences depended on whether or not, within their respective relations with tribal governments and individuals, they had found success in gaining unfettered access to tribal lands and resources. See Miner, *The Corporation and the Indian*; and Samuel Thomas Bledsoe, *Indian Land Laws* (Vernon Law Book Company, 1913).

43. Janet Ann McDonnell, *The Dispossession of the American Indian, 1887–1934* (Bloomington: Indiana University Press, 1991).

44. According to the Bureau of Indian Affairs, "FAQS," http://www.bia.gov/FAQS.

45. Alyosha Goldstein, "Finance and Foreclosure in the Colonial Present," *Radical History Review* 118 (2014): 42–63.

46. Cohen, *Handbook of Federal Indian Law*, 192–94.

47. Cohen, *Handbook of Federal Indian Law*, 216.

48. Cohen, *Handbook of Federal Indian Law*, 214–15.

49. Slaughterhouse Cases, 83 U.S. 36 (1872).

50. Santa Clara County v. Southern Pacific Railroad Company, 118 U.S. 394 (1886).

51. Blair, "Corporate Personhood," 803.

52. Blair, "Corporate Personhood," 804. See Morton J. Horwitz, "Santa Clara Revisited: The Development of Corporate Theory," *West Virginia Law Review* 88 (1985): 173–224, 176.

53. Robert Fleming Heizer, Alan J. Almquist, and Alan F. Almquist, *The Other Californians: Prejudice and Discrimination under Spain, Mexico, and the United*

States to 1920 (Berkeley: University of California Press, 1977); Jack D. Forbes, *Native Americans of California and Nevada* (Happy Camp, CA: Naturegraph Publishers, 1993).

54. Pratap Chatterjee, "Gold, Greed, and Genocide" (1998).

55. Clifford E. Trafzer and Joel R. Hyer, eds., *Exterminate Them: Written Accounts of the Murder, Rape, and Enslavement of Native Americans during the California Gold Rush* (East Lansing: Michigan State University Press, 1999).

56. Forbes, *Native Americans*, 69.

57. James J. Rawls, *Indians of California: The Changing Image* (Norman: University of Oklahoma Press, 1986).

58. Ned Blackhawk, *Violence over the Land: Indians and Empires in the Early American West* (Cambridge, MA: Harvard University Press, 2009).

59. Blair, "Corporate Personhood," 791.

60. Kevin Bruyneel, "The Trouble with Amnesia: Collective Memory and Colonial Injustice in the United States" (May 31, 2013), in *Political Creativity: The Mangle of Institutional Order, Agency and Change*, ed. Gerald Berk, Dennis Galvan, and Victoria Hattam (Philadelphia: University of Pennsylvania Press, forthcoming), http://ssrn.com/abstract=2272816.

61. Jean Baudrillard, *Simulacra and Simulation* (Ann Arbor: University of Michigan Press, 1994).

PETER CAPOSSELA*

Impacts of the Army Corps of Engineers' Pick-Sloan Program on the Indian Tribes of the Missouri River Basin

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* Peter Capossela earned his J.D. from the University of Oregon School of Law in 1988. He has practiced federal Indian law and natural resources law since that time. The author thanks his longtime colleagues, Everett Iron Eyes Sr. and Dave Archambault Sr. of the Standing Rock Sioux Tribe, and Richard Bad Moccasin of the Crow Creek Sioux Tribe, for their insights into the issues discussed in this article.

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"Every time the Corps of Engineers thinks of something, they create another problem for us Indians."[1]

The Late Rueben Snake
Chairman, Winnebago Indian Tribe

INTRODUCTION

"Rivers are nature's landscape painters."[2] And nature may have no better landscape artist than the Missouri River.

Society, however, has tried to harness the power of this great river. In response to catastrophic flooding in the lower Missouri basin, Congress enacted the Flood Control Act of Dec 1944.[3] This statute

1 DANIEL MCCOOL, COMMAND OF THE WATERS: IRON TRIANGLES, FEDERAL WATER DEVELOPMENT AND INDIAN WATER 178–79 (1987).

2 DANIEL B. BOTKIN, PASSAGE OF DISCOVERY: THE AMERICAN RIVERS GUIDE TO THE MISSOURI RIVER OF LEWIS AND CLARK 7 (1999).

3 Flood Control Act of 1944, Pub. L. No. 78-534, 58 Stat. 887 (codified in scattered Sections of 16, 33, and 43 U.S.C.), *available at* http://www.usbr.gov/power/legislation/fldcntra.pdf.

authorized the Army Corps of Engineers to construct and operate five massive earthen dams on the main stem of the Missouri River for flood control, navigation and hydropower.[4] The Bureau of Reclamation was authorized to build numerous smaller dams on the tributaries to the Missouri River, primarily for irrigation and recreation.[5] The projects authorized in the 1944 Flood Control Act are collectively referred to as the "Pick-Sloan Plan."[6]

The Pick-Sloan Plan devastated the Indian Reservations along the Missouri River.[7] The large dams on the Missouri River main stem inundated over 356,000 acres of Tribal land in the late 1950s and early 1960s.[8] The wooded Missouri River riparian bottomlands—the aboriginal homeland of the region's tribes—were completely destroyed.[9] Entire tribal communities were relocated to new town sites, situated on the barren plains above the river valley.[10] These areas lacked the rich riparian resources of the tribes' aboriginal homelands.[11]

The new town sites lacked infrastructure, such as roads, water systems, schools and community facilities. The statutes authorizing the taking of Reservation lands required the Corps of Engineers to replace the infrastructure,[12] but the Corps failed to do so.[13] This exacerbated the long term adverse effects on the tribes.[14]

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4 § 9, 58 Stat. at 891 (noting that a preexisting dam on the Missouri River, the Fort Peck Dam in northeastern Montana, was integrated into the Flood Control Act projects). The Fort Peck project was originally authorized in the Rivers and Harbors Act of 1938. Rivers and Harbors Act of 1938, Pub. L. No. 75-685, 52 Stat. 802 (codified in scattered Sections of 16, 33, and 43 U.S.C.), *available at* http://planning.usace.army.mil/toolbox/library/compilation/1790-1939-V3.pdf.

5 § 9, 58 Stat. at 891.

6 ETSI Pipeline Project v. Missouri, 484 U.S. 495, 500–02 (1988).

7 MICHAEL L. LAWSON, DAMMED INDIANS: THE PICK-SLOAN PLAN AND THE MISSOURI RIVER SIOUX, 1944–1980, at 57–58 (1982).

8 S. REP. NO. 111-357, at 1–2 (2010), *available at* http://www.gpo.gov/fdsys/pkg/CRPT-111srpt357/html/CRPT-111srpt357.htm.

9 Raymond Cross, *Sovereign Bargains, Indian Takings, and the Preservation of Indian Country in the Twenty-First Century*, 40 ARIZ. L. REV. 425, 484–87 (1998) (describing the land and natural resources of the Fort Berthold Reservation that were inundated by Garrison Dam).

10 *Id.*

11 *Id.*

12 The Secretary of the Army . . . is authorized and directed . . . to locate and construct on tribal land selected by the Crow Creek Tribal Council and with the approval of the Secretary of the Interior, a townsite adequate for fifty homes,

This Article provides an overview of the historic and ongoing impacts of the Pick-Sloan project on the affected Indian tribes. There is a discussion of the Flood Control Act of 1944 and subsequent federal legislation authorizing the acquisition of tribal lands for the site of the reservoirs. The resulting relocation of entire Reservation communities disrupted the socioeconomic and cultural life of these Tribes.[15] This paper will assess the adequacy of compensation authorized by Congress, along with the need for additional federal action.

Many tribes have expressed concern with the ongoing impacts of the operation of the dams on the remaining tribal land and water.[16] Accordingly, there is a discussion of the disproportionate impacts on the Reservation environment, and on the impacts to Native American cultural resources. The future challenges posed by water demands for Mississippi River navigation and hydraulic fracturing are also discussed.

I
OVERVIEW OF THE MISSOURI RIVER BASIN PICK-SLOAN PROGRAM

A. The Natural Missouri River and its Vast Watershed

The vast Missouri River watershed has been described as follows:

> The Missouri [River] Basin thus presents us with a world of striking contrasts.

> including streets, utilities, including water, sewage, and electricity . . . a community center containing space and facilities for community gatherings, tribal offices, tribal council chamber, Bureau of Indian Affairs and Public Health Service offices and quarters and a combination gymnasium and auditorium.

Act of Oct. 3, 1962, Pub. L. No. 87-734, § 6, 76 Stat. 698, 700, *available at* http://www.gpo.gov/fdsys/pkg/STATUTE-76/pdf/STATUTE-76-Pg698.pdf.

13 "Our community was never rebuilt." *Crow Creek Infrastructure Trust Fund Development Act: Joint Hearing Before the S. Comm. on Indian Affairs and the Subcomm. on Native American and Insular Affairs of the H. Comm. on Res.,* 104th Cong. 66 (Statement of Ambrose McBride, Tribal Elder, Crow Creek Indian Reservation), *available at* http://babel.hathitrust.org/cgi/pt?id=pur1.32754066677075;view=1up;seq=60.

14 *Id.* at 65–66.

15 *See Final Report and Recommendations of the Garrison Unit Joint Tribal Advisory Committee: Joint Hearing Before the S. Comm. on Indian Affairs, the S. Comm. on Energy and Natural Res., and the H. Comm. on Interior and Insular Affairs*, 100th Cong. 49–52, 54, 56 (1987), *available at* http://babel.hathitrust.org/cgi/pt?id=pur1.32754074491261;view=1up;seq=1.

16 *In re* Operation of the Mo. River Sys. Litig., 421 F.3d 618, 637 (8th Cir. 2005) *cert. denied*, North Dakota v. U.S. Army Corps of Eng'rs, 547 U.S. 1097 (2006).

> The upper basin, which is usually thought of as that area north of Sioux City, Iowa, has no major city. It is in the upper basin, however, that we find the Great Sioux nation, the northern great plains, and large Sections of the Rocky Mountains. The lower basin includes such cities as Omaha, St. Louis and Kansas City. If the upper basin finds its history in the old west, range life, and the agricultural settlements generated by the homestead movement, the lower basin finds its history in the Mark Twain world of river commerce . . . . Whereas the economy of the upper basin remains agricultural that of the lower basin has risen with the tide of post-World War II investment and industrial growth.[17]

The rushing waters of three alpine rivers, the Jefferson, Madison, and Gallatin, converge on the central Montana prairie to form the Missouri River.[18] The Missouri flows north and then east into North Dakota.[19] Engulfing minor sloughs, as well as major tributaries such as the Yellowstone River, the Missouri widens as it caroms across the plains.[20] One boat runner at the turn of the century described the Missouri River this way:

> The river runs crooked through the valley; and just the same way the channel runs crooked through the river . . . . The crookedness you see ain't half the crookedness there is.[21]

The Sioux called the river *Mni Sose*, referring to the dark, murky color of the sediment-laden waters.[22] For their part, "farmers joked that the river's water was, 'too thick to drink and a mite too thin to plow.'"[23]

The river veers southward on the central plains, bisecting the Dakotas, and meandering to the east, where it flows through farm lands, and eventually drains into the Mississippi River at St. Louis. By the time it reaches its confluence with the Mississippi, the waters

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17 John H. Davidson & Thomas Earl Geu, *The Missouri River and Adaptive Management: Protecting Ecological Function and Legal Process*, 80 NEB. L. REV. 816, 822 (2001).

18 LAWSON, *supra* note 7, at 4.

19 *Id.* at 8–9.

20 *Id.*

21 BOTKIN, *supra* note 2, at 8.

22 *See* Mni Sose Intertribal Water Rights Coalition, *Testimony to the Western Water Policy Review Commission* (Mar. 26, 1996).

23 LAWSON, *supra* note 7, at 4.

of the Missouri River will have traveled nearly twenty-five hundred miles, and drained one-sixth of the United States.[24]

One court described the Missouri Basin as "one of the largest and most beautiful in our country."[25] Lewis and Clark described "dozens of species previously unknown to science, ranging from coyotes to prairie dogs to cutthroat trout."[26] The river they encountered, "featured thousands of islands and sandbars separated by two constantly shifting channels."[27] "Dense forests, shallow wetlands, and endless prairie bordered the river. . . . [It was] a land filled with thousands of buffalo, elk, antelope, and grizzly bears."[28] And of course, there were Indians.

The tribes of the upper plains wintered along the Missouri River and its tributaries, for thousands of years.

> Indian Tribes in the Upper Missouri River Basin were fierce, warlike, and willing to defend their homelands against the intruding non-Indian population. That fact forced the United States to invoke the most basic power of a sovereign—to wage wars and to effectuate peace by Treaties resolving the differences between nations.[29]

Accordingly, the United States entered a number of treaties with the Indian Nations of the Missouri Basin.[30] The Fort Laramie Treaty of September 17, 1851, outlined the territory of several Missouri Basin tribes, including the Sioux Nation, and the Mandan and Arikara Tribes.[31] The Mandans and their sister Tribes were renowned for their agriculture in the lush Missouri bottomlands of the upper plains.[32] The Sioux Nation, which developed the great horse culture of the plains, established the Great Sioux Reservation in the 1868 Fort Laramie

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24 BOTKIN, *supra* note 2, at 8.

25 Am. Rivers v. Army Corps of Eng'rs, 271 F. Supp. 2d 230, 236 (D.D.C. 2003).

26 Stephen E. Ambrose, *Forward* to DANIEL B. BOTKIN, PASSAGE OF DISCOVERY: THE AMERICAN RIVERS GUIDE TO THE MISSOURI RIVER OF LEWIS AND CLARK, at xv (1999).

27 *Id*.

28 *Id.*

29 William H. Veeder, *Indian Prior and Paramount Rights Versus States Rights to the Use of Water*, 51 N.D. L. REV. 107, 121 (1974).

30 *See generally* Charles J. Kappler, *Indian Affairs: Laws and Treaties Volume II*, INDIAN AFFAIRS: LAWS AND TREATIES, http://digital.library.okstate.edu/kappler/Vol2/Toc.htm (last visited Feb. 22, 2015).

31 Charles J. Kappler, *Treaty of Fort Laramie With Sioux, Etc., 1851*, INDIAN AFFAIRS: LAWS AND TREATIES, http://digital.library.okstate.edu/kappler/Vol2/treaties/sio0594.htm (last visited Feb. 22, 2015).

32 *See* Roy W. Meyer, *Fort Berthold and Garrison Dam*, 35 NORTH DAKOTA HISTORY 220 (1968).

Treaty.[33] The vast reservation comprised all of present-day South Dakota west of the Missouri River, with the river's east bank delineating the reservation boundary.[34] The Missouri River Basin truly was Indian Country.[35]

B. Enactment and Implementation of the 1944 Flood Control Act

The dust bowl drought on the plains during the 1930s gave way to successive wet years.[36] Severe floods in the early 1940s led to a clamor in the lower Missouri Basin for more federal assistance for flood control.[37] The federal water management agencies, the Army Corps of Engineers and Bureau of Reclamation, developed competing plans for the impoundment of water in the upper basin.[38]

The Chief of Engineers for the Corps was Colonel Lewis A. Pick.[39] Under Pick's leadership, the Corps developed a plan for five massive dams on the main stem of the Missouri River to hold back floodwaters in huge reservoirs in the Dakotas.[40]

> The plan called for five dams and reservoirs, all of them of monstrous. Garrison Dam, in western North Dakota, was the largest . . . . Two and one-half miles long, 210 feet high, the dam would be the second biggest structure on earth . . . . The other dams, Oahe, Gavins Point, Big Bend, Fort Randall—would be smaller, but large enough to dwarf anything else around.[41]

The Bureau of Reclamation planned a different approach. Established under the Reclamation Act of 1902, the agency's mission

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33 Charles J. Kappler, *Treaty with the Sioux—Brulé, Oglala, Miniconjou, Yanktonai, Hunkpapa, Blackfeet, Cuthead, Two Kettle, Sans Arcs, and Santee—and Arapaho, 1868*, INDIAN AFFAIRS: LAWS AND TREATIES, http://digital.library.okstate.edu/kappler/Vol2/treaties/sio0998.htm (last visited Feb. 22, 2015).

34 *Id.*

35 Davidson & Geu, *supra* note 17, at 824–25 (describing the Indian Reservations in the upper Missouri Basin).

36 *Id.* at 827–28; LAWSON, *supra* note 7, at 10–11.

37 Davidson & Geu, *supra* note 17, at 829.

38 Davidson & Geu, *supra* note 17, at 828–30; LAWSON, *supra*, note 7, at 11–17; MARC REISNER, CADILLAC DESERT: THE AMERICAN WEST AND ITS DISAPPEARING WATER 189–94 (1986).

39 Davidson & Geu, *supra* note 17, at 829.

40 H.R. REP. NO. 78-475 (1944) ("Pick Plan").

41 REISNER, *supra* note 38, at 191.

involved water supplies for irrigation in the semiarid west.[42] Accordingly, the agency proposed numerous small dams on the tributaries to the Missouri River in the upper basin.[43] The Reclamation projects would utilize the impounded waters for flood control, hydropower, and irrigation, thereby providing economic benefit to the smaller, rural communities in the Dakotas and Montana.[44] This proposal became known as the "Sloan Plan," named after Glenn Sloan, the director of the agency's Billings, Montana Regional office.[45]

The two agencies pitched their respective plans.[46] The Corps appealed to urban communities in the lower basin, which suffered the loss of life and property in the recent flooding.[47] The Corps' plan also fit neatly with the Roosevelt administration's vision of large projects, and comprehensive planning.[48] But, the governors of Wyoming, Montana, and North Dakota came out for the Sloan plan.[49] Like the Pick Plan, the estimated costs and proposed benefits of the irrigation projects appeared dubious.[50] However, the Sloan Plan was presented with greater engineering detail, while the Corps' plan seemed oversold by the blustery Colonel Pick.[51] As historian Michael Lawson explained, "Congress now had to consider two plans representing the contending claims, goals, and ambitions of two powerful federal agencies with fundamentally different interests."[52]

It would take the emergence of a third proposal for the development of the Missouri River, to break the logjam. On August 18, 1944, Montana Senator James Murray introduced legislation to establish a Missouri Valley Authority, based upon the independent

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42 Reclamation Act of 1902, 43 U.S.C. §§ 372, 383 (1902), *available at* https://www.wapa.gov/ugp/powermarketing/2021PMI/HistoricalDocs/ReclamationAct.1902.pdf.

43 S. DOC. NO. 78-191(1944) ("Sloan Plan").

44 *Id.*

45 LAWSON, *supra* note 7, at 15.

46 *Id.*

47 *Id.* at 16; *see also* MCCOOL, *supra* note 1, at 95–96.

48 LAWSON, *supra* note 7, at 13.

49 *Id.* at 14.

50 "From the outset irrigation was a dream without foundation in fact, science, or economic demand." Davidson & Geu, *supra* note 17, at 836. "The General Accounting Office reviewed six reclamation projects and found that repayments cover less than 10 percent of actual costs." MCCOOL, *supra* note 1.

51 LAWSON, *supra* note 7, at 13.

52 *Id.* at 16.

public corporation model of the Tennessee Valley Authority.[53] The prospect of a decentralized and independent agency empowered with the comprehensive planning and development of the Missouri Basin prompted the Corps of Engineers and Bureau of Reclamation to join forces.[54] In what a critic called, "a shameless, loveless shotgun wedding," the two agencies agreed simply to combine their two plans.[55] Thus, the "Pick-Sloan Program" came about.[56]

The resulting compromise was enacted as the Flood Control Act of 1944.[57] Section 9(a) of the act contains the operative language.[58] This Section reads as follows:

> The general comprehensive plans set forth in House Document 475 and Senate Document 191, Seventy-eighth Congress, second session, are hereby approved and the initial stages recommended are hereby authorized and shall be prosecuted by the War Department and the Department of the Interior as speedily as may be consistent with budgetary requirements.[59]

The act authorized "channel and major drainage improvements" in the lower Missouri Basin.[60] Along with work conducted under the authority of the River and Harbors Act,[61] this resulted in the construction by the Corps of a 9-foot-wide and 300-foot-deep artificial channel from Sioux City, Iowa, to the mouth of the Missouri, at St. Louis.[62] The large dams and reservoirs in the upper basin remain the cornerstone of Pick-Sloan. However, it is the fledging navigation in the lower Missouri basin, enabled by the channelization

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53 S. 2089, 78th Cong. (1944).

54 LAWSON, *supra* note 7, at 18.

55 *Id.* at 19.

56 ETSI Pipeline Project v. Missouri, 484 U.S. 495, 500–02 (1988) (describing the legislative history of the Pick-Sloan Program).

57 Flood Control Act of 1944, Pub. L. No. 78-534, 58 Stat. 887–908 (codified in scattered Sections of 16, 33, and 43 U.S.C.).

58 *Id.* at 891.

59 *Id.* at 806. The House Document 475 contains the Pick Plan, H.R. DOC. NO. 475, 78th (1944); and the Senate Document 191 prescribes the Sloan Plan, S. DOC. NO. 191, 79th Cong. (1944). The two plans were combined and reconciled in the joint engineering report printed in S. DOC. NO. 247, 78th Cong. (1944).

60 58 Stat. at 798.

61 33 U.S.C. § 540 (2012).

62 U.S. ARMY CORPS OF ENG'RS, NORTHWESTERN DIV., FINAL ENVIRONMENTAL IMPACT STATEMENT: MISSOURI RIVER MASTER WATER CONTROL MANUAL REVIEW AND UPDATE, at 1-1 (2004), *available at* http://www.nwd-mr.usace.army.mil/mmanual/feis/Index.htm.

and water flows supplied by the dams, that became the source of controversy over water management under the Pick-Sloan program.[63]

The Flood Control Act authorized the Bureau of Reclamation's Sloan Plan, which included numerous irrigation projects in the more arid upper basin.[64] The 1944 Flood Control Act also authorized the development of dams, diversion works and irrigation for 2,927,100 acres of land in the Dakotas and Montana.[65] However, only a small portion of the irrigation authorized under the Pick-Sloan program was actually developed.[66] The economic infeasibility of most of the projects, along with environmental concerns, stifled most of the irrigation projects authorized in the 1944 Flood Control Act.[67]

Yet these projects remain congressionally authorized components of Pick-Sloan. This had the effect of easing the repayment of the federal debt for the overall program. Section 9 of the Flood Control Act provided that those project functions more able to pay (e.g., hydropower) were to repay to the U.S. Treasury the federal investment for those project functions less able to repay their cost (e.g., irrigation).[68] This Section also provided that the federal cost of Pick-Sloan irrigation was to be reimbursed on the same terms as those prescribed under the Reclamation Act of 1902.[69] The highly subsidized repayment structure under the Reclamation Act included principal payment deferment and zero percent interest on the federal cost of the project.[70] Consequently, the favorable repayment terms for these nonexistent projects was applied to the repayment of the debt for the entire Pick-Sloan program.[71]

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63 *In re* Operation of the Mo. River Sys. Litig., 421 F.3d 618, 629–30 (8th Cir. 2005) ("Nothing in the text or legislative history of the FCA suggests that Congress intended the priority of interests under the FCA to shift according to their relative economic value. Arguments based on the wisdom of the priorities established by the FCA must be addressed to Congress." *Id.*).

64 58 Stat. at 891.

65 *Id.*

66 DORIS OSTRANDER DAWDY, CONGRESS IN ITS WISDOM: THE BUREAU OF RECLAMATION AND THE PUBLIC INTEREST 57–58 (1989).

67 *See, e.g.*, H.R. REP. NO. 99-525, at 9–11 (1986).

68 58 Stat. at 807.

69 *Id.*

70 U.S. BUREAU OF RECLAMATION, 88TH CONG., REP. ON FINANCIAL POSITION OF THE MISSOURI RIVER BASIN PROJECT (1963).

71 *See* WESTERN AREA POWER ADMINISTRATION, PICK-SLOAN MISSOURI BASIN PROGRAM POWER RATE ADJUSTMENT (1987).

Thus, the Congress established extremely generous principles for the repayment of the federal investment for the Pick-Sloan program.[72] This enabled the federal government to market the hydropower produced at the Pick-Sloan dams at very low rates.[73] In fact, Pick-Sloan's hydropower benefit became its most economically valuable project function.[74]

Section 6 of the Flood Control Act authorized "contracts with States, municipalities, private concerns, or individuals . . . for domestic and industrial use for surplus water that may be available at any reservoir."[75] This Section contemplated that after all of the dams and irrigation works authorized in Section 9 were completed and water supplied accordingly, the Corps of Engineers could market surplus waters remaining in the reservoirs. However, little of the irrigation authorized was developed.[76] Recent determinations by the Corps for the amount of surplus water available in the Missouri River main stem reservoirs led to considerable controversy.[77]

The Flood Control Act lacked any mitigation provisions for the affected Indian Tribes. The only mention of Indians in the act itself is in Section 9(c), which provides that the few Indian irrigation projects authorized in the Sloan Plan would be operated "in accordance with the laws relating to Indian lands."[78]

C. A River Transformed

"Today, Lewis and Clark (as well as the Indians who helped them) would hardly recognize much of the Missouri River."[79] The river "would simply be *unrecognizable* to them."[80] "This historic river is

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72 Section 5 of the Flood Control Act requires the sale of Pick-Sloan hydropower "at the lowest possible rates to consumers consistent with sound business principles." 58 Stat. at 801.

73 *Id.* at 804.

74 U.S. ARMY CORPS OF ENG'RS, NORTHWESTERN DIV., *supra* note 62, at 7-197.

75 58 Stat. at 804.

76 ETSI Pipeline Project v. Missouri, 484 U.S. 495, 504–07 (1988).

77 *See infra* Part III.

78 58 Stat. at 807.

79 Ambrose, *supra* note 26.

80 Robert Redford, *Afterword* to DANIEL B. BOTKIN, PASSAGE OF DISCOVERY: THE AMERICAN RIVERS GUIDE TO THE MISSOURI RIVER OF LEWIS AND CLARK, at 211 (1999).

now one-third reservoirs, one-third dredged channels, and only one-third ecologically vulnerable free-flowing water."[81]

The Corps of Engineers' dams on the Missouri River are huge. When full, they impound 73.4 million acre-feet of water in the Dakotas and Montana.[82] This constitutes "the largest amount of water stored on any United States river system."[83] These dams transformed the free-flowing Missouri River into a chain of very large reservoirs in the upper basin.[84] The reservoirs inundated vast riparian forests of the Missouri River bottomlands, resulting in a dramatically altered landscape.[85] Damming permanent disrupted patterns of flooding and sedimentation and altered the geomorphology of a river spanning twenty-five miles.[86]

The river channel was dammed, the riparian habitat inundated, and huge reservoirs replaced the braided, rolling river.[87] "The worst natural damage was the flooding of some of the best riparian waterfowl habitat in the world."[88] The wooded river bottomlands on numerous Indian Reservations were destroyed.[89] The Indians relied on this land for fish, game, timber, and agriculture.[90] It was their aboriginal—and treaty protected—homeland.

The Corps of Engineers channelized the lower Missouri, and constructed levees for the retention of flood waters.[91] This enabled the Corps to alter the natural hydrograph pattern of spring flooding, and stabilize water flows for navigation.[92] The Corps of Engineers provided lower Missouri basin residents everything one would want from a river—a perfect artificial channel, steady stream flows, flood protection—everything except a natural river.

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81 John E. Thorson, *Voyage of Rediscovery: Lessons from Lewis & Clark for Missouri River Managers,* 6 GREAT PLAINS NAT. RESOURCES J. 121, 123 (2002).

82 U.S. ARMY CORPS OF ENG'RS, NORTHWEST DIV., *supra* note 62, at 2–3.

83 A. Dan Tarlock, *The Missouri River: The Paradox of Conflict Without Scarcity*, 2 GREAT PLAINS NAT. RESOURCES J. 1, 2 (1997).

84 REISNER, *supra* note 38, at 191–92.

85 LAWSON, *supra* note 7, at 56.

86 *See* NATURAL RESOURCES CONSERVATION SERVICE, PHASE II SEDIMENTATION ASSESSMENT FOR THE UPPER MISSOURI RIVER BASIN (2009), *available at* http://msaconline.com/wp-content/uploads/2015/01/Missouri-River-Phase-II-Report.pdf.

87 REISNER, *supra* note 38, at 199.

88 *Id.*

89 S. REP. NO. 111-357, at 1-2 (2010).

90 *Id*.

91 Am. Rivers v. Army Corps of Eng'rs, 271 F. Supp. 2d 230, 238–39 (D.D.C. 2003).

92 *Id*.

There is nothing natural about the Missouri River today. As Professor John Davidson explained,

> The continuing story of the Missouri Basin is the story of river development. To understand the history of this river's development, one must recognize that it is the result of the constant playing-out of the tensions and conflicts inherent in the basin. Today's river is intensively developed. In the upper basin there are six massive main stem reservoirs which convert the river north from Yankton, South Dakota into one large flat-water lake. South from there the river is channeled in order to support navigation and guide the river to its mouth near St. Louis. Flows from the Missouri are, in turn, an essential component of Mississippi River navigation.[93]

II
IMPACTS OF DAM CONSTRUCTION ON THE INDIAN RESERVATIONS ALONG THE MISSOURI RIVER

A. Inundation of Land and Relocation of Tribal Communities

The Fort Laramie Treaty of 1851 established the upper Missouri Basin as Indian Country.[94] Article 5 of the treaty delineated the "respective territories" of the Sioux Nation, Gros Ventre, Mandan, and Arikara Nations, the Assiniboine, Blackfoot, Crow, and other Tribes, stretching south from the headwaters of the Yellowstone River to the Arkansas River.[95] Subsequent treaties and agreements established reservations for the Tribes within their 1851 Treaty-recognized territory, with some Tribes forced to relinquish claims to larger land areas.[96]

The Missouri River main stem flows through the Fort Berthold Reservation in North Dakota, established by Executive Order on April 12, 1870, for the Mandan, Hidatsa, and Arikara Nations.[97]

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93 John H. Davidson, *Indian Water Rights, the Missouri River, and the Administrative Process: What Are the Questions?*, 24 AM. INDIAN L. REV. 1, 7 (2000).

94 Charles J. Kappler, *Treaty of Fort Laramie With Sioux, etc.,* 1851, INDIAN AFFAIRS: LAWS AND TREATIES, http://digital.library.okstate.edu/kappler/Vol1/HTML_files/NOR0881.html#p881 (last visited Feb. 22, 2015).

95 *Id*.

96 *E.g.*, Treaty Crow Tribe of Indians, proclaimed Aug. 12, 1868, 15 Stat. 649–653, *available at* http://digital.library.okstate.edu/kappler/Vol2/treaties/cro1008.htm.

97 Charles J. Kappler, *Part III.—Executive Orders Relating to Indian Reserves: North Dakota Fort Berthold Reserve*, INDIAN AFFAIRS: LAWS AND TREATIES, http://digital.library.okstate.edu/kappler/Vol1/HTML_files/NOR0881.html#p881 (last visited Feb. 22, 2015).

Downstream, the Missouri's main channel is the eastern boundary of the Standing Rock Sioux, Cheyenne River Sioux, Crow Creek Sioux, and Lower Brule Sioux Indian Reservations, as established in the Act of March 2, 1889.[98] These Tribes, along with the Yankton Sioux Tribe and the Nebraska Tribes downstream, were directly and severely impacted by the Pick-Sloan program.[99]

Numerous Tribal communities were established on these reservations in the Missouri River riparian bottomlands.[100] The thick, wooded lands of the Missouri River corridor in the upper basin became the Treaty-protected Reservation homelands of numerous Tribes.[101] There was plenty of timber and natural cover for livestock and the soil was fertile.[102] Wildlife was abundant and the water supplies were plentiful.[103] As the U.S. Senate Committee on Indian Affairs recently explained,

> From 1851 to 1889, the United States entered into treaties and agreements with the tribes and bands of the Three Affiliated Tribes of the Fort Berthold Reservation and the Sioux Nation. In these treaties and agreements, the United States recognized the Indians' territories, and the tribes and bands reserved lands for their permanent homelands. Seven of these reservations are along the Missouri River in the states of North Dakota, South Dakota and Nebraska: the Fort Berthold Reservation, the Standing Rock Sioux Reservation, Cheyenne River Sioux Reservation, Lower Brule Sioux Reservation, Crow Creek Sioux Reservation, Yankton Sioux Reservation, and the Santee Sioux reservation.
>
> Although these reservations were significantly smaller than the tribes' former territories, the seven reservations were strategically located along the resource rich Missouri River. The Missouri River's wooded bottomlands provided the tribes' reservation economies with fertile agricultural lands, timber for lumber and fuel, coal deposits, seasonal fruits, habitat for wild game, medicines, shelter for domestic animals, and plentiful supplies of clean water. These lands were also an important part of the tribes' social,

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98 Sioux Bill, ch. 405, 25 Stat. 888–899 (1889), *available at* http://digital.library.okstate.edu/kappler/Vol1/HTML_files/SES0328.html#p336.

99 Frank Pommersheim, *The Reservation as Place: A South Dakota Essay*, 34 S.D. L. REV. 246, 261 (1989). The Corps of Engineers' projects on the Columbia River have had a similar adverse effect on Tribal communities in Oregon. Gosia Wozniacka, *Columbia River Tribes Displaced by Dams Live in Squalor, Seek Help*, THE SEATTLE TIMES, Nov. 9, 2014, *available at* http://www.seattletimes.com/seattle-news/columbia-river-tribes-displaced-by-dams-live-in-squalor-seek-help/.

100 Davidson & Geu, *supra* note 17, at 824–25.

101 LAWSON, *supra* note 7, at 56–57.

102 *Id.*

103 *Id.*

> cultural, and spiritual lives. Much of the tribes' community infrastructure was located along the river, including, tribal homes, schools, hospitals, government buildings, churches, graveyards, and roads.[104]

The Corps of Engineers' dams on the Missouri River main stem would decimate these lands.[105] The Corps located the dams so as to minimize the impact of the reservoirs on the cities along the river in North and South Dakota.[106] The Corps targeted Tribal lands, which were inundated as the sites of the reservoirs.[107] Two dams, Fort Randall at Yankton[108] and Big Bend at Lower Brule and Crow Creek, were built on Indian Reservations.[109] The largest reservoirs, Sakakawea at Fort Berthold and Oahe at Standing Rock and Cheyenne River, largely overlaid lands taken from the Tribes.[110]

The scholar Vine Deloria, Jr., an enrolled member of the Standing Rock Sioux Tribe, described Pick-Sloan as "the single most

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104 S. REP. NO. 111-357, at 1-2 (2010), *available at* http://www.gpo.gov/fdsys/pkg/CRPT-111srpt357/html/CRPT-111srpt357.htm.

105 This Article focuses on Pick-Sloan's impacts on those upper Missouri Basin Tribes most directly affected by the main stem dams and reservoirs. Some Tribes in the upper basin are located on major tributaries to the Missouri River, and have suffered the degradation of riparian lands and water resources due to reclamation projects authorized under Pick-Sloan. For example, the Bureau of Reclamation's Yellowtail project impounded the Big Horn River on the Crow Indian Reservation. United States v. Crow Reservation, 162 F. Supp. 108 (D. Mont. 1958); *see also* S. 2489, 110th Cong. (2008) (a bill to establish a trust fund in the amount of $90.5 million for the mitigation of damage on the Pine Ridge Indian Reservation, resulting from Reclamation's Angostura Unit). Additionally, lower basin Tribes, such as the Omaha Tribe and Winnebago Tribe, suffer the loss of Reservation wetlands, cultural sites, and other resources associated with the natural free-flowing river, which no longer exist. *See* U.S. ARMY CORPS OF ENG'RS, NORTHWEST DIV., *supra* note 62, at 3-8. Yet the massive upper basin reservoirs on the Missouri main stem, which have generated region-wide and national benefits, caused very extreme hardship on the Indian Reservations on which they are located.

106 *See* LAWSON, *supra* note 7, at 59, 75.

107 Mni Sose Intertribal Water Rights Coalition, *supra* note 22.

108 *See* Yankton Sioux Tribe v. U.S. Army Corps of Eng'rs, 83 F. Supp. 2d 1047, 1057 (D.S.D. 2000) (finding the impact of the operation of the Fort Randall Dam on Tribal cemetery actionable under the Native American Graves Protection and Repatriation Act).

109 *See* Lower Brule Sioux Tribe v. South Dakota, 104 F.3d 1017, 1023–24 (8th Cir. 1997) (finding that lower Brule Tribe lacks jurisdiction over non-Indian hunting on Corps of Engineers' Fort Randall and Big Bend project land within the Reservation).

110 *See* South Dakota v. Bourland, 508 U.S. 679, 689 (1993) (finding that Cheyenne River Sioux tribe lacks jurisdiction over non-Indian hunting on Corps of Engineers' Oahe project land within the Cheyenne River Reservation).

destructive act ever perpetuated on any tribe by the United States."[111] The Army Corps of Engineers relocated entire Tribal communities against their wishes in the late 1950s and early 1960s, to make way for the reservoirs created on the Missouri River under the Pick-Sloan Plan.[112] The replacement housing was located on the plains above the river valley, which was less fertile with scarce groundwater or vegetation making it a much less hospitable environment.[113] Community infrastructure was destroyed and not replaced by the Army Corps of Engineers.[114] Although Congress authorized the Corps to relocate Tribal cemeteries from the taken area, the Corps failed to do so.[115]

The Indian livestock economy on the Fort Berthold, Standing Rock, Cheyenne River, and Lower Brule Reservations never fully recovered.[116] Jobs in timber, livestock, and agriculture disappeared; subsistence hunting and gardening became much less productive. The replacement housing was inadequate.[117] The historian Michael Lawson described the plight of the affected Sioux Tribes as follows,

> Damages caused by the Pick-Sloan projects touched every aspect of Sioux life. Abruptly the tribes were transformed from a subsistence to a cash economy and forced to develop new ways of making a living. The uprooting of long-standing Indian communities disrupted and disorganized the social, economic, political, and religious life of well-integrated tribal groups and had a serious effect on the entire reservation population. It was an onerous imposition for tribal members to be forced to move their community halls, churches, and religious shrines. It was even harder for them to disturb the graves of their ancestors. Yet . . . the largest cemeteries and most of the private burial grounds had to be excavated and moved elsewhere. (footnote omitted).

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111 Philip P. Frickey, *Domesticating Federal Indian Law*, 81 MINN. L. REV. 31, 83, n.206 (1996).

112 *See* Cross, *supra* note 9, at 484–87.

113 LAWSON, *supra* note 7, at 57.

114 Section 2(a)(6) of the Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996 contains a Congressional finding that, "the requirements . . . with respect to mitigation of the effects of the Fort Randall and Big Bend projects on the Crow Creek Indian Reservation have not been fulfilled." Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996, Pub. L. No. 104-223, 102 Stat. 3027 (1996), *available at* http://babel.hathitrust.org/cgi/pt?id=pur1.32754066677075;view=1up;seq=1.

115 Yankton Sioux Tribe v. U.S. Army Corps of Eng'rs, 83 F. Supp. 2d 1047, 1048 (D.S.D. 2000) ("The Corps failed to effect the removal and reburial of all of the bodies in the cemetery." *Id.*).

116 LAWSON, *supra* note 7, at 57.

117 *Id*. at 145.

> . . . Psychological and aesthetic damages were more difficult to measure. . . . Because of their close relationship with nature, the Sioux had a sacred attachment to their land. The areas along the river had afforded them a comfortable and relatively scenic environment with resources enough to sustain their way of life. The loss of this land and livelihood had a strong emotional impact on them. . . . Unlike others affected by public works projects, they were not able to duplicate their old way of life by moving to a similar environment. No Indian lands like the ones vacated existed after inundation.[118]

The Three Affiliated Tribes of Fort Berthold objected strenuously to the construction of the Garrison Dam.[119] The Tribal Council passed a resolution opposing the sale of Tribal land for the reservoir site. The resolution explained,

> The lands which will be flooded are practically all the lands which are of any use or value to produce feed for stock or winter shelter. We are stockmen and our living depends on our production of cattle . . . . All of our people have lived where we now are for more than 100 years. Our people have lived on and cultivated the bottomlands along the Missouri River for many hundreds of years. We were here before the first white man set foot on this land. We have always kept the peace. We have kept our side of all treaties. We have been, and now are, as nearly self-supporting as the average white community . . . . [W]e cannot agree that we should be destroyed, drowned out, removed, and divided for the public benefit . . . .[120]

The Tribal Council Resolution was prophetic.

B. Pick-Sloan as an Exercise of Plenary Power in the Termination Era

Nevertheless, "[t]he Pick-Sloan Plan was presented . . . as a fait accompli."[121] Pursuant to the 1903 Supreme Court decision in *Lone Wolf v. Hitchcock* the federal courts deferred to Congressional authority in the taking of Tribal lands for most of the twentieth century.[122] This is the case even if the Tribe's title to forcibly acquired land was guaranteed by Treaty.[123]

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118 *Id.* at 57–58.

119 Cross, *supra* note 9, at 484–87.

120 REISNER, *supra* note 38, at 196.

121 *Id.* at 46.

122 Lone Wolf v. Hitchcock, 187 U.S. 553, 565 (1903).

123 *Id.*

The so-called "plenary power" doctrine stemmed from developments in the southern plains. The 1867 Treaty of Medicine Lodge Creek established a Reservation for the Kiowas, Comanches, and Apaches in what is now Oklahoma.[124] Article XII of the treaty provided that any further cession of land would require the signatures of "at least three-fourths of all adult male Indians occupying the same."[125] In a scene to be repeated throughout the west, a government commission approached the Tribes in 1892, proposing to divide the Reservation land into allotments for individual Indian heads-of-households, and to purchase the remaining tracts for use by non-Indian homesteaders.[126] The Indian resisted, but an agreement was ultimately reached.

The Commissioners drafted a document and obtained signatures of approval by the Tribe, per Article XII of the Medicine Lodge Creek Treaty.[127] However, the document presented contained different terms than the agreement the parties had reached.[128] The altered terms were presented and approved by Congress.

Lone Wolf, a Kiowa Chief, initiated a legal action to enjoin implementation of the act, contending that it violated Article XII of the Treaty.[129] Ultimately, the Supreme Court would not stand in the way of the taking of Treaty-protected Tribal land. It held that, "Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government."[130] Moreover, "[T]he power exists to abrogate the provisions of an Indian treaty."[131]

With respect to fraud, the Court in Lone Wolf stated, "these matters, in any event, were solely within the domain of its legislative authority, and its action, conclusive upon the courts."[132] In a

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124 *Id*. at 554.
125 *Id.* at 564.
126 *Id.* at 563.
127 *Id.* at 567–68.
128 *Id.*
129 *Id.*
130 *Id.* at 565.
131 *Id*. at 566.
132 *Id.* at 568.

concurring opinion, the fraud perpetuated on the Kiowas was described as "the usual process."[133]

Under the "plenary power" doctrine of the *Lone Wolf* case, the courts have largely deferred to Congress on the disposition of Indian land.[134] This left the upper Missouri Basin Tribes with no remedy to the Pick-Sloan plan.[135]

Nevertheless, a taking of Indian land must be authorized by Congress.[136] Executive branch agencies lack the authority to exercise eminent domain over these lands.[137] This is because the United States generally has recognized the Tribes' title to their lands by Treaty or statute.[138] The Secretary of the Interior holds trust title to Indian lands for the purpose of maintaining the Indian land base through

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133 DAVID H. GETCHES ET AL., CASES AND MATERIALS ON FEDERAL INDIAN LAW 181 (4th ed. 1998).

134 *See* United States v. John, 437 U.S. 634 (1978).

135 The "Plenary Power" doctrine established in *Lone Wolf* was severely curtailed in United States v. Sioux Nation of Indians, 448 U.S. 371 (1980) ("Lone Wolf's presumption of congressional good faith has little to commend it as an enduring principle . . . ." *Id.* at 414.). The Court will review acts of Congress affecting Tribes to ensure they pass constitutional muster under the Fifth Amendment due process clause; Delaware Tribal Bus. Comm. v. Weeks, 420 U.S. 73 (1977), as well as the takings clause; Sioux Nation of Indians, 448 U.S. at 390–95; *see also* Babbitt v. Youpee, 519 U.S. 234 (1997) (finding that Escheat provisions of the Indian Land Consolidation Amendments for small fractionated interests to Indian allotments violate takings clause). The plenary power doctrine has been discredited as a source of federal power over Indians. Nell Jessup Newton, *Federal Power over Indians: Its Sources, Scope, and Limitations*, 132 U. PA. L. REV. 195, 228–33 (1984) (providing an overview of Congressional acts providing for judicial review for Tribes); Robert A. Williams, Jr., *The Algebra of Federal Indian Law: The Hard Trail of Decolonizing the White Man's Indian Jurisprudence*, 1986 WIS. L. REV. 219, 263. Nevertheless, the Congress continues to exercise very broad authority over Indian affairs. *See, e.g.*, Tribal Law and Order Act of 2010, Pub. L. No. 111-211, 124 Stat. 2261–2301 (codified as amended at 25 U.S.C. §§ 2801–2815 (2012)); Indian Trust Fund Management Reform Act of 1994, 25 U.S.C. §§ 4001–4061 (2012); 25 U.S.C. §§ 151–162a (2012); Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701–2721 (2012). This is often to the chagrin of Tribes and Tribal leaders. *See* Red Lake Band of Chippewa Indians v. Swimmer, 740 F. Supp. 9, 11–12 (D.D.C. 1990) (rejecting Tribe's contention that IGRA's requirement that Tribes compact with states for Class III Gaming unconstitutionally infringes on Tribal sovereignty).

136 United States v. Winnebago Tribe, 542 F.2d 1002, 1006 (8th Cir. 1976).

137 United States v. Dion, 476 U.S. 734, 740–43 (1986) (finding that Endangered Species Act abrogated Indians right to hunt protected species, even for feathers needed for religious and ceremonial uses).

138 *See* Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 279 (1955).

restrictions on alienation.[139] The Court treated reservations established by Executive Order no differently than those established in treaties.[140]

The Standing Rock Sioux Tribe resisted the condemnation of its land by the Army Corps of Engineers for the site of Oahe Reservoir. The Corps initiated eminent domain proceedings for Tribal land in the Oahe Reservoir site.[141] The district court for South Dakota ruled in favor of the Tribe, enjoining the taking, for lack of prior authorization by Congress.[142]

The Flood Control Act authorized the project, but did not provide for the acquisition of the Indian lands where the Corps proposed to build the dams and reservoirs.[143] Consequently, it was necessary for Congress to enact additional legislation to authorize the acquisition of Reservation lands along the Missouri River for the construction of the Fort Randall, Oahe, and Garrison Dams.[144] In 1950, Congress passed a bill that directed the Army Corps of Engineers and Bureau of Indian Affairs to coordinate their efforts in appraising Indian land along the Missouri River, and negotiated for the acquisition of the lands needed by the Corps for the main stem reservoirs.[145]

The Corps of Engineers began construction before the Indian land being utilized for the dams and reservoirs was even acquired.[146] This resulted in harried and inadequate appraisals of the value of Tribal land.[147] It also intensified the pressure on the Tribes to agree to a sale price for their rich, fertile Missouri River bottomland forests.[148] Meanwhile, the Bureau of Indian Affairs used its authority for the approval of Tribal Attorney contracts to pressure Tribes into accepting unfavorable settlements.[149]

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139 25 U.S.C. § 177 (2012); 25 C.F.R. § 152.22 (1996).

140 Arizona v. California, 377 U.S. 546, 598 (1963).

141 U.S. v. 2005.32 Acres of Land, 160 F. Supp. 193, 202 (D.S.D. 1958).

142 *Id*.

143 Flood Control Act of 1944, Pub. L. No. 78-534, 58 Stat. 887, 891 (codified in scattered Sections of 16, 33, and 43 U.S.C.).

144 2005.32 Acres of Land, 160 F. Supp. at 202.

145 Act of Sept. 30, 1950, Pub. L. 870, 64 Stat. 1093, *available at* http://digital.library.okstate.edu/kappler/Vol6/html_files/v6p0523.html.

146 LAWSON, *supra* note 7, at 59.

147 *Id.* at 47.

148 *Id.*

149 *Id.* at 70–71.

Moreover, the 1950s saw the onset of the "termination era" of Indian policy.[150] The cold war was underway.[151] Free markets and individual freedoms buttressed notions of Soviet collectivism.[152] Yet on Indian Reservations, there remained considerable amounts of Tribally-owned land and community-based microenterprises, such as the vast community gardens in the Missouri River bottomlands.[153] Certain policy-makers in Congress sought to impose the individualist American ethic on Tribal communities by terminating Tribal status and disestablishing Reservations.[154] This would relieve the budget of federal program outlays on the Reservations, though the programs to be eliminated were Treaty obligations.[155] There was an obvious element of racism to the "termination" policy.[156]

On August 1, 1953, Congress adopted House Concurrent Resolution 108, declaring the federal policy "to make the Indians . . . subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens . . . [and] to end their status as wards."[157] The following year, Congress passed legislation terminating seventy Tribes, most notably Oregon's Klamath Tribe and Wisconsin's Menominee Tribe.[158]

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150 COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 1.06 (Nell Jessup Newton ed., 2012) [hereinafter, COHEN'S HANDBOOK].

151 *See* HOWARD ZINN, A PEOPLE'S HISTORY OF THE UNITED STATES 429–42 (2003 ed.).

152 *Id.* at 436 ("The whole culture was permeated with anti-Communism." *Id.*).

153 *See* United States v. Jim, 409 U.S. 80, 81 (1972) ("Whatever title the Indians have is in the tribe, and not in the individuals . . . ." (quoting Cherokee Nation v. Hitchock, 187 U.S. 294 (1902)) *Id.*).

154 *Termination of the Federal Supervision over Certain Tribes of Indians: Joint Hearings on S. 2670 and H.R. 7674 Before the Subcomm. on Indian Affairs of the Comm. on Interior and Insular Affairs*, 83d Cong. 42 (1954).

155 COHEN'S HANDBOOK, *supra* note 150, §1.06. "Federal programs for both tribes and individual members were discontinued, so that education, health, welfare, and housing assistance, as well as other social programs, were no longer available." *Id.*

156 *See* Williams, *supra* note 135.

157 *Concurrent Resolution of the Eighty-Third Congress, First Session, 1953 Indians*, INDIAN AFFAIRS: LAWS AND TREATIES, http://digital.library.okstate.edu/kappler/Vol6/html_files/Images/v6p0614.jpg (last visited Feb. 22, 2015).

158 COHEN'S HANDBOOK, *supra* note 150, at § 1.06; *see also* Kimball v. Callahan, 493 F.2d 564 (9th Cir. 1974), *cert. denied* 419 U.S. 1019 (1974) (finding that Treaty fishing rights survive termination of Klamath Tribe); Menominee Tribe of Indians v. United States, 391 U.S. 404 (1968) (Treaty hunting and fishing rights of Menominee Tribe survive termination). President Nixon formally repudiated the termination policy, in a 1979 Message to Congress. H.R. DOC. 91-363, 91st Cong. (1970). The Tribal status of the

In contrast, none of the upper Missouri Basin Tribes affected by the Pick-Sloan plan were terminated.[159] However, termination was the underlying policy environment in which these Tribes were forced to negotiate Congressional legislation for the sale of their best land. It proved to be an extraordinarily difficult task.[160]

C. Overview of Legislation Authorizing the Taking of Reservation Land

The Three Affiliated Tribes of Fort Berthold were the first Tribe to agree with the proposed legislation.[161] This resulted in the enactment of Public Law 81-437, which provided for the acquisition by the United States of 152,360 acres of the Missouri River riparian lands meandering across the middle of the Fort Berthold Reservation.[162] The Army Corps of Engineers had set aside $5.1 million from prior-year appropriations to acquire the Fort Berthold lands.[163] Public Law 81-437 authorized an additional $7.5 million payment for total compensation of $12.6 million.[164] Section 3 of the statute established a multi-agency appraisal board to appraise allotments and determine payments for individual landowners, who retained the right to appeal the appraisal.[165]

Under Section 14 of Public Law 81-437, Congress recognized the Three Affiliated Tribes as a public entity, eligible to acquire the low cost power generated at Garrison Dam under the Rural Electrification Act of 1936.[166] Although this merely codified the Tribes' preexisting status, it was an important recognition that the Indian Tribes should share in its hydropower benefits, in common with the rural electrical

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Klamath Tribe was restored by Congress in 1986. 25 U.S.C. § 566 (2012). The Menominee Tribe regained its status as a federally recognized Tribe in the Menominee Restoration Act of December 22, 1973, 25 U.S.C. §§ 903–903f (2012).

159 *See* Rosebud Sioux Tribe v. South Dakota, 900 F.2d 1164 (8th Cir. 1990) (finding South Dakota did not obtain civil jurisdiction over Indian Reservations in the state under Publ. L. 280, a termination-era statute authorizing state jurisdiction in Indian Country for certain states).

160 LAWSON, *supra* note 7, at 94–107.

161 *Id.* at 59.

162 Act of Oct. 29, 1949, Pub. L. No. 81-437, 63 Stat. 1026, *available at* http://digital.library.okstate.edu/kappler/Vol6/html_files/v6p0463b.html.

163 War Department Civil Appropriations Act of 1948, Pub. L. No. 295, 61 Stat. 690 (1948).

164 63 Stat. at 1027.

165 *Id.*

166 *Id*. at 1028. The Rural Electrification Act is codified at 7 U.S.C. §§ 901-950bb-1 (2012).

cooperatives serving predominantly non-Indian communities. However, the U.S. Western Area Power Administration, which markets Pick-Sloan hydropower, refused to enter firm power contacts with the Three Affiliated and other Missouri Basin Tribes until January 1, 2000—over fifty years after Congress enacted this provision.[167]

Legislation approving the acquisition of Fort Berthold Reservation lands paved the way for the construction of Garrison Dam, the largest earthen dam in the United States.[168] The creation of Lake Sakakawea on the Reservation was devastating to the Three Affiliated Tribes; the lake forced relocation of eighty percent of the Tribal members and inundated one-fourth of all Reservation land, including all of the timber, agricultural and grazing land, and government agency facilities.[169] And so it would be for the Sioux Tribes downstream.

"The Oahe Dam destroyed more Indian land than any other public works project in America."[170] Separate acts of Congress provided for the acquisition of Indian land for the Oahe Reservoir from the Cheyenne River and Standing Rock Sioux Tribes.[171] The Cheyenne River Sioux Tribe obtained a settlement of $5.4 million as appraised taken land value plus $5.2 million for economic and social rehabilitation, for a total settlement of $10.6 million.[172] The Tribe lost 104,420 acres of Missouri River bottomlands, crippling the Reservation's livestock industry and causing the relocation of government facilities over sixty miles to Eagle Butte.[173]

Nevertheless, Cheyenne River's legislation contained important provisions. The rehabilitation funding was sorely needed by all affected Tribes. The rehabilitation provision in the Cheyenne River act represented the first time that Congress recognized the tremendous socioeconomic hardship the dams were causing on the

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167 Final Power Allocations of the Post-2000 Resource Pool—Pick-Sloan Missouri Basin Program, Eastern Division, 62 Fed. Reg. 11174 (Mar. 11, 1997), *available at* http://www.gpo.gov/fdsys/pkg/FR-1997-03-11/pdf/97-5996.pdf.

168 *See* U.S. ARMY CORPS OF ENG'RS, NORTHWESTERN DIV., *supra* note 62, at 3-5 to 3-6.

169 LAWSON, *supra* note 7, at 59.

170 *Id.* at 50.

171 South Dakota v. Bourland, 508 U.S. 679, 689 (1993).

172 Act of Sept. 3, 1954, Pub. L. No. 83-776, 68 Stat. 1191, *available at* http://www.gpo.gov/fdsys/pkg/STATUTE-68/pdf/STATUTE-68-Pg1191.pdf.

173 LAWSON, *supra* note 7, at 50.

Reservations.[174] It was an important precedent that benefitted the other affected Tribes.

Section 10 of act also guaranteed Tribal members hunting, fishing, and grazing rights on the taken land—as well as access to the Oahe Reservoir—subject to Corps' regulations.[175] The Tribe also retained mineral rights subsurface to the taken land.[176] Significantly, the relocation and reconstruction of Tribal and federal facilities were to be paid out of Oahe project funds, not the Tribal compensation fund.[177] Tribal members retained the right to challenge Corps' appraisals in federal court;[178] although as a practical matter, few possessed the resources to do so.[179]

After the Standing Rock Sioux Tribe defeated the Corps' attempt to condemn Tribal lands, Congress acted. Under Public Law 85-915, the United States acquired 55,993.82 acres of Standing Rock Reservation bottomlands for payment of $5.3 million plus approximately $7 million in rehabilitation funds for a total settlement of $12.3 million.[180] Standing Rock—like Cheyenne River—retained hunting, fishing, and grazing rights on the taken lands, subsurface mineral rights, and guaranteed access to the reservoir.[181]

Significantly, Congress omitted payment to Standing Rock of compensation for the bed of the Missouri River within the Reservation.[182] Consequently, at least one Tribe affected by Pick-Sloan retained its claim to the title to the bed of the Missouri River.[183]

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174 68 Stat. at 1192.

175 *See Bourland*, 508 U.S. at 691.

176 68 Stat. at 1192.

177 *Id.*

178 *Id.*

179 LAWSON, *supra* note 7, at 100.

180 Act of Sept. 2, 1958, Pub. L. No. 85-915, 72 Stat. 1762, *available at* http://interior.gov/ost/tribal_doc_archive/upload/T-20350.pdf.

181 *Id*. at 1763–64.

182 *See* H.R. REP. NO. 58-1888, at 29 (1958) ("The Corps of Engineers elected not to acquire the bed of the Missouri River . . . . The bed of the Missouri River continues to be part of the reservation, and marks the eastern boundary of the reservation." *Id.*).

183 *See* Russel Lawrence Barsh & James Youngblood Henderson, *Contrary Jurisprudence: Tribal Interests in Navigable Waterways Before and After* Montana v. United States, 56 WASH. L. REV. 627, 681–83 (1981) (express Treaty language is needed to rebut presumption of state ownership of riverbed); *cf*. United States v. Cherokee Nation of Oklahoma, 480 U.S. 700, 705–06 (1986) (finding a clear congressional intent to compensate Tribe is needed to overcome navigation servitude).

The Fort Randall and Big Bend Dams are the other Missouri River main stem dams that impacted the Sioux Tribes.[184] Both projects affected the Lower Brule and Crow Creek Sioux Tribes.[185] Congress enacted separate bills on September 2, 1958 (the same day as the Standing Rock taking act), authorizing the acquisition of 7,997.67 acres of on the Lower Brule Reservation for $976,503[186] and 9,418.69 acres at Crow Creek for $1.4 million.[187] This land was inundated by Lake Francis Case, created by Fort Randall Dam.[188] These Tribes did not receive rehabilitation funds.

In a final blow, the last dam built on the Missouri River main stem, Big Bend, was installed at Fort Thompson, the largest community on the Crow Creek Reservation east of the river and the community of Lower Brule on that Reservation on the western shore.[189] Like at Fort Berthold, Standing Rock, and Cheyenne River, the entire communities of Fort Thompson and Lower Brule had to be relocated.[190]

Congress passed a second round of legislation taking more land from the Lower Brule and Crow Creek Tribes for the Big Bend Dam and Lake Sharpe. Public Law 87-735 provided for the acquisition of an additional 6,179 acres of the Crow Creek Reservation Missouri River bottomlands for $564,302 plus rehabilitation funding of $3.8 million.[191] Lower Brule was forced to cede an additional 14,299 acres for payment of $1.25 million plus approximately $2 million for rehabilitation.[192] The Big Bend legislation directed the Corps to replace cemeteries, schools, hospitals, and other community facilities at Fort Thompson and Lower Brule to be paid by project funds, not Tribal compensation or rehabilitation funds.[193] The Tribes retained

184 *See* LAWSON, *supra* note 7, at 125–34.

185 *Id.*

186 Pub. L. No. 85-923, 72 Stat. 1773 (1958).

187 Pub. L. No. 85-916, 72 Stat. 1766 (1958).

188 LAWSON, *supra* note 7, at 130–34.

189 *Id.*

190 *See* Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996, Pub. L. No. 104-223, 110 Stat. 3026; Lower Brule Sioux Tribe Infrastructure Development Trust Fund Act of 1997, Pub. L. No. 105-132, 111 Stat. 2563.

191 Big Bend Act of 1962, Pub. L. No. 87-735, 76 Stat. 704, *available at* http://digital.library.okstate.edu/kappler/Vol6/html_files/v6p0977.html.

192 Pub. L. No. 87-734, 76 Stat. 698 (1962).

193 76 Stat. at 702–706.

grazing, hunting, and fishing rights subject to the Corps of Engineers' regulations.[194]

Overall, Pick-Sloan caused more damage to Indian land and resources than any public works project in American history.[195] Approximately 356,000 acres of Indian Reservation lands were taken for Pick-Sloan, representing twenty-three percent of the 1,499,759 acres impacted by the main stem dams, reservoirs, and transmission lines.[196]

The upper Missouri River basin Indian Tribes were negatively and disproportionately affected by the Pick-Sloan program.[197] The payments authorized, often belatedly, were based on hasty appraisals, and were clearly inadequate in light of the harm that was suffered.[198] Congressionally-directed mitigation measures, such as the reconstruction of hospitals and government offices as well as the relocation of cemeteries, were often ignored by the Corps of Engineers.[199] The forced relocation of Tribal communities for the Pick-Sloan program caused socioeconomic depression which has lingered for decades.[200] For these reasons, Congress revisited the question of compensation to the Tribes a generation later.

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194 *See* United States v. Big Eagle, 881 F.2d 539, 540 (8th Cir. 1989) (finding a Federal Lacey Act Amendment violation by Crow Creek Tribal member, who violated Lower Brule Tribal law when fishing west of the main channel, outside of the Crow Creek Reservation boundary but within the Lower Brule Reservation).

195 *See* LAWSON, *supra* note 7, at 134.

196 Mni Sose Intertribal Water Rights Coalition, *supra* note 22.

197 S. 3648, 111th Cong., § 2(6) (1965).

198 Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act of 1992, Pub. L. No. 102-575, 108 Stat. 4732.

> The Congress declares that the Three Affiliated Tribes are entitled to additional financial compensation for the taking of one hundred and fifty-six thousand acres of their reservation lands . . . . [and] the Standing Rock Sioux Tribe is entitled to additional financial compensation for the taking of over fifty-six thousand acres of its reservation lands, as the site for the Garrison Dam and Reservoir.

§ 3503(a), (b), 108 Stat. 4732.

199 *Final Report and Recommendations of the Garrison Unit Joint Tribal Advisory Committee: Joint Hearing Before the S. Comm. on Indian Affairs, the S. Comm. on Energy and Natural Res., and the H. Comm. on Interior and Insular Affairs*, 100th Cong. 64–69 (1987).

200 *Id.*

D. Subsequent Compensatory Legislation for the Missouri Basin Tribes

1. Background–The Garrison Diversion

Efforts to properly compensate the Tribes for their tremendous injury resulting from the Pick-Sloan program arose in the context of non-Indian irrigation projects. The Sloan Plan had provided for the development of irrigation by the Bureau of Reclamation for approximately three million acres in the upper Missouri Basin.[201] A main component of this was the Missouri-Souris Project, a plan to irrigate 1,275,000 acres in North Dakota.[202] After the construction of Garrison Dam, the Bureau of Reclamation redesigned the project, using Lake Sakakawea as the point of diversion for the irrigation of one million acres in central and eastern North Dakota. The new plan, known as the Garrison Diversion, engendered national and even international controversy.[203]

Soon after the main stem dams and hydropower facilities were completed, concerns arose about the over-runs and cost-benefit ratio of Pick-Sloan, especially irrigation.[204] The Appropriations Act of August 14, 1964, required Congressional reauthorization of the irrigation projects approved as part of the Sloan Plan in the 1944 Flood Control Act.[205] Consequently, those irrigation projects authorized in the 1944 Act, but which had not received Congressional appropriations and had not been built, needed to be reapproved by Congress. Congress approved the first phase of the Garrison Diversion in 1965, authorizing construction of 250,000 acres of irrigation.[206]

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201 S. DOC. NO. 79-191 (1935).

202 *Id*.

203 H. REP. NO. 99-525, at 9–11 (1986) (summarizing the problems facing the Garrison Diversion Unit).

204 United Family Farmers v. Kleppe, 418 F. Supp. 591, 600 (D.S.D. 1976) (upholding NEPA study on Bureau of Reclamation's controversial Oahe project, notwithstanding unresolved issues relating to engineering feasibility).

205 Flood Control Act of 1944, Pub. L. No. 78-534, 58 Stat. 887 (codified in scattered Sections of 16, 33, and 43 U.S.C.).

206 Pub. L. No. 89-108, 79 Stat. 433–435 (1965).

The project as authorized was still a huge and inefficient inter-basin transfer of water.[207] Numerous large canals would crisscross the plains in North Dakota with drain irrigation run-off directed into Canada's pristine Hudson Bay basin.[208] The canals and other project facilities would remove thousands of acres of productive dry-land farms out of production, and destroy valuable prairie pothole wetlands.[209] The project's estimated cost at $334 million, to be repaid mostly by Pick-Sloan power revenues under the generous repayment provisions of Section 9 of the Flood Control Act, rendered it economically infeasible.[210]

Thus, Garrison prompted strong opposition among many North Dakota farmers and landowners, national environmental groups, and the Canadian government.[211] This opposition stifled Congressional appropriations in the years after the project was authorized.[212]

But many North Dakotans rallied around Garrison. The delay in its completion was perceived by some as a broken promise made by the federal government to the state. Consequently, Congress established the Garrison Diversion Unit Commission to make recommendations to scale down and reformulate the project. The statute recognized "the entitlement of the State of North Dakota to a federally-funded water development program as compensation for North Dakota's contribution to the Pick-Sloan program."[213]

Thus, the effort to build the Garrison Diversion was framed in terms of the loss of land in North Dakota for the site of the Garrison Dam, Lake Sakakawea, and the Oahe Reservoir.[214] On December 20, 1984, the Garrison Diversion Unit Commission issued its report with recommendations to significantly scale back the irrigation project and reformulate Garrison for municipal, rural, and industrial water supplies in North Dakota.[215] The Garrison Commission acknowledged that, of all North Dakotans, the Three Affiliated Tribes of Fort Berthold and the Standing Rock Sioux Tribe were perhaps most

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207 *See* REISNER, *supra* note 38, at 200–01 (discussing the economic infeasibility of the Garrison Diversion Unit).

208 *Id.*

209 *Id.*

210 H. REP. NO. 99-525, at 9–11 (1986).

211 Nat'l Audubon Soc'y v. Watt, 678 F.2d 299, 301 (D.C. Cir. 1982).

212 *Id.*

213 Pub. L. No. 98-360, § 207(a)(1), 98 Stat. 411 (1984).

214 *Id.*

215 H. REP. NO. 99-525, at 14.

affected by Pick-Sloan.[216] It recommended that the Secretary of the Interior appoint a second commission for the sole purpose of evaluating the impacts on the affected North Dakota Tribes.[217]

Congress generally accepted the Commission's recommendations and enacted the Garrison Diversion Unit Reformulation Act of 1986.[218] The Act de-authorized 876,180 acres of irrigation development, which Congress previously approved in the 1944 Flood Control Act and 1965 Garrison Act.[219] Funding was reauthorized for irrigation projects for 130,940 acres with the requirement of wetlands development equal in acreage to those wetlands impacted by the project.[220]

The thrust of the act was the significant authorization of funding for the development of municipal water supplies in North Dakota.[221] The sum of $200 million was authorized for "municipal, rural, and industrial" water development, to be matched with a twenty-five percent cost-share by the state of North Dakota.[222] Additionally, the act extended Pick-Sloan subsidized power rates to the new water systems.[223] This reflected a new political reality in which Pick-Sloan repayment resources shifted from inefficient irrigation projects to municipal water supplies.

The Congressionally-declared purpose of the act was "to offset the loss of farmland within the State of North Dakota resulting from the construction of major features of the Pick-Sloan Missouri Basin Program."[224] As stated above, in issuing its recommendations to

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216 "[T]he construction of the mainstem reservoirs . . . had a devastating effect on the Fort Berthold and Standing Rock Indian Reservations. . . . The Commission expressed concern about these impacts and made a series of important recommendations to correct some longstanding problems." *Id.* at 25.

217 *Id.*

218 Pub. L. 99-294, 100 Stat. 418 (1986).

219 H. REP. NO. 99-525, at 18–19. The fact that Congress de-authorized such a large-scale project reflects the level of overkill in the reclamation program, in North Dakota and throughout the United States. "The federal government for many years has appropriated and spent billions of taxpayer dollars to fund massive irrigation projects, taking Indian water and delivering it to non-Indian farmers." MCCOOL, *supra* note 1, at 171 (quoting John Narcho, Papago (Tohono O'odham) Water Commission).

220 H. REP. NO. 99-525, at 18–19.

221 *Id.*

222 *Id.*

223 *Id.*

224 *Id.*

reformulate the project, the Garrison Diversion Unit Commission recognized that the Tribes suffered a tremendous loss of land that should be redressed.[225]Consequently, the Garrison Unit Reformulation Act contained $67 million for irrigation at Fort Berthold and Standing Rock and MR&I funding in the amount of $20 million for the two Tribes and the Spirit Lake Sioux Tribe.[226]

2. The Joint Tribal Advisory Committee for Standing Rock and the Three Affiliated Tribes of Fort Berthold

Meanwhile, former Secretary of the Interior Donald Hodel implemented the recommendation of the Garrison Commission by appointing another blue-ribbon committee of North Dakotan and national leaders, known as the Joint Tribal Advisory Committee ("JTAC"), to evaluate compensation for the two Tribes.[227] The JTAC issued its Final Report on May 23, 1986.[228] The committee recommended additional compensation to the Three Affiliated Tribes in a range of $178-411 million and to Standing Rock in a range of $181-350 million.[229] It also recommended full funding for Tribal municipal water and irrigation development, federal protection of reserved water rights, and the return to the Tribes of taken lands that were not inundated by the reservoirs.[230]

Congress acted on the JTAC Report with the passage of the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act of 1992.[231] The act included a finding that "Congress concurs in the Advisory Committee's findings and conclusions that the United States Government did not justly compensate such Tribes when it acquired those lands."[232]

Trust funds were established as equitable compensation in the amount of $149.2 million for the Three Affiliated Tribe of Fort

225 *Id.* at 83.

226 Garrison Diversion Unit Reformulation Act of 1986, Pub. L. 99-294, 100 Stat. 418, *available at* http://www.gpo.gov/fdsys/pkg/STATUTE-100/pdf/STATUTE-100-Pg418.pdf.

227 *Final Report and Recommendations of the Garrison Unit Joint Tribal Advisory Comm.: Joint Hearing Before the S. Comm. on Indian Affairs, the S. Comm. on Energy and Natural Res., and the H. Comm. on Interior and Insular Affairs*, 100th Cong. 100-249 (1987).

228 *Id.*

229 *Id.* at 50–52, 55, 57.

230 *Id.* at 49–52.

231 Pub. L. No. 102-575, 106 Stat. 4731 (1992).

232 *Id.* at 4732.

Berthold and $90.6 million for Standing Rock, each to be capitalized at a schedule equal to twenty-five percent of the gross revenues of the Western Area Power Administration.[233] An additional $60 million was added to the Fort Berthold fund from appropriations previously approved for irrigation at Fort Berthold in the 1986 Garrison Reformulation Act.[234] The principal of the trust funds were to remain untouched with interest to be transferred to the Tribes on an annual basis after the funds had been fully capitalized.[235] The funds were to be used by the Tribes for "educational, social welfare, economic development, and other programs," and could not be distributed on a per capita basis.[236]

Rather than compensate the Tribes at the level recommended by the JTAC, Congress based its figures on estimates provided by the Congressional General Accounting Office (GAO).[237] The JTAC had recommended higher levels of compensation based upon economic analysis of direct and indirect damages that were not accounted for in the land appraisals in addition to foregone capitalized resources to present-day values.[238] The GAO urged a different approach. It researched the legislative history and negotiations surrounding the acquisition of land from the Tribes in the 1940s and 50s and attempted to glean what an equitable deal would have been at that time, accounted for inflation.[239] Congress adopted the GAO approach and reduced the level of compensation to the Three Affiliated Tribes and Standing Rock Sioux Tribe from the level recommended by the JTAC.

The JTAC also recommended the return to the Tribes of surplus taken lands.[240] The Army Corps of Engineers acquired much more

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233 *Id.* at 4732–4733.

234 *Id.* at 4732.

235 *Id.* at 4732–4733.

236 *Id.*

237 *Id.*

238 *Final Report and Recommendations of the Garrison Unit Joint Tribal Advisory Committee: Joint Hearing Before the S. Comm. on Indian Affairs, the S. Comm. on Energy and Natural Res., and the H. Comm. on Interior and Insular Affairs*, 100th Cong. 54–57, 100–249 (1987).

239 §§ 3503–3506, 106 Stat. at 4732–4733.

240 S. Hrg. 100-249 at 53–56. The JTAC Report also recommended "development of shoreline recreation potential" at Fort Berthold and Standing Rock, the protection of the Tribes' reserved water rights, and full funding for water projects. *Id.*

land for the Pick-Sloan reservoirs than is used for the site of the reservoirs.[241] As a result, large tracts of federal lands enclosed the reservoirs.[242] Indeed, Section 1(b) of the Public Law 85-915, which authorized the taking of Standing Rock Reservation lands for Oahe Reservoir, provided that,

> Upon a determination by the Secretary of the Army . . . within two years from the date of this Act, that any of the [taken] lands . . . are not required for Oahe project purposes, title to such land shall be revested in the former owner . . . .[243]

Clearly, Congress contemplated the possibility that the amount of land which it authorized the Army Corps of Engineers to acquire from Standing Rock may exceed the amount of land actually required.[244] Nevertheless, the statutory provision vests discretionary authority with the Army Secretary to determine whether to return land to the Tribe.[245] It was not a mandate.[246] The Secretary did not exercise this authority during the two-year time period referenced in the statute and since has avoided calls for administrative action to transfer land back to the affected Tribes.[247]

The Equitable Compensation Act addressed this by requiring the Secretary of the Army to transfer title to the Pick-Sloan project land within the Fort Berthold and Standing Rock Reservation boundaries to the Secretary of the Interior.[248] The lands to be transferred were those tracts acquired from the Tribes or Tribal members but that lay above the reservoirs' maximum pool level.[249] The transfer was subjected to a flowage easement for reservoir operations, although by

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241 *See* South Dakota v. Bourland, 508 U.S. 679, 689 (1993) (finding the Tribe lacks jurisdiction over non-Indians hunting and fishing on Corps of Engineers lands adjoining Lake Oahe within the boundaries of the Cheyenne River Indian Reservation); *see also* Lower Brule Sioux Tribe v. South Dakota, 104 F.3d 1017, 1019–20 (8th Cir. 1997).

242 *Id.*

243 Pub. L. 85-915, § 1(b), 72 Stat. 1752 (1958), *available at* http://digital.library.okstate.edu/kappler/Vol6/html_files/v6p0861.html.

244 *See* Lower Brule Sioux Tribe v. United States, 712 F.2d 349, 353 (8th Cir. 1983) (finding land reversion provision in taking act is discretionary).

245 *Id.*

246 *Id.*

247 *See, e.g.*, 60 Fed. Reg. 18070 (Apr. 10, 1995) (no final rule was ever published) (Army Corps of Engineers' proposed rule to transfer certain Pick-Sloan project lands, prescribing restrictive criteria for a land transfer to Standing Rock and the Three Affiliated Tribes).

248 Pub. L. No. 102-575, 106 Stat. 4731–4739 (1992).

249 *Id.* at 4732, 4736.

definition they were above the reservoir pool elevation.[250] The Secretary of the Interior was then obligated to administer the former Tribal tracts and offered a right of first refusal to former owners or their heirs of former family-owned allotments to reacquire the land at present-day market value.[251] If the right was not exercised, then Secretary administered the land as Tribal land.[252]

The process prescribed by Congress to transfer surplus Pick-Sloan project lands to Standing Rock and the Three Affiliated Tribes of Fort Berthold was needlessly convoluted. It required the Secretaries of the Interior and Army to coordinate the offer of first refusal and title transfer to literally thousands of allottees.[253] The statute obligated the Interior Secretary to make the offer of first refusal to the Tribes and former landowners within one year.[254] The agencies failed to implement the act in a timely manner, and instead informed Congress that the cost of transferring the land would be $21 million—four times the estimated value of the land.[255]

Citing the controversy, North Dakota Senator Kent Conrad sponsored an amendment to the Emergency Supplemental Appropriations Act of 1994 to repeal the land transfer provisions of the Equitable Compensation Act.[256] Enacted as Section 407 of the statute, the Conrad amendment authorized the Corps of Engineers to transfer surplus Pick-Sloan project lands under its general land disposal authority for Tribes, rather than the procedure prescribed in

250 *Id*. at 4735–4738.

251 *Id*. at 4735, 4737.

252 *Id.*

253 *See* Cobell v. Norton, 240 F.3d 1081, 1086 (D.C. Cir. 2001) (affirming breach of trust by Interior Secretary in mismanaging lease royalties due allottees, and requiring historical accounting of the landowners' interests). *Cobell* demonstrates the recordkeeping problems at the Department of the Interior and their effect on Indian allotments.

254 106 Stat. 4735, 4737.

255 140 Cong. Rec. 1779 (1994) (statement of Sen. Kent Conrad).

256 *Id.*

the Equitable Compensation Act.[257] The Corps conveyed only small tracts, however.[258]

Subsequently, Congress authorized the transfer of some Pick-Sloan project land above the main stem reservoirs in South Dakota.[259] The Water Resources Development Act of 1999 directed the Secretary of the Army to transfer the Corps of Engineers' land.[260] The Corps' land above the reservoir pools within the Cheyenne River and Lower Brule Sioux Reservations was to be transferred to the Secretary of the Interior to be held in trust for the respective Tribes.[261] And the project land in South Dakota outside of the Indian Reservations was to be transferred to the state.[262] The Water Resources Development Act of 1999 authorized $108 million for wildlife mitigation trust funds in South Dakota and $38 million for the two Tribes to share.[263] The Act also required that federal protections for historic properties under the National Historic Preservation Act[264] and Native American Graves Protection and Repatriation Act[265] were to remain in effect on transferred lands. Environmental statutes, such as the National Environmental Policy Act,[266] Clean Water Act[267] and Endangered Species Act[268] were also to remain in effect on transferred lands.

The Standing Rock and Crow Creek Sioux Tribes, like Cheyenne River and Lower Brule, had Pick-Sloan riverine lands on their Reservations acquired from the Tribe and laid fallow above the reservoirs.[269] But Standing Rock and Crow Creek chose not to be

257 "[S]ections 3508 and 3509 of the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act are repealed . . . . *Provided*, That the U.S. Army Corps of Engineers should proceed with the Secretary of the Interior to designate excess lands and transfer them pursuant to Public Law 93-599." Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act of 1992, Pub. L. No. 103-211, 108 Stat. 41 (1992).

258 *See infra* note 294, at E-9.

259 Act of Aug. 17, 1999, Pub. L. No. 106-53, 113 Stat. 385, *available at* http://www.gpo.gov/fdsys/pkg/PLAW-106publ53/pdf/PLAW-106publ53.pdf.

260 *Id.* at 391–94.

261 *Id.*

262 *Id.*

263 *Id*. at 389–90.

264 16 U.S.C. §§ 470–470a-1 (2012).

265 25 U.S.C. §§ 3001–3013 (2012).

266 42 U.S.C. §§ 4321–4370f (2012).

267 33. U.S.C. §§ 1251–1387 (2012).

268 16 U.S.C. §§ 1531–1544 (2012).

269 143 Cong. Rec. S11354 (1997) (statement of Sen. Tom Daschle).

included in the Water Resources Development Act.[270] There was concern amongst some Tribes and Tribal members with the transfer of the Corps of Engineers' land outside of Indian Reservation boundaries to the state of South Dakota because some of these lands were once part of the Great Sioux Reservation as established in the 1868 Fort Laramie Treaty.[271] The patchwork land management jurisdiction resulting from the transfer of federal riverine lands to the state and the potential impacts on historic preservation became a Tribal concern as well.[272]

3. Compensatory Legislation for the Sioux Tribes in South Dakota

Although Congress repealed the land transfer provisions of the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act, the establishment of trust funds for these Tribes served as precedent for the South Dakota Tribes. Congress enacted compensatory legislation for the Crow Creek Sioux Tribe in 1996,[273] the Lower Brule Sioux in 1998,[274] and the Cheyenne River Sioux in 2002.[275]

As with the original land-taking acts in the 1950s, the statutes for each of the Tribes have some similarities and some differences. The statutes for Crow Creek and Lower Brule authorized trust finds of $27.5 million and $39 million, respectively, to be financed according to the schedule of Pick-Sloan hydropower receipts as in the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act. The trust funds were deemed adequate by the Clinton administration because they were proportionate to those authorized for the North Dakota Tribes.[276] The authorized use of the

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270 *Id*.

271 William Kindle, President, Rosebud Sioux, Guest Columnist, *Land Transfer Bill Misleading*, RAPID CITY J., July 12, 1997. The Supreme Court detailed the history of the Sioux Nation land claim under the 1868 treaty in *United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980).

272 Crow Creek Sioux Tribe v. Brownlee, 331 F.3d 912, 915 (D.C. Cir. 2003).

273 Act of Oct. 1, 1996, Pub. L. No. 104-223, 110 Stat. 3026, *available at* http://www.gpo.gov/fdsys/pkg/STATUTE-110/pdf/STATUTE-110-Pg3026.pdf.

274 Act of Dec. 2, 1997, Pub. L. No. 105-132, 111 Stat. 2563, *available at* http://www.gpo.gov/fdsys/pkg/PLAW-105publ132/pdf/PLAW-105publ132.pdf.

275 Act of Nov. 13, 2000, Pub. L. No.106-511, 114 Stat. 2365, *available at* http://www.gpo.gov/fdsys/pkg/PLAW-106publ511/pdf/PLAW-106publ511.pdf.

276 *Crow Creek Infrastructure Trust Fund Development Act: Joint Hearing Before the S. Comm. on Indian Affairs and the Subcomm. on Native Am. and Insular Affairs of the H.*

funds for Crow Creek and Lower Brule was targeted for facilities such as schools, hospitals, and government buildings—with an emphasis on infrastructure.[277] In the 1962 Big Bend Act, Congress directed the Corps of Engineers to replace these facilities out of the project budget when the communities of Fort Thompson and Lower Brule were relocated.[278] In the late 1990s, Congress' stated purpose in legislation for these Tribes was to finance the new community facilities promised to the Tribes when Big Bend Dam was built thirty years earlier.[279]

The Cheyenne River Sioux Tribe Equitable Compensation Act of 2002 established a $290 million trust fund reflective of the Tribe's larger land base and the sum of Reservation lands inundated by the Oahe Dam.[280] Unlike Crow Creek and Lower Brule, the schedule for capitalization of the Cheyenne River trust fund was unrelated to the receipts from the sale of Pick-Sloan hydropower. Deposits to the fund were made from appropriations to the general fund of the treasury.[281]

The compensatory legislation for all of the Missouri River Tribes required that they develop plans for the expenditure of funds for common developmental needs, such as "economic development," "infrastructure," and "educational, health, recreational, and social welfare objectives."[282] Every statute prohibits the distribution of funds to Tribal members on a per capita basis—with an emphasis on community-wide development.[283] All of the acts contained language prohibiting reductions in federal services or impacts on Treaty rights. The Cheyenne River Equitable Compensation Act contained additional language extinguishing any future damage claims relating to Oahe Dam.[284]

Unlike the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act, the settlements for the Sioux Tribes in

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Comm. on Res., 104th Cong. 38 (statement of Catherine Vandemoer, Special Assistant for Water and Natural Res., Dep't of the Interior).

277 § 104, 114 Stat. at 2366–2368.

278 Big Bend Act of 1962, Pub. L. No. 87-735, 76 Stat. 704 (1962), *available at* http://digital.library.okstate.edu/kappler/Vol6/html_files/v6p0977.html.

279 Crow Creek Sioux Tribe Infrastructure Development Trust Fund Act of 1996, Pub. L. No. 104-223, 102 Stat. 3027 (1996).

280 § 104, 114 Stat. at 2366.

281 *Id.*

282 *Id*. at 2367.

283 *Id.* at 2368.

284 *Id.*

South Dakota contained no provisions for the return of Pick-Sloan project lands.[285] Congress dealt with this issue for the Cheyenne River and Lower Brule Sioux Tribes, along with the state of South Dakota, in the 1999 Water Resources Development Act.[286] As of the present, the issue of the transfer of surplus Pick-Sloan project taken lands on the Fort Berthold, Standing Rock, and Crow Creek Reservations remains unresolved.

Ultimately, the process by which the Missouri River Tribes obtained additional compensation for the taking of their valuable riparian land was as piecemeal and problematic as the legislative process for the original taking acts during the termination era of the 1950s. Consequently, some Tribes have continued to petition the Congress for land restoration or additional compensation.[287] On November 1, 2007, the Senate Committee on Indian Affairs conducted a hearing on unresolved Tribal claims under Pick-Sloan.[288] In testimony to the committee, the General Accounting Office (GAO) presented its established ranges of recommended compensation for each of the Missouri River Tribes.[289] The GAO testimony suggests that at least one Tribe, the Standing Rock Sioux, may be entitled to additional compensation, relative to the other Tribes.[290]

In the following Congress, North Dakota Senator Byron L. Dorgan introduced the Pick-Sloan Tribal Commission Act, to establish an expert commission to study the unresolved claims of the Indian Tribes directly affected by Pick-Sloan.[291] The bill was reported by the Committee on Indian Affairs,[292] but was not acted upon by the Senate. Its future remains uncertain.

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285 *Crow Creek Infrastructure Trust Fund Development Act: Joint Hearing Before the S. Comm. on Indian Affairs and the Subcomm. on Native Am. and Insular Affairs of the H. Comm. on Res.*, *supra* note 276, at 34 (statement of Sen. Tim Johnson).

286 Act of Aug. 17, 1999, Pub. L. No. 106-53, 113 Stat. 385, *available at* http://www.gpo.gov/fdsys/pkg/PLAW-106publ53/pdf/PLAW-106publ53.pdf.

287 *Impact of the Flood Control Act of 1944 on the Indian Tribes Along the Missouri River: Hearing Before the S. Comm. on Indian Affairs*, 110th Cong. (2007).

288 *Id.*

289 *Id.* at 5–19 (statement of Robin Nazarro, Director Natural Res. Div., Gov't Accountability Office).

290 *Id.* at 11–12.

291 S. 3648, 111th Cong. (2010).

292 S. REP. NO. 111-357 (2010).

III
ONGOING IMPACTS OF THE CORPS OF ENGINEERS' MISSOURI RIVER OPERATIONS ON THE INDIAN RESERVATIONS ALONG THE MISSOURI RIVER

A. The Corps' Operations Under the Missouri River Master Water Control Manual

The Corps of Engineers operates the dams on the Missouri River pursuant to the *Missouri River Mainstem Reservoir System, Master Water Control Manual,* (hereinafter "Master Manual").[293] The Master Manual prescribes the criteria to be followed by the Corps for water releases for navigation, flood control storage space, and other Pick-Sloan authorized uses.[294] Each year, the Corps publishes an Annual Operating Plan ("AOP"), which estimates the precipitation and run-off and applies the criteria prescribed in the Master Manual to establish flow rates at the dams.[295]

On the Missouri River main stem, six dams and reservoirs comprise the Pick-Sloan program.[296] Four of these projects—Gavins Point Dam, Fort Randall, Big Bend, and Oahe—are located in South Dakota.[297] The largest dam, Garrison, is located in North Dakota, and the upstream-most project, Fort Peck, is located in northeastern Montana.[298]

The upstream reservoirs—Oahe, Garrison, and Fort Peck, are used to store snow melt in the spring, and are drawn upon to provide water for downstream navigation, and storage space for flood control.[299] The vast reservoirs contain storage space for millions of acre-feet of water.[300] The three downstream projects—Gavins, Point Dam, Fort

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293 South Dakota v. Ubbelohde, 330 F.3d 1014, 1020 (8th Cir. 2003) (explaining the U.S. Army Corps of Engineers' publication of the Master Manual to implement the broad goals behind the Flood Control Act).

294 U.S. ARMY CORPS OF ENG'RS, NORTHWESTERN DIV., MISSOURI RIVER MAINSTEM RESERVOIR SYSTEM MASTER WATER CONTROL MANUAL VII-1 to VII-45 (2006), *available at* http://www.nwd-mr.usace.army.mil/rcc/reports/mmanual/MasterManual.pdf.

295 Missouri *ex rel.* Nixon v. Craig, 163 F.3d 482, 485–86 (8th Cir. 1998).

296 U.S. ARMY CORPS OF ENG'RS, NORTHWESTERN DIV., *supra* note 294, at IV-1 to IV-2.

297 *Id*.

298 *Id.*

299 *Id.* at VII-2.

300 *Id*.

Randall, and Big Bend—are smaller dams, whose reservoirs have less storage space.[301]

The water releases for navigation on the lower Missouri River are the central feature of the Missouri River system operation.[302] The Corps of Engineers generally releases 35,000 cubic feet per second daily from the Gavins Point Dam to the lower reach of the Missouri River, from March 15 to November 15 of each year.[303] That is a significant, steady flow of water for the lower Missouri basin. Gone are the spring flood waters, the deposit of sediments for sandbars, and the lower flows of late summer when the murky, braided river rolled slowly across the plains.[304] As a result of the operation of the Pick-Sloan program by the Corps of Engineers, the Missouri River below Gavins Point Dam (near Sioux City, Iowa) is now a steady chute of a significant quantity of water, from mid-March to mid-November.[305]

In the springtime, the large upstream reservoirs—South Dakota's Lake Oahe, North Dakota's Lake Sakakawea, and Lake Fort Peck in Montana—receive recharge from snow melt in the Rocky Mountains.[306] Beginning with the water releases for navigation on March 15 of each year, the waters stored in these large reservoirs are drawn down by the Corps.[307] The navigation releases cause the water levels in the reservoirs to decline precipitously during the course of the navigation season.[308]

The Corps also releases water from the dams periodically, for other Pick-Sloan program functions.[309] There are releases to generate hydropower during the off-navigation season, which are at their highest level when demand peaks in the winter.[310] During the off-

301 U.S. ARMY CORPS OF ENG'RS, NORTHWEST DIV., *supra* note 62, at 2-4.

302 U.S. ARMY CORPS OF ENG'RS, NORTHWEST DIV., *supra* note 294, at VII-50 to VII-54.

303 *Id.* at VII-10, VII-25. The navigation full-service target established in the Master Manual is 35,000 cfs. *Id*.

304 *In re* Operation of the Mo. River Sys. Litig., 421 F.3d 618, 625–26 (8th Cir. 2005).

305 Sandra B. Zellmer, *A New Corps of Discovery for Missouri River Management*, 83 NEB. L. REV. 305, 319 (2004).

306 U.S. ARMY CORPS OF ENG'RS, NORTHWEST DIV., *supra* note 62, at 3-111.

307 U.S. ARMY CORPS OF ENG'RS, NORTHWEST DIV., *supra* note 294, at VII-23.

308 South Dakota v. Hazen, 914 F.2d 147, 148–49 (8th Cir. 1990) (request for injunction against navigation releases deemed moot, because fish spawning season and navigation season had concluded).

309 U.S. ARMY CORPS OF ENG'RS, NORTHWEST DIV., *supra* note 294, at VII-2.

310 *Id.*

navigation season, the Corps maintains sufficient river levels below Gavins Point Dam, for municipal intakes and nuclear plants along the lower Missouri.[311] The Corps also releases water as needed to break up winter ice jams in the river reaches between the reservoirs to prevent flooding.[312] Some years, the Corps of Engineers will release water from Gavins Point to the lower basin, to create a spring rise—an artificial "flood" for the purpose of depositing silt for sand bars for the nesting of endangered least terns and piping plovers species.[313]

The Corps of Engineers first issued the Missouri River Master Manual in 1960.[314] The extent of the Corps' authority to manage the Missouri River main stem reservoirs, as well as its operational priorities under the Master Manual, have engendered controversy since that time.

In *ETSI Pipeline Project v. Missouri*, the Court held that the Flood Control Act vested authority to enter contracts for the industrial use of water from the Missouri River main stem reservoirs with the Corps of Engineers, and not the Bureau of Reclamation.[315] The state of South Dakota had granted a water permit to Energy Transfer Solutions, Inc. (ETSI) to use water for an interstate coal slurry.[316] The U.S. Bureau of Reclamation then contracted with ETSI for the withdrawal from the Missouri River's Oahe Reservoir of 20,000 acre-feet of water annually for forty years, for use by the coal slurry.[317] The states of Missouri, Iowa, and Nebraska successfully challenged the contract, as exceeding the Bureau of Reclamation's authority under the 1944 Flood Control Act.[318]

Significantly, Justice White's opinion stated, "The Sloan Plan recognized that the 'dominant function' of Lake Oahe and the other main-stem reservoirs would be flood control and navigation, and therefore these projects would come under the jurisdiction of the Army and its Corps of Engineers."[319] That language may go too far,

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311 *Id.*

312 *Id.*

313 *In re* Operation of the Mo. River Sys. Litig., 421 F.3d 618, 634–35 (8th Cir. 2005) (finding spring rise not mandated under Endangered Species Act).

314 Missouri *ex rel.* Nixon v. Craig, 163 F.3d 482, 483 (8th Cir. 1998).

315 ETSI Pipeline Project v. Missouri, 484 U.S. 495, 499 (1988).

316 *Id.* at 497–98.

317 *Id*.

318 *Id*. at 498.

319 *Id.* at 512.

however. Section 1(b) of the 1944 Flood Control Act, known as the O'Mahoney-Millikin Amendment, provides that,

> The use for navigation, in connection with the operation and maintenance of such works herein authorized for construction, of waters arising in States lying wholly or partly west of the ninety-eighth meridian shall be only such use as does not conflict with any beneficial consumptive use, present or future, in States lying wholly or partly west of the ninety-eighth meridian, of such waters for domestic, municipal, stock water, irrigation, mining, or industrial purposes.[320]

Justice White cited part of the legislative history of Section 9 of the Flood Control Act, in support of his dicta that navigation is a "dominant" purpose of Pick-Sloan.[321] S. Doc. 191 contains the Sloan Plan originally contemplated by the Bureau of Reclamation.[322] The pronouncement that navigation is the primary Pick-Sloan function was based on language in S. Doc. 191 that the "dominant functions" of the main stem reservoirs would be navigation and flood control.[323]

The legislative history to Section 1(b) of the Flood Control Act conflicts with that. The intent of the O'Mahoney-Millikin Amendment was explained by North Dakota Representative William Lemke:

> We are not going to take the water from the people in the states where it originated so that some fellow may float a yacht down the lower Mississippi Valley, while the people and their cattle in the

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320 Flood Control Act of 1944, Pub. L. No. 78-534, § 1(b), 58 Stat. 887 (codified in scattered Sections of 16, 33, and 43 U.S.C.), *available at* http://www.usbr.gov/power/legislation/fldcntra.pdf.

321 *ETSI Pipeline Project*, 484 U.S. at 512 (citing S. DOC. NO. 78-191 (1994)).

322 S. DOC. NO. 78-191.

323 *ETSI Pipeline Project*, 484 U.S. at 512; *see also* Dep't of the Army, Mo. River Div., Corps of Eng'rs Office of Legal Counsel, *The Role of Recreation in the Regulation of the Corps of Engineers Constructed and Operated Main Stem Reservoirs of the Missouri River*, 4 GREAT PLAINS NAT. RESOURCES J. 26, 33 (1999). The Corps' Office of Legal Counsel relies on the Joint Engineering Report in S. Doc. 247 to support the contention that navigation and flood control are the Pick-Sloan primary purposes, with other purposes secondary. "It seems a rational conclusion that the reconciled plan produced in Senate Document 247 intended the phrase 'and other uses' following its recitation of the above primary purposes to encompass the purposes of domestic and sanitary purposes, wildlife, and recreation, which the reconciled report identified in its closing paragraph." *Id*. The Corps believes that the mere fact that the legislative history references "navigation, flood control . . . and other purposes" means that the two specified functions take precedence over other Pick-Sloan authorized purposes. *Id.* at 30–31.

> upper regions go hungry on account of the lack of food and water.[324]

Indeed, the opinion in *ETSI Pipeline* actually acknowledged that the legislative history is inconclusive.[325] Footnote 7 reads in part, "The self-styled 'joint engineering report' contained in the final Senate Document that effected a reconciliation of the Pick and Sloan Plans did not shed any further light on how the administrative jurisdictions of the two Departments were to be circumscribed . . . ."[326]

Nevertheless, Justice White's dicta in *ETSI Pipeline* was cited by the Eighth Circuit Court of Appeals in *South Dakota v. Ubbelohde*, which upheld the level of navigation water service provided by the Corps, as a reasonable balance of competing water uses during severe drought.[327] South Dakota had argued that the continued water releases at the main stem dams during the drought violated the Flood Control Act, which includes numerous project purposes, including fish and wildlife.[328] The Eighth Circuit ruled that, "The dominant functions of the Flood Control Act were to avoid flooding and to maintain downstream navigation."[329]

This issue affects the Tribes in the upper Missouri basin, such as the Three Affiliated Tribes of Fort Berthold, and the Standing Rock and Cheyenne River Sioux Tribes, whose water supplies and Reservation environment are impacted by the levels of the Sakakawea and Oahe Reservoirs.[330] The priority afforded to navigation in the management of Missouri River stream flows by the Corps of Engineers reduces reservoir levels on these Indian Reservations and impedes the ability of the Tribes to utilize and perfect their reserved water rights.[331]

Due to the severity of drought conditions in the Upper Missouri River Basin during the late 1980s, the Corps of Engineers reviewed

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324 *Missouri River Basin: Hearings on Amendments to the Missouri River Provision in H.R. 3961 Before the House Comm. on River and Harbors*, 78th Cong. 4213 (1944) (statement of Rep. William Lemke, Member, House Comm. on River and Harbors).

325 *ETSI Pipeline Project*, 484 U.S. at 512.

326 *Id* at 512 n.7.

327 South Dakota v. Ubbelohde, 330 F.3d 1014, 1020 (8th Cir. 2003).

328 *Id*. at 1030.

329 *Id.* at 1019–20 (*citing ETSI Pipeline Project*, 484 U.S. at 512).

330 U.S. ARMY CORPS OF ENG'RS, NORTHWEST DIV., *supra* note 62, at 3–6.

331 *See infra* Part IV.

the operational priorities of the Master Manual.[332] Tribal issues seemed cast aside in the regional conflict pitting upper basin reservoir water users and against lower basin municipal water users and the navigation industry.[333] The Supreme Court explained the respective water needs of the upper and lower basin, in *ETSI Pipeline Project v. Missouri*,

> The topography of this area, however, reveals two distinct regions that experience very different water problems. The upper part of the Basin, which includes large Sections of Montana, Wyoming, North Dakota, and South Dakota, is mostly arid or semiarid; there, the Missouri River and its tributaries are important because they represent a major resource for developing the agricultural and industrial potential of the area. The lower part of the Basin, which includes territory in Nebraska, Kansas, Iowa, and Missouri, is more humid, and there the rivers are used chiefly for navigation, though the critical problem in this region is to control flooding.[334]

Meanwhile, the *Missouri River Master Water Control Manual Review and Update* took nearly fifteen years to complete, and then only by court order.[335] On March 19, 2004, the Corps released the *Final Environmental Impact Statement: Missouri River Master Water Control Manual, Review and Update* (hereinafter "Final EIS") and the updated 2004 Master Manual.[336] They established "drought conservation measures," to enhance flexibility to reduce navigation releases from the dams during drought.[337] Under the 2004 revision to the Master Manual, the Corps will check the amount of water in storage in the Pick-Sloan reservoirs on March 15 and July 15 of each

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332 South Dakota v. Hazen, 914 F.2d 147, 150–51 (8th Cir. 1990).

333 *In re* Operation of the Mo. River Sys. Litig., 421 F.3d 618, 637 (8th Cir. 2005). Professor Tarlock wrote,

> For the past fifty years, the basin states have persistently, if quietly, fought among themselves and with the federal agencies, primarily the U.S. Army Corps of Engineers . . . that run the Pick-Sloan project reservoirs about the use and management of the river. . . . A secondary theme [is] the injustice done to the Native American Tribes by the federal government . . . .

Tarlock, *supra* note 83, at 1–2; *see also* JOHN E. THORSON, RIVER OF PROMISE, RIVER OF PERIL: THE POLITICS OF MANAGING THE MISSOURI RIVER (1994).

334 ETSI Pipeline Project v. Missouri, 484 U.S. 495, 499–500 (1988).

335 *In re* Operation of the Mo. River Sys. Litig., 305 F.Supp. 2d 1096, 1096–99 (D. Minn. 2004).

336 *Id.* at 1099.

337 U.S. ARMY CORPS OF ENG'RS, NORTHWEST DIV., *supra* note 62, at 8-5.

year.[338] If the amount of stored water declines to identified "target" levels due to drought, the Corps reduces or eliminates navigation service.[339]

Essentially, in the Final EIS and 2004 Master Manual, the Corps maintained the status quo with respect to its operational priorities under its 1979 Master Manual.[340] The release of a high volume of water for navigation continues, but with the prospect of reduced streamflows during drought.[341] The *2004 Master Manual* provides administrative authority to the Corps to reduce the water releases for navigation during periods of extreme drought.[342] The Corps also committed to utilize its new adaptive management authority to experiment with water releases for a spring rise, and to develop new habitat for affected species.[343]

A series of lawsuits against the Corps of Engineers over the 2004 Master Manual by upper Missouri basin states,[344] lower basin states,[345] and environmental groups,[346] was consolidated in the District Court of Minnesota.[347] In *In re Operation of the Missouri River System Litigation*, the court evaluated the adequacy of the Final EIS under the National Environmental Policy Act and Endangered Species

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338 *Id*. at 8-7.

339 *Id*. Navigation service is to be reduced if total storage falls below 57 million acre-feet on July 1, and reduced further if storage has fallen below 50.5 million acre-feet. There is a "navigation preclude," which eliminates navigation releases if there is less than 31 million acre-feet in total storage on March 15. *Id.* at Figures 8.2-1 and 8.2-2. *See also* U.S. ARMY CORPS OF ENG'RS, NORTHWESTERN DIV., *supra* note 294, at VII-50 to VII-53.

340 U.S. ARMY CORPS OF ENG'RS, *supra* note 62, at 8-9 to 8-32 (comparing effects of water management plan under 1979 Master Manual with the preferred alternative in the 2003 Final EIS, and the 2006 Master Manual).

341 *In re* Operation of the Mo. River Sys. Litig., 421 F.3d 618, 629 (8th Cir. 2005).

342 *Id.*

343 U.S. ARMY CORPS OF ENG'RS, NORTHWESTERN DIV., *supra* note 62, at 8-2 to 8-3. The Corps committed to establishing a "Missouri River Recovery Implementation Committee," comprised of, "representatives of Tribal and State governments and of other governmental and non-governmental organizations that have an interest in the management of the river and the recovery of the listed species and their habitat." *Id.*

344 North Dakota v. U.S. Army Corps of Eng'rs, 270 F. Supp. 2d 1115, 1128 (D.N.D. 2003) (finding North Dakota unlikely to succeed on merits of claim that operation of main stem dams violates state water quality standards).

345 South Dakota v. Ubbelohde, 330 F.3d 1014 (8th Cir. 2003).

346 Am. Rivers v. Army Corps of Eng'rs, 271 F. Supp. 2d 230 (D.D.C. 2003).

347 *In re* Operation of the Mo. River Sys. Litig., 363 F. Supp. 2d 1145, 1154–55 (D. Minn 2005); *see* J.R. Seeronen, *Judicial Challenges to Missouri River Mainstem Regulation*, 16 MO. ENVT'L. L. & POL'Y REV. 60 (2003).

Act.[348] The district court entered summary judgment for the Corps of Engineers and other named federal defendants,[349] and the Eighth Circuit affirmed.[350]

The Eighth Circuit explained that, under NEPA, "When the resolution of the dispute involves primarily issues of fact and analysis of the relevant information 'requires a high level of expertise, we must defer to the informed discretion of the federal agencies.'"[351] It held that, "The FCA 'clearly gives a good deal of discretion to the Corps in the management of the River.'"[352] The court also reiterated that under the *ETSI Pipeline* and *Ubbelohde* cases, flood control and navigation were deemed the "dominant functions" of the Pick-Sloan program.[353]

In *In re Operation of Missouri River System Litigation*, the Eighth Circuit did not address the potential conflict between the portion of the Flood Control Act's legislative history which may express a preference for navigation, and Section 1(b) of the Act (the O'Mahoney-Millikin Amendment), which prohibits navigation water use from conflicting with agricultural and industrial uses in the upper basin.[354] The court held that, "The Corps' balancing of water-use interests in the 2004 Master Manual is in accordance (with the Flood Control Act)."[355] Having upheld the Corps, the court stated, "we need not address appellee South Dakota's argument," that the O'Mahoney-Millikin Amendment expresses preference for upstream water uses.[356] Thus, the Eighth Circuit invoked its prior dicta that navigation is the

348 *In re* Operation of the Mo. River Sys. Litig., 363 F.Supp. 2d at 1155.

349 *Id.*

350 *In re* Operation of the Mo. River Sys. Litig., 421 F.3d 618, 638 (8th Cir. 2005).

351 *Id.* at 628 (quoting Friends of the Boundary Waters Wilderness v. Dombeck, 164 F.3d 1115, 1128 (8th Cir. 1999) and Marsh v. Or. Natural Res. Council, 490 U.S. 360, 377 (1989)); *see also* Mo. Coal. for the Env. v. Corps of Eng'rs, 866 F.2d 1025, 1033 (8th Cir. 1989) (upholding Corps of Engineers' Environmental Impact Statement citing "[t]he sheer volume of the administrative record in this case" to constitute adequate consideration of environmental effects. *Id.*).

352 *In re* Operation of the Mo. River Sys. Litig., 421 F.3d at 633.

353 *Id.* at 629.

354 Flood Control Act of 1944, Pub. L. No. 78-534, § 1(b), 58 Stat. 887 (codified in scattered sections of 16, 33, and 43 U.S.C.), *available at* http://www.gpo.gov/fdsys/pkg/USCODE-2013-title33/pdf/USCODE-2013-title33-chap15.pdf.

355 *In re* Operation of the Mo. River Sys. Litig., 421 F.3d at 630.

356 *Id.* at 630 n.8.

"dominant purpose" of the Flood Control Act, without addressing the fact that Section 1(b) of the act suggests otherwise.[357]

The Three Affiliated Tribes of the Fort Berthold Reservation intervened in the Missouri River litigation.[358] The circuit court upheld the finding that the Tribes did not suffer an adequately particularized "injury-in-fact" from the 2004 Master Manual, to justify standing under Article III.[359] The Missouri River Tribes have suffered and continue to be affected by the Pick-Sloan program. The treatment of the Three Affiliated Tribes' claims in *In re Operation of Missouri River System Litigation* demonstrates that, in litigation relating to the Missouri River, Tribes may need to show injury specific to their Reservation in order to have Article III standing.

As a result of the Corps' Missouri River operations under the Master Manual, the Oahe Reservoir, and Lakes Sakakawea and Fort Peck experience huge fluctuations in their water levels.[360] This has significant impacts on the water supply, aesthetics and natural environment in the Tribal communities along the upper Missouri River, including Fort Berthold.[361] Moreover, the ability of the Tribes to perfect and utilize their reserved water rights is jeopardized by the Corps' operations under the Master Manual.[362]

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357 *Id.* at 629–30. The district court had addressed this directly,

> South Dakota maintains that the FCA subordinates navigation to upstream uses of irrigation and domestic water supply [under the O'Mahoney-Millikin Amendment] . . . . South Dakota argues that the 2004 Master Manual is in "conflict" with South Dakota's consumptive beneficial uses, because the 2004 Master Manual allows for lower levels in reservoirs such that South Dakota may be required to build extensions to irrigation lines or extend intake structures . . . . South Dakota's argument lacks merit. . . . [R]equiring South Dakota to build extensions for irrigation lines or drinking water is not in 'conflict' with South Dakota's consumptive beneficial uses, because there is no destruction or denial of South Dakota's water rights.

In re Operation of the Mo. River Sys. Litig., 363 F. Supp. 2d 1145, 1154–55 (D. Minn 2005) (citations omitted). On appeal, the Eighth Circuit explicitly left this issue for another day. *In re* Operation of the Mo. River Sys. Litig., 421 F.3d at 630 n.8.

358 *In re* Operation of the Mo. River Sys. Litig., 363 F. Supp. 2d at 1168.

359 *In re* Operation of the Mo. River Sys. Litig., 421 F.3d at 637.

360 U.S. ARMY CORPS OF ENG'RS, NORTHWEST DIV., *supra* note 294, at E-9.

361 *Id.*

362 Davidson, *supra* note 93, at 7.

B. Indian Reserved Water Rights to the Missouri River

Many Indian Tribes in the upper Great Plains possess reserved water rights to the Missouri River main stem.[363] Indeed, "Upper Missouri Basin Indians were the first to successfully assert prior and paramount rights to provide water for Reservation lands that would otherwise be uninhabitable."[364] In *Winters v. United States*, the Supreme Court established that when Montana's Fort Belknap Tribe reserved rights to land, they also reserved water rights as needed to survive on the Reservation.[365]

The prior appropriation doctrine of water law applies in most western states, including Montana.[366] Under a prior appropriation scheme, a state water engineer or other official issues permits to water users, authorizing them to divert an established quantity of water and put it to a beneficial use, as defined by state law.[367] The date in which water is first diverted and put to beneficial use is generally the priority date for that water use.[368] During periods of shortage, the holder of an earlier (senior) priority date to a source of water will retain the right to use their full permitted quantity.[369] Permittees with later priority dates obtain water only after more senior holders fulfill their water right.[370] Shortages are not pro-rated. Prior appropriation water law favors "first in time, first in right."[371]

In the *Winters* case, an irrigator on the Milk River, a tributary to the Missouri River, diverted water upstream from the Fort Belkap Indian Reservation.[372] The upstream diversion diminished water

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363 William H. Veeder, *Indian Water Rights in the Upper Missouri Basin*, 48 N.D. L. REV. 617, 631–32 (1972).

364 *Id.* at 625.

365 Winters v. United States, 207 U.S. 564, 575–76 (1908).

366 *See* A. DAN TARLOCK, LAW OF WATER RIGHTS AND RESOURCES, § 5:42 (2000) (stating elements for appropriative water rights); *In re* Adjudication of Existing Rights to Use Water, 55 P.3d 396, 399 (Mont. 2002) (discussing prior appropriation water rights under Montana law).

367 TARLOCK, *supra* note 366, at §§ 5:65 to 5:66.

368 *Id.* at § 5:29.

369 *Id.*

370 *Id.*

371 *E.g.*, State *ex rel.* Cary v. Cochran, 292 N.W. 239 (Neb. 1940) (finding senior holder fulfills right during water shortage even if water is subject to excessive loss).

372 *Winters,* 207 U.S. at 566–69.

needed on the Reservation for a Tribal irrigation project.[373] Under principles of prior appropriation, the upstream water user whose diversion of water predated the Indian project was safe. However, the Court noted that "the power of the Government to reserve the waters [for the Indian Reservation] and exempt them from appropriation under the state laws is not denied, and could not be. . . . [T]he Government did reserve them . . . and for a use which would be necessarily continued through years [sic]."[374]

The Court held that the prior 1888 Agreement between the United States and the Tribes, which established Fort Belknap Indian Reservation, implicitly reserved water for the Reservation lands.[375] Even though Winters' water use predated the Tribal irrigation project, the Indian water right prevailed because the Reservation was established before Winters began irrigating.[376] Federal law reserves Indian water rights, [377] regardless of whether state or local law requires an actual diversion or appropriation.

Indian water rights have been characterized as "prior and superior" to state-granted water rights.[378] "prior" because the reservations were established before most western states and are thus senior during periods of shortage, and "superior" because Indian reserved water rights exist pursuant to federal law, rather than state law. As explained in *Cohen's Handbook of Federal Indian Law*,

> The *Winters* decision established that the creation of an Indian reservation impliedly reserves water rights to the tribe or tribes occupying the territory; that those water rights are reserved in order to carry out the purposes for which the lands were set aside; and that the rights are paramount to water rights later perfected under state law.[379]

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373 *Id.*

374 *Id.* at 577 (citations omitted).

375 *Id.* at 575–76.

376 *Id.*

377 *See* Judith V. Royster, *A Primer on Indian Water Rights: More Questions Than Answers*, 30 TULSA L.J. 61, 63 (1994).

378 Arizona v. California, 460 U.S. 605, 610 (1983) (holding Indian water rights are "entitled to priority"); Conrad Investment Co. v. United States, 161 F. 829, 831 (1908) (describing the "paramount" water rights of the tribes on the Blackfeet Indian reservation); William H. Veeder, *Indian Prior and Paramount Rights to the Use of Water*, 16 RKY. MT. MIN. L. INST. 631, 641–42, 653–54 (1971).

379 COHEN'S HANDBOOK, *supra* note 150, at § 19.03(1).

Many Indian Reservations were established with an agricultural purpose.[380] In *Arizona v. California*, the Court held that "when the United States created these reservations or added to them, it reserved not only the land but also the use of enough water from the Colorado to irrigate the irrigable portions of the reserved lands."[381] The Court recognized a reservation of a quantity of water "to satisfy the future as well as the present needs of the Indian Reservations and [] that enough water was reserved to irrigate all the practicably irrigable acreage on the reservations."[382] Ultimately, the over-arching purpose of most Indian Reservations is to provide a permanent homeland for that Tribe,[383] which encompasses water for all beneficial uses, including livestock,[384] fish and wildlife,[385] and ceremonial uses.[386]

The precise quantity of a Tribe's reserved water right may be determined in an adjudication or by compact.[387] In the Missouri Basin, the Shoshone-Arapaho Tribes of the Wind River Reservation

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380 *In re* Gen. Adjudication of All Rights to Use Water in the Big Horn River Sys., 753 P.2d 76 (Wyo. 1988) *aff'd submitted by an equally divided court in* Wyoming v. United States, 492 U.S. 406 (1989).

381 Arizona v. California, 373 U.S. 546, 596 (1963).

382 *Id.* at 600.

383 Colville Confederated Tribes v. Walton, 647 F.2d 42, 47 (9th Cir. 1981); *In re* Gen. Adjudication of All Rights to Use Water in the Gila R. Sys. & Source, 35 P.3d 68, 74 (Ariz. 2001).

384 *See, e.g.*, Water Rights Compact, Mont.-Northern Cheyenne Tribe-U.S., May 20, 1991, Mont. Code Ann. § 85-20-301. For an assessment of the water rights settlements of three Oregon Tribes see also Rebecca Cruz Guiao, *How Water Rights Are Won in the West: Three Case Studies from the Northwest*, 37 AM. INDIAN L. REV. 283 (2012–2013).

385 United States v. Adair, 723 F.2d 1394, 1413–15 (9th Cir. 1983) (finding reserved water right for fishery with priority date of time immemorial); United States v. Anderson, 736 F.2d 1358 (9th Cir. 1984) (affirming minimum streamflow for fishery); *see also* Michael C. Blumm et al., *The Mirage of Indian Reserved Water Rights and Western Streamflow Restoration in the McCarran Amendment Era: A Promise Unfulfilled*, 36 ENVTL. L. 1157, 1171–91 (2006) (detailing difficulties Tribes encounter obtaining and enforcing instream flow rights in state court adjudications); Amy Choyce Allison, Note & Comment, *Extending* Winters *to Water Quality: Allowing Groundwater for Hatcheries*, 77 WASH. L. REV. 1193, 1121–26 (2002) (contending that *Winters* rights should extend to groundwater of good quality for fisheries).

386 *See, e.g.*, Water Rights Compact, Mont.-Northern Cheyenne Tribe-U.S., May 20, 1991, Mont. Code Ann. § 85-20-301.

387 Robert T. Anderson, *Indian Water Rights: Litigation and Settlements*, 42 TULSA L. REV. 23 (2006); "[J]udicial determinations of reserved rights are being replaced increasingly with settlement agreements . . . ." COHEN'S HANDBOOK, *supra* note 150, at § 19.03.

in Wyoming had their water rights quantified by state court decree,[388] and several Montana Tribes have entered reserved water rights compacts with the State of Montana.[389] Neither the Three Affiliated Tribes of Fort Berthold in North Dakota, nor the Tribes of the Sioux Nation downstream on the Missouri River, have quantified their water rights.[390]

Under *Winters*, the priority date of the water right is the date which the Reservation was established,[391] or earlier.[392] Consequently, "the exercise of tribal water rights has the potential to disrupt non-Indian water uses."[393] That is the gravamen of the controversy involving Indian reserved water rights to the main stem of the Missouri River.

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388 *In re* Gen. Adjudication of All Rights to Use Water in the Big Horn River Sys., 753 P.2d 76 (Wyo. 1988) *aff'd submitted by an equally divided court in* Wyoming v. United States, 492 U.S. 406 (1989). In the exercise of state prior appropriation systems, the state courts or administrative agencies may be called upon to adjudicate the rights of all users to a stream system in a general stream adjudication. *See* A. Lynne Krogh, *Water Rights Adjudications in the Western States: Procedures, Constitutionality, Problems & Solutions*, 30 LAND AND WATER L. REV. 9, 18–31 (1995). Congress enacted the McCarran Amendment waiving the sovereign immunity of the United States in state court general stream adjudications, to permit the joinder of the United States when it possesses water rights to a stream under adjudication. McCarran Amendment, 43 U.S.C. § 666 (2012). The Supreme Court has interpreted this waiver of sovereign immunity as granting the state courts jurisdiction to adjudicate Indian water rights. Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 810 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983). This has proven to be very controversial. Harold S. Shepherd, *State Court Jurisdiction Over Tribal Water Rights: A Call for Rational Thinking*, 17 J. ENVTL. L. & LITIG. 343 (2002); Stephen M. Feldman, *The Supreme Court's New Sovereign Immunity Doctrine and the McCarran Amendment: Toward Ending State Adjudication of Indian Water Rights*, 18 HARV. ENVTL. L. REV. 433, 444–46 (1994). The Wind River Tribes experience in *In re Gen. Adjudication of All Rights to Use Water in the Big Horn River Sys.* illustrates this. *See* Susan M. Williams, *Indian Winters Water Administration: Averting New War*, 11 PUB. LAND & RESOURCES L. REV. 53 (1991); *see also In re* Gen. Adjudication of All Rights to Use Water in the Gila River Sys. Source, 35 P.3d 68, 79 (Ariz. 2001) ("[W]e decline to approve the use of [Practicably Irrigable Acreage (PIA)] as the exclusive quantification measure for determining water rights on Indian lands," thereby ignoring precedent and jeopardizing future agricultural water uses by the Apache Tribes. *Id.*); Dep't of Ecology v. Yakima Reservation Irrigation Dist., 850 P.2d 1306, 1331–32 (Wash. 1993) (affirming the quantification of the water rights of the Confederated Tribes of the Yakima Nation even though the Tribe was not a party to the litigation).

389 *See supra* notes 384, 386.

390 Charles Carvell, *Indian Reserved Water Rights: Impending Conflict or Coming Rapprochement Between the State of North Dakota and North Dakota Indian Tribes*, 85 N.D. L. REV. 1, 3 (2009).

391 Winters v. United States, 207 U.S. 564, 574–76 (1908).

392 United States v. Adair, 723 F.2d 1394, 1413–15 (9th Cir. 1983).

393 COHEN'S HANDBOOK, *supra* note 150, at § 19.03(1).

C. Impacts of the Master Manual on Indian Water Rights

As described above, the Army Corps of Engineers operates the main stem dams primarily for flood control storage, water supply for downstream navigation, and to generate hydropower.[394] The Fort Berthold Reservation, and the Standing Rock, Cheyenne River, Crow Creek, Lower Brule, Yankton, and Santee Sioux Reservations all border the Missouri River.[395] "Reserved rights presumably should attach to all water sources—groundwater, streams, lakes, and springs—that arise on, border, traverse, underlie, or are encompassed within Indian reservations."[396] Thus, the Missouri Basin Tribes possess *Winters* Doctrine claims for the right to use the water of the Missouri River for beneficial use on the Reservations.[397]

As of the present, those claims remain unadjudicated.[398] Accordingly, the Corps does not know how much of the stored water in the main stem reservoirs for flood control and released for navigation and water supply in the lower Missouri is subject to upstream depletions for presently unadjudicated Indian water rights.[399]

Indian water rights are property rights stemming from the Treaties and other agreements between the Tribes and United States.[400] The United States has assumed a trust responsibility to protect Indian property,[401] including water rights.[402] The trust responsibility has been

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394 *See supra* Part IV.A.

395 Davidson & Geu, *supra* note 17, at 824–25.

396 COHEN'S HANDBOOK, *supra* note 150, at § 19.03(2)(a).

397 Veeder, *supra* note 363, at 631–32.

398 Carvell, *supra* note 390, at 3.

399 *Cf.* Turner v. Kings River Conservation Dist., 360 F.2d 184, 187 (9th Cir. 1966) (refusing to enjoin water impoundments by the Corps of Engineers and water delivery contracts by the Bureau of Reclamation alleged to impair state law water rights).

400 Arizona v. California, 373 U.S. 546, 600 (1963) (describing Indian water rights as "present perfected rights").

401 Johnson v. M'Intosh, 21 U.S. 543, 573 (1823) (conveyance of land by Tribe invalid, for lack of fee simple title by Tribe; adjudged to be held by the United States due to much criticized "doctrine of discovery"); 25 U.S.C. § 462 (2012) (trust title retained by United States under Indian Reorganization Act of 1934).

402 Section 2 of the Western Water Policy Review Act of 1992 provides that, "the Federal government recognizes its trust responsibilities to protect Indian water rights and assist Tribes in the wise use of these resources." Western Water Policy Review Act of 1992, Pub. L. No. 102-575, § 3002(9), 106 Stat. 4694, *available at* file:///C:/Users/Law Student/Downloads/STATUTE-106-Pg4600%20(3).pdf; *see also* Robert T. Anderson,

compromised by conflicts of interest[403] and politics.[404] Nevertheless, it imposes responsibilities on agencies managing waters subject to the reserved rights claims of Indian Tribes.[405]

In *Northwest Sea Farms v. U.S. Army Corps of Engineers,* the district court explained the nature of the Corps' obligation to an Indian Tribe affected by its programs.[406] The court upheld the denial by the Corps of a permit for sea bed farming, due to the potential impact on Treaty fishing rights.[407] The court stated,

> The Supreme Court has recognized "the undisputed existence of a general trust relationship between the United States and the Indian people." This obligation has been interpreted to impose a fiduciary duty owed in conducting "any Federal government action" which relates to Indian Tribes. . . . [T]he duty extends to the Corps . . . .
>
> In carrying out its fiduciary duty, it is the government's, and subsequently the Corps', responsibility to ensure that Indian treaty rights are given full effect. . . . [T]he Corps owes a fiduciary duty to ensure that the [Indian] Nation's treaty rights are not abrogated or impinged . . . .
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> . . . .
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> . . . It is this fiduciary duty, rather than any express regulatory provision, which mandates that the Corps take treaty rights into consideration.[408]

Thus, "the courts have recognized the obligation of the United States, as trustee of the Indian tribes and people, to preserve and

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Indian Water Rights and the Federal Trust Responsibility, 46 NAT. RESOURCES J. 399 (2006).

403 Nevada v. United States, 463 U.S. 110, 135 (1983) (finding the United States is not held to a strict fiduciary standard when asserting Indian reserved water rights and reclamation water rights in same litigation*)*; *Message From the President of the United States Transmitting Recommendations for Indian Policy*, 116 Cong. Rec. 10894, 10896 (July 9, 1970) ("No self-respecting law firm would ever allow itself to represent two opposing clients in one dispute; but the Federal Government has frequently found itself exactly in that position." *Id.*); Ann C. Juliano, *Conflicted Justice: The Department of Justice's Conflict of Interest in Representing Native American Tribes*, 37 GA. L. REV. 1307 (2003).

404 United States v. Navajo Nation, 537 U.S. 488, 511 (2003) (finding high-level DOI officials' *ex parte* meetings with coal companies, designed to minimize lease payments to the Navajo Nation, did not give rise to liability for breach of trust).

405 *See* Parravano v. Babbitt, 70 F.3d 539, 547 (9th Cir. 1995) ("[T]he Tribe's federally reserved fishing rights are accompanied by a corresponding duty on the part of the government to preserve those rights." *Id.*).

406 Northwest Sea Farms, Inc. v. U.S. Army Corps of Eng'rs, 931 F. Supp. 1515, 1519–20 (D. Wash. 1996).

407 *Id.*

408 *Id.* (citations omitted).

protect the Indian rights to the use of water."[409] For example, in *Pyramid Lake Paiute Tribe v. Morton*, a water allocation regulation issued by the Secretary of the Interior was struck down as arbitrary and capricious under the Administrative Procedures Act because the Secretary failed to demonstrate how the allocation fulfilled his obligation to protect the water rights of the affected Tribe.[410] The court held that,

> In order to fulfill his fiduciary duty, the Secretary must insure, to the extent of his power, that all water not obligated by court decree or contract goes to [the Pyramid Lake Reservation].
>
> . . . .
>
> The Secretary was obliged to formulate a closely developed regulation that would preserve water for the Tribe.[411]

Under this principle, the Missouri River Master Manual must contain "a closely developed regulation" to preserve water to fulfill the Tribes' water rights.[412]Nevertheless, with respect to water releases at Oahe Dam, which directly affect the Standing Rock and Cheyenne River Sioux Reservations, the Master Manual states,

> Oahe's primary water management functions are (1) to capture plains snowmelt and localized rainfall runoffs . . . that are then metered out at controlled release rates to meet System requirements . . . (2) to serve as a primary storage location . . . [for] major downstream flood control regulation . . . and (3) to provide the extra water needed to meet project purposes that draft storage during low-water years, particularly downstream water supply and navigation.[413]

The Corps of Engineers' manual for the operation of the Oahe Dam establishes priorities of "downstream flood control" and "downstream water supply and navigation."[414] There are no provisions demonstrating how "all water not obligated by court decree or

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409 William H. Veeder, *Water Rights in the Coal Fields of the Yellowstone River Basin*, 40 L. & CONTEMP. PROBS. 77, 88 (1976).

410 Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252, 256 (D.D.C. 1972).

411 *Id.*; *see also* Klamath Water Users Protective Ass'n v. Patterson, 204 F.3d 1206, 1213–14 (9th Cir. 1999) (upholding water allocation by Bureau of Reclamation to fulfill senior Indian water rights); *cf.* San Carlos Apache Tribe v. United States, 417 F.3d 1091, 1099 (9th Cir. 2005) (upholding dismissal of action for injunctive relief against operation of dam affecting Tribal waters due to defective pleading).

412 *Pyramid Lake Pauite Tribe*, 354 F. Supp. at 256.

413 U.S. ARMY CORPS OF ENG'RS, NORTHWEST DIV., *supra* note 294, at VII-1.

414 *Id.*

contract with the District goes to [the Tribes'" as required in the *Pyramid Lake* case.[415] The Master Manual lacks any operational criteria to ensure that Tribal waters are protected, in light of the stream flow management for downstream flood control and navigation. In this respect, it fails to meet the requirements described in *Northwest Sea Farms* case.[416]

The Corps' historian, John R. Ferrel, explained, "Indian rights regarding water management were not clarified nor considered in operational plans."[417] Actually, the Master Manual purports to divest the Corps of its responsibilities to the Tribes, because Indian reserved water rights to the Missouri River main stem have not been quantified and put to consumptive use.[418] The Master Manual states in relevant part:

> Currently, Tribal Reservation-reserved water rights have not been quantified in an appropriate legal forum or by compact . . . .
>
> . . . .
>
> . . . When a Tribe exercises its water rights, these consumptive uses will then be incorporated as an existing depletion. Unless specifically provided for by law, these rights do not entail an allocation of storage. Accordingly, water must actually be diverted to have an impact on the operation of the System. Further modifications to System operation, in accordance with pertinent legal requirements, will be considered as Tribal water rights are exercised . . . .[419]

In operating the main stem dams, the Corps concerns itself only with water depletions— not reserved rights. The Tribes' water rights are reserved for both present and future uses.[420] The reserved water rights to the Missouri River for future Indian uses are not "existing depletions," and are not taken into account by the Corps.

In operating the Missouri River main stem dams under the Pick-Sloan program, the Corps of Engineers possesses an obligation to

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415 *Pyramid Lake Paiute Tribe*, 354 F. Supp. at 256.

416 Northwest Sea Farms, Inc. v. U.S. Army Corps of Eng'rs, 931 F. Supp. 1515, 1519–20 (D. Wash. 1996).

417 JOHN R. FERREL, U.S. ARMY CORPS OF ENGINEERS, BIG DAM ERA 123 (1993).

418 *See* Carvell, *supra* note 390, at 3.

419 U.S. ARMY CORPS OF ENG'RS, NORTHWEST DIV., *supra* note 294, at E-10.

420 Arizona v. California, 373 U.S. 546, 596 (1963). The Court in *Winters* made clear that the reservation of water stemmed from the agreement between the United States and Fort Belknap Tribes. Winters v. United States, 207 U.S. 564, 576 (1908). Unlike state law prior appropriation water rights systems, Indian reserved water rights are not forfeited by nonuse. *Id*.

protect Tribal water supplies.[421] Instead, the Corps' Missouri River operations under the Master Manual focus exclusively on downstream navigation and water intakes, to the detriment of water uses on the Indian Reservations.[422]

In 2003, water releases at Oahe Dam for downstream navigation, in combination with drought conditions, caused low water levels in the Oahe Reservoir.[423] Excessive silt deposits resulted in the breakdown of the intake for the Fort Yates public water system on the Standing Rock Reservation.[424] On November 23, 2003, three Tribal communities lost their drinking water supplies for ten days.[425] The Corps of Engineers' water releases contributed to adverse environmental conditions, which led to a public health crisis on the Standing Rock Reservation.[426]

In its Missouri River operations, the Corps of Engineers ignores the detrimental impact of the impoundment and management of the Missouri River stream flows on the Tribes' ability to put their water

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421 *See supra* notes 402–09 and accompanying text.

422 *See* Mary Christina Wood, *The Indian Trust Responsibility: Protecting Tribal Lands and Resources Through Claims of Injunctive Relief Against Federal Agencies*, 39 TULSA L. REV. 355, 368 (2003) ("Courts should invoke their equitable authority to restrain the majority of society and its industry from bringing to ruin the natural systems sustaining Native America." *Id.*); *see also* Judith V. Royster, *Indian Water and the Federal Trust: Some Proposals for Federal Action*, 46 NAT. RESOURCES J. 375, 375–81 (2006).

423 *Water Problems on the Standing Rock Indian Reservation, Hearing Before the S. Comm. on Indian Affairs*, 108th Cong. 1–4 (2004) (statement of Charles W. Murphy, Chairman, Standing Rock Sioux Tribe) ("It's very said right now that we don't know if we're going to have water next week or not . . . they're letting too much water downstream." *Id.*), *available at* http://babel.hathitrust.org/cgi/pt?id=pur1.32754077962433;view=1up;seq=6; *cf. In re* Operation of Mo. River Sys. Litig., 363 F. Supp. 2d 1145, 1155 (D. Minn. 2004) ("requiring South Dakota to build extensions for irrigation lines or drinking water is not in 'conflict' with South Dakota's consumptive beneficial uses, because there is no destruction or denial of South Dakota's water rights . . . . The statute is not designed to protect against these difficulties . . . ." *Id.*).

424 *Water Problems on the Standing Rock Indian Reservation, Hearing Before the S. Comm. on Indian Affairs*, *supra* note 423, at 1–4 (statement of Charles W. Murphy, Chairman, Standing Rock Sioux Tribe).

425 *Id.* at 2.

426 *See* Mary Christina Wood, *Protecting the Attributes of Native Sovereignty: A New Trust Paradigm for Federal Actions Affecting Tribal Lands and Resources*, 1995 UTAH L. REV. 109, 139–40 (1995) ("The fiduciary duty to protect the land base of the tribe should naturally extend to protecting it from environmental degradation." *Id.*).

to beneficial use.[427] The resulting uncertainty complicates the Tribes' ability to perfect their *Winters* Doctrine claims through an adjudication or negotiated settlement.[428]

The quantification of Indian reserved water rights involves economic feasibility determinations for future water development projects.[429] In *Arizona v. California*, the Court recognized the Tribal reservation of agricultural water for the "practicably irrigable acreage" on the Reservations.[430] This has led some state courts, when adjudicating Indian water rights, to delve into the minutiae of irrigation engineering and agricultural economics.[431] The Secretary of the Interior's *Criteria and Procedures for the Negotiation of Indian Water Settlements* include feasibility criteria for future water projects in settlement agreements quantifying Indian water rights.[432]

Moreover, the Supreme Court has determined that the quantity of water reserved by the United States when it established a national forest must be determined narrowly with sensitivity to the impact on existing water users.[433] The management by the Corps of Missouri River streamflows under the Master Manual guarantees water supplies for downstream navigation and consumptive uses, in all but the most serious of drought conditions.[434] The Court's "sensitivity

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427 *See* United States v. Oregon, 44 F.3d 758, 771 (9th Cir. 1994) (admonishing state not to prejudice reserved water rights of Tribe in administrative proceeding to which neither Tribe nor United States were a party).

428 State *ex rel*. Martinez v. Lewis, 861 P.2d 235, 246 (N.M. Ct. App. 1993) (identifying "water quantity" as part of the criteria for feasibility); *In re* General Adjudication of All Rights to Use Water in Big Horn River Sys., 753 P.2d 76 (Wyo. 1988) ("water availability" as an aspect of project feasibility).

429 *In re* General Adjudication of All Rights to Use Water in Big Horn River Sys., 753 P.2d at 101.

430 Arizona v. California, 373 U.S. 546, 600 (1963).

431 *In re* General Adjudication of All Rights to Use Water in Big Horn River Sys., 753 P.2d at 101 ("The determination of irrigable acres involves a two-part analysis, i.e., the [Practicably Irrigable Acreage (PIA)] must be susceptible of sustained irrigation (not only proof of the arability but also of the engineering feasibility of irrigating the land) and irrigable 'at reasonable cost.'" *Id.*); *see also Martinez*, 861 P.2d at 246.

432 55 Fed. Reg. 9223 (Mar. 12, 1990) ("Settlements should not generally include . . . participation in an economically unjustified irrigation investment . . . ."); Joseph M. Membrino, *Indian Reserved Water Rights, Federalism and the Trust Responsibility*, 27 LAND AND WATER L. REV. 1, 6–12 (1992) ("Practicable irrigability analyses for Indian lands are subject to more strict economic review than those for reclamation projects.").

433 United States v. New Mexico, 438 U.S. 696, 705 (1978). The term "sensitivity doctrine" is derived from Justice Powell's opinion partially concurring and dissenting. *Id*. at 718.

434 *See supra* notes 320, 321 and accompanying text.

doctrine" applies to federal reserved water rights for national forests and parks, not Indian reserved water rights.[435] Nevertheless, the economy in the lower Missouri basin has come to rely on the steady flow of Corps-managed water.[436] The reliance by the lower Missouri basin on the status quo imposes burdens on the Tribes, as they perfect and implement their reserved water rights, upstream on the Missouri River.[437]

Professor John Davidson has described the impact of the Corps' operations on Indian water rights, as follows:

> [T]he final Master Manual may lock in the status of the specific river uses with a firmness that is every bit as solid as many Supreme Court equitable apportionments. Any given process is as important as the finality and enforceability of the final decision, be it judicial, legislative or administrative. For Missouri River water users, the Master Manual process may be as important as the litigation in *Arizona v. California* was to Colorado River water users.[438]

D. Effect on Cultural and Environmental Resources

1. Cultural Resources

As discussed above, the Three Affiliated Tribes of Fort Berthold and the Sioux Tribes along the Missouri River had established traditional communities in the Missouri bottomlands, which were uprooted by the main stem dams.[439] Not all of the Tribal cemeteries were properly relocated.[440] The operation of the dams has resulted in the erosion of grave sites and other historical sites.[441] Native American human remains, and artifacts and cultural objects routinely wash up on the shores of the Missouri River.[442]

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435 Sylvia F. Liu, *American Indian Reserved Water Rights: The Federal Obligation to Protect Tribal Water Resources and Tribal Autonomy*, 25 ENVTL. L. 425, 459–61 (1995).

436 Tarlock, *supra* note 83, at 2.

437 Davidson, *supra* note 93, at 18.

438 *Id.*

439 *See supra* Part III.

440 Yankton Sioux Tribe v. U.S. Army Corps of Eng'rs, 83 F. Supp. 2d 1047, 1048 (D.S.D. 2000) ("The Corps failed to effect the removal and reburial of all of the bodies in the cemetery." *Id.*).

441 *Id.* at 1056–57.

442 *See* U.S. ARMY CORPS OF ENG'RS, NORTHWEST DIV., *supra* note 62, at 3-167 to 3-168, *available at* http://www.nwd-mr.usace.army.mil/mmanual/Volume%20I/Section_3.pdf.

The Corps of Engineers has found,

> The lakes, shoreline zones, and adjacent uplands of the Mainstem Reservoir System contain a variety of archaeological site classes, including prehistoric sites of all periods . . . .
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> . . . .
>
> The Fort Peck survey recorded 49 archaeological sites, including 12 historic and 37 prehistoric sites. These sites ranged from historic-era homesteads to scatters of stone tool waste, tipi rings, and rock cairn sites to a large communal bison kill and processing site.
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> . . . .
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> Archaeological surveys have resulted in the discovery of 1,402 archaeological sites in and adjacent to Lake Sakakawea.
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> . . . .
>
> Surveys at Lake Oahe recorded 1,114 archaeological sites . . . .
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> . . . .
>
> Archaeological surveys have recorded 165 other archaeological sites [at the remaining Pick-Sloan reservoirs].[443]

Two federal statutes, the Native American Graves Protection and Repatriation Act (NAGPRA),[444] and the National Historic Preservation Act (NHPA)[445] provide substantive protections and procedural rights to the affected Tribes. NAGPRA is designed to protect Native American human remains, funerary objects, and objects of cultural patrimony from disturbance on Federal and Tribal land.[446] Section 3(d) of NAGPRA governs the inadvertent discoveries of these objects.[447] Upon an unintended unearthing, the agency must cease the activity that caused the disturbance, protect the human remains and cultural objects *in situ*, and provide notice to the appropriate Tribe, with a right of repatriation.[448]

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443 *Id.* at 3-167.

444 Native American Graves Protection and Repatriation Act of 1990, 25 U.S.C. §§ 3001–3013 (2012).

445 National Historic Preservation Act of 1966, 16 U.S.C. §§ 470 to 470x-6 (2012).

446 Jack F. Trope & Walter R. Echo-Hawk, *The Native American Graves Protection and Repatriation Act: Background and Legislative History*, 24 ARIZ. ST. L.J. 35, 59 (1992). Other important statutory provisions require museums to repatriate human remains and cultural objects with the affiliated Tribe, including civil and criminal penalties for violations. 25 U.S.C. §§ 3003–3005; 18 U.S.C. § 1170 (2012).

447 25 U.S.C. § 3002(d).

448 *Id.*; *see* Bonnichsen v. United States, 357 F.2d 962, 996–67 (9th Cir. 2004) (reversing agency decision on Tribal affiliation of prehistoric remains); Fallon Paiute-Shoshone Tribe v. U.S. Bureau of Land Mgmt., 455 F. Supp. 2d 1207, 1025–26 (D. Nev. 2006) (requiring agency to consider Tribal data on issue of Tribal affiliation of remains).

Water releases at the main stem dams cause wave action and erosion along the Missouri River.[449] This results in the unearthing of Native American human remains and cultural objects on the Corps of Engineers' Pick-Sloan project lands.[450] When this occurs, it constitutes an inadvertent discovery under Section 3(d) of NAGPRA, triggering the mitigation and repatriation requirements.[451] The federal court in the *Yankton Sioux Tribe v. U.S. Army Corps of Engineers* case explained the Corps' legal duties under NAGPRA, upon an unearthing of human remains due to reservoir fluctuations caused by water releases at the Missouri River dams.[452] The court stated,

> As the inadvertent discoverer of remains protected by §3002(d) and the federal agency with primary management authority over the land on which they were discovered, the Corps has three duties. First, the Corps must meet certain notification and certification requirements [for repatriation]. Second, the Corps must refrain from raising and lowering the water levels of the Lake over the cemetery for at least thirty days from the date of certification. . . . Finally, the Corps must take steps to protect the remains. As the discoverer of the remains, the Corps has a statutory duty to make "a reasonable effort to protect them"; as the federal agency responsible for managing the site, it must "further secure and protect inadvertently discovered human remains . . . including, where necessary, stabilization and covering."[453]

The NHPA is a procedural statute designed to ensure consideration of the impacts of federally-funded activities on historically-significant sites or objects.[454] Under Section 106 of the NHPA, federal agencies must, "prior to the approval of the expenditure of any Federal funds on the undertaking . . . take into account the effect of the undertaking on any district, site . . . or object that is included in or eligible for inclusion in the National Register [of Historic Places]."[455] The agency

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449 *See* U.S. ARMY CORPS OF ENG'RS, NORTHWEST DIV., *supra* note 62, at 3-167 to 3-168.

450 Yankton Sioux Tribe v. U.S. Army Corps of Eng'rs, 83 F. Supp. 2d 1047, 1056 (D.S.D. 2000).

451 *Id.*

452 *Id*. at 1056–57.

453 *Id.* at 1057.

454 Morris County Trust for Historic Preservation v. Pierce, 714 F.2d 271, 278–79 (3d Cir. 1983).

455 National Historic Preservation Act of 1966, 16 U.S.C. § 470f (2012), *available at* http://www.gpo.gov/fdsys/pkg/USCODE-2013-title16/pdf/USCODE-2013-title16-chap1A-subchapII.pdf.

engaged in the undertaking must consult with the Advisory Council on Historic Preservation in making this determination.[456]

A finding that a federal undertaking shall have an adverse impact on covered sites or objects will trigger mitigation requirements, as prescribed in the Advisory Council regulations.[457]

The regulations define "adverse effects," as including the "physical destruction of or damage to all or part of the property."[458] As the Corps of Engineers explained, "Of 380 Plains Village earthlodge villages . . . 43 are immediately threatened with destruction due to lake action . . . ."[459] Consequently, NHPA Section 106 applies when water releases by the Corps affect cultural sites along the Missouri River, and the Corps should comply with the requirements of Section 106 and the applicable regulations.

This includes consulting with the affected tribe, "to develop and evaluate alternatives to the undertaking that could avoid, minimize or mitigate adverse effects . . . ."[460] The Corps must attempt to reach a memorandum of agreement with the affected tribe.[461] If it is unable to do so, it must consult further with the Advisory Council.[462]

The Corps of Engineers purports to comply with these requirements with its *Final Programmatic Agreement for the Operation of the Missouri River Main Stem System for Compliance with the National Historic Preservation Act* (hereinafter PA).[463] The PA is an agreement between the Corps of Engineers, Bureau of Indian Affairs, State Historic Preservation Officers of Montana, North and South Dakota, stakeholders such as the National Trust for Historic Preservation, and a number of Missouri Basin Tribes.[464] Numerous tribes that are affected by the Pick-Sloan program, such as the

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456 Nat'l Trust for Historic Preservation v. Blanck, 938 F. Supp. 908, 920 (D.D.C. 1996) (finding consultation mandatory for federally funded or permitted undertaking).

457 Muckleshoot Indian Tribe v. Forest Service, 177 F.3d 800, 808–09 (9th Cir. 1999) (finding inadequate mitigation for land transfer under prior regulations).

458 36 C.F.R. § 800.5(a)(2)(i) (2004), *available at* http://www.achp.gov/regs-rev04.pdf.

459 U.S. ARMY CORPS OF ENG'RS, NORTHWEST DIV., *supra* note 62, at 3-168.

460 36 C.F.R. § 800.6(a) (2004).

461 *Id.* at § 800.6(a), (c).

462 *Id.* at § 800.6(b).

463 PROGRAMMATIC AGREEMENT FOR THE OPERATION AND MANAGEMENT OF THE MISSOURI RIVER MAIN STEM SYSTEM FOR COMPLIANCE WITH THE NATIONAL HISTORIC PRESERVATION ACT *passim* (2004), *available at* http://www.usace.army.mil/Portals/2/docs/civilworks/tribal/mou_moa_pa/fina_1mor_pa_signed.pdf.

464 *Id*. at P-2.

Standing Rock Sioux Tribe and Yankton Sioux Tribe, are not signatories to the agreement.[465]

The PA establishes consultation protocols under NHPA Section 106, and commits the Corps to conducting cultural resource management and enforcement plans.[466] The extent that the PA's consultation schedule and mitigation requirements are more beneficial than those outlined in the statute and regulations is debatable. Additionally, the level of NHPA compliance by the Corps with respect to the non-signatory tribes may be an ongoing issue.[467] Ultimately, the damage to Native American cultural resources from the operation of the Missouri River dams is extensive and ongoing—time is not on the Tribes' side.[468]

2. Environmental Justice Considerations

On February 11, 1994, President Clinton issued Executive Order 12,898 on *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*.[469] It provides that, "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities," on minority and poor communities.[470] An interagency task force was established to coordinate its implementation.[471] There is an emphasis

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465 *Id.*

466 *Id.*

467 *See* Melissa Lorentz, Note, *Engineering Exceptions to Historic Preservation Law: Why the Army Corps of Engineers' Section 106 Regulations Are Invalid*, 40 WILLIAM MITCHELL L. REV. 1580, 1582–83 (2014) (arguing that regulations issued by the Corps of Engineers implementing NHPA Section 106, 33 C.F.R. 325 pt. app. C (2013), fail to comply with the Act and the Advisory Council on Historic Preservation requirements).

468 *See* U.S. ARMY CORPS OF ENG'RS, NORTHWEST DIV., *supra* note 62, at 3-168.

469 Exec. Order No. 12,898, 59 Fed. Reg. 9061 (Feb. 16, 1994), *available at* http://www.archives.gov/federal-register/executive-orders/pdf/12898.pdf; *see also* White House Memorandum from William Clinton, U.S. President, to the Heads of All U.S. Dep'ts and Agencies, Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Feb. 11, 1994), *available at* http://www.epa.gov/environmentaljustice/resources/policy/clinton_memo_12898.pdf.

470 Exec. Order No. 12,898 § 1-1; *see* Richard J. Lazarus*, Pursuing 'Environmental Justice': the Distributional Effects of Environmental Protection*, 87 NW. L. REV. 787, 850–52 (1993) (discussing "reforming the structure of environmental policymaking to promote minority interests").

471 Exec. Order No. 12,898 § 1-102.

on enhanced research and analysis of the impacts of agency actions on affected minority and low income communities, as well as public participation.[472] The Executive Order specifies that programs affecting Native Americans are to be included in the Environmental Justice mission of all federal agencies.[473]

Many of the functions contemplated in the Executive Order and its implementing memorandum are conducted in accordance with the National Environmental Policy Act (NEPA).[474] The Council on Environmental Quality (CEQ), which advises the President on NEPA implementation, has issued Guidance for complying with the Executive Order when conducting NEPA environmental reviews.[475] The Guidance provides for "tribal representation [in the NEPA process] in a manner that is consistent with . . . treaty rights."[476]

Major decisions or actions by the Corps of Engineers affecting the operation of the Missouri River main stem dams trigger NEPA.[477] Since the CEQ Guidance on Environmental Justice prescribe respect for Tribal Treaty rights in NEPA decision making,[478] the Corps of Engineers should be obligated to explain in some detail how its Missouri River operations affect Tribal Treaty rights, and describe

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472 § 3-3.

473 § 6-606; Jana L. Walker et al., *A Closer Look at Environmental Injustice in Indian Country*, 1 SEATTLE J. FOR SOC. JUST. 379, 381 (2002) ("What distinguishes the situation of Tribes from all other environmental justice groups, however, is the fact that environmental justice issues affecting Tribes must be viewed against the backdrop of tribal sovereignty, the federal trust responsibility owed by the United States to the Tribes, the government-to-government relationship, treaty rights, and the special jurisdictional rules applicable to Indian Country." *Id.*); *see also* Michael S. Houdyshell, *Environmental Injustice: The Need for a New Vision of Indian Environmental Justice*, 10 GREAT PLAINS NAT. RESOURCES J. 1 (2006).

474 National Environmental Policy Act of 1969, 42 U.S.C. §§ 4231–4370f (2012); *see* Uma Outka, *NEPA and Environmental Justice: Integration, Implementation, and Judicial Review*, 33 B.C. ENVTL. AFF. L. REV. 601 (2006); Johnson, *NEPA and SEPAs in the Quest for Environmental Justice*, 30 LOY. L.A. L. REV. 565, 579–604 (1997) (discussing environmental justice considerations in NEPA review process).

475 See 42 U.S.C. §§ 4342–4344 for the CEQ's statutory authorization under NEPA. COUNCIL ON ENVTL. QUALITY, ENVIRONMENTAL JUSTICE: GUIDANCE UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT (1997), *available at* http://www.epa.gov /environmentaljustice/resources/policy/ej_guidance_nepa_ceq1297.pdf.

476 COUNCIL ON ENVTL. QUALITY, *supra* note 475, at 9.

477 *In re* Operation of the Mo. River Sys. Litig., 363 F. Supp. 2d 1145, 1152 (D. Minn. 2004); *see* Environmental Defense Fund v. Froehlke, 473 F.2d 346 (8th Cir. 1972) (Environmental Impact Statement for river channelization project contained inadequate alternatives analysis).

478 COUNCIL ON ENVTL. QUALITY, *supra* note 475, at 9.

alternatives and mitigation measures.[479] Instead, the Corps' Missouri River Master Water Control Manual provides detailed criteria for water flow management for navigation and flood control in non-Indian communities downstream.[480]

Executive Order 12,898 states that it does not create a right of judicial review.[481] Consequently, some courts have refused to entertain environmental justice claims.[482] However, other courts have determined that if an agency undertakes an environmental justice analysis, then its findings are reviewable on appeal.[483] This includes the Eighth Circuit, in which most of the Missouri River basin is located.[484]

In *Mid States Coalition for Progress v. Surface Transp. Bd.*, the court explained that "an agency must compare the demographics of an affected population with demographics of a more general character (for instance, those of an entire state)."[485] That analysis, applied to the communities affected by the Missouri River operations of the Corps of Engineers, establishes disproportionate impact on Native Americans. For example, the 2010 U.S. Census reveals that the percentage of the population of Native Americans in the counties abutting the Oahe Reservoir in North Dakota and South Dakota is thirteen percent, or nearly twice the percentage for the two states as a whole.[486] The percentage of Indians in Sioux, Corson, Dewey, and Ziebach Counties—the area most directly affected by the Oahe Dam—is seventy-five percent, or ten times the percentage for the two states.[487]

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479 Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252, 256 (D.D.C. 1972).

480 *See supra* Part IV.A.

481 Executive Order 12898 § 6-609.

482 Sur Contra la Contaminacion v. EPA, 202 F.3d 443, 449 (1st Cir. 2000).

483 Communities Against Runway Expansion, Inc. v. FAA, 169 F.3d 1, 8-9 (D.C. Cir. 1999) (review under arbitrary and capricious standard of the Administrative Procedures Act of 1946, 5 U.S.C. § 706(2)(A) (2012)).

484 Mid States Coalition for Progress v. Surface Transp. Bd., 345 F.3d 520, 541 (8th Cir. 2003).

485 *Id.*

486 U.S. Census Bureau, *United States Census 2010: Interactive Population Map*, CENSUS.GOV, http://www.census.gov/2010census/popmap/index.php (last visited Nov. 11, 2014).

487 *Id.*

Yet the Corps of Engineers has found that its stream flow management of the Missouri River has no disproportionate impacts on the affected Tribes.[488] It appears inevitable that tribes shall continue to be concerned with the Corps of Engineers' level of compliance with Executive Order 12898 on Environmental Justice, in its operation of the Pick-Sloan program.[489]

IV
NEW CHALLENGES FACING THE MISSOURI BASIN TRIBES

A. New Demands for a Limited Resource

1. Mississippi River Navigation

In recent years, the Midwest has suffered a repeating cycle of drought and heavy rain and run-off, causing flooding.[490] Reputable experts associate this with man-made climate change.[491] They predict that this pattern will continue, and perhaps intensify.[492]

The drought from 2012 to 2013 threatened to ground navigation in the lower Mississippi River.[493] This prompted a renewed call among Mississippi River states to release stored water in the Missouri River main stem reservoirs to augment Mississippi River flows for navigation. On November 16, 2012, Illinois Senator Richard Durban and fourteen other senators sent a letter to President Obama, the Army Corps of Engineers, and the Federal Emergency Management

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488 U.S. ARMY CORPS OF ENG'RS, NORTHWEST DIV., *supra* note 62, at 9–6 ("The Corps . . . has concluded that there are no disproportionate impacts to American Indian Tribes" from the operation of the Missouri River main stem dams, pursuant to revisions in the Missouri River Master Manual. *Id.*).

489 *In re* Operation of the Mo. River Sys. Litig., 421 F.3d 618, 637 (8th Cir. 2005) (Three Affiliated Tribes of Fort Berthold seeking operational alternative to "protect[] the Nation's cultural resources.").

490 Doyle Rice, *Flooding Descends on the Midwest Mere Months After Drought Disrupted River Traffic*, USA TODAY, Apr. 22, 2013.

491 James Hansen, *Game Over for the Climate*, N.Y. TIMES, May 9, 2012 ("Over the next several decades, the Western United States and the semiarid region from North Dakota to Texas will develop semipermanent drought, with rain, when it does come, occurring in extreme events with heavy flooding.").

492 *Id.*

493 Johnna Rizzo, *How Drought on the Mississippi River Impacts You*, NATIONAL GEOGRAPHIC NEWS, Jan. 31, 2013 ($7 billion in commodities at risk of not reaching destination).

Agency, requesting the immediate release of Missouri River stored water.[494]

The Corps of Engineers' has taken the position that its authority to supply water for navigation under the 1944 Flood Control Act was limited to Missouri River navigation.[495] The Corps' Missouri River Master Water Control Manual, which prescribes the criteria governing water releases at the main stem dams, contains no provisions for the release of water stored in the Missouri River reservoirs, for Mississippi River navigation.[496]

Nevertheless, the quantity of water released by the Corps of Engineers for lower Missouri River navigation and water supply intakes is significant, and much of it augments the flows of the Mississippi River at St. Louis.[497] Mississippi River navigation benefits significantly from the Corps' operations under the Missouri River Master Manual.[498] But during periods of drought, which may be increasing due to climate change, there have been proposals and political pressure to release water stored in the Missouri River main stem reservoirs for Mississippi River navigation flows.[499]

The navigation on the lower Mississippi River greatly exceeds that on the lower Missouri River. By substituting targeted releases of water for Mississippi River navigation in late summer for the eight-month long Missouri River navigation season, the Corps could enhance the value of Pick-Sloan navigation. Targeted releases would also allow the Corps to store more water in the upper basin reservoirs for tribal uses as well as fish and wildlife. The Congress should consider reforming the Corps' Missouri River operations to ensure adequate water supplies for the upper basin Tribes. More efficient use of water for navigation is one option for reform.

This intensifies the demands on the waters of the Missouri River main stem, claimed by the tribes under the *Winters* Doctrine.[500] It

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494 Press Release from U.S. Senator Richard Durbin, Army Corps Will Expedite Process to Demolish Rock Pinnacles (Nov. 29, 2012).

495 U.S. GEN. ACCOUNTING OFFICE, WATER RESOURCES CORPS' 1988 MISSOURI RIVER WATER RELEASES MET GUIDELINES 9 (1990), *available at* http://www.gao.gov/assets/220/213275.pdf.

496 *See supra* Part IV.A.

497 *Id.*

498 Davidson, *supra* note 93, at 7.

499 Durban, *supra* note 494.

500 Tarlock, *supra* note 83, at 1–2.

further complicates the ability of the Missouri Basin Tribes to perfect their water rights.[501]

2. Hydraulic Fracturing in the Williston Basin and the Corps of Engineers' Surplus Water Reports

Since 2008, there has been a significant increase in oil and gas production in the Williston Basin of western North Dakota and eastern Montana.[502] The widespread technique of hydraulic fracturing is water-intensive in the construction and operation of production wells.[503] The Corps of Engineers received nine requests for easements at Lake Sakakawea, for the diversion of 34,150 acre-feet of water for energy development.[504]

The Corps responded by issuing the *Garrison Dam/Lake Sakakawea Project North Dakota Surplus Water Report*.[505] In this report, the Corps concluded that the demand for stored water at Lake Sakakawea for hydraulic fracturing necessitated identifying a specific quantity of "surplus water" for future municipal and industrial use.[506] It identified 100,000 acre-feet as surplus water in Lake Sakakawea, with easements to be granted upon entering five-year water supply contracts, with a recommended fee of $20.91.[507]

In 2012, the Corps released draft "Surplus Water Reports" for the other Missouri River main stem reservoirs, identifying a total of 282,917 acre-feet of stored water in the six reservoirs as surplus, to be available for municipal and industrial use over a ten-year period.[508]

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501 Davidson, *supra* note 93, at 6–7.

502 U.S. GEOLOGICAL SURVEY, ASSESSMENT OF UNDISCOVERED OIL RESOURCES IN THE DEVONIAN-MISSISSIPPIAN BAKKEN FORMATION, WILLISTON BASIN PROVINCE, MONTANA AND NORTH DAKOTA, 2008 (2008), *available at* http://pubs.usgs.gov/fs/2008/3021/pdf/FS08-3021_508.pdf (estimated undiscovered volumes of 3.65 billion barrels of oil). The recent updated assessment increased this estimate to 7.4 billion barrels. U.S. GEOLOGICAL SURVEY, ASSESSMENT OF UNDISCOVERED OIL RESOURCES IN THE BAKKEN AND THREE FORKS FORMATION, WILLISTON BASIN PROVINCE, MONTANA, NORTH DAKOTA, AND SOUTH DAKOTA, 2013 (2013), *available at* http://pubs.usgs.gov/fs/2013/3013/fs2013-3013.pdf.

503 U.S. ARMY CORPS OF ENG'RS, OMAHA DIST., GARRISON DAM/LAKE SAKAKAWEA PROJECT NORTH DAKOTA SURPLUS WATER REPORT 2-17 to 2-18 (2011).

504 *Id*.

505 *Id.*

506 *Id.*

507 *Id.*

508 *See generally* U.S. Army Corps of Eng'rs, Omaha Dist., *Planning Projects*, U.S. ARMY CORPS OF ENGINEERS, http://www.nwo.usace.army.mil/missions/civilworks/planning/planningprojects.aspx (last visited Mar. 2, 2015) for draft Surplus Water Reports

The imposition of fees was delayed pending a formal rulemaking establishing a nationwide policy for storage fees.[509]

The draft surplus water reports outline the proposed requirements for future water uses of the Missouri River, from Gavins Point to Fort Peck. They include limiting future water use in the reservoirs to water identified as surplus, entering water supply agreements with the Corps of Engineers, and ultimately the payment of storage fees.[510] The reports explain that a prospective water user will be denied an easement over Corps project lands surrounding the reservoir, absent compliance with these requirements.[511]

Congress prohibited the Corps of Engineers from imposing water storage fees at the Missouri River main stem reservoirs, in Section 1046 of the Water Resources Reform and Development Act of 2014.[512] This prohibition expires ten years from the date of the act, and the Corps may attempt to impose water fees at that time.[513] Meanwhile, the prospect for enhanced federal regulation of stored water causes concern among Tribal and non-Indian water users in the upper Missouri River Basin.[514]

In issuing the proposed surplus water requirements, the Corps of Engineers relied on Section 6 of the Flood Control Act, which authorizes surplus water contracts for municipal and industrial uses by public and private entities.[515] Section 6 does not include tribes as among the water users to whom the surplus contracting authority applies. The plain language of the statute does not include Tribes.[516]

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for Fort Peck, Garrison, Oahe, Big Bend, Fort Randall, and Gavins Point Dams and Projects.

509 U.S. ARMY CORPS OF ENG'RS, *supra* note 503, Addendum No. 1 at 2.

510 *Id.*

511 *Id.*

512 Water Resources Reform and Development Act of 2014, Pub. L. 113-121, 128 Stat. 1254 (2014).

513 *Id.*

514 John H. Davidson, *Marketing Missouri River Water: Competing Plans for Commoditizing a Natural Resources*, 89 N.D. L. REV. 1, 25–26 (2013).

515 John H. Davidson, *Missouri Reservoirs in a Century of Climate Change: National or Local Resource?*, 20 J. ENVTL. & SUSTAINABILITY L. 1, 13–15 (2014) (describing the Corps of Engineers' authority to market water under Section 6 of the 1944 Flood Control Act).

516 *See, e.g.*, Caminetti v. United States, 242 U.S. 470, 485 (1917) ("[T]he meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain . . . the sole function of the courts is to enforce it." *Id.*).

The prominent Indian water rights attorney and scholar, William Veeder, evaluated the Corps' authority under Section 6 of the Flood Control Act, as well as the Water Supply Act of 1958,[517] as it relates to Indian water rights to the Missouri River. Veeder wrote,

> These statutes, however, leave crucial issues unresolved. They do not propose to authorize the seizure of Indian water rights pursuant to the national power of eminent domain. There is no suggestion in any of the acts that the rights of the Indians would be subject to infringement . . . . Clearly the trust responsibility of the federal government to the Indian tribes involved is not to be abrogated or diminished without specific congressional authorization to that effect and provision for just compensation for any taking of Indian rights.[518]

Nevertheless, the Corps suggests that the surplus water requirements shall be imposed on the tribes as well as other prospective water users. The surplus water reports indicate that the proposed regulations apply to all water uses except those "specifically authorized by Congress to use Missouri River water."[519] According to the Corps of Engineers, "Tribes are not considered differently in this respect than a State or private water user."[520] This could subject non-federally funded Tribal water projects, and irrigation or other intakes sought by Indian allottees, to the proposed surplus water requirements. Thus, the Corps seeks to impose the surplus water requirements on the future water use by tribes and tribal members, even though the statute does not apply to Indians.

The Missouri River main stem reservoirs constitute the source for water supplies on North Dakota's Fort Berthold and Standing Rock Reservations, and to at least six Sioux Indian Reservations in South Dakota.[521] These Tribes possess reserved water rights for future municipal and industrial uses.[522] The specific quantity of water reserved by the Tribes for these purposes has not been established by court decree or compact.[523] The amount of water that is ultimately required to fulfill the reserved water rights for municipal and

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517 Water Supply Act of 1958, 43 U.S.C. § 390(b) (2012).

518 Veeder, *supra* note 409, at 92–93.

519 *E.g.*, U.S. ARMY CORPS OF ENG'RS, OMAHA DIST., DRAFT OAHE DAM/LAKE OAHE PROJECT SOUTH DAKOTA SURPLUS WATER REPORT 4-10 (2012), *available at* http://cdm16021.contentdm.oclc.org/cdm/ref/collection/p16021coll7/id/50.

520 *Id.*

521 *See supra* Part IV.C.

522 *See supra* Part IV.B.

523 Carvell, *supra* note 390, at 3.

industrial uses by the Fort Berthold and South Dakota Sioux Tribes may exceed 282,917 acre-feet, the amount identified by the Corps of Engineers as current surplus water in the Missouri River main stem reservoirs.[524] Consequently, the surplus water determinations by the Corps may conflict with Indian reserved water rights to the Missouri River.

The amount of water deemed surplus in each of the Missouri River main stem reservoirs and available for future municipal and industrial water use is small, as compared to the amount of water in storage, and the amount of water that flows naturally in the Missouri River. For example, the Corps identified 57,317 acre-feet as surplus water in Lake Oahe.[525] Yet the Corps' own Missouri River Master Manual indicates that Lake Oahe contains approximately 12 million acre-feet in multiple-use storage and 27.1 million acre-feet in total storage.[526] Moreover, the unregulated flow of the Missouri in the river reach between reservoirs near Bismarck, North Dakota, averaged 16.4 million acre-feet annually, from 1968 to 2010.[527] Thus, the water flow that would be available without any Pick-Sloan storage far exceeds the amount of water deemed surplus in the large reservoirs.

Indian reserved water rights stem from the natural flow of the waters of their reservations and aboriginal areas.[528] The Corps of Engineers' assertion of storage control over the waters of the natural flow of the Missouri, to which the Tribes have prior and superior water rights under the *Winters* Doctrine, suggests a Fifth Amendment taking of the Tribes' water rights.[529]

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524 *See generally* U.S. Army Corps of Eng'rs, Omaha Dist., *Planning Projects*, U.S. ARMY CORPS OF ENGINEERS, http://www.nwo.usace.army.mil/missions/civilworks/planning/planningprojects.aspx (last visited Mar. 2, 2015) for draft Surplus Water Reports for Fort Peck, Garrison, Oahe, Big Bend, Fort Randall, and Gavins Point Dams and Projects.

525 *Id*.; U.S. ARMY CORPS OF ENG'RS, OMAHA DIST., *supra* note 519, at 1.

526 U.S. ARMY CORPS OF ENG'RS, NORTHWEST DIV., *supra* note 294, at Plate II-38.

527 *See generally* U.S. Geological Survey, *USGS Surface-Water Data for North Dakota*, U.S. GEOLOGICAL SURV. http://waterdata.usgs.gov/nd/nwis/sw/ (last modified Mar. 2, 2015) using key search terms "Missouri River at Bismarck, Station No. 06342500" as a reference.

528 United States v. Gila Valley Irrigation Dist., 31 F.3d 1428, 1440–41(9th Cir 1994).

529 *See* United States v. 5,677.94 Acres of Land, etc., 162 F. Supp. 108 (D. Mont. 1958) (Flood Control Act authorization of Yellowtail Dam on the Big Horn River not to infringe upon Crow irrigation water rights); Pyramid Lake Paiute Tribe v. United States, 36 Indian Cl. Comm'n 256 (1975); Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv., 524 F.3d

Significantly, the construction of the main stem dams and reservoirs did not diminish the Reservation boundaries of the affected Tribes—the reservoirs and portions of the bed of the Missouri River remain with the boundaries of the Fort Berthold and numerous Sioux Reservations.[530] The Tribes retain reserved water rights to the Missouri River, whose natural river bed borders or traverses their Reservations.[531]

In the surplus water reports, the Corps of Engineers leverages its land management authority over the project lands adjacent to the Pick-Sloan reservoirs, to control the right to divert water from the reservoirs. The reports explain,

> Easements are required for water pipelines and water intake structures on Corps project lands. No easement that supports a water supply agreement will be issued prior to the water supply agreement being executed by all parties.[532]

However, the Tribes retained certain rights in the Congressional acts which authorized acquisition of Tribal land for the reservoir sites. For example, Section 10 of Public Law 85-915, states that the Standing Rock Sioux Tribe and tribal members "shall be permitted to have, without cost, access to the shoreline of the reservoir . . . ."[533]

The legislative history evidences recognition by Congress that the Tribe used the Missouri River for domestic and economic use, as well as hunting and fishing.[534] Clearly, Congress intended that, notwithstanding the construction of Oahe Dam and the acquisition of

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917, 928 (9th Cir. 2008) (requiring Corps of Engineers to consider pre-dam conditions under the Endangered Species Act).

530 South Dakota v. Bourland, 508 U.S. 679 (1993); Lower Brule Sioux Tribe v. South Dakota, 104 F.3d 1017 (8th Cir. 1997).

531 The Fort Laramie Treaty of April 29, 1868 established the Great Sioux Reservation, the eastern boundary of which was the east bank of the Missouri River, placing the river bed within the Reservation. 15 Stat. 635, *available at* http://digital.library.okstate.edu/kappler/Vol2/treaties/sio0998.htm. The Congress divided the Great Sioux Reservation into six separate Reservations in the Act of March 2, 1889, with the Missouri River main channel comprising the boundary of the present-day Standing Rock, Cheyenne River Crow Creek, and Lower Brule Reservations. Act of March 2, 1889, 25 Stat. 889.

532 *E.g.*, U.S. ARMY CORPS OF ENG'RS, OMAHA DIST., DRAFT SURPLUS WATER REPORT FORT RANDALL DAM/LAKE FRANCIS CASE PROJECT, SOUTH DAKOTA 2-20 (2011) (this language is included in the draft surplus water report for each Pick-Sloan reservoir), *available at* http://srstwater.com/data/upfiles/programs/news/Fort%20Randall%20Surplus%20Report.pdf.

533 Standing Rock Land Taking Act, Pub. L. 86-915, § 10, 72 Stat. 1752 (1958), *available at* http://digital.library.okstate.edu/kappler/Vol6/html_files/v6p0861.html.

534 H.R. REP. NO. 85-1888, at 6 (1958).

Tribal land for Oahe Reservoir, the Tribe retained the right to access and divert water.[535] Thus, in implementing Section 6 of the Flood Control Act through the proposed surplus water requirements, the Corps of Engineers may be violating statutory rights of the Tribes along the Missouri River.

Moreover, the surplus water reports would create requirements for water diversions on the Missouri River between Gavins Point and Fort Peck, while nothing comparable applies on the Missouri River upstream from Fort Peck and downstream from Gavins Point. Since the Pick-Sloan dams were developed on the Missouri River main stem, the water depletions from Gavins Point downstream to Nebraska City, Nebraska, have far outpaced the depletions upstream from Gavins Point.[536] In the draft surplus water reports, the Corps of Engineers proposed making it more difficult to divert water above Gavins Point,[537] exacerbating the inequities with respect to the regional economic benefits of water supply under the Pick-Sloan program. This contravenes the Congressional declaration in Section 1 of the Flood Control Act for "comprehensive and coordinated development" of the Missouri River.[538]

The Corps of Engineers contends that it must identify surplus water in the Missouri River main stem reservoirs, to ensure that existing Pick-Sloan water uses (e.g., lower Missouri River navigation and water supply intakes) are not harmed by the increased demand for water for energy development in the upper basin.[539] But the surplus water reports ignore the fact that numerous Indian tribes possess reserved water rights to divert the water of the Missouri River for consumptive use on their Reservations, and that their water rights

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535 *Id.*

536 *See* THORSON, *supra* note 333, at 89–90.

537 *See supra* note 531 and accompanying text.

538 Flood Control Act of 1944, Pub. L. No. 78-534, 58 Stat. 887 (codified in scattered Sections of 16, 33, and 43 U.S.C.), *available at* http://www.usbr.gov/power/legislation/fldcntra.pdf.

539 *See In re* MDL-1824 Tri-State Water Rights Litig., 644 F.3d 1160, 1185–86 (11th Cir. 2011) (remanded to the Corps of Engineers to determine long-term water allocation for Lake Lanier, in longstanding dispute over water supply contracts and their impact on downstream fish and wildlife); Jicarilla Apache Tribe v. United States, 657 F.2d 1126, 1141 (10th Cir. 1981) (Bureau of Reclamation exceeded authority in contracting with city of Albuquerque for San Juan-Chama project water surplus to meet the city's needs).

include future municipal and industrial uses.[540] Moreover, the tribes' statutory rights to access the Missouri River are being ignored in the rush to secure water for energy development.[541] As William Veeder testified to the Senate Committee on Interior and Insular Affairs in 1975, "the energy crisis is truly an Indian crisis."[542]

The Corps of Engineers has made it so, by proposing to limit future municipal and industrial water uses in the upper Missouri Basin, including Indian water uses. The Corps' proposed surplus water regulations lend uncertainty to the ability of the Tribes to develop water for future municipal and industrial uses—literally jeopardizing economic development on the impoverished Reservations. This uncertainty complicates the tribes' ability to perfect their rights, through a negotiated settlement or water rights adjudication.

B. Quantification of Indian Water Rights to the Missouri River

The state of South Dakota petitioned the Supreme Court to invoke original jurisdiction for an equitable apportionment of the Missouri River, but the Court refused to entertain the action.[543] This demonstrates the tension placed on the Missouri River between competing interests in the upper and lower basins.[544] That tension

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540 Professor Frank J. Trelease has evaluated the impacts of federal water development on water rights from the perspective of the states. Frank J. Trelease, *Water Rights of Various Levels of Government—States' Rights vs. National Powers*, 19 WYO. L. REV. 189 (1965); Frank J. Trelease, *Government Ownership and Trusteeship of Water*, 45 CAL. L. REV. 638 (1957); Frank J. Trelease, *A Federal-State Compact for Missouri Basin Development*, 7 WYO. L.J. 161 (1953). He suggested that impending conflicts over the federal management of navigable and non-navigable rivers will be resolved in favor of extensive federal power, "except for some of the Indian cases." Trelease, *Government Ownership and Trusteeship of Water*, *supra*, at 652. The implication is that although the authority of federal water management agencies such as the Corps of Engineers may be broad with respect to state law, it is more limited in relation to the proprietary interests of the Tribes.

541 *See supra* notes 531–33 and accompanying text.

542 *Missouri River Basin Indus. Water Mktg.: Hearing Before the Subcomm. on Energy Research and Water Res. of the Comm. on Interior and Insular Affairs*, 79th Cong. 141 (1975).

543 South Dakota v. Nebraska, 485 U.S. 902 (1988). A state may file an original petition to the Court, to apportion the water rights to an interstate river amongst two or more states. TARLOCK, *supra* note 366, at §§ 10.2 to 10.3. The Court developed the doctrine of equitable apportionment for the allocation of water rights between states. Kansas v. Colorado, 206 U.S. 46 (1907). The Court requires a high standard of injury to entertain such an action. Missouri v. Illinois, 200 U.S. 496 (1906).

544 *In re* Operation of the Mo. River Sys. Litig., 421 F.3d 618, 637 (8th Cir. 2005), *cert. denied*, North Dakota v. U.S. Army Corps of Eng'rs, 547 U.S. 1097 (2006); Tarlock, *supra* note 83, at 1–2.

affects Indian water rights also.[545] South Dakota initiated a general stream adjudication for the Missouri River and its tributaries, in order to quantify Indian reserved water rights, but the expensive and unwieldy action was dismissed without prejudice.[546]

The issue of the quantity of water from the Missouri River main stem, its tributaries, and groundwater, to which the North and South Dakota tribes are entitled, will ultimately be resolved by adjudication or negotiated settlement. Many of the tribes have resisted this, for good reason.[547] But there is too much demand on the valuable water resource of the Missouri River for Indian reserved water rights to remain unadjudicated indefinitely.[548]

There is considerable commentary on the respective merits of negotiation and litigation of Indian reserved water rights.[549] Suffice to say, the North and South Dakota tribes with water claims to the Missouri River main stem and its tributaries will be facing costly and time-consuming water rights litigation or negotiations, or both. The legal and policy environment in which that will take place is made more difficult by the Corps of Engineers' Missouri River operations under the Master Manual, and its proposed surplus water regulations.

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545 GETCHES ET AL., *supra* note 133, at 816 ("A tribe's reserved water right with an early priority date leaves all junior rights holders uncertain . . . . For that reason, states and non-Indian water users have pressed for quantification of Indian reserved rights. The quantification process has proved difficult and expensive." *Id.*).

546 Fraser v. Water Rights Comm'n of Dep't of Natural Res Dev., 294 N.W.2d 784 (S.D. 1980).

547 *See* LLOYD BURTON, AMERICAN INDIAN WATER RIGHTS AND THE LIMITS OF THE LAW 64–65 (1991).

548 *See supra* note 540 and accompanying text.

549 Robert T. Anderson, *Indian Water Rights, Practical Reasoning and Negotiated Settlements*, 98 CAL. L. REV. 1133 (2010); A. Dan Tarlock, *Tribal Justice and Property Rights: The Evolution of Winters v. United States*, 50 NAT. RESOURCES J. 471 (2010); John B. Weldon et al., *Future Indian Water Settlements in Arizona: The Race to the Bottom of the Waterhole?*, 49 ARIZ. L. REV. 441 (2007); K. Heidi Gudgel et al., *The Nez Perce Tribe's Perspective on the Settlement of its Water Rights Claims in the Snake River Basin Adjudication*, 42 IDAHO L. REV. 589, 593 (2006); Jennifer E. Pelphrey, Note, *Oklahoma's State/Tribal Water Compact: Three Cheers for Compromise*, 29 AM. INDIAN L. REV. 127 (2004–2005); DANIEL MCCOOL, NATIVE WATERS: COTEMPORARY INDIAN WATER SETTLEMENTS AND THE SECOND TREATY ERA (2002); Gina McGovern, *Settlement or Adjudication: Resolving Indian Water Rights*, 36 ARIZ. L. REV. 95 (1994).

CONCLUSION

The massive water development of the Missouri River Basin under the Corps of Engineers' Pick-Sloan program negatively and disproportionately impacted the Indian tribes. The socioeconomic hardship facing many of the upper Missouri Basin Tribes is directly attributable to Pick-Sloan. The water supplies needed by these tribal communities for economic and human development are controlled by the Corps of Engineers, through its operation of the main stem dams.

The Corps' Missouri River operations give priority in streamflow allocations to navigation and water supply in the lower basin. This degrades the water supplies of the tribes, and could affect their reserved water rights claims under the *Winters* Doctrine. The Corps possesses treaty, statutory, and trust responsibilities to preserve the Tribes' waters, but the criteria for streamflow management in the Corps' Master Manual focus exclusively on downstream water needs. Meanwhile, erosion caused by reservoir operations has destroyed significant Native American cultural resources and unearthed human remains and artifacts. Tribal water and environmental resources continue to suffer the ongoing effects of the Corps' operations of the main stem dams. Much of the harm could be mitigated through revisions to the Master Manual by modernizing the operational priorities to fulfill tribal rights.[550] However, with the release of the surplus water reports for Lake Sakakawea and the other main stem reservoirs, the Corps appears to be moving in the opposite direction by imposing limits and additional costs on future tribal water uses in the upper basin.

Consequently, Congressional action may be necessary to protect tribal waters for use on the Reservations in the upper Missouri basin. However, the navigation industry, municipal, and agricultural water users in the lower Missouri basin benefit from the status quo and have resisted reform.[551] The upper Missouri Basin Tribes face the dual challenges of perfecting their water rights and assuring that the Corps

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550 The Standing Rock Sioux Tribal leader Mike Claymore described his Tribe's frustration in attempting to obtain administrative relief by the Corps of Engineers, for revisions to the Missouri River Master Manual: "We have corresponded, attended meetings, and been visited by officials of the Corps of Engineers . . . and all has been to no value to the Standing Rock Sioux Tribe. The Corps of Engineers has proven it cannot analyze our environmental impacts, much less impacts on our invaluable water rights." *Missouri River Master Manual: Hearing Before the Committee on Indian Affairs, U.S. Senate,* 108th Cong. 27 (2003).

551 *See supra* notes 333, 334 and accompanying text.

of Engineers reforms its Missouri River operations to ensure adequate water supplies on the Reservations.

The claims by tribes for proper equitable compensation for the lands, resources, and cultures that were inundated should also be revisited. All lands that were taken from the tribes for Pick-Sloan, but which are retained by the Corps of Engineers and lay fallow above the reservoirs, should be returned. Ultimately, environmental justice for the affected Tribes must be a central focus of the Pick-Sloan program moving forward.

Relating Divergent Worlds: Mines, Aquifers and Sacred Mountains in Peru

Fabiana Li *University of Manitoba*

Abstract: This article examines a conflict over the expansion, into Cerro Quilish (Mount Quilish), of the Yanacocha gold mine, in Northern Peru. In campaigns against the mine, Cerro Quilish was an aquifer (a store of life-sustaining water) and an Apu (usually translated from Quechua as "sacred mountain"). Neither the product of ancestral tradition nor the invention of antimining activists, Cerro Quilish came into being through knowledge encounters that brought together actors with diverse interests, although at times a single entity—water—became the central focus of debate, obscuring other realities. Drawing on science and technology studies literature, I examine the practices that bring entities into being and argue that contemporary conflicts involve an ongoing process of contestation over socionatural worlds.

Keywords: mining, water, social movements, environmental conflict, Peru

Résumé : Cet article s'intéresse à un conflit portant sur l'expansion de la mine d'or Yanacocha dans le Cerro Quilish (mont Quilish), au nord du Pérou. Dans les campagnes contre la mine, le Cerro Quilish était à la fois un aquifère (une réserve d'eau porteuse de vie) et un Apu (qu'on traduit habituellement du quechua comme « montagne sacrée »). Alors qu'il n'est ni le produit d'une tradition ancestrale ni l'invention des militants anti-mines, le Cerro Quilish a vu le jour par des rencontres de savoir réunissant des acteurs aux intérêts divers, bien qu'avec le temps une entité unique—l'eau—est devenue l'enjeu central des débats, cachant à la vue les autres réalités. Puisant dans la littérature des études des sciences et technologies, j'examine les pratiques qui amènent les entités à l'existence et soutiens que les conflits contemporains impliquent un processus continu de contestation des univers socionaturels.

Mots-clés : industrie minière, eau, mouvements sociaux, conflit environnemental, Pérou

Introduction

On the morning of 2 September 2004, protestors marched to Cerro Quilish (Mount Quilish), in the Northern highlands of Peru, to demand an end to mining exploration activity. At the peak of the 15 days of protesting, more than 10,000 people filled the town square in the city of Cajamarca, 18 kilometres from Cerro Quilish. As many would later remark, the defence of Cerro Quilish united the city and countryside, bringing together a diverse mix of people: urban professionals, irrigation canal users' associations, *Rondas Campesinas* (peasant "patrol" groups, one of the backbones of peasant political organizing in Peru), unions, students, religious organizations and other groups. The massive protests put a halt to the extraction of an estimated 3.7 million ounces of gold from Cerro Quilish. The proposed project was to be an extension of the Yanacocha mine, which was opened in 1993 and was already the largest gold mine in Latin America.[1] The mine is operated by Minera Yanacocha, a joint venture of the US-based Newmont Mining Company (with 51.35 per cent of shares), the Peruvian company Buenaventura (43.65 per cent shareholder), and the financial branch of the World Bank (with a remaining 5 per cent of the shares).

On the surface, the Quilish protests shared many characteristics with other mobilizations that emerged in the late 1990s and would intensify in the 2000s in response to mining expansion in Peru and elsewhere in Latin America (see Bebbington 2009). In this context of increased mining-related activism, the Quilish protests stand out not only because they effectively stopped the project but also due to their long-lasting impact on the popular imagination and political debates around mining activity in Peru. Like other mining-related conflicts, the controversy over the Quilish project centred on the costs and benefits involved in converting mountains into open-pit mines. But what made this case different was that Cerro Quilish emerged in the conflict as a particular kind of mountain: one that holds water and has special

significance for the local population. In antimining campaign materials and news reports, Cerro Quilish was presented as an aquifer—the source of the main rivers and tributaries that supply water to the city and rural communities. Activists argued that mining activity would compromise the quality of that water (due to increased sedimentation and the potential leaching of heavy metals and toxic substances into rivers and streams) and reduce the quantity of water available in what is already a drought-prone region. Protestors also argued that the mine should not be built because *campesinos* (peasant farmers) living in the area considered Cerro Quilish to be an *Apu*, a Quechua term that is commonly translated as "mountain spirit" or "sacred mountain."

Framed around the protection of an aquifer and an Apu, the aims and strategies of the antimining protests did not always fit within the discourses of existing political movements focused on economic justice or the nationalization of resources (e.g., local unions or left-leaning political parties). While arguments calling for nationalizing the mines or better pay and working conditions did surface in conflicts emerging throughout the country, activism against mining at once incorporated and exceeded established political discourses and practices. The Quilish protests became part of a movement "in defence of life" that encompassed water and livelihood, landscapes and cultural identity—but it was also more than this. The mountain was not just an economic resource to be defended but the embodiment of life itself. By calling Cerro Quilish an Apu, the protestors suggested that it was a living entity and, furthermore, that other lives (both human and nonhuman) depended on its existence. Arguments against mining in Cerro Quilish were entangled with discussions about water as a life-sustaining substance—life in a general biological sense but also with relation to the particular (and by some accounts, disappearing) ways of life in the *campo* (countryside). In addition, the mining industry's new ventures in Cajamarca and other parts of the country were coming up against unexpected forms of life: not only the animal and plant species deemed valuable by local people and environmentalists but also entities like Apus and other earth-beings that animate the Andean landscape. The invasive technologies of open-pit mining were disrupting landscapes and, along with them, the conditions necessary to sustain ways of living and interacting with those landscapes.

This article examines how Cerro Quilish emerged as an Apu and an aquifer in campaigns against the mine. As Blaser (2009) and de la Cadena (2010) have noted, many contemporary environmental conflicts are conflicts over different realities or worlds. The conflicts do not simply concern competing interpretations of Nature (which assumes the existence of many cultures but a single reality) but should be understood as struggles over the enactment, stabilization and protection of multiple socionatural worlds. In the conflict I examine here, Cerro Quilish was not only a mountain or a resource, nor was it simply *perceived* in different ways by the various constituencies involved in the controversy. Rather, it emerged as radically different entities—a valuable mineral deposit, a mountain that holds water, a sacred mountain and sentient being—through the practices of the actors involved.

I argue that recognizing Cerro Quilish's multiplicity can help us understand the dynamics of conflicts over mining. First, examining the controversies that brought Cerro Quilish into being—a perspective inspired by what Blaser (2009) and others call *political ontology*—can contribute to discussions about how natures and knowledges are made. I draw here on the work of scholars of science who have shown that entities in the world are not fixed or constant but are the effect of practices and require continuous enactment and stabilization (Law 2004; Mol 2002).[2] If a particular entity "hangs together," it is not because its coherence "precedes the knowledge generated about it, but because the various coordination strategies involved succeed in reassembling multiple versions of reality" (Law and Mol 2002). In the conflict I focus on here, we cannot simply take Cerro Quilish for granted as an element of a preexisting "reality-out-there" (Law 2004) or take as given its recognition as Apu or aquifer. Cerro Quilish's complex forms *came to matter* through knowledge encounters that brought together campesinos' experiences of a sentient landscape, Catholic sermons, hydrological studies, radio campaigns, geological explorations and antimining activism.

My use of the term *matter* refers to how elements of the landscape acquire political significance and become the focus of public concern. It also refers to the ways in which things take form and come to be known and experienced, as well as ongoing efforts required to solidify them into "facts." As scholars of science have noted, political theory has tended to focus on human agency while casting nonhumans out of the political sphere (see for example, Latour 1993). Thus, we tend to think of anything nonhuman (including the things of nature, such as mountains, minerals or water) as a resource or tool that enters political theory "only to the extent that it has *instrumental* value, but not in terms of its *constitutive* power" (Braun and Whatmore 2010:xv). Recognizing the ability of things to condition political life, I do not treat Cerro Quilish simply as a contested resource;

rather, I examine the kinds of politics that it enabled (and at times precluded) as it came into being as an aquifer and an Apu.

The Quilish conflict illustrates that political responses to mining activity in recent years do not simply cohere as "antimining" social movements. Mobilizations are loosely organized around multiple demands and involve a diverse group of actors. Significantly, demonstrations have been held in support of mining companies and not just against them. Participants involved in various kinds of mobilizations do not necessarily share common interests or an ideological stance that defines their position vis-à-vis extractive activity. My analysis of the Quilish conflict seeks to show how various actors came together in ways that strengthened the movement, in spite of their different interests and positions. At other times, different interests can lead to unpredictable effects. For example, the importance of Quilish as an aquifer helped make water into a focal point of debates over mining—not only in this conflict but in subsequent ones as well. While these arguments helped draw supporters to the movement against the mine, they also led the mining company to focus its public relations campaigns on technical arguments and water management programs. What I argue is that focusing on a single aspect of Cerro Quilish (water) reduced the complexity of the mountain and the challenge that it posed for the company. The shift from multiplicity to singularity helped neutralize opposition to the project. But, as I have already noted, the stabilization of facts requires constant effort. Thus, the potential for multiplicity remains, and conflicts that might seem to have been resolved are likely to reemerge.

The research presented in this article is based on two years of ethnographic research in Peru in 2005 and 2006. Although the article focuses on the Quilish controversy, the material I draw on is part of a larger project on conflicts over mining activity that intensified as a result of neoliberal reforms in the 1990s. As conflicts proliferated in Cajamarca and various other parts of the country, the significance of Cerro Quilish and continued tensions in Cajamarca led me to focus my fieldwork on the Yanacocha mine. Although I was based in the city of Cajamarca, I also conducted fieldwork in campesino communities in Porcón, the area where people responded most strongly against the Quilish mining project. Material for this article comes from participant observation, the analysis of documents related to the Quilish project and interviews with key leaders, activists and others who participated in the Quilish protests.[3]

The article is organized as follows. In the first part, I examine how a Catholic priest emerged as a key figure in the conflict and played a crucial role of translation that merged religious and scientific knowledges with the lived experiences of campesinos in the region. By emphasizing Cerro Quilish's multiplicity, the Quilish campaigns shifted the focus of debates on mining and enabled new forms of political activism. In the second part of the article, I describe how Cerro Quilish, as Apu and aquifer, enabled the antimining campaigns to travel from the local through regional, national and transnational networks. The campaigns tapped into, connected with and modified existing campesino knowledge practices that recognized the qualities of Cerro Quilish as an animate being and a source of water.

In the final part of the paper, I examine the company's attempts to narrow the scope of the Quilish debate by focusing it on water and its technical management. Protestors challenged this definition of Cerro Quilish as a resource to be managed; yet, the issues around water quality and quantity were ones that they helped introduce into the debate. I suggest that the ongoing conflicts around mining in Cajamarca attest to the unstable nature of objects as they emerge and change form through environmental controversies.

How Quilish Became an Apu and Aquifer

The protests over Cerro Quilish brought *mining conflicts* (a now-ubiquitous term) into the popular consciousness in Peru at a time when mineral extraction was being subjected to increasing public scrutiny. In 2003, the Tambogrande mining project in the department of Piura was brought to a halt after significant opposition and a concerted local and international campaign that included a popular referendum. In addition, conflicts in the smelter town of La Oroya and other mining centres began to receive more attention in the news media. In Cajamarca, complaints against Minera Yanacocha—from lands usurped from campesinos, to fish deaths and diminished water flows in irrigation canals—had been accumulating since the mine began operating. However, it was in 2000 that the company faced its biggest setback, with a mercury spill in the town of Choropampa, which was considered to be the largest mercury spill in the world. These events put in doubt the image of modern mining that the industry and government tried to promote: an image of safety, environmental responsibility and local development.

In this climate of increasing tensions between communities and Minera Yanacocha, the Cerro Quilish project proposal came to the fore. Educational materials distributed as part of the campaign to stop the project pointed out that Cerro Quilish and the city of Cajamarca are separated by a distance of a mere 14.5 kilometres as the crow flies. People also argued that Cerro Quilish was

only eight kilometres away from the city's water treatment plant, "El Milagro," and was the source of the Porcón and Grande Rivers, which together provided 70 per cent of the water consumed in the city. At least four campesino communities were considered to be within the area of the proposed Quilish project, but many more relied on irrigation canals and water springs that originate at Cerro Quilish. The protests against the mining project emphasized these various connections between people and bodies of water emerging from Cerro Quilish, thus securing the support and participation of a large segment of the rural and urban population.

Political activism against mining at Cerro Quilish did not erupt spontaneously but was the result of tenacious education and advocacy campaigns that spanned almost a decade. Spearheading these efforts was the NGO Grufides—and, in particular, Father Marco Arana, one of its founding members. Grufides is a small development organization that was formed in 2001 by recent graduates of the Universidad Nacional de Cajamarca (Cajamarca National University) under the guidance of Father Arana, who directed the University Parish. As in much of Latin America, liberation theology has been a significant influence for NGOs and individuals whose work merges Christian teachings with issues of economic justice, human rights and (more recently) environmental concerns.[4]

Father Arana, as well as other professionals from the city of Cajamarca, wrote extensively against Minera Yanacocha's continued expansion, pointing out the risks of cyanide leaching (Deza 2002) and evidence of water contamination from mining operations already underway (Seifert 2003). But it was Father Arana who, in numerous newspaper editorials, email missives and published reports, imbued the technical arguments against mining with what he saw as a cultural and moral dimension to the struggle against the mine. He based his arguments on the defence of a way of life rooted in a place called Porcón, an area made up of campesino communities that begins just beyond the city of Cajamarca and extends into the property of the mine. His experiences as a rural priest made him attuned to the hardships of campesinos and their particular ways of expressing their identity as "porconeros" (as the area's locals are called).

Undoubtedly, the effectiveness of narratives that centred on Cerro Quilish's role as aquifer and Apu rested on its seemingly timeless qualities. Since the mineral deposit was located in Porcón, a place that had become emblematic of a pre-colonial past, these narratives presumed that locals had always considered Cerro Quilish to be the primary source of water for the city and surrounding region and implied that it was an Apu according to "Andean tradition." On the other hand, counter-claims to disprove the validity of these arguments dismissed them as "inventions" with the intent to manipulate. Yet, both of these views ignore the dynamic and creative connections among people, technologies and landscapes that brought Cerro Quilish to the centre of a complex controversy.

This is the irony of Cerro Quilish: that its protagonism as an Apu took shape in a region where many people have turned to evangelism and where a Catholic priest became one of its most important spokespersons. It took a proposed mining project—with the threat of open pits, toxic chemicals and altered water courses—to make the latent "indigeneity" of Porcón and people's relationships to a sentient landscape politically visible and significant in the present. I use the term *indigeneity* recognizing the complex politics of class, language, ethnicity and race in Peru. First of all, the term *indigenous* is not used by people in rural Cajamarca (who tend to refer to themselves as campesinos). Also, I do not mean to suggest that people are more or less indigenous based on a set of prescribed characteristics (e.g., language or dress). As scholars have pointed out, we need to "move beyond thinking of indigeneity in the all-or-nothing terms of authenticity and invention, cultural survival and extinction" (see Garcia 2005:6). Recognizing the complex ways in which identities are made and negotiated, I want to explore how indigeneity came to be articulated through the engagement of various actors.

"Quilish is more than Quilish"

Three years after the 2004 protests, Father Arana wrote an article reflecting on the significance of the campaigns against mining at Cerro Quilish and asserting his unwavering commitment to protect it:

> If the ecological matter put forth by the avarice of gold that has laid eyes on Cerro Quilish is to be understood as merely a technical-scientific problem, then I'll always say no. And I'll do the same if these questions are reduced to problems of a cultural, social or religious-symbolic character. It is not with these half-truths that life will be protected and defended, but rather with the understanding and practice of ecology as an integral matter: scientific, cultural, social, political, historical, and ethical. [Arana 2007]

For Farther Arana, the Quilish conflict could not simply be addressed with technical solutions. If the controversy were to be considered from an *ecological* point of view, in his definition of the term, it would be necessary to take a holistic approach that incorporated the scientific,

socio-cultural, political, historical and ethical issues at stake. Considering one of these dimensions separately, without seeing the larger whole, would only produce "half-truths." Rejecting the perils of reductionist thinking, Father Arana wrote that "Quilish is more than Quilish." What was at stake in the protests, he explained, was not only the protection of this mountain; the defence of Quilish was also linked to the protection of local people's right to water, their cultural identity and the democratic right to prior consultation (Arana 2007). Evoking Cerro Quilish's multiplicity was fundamental for making the struggle known nationally and internationally.

Although he tried to play down his leadership role, no other individual has had as much of an impact on mining debates in Cajamarca or incited as much controversy as Father Arana. Father Arana was born in the city of Cajamarca, and his understanding of Cerro Quilish and its meaning for local people was shaped by a long relationship with rural communities that began with his appointment as parish priest in Lower Porcón in 1991. During his time as a rural priest, Father Arana made contact with people and established a reputation in the countryside that would last beyond his years in Porcón. His position as a trusted authority figure allowed him to hear firsthand about campesinos' initial altercations with the mining company and to intervene on their behalf. In the process, his day-to-day experiences in rural communities convinced him that Cerro Quilish was more than what could be captured by the utilitarian value of the resources it provided (land, water, pasturelands, etc.) and that might be compromised by mining activity. Campesinos told him they had always known Cerro Quilish contained gold and water and spoke of a "golden fountain" from which water sprung and flowed in two directions (Arana 2007). This, according to Father Arana, was an apt description of Cerro Quilish's location in the area of the continental divide separating the watersheds that drain into the Pacific and Atlantic oceans. They also told of how, if the first clouds of October appear above the crown of Cerro Quilish, it would be a year of heavy rains and bountiful harvests (Arana 2007). For Father Arana, the significance of Quilish was evidenced in the stories passed on from generation to generation and in the little "altars" made of rocks where campesinos would bring holy water, liquor, peppers, salt, candles, strands of lamb's wool or little pieces of leather. "They prayed first to God Almighty, Father of Jesus Christ, and then came the libations and offerings to the earth with trickles of water" (Arana 2007), he wrote, translating the practices of campesinos according to his understanding of religion. In this way, Cerro Quilish became a *sacred mountain*, a term that caught on in the media yet differed from what Cerro Quilish was to campesinos: an agentive being with whom people interacted and established relationships necessary to sustain life.

Like many priests working in the Peruvian countryside since the colonial period, Father Arana accepted the coexistence of Catholic saints and sentient entities, of special offerings left in rocky caves and processions in honour of Christ (like the Cristo Ramos celebrations held annually in Porcón). In his writings and reflections on Cerro Quilish, Father Arana seemed to tap into a consciousness of a world in which such mixtures were still possible, even if they were not always evident in peoples' everyday lives. In Porcón, Apus did not have the prominence that they do in the southern department of Cuzco, for example, where some mountains are the focus of yearly pilgrimages or recognized as important protectors.

In the Cajamarca region, by contrast, the influence of Spanish colonialism prevailed over many pre-colonial practices. The indigenous Quechua language is spoken only in a few communities, and a significant number of rural people attend the evangelical churches that now predominate in the region. As in other parts of Peru and Latin America, evangelical Protestantism has grown rapidly since the 1960s. According to the 2007 departmental census, 14 per cent of the population professes an evangelical religion (compared to 80 per cent who identify as Catholic). While this is a relatively small percentage, the rapid inroads made by evangelical religions in Porcón is evidenced by the proliferation of non-Catholic Christian churches. Also, since many Catholics are nonpracticing and regular church services are not available in each community, the majority of active churchgoers are evangelicals. Evangelism has had a significant influence on most aspects of everyday life, from politics and community leadership to personal habits, including the avoidance of alcohol. Evangelism also discouraged any practice that could be seen as violating its monotheistic teachings (e.g., making offerings to the dead or being fearful of places where earth-beings are said to hide).

It was in this setting that Father Arana argued Cerro Quilish was not only a mountain and not just a source of water. It was an Apu and a source of life. This message became part of his writings, interviews and sermons delivered during events organized in the defence of Cerro Quilish. The following are fragments of a homily given on Cerro Quilish during a march in August 2001:

> Quilish, for campesinos here, is still the APU, the mountain that is protector of all earthly and heavenly life. Pantheist paganism, might say those who do not understand that the campesino's relationship with nature, is the delicate thread that sustains all life.... Quilish is about to be seized from us, the destiny that the miners want to give Quilish is to transform it into some millions of dollars that will fill their pockets, without regard for the many people for whom Quilish is a source of water and, therefore, a source of life. Today we are here to tell ourselves, in the presence of God, that we renounce the avarice of gold; and that we will not allow others to transform our source of water into a handful of gold to satisfy their greed; that we will not permit that their idolatrous way of life, in which everything is sacrificed to a gold idol, continues without regard for how many lives depend on this, our source of water. (Arana 2002)

According to Father Arana, for "the miners" (meaning those involved with the mining company and more generally, its supporters), Cerro Quilish was a source of minerals and profits. That it could also be an Apu and an aquifer allowed for the moral condemnation of the materialism and greed that went along with the "idolatry of gold."

In addition Quilish's identity as an Apu challenged any arguments that justified mining activity based on economic calculations about the utilitarian value of resources. The fact that Quilish was an Apu made it incommensurable, in the sense that it was irreducible to gold or other forms of material benefits. The question ceased to be, How can Cerro Quilish be mined responsibly? (as the problem is often framed by corporations promoting an image of "Corporate Social Responsibility"); nor could the dispute be described simply as a disagreement over how communities would "benefit" from the project. The multiplicity of Cerro Quilish disrupted the equivalences at the root of proposals to "manage" the impacts of mining activity with technological solutions and compensation agreements with affected communities.

Father Arana's interpretations of Catholicism and of campesinos' relationships with Cerro Quilish were certainly controversial, and many accused him of being a "false prophet" and of introducing the idea of the Apu where it had never previously existed. Yet, the binary opposition between "authentic" indigenous tradition, on the one hand, and invented (and thus "fraudulent") interpretation, on the other, does not capture the way Cerro Quilish came to matter as both an Apu and a source of water. Father Arana's arguments were controversial precisely because they disrupted a "modern" understanding of politics, which stems from the separation of society and nature (Descola and Palsson 1996) and relegates politics to the representation of humans (society) and science to the representation of nonhumans (nature). This distinction rests on what Latour (1993:13) calls the "crossed-out God, relegated to the sidelines." Through the process of purification (the ever-increasing separation of society and nature), God was separated from the realm of the profane and relegated to the sphere of "spirituality," where it could not intervene in worldly affairs. God was made transcendent and also irrelevant and, thus, did not pose a threat to the rationality of science.

In protests against mining expansion and subsequent media coverage of these events, activists and journalists sometimes defined Cerro Quilish according to a Catholic conception of the "sacred" or a romantic vision of ancestral knowledge and relegated it to a "spiritual" dimension detached from its material properties. It could be said that Father Arana did this also and simply incorporated the idea of the Apu into his own (modern) understandings about Catholicism and environmentalism. In Father Arana's translation, an Apu is a "sacred mountain" according to "local beliefs"; this maintains the dualisms that keep earth-beings (and the worlds to which they belong) in the sphere of spirituality. Treated as *belief,* Cerro Quilish does not pose "an epistemic alternative to scientific paradigms (ecological or economic)" (de la Cadena 2010:349), making it easier to dismiss from politics.

However, it could also be said that Father Arana tried to reject reductionist analyses that interpreted the defence of Cerro Quilish in terms of two incompatible spheres: that of the mythical, spiritual, romantic and ideological or that of the technical and scientific (Arana 2007). By refusing this ontological separation, Father Arana connected the plane of the secular with that of sentient entities like Apus and infused his critique of capitalist mining with both religious teachings on morality and hydrological studies of aquifers. Thus, it could be said that Father Arana brought the "crossed-out God" back into the world of the secular (and, hence, into the realm of politics), making it impossible to settle the controversy solely through economic, technical and scientific arguments.

The campaigns in defence of Cerro Quilish evoked an animate landscape that was part of campesinos' experiences of the Cajamarca countryside. People's relationship to the beings that populated that landscape was not always expressed in everyday practice; nevertheless, it inspired the campaigns against mining at Cerro Quilish and contributed to its success. I went to Porcón with the hope of understanding people's relationships with the neighbouring mine, the resources that enabled their

subsistence and the mountain that had become so emblematic in debates over mining. I describe these experiences in the next section of the article to show that knowledge is not anchored in timeless, ancestral traditions but is constantly made through encounters and collaborative practices.

Knowledge Encounters in Porcón

In Porcón—a group of communities located along the main highway leading up to the Yanacocha gold mine—people's relationships with the mining company oscillated between dependence and rejection, resistance and cooperation. On the one hand, being part of Minera Yanacocha's "area of influence" made these communities eligible to receive various forms of support, from donations of classroom supplies to the primary school, to potable water projects, improved irrigations canals and electrification projects. On the other hand, the company's promise of employment and development went along with the recognition that mining could radically alter the landscape and ways of life, including the availability of water resources. The water used in many of these communities (for domestic and agricultural activities) originates in Cerro Quilish, and it is for this reason that many people from the area participated in the 2004 protests against the mine's expansion.

Porcón's distinctive characteristics—particularly its festivals, communal agricultural practices and artistic traditions, such as weaving and stonework—captured the imagination of urban intellectuals, NGOs, artists and activists, especially those critical of the mine. My initial contacts in Porcón were made through one such individual, Ernesto, whose fascination with what he termed the "Andean world view" (*la cosmovisión andina*) inspired his involvement in the Quilish campaigns. In one of our conversations, Ernesto explained to me that in spite of high rates of conversion to Adventism, this *cosmovisión* was something that people in Porcón carried with them and expressed in subtle ways, even if they had to outwardly behave according to evangelical teachings (which included strict codes for dress, diet and behaviour). Just as evangelical Christians could no longer participate in the Catholic festival of Cristo Ramos but still watched from a distance, he told me, the fact that people could not talk about the sun and water being "sacred" did not mean that people did not treat them as such. His enthusiasm for my plan to carry out fieldwork to learn more about life in the campo led me to Cochapampa, a small *caserío* or hamlet consisting of some 80 families that is part of Upper Porcón.

Scientists and Mountain Spirits

In Cochapampa, children and adults told me many stories about good and evil mountains, creatures that emerge from water springs at night, places one should not venture for fear of losing his or her spirit (*ánimo*), the dangers of rainbows, and the plants that cure *susto* (literally "fright," which afflicts young children in particular, when travelling in dangerous areas). Sometimes, I would ask about Cerro Quilish, thinking that people's stories could help me understand why so many had joined forces in its defence. Most of the stories I heard were not about a benevolent protector that might correspond to an environmentalist narrative or to the image of a "sacred mountain" that tended to surface in campaigns against mining. Instead, they were about harmful spirits lurking in caves and water springs, especially in mountains that, like Cerro Quilish, concealed precious minerals and other treasures to entice humans into the underworld where evil spirits reside.

These stories coincide with those in a monograph by anthropologist Ana de la Torre (1986) titled *Los dos lados del mundo y del tiempo*, which is based on research conducted in communities around Cerro Quilish between 1979 and 1980. Her informants described a *Shapi*, a being that emerges from the underworld through tunnels that end at water springs. From these water springs, the Shapi waits for its victims to steal their ánimo, tempting them with the promise of sweets, gold coins, livestock and other offerings. "Bad" mountains are those associated with the source of rivers and water springs, since water is considered the property of the Shapi. The danger of the Shapi lies in its evil intentions as well as its ability to fascinate and entice humans with promised gifts; this contradictory nature, the tension between danger and desirability, destruction and fecundity, is what produces the natural order.

When I asked about Cerro Quilish and the community's sources of water, people explained to me that the water used in Cochapampa came from the Kunguna, a small mountain with a distinctive rock façade, and the water from the Kunguna came from Cerro Quilish. Mount Kunguna was considered one of those places that one ought to approach with care, since the presence of water springs and the entities that could emerge through them could bring danger to those who ventured near them. People described the beings that emerged from the water springs as demons or evil bird-like creatures. One day I walked to the Kunguna with a group of school kids, up to the top where a wooden cross was decorated with flowers and offerings from the few practicing Catholics who have not converted to evangelism.

As we climbed on the rocks and explored Kunguna's caves, a teenage boy in the group told us, "At midnight, the mountains talk to each other."

During my time in Porcón, people's stories and accounts made evident their detailed knowledge about the location of water springs, the flow of rivers, the routes of irrigation canals and other details pertinent to their agricultural livelihoods. But my conversations with people also reminded me that the intimate, lived experience of everyday life that is often conceived as "local" knowledge, is always born from encounters (Lowe 2006; Raffles 2002; Tsing 2005). Anthropologist Julie Cruikshank explores three different types of knowledge encounters in her account of the socionatural history of glaciers in Alaska: encounters take the form of actual meetings between strangers; they are interactions between humans and a rapidly changing landscape; and they concern ongoing exchanges between stories and their subsequent readers and listeners (2005:16). Similarly, some of the knowledge encounters that shaped the socionatural history of Porcón include interactions among *porconeros* and state agents, Catholic priests, evangelical missionaries, NGOs and mining engineers. But knowledge encounters also involve elements of the surrounding landscape (both before and after mining's transformative effects) and the animate entities that make that landscape. Furthermore, encounters take place as stories about Cerro Quilish travel outside Porcón and when these stories become translated, reinterpreted and perhaps reincorporated into different knowledge practices. I learned about these multiple encounters during a conversation with Margarita, a 29-year-old mother whose husband worked at the mine. As we chatted in her house, we were joined by her 12-year-old son, Jaime. Jaime liked telling me stories about devils inhabiting the Yanacocha mine, which he had heard from his father and uncle who worked there. I asked Margarita what she knew about Cerro Quilish.

Margarita: The water that we drink comes from Quilish, they say. They say that, in Quilish, there's a lagoon inside, which rises every which way.

F: Who says this, the elders?

M: The scientists. They study it, that's why they say this. This is what they tell us.

Jaime: It's also on the radio.

M, J: They talk to each other. The devils talk to the gringos.

J: [Mount] Kunguna also talks to [Mount] Aliso.

M: And Aliso talks to Quilish.

J: They recorded this, when they talked and they play it on the radio. They speak in Quechua, in English.

F: What else do the scientists say?

M: Quilish has a lagoon inside, they say. It springs every which way.

F: That's where the water comes from?

J: Yes, it springs from the foot of the mountain. There they made a reservoir and then it comes through the pipes. That's where they take the potable water and it reaches our house.

F: So this water from the tap comes from Cerro Quilish?

M: That's what they say. A lagoon, they say.

F: Before you heard it on the radio, did people tell stories about Cerro Quilish?

M: No, we hear them on the radio. "Quilish is life." If it's mined the water will be contaminated and we'll die, like chickens [laughs].

J: There used to be frogs, but these are dead now.

M: There are no frogs now; before there were, green ones.

J: Now the mine has contaminated them.

M: On the path, you'd find them ... it's been seven, eight years that there aren't any. I used to be afraid to walk there; we'd find the little frogs, around the rocks, green ones.

Margarita went on to recount some stories her grandfather had told her, about mountains that contained gold. I asked if her grandfather had also told her stories about Cerro Quilish, and she replied:

> They used to say Cerro Quilish was evil. It would eat you. Yanacocha couldn't get there, the water springs would suck you in. Quilish was such an evil one! Little boys would die, dried up. But not anymore. It's become tame. I don't know how. Now we can get there, we're not afraid at all. Before they used to believe, our grandparents... And because of their beliefs, the children would die. But now we know the word of God and we don't believe anymore [in evil spirits]. We're not even afraid.

Margarita's account combines her grandfather's stories and NGO campaigns against mining with her own observations of water springs at the foot of Cerro Quilish and the experience of walking on paths full of frogs to the nearby community of Chilimpampa (named after the *chilin*, one of the types of frogs commonly found in the area). Many campesinos commented on the absence of frogs as a consequence of mining activity, and this concern was picked up by environmentalist campaigns and the mine's own counter-campaigns. The "scientists" she mentions could refer to members of local NGOs or to international consultants who went to Cajamarca to lend support to the Quilish campaigns. For example, a public event held in March 2004 to

present observations to Yanacocha's Environmental Evaluation Study included the participation of members of the NGO Grufides, a lawyer from Lima and an environmental scientist from Belgium. Radio spots, printed materials and educational workshops run by NGOs usually made reference to studies carried out by local and international organizations, even though the information was translated into nontechnical language. Thus, the "lagoon" refers to scientific descriptions of Quilish as an aquifer that holds water, but this idea merged with stories told in Andean communities about large subterranean lakes that exist beneath mountains. While rivers, lakes and water springs are obvious sources of water, mountains themselves can also be considered sources of water, even if they show no evidence of being so (Sherbondy 1998:229).

Jaime and Margarita attributed their knowledge about Cerro Quilish to what they heard on the radio, but in their accounts, the radio spots (produced by NGOs to raise awareness about mining) became entangled with their own conceptions about mountain beings. Mountains have human qualities and "talk to each other." They referred as well to versions of stories about gold-bearing mountains and greedy individuals who meet a tragic fate when they are confronted by evil spirits. In recent versions of this oft-told story, the "gringo" perpetrators are North Americans and Peruvians from the capital city working for Minera Yanacocha. The NGO campaigns drew from these stories to reach a rural audience, even though, as Margarita claims, people who converted to evangelism "don't believe" in them anymore. At the same time, she continued to attribute agency to Cerro Quilish when she explained that the reason Cerro Quilish no longer harms people is that "it's become tame."

The stories told by Margarita and Jaime mesh "scientific" narratives about the importance of Quilish with a world of spirits and agentive mountains. Both were necessary in order for stories about Cerro Quilish to travel outside the boundaries of Porcón and the Cajamarca region. While hydrological arguments appeal to universalizing ideals of science and environmentalism, testimonials of Cerro Quilish as an animate being appeal to the particularities of local knowledge. However, as I was constantly reminded in the field, what are usually thought of as "scientific" and "traditional" knowledge are both the result of global/local encounters that are unequal, unstable and have unpredictable effects.

Neither science nor local stories are fixed and unchanging. As they become part of new transnational contexts of global mining, environmentalism and cultural rights, they are transformed and, in turn, help transform those contexts with which they merge. Sometimes these different types of knowledge connect and sometimes they slide apart (Cruikshank 2005) but, as the Quilish case makes clear, these knowledges do not have to be based on shared interests or a common understanding of the world. Divergent knowledges can also communicate and come together in unexpected ways. One of the ways in which noncongruent knowledges came together in the Quilish controversy was in discussions around water. As I will show, arguments about the importance of Cerro Quilish as a water source were important for the campaigns against the mine, but they also helped further the interests of those in favour of the project.

Stabilizing Multiple Worlds

If the image of Cerro Quilish as an Apu held romantic appeal and added a new dimension to the antimining struggle, it was the language of aquifers that gave it scientific validity. One of the principal arguments made by activists who opposed the mining project was that the local population, both urban and rural, depended on this mountain for its water needs. Looking through papers he had collected over many years campaigning against Minera Yanacocha, Reinhart Seifert, then-president of the Cajamarca Defence Front, pulled out an old article from a local paper. He said this was where the first reference to Cerro Quilish as a mountain that "holds water" appeared. The 1996 article from a local weekly publication read: "Mayor Guerrero indicated that these mountains are the water 'sponges' or 'cushions' of the city of Cajamarca and showed concern over the possible activities of the mining company" (*Clarín* 1996). Having the city's mayor refer to Cerro Quilish as a water source was a major step in a campaign that gradually gained supporters.

Mr. Seifert had arrived from Germany in the 1980s to work for a development agency and made Cajamarca his permanent home. His radical antimining stance and fiery temperament made him a controversial figure among both critics and supporters of the mine. While recounting his involvement in the campaigns against Minera Yanacocha, he distinguished between the different strategies used to defend Mount Quilish: it was Father Arana, he told me, who embraced and helped disseminate the imagery of the sacred Apu; by contrast, he, as a scientist, was more interested in the technical arguments against mining. Their joint efforts—even if part of a sometimes conflictive relationship—are indicative of a wider network of collaboration that contributed to the effectiveness of the Quilish campaign. Even if

their interests did not always converge, an alliance was nevertheless possible.

Cerro Quilish's multiple forms—mineral deposit, Apu, sacred mountain, aquifer, "mountain that holds water" and so on—overlapped or diverged at various times throughout the conflict, and this flexibility was essential for making the struggle known beyond Cajamarca. National and international news stories that circulated about the Quilish protests consistently described the conflict as one that revolved around the defence of Cajamarca's primary source of water. For example, *La República*, a national daily with a liberal slant, referred to Cerro Quilish as an aquifer that supplies water to the city (*La República* 2004). Some national media reports mentioned the need to conduct hydrological and hydrogeological studies of the watershed before any exploration work could continue, a point that was written into an agreement between the mining company and local leaders that put an end to the protests (*El Comercio* 2004).

In missives from organizations such as Oxfam America and the international press, descriptions of Quilish as a source of water were often accompanied by references to its local significance as a sacred mountain. An article from AFP newswire stated that "campesinos justified their attitude [against exploration activity] alleging that the mountain is sacred and that the gods of Andean mythology (Apus) gave it to them 'in concession' to take care of them" (Cisneros 2004). In another article, titled "Protests Continue against Gold Prospecting on Sacred Peruvian Mountain," a journalist from the Associated Press wrote that Cerro Quilish was "historically considered an 'apu,' or deity, by local Indian communities" (Caso 2004). In the national press, the term *Apu* did not appear with great frequency, but the alleged sacredness of Cerro Quilish was nevertheless present in media coverage (e.g., Sandoval 2004) and influenced public opinion on the issue.

Before the Quilish protests, Apus and other entities were usually relegated to studies of "folklore" (or more recently, to tourism and to "New Age" and environmentalist discussions) but were not taken seriously in political debates. In addition, the idea that Cerro Quilish was an important aquifer set the conflict apart from earlier disputes around mining activity in the country. Certainly, water had previously been a concern in mining regions, particularly when rivers and streams were contaminated by mine runoff. However, the idea that a mountain needed to be protected *because* it was a source of water marked a shift in thinking about mining, water and the environment. Water helped make the Quilish issue compelling and drew the support of people who did not necessarily identify with an "environmentalist" or "antimining" stance.

In part, the shift to discussions about water related to new technologies of open-pit mining that involve moving massive quantities of earth and using chemicals that could leach into bodies of water, as well as using large quantities of water in the mining process. In modern mines like Yanacocha, the unknown and unpredictable risks associated with mining operations are the most worrisome for neighbouring communities: the lowering of the water table, the reduction of water flows in rivers and irrigation canals and contaminants that are often undetectable to the naked eye. Once Cerro Quilish was identified as a key source of water for the region, these unseen and unforeseen hazards became more tangible. Activists used these arguments to put a stop to the project and made water a key element of future conflicts.

Quilish as Water

The Quilish antimining protests, unprecedented in the country's history, prompted Minera Yanacocha's withdrawal from Cerro Quilish. Bowing to public pressure, Minera Yanacocha asked the Ministry of Energy and Mines to revoke its exploration permit. Following the protests, the mining company emitted a communiqué in which it recognized its mistakes:

> The events that took place in September have made us understand the true dimension of the preoccupations that our insistence to initiate exploration studies and activity in Quilish generated in the population, both in the countryside and the city.
>
> We have listened to the preoccupations expressed by people of the countryside and the city, with regard to the quality and quantity of water. In this respect, we will work jointly with communities with the objective of obtaining an integral and transparent solution that will allow us to protect this precious resource. (Yanacocha 2004)

Activism against the Quilish project, including scientific arguments about the importance of Quilish as an aquifer, helped make water the common language in which mining issues were discussed. During the Quilish controversy and in subsequent mining conflicts, protestors maintained that extractive activity threatened the water supply of local communities. Another recurrent argument was that mining "at the headwaters of the river basin" (*en cabecera de cuenca*) would inevitably affect the water of communities downstream and should

not be permitted. Arguments about the reduction of water in irrigation canals, toxic pollution and the disappearance of lakes and water springs made water a central actor in protest actions against mining expansion.

The focus on water in mining debates emerged alongside a national concern about water issues that were not restricted to the impacts of extractive activity but ranged from potable water and sanitation in urban areas to global water scarcity and privatization. However, "water and mining" became a prominent theme in the many water-related conferences, forums and educational events that were organized in Cajamarca and throughout the country in the years following the Quilish protests. These conferences often saw the participation of international experts and key figures, such as Father Arana and spokespeople from the mining sector. In May 2007 in Cajamarca, for example, the "First Water Forum" (organized by a coalition of actors that included Minera Yanacocha) brought together representatives from corporations, government and civil society to discuss a water management strategy for the province. In several conferences on mining organized by NGOs, water also took precedence in the presentations and discussions.

While arguments about Cerro Quilish's role as a source of water contributed to an antimining discourse, Minera Yanacocha also began to give water more attention in its public relations campaigns. These campaigns transformed Cerro Quilish into an object for technical and scientific management and sought to counter criticisms against the mining company. Much of Minera Yanacocha's public relations work focused on water issues that activists themselves had helped introduce into the debate; for example, the company disputed the claim that mining processes compromise water availability for local communities. Instead, Minera Yanacocha's educational materials and public presentations suggested that the problem was not one of water *scarcity* but of water *management*. In its public relations materials, the company argued that Cajamarca had abundant water, but it was "lost" because it was not captured and used to its full advantage before it flowed into the sea.[5] Thus, the solution lay in capturing more water by constructing water reservoirs, dykes and water tanks. Other company-sponsored projects focused on improving irrigation systems by lining canals to reduce water loss and introducing spray irrigation technologies. The company also invested in various participatory water monitoring programs that involved state institutions and local communities. These strategies reflected the company's efforts to promote an image of environmental responsibility, institutional transparency and public participation, all legitimized by scientific arguments. This emphasis on the technical dimensions of water issues reduced the complexity of Cerro Quilish and facilitated the company's efforts to refocus the debate to emphasize the management of resources.

Although not everyone accepted Minera Yanacocha's claims of environmental responsibility, its focus on water management provided the company's supporters with arguments to delegitimize the opposition and posed an additional challenge for activists. After the events of 2004, the social movement "in defence of life" that Cerro Quilish had inspired became promptly fragmented. Those who continued to protest against the mine's effects on water quality and quantity or who mobilized to oppose other expansion projects, grew frustrated by the lack of popular support at marches and other organized events. Many of them felt that Minera Yanacocha had co-opted local leaders and that the promise of jobs and development projects had effectively neutralized any opposition in communities surrounding the mine—including those in Porcón.

Conclusion

In her classic study, June Nash (1993) wrote about spirits and other beings that inhabit the mountains and have long been part of mining activity, engaged in complex negotiations with mine workers facing the dangers of the underground mines. Similarly, the Apu is part of a sentient, animate landscape disrupted by recent large-scale mining projects. However, Cerro Quilish did not already exist as an Apu according to a traditional "Andean cosmology"; rather, it came into public view through multiple interactions and knowledge practices that revolved around the antimining protests.

Father Arana's evocations of Cerro Quilish's "sacredness" resonated with urban residents, including those who shared his Catholic background. The protection of the environment from mining contamination, and the defence of Cerro Quilish in particular, came to be seen by some within this group as an intrinsic part of their Catholic duty. The idea of the "sacred" helped to translate the relationship between campesinos and Cerro Quilish into the language of Catholicism. At the same time, Cerro Quilish's identity as an Apu travelled beyond a religious audience, enrolling journalists, environmentalists and other supporters including campesinos themselves, who embraced Cerro Quilish's multiple forms in ways that helped to strengthen their claims.

The struggles over Cerro Quilish involved a large number of participants whose interests both overlapped and diverged in productive ways, contributing to the strength of the campaign against the mine. As I have

tried to show in this article, Cerro Quilish's multiple forms made it possible for the campaign to draw a diverse base of supporters and travel through international activist and media networks. I am not suggesting that Quilish's multiplicity was planned or intentionally fabricated; rather, the various actors and events I have described helped shape and bring to the forefront the particular forms that Cerro Quilish was to take at various stages in the controversy.

When the movement was at its strongest, the multiplicity of Cerro Quilish posed a challenge for Minera Yanacocha. Yet, as I have sought to show, "making matter" requires continuous effort, and the precariousness of those multiple worlds became evident at times when the movements against mining expansion became fragmented and activism weakened. Arguments about water quality and quantity that antimining activists introduced into the debates, along with the mining industry's technocratic solutions centred on environmental management, had the effect of destabilizing Cerro Quilish's multiplicity and enabling a singular reality (water) to take hold. This singularity seemed to obscure (at least temporarily) other realities from view. Yet the potential for ongoing conflict remains, for those other realities do not cease to exist. An attention to multiple worlds reveals the collaborative processes of enactment that brings entities into being. Contemporary conflicts over mining can thus be understood as an ongoing process of contestation over socionatural worlds. This is always an unfinished process and will continue as Cerro Quilish's multiple forms are enacted and reenacted in an evolving context of mining expansion in Peru.

Fabiana Li, Department of Anthropology, University of Manitoba, 439 Fletcher Argue Building, Winnipeg, Manitoba R3T 2N2, Canada.
E-mail: fabiana.li@umanitoba.ca.

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Notes

1 At the time, the property of the mine covered more than 535 square miles (1,386 sq km) (Newmont Mining Corporation 2005). The mine is located within four major watersheds spanning the continental divide.

2 For an overview of anthropological engagements with the materiality of resources, see Richardson and Weszkalnys (2014).

3 All interview excerpts and quotes from print sources are my own translation from Spanish, the language that is primarily spoken in Cajamarca.

4 Liberation theology had a particularly strong influence in Cajamarca, in part as the legacy of José Dammert, Bishop of Cajamarca between 1962 and 1992. His work with the *Rondas Campesinas* and Cajamarca's rural poor inspired many people involved in social justice activism. Bishop Dammert was a mentor to Father Arana and created the Cristo Ramos Parish in Porcón in 1990, where Father Arana served as parish priest.

5 A 2007 advertisement by Minera Yanacocha reads: "We are collecting some of the water that Cajamarca looses at sea. There is [enough] water. Let's all think about how we can collect more of it." (*Ya estamos juntando algo del agua que Cajamarca pierde en el mar. Agua hay. Pensemos todos en cómo juntamos más*).

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CONSUMING INTERESTS: Water, Rum, and Coca-Cola from Ritual Propitiation to Corporate Expropriation in Highland Chiapas

JUNE NASH
City University of New York

A growing demand for water that exceeds scarce resources is changing political and social alignments and provoking the emergence of water wars. The scarcity of water is a result of deforestation, the contamination of existing water sources, and the diversion of groundwater to commercial enterprises. These commercial enterprises include irrigation agriculture and, increasingly, consumer beverage production, especially of bottled water, now sold to people who face growing water scarcity. A natural resource once considered a blessing for all people granted by the rain gods is now a contested commodity exacerbating the growing divide between classes.

In this article, I examine ways in which a consuming interest in water that once promoted community integration in early civilizations in Mesoamerica has become a multibillion-dollar industry with sales throughout the world, based on a commodity that many local people cannot afford. The concern of preconquest civilizations to ensure the water supply was transformed by the Spanish conquerors, who drained and diverted the abundant waters in the Aztec capital and then introduced commercialized cane and maguey used in the production of rum and tequila. Adopted by indigenous pueblos as a libation in ceremonies offered to the saints and divine powers during colonial and independence times, the demand was finally diverted to the consumption of Coca-Cola and other soft drinks imported by local concessionaires responding to corporate inducements. Today the major extraction of groundwater in San Cristobal de Las Casas, Chiapas is done by the Coca-Cola

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Company. The company now bottles the water and sells it throughout the world and to the people from whom it was expropriated.[1]

The transformation of water from a deified resource to a commodified multi-billion dollar industry reveals how a public interest can be distorted by unregulated privatized expropriation. It is a morality tale that applies equally to other resources such as gold, silver, oil, and tin. Unlike these other resources, however, water has a human rights dimension; without water, humans cannot live. I have concentrated on water as a consumption product in this article because it is intrinsic to the social relations linking indigenous pueblos to their environment.[2] I include in my critique of privatized exploitation of water resources the failure of national and local governments to reach consensus on policies to address the growing shortages.

WATER IN PRECONQUEST CITY STATES

The availability of drinking water was a significant factor in the location of populations throughout Mesoamerica from the earliest known settlements hundreds of years before the Christian era to the present. In prehispanic times, growing concentrations of populations that depended on a communally controlled water supply propitiated deities who were believed to ensure a continuous flow. The confidence gained by fulfilling their obligations to the gods in ritual cycles encouraged people of early empires to perform spectacular engineering feats to control rivers and contain springs.

Possibly at the same time or even before the great ceremonial center of Teotihuacán near Mexico City developed their water control cultivation system about 500 B.C.E., precursors of the Mesoamerican civilizations in the central valleys of the state of Jalisco in western Mexico were developing chinampas, or cultivated islands anchored in lakes connected by canals that became the leading edge of horticultural activities in Mexico's central plateau. Archeological research over the past three decades by Phil Weigand and Acelia Garcia, who have examined the ecosystems of the Guachimontones site in Teuchitla, indicates that cultivators in this fragile environment were knowledgeable and concerned about soil fertility and water resources.

When I toured the site with Phil Weigand in April 2006, he pointed out the monumental lagoon where the chinampas were built and remain as islands grouped in regular blocks in canals that connected lakes. The extensive hydraulic engineering ensured the flow of water and capture of eroded topsoil in constantly enriched sites for sustained farming by inhabitants of over 2000 villages. It also provided a habitat for a variety of fish and animal species. These chinampas are, according to the

site brochure "among the earliest, most extensive and best designed cultivation fields within swamps in the whole of Mesoamerica" (Weigand and Esparza Lopez 2004:31).

Massive ritual mounds built at ceremonial sites near the springs and other sources of water, and the presence of a 2,200 meter square ball court, reveal the prosperity of the people who also developed fine pottery and sculpture. Sculptured figurines depicting dances and domestic life found in this early site and displayed in the Teuchitla museum suggest the collective basis for social organization. The widespread distribution of tools from more than 150 obsidian mines at the Guachimonton site attests to the part these people played in the circulation of ideas and techniques throughout Mesoamerica.

In the centuries after the Christian era, images of the rain god Tlaloc in Teotihuácan, and those of the Mayan rain god Chac in Palenque and Chichenitza, give further evidence of the power accorded to deities worshipped as the givers of water. This power extended to the gods of maguey and corn that produced fermented liquor that enabled humans to communicate with spiritual beings. Among the Aztecs, the goddess Mayahuel was venerated as the deity who gave pulque, the fermented juice of maguey, to humans.[3] The corn god, Ixim, was venerated not only as the provider of the main dietary staple but also as the very source of human life among Mayas throughout the Yucatan, Chiapas, and the western highlands of Guatemala. Rituals in their honor solidified the social group dedicated to maintenance of the environment, but failure in cases of drought, often led ruling elites to exact human sacrifices for the gods that promoted conflicts and even cultural collapse.

The Aztecs left their homeland in Aztlan, whose geographic location is not known, about C.E. 820, arriving in the Central Plateau about three centuries later. There they introduced chinampa cultivation into the densely populated centers where they served as mercenaries for the Culhuacán and other kingdoms. Within two centuries they were able to use their military skills to forge powerful alliances; and by the mid–13th century they established a kingdom of their own, known as Tenochtitlán. Located in a river basin encompassing 70–80-thousand hectares, the capital city was set on an island in a lake surrounded by a chain of lakes, including the marshy sweet waters of Chalco-Xochimilco, the salty bitter waters of Texcoco, and the sweet waters of Zumpango verging into the salty lake Xaltocan (Tortolero Villaseñor 2000:23).

The setting for the major Aztec temple, the templo mayor, is that of a chinampa rising out of the lake that surrounds the ceremonial center. Tlaloc, the rain god, was enthroned in the vertex of the pyramid, and four of the 18 months in the

ceremonial calendar were dedicated to the gods of rain. Like all powers of nature, the Aztecs conceived of water in the form of rains, floods and storms as potentially destructive as well as beneficial to humankind (Tortolero Villaseñor 2000:24). The lakes provided fish, turtles, frogs, toads, mollusks, and algae, and supported ducks and birds and many species of animals. Highly developed hydraulic systems made up of dykes, locks, and water transport all attest to the engineering skills of the Aztec administration, enabling them to take advantage of an abundant supply of food in areas that had been abandoned by the enemies they had defeated.

Undoubtedly, the Aztec mastery of chinampa cultivation contributed to their power in the central plateau, offering them sustained irrigated lands that were replenished with rich fertilizers from the lake bottom. They fortified this material base with an ideological and ritual structure honoring the power of rain and water deities that were related to the moon, Coyolxauki; but they placed the tribal god of war Huitzilopochtli at the apex. A gigantic image of Tlaloc, the god of water, found in the biggest chinampa site of Lake Texcoco, has recently been removed to the entrance of the National Museum in Chapultepec Park. The population density of the area—hundreds of thousands in the Valley of Mexico at the height of Aztec civilization—attests to the success of hydraulic cultivation (Sanders and Price 1968:202). But the increasingly onerous demands for sacrificial offerings of human captives to their gods engendered the hostility of neighbors and even their own population so that the Spaniards found ready allies in their invasion.

Until recently, Mayas who inhabited areas to the south in Mexico and Guatemala were thought to have relied on swidden cultivation, an extensive slash and burn process requiring that large land areas be left fallow for future use. Certain of the classic sites in Chiapas seem to be chosen for the proximity of still lakes, particularly characteristic of Ch'inkultik, just south of Palenque where the dominant ceremonial site rises about 200 meters above a series of still freshwater lakes. In the streams that flow between them one can still find lilies growing. Linda Schele and Peter Mathews (1998) hypothesize that the recurrence of the lily as an emblem of kingship in Mayan glyphs may have related to the kings' responsibility to maintain chinampas that were sustained by the tuberous roots of the lily. As yet this hypothesis has not been substantiated by any archeological dig.

In these preconquest city states, hydraulic systems reveal economic and social integration extending over large regions that were strongly focused on the control and conservation of water resources. The importance granted to water and the responsibility taken to guarantee its continued abundance contrasts with the culture introduced by the Spaniards and even more so with intensive commercial crop

cultivation promoted after 1960s. Where these practices dominate the landscape, the valuation of nature and the commitment to balance in the cosmos found in the Mesoamerican formative era are violated, just as they were by warring elites before the conquest when deforestation caused the collapse of lowland civilizations. Today for example, the Teuchitla area in western Mexico is environmentally devastated, and the river and lakes have shrunk or disappeared. The national government subsidizes extensive irrigation systems for the production of cane sugar and maguey that divert water from subsistence cultivation. Tequila, the chief product made from maguey, is a product identified not only with the town from which the name is derived but also with Mexico as a nation, yet it was recently sold to a foreign corporation, along with the water rights that sustain its production.[4] Mexico City is experiencing a water shortage, and water supplies in most large urban centers are threatened with contamination or scarcity.

I now turn to the logic and practices of the Spanish invaders and conclude by highlighting the attempts now being made by Mayas to pursue an autonomous course of development reinstating small plot cultivators and craftspeople.

THE SPANISH CONQUEST AND THE DRIVE TO DESICCATE WATERLANDS

Spaniards expressed awe and admiration for the beauty of the Aztec capital, overflowing with vegetation, flora, and birds. Fountains and canals connected lakes from which rose the artificial islands or chinampas capped with flowers and fruits. Yet coming from the arid lands of Asturias, Andalusia, and Madrid the colonial bureaucrats were bent on draining the water that impeded their plans to replace the temples and palaces of Tenochtitlan with replicas of the quarried stone cathedral and government offices that still stand in Mexico City's zocalo. They are a testament not only to the dominance and control exercised by the conquerors but also to their insensitivity to the knowledge and artistry of the people and to the environment.

In the century following their conquest of the Aztecs, the Spaniards proceeded to carry out what Tortolero Villaseñor (2000:33 et seq.) calls "an ecological destruction without parallel" in the world. They diverted waters from the lakes and canals, constructing dams in ways that caused the waters to stagnate and the fish and plants to die. They burned woodlands to make pasture for cattle, introduced plow cultivation so deep that it caused erosion, and brutally disrupted the marshy lake bottom. The soft subsoil could not support the weight of their stone buildings. Lacking the constant flow of waters through canals that kept the lake waters oxygenated, the dead waters no longer maintain the life of plants and fish.

Given their own failure to dry out the landscape, the Spaniards hired a Dutchman, De Boot, because Dutch engineers had recovered 80-thousand hectares of land from the sea between 1540 and 1615. His plan to dig a ditch around the city, expel the surplus waters with hydraulic pumps as they did in Holland, and connect the lakes with canals was rejected because it too closely replicated what the Indians had had. He was denounced as a Dutchman and a Calvinist, a spy and a heretic, and condemned to death by the Inquisition in 1636. Although the sentence was suspended, he died, apparently of natural causes, in 1638 (Tortolero Villaseñor 2000:37).

Colonial government policies were guided by the attempt to dry out the urban environment of the capital city they replaced, in effect replicating the arid environment from which the Spaniards had come. Subsequent projects spread the Spaniard's ecological disaster with the advance of hacienda cultivation in the north and in the flatlands to the east and south. The destruction that followed the conquest was accelerated through the ineptitude of bureaucrats and the rejection of often-superior techniques and practices of the Indians, setting the stage for local rebellions that ultimately brought down Spanish rule. This insensitivity to the environment persisted after independence when buildings such as the Palacio de Bellas Artes and the interrupted Benito Juarez monument meant to celebrate the power of the state sank several meters. Floods resulting from the destruction of the intricately engineered canals continue to plague the population, with Lake Texcoco periodically disgorging its waters on the Mexican capital.

CHIAPAS AND THE DELAYED REVOLUTION

The highlands of the state of Chiapas did not attract many Spaniards during the colonial period. Without the participation of indigenous people, the decision to join forces with Mexico rather than Guatemala was made by the few land barons who dominated the state in 1824, three years after Mexico had gained its independence. Promoted by liberal policies in the last quarter of the 19th century, the descendants of these elites and immigrant Europeans seized coastal lands and the better lands of Indian pueblos in highland valleys. There they established a racially divided society that maintained an impoverished, geographically isolated majority of Indians in the highlands, reduced to a subordinated status, deprived of education, and dispirited by alcoholism. Mexico's independence from Spain did not bring freedom for the indigenous people, but, rather, greater freedom for the descendants of Spaniards, deculturated and mixed blood Indians, or ladinos, to exploit Indians in feudal institutions of work. The relative isolation of indigenous townships allowed some precolonial practices to survive until the mid–19th century when the attrition of

restricted lands previously granted to Indian pueblos by the crown forced many to migrate temporarily or become peons in coastal plantations. The vision that fostered the growth of empires dedicated to cosmological forces was further attenuated by commercial activities dominated by Europeans and a growing population of ladinos.

Throughout pre-Colombian Mexico, consumption of fermented beverages was an intrinsic part of religious and secular celebrations. Powerful seers *(iloletic)* or shamans imbibed these intoxicating beverages and smoked strong tobacco cheroots to enhance their communication with the animal spirit of the patients and their malefactors to carry out a cure or intercept witchcraft. After the conquest the fermentation and distillation of sugarcane liquor, or rum, became a monopoly of religious *cargo* (lit. "burden") holders who required the drinking of *posh,* or home brewed cane liquor, in all celebrations in the calendar cycle of saints, and in curing ceremonies, betrothal rites, and in funerals. In some towns, such as Chamula, a Tzotzil speaking municipality contiguous with San Cristobal de La Casas, both the production and distribution of posh was monopolized by the elders themselves. In other towns such as Amatenango liquor production became a cottage industry with rudimentary stills discretely located in hamlets surrounding the town center.

When I was living in Amatenango during the 1960s, drinking was institutionalized in every celebration within the home as well as in the church and town hall. Civil and religious officials addressed prayers, called pat'otan (behind the heart), to the ancestors *(me'iltatil),* asking permission to swallow the drink. Liquor was considered to be the gift of our Lord Jesus Christ, derived from the bath water of the crucified Christ when he was taken down from the Cross *(s'mahtan sapilyok, sapilsk'aab yu'un tatik Jesu Kristo).* During civil and religious celebrations, officials tested each other's manliness, equated with the ability to drink a great deal without staggering. When they reached their limit of tolerance, they could not refuse it but were allowed to pour the offering into bottles carried by young boys who accompanied each official. Every young man produced his first batch of posh when he started his campaign to win a wife, a long drawn out series of visits to her parents in which gifts of liquor along with bread, chocolate, and brown sugar, played an important part. When the parents of the girl accepted the drink, the troth was announced, and then the big production of liquor for the wedding began (Nash 1973). The worth of a woman was measured in the number of liters of posh given by a youth in the betrothal match, and years after the marriage the quantity was remembered and remarked on.

In 1957, Pedrero, one of the largest cane growers who owned the sugar refinery of Pujiltic on the lower slopes of the central Chiapas plateau, used his

political connections throughout the state to make home distilled beverages illegal. Soon afterward, state police were dispatched to the towns and proceeded to flush out the moonshiners in the hill towns. I was told after the campaign that there were two killed on each side of the fight. Sensing the futility of the military campaign, the state government called in the National Indigenist Institute (INI). They proposed a reward for anyone who brought in their equipment, in exchange for which they received ancient copper coils and metal drums. These items, including pottery tinajas (or water carriers) used to capture the evaporation of the boiling sugar, made for a fine museum collection, but in the following weeks the stills were back in operation with updated copper tubing. The owners of the 41 stills operating when I was there resisted attempts by federal police to locate them, broadcasting warnings in Tzeltal of the impending raid on loudspeakers that played popular songs to attract young men to the bars they operated in town.

Given the prevalence of this consuming interest in liquor, anthropologists were attracted to the subject, resulting in a large-scale research project and extended computer analysis during the 1960s, when this technology was not much in use. The book that resulted from the investigation in three towns, Amatenango del Valle, Chamula, and Oxchuk, was entitled *Drinking Patterns in Highland Chiapas: A teamwork Approach to the Study of Semantics through Ethnography* (Siverts 1973). It was a triumph of structural functional investigation, showing minutely the functioning of the civil religious hierarchy based on age, gender, and rank as this was played out in drinking order. In the process, a great deal of liquor was imbibed, both by anthropologists and "informants," possibly promoting what was called rapport in those days. The requisite drinking in ceremonial occasions may have promoted conviviality, as the authors claimed (and I was one of them), but it also promoted a compulsive addictive behavior that was ruining the health of local people and promoting domestic violence. The interpretations generated by the research ignored both the overarching structures of inequality that held Indians in bondage and the way in which drinking behavior reproduced the relations of subordination.[5]

The high consumption of liquor not only increased the brutalizing impoverishment of indigenous people who expended so much of their labor and land on cane sugar liquor but also succeeded in anesthetizing Indians to the injustice in which they were held captive. Those who became conscious of this, especially women who were not so engaged in the ceremonial life requiring that they imbibe copious amounts of liquor, chose to convert to Protestantism because it absolved them of participating in the civil religious hierarchy. This strategy was notable, especially in Oxchuk where in the late 1940s over 5,000 adults had converted to escape the

required drinking in civil and religious ceremonies, and particularly in curing rituals where drinking was considered an essential part of the cure (Villa Rojas 1990). Women were among the first to convert and made up the majority of the converts that Villa Rojas recorded during his field work in the 1940s. The women, who were the first to accept the new faith, often converted their husbands because drinking was prohibited in the congregation, a pattern that Christine Eber (1995) recorded over two decades later in Chenalhó.

Aware of growing concern about alcohol, traditional religious leaders began to substitute soft drinks for the liquor, establishing concessions with the Coca-Cola Company or PepsiCo that were making inroads in indigenous markets during the 1980s. In Chamula, leaders of the hierarchy reinstated their monopoly with the new product replacing posh. The Coca-Cola Company advertised the beneficial health effects of the nonalcoholic drink, and the religious brotherhoods provided the infrastructure for the promotion of Coca-Cola in local celebrations that had previously served locally distilled cane liquor. The monopoly of this sale was granted by elders of the civil religious hierarchy to the Coca-Cola Company. In Amatenango, the concessions were granted through party allegiance, with Institutional Revolutionary Party (PRI) officials purchasing Coca-Cola and Party of the Democratic Revolution (PRD) officials favoring Pepsi. When I returned to Amatenango in 1987 after a 20-year absence, I found that these soft drinks were dispersed with the same ceremonial practices and prayers that had accompanied the distribution of posh during celebrations in the past. Soft drinks, including national brands as well as the U.S. brands that tended to be distributed in accord with monopolized markets, have even replaced the gift of posh in the elaborate household ceremonies of betrothal and death.[6]

The consumption of both posh and soft drinks opened indigenous society to wealth opportunities for a few, engendering a class system that divided the town between those who were part of the cacicazgo—political leaders dependent on the ruling party—and those who were not. The cacicazgo fostered political alliances between indigenous leaders and the state that debilitated indigenous autonomy more than any previous colonial or independence institutions. It became a key factor in the extreme marginalization of Chiapas after the Revolution of 1910–17, in which it perpetuated the rule of feudal land barons long after they had been superseded by modernizing agents in other states. Government services, including education, health clinics, electricity, and piped water, came late or not at all. Indigenous villages did not have any piped water service when I arrived in Amatenango in 1957, and it was not available even to residents in the center of town until a decade later. When

it was finally introduced in the late 1960s and 1970s, it was given out preferentially; those who lived in outlying hamlets or were marginalized from the government largess were the last to receive piped water, and often the hamlets that were opposed to the party in power never gained it.

Piped water has created another basis for partisan discrimination and conflict within communities. When piped water was first proposed by the INI, the curers in Amatenango did not want to have the spring waters covered and tapped with pipes because this was the site of curing rituals where patients were bathed. It was only after a year's negotiation that INI reached a compromise and diverted a stream for curing purposes. In the spring of 2004, Zinacantán's PRD officials who occupied the town offices refused to grant water to nonparty members. The resulting conflict caused two deaths. In Chamula, residents in the hamlet of Petet were discriminated against when potable water was first introduced in 1995 because they voted for the party opposed to that of incumbent PRIistas. Remote hamlets of Amatenango have never received running water.

These local conflicts are not caused by the corporations that enter into market relations with indigenous communities, yet the concession granted to soft drink companies have aggravated deep-seated conflicts based on religious and political party schisms by promoting access to privatized gains. To resist the influence of corporations requires more than a boycott of the product, as the people of Mitzitón learned in 2004 when they opposed the order of a township official who demanded that they purchase twenty cases of Coca-Cola per week for meetings so that he could retain his concession with the company. Faced with expulsions and even death threats for refusing to buy Coca-Cola from the incumbent official, the dissidents had to leave their community and colonize a new settlement in Teopisca on the basis of Catholic Word of God principles (CIEPAC 2004:3).

Many indigenous communities are beginning to reject the authoritarian rule of traditional leaders and the increasing threat to land and water resources by foreign private enterprises. Some seek autonomy, following the path of Lacandon communities that support the Zapatista Army of National Liberation that constituted themselves as Regional Autonomous Pluriethnic Pueblos on October 12, 1993. This group drafted the demands that were later codified in the San Andrés Agreement signed but never implemented in 1996 by President Zedillo.[7]

This course is being pursued by Chamula residents who have settled on the slopes of Huitepec, the volcanic peak where the major springs that supply water for the department of San Cristobal and many of its surrounding indigenous communities are found. During the presidency of Vicente Fox, who had served as the

chief executive officer of Mexico's Coca-Cola Company prior to his taking office, the federal water agency gave permission to the company to tap deep groundwater resources. The water is not metered, and the municipality does not receive reimbursement. Perhaps to confirm the concession of this precious resource, the newly installed Partido Acción Nacional president Felipe Calderon declared Huitepec a national environmental reserve. This step, which allows the federal government to abrogate land and water rights of localities, has been taken in many of the water rich environments throughout the state. Following this preemptive act, the new paramilitary organization that has been active in prime Lacandon sites since Calderon's inauguration arrived in the area and threatened the long-term settlers, claiming that they were cutting down trees in the new reserve. The settlers claim that they have not done any more than cut small trees for firewood as they have done for the past six or seven decades of residence, and that the large-scale cutting was done by the intruders. Meanwhile, Maderos del Pueblo, an activist NGO of Great Britain, supports the residents and has called environmental and human rights organizations in the area to rally around the threatened residents. When I visited the encampments of volunteers on April 12, 2007, they reported a lull in hostilities but were maintaining daily tours to ensure that no new cutting of trees occurred.

The Coca-Cola Company, which moved its headquarters from the state capital of Tuxtla Gutierrez a few years ago to take advantage of the excellent water supply in San Cristobal, has expanded its fleets of trucks that canvass the neighborhoods of the city, proclaiming their presence with a happy jingle that draws adults and children to purchase their soft drinks and the increasingly popular bottled water. The company claims to be trying to recruit indigenous workers, but the manager complained to me in an interview (March 2006) that the level of education is too low for the jobs they need to fill. As a result, he said, they are giving grants to communities such as Chamula to upgrade the educational level. When I visited the town soon after, officials told me that, to their knowledge, Coca-Cola has not invested in any educational program in town.

PRIVATIZED APPROPRIATION OF WATER IN A NEOLIBERAL ECONOMY

In global markets, the links between resource bases and consumption needs have changed. Instead of rendering liquor, candles, tobacco, and incense to the gods in thanks for their gift of water, public officials now grant concessions to foreign firms that allow them to extract unlimited quantities of an increasingly valuable

resource. In the new exchange relationship the ritual responsibilities that promoted communal integration are waived, and in their place class differences have created the basis for growing conflicts among indigenous people.

The demand for commoditized bottled water has grown as a result both of contamination of existing water supplies and new industrial uses, particularly in agroindustry. It has also grown because of the diversion of groundwater and springs to the companies that sell bottled water. During 2004, more than 154-billion liters of bottled water were consumed worldwide. The United States is a foremost consumer with 26-billion liters and Mexico is the second highest consumer with 18-billion liters.[8] The biggest gains in the sale of bottled water are in Third World countries, which face growing scarcity of clean water along with rising populations. Companies like Coca-Cola, PepsiCo, and Nestle that have always drawn on world water resources for their beverages, now use their water rights to exploit groundwater for sale. In countries that are experiencing the greatest growth in the world economy, bottled water conduces to the scarcity of potable water: in India Coca-Cola's export sales of water called Dasani have reduced the capacity of 50 cities to meet the needs of the people.

Although not always healthier than tap water in countries that purify piped water, bottled water is 10,000 times more costly if one takes into account the energy expended in bottling, commercialization, and recycling. Bottled water is also highly costly for the environment. There are few government regulations on the production of bottled waters, and some bottling companies simply take tap water and add minerals, a practice that has not always proved healthful (*La Jornada* 2006: 6a).

Investment in water services has low return when the server does not hold monopoly control of water. The Mexican government had hardly begun to provide water services to indigenous areas when the transfer of water services to the municipality began to be privatized illegally in l982. Privatization was then legalized by the reform of Article 27 of the Constitution in 1992 during Salinas's presidency. The drive to privatize rights to exploit groundwater and make it available to foreign private companies surged during Vicente Fox's presidential term. As former president of Mexico's Coca-Cola Company, Fox was instrumental in assessing the wealth of subsoil waters and asserting the need of foreign capital with the perforation technology to dig deep wells. It was no surprise when he introduced the new Law of National Waters in 2004 that authorizes the privatization of the entire hydraulic infrastructure of federal property—dams, canals, and irrigation ditches—and prioritizes the rights of extraction of water by corporations. These resources had been

considered the patrimony of the nation. The new Law of National Waters expands the creation of markets of water, taking advantage of the small farmers who can sell their right of extracting water. During his presidency the Fox administration has granted rights to exploit more groundwater in a country than ever before. The country now faces water shortages owing principally to the use of subterranean water, by large-scale agribusiness.[9]

The water hunters are now actively entering the new markets opened up by the Fox administration's reforms. Carlos Slim, a man who made his multibillion-dollar fortune in the privatization of telecommunications rights over a decade ago, has now offered to assist Mexico City with its water supply. The reform in the law at the federal level has enabled the Coca-Cola company to exploit deep wells in San Cristobal de Las Casas. Although the municipality of San Cristobal does not receive any rent or payments for the rights of exploitation of the wells, Coca-Cola Company is now selling not only their signature soft drink but also 400 product lines that now include bottled water for this increasingly scarce resource. The corporation's new distribution center in San Cristobal consolidates its market gains in consumption of Coca-Cola in indigenous territory while taking advantage of low prices for clear water in territory that was known for abundant water supplies. The market has expanded with the demands of a growing tourist industry and also of low income ladinos and Indians who have no access to groundwater. Consumption of bottled water in Mexico has doubled from 1999 to 2004 as a result of increasingly contaminated waters, and the buyers are not just tourists or young urban professionals. Indigenous entrepreneurs use the corporate frame to enhance political party goals internally at the same time that the corporation uses the local concessions to promote sales and secure their position in a sovereign nation on their own terms.

THE WORLD RESOURCE WAR IN WATER

The tenuous link between consumer and producer, stretched in the western expansion and consolidation of the capitalist market system in the 20th century, is now being severed in the third millennium. Privatization had already been legislated in the North American Free Trade Agreement, railroaded through Congress during the Clinton administration and ratified by Carlos Salinas in 1993. That agreement defines water as a tradable good, obliging all parties to sell their water resources to the highest bidder under threat of being sued by private companies that want it. These parties will be strengthened by the proposed Free Trade Area of the Americas (FTAA), which would allow foreign investors to sue and demand compensation from

governments for any law or rule that affects their profits, even when these laws are motivated by environmental considerations. (Americas Program 2004). The World Bank is now making its loans to countries conditional on the privatization of water services and resources.

We are on the brink of a new resource war that will divide the populations of the world into the haves and have-nots of water. The first major water war grew out of Bolivian popular resistance to the privatization of the Cochabamba water system. It was set off when Aguas del Tunari and Abengoa Corporations, subsidiaries of Bechtel's operations in Bolivia acquired the rights to manage the water service of Cochabamba in 1999. This concession was a response to the IMF offer of a development loan to Bolivia's government on the condition that Bolivia would sell to private corporations the municipal water system of Cochabamba and the national oil refineries. The offer was cunningly related to a World Bank report advising that no relief be granted to ameliorate the increase in water tariffs that took place (Albro 2004:235 et seq.) Massive popular mobilizations ensued, involving large segments of both indigenous and chola or mestizo populations. In the process, they generated what Albro calls a "plural popular" subject that was neither Indian nor elite and that became the base for the political success of the indigenous leader, Evo Morales in the presidential elections of 2006.

Other countries in Latin America have followed the example set by Bolivia's popular resistance to privatization. In Uruguay a 2004 plebiscite limited private participation in water services, and in Argentina the government restricted the benefits that had been customary in water contracts to private companies. This could happen in Colombia, too. Costa Rica is one of the few Latin American countries that provides public water services for all, whereas in Haiti only 50 percent are served. Water has become yet another measure of the poverty index, and investments in water services for Latin America are considered a poor market risk.

The Fourth World Water Forum, held in Mexico City in March 2006, differed markedly from the First World Forum on Water held in Marrakech. The First World Forum was organized by civil society with groups such as the Coalition of Mexican Organizations for the Right to Water and the movement for an alternative to privatization and for recognition of water as a human right setting the agenda. The agenda for the Fourth World Forum was set by financial organizations that now support it, including the Interamerican Development Bank and the World Bank. (As I have mentioned, the World Bank financing for installing water service is in fact conditional on privatizing water.) These organizations prevailed on the assembled

groups not to proclaim water as a human right (Galan et al. 2006: 43). The watered down (no pun intended) declaration, simply says that water is important for health and for the poor.

Local initiatives and community-level projects to supply, conserve, and treat water were overshadowed by very different neoconservative concerns. As a result, the NGOs and indigenous dissenters held an alternative Water Forum outside in the streets of Mexico City. An estimated l0,000 demonstrators were blocked from marching to the meeting site. They included members of communities threatened with sewage contamination, Indians whose water is being diverted to supply big cities, and farmers whose lands are scheduled to be flooded by hydroelectric projects. Mazahuas carried out a ritual asking for protection of water. Representatives of Pueblos Indígenas of Latin America announced that water is not merchandise, but life, and it ought not to be sold. "We know that some chiefs of State have not accepted satisfactorily that the liquid of the indigenous pueblos is like blood for the land; it is sacred, and therefore we respect it and for it we demand that the agenda of agreements of this forum establish actions that include us." As the most threatened consumers, they were the most forceful in protesting the threatened scarcity of water. Capitalist providers might take note that the break between consumption and production will also terminate their survival.

CONCLUSION

This brief review of transformations in the social organization of water systems from preconquest to colonial to independence to modern times reveals the need for a holistic analysis to ensure sustainable development and equitable distribution of such a basic necessity. The imposition of Spanish rule interrupted well-established adaptations to fragile environments and in so doing aggravated the scarcity of water in heavily populated areas and contributed to the concentration of power and wealth. In the early colonial period, the conquerors were able to reach water with wells of nine meters, now they have to dig 450 meters to find water.

The transformation from ritual propitiation of the gods that engaged entire populations in collective action to the private expropriation of water resources is having a profound impact on the indigenous pueblos that are now major consumers of these costly products. The shift from rum to Coca-Cola or Pepsi Cola is not entirely negative; the devastating effects of alcoholism are not nearly as apparent today as when I worked in the highlands during the 1960s. Yet the immediate effects are the dental caries that afflict the population coming of age in the 1970s, and the dehydration of infants and elders with parasites that sometimes causes

death. The delayed effects are environmental changes that are already becoming apparent, along with the increasing scarcity of a gift of the gods that is becoming too costly for the poor. The alliances made between corporate and government leaders to secure water rights without redistribution of profits to the consumers remain the most pernicious effect of privatization and monopolization of this precious resource.

The magnitude of the water crisis is made clear by the indigenous people who live on the frontiers of capitalist expansion. They are the most forceful in addressing the values that are threatened in the new resource wars for water. They remind us of a culture that promoted collective rights through practices that enhanced the environment, and the will of those who were the "keepers of water and earth" (Enge and Whiteford 1989) in earlier epochs. The privatization of a resource once considered to be the gift of gods and nature threatens universal access to a primary resource that many think should be protected by human rights covenants.

ABSTRACT

In this article, I trace consumption chains motivated by religious and secular rituals that have promoted demand for water, rum, and soft drinks in Mesoamerican communities for over 2,000 years. It describes transformations in the social organization of water systems, and how these transformations have affected indigenous communities in particular. In preconquest ceremonial centers the collective effort of the entire community contributed to the engineering of water projects and the celebration of deities who ensured the supply of water. Spanish rule brought a new array of saints, often identified with deities of natural forces, and with them cane sugar and rum with which Indians celebrated sacred holidays. Religious fraternities that once promoted imbibing of rum to facilitate communication with the gods and saints during the colonial and independence periods turned to Coca-Cola and other commercial beverages in the 1970s. The Coca-Cola Company promoted the health effects of their nonalcoholic drink and religious brotherhoods provided the infrastructure or local promotion of the drink during celebrations that once served locally distilled cane liquor in the annual cycle of fiestas. Federal concessions for extracting the groundwater of Chiapas now enable the company to produce their internationally sold products along with their newly featured bottled water. Rituals once made to the rain gods as givers of water are supplanted by political concessions to transnational corporations working with local officials in contemporary Mesoamerican communities. The transformation from ritual propitiation of the gods that engaged entire populations in collective action, to the private expropriation of water resources, has a profound impact on indigenous pueblos that are major consumers of these costly products.

Keywords: Mesoamerica, preconquest, rituals, water, consumption

NOTES

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1. Federal permits to the Coca-Cola Company were granted during the presidency of Vicente Fox, who was formerly chief executive officer of the Coca-Cola Company in Mexico. The municipality does not receive compensation for the unmetered pumping from deep groundwater reserves.
2. Intensive agricultural exploitation uses far more of the country's water supply than does bottled water, as studies to the north of Chiapas amply demonstrate. Enge and Whiteford (1989) have noted the remarkable feats accomplished by small plot farmers in the Tehuacán Valley who retain a collective organization and control of the irrigation system they devised. Roberto J. Gonzalez (2001) also indicates the scientific acuity of Zapotec farmers who have adapted the new coffee crops without abandoning their cultivation of subsistence crops. Although the impact of privatization is emphasized here, I do not overlook the dangers of government programs that ignore or reject the solutions that indigenous people make.
3. Eloise Quiñones Keher (1995), traces the roots of worship of Maguey through the goddess Mayahuel in her book *Codex Telleriano, Remenses: Ritual, Divination, and History in a Pictorial Aztec Manuscript*. Like pulque, made from maguey, mushrooms and tobacco were used by Aztec shamans to conjure up demons and the devil himself. Yucatec Mayan shamans could send diseases inflicted by underworld rulers back to the realm of the dead.
4. Researchers in the Latin America Data Base (vol. 17, no. 35, September 2006): Source Mex, Economic and Political News on Mexico. Latin American and Iberian Institute, University of New Mexico) reported the sale of Casa Herradura, on August 28, 2006, to U.S.-based Brown-Forman Corp. Other firms have recently been acquired by U.K.- and U.S.-based brands. The sale that occurred during the month for celebration of Mexican independence was usually toasted with tequila, now a bitter potion for Mexicans.
5. Sergio Navarro Pellicer's (1988) incisive analysis of aguardiente examines the way in which aguardiente reproduces the relations of subordination in Chenalhó. Eber (1995) analyzes the double subordination of women as victims of domestic abuse and ethnic subordination aggravated by alcohol.
6. Another variation in this party alliance was played out in Mitzitón where the Coca-Cola Company gave the town's storekeeper a refrigerator, chairs, tables, and free gifts in a contract that required him to sell 20 cases of soft drink a week. The storekeeper used his links with the PRI-controlled community council to force the sale of the drink on all members. When the people refused to buy the costly drinks, the PRI monopoly threatened them, and they were forced into exile (Centro de Investigaciones Económicas y Políticas de Acción Comunitaria [CIEPAC] n.d.).
7. On October 12, 1994, the Lacandon communities that supported the Zapatista Army of National Liberation constituted them as Regional Autonomous Pluriethnic Pueblos and drafted the demands that were later codified in the San Andreas Agreement signed by President Zedillo. The state has failed to implement the policies.
8. See *La Jornada* (2006: 6a) and the anthology prepared for the Fourth World Forum on Water.
9. Felix Hernández Gamundi, an engineer working with indigenous communities, spoke in Taller Popular en Defensa del Agua, April 2005, printed in *La Jornada* (Gamundi 2006). has been chipping away at the nationalized enterprises of Pemex and the Federal Commission of Electricity, permitting foreign exploitation of natural gas, illegal contracts to Repsol, Petrobras, Techint, Teikoku, and Lewis Energy Group.

   Editor's Note: Other *Cultural Anthropology* articles have examined ways capitalism reorients desire and consumption. See, for example, Debra Curtis's "Commodities and Sexual Subjectivities: A Look at Capitalism and Its Desires" (2004), Nickola Pazderic's "Recovering True

Selves in the Electro-Spiritual Field of Universal Love" (2004), and Adeline Masquelier's "Of Headhunters and Cannibals: Migrancy, Labor, and Consumption in the Mawri Imagination" (2000).

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Dam Indians: The Missouri River

Posted on March 10, 2010 by Ojibwa

The Missouri River has an important place in American history. In 1803 the United States purchased the rights to govern the Louisiana Territory, an area which spread from the Mississippi River west to the headwaters of the Missouri River. The Lewis and Clark expedition was then sent out to find the headwaters of the Missouri, to make contact with the Indians, and to report on the economic potential for the new territory. Soon after, the Missouri became the highway for non-Indian fur traders, explorers, miners, and settlers.

In 1944 Congress approved the Pick-Sloan Plan for flood control and navigation on the Missouri River. The primary beneficiaries of the Pick-Sloan plan were non-Indian farmers. The Plan involved the construction of four dams – Garrison, Fort Randall, Oahe, and Big Bend – which would impact twenty-three Indian reservations and result in the forced relocation of nearly 1,000 Indian families. Many Indian leaders would later charge that the project selected Indian lands for dam sites rather than non-Indian lands. In carrying out the plan, the Army Corps of Engineers negotiated settlements with the Indians, ignoring tribal sovereignty, Indian law, and treaty rights.

The Bureau of Indian Affairs was fully informed about the project and its impact on Indian reservations. The BIA made no objections to the project while it was debated in Congress. None of the tribes affected by the project were consulted about it.

Former Commissioner of Indian Affairs Philleo Nash would later say that Pick-Sloan “caused more damage to Indian land than any other public works project in America.” The plan ignored Indian water rights and the Winters Doctrine.

In 1946 the Army Corps of Engineers began construction on the Fort Randall Dam in South Dakota. The dam flooded 22,091 acres of Yankton Sioux land and dislocated 136 families. The reservoir also covered Fort Thompson, the largest community on the Crow Creek Reservation. As a result, the Bureau of Indian Affairs Offices were moved to Pierre, South Dakota and the Indian Health Service facilities were moved to Chamberlain, South Dakota. By placing these two services – BIA and HIS

– in two different communities it became more difficult and less convenient for the Indians needing these services.

The Army Corps of Engineers, ignoring the Yankton Treaty of 1858, tribal sovereignty, and Indian law, simply condemned the Indian land that it needed. The amount offered to Indian land owners was often significantly less than the amount offered to non-Indian land owners.

The Army Corps of Engineers also entered the Fort Berthold Reservation in North Dakota to begin construction of the Garrison Dam. The Three Affiliated Tribes of the Reservation — Mandan, Hidatsa, Arikara — had not been informed of the project. The dam would flood every acre of productive land on the Fort Berthold reservation.

When the tribes informed the Department of Interior that the homes and lands of 349 families with 1,544 people were to be flooded, the BIA simply told them to start looking for new homes.

While the Army Corps of Engineers altered the project's specifications without Congressional authorization to protect the non-Indian town of Williston, they did nothing to protect the Indian communities. The Fort Berthold tribes protested to Congress and managed to stop the funding for the project until a settlement was reached.

At one reservation conference attended by General Pick of the Army Corps of Engineers, Indians in full ceremonial dress denounced the talks. General Pick flew into a rage, canceled the negotiations, and repudiated all of the agreements which had been reached as of that time. By his failure to understand the situation, the general clearly revealed his basic ignorance of the people with whom he was dealing. General Pick's contention that the Indians were belligerently uncooperative was used by him as a reason to dictate his own settlement terms to Congress.

In 1948 the Army Corps of Engineers began construction of Oahe Dam in South Dakota. The Oahe Dam would destroy more Indian land than any other public works project in America. The project destroyed 90 percent of the timber land on the Standing Rock Sioux and Cheyenne River Sioux reservations as well as the most valuable rangeland, most of the gardens and cultivated areas, and the wild fruit and wildlife resources.

The Department of the Interior (of which the BIA is a part) signed the final agreement in 1948 for the Pick-Sloan plan to build dams which would flood the Fort Berthold Reservation in North Dakota. While the Pick-Sloan plan took great care not to drown any non-Indian towns along the Missouri River, it flooded 155,000 acres of the most fertile Indian farmland in the Great Plains.

The agreement denied Indians the right to use the reservoir shoreline for hunting, fishing, grazing, or other purposes. It also rejected tribal requests for irrigation development.

In 1950 Congress enacted legislation which established the guidelines for the negotiation of a settlement for Indian lands taken by the Oahe Dam project in South Dakota. The legislation made the Army Corps of Engineers and the Secretary of the Interior responsible for negotiating favorable settlements with the tribes. The legislation required that the settlement include payment for Indian land and improvements as well as for relocation costs.

The Standing Rock Sioux in 1951 attempted to hire their own attorney, to be paid out of tribal funds, to help in the negotiations regarding lands taken in the Pick-Sloan dam projects. The tribe wanted legal counsel which would be totally independent from the politics of the Department of the Interior. However, Commissioner of Indian Affairs Dillon Meyer rejected their choice of an attorney and allowed only a one-year contract.

The attorney selected by the tribe, James Curry, was an outspoken critic of the BIA and was one of a number of Indian claims lawyers against whom Meyer had a personal vendetta. The tribe protested Meyer's decision to the Department of Interior. The Department of the Interior did nothing as Meyer continued to publicly attack Curry.

Federal representatives from the Army Corps of Engineers and the BIA met with the Standing Rock Sioux and the Cheyenne River Sioux in 1952 to seek an agreement over lands taken from them under the Pick-Sloan dam projects on the Missouri River.

The Standing Rock Sioux asked that they be allowed to spend $500 to have their attorney attend the conference with them. Commissioner of Indian Affairs Dillon Meyer refused the request, calling it a "highjacking game." The Secretary of the Interior overruled Meyer's decision.

According to one representative from the Cheyenne River Sioux: "This is not a happy occasion. We are here to participate in the gutting of our reservation."

Representatives of the Cheyenne River Sioux in South Dakota testified before Congress in 1954 regarding land claims from the Oahe Dam of the Pick-Sloan Project. The representatives paid their own way for the BIA would allow them only five days in Washington which was not enough time to cut through the federal bureaucracy. The representatives also realized that Congress was more comfortable hearing from Indian stereotypes than real Indians. Thus, Little Cloud was instructed to speak in Lakota at the hearings, and Chasing Hawk was to translate his remarks into broken English, even though both men spoke their adopted language fluently. Members of Congress were delighted.

In the end, Congress awarded the Cheyenne River Sioux nearly $11 million which was $13 million less what the Indians felt was just compensation for their losses.

In 1958 the Army Corps of Engineers filed suit to condemn Standing Rock Sioux land which was needed for the Oahe Dam. Tribal attorneys countered with a motion to dismiss because Congress had not given specific authorization to condemn tribal land. Support for the Indian's case was provided in the 1868 Sioux Treaty which stated that land can be taken only upon payment of just compensation and the consent of adult tribal membership.

Judge George Mickelson, a former South Dakota governor, found for the tribe stating: "It is clear to this Court that Congress has never provided the requisite authority to the Secretary of the Army to condemn this tribal land. Such action is wholly repugnant to the entire history of Congressional and judicial treatment of Indians."

Two weeks after the Oahe Dam was closed and the reservoir began filling, Congress passed a settlement which provided a little more than $12 million to the Standing Rock Sioux. This was $14 million less than they had requested.

In 1959 the Army Corps of Engineers began work on the Big Bend Dam in South Dakota. The project was located on lands belonging to the Crow Creek Sioux and the Lower Brule Sioux and would take 21,026 acres of Sioux land. The reservoir would flood the town of Lower Brule.

In addition, the reservoir created by the dam would flood the reservation lands which had the greatest potential for irrigation and thus destroy the possibility of implementing plans proposed by the BIA and the Bureau of Reclamation for irrigation projects on the two reservations.

The Army Corps of Engineers filed a condemnation suit against the Crow Creek Sioux and the Lower Brulé Sioux in 1960 to obtain land for their Big Bend Project. Congress had not specially designated any power of eminent domain to the Army and the Army ignored the Court ruling regarding the Standing Rock Sioux. The Army Corps of Engineers was allowed to take title to the land. Neither the tribes themselves, their lawyers, the BIA, nor any of the Indian rights organizations protested this decision.

In South Dakota, the Army Corps of Engineers delivered payment to the Standing Rock Sioux for lands needed for the Oahe Dam project in 1960. In the midst of a fierce winter, the tribe was also given an immediate eviction notice. Indian families were forced to gather their possessions and leave the land. However, the government had not yet made available funds for the construction of new homes and the people were forced to live in trailers which they had to maintain at their own expense. The eviction date established by the Corps had been an arbitrary one. Tribal members could have remained in their old homes until the more favorable months of summer without interfering with the completion of the Oahe project.

Under 1944 legislation dealing with the electricity generated by the Pick-Sloan dams, Indians should have qualified as preferential low-cost power customers. However, the government simply ignored this and the Indians did not receive low cost electricity from the dams located on their land. It took Congress nearly 40 years to recognize that a wrong had been committed. Therefore, in 1982 authorized the Departments of Energy and Interior to make Pick-Sloan pumping power available to the Standing Rock, Cheyenne River, Crow Creek, Lower Brule, and Omaha Reservations in South Dakota and Nebraska. However, Congress did not provide for the construction of new transmission lines to these Indian projects. Existing lines owned and operated by Rural Electrification Administration cooperatives were unable to give the tribes a reduced delivery rate.

In 1983 the state of South Dakota attempted to exercise exclusive jurisdiction over hunting and fishing in the Fort Randall and Big Bend Dam project areas on the Lower Brulé Reservation. The Court of Appeals ruled in favor of the Indians and as a result both the state and the tribe enforced their regulations within the area. The state, however, was limited to enforcement over non-Indians.

In 1988 the Cheyenne River Sioux Tribe announced that they would no longer recognize South Dakota hunting licenses in the Oahe Dam project area and that hunters must obtain a tribal hunting license.

Congress authorized in 1992 nearly $91 million to the Standing Rock Sioux in compensation for damages caused by the Oahe Dam project. The legislation also established an irrigation area on the reservation and transferred the administrative jurisdiction of the land taken in the project from the Secretary of the Army (Corps of Engineers) to the Secretary of the Interior (Bureau of Indian Affairs).

In 1999 Lakota protesters established a camp on LaFramboise Island in the Missouri River in South Dakota. The camp was in protest of the Water Resources and Development Act (WRDA) which would give treaty lands to the state of South Dakota. The lands were taken from the Cheyenne River and Lower Brulé Sioux tribes by the Army Corps of Engineers in 1947 as a part of the Pick-Sloan dam project. The land was no longer needed by the Corps.

In 2000 the Army Corps of Engineers agreed to delay raising water levels in Lake Francis Case in South Dakota to allow the Yankton Sioux Tribe to recover scattered human remains. The Indian burial site was uncovered when the water levels behind Fort Randall Dam dropped. Supposedly the Army Corps of Engineers had relocated all burials in 1950 before the reservoir filled.

This entry was posted in Uncategorized and tagged American Indians, Arikara, Cheyenne River, Corps of Engineers, Dams, Hidatsa, Mandan, Missouri River, Yankton Sioux by Ojibwa. Bookmark the permalink [http://nativeamericannetroots.net/diary/406] .

Although Idle No More began before Chief Spence's hunger strike, and will continue after, her strike is symbolic of what is happening to First Nations in Canada. For every day that Spence does not eat, she is slowly dying, and that is exactly what is happening to First Nations, who have lifespans up to 20 years shorter than average Canadians.

Idle No More has a similar demand in that there is a need for Canada to negotiate the sharing of our lands and resources, but the government must display good faith first by withdrawing the legislation and restoring the funding to our communities. Something must be done to address the immediate crisis faced by the grassroots in this movement.

I am optimistic about the power of our peoples and know that in the end, we will be successful in getting this treaty relationship back on track. However, I am less confident about the Conservative government's willingness to sit down and work this out peacefully any time soon. Thus, I fully expect that this movement will continue to expand and increase in intensity. Canada has not yet seen everything this movement has to offer. It will continue to grow as we educate Canadians about the facts of our lived reality and the many ways in which we can all live here peacefully and share the wealth.

After all, First Nations, with our constitutionally protected aboriginal and treaty rights, are Canadians' last best hope to protect the lands, waters, plants, and animals from complete destruction—which doesn't just benefit our children, but the children of all Canadians.

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OCCUPY(ED) CANADA:
The Political Economy of Indigenous Dispossession

Shiri Pasternak

The political economy of Canada rests on claims of ownership to all lands and resources within our national borders. So, what, in concrete terms, does it mean to talk about Occupy(ed) Canada to express the demands of the 99 percent?

Last week, *The Globe and Mail* reported that the Canadian Forces' National Counter-Intelligence Unit has been keeping tabs on the activities of Indigenous organizations. While the Department of National Defence—the unit that released the surveillance documents—is tasked with protecting citizens from espionage, terrorists and saboteurs, the content of these co-intel reports do not contain a single shred of evidence that Canadians' safety is at stake. In fact, what these surveillance reports starkly reveal is that the self-determination, well-being, and territorial heritage of Indigenous peoples are at the heart of Indigenous protest and land reclamation.

Even Indian and Northern Affairs Canada (INAC) confirm this observation. In a 2007 presentation to the RCMP, INAC states that "the vast majority of Hot Spots" of so-called Native unrest are "related to lands and resources," with most conflicts "incited by development activities on traditional territories." It seems, in other words, that "Native unrest" is largely a euphemism for bands that are protecting their lands from ecological damage, or in the case of land claim disputes, from dispossession. More broadly, "Native unrest" has become rhetoric of dismissal for the struggle to exercise inherent Indigenous rights. So why is the Department of National Defence spying on Indigenous communities in Canada?

It is the fear of economic disruption that is driving Canada to spy on Indigenous peoples. Moreover, in recent years, it has become the fear of an exceedingly more dangerous risk to business-as-usual in this country than paranoid phantoms of espionage. It is the fear of Aboriginal Title. Since 1997, Indigenous politics in Canada have unfolded against a changing landscape of economic consequence. In that year, the Supreme Court of Canada recognized in Delgamuukw v. British Columbia that Aboriginal Title is the collective proprietary interest of Aboriginal peoples in their unceded traditional territories. Therefore, wherever treaties had not been signed, Aboriginal proprietary rights underlie provincial, federal, and private property lands. And in addition to unceded or unsurrendered lands, as Arthur Manuel and Nicole Schabus pointed out in an article in Chapman Law Review in 2005, "Many Indigenous Peoples argue that the 'spirit and intent' of the treaties also ensures Indigenous control over their traditional territories."

Unceded and treatied lands cover a massive amount of territory in Canada from coast to coast, translating into significant uncertainty for industry and government. There is no question that the active defence of Indigenous rights and lands has major economic consequences for Canada. In 1990, INAC commissioned a study by Price Waterhouse on the economic value of uncertainty associated with Indigenous claims in B.C., for example. The report concluded that around $1 billion of capital expenditures involving up to 1,500 jobs in the mining and forestry sectors would likely be affected by the land claims process.

This problem is not going away. It is only intensifying with the current global scramble for energy, minerals, oil and gas. Key natural resource projects cannot proceed without Indigenous consent and cooperation. In the last few years alone, Kitchenuhmaykoosib Inninuwug shut down Platinex mining in northern Ontario Ojicree territory, 64 B.C. First Nations threaten the development of the west coast Enbridge pipeline to the Pacific Coast from the Alberta tar sands, and local Tsilhqot'in Nation sank the Prosperity copper and gold mine at Fish Lake in B.C. Moreover, mega-projects like the Canadian Boreal Forest Agreement, Plan Nord in Quebec, and the Ring of Fire in northern Ontario have all been hampered by the failure of ENGOs, government and industry to recognize the land rights of Indigenous peoples.

These developments are hardly new. Indigenous peoples have been on the geographic frontier of capital accumulation for over 500 years of permanent resistance. Indigenous peoples' labour and lands have shaped the political economy of Canada, from the time of the fur trade to bankrolling industrialization with their lands and resources, and today, by confronting neo-liberal policy in the form of continental restructuring and intensified resource grabs.

One example of the economic role of Indigenous lands historically and today can be found in the case of railways, to which Canada maintained a pre-emption right to clear Indigenous lands, and that facilitated the industrial pathways for capitalist development. Over a hundred years later, authorities have become well aware of the risky correlation between Indigenous lands and the steel rails that cross the country from coast to coast. In an RCMP briefing to CSIS on operational responses to Aboriginal occupations and protest, the RCMP warn: "The recent CN strike [referring to the Tyendinaga Mohawk rail blockades in April 2007] represents the extent in which a national railway blockade could affect the economy of Canada." In addition to these massive expanses of treaty areas and unceded traditional territories, Indigenous lands were historically fragmented into isolated and remote reserves by successive colonial administrations. There are over 2,600 Indian reserves across Canada today.

This forced settlement resulted in a unique spatial phenomenon that unwittingly placed Indian reserves on the frontier of vital national and regional boundaries: frontiers, for example, for natural resource extraction, suburban development, military training grounds, oceans and inland waterways, state borders, and energy generation. Despite their wealth in land and resources, economic racism prevents Indigenous peoples from obtaining financial benefits from their traditional territories. Their proprietary interests have been largely ignored and Aboriginal Title is extinguished through the land claims settlement process. Chronic underfunding of reserves has deepened the gap formed by deprivation from traditional subsistence economies due to land loss and ecological deterioration. The Royal Commission on Aboriginal Peoples (RCAP) commissioner stated in 1996 that "current levels of poverty and underdevelopment are directly linked to the dispossession of Indigenous Peoples from their lands and the delegitimization of their institutions of society and governance."

In addition to systemic impoverishment, and where Indigenous populations join the 99 percent, austerity programs attack the weakest first. Murray Angus, in his slim but critical book "And the Last Shall be First: Native Policy in an Era of Cutbacks," gives three main reasons for why Indigenous people are the first ones out of the social security boat when austerity programs roll around: (1) funding—money for Indigenous people comes from the "social envelope," which is under attack; (2) demographics—Indigenous peoples are the fastest growing population—so even maintaining programs is expensive; (3) and racism—white people will look after their own first.

The government has been doling out austerity programs to Indigenous peoples for decades by downloading their responsibilities onto provincial and territorial governments, as well as through bogus self-government policies. But as bureaucrats cast around for deep cuts that Harper has demanded, austerity measures will trim whatever is left

in Aboriginal budgets that cannot be tied down. In 2010, the Aboriginal Healing Foundation lost funding, an organization that financed community-based programs to address abuse suffered at residential schools. That same year, Harper's Conservatives cut funding to the Sister in Spirit research project that brought to light hundreds of cases of missing and murdered Indigenous women. Most recently, Department of Aboriginal Affairs Minister John Duncan announced upcoming budget cuts to his department amounting to a $100 million slash.

The wealth of the nation still depends fundamentally on land. Financial investment for resource development projects is funneled through the same banks protested against across the U.S. and Canada, such as RBC Royal Bank that funds tar sands development on Treaty 8 lands. Global structural inequality can only be addressed then by questioning the sources of authority by which resources are bought and sold. If you don't own it, Canada, how can you give it away?

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DECOLONIZING TOGETHER:
Moving Beyond a Politics of Solidarity Toward a Practice of Decolonization

Harsha Walia

Canada's state and corporate wealth is largely based on subsidies gained from the theft of Indigenous lands and resources. Conquest in Canada was designed to ensure forced displacement of Indigenous peoples from their territories, the destruction of autonomy and self-determination in Indigenous self-governance, and the assimilation of Indigenous peoples' cultures and traditions. Given the devastating cultural, spiritual, economic, linguistic, and political impacts of colonialism on Indigenous people in Canada, any serious attempt by non-natives at allying with Indigenous struggles must entail solidarity in the fight against colonization.

Non-natives must be able to position ourselves as active and integral participants in a decolonization movement for political liberation,

social transformation, renewed cultural kinships, and the development of an economic system that serves rather than threatens our collective life on this planet. Decolonization is as much a process as a goal. It requires a profound recentering on Indigenous worldviews. Syed Hussan, a Toronto-based activist, states: "Decolonization is a dramatic reimagining of relationships with land, people, and the state. Much of this requires study. It requires conversation. It is a practice; it is an unlearning."

Indigenous Solidarity on its Own Terms

A growing number of social movements are recognizing that Indigenous self-determination must become the foundation for all our broader social justice mobilizing. Indigenous peoples in Canada are the most impacted by the pillage of lands, experience disproportionate poverty and homelessness, are overrepresented in statistics of missing and murdered women, and are the primary targets of repressive policing and prosecutions in the criminal injustice system. Rather than being treated as a single issue within a laundry list of demands, Indigenous self-determination is increasingly understood as intertwined with struggles against racism, poverty, police violence, war and occupation, violence against women and environmental justice.

Incorporating Indigenous self-determination into these movements can, however, subordinate and compartmentalize Indigenous struggle within the machinery of existing leftist narratives. Anarchists point to the antiauthoritarian tendencies within Indigenous communities, environmentalists highlight the connection to land that Indigenous communities have, anti-racists subsume Indigenous people into the broader discourse about systemic oppression in Canada, and women's organizations point to the relentless violence inflicted on Indigenous women in discussions about patriarchy.

We have to be cautious not to replicate the Canadian state's assimilationist model of liberal pluralism, forcing Indigenous identities to fit within our existing groups and narratives. The inherent right to traditional lands and to self-determination is expressed collectively and should not be subsumed within the discourse of individual or human rights. Furthermore, it is imperative to understand that being

AP Photo

George Gillette, chairman of the Fort Berthold Indian Tribal Council weeps as he watches Secretary of the Interior A.J. King sign away the tribe's rights to the Missouri River and the loss of 700 miles of the most fertile of tribal lands on May 20, 1948. Krug is signing a contract that turned over 155,000 of the reservation in North Dakota for the Garrison Dam and Reservoir project. In a prepared statement, Gillete said: "The members of the Tribal Council sign this contract with heavy hearts. Right now the future does not look good to us."

Echoes of Oak Flat: 4 Pick Sloan Dams That Submerged Native Lands

CHRISTINA ROSE | 9/11/15

The Oak Flat land grab is just one of many acts of the federal government that has seized Indian land or despoiled it. Dams, mines, railroads, timber roads—the reasons may vary but the results are sadly familiar.

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In 1946, the U.S. Army Corps of Engineers began construction on the first of four Pick-Sloan Flood Control Act dams that ultimately submerged nearly 700 miles of

tribal lands in the Missouri Valley from Yankton, South Dakota, to Williston, North Dakota.

Until the enactment of the Pick-Sloan plan, devised to reduce flooding and improve irrigation and travel, Indian Law and the Fort Laramie Treaty protected the rights of tribal nations to their land and water. However, once the plan was accepted by Congress, The Corps condemned the land and seized it through eminent domain.

Tribal citizens were forced from their homes in the bottomlands—the forested, naturally flooded habitat to a wide variety of plants and animals. The new dams created reservoirs, but no plans for those who were displaced by them. Medicine and food plants that had always sustained the Plains lifestyles were submerged, and loss of access to water and fishing devastated traditional lifestyles. The remaining reservation lands were primarily the less fertile prairies. In the introduction to "Dammed Indians Revisited," Vine DeLoria called the Pick-Sloan Plan "without doubt, the single most destructive act ever perpetrated on any tribe by the United States."

In Flooding The Missouri Valley: The Politics Of Dam Site Selection And Design, author Robert Kelley Schneiders explained that tribal lands were selected for damming to avoid building near established businesses and white communities, though a few were also affected. Expensive real estate would have increased the cost of the dams and tribal lands were considered inferior and underutilized, and therefore less expensive. Natives were considered easier to relocate than town and city residents who had purchased land, built homes, farms and businesses.

Construction lasted from 1946 until 1966. An article on the Daily Kos, described how the dams built at Oahe, Fort Randall, and Big Bend affected 23 reservations and forced the relocation of nearly 1,000 Native families.

Fort Randall Dam

The Fort Randall dam totally submerged the community of White Swan. Some resistant families refused to leave their homes until the water started flooding their land.

Ellsworth Chytka, now almost 80 years old, was a longtime spokesman for the Yankton Sioux Tribe. He described to ICTMN the effects of the dam on White Swan, a town and Yankton cemetery along the river.

Recalling his family's history, he said: "When they first started construction, there was a big burial mountain there, and they were putting in big steel tracts. It was just pushing them bones up right at the face of the dam. People were standing there crying. They never did consent for the dams to be built, but the government forced it."


Culturally Appropriate Chicago Blackhawks Logo by First Nations Artist Goes Viral


Trauma May Be Woven Into DNA of Native Americans

Fort Randall Dam and Lake Francis Case. c. 1965. The Corps of Engineers began storing water behind Fort Randall Dam in November 1952. Within a few months Fort Randall Reservoir stretched 25 miles upstream. By the fall of 1954 the reservoir (later named in honor of South Dakota Senator Francis Case) approached its maximum level inundating vast tracks of valley bottomland on the Crow Creek and Lower Brule Indian reservations. (Courtesy Missouri River Division/U.S. Army Corps of Engineers, Omaha, Nebraska)

In 1990, lower water levels exposed ancestral remains that had been raised and scattered by the flooding caused by the dam. “There was pipes, beads, arrowheads and other stuff laying around. We tried to tell the Army Corps of Engineers that was a spiritual area, but they would not let us use the word spiritual. Over and over they would say, ‘No, it's just a cemetery.’ Well, the government said they were going to take all the remains to the Episcopal church, and some down to Marty, South Dakota.”

Chytka said the court retained an Oklahoma company to move the remains. “But they didn’t,” he said. “I would hear them talking about, ‘Wow, you should see what we found today.’ They pilfered the graves. They never moved them. They lied to us.”

“They were literally destroying culture. Each one of them dams was put on Native land, and all of the tribes had land,” he said.

In 2000, The Corps allowed the water to remain low long enough for the Yankton Sioux Tribe to recover and rebury their ancestors’ remains.

In the May 1999 Congressional Record, Senator Thomas Daschle petitioned congress to provide funding to the Yankton and Santee nations for the flooding and erosion of more than 4,000 acres.

Garrison Dam

The Garrison Dam took 152,360 acres from the Mandan, Hidatsa, and Sahnish and forced the relocation of 325 families—94 percent of their farmland was lost. The government refused to pay the market value of $21,981,000 and instead offered the tribes a settlement of $12,605,625, about $144 an acre.

The devastating aftereffects of the Garrison Dam are still being felt, and include a wave of diabetes. The affliction had been extremely rare among people of The Tribes until their way of life was changed and they were forced to rely on government commodities due to the loss of farmland. For an in depth look at the situation see the ICTMN article below.

The Garrison Dam nearing completion in the early 1950s. (Courtesy State Historical Society of North Dakota 0073-097)

RELATED: A Dam Brings of Flood of Diabetes to Three Tribes

"The Garrison Dam could have been built at an alternate site, north of the reservation, but it wasn't," said Biron Baker, a tribal member who was interviewed in the 2006 film, Waterbuster. "We lost the 156,000 acres of fertile bottomland, rich with our history, our traditions and culture. It's all gone. And I cannot imagine not having a sense of loss and anger over that."

Big Bend Dam

Big Bend Dam in South Dakota took more than 121,026 acres of Crow Creek and Lower Brule's land best suited for irrigation.

A 1997 Senate Report stated the Fort Randall and Big Bend Dams washed away 22,000 acres of bottomland resources affecting traditional tribal lifestyle and economy.

Portions of the original Indian community of Lower Brule. (Courtesy Missouri River Division/U.S. Army Corps of Engineers, Omaha, Nebraska)

Oahe Dam

According to Native American Netroots, the Oahe Dam destroyed more Native land than any other public works project in America by flooding 90 percent of the timber and bottomland of the Standing Rock and Cheyenne River Nations.

Ronald Campbell, a Sioux Indian known as Oldest Son among his tribal brothers at the Pierre Indian Agency reins in his pony beside a 90-foot channel where the Missouri River once ran wide and free on July 19, 1958. Oldest Son had donned the ceremonial regalia of a Sioux chief for an official visit to Oahe Dam near Pierre, South Dakota. (AP Photo)

In 2000, the Standing Rock Sioux joined suit with the Yankton Sioux's NAGPRA filings when falling water levels behind the Oahe exposed remains and cemeteries. "We are doing this to protect our rights under federal law, and to defend the rights of the lineal descendants," Standing Rock Sioux Chairman Charles W. Murphy told Indian Country Today at the time. No other people in the United States are

subject to having the government conduct its affairs in such a manner as to unearth the remains of their relatives. It should not happen to the descendants of one of our chiefs."

The Sum of the Devastation

According to Flooding The Missouri Valley:

> The Pick-Sloan dams are among the largest in the world.
>
> The reservoir created by the Oahe Dam stretches 250 miles.
>
> All of the Missouri Valley bottomlands in the Crow Creek, Lower Brule, Cheyenne River Sioux, Standing Rock, and Fort Berthold reservations were submerged.
>
> How much land? According to "Dammed Indians Revisited" The dams "flooded more than 203,000 acres of Sioux land on the Standing Rock, Cheyenne River, Lower Brule, Crow Creek, Rosebud, and Yankton reservations in North and South Dakota and the Santee reservation in Nebraska.
>
> The Yankton, Rosebud, and Santee reservations lost a total of 353,313 acres for reservoir water storage.
>
> The towns of Fort Thompson (Crow Creek Reservation), Lower Brule (Lower Brule Reservation), Cheyenne River Agency (Cheyenne River Reservation), and nine towns on the Fort Berthold Reservation were flooded.
>
> Approximately 3,538 Natives were forced to relocate from the valley lands to the uplands or to off-reservation towns. Additionally, another 6,900 Indians were affected in varying degrees of severity.

Oahe Powerhouse near Pierre, South Dakota. (Wikipedia)

Glimmer of Hope?

"Now, nearly 70 years after Pick-Sloan, efforts to restore some of the Missouri River ecosystems form and function are underway—this time, with representatives of tribal nations with a voice at the table," wrote Lorraine Jessep in ICTMN.

"Members of the Missouri River Recovery Implementation Committee (MRRIC) met during the first week of May in Overland Park, Kansas. Authorized by Congress and established in 2008, MRRIC is a basin-wide collaborative forum to develop a shared vision and comprehensive plan for Missouri River recovery. It

consists of Missouri River basin tribes, states and federal agencies, stakeholders and local government."

With natural flora and fauna suffering the consequences of having the natural landscape altered, the MRRIC is trying to undo some of the damage to the environment. While the land cannot be returned unless dams are removed, as stewards of the land the tribal nations are in the best position to help improve the surrounding areas.

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In British Columbia, indigenous group blocks pipeline development

To stop oil projects from moving forward, the Unist'ot'en have set up an encampment on traditional territory

August 20, 2015 5:00AM ET

This is the second in a two-part series on Canadian government monitoring of First Nations groups over land and environmental issues. Read the first part here.

HOUSTON, British Columbia — In a remote mountain pass connecting the Pacific Coast to the interior of British Columbia, a region brimming with wild berries and populated by grouse and grizzly bears, felled and painted trees have been laid across a logging road to form an enormous message. Directed at air traffic, it reads "No pipelines! No entry!" The warning marks off land where the government of Canada and a First Nations clan hold irreconcilable views of what should happen to a 435-square-mile area each claims as its own.

Starting in 2009, the government of Canada began to issue permits for a pipeline corridor to link British Columbia's fracking fields and Alberta's tar sands with export facilities and tankers on the Pacific coast. Seeking to become a global energy superpower, Canada staked its economic future and legislative agenda on the rapid expansion of its resource and fossil fuel sectors, envisioning pipelines as the arteries of trillion-dollar hydraulically fractured gas and bitumen industries.

That year the Unist'ot'en clan of the Wet'suwet'en nation began to establish a permanent community directly in the path of three approved projects — Enbridge's $6.1 billion Northern Gateway, Chevron's $1.15 billion Pacific Trail Pipeline and TransCanada's $3.7 billion Coastal GasLink. These pipelines were to run through land that Unist'ot'en were forced from in the early 1900s, and after reoccupying the territories, the clan banned all pipelines under a hereditary governance system that predates Canada.

Although the Unist'ot'en clan, along with most other First Nations peoples in British Columbia, never relinquished its territories to Canada by way of treaty, land sale or surrender, the provincial and federal governments assert jurisdiction over these lands and have authorized widespread development. While the government maintains that First Nations must be consulted about development — though they ultimately lack veto power — by controlling access to their traditional territories, the Unist'ot'en clan is attempting to require that the government gain "consent for any activities and development that take place," as the clan put it in an Aug. 6, 2015, declaration.

"The Unist'ot'en do not recognize or honor any permits by provincial or federal regulatory or governing bodies related to our unceded traditional territories," read a letter sent by the clan to pipeline giant TransCanada. "We honor only our traditional law and are guided by our ancestors' direction to protect our territories from destruction."

Since June, the hereditary chiefs of the Unist'ot'en clan and dozens of supporters have physically impeded the Royal Canadian Mounted Police (RCMP) and TransCanada and Chevron pipeline work crews from entering the territory. Although the pipeline companies have modified their projects to skirt the Unist'ot'en's main encampment, they remain intent on building through land traditionally used by the clan.

Rejecting this prospect, the Unist'ot'en have fortified their perimeter. With heavy chains, a pickup truck, a newly installed plywood and barbed wire gate, spotlights and an emergency siren, the clan transformed a bridge to their traditional territory into an international border, monitored by a fluctuating crew of volunteer guards.

Holding their ground

Freda Huson confronts RCMP oficers on the bridge to traditional Unist'ot'en territory.

Michael Toledano

In the past three months, a series of encounters with pipeline companies and law enforcement officials have occurred at checkpoints on logging roads that lead to the clan's traditional territories. To access these roads, visitors are required to answer five questions posed by a clan representative: "Who are you?" "Where are you from?" "Do you work for industry or government that's destroying our land?" "What skills do you bring?" and "How will your visit benefit the Unist'ot'en?" The protocol is inspired by the U.N. Declaration on the Rights of Indigenous Peoples and by the clan's history of monitoring its territorial boundaries and enforcing trespass laws.

Though loggers, tree planters and a guide outfitter have been granted access to the territory since the clan instituted this protocol, pipeline contractors have been turned away. Throughout June, safety officers and TransCanada crew members, some wearing body cameras, repeatedly approached the boundary and asked camp supporters their names and if crews would be in danger if they entered the territory. Clan members believe that energy companies are gathering information to obtain a court injunction, which would oblige police to force the roads open in order to ensure that pipeline crews can work unimpeded.

On two occasions, helicopters carrying TransCanada crews were found entering the traditional territory without permission. The first crew was confronted by Unist'ot'en supporters and immediately complied when asked to leave. The second crew, escorted by an ex-military pilot and security staff, completed a day of work before volunteers grounded their helicopter by staging a sit-in beneath its rotor blades.

At the end of July, representatives of the Chevron-backed Pacific Trail Pipeline arrived at the Unist'ot'en boundary. "We're here to talk to you about doing work on your land and are requesting access onto your territory," said pipeline vice president Rod Maier.

"We've already written you letters saying that you guys don't have our consent," Freda Huson, a spokeswoman for the clan, replied. "We're not letting the last stitch of our land be taken over so we can't hunt, fish and trap or teach our young ones who they are and where they belong."

Huson's home, a cabin built five years ago in the path of Enbridge and Chevron's projects, has transformed into a base of operations for the northwestern anti-pipeline movement. Pipeline maps sprawl across her living room table, two-way radios and scanners bleat updates from remote outposts throughout the territory, and quarters of bear meat are canned in her kitchen. Her front door swings open and shut as a steady stream of activists from across North America and beyond rush in and out to grab supplies.

Outside the cabin, a community thrives in the pipelines' paths. A permaculture garden, a solar-powered electric grid, a bunkhouse, elders' trailers, campgrounds, a root cellar, a traditional Wet'suwet'en pithouse and a two-story healing center with an industrial kitchen and counseling space have all been built with crowd-sourced funds and volunteer labor.

Zeroing in

As pipeline crews have increased their presence throughout the region, so too have the RCMP. In late June, police initiated what the clan called "a campaign of harassment and intimidation on and around Unist'ot'en territory." Two police checkpoints were established on roads used by the Unist'ot'en under the pretense of ensuring safety.

For approximately two weeks, officers asked drivers and passengers traveling in the region for identification and information about their travel plans. The driver of a vehicle associated with the Unist'ot'en was stopped and questioned in a nearby town.

Some American tourists visiting the Unist'ot'en reported that they were stopped four times by RCMP officers and warned that they could be criminally charged, deported and banned from Canada if their vehicle was found impeding road access. The British Columbia Civil Liberties Association expressed concern in a letter to police that "the sudden and repeated presence of mandatory checkpoints at this location has the appearance of targeting people who are lawfully traveling to and from the camp."

'This is Unist'ot'en territory. It's not Canada. It's not [British Columbia]. We make our own laws here.'
Freda Huson

Unist'ot'en spokeswoman

Brett Rhyno, a longtime supporter of the clan, was stopped three times by police in two hours.

In the first stop, an officer rested his hands in the vehicle and indicated that he had prior intelligence on Rhyno. At the next, officers pointed a camera into the vehicle and photographed me in the backseat. I was asked to

identify myself but declined, in compliance with Canadian law. At the final stop, officers asked me to identify myself again. When I remained silent, officers identified me by name, without having been provided my personal information.

“They were using scare tactics to try and scare our supporters away,” Huson said. “It worked a bit.”

Several weeks later, two officers of the RCMP attempted to cross into Unist’ot’en territory and were stopped by clan supporters. Blocked by a volunteer who repeated, “You do not have jurisdiction to walk through here,” Sgt. Steve Rose of the Houston RCMP insisted, “Yes, I do,” and threatened to make arrests. “The RCMP have access to all of Canada to enforce the laws of Canada,” he told Huson.

“This is Unist’ot’en territory. It’s not Canada. It’s not B.C.,” Huson replied. “We make our own laws here.”

Surveilling First Nations

On Unist'ot'en territory, a large sign made of wood warns aircraft, “No pipelines, no entry.”

Michael Toledano

On Aug. 7, a suspicious person was removed from the Unist’ot’en encampment for taking photos and video without permission — the third time that the clan has suspected a police infiltrator among their supporters.

Police attention to the community dates back to at least 2010, when direct action workshops held by the clan were subject to RCMP surveillance. An RCMP intelligence report from September 2011 devotes a section to the Unist’ot’en.

More broadly, the RCMP has monitored First Nations and environmental groups at hundreds of protests, on the Web, with drones and through the use of field agents or spies. Police investigated a 71-year-old woman as a terrorist threat after she took photos of a petroleum storage facility in Vancouver. They violently dismantled an indigenous anti-fracking blockade in Elsipogtog, New Brunswick. And last year they made over 100 arrests on Burnaby Mountain, where members of the public used civil disobedience to resist the construction of a tar sands pipeline.

RCMP officials have held regular meetings with energy corporations and granted industry representatives security clearance and access to classified information. A report prepared for the petroleum industry by the

RCMP's critical infrastructure intelligence team, deemed activists with "anti-petroleum ideology" a "realistic criminal threat to Canada's petroleum industry, its workers and assets and to first responders."

In the report's appendix, an article on the Unist'ot'en published in British Columbia's Georgia Strait is reproduced in full. Summarizing threats to the Enbridge Northern Gateway, a project that the Unist'ot'en community obstructs, the report reads, "The [second] most urgent anti-petroleum threat of violent criminal activity is in northern British Columbia, where there is a coalition of like-minded violent extremists who are planning criminal actions to prevent the construction of the pipeline."

"They're trying to categorize us as violent extremists so they can legitimize what they're doing, so they can try and force their projects through here," Huson argued. "The RCMP are there to enforce the government's permits, even though they're illegal."

Since the clan issued a call for support on July 19, reinforcements and supplies have arrived daily. Helicopters and low-flying planes have conspicuously circled the camp and photographed its occupants. In Toronto, Montreal, Vancouver, Victoria and Seattle, activists have dropped banners, occupied investors' offices and held rallies in solidarity with the Unist'ot'en. At a Montreal rally, police arrested one protester and fined eight others for obstructing a roadway.

Despite being on high alert, over a long weekend in honor of British Columbia, the Unist'ot'en and their supporters sang and danced to celebrate Knedebeas Day — a holiday named for a clan head chief who instructed her grandchildren, "Let no man take this land."

They ate wild salmon pizza from a wood-fired oven and drank river water as kids played on a teeter-totter made of 2-by-4s. Elders cleaned buckets of huckleberries, and a warrior sat by the campfire sharing stories from Kanehsatake and Gustafsen Lake — armed standoffs in which Canada used military force against indigenous activists asserting their sovereignty.

On the other side of the border, Chevron crews and security teams move closer to the Unist'ot'en every day as they conduct studies and survey for a pipeline right of way. Yet, aside from the distant whir of helicopters and the occasional siren of an emergency preparedness drill, the community lives quietly, in peace.

SIX

EMPIRE

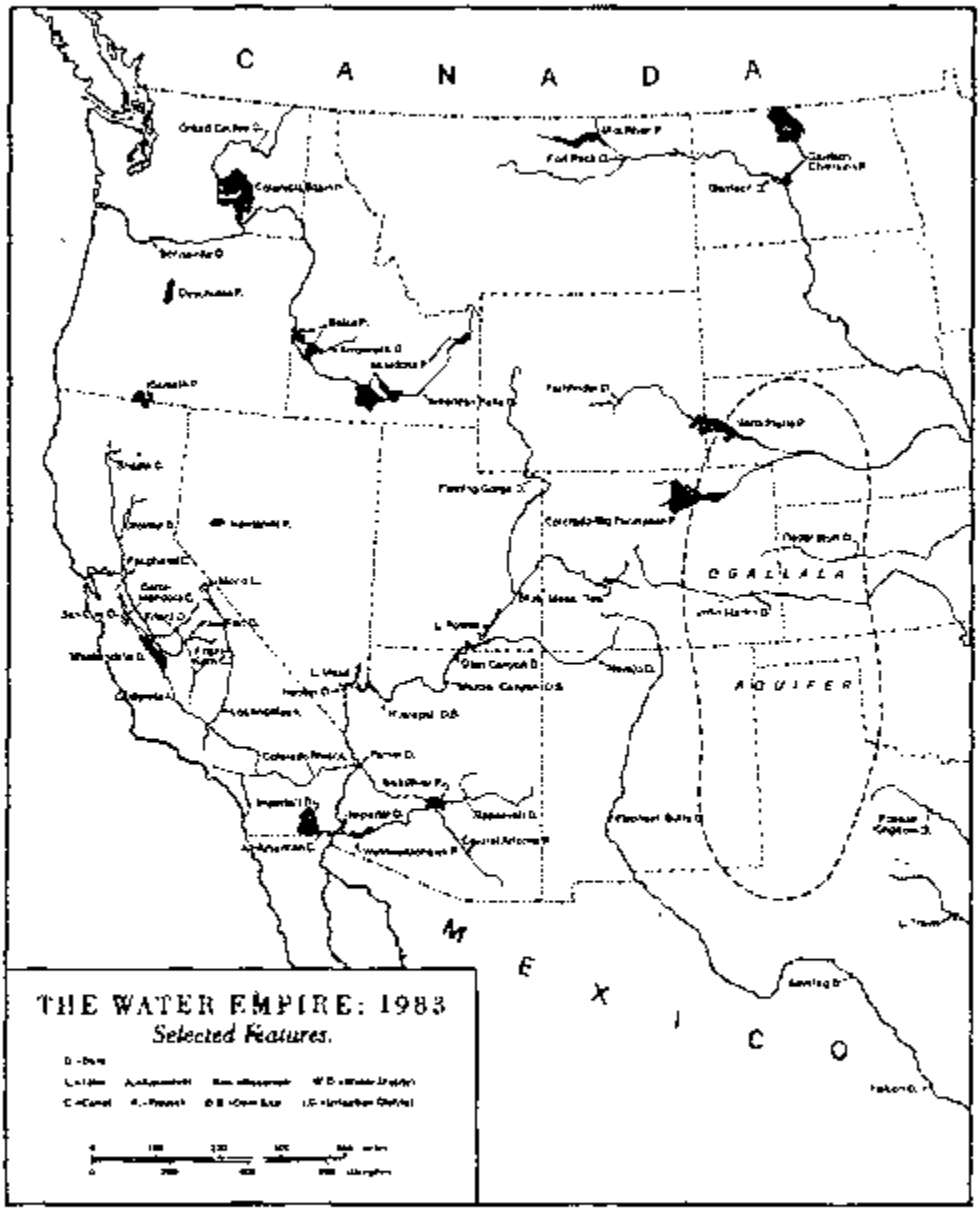
Water and the Modern West

Touch water [in the West], and you touch everything.

—*John Gunther,* Inside U.S.A. *(1947)*

There is no lack of water here, unless you try to establish a city where no city should be.

—*Edward Abbey,* Desert Solitaire *(1968)*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THE WATER EMPIRE: 1983
Selected Features.

Standing on a green Appalachian ridge and scanning west, with their backs to the crowded, constrained world of the past, early Americans found it easy to dream extravagantly of power and glory. Below them, thrown down at their feet as it were, lay an endless stretch of hardwood and pine forests, immense open parklands with deep black soils inviting a plow, a rich lacing of brooks, seeps, springs, creeks, lakes as large as seas, and in the hazy blue distance the mighty Father of Waters. They took it as self-evident that personal wealth and national power must follow such natural abundance. What they were completely oblivious of was a precisely contradictory and more plausible proposition: that power is more likely to be strenuously sought and won under the pressure of continuing environmental scarcity than of ready-to-hand abundance. The pursuit of power may go on in any setting, of course, but it generally loses impetus without the constant goad of deprivation, whether real or imagined: The experience of overwhelming bounty can blunt the drive for technological conquest, can diminish the urgency of survival, of acquisitiveness, and say to people: relax, take it easy, why worry, the future will look out for itself, already you are in paradise.

Beyond the hundredth meridian the necessary goad was more starkly, emphatically present—a dry throat, a daily uncertainty, always the danger, the anxiety, of life in a desert or near-desert. Travelers found themselves in an even more awesome space, grander by far than any Appalachian vista, one big enough for dreaming, all right, but a land too empty, barren, dusty, and austere to invite the soul to loaf and take its ease. This landscape, in its elemental scarcity of life-supporting resources, was more clearly suited to driving people on and on to power than any part of the humid, vegetative East. Though it took a while to discover the fact, the West was the natural home of the American Empire.

How could deprivation be translated into wealth and power and influence? That was the problem posed to the arid region from the beginning. The answer, as tracked in the preceding pages, was that its people had to

bend themselves to the discipline of conquest, had to accept the rule of hierarchy and concentrated force. That acceptance they seldom acknowledged, at least publicly. Again and again they told themselves and others that they were the earth's last free, wild, untrammeled people. Wearing no man's yoke, they were eternal cowboys on an open range. But that was myth and rhetoric. In reality, they ran along in straight, fixed lines: organized, regimented, incorporated men and women, the true denizens of the emergent West. It might have been otherwise, but then they would not have made an empire.

After World War Two, the western empire came at last into its own. It reigned from the 1940s on as the undisputed agricultural leader, supplying food and fiber for the nation, for the world. It took on the outlines of a new industrial behemoth, with steel mills, coal and uranium mines, assembly plants for aircraft and armaments, a scattering of scientific research institutes. Mass entertainment radiated from its cities, from Hollywood, Disneyland, the streets of San Francisco, Las Vegas, Aspen, and Dallas, radiated out over most of the globe, shaping the mass urban mind in Minneapolis and Louisville, in Manila and Rio. Out of the region came too a new generation of influential national political leaders, from Richard Nixon and Lyndon Johnson to Henry Jackson, Barry Goldwater, and Ronald Reagan, leaders whose prime instinct in many cases was to assume that America's good was the good of the American West. Accompanying that shift of economic, cultural, and political weight came a steady current of moving Americans, going West to live in unprecedented numbers. In 1965, California replaced New York as the most heavily populated state in the union—as the new empire state—counting 18.6 million inhabitants, a state richer as well as more populous than any of its eastern counterparts. And as California filled and filled, it spilled over into Oregon, Washington, Nevada, Arizona, and Colorado, buttressing its preeminence with a ring of satellites and clones. All that is not to say the West came to dominate the country in every respect. The eastern seaboard still had its Wall Street and Pennsylvania Avenue, its universities and publishing firms, and the Midwest its automobile manufacturers and Corn Belt. But the flow of power westward was unmistakable. And not to put too fine a point on it, the command over water in the region was, more than any other single factor, what made that flow possible.

The traditional notion of empire, as characterized, say, in the Old World regimes of Charlemagne or Kublai Khan or King George the Third, was of an extensive dominion ruled by a single, despotic head of state. In the hands of the Americans, empire has always been a more impersonal and indefinite notion. Emperors have not been wanted, empire has been: a condition of

absolute sway, supreme command, undisputed control over nature that would give front rank, not to any one individual, but to an entire people, their values, and their institutions. They professed to seek a technological empire, a money empire, one built on and devoted to the principles of liberal democracy, one opposed to despotism and coercion. From the beginning, however, it was a notion shot through with illusion. Imperial ambitions, whatever shape they take, must at last create imperial societies, bearing a family resemblance one to another. The empire of liberal democracy, for all its contrary promises, made that fact irresistibly clear in the postwar American West. As it came to maturity there, its structure was revealed to be one of a small power elite reigning over a large, anonymous, dependent population. That elite had both a public and a private face, the double-sided face of the modern capitalist state. It ruled in the West, as it did elsewhere, through an oligopolistic hold on capital and on expertise, but here it had the special advantage of water scarcity to justify its rule, to enhance its authority, to give it the imprimatur of necessity.

If history teaches us anything unequivocally about empires, it is that sooner or later they begin to falter. The illusions on which they are constructed eventually begin to lose their hold over the minds of people. The promises they have made are simply too grand to be delivered. Contradictions begin to mount, legitimacy to crack and flake away. The unanticipated social and ecological consequences of empire become increasingly unmanageable, just as they always have, and Leviathan starts to wobble, clutching more and more frantically at panaceas. All of those patterns began to appear in the western water empire at the very moment it neared its final triumph over a recalcitrant nature.

For all its seeming motion toward some grander destiny, nature is mainly a set of cycles, a tireless repetition of old ideas. A trickle in the highlands becomes a broad watery highway coursing through lower alluvial valleys, past dense ambitious cities, and then the river disappears, at least for a while, though beginning somewhere else as a trickle once again. History is a kind of river too, returning over and over to beginnings, completing cycles, if one stands and watches long enough. How long is hard to be precise about; the time required to complete the cycle of empire cannot be predicted with any confidence. But nothing is more certain in the modern West than that the next stage after empire will be decline.

"TOTAL USE FOR GREATER WEALTH"

Whatever its geography, its ethnic complexion, its degree of affluence or impoverishment, the colony's complaint is poignantly the same everywhere: that its fate is not in its own hands, that its wealth is being drained away to a distant metropolis, that it is made poorer so that others can be rich. The familiar remedy for the complaint among colonies of every sort is economic liberation, securing the freedom to make their own decisions and control their own destinies. For every colony which genuinely attains that liberation, several others fail. Hard as that freedom has been to achieve, however, it has not been so hard as another kind of liberation —freeing the colonists' minds to imagine fundamental alternatives to the old power relationship. The colony, in its pursuit of freedom, dreams of empire. It will throw off its chains by forging new ones, fastening them either on its own people or on its neighbors or, it may be, on the metropolis. So the eighteenth-century American colonies successfully struggled to be emancipated from the mother country and then proceeded to replicate the very institutions and drives they had despised as corrupt and exploitative. The ways of power are more easily learned and aped and improved upon than they are transcended or put aside.

No colony ever exhibited that fact more forcefully than the American West in its long, fierce quest to get out from under and on top. The expatriate Bernard DeVoto, looking again at his old home region on a visit in the summer of 1946, reassessing the region he had once called "the plundered province," saw that in pain and outrage, saw the West beginning to be caught in the coils of its own liberation. By that year the region was emerging at last from its long colonial status, he believed, thanks mainly to the New Deal and the water investments (like the Central Valley Project) it had made in the region. Those efforts at redistribution of national wealth had not been received by westerners with much grace, demanding as they did more and more of them, "demanding," wrote DeVoto, "further government help in taking advantage of them, furiously denouncing the government for paternalism, and trying to avoid all regulation." But for all the churlishness with which they were gathered in, the federal investments had "begun to make possible what had not been possible before"—an expanded resource base for the region that could raise it from its colonial dependency. All of that went down in Benny DeVoto's column as success, a thumping,

rousing, emphatic success, for he wanted to see the region realize its dream of "adult economic development and local ownership and control." What he did not like to see, what had driven him away from the West originally, was the region's slavish adherence to the imperial mentality, to what he had once termed the "desire of growth and domination." The West, he understood even in his enthusiasm for dam building, "does not want to be liberated from the system of exploitation that it has always violently resented. It only wants to buy into it, cumulative preference stock if possible."[1]

DeVoto went back to Massachusetts disillusioned and contentious, worried mainly about what western stockmen, lumber companies, and other public-land raiders were fixing to do to the West. What he did not mention was what the water-hustlers out there were lining up to do. In the next two decades or so they would lay their hands on virtually every river and tributary in the region, obliterating entire watersheds in a rage for "comprehensive, multipurpose water development." They would insist, with a sincere, breathless urgency, a frantic, intense will to believe in which was mixed the crassest self-interest and patriotic promotion, that without more and more water, death itself was stalking the land. Their anxious need to get more water, to expand their manipulation of nature, was so intense it became a kind of totalitarian impulse—a drive to capture and hold on to every single drop that fell on the West, allowing nothing to elude their tight control or stand as a challenge to their supremacy. And in their anxiety, most of it self-induced and contrived, in their unquenchable thirst for control, they would make their final push to empire.

Nowhere was the postwar mania for water engineering more pronounced than on the southern plains. Here a generation of leaders that had gone through the double trauma of depression and dust storms in the thirties, that had been looking poverty in the face for a long time, came into office advocating a program of dams, canals, and wells as their states' salvation. Perhaps no part of the West was more insecure than this one, and none more ready to place public faith in technological formulas to overcome that insecurity. They were quick also to generalize their formulas to the rest of the globe, especially the underdeveloped countries of Asia, Latin America, and Africa, where water control, they believed, would be needed, as it was at home, to save the world for democracy. Not only were droughts and dust bowls and hunger threatening humanity abroad as they were on the American plains, but there were also communists infiltrating all those places, undermining the foundations of prosperity and progress. Massive dams on the Mekong and Indus, counterparts to those on the Brazos and Platte, would drown all the enemies at once. Senator Lyndon Johnson, clawing his

way out of the obscurity of backcountry Texas, expressed that enlarging, generalizing anxiety when he wrote that "water management is . . . a decisive tool in our mighty struggle for national security and world peace." So did his colleague Robert Kerr, oilman and former governor of Oklahoma who, as the head of the Senate's Select Committee on National Water Resources, argued that river development was part of "a greater conflict," the international struggle of free peoples against godless Marxists. Whoever controlled water controlled the world's destiny.

> Can a pagan Communist nation [he asked], by enslaving and regimenting its people, make more efficient use of soil and water resources than the most advanced and enlightened nation in the world? Can ruthless atheists mobilize and harness their treasures of God-given wealth to defeat and stifle freedom-loving peoples everywhere?[2]

The answer, of course, was no—that is, it would be if Congress appropriated the money for the Kerr Plan, which would bring the Red, the White, and the Arkansas rivers under strict management, providing irrigation for the plains farmer and making Tulsa an international seaport. Thus did local ambition and global ideological conflict, a fear of deprivation and of the loss of control, all fuse and run together toward the single potent symbol of a dam.

As an exemplar of the southern plains water craze, the Texas professor Walter Prescott Webb was one of the more ironic figures. Two decades earlier he had been the man who had awakened the West to its colonial subservience and who had urged it to seek its own unique destiny in its arid condition. But by the 1950s it was clear that what he had in mind was not acceptance of and adaptation to but technological mastery over that ecology. A bigger and better industrial order than the one in the East should be created, this one to be founded on water control, making the West supreme and unassailable. In the midst of the 1953 drought, recalling earlier days when he had watched cattle dying of thirst and when his family had had to dip their water from a single scum-covered pond, he urged Texans to support Lyndon Johnson's grandiose program of federal river development. A canal, he explained, could be dug two hundred feet wide and hundreds of miles long, diverting surplus flow from the state's eastern rivers to the drier west, all the way from the Sabine to the upper Rio Grande. Such a scheme would bring "a complete revolution" to the state, he promised. It would ensure the "future growth of population, industry, and agriculture," would avert "a social and economic stagnation if not disaster," and by the

end of the century would bring as much as $8.5 billion to the Gulf Coast. There was nothing uniquely western in Webb's dream of the future. Essentially it amounted to a vision of replication of the East, where Texans would earnestly make the fullest use of their limited water in the pursuit of money and industrial giantism. In that process, he hoped, they would be able to drain power away from the old imperial centers to the rising new one.[3]

Few Westerners were as candid about their sectional rivalry as Webb, nor could they risk being so if they wanted the East's cooperation. Throughout the region, from its plains and mountains to its far coast, from the 1940s onward was heard the more politic claim that completing the West's hydraulic regime was important because it would secure for the entire country an enhanced international power. Give us more water, the promise went out year after year, help us build up the region, and we will put America in command of the earth, will keep it in that position against all threats. From the western slope of Colorado came a warning from Congressman Wayne Aspinall that without a stepped-up reclamation effort the nation would not be able to meet "increasingly severe challenges from abroad," either the Soviet bloc or capitalist competitors. A University of Arizona economist pointed out that the "creation of additional wealth-producing properties" by watering arid places had created "a new empire" in the West, and that without that empire "America would not be the world-dominating America we know at the midpoint of this twentieth century." And from the halls of the Bureau of Reclamation came a supporting chorus, insisting that the size of its budget, all lavished on the West, was a measure of national resolve. Bureau Commissioner Michael Straus threw down the challenge, "Why not survive," implying that anyone who questioned the reclamation program was in favor of American cultural suicide. The Bureau's director of project planning, J. W. Dixon, lauded the water engineer in the West as "a tool for world peace." And the burly, squareheaded, cigar-chomping Floyd Dominy, son of Nebraska homesteaders, commissioner of reclamation and perhaps the most influential agency head in the postwar era, tirelessly asserted that "achieving national goals for a stronger and more prosperous America" was what was at stake in the western plains and deserts. In all these minds, the dream of domination was powerfully compelling despite its loose and rigorless logic: the West is America, money is peace, control is freedom, survival is domination.[4]

Westerners could count not only on the Bureau for support in their grand designs. There were also such influential eastern opinion-makers as Henry Luce, a strident, unblushing ideologue through the fifties for the American Empire and Pax Americana. His *Time* magazine trumpeted the West as "the endless frontier" made possible by advanced water technology. "Irrigation

experts," the Luce establishment announced, "are now convinced that the rapidly growing U.S. can expand almost indefinitely within its present boundaries." Across the Rockies lay 50 million undeveloped acres waiting to be "watered into life," holding the promise of an agricultural productivity equal to that of France or Germany. *Time* noted they were capable of feeding 75 million people. Then there was the still untapped Mississippi, which could be pumped uphill to the high dry country, and the Columbia, which could be sent down south to the hot deserts—feats capable, the magazine promised, of inspiring "engineering ecstasy." And poised, eager, itching to lay hold on those possibilities, were the professional water managers, men who readily confessed with a grin to an awestruck reporter, "We enjoy pushing rivers around." Apparently enough Americans in every region took such brassy journalism to heart, enjoyed watching the river-pushers go to work, and were willing to pay something for the privilege. Federal money for western water development rose from $33 million in 1939 to $230 million in 1949 and stayed on that higher plateau thereafter.[5]

With popular enthusiasm stirred up by men like Henry Luce, with generous postwar appropriations from Congress, and with a dithery, ecstatic army of river improvers at its service, the West set itself the target of achieving nothing less than total control, total management, total power, or as the Bureau's own slogan, emblazoned on the covers of reports and project summaries and public relations material, put it, "total use for greater wealth." The war against European fascism and Asian militarism was over, a war waged for "unconditional surrender." Another war, the Cold War, pitting two superpowers armed with nuclear weapons against each other, had begun. And still a third war was now under way in earnest, this one to be waged against the western American landscape of scarcity, and it too would not stop short of total victory.

It drips endlessly from the roof of North America, from the cordillera of the Rockies, down from its eaves and gables and ridges, its mossy slates and piney shingles, running this way and that, running whichever way offers the least resistance. Put a barrel where it drips, and a second next to that one, and so on until the yard is full of barrels. Call part of that dripping the Rio Grande and give the barrels names too: Road Canyon, Sanchez, La Jara, Abiquiu, El Vado, Jemez, Elephant Butte, Caballo, Two Rivers, McMillan, Red Bluff, Amistad, and Falcon. Skip north across the plains with more barrels, putting them down right and left: Conchas, Possum Kingdom, Texhoma, Stillhouse Hollow, Fort Gibson, Cheny, John Martin, Kanopolis, Waconda, McConaughty, Pathfinder, Seminoe, Buffalo Bill, Glendo, Oahe, Sakakawea, Fort Peck, Yellowtail, Canyon Ferry,

Tiber. Barrel after barrel, each with a colorful name but all looking alike, quickly becoming an industry in their manufacture, with industrial sameness in their idea and use. The big ones must all be made to federal specifications and paid for by federal funding, but a thousand little private kegs and rusty pots can be deployed too. Run to the other side of the roof and put down more of them. Jackson, Blackfoot, American Falls, Dworshak, Cascade, Deadwood, Franklin Roosevelt, Potholes, McNary, Flaming Gorge, Blue Mesa, Navajo, San Carlos, Lake Powell, Lake Mead, Havasu, Laguna. Everywhere barrels filling in the spring, barrels emptying out again in the dry season. Plink, plink, save, save. It would have been a crime simply to stand by and watch it drip and run away. Waste not, want not. So the rooftop of the Rockies, in a matter of thirty or so frantic years, was ringed about with the means to capture and hoard all the falling, dripping mountain waters.

In the northern latitudes of the western United States, the two great challenges of the postwar period were the Missouri and the Columbia, along with their major branches. Neither river had been truly harnessed before World War Two, mainly because they were too much of a handful for the available money and technology and because the returns were too marginal to justify the effort anyway. So 150 years after Lewis and Clark had poled their way up its banks, the Missouri, longest river in the West, remained a treacherous, unpredictable force. Wide and shallow and filled with sandbars in the low season, a dark brown boiling of energy in spring floods, year after year it took lives and property and gave little back in profit. In its lower reaches were vulnerable floodplain settlements like Kansas City and Omaha that would have been happy simply to be protected from the river, though they would take wealth too. Upstream in Nebraska, the Dakotas, and eastern Montana were thousands of farmers who, like the southern plainsmen, had tasted a lot of blowing dust in the dirty thirties and now demanded some help in the form of irrigation from the river to stay in business. Both groups were prepared to accept some new, outside, central authority if it could tame the Missouri and deliver them from tribulation.[6]

The first agency to take on the Missouri was the Army Corps of Engineers as part of its mission to defend America against floods and improve inland navigation. For a long time that work had meant pulling snags out of the lower river, throwing up levees, and dredging deeper channels so that steamboats and barges could be safe. In 1933 Congress directed a somewhat reluctant Corps to undertake a new venture, the construction of a massive earthen dam, four miles wide, at Fort Peck in the Montana shortgrass country. This dam was to stabilize downstream navigation and store meltwater, but in 1942 and 1943 devastating floods gave more ambitious

heads in the Corps an opportunity to enlarge that role. To the forefront came Colonel Lewis Pick, a shrewd, ambitious bureaucrat-soldier, who in a terse, brief report proposed the complete dismantling of the natural river. Twenty-two dams were projected, the largest of them, Garrison in North Dakota, to be constructed on a site earlier rejected by the Corps as unsafe. Together they would cost the nation $661 million, would require the evacuation of 20,000 people (including a large Indian population from their reservations), and would cover a considerable amount of farmland with reservoirs. All this to realize what the colonel casually assumed to be self-evident benefits, not worth specifying in detail. "I mean," said Pick, "to control the water of the Missouri River."[7]

Meanwhile the Bureau of Reclamation was moving with matching fervor from an opposite direction, from headwaters and upstream reclamation possibilities toward the Corps's downriver domain. Out of their Billings office in 1944 came a proposal, drawn up by a lower functionary, W. Glenn Sloan, to construct ninety new reservoirs on the river system which would furnish irrigation water for 4.7 million acres of dry land, doubling the basin's existing reclaimed total and extending the Bureau's reach into the Dakota dust bowl. The cost was estimated at $1.3 billion, only a small part of it to be paid by farmers. If adopted independently, the plan might seriously interfere with the Corps's work, for one agency wanted to spread the river over fields while the other insisted on letting it flow in deep, steady currents in order to float commercial traffic. For two days at the Stevens Hotel in Omaha the rivals Pick and Sloan met to thrash out a compromise and save a role for both their bureaucracies. Their solution was a "Pick-Sloan" scheme in which "all the engineering features of both plans were agreed upon." Though nothing more than a paste-together job, their new, combined blueprint was a happy *modus vivendi* for each group. Together, in a cooperative spirit of river-pushing, they promised to construct an ornate hydraulic regime on the Missouri with a combined storage capacity of 83 million acre-feet, enough to give the shippers all the water they wanted and still allow irrigation diversions from Garrison and Oahe dams to open farm production east of the hundredth meridian to compensate for lands elsewhere lost in the scheme. If at points their program seemed somewhat self-defeating and irrational, a vicious circle of cost chasing cost, well, compromises can be like that. The river and the public treasury could wash over all the problems. Despite a lack of specifics on how the benefits compared with the costs involved, despite the Hoover Commission's conclusion in 1949 that Pick-Sloan was "in no sense an integrated development plan," Congress bought it. The basin subsequently fell under complex,

multiheaded federal regulation, and the grand Missouri became a series of deadwater lakes.[8]

Over on the other side of the Rocky Mountain rooftop, in the Pacific Northwest, the Army Corps of Engineers and Bureau of Reclamation were again competing, this time for the chance to manage the Columbia. Here, however, they had to deal with a river that was more a wild, cold gush than a dripping. But otherwise there were marked similarities. As in the Great Plains, water development in the Northwest subsection had lagged behind the more southerly parts of the region. The state of Washington, for example, had in 1939 only one-fifth as much irrigated acreage as California, and most of it was confined to the narrow Yakima valley—yet the mightiest river in the West looped through its territory.[9] By the forties, that retarded condition began to change quickly, as one in every four federal water dollars came to be spent in the state. And where there was an influx of money there was also the occasion for bureaucratic squabbling, for a new alignment of authority, for unbounded expectations.

The Columbia was for a long while exclusively the Army's river. Getting ocean vessels as far upstream as possible, over its many rapids, was the chief idea, and that was Army work. The Rivers and Harbors Act of 1927 gave the agency an expanded mandate to survey and build a chain of dams on the river, which it was hoped would provide smooth sailing deep into the interior. The first of those dams was Bonneville, begun in 1933 and topped off in 1938, a multipurpose structure designed to generate electricity as well as navigation. The American people heard about its virtues mainly through Woody Guthrie, who was hired to write and sing songs in praise of Bonneville. They were nasal and folksy and full of downhome spunk. "Your power is turning our darkness to dawn," one of the more familiar of them went, "roll on, Columbia, roll on." The songs were, in their way, rather more impressive than the dam itself, and the Army soon looked farther upstream to the Grand Coulee site, where there was more reason for excitement.

The main stem of the Columbia charges down from the Canadian Rockies into the United States, now running north, now south, then west, then south again, struggling to find its way through the Cascades, finally turning westward to the sea. In the Pleistocene a massive block of ice forced the river up and out of its twisty canyons, compelling it to carve a new path for itself—the Grand Coulee, a detour fifty miles long and as much as a thousand feet deep—until it could regain its established course. When the ice melted, the river reverted to the old way, leaving the Coulee a dry, abandoned trench. Falling away from that ancient, disused gash in the earth

was an immense stretch of eminently arable land, sagebrushy and cloudless, a land standing in a rain shadow, but a land that might, so local boosters believed, be transformed into an "inland empire" of agriculture, the Great Columbia Plain.[10]

A local newspaper editor, Rufus Woods of the Wenatchee *Daily World*, publicized in 1918 the notion of building a dam where the ice block had been in order to force the Columbia once more into the Coulee and, this time, to make it pay. He got nowhere with the idea. More prosaic minds had decided that the most practical strategy was to divert the Pend Oreille River somewhere east in Idaho and bring its water via a gravity canal downhill to the plain. The state hired General George Goethals, commander of the Panama Canal excavation, to advise it on the matter, and he too recommended the Pend Oreille alternative. That more than likely would have been the choice, had it not been for Idaho's determination to keep its water at home. In 1931 the Army engineers, impatient with interstate quarreling between Washington and Idaho, with the lack of resolution, threw their considerable prestige behind the Woods notion. So too did the Bureau of Reclamation, now rushing into the scene with New Deal backing. So also did President Franklin Roosevelt, who came out in 1934 to see the prospects for himself and, in the spirit of the old reclamation movement, pledged this to the gathered throngs:

> You have acreage capable of supporting a much larger population than you now have. And we believe that by proceeding with these great projects it will not only develop the well-being of the far West and the Coast, but will also give an opportunity to many individuals and many families back in the older, settled parts of the nation to come out here and distribute some of the burdens which fall on them more heavily than fall on the West. . . . You shall have the opportunity of still going West.

Senator Richard Neuberger of Oregon echoed that assurance when he predicted that a dam at Grand Coulee would make rural homes for "people in the slums and tenements of the East and the dust-bowl of the Middle-West," homes where they might "settle and cultivate a great chunk of fertile soil almost a continent removed" from their poverty. Now with humanitarianism and welfare-state largesse on its side, joined to the demands from local button-busting merchants and agriculturists, the dam soon materialized, reaching completion in 1941.[11]

Neuberger touted Grand Coulee Dam as "the biggest thing on earth," a

boast that took in a lot of territory—the Pacific Ocean, Mount Everest, Antarctica, and the like. As human contrivances go, it was indeed elephantine, a concrete plug standing in the midst of nowhere, 550 feet high and 4,200 feet long, with fully three times the mass of Hoover Dam. An artificial lake backed up behind it for 150 miles, all the way to Canada. And inside, down in the cool depths of the structure, a pack of dynamos hummed endlessly, capable of adding 50 percent to the nation's existing hydroelectric capacity, dynamos that would soon be furnishing enough energy to lift a portion of the river into the Coulee for irrigation and still have enough left over to make the Northwest the major postwar producer of military and commercial jet airplanes, a new center for the atomic bomb industry (at nearby Hanford, Washington), and the most important supplier of aluminum. Finally, there was water to provide 1,029,000 acres with irrigation, enough water to make 17,150 new farms. And that would be only the beginning, for already both the Bureau and the Army were drawing up their separate lists of future dams along the river, 142 of them from the Bureau alone, strung out along tributaries all the way to Wyoming, supplying water to 238 projects, benefitting over 5 million acres, and so the numbers went on and on. To bring all of the glittering statistics to reality, the two agencies would once more have to put their rivalries aside and share a river system with each other, share the credit for virtuosity in domination.[12]

The Columbia Basin Project, authorized in 1944 to become the main recipient of Grand Coulee water, was one of the Bureau of Reclamation's own enterprises, and the largest and most carefully planned agricultural settlement it had ever attempted. In contrast to the Great Central Valley of California, this one was explicitly to be a program in the redistribution of wealth. Virtually all of the project area was in private hands, as was also the case in California, but on the Columbia, the federal authorities were dealing with scattered, disorganized, often marginal and hardluck wheat growers and ranchers, not the likes of Joseph DiGiorgio and the Associated Farmers. Thus the Bureau could announce, without much fear of resistance, that in exchange for the cheap water it would furnish—electricity consumers would pick up 90 percent of the dam and project costs—existing owners would have to follow the Bureau's rules. They would be allowed to keep a maximum of 160 acres per farm. They must sell excess land to the government at prewater prices, eschewing speculation and windfall profits. The government, in turn, would find new buyers for it, usually in 40-, 60-, and 80-acre farm sizes. Teams of federal planners would come into the country and, in the spirit of Elwood Mead, lay out new town settlements in the project, new farm-management models, and new transportation facilities. "We were planning *for* a group about whom we knew very little," one

of them, Marion Clawson, admitted at the time, "and were not planning *with* them." It was a serious flaw in his view, but because the majority of the settlers had not yet arrived, because the Bureau's experts had to prepare the ground for them to occupy, what else, he wondered, could be done? The great advantage for the planners in that situation, of course, was that they were free to make the project, in the words of Bureau official William Warne, "not Utopian, but as near the ideal American farming community as can be."[13]

Dust-bowlers and tenement dwellers were, it must said, only a small fraction of the intended beneficiaries of the remade Columbia River, not important enough in themselves to justify the effort and expense, particularly in light of the parallel development going on to the east of the Rockies, which aimed at keeping many of them at home. No, the principal goal in the Northwest was something else, something not so very different from what it was in the southern latitudes, in California, Arizona, and Texas: to repeat from the Bureau's own mouth, total use for greater wealth. According to that agency, "we have not yet produced enough . . . to sustain a desirable and reasonable standard of living, even if goods were equitably distributed; and . . . there is no limit to the human appetite for the products of industry."[14] By that thinking the overriding goal of western water development was simple and unambiguous—the goal of making more—and yet it was an elusive goal, impossible to define or achieve, for what was "desirable" and "reasonable" was confessed at the outset to be an idea without shape or limit or the means of satisfaction.

The third of the great streams running from the roof of the Rockies was the Colorado, and in the postwar era it too came in for "total use." So total, in fact, that by the early 1960s it no longer reached the sea. Much of its annual flow had come to be lost in reservoirs, soaking away into porous sandstone or evaporating into the air. Some of it passed by a tunnel under Rocky Mountain National Park into the Platte River basin for irrigation. The largest portion was diverted into California, into its agriculture and urban settlements, through the All-American Canal and through the California Aqueduct, which sucked up water from behind Parker Dam and carried it to the Metropolitan Water District on the coast. More commitments would follow, but those were sufficient to reduce the lowest reaches of the river to a mere drainage ditch, lined and edged, carrying only runoff and local floods now and then. Down in the delta the Colorado completely dried up and disappeared.

The death of the Colorado River began with Hoover Dam but was completed by a new round of demands coming from parties that had gotten nothing out of the Boulder Canyon Project Act and were now, by the 1940s,

ready to be dealt into the game. The first claimant was Mexico, and that country threatened to make a great deal of noise in international circles unless the Americans guaranteed it a large, steady supply. Granted, Mexico contributed little precipitation to the river—virtually none, in fact—but then neither did California. Furthermore, the Mexican farmers had been drawing from the river for a long time too, and they were often poor, struggling folk meriting some help. The problem was to decide how much was Mexico's fair share and who should be obliged to give it. In 1944 a treaty between the two nations was signed, granting a minimum of 1.5 million acre-feet a year to the Mexicans, secured and delivered by the American reclamation investment. Californians, the most vociferous critics of the treaty, condemned it as "a first mortgage" on the river, as unfair competition in dry years for their heavy users, as an imposed modification of the western water-law principle of prior appropriation—and they were right. But the neighboring states, eager to get their own claims satisfied and some development under way, supported the State Department's treaty, and for a while the matter was settled.[15]

After Mexico got its share secured, the upper-basin states began lining up with buckets and barrels. By the Compact of 1922, those states (Wyoming, Colorado, Utah, and New Mexico) were reserved the rights to 7.5 million acre-feet, *after* they had made sure the lower-basin states (Arizona, Nevada, and California) got an equal amount. In truth, there would not be that much left over; more like 6.6 million acre-feet was all they could realistically expect in normal years. In a 1948 compact the upper-basin states agreed to divide whatever there was by the following formula, based on each state's contribution to the river: Colorado, 51.75 percent; Utah, 23 percent; Wyoming, 14 percent; and New Mexico, 11.25 percent; with 50,000 acre-feet set aside each year for northern Arizona. And then they went to work on Congress and the Bureau of Reclamation to build them a few dams and canals. First they would get a giant reservoir at Echo Park on the Green River, flooding Dinosaur National Monument, in order to be ensure enough water for the south. That would open irrigation development galore, up and down the western slope.[16]

For the men who wanted to flood Dinosaur, men like Senator Arthur Watkins of Utah, Bureau Commissioners Michael Straus and, later, Wilbur Bexheimer, and Secretary of the Interior Douglas McKay, an artificial lake would brighten up the dull, drab (and unvisited) canyons, would make good use of a wilderness containing nothing more valuable than a few old reptilian bones and scraggly pifions. Another group, however, with different values, suddenly appeared to battle the reclamationists, vowing to stop the Echo Park dam. They included Bernard DeVoto, who in a letter to Senator

John F. Kennedy declared, "The entire concept of reclamation needs a thorough overhauling."[17] There was also the writer Wallace Stegner, who depicted the virtues of an unflooded wild monument in *This Is Dinosaur,* along with David Brower of the Sierra Club, perhaps the most effective leader of the opposition, Howard Zahniser of the Wilderness Society, Arthur Carhart, a Denver conservationist, the New York publisher Alfred Knopf, and thousands of others in the West and East, all of them remembering with some bitterness that not three decades earlier they had lost a similar battle when San Francisco took over Hetch Hetchy Valley in Yosemite National Park for its water supply. This time they were determined to win, and win they did. The Echo Park dam proposal was scratched in March 1956, and Secretary McKay, stung by the defeat, resigned from the Eisenhower cabinet. Some other way would have to be found to get the upper Colorado harnessed.[18]

In the place of Echo Park, the Colorado River Storage Project Act of 1956 authorized a tremendous structure at Glen Canyon, just south of the Arizona-Utah border. To save Echo, Brower and the others supported a dam at this new site, much to their later regret, for it would drown some of the most spectacular canyons in the West. In its Lake Powell, named after explorer John Wesley Powell, Glen Canyon Dam would hold back two years' flow of Colorado water—as much as Hoover, its downstream mate. More than that, it would be what the Bureau called a "cash register," a generator of electrical power that would pay for all the other upper-basin features. There was to be Navajo Dam, dedicated in 1962, followed by Flaming Gorge in 1964, Blue Mesa and Curecanti on the Gunnison, the Central Utah Project, Seedskadee, San Juan–Chama, Paonia, and others. Glen Canyon Dam itself was completed in 1963. It was a plain chalk-white arch 710 feet high, wedged tightly between dark red stone walls, imposing in its clean, pure utilitarianism, impressive for its bulk if not grace; and running nonstop down in its turbine chamber was a cash register, counting up for tourists the dollars constantly being earned by the sale of electricity.[19]

And finally among the claimants seeking the death of the Colorado there was Arizona, a poor stepchild, left to the last and unhappy with its plight. What could be done for Arizona? Not much until it gave in to the federalization of the Colorado and ratified the 1922 compact, which, under pressure from the Mexican treaty, it got around to doing in 1944. Having done that, Arizona, rallying around the leadership of its aging but persistent United States Senator Carl Hayden, immediately began agitating for a federal program to bring the river into its dry interior. The water, it was said, was desperately needed, for Phoenix and Tucson were beginning a population

explosion that in the postwar decades would take them to metropolitan status. Competing against them for local supplies were the irrigators of the Salt and Gila valleys, using 95 percent of the water and still coming up short. In 1940, the state pumped 1.5 million acre-feet from its ancient underground deposits dating from as far back as the Ice Age. In 1953, it pumped 4.8 million acre-feet. Unable to agree on state legislation to control that unrestrained pumping, Arizonans looked off to the Colorado for their salvation. Repeatedly, from 1947 on, Hayden got the Senate to approve a billion-dollar Central Arizona Project under the auspices of the Bureau of Reclamation, only to have the California delegation in the House of Representatives stop it, claiming as they did that there was not enough river left for any large new diversions. Indeed there was not, for California was by then using 5.2 million acre-feet, not the 4.4 suggested as a fair share by Congress in the Boulder Canyon Project Act. Arizona, more angered and impatient with its big thirsty neighbor than ever, filed suit in 1952 to settle once and for all its rights and those of California. "The subsequent trial," writes Norris Hundley, "proved to be among the most complicated and hotly debated in Supreme Court history."[20] When it was settled in 1964, after fifty lawyers and a court-appointed special master had worked on it, Arizona emerged smiling and triumphant. It could lay claim, the court agreed, to a full 2.8 million acre-feet of the Colorado, plus the full flow of its own tributaries—though Arizona had to give a million of its allotment to several Indian tribes, which had suffered even more than white Arizonans had as mere stepchildren of the river.

With the competing claims settled, Congress was now ready to pass the last major water-development legislation for the Southwest, the Colorado River Basin Project Act of 1968, featuring the Central Arizona Project and a handful of little gifts tacked on for its friends and supporters. The CAP would begin on the eastern shore of Lake Havasu, created by Parker Dam, where a pump would slurp 1.2 million acre-feet a year up through a pipe and tunnel, through the Buckskin Mountains, into the Granite Reef Aqueduct. That great concrete channel would transport the water eastward across the state, 307 miles in all, first to Orme Dam northeast of Phoenix, then on south in the Tucson Aqueduct, through and over and past more pumps, mountains, deserts, Indian lands, suburban sprawl, until there was nothing left in the ditch. The first water began running in 1985. Total cost of the CAP, mounting higher and higher as the years went on, was in the billions of dollars, a sum that exceeded, so a couple of the state university economists admitted, the direct benefits from the project. Thankfully all of it was federal money or it would not have been there to spend. The energy bill was staggering too. Originally the plan had been to run the pumps on

hydroelectricity generated by two more Colorado River dams, one at Marble and the other at Bridge Canyon, the latter creating a reservoir that would bury a portion of the Grand Canyon National Park.[21] Once more the environmentalists buckled down to battle to save a last piece of the natural river, and once more—for the second time in the century—they were victorious. Once more, however, they lost something as well, for the energy to make the CAP go would be derived instead from coal strip-mined on Hopi sacred lands at Black Mesa in northern Arizona and burned in the Navajo Generating Station near Page, polluting the crystalline desert air with ash and poison gas.[22]

The Central Arizona Project was authorized exactly one hundred years after Powell led his small party down the unknown Colorado and exactly fifty years after the Boulder Canyon Project was passed. In the span of that century, even more so of that second half-century, the southwestern desert had been replaced over much of its extent by an astonishing urban and agribusiness complex, while the Colorado itself had been transmogrified into an industrial artifact, an almost perfectly realized expression of the new imperial West. What those northern rivers, the Missouri and Columbia, were still struggling toward, the Colorado had become—a part of nature that had died and been reborn as money.

For scale of engineering, for wealth produced, the American West had become by the 1980s the greatest hydraulic society ever built in history. It had far eclipsed not only its modern rivals but also its ancient ones, Mesopotamia, Egypt, Mohenjo-Daro, China, and the rest. It had made rivers run uphill, made them push themselves up by their own energy, and celebrated the achievement in brilliant neon colors playing over casinos, corporate offices, shopping malls, over all its new-age oases. It had turned an austere wilderness into sparkling serpentine seas where fleets of motorized houseboats circled under hot cloudless skies, where water skiers turned playfully in and out of once desolate, forbidding chasms. Then it had taken that same water and raised cotton with it, filled city pools with it, thrown it in the air with fountains and let it blow away. It had made its rivers over to produce art, learning, medicine, war, vulgarity, laughter, stinginess, and generosity. All this it had done with unmatched zeal, and most of it with the aid of the East.

To appreciate the awesome magnitude of this new hydraulic civilization, one had to start with its improbable farms, the foundations of its urban, industrial life, and they were legion and lush. The Census of Agriculture reported in 1978 that there were 45,433,535 irrigated acres in the seventeen western states: one-tenth of the world's total. California was still the

leader, with 8.6 million acres; but Texas had surged into second place, with 7 million, followed by Nebraska with 5.7 million and by Idaho and Colorado with 3.5 million each. The market sales from those lands amounted to one-fourth of the nation's annual total, or $26 billion (Florida, the only eastern state with substantial irrigation, contributed a small part of that figure), roughly the value of the sum of American farm exports. Taken by counties, all but one of the top ten agricultural producers were in the irrigated West, and eight were in California alone. Of the leading 100 counties in farm-product sales, California counted 21, Texas 13. Such figures, revealing as they were of the geographical shift in agricultural preeminence, only hinted at the political brawn of these western farmers, who were in most cases gathered around their ditches and water-management needs into muscular organizations.[23]

The irrigated West, it must be added, was not yet a single coordinated monolith, for it included thousands of farmers who remained on their own, as independent entrepreneurs, continuing to pump their water from aquifers with private equipment, as well as remnant small-scale, local water cooperatives. But far and away the major force in agricultural water supply, preempting the field with its capital and expertise, drawing western ranchers and growers into a regionwide network unapproached for cohesion elsewhere, was the Bureau of Reclamation. In its seventy-fifth anniversary report, the Bureau proudly listed its accomplishments: 9.1 million acres irrigated on 146,000 farms; 322 storage reservoirs constructed, 345 diversion dams, 14,490 miles of canals, 34,990 miles of laterals, 930 miles of pipelines, 218 miles of tunnels, 15,530 miles of drains, 174 pumping plants; 49 power plants marketing more than 50 billion kilowatt-hours a year over 16,240 miles of transmission lines. It had invested nearly $7 billion for irrigation purposes alone. Most of the electricity went to the cities, and the Bureau also furnished water for 16 million municipal and industrial consumers. "Builder of the West" was the way the agency was described by one of its longtime employees, and what he might have added, but did not, was that in no other major American region had a single federal agency devoted itself so single-mindedly to so narrowly regional a mission as this one, to the responsibility, as the same writer put it, of "marshalling resources to sustain the growth of the West."[24]

In rationalizing this work, from the time of Francis Newlands on, the claim had been drummed in repeatedly that western agricultural investment benefitted every American, wherever he or she lived. For example, Congressman Aspinall, the consummate water politician to whom was due the greatest credit for the size of postwar water budgets, argued that federal reclamation made children "bigger, stronger, more alert, and healthier than

their parents were" by filling them up with irrigated oranges and vegetables. What's more, the farmers out there pumped money back into the national economy. By his figures, the North Platte Valley Project, to take a single case, had cost the government $22.5 million, but each year of late it had paid back $16 million in taxes and ordered as many as 20,000 boxcars of merchandise from all over the country, thereby stimulating "American business and prosperity." The Bureau too was an old hand at trotting out the justificatory data, pointing out in 1977 that eleven of its projects had, during their existence, surpassed $1 billion each in gross crop value (led by the Central Valley, Imperial Valley, Minidoka-Palisades in Idaho, Yakima, Colorado–Big Thompson, Salt River, and the relatively new Columbia Basin)—over $4 billion worth of crops grown that year from federal water, enough to feed 32 million people.[25] The figures were all true, and the economic benefits indeed substantial, as these sincere, devoted zealots believed. What was missing from their accounting, however, was any acknowledgment that the success of the West was, to a sizable extent, the failure of the East. Those boxcars of tractors and radios would, in the absence of the reclamation program, largely have gone to places like Tennessee and Ohio, especially if the government had put that $7 billion of reclamation money into helping poorer farmers there improve their skills and productivity.

Few of the crops in the West had to be grown there exclusively. Most could have been more cheaply raised in humid environments, and they would have been, had been, are raised there yet. The most common crop on federally watered farms, the Bureau itself reported, was forage to feed cows—not people—constituting 37 percent of all acres in production. Another 25 percent of reclaimed lands grew the staple cereals, mainly corn, wheat, and barley, none of them unique to the West. The southerner's traditional crop of cotton appeared on one in ten Bureau acres. Only 17 percent of Bureau-aided lands were devoted to vegetables, fruits, and nuts, and the percentage in winter-season lettuce or in citrus fruit, filling out and diversifying the American diet, was a minuscule portion of that. Clearly the West was in extensive, direct, subsidized competition with the East. The consequence of that fact, a pair of resource economists commented, was that "increased production on reclamation-served land has increased USDA payments [paid out since the New Deal, paradoxically, to reduce surpluses], stimulated regional production shifts, and reduced the incomes of nonreclamation farmers." Bureau projects, they calculated, had forced out of use at least 5 to 18 million farm acres in the East. Though there had been a net gain in national production, it had been achieved by sending thousands of rural men and women into bankruptcy, forcing them to drift to the cities

looking for work, for few of them were able or willing to take up a new farm in the West.[26]

Here, then, were the outstanding achievements of the western hydraulic society—its triumphs over nature, its bright green wealth sprouting out of what had once been a dry, cracked landscape—and some of its costs entailed elsewhere. And at home, in the West, what was the structure of power associated with those triumphs? Had the region in fact become a model democracy, as forecast by a succession of promoters? Was it a society in which power and profit were broadly diffused—was it, after all, a people's Eden? Or was it instead, more or less as the earlier hydraulic societies had been, a hierarchical system of power, of unequal life-chances, of some humans dominating others? Were there concentrated, centralized forms of authority there, and did the individual and the small community stand before them in futility and impotence?

A number of observers have examined the question of power in the postwar West and its relationship to water, and virtually all of them have agreed that there has been an immense ballooning of the state, which is to say, the federal government and its bureaucratic apparatus, in the region. It would be hard to maintain otherwise—like trying to refute the setting of the sun. However, the observers have disagreed over the effects of that state apparatus on private power, over its implications for community freedom and autonomy, over its relation to festering social inequities. And, disagreeing over those matters, they have been at odds when it comes to suggesting how and by whom water should be apportioned in the future or how a genuinely democratic West would deal with its rivers.

One set of observers, and they are among the most listened-to critics of the modern hydraulic society, are the free-market advocates. What they have perceived emerging in the West is a big bruiser of a state that has shouldered private enterprise out of the water-development business, poured capital into projects that cannot meet the tests of market rationality, and played favorites when it comes to doling out the resource. The West by their account begins to look like a throwback to mercantilist England in the days before Adam Smith and laissez-faire enlightenment. Representative of this group of critics is the disillusioned New Dealer and *Newsweek* columnist Raymond Moley, who in the mid-1950s delivered a scathing attack on western reclamation, calling it a "paternalistic rainbow" and the Bureau behind it a "Napoleonic" institution in its overweening ambition. Money was being taken from the American public in the form of taxes, he charged, and redistributed according to the social values of powerful bureaucrats, and those bureaucrats favored western farmers over eastern farmers, over

urban dwellers, and over industrialists who wanted water too. Three economists—Jack Hirschleifer, James DeHaven, and Jerome Milliman—made the same case a few years later when they accused the Bureau of suffering from a "monument syndrome," of building immense, costly works that were simply not good business investments. Supplying water, they complained, seems persistently to evolve into a "natural monopoly" in which prices and benefits bear little relation to costs and both freedom and reason are sacrificed. They proposed "a decentralization of authority" in making decisions about water and stated: "The cause of human liberty is best served by a minimum of government compulsion and, if compulsion is necessary, local and decentralized authority is more acceptable than dictation from a remote centralized source of power."[27] The same argument would appear in one form or another over the succeeding decades. The West, it goes, is excessively dominated, insofar as water is concerned, by the federal government, and that government is surrounded by a pack of sycophants. In the eyes of the more extreme market theorists, the region is saddled with a bureaucratic despotism not so very different from that Karl Wittfogel found in the ancient world. Only the restoration of a free, private market in water supply, investment, and pricing would bring this monster tumbling down.

A contrary critique, so dissimilar that one might well wonder whether it can possibly have been provoked by the same West, has come from another group, who might be called the "public-interest liberals." They have found the region to be a fragmented, chaotic structure of power that is incapable of working for, incapable even of perceiving, the common good: a shabby little house of private desires. In one of its rooms, the Bureau of Reclamation squabbles endlessly with the Army Corps of Engineers over who will dam what, while in an adjacent room a knot of congressmen in Stetsons and string ties are elbowing one another aside at the federal trough, diving for pieces of pork; roaming about the floor everywhere are local farmers with their hands out, their pockets open, their voices demanding and lustful. The great failing of the region from this view is that there has been too little effective central power and too weak a sense of collective purpose in the conquest of water. Rivers can never be exploited for total yield, for maximum efficiency, this critique goes, until some new superior source of authority is located that can take a broad view and do the job in a coordinated fashion. As Charles McKinley wrote in his critical study of the Columbia River schemes, "these waters are a part of a great single force which demands unified human manipulation if it is to be used to best advantage." He would have set up a National River Development and Management Administration in the Department of the Interior and under its aegis nurtured a series of river-basin commissions resembling the Tennessee Valley

Authority, beholden to no local oligarchies or old, entrenched bureaucracies.[28] Similar proposals for one or more TVA-like superagencies have been made repeatedly and for every major western stream, always with the confidence that centralization of power is not the road to serfdom, as the market ideologues fear, but a way to achieve the national welfare.

In this same vein, the writings of political scientists Theodore Lowi and Grant McConnell have been especially influential. For them, the West, particularly in its irrigated agricultural development, exemplifies a pervasive problem in American life: the capture of government power by narrow interest groups and, consequently, the subversion of democracy. Lowi, in a complex argument that cannot be done justice to here, refers to an "iron triangle" in water development that has as its three corners a handful of well-placed western congressmen, the Bureau, and organized agribusiness, together forming a closed network of power that eludes scrutiny and check. "Power goes up," he argues, "but in the form of personal plunder rather than public choice."[29] Similarly, McConnell holds that real clout in the West rests with small, cohesive private groups that have made the federal bureaucracy their servant, reduced it to an amiable, docile giant stumbling after its little master. Americans are readily fooled by this arrangement, McConnell warns. Fearing some great despotic central state that could hold life-and-death sway over their lives, they have naively trusted in the notion of "local control," all unaware that power in such a decentralized society has not been done away with but has become more firmly seated than ever, with no possibilities for challenge at the grassroots. Failing to realize the genuine threat to democracy that exists in that situation—the opportunities it opens, for instance, for rich California farmers to grab cheap water for themselves at taxpayers' expense—they have no defense. Only a strong, transcendent federal government, McConnell believes, in which a full diversity of interests are represented, can look out for the public interest.[30]

In the face of two such contradictory sets of analyses of the West, of the market men who see decisive power gathering ominously in the hands of the state and of the public-interest liberals who think it is still in the tight grasp of private elites, the cry naturally goes out: Who is right? To some extent, the answer must be that both are. The problems of the American West resemble one of those funny little pictures that, held one way, show a face with a scraggly tuft of hair on top and a bushy beard underneath, and held another way, show a very different face with a wild bush on top and a goatee. The power that has accumulated with the domination of western rivers has two faces also, one private and the other public, depending on which way one turns the picture. The most nearly adequate term for describing the composite is "capitalist state." As indicated in an earlier

chapter, this will not do finally as a full or adequate description of the West, will not capture all its peculiarities of history and ecology, but it comes closer than either of the accounts above to suggesting the complex but unified structure of power there.

The theory of the capitalist state, it will be remembered, denies that power in modern societies is democratically diffused, competitive, or pluralistic. It also denies that the immense bureaucratic apparatus of today is a benign force, or even a neutral one standing ready to do the bidding of whatever organized group can get into office, the good as well as the bad folks. Instead, the state has become a Leviathan in whose shadow ordinary men and women live. This large, hovering creature is not all-powerful, for the contemporary world is too complex, too diverse, too full of struggling, contending parties for any entity to rule unchallenged. Moreover, it is restrained by the purpose on which it has fattened. Depart from that purpose and Leviathan will sicken and die. In the main, that purpose is to promote the economic culture of capitalism, the core ethos of which is the rational, calculating, unlimited accumulation of private wealth. The state has come to be the single most important agency for the preservation of that culture. In the work of preserving, it finds at once the end of its being and the means to enhance its own prospects. As conservator, the state exercises military power abroad, facilitates commerce at home, educates the young, encourages investment, safeguards profit, absorbs the social and environmental costs of capitalism, and regulates the chaos of the marketplace. Above all, the state has the responsibility, not alone but finally, whenever lesser agencies fail, of dominating nature. Only through such mastery can resources be made available in infinite quantities and can the process of private accumulation continue.

The Moleys, Lowis, and McConnells see only a limited aspect of this picture, and that is where they go wrong. All of them, however, are right to a point. As the market purists accurately complain, freedom of enterprise tends to shrivel in the shadow of the modern state, but not because that shadow is thrown by a hostile form of power. Capitalism is, after all, aimed primarily at the acquiring of individual wealth; free markets are only one of its strategies for doing that, and one that has historically been quickly discarded when others, the contrived market of the state in particular, have become available. The public-interest liberals are likewise perspicacious about several details. In the capitalist state, private good does in fact become identified with the general welfare. However, removing power from local elites to some national center does not change that identification but only enlarges it, making power more concentrated than ever, more difficult to escape or overturn.

But it is not only those observers discussed above who have been unable to turn the picture around and around to get all its faces in view. The Marxists, too, have had their lapses of perception. Though they have written almost nothing on the American West specifically, they have been among the most clear-minded generally about the capitalist state and its mission. They have seen its coherence, its logic, its connections, better than almost any one else around. Too quickly, however, they have assumed that the state is merely a tool of a single elite group who own the means of production—that it is, in other words, first and last a coercive instrument of a well-defined ruling class. That kind of mechanical analysis reduces the endless conundrum of historical cause and effect to a pat formula. Is the entire culture of capitalism along with its protective, conserving state the invention of a particular economic class, the bourgeoisie? Or rather has the rise and hegemony of the bourgeoisie been an inevitable outcome of that culture? Has the class been called into existence, thrust into a position of leadership, by the culture's values and beliefs, shared more or less spontaneously by a wide spectrum of the population, as well as by its evolving relationship with nature through technology? The latter way of thinking, though admittedly messier, seems finally to be the more satisfactory, for it rightly emphasizes that a culture is not simply the invention of a handful of people at the top, something that they alone create and impose on everyone else, but that a culture, including that of capitalism, grows amorphously, anonymously, out of particular historical circumstances, out of particular environments, and in that process of growing sets up its own distinguishing structure of power.

The American West is an ecological variant on the modern world-circling culture of capitalism: a pattern of culture and society that has branched off, diversified somewhat from the parent that sent it out to find a new home for itself. It was created by the movement of that capitalist culture into an arid environment, into a land where scarcity of the vital resource of water was the prevailing environmental reality. Where there was an abundance of natural wealth lying about, waiting to be easily gathered up and made use of, capitalism as a culture and as a social order got along without much centralization of its energies. But when it encountered the raw edge of scarcity (it can create scarcity through depletion, of course, as well as come into it) that culture began to shift about. It found itself saying and accepting things it would not have accepted before. It felt the need to fabricate, or invite in, powerful organizations, above all the state, to help carry out its drives. In the West, the single most important function of that state has been, in the words of Roy Huffman, "to provide a constantly expanding resource base upon which private enterprise can build."[31] Making abun-

dant what was scarce, putting an elusive, stingy nature within private reach where before it was unattainable: this has been the fundamental, underlying ecological role of the capitalist state, and in the West, this has been its role to a degree unmatched anywhere else in America.

The naked accumulation of wealth has, for most people, never been a wholly agreeable idea or an adequate explanation of life. Consequently, it has needed dressing up from time to time in more lofty ideals, more noble, transcendent rhetoric, even in actual garb. As Ralph Miliband shows, one of the most appealing wardrobes has been that of nationalism. For a long time now, the capitalist state has resorted to nationalistic appeals to furnish disguises for the self-enriching behavior it seeks to protect. Nationalism or patriotism has also served to muffle internal protest and dissent. "For the good of the nation"—by that appeal men and women are persuaded to go quietly along with their state apparatus and its projects, subordinating themselves, as Miliband puts it, to "a larger, more comprehensive concern which unites in a supreme allegiance rich and poor, the comfortable and the deprived, the givers of orders and their recipients."[32] There are other garments in the wardrobe besides nationalism. The grand cause of the domination of nature is one of them, perhaps the one most often brought out and worn, though it may be called by other names like "progress." Another garment used to cover the embarrassment of unconcealed self-seeking—and a capacious, well-handled one it has been in the United States—is regional pride, regional ambition. Nowhere is this more so than in the American West, where talk of making an empire, of conquering the desert, of overtaking the East, has served to distract attention from the less attractive realities of hierarchy, power elites, and the insatiability of an acquisitive culture. Finally, put the water-controlling men into a costume of oversized belt buckles, narrow-heeled boots, and big white hats, and their disguise is complete. They have fully appropriated the heroic, freedom-loving cowboy past of the West to justify their modern acquisitiveness.

Here then are the mature lineaments of the newfangled hydraulic society which, by the 1980s, had taken form in the trans-Mississippi landscape, up and down the plains, over the Rocky Mountain rooftop, across the desert basins to the coast. Not radically different in its cultural imperatives from the rest of America, or from France or Japan for that matter, it presented nonetheless a few distinctive features. On its environmental base of aridity, it had erected a closely integrated system of power that included both the state and private capitalist enterprise. Neither could survive in the harsh land without the other. Working together, however, the vision of total use could be dreamed and realized: the management of every river, every

obscure remote creek, for the sake of greater wealth, for the sake of America and a greater West, for the sake of domination.

ACCUMULATION AND LEGITIMATION

Holding an empire together is a more difficult task than creating one. With success come new threats from within and without, requiring a level of vigilance that would have been inconceivable at some more primitive stage of development. In the postwar western water regime, those threats took two forms. First, there was a swelling of social criticism that the empire could not answer. Dissension over the grand project of river domination arose as its human results became difficult to reconcile with some of its original promises. That dissension, as it grew more bitter and unresolved, left in its wake a dark deposit of disillusionment, a loss of faith. The entire project began, for many, to seem morally bankrupt. Second, with all the engineering triumphs came a set of adverse ecological consequences, and they began to plague the river-pushers, defying their expertise and endangering their magnificent artifice. The first of those threats to the empire, the decline of its moral legitimacy, was the outcome of a hard-fought, impassioned controversy, lasting more than three decades, over the 160-acre limit in the national reclamation law. The fate of the limit was finally settled by Congress in 1982—but not before a fatal crack had appeared in the traditional, broad-based political alliance for arid-land reclamation.

Ironically, the threat of a lost legitimacy came precisely and inevitably through the very success of the water empire. All along in its rise to power it had been marked by latent contradictions, and those contradictions, deriving chiefly from the capitalist state mode of environmental exploitation, had always carried the potential for self-destruction. Most treacherous of them was the contradiction in purpose: the state had in the West the dual role of promoting the accumulation of private wealth through the increase of available water while maintaining social harmony in its distribution.[1] Promoting accumulation was always the more essential job, for time and instrumental reason had proved it to be the most efficacious strategy for generating economic growth, bringing in revenues, and keeping the bu-

reaucracy employed. It was also what the Bureau of Reclamation did best, and as the years passed, it became more narrowly focused. As some individuals got richer, they clearly came to deserve, by the rules of the Bureau's work, the fullest attention. Which is another way of saying that the accumulative function by its nature tolerated, even produced, economic inequalities. On the other hand, many of those citizens who, for one reason or another, failed to keep pace with the elite were sooner or later likely to resent their situation and feel that the state was not performing its distributive job in good conscience. They could readily accept the idea that the state apparatus ought to help individuals acquire more water, more capital, and more income—but accept only to the extent they themselves were assured that such help was fairly distributed to all. The controlling American definition of justice, as many have observed, has been one of open opportunities and plenty of them. Restrict those opportunities to a privileged handful, smaller and smaller in number, and in many people's eyes the state and its efforts began to appear less legitimate, less supportable.

Everywhere modern capitalist culture faces such a contradiction, and faces, if it cannot resolve the tension, its own death. So at least Jürgen Habermas, the German social philosopher and heir of the Frankfurt School, has argued. What he calls *Steuerungsprobleme*, or unresolved steering problems, abound in this culture and its various societies, engendering from country to country a sense of crisis that so far no state has quite been able to relieve. Apathy, alienation, a decline in mass loyalty toward institutions and traditions, a growing sense of a world gone irrational: these are some of the symptoms of the general legitimacy crisis. Can the state steer away from the rock of elite accumulation and back toward popular support? Can it revive the heroic collective spirit that once animated the drive to conquer nature? If not, a crash is coming, Habermas warns, and some new culture, some new economy, with new social arrangements and modes of production, will emerge from the wreckage.[2]

The American West, running for so long on an ascending curve of optimism, came at last to be drawn into that same general malaise. So abrupt was the reversal in mood that it left a lot of westerners bewildered and angry, determined to insist on the old clichés more stridently than ever. They began to sense but not really understand that former symbols of success like Hoover Dam no longer stirred the same old enthusiasm nationwide. Nor did Henry Luce's ebullient vision of an "endless frontier" for reclamation raise its former fervor. Too many critical questions faced the empire. But western leaders and state apparatchiks proved unable, as we

will see, to respond creatively to the crisis, and so at last undermined their project of river domination.

Steering a successful course for reclamation had always required the wholehearted support of agrarian democrats. More than any other group, it was they who gave the effort its moral legitimacy. They earnestly believed and worked to convince the public that irrigating the West was the way to open up opportunities for millions of poor Americans and to keep faith with the ideals of men like Thomas Jefferson. In the postwar period, that role of legitimation belonged preeminently to the University of California economist Paul Taylor. He would never have described his part that way. On the contrary, he would have said he was a gadfly, an outsider, an outraged man fighting against the power elite, denying them legitimacy. And he was all that too: for forty years he had struggled against them to save the 160-acre limit in the reclamation law. But so long as he was successful in his struggle, and for a while he was that, Taylor added an unintended credibility to the over-all program. For he sincerely felt that the idea of water domination was a noble one, if it could be kept joined to the idea of distributive justice. That was exactly what the cause of reclamation legitimacy needed: someone to fight tirelessly for its tradition. The empire also needed to let a man like Taylor win a little. That did not happen, and that was why it irretrievably weakened its case.

Taylor first learned about the reclamation program, including the provision on acreage limitation, at the feet of Walter Packard in the early forties.[3] He was then a professor at Berkeley, had been since 1922, and would stay there till his retirement and beyond. Born in 1895 in Iowa, he had studied at the University of Wisconsin with John R. Commons before coming West for graduate work. His first scholarly commitment was to labor policy, especially regarding Mexican farm workers in California. In 1939, he and his photographer wife, Dorothea Lange, collaborated on an eloquent essay, *American Exodus,* depicting the plight of the Okie migrants. Once he had heard from Packard about the acreage limit, however, he had the driving motive of his mature years: to bring about the breakup of the large agribusiness interests in California and put land in the hands of as many people as possible. A democratic West, he began to insist in a spate of articles and congressional testimony, would require the prevention of land and water monopoly and the proliferation of the small family farmstead.

Originally the acreage limit on federal water projects, as has been discussed, had been set at 160 acres per family. That was a maximum, a ceiling, not a suggested optimum. Far less land than that, it was generally

acknowledged, would be adequate to support a family wherever irrigation was available. Consequently, farms in the West ought to be smaller than those elsewhere, smaller than the quarter-section norm that had guided earlier, humid-land settlement. Families, the law went on, must reside in the "neighborhood" of their land—must be real farmers, that is, not speculators or landlords living in some distant city. By midcentury, however, the law had been significantly altered by Bureau "interpretation." The residency requirement was completely ignored (under the unconvincing claim that Congress had omitted it in the 1926 Omnibus Adjustment Act).[4] The 160-acre allotment had been extended to every adult member of a farm household, and it could be held in as many separate irrigation districts as one liked. Exemptions had been granted to a lengthening string of projects all over the West, though not, despite the best efforts of Sheridan Downey and Alfred Elliott, to the Central Valley of California. Luckily, Michael Straus's "technical compliance" formula allowed large landowners there to sell their excess land to friends, relatives, employees, anyone who would let them go on using it. And the Bureau everywhere allowed the unlimited leasing of land, so that a single operator could farm five or ten or fifteen thousand acres with ridiculously cheap public water. Still, for all the bureaucratic loosening, there remained a specified limit on the books and enough show of enforcement to rile the bigger accumulators. It was Paul Taylor's intention to hold fast to that limit, or some near facsimile of it, and to toughen the Bureau's adherence to it.[5]

He had his work cut out for him. During the first term of the Eisenhower presidency, Secretary of the Interior Douglas McKay, formerly an Oregon automobile dealer, now a powerfully placed official determined to remove all federal roadblocks to private enterprise, came up with a method to get around the acreage law. He offered to accept a lump-sum payment of $14 million for the Army-built dam at Pine Flat on California's Kings River (it had cost $40 million—the rest would be charged off to flood control), allowing excess owners along the river and in the old Tulare Lake basin to buy their way out of conformity. Fifty-two of the owners held among them 196,466 excess acres, and they were delighted with the McKay bargain; it was exactly what they had sought since prevailing upon the Army (instead of the Bureau) to do the work.[6] Unfortunately for them, McKay's successor, Fred Seaton, felt compelled to take that offer back as a possible violation of the reclamation law, and not until 1982 would they get their way. Meanwhile, Congressman Clair Engle of California introduced a more successful evasive strategy, the so-called Engle formula, which allowed exemption through payment of interest charges, set at very low rates, on federal

water projects. This was enacted in the Small Reclamation Projects Act of 1956.[7] Still another assault on the limit came through the courts, when an excess owner in the Ivanhoe Irrigation District (Tulare County again) sued to stop the district from accepting the limit in its Bureau of Reclamation contracts. The California Supreme Court agreed with him, declaring in *Ivanhoe Irrigation District* v. *All Parties* (1957) that the acreage provision violated state law, which must take precedence in water matters. The limit was "unlawful discrimination" against the well-to-do, the court complained, a piece of "class legislation." The following year, the United States Supreme Court unanimously struck down that decision, thereby asserting not only the validity of the limit itself but the primacy of federal authority as well.[8] In all these skirmishes, Paul Taylor was at the forefront, advising and consulting with liberal senatorial allies Paul Douglas and Wayne Morse, bristling tall and angry at hearings, his keen eyes searching out any bureaucrat who would dare to empty sacred words of their meaning. He was a strong, determined hawk of a man whom little farmers could use around the barnyard for defense.

The case against the acreage limit was what it had always been. Critics contended that in the old days it had been a nice theory of dividing up the public domain, but that it now interfered with the higher principle of accumulation. In the words of the chief counsel for the Imperial Irrigation District, "it completely offsets a man's right to work, to live, and to acquire property." That refrain ran through the 1958 hearings convened by Senator Clinton Anderson of New Mexico, who was among those seeking repeal, or at least relief. The witnesses he called in those hearings included a North Dakota farmer who resented "this business of putting ceilings over him." "America has been known and admired the world over as a land of unlimited opportunity," he went on, but "acreage ceilings set at the turn of the century certainly limit the opportunity of progressive irrigation farmers." Senator Frank Barrett of Wyoming, whose bill would have applied the Engle formula to all federally reclaimed lands, stuck in his view that it was not morally right to deprive a man of his property and give it to another. And Floyd Dominy, then the Bureau's associate commissioner, confessed that he was at heart an accumulator too. He owned 380 acres as a gentleman farmer in Virginia and was "not yet convinced that is sufficient." Dominy went on:

> I think we must cut through the fog in this [hearings] room that has come from many well-intentioned people as to the sacredness of the 160-acre limit. I want to defend it, yes,

> as to its principle and as to its policy. But I think that it needs to be adjusted to the existing circumstances in any given area.[9]

With Chairman Anderson and other western politicians, Dominy lavishly praised the principle of redistributing reclamation benefits widely. Such assertions were the established method of holding on to broad funding support. It was merely the application, the substance, of that principle he and the others found objectionable. For them, the problem was to devise some subtle, unobtrusive way of maintaining the husk of agrarian idealism without preserving its kernel of meaning. For Paul Taylor, the challenge was not letting them get away with it.

Note that though the party of accumulators was scattered over the West, California was still by far the main and loudest source of noncompliers, with recalcitrants in the neighboring states looking on to see which way the federal wind blew out there. In the next round of the limit controversy, after those generally unsuccessful trials in the fifties to get the limit removed completely, the contest would move to California altogether. Once more, its Central Valley would become a violent battleground, though this time words and lawyers—not pick handles and thugs—would be used, for this was to be a battle fought, for the most part, with professors and congressmen, not with poor alien workers. The controversy now focused on the desolate western side of the San Joaquin River, the Westlands district still lying high and dry and vulnerable. With no other water than what they could pump from deep down in the ground, with water tables falling rapidly, there was a fierce local clamoring for government aid. Controversy was also gathering around the latest hydraulic feat in the West, and one of the most impressive: the State Water Project of California, which was sold to legislators by agribusinessmen to rid them of the fearsome federal rule-makers.

The State Water Project began in the early 1940s when powerful valley agricultural interests, backed up by merchant groups and the state engineer, made a pass at buying out the feds. When they discovered there was not enough money, or will, to take over the entire Central Valley Project, they turned instead to rivalry. They would jolly well do their own plumbing from this point on. They would not let the Bureau of Reclamation add the Feather River, plunging off the Sierra into the Sacramento basin, to its cap, but would claim it for the state. A dam on the river at Oroville, built to world-class scale, plus diversion of northern coastal waters southward would yield enough water to fill a new canal, the California Aqueduct, which would push up from the delta along the western wall of the valley and,

reviving an old fancy, leap over the Tehachapi Mountains. That was the main idea, simple and megalomaniacal. But in their master blueprint of 1957, the planners went on to speak airily of 376 new reservoirs in all and of total capital expenditures of $11.8 billion—not bad for a single state going it alone. If carried out, the plan would be larger and more costly than the entire federal reclamation program to date. The need for it, state officials said, was desperate. Los Angeles, suppurating endlessly over the southern desert, must have that kind of investment or it would die. Even more to the point, there were land interests along the aqueduct route who needed it, who were aching with thirst, who had to have an irrigation system they could reliably control. This one, it was understood, would have no acreage limitation attached.[10]

After a lot of disputation and delay, a new governor, Edmund "Pat" Brown, took the plan firmly in hand in 1959 and coaxed it through the legislature. His special aide in the campaign was a former Bureau lawyer, Ralph Brody, a smooth man destined for wealth and notoriety. One year later, the proposition went before the California public in a referendum. Now, however, only the first phase was laid out for scrutiny and the cost presented for approval was a mere $1.75 billion. Even at that, a number of independent economists said the project was a boondoggle, returning, by one estimate, barely fifty cents on the dollar. Other critics wanted water development left to the federal bureaucracy, who had the means to go after the big supplies farther north, the Columbia in particular.[11] The opposition almost prevailed, but four days before the election the Metropolitan Water District of southern California signed a contract with the state for 1.5 million acre-feet, and the southern voters now swung over to support the plan. The project passed by 170,000 votes out of almost 6 million cast. Only sixteen out of forty-four counties, and all but one of them was in the southland, gave it a majority.[12] Late in 1971, the first water crossed the mountains.

City people paid the largest part of the bill for the State Water Project, though in some cases they used none of the water. Land developers and agribusiness, on the other hand, took the largest profit. The Metropolitan Water District directors, who ostensibly represented urban consumers, could hardly have been unaware of that outcome. Perhaps because nearly half of those directors were real-estate developers or big landholders, they were not manifestly bothered. In the Great Valley, the leading beneficiaries were a few horny-handed plowmen toiling in Kern and Kings counties: Chevron USA (owner of 37,793 acres in the SWP service area), Tejon Ranch (part of the Los Angeles *Times* holdings, owner of 35,897 acres), Getty Oil (35,384), Shell Oil (31,995), McCarthy Joint Venture A (a part-

nership including Prudential Insurance, 25,105), Blackwell, Tenneco, and Southern Pacific. They got their water at discount and used it, not to salvage a fading economy as promised, but to put in a quarter of a million new acres of cotton, olives, pistachios, almonds, and wheat.[13]

That the *un*-motive of the State Water Project, however overlaid it became with later justifications, was to circumvent the federal acreage limit was well understood by Paul Taylor and his associates. Their attention, though, was riveted elsewhere, on the Bureau of Reclamation and its latest round of maneuvers in the valley. Not one to be shut out of any field of budding enterprise, the Bureau was now hurrying its own schemes along to fetch more water and find more customers in the California interior. Already it had spent more money on the valley than on any other single project. Yet still there were lands unredeemed. There was, for instance, west of Fresno above the low-lying sloughs, an undeveloped flattish area the size of Rhode Island. In 1952, landowners there formed the Westlands Water District, which eventually would cover more than 600,000 acres, replacing Imperial as the largest district in the nation.[14] Directly thereafter, the Bureau began looking into the prospects of hooking up a faucet for them. The most feasible solution appeared to be a dam on San Luis Creek coming out of the Diablo Range—precisely where the State Water Project engineers also wanted to build. Handsomely, they agreed to share the facility, and San Luis Dam was budgeted by Congress in 1960. Water taken from its reservoir for federal use would carry the acreage-limit proviso; water for state use would not. The trickiness of distinguishing one water molecule from another did not trouble President John F. Kennedy, who was present to preside over the ground-breaking ceremony, quipping to the thousands sitting on folding chairs, "It's a pleasure to me to come and help blow up this valley in the name of progress." When completed in 1968, San Luis Dam was one of the half-dozen largest structures of its kind ever made, worthy enough, exclaimed Interior Secretary Stewart Udall, to bear a sign reading "Man was here!"[15] What kind of man, what kind of progress, had yet to be discovered.

Long before the Bureau and its know-how came to the rescue, Westlands had been the private fiefdom of a few exceptionally big owners. Though by cross-valley standards they earned a skimpy per acre return from the land, they were hardly poor, for they counted among their numbers the likes of Southern Pacific Railroad, Boston Ranch, Southlake Farms, Bangor Punta, and Standard Oil. You needed many acres there, it was said, to eke out a bare, marginal corporate living, many more to be really comfortable. Federal water, however, was supposed to change all that: farms would be broken into much smaller units, it was promised, new settlers would flock

in by the thousands, crop yields would shoot out of sight, the economy would boom, money would blossom along every ditch. In fact, only the last of those promises turned out to be true. After the project was finished, most of the same growers were hiring the same men to ride the same tractors around the same fields. There was no new settlement and little genuine or practical opportunity for the landless—but there was indeed a great gob of money rolling in at last. Why that was the outcome is a revealing study in bureaucratic handling of the reclamation law.

By a strict interpretation of the law, the Bureau was obliged to sign contracts before any construction could begin, and the contracts had to commit landowners to sell their excess lands within ten years of receiving water and at preproject prices to prevent windfall profiteering. Commissioner Dominy saw his duty differently. He would build first, get contracts later. Eventually, under public pressure, they were indeed signed, all under the watchful eye of Ralph Brody, formerly of the governor's office and before that of the Bureau, now counsel for Westlands and the highest paid official in California. By 1976, Brody could boast that 350,000 acres in the district were under contract and of that sum 109,000 excess acres had been disposed of to 928 individuals. All in all, it was "an outstanding record of compliance."[16] Not so, said a group of U.S. senators who came out in 1975 and again in 1976 to see for themselves what had been wrought. The Bureau had no idea, charged the senators, what a family farmer was, how many of them were originally in the district, how many had been added. It had accepted sale prices that were too high, and worse yet, had not made sure that the land really went on the market. Senator Gaylord Nelson reported:

> I have witnessed few hearings in my career that have been more moving than those held in Fresno when literally hundreds of would-be family farmers appeared just to be represented by one California family farmer—a man who told their story of repeated efforts to buy reclamation land sold as excess, only to be told that it was not available in small parcels for family sized farms. These people were experienced family farmers with credit available to them from private sources. All they were asking was what the law promised.[17]

Who, then, was getting the land, if in fact it was being sold as Brody claimed, and how were they doing it?

The would-be farmers who had been excluded from buying formed the

National Land for People organization under the leadership of George Ballis, a sharp, crusty ex–labor journalist. Their investigation uncovered that, despite strenuous denials, project-aided lands were being reorganized into ever more intricate corporate holdings, with the investors typically residing in such farm neighborhoods as San Francisco, the Caribbean, Japan, and Mexico. For instance, Russell Giffen, once described as the largest farmer of irrigated land in the United States, had sold out to a hand-picked circle of cronies and "partnerships," many of them giving the same last name and the same address, which also happened to be the office of one John Bonadelle, a Fresno land speculator. All in the family, as it were. Bonadelle soon after pleaded guilty to a fraud conspiracy charge, but the Westlands shell game went on, confusing the most alert observer with its deft movements, its successive sales and resales, its shuffling of names on the door. Combined with unrestrained leasing, the game was played as a way to prevent any change whatever in the personnel or scale of farm operation. "It is like a club atmosphere," said a representative of the National Farmers Union who had personally tracked down one of the purchasers, the so-called Jubil Farms, to its New York office. "If you are a member of the club, you have access." Under this Bureau-style watchdogging of the reclamation law, there were simply no 160-acre (and precious few 320-acre) farming operations to be found in Westlands.[18]

That men and women would carry on so intricate, so demanding, even at times so flagrantly criminal a shell game as this one may require explanation. The reason, at least the indisputable part of it, had to do with the accumulative urge. Turning on a faucet for Westlands cost the American taxpayer more than $3 billion dollars. (This figure includes construction and interest charges, calculated at 6.75 percent over forty years.) The water came to growers at a measly $7.50 an acre-foot, well below the price charged on the nearby State Water Project lands—a figure so low that they were actually paying off only the yearly operation and maintenance costs. Pumping water uphill from San Luis Dam was done with cheap electricity supplied by the Bureau. The total subsidy, according to economists Philip LeVeen and George Goldman, was a whopping $2,200 per acre. Figure it out: an investor who got one of those interlocking quarter-sections received a gift from the public of $352,000.[19] In exchange, the public got more cotton, sugar beets, and tomatoes—more of them, yes, but not enough to justify their huge capital investment. It was ridiculously expensive food and fiber.

Why the Bureau or Congress would underwrite such extravagant welfare for a rich elite should by now not require any explanation. What none of the parties involved quite expected was the hullabaloo, the demands for

investigation, raised over the Westlands project. People wanting an opportunity to farm, resenting their government's indifference toward them and now more effectively organized than ever, were not going to accept this outcome in silence. In 1976, National Land for People filed suit against the Department of the Interior to prevent any further approval of excess-land sales in the district. One year later, Secretary Cecil Andrus, acting under a court injunction, suspended sales approvals not only there but throughout the West, pending a general review of the reclamation law and the adoption of new rules for its enforcement.[20] And Paul Taylor up in Berkeley thought maybe the tide was turning at last, bringing in a people's program of water control.

"All around him were oaths, moans, bellowed complaints, the brief tableaux of upright wincing men, hoes dangling, their hands on the small of their backs, who were going on under the same torment." That is the world of the washed-up prizefighter Billy Tully in Leonard Gardner's novel *Fat City*.[21] It is the California agricultural worker's world, populated by winos toting along their bottles in paper bags, by street derelicts trying to pick up a little change, by old experienced hands knowing no other life, a few of them white, many more of them black, Filipino, and Mexican, in every case seasonal workers who get ninety cents an hour to thin tomatoes or top onions and who spend much of it evenings in Central Valley bars. In the postwar period, they were still around, as they had been since the nineteenth century, and they were no closer to escaping that hard lot than before, no nearer to owning their own farms or receiving public-funded water for them. The entire federal and state investment in irrigation expansion had not been made for them, did not improve their condition. It had been for the accumulative class, who were overwhelmingly white, Anglo men already owning property.[22] Even the hundreds of aspiring farmers who showed up before Gaylord Nelson wanting to buy a piece of the Westlands were well removed from the ranks of seasonal laborers. Granted, with the right kind of reclamation program it was at least conceivable that some of the Billy Tullys along with the Sanchezes and the Villanuevas of the fields could become small-time owners, bending and sweating for themselves. But that had not been the program pursued, though it had always been the promise held forth. The result was a glaring gap between the claim of wide redistribution and the bleak reality of a permanent underclass who did the brute work in western reclamation. Legitimacy slipped down into the gap and could not be pulled out.

The elaboration of irrigated agriculture, as demonstrated earlier, required a rural proletariat. For a long while Asian immigrants made up that

proletariat, then Mexicans and Okies. When the Okies moved out of farm work during World War Two and into coastal defense industries, the growers fell back once more on Mexican nationals to serve. A presidential executive order in 1942 allowed them to recruit workers across the border (the so-called *braceros*, or strong-armed ones) on temporary work permits. The policy was extended in 1951, as Public Law 78, a further example of the state's promotion of the water empire. Growers claimed, in agitating for the law, that they could not find enough domestic hands to get their crops in. "We tried to bring labor from the Southern states," explained J. Earl Coke, a prominent California agricultural leader, "and the colored people just can't bend over that far."[23] In the peak year of 1959, California imported 136,012 Mexicans, and Texas used 205,959. Put more accurately, it was a tightly organized group of 50,000 growers in five key western states, assembled, for instance, as the Imperial Valley Farmers Association, who employed virtually all the *braceros*. Stories of laborers being herded north (packed like cattle into rickety old trucks by unscrupulous, exploiting contractors), of squalid housing conditions, and of starvation wages led to the termination of the import program in 1964. Still open were the possibilities of applying for permanent alien resident status—becoming a "green card" worker—or of crawling illegally under the fence at the international border.[24]

Then began, with that grudging restriction of the labor pool, a fierce race along the western ditches between the forces of unionization and of mechanization. Americans of Hispanic ancestry, the largest remaining source of workers, undertook to organize themselves, as they had tried to do in the 1920s and 1930s, into agricultural unions. Marching under the flag of the National Farm Workers Union, which bore a black Aztec eagle on a red-and-white field, and led by a cotton picker from Arizona, César Chavez, they tasted real success for the first time. In 1965, they announced a work stoppage against the grape farms of the Delano, California area. In the next year, they went on strike in the vineyards of two of the state's biggest growers, Schenley (who became the first to recognize the union) and DiGiorgio (who fought them bitterly). Those actions were followed in 1968 by a national boycott against the table-grape industry. Despite the open hostility of Governor Ronald Reagan and the entire agribusiness establishment, the NFWU persisted, winning through the seventies a series of victories in contracts, minimum-wage guarantees, and state-supervised elections.[25]

And then they began to lose. With every success, growers had an added incentive to invest in the new farming machines appearing on the scene. The weird, ingenious, and expensive technology was designed, for the most part, at public-funded universities and aided the accumulators by lowering

their labor costs. One harvester clattered along the cotton rows, stripping the bolls and blowing them into wheeled bins that carted them to the gins. Another ripped grapes from their vines. Still others grabbed walnut trees by their trunks and shook the crop down. With increasing frequency it was machines that dug potatoes and beets and carrots and dumped them onto conveyor belts. By 1966, there were 460 machines in California fields alone harvesting tomatoes, and farmers were bringing in millions of tons of a new "square", thick-skinned variety of the fruit, specially created to withstand mechanical handling. "The machine won't strike," noted the chairman of an engineering department at the University of California at Davis, where much of the inventing went on; "it will work when [the growers] want it to work."[26] His words hinted of the vision that had animated the empire from the beginning—of extending its technological control as far as possible, to the total domination of the earth. If one could make water run uphill for hundreds of miles, one could do more, much more. One could turn over the whole job of irrigated cropping to genetics, to electronics, to robotics, doing away with the need for almost all field labor, completing man's triumph over the desert. No more stooping in the hot sun, no more threats to strike, no more workers, no more work.

From its very beginning, the federal reclamation bureaucracy had studiously ignored this rural proletariat toiling on its assisted lands. All of its promises of creating new farms and farmers in the West were proffered, however vaguely, to some set of noble husbandmen or yearning city people elsewhere, usually a good deal farther off. And there was another community in the West who were ignored, closed out, not regarded as the stuff from which accumulators and imperialists are made: the Indians. Outside of a few of its judges, the government did not acknowledge that the Indians might need or want water too. Yet three out of four Indians living on reservations in the United States were located in the West, and because they had for so long been disregarded, the tribes found themselves by the postwar years in a parlous situation. Reservation lands had been taken from them and sold to white irrigators or flooded behind dams. Their groundwater had been pumped away to adjacent interests. The Paiute of Nevada watched their Pyramid Lake, once an abundant fishery for cutthroat trout and cui-ui, recede lower and lower, as farmers upstream on the Newlands Irrigation Project diverted the Truckee River to raise cattle feed. The Bureau of Reclamation consigned other flows, like the Yellowstone River in Montana, to invading coal companies, despite the protests of the Crow, Cheyenne, Arapaho, and Shoshone. Some Indians wanted to secure water for their own industrial schemes, while others had the laying out of large-scale irrigation farms in mind—or merely the retaining of a right to future

development. But everywhere they were standing at the tail end of a long, long ditch.[27]

The Indians pinned their hopes for a fairer distribution on some principles enunciated in a Supreme Court case back in 1908, *Winters* v. *United States*. The case was over who was entitled to the Milk River of Montana: a white settler named Henry Winters and his neighbors, who were drawing off the river to their fields, or, downstream from them, the Gros Ventre on their Fort Belknap reservation. The Court concluded that the Indians had priority of claim, had in fact a special, unique right to water based on their treaty with the American government. When they came to terms with their conquerors, the tribe reserved enough water for all their future needs. Whether that right had ever been claimed or not was immaterial; the water must be there waiting for the Indians whenever they decided to use it. The white man's laws of appropriation, which gave a water right to whoever first put a river to use, could not affect those reserved native rights. Furthermore, the English tradition of riparian rights, granted to any and all streamside dwellers, could not prevail against the Indian priority. The Winters doctrine was potentially a bombshell that could blow the entire structure of western water rights, and the hydraulic society resting on it, to ruins. One Indian sympathizer, William Veeder of the Department of Justice, maintained that the Winters decision gave the tribes an unlimited claim on their watersheds, on all the streams "which rise upon, traverse or border upon Indian reservations," and that white users there, no matter how old their own claims, must now buy the right to divert or must give way. Others hotly denied so sweeping a claim.[28] A fundamental moral issue was at stake, a question of justice. Did the fact that a people had arrived in a country first give them an eternal and superior hold on its natural resources? Or did a higher right belong to the man or woman who first saw the economic promise in a resource, who first put it to use and made a profit from it? Neither the courts nor Congress managed to settle the issue. Indeed, they left it in total confusion. No one could say, would say, where or how far the Winters doctrine applied. And in that state of ambiguity the white appropriators had an uneasy but clear edge: they were already in possession.[29]

The predicament of the farm workers in the western hydraulic order was radically unlike that of the Indians. But there were some similarities. In the first place, neither group had been cut in on the benefits from water development. Now, in their new militancy, both groups could seriously embarrass the region nationally and internationally. They could testify that technological prowess and private accumulative success were not the only outcomes worth noting. There was also poverty, despair, and discrimination

in the West. The instrumental reason by which the empire functioned had long ignored those darker truths, for they were about matters of morality, justice, ultimate intrinsic values, and the instrumentalists, whether public or private men, were not skilled or interested in such matters. Another parallel was that neither the field workers nor the Indians could expect much from the traditional reclamation law, regardless of how vigorously it was enforced. In particular, the acreage limit was not meaningful if one had the land, as the Indians did, but needed water or if one did not have the funds, as workers did not, to buy excess lands that came on the market. The theory of justice embodied in the limit, taken alone, was too narrow to produce a genuinely egalitarian society in the region. Moreover, it could conceivably work against these poorest, excluded groups by adding to the number of white farmers competing against the Indians' reservations or pushing for mechanization of the laborers' jobs. Finally, for both groups the danger in the controversy over the 160-acre law was that it could preempt the broader moral debate over water and its distribution, reducing to a formula, and an old-fashioned Jeffersonian agrarian formula at that, the more complex issues they wanted addressed.

By the decade of the 1970s, then, the water empire was ringed about, more than at any other time in its rise to power, by loud, angry, protesting voices. Among them were the voices of Indians and field workers. There was also a vitriolic newcomer down in Imperial Valley, Dr. Ben Yellen, fighting with broadsides and lawsuits to get the acreage limitation and residency clause enforced.[30] There was George Ballis and National Land for People agitating for the same thing in the Westlands district and across the region. Even the growers, those securely on the side of empire, were not altogether happy. They resented any semblance of federal control, especially over their acquisitive ambitions, and demanded the removal of all acreage limits whatsoever. What all of the voices were wrangling over was the legitimacy of the empire itself and how that legitimacy would be defined—what cultural values, traditions, and standards of judgment would predominate.

In August 1977 the Bureau of Reclamation, obeying the court injunction to review acreage enforcement, issued a new set of rules interpreting and applying the 1902 law. Any single individual (or any corporation) would still be limited to 160 acres, as the law said, though a family could own up to 640 acres. Through additional leasing, the operational limits could be expanded to 480 acres per person, or 960 acres per family. The time allowed for disposal of excess lands would be lowered from ten to five years, and the federal government would set up a lottery to sell lands that owners could not sell among their family, neighbors, or employees. And no owner

or lessee of federally watered lands would be allowed to live more than fifty miles from them—a requirement that would be "phased in so that no undue hardship would occur." Would the enforcement of those rules make much of a difference across the West? In most places, the answer was no. Only 2 percent of all reclamation landowners had more than 320 acres; the average size of ownership units was a piddling 70 acres. A mere 0.8 percent of the units exceeded 640 acres, the family standard (though they owned 16.8 percent of irrigable acres). But there were a few places over which the rules would roll like an earthquake, shaking and knocking about the social order, and those places happened to be precisely where the Bureau had lavished its best efforts, notably the Central Valley of California. Under the proposed methods of calculating, Californians would own almost a million acres of excess lands, or 89.3 percent of the total in the seventeen-state Bureau service area. New Mexico, Texas, Nebraska, and Montana would add enough to account, with California, for 96 percent of acreage excess. In those states, the Bureau was admitting at last that there "was a very high degree of inequality" in the distribution of benefits for which it was partly responsible, and that a new, serious round of enforcement could rectify that inequality. Something like a thousand new farms could be created, the government ventured, most of them to be found in the Westlands district. That was, after all, not many farms, not enough to erase most of the lines of class and hierarchy, but it was enough to seem wildly, dangerously revolutionary to a grower named Standard Oil or J. G. Boswell, Inc., and thus it was enough to doom the new rules.[31]

The Interior Department officials dutifully took their proposed rules into western towns and cities where they hoped to hear the grassroots reaction. What they mainly heard, and it came from a choleric brigade who could not claim to represent the large, unaffected, complacent majority of reclamation farmers, was that enforcement would be catastrophic. An even smaller knot of dissidents appeared at hearings to say that the rules did not go far enough, that far stricter ceilings on family ownership and on leasing—say, a maximum of 320 acres on all operations of every kind—would make many more opportunities for new farms than the Interior scheme, but their voices were shouted down in the general organized clamor set up by the rural elite. Among those taking the elite's side was liberal Governor Jerry Brown of California, who sent his state director of food and agriculture, Richard Rominger, to protest that the 160-acre limit was "unrealistic." He had support from men like the Westlands Water District manager and the spokesman from the Pacific Legal Foundation, who charged that Interior was trying to force "a social change by attempting to create an 'agrarian' form of agriculture." The foundation subsequently got the courts to issue

an injunction against the rules until an environmental-impact statement was prepared.[32] While that was in process, western congressmen and senators rushed off to Washington with a slew of proposals in their attaché cases to bury the proposed rules and amend the 1902 law.

By 1979, it was clear that the only bill that had much chance of passage was the Reclamation Reform Act, Senate Bill 14, proposed by Frank Church of Idaho to give "relief to real family farmers." It would repeal all residency requirements, make 1,280 acres the absolute maximum for operations, leased or owned or a combination thereof, but expand that limit where climate or altitude put farmers at a competitive disadvantage. Church would also free any district from those limits once it had paid out its forty-year contract with the Bureau. Hearings on the bill were held in Washington in March 1979. After drawn-out statements from state secretaries of agriculture, from the well-heeled Farm/Water Alliance, the National Cotton Council, and so forth, after twenty-three witnesses in all testified in favor of liberalizing or abolishing the old law, when the hour was late and the senators were eager to go home, George Ballis of National Land for People was allowed to come forth and speak alone in opposition. Some months later the full Senate considered the Church bill and voted in favor of it, 47 to 23. No action was taken by the House of Representatives, however, leaving the issue moot.[33]

With the new Interior rules still hanging threateningly in the air, with a string of failures to get the law rewritten by Congress, the western elite was frustrated and worried that they would again fail to get reform as they had in the 1940s and 1950s. Then, the inauguration of Ronald Reagan as President in January 1981, a man who as California's governor had sharply condemned the general idea of an acreage limit, along with the seating of a strongly conservative, Republican-controlled Senate, brightened their prospects considerably.[34] Once more a rush of new bills appeared in Capitol Hill committees. Senator James McClure of Idaho, with support from Armstrong of Colorado and DeConcini of Arizona, sponsored S. 1867, which would set the limit at a munificent 2,080 acres owned and leased. For a while it was the Senate's favored child. This time, however, the bill that was destined to succeed where all others had failed was one slipped into the House hopper by Morris Udall of Arizona. H.R. 5539 would abolish residency requirements completely. The western reclamation farmer could live in Taiwan or Palm Springs if he liked, plowing and watering at long distance. Udall's bill would set the combined ceiling for a family at 960 acres, or its equivalent in areas of lesser productivity, but at 320 acres for a corporation. It would let the Secretary of the Interior decide how long (up to a period of five years) an owner had to dispose of his excess lands. No

lottery was required to see that the excluded, the outsider, got a chance at the sale. The bill would allow unlimited leasing above 960 acres, so long as the lessee reimbursed in full the interest paid out by the government on the reclamation funds it borrowed. And it would exempt all Army Corps of Engineers projects from any acreage limit. On 6 May 1982, the House voted in favor of the Udall bill (228 ayes, 117 nays). In July of that year the senators agreed to shelve their own McClure bill and put Udall's in its place. The vote was 49 in favor of that move, with only 13 opposed. Thus, the Reclamation Reform Act of 1982 became law. After eight decades of dispute, loose attention, and the persistent hopes of social reformers the old 160-acre homestead principle was dumped for a new standard, one six times larger than its predecessor. For those growers whom George Ballis called the "biggies," those men who were huge in ambition but mighty few in number, constituting less than 2 percent of the reclamation owners, the way was now open to unlimited aggrandizing. Without embarrassment or danger they could openly set up truly massive operations, if they paid "full cost." What was meant by paying "full cost" turned out to be not so very onerous either: getting an interest rate, through long-term government borrowing, that was about half the going market figure, paying something like 6 or 8 percent above the water rates charged the smaller operators, with all those subsidies from urban water and electricity consumers left pleasantly intact. The power structure of the hydraulic empire was not altogether satisfied with the outcome—it wanted more liberality than it got. But, on balance, it was happy, for it was safe at last from the tattered hordes of wild-eyed agrarians, farm workers, revolutionaries, populists, and redistributionists.[35]

During these years of turmoil from the mid-1970s to 1982, much was said about the principles, the moral values, that should henceforth govern the development and use of water in the West. Little that was said was new or profoundly thought out, but what was said was strongly, passionately, and thanks to the changed political climate of the Reagan era, unabashedly urged. The debates in Congress produced especially revealing articulations of the region's public values on the matter. Judging by the frequency of their iteration, the most compelling of those principles were the following:

1. The proper role of the state should be to promote the private accumulation of wealth, not seek its dispersal into as many hands as possible; it should be to reward the successful, not the failures.
2. The laws of the marketplace are reason exemplified,

and they should be allowed to dictate what size of farm operation is most desirable, what will work best, what will be viewed as efficient.

3. The hydraulic apparatus of the West, an imposing technological triumph, should not be flawed and compromised by an antiquated agrarian ideal that belongs to the horse-and-buggy days.

Although evidence could be rustled together in support of any of the three principles, they were all more in the way of preachments than demonstrable or logical truths. Defenders of the 1902 law flailed away at them with their own statistics and preachments, but finally they could not prevail—could not crack the imperial ideology.

By the first of the principles, the federal government was to be regarded as a welcome partner in developing western water when it confined its mission to the domination of nature and left private enterprise alone. When it acted, that is, in Senator Malcolm Wallop of Wyoming's words, as "a public-investment-making entity," and in the words of his senior colleague, as "an engine of economic growth." Then, so the reasoning went, no matter how large its budget or how far-flung its tentacles, no matter how subtle or powerful its influence, no matter how deeply dependent on it westerners had become, government was not yet become that dreaded monster Bureaucracy. It was not yet an overarching authority repressing and restraining the rights of individuals. When the state took to redistributing land and water, on the other hand, the West would become, in the rumbling phrases of McClure of Idaho, a "centrally controlled, rigidly enforced egalitarian society in which excellence is not virtue and liberty no prize." In the 1979 hearings, Orrin Hatch, a prominent member of the New Right, denounced this "continuing process of bureaucratic domination" that the acreage limit imposed on his constituents in Utah (Bureau figures showed that only 0.1 percent of irrigable acres there were excess). On the same occasion John Puchen, director of California Westside Farmers, demanded to know, "Who is the Government of the United States to say that because you want to be a farmer, your income should be limited to a subsistence level?" And Bernice Wolf of California Women in Agriculture echoed many senatorial sentiments when she said, "We must preserve the sacred right of property owners to do as they wish with their property." Big government, then, was not *ipso facto* incompatible with the western way of thinking, only government, whatever its size, that attempted to mess about with the single sacred right of accumulation. The region's elite were attacking a government that said, as Wallop put it, "You're going to be frozen in place."[86]

The second principle had less visceral appeal than that of defending the raw accumulative passion, but it had the great advantage of seeming to be more scientific, more disinterested, even more humanitarian: A large body of technical literature could be brought to its defense, all of it demonstrating, so it was said, that a mere 160 acres was irrational and inefficient by the standards of contemporary marketplace agriculture. Among such studies frequently cited were those by California farm economists Gerald Dean, Harold Carter, and Warren Johnston. In their view, the economies of scale in irrigated farming all began well above the quarter-section farm unit level: at 600 to 640 acres for most of the crops they studied. Modern machinery, their studies and a few others suggested, had made the old nineteenth-century standard in farm size completely outmoded. Rigidly imposing that standard today would raise the cost of food and, as some went on to claim, threaten the hungry of the world with starvation. However simplistic, that argument provided grist for the empire's mills. Not mentioned were the other implications in the studies. Once achieved, those economies of scale typically did not go on and on upward but reached a plateau where they leveled off, or even declined, as they encountered some inefficiencies associated with overblown size. Yet no one in the agribusiness world or the United States Senate suggested that a *lid* be placed on western farm size right where those diseconomies began to show up. Taking off every lid possible was the great and only desideratum, for it was accumulation, not efficiency, that was their real, leading motive.[37]

The identification of an optimum scale in agriculture mainly reflected, of course, the cost and design of the machinery currently being invented and deployed on farms, as well as the desire of every operator to own his own full panoply of such equipment rather than to share with his neighbors; the growing dependence on a battery of chemicals; and the ability or inability to get a contract with some giant food processor. Any such optimum was best understood, not as a "law," specifying what had to be, but rather as a description of what was, of what had been devised, of what had been sought. In the agricultural engineering schools, efficiency had been persistently defined as whatever was most profitable for big operators. Therefore, the search for a so-called scientific definition of ideal scale was something of a self-fulfilling prophecy. Believe that big is better and you will work to make it so.[38]

Those who wanted to hold on to the old 160-acre acreage limit, or at least on to some lower ceiling than the one pushed by Udall or McClure, had their own studies to cite, casting the entire matter of scale and profitability into some confusion. For example, a study by two agricultural economists at Washington State University demonstrated that a 160-acre farm in the

Columbia basin could earn a family $15,590 in after-tax income, a 320-acre farm, $27,360, sums they described as respectively "quite adequate" and "quite generous" by national standards. Corroboration came from the Bureau of Reclamation's environmental-impact statement on its proposed rules, which determined that in the vast majority of irrigation districts a 160-acre farm could produce as much as or more income than the national farm average of $10,037. Quadrupling that size, as the Bureau proposed to allow for families, would have made it possible for a western farmer with subsidized water to make far more money than his counterpart in the East: as much, it was calculated, as $101,480 in net operator income in the Westlands Water District, $124,600 in Imperial Valley.[39]

The third principle may have been the most subtly persuasive of all, though it was more of an oblique presence than a well-articulated argument. The 160-acre standard, argued senators, congressmen, editorialists, and farm groups, came from another century, when dams were simply piles of brush or stones placed across a stream, when a plow or a mule-drawn fresno was sufficient to scratch out a ditch. In the shadow of a San Luis Dam or the Central Arizona Project, it seemed a hopeless anachronism. Moreover, the standard came from another, fading region. For farmers back East so small a farm and the income it provided might be all right, but not for farmers in the West, where men lived by larger expectations. Enforcing an old, outmoded social ideal of small farming in that big land of big engineering triumphs was a gross incongruity. It would create a region of "serfs" and "peasants," warned western leaders.[40] Never mind for the moment that those serfs, according to the economic studies, were making on average as much as or more than those in any other region of the world. The point was that they were men who had a spectacular hydraulic achievement to live up to and therefore could not be confined to the ambitions of lesser men elsewhere. That general, diffuse feeling of incompatibility between traditional, eastern social ideals and modern, western technological miracles was independent of any personal, self-interested acquisitiveness or any loyalty to the most accumulative class. It was unsentimental, commonsensical thinking, an honest acknowledgment that if the West had ever really wanted to establish in its valleys a more decentralized, agrarian life, where a large portion of its people would live directly on the land and make their own decisions locally, it would never have pursued the water system it got. Now it was time, westerners were insisting, that the society be conformed to its infrastructure.

Whatever the validity of these ways of thinking, they carried the day. A long-standing agrarian tradition and its powerful mystique were abandoned in 1982. For almost a century, it had been attached—granted, as rhetoric

more than reality—to the western reclamation program. Now at last that program was revealed to be unequivocally an imperial one, aimed at the massing of wealth and power, using the concentrated force of the capitalist state to further that work. The next question was whether, without the cover of the agrarian tradition, such a program could still hold on to its legitimacy among Americans, even among westerners. Would they continue to finance it, as they had always done, once they had an unambiguous view of what it was after?

"The great barbecue is over," announced Senator Daniel Moynihan of New York during consideration of the McClure bill. While the taxpayers in his own home city were forced to spend over a billion dollars of their own money to improve their water supply, westerners were still asking for more federal aid. They were asking, he acknowledged, but they were not going to get it. Not a single major water-authorization bill, he pointed out, had been passed by Congress in the decade after 1972. The Corps of Engineers was without work, and the Bureau was merely finishing up old projects. The national majority that had once supported those authorizations had now disintegrated. Moynihan recounted how the governor of Arizona, flying with him in a helicopter over the Colorado River reservoirs, had joked that the water was destined for "the swimming pools of my more affluent constituents." Moynihan was incensed by such profligacy, such flagrant abuse of New York charity. What he was saying should have been taken as a warning to the western bloc in Congress that the legitimacy of their program was hanging in the balance. They did not pay him any attention, however, and ignored similar warning signals from Senators Proxmire of Wisconsin, Metzenbaum of Ohio, and Lugar of Indiana. All indicated that the Midwest, like the East, was not likely to go on financing the water empire in years to come. Nor did they heed one of their own, Congressman Jim Weaver of Oregon, who denounced the Udall bill as "the product of a well-financed campaign of a small but very wealthy group of agribusiness interests, multimillionaires and corporations. It is a bald-faced antifamily farm package of direct subsidies to the richest of America's agribusiness interests." Outside the West, and even here and there within it, the legitimacy of the program was slipping away.[41]

The irony of the situation was that, in making their case for reforming the acreage limit, the western elite had forged a tool that now could be turned against them with devastating effectiveness. They had claimed to want to live and grow by the principles of the marketplace. Very well, let them pay market prices for their water. If the West was not interested in

opening new homestead opportunities for the disadvantaged, then the old justification for furnishing cheap irrigation was gone. Two Colorado State University economists, David Seckler and Robert A. Young, wrote in 1978, "We find there is no compelling rationale for anything like the amount of subsidies now being provided under federal water programs."[42] That was an old conclusion, now spreading rapidly through both professional and lay circles, and the 1982 legislation could only confirm it. In fact, the new law reflected that thinking to some degree when it spoke of "full cost" pricing for larger operations and when it required districts to agree to annual renegotiations of contracts and prices if they wanted to enjoy the new acreage liberality. Since it had been taken over by the state, reclamation had never been asked to meet the familiar market tests: Would this expenditure bring the highest possible return? Would the benefits be greater than the costs? Would private capital have undertaken this or that project? Would the water go to those willing to pay the most for it? Now, suddenly, caught in the backlash of their own reasoning, the western ideologists might have to face those tests at last.

If the empire had now to meet, and meet rigorously, the pure marketplace tests of economic success, then there might be significant shifts ahead in its structure of power. Agriculture might eventually have to give way, might be forced to migrate back eastward where its costs were lower, its western water going to a new set of customers—the industrialists, the mining and energy companies, the desert megalopolises. Moreover, under strict marketplace accounting, no new projects might be undertaken for quite some time. There might be too many other demands on capital, pressing demands from all over the world, competing against the water developers. Their dream of total use, total domination of the western landscape, might then never be fully realized. That was a distinct possibility lurking in the triumph of 1982. In winning its long battle to lift the lid on accumulation, the empire might have lost the means to finance its continuing war on the desert. And lost too its ability to command the moral capital of the nation.

For a man like Paul Taylor, however, a man who had given so much of his life to defending the agrarian tradition in the reclamation law, that sudden, unforeseen vulnerability of an empire overreaching itself was not apparent in the summer of 1982. Now eighty-seven years old, he shuffled down the corridors of Barrows Hall on the Berkeley campus where he had his office, dressed in a plaid shirt and a blue nylon padded jacket, walking slowly and gingerly with a cane in one hand. Once in his office he sat among the scholarly debris of a lifetime, sorting out his papers for the archivists. His eyesight was weakening, his sagging eyelids held in place by tape. On

his desk lay an appeal from Morris Udall for a campaign contribution, and for a moment it brought the fire back into those eyes. "Should I send him money?" he asked—send money to a man who at that moment was gutting the law Taylor had worked so hard, so long, to hold on to? He had before him too the beginnings of an article for a law journal, arguing that the Metropolitan Water District had been violating the Warren Act of 1911 by selling its Colorado supplies to excess-land owners. On that and other matters he answered questions with a slow, thoughtful precision. His mind was alert and tenacious while the body gave way. Yet that alertness was tinged with melancholy, for he knew that he had failed in what he had set out to achieve. He understood and must accept that the West, or at least the elite West, had rejected a future he had wanted to see for it, a future where small farmers of many races could live harmoniously and comfortably in that dry land, with a powerful benevolent state building for them, looking out for their welfare, bringing them water. Now that was a vision that had been put aside, once and for all. It was a quaint notion left to the historians. "Well," was all Taylor could say at the end, glancing at the floor, then out the window toward the Sather Tower, "it was a good fight."

LEVIATHAN AILING

In the winter of 1975, the Bureau of Reclamation began filling the reservoir behind one of its newest dams, Teton in southeastern Idaho, at the base of the glorious mountains of the same name. There had been no end of headaches in its construction. Incredibly, the dirt-and-rock dam had been sited on one of the most active earthquake zones in the country, and the canyon walls around it were cracked and fragile, leaking water like a corroded bathtub. Scientists at the U.S. Geological Survey had questioned the wisdom of putting a structure in so treacherous a place. Economists had worried about the cost overruns. Environmentalists criticized the destruction of seventeen miles of canyon wildlife habitat. The Bureau answered by pouring more grout into the cracks. Within six months after its completion Teton Dam sprang a leak, then another. On the fifth of June 1976, its entire north end collapsed, and 80 billion gallons of water came thundering downstream, taking everything in its path: eleven people, 13,000 head of cattle, many ranchers' homes, a billion tons of topsoil, and no small part of the pride and esteem of the river controllers.[1]

A tragedy like Teton Dam could give no one satisfaction, but it could usefully suggest that the hydraulic society had a misplaced, dangerous confidence in its mastery, through concrete, steel, and earth, over nature. The best designs of the best engineers (though Teton was hardly that) could fail, not only all at once, with thunderous impact as in Idaho, but slowly too, wearing out, falling into disrepair, becoming impossible to salvage. Steel penstocks and headgates must someday rust and collapse. Concrete, so permanent-seeming in its youth, must turn soft and crumble. Heavy banks of earth, thrown up to trap a flood, must eventually, under the most favorable circumstances, erode away. After all, nothing nature could throw in the way of even so small a river as the Teton—whether blocks of lava, andesite, sandstone, granite, or gneiss, no matter how many thousands of feet thick and miles and miles across—could contain it forever; how much less likely was it that the human contrivances of the water empire could permanently withstand the force of flowing water. The message of the Teton disaster was that the days of the empire were numbered, on stream after stream, river after river. It was a signal of impending mortality, of human imperfection, of transient, elusive command. The end might not come soon, might come when it did with a whimper more than a bang, but it would come.

Teton was not the first big American dam to collapse. There was the Johnstown, Pennsylvania, disaster of 1889, which had brought John Wesley Powell to a ringing defense, despite the more than two thousand casualties. There was the St. Francis Dam catastrophe of 1928, some forty miles north of Los Angeles, which drowned more than four hundred persons and destroyed the career of the formidable William Mulholland of the Los Angeles Water and Power Department. There was the Walnut Creek washout in Arizona, Austin Dam in Texas—and how many nameless others? In 1965, Fontenelle Dam in Wyoming began leaking and had to be drained, and Navajo in New Mexico narrowly averted a similar fate; while in 1981, a large section of the Westlands irrigation facility, San Luis Dam, slid off into the water, threatening not drownings but drought from diminished reservoir capacity. And there were a few more potential disasters looming in the future: Auburn and San Fernando dams in California and Wolf Creek in Colorado had all been built in unstable seismic zones like Teton's. One study in the aftermath of the Idaho collapse argued that America's dams were ten thousand times more likely to cause a major disaster than all of the nuclear power plants. Even if the federal government could learn to put safety ahead of pork-barrel politics and guarantee its own structures, there remained the grim fact that twenty-four out of twenty-five dams around

the country were in private hands, and those were often loose, bungling hands.[2]

More serious for the empire's future than any botched design or isolated disaster were the inevitable problems associated with the aging of the hydraulic system. Yet those problems were seldom confronted. In proposing dams and canals the practice had never been to include the costs of decommissioning or replacing them, for the designers had always assumed that their works were made to last, if not forever, then for a very, very long time. In 1985 Hoover Dam would be a half-century old, and no one really knew what its life-span was. Each day sediment backed up behind it, reducing its capacity, foreshadowing its end. Would it last a full century? Two? The answer would depend in part on the durability of its materials, exposed year after year to a hard climate yet expected to withstand the unrelenting pressures of a mammoth lake, and upon the vagaries of land-use management in its basin, for too much grazing or deforestation upstream could accelerate erosion and add to the sediment. Pointed warnings came from the bad experiences of other countries, for example, from Pakistan's much touted Tarbela Dam, whose life expectancy the designers had overestimated by a factor of three or four.[3] One thing was certain over the long term: whatever their span of service, the Hoovers and Grand Coulees of the West must some day hold back not water but a vast sludge drying in the sun. Eventually engineers would be forced to look for new sites, and they were not going to find any, for the good ones had already been taken, used, and rendered useless.

The failures associated with aging and carelessness of design were part of a larger environmental vulnerability that the water lords began to encounter in the postwar period. They had to contend, in ways their predecessors had never contemplated, with the limits imposed by nature, limits to what humans can do in the pursuit of domination. Hydraulic technology held out for a long time the illusion that it could bring natural forces under absolute, tight, efficient control, but in truth it multiplied the ways it could work its own demise. Each new project, grander than the last, demanded increasingly intricate supervision, greater managerial sophistication—greater, it sometimes seemed, than people could summon. There was more to go wrong, and it did go wrong, on a scale commensurate with the technology involved. In addition to the problems with the apparatus itself, three sets of environmental vulnerabilities appeared: a water-quantity problem, a decline in water quality under ever more intensive use, and a potentially irreversible degradation of the pristine ecological communities of the West. These were not mere casual or minor nuisances. They were

deep systemic problems, growing out of the very program of large-scale, intensifying water control, associated with it wherever it had been pursued in history, and quite possibly without remedy. In that case, they might also prove to be fatal.

The old Incas used to say, "The frog does not drink up the pond in which he lives." They did not know the frogs or the ponds of the American West. Into that dry region had migrated the thirstiest frogs on the planet, and by the 1970s they were in fact drinking up their supplies at an alarming rate. Thousands of potholes, sloughs, and entire lakes from North Dakota to southern California had by that date been drained completely dry. Major rivers like the Colorado, the upper Rio Grande, the Arkansas, the Red, and the Platte were totally consumed or nearly so; even the copious Columbia was flowing uncommonly low at times. Despite more than a century of herculean efforts to make more water available, the thirst was still there, and it was a thirst that grew larger and more diverse with time. These frogs needed not only a little water on their tongues, in the way of all flesh, but a lot of water on their lawns, in their coal-slurry pipelines, in their manufacturing plants, and above all on their farms. They simply could not be satisfied. Scarcity for them was not merely an objective condition of nature but the product of, the rationale for, the force behind, their culture. Wherever they perceived scarcity they would drive themselves to create abundance. When and where there was abundance they would make scarcity anew. In that unceasing escalation of want they constantly ran the risk of consuming the very last drop, of becoming frogs with no ponds left.

Here were the dimensions of western thirst in the mature stage of empire. In its 1975 Westwide study of eleven states, omitting the plains tier, the Bureau of Reclamation determined that water withdrawals for all uses amounted to 136,778,000 acre-feet a year, or 45 trillion gallons. Of that sum, irrigation alone accounted for 100,717,000 acre-feet, or 74 percent. Some of that water made its way back into streams, but most of it did not. California's was the worst case in this respect: three out of every four gallons it used were considered "consumed"—that is, made unavailable for further use because of evaporation or seepage into the ground. California also made the largest withdrawals (39 million acre-feet), followed by Idaho (26 million), and Oregon (11 million). These figures must be put, of course, against the total runoff available, some 427 million acre-feet in all. That might seem like a plentitude of water, four times the quantity consumed, leaving no cause for alarm. And then one remembered where that runoff occurred and how difficult it would be to reach what was still untapped. Two

states, Washington and Oregon, and their coastal ranges in particular, contributed 183 million acre-feet alone to the runoff, and that water was a far and expensive way off from most of the thirst.[4]

Americans of all regions had habitually been, as though it were their birthright, big water users, profligate users even, but westerners had become the biggest by far. In 1900, the total amount of water used across the country for all purposes was 40 billion gallons a day; by 1975, the amount was 393 billion gallons, ten times more, though the population had only tripled in size. By that later date Americans were indisputably the thirstiest people on earth, withdrawing three times as much as the world average, a considerably higher rate than in other industrial societies and enough to make an African villager, carrying a water pot home on her head, stagger in unbelief. Beyond the hundredth meridian, per capita rates of withdrawal and consumption much exceeded even those extravagant American levels. The national average withdrawal from all sources was 1,600 gallons per person per day. In Idaho it was, thanks to irrigation, 21,000 gallons. It was equally striking that not only farmers but urban westerners too, in their direct use about the house and yard, drank great draughts of water. The national average for direct personal use was 90 gallons a day, but in Tucson, it was 140 gallons, in Denver, 230, and in Sacramento, 280.[5] This was letting water slop from the cup, run freely down the chin, thoughtlessly spill on the ground, making the world stare in amazement. By 1980, resource experts were predicting a planetwide water crisis that could be a greater threat to human life than the energy shortages of the seventies. If that was to be the future, Americans would be much troubled to adjust and struggle through—and Americans in the West, drinking, bathing, guzzling, swimming, mining, watering with a loose freedom in the face of strict limits, would be the most troubled of all.

Survival, to be sure, is an elastic idea, and a crisis of survival means different things to different people. For a Punjabi farmer the lack of water might mean a nightmare of crop failure and famine, but in the modern West the immediate, foreseeable threat was not so dire. It was a threat to an established standard of living, to a margin of wastefulness, and to a future of unrestrained economic growth. That last may have been the most culturally serious. As Theodore Schad, director of the National Commission on Natural Resources, saw the problem, "Some method must be found to meet the demands in order to prevent stagnation of the economy of the West due to lack of water in the twenty-first century."[6] But even though they were less desperate than some in the world, the prospects for the West could be fearful all the same. Where would the future supplies come from to satisfy those expanding demands? Therein lay the region's challenge, a more

compelling one in the late postwar period than ever before, and the acceptable, practical answers were getting harder and harder to come by.

The ground itself had always held the largest promise of water. Subsurface deposits often require little social organization to exploit, though it was a long while before people realized that and even longer before they could begin to tap them. Even the starkest desert could offer, down in its depths, a reservoir for the thirsty. Through the permeable aquifers, the water crept seaward, sometimes moving no faster than a mile per century, rising to the surface now and then in artesian wells, springs, and oases. Hydrologists calculated that there was thirty-seven times more water underground than there was on the surface, some of it billions of years old, some of it last winter's snow. A serious difficulty was that the larger portion of the underground supply lay more than a half-mile down, too deep to retrieve. Most of the rest became available only with the invention of powerful centrifugal pumps using electricity or fossil fuels. A second difficulty was that underground water was replenished at a far slower rate than the pumps could take it out. Hence, falling water tables, "cones of depression" around active wells, land subsidence; and increasingly intrusive government regulation were everywhere the outcome.[7] That pattern of expansion and overpumping, as discussed earlier, was what led farmers and urbanites alike in central Arizona and California to demand that distant rivers be brought to their doorsteps.

A similar plight came to the Great Plains in the postwar period, stirring up a similar demand. Underlying what had once been unbroken grasslands, so sparsely watered on the surface, was the paradox of the largest freshwater aquifer in the world, the Ogallala, containing 2 to 3 billion acre-feet, more water than the Mississippi had carried to the Gulf in two hundred years. The Ogallala extended from the southernmost parts of Texas northward into Nebraska. In the aftermath of the dust-bowl years, farmers around Lubbock and Plainview discovered it and with its aid raised a series of phenomenal harvests of cotton and corn. A boost to the plains farmers' efforts came in 1949 when Frank Zybach of Strasbourg, Colorado, invented the ingenious center-pivot irrigation system: a row of sprinklers mounted on a wheeled frame that rotated in a great circle around a well. The system could ride over sandy hillocks, requiring no land leveling or ditchdigging, throwing water over a field like light rain falling from the sky. By 1979, there were more than 15,000 of these units in use in Nebraska alone, and they had transformed the plains landscape from a giant checkerboard to rows and rows of bright green checkers. They had also opened up fragile lands to cropping, encouraged farmers to cut down their shelterbelts (rows of trees planted along the edges of fields to diminish the wind), and in-

creased the incidence of wind erosion. And they were rapidly depleting the Ogallala. By the late seventies, farmers were mining the aquifer at ten times its recharge rate, taking out an amount over the rate of replenishment equivalent to the entire Colorado River flow. Consequently, the underground water table quickly began to recede, six inches a year in some places, six feet in others. At those rates of fall, the Ogallala would be altogether depleted within thirty to forty years, by the first or second decade of the next century—and then there would have to be a devastating retrenchment in plains agriculture and the society it supported.[8]

Clearly, the cheapest way to bring supply and demand into balance was by reducing demand. That meant a program of conservation, and in every part of the West much could be done. There were thousands of miles of ditches that could be lined with concrete to prevent seepage, and there were hundreds of thousands of farmers who might be persuaded (and quickly would have been if their water were not so cheap) to pour less on their crops. However, the region was good at going after every possible molecule but exceedingly careless about putting what was captured to use. Conservation had always had about it an air of restraint, self or other, and the expansionary, accumulative culture was in its marrow opposed to restraint. Far more acceptable were the technological panaceas that had substituted for conservation—and there were still a few of them to grow ecstatic about. One group of wizards proposed towing Arctic icebergs or collapsible bladders filled with Columbia water down to the California coast. The Bureau of Reclamation undertook, in its ballyhooed Project Skywater, to make more snow fall on the Rockies by cloud seeding, thereby augmenting the spring runoff. Several other experts suggested that atomic bombs could be set off underground, fracturing rocks and enlarging the carrying capacity of aquifers. Still others wanted nuclear power plants to take the salt out of the ocean and pipe the water inland. None of those panaceas ever quite materialized. All were too costly, it seemed, or presented complicated dangers that could not be escaped.[9]

That left, as always, the traditional remedy of interbasin transfers. Find a river so far left alone and push it out of its course, push it wherever there was thirst. But in the mature days of the empire that once-popular remedy was encountering resistance from the public will and pocketbook. For example, anticipating the depletion of the Ogallala, state and federal water planners looked hopefully toward the Missouri and Mississippi, even the Great Lakes, as replacement sources, but the residents along those waters eastward were not eager to let them go. Even if they could be persuaded, the cost would be sizable: many billions of dollars, money that the western farmers could not scratch together on their own, money that other taxpayers

were not eager to provide. In 1969, the voters of Texas vetoed a state water plan to pump the Mississippi River across the state to the High Plains. That left them, like their northern neighbors, with no foreseeable options but to wait for the decline. Farther west, the Columbia was still the established favorite to be everybody's savior, but here too there was a sudden resistance against any interbasin transfers. Senator Henry Jackson of Washington, working to protect his constituents from their fellow westerners, got included in the Colorado Basin Project Act of 1968, as the price of his consent to it, a moratorium on studies to bring any outside water (the Columbia was what he particularly had in mind) into the Southwest. Whether his death in 1983 would make possible the resumption of such studies and the eventual diversion of Northwest waters to the southern latitudes remained to be seen.[10] Meanwhile, as the Columbia became more closely guarded, an even more spectacular transfer, the North American Water and Power Alliance, was being debated.

NAWAPA: the water scheme to beat all schemes, or end them. If empires are at bottom feats of imagination as much as of strength or greed; then this was the western water empire's finest hour, for never had imagination conceived anything like it in the way of river manipulation. Its audacity was breathtaking. The plan came to the public in 1964 from the Ralph Parsons engineering firm in Pasadena, California, an outfit where several former Bureau of Reclamation engineers had assembled to make money consulting and designing resource projects for countries around the world. These Parsons people thought in terms of entire continents. Far to the north in Alaska, they realized, could be found almost half of the United States' fresh-water supply, stored in lakes and glaciers, flowing down the Tanana, the Susitna, and the Yukon to the Bering Sea. There also were the Canadian rivers—the Churchill, the Blackstone, the Slave, the Coppermine, the Peace, the Mackenzie—spending themselves uselessly in the Arctic Ocean or Hudson Bay. Could they made to serve the new race of pharaohs raising their pyramids in the south? Assuredly yes, if the nerve was there, along with something like $100–200 billion (the estimates varied) to pay for the apparatus. According to the plan, an array of reservoirs, tunnels, and pumping stations would divert the northern surplus into the nine-hundred-mile depression known as the Rocky Mountain Trench that runs the length of British Columbia. From the upper end of this deep trough a canal would angle southeastward across the Prairie Provinces to Lake Superior and the Mississippi, making inland barge navigation possible from the Alaska wilderness to Montreal and New Orleans. At the southern end of the Trench, electricity generated by the project would send water off into the Columbia basin, relaxing jealousies there, and into the high border country of Idaho

and Montana. From that latter point, the plumbing would branch in two directions, toward the east slope of the Rockies, the depleting plains lands, and toward the southwestern deserts, crossing the Snake valley, the Bonneville Flats, on and on to golden prosperity. Even Mexico, at the very end of the system, would get enough water to irrigate eight times more land than the Egyptians were reclaiming from their new Aswan High Dam. Surely men who could dream such dreams and carry them out need never fear privation, stagnation, or the closing in of restraint. They could engorge the very oceans, they could cut up the polar ice pack into cubes for their drinks, could, if they desired, master anything in their view. NAWAPA was, simply put, "feasible," and it had about it the irresistible logic of an imperial history.[11]

In the awed hush that followed the unveiling of the Parsons scheme, western leaders lined up to embrace it, though with dignified caution, as though they feared giving way too easily to their own enthusiasm. Senator Frank Moss, for instance, who had served as chairman of the Subcommittee on Irrigation and Reclamation and on the Senate Select Committee on National Water Resources, gave it his careful endorsement. It was, he wrote with an air of studied understatement, an "encouraging" proposal because it suggested that "if we are wise, and if we apply the technical knowledge we have to the problem, the whole of the North American continent can be assured of an adequate supply of good water for as long as we want to live here."[12] But alas for those seeking encouragement, the scheme proved to be at once too premature—for there were still other, more accessible streams to be mastered—and too late, for gathering across the country was the beginnings of a mood of rejection. Wallace Stegner was a prophet of that mood when he wrote in 1965 that the plan would be "a boondoggle visible from Mars."[13] What would be the ecological consequences of so grandiose a transfer, a new generation began to ask? Would the diversion cause the polar cap to melt, elevating the level of the seas around the planet, submerging coastal cities? Would the gargantuan reservoirs to be constructed trigger a series of devastating earthquakes, releasing massive floods? Could the nation afford so huge an expense? And then there was the matter of agency: who was available to carry out the project, and who could be entrusted with the power it entailed? It would take the combined managerial authority of three sovereign nations, or of some centralized, supernational force, and the American-based Bureau of Reclamation was not likely to be handed that role. Who then? Unresolved, those imponderables generated doubt, then opposition, then apathy. Thus, though the NAWAPA project had started off brightly toward realization, as so many others before it had done, in the twenty years following its publication it

slipped slowly from public consciousness, fading away as dreams do when they have gone too far to be credible.

By the early 1980s, the empire had reached a plateau of water development and did not know how to climb on up from there. Its existing supplies, its prospects for growth, were running out, yet no new possibilities offered themselves convincingly to a scrutinizing, distrusting people. Once before when the water developers had reached a plateau and were milling about in frustration, the federal government had thrown them down a rope. Now there was no superior agency standing ready to pull the West another notch upward, no one in a position to furnish the necessary capital and expertise, no one powerful enough to overcome all the regional and international political differences, no one able to command a continent.

The second set of environmental vulnerabilities had to do with deteriorating water quality. Reclamation, it began to be clear, was capable of taking good water and making it bad. Indeed, at some advanced point in its intensification, it could hardly do otherwise. Water quality, of course, was a problem that concerned more than the West. In fact, for a long time it seemed to be more of an eastern malady, the result of too many people flushing their body wastes and toxic chemicals into waterways and, more seriously yet, into aquifers, polluting them for the indeterminate future. Eventually, as its population and industry swelled, those problems became the West's too. In addition, the region had a few water-spoilers that were all its own: the corruption draining from densely packed, dreary cattle feedlots and their mountains of manure, as well as that from a hundred million tons of radioactive uranium tailings left lying about on the banks of the Colorado River. Then there were those threats to water quality from irrigated agriculture, perhaps the most discouraging of all because they were the bitter fruit of some very proud achievements.

The warm, moist environments created by reclamation, as noted elsewhere, have in land after land offered ideal breeding grounds for a host of pests, some of them pathogens preying on humans, others of them insects, fungi, and nematodes that damage crops. This predicament appeared in the West early on, and farmers there quickly became avid technicians of pest control. In 1872, California citrus groves were besieged by an imported scale insect that fed on the trees' sap. That threat was defeated by biological control methods—the clever introduction of an Australian lady beetle that attacked the scale insects. Later, however, irrigation farmers turned almost exclusively to a series of deadly chemicals. They were among the first and most heavy users of DDT in the post–World War Two years. From 1962 to 1974, pesticide use nationally doubled, then doubled again in the next

eight years. In that escalation, the West set the pace. California was consistently the leading user among the states, spending in 1978 the sum of $1 billion a year on chemical pesticides (insecticides, rodenticides, herbicides, fungicides) and their application, about one-fifth the American total. Some of those poisons were the chlorinated hydrocarbons, such as DDT—until it was banned for use in the United States in 1972—heptachlor, aldrin, dieldrin, chlordane, and endrin. Others were the organic phosphates, including parathion, malathion, DBCP, EDB, benzine, hexachloride, and toxaphene. They were sprayed on codling moths in the apple orchards of the Yakima valley, on pink bollworms infesting cotton in Arizona and Imperial, on aphids crawling on cantaloupes near Rocky Ford, Colorado, on spider mites raging through San Joaquin alfalfa fields. Each application, it soon was apparent, made necessary another and stronger dose, as the pests quickly developed genetic resistance or as the poisons killed off useful, nontarget species that had kept the pests in some kind of check. Western farmers, with sizable and profitable investments in their system of irrigated agriculture to protect, found they could not live without the expensive pesticides. But neither could they live with them.[14]

Rachel Carson, in her book *Silent Spring,* told the story of the Tule and Upper Klamath Lake area of Oregon, where DDT from surrounding reclamation lands drained into wildlife refuges, killing herons, pelicans, grebes, and gulls.[15] That was in 1960. Subsequently, water contamination by pesticides and its lethal effects on the food chains in nature became a familiar tale. Consumers began to worry about dangerous residues on the fruits and vegetables they ate, with good reason, for virtually all Americans were carrying detectable amounts of the poisons in their fatty tissues, and those residues were linked to ailments ranging from liver and blood disease to, possibly, cancer. Western farm workers had to live with some of the most serious consequences: it was they who were hired to do the actual spraying and dusting of cauliflower, peaches, lettuce, strawberries, and other crops. Reentering the sprayed field even as late as a month afterward, they would suffer from blisters, inflamed skin, and reddened eyes. Nor was that the worst of it. Between 1950 and 1961, more than 3,000 farm workers were poisoned in California by pesticides and other farm chemicals, and of that number 22 adults and 63 children died. A biophysicist at the University of California reported that "the severity of pesticide-related illnesses to farmworkers is probably greater than that attributed to all occupational causes in any other type of work in California."[16] This was a consequence of the water empire that no one in earlier stages had had any premonition of, that no one more recently involved in it had intended, yet one that nobody knew quite how to shake off. The unintended costs in lives and

money were high and tragic, but without those pesticides, even when used in a more restrained and integrated program of pest management, the irrigation economy might very well collapse.

The degradation of the precious water on which the West depended had further ominous aspects. A regimen of intensive cropping must soon deplete the soil, necessitating the application of chemical fertilizer. The fertilizer in turn, under continual artificial watering, must leach into the groundwater or streams, contaminating drinking sources. Nitrates in the fertilizer, where sufficiently concentrated in an aquifer, could produce methemoglobinemia, or "blue-baby syndrome," a condition of inadequate oxygenation of the blood, and such concentrations were indeed found and found frequently in places like the irrigated Platte River valley.[17] And then there was the oldest and most endemic form of water decline associated with all hydraulic societies: salinization, the poisoning of water and soil alike by salt buildup.

Salt is a generic term covering not only the familiar sodium chloride in the kitchen shaker but also a range of chemical compounds that are reactions between bases and acids. These include calcium carbonate (chalk), zinc sulfate, barium chloride, sodium bicarbonate, various phosphates, nitrates, and hydrates. Typically they have a whitish or grayish color, and their structures are crystalline. They readily dissolve in water, making it "hard," or alkaline, leaving in teakettles and pipes a scaly deposit. Clustered heavily around the roots of plants, salts interfere with moisture take-up, causing stress, diminished productivity, and even death.[18] Fortunately for living things, the salts, though originally scattered through the earth, have been diminished in the upper soil layers by the steady rainfall of billions of years and have washed into the sea, allowing vegetation to flourish. Everywhere, that is, except in the arid lands. There the salts remain abundant and omnipresent. A desert torrent, violent but soon over, may bring them to the surface, leaving them behind as a glittering crust, or they may collect in stagnant pools. Whichever, the climate there is too dry to greatly diminish them. Desert plants therefore must be highly salt-tolerant to thrive.

What nature has taken geological eons to achieve, the leaching of salts from the root zone of plants, the irrigator undertakes to do in a matter of decades. Covering the arid soil with artificial rain, two or three feet deep over each acre in a year's time, has several effects on the salts. First, the water table may rise, bringing with it dissolved salts, until it intrudes into the root zone, saturating the ground with dangerously saline water just where the farmer's crops are trying to grow. The only remedy then, other than decreasing the irrigation, is to lay down an expensive network of drains, which will remove the salt, but only by pouring it in concentrated

form into streams and rivers. Another effect, and a more obvious one to the casual passer-by, is for the salt to come to the surface and, as the water evaporates in the dry air, to be left behind there—an acceleration of a natural process. Then the irrigator must use more, not less, water to flush away the white crusting, washing it off downstream for someone else to deal with. The use and reuse of that water makes it more and more saline, until the last man on the last ditch might as well be dipping from the ocean. This is a discouraging predicament coming from the attempt to transform, overnight as it were, a desert environment into a humid one. What seems at first to be an easy, and miraculous, achievement turns out to be a Sisyphean labor.

Salinization, the process of concentrating what had been diffused, became in the postwar years a worldwide environmental disaster. Agricultural expansion into dry, marginal lands led to salt buildup, led to man-made wastelands, led to impoverishment and hunger in country after country. Pakistan at one point was losing 60,000 acres of fertile cropland a year to salinization, and Peru had 10 percent of its agricultural area similarly degraded. In the Helmud Valley of Afghanistan, in the Punjab and Indus valleys of the Indian subcontinent, in northern Mexico, in the Euphrates and Tigris basin of Syria and Iraq, salinity was a severe problem dogging the developers' plans.[19] Gradually it became clear that the same problem had damaged early irrigation civilizations, perhaps had even destroyed them. An American traveler to Iraq in the late 1940s, Frank Eaton, saw from his train window miles and miles of salt lying white on the surface, shining in the night like snow. It was the insidious force, he argued, that had brought ancient desert societies to their destruction. "Compared to the magnitude of this slow-moving event," he added, "our dust bowl was but a passing incident." Some years later, two archaeologists, Thorkild Jacobsen and Robert Adams, supported that historical hypothesis, arguing as they did that "growing soil salinity played an important part in the breakup of Sumerian civilization." So long as there had been "a powerful and highly centralized state," they went on, a state that could keep strong vigilance over the side-effects of irrigation, Sumer thrived; but the eventual weakening of that state, its distraction and failure to command obedience, allowed the problems of salt and silt to pile up to the point of hopelessness.[20] The lesson drawn by these observers for modern irrigators was that salinization was a trouble that might be managed, but only by furthering the concentrating, power-accreting tendencies of the hydraulic society.

In the American West, too, salinization became a more and more serious ailment, producing loud cries that the federal government step in and save the irrigators. Especially in the most intensively developed parts of the

water empire, the Colorado basin and the southern half of the Great Central Valley, conditions reminiscent of Pakistan or Sumer could be found. It took, nonetheless, an international confrontation to make the situation there dramatic and compelling. Late in 1961, the government of Mexico made a formal protest to Washington that its agreement with this country over the Colorado River was being violated. In the treaty of 1944 Mexico had been guaranteed, so it claimed, not only 1.5 million acre-feet of water a year, but water of good quality, suitable for irrigation. Instead, it was receiving highly saline water. The protest riveted attention on the mounting environmental crisis along the Colorado, one never mentioned in all the authorizations for more dams and aqueducts. In 1962, the State Department established an advisory Committee of Fourteen (made up of two representatives from each of the seven basin states) to prepare recommendations on how to respond to Mexico. Mainly, they proposed to let Washington handle it, and while it was doing that, to give the western Americans some aid too. Ten years later, President Richard Nixon agreed with President Echeverria of Mexico to work toward a permanent solution, and Herbert Brownell was named to head a task force on the matter. Minute 242, which fixed a limit on the salt content of the water delivered across the border, was signed in 1973.[21]

The cause of Mexico's ire lay, of course, in heavy river use north of the border, but nothing in the Minute directly addressed that. The river itself, as noted earlier, was drying up. During the fifties, the flow at the international boundary averaged 4.24 million acre-feet a year; in the sixties, it fell to 1.52. This drop meant that there was less fresh current to dilute the polluted water seeping back from agricultural users. The Bureau of Reclamation made the situation worse in 1952 when it completed a new irrigation project, Wellton-Mohawk, using Colorado water on some 60,000 acres east of Yuma, Arizona. Soon the project was producing cotton and citrus crops valued at over $1,000 an acre. It was also soaking a great deal of water into those crops—more than five times as much, one report claimed, as the Israelis, employing an advanced, economizing system of drip irrigation, were using on similar crops in Israel. An impermeable substratum under the project lands kept the irrigation water from draining downward, so farmers had to find other methods to get rid of it. Their solution was to drain the used water, and now it was very salty water, back into the Colorado—and out of their concern. Immediately thereafter Mexico found its supplies jumping to a salinity level of 1,500 parts per million (ppm), double the norm. Did the Bureau then (or the State Department or basin users) propose to shut down this project and clean up the Colorado? They did not. Instead, the federal government built, at public expense, a bypass channel that

would void the saline excretions farther south, where they would not pollute Mexico's fields. And it undertook to construct, again with public monies, a desalting plant, costing $178 million, to reduce the salt level in the Wellton-Mohawk backflow. That plant was authorized in the Colorado River Basin Salinity Control Act of 1974.[22]

In the case of Wellton-Mohawk, the salinity threat had an easily defined local source, but that was not usually so. The degradation of water and land had in most instances no clear single perpetrator. Scientists speak of "salt loading," the dissolving of salts into the drainage, and "salt concentrating," the loss of diluting water from a solution through evaporation. Both these phenomena are spread widely around, and controlling them is as hard as keeping dust out of the air. American irrigators in the Colorado basin came to that frustrating realization as, in the wake of the Mexican wrangle, they themselves had to contend with the problem. With the onward march of their empire, the river became a bit saltier each year. Before any diverters had appeared, the Colorado at Lees Ferry, its halfway point, was carrying a salt load of 5.1 million tons a year, or about 250 ppm. That was nature's own leachings from shale formations, mineral springs, and salt domes upcountry. By 1972 that natural level had been raised by human activities to 606 ppm. One study showed that Grand Valley farmers in western Colorado were alone adding 8 tons of salt to the river from each acre they farmed, while in Uncompaghre Valley the pickup was 6.7 tons. Those were areas that had been continuously irrigated since the latter decades of the nineteenth century—yet the salt was still there, still washing out, in quantity. Two engineers for the Colorado River Board of California estimated that by the year 2000, the current at Lees Ferry would be 800 ppm saline. Downstream the condition worsened. The water at Imperial Dam near the border read 785 ppm on average from 1941 to 1969, then 850 ppm from 1963 to 1967, and was predicted to reach 1,340 ppm by the end of the century.[23]

The economic implications for the growers of Imperial Valley were grim, for they, with the Mexicans, were the last to drink. Lying low as they did —below sea level, in fact—growers there had been forced from the time of first settlement to spend hugely on a system of drainage. By the early seventies, they had put out more than $66 million on tile drains and canal linings, discharging the runoff into the sump of the Salton Sea. But once the water coming through the headgates began to deteriorate, the growers were in a new and more serious sort of trouble. They must then shift to salt-tolerant crops, and with them they would earn less cash, be able to hire fewer workers, be strapped to maintain their hydraulic apparatus. Or they must consume more water—if they could get it—to rinse away the poison-

ous deposits, and that would mean needing more fertilizers, pesticides, and pump energy too. A single point increase in ppm, said the Bureau of Reclamation, cost those irrigators $108,400, directly and indirectly, and that amount would leap, by the year 2000, to $240,000.[24]

Anticipating these calamities, the Colorado River Board of California, with support from Governor Reagan, called in 1970 for federal assistance to the agribusiness valley. They wanted fresh water brought in from their state's northern coastal rivers. They wanted someone to find a cheap way to take the salt out of the Pacific Ocean, with the resulting brine to be injected safely out of the way in deep geological formations. They wanted weather modification to get more snowfall and runoff. They demanded control of salinization at its sources in the upper Colorado basin. Some of those demands were delivered by the Colorado River Basin Salinity Control Act of 1974. It instructed the Bureau, in addition to building the desalting plant, to spend $125 million on containing the salt dribbling out of the Crystal Geyser in Utah, the Las Vegas Wash, and other natural sources up north. Here once again were structural or engineering solutions, aimed at controlling nature, not man. What was needed, in the opinion of critics, was a forthright facing of the main issue, an overextended reclamation program that was neither economically rational nor ecologically sustainable. Until that was done, salinization would continue to be a stalking danger.[25]

In the San Joaquin Valley, grappling with the salt threat was quite as ineffectual. By 1981, there were 400,000 acres affected there by high (or "perched") brackish water tables, located mainly in Kern, Kings, and Fresno counties. To salvage those farms and their owners, as they had been salvaged so many times before, the government set about to dig a master drain, the cost to be partly repaid by the irrigators. The drain was to draw off the saline water and dump it three hundred miles away near San Francisco. Without the drain, one reporter wrote, "more than 1 million acres in the San Joaquin could undergo desertification during the next 100 years."[26] Saving those lands was not, however, to be the end of the problem. There was also the question who or what would be sacrificed in that salvation. One hint of an answer came late in 1983. Scientists at the Kesterson National Wildlife Refuge, lying below the Westlands, discovered a pathetic cohort of fledglings in their nests: coots, stilts, grebes, and ducks born with stumps for feet, missing eyes and beaks, dying soon after birth, reminiscent of the human thalidomide deformities of a previous decade. The birds were the victims of selenium compounds and other salts leaching from nearby irrigated fields. The drain, when completed, might save the refuge and its waterfowl, along with the growers, but only to pour the same poison into the environment elsewhere. Congressman George Miller, repre-

senting Californians living where the drain would vent, vowed to stop it, calling it "nothing short of a dagger pointed at the heart of San Francisco Bay and the delta."[27]

Could the lowering specter of salinization ever really be exorcised from the western water empire? Some of its engineers and agriculturists had no doubt that it could be, that it was a temporary nuisance which a little time and expense could banish. Others were much less confident. Throughout history, wherever irrigation has been carried on intensively, they pointed out, salinization has come in its wake, like dust following the wind. It is the way of empires to believe they will be forever impregnable, that they will give the law to nature, not vice versa, that their power and expertise will conquer all. But from the vantage of 1983, that confidence was falling apart.

Salinity, sedimentation, pesticide contamination, diminishing hopes of replenishment, the dangers of aging, collapsing dams: all these were the hydraulic society's worsening headaches. But there was another peril, altogether different in kind from these and even less manageable because it had to do with faith, not technique. A sense of irreparable loss began to settle about the water empire by the late twentieth century, a remembrance of things past. Once, men and women recollected, the West had been a land of canyons leading on to canyons where tamarisk and cottonwoods rustled in a slight breeze blowing up at twilight, a region of broad flatlands where sandhill cranes alighted during their migrations to spear at frogs and crayfish. Deer came out in that lost time to browse in the bottomlands, finding shelter there in winter, encountering, it might be, a mountain lion lying hungrily in wait. Then was a time too of wrens singing a bright, bubbling melody that echoed from the canyon walls, of swallows wheeling and dipping over a stream for mayflies. In the spring run, salmon came fighting their way upstream from the ocean, seeking their birthing place. Beaver chewed down aspen logs, dragging them into midstream for a dam, a lodge, a home for their kits. And everywhere the water purled on, free and uninhibited, racing and slackening, curling back on itself, rippling over hidden rocks, meandering under empty skies, a thing always alive, voracious, unpredictable and full of mystery. Not all of that older time had been lost, but most of it had, and there were many who were not pleased to see it go. Good riddance, had always been the response of the water manipulators; let nature give way to a greater, man-made West. Only the sentimental, the misguided, would mourn that loss or criticize the gain. Leave the elegies to poets, therefore, and get on with constructing the future. What the proponents of empire did not anticipate was that there would come a day

when such advice would be rejected. Nor did they appreciate that the nostalgia they scorned might turn out to be more than a silliness. It might transform itself into a profoundly subversive force, one that could bring an empire low. Nostalgia for what has been lost might lead people to the discovery of new, radically disturbing moral principles, in this case the idea that pristine nature in the West has its own intrinsic value, one that humans ought to understand and learn to respect. In that event, to save what remained of that lost natural world from the imperialists, the instrumentalists, the accumulators, could appear to be a struggle worth making. Conceivably, too, nostalgia might serve as a basis for imagining an alternative future society quite different from the reigning imperial order.

By the 1970s, impassioned friends of the western river past could be found, to the consternation of the empire, in all parts of the region and across the country, sorting out their loyalties, moving from private elegies to the politics of preservation. In one dramatic instance, a young man named Mark Dubois chained himself to a rock in the middle of California's Stanislaus River, protesting the flooding of its wildness behind New Melones Dam.[28] Others challenged the reclamation men armed with chainsaws who were cutting out along thousands of streamside acres the so-called phreatophytes—the trees and other plants that grew along the waterways, pumping moisture through transpiration into the air, wasting what should have gone to a farmer.[29] Other nay-sayers canvassed to save estuaries like San Francisco Bay from poisoning and from eutrophication through diminished inflow.[30] Or to rescue Mono Lake and its rookeries, even its brine shrimp, from Los Angeles's increasing megalopolitan thirst.[31] Still others, in the tradition of Mary Austin and John Van Dyke, went out to fight for a remnant of desert, a place that might have been unredeemed and gaunt but was made more precious than ever by its rarity. The instances of such conflict multiplied in the newspapers, engendering after a while a kind of glazed boredom in readers. So many court appeals, so much repetitious testimony, so familiar the main story, so unending the details. But it would be a mistake to let that feeling of familiarity obscure the historical novelty of what was happening. Never before had a great water-dominating civilization encountered so informed, relentless, determined, and successful an internal opposition. Not Egypt, not the China of the Han dynasty, not the Aztecs or the Sumerians. It was as though the American water empire had created, against its will, a dissidence precisely commensurate with its unparalleled technological success. And now it found itself embattled, losing, unable to hold on to its credibility. It was caught in a dialectic that Karl Marx had never predicted, one pitting not merely rival classes pursuing their competing self-interest but rival ways of valuing nature.[32]

The most sensational success of the emergent party of protest came in 1977 when they managed to persuade a new President, Jimmy Carter of Georgia, to veto a slew of environmentally damaging and economically questionable water projects, nine of them in the West, up for reauthorization. Those projects included Fruitland Mesa in Colorado, which would spend $70 million to benefit fifty-six farmers; the Garrison Diversion in North and South Dakota, which would destroy prairie wetlands wholesale and send salty irrigation return flows into Canada; and the Central Arizona and Central Utah projects. Nothing like that presidential veto had ever happened before to the region, not in seventy-five years of extracting money from the public treasury, and its leaders and elite reacted with shocked, spluttering wrath. Shortly, they succeeded in getting the veto overridden. But in their triumph over a clumsy, uncertain President Carter, the empire leaders might have seen that their success was written on the water, dissolving before their eyes. Those would be the last projects authorized by Congress—for how long no one could yet say, perhaps a short while, perhaps forever. As Senator Moynihan pointed out, not one new project had made it through Congress after 1972. Even when westerner Ronald Reagan, a darling of the empire, defeated Carter in 1980 and moved into the White House, that situation would not change. Much would be proposed in the way of new schemes—$10 billion worth, in fact—but as late as 1985 none of them had managed to run the gauntlet.[33]

The party of preservation and protest, however, had more success in stopping the expansion of the hydraulic society than it had in dismantling it. In 1983 the apparatus was still in place, still pumping the rivers dry, as was the capitalist state that oversaw its operation. Millions of acres of farmland remained in subsidized, profitable production, though besieged by difficulties, and millions of city dwellers had moved into the region to keep the empire busy and in control. Nonetheless, something important had changed, to what effect it remained to be seen. Now, as at no other point in its history, the water-control apparatus (including its managers and its chief profiteers) was coming to be seen, not as a crowning, self-justifying achievement of a world-beating people, but as a necessary evil. The domination of nature had been achieved, and it would not be easy to undo, perhaps could not be. But at the same time domination was no longer a language that westerners or other Americans spoke with much enthusiasm. Somewhere an old river god might be listening to such talk and might exact a retribution.

Fracking, Oil, and the Environment

THE BAKKEN GOES BOOM

OIL AND THE CHANGING GEOGRAPHIES OF WESTERN NORTH DAKOTA

Edited by William Caraher and Kyle Conway

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Introduction

The Changing Geographies of Western North Dakota

Kyle Conway and William Caraher

This book is about the human side of the oil boom in the Bakken formation in western North Dakota. We began work on it in 2013, when a barrel of crude oil sold for a little more than $90. At that time, economic optimism was the order of the day. People were asking, would the boom last twenty, forty, or sixty years? Harold Hamm, the billionaire CEO of Continental Resources, went so far as to tell the Williston Basin Petroleum Conference, "I still think we will reach 2 million barrels a day [by 2020]. I don't think that's over the top, folks" (quoted in Burnes 2014).

Now, as we write this introduction at the end of 2015, that same barrel sells for less than $40. What we did not know—what we could not know—when we began was that the Organization of the Petroleum Exporting Countries (OPEC) would refuse to cut production in the face of dropping oil prices, in an apparent attempt to make oil production from shale, such as in the Bakken, too expensive to continue (Murtagh 2015; Olson and Ailworth 2015). In retrospect, the estimates of a forty- or sixty-year boom seem naive: by all appearances, we were at the boom's peak. In December 2014, there were 174 rigs drilling in the oil patch; a year later, there are 65. There are also five thousand fewer jobs, and monthly in-state income on oil royalties has dropped from $128 million to $69 million (Donovan 2015). Inadvertently, it seems, we captured an important moment, when the bust people dreaded (but thought would never happen) was just on the horizon.

Our purpose in putting this book together was to give voice to as wide a range of people as we could. We were both professors at the University of North Dakota, so we sought out other scholars. We researched the boom, so we sought out our collaborators. We taught about the Bakken, so we sought out students. But we also read the news, went to art galleries, and read poetry, so we also sought out journalists, artists and museum

curators, and poets. The boom was one of the most interesting things we had ever seen, and there were more ways to know it than through the cold rationality we privileged in our scholarship. Journalists, artists, and poets could reveal things we would not otherwise see, experiences or emotions that academic prose could not capture, but art or poetry could. As much as drilling for oil in the Bakken produced an economic and demographic boom, it also was an intellectual and cultural moment for North Dakota, and our book tries to capture that.

Our approach was propitious, if the controversies around hydraulic fracturing (or simply "fracking") are any indication. In the time since we began soliciting submissions, a wide range of books have been published, each more polemical than the last. In one, an environmentalist asks what happens when she inherits mineral rights in North Dakota and has to choose between her ideals and financial security (Peters 2014). In another, a conservative media darling calls out environmentalists for what he sees as their duplicity and willful ignorance of the human rights abuses inflicted by governments of oil-rich countries on their own citizens (Levant 2014). In yet another, an investigative reporter tells the story of an Alberta woman's fight for justice from the oil industry (and her own government) after fracking poisons her water supply (Nikiforuk 2015).

In this back-and-forth, it is clear that the pro- and anti-fracking groups are talking past each other. This is where our book does something different. By and large, contributors sidestep the controversies about fracking and focus instead on the social impact of the boom. There is much to learn here: whether we support or oppose fracking, it has had a significant impact on people's lives. For people living in the Bakken region, life has changed, and we want to understand how. What impact did the boom have on longtime residents? On newcomers? On women? On Native Americans? How did it reshape the healthcare infrastructure? Housing? The media? These are the questions we asked our contributors to answer.

Scholars and journalists shared insight that they gained from their particular perch. But artists and poets did something more: as they talked about how the boom has reshaped North Dakotans' sense of self—how North Dakotans see themselves and imagine their future—they evoked something akin to emotional truth. For that reason, we have devoted considerable space in this book to their work. Because art has the potential to affect viewers at a gut level, we included, among other things, a catalogue from an exhibit about the Bakken at the Plains Art Museum in Fargo. We also included comments left by members of the public.

We also decided to open this book with a prologue in the form of a prose poem. Language is an imperfect tool. It serves us relatively well

when we describe technical aspects of a situation, but in other cases it falls short. We know this most acutely when we experience powerful emotions such as joy or grief and words fail us. In the Bakken, for instance, it is relatively easy to describe the monetary or environmental costs of an oil boom, but it is much harder to find words for the ache we feel when our home no longer looks the same. But in poetry, language comes closest to breaking free of its bounds. When poet Heidi Czerwiec writes, "Given enough time, a sea can become a desert; given enough time, even a desert has value," she presents us with an image not unlike the art in the catalogue. In the dried up sea, we see our own fall from plenitude to emptiness. But the loss is paradoxical, in that it brings a new type of value. Her image brings the contradictions that undergird our experience into view. Even if we cannot put them into words, we can see them and feel them.

So what do we learn from all of this? What do scholars, journalists, artists, and poets reveal about the human side of North Dakota's oil boom? Resources are stretched thin, and to compensate, people have had to rethink the social and physical networks that link them to others. As a result, the geographies of western North Dakota—the ways people understand their relationship to space and place—have changed. Part of this change is material, such as the demographic shift from the eastern part of the state to the western part. A decade ago, nearly a third of the state's residents, those in Grand Forks and Fargo, lived in the narrow strip between Interstate 29 and the Red River. In other words, almost one out of three people lived within five miles of Minnesota. No longer is that the case, as towns such as Williston, Watford City, and Dickinson have doubled or tripled in size, creating unmet needs in social services, law enforcement, healthcare, housing, and other forms of infrastructure.

Part of this change is psychological, too. The stories people tell to make sense of their place in their community or the world have changed. They understand their relationships with their neighbors differently. Some longtime residents and newcomers view each other with a suspicion that grows out of a disparity in wealth and access to resources. Others look for what they share in common.

One result of these changing physical and mental geographies is that many people have had to make do with less, especially those who were already in vulnerable positions. Rents have gone up, but the stock of quality housing has gone down. Travel takes longer and is more dangerous, and unfamiliar people congregate in once familiar places. Even as the boom has subsided, social networks remain stretched for longtime residents, who face new disparities of wealth and ongoing political challenges, and for newcomers, who have left families in faraway homes in search of work. In short, there are more cracks to slip through.

But there is also resilience and creativity. Longtime residents have found ways to extend hospitality to newcomers. Artists have found ways to reimagine their place—which is to say, our place—in a landscape punctuated by oil rigs and tanker trucks. We cannot understand the challenges posed by the boom without considering the creativity it has brought about, nor the creativity without the challenges. One tugs constantly on the other.

To close, let us consider an interesting potential symmetry. In 2013, the bust was on the horizon, but we could not yet make it out. We must not forget that booms and busts are cyclical. Perhaps the next boom is on the horizon now, but as with the bust, we will see it most clearly in retrospect. As Karin Becker writes in her chapter, change has reached a plateau. North Dakota in 2015 is not the same as North Dakota in 2005. People talk of a "new normal." The state has reversed its longstanding trend of outmigration, and the population is up almost 20 percent compared to a decade ago. The median age is younger, and jobs pay better: even Wal-Mart has to pay $17 an hour to its employees in Williston, where the average annual salary is still more than $75,000 (Donovan 2015).

The changes North Dakota has undergone are real, and we owe it to ourselves to ask how they have shaped us. We would do well to listen to everyone—citizens, public figures, artists, poets, and even scholars. This book is not the final word on the Bakken oil boom, but we hope readers will find in it something useful, a starting point for understanding how the boom has affected us and who it is we have come to be.

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Prologue

Excerpts from:
Sweet/Crude: A Bakken Boom Cycle*

Heidi Czerwiec

I.

From Teddy Roosevelt's cabin in western North Dakota, as far as the eye could see was sea: the Cannonball Sea, last of the North American interior, brimming with paleobiology, swimming with lithe dinosaurs. Later, Lake Agassiz (the *–siz* sounds like *sea*), named for the Swiss geologist who read books of stone in the old epic mode, who posited the immense glacial lake, greater than all Great Lakes collected, fed by the end of the last Ice Age. Later still, geologists tell us all that life went underground: carbon-rich shale trapped beneath aquifer-rich sandstone trapped beneath nutrient-rich soil. And buffalo grass: a species whose fine roots lace to dense sod seven feet deep.

What lies beneath you?

(This is all connected.)

Labeled the Great American Desert on old maps of hostile horizons, the Plains become a place that settlers bypass on their way out West seeking the auguries of timbers, pilgrims bristling with hoop-iron and axles. Until a blacksmith named John Deere invents steel plow blades that can break through sod to soil beneath. Until the Homestead Act claims "rain follows the plow." Until settlers staking their claims realize the previous claim is buffalo shit, but learn to tap the aquifers, to siphon off for farming. Until Henry Bakken, a farmer in western North Dakota, taps oil until no more seeps out. Until a U.S. Geological Survey estimates the shale holds 7.4 billion barrels. Until they learn to frack.

Given enough time, a sea can become a desert; given enough time, even a desert has value.

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* Excerpted from Heidi Czerwiec, *Sweet/Crude: A Bakken Boom Cyle*. Farifax, VA: Gazing Grain Press. 2016.

II.

Given enough time, an inland sea can become a desert; given enough time, even a desert has value. The Fertile Crescent has been called the cradle of civilization, of incunabular vocabulary, inventing the alphabet so I can tell you these things. Inventing the wheel, literally. Inventing agriculture by irrigation, diverting two rivers to preserve a land alluvially lush. Lavish: a king deviates the Euphrates to water cascading terraces of fruited trees for the pleasure of a favored concubine longing for the meadows of her Persian mountains. Crescent, the sweet kisses she lavishes on his brow.

Today, the gardens are legendary. Today, less than a tenth of the crescent's fertility remains, almost completely dried up, scrub marking the ancient shore, its gardens gone underground, its only liquid sweet crude. Double-edged sword that continues to support and yet thwart civilization, its foreign hungers and wars. Its land increasing in demand, increasingly wasted, unstable – some in ways we've been implicated, participated. I fill my car even as I listen to NPR, my fool deity, my black idolatry. Men's covenants are brittle.

Don't blame us, the oil companies say. It's the Taliban's fault, they claim, as people in the streets raise signs that read *No Blood for Oil*.

III.

No blood for oil implies distance, implies foreign. But this is here, this is North Dakota (trademark: Legendary!), one of the worst states for workplace safety. Blame the Wild West culture of risk. Blame an influx of green employees with no industry experience, disordered recruits afoul outcountry. Blame fatigue from long shifts – 12-hour days for 2 weeks straight, mud effigies jagged with blood among the dull clank, the blackened pools of grease – work that goes on regardless of weather. (Don't blame us, the oil companies say, it's the contractors' fault. Don't mention drug use: word is, they skimp on testing to fill out their crews.) Nearly all state fatalities investigated by OSHA occur in the Bakken: two-thirds are pulled into pumpjacks or set afire. (An employee was changing valves when a tank ruptured, soaking the employee in oil; he burst into flame and died as a result of his injuries.) One-third killed in falls or "struck by" hazards. (An employee was hit by a set of power tongs on a rig and died as a result of his injuries.) The death rate in North Dakota is 18 times higher industry-wide. (Word is, it's bad luck to wear another man's hardhat; word is, you have better odds of winning the lottery than getting a visit from a regulatory industry; word is, the payoff is up to $300,000.) None of this includes the near-daily occurrence of truckers sliding off slick highways glassy and treacherous, the force of 40-ton tankers colliding with cars on the back roads of North Dakota: flyover, but not foreign.

IV.

North Dakota is a foreign country. Alien. A flyover state, even from space. When we show our foreign friend a photo of a satellite flyover, he's astonished. At nightfall, light clusters on the frozen prairie, phantom city emerged from among the ghost towns. A blooming midnight meridian. Stars in a lake of blackness, a constellation of ignited eyes. The natural gas that emerges alongside the oil costs more to capture than flare. The foreign companies that drill here burn money, a billion a year in flames and fines. A Little Kuwait on the Prairie whose dread watchfires smelter under the dark more brightly than Minneapolis. More broadly than Chicago. In winter, truckers cluster for warmth beneath the flares, which fling their flapping rags of fire six yards into space, toward the stars and satellites and passing planes.

Foreigner, flyover passenger, when you peer out your window, what do you see? What lies beneath you?

Chapter 1

The Paradox of Plenty: Blessings and Curses in the Oil Patch

Karin L. Becker

The press has descended on the oil patch, centering on Williston as the new ground zero for America's energy renaissance. Whether it be by sound, like NPR audio podcasts, by sight, like the countless documentaries circulating on Youtube, or by print, as national, regional, and local media outlets cover North Dakota's oil boom, the Bakken boom is receiving lavish attention. Just within the last year, writers from *Harper's*, *National Geographic*, *The Atlantic*, *New York Times*, *Washington Post*, and *Huffington Post* have devoted boots-on-the ground journalists and lengthy spreads to cover the oil boom. The oil boom has garnered national and international publicity and put North Dakota in the limelight. With the spotlight cast on the oil patch, the question that journalists are trying to answer is whether the oil boom is a blessing or a curse.

Much publicity has been given to the economic benefit of the oil boom. Equally, time, energy, and resources have been dedicated to documenting the social, health, and environmental impacts the oil boom has caused on this frontier region and the rural communities. While reporters and policy makers are busy making their T-bar lists and tallying the positive outcomes against the negative ones, what is missing from this conversation is the long-casting vision. While an oil boom is not unique to North Dakota, nor unprecedented (this is the third one to occur in six decades), media accounts neglect to talk about similar communities that have endured boom and bust cycles. Therefore, there is critical need to look at how boomtown communities are impacted both positively and negatively over time. Many current conversations attend to documenting the pressing problems stemming from the frantic race of oil companies to get there first and start drilling and are exacerbated by the needs caused by the influx of people. However, more efforts need to be made to better understand the phenomena of boom and bust communities.

To help explore the question of whether the oil boom is a blessing or a curse, this chapter will review the research compiled from communities that have experienced similar booms and then apply those findings to circumstances in western North Dakota. While these historic case studies provide insight into the current oil boom phenomena, much remains unknown in terms of final outcomes. While oil industry experts and geologists estimate there is enough oil to sustain the oil boom anywhere between three to seven decades to come, the answer may not be apparent until after the boom. Determining outcomes of the boom is important, both for economic and community impacts, but the evidence needed to answer the question is not yet available. In the meantime, while the oil boom continues to play out, a revised question is needed—one that accounts for the concept of time. For when the question is asked, pre-boom, peak-boom or post-boom, may determine its answer.

Boomtown Phenomena

North Dakota is situated atop the Bakken Formation, the largest contiguous oil deposit in the lower forty-eight states, with the U.S. Geological Survey estimating there are 7.4 billion barrels of recoverable oil resting below its surface (Rucker and Volcovici 2013). Oil produced in North Dakota helped the U.S. become the world's leading oil producer and has ushered in a geopolitical shift and economic prosperity in North Dakota (Krogstad 2014). Yet this is not North Dakota's first oil boom. As a result of new fracking technology that has changed the ways in which oil is extracted, this oil boom has made the largest footprint and is predicted to last the longest.

Longtime residents of western North Dakota are familiar with the boom and bust oil cycles, but this one feels distinctly unique. The first major exploration in the Bakken occurred in Tioga, N.D. in 1951 when Amerada Corporation struck oil in a farmer's field (MacPherson 2008). According to Debbie Iverson, wife of Clarence Iverson on whose farm oil was first discovered over sixty years ago, this current oil boom has had a greater impact on the community. "I've seen boom and bust times, but this boom is the biggest and longest and has the most infrastructure" (personal communication, October 1, 2012).

Reviewing the literature with an eye for themes emerging from boomtown communities reveals pervasive concerns surrounding rapid expansion and decline, and heavy demands on community services and infrastructure (Camasso and Wilkinson 1990). Specifically, three themes emerge concerning community impacts: social disruption due to rapid population influx, loss of identity, and uncertainty and anxiety. These

themes will be explored and then applied to the oil boom in western North Dakota.

Looking at oil boom community impacts in midwestern states, Little (1977) claims the most distinguishable characteristic of boomtowns is an accelerated population growth. Stemming from community impact studies conducted in the late 1970s and early 1980s on governmental regulated extraction projects carried out in rural areas of the western United States, a "boomtown model" was developed to measure social impacts (Gramling and Brabant 1986). Gramling and Brabant (1986) recognized common characteristics when large, complex extraction projects were constructed near small, rural, isolated, homogenous, agricultural-based economies. Specifically, the type and lifespan of the projects necessitated certain labor demands that the local community could not supply. The shortage of workers led to a large in-migration of workers, followed by an out-migration once the project was completed. The rapid population growth and ensuing decline were responsible for both the positive and negative economic, infrastructural, fiscal, and sociocultural impacts on the local community (Gramling and Brabant 1986).

When a community is suddenly faced with a swelling population, economic problems associated with the influx are readily apparent. "There is very little delay between the onset of the new population and the economic costs of providing community services for these new residents" (Little 1977, 404). Small, rural communities are particularly ill-prepared to absorb population growth. There are many ways to define rural according to population density (having less than one hundred persons per square mile) and location (having fewer than 2,500 inhabitants and being located outside of an urban area) (U.S. Census Bureau, n.d.). According to the Health Resources and Services Administration, all five counties within the oil patch region of North Dakota (Dunn, McKenzie, Mountrail, Stark and Williams) are listed as rural counties.

According to Little (1977), rapid population growth leads to a breakdown in municipal services, planning lags behind need, and control of the community rests with forces outside the immediate environment. Communities can usually absorb a population growth rate of 5 percent with a breaking point threshold at 15 percent. As communities approach the 10 percent growth rate, institutional malfunctioning and community fragmentation begin (Little 1977).

Social Disruption

The oil patch region of North Dakota, which consists of counties in the far northwest corner, has experienced astronomical population growth.

Williams County, where Williston is located, has witnessed a 32.1 percent population change in just three years, from 2010–13 (U.S. Census 2014). Williston is braced to expand from 12,000 to an estimated 90,000 within 15 years (Chiaramonte 2013). Similarly, neighboring McKenzie County to the south and Mountrail County to the east have experienced a 46.4 percent and 22.2 percent population change respectively in the same time period (US Census 2014). According to the Williams County Comprehensive Plan 2035 planning report, these counties are anticipating a continued population growth for the next twenty-five years.

Population growth is a new trend as North Dakota's population for the past one hundred years has remained stagnant. Fearful of the shrinking trend that has caused some small, rural towns to become ghost towns, at first residents welcomed the expansion the oil industry brought. Some communities which were close to dying are now flourishing. Schools are no longer consolidating, but growing. The demographics are changing as well. It is predominantly young, single men between 20 and 35 years of age who are moving in compared to the majority of the existing residential population who are between 45 and 59 years of age (U.S. Census 2014).

As a result of the population increase, communities are experiencing severe growing pains. Increases in traffic, accidents, dust, litter, and stress have been reported by residents living in oil-impacted counties (Becker and Hall 2012–13; Becker and Hall 2013; Hall and Becker 2012–13). A recent study examining community health need assessment data from oil patch communities reveals that the most pressing community health needs are a health care workforce shortage, excessive drinking rates, traffic safety, and a lack of affordable housing (Becker 2014). What is significant about these results is that they are expressed and prioritized by community members living in the oil patch. Community members report they no longer know their own community; it is not the same town they grew up in and they no longer feel safe to go outside for walks (personal communication, January 6, 2013).

Crime, domestic violence, prostitution, depression, isolation, and unmet mental health needs have also been reported to have increased since the oil boom (Becker 2014). Some attribute the increase to a numbers game: the more people you have in a given area, the more conflict will arise. Others point to the cramped living quarters where a family of five may be living in a single-wide trailer that is positioned six feet away from the next trailer. In the initial rush of the oil boom, some trailer parks lacked electricity and running water. Further, long hours of monotonous work are blamed for increasing substance abuse. Living as an outsider in a small town away from family members can bring feelings of isolation and

marginalization which are often soothed by alcohol. While not readily noticed or addressed as economic factors, social factors are important corollaries affecting communities as a result of the population boom.

Kennedy and Mehra (1985) indicate the major social disruption resulting from rapid social change. Their research focuses on communities in western Canada that have undergone similar significant economic and social change with an oil boom. They conclude that instability in population size and composition, as well as shifting economic conditions, wreaks havoc on a community's social climate. Seydlitz and a group of researchers (1993) have studied the impacts of oil and gas extraction on communities in the gulf region, and their research has demonstrated that higher levels of rapid changes in development are associated with higher homicide and suicide rates, especially in communities that are involved in resource extraction. Moreover, their research shows increased strain on local infrastructure and increases in poverty during the height of mineral extraction (Seydlitz et al. 1995).

Demand for high paying oilfield jobs has put a squeeze on local businesses in the oil patch. Employers are experiencing turnover as employees quit their jobs or careers for more lucrative oil field employment. Hospitals are losing their custodial and administrative staff as well as certified nurse assistants. Emergency medical services are strained immensely. For hospitals serving the oil patch, call volume has increased three to four times with the recent influx. Tioga Medical Center CEO Randall Peterson states, "In 2007 we would see 600 patients in the ER per year. In 2012, we anticipate seeing over 2,000. That means in a five-year period, Tioga's emergency room visits have more than tripled" (McChesney 2012).

Recruitment efforts are stymied because of the housing shortage. Tioga Mayor Nathan Germundson says "there is literally no place to sleep" (Holeywell 2011, section 5). Residents are sleeping in churches or in their vehicles. To alleviate the housing crisis, oil companies are providing housing, in the form of mobile homes, for oilfield and construction workers. Called man camps, since they are primarily occupied by men, these camps are tightly run with rules including residents cannot drink alcohol, smoke, host guests, or have pets on the premises (Klimasinska 2013). A tour the author took in the fall of 2013 of Tioga Lodge, a man camp run by Target Logistics located on the outskirts of Tioga, revealed a sprawling compound consisting of rows and rows of trailers, each with pickup trucks parked outside, entirely enclosed by a metal fence. The camp housed approximately 1,200 people, about the same size of Tioga, and has led some to call the influx of workers a "man rush" (Krogstad 2014). During my tour, dust was kicked up on the dirt roads and my tour

guide said his favorite pastime of hunting was scratched as the dust and noise pushed the wildlife out.

For the rural residents who elect to live in a small town, the growth comes with a price. "Every system you take advantage of is taxed," says Upper Missouri District Health nurse Janine Oyloe (personal communication, January 13, 2013). The systems she is referring to are roads, traffic lights, repair shops, retail items and medical services. Although new fees have been drafted for the camps to support fire and ambulance services, the increase in call activity is heavily straining the local communities, both in terms of personnel and finances. For many small towns, the oil boom has "come to embody the danger of growing too big too fast, cluttering formerly idyllic vistas, straining utilities, overburdening emergency services and aggravating relatively novel problems like traffic jams, long lines and higher crime" (Sulzberger 2011, section 2).

Identity Fragmentation

Freudenberg (1984) claims the problem of hasty social change produces two viewpoints. One view suggests that rapid social change loosens traditional systems and as a result, greater economic and social opportunities appear. Individuals experience positive effects and opportunities for growth. It is important to point out that age is an important variable; younger people are more apt to benefit from rapid social change (Freudenberg 1984).

The alternative viewpoint posits that rapid growth creates substantial disruption for local residents. This is the dominant view from the body of literature surrounding boomtowns and rapid social growth. Communities, especially small, rural ones, thrive upon creating a web of continuing relationships. This process is a slow one, developed over time where the emphasis is on coming together, sharing resources, and experiencing a sense of belonging to the community. With increasing mobility and population migration, the psychological sense of community fades. The perception of community as a stable and secure place of one's long term home becomes a source of change and fear; negative consequences ensue as individuals are less securely embedded in a family, a workplace, a neighborhood, or community (Pilisuk et al. 1996).

The hurried pace of the oil boom leaves little time for planned growth. City planners in the small rural towns of western North Dakota are overwhelmed with the population influx as the towns are growing too big, too fast, overburdening housing, utilities, and emergency services. Although city planners and local leaders across the western prairie placed an indefinite moratorium on man camp developments in 2011 and gathered

at a conference to discuss regional infrastructure needs, the fact remains that the boom is booming too quickly (Donovan 2012). Even though this growth has anchored oil patch communities' viability, the population surge has happened so quickly it has strained local services and resources. With the increase of traffic and rail accidents, the dangerous nature of the work, and the demanding twelve- to fourteen-hour shifts, oil and gas industry professionals are admonishing caution. Even high profile proponents of the boom, like Robert Harms, Chairman of North Dakota's Republican party, are calling for a slower, more "moderated approach" (Breiner 2014, section 1).

Moreover, rural communities typically have antiquated or seriously strained public facilities prior to the additional stress created by the new industry. The primary method of information dissemination in small towns is word of mouth and face-to-face interactions (Solomon et al. 1981). These communication methods favor local, insider knowledge and can make communicating to newcomers difficult. A central repository of information is lacking and often websites are not updated. The lack of a viable communication network tends to make newcomers feel excluded from the community. Alternately, longtime residents may view newcomers as uninterested and detached from the local community. These perceived differences can result in weakening relationships between economic, social, environmental, and political dimensions of community involvement, agency, and political mobilization (Brown and Schafft 2011).

The combined forces of increased population, change in demographics, and economic and infrastructure development can erode a community's identity. Brown and Schafft (2011) claim one of the principle foundations of rural communities is the role of locally oriented social interaction where community members share common interests. However, differences in values and commitment to the local community vary between newcomers and longtime residents. Gramling and Freudenburg (1990) attest to the external origins of large-scale industrial projects where the magnitude of exterior boom/bust forces may be so great that they overwhelm the local community. For example, a new workforce may view the local community as only a temporary situation; therefore, motivation for community involvement may be low. The temporary trailers in the man camps situated on the outskirts of town reinforce the workforce as outsider status. The distribution of news and promotion of local events that occur casually at convenience stores and cafés keep newcomers uninformed. Consistent with Freudenberg's (1984) analysis of boomtowns in western Colorado, this lack of identity with and lack of trust in their community has a destabilizing effect on residents, leaving them with feelings of alienation and normlessness. Yet in the midst of the merge between

newcomers and longtime residents, new structures of identity and community are emerging and worthy of study.

Uncertainty and Anxiety

Another major theme identified in the research on boomtowns is uncertainty (Brown and Schafft 2011). Although North Dakota has the nation's best economy, tops the country's jobless rate, and has an education system rich with dollars flowing into it, community members are quick to ask "for how long" (Bureau of Labor Statistics 2013)? While it is clear the oil boom has a strong economic impact to local, state and national economies, it is unclear how sustainable this growth is.

According to the U.S. Energy Information Administration (2014), North Dakota is now the second leading oil producing state, behind only Texas in nationwide output. Oil production has generated an economic boom in the state and a domestic energy spike for the nation. Oil output in North Dakota broke a million barrels per day for the first time in history (Petroleum Supply Monthly 2015). The Bakken oil field has close to 10,000 wells, with each one generating on average $24 million in net profit, and many more in the works as the boom transitions from the discovery phase into the production phase (O'Donoghue 2014). For every dollar the industry earns, the state takes 11.5 cents, which totaled more than $2 billion as of October 2012 and supports more than $1 trillion in total value added to the economy, or 7.3 percent of U.S. GDP (North Dakota Energy Forum 2014). However, forecasts for future oil production are marked with tremendous uncertainty. The Energy Information Administration anticipates oil production to continue to rise until about 2020 and then to plateau for a few years, before starting a gradual decline (Casselman 2014). A newfound dependence upon the mining of non-renewable resources such as oil makes communities apprehensive about sustaining the economic base and infrastructure once the extractive activity is completed. Residents that lived through previous booms are quick to point out the results of the bust cycles — the vacant buildings that remain from previous booms when growth happened too soon, too fast and was not sustained.

With North Dakotans already having two boom and bust cycles under their belts, there is an attitude of wariness that pervades. Haunted by the memories of vacant hotels and empty lots, boomtowns turning into ghost towns over night with the fall of oil prices in the 1980s, North Dakotans are careful not to repeat history by adding to the "too much, too fast" recipe (Robinson 1959). Business owners and elected officials are proceeding prudently with development, sure that the bust is imminent.

While no one can predict when the fall may happen, it is certain that a bust is inevitable. As recently as 2009, the Federal Reserve Bank reported the pulse of the Bakken boom was weak; economists were forecasting dismal oil projects, causing oil companies to continue with caution, cutting down drilling and downsizing staff. "Their anxiety is reflected in a slowdown of business and consumer spending, less demand for bank loans and falling rents for apartments" (Davies 2009, 2).

In hindsight, we know the opposite of this happened. Rents are higher in Williston than in Manhattan, indicative of the demand for housing and workers due to the boom exploding (Grandstrand 2014). Yet it is the idea of the bust being ever-present on the horizon that clouds the vision. The scathing memory of previous busts and the cyclical nature that a boom also includes a bust creates an atmosphere of apprehension. At any moment, all of the growth, the influx of people and the economic gain could come crashing to an end. Combined with the extent of social disruption experienced from the in-migration of workers and the amount of change to the rural communities, the ever-present worry of the end exacerbates residents' feelings of anxiety.

Another uncertainty expressed by community members living in the oil patch is the unknown environmental effects of the oil boom (Becker and Hall 2013). Fracking is controversial for many reasons including its spread of natural gas drilling and for the wastewater its produces (Prud'homme 2014). The chemical makeup of this briny wastewater is toxic—it's eight times saltier than seawater and is laced with carcinogenic chemicals and heavy metals that can be radioactive, kill vegetation, destroy farmland, and contaminate drinking water (Dawson 2015). A three million gallon spill of wastewater from a North Dakota pipeline near Williston that occurred in January 2015 has the capacity to wipe out aquatic life in streams and wetlands and sterilize farmland (Valentine 2015). Although the brine is supposed to be injected thousands of feet underground into disposal wells, spills by tanker trucks and ruptured pipelines are common (Kusnetz 2012; Dawson 2015), with 74 saltwater spills in 2013 alone (Valentine 2015).

In addition to wastewater spills, oil patch residents are concerned about oil spills and railroad hazards due to the increase in rail traffic (Becker & Hall, 2012-13). The Tesoro Logistics pipeline that spilled more than 20,000 barrels of crude oil in a wheat field in Tioga in the fall of 2013 highlighted the environmental threat the oil boom poses (Atkin 2014). An oil train's explosive derailment in Quebec that killed forty-seven people in June 2013 drew attention to the need for rail safety (George-Cosh 2014). In December 2013, a freight train carrying crude oil that collided with another train, shooting black fireballs up more than

one hundred feet, prompted the evacuation the town of Casselton in December, and reinforced the danger of the boom and drew attention to the need for rail safety. With the Bakken pumping out more oil and relying on trains to transport it, railroads are being heavily utilized but not readily maintained. As North Dakota Representative Kevin Cramer said, "Booms happen first and then the infrastructure catches up" (Potter 2014, section 3). Of the 1.2 million gallons of oil spilled in the U.S. in 2013, all but 10,000 came from the oil fields in western North Dakota (Potter 2014). More than one thousand accidental releases of oil, drilling wastewater, or other fluids have been documented in 2011 alone, with many more lethal releases going unreported (Kusnetz 2012).

Furthermore, the process of hydraulic fracking forces the sought after crude oil to come out of the earth, but also pushes out natural gas which, if not processed, is flared or burned off (Quick and Breennan 2014). Pipelines which could capture the natural gas are at capacity, resulting in burning nearly a third of the natural gas produced in the region and consequently generating thousands of flares—enough to light up the prairie night sky (Quick and Breennan 2014). Flaring raises the atmospheric levels of carbon dioxide and has contributed to the U.S. moving from fourteenth up to fifth place on the list of gas-flaring nations (Brown 2013). Because many companies offer incentives for low injury rates, many of the environmental impacts are unreported or underreported. What remains to be determined are the environmental risks and negative health factors associated with living in an oil boom environment. The lack of reporting combined with the aggressive pace of drilling creates an atmosphere of suspicion and mistrust.

Timing is Everything

Consistent with boomtown phenomena, North Dakotans living in the oil patch are affected by social disruption due to rapid population influx, loss of identity, and uncertainty and anxiety. However, these impacts do not necessarily determine that the oil boom is a more of a curse than a blessing. Trying to measure the benefits against the detriments of the oil boom leads researchers to conclude they are a "paradox of plenty" (Karl 2004). Proponents of oil-led development highlight the augmented economic growth and job creation, increased government revenues to offset poverty, technological advancements, improvements in infrastructure, and growth of related industries. However, the experience of almost all oil-exporting countries to date illustrates few of these benefits. Overwhelmingly, the consequences of oil-led development tend to be negative, including slower than expected growth, barriers to economic

diversification, poor social welfare indicators, and high levels of poverty, inequality, and unemployment (Karl 2004).

However, it is important to point out that much of this research has been conducted at the peak of extraction. What this list of consequnces does not convey is that these needs are observed during the height of the boom when communities are at the breaking point and social services are in crisis mode. While the intensity and severity of needs are not doubted, a long-term look at how past oil booms have fared may help to answer the blessing-versus-curse question, allowing communities to prioritize the most pressing concerns and better plan for the growing needs. What is needed is research collected on the extent of social disruption at five, ten, and twenty years after the boom cycle.

A longitudinal study of community change conducted by Brown (2005) using Delta, Utah, as a case study to examine pre- and post-boomtown phenomena reveals that time has the potential to heal wounds. Looking at measures of community satisfaction such as likelihood to move, willingness to borrow from neighbors, and number of friends in the community, Brown's research shows that the dimension of wellbeing was enhanced ten years after the boom. Indeed, throughout the twenty-four year history, periods reporting the lowest levels of community satisfaction and the greatest likelihood of residents moving over the twenty-four-year reporting history occurred at times of substantial population growth. This study has significant implications for oil patch communities in western North Dakota. As some experts say the oil boom is currently at its peak, it is understandable that community erosion and feelings of dissatisfaction are strong. Brown's study concludes that time can heal many of the social interactional wounds caused by the rapid growth; having a hearty attachment to one's place through "thick and thin" can help residents adjust to disruptions (Brown 2005, 19).

Smith, Krannich, and Hunter (2001) agree that social disruption occurs in several dimensions of wellbeing such as social integration of newcomers and community change, but their research contends the effects are not permanent. Among four boomtown communities studied for social disruption in western states, none continued to show declines in overall community satisfaction. In fact, where boomtown disruption was evident, it was followed by a sharp rebound in social wellbeing. Fifteen years down the road, the communities that had experienced the strongest boom effects reported greater wellbeing. Moreover, age may have a more profound impact on community satisfaction. In examining attitudinal differences between residents of a boomtown and of surrounding stable communities, no difference existed for adults although adolescents exhibited less satisfaction and greater alienation in post-boomtown

communities (Freudenburg 1984). Given the aging population of most rural areas, this finding holds promise for cooperative outcomes.

Blessing or Curse

Before we can answer if the oil boom in western North Dakota is more of a blessing or a curse, we need to be patient and allow for a longitudinal perspective to unfold. The drama of the oil boom will continue to play out as time moves forward. Once the boom has subsided and in the years following its decline, the answer to the aforementioned question will become clearer. Perhaps the benefits have not yet been realized but will emerge over time. Perhaps the question needs to be reframed so that it allows for a both/and response instead of an either/or solution.

In the meantime, residents of the oil patch can help foster a capacity for flexibility where they can simultaneously remember and forget the oil boom. The cyclical nature of booms and busts necessitate that residents learn from the oil boom to avoid repeating mistakes, but there is also a need for residents to choose to let go of their fears and anxieties in order to move forward. This boom is distinctively different than past booms and experts predict it is here to stay.

Given the amount of change and displacement community members are experiencing, it is natural for a certain amount of resistance to be expected. Their small communities are becoming unrecognizable to them, and the quickly changing environs are cause for fear. Yet the propensity for patience about the social disruption experienced at the peak times and the ability to focus on long-term planning may help alleviate the feelings of uncertainty. An attitude of openness to change may help longtime residents accept the changes that are occurring. There are many positive outcomes stemming from the oil boom, although in the immediacy of the day-to-day changing environment, the inundation of new faces, the amount of change in traffic and daily routines, especially for rural communities, the positives may be hidden.

The ability to loosen one's grip on the tightly held memory of how things used to be before the boom may encourage healing and usher in an elasticity that allows for some change, some shifting in the ideation of what their community looks like, feels like, and is comprised of. Although not denying the impact of the social change, nor attributing the disruption to hype or heresy, a future vision where the shape of community is not yet drawn may be the cushion needed to rethink boundaries and priorities and allow the time needed to determine if the oil boom is a blessing or a curse. While much has been written and there is much to be learned from boomtowns across the U.S., whether they come in the

form of coal mines or oil rigs, looking at boomtown phenomena on a long-term scale may help lessen the community erosion and allow for an invitation to be extended to new residents to help shape the face of the oil patch and steer the conversation to long-term planning.

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Chapter 5

Revisited Frontiers: The Bakken, the Plains, Potential Futures, and Real Pasts

Sebastian Braun

> *Thousands of emigrants, as our magazines have told us again and again, are thronging annually to the great plains of the Northwest, where wheat-farming has offered the home-seeker great financial opportunities. All Americans rejoice that these thousands of home-seekers are able to establish themselves financially. On the other hand, residents of the East, the South, or the Pacific Coast, who love a pleasing diversity of hill and dale, grove and meadow, lake and river, cannot but regret that millions of their fellows are doomed to live on the monotonous Western plain, and to gaze daily on a view which includes no hill, no valley, no grove of trees, no water, nothing but earth and wheat.*
>
> Wallace Craig (1908)

During the Bakken oil boom beginning in 2008, people from all over the United States would once again flock to North Dakota, lured by economic possibilities. In this boom, however, images of monotonous doom have had no place. In the curious historical frame of post-terror insecurities and anger, of rising, if reluctant, acknowledgment that climate change has real consequences, of post-Iraq realizations that it might not be possible to truly control oil abroad, and of living through an economic depression that wiped away jobs (yet left wealth intact), messages about the Bakken have been very clear. The oil boom, while a temporary inconvenience, has helped North Dakota stay out of economic trouble, has brought a population increase, has revitalized the state, and has put the state on the map. North Dakota became the poster child for the American dream after having languished in national amnesia, or worse, as the poster child for lonely abandonment, for decades. The message came (and comes) from official and unofficial state channels, was (and is, although with more question marks) picked up by the media, as well as by educational institutions. The Bakken is exciting, it is a chance to start

over, it is a new chapter for the state, and all of this is made possible by new technology: hydraulic fracturing and horizontal drilling. Here, I will not try to evaluate the claims made about economic, ecological, or social impact. I will not attempt to dissect and deconstruct political statements. I will not critique well counts, tax agreements, pipelines, flaring practices, or roads. All of these issues need to be addressed. However, in this text, I will simply put the Bakken into its context as a resource extraction boom. Booms—and busts, which people often forget in the excitement of a developing boom—are nothing new, and so, it would seem, a state undergoing a resource boom would be able to learn a lot from the experiences of past booms—and busts.

Resource booms are nothing new to North Dakota. In fact, the response of many communities in the Bakken region to the developing boom in its early years was guided by the experiences with the last oil boom, in the early 1980s, which ended in a bust very quickly. Not sure whether this new boom would last, experienced residents decided to adopt a wait-and-see attitude. Instead of risking investments into infrastructure that might lead to financial troubles again, perhaps the boom would blow over, and once the workers and their machines were gone, the communities could emerge more or less intact. This attitude, of course, shaped the response by the state, which placed considerable emphasis on the long-term nature of the boom (preferring not to speak of a boom, instead predicting that these developments would increase the population in communities three-fold, for the long term). Local challenges became regional opportunities, and this new boom was nothing like the earlier one. Hence, historical models would only be misleading. A new society was being built, with new technology, opening new opportunities. In fact, even if the events would not benefit the communities they were going to directly affect, they would at least provide security—energy security—to the rest of the nation. The potential futures projected onto graphs and into newspapers, onto whiteboards and screens, and most importantly into dreams and over frustrations, were millennial and sometimes bordering on the messianic.

The history of the United States, is, of course, permeated with the idea of building new societies, a shining city on the hill, the new Jerusalem—communities that would not be linked to historical precedent. Of this mythical American project, and the stories that accompany it, Ziauddin Sardar and Merryl Wyn Davies (2002, 207–8) have written that the "most hateful of all acts of 'knowledgable ignorance' is the failure to examine history and to acknowledge that deeds done to others in the name of virtue have actually done great harm." Working, teaching, and writing as an anthropologist in a department of American Indian Studies,

and thus entering into dialogue with those kinds of deeds every day, I have to agree. The world is complex, history is complex, motivations for action are complex. Nobody asks that any action taken cannot hurt anybody. But the painting of a new canvas, no matter how grand, virtuous, or well-meaning, is never isolated from history, nor disconnected from people in communities.

Frontiers

The Bakken boom, far from being something terribly new, is in fact simply a revisitation of the "frontier" to the northern plains, a region that has seen different waves of frontier booms based on natural resource extraction for centuries. Thinking about frontiers in terms of settlement or demographics is to use the wrong category. In a superficial reading of Fredrick Jackson Turner ([1920] 1996) or the Buffalo Commons prediction (Popper and Popper 1987), demographic change might appear to be the factor determining whether frontiers open or close. However, although population changes might be one of the consequences of booms and busts, it is not population density that defines a frontier. What makes a frontier is, most often, a resource boom. Turner ([1920] 1996, 147) actually did connect the frontier to the industrialization of a landscape: "The transcontinental railroad, the bonanza farm, the steam plow, harvester, and thresher, the 'league-long furrow,' and the vast cattle ranches, all suggested spacious combination and systematization of industry." Frontiers do rearrange landscapes, as Fredric Jameson (1998) has pointed out, and it is not simply the physical landscape that is altered: legal, cultural, social, political, and spiritual landscapes are affected as well (Braun 2008, 210–14). Resource frontiers do not simply extract resources and then disappear without a trace. They extract resources and leave a fundamentally changed environment. On the northern plains, the resources have taken diverse forms: in no particular order, fur, gold, water, hides, land, uranium, buffalo bones, coal, and, for quite a while now, oil.

Oil was first sought and found in Montana in the early twentieth century. Between 1915 and 1920, several oil and gas wells became operational in east-central Montana between Lewistown, Billings, and Miles City (Rowe 1920). The discovery of the Cat Creek field in 1920 began a boom that lasted several years. Investors in one company saw a 9,500 percent return on investments over seven years. The boom, however, did not last. No new major fields were discovered, and the onset of the great depression in the late 1920s busted the developments. World War II meant a renewed interest in exploration, which was prolonged into the 1950s (Darrow 1956). In North Dakota, too, oil exploration started in the

1910s, expanded in the early 1920s, and was revived and focused after the war (Thom 1952). While a North Dakota well produced a single pint of oil in 1950, the first commercial well in the Williston Basin was drilled in Manitoba in 1951, followed that same year by wells in North Dakota and Montana (Fox and Matiniuk 1992; Laird 1962). The following boom lasted into the early 1960s, but then production decreased into the 1970s. New discoveries together with the OPEC crisis then led to a renewed oil boom into the early 1980s (Anderson et al. 1982), when it went bust. This was the last oil boom before the current Bakken boom, which started in earnest around 2009. It is this last boom, and the experiences that longtime residents made at that time, that informed at least the initial reactions to the contemporary Bakken boom.

As in most places, frontiers in North America have been waves of expansion and retraction of state control, of procedural landscapes (Braun 2013). States, however, let private companies or individuals interested in resources take the lead and limit their presence to licensing, permitting, and, if necessary, the enforcement of policies, laws, and territorial control. This is an old pattern of European colonial expansion, seen in the *repartimiento* and *encomienda* system of the Spanish conquest (e.g., Service 1951; Pastore 1997), and then its proto-capitalist English, Dutch, and French system of trading companies (MacLeod 1967), and its American descendants of free market governance. As one author points out, "The conquest and colonisation of America, therefore, was a joint venture between the Spanish state and private entrepreneurs" (Pastore 1997, 333). The same is true for most other European colonial efforts, as well as for the United States. On the northern plains, the first encounters with this developing global capitalist market system that brought wealth and power, unknown risks, and ultimately dependency, occurred during the early fur trade, when both British and French companies explored the region, established posts and trade relationships, and began a boom cycle. Native peoples in the region thus have experiences with proto-industrial and industrial extraction economies within a global context that stretch back at least three hundred years (Ray 1998). Different resources created booms and frontiers in different regions in North America. They all, however, demanded adaptations, commodified and stripped the resources, and created dependencies that could be exploited when the booms busted (e.g., Milloy 1988; Braund 1993; Gallay 2002). Frontiers were primarily an economic enterprise. They did not establish total political control at once, nor were they one-sided, as "colonialism was seldom if ever imposed but instead built through interactions" (DuVal 2006, 47). Frontiers, however, returned, often in waves, dependent on the need for new resources (see Braun 2013). While this pattern is observable all around the

globe, the northern plains provide a great example of it, and the current Bakken oil boom is but one historical manifestation.

Most booms and frontiers do not originate from the discovery of new resources (unless the value of that resource is, at the time, very high), but from a change in economic value of a known resource. The fur trade was not driven by the existence of fur-bearing animals, but by the fashion demands in Europe. The buffalo hide boom was driven by the new value for hides once they could be industrially processed. The buffalo bones boom was driven by the demand for fertilizer. Energy booms are similarly driven by specific demands. Once the demand or the value falls (which is not always the same thing, as natural resources are extracted in a global context), that particular resource boom goes bust. If the value stays the same, however, the boom goes on for as long as the resource lasts. Particular frontiers thus move over landscapes, and the local boom economies are always dependent on global economic values outside their control. Nobody should understand that better than those who have to estimate property values. "The oil economy can be fickle," as one banker in North Dakota put it (Ustinova and Louis 2013). In the Marcellus Shale gas boom, the more conservative banks are calculating mortgage risks based on the assumption that the boom disappears. Others only value 20 percent of royalty income in their appraisals (Scarborough 2012). Community reactions to the Bakken oil boom at least initially took a similar approach. Communities did not want to invest in new infrastructure if the boom would not last as happened in the 1980s, and as a result communities would become insolvent after the bust. After a while, however, the influx of people and wealth can no longer be ignored because it disrupts and paralyzes life as people knew it.

Studies of social impacts of natural resource extraction on local communities were developed in Canada, Australia, and Alaska, mostly in the 1970s, and mostly in the context of indigenous communities affected by mining, oil extraction, or pipeline construction. The most significant of these studies, and in many ways the model, was the Berger inquiry into the Mackenzie River valley pipeline in the Yukon Territory (Young 1995, 184–88). The report, titled "Northern Frontier, Northern Homeland," demonstrates that frontiers are not wilderness areas becoming settled, but the territories of people making their homes there (Nuttall 2010, 62–70; see also Watkins 1977). In some situations, because of treaties, sovereign status, special legal status, or other considerations, it is important that in many cases, it is indigenous peoples that are affected by resource frontiers. However, implications are the same whether locals are indigenous or not. Frontiers exist as *frontiers* for outsiders, on the same land that is *home* to locals. The imposition of frontiers, then, already showcases that

they are an expression of power: the power to transform homes into a frontier. It is by reclassifying and transforming a landscape into a frontier (supposedly free for the taking) that the resources also are transformed from owned to exploitable. The Berger report resulted in a ten year moratorium to clarify land title and prepare for social impacts, but these kinds of setbacks to industry are extremely rare, and only come about through thoughtful governments intent on using power benignly.

Interests and Discourse

Mineral resource and oil or gas booms might be the most visible, and perhaps most infamous, resource booms today. However, they are obviously not the only natural resource booms; probably the most common are land booms. Whatever the desired resource is, these booms and associated frontiers show structural similarities, both in their local manifestations and in their general existence. Historically, one of the primary similarities was that booms and frontiers were temporary, at least in expectation. Once the resource—furs, gold, oil, land—was exhausted, the area no longer held any interest. This was even true for the seemingly most permanent resource: land. As long as the intent is simply to extract value from the land—that is, as long as land is seen as an alienable or alienated commodity, not a place or a home—there is no incentive to expend resources on further investments once the easy returns are gone. Historically, this can be seen with the example of agricultural frontiers in the United States.

The plains, David Danbom (2006, 146, 148) has concluded, were settled as a "postindustrial commercial frontier," and have remained "largely colonial, exporting raw commodities and importing capital and manufactures." Looking at this agricultural frontier as an industrial frontier indeed shows the similarities to other booms, such as the Bakken. Geoff Cunfer (2005, 219) describes the necessity of the constantly moving agricultural frontier in the United States based on soil depletion, "a farm system that mined soil nutrients." Once a particular frontier had run its course, and land as a natural resource had been depleted, a new frontier was opened—"there were the farther free lands to which the ruined pioneer could turn" (Turner [1920] 1996, 148). When there were no more "free lands" suited for agriculture, however, the frontier was transformed. "Rather than adopt one or more of the ancient strategies, farmers (and the industrial nation behind them) created a new option. They appropriated abundant, cheap fossil-fuel energy to import enormous amounts of synthetically manufactured nitrogen onto their fields" (Cunfer 2005, 219). Ultimately, the land frontier and the fossil fuel frontiers are directly

linked. This history, however, leaves out several aspects of frontiers and booms, most importantly the legal implications and the global consequences of resource frontiers.

Governments of expanding states are always interested in advancing frontiers, as discussed in part because their frontiers appropriate the homes of others. However, they are not necessarily interested, at least not in the modern, capitalist state, in pouring resources into these frontiers. Just as they are for businesses, frontiers are extractive for governments, too. In the United States, this has historically resulted in government disposing of newly acquired territories to private individuals—"the distribution of the public domain," as one author called it (Klose 1964, 98–104). After all, the "free land," and other "free" resources were only "free" for the taking because the state directly or indirectly imposed and enforced the fact. The political dynamics at work can be seen on the plains in the subsidized, land-grant railroads, beginning with the Pacific Railroad Act of 1862.[1] On a global stage, the quest for fertilizer before the advent of synthetic nitrogen led to the opening of new frontiers with the Guano Islands Act of 1856, which enabled the appropriation of any "island, rock, or key" with guano deposits, for the sole purpose of allowing the commercial extraction of that resource. After the resource was depleted, the United States was in no way obligated to keep the territory (or any responsibilities for it) (Foster 2000, 150–151).[2]

Resource booms do not exist, and never have come into existence, as a function of an essential need for more resources. Such an interpretation leaves out the political, social, cultural, legal, and environmental contexts of booms. It could be argued that the growth-imperative of modern capitalist economies has to lead to constant expansion into territories of cheap resources and labor. However, just like the expansion of the Inca and Aztec empires was not a function of religion, and religion did not have the purpose to serve as a legitimization of expansion (Conrad and Demarest 1984, 191–209), so, too, can we not interpret economics from a functionalist perspective only. The establishment of resource frontiers is a social, cultural, and political choice. It is embedded in other discourses, and partially dependent on them, but it is a voluntary activity. The nature of resource frontiers, too, is dependent on cultural choices. Mississippian buffer zones, for example, were used for resource extraction, but they

[1] I have argued elsewhere that 1862 marked the beginning of the true colonization of the plains. In conjunction with the Pacific Railroad Act, the Morrill Act and the Homesteading Act prepared this. See Braun (2009).

[2] See also 2011 U.S. Code, Title 48—Territories and Insular Possessions, Chapter 8—Guano Islands (§§1411–19).

looked very different from other frontiers. Their depletion probably led to societal collapse (Anderson 1990, 205–6). This might be true for all resource frontiers, but a global economy can exploit more alternative niches and therefore can hide the collapse longer. While the goal for a buffer zone was to be sustainable, the goal for extractive resource frontiers, especially booms, is not to be sustainable, but to provide as much economic profit as possible. We have to be careful not to infuse local peoples with ecological wisdom (Krech 1999), but the decision to leave intact resources that could be extracted is possible, an available choice.[3]

What resources are extracted, how, and how a frontier should look, then, are choices that are up for debate. However, because resource extraction in boom frontiers is in the interest of the state or of corporations, and because the legality and legitimacy of frontiers are often tenuous at best, an open debate might not be in the best interest of powerful stakeholders. Instead, most frontiers are enshrined in a hegemonic discourse. As mentioned, in the Bakken, and in other oil and gas booms in the early twenty-first century, this discourse is dominated by the idea that these booms save the state and the people. The urgency to extract resources as fast as possible in order to jumpstart the national and regional economy, to provide energy security, and to provide jobs thus merges with the old ideas of the frontier as the bringer or guarantor of American wellbeing and identity. These booms are also positioned in a context in which the "focus of government policy [has] shifted to making the world a more hospitable place for American business." This is nothing new, as in reality, "the heads of US-based corporations" were always the frontiersmen (Byers 2005). The myth of the American frontier is anchored in the lone, individual hero (Sardar and Davies 2002), but in reality, frontiers were controlled (and financed) by private and state capital, from railroad barons to ranch empires, from government agencies to multinational corporations. Local people often experience booms and frontiers as chaotic and uncontrollable, but this might more be a consequence of not being privy to the planning decisions.

The discourse in the Bakken has been stressing that corporations might move somewhere else if the state is not lenient in regulating them. State regulators and legislators have been especially wary of environmental regulations that might slow the rate of development, warning of EPA regulations on hydraulic fracturing (Donovan 2011), just as they have warned against EPA regulations on coal power plant emissions (Nowatzki 2014). This discourse is nationally organized, for example

[3] For example, in the Ecuadorian Amazon; for a general argument on this see Grober (2012).

through groups like the American Legislative Exchange Council (Goldenberg 2014; Yeatman 2013). "Decades worth of oil, natural gas, coal and uranium are once again within reach—along with many thousands of jobs and trillions of dollars in government revenues," wrote one author; yet, "almost as quickly as technologies and discoveries are announced, national environmentalist groups, local activists, bureaucrats, courts and politicians proclaim their opposition, based on potential to speculative risks to air quality, groundwater, endangered species or Earth's climate, or on resistance to energy projects and facilities in their back yards" (Driessen 2010, 3). The discourse is so pervasive that in my own research on boom impacts, I have learned of and met faculty at regional institutions and employees at federal agencies reluctant to engage in any research or data sharing activities that might be seen as directed against the interests of industry. This includes basic research on air and water quality, or the sharing of public satellite images. One of the best examples of this discourse came in the summer 2012, when I attended the *Energy Impact Solutions Conference* at Minot State University. John Hurlimann, the presenter on "Statewide Community Resilience for North Dakota" and working for Dickinson State University, was talking about the dangers of terrorism for the Bakken boom, in a passage that merits quoting in full:

> I know, people look at me like I'm crazy when I talk about terrorists, and we are becoming more of a terrorist target in this country, right now, uh, for a couple reasons. We have two groups that don't want to see a lot of things going on here. One are the environmentalists, and, trust me, you read the blogs, and I mean they would just as soon close down the coal and everything else we have. The EPA is a good example of that, uhm … and, sorry, Senator Conrad's office, but, uhm … they passed a rule last year that said any power plant that uses coal will be fined unless it changes to a new biodegradable fuel. The problem was, this fuel has not been invented yet. But their argument was that they're gonna fine people anyway because that was an encouragement for them to invent the fuel. So, I mean, that's what we're dealing with sometimes with these people.[4]

Maybe because this was North Dakota, nobody raised an eyebrow at this equation of a federal agency with terrorism because the agency is trying to

[4] The quote in full is transcribed from the DVD of the conference presentations *Energy Impact Solutions Conference*, Tuesday, August 14, 2012. In possession of author.

regulate the energy industry. The example showcases how hegemonic the discourse of the resource extraction frontier as an economic enterprise in the interest of the state has become. To put this into historical context, the land boom that populated the plains in the late nineteenth century was in part fueled by a discourse of rain-making through "pluviculture" and other schemes, a discourse that "was understandably popular in a land where dreams were much more pleasant than realities" (Danbom 2006, 145).

Realities

In reality, booms are never only pleasant, not the current oil boom, nor the fur trade, nor uranium mining, nor gold rushes, nor the land boom in the nineteenth century. Less than 20 percent of homesteaders on the plains stayed on the plots they settled first. They found that the environments did not adhere to the dreams of pluviculture. However, "such a constrained environment is not likely to be accompanied by limited expectations by people from modern industrial cultures" (Bennett 1996, 261). People who believe in the hegemony of technological and industrial solutions did not and do not expect to have their dreams shattered by local realities. In essence, that is why booms occur: there is a disconnect between the lived realities of local people and the dreams of strangers, who flock to boom regions. Because booms are temporary phenomena, and because capital can be controlled globally, frontier realities of local people also often do not match those of outsiders.

In addition, booms create status divisions. Oil and gas booms, for example, create divisions between those who own mineral rights and earn royalties and those who do not, yet have to live with all the disturbances that are necessary to create their neighbors' new wealth (Hudson and Braun 2013). Simona Perry (2012) describes the impacts by hegemonic discourse, wealth differentiation, and the influx of strangers on communities in the Marcellus Shale as "collective trauma." Her description of local realities under boom conditions are very similar to community impacts in other resource frontier situations. Accounts of the Marcellus fracking boom show how the initial local enthusiasm—fueled by dreams of poverty relief, national recognition, and patriotism—disappeared when it became clear to some in these communities that this development had divided communities and sometimes families, had the potential to create great environmental harm, and would ultimately mostly benefit outsiders (McGraw 2011; Wilber 2012). While in the abstract, booms have a positive economic impact on an international, national, regional, and local

level, the impact on local people cannot be captured by general statistics or numbers alone.

Only in very abstract terms can economic growth be used to define development because it is mostly meaningless for people in communities. As has become increasingly evident, economic recovery has been disconnected from employment opportunities, for example. In other words, "the 'trickle-down effect' rarely takes place; growth does not necessarily lead to enhanced standards of living. As societies in the affluent North demonstrate, the increased use of highly sophisticated technology or a fast-growing GNP does not necessarily eradicate poverty, illiteracy or homelessness, although it may well alter the ways these ills are experienced" (Gardner and Lewis 1996, 7). In the case of resource booms like the Bakken, it is easily arguable that homelessness increases and education is disincentivized. Like other booms, the Bakken has in part led to the deterritorialization of locals, who either cannot afford to pay hugely inflationary rents or have their subsistence activities disrupted by mineral rights owners. The lure of quick money is, at least from anecdotal evidence, also leading large numbers of young people to forgo higher education.

The majority of local residents in the Bakken, in my experience, still look at the extraction of natural resources as a positive development. Many have come to see the boom in a different light, though, and question whether extraction has to be hurried, or whether it can be carefully thought through, well-regulated, and supervised. The issue for them is not whether or not extraction should take place. "The key issue is," as Young (1995, 183) pointed out for mining in Australia, "aboriginal [or local] control over deciding where [extraction] can take place and how its benefits will flow through to the community." The loss of local control, "the most serious consequence of 'development'" (Bennett 1996, 347), along with alienation from the earth and from one another have long been recognized as two conditions of capitalism (Foster 2000). They flow as necessities out of the prioritization of economic capital and growth, the simplification of context for the sake of efficiency (Dussel 1998, 13). In frontier situations, this can mean the exclusion of local concerns, as the preexisting local is denied under the assumptions of wilderness; in boom situations, the local is denied under the assumption of overarching economic or political interests.

While some authors may argue for at least the potential of a "sustainable boom" (Parlow 2011), I see that idea as an oxymoron. But even if booms were "sustainable" (what exactly would that mean[5]—and is it

[5] See Grober (2012, 17–21) and Boff (1997, 128–29).

not in the definition of "boom" that it will go bust?), they contribute to new inequalities. I have argued that "the proper goal for a contextualized economy is not only materially healthy communities but also spiritually, ecologically, and physically healthy communities" (Braun 2008, 177). In 1869, the naturalist Alfred Russel Wallace wrote that we "should now clearly recognize the fact, that the wealth and knowledge and culture of the few do not constitute civilization, and do not of themselves advance us towards the 'perfect social state'" (Wallace 2000, 457). Poverty, power, and sovereignty are evident factors in the hydraulic fracturing booms of the early twenty-first century. Poor communities need income and jobs, and they do not have the luxury of asking whether they agree with how these are generated, or whether the mode of production will destroy their communities in a few generations' time (Braun 2008). In other words, they do not have, or feel they do not have, the privilege of sovereignty, a good that has increasingly become a luxury of "the few." This can, for example, be seen by an analysis of decision making processes during another energy boom opportunity in North Dakota, the coal-gasification boom of the early 1970s in Mercer County (Tauxe 1993, 138–44). Energy development can be beneficial to local communities. In order for that to happen, however, they need to regain control, which sets up a built in conflict over sovereignty between local and outside interests.

The way these conflicts have been fought may perhaps best be seen by the experience of Native communities, who have been embroiled in struggles over sovereignty for a long time (Ambler 1990). Energy and other resource booms have affected indigenous communities for centuries, and several, especially Fort Peck and Fort Berthold, have been in the center of different oil booms on the northern plains. It is an expression of the ways in which power inequalities are mustered in the interests of the state and industry when local people express feelings of being treated "like Indians" when they feel disappropriated by governments (Tauxe 1993, 145; Wagoner 2002). Patricia Limerick has pointed to western ranchers' self-perception as victims in the wake of the sagebrush rebellion, and Lamm and McCarthy also identified themselves with "the New Indians," refusing to "be herded to the new reservations" (Limerick 1987, 47, 157). In the spring of 2014, militia members from all over the United States participated in a successful armed standoff against the Bureau of Land Management in Nevada, which was trying to enforce grazing fees on public lands against a rancher. These events underscore how much frustration government power still creates (e.g., Eowyndbh 2014). They also recall, however, the long fight by Western Shoshones Mary and Carrie Dann against the BLM and other agencies who do not accept the Treaty of Ruby Valley (Luebben 2002), and faintly echo other ongoing

fights against treaty violations. Perhaps more interesting than the effort to paint oneself as a victim (and write the "old Indians off the page"? [Braun 2007, 199]) is that Lamm and McCarthy (1982, 5) start their book with a "nightmare" scenario of energy politics, a hypothetical blockade of Middle Eastern oil:

> The federal government takes immediate action, mandating massive energy exploration and recovery in the American West. State and local laws are overridden as energy profits proliferate across the land. The western states are not consulted. They are ignored. Their rights are abrogated, their sovereignty destroyed. Energy combines, unleashed by the government, invade the West … Boomtowns mushroom across the West's rural face, disfiguring the land. Cedar breaks crumble to strip miners, waters fill with toxic waste, mountain valleys fall to tractor roads, and evening sunsets blaze through polluted air. Ways of life change forever … New cities, plagued by crime and violence and nonexistent social and economic services, cannot deal with the change.

Apart from the cedars and the mountains, the scenario seems almost prophetic when compared to the local perception of the Bakken boom, and many other energy booms in the early twenty-first century—except that the government has given the driver's seat to industry, in part under the pressure of political leaders who want to see "energy profits proliferate across the land."

In the last decade of the twentieth century, some authors thought that the western United States had been deindustrialized, that "the federal government succeeded in transforming the colonial economy of the West into a pacesetting technologically advanced economy" (Nash 1999, 145). Others, however, warned that there had been no real structural change. "The form of capital remaking the hinterland may be different, the ensuing pace of change may be more immediate, and the remapping of regional landscapes may be on a much greater scale, but in terms of external influences on local conditions, little has changed. Events in the West today differ only in scope and magnitude from the events of 1893, when decisions made in transatlantic boardrooms brought immediate chaos and suffering to the tiniest of industrial communities in the western outback" (Robbins 1994, 194). Lamm and McCarthy (1982, 5–6), too, saw western history as a continuity of dependence: "In time, the energy rush dies. The boomers disappear. Left behind is a wasteland, its skeletal boomtowns and cratered-out landscape a graphic reminder of days past.

Western people, pawns in an ugly and endless war, regroup and rebuild. And their cyclical history begins again."

The Real Resource: Water

A cyclical nature is not only a marker of settler history on the plains, and of boom-bust economies, but also of the plains ecosystem, especially in regards to drought cycles (Clark et al. 2002). Yet, in early 2012, the predominant water-related metaphor for the Bakken boom did not mention drought. Instead, people were framing the boom as a potential tsunami. This might have been a response to the 2011 tsunami that had devastated the Japanese coast, yet it made perfect sense. The image of an unstoppable wave crashing into and over peaceful communities and leaving nothing but destruction in its wake captured the fears of locals, both Indian and non-Indian. On the Fort Berthold reservation, however, I heard another metaphor, too. Several people used the historic flooding of the Missouri River as an image to describe their fear for their communities. Lake Sakakawea had destroyed communities, livelihoods, and the nation's economy fifty years earlier, leading to lasting dependency (Parker 2011). Those events thus capture, on one hand, the fears of destruction at the hand of outside forces. For others, they are the reason why the tribe needs to invest in and profit from the boom: it presents the chance to finally rebuild something akin to what was lost.

Beyond these metaphors, however, lies a greater truth. All the booms and frontiers on the plains have one thing in common: water is the key resource. Whether it is furs, electricity, gold, uranium, land, or oil that is extracted, the ultimate resource for all activities has always been water. Water is also at the heart of the Bakken boom, and of fracking booms in general. This has two reasons: hydraulic fracturing uses a lot of water, and it produces a lot of wastewater. In 1890, John Wesley Powell pointed out the centrality of water as a resource for the arid lands of the west. He went a step farther, however, and problematized another aspect of water as a critical resource, namely commodification and regulation: "The land itself is valueless without the water. If a company owns that water, unless protected by local, national, or State law in some manner the farmer becomes the servant of the company" (Powell 1890, 252). Even in semi-arid lands, like the plains, interdependent natural resources "are often set in a hair-trigger equilibrium which is quickly upset by uncontrolled use" (Leopold 1991, 112–13). Aquifers across the United States and globally have been depleted by agriculture and industrial usage and population increases (Konikow 2013; Wada et al. 2010).

According to a brief survey of data from FracFocus.org, a typical fracking well in the Bakken needs about two million gallons of water to complete. In southern Mountrail County, the range of water used lies between 700,000 and 30,000,000 gallons of water; at the beginning of June 2014, there were 1,055 wells listed for the county.[6] In October 2013, 809 had been listed. This means that the fracking industry used at least 400 million gallons of water in one county during these nine months. Initial water usage for fracking a well is extended by maintenance usage, which amounts to about 600 gallons a day per well (Kiger 2013). In 2012, the estimated water usage by the oil industry in the state came to 5.5 billion gallons (Dalrymple 2013). In 2010, estimates for total usage needs in 2025 ranged from 4.5 billion gallons to 9.1 billion gallons per year and came to the conclusion that "the only plentiful and dependable supply of water for the oil industry in western North Dakota, at projected rates of extraction, is the Missouri River system" (Schuh 2010, 43–47). Perhaps in part because of the Missouri, water use for fracking is not perceived to create a hugely competitive situation in North Dakota, in contrast to drought-hit regions with fracking booms, such as Texas (Freyman and Salmon 2013). North Dakota also has a more effective regulatory system in place. Anyone with a legal interest in land can apply for a water use permit; these permits are then examined by the State Water Commission. The oil industry has given rise to many water permits being used for "water depots," where the industry buys the water needed for its operations (Schuh 2010; Western Organization of Resource Councils 2013). The system exemplifies the frontier as a place where public resources are commodified for the profit of individuals and corporations. However, permits limit the quantity of water to be extracted.

Because the future of the oil boom in North Dakota hinges on the availability of water from Lake Sakakawea, the state, which is supporting the industry, and the federal government, which is trying to regulate the water usage in the Missouri River watershed overall, have come into conflict. The Corps of Engineers has been playing with the idea of asking for a "storage fee" for water from the lake, a notion that the state is rejecting out of hand, as it claims the water for itself. If the water belongs to the state, water permits could be given for a nominal fee, and the industry would have cheap access to the critical resource it depends on. In 2012, the Corps signed a first water agreement, for 1.6 billion gallons. In 2010, it had applications for easements for about 11 billion gallons, although the amount requested might not be the amount of water that is either needed or would be removed (US Army Corps of Engineers 2010;

[6] Data retrieved from FracFocus.org on June 2, 2014.

Springer 2013). The fact that this conflict mirrors frontier water disputes of the nineteenth century, and that water is the actual key resource in the Bakken is also illuminated by the response from the Mandan, Hidatsa and Arikara Nation on Fort Berthold. In 2012, the Three Affiliated Tribes passed a resolution against water agreements by the Corps, noting that the "Corps' proposal to sell or allow the taking of water from Lake Sakakawea for use in the oil and gas industry will undermine the Tribes' current plans to market and sell water to the oil and gas industry and thereby raise needed revenue" (Tribal Business Council of the Three Affiliated Tribes 2012). New communal water delivery systems in northwest North Dakota are also counting on industrial sales of water to finance the infrastructure. Even if there is enough water, competition between water providers to raise revenues for communities is becoming a new economic and sociopolitical reality.

Water usage is only one part of the role water plays in hydraulic fracturing frontiers; however, the other part is the generation and disposal of wastewater. Water is mixed with chemicals before it is injected into wells to frack them. That water, as well as additional water, comes back up the well, and in contrast to water that is used for agriculture or ethanol or coal plants, this water cannot be allowed to reenter the water cycle. The only way to legally dispose of it in the Bakken and in most other oil and gas shale plays, is to inject it deep into the ground. The illegal way to dispose of it is to simply let it drip out of tank trucks while driving along the road. However, in North Dakota, as in other states, the Department of Health "considers oilfield-produced saltwater (brine) to be an effective substitute for commercial dust and ice control products." As such, brine can be spread on dirt roads in winter and summer. The NDDoH notes that "wastes are exempt from waste management rules and are not considered a waste when it is: '(2) Used or reused as effective substitutes for commercial products'" (North Dakota Department of Health n.d.). Brine as a waste product is injected in one of over 30,000 Class II disposal wells in the United States. In early 2013, North Dakota was injecting over 19 million gallons of produced water brine into the "Dakota Formation" per day, or over 7 billion gallons a year (Davisson and Luther 2013).[7]

Deep injection wells are designed to be safeguarding drinking water and aquifers, but the regulations are often based on unproven assumptions (Lustgarten 2012). A study hypothesizing that fracking itself can change the properties of the shale in which it occurs, which could then lead to the permeability of assumed stable geological formations, enabling waste

[7] For a discussion of the inconsistencies in nomenclature of formations, see Thamke and Craigg (1997, 12–13).

to travel into other layers, including aquifers, was heavily criticized, in part by a consulting firm (Myers 2012; Saiers and Barth 2012; Cohen and Andrews 2013). However, other studies have postulated that some of the assumed impermeable geological layers might have natural fractures, and that brine has contaminated groundwater (Warner et al. 2012). It seems that deep injection is relatively safe for now, as long as the injection wells are constructed and maintained well. The volume of waste injected, the lack of known data, potential seismic activity caused by injection, and communication between fracked wells, all raise the potential for contamination of ground water over the long term. Recent research by a consulting company rejecting the permeability of layers comes to the conclusion that "where upward flow occurs, both permeability and flow rates are low, and therefore, timescales for transport are long" (Flewelling and Sharma 2013; Flewelling et al. 2013). Thus, if problems occur, they might become noticeable after the industry has left the region.

Most contamination issues exist from improper handling, storage, and well construction. The potential for contamination of drinking water in shallow aquifers on the northern plains is demonstrated on Fort Peck, where brine has contaminated drinking water and the Poplar River since the 1970s. To reduce the threat to groundwater serving three thousand people in the Poplar area, remediation systems were established (Thamke and Craigg 1997; Thamke and Smith 2014). Potential water contamination and other health risks, such as air pollution (McKenzie et al. 2012), have led to calls for the inclusion of a comprehensive public health approach to discussions on hydraulic fracturing development (Mackie et al. 2013). It is, of course, the presence of such planning discussions that mark the absence of a frontier, or a boom. Comprehensive planning and regulations mark not necessarily an economic bust, but the fact that the state is changing its interests from securing resources for individuals and corporations to a public safety enforcement.

Conclusions

Industrial booms are nothing new to the global or national landscapes, nor are they new to the northern plains. Recurrent waves of frontiers, each one extracting resources a little more difficult to get at, have swept the region. As all frontiers, each visitation has disrupted those tied to place, and shifted economic and political power to those not related to the region and those who disentangle themselves from such ties. "Today's disintegration of rural life," wrote Osha Gray Davidson (1990, 159), "the breakup of families, small-town organizations, and whole communities—fits the pattern established by colonial powers throughout the Third World." There

is a connection between inequality, dependence, poverty, and frontier resource extraction: the first three create a society where "civic culture" is more likely absent (Duncan 1999), and that enables the establishment of a frontier economy. Frontiers are economic and political patterns that take advantage of and create more inequality. They persist until one of two things happens: either the resources are depleted and capital leaves, or some beneficiaries successfully (re-)build a civic culture. In the first case, local communities are left with depleted resources and nothing to show for it. In the second case, the frontier transforms into a stable, regulated economic and political environment. This transformation, however, also needs to accomplish a successful economic diversification, or the stability will be a delusion. Brian Black (2000, 187) describes the dreams for such a transformation for the region around Petrolia, where "delusions of permanence had been based on a finite resource; it was a lesson about the nature of the oil industry." That lesson has been learned by planners in North Dakota as they attempt to attract families, to build infrastructure and subdivisions, and to advertise the Williston Basin as a sustainable boom. The underlying dependence on a finite resource, however, raises the specter of yet another bust.

Facing the spectacular end of the land boom on the plains in the years after the Dust Bowl, the Great Plains Committee came to the conclusion that hubris and ignorance about geographic, climatic, and environmental conditions had been mainly to blame. Although "an inherent characteristic of pioneering settlement," the assumption that "Nature is something to take advantage of and to exploit" was obviously a mistake. Since natural resources are actually not inexhaustible, the report advocated for conservation instead of temporary economic profiteering. It also, however, pointed out that "under pioneering conditions … if anyone acquired some portion of the free natural resources and turned it into productive use, he was … rendering a service to the entire society"; yet, in hindsight, "only too frequently what appears to be of immediate good to the individual in the long run is not good for the people of the region, and even for the individual" (Great Plains Committee 1947, 63–64). Local control cannot mean handing that control to economic interests that are often not tied to local communities. Local sovereignty over resources needs longterm wisdom and regulations, and outside control needs insight and deference to local needs and wants. Neither is given in frontier situations. In 1924, Aldo Leopold advocated that "uncontrolled use of one local resource may menace the economic system of whole regions. Therefore, to protect the public interest, certain resources must remain in public ownership, and ultimately the use of all resources will have to be put under public regulation, regardless of ownership" (Leopold 1991, 113).

This advice, namely to keep decisions about natural resources outside the influence of economic interests, would end frontiers and regulate booms.

The crux is, of course, as it has been ever since the American settlement of the West, what "public interest" means. For Leopold and others, it was the defense of the community and the environment upon which the community rests against corporate interests and those wanting to exploit "free" resources. This is still the interpretation of communities, for example, that have passed no fracking ordinances in order to safeguard their water. It is hard to reconcile such a notion with contemporary practices of states, however. Providing free resources to individuals and corporations so they can profit from them hardly protects the public interest, unless, of course, the public interest is identical with corporate interests. This is, of course, what lobbying groups such as the American Legislative Exchange Council postulate.

The public interest in natural resource has been interpreted in the interests of the state since the 1930s at least. In the case of water, the Tennessee Valley Authority and the Pick-Sloan dams on the upper Missouri are testimony to that. Energy extraction—with or without fracking—as a national interest follows the same trajectory. However, there is a difference between a resource being appropriated by the state and a state giving free reign over a resource to corporations. The latter, which creates the frontier extraction model, may fall into the current trend for states to clear the way for business interests. I have to admit, however, that this leaves me deeply suspicious. Imagine watching a movie in which the sheriff tells John Wayne or Gregory Peck that they cannot help poor ranchers fight for their right to water because the rich water barons need to make more money off them.

Boosterism has always accompanied frontiers, just as it does in the Bakken today. Yet boosterism works only by abstracting specific positive elements of booms from their contexts, and then claiming they stand for the whole. "Pluviculture" never worked in context; the rain does not follow the plow, even if at times, it might rain after somebody plows. Neither is it true that "the lesson of history is that in free societies individuals produce more energy than they consume" (Bradly and Fulmer 2004). The first law of thermodynamics has something to say about that. Neither is it true that "'non-renewable' energy sources have become more abundant" (Desrochers 2005)—we have just happened to find more, like in the Bakken. But ultimately, no amount of boosterism can realistically deny that the Bakken needs to be analyzed in the appropriate, historical and contemporary, global context of energy, environment, and politics.

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Chapter 9

Doctors Wanted: How the Bakken Changed North Dakota Health Care Delivery

Jessica Sobolik

We often hear through the news media that a physician shortage is occurring in the United States (Association of American Medical Colleges 2014a). Headlines warn that the number of doctors needed to treat aging baby boomers is insufficient. Furthermore, many physicians are approaching retirement. However, in rural states like North Dakota, distribution of health care is a larger problem (UND School of Medicine and Health Sciences 2012, vii). The state's relatively small population (700,000) is spread out over a large geographic area, and there are not enough physicians to adequately serve everyone. Thus, people who live in rural areas often travel more than one hundred miles to receive specialized health care.

During the latest oil boom in western North Dakota, the growing population has strained the state's health care system even further. The new challenge is twofold: not just a sharp increase in population in general, but a change in demographics that were not prevalent in North Dakota since the 1930s (U.S. Census Bureau 2014). Young men doing dangerous work, often requiring visits to the emergency room (Eligon 2013), have in many cases brought young families to the state. Hospitals are scrambling to provide the services that this new demographic requires, among other challenges. This chapter will explore North Dakota's current health care system network, the state's demographic changes, the challenges the network is facing, and solutions that may result in better health care for all.

North Dakota's Health Care Network

North Dakota's health care network includes six tertiary hospitals, or the Big Six: Altru Health System in Grand Forks, Essentia Health in Fargo, Sanford Health in Bismarck and Fargo, St. Alexius Medical Center in Bismarck, and Trinity Health in Minot (UND School of Medicine and

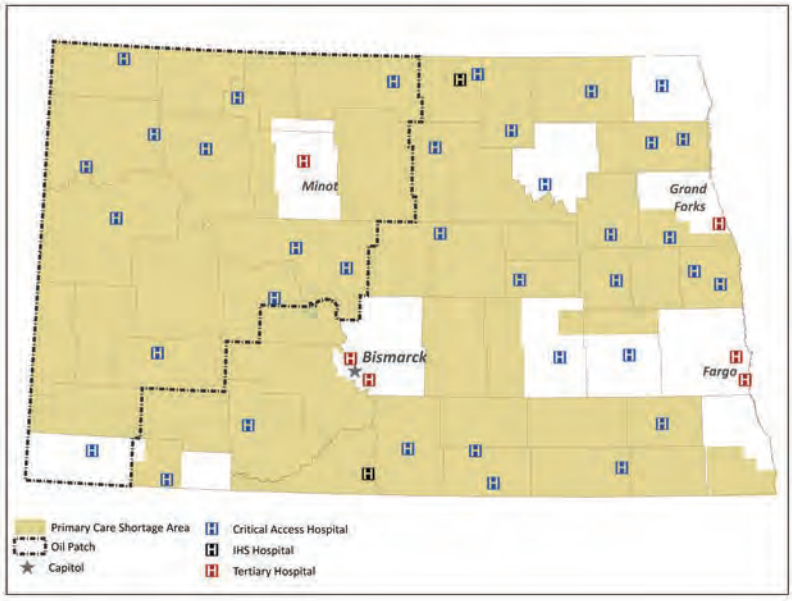

Figure 1. North Dakota's hospital system network (source: UND School of Medicine and Health Sciences 2012, 66).

Health Sciences 2012, 66). Tertiary hospitals offer specialized medical care involving complex procedures and treatments by medical specialists (as opposed to primary or secondary care). The Big Six are located in the four largest cities in the state. In other words, if you were to divide the general rectangle shape of North Dakota into four quarters, each city would serve a quarter (see Figure 1).

The state also has thirty-six critical access hospitals (CAHs, pronounced "caws"). CAHs serve rural areas of the state and must meet federal guidelines such as no more than twenty-five short-term care beds, an average length of stay for patients of ninety-six hours or less, and a location with thirty-five miles of another hospital (not necessarily a tertiary hospital). In addition to various clinics and the tertiary hospitals, CAHs form a network of health care across the state. This does not include the state's three psychiatric hospitals (Fargo, Jamestown, and Grand Forks), two long-term acute care hospitals (Fargo and Mandan), two Indian Health Service hospitals (Ft. Yates and Belcourt), and one rehabilitation hospital (Grand Forks) (North Dakota Department of Health 2014a). Physicians from the Big Six often travel to the CAHs one or two days per week or month to provide specialized care for those who might not be able to travel to the Big Six.

In addition to tertiary hospital Trinity Health in Minot, twelve CAHs are located within the Bakken oil patch: Community Memorial Hospital, Turtle Lake; Garrison Memorial Hospital, Dickinson; Kenmare Community Hospital, Kenmare; Mercy Medical Center, Williston; McKenzie County Hospital, Watford City; Mountrail County Medical Center Hospital, Stanley; Sakakawea Medical Center, Hazen; Southwest Medical Clinic, Bowman; St. Andrew's Health Center, Bottineau; St. Joseph's Hospital, Dickinson; St. Luke's Hospital, Crosby; and Tioga Medical Center, Tioga (UND School of Medicine and Health Sciences 2012, 66). CAHs more centrally located in the Bakken oil field, such as Mercy Medical Center in Williston, are more affected than those on the outskirts, such as Sakakawea Medical Center in Hazen. A closer look at the challenges faced by individual centers later in this chapter may better illustrate how each facility is being affected differently by the oil boom making it difficult to come up with a blanket solution that would fix all health care delivery problems across the state.

Population Changes

Several population and demographic changes have occurred in North Dakota since the Bakken oil boom began, which greatly affect health care delivery. Because many changes have occurred after the U.S. Census in

2010, it is difficult to pinpoint exact population and demographic statistics for the western part of the state today. Still, the U.S. Census Bureau, the authority for demographic statistics, makes projections between census years. Those projections are used in this chapter.

Overall, the state's population tallied 672,591 in 2010 (U.S. Census Bureau 2014). Since then, the U.S. Census Bureau has projected a 4.3 percent increase in population in 2012 and a 7.6 percent increase in 2013 for a record total of 723,393. The previous record of 680,845 was tallied in 1930, right before the Great Depression derailed the state's burgeoning agricultural industry (UND School of Medicine and Health Sciences 2012, 10). In general, the state's population is increasing rapidly, three times more than the national rate (U.S. Census Bureau 2014).

Demographically, North Dakota is the second-oldest state in the nation behind Rhode Island in the percentage of its population over eighty-five-years-old (defined as "elderly") (UND School of Medicine and Health Sciences 2012, 5). Based on 2012 Census Bureau population projections, people over age sixty-five made up 14.4 percent of the state's population (U.S. Census Bureau 2014). Older populations use more health care workforce resources than younger populations requiring more ambulatory services and more family physician visits (UND School of Medicine and Health Sciences 2012, 5).

However, 22.1 percent of the state's projected 2012 population (701,345) consists of children under age 18 (U.S. Census Bureau 2014). Children and their mothers require physicians of different specialties, primarily pediatrics and obstetrics/gynecology. As far as gender goes, according to 2012 projections, the state's population is still split roughly 50/50, although more men are working in the oil fields.

North Dakota counties that saw the largest population increase from 2000 to 2010 were primarily in the western part of the state: Burleigh (Bismarck), Mountrail (Stanley), Williams (Williston), McKenzie (Watford City), Morton (Mandan), Stark (Dickinson), and Ward (Minot) (UND School of Medicine and Health Sciences 2012, 11). Burleigh, Mountrail, Williams and McKenzie counties increased their populations by more than 10 percent.

Generally speaking, the population in western North Dakota will continue to grow and demographics will continue to change as oil production in the area increases. In order for hospitals to provide adequate health care to the growing population, they must understand the area's changing demographics.

Physician Specialties

Primary care physicians are most in demand in North Dakota and across the nation, followed by general surgeons. Various health care entities categorize primary care specialties differently; this chapter uses the most generally accepted definition of primary care as family medicine (basic health care), internal medicine (prevention, diagnosis, and treatment of adult diseases) and pediatrics (development, care, and diseases of babies and children). There are 550 primary care physicians practicing in North Dakota (UND School of Medicine and Health Sciences 2012, 52). Fifty-nine percent of them specialize in family medicine, 28 percent are internists, and 13 percent are pediatricians. Primary care physicians do not earn as much compensation as other specialists (Association of American Medical Colleges 2014b), a fact that likely has some effect on workforce shortages in western North Dakota.

Aside from primary care, physicians can specialize in a number of areas. More popular specialties include: anesthesiology, dermatology, emergency medicine, neurology/psychiatry, obstetrics/gynecology, ophthalmology, otolaryngology, pathology, radiology, surgery (orthopedic, plastic, thoracic), and urology (American Board of Medical Specialties 2014). One can also subspecialize in a particular specialty. For example, cardiology is a subspecialty of internal medicine.

Specialists in North Dakota are more often found at the tertiary hospitals where patients requiring those specialties are expected to go (see Figure 2). However, recognizing that sometimes patients are unable to travel long distances, some specialists travel to the CAHs on a limited basis.

Workforce Needs

In 2011–13, CAHs responded to a survey that helped form individual community health needs assessments compiled by the Center for Rural Health at the UND School of Medicine and Health Sciences. Of the twelve CAHs in Bakken oil country, all identified "health care workforce shortage" as one of their significant health needs (Center for Rural Health 2014). Less than one-third of all CAHs *did not* identify this need, indicating a statewide challenge as opposed to a Bakken challenge. Assuming all CAHs were already facing this challenge, the oil boom only made the issue worse.

It is important to note that not all twelve western North Dakota CAHs feel affected by the Bakken oil boom. "We are impacted, but not nearly to the degree that those in the center of the activity are," said Darrold

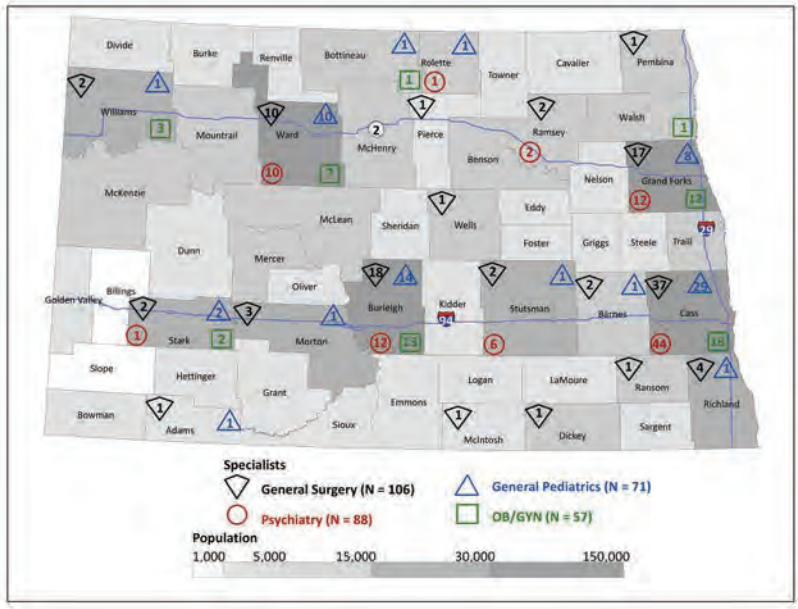

Figure 2. Location of specialty physicians in North Dakota (source: UND School of Medicine and Health Sciences 2012, 55).

Bertsch, CEO of Sakakawea Medical Center in Hazen, in an email to this author. However, facility administrators are still hoping to restart obstetric services and add specialized pediatric services (Hall 2012, 52–53). The number of young families is increasing in western North Dakota, and patients living in Hazen, for example, currently travel seventy miles to Bismarck to receive those services.

Southwest Medical Clinic in Bowman was one of few facilities that did not indicate oil field challenges at all in its community health needs assessment. In fact, it predicted a slight decrease in total population between 2000 and 2017 (Eide Bailly 2013, 10).

Clearly, not every CAH has the same needs when it comes to specialties. Some have more of a need for family medicine physicians. Others agree that pediatricians and obstetricians/gynecologists are needed (Jackson, current volume). But almost all CAHs in the Bakken have indicated workforce challenges tied to the oil industry, even at St. Andrew's Health Center in Bottineau in the far northeast corner of the Bakken oil patch. In its community health needs assessment, the facility's community members and health care providers acknowledged a growing population and a similar increase in emergency room visits (Hall and Becker 2012, 33). In addition to the specialists mentioned above, health care providers in the area also expressed interest in expanded radiology services (e.g., ultrasound and MRI) (Hall and Becker 2012, 40).

As cited in his facility's community health needs assessment, Tioga Medical Center CEO Randall Pederson also reported a growing number of emergency room visits. "In 2007, we would see 600 patients in ER per year," he said. "In 2012, we anticipate seeing over 2,000. So in a five-year period, we have more than tripled our emergency room visits" (Becker and Hall 2013, 58). The assessment also indicated an interest in adding surgeons (general and orthopedic) (Becker and Hall 2013, 60).

For this chapter, administrators at the twelve CAHs were interviewed in order to identify challenges being faced since the community health needs assessments were completed. Out of the twelve, four administrators completed the interview questions, one responded briefly in general, two declined participation due to other commitments, and five were unreachable. The following is a closer look at four specific facilities, their communities and their physician needs, along with a brief indication of how the facilities plan to fill those needs (e.g., recruitment agencies).

Spotlight on Williston

Williston has been identified as the center of oil boom activity (Rocco 2013). In its community health needs assessment, respondents addressed

the demographic changes taking place in the community. "Lifelong residents are bitter about the influx of residents due to the oil boom and they feel their needs are not being met," one said. Others mentioned that elderly residents were moving away because of the increase in the cost of living (e.g., housing, food) (Hall and Becker 2013b, 43).

In an email to this chapter's author, Mercy Medical Center CEO Matt Grimshaw confirmed the demographic challenges facing his facility in Williston. "The most significant change in our region, apart from the increase in population, has been the changing demographics," he said. "Williston is getting younger faster than any city in America, and because of that, the kind of services needed here have changed dramatically. Demand for the many services needed by younger people have increased 100 percent in the past four years (ER, obstetrics, pediatrics), while other services have only increased slightly (inpatient surgery, intensive care)."

Grimshaw confirmed that his facility was facing a physician shortage before the oil boom began. He estimates the current shortage in Williston is approximately six full-time primary care physicians, and he projects that shortage to increase to more than twenty providers over the next five years. Specialties currently needed include emergency medicine, orthopedics, general surgery and oncology. Future needs include cardiology, urology, and critical care. Mercy Medical Center is actively recruiting to fill open positions with physicians who are a good fit with the facility's existing team and who are "fully committed to providing the highest quality of care possible," according to Grimshaw. The facility utilizes online recruiting resources and multiple recruiting firms. In the meantime, the facility brings specialists in from multiple neighboring facilities. These specialists focus on cardiology, neurology, neurosurgery, and oncology.

Spotlight on Garrison

Garrison is located between Minot and Bismarck on the eastern border of the Bakken oil patch. According to its community health needs assessment, St. Alexius Garrison Memorial Hospital has seen an increase in acute and emergency room visits because of the oil boom (Howe Enterprises LLC 2013, 5). In an email to this author, hospital administrator Tod Graeber confirmed that the oil boom has greatly stressed his facility's emergency medicine department, similar to St. Andrew's Health Center in Bottineau and Tioga Medical Center. "Our emergency department has seen increases of 25 to 30 percent in volume in the past five years," he said.

He also mentioned the challenge of collecting payments from patients after services were provided. "There are a lot more transient patients," he said. "These patients are often hard to track down to find an address to send a bill to. There are a lot of good-paying jobs, but often a lot of these workers do not have health insurance."

In the community health needs assessment, Garrison community members and health care professionals indicated the number one reason patients seek health care services in other towns is because of a lack of specialists (Howe Enterprises LLC 2013, 47–48). According to Graeber, the hospital only provides primary care and emergency care, for which he feels the facility is adequately staffed. The hospital used to provide specialty services via visiting physicians one or two days per month. However, since western North Dakota's population has grown, Graeber said the hospital has lost access to some of its visiting specialists who are being called elsewhere. These included urologists, podiatrists, neurologists, and psychologists. Graeber is hoping to restore some of these services in the future. The facility posts its job openings on its website, on related industry websites, and in relevant professional publications.

Spotlight on Kenmare

Located 50 miles northwest of Minot, Trinity Kenmare Hospital is located on the eastern edge of the Bakken oil patch. Still, the community has felt significantly affected by a growing population according to its community health needs assessment. Young single males make up most of the influx, and their chosen profession in the oil fields is requiring more emergency services (Trinity Kenmare Community Hospital 2013, 4).

In an email to this author, hospital administrator Shawn Smothers said her facility only has one physician who rotates with a family nurse practitioner every other week. She would like to hire another family medicine physician, but the hospital cannot afford one. Instead, it is considering hiring a midlevel provider—a family nurse practitioner—to cover clinic hours, as well as the emergency room and overnight shifts. Smothers also pointed out that it has been difficult to keep adequate hospital staff on the payroll. Either they are leaving for higher paying jobs in the oil fields, or they have spouses making enough money in the oil fields making a second income unnecessary.

Outside of primary care, the hospital does not have any specialists except a podiatrist who visits the facility once a month and a physician who covers the emergency room up to ten days a month. Smothers did not feel additional specialists were needed, although community members have expressed interest in having more access to an oncologist (Center

for Rural Health 2013, 10). The hospital utilizes recruitment agencies to fill job openings.

Spotlight on Watford City

Watford City, like Williston, is more centrally located in the Bakken oil field. Forty-five miles southeast of Williston, McKenzie County Healthcare System has a greater need for emergency medicine, just like in Tioga and Garrison. According to CEO Dan Kelly in an email to this author, the county's hospital was seeing fewer than one hundred emergency room patients per month in 2007. Today, that number exceeds five hundred per month. "In addition, we're seeing more trauma patients," he said. Further, according to the hospital's community health needs assessment, there are not enough outpatient clinic doctors to see patients in a timely manner, so patients are using the emergency room as a walk-in clinic (Hall and Becker 2013a, 60).

In particular, Kelly does not feel his facility has the need for a full-time pediatrician or obstetrician/gynecologist just yet, but as the population increases, he acknowledges that will change. However, he would like to recruit one more family or internal medicine physician. Currently, the ratio of McKenzie County residents to primary care physicians is five times the state average and six times the national average (Hall and Becker 2013a, 60). On the other hand, community members indicated a need for more "birthing services/obstetrics" and pediatric services in the community health needs assessment (Hall and Becker 2013a, 44). So while some community members desire these specialties, there are still not enough patients to justify bringing these full-time specialists on board. In addition, cardiologists, pediatricians, and orthopedic surgeons operate separate specialty clinics in the area.

Solutions

This chapter has identified a number of challenges facing health care facilities in western North Dakota today. In summary, there has been a swift increase in population, changing patient demographics, a shortage of specialists and physician recruitment. Particularly CAHs are seeing a greater need for pediatricians, obstetricians/gynecologists, and emergency medicine providers.

In light of this information, solutions are being identified and action plans are being formed across the state. CAHs are drafting their implementation strategies based on the community health needs assessments. Also, the UND School of Medicine and Health Sciences has developed the

Health Care Workforce Initiative, which aims to reduce disease burden, increase retention of graduates, increase student class sizes and improve the health care delivery system overall (UND School of Medicine and Health Sciences 2012, 108–10). According to its purpose statement, the School of Medicine and Health Sciences, the only medical school in the state, is responsible for educating future physicians and other health professionals and enhancing the quality of life for all North Dakotans (UND School of Medicine and Health Sciences 2013).

By reducing disease burden, or encouraging disease prevention, fewer people would get sick and therefore require fewer health care services. Specific to the Bakken oil fields, for example, educating workers about preventing sexually transmitted infections could reduce the number of future health care visits. Public health officials already provide these educational services to physicians (North Dakota Department of Health 2014b). The UND School of Medicine and Health Sciences created a Master of Public Health program in 2012 to educate more public health officials (UND School of Medicine and Health Sciences 2012).

Retaining graduates is perhaps the most challenging goal, but also one of vital importance. All medical school graduates are required to complete residency training, which lasts three to seven years depending on the specialty (Association of American Medical Colleges 2014c, 11). Yet most residencies are located outside the state, and statistics indicate that medical students are more likely to practice in the state where he or she completed residency training (UND School of Medicine 2012, 104). In-state residency programs include family medicine, internal medicine, psychiatry, and surgery. Discussions are underway to resurrect the state's obstetrics/gynecology residency program. Furthermore, the North Dakota Legislature approved funding for a RuralMed Program, which defrays tuition costs if the graduate agrees to practice family medicine in a rural area of the state for five years (UND School of Medicine 2012, 109).

Increasing student class sizes would increase the likelihood of more graduates choosing to practice in North Dakota. Therefore, the state legislature approved funding to allow the School to increase its class sizes starting in summer 2012 (UND School of Medicine 2012, 109–10). Using medical students as an example, the first expanded class would graduate in 2016 and finish residency training no earlier than 2019.

Improving the health care delivery system would encourage the tertiary hospitals to work cooperatively with the CAHs across the state to ensure that all areas of the state receive quality health care.

To get a better idea of how long it takes to produce certain specialists, it may be helpful to look at the latest graduating class of medical students

at the UND School of Medicine and Health Sciences. Out of a class of sixty-four students graduating in May 2014, nine plan to go into family medicine, four are going into obstetrics/gynecology, five are going into emergency medicine, and four are going into pediatrics (UND School of Medicine and Health Sciences 2014). The rest have chosen other specialties. Comparing these numbers to the needs identified in Williston and elsewhere (e.g., Mercy Medical Center needing six primary care providers), this year's class cannot fill current shortfalls, so physicians must be brought in from out of state or outside the United States. Midlevel providers (e.g., nurse practitioners, physician assistants) could also help fill the gaps. No matter what solutions or action plans are identified as the best, it is certain that inaction would only make the physician shortage worse and the health care delivery system in western North Dakota more strained.

Summary

In conclusion, the delivery of health care via CAHs across North Dakota was already strained before the latest Bakken oil boom occurred. Now, CAHs are lacking the appropriate workforce to provide the necessary health care for their communities. In general, the specialists most needed or desired are pediatricians, obstetricians/gynecologists and especially emergency medicine providers. However, just because community members desire additional services or providers, it may not warrant actual hiring of those providers.

Each community has been impacted differently. By taking a closer look at four specific CAHs and their communities (Williston, Garrison, Kenmare, and Watford City), it is evident that each facility must develop unique strategies to follow in the near future.

By identifying the changing North Dakota demographics and the parallel needs of the state's CAHs, the UND School of Medicine and Health Sciences and other health care partners can then develop the most effective ways to improve health care delivery statewide, which is especially challenging when the state's population increases so quickly. As history has shown, North Dakota's health care network will work together to ensure that everyone is entitled and has access to high-quality health care.

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Chapter 14

"Cowboy Logic": Lessons from Norway

Ryan M. Taylor

I published these pieces in the *Dickinson Press* after I had been invited by one of the editors to write about my fellowship with the Bush Foundation. I had gone to Norway as a Bush Fellow to study their policies and see what could be learned from a country with a long history as a major oil exporter.

I wrote in a style that was personal and practiced due to my part-time vocation as a columnist for agricultural newspapers across the western U.S. and Canada since 1994. My long-running Cowboy Logic column has always dealt with living on a ranch, being part of a tight-knit rural community, and raising a young family in the midst of it all. When I wrote these pieces about the topic of oil development and a handful of global lessons, I kept my same Cowboy Logic voice. I figured the readership of the *Dickinson Press* in western North Dakota would understand and appreciate that. Plus, it allowed me to be myself. My voice is my Cowboy Logic voice.

There is generally a lot of support for oil development in North Dakota, including western North Dakota where the brunt of the impacts are felt—the good, the bad and the ugly. The jobs and the economic development (the good) is something North Dakota has been looking to find for years. The deterioration and the critical shortage of infrastructure (the bad)—roads, highways, housing, emergency services, law enforcement, schools, you name it—seem to be challenges continually faced a day late and dollar short. Then there's the large-scale wasteful flaring of natural gas, the saltwater brine and oil spills onto productive agricultural lands, the diminished feeling of safety in once secure communities, and the surge in traffic fatalities (the ugly). One of the problems in our public discourse, though, seems to be that any mention of the bad or the ugly will bring accusations that you don't appreciate the good, or it'll get you labeled "anti-oil."

As a public figure, I've faced my share of accusations when it comes to the booming oil and gas sector of North Dakota. Having served in the state senate for ten years from 2002 to 2012, I pushed the green (yes) or red (no) button at my desk thousands of times on thousands of legislative bills and issues. I support the harvesting of energy in North Dakota, but I've never been willing to give away our one time harvest or step back from our responsibility to be good stewards of the land and water while we do it.

I remember voting against a tax break for oil companies in the 2009 legislative session. It looked to me like a giveaway; it was pitched as an "incentive." I figured the incentive to drill for oil in North Dakota hinged squarely on the quality of the resource, the world market price for oil, and the technology available to go get it. So I voted no on the oil tax reduction and in my 2010 reelection for the district senate seat, opponents ran radio ads across the state, well beyond my district borders (foreseeing that I would probably be a statewide candidate in the future) that said I was "against the Bakken."

I laughed at the ludicrous spin they were making—that voting against a tax giveaway to oil companies made someone against the Bakken. As a Republican ranching friend and supporter of mine from McKenzie County chuckled and said, "Gosh, Ryan, I didn't think anyone could be against a geological formation!" For the record, I'm not against any of our geological formations or tapping energy from them. I do believe we need to work very hard to do it in a way that respects our land and water, and the communities and people in the middle of the development. And yes, that means maintaining a reasonable oil extraction tax rate to provide the needed investments in those communities and having something to show for the future when this one-time harvest is complete.

In politics today, there seems to be little respect for the idea of middle ground or thoughtful compromise, unfortunately. When I ran for governor of North Dakota in 2012, and later, for state agriculture commissioner, oil development was a fundamental topic of the debate about North Dakota's future and our legacy as a people and an agrarian culture. And, while I won my senate election in 2010 handily in spite of the "against the Bakken" radio ads, that narrative of false choices was continued by my opponents in my two statewide races both of which proved unsuccessful at the ballot box. The attacks were amusing, though. When the Brighter Future Fund (and you can imagine whose bright future they were worried about funding) took to the radio airwaves in my race for ag commissioner to say that I had admitted to being a "tree hugger" in one of my Cowboy Logic columns (gasp), I had to laugh, because I knew the column they were referencing.

The exact words in my July 20, 2009, column were, "Even though I'm a child of the generally treeless plains, I'm a tree lover. I reckon you could call me a tree hugger, although being a Scandinavian Midwesterner with well-managed emotions makes me an unlikely hugger of anything. As with people, I'd be more likely to give a tree a firm handshake or a hearty pat on the back, but not a hug." There you have it. I went on to write about the grove of ponderosa pines my father planted in one of our pastures, and how I built my house next to those trees after they grew so nice and tall. I don't know that I've hugged them—the pine needles are kind of bristly, you know. I have stood on the south side of them when a brisk north wind is blowing in January and felt quite content, however.

I failed to find much derision in Norway for people who appreciate the outdoors and who are willing to advocate for the environmental side of the equation when there are potentially harmful tradeoffs with industry. On the contrary, there is a common Norwegian term, *friluftsliv*, meaning, "the open air life," an ingrained, cultural Norwegian appreciation of the outdoors and outdoor recreation. Understanding the Norwegian *friluftsliv* makes it easy to see the cultural basis of their fourth commandment in the 1971 "Ten Oil Commandments" for Norwegian oil and gas development. It lifted up protection of nature and the environment as a guiding value from the very beginning of their off shore oil and gas extraction activities.

Norway is not perfect—no country is—but it does have policies and experiences that we can learn from. My experience as a policy maker in the state senate and as a candidate for statewide office tells me there is room for improvement in the way North Dakota manages and finds its way through this oil boom. As a Bush Fellow, I believe I have identified some of those possible improvements on the other side of the Atlantic. And as a fourth generation cattle rancher and agrarian who holds our prairie in very high esteem, I believe many of us know what we should be doing and where we must improve. Maybe some Cowboy Logic will help remind us what that is.

Across the Pond: Looking for Lessons in the Old Country

Towner. N.D. — It was 1910, 103 years ago, when a grandfather I never knew packed up all that he had, bought a ticket to America on a ship called the Lusitania and left his home, never to return.

He died long before I was born and that's why I never knew him. And I never really had the opportunity to travel back across the pond, as they say, to get to know his homeland. But this fall, I got to make the trip, and

by seeing his country I think I learned a little about both him and his home.

The home he left in Norway was a mountainous valley called Hallingdal, and the place he came to in North Dakota was a significantly less mountainous valley along the Mouse River. The ship that Syvert came over on would become famous five years after his journey in a sinking that would eventually bring the U.S. into World War I, but when he was on board, it was just another long, hard trip to Ellis Island to add his name to a long list of immigrants seeking a life less hard in America.

His trip took weeks just to get to New York, mine took about 12 hours of flying time on three jet planes to get all the way to North Dakota. Syvert never got to see his family again. When I was in Norway, if I wanted to see my family, I simply found a wireless internet connection for my iPad and dialed them up on Skype.

I didn't get to Hallingdal on this trip, but I saw a lot of Norway, and I saw a lot of beautiful country. It's a place that has always been beautiful, but, in 1910, Syvert knew you couldn't eat scenery, so, along with what would be 900,000 of his countrymen and women over a 100 year period they struck out for places with more land and opportunity.

I was in Norway to study the lessons of their policies and practices in the area of oil extraction as part of a Bush Foundation Fellowship that I was awarded. In an interesting turn of fate, the country that was so poor that one third of their citizens had to leave its shores less than 100 years ago is now one of the world's wealthiest, with vast pools oil and gas beneath the waters of the seas they've sailed since the time of the Vikings.

Syvert left a poor country that became a wealthy country with oil. He moved to North Dakota which had more space and opportunity, but was still a hard place to survive, especially through the years of the Depression as a small farmer caring for a family of seven children along with his wife. And now that state is becoming wealthy with oil. The place he left has handled the prosperity pretty well, committed to the geological windfall being a long term benefit to its people for generations to come.

The Norwegians are the same people who ate sheep's head, "smalahove," because they didn't waste anything. Know that, and it's easy to understand that one of the first hard rules they laid out when they started granting permission for companies to drill for oil in their sea was that there would be no unnecessary flaring of natural gas.

It's like eating the sheep's head. They weren't going to light a match to perfectly good natural gas and put it up in smoke. They waited for the pipelines and the plants, they found uses and markets for it or they reinjected it, pressurized the wells and got more oil. No waste.

I learned a lot in the short time I was back in Norway. And even though it was my first time, it felt more like a homecoming than a maiden voyage. I wasn't just a North Dakota cowboy roaming Norway.

I was the grandson of Syvert from Hallingdal, the great grandson of Hans and Ragnhild from Gudbrandsdal. And I ate the gamalost and the lutefisk, and, if it's put in front of me, I'll raise a skol of aquavit and try some smalahove as I listen to their lessons on prudent petroleum management for the long haul.

Hard Work and a Good Rest

Towner, N.D. — Around the world, work is work. Some work is harder, some places definitely have better working conditions, but in the end it's all a trade of time and toil for money, or something else of value.

I grew up knowing full well the old saying, "an honest day's work for an honest day's pay," and it's western companion, "you have to ride for the brand." I knew a lot of people who lived by them. When I went to work in the animal health business years ago my regional manager stood up, said those two things and said that's what he expected of us. I knew I was in the right region and that I had the right manager.

I've had a lot of friends and neighbors go to work in the oil patch, and I know they put in an honest day's work for an honest day's pay, and they rode for the brand because the company logo was on their coveralls, their chore gloves, and their baseball caps! And I'm pretty certain it was hard work. Several of them worked a few years and decided to come back and ranch instead of roughneck. Ranching's no walk in the park so if raising cattle is more tempting than the oil rig, it must be demanding.

They may not have made a lifelong career on the oil rig, but they took the money they made to buy some cows, pick up some land or pay cash for a more modern feeding tractor to make life a little easier on the ranch. Others have made a career out of it, and are working their way up the ladder from worm to driller to who knows what.

When I was in Norway visiting with people in their oil industry the subject of careers in oil came up, of course. I distinctly remember a drilling supervisor tell me that no one looked down on the oil rig jobs, he said there was no such term as 'oil field trash', "these are respected careers," he said, "Lifelong careers that allow people to be with their families."

A lot has changed in oil field jobs, everywhere I think, and that has changed the once held stereotype. Most people can probably remember the bumper sticker from oil booms past, "Don't tell my mother I'm working in the oil patch, she thinks I'm a piano player in a brothel (actually it didn't say brothel, I'm just trying to find a term acceptable for

print in a widely circulated paper)." At any rate, the message on the sticker was that 'mother' would put oil patch work below other, shall we say, less respected jobs.

In Norway, the oil is all off shore, so when you go to work on a platform, you are out to sea and on the job for two weeks. The biggest point of pride for the drilling supervisor I talked to was the Norwegian mandate of "two weeks on, four weeks off" for their workers. That, he believed, helped make the careers respectable, sought after, and most important to him and his workers, family friendly.

A parent or spouse might be out to sea for two weeks, but they come back and have a whole month to be a full time parent and a partner before they have to leave again. The supervisor believed that work schedule helped change the status of oil platform work in Norway to one of career and not just cash.

I'm certain the pay was excellent, as it is in much of the industry. I didn't ask anyone the exact pay scale. I still have a hard time doing that because it strikes me as similar to asking a rancher how many cows he has, or how big a place they have. Anyone in the cow business knows those questions are taboo. It'd be like asking someone to show their W2 form and lay out all their personal finances.

Every policy has pros and cons. The supervisor saw a lot of pros to the two on, four off, schedule for family. I'm guessing family holds a high place in Norway because they're also the country with 36 to 46 weeks of mandated, paid parental leave for new mothers or fathers.

I suppose a drawback could be having to recruit more workers to accommodate the job needs during the longer time off, especially in Norway, a country with low unemployment and a short supply of workers similar to North Dakota. However, the policy could make the work that much more attractive across a bigger geographical area and give them more candidates for the work.

The supervisor said his workers can live "wherever they want," and fly in from all parts of Norway, or Europe for that matter. It probably reduces the housing crunch somewhat for the communities closest to oil activity and the heightened demand that increase rents and prices beyond reach.

Whether this is a policy that fits places other than Norway is hard to say. But like everything we learn when we go abroad or talk to others, we discover there's more than one way of accomplishing an honest day's work.

Leadership, Learning and Adaptive Challenges:
Lessons Taught, Experiences Studied

Towner, N.D. — When I was awarded a Bush Fellowship from the Bush Foundation of St. Paul, Minn., the most common question asked, hands down, was if it came from the family of George W. Bush and George H.W. Bush. And, if so, why on earth would they award one to me?

First off, no, the Bush Foundation was established by 3M company executive Archibald Bush, and his wife Edyth, in 1953. And here's a piece of trivia for you. The 3M company which now makes us think of "Post-it" notes and Scotch brand tape, was originally known as Minnesota Mining & Manufacturing (get it? 3M) and started as a mining company that moved into the production of sandpaper.

The fellowship's stated goal in its leadership category is "To support and develop more leaders who are better equipped and better networked to effectively lead change." They mention things like being a "catalyst for courageous leadership" and they "support efforts to expose proven and emerging leaders to new ideas and new people."

The fellowship has certainly done that for me. Most recently, it allowed me to go to Harvard University for a week to participate in a course called "21st Century Leadership: Chaos, Conflict and Courage." Sounds applicable to western North Dakota, especially on the days when the chaos seems to outpace the courageous leadership.

I'd have never guessed I'd have a chance to sit in a classroom at Harvard, in a group of 66 people coming from more than 25 nations around the world. As one of my personal heroes, Will Rogers, said, "A man learns by two things. One is reading. The other is association with smarter people." I got to do both at Harvard.

Some of my readings were in "Leadership on the Line," a book who's author happened to be one of the smart people I got to associate with at Harvard. I guess you'd call that a Will Rogers double.

One of the concepts in the book is the work of differentiating between technical and adaptive challenges. Technical challenges can usually be fixed with a tool or technology. Go get the hammer or the microchip. Adaptive challenges require a change of mindset, require courageous leadership. The hammer won't work, and neither will the newest whiz bang fix.

It brought to mind another lesson from my fellowship when I was in Norway, learning about their oil production practices and policies. I was visiting with a production supervisor for one of their major oil companies. As it goes, whenever a person talks about off shore drilling, the BP oil spill, or the Macondo spill, as some call it, in the Gulf of Mexico in 2010,

came up. It resulted in the death of 11 workers and spilled 206 million gallons of oil into the gulf.

We talked about possible technical solutions—blow out preventers, remote triggers, protocols, casings and such. I'm no expert in any of this but I asked him about one piece of blow out technology that I remembered hearing about—one that Norway had mandated since the early 1980's that was still not required in the United States in 2010.

He conceded that it may have helped, but that he thought there was more to the tragedy than mere missing technology. He then drew the distinction for me between technical challenges/solutions, and adaptive challenges/leadership, in his own understated Norwegian way.

He said that his company had a platform operating in the Gulf of Mexico quite close to the Macondo well of BP's. They had lots of trouble too, he said, pressures and disruptions and difficulties with their well. It was a hard go.

But, he said, "we are Norwegians and in our culture sometimes we just back off, and take it easy, and slow down," spoken with his open hands in front of him signaling a backing off. And I had to remind myself that the Norwegians have held that mentality and have still harvested 37 billion barrels of oil and gas (in oil equivalents) off their own shores. Taking it easy did not mean standing idle.

I've thought about that conversation many times. The difference between a continued search for a technical fix in hardware or software, and the seemingly simple, but courageous, adaptive leadership that could have possibly prevented a 206 million gallon oil spill by backing off from the go-go mentality and just "taking it easy." Adaptive leadership could have saved lives, billions and billions of dollars of financial loss and untold environmental challenges and clean-up costs.

And I begin to connect the dots from that visit over a cup of strong coffee in a Norwegian break room to the discussions in a classroom at Harvard University to my place in this fast rising oil state that seems to be searching for courageous leadership in the midst of chaos.

Dance with the One Who Brought You
But Everyone Else is Welcome to Waltz Too

Towner, N.D. —When I came out of NDSU in 1992, the parchment in the nice black folder that the university president handed me said bachelor's degree in agricultural economics. I got a second degree (nearly a two for one in the days when you didn't pay per credit) at the same time that said bachelor's in mass communications.

So I was one of those 'right brain/left brain' anomalies, someone who was good at math and liked economics, but could also write a story, or even draw a picture or recite a poem if need be. But, even though both sides of my brain work, I still shoot my rifle right handed, rope calves right handed and the only time I ever wrote with my left hand was the 12 weeks of healing when I broke my right wrist back in seventh grade basketball. I can spin a Will Rogers-style flat loop with my right or left hand thanks to that wrist-induced period of ambidextrousness.

Anyway, back to ag economics. By training, I'm one of those guys. I can plot supply and demand on the two axis of a graph and identify the intersecting price. I could have taken up ag banking or aspired to corporate management after college graduation, but my Dad had been diagnosed with Parkinson's Disease, the family ranch needed me, and, honestly, I felt I needed to be with my family and back on the ranch as we began to fight Dad's battle together.

But I've always followed economics, and kept economics and business on my reading list. I even had the Wall Street Journal delivered to my mailbox three and half miles from the ranch every day for a year after college. I won it as part of an academic scholarship. The paper was always a day late, but that seemed timely enough in the days before the internet.

Now, after 22 years of post-college cattle ranching, 10 years serving in our state senate, a campaign for governor and a new campaign to be the state's agriculture commissioner, I find myself reading about the economics of agriculture and oil, which, today, are the two main economic movers in North Dakota.

One economic principle that kept popping up in my reading was one called the "Dutch Disease." Not Dutch Elm Disease, that's a nasty one that took out some nice trees in a pasture just north of my house, but just Dutch Disease. It's the identified relationship between an increase in an area's exploitation of natural resources and a correlating decline in that area's agriculture and industry. The term was coined in a magazine, "The Economist," in their description of the decline of the manufacturing sector in the Netherlands after they discovered a large natural gas field in the North Sea.

Now stick with me while I try to nutshell the theory without getting too eggheaded. There's a non-tradable sector and two tradable sectors. Non-tradable is service, tradable is the booming (natural resource) sector and the non-booming (agriculture or manufacturing) sector. Eventually the booming sector increases the demand for labor and so does the service sector in order to meet the needs of the booming sector, the non-booming sector pays higher local prices for both services and labor to the detriment of their business, and deals with shortages from the increased

boom and booming service demand. It sounds familiar, even with the economic jargon.

My brother-in-law is flying in his farming help from South Africa because no local labor is available. It's not an inexpensive venture. Across North Dakota, railroads have increased rail rates and local elevators can hardly get grain cars on the tracks laden with oil tankers to get the grain to market. It forced shutdowns and slowdowns of the state's mill and elevator in Grand Forks and sugar beet plants in the Red River Valley. A long standing livestock sale barn in Minot was scrapped to make room for boom sector infrastructure. These are economic symptoms of the Dutch Disease. History shows it has caused the diminishment of pre-boom manufacturing and agriculture in other countries.

Ways to treat the disease, according to lessons from others, include investments in education and infrastructure for the non-booming sector of agriculture. Some countries have outright supports for the non-booming sector. Many nations have large savings funds to hold the taxes and revenues collected from the booming sector to insulate their economy for future generations and protect them from overheating the economy to the detriment of their historical agricultural and manufacturing sectors. Norway's $800 billion sovereign wealth fund is one I got to study to some extent in my Bush Foundation Fellowship.

It's interesting economics, worth reading about in the Economist or the Wall Street Journal when it comes to a dusty mailbox three and a half miles from a remote ranch. Better yet, worth discussing by policy makers who, first, realize the symptoms, and, second, believe that both agriculture and oil, as well as tourism, technology and manufacturing, are worth having as contributors to the North Dakota economy.

It's nice to have a new dance partner (oil), but remember the old adage that also instructs us to dance with the one who brought us (agriculture).

People and Oil, and Stories

Towner, N.D. — I grew up in a community, and in a family, with a strong appreciation for stories and the storytelling culture. It may be a cowboy trait that gives birth to cowboy poetry and music and the gatherings at brandings where a lot of folks who'd rather take a beating than step in front of a microphone entertain others with tremendous storytelling talent.

My father was one of those soft spoken cowboys who was full of good stories. One of my favorites was about a colt he raised on the ranch that was a year or two old when he was drafted into the army in WWII and went to fight and serve in the South Pacific. By the time he came home

from the war years later that colt was plenty big, a big one to geld and a big one to break.

He got him broke and a nearby rancher named Morris decided he wanted to own that big gelding. He asked Dad how much he wanted for the horse and Dad told him $75, a decent sum in the late 1940's. Morris dug a check out of his pocket that was written to him for $1,200.

He asked Dad if he could cash that check so he could buy that horse. Dad looked at him and said, "Hell, if I could cash a $1,200 check, I wouldn't be selling the horse!"

That's an honest piece of cowboy logic about buyers and sellers, and ranch finance.

Stories of Norway and oil

I thought about the stories that make up a places economic history when I was in Norway on my Bush Fellowship to study that country's successful practices and policies in oil development.

They have many. There's the story of the geologist in the early stages of analysis who completely discounted the possibility of their being any oil off Norway's shore beneath the sea. He confidently claimed he would drink all the oil that anyone would bring up from the Norwegian Continental Shelf. Lucky for him, 37 billion barrels of oil and gas (in oil equivalents) later, no one held him to it.

A famous letter in the Oil Museum in Stavanger, Norway, is that from Phillips Petroleum in 1962 requesting an exclusive license to explore and develop the Norwegian Continental Shelf. History records the offer to have been $160,000 per month for that exclusive right. Wisely, the government and leaders declined the offer, and they now have some $800 billion in a sovereign wealth fund belonging to all Norwegians derived solely from oil taxes and revenues.*

As another story goes, a fellow Scandinavian country had a similarly low offer for exclusivity at a point in their history. Their chief negotiator, under the influence of a fair bit of alcohol, accepted the offer, and, so, that country has realized a lot less benefit from their petroleum in comparison to Norway. I don't mention the country by name because I was only told the Norwegian version of the story by a friend over a shotglass of aquavit and I can't cite any academic sources for it!

Drawing lines between nations under the sea, spawned another story directly related to the offshore oil field called Ekofisk that I was fortunate

* These figures date to 2013, today the Norwegian sovereign wealth fund is $882 billion.

enough to visit, thanks to the hospitality of Conoco Phillips and their helicopter, on my trip to Norway.

By negotiating a starting point beyond their physical shoreline for the demarcation of the boundary with the United Kingdom that put British oil on one side and Norwegian oil on the other, Norway found itself just inside the line for its first major productive oil field, Ekofisk, a field that continues to produce superbly today as technology and recovery methods advance and evolve. I'm guessing the Norwegian negotiator was both shrewd, and sober, when he struck that deal.

North Dakota's Storied History

When the story of North Dakota's oil history is written, it will revolve around some often repeated stories as well, I'm sure. The story of the Iverson well near Tioga that started it all is sure to be among them. I have a copy of a Life magazine from Aug. 13, 1951, with a story headlined "Wheatland Oil Boom," complete with photos of the "Wildcat Headquarters" at Bismarck's Grand Pacific Hotel and of an oilman bargaining with a North Dakota farmer sitting on the seat of his tractor.

Individual farms and ranches will likely have stories of regret when their mineral rights were sold outright to get them through a hard time. Others will have stories of gladness of mineral rights leased and royalties retained to benefit generations forward.

Will the stories of North Dakota's policymakers who were in charge during this boom be stories of wise negotiating and policy-setting on behalf of the all its people, and their children and grandchildren? Or will it be a story told with eyes downcast of missed opportunities and a windfall sold short?

By studying, and sharing, the stories of Norway, afforded to me by the Bush Foundation and their fellowship awarded to me, I hope we'll write stories with happy endings, complete with a little pragmatic, Norwegian cowboy logic.

Chapter 17

Photographing the Bakken

Kyle Cassidy

> *The first thing which I recommend is to burn the wagons we have got, so that we may be free to march wherever the army needs, and not, practically, make our baggage train our general. And, next, we should throw our tents into the bonfire also: for these again are only a trouble to carry, and do not contribute one grain of good either for fighting or getting provisions. Further, let us get rid of all superfluous baggage, save only what we require for the sake of war, or meat and drink, so that as many of us as possible may be under arms, and as few as possible doing porterage. I need not remind you that, in case of defeat, the owners' goods are not their own; but if we master our foes, we will make them our baggage bearers.*
>
> Xenophon, Anabasis

The fog froze on the trees last night.

As it crept slowly through Tioga, crystal by crystal fog collided with trees, with the occasional building, with blades of grass, with fences and came to rest, and other crystals nestled next to them, and in the morning the world looked like a faerie palace, everything was white, encased in half an inch of frozen fog (Figure 1).

It's cold here in the western part of North Dakota. The coldest temperature ever recorded in the Bakken was in February of 1936 where, in the sleepy town of Parshall, population 1,929, part of the Fort Berthold Indian Reservation, just a few miles from where we are right now, the mercury fell to sixty-degrees below zero.

And there are winds here too. After these winds caused the great dustbowl of 1934 by blasting the topsoil into the air, killing everything and driving vast numbers of people west form the planes into California, New Mexico, and Washington looking for work in the greatest migration this country has ever known, the federal government planted shelter belts of trees to keep it from happening again – they grow in inexplicable rows

Figure 1. Capital Lodge near Tioga, ND.
Photo by Kyle Cassidy.

across the landscape. But in the 1970s and 80s as family farms began to become consolidated by large agro business, the shelter belts began to be cut down because they were obstacles for farm equipment that had to spend precious time navigating around them, so the winds are returning. These winds take the cold air and hurl it across the prairie. And it's not just the extreme cold, but the persistence. Once the temperature falls, it stays that way. On average, January temperatures move only between -2 and 15 with an average temperature of 7. In January of 2014 the temperature in Williston dipped into the negative double digits nine out of thirty-one days. The number of days with below freezing temperatures vacillates between 180 and 201 days out of the year.

On top of the persistence is the isolation; Toronto and Winnipeg all have climates similar to the Bakken, but they were designed and built as cities. There are things to do. In western North Dakota, in the winter, there's one thing to do: get oil out of the ground. The infrastructure exists for this and precious little else.

Apart from a constant drone of trucks which come, even in the early morning, at a rate of four or five a minute, and a slowly flapping American flag, the only thing moving in this Tioga Type II man camp is Clint Breeze, a 37-year-old over-land truck driver from Southern Idaho who moved here a year and a half ago to take a job hauling water and fracking fluid (Figure 2).

> "I moved my family out here 8 months ago," he says, "and it just wasn't working so I'm moving them back home today. It's nice to have the family together, but not a good place for them, nothing for them to really do." Clint's wife and three children spent days in a trailer provided by his employer while Clint worked regular shifts of 12 hours on, 12 hours off, 28 days in a row. The cold and the isolation got to them. Eight months was all they could take. Clint, like many workers in the oil patch is making money hand over fist, it's just a question of how long he can hold out.

So much of surviving here is in the preparation. Lewis and Clark arrived in North Dakota in October of 1804 and stayed for an entire miserable winter, erecting a high walled fort, meeting Sacagawea, and preparing for their demise by copying down all of the notes they'd made so far to send back to Saint Louis as soon as the thaw came.

Towards the end of April, Lewis climbed a bluff in present day Williston and observed "a most delightful view of the country, the whole of which except the valley formed by the Missouri is void of timber or underbrush, exposing the first glance of the spectacular, immense herds

Figure 2. Clint Breeze in his trailer near Tioga, ND.
Photo by Kyle Cassidy.

of buffalo, elk, deer, & antelopes feeding in one common and boundless pasture."

There are still elk and deer, though the buffalo seem to all be behind fences, raised as cattle ("too dry" remarks one local) there are still lots of other animals around. Pheasants, for one thing, seem to exist like pests, dotting nearly every field and continually darting in front of cars. As I'm dragging my suitcase into the SUV outside of the Roosevelt Inn in Watford City a truck blasts its horn three times and a mule deer bounds up into the parking lot, rushing past me before I can get my camera to my eye and loping off, looking for some place to call its own in what has become a residential patch on a hilltop.

Settled a hundred years after Lewis and Clark left, the town of Tioga occupies less than one and a half square miles. Its population quadrupled in the 1950s when oil was first discovered in Williston and at its largest, in the 1960s, slightly more than 2000 people lived there. It's big enough now to maintain a high school and a newspaper. Tioga means "peaceful valley" though there's not really one to be seen. It looks like a pool table.

Twenty two miles southwest of Tioga is the smaller town of Wheelock. Wheelock's population was at its height in the 1930s when there were more than a hundred people living there—by the 1990s that had dwindled to twenty-three. Now on its third wave of occupation, a smattering of houses and permanent structures are augmented by a series of RV's and trailers (Figure 3).

It's like the Salton Sea in its remoteness and the people who populate it; it sports a self-proclaimed mayor and a motorcycle club and every year hosts a legendary fourth of July party. Wheelock busted but it never boomed, from its founding in 1892 the number of inhabitants has hovered around 100, dipping to 23 or so at its low point in the 1990's but now mobile homes are springing up adding somewhat to the population. The town disincorporated in 1994. "The dogs outnumber the people here," says Samantha who lives in a small green house by the eastern edge of the town with her two daughters (Figure 4).

* * *

When scientists go to a place it is to find truth. When artists go to a place, I think, it is to find beauty. When artists and scientists work together they have the potential to produce that, rarest of all things: something which is both useful and beautiful.

North Dakota is a beautiful place—and a place filled with beauty—these are two different things. Everything that you see is abut the poetry of the intersection of people and landscape—from that mule deer in the motel parking lot to the very act of oil coming out of the ground which is

Figure 3. Truck, house and trailers. Wheelock, ND.
Photo by Kyle Cassidy.

Figure 4. Samantha and her two daughters outside their home. Wheelock, ND. Photo by Kyle Cassidy.

an amazing feat of chemistry, engineering, management and desperation —to the questions of providing for the people who do these things. These are thoughts on a grand scale: What makes a *town*? What's the difference between a *house* and a *home*? What do *people* need to stay *human*? What is *work*? And what can an employer expect from an employee?

This is a place filled with beautiful and terrible stories, with people who are happy and people who are living at the very edges of what a person will do to care for their family. Here, often, are the ends of stories that begin "I had no other choice...." and they're complicated—it can be a difficult place to raise a family, the working hours are long, but the money can be extremely good. People with engineering skills, the people who find the oil and drive the drill bits to their destination through miles of rock can make money at astounding rates, but for unskilled laborers the stories are often grim.

These are all the stories you have to work with; all influenced by the grand and empty landscape, by the cold, and by the isolation and by a nation hungry for oil.

Working with scientists also ties all your art to a very specific set of data points. You can't make a photograph and wonder five years later "whatever became of that group of houses?" because the scientists have tagged the GPS coordinates of every corner of each house in your photo and you can go back forty-five years later and find the sewage lines in the same place. Your art, you realize, is itself just a data point in a greater collection of *truth*. But if you're doing your job right, your data points are fuzzy, you tell the stories that are happy and sad at the same time, your work is hard to quantify, but it makes people pause while looking at the *data*, that in the truth of science, they might, for a moment, glimpse a greater, but impossible to grasp, truth about humanity.

About the Contributors

Carenlee Barkdull, PhD, LCSW, is associate professor and chair of the Department of Social Work at the University of North Dakota. Dr. Barkdull has numerous years of experience in the public and nonprofit sectors encompassing policy advocacy, administration, and community practice. Her involvement with the North Dakota Man Camp Project has led to a keen interest in the effects of extractive industries on vulnerable populations and the human service sector, especially child welfare and child and family wellbeing.

Karin L. Becker received her PhD in communication from the University of North Dakota. With a focus in health communication, her research explores provider-patient communication preferences among individuals with chronic pain and addresses the utility of computer-mediated communication as a mechanism to provide support for marginalized populations. While working as a researcher at the Center for Rural Health at the University of North Dakota School of Medicine and Health Sciences, she conducted community health needs assessments on critical access hospitals and facilitated strategic implementation planning sessions with hospitals located in the oil patch. She has over fifteen years of teaching experience and currently teaches in the School of Entrepreneurship at UND. Originally from Durango, CO, she is an avid hiker and landscape photographer but currently, her lens is focused on her son and daughter.

Nikki Berg Burin is an assistant professor of history and women and gender studies at the University of North Dakota. She received her PhD in history from the University of Minnesota in 2007. Nikki is working on a book project that puts the history of prostitution and sex trafficking in North Dakota in conversation with the commercial sexual exploitation of

women and children in the state today. Nikki also serves on the Advisory Committee for FUSE (North Dakota's anti-sex trafficking coalition).

Sebastian Braun is associate professor of anthropology and director of American Indian Studies at Iowa State University. He earned a lic. phil.I in ethnology, history, and philosophy from University of Basel and a PhD in anthropology from Indiana University. He is the author of *Buffalo Inc. American Indians and Economic Development* and editor of *Transforming Ethnohistories. Narrative, Meaning, and Community*. Among other publications, Braun has written the chapter on the United States for *The Indigenous World*, the yearbook of the International Work Group for Indigenous Affairs (IWGIA) since 2005. His interests lie in the intersections of ecology, economics, and politics.

William Caraher is an associate professor in history at the University of North Dakota. His took his PhD at Ohio State University in ancient history. He has directed archaeological project in Cyprus and worked extensively in Greece. He is the co-director of the North Dakota Man Camp Project with Bret Weber and the co-author of *Pyla*-Koutsopetria *I: Archaeological Survey of An Ancient Coastal Town* with R. Scott Moore and David K. Pettegrew.

Angela Cary is a proud North Dakotan and third-year graduate student at the University of North Dakota in Grand Forks. She will complete her master of arts degree in communication in 2016. This is Cary's second degree from UND—she also earned her BA in advertising and visual arts from the university in 1990. Cary's professional background is in television production. She spent seventeen years writing and producing commercials and promotional videos before making the decision to return to graduate school. She hopes to continue working as a communication instructor following her graduation from UND.

Kyle Cassidy is the author of the #1 bestselling art book *Armed America: Portraits of Gun Owners in Their Homes*, as well as 2012's *War Paint: Tattoo Culture & the Armed Forces*. He has published viral photo essays of Librarians, Occupy Wall Street protesters, Science Fiction authors and, in 2015, the scientists behind the New Horizons mission to Pluto. Find him online at kylecassidy.com as @kylecassidy on Twitter.

Kyle Conway taught at the University of North Dakota for six and a half years before joining the Department of Communication at the University of Ottawa in January 2015. He studies the ways people talk across

cultural or linguistic borders, and he asks whether and how they negotiate a common vocabulary. His books include *Everyone Says No: Public Service Broadcasting and the Failure of Translation* (2011), *Beyond the Border: Tensions Across the Forty-ninth Parallel in the Great Plains and Prairies* (coedited with Timothy Pasch, 2013) and Little Mosque on the Prairie *and the Paradoxes of Cultural Translation* (forthcoming).

Dr. **Simon Donato** is best known as the host of the Esquire Network's adventure sports television show *Boundless*. He is the founder of Adventure Science, a volunteer-based organization formed in 2008, which pairs scientists with adventure athletes and has since conducted over fifteen global projects exploring everything from archaeological ruins in Oman, to searching for missing people in New Mexico, to conducting exercise physiology projects on ultra-distance runners in the Canadian Rocky Mountains. When he's not racing or exploring, he spends his days running Stoked Oats, his gluten-free oatmeal company. He holds a PhD in Geology and lives in Canmore, Alberta.

Rebecca A. Dunham is the curator of collections and exhibitions at the Nora Eccles Harrison Museum of Art at Utah State University in Logan. Dunham specializes in modern and contemporary art, particularly works on paper and ceramic arts. Previously, she worked at Plains Art Museum, the Museum of Fine Arts in Houston, and two university-affiliated museums. She earned a BA in art history from the University of North Carolina at Chapel Hill, an MA in art history from the University of Florida, and completed PhD studies in art history and classical archaeology at the University of Missouri.

Julia C. Geigle, MSW, LGSW, has practiced in the areas of school social work and crisis stabilization, assessment, and counseling services for individuals with chemical and mental health issues. She obtained both her master's and bachelor of social work degrees from the University of North Dakota. Her thesis addressed the social impacts of western North Dakota's early twenty-first century oil boom.

John Holmgren received his Bachelor of Arts from Central Washington University in 2004, and in 2007 received his Master of Fine Arts in photography from the University of Minnesota in Minneapolis, Minnesota. In 2010 he accepted a position at Franklin & Marshall College in Lancaster, Pennsylvania. He has exhibited his work nationally and internationally and has been awarded many grants and awards.

Heather Jackson (MA, MPH) is from North Dakota. Now she resides in New England and works as a birth doula, case manager of pregnant and parenting teens, and early childhood education data collector. She is co-editor of *Feminist Parenting*, an anthology published by Demeter Press (demeterpress.org). Her writing has also been published on thepushback.org, hipmama.com, girl-mom.com, muthamgazine.com, and in many books and zines. She is also the single mother of a teenager, and she rides bike, goes to the beach, and plays guitar.

Ann Reed is a cultural anthropologist and adjunct assistant professor in the Department of World Languages and Cultures at Iowa State University. Her research interests have focused on the interface of political economy and culture, both in North Dakota and in Ghana. Since the 1990s, she has carried out long-term field research in Ghana on the construction of diaspora African identity, heritage tourism, globalization, and political economy. Her most notable publication to date is *Pilgrimage Tourism of Diaspora Africans to Ghana* (2014), but she has also published in *Museum Anthropology* and contributed book chapters for edited volumes on tourism, heritage, and diaspora from Palgrave MacMillan, Ashgate, Blackwell, and Routledge. She teaches courses in African and African American studies, anthropology, and international studies.

Andrew Reinhard publishes the work of the American Numismatic Society and previously served as publisher for the American School of Classical Studies at Athens. Educated at the University of Missouri-Columbia and the University of Evansville, he has excavated in Greece, Italy, Kansas, New Mexico, and Illinois. Andrew most recently led a team of "Punk Archaeologists" as they dug the now infamous "Atari Burial Ground" in Alamogordo, New Mexico, uncovering thousands of games while being filmed for a documentary. Reinhard now studies the intersection of archaeology and video games.

Dr. **Richard Rothaus** holds a BA from The Florida State University, an MA from Vanderbilt University and a PhD from The Ohio State University. Rothaus has pursued historical and archaeological research in North America, the Mediterranean, the Middle East, Asia, and Central America. Rothaus has been involved with Adventure Science since the beginning, and has traveled the world with some of his colleagues on the Badlands adventure. Rothaus is currently the Interim Vice Chancellor of Academic and Student Affairs for the North Dakota University System and a research assistant at the Center for Heritage Renewal at North Dakota

State University. Rothaus lives in Bismarck with his wife and youngest son; his older sons live in Minnesota and Washington.

Jessica Sobolik is director of alumni and community relations for the University of North Dakota School of Medicine and Health Sciences, which aims to educate physicians and other health professionals and to enhance the quality of life in North Dakota. She earned a Bachelor of Arts degree in Communication from UND and is currently pursuing a Master of Arts degree in the same field. She lives in Minto, ND, with her husband Ryan and two children, Josie and Luke.

Melissa Rae Stewart is a public relations professional and savvy entrepreneur, working in the endurance sport and outdoor industries. Founder of Sufferfest Media and Digitainment Group, as well as sports agent and publicist to various professional athletes, Melissa is a recognized and respected expert in the field of public relations. She has provided communications programming and support for various scientific expeditions throughout the globe.

Laura Tally is a 2014 graduate of Saint Catherine University with a B.S. in communication studies. Through the capstone class Global Search for Justice: Women and Work with economist Dr. Shika, she examined the intersection of domestic violence and the Bakken oil boom. The opportunity to educate her classmates and professors on this topic evolved into a commitment to share the stories of domestic violence survivors and service providers with dignity, relevance, and in a language both scholars and policy makers can use to effect change. She currently lives in rural Stevensville, Montana, and volunteers with SAFE in the Bitterroot.

Ryan Taylor is a fourth generation cattle rancher from Towner, ND. A graduate of North Dakota State University, Taylor wrote his "Cowboy Logic" column for twenty-one years for multiple agricultural newspapers and had them published in three separate books. Taylor was elected to the North Dakota Senate three times, serving from 2002 to 2012; was elected by his peers to be senate minority leader; and was the Democratic NPL candidate for governor in 2012. In 2013, he was named a leadership fellow of the Bush Foundation, St. Paul, MN. In August, 2015, he was appointed by the President to serve as state director for USDA Rural Development, making critical investments in the infrastructure of the state's rural communities. With his wife, Nikki, they are raising their three young children.

Bret A. Weber, PhD, LCSW, is an associate professor in the Department of Social Work at the University of North Dakota. His terminal degree is in U.S. History with emphases on twentieth century social policy and environmental history. As a member of the Grand Forks City Council, and as codirector of the North Dakota Man Camp Project (including service on the boards of the local Housing Authority and Community Land Trust), he focuses on social justice issues related to housing, and the social, physical, and economic environment.

Dr. Joshua E. Young is an assistant professor of communication studies at St. Gregory's University and a recent PhD graduate of the communication and public discourse program at the University of North Dakota. Young's research focuses on the way that rhetoric and public discourse create the relationships between and within communities. For instance, he has published work on budget struggles between university administration and other education stakeholders and presented work at the Smithsonian Institute on the contemporary relationship between non-Natives and American Indians in the context of powwow.

Hydraulically fractured

Unconventional gas and anthropology

Kim de Rijke
The author is a postdoctoral research fellow at the University of Queensland (UQ) in Australia. He has undertaken fieldwork in Alaska and Australia on notions of wilderness, a dam dispute, and native title rights to land and water. His current research project, funded by the UQ School of Social Science, involves coal seam gas disputes in the Australian states of Queensland and New South Wales. His email address is k.derijke@uq.edu.au.

Hydraulic fracturing, commonly referred to as 'fracking', is a controversial technique for recovering oil and gas from underground rock layers that has been available since the mid-20th century, but has not been commercially viable until this last decade. In conjunction with other technological advances such as horizontal drilling, fracking has helped to significantly increase unconventional gas production, initially and especially in the United States, but increasingly also in other countries around the world. In the context of global climate change, this technology has been heralded for its potential to provide a much cheaper and cleaner-burning energy source than coal and oil.

However, the operation of this technology is accompanied by major environmental issues ranging from its potential to cause environmental pollution to triggering seismic events. The governments of industrialized countries have so far been ill-equipped to provide the stricter regulation that these sophisticated techniques are said to require, and their adoption – especially in countries with weaker regulatory regimes – could pose a particular threat to human populations. These factors make this technology particularly controversial today.

In this paper, I begin by setting out some of the main aspects of global energy predictions, unconventional gas, and fracking. This provides context for discussion of disputes, anthropological research projects, and the limited published literature on the subject. Drawing on my ongoing research in the gas fields of Australia, in the third section of this paper I describe the conflicts surrounding the extraction of gas from coal seams in southern Queensland. This case material is presented thematically to illustrate the diversity of anthropological perspectives in the literature and the research currently underway.

Unconventional gas and global energy

The World Energy Outlook released by the International Energy Agency (IEA) in November 2012 includes a factsheet which opens with a pertinent warning that 'taking all new developments and policies into account, the world is still failing to put the global energy system onto a more sustainable path' (IEA 2012a: 1). This warning, a reference to both the environmental and social consequences of current energy production modes, is particularly salient in the light of projected demand. Disregarding for the moment the difficulty of making accurate predictions under changing conditions, from 2012 to 2035 global energy demand is projected to increase by over one third.

So-called 'unconventional' gas production is set to account for nearly half the growth in global gas production to 2035 (IEA 2012a), with the share of unconventional gas potentially rising from 14 per cent in 2010 to 32 per cent in 2035 (see Fig. 1). These predictions give an indication of potential magnitude, but appear not to take into account a variety of factors affecting the economics of production, including high gas well depletion rates and associated cost increases, concerns about climate change and continued reliance on hydrocarbons, and increasing community opposition to technologies such as fracking.[1]

Unconventional gas is gas previously considered difficult to extract profitably. It is contained in deep underground shale formations, coal beds (referred to as coal seams in Australia), or in geological formations that are particularly impermeable (so-called 'tight' gas). Significant reserves of unconventional gas have been found around the world in regions both sparsely and densely populated. In Australia, most coal seam gas fields are located on the populated eastern seaboard, in agricultural rural hinterlands relatively close to rural and urban centres.

Across the United States, Europe and Australia, diverse protest groups are emerging which take issue with the environmental consequences of the increased use of fracking in unconventional gas extraction. Despite local idiosyncrasies they share concerns about issues such as the industrialization of rural landscapes, food production, multinational corporate enterprise and community disempowerment, the potential for subterranean and surface water pollution, and future human and environmental health generally.

Although its safety has been questioned for some time (e.g. see Sumi 2005), an important impetus for the emergence of various protest groups was Josh Fox's 2010 Oscar-nominated activist documentary *Gasland*, filmed in the unconventional gas fields of the United States, which caused consternation around the world with its threatening images of pollution and combustible tap water.

Unconventional gas and fracking

Compared to conventional gas, unconventional gas extraction requires a greater density of wells (one or more per square kilometre) and thus much more infrastructure, including well pads, pipelines, compressor stations, processing plants, roads, and water treatment facilities. The scale of such operations has caused concern about its environmental impacts, including major changes to the landscape (see front cover image).

When gas flow needs to be increased, fracking is used to 'stimulate' the underground layers in which the gas is trapped. Small fractures are created by pumping fracking fluid (a combination of 98 per cent water, proppants – silica sand or manufactured granules which keep the fractures open – and numerous chemicals) into the shale or coal seam under enormous pressure. New drilling techniques allow these fractures to be created along horizontal lines, increasing the amount of obtainable gas per well (see Fig. 4).

Every fracked well may require up to 20 million litres of fresh water, 4,000 tons of proppants, and up to 200,000 litres of chemicals (IEA 2012a: 27; IEA 2012b: 33). In Australia, the Queensland state government intervened to ban the use of carcinogenic chemical compounds such as benzene, in fracking. Methane, the main component of natural gas, is a volatile and more potent greenhouse gas than carbon dioxide, and leakage may thus undermine the proponents' view of methane as a clean and transitional source of energy in the future. However, enticed by energy independence and security, many thousands of wells have

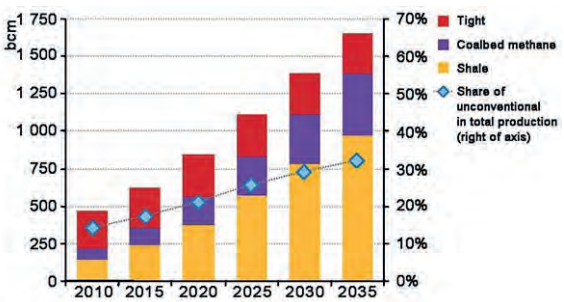

Fig. 1. *Projected unconventional gas production increases (IEA 2012b: 82).*

GREENSEFA / CC BY 2.0

Fig. 2. *Green Members of the European Parliament (MEPs) and anti-fracking activists pose with fracking-flavoured water outside European Parliament.*

been drilled in the United States thus far, and approximately 40,000 wells are planned in the Australian state of Queensland over the next few decades.

Much of the fracking fluid remains underground (50 to 80 per cent in shale operations), and may pollute poorly understood underground water resources. The fluids which flow back to the surface are also considered hazardous, including highly saline water and harmful compounds naturally occurring underground. Coal seams do not require the same level of stimulation as shale, but the coal seams must be dewatered to depressurize them and allow gas flow. In Australia, vast amounts of the resulting 'produced' water must be treated before release into the environment or re-injection into underground reservoirs. As a result of the controversies surrounding fracking, France has banned it, as did the state of Vermont in the United States, while many other places have seen the introduction of (temporary) moratoria on the use of fracking techniques until a variety of scientific risk studies are completed.

In summary, if the predicted increase in unconventional gas production eventuates, it is set to change global energy and attendant geopolitical relations. Increased conversion into LNG (Liquid Natural Gas) allows shipping of gas around the world, thus intensifying concerns where it is extracted and transported on a large scale. The required infrastructure needed to support unconventional gas extraction results in profound changes in the local landscape. Widespread public concern about the impacts of this industry have emerged, particularly with regard to fracking, surface and subterranean water, air pollution and a host of other environmental, social and health issues. In many regions, unconventional gas has been brought into production despite a poor understanding of its various potential impacts.

Research today

Energy has been of interest to the social sciences for a long time (e.g. Cottrell 1955; White 1943). However, interest in natural gas specifically has been awakened more recently as part of a portfolio of interests in the individual types of energy (e.g. Behrends et al. 2011 on oil) and in energy more broadly (e.g. Nader 2010; Spreng et al. 2012; Strauss et al. 2013).

Melosi (2010: 58) found that energy transitions historically 'are not simply exercises in swapping fuels and changing technologies, but disruptive events with the potential to remake societies in fundamental ways'. The challenge of research is to combine insights into the global and historical processes of energy production, consumption and distribution with the specific characteristics of the resource, its related technologies and the societies in which they are introduced.

A number of scholars are contributing to research on discursive framing and the political economy of fracking, which will usefully add to the broader anthropological literature on energy and 'energopolitics' (see e.g. Boyer 2011; Rogers 2011 for brief commentary). The volume by Strauss et al. (2013) *Cultures of energy: Power, practices, technologies* includes contributions on the ethnography and cultural understandings of energy, and its meaning, transformation and contest. One contribution by Elizabeth Cartwright considers the concept of eco-risk in the context of fracking. She considers risk at the intersection of 'particularly lived understanding' (drawing on Reno's [2011] work on risk, knowledge and emplacement), 'technologies of visualization and quantification' and legal standards (2013: 204). The health implications of fracking are under-researched and, she argues, any such research should engage with the enormous complexity of 'multimorbidity' (2013: 205-6) – the poorly understood interplay of multiple factors with regard to health. Cartwright's call to address complex relationships while also attending to technologies of quantification and regulatory frameworks is pertinent to other aspects of unconventional gas research, including, for example, the impact of fracking on subterranean water reservoirs or social well-being.

Sociological survey studies were published in the 2011 *Journal of Rural Social Science* special issue on unconventional gas in the United States, including analyses of key themes and variables in community perceptions of, and engagements with, unconventional gas developments.

While anthropologists have yet to fully engage these new developments, the 2012 American Anthropological Association's (AAA) annual meeting in San Francisco included an environmental anthropology panel entitled 'Energy, environment, engagement: Anthropological encounters with hydraulic fracking' and involved presentations of current research projects underway on fracking in parts of Ohio, Pennsylvania, New York State, Wisconsin and Australia. Projects cover topics such as contested landscape imaginaries and human-environment relations (Anna Willow), health and fracking discourse in the gas fields (Anastasia Hudgins), responses to fracking by affected farming communities (Jeanne Simonelli, see also Perry 2012), materiality and symbolic politics (Kim de Rijke), and the political ecology of frac sand mining and commodity chains (Thomas Pearson).

Two collaborative efforts involve a stronger applied character: a participatory film project to engender community dialogue on place and fracking (Amanda Poole) and the development of open-source collaborative information systems ('digital humanities') to enhance the documentation, sharing and collective analysis of stories from the gas fields (Sara Wylie). To facilitate cooperation among anthropologists working in this contested space, AAA panel members also created the new listserv 'Extr-act-ed'.

So, while anthropological literature on unconventional gas and fracking may as yet be limited, with these research projects underway and against a background of increased interest in the social sciences generally, this situation will likely soon change. Hopefully, research on gas company representatives, drillers, investors and others directly involved in this system of energy production – studying 'up, down and sideways' as Nader (2013: 317) argued – will allow for a richer understanding of fracking and unconventional gas disputes. Promising fields of enquiry include analyses of place and landscape imaginaries, discursive frames, and political economy. Collaborative applied research projects with affected communities have

the potential to make significant contributions to public engagement and debate.

Coal seam gas: An Australian case

Below follows my research into conflicts surrounding unconventional gas in Australia as a case study to illustrate the points made above.

Politics

In Australia, extractive industries exert considerable political influence, as evidenced in a highly effective industry advertising campaign against a proposed new federal tax on 'resource super profits', which contributed to the 2010 resignation of the then Prime Minister Kevin Rudd (cf. Wanna 2010). Similarly, in the United States, we had previously seen shale extraction exempted from aspects of federal laws including the Safe Drinking Water Act, the Clean Water Act, the Clean Air Act, and the Emergency Planning and Community Right-to-Know Act. How, then, should we understand the role of government regulation? The Australian state of Queensland might serve as an example.

Over the past few years, in the context of substantial state government debt, comparatively limited technical and human resource capacity, and revolving doors through which talented public servants may depart for well-paid industry employment, the Queensland government embraced a coal seam gas adaptive management strategy. While flexibility of regulation may be appropriate in fast-changing circumstances, the practical outcome of this approach is a reactionary regime which facilitates unconventional gas extraction.

In fact, a recent media investigation has alleged that severe political pressure was put on Queensland public servants over the implementation of gas project assessments. Multi-billion dollar projects are said to have been approved within short time-frames despite complaints by public servants about insufficient project details and environmental impact concerns (*The Courier Mail* 2013). In the context of acknowledged impact uncertainty and absent key performance indicators, the regulator has taken a 'learning by doing' approach which allows problems to become apparent before amendments are made (c.f. Swayne 2012). This looks like a questionable strategy when dealing with volatile substances, disputes and radical transformations of the landscape.

Discourse

In May 2011, the then premier of Queensland heralded the arrival of a new 'gas age'. Many billions of foreign capital investments and many thousands of new jobs linked unconventional gas extraction to the 'future prosperity' of Queensland. Echoing the findings of Finewood & Stroup (2012) with regard to neoliberal discourse in Pennsylvania, economic development and prosperity – also of rural resource regions historically in decline – are pervasive tropes of discourses arguing in favour of natural gas, whether employed by industry, governments or the wider public. In Queensland, rural communities with limited economic opportunities are indeed experiencing significant increases in economic activity after the introduction of gas fields. Many landholders have agreed to developments on their land because these provide a welcome additional income stream.

Public discourse often portrays natural resources as forms of wealth, such as 'liquid gold' (irrigation water), 'black gold' (oil) or 'buried sunshine' (coal). In certain areas, waste water is offered to farmers as irrigation water after recycling in reverse-osmosis plants. The life-giving force of water features prominently among coal seam gas companies in Queensland: images dominated by the green colours of irrigated trees on company-owned plantations adorn websites and speak to industry claims of methane as a clean transitional source of energy, supportive of environmental integrity and productivity.

In contrast, opponents use tropes of death, disease, and invasion. Aerial images of dense gas fields depict a diseased landscape in which human health and environmental integrity are said to be utterly compromised. These claims are supported by reports from various gas fields where affected residents have reported skin rashes, nosebleeds and a raft of other health complaints. Additional activist themes relate to future soil quality and food production (see Fig. 7) and a sense of nationalism played out in an ambiguous activist symbolic politics. Undertones of xenophobic politics, for example, appear in relation to concerns about unconventional gas and foreign, particularly Chinese, industries. Imagery may include references to invasion and Akubra hats (which represent 'the food producing farmer' or colloquial 'little Aussie battler'), and future generations (see Figs 5-6).

The alignment of environmental activists and largely conservative farmers is particularly ambiguous because most commercial farming operations in or near the Queensland gas fields are best understood as agribusinesses. Agribusiness in the fertile black soil regions of the Darling Downs in southern Queensland, for example, is characterized by advanced technological production methods including GPS navigation of machinery, GM (genetically modified) crops, laser-levelled land, and, at least historically, substantial water use. More appropriately represented by the industrial 'hard hat' than the historical Akubra hat, these enterprises have themselves led to severe concerns about the environmental impact of certain farming practices on soil quality and underground aquifers, particularly the vast subterranean reservoir known as the Great Artesian Basin.

Rights

The symbolic acts revolving around the small Aussie battler also refer to concerns about rights. In Australia, the state owns the underground resources. Landowners with freehold title therefore cannot stop resource extraction. But they can lock their gates to frustrate company access. Established in 2010, The Lock the Gate Alliance has become the overarching anti-coal seam gas network in Australia. In less than three years it has developed international links and represents 167 smaller member groups with more localized activist agendas across the country.

Other Australian titles to land, such as Native Title, afford Aboriginal people the right to negotiate agreements with extractive industries, but this does not afford them the right to stop extraction should they wish to do so. This right is vested only in the state and federal governments. Local (municipal) governments too are to a large degree by-passed in decision-making, although they do face the local consequences. Lastly, similar to the situation in the US, companies negotiate individual agreements with landholders which might include confidentiality clauses that prevent public discussion about the terms of compensation and other arrangements.

The extraordinary expansion of the unconventional gas industry has thus led to questions about social power and the rights of individuals and local communities, the role of multinational corporations in politics and rural service provision, as well as related questions regarding fundamental processes of democracy, capitalist economies and social justice.

The material qualities of gas and fracking

In his work on oil, gas and corporate social technologies in Russia, Rogers (2012: 293) called on anthropologists to

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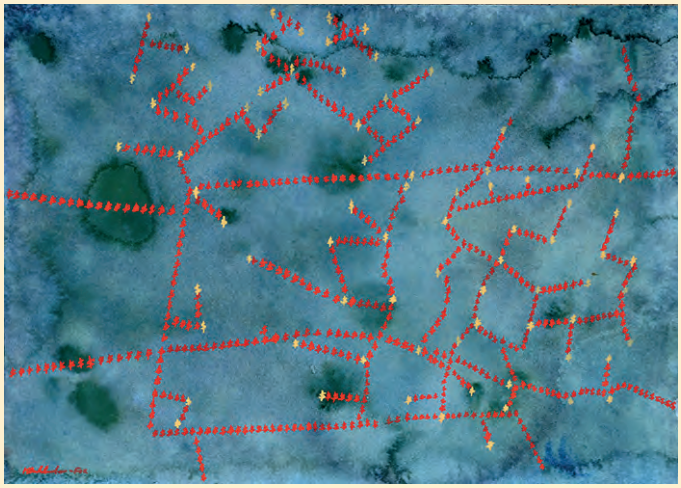
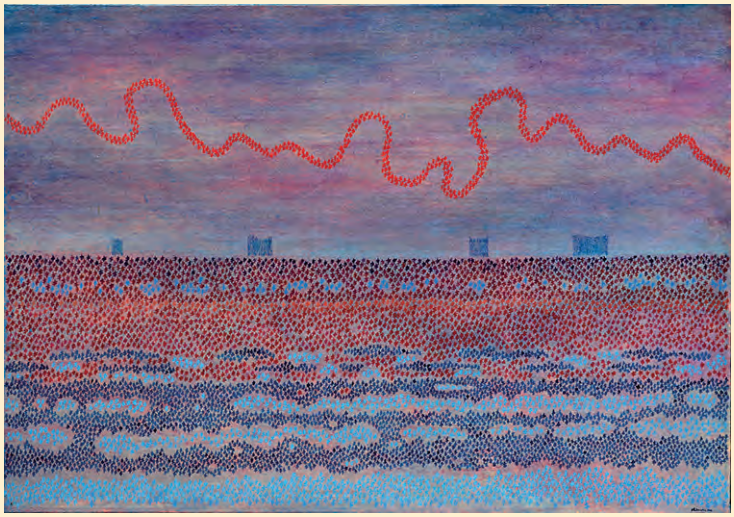


KATHRYN BRIMBLECOMBE-FOX.



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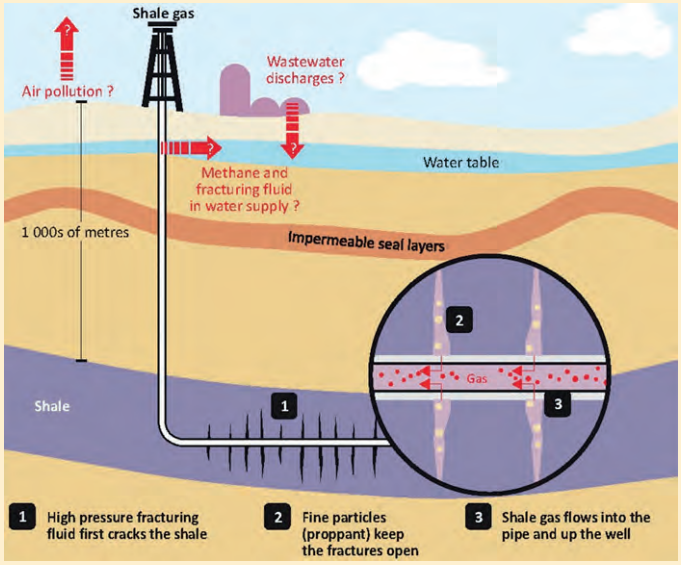

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BRIAN MONK

(From above to below, left to right)
Fig. 3. *'Cooked with gas', Gouache on paper, 2010. By Kathryn Brimblecombe-Fox.*
Fig. 4. *Shale gas extraction and hazards (IEA 2012b: 26).*
Fig. 5. *Anti-gas protest: the Australian flag and hats lie thrown on the ground as a sign of resistance.*
Fig. 6. *A foreign-owned drilling operation crushes the hats of protesters.*
Fig. 7. *$oils Aint $oils-Anymore! Oil on linen, 2011, by Kathryn Brimblecombe-Fox.*
Fig. 8. *A protest: 'I [death] love coal seam gas'.*
Fig. 9. *Gas field residents with unexplained health complaints use technological devices to demonstrate the presence of gas in their private water bore in southeast Queensland.*

attend 'ethnographically to the ways in which particular qualities of these materials enter broader, and heavily politicized, fields of signification'. The material qualities of unconventional gas, fracking, and associated aspects such as pipelines, processing and export facilities, large machinery, industrial traffic and work camps are important if we are to understand current conflicts, including their discursive dimensions.

Methane is a volatile, highly flammable, odourless, and invisible substance which requires sophisticated technologies to contain (cf. Kaup 2008: 1736). In the process of extraction, methane is associated with other dangerous gases such as hydrogen sulphide (it is technically categorized as 'sour' gas where the proportion of hydrogen sulphide is significant and as 'sweet' gas where it is not).

Unless methane is mixed with hydrogen sulphide in the open air in sufficient concentration, in which case it can be smelled, humans can often only detect natural gas with technological devices (see Fig. 9). It generally produces no sound and cannot be felt unless transformed into a liquid; yet emissions of gaseous compounds associated with the extraction process are reported in gas fields in Queensland and America as accompanied by headaches and other physical reactions. During my fieldwork some affected residents reported severe anxiety about the possibility of ubiquitous but invisible substances in their day-to-day lives and environments. Others travelled the gas field region during recent floods to inspect for otherwise indiscernible bubbles that might indicate methane emissions.

Unconventional gas originates deep underground and is the product of organic decay. In that way it is the antithesis of oxygen, which is both a product and source of growth, and which methane requires in order to burn and release the energy we seek. Apart from places such as swamps and garbage dumps, subterranean natural gas is generally contained in, and by relatively stable underground geological formations.

To release unconventional gas, such stability must often be physically fractured, allowing gas to cross or diffuse those boundaries. Methane may leak from pipes and associated infrastructure, becoming what are called 'fugitive emissions'. It might 'migrate' through underground layers and contaminate aquifers or surface water, air and soils. In the process of coal seam gas extraction it must be separated from highly saline 'produced' water. It must then be compressed, chilled and converted into a liquid (LNG) to transport effectively.

These material qualities make unconventional gas an agent of change both underground and at the surface. These forms of change have a profound sensory dimension; visual, auditory, as well as olfactory. In combination with technological interventions like fracking, gas can become – in a classic Mary Douglas way – 'matter out of place'; its material qualities contribute to a sense of anxiety as it escapes above ground into the inhabited environment (cf. Jackson 2011). Such anxieties also explain the international outcry over images of dangerous material boundary crossings, including those of combustible tap water in *Gasland*.

Simultaneously, the technical capabilities to contain gas through pipes, compression, and industrial networks, also speak to cultural imaginaries of power and submission of the natural world, inspiring economic development, growth and wealth creation. Gas company websites, for example, include promotional images of complex and well maintained infrastructure. In Queensland public debates, the technological capacity to capture and develop a multi-billion dollar industry on a materially elusive substance is linked to human endurance and community perseverance in economically challenging times. Such discursive strategies draw on the material qualities of steel and complex technologies of containment, but obfuscate others, including those concerned with fracking, uncertainty and vulnerability.

Risk, knowledge and the politics of science

As implied above, and addressed specifically by Cartwright (2013), a significant part of the conflict over unconventional gas in Queensland revolves around risk, with concomitant discussions about the precautionary principle, the acceptability of impacts, and views of science as the pursuit of objective truths.

In conflicts such as these, however, the social dynamics of establishing trust, credibility, and measuring risk as part of lived experience are of the essence. Environmental activists, for example, often have an ambigious relationship with science as they negotiate, both internally and externally, the politics of esoteric expertise and 'lay' forms of knowledge based on daily embodied activity (c.f. Checker 2007; Delgado 2010; Satterfield 1997; Yearly 1996).

Public credibility of scientific knowledge may be compromised where industry funds university research programmes and specialized institutes directly. This raises ethical concerns that wealthy companies may unduly influence policy and the purview of research.

Generally, academic research into the contentious aspects of unconventional gas extraction, whether publicly funded or not, instantly becomes subject to criticism and debate far beyond the circles of academia. Digital fora bring together information from across the globe, whether on fracking, companies, politics, family stories or local blockades.

Conclusion

With energy demand rising, fossil fuel consumption is projected to increase in the coming decades. Calls for reductions in emissions in the light of climate change may not put a stop to this. Celebrated by proponents as a clean and transitional fuel, unconventional gas is envisaged to meet a significant part of this growing demand, despite high rates of well depletion and increasing cost. However, as we have seen, the unconventional gas industry has been the subject of intense conflicts around the world especially in relation to its controversial production technologies that have the potential to pollute the environment and profoundly transform landscapes.

Technologies may be invented or adjusted to help contain and mitigate the adverse effects of its deployment on the societies where it operates. Nevertheless, disputes about the potential social and environmental ramifications of this technology may not be fully contained, and anthropologists would do well to research this topic from a variety of perspectives, some of which I have touched upon above.

I have highlighted the material qualities of gas and fracking that inform the diverging attitudes and discursive frames surrounding its production and utility. Expansion of this industry is accompanied by key tropes of economic growth, investment and the promise of future prosperity. However, close relationship between governments and powerful multinational corporations brings to the fore questions about political influence and human rights.

Anthropology, with its commitment to understanding local individuals and groups in their holistic cultural contexts is well suited to contribute to these debates surrounding gas extraction and energy. Whether we seek to offer socio-cultural analyses as publicly funded academics, as social impact consultants for governments or industry, as journalists, or as activists aligned with protest movements, the unconventional gas boom presents important conundrums to attend to. ●

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Climate change in the Fertile Crescent and implications of the recent Syrian drought

Colin P. Kelley[a,1], Shahrzad Mohtadi[b], Mark A. Cane[c], Richard Seager[c], and Yochanan Kushnir[c]

[a]University of California, Santa Barbara, CA 93106; [b]School of International and Public Affairs, Columbia University, New York, NY 10027; and [c]Lamont–Doherty Earth Observatory, Columbia University, Palisades, NY 10964

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Before the Syrian uprising that began in 2011, the greater Fertile Crescent experienced the most severe drought in the instrumental record. For Syria, a country marked by poor governance and unsustainable agricultural and environmental policies, the drought had a catalytic effect, contributing to political unrest. We show that the recent decrease in Syrian precipitation is a combination of natural variability and a long-term drying trend, and the unusual severity of the observed drought is here shown to be highly unlikely without this trend. Precipitation changes in Syria are linked to rising mean sea-level pressure in the Eastern Mediterranean, which also shows a long-term trend. There has been also a long-term warming trend in the Eastern Mediterranean, adding to the drawdown of soil moisture. No natural cause is apparent for these trends, whereas the observed drying and warming are consistent with model studies of the response to increases in greenhouse gases. Furthermore, model studies show an increasingly drier and hotter future mean climate for the Eastern Mediterranean. Analyses of observations and model simulations indicate that a drought of the severity and duration of the recent Syrian drought, which is implicated in the current conflict, has become more than twice as likely as a consequence of human interference in the climate system.

drought | Syria | climate change | unrest | conflict

Beginning in the winter of 2006/2007, Syria and the greater Fertile Crescent (FC), where agriculture and animal herding began some 12,000 years ago (1), experienced the worst 3-year drought in the instrumental record (2). The drought exacerbated existing water and agricultural insecurity and caused massive agricultural failures and livestock mortality. The most significant consequence was the migration of as many as 1.5 million people from rural farming areas to the peripheries of urban centers (3, 4). Characterizing risk as the product of vulnerability and hazard severity, we first analyze Syria's vulnerability to drought and the social impacts of the recent drought leading to the onset of the Syrian civil war. We then use observations and climate models to assess how unusual the drought was within the observed record and the reasons it was so severe. We also show that climate models simulate a long-term drying trend for the region as a consequence of human-induced climate change. If correct, this has increased the severity and frequency of occurrence of extreme multiyear droughts such as the recent one. We also present evidence that the circulation anomalies associated with the recent drought are consistent with model projections of human-induced climate change and aridification in the region and are less consistent with patterns of natural variability.

Heightened Vulnerability and the Effects of the Drought

Government agricultural policy is prominent among the many factors that shaped Syria's vulnerability to drought. Despite growing water scarcity and frequent droughts, the government of President Hafez al-Assad (1971–2000) initiated policies to further increase agricultural production, including land redistribution and irrigation projects, quota systems, and subsidies for diesel fuel to garner the support of rural constituents (5–9). These policies endangered Syria's water security by exploiting limited land and water resources without regard for sustainability (10).

One critical consequence of these unsustainable policies is the decline of groundwater. Nearly all rainfall in the FC occurs during the 6-month winter season, November through April, and this rainfall exhibits large year-to-year variability (Figs. 1*A* and 2*A*). In Syria, the rain falls along the country's Mediterranean Sea coast and in the north and northeast, the primary agricultural region. Farmers depend strongly on year-to-year rainfall, as two thirds of the cultivated land in Syria is rain fed, but the remainder relies upon irrigation and groundwater (11). For those farms without access to irrigation canals linked to river tributaries, pumped groundwater supplies over half (60%) of all water used for irrigation purposes, and this groundwater has become increasingly limited as extraction has been greatly overexploited (4). The government attempted to stem the rate of groundwater depletion by enacting a law in 2005 requiring a license to dig wells, but the legislation was not enforced (6). Overuse of groundwater has been blamed for the recent drying of the Khabur River in Syria's northeast (6). The depletion of groundwater during the recent drought is clearly evident from remotely sensed data by the NASA Gravity Recovery and Climate Experiment (GRACE) Tellus project (Fig. 2*C*) (12).

The reduced supply of groundwater dramatically increased Syria's vulnerability to drought. When a severe drought began in 2006/2007, the agricultural system in the northeastern "breadbasket" region, which typically produced over two-thirds of the country's crop yields, collapsed (13). In 2003, before the drought's onset, agriculture accounted for 25% of Syrian gross domestic product. In 2008, after the driest winter in Syria's observed record, wheat production failed and the agricultural share fell to 17% (14). Small- and medium-scale farmers and herders

Significance

There is evidence that the 2007–2010 drought contributed to the conflict in Syria. It was the worst drought in the instrumental record, causing widespread crop failure and a mass migration of farming families to urban centers. Century-long observed trends in precipitation, temperature, and sea-level pressure, supported by climate model results, strongly suggest that anthropogenic forcing has increased the probability of severe and persistent droughts in this region, and made the occurrence of a 3-year drought as severe as that of 2007–2010 2 to 3 times more likely than by natural variability alone. We conclude that human influences on the climate system are implicated in the current Syrian conflict.

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[1]To whom correspondence should be addressed. Email: colin.kelley@geog.ucsb.edu.

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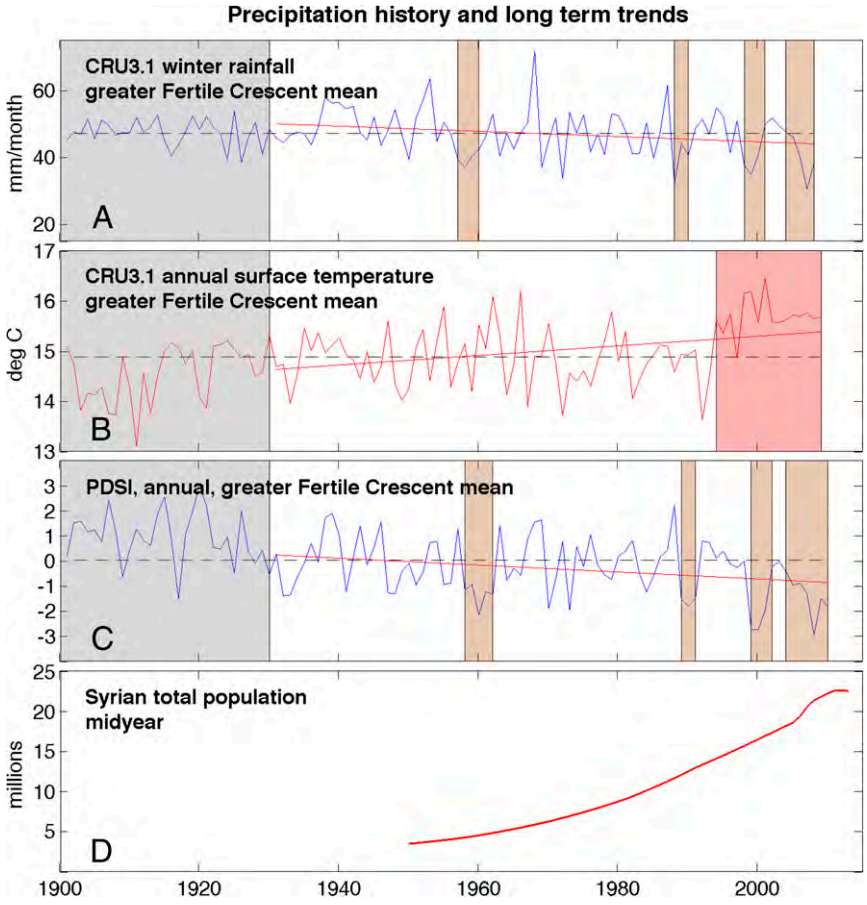

Fig. 1. (*A*) Six-month winter (November–April mean) Syria area mean precipitation, using CRU3.1 gridded data. (*B*) CRU annual near-surface temperature (red shading indicates recent persistence above the long-term normal). (*C*) Annual self-calibrating Palmer Drought Severity Index. (*D*) Syrian total midyear population. Based on the area mean of the FC as defined by the domain 30.5°N–41.5°N, 32.5°E–50.5°E (as shown in Fig. 2). Linear least-squares fits from 1931 to 2008 are shown in red, time means are shown as dashed lines, gray shading denotes low station density, and brown shading indicates multiyear (≥3) droughts.

suffered from zero or near-zero production, and nearly all of their livestock herds were lost (15). For the first time since self-sufficiency in wheat was declared in the mid-1990s, Syria was forced to import large quantities of wheat (13). The drought's devastating impact on vegetation is clearly evident in Moderate Resolution Imaging Spectroradiometer (MODIS) Normalized Difference Vegetative Index (NDVI) version 5 satellite imagery (Fig. 2*D*) (16). Atieh El Hindi, the director of the Syrian National Agricultural Policy Center, has stated that between 2007 and 2008, drought was a main factor in the unprecedented rise in Syrian food prices; in this single year, wheat, rice, and feed prices more than doubled (17, 18). By February of 2010, the price of livestock feed had increased by three fourths, and the drought nearly obliterated all herds (16, 19). There was a dramatic increase in nutrition-related diseases among children in the northeast provinces (20), and enrollment in schools dropped by as much as 80% as many families left the region (21). Bashar al-Assad, who succeeded his father in 2000, shifted to liberalizing the economy by cutting the fuel and food subsidies on which many Syrians had become dependent. These cuts continued despite the drought, further destabilizing the lives of those affected (22). Rural Syria's heavy year-to-year reliance on agricultural production left it unable to outlast a severe prolonged drought, and a mass migration of rural farming families to urban areas ensued.

Estimates of the number of people internally displaced by the drought are as high as 1.5 million (3, 4, 13). Most migrated to the peripheries of Syria's cities, already burdened by strong population growth (~2.5% per year) and the influx of an estimated 1.2–1.5 million Iraqi refugees between 2003 and 2007, many of whom arrived toward the tail end of this time frame at the beginning of the drought and remained in Syria (23). By 2010, internally displaced persons (IDPs) and Iraqi refugees made up roughly 20% of Syria's urban population. The total urban population of Syria in 2002 was 8.9 million but, by the end of 2010, had grown to 13.8 million, a more than 50% increase in only 8 years, a far greater rate than for the Syrian population as a whole (Fig. 1*D*) (24). The population shock to Syria's urban areas further increased the strain on its resources (11).

The rapidly growing urban peripheries of Syria, marked by illegal settlements, overcrowding, poor infrastructure, unemployment, and crime, were neglected by the Assad government and became the heart of the developing unrest (13). Thus, the migration in response to the severe and prolonged drought exacerbated a number of the factors often cited as contributing to the unrest, which include unemployment, corruption, and rampant inequality (23). The conflict literature supports the idea that rapid demographic change encourages instability (25–27). Whether it was a primary or substantial factor is impossible to know, but drought can lead to devastating consequences when coupled with preexisting acute vulnerability, caused by poor policies and unsustainable land use practices in Syria's case and perpetuated by the slow and ineffective response of the Assad regime (13). Fig. S1 presents a timeline summarizing the events that preceded the Syrian uprising.

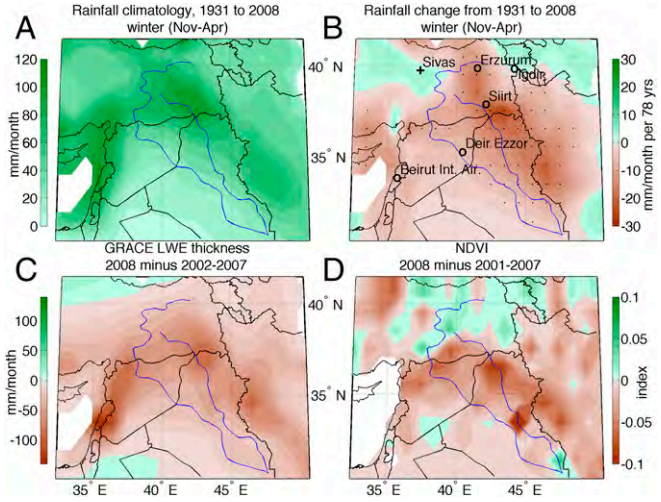

Fig. 2. (*A*) Observed winter (November–April) precipitation climatology, 1931–2008, UEA CRU version 3.1 data. (*B*) The spatial pattern of the CRU change in 6-month winter precipitation from 1931 to 2008 based on a linear fit (shading); those GHCN stations that indicate a significant ($P < 0.1$) trend over their respective records are shown as circles and crosses (indicating drying/wetting). (*C*) The difference in liquid water equivalent (LWE) between 2008 (annual) and the mean of the previous 6 years using the NASA GRACE Tellus project data. (*D*) The difference in the Normalized Difference Vegetation Index (NDVI) between 2008 (annual) and the mean of the previous 7 years.

The Drought in Context

Having established Syria's vulnerability to droughts, we now examine the 2007–2010 drought itself. The severity and persistence of the drought can be seen in the area mean of FC rainfall according to the University of East Anglia Climatic Research Unit (UEA CRU) data (Fig. 1*A*) and in the two Global Historical Climatology Network (GHCN) stations located closest to Syria's northeastern agricultural region, Deir ez-Zor on the Euphrates River and Kamishli near the Turkish border (*Materials and Methods*). The 2007/2008 winter was easily the driest in the observed records. Multiyear drought episodes, here defined as three or more consecutive years of rainfall below the century-long normal, occurred periodically over the last 80 years (CRU), in the late 1950s, 1980s, and 1990s (Fig. 1*A*, brown shading). Although less severe, these droughts raise the question of why the effects of the recent drought were so much more dramatic. We offer three reasons: (*i*) the recent demand for available resources was disproportionately larger than in the 1950s; in addition to the recent emphasis on agricultural production, the total population of Syria (Fig. 1*D*) grew from 4 million in the 1950s to 22 million in recent years; (*ii*) the decline in the supply of groundwater has depleted the buffer against years with low rainfall; and (*iii*) the recent drought occurred shortly after the 1990s drought, which was also severe; Syria was far more vulnerable to a severe drought in the first decade of the 21st century than in the 1950s, and the FC never fully recovered from the late 1990s drought before collapsing again into severe drought. In fact, the region has been in moderate to severe drought from 1998 through 2009, with 7 of 11 years receiving rainfall below the 1901–2008 normal. It is notable that three of the four most severe multiyear droughts have occurred in the last 25 years, the period during which external anthropogenic forcing has seen its largest increase.

Regional Climate Variability and Trend

Agriculture in Syria depends not only on the precipitation that falls within Syria and on local groundwater but also on water from the Euphrates and Tigris rivers and their numerous tributaries. These rivers have long provided water to the region via precipitation in their headwaters in the mountains of eastern Turkey. Despite Turkey's control over the water flows of the Euphrates and Tigris through its upstream placements of dams, Syria and Turkey have cooperated in recent years, and Turkey increased water flow to Syria during the recent drought (28). It has been previously shown that natural winter-to-winter rainfall variability in western Turkey is due largely to the influence of the North Atlantic Oscillation (NAO) (29). For eastern Turkey and in Syria and the other FC countries, however, the NAO influence is weak or insignificant. This has allowed observational analyses to identify an externally forced winter drying trend over the latter half of the 20th century that is distinguishable from natural variability (30–32). Furthermore, global coupled climate models overwhelmingly agree that this region will become drier in the future as greenhouse gas concentrations rise (33), and a study using a high-resolution model able to resolve the complex orography of the region concluded that the FC, as such, is likely to disappear by the end of the 21st century as a result of anthropogenic climate change (34).

That the neighboring regions of southeast Turkey and northern Iraq also experienced recent drought, to a lesser extent, perhaps begs the question as to why the effects in Syria were so grave. Syria was far more vulnerable to drought, given its stronger dependence on year-to-year rainfall and declining groundwater for agriculture. Water scarcity in Syria has been far more severe than in Turkey or Iraq, with Syria's total annual water withdrawal as a percentage of internal renewable water resources reaching 160%, with Iraq at 80% and Turkey at around 20% in 2011 (35). Furthermore, Turkey's geographic diversity and investment in the southeast region's irrigation allowed it to better buffer the drought, whereas the populace in northwest Iraq is far less dependent on agriculture than their counterparts in northeast Syria (36, 37).

To address the question of whether the recent drought was made more severe by a contribution from long-term trends, we first determined the long-term change in winter rainfall. The FC as a whole has experienced a statistically significant ($P < 0.05$) winter rainfall reduction (13%) since 1931 (Fig. 1*A*). Observational uncertainty was large before 1930 due to sparseness of station data. Further examination of the linear trends present in the individual GHCN stations for the FC corroborate the drying trend, as 5 of 25 stations exhibited a statistically significant ($P < 0.1$) negative rainfall trend (Fig. 2*B*). The pattern of this trend (Fig. 2*B*) is similar to the climatological rainfall pattern (Fig. 2*A*), concentrated along the coast and in northeastern Syria. The long-term drying trend is closely mirrored by recent changes in satellite measurements of groundwater (measured in terms of liquid water equivalent) (Fig. 2*C*) and, to a lesser extent, by estimates of vegetation changes (Fig. 2*D*).

The annual surface temperature in the FC also increased significantly ($P < 0.01$) during the 20th century (Fig. 1*B*). The warming in this region since 1901 has outpaced the increase in global mean surface temperature, with much of this increase occurring over the last 20 years (all years from 1994 through 2009 were above the century-long mean) (Fig. 1*B*, red shading). The trend during the summer half year (1.2 degrees, Fig. S2) is also important, as this is the season of highest evaporation, and winter crops such as wheat are strongly dependent on reserves of soil moisture. Reductions in winter precipitation and increases in summer evaporation both reduce the excess of precipitation over evaporation that sustains soil moisture, groundwater and streamflow. The recent strong warming is concomitant with the three most recent severe multiyear droughts, together serving to strongly dry the region during winter and summer.

The century-long, statistically significant trends in both precipitation and temperature seen in Fig. 1 suggest anthropogenic influence and contributed to the severity of the recent drought. The FC area mean of the self-calibrating Palmer Drought Severity

Index (38), which combines precipitation and temperature as a proxy for cumulative soil moisture change, also exhibits a significant long-term trend (Fig. 1*C*). Although natural variability on timescales of centuries or longer cannot be entirely ruled out for this region, the long-term observed trends and the recent increase in the occurrence of multiyear droughts and in surface temperature is consistent with the time history of anthropogenic climate forcing. The case for this influence is supported by additional modeling and theoretical and observational evidence (see *Frequency of Multiyear Droughts*, *Mechanisms*, and *Supporting Information*).

Frequency of Multiyear Droughts

For Syria and for the greater FC, natural multiyear droughts—here defined as three or more consecutive years of rainfall below the long-term normal—occurred periodically during the 20th century (Fig. 1*A*). It is a generic property of a time series consisting of a natural oscillatory part and a downward trend that the minimum is most likely to occur toward the end of the time period when the negative influence of the trend is greatest and when the oscillation is also at a minimum. The century-long trends in precipitation and temperature, here implicated as evidence of anthropogenic influence, point toward them being key contributors to the recent severe drought. We therefore estimated the increased likelihood of an extreme 3-year drought such as the recent one due to anthropogenic trend.

We did this in two ways. First we separated the observed anthropogenic precipitation trend from the residual, presumably natural, variability by regressing the running 3-year mean of observed (CRU) 6-month winter precipitation onto the running 3-year mean of observed annual global atmospheric carbon dioxide (CO_2) mixing ratios from 1901–2008 (39, 40). The latter time series was used as an estimate of the monotonic but nonlinear change in total greenhouse gas forcing (*Materials and Methods*). After removing the CO_2 fit from the total observed winter precipitation timeseries (Fig. 3*A*), we constructed frequency distributions of the total and residual timeseries (Fig. 3*B*) and applied gamma fits to the distributions. The difference in the total and residual distributions is significant ($P < 0.06$), based on a Kolmogorov–Smirnoff test, and is due almost entirely to the difference in the means. Thresholds are shown at 10%, 5%, and 2% (in percent of the total sample size of 76 3-year means) in the dry tail for the timeseries (Fig. 3*A*) and for the distribution of the total (Fig. 3*B*). The result is that, when combined, natural variability and CO_2 forcing are 2 to 3 times more likely to produce the most severe 3-year droughts than natural variability alone. Residual, or natural, events exceeding the 10% threshold of the total occur less than half as often (3 versus 8, out of 76). For the residual alone, no values exceed the 5% threshold of the total.

The trend contribution would be quite similar if we simply calculated a linear time trend. There is no apparent natural explanation for the trend, supporting the attribution to anthropogenic greenhouse gases. Further support comes from model simulations. We used 16 Coupled Model Intercomparison Project phase five (CMIP5) models (*Materials and Methods* and Table S1) to construct similar distributions, providing a larger sample size than for the observed 3-year droughts. In this case, rather than removing the CO_2 forcing as in the observed case, we compare the historical and historicalNat runs. The former include all external forcings during the 20th century, including the change in greenhouse gas concentrations, whereas the latter include only the natural forcings (*Materials and Methods*). In this analysis, the models were normalized to the observed CRU mean and standard deviation (SD) (see Fig. S3 for model comparison before normalizing). The resulting distributions support the observed finding, as the driest 3-year events occur less than half as often under natural forcing (historicalNat runs) alone (Fig. 3*C*). The agreement between the model and observational analysis

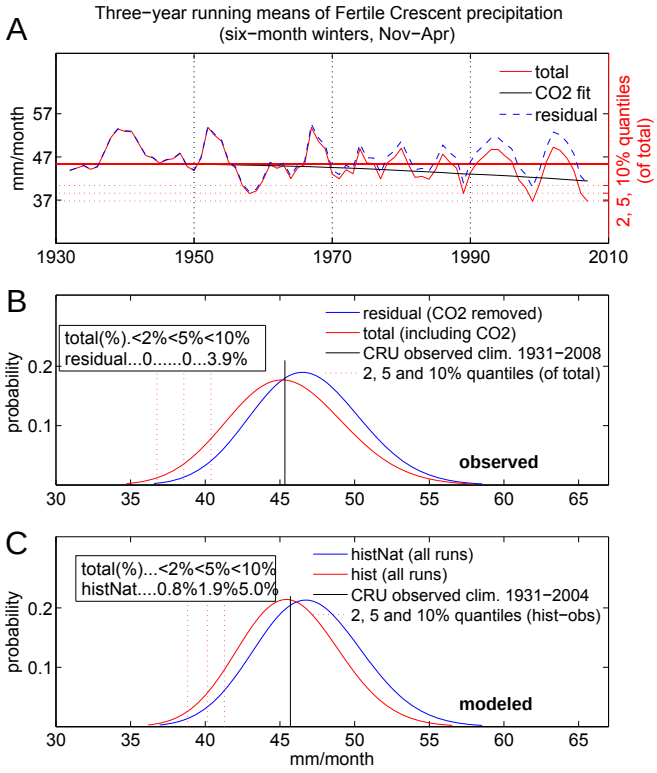

Fig. 3. (*A*) Timeseries of observed (CRU) 3-year running mean 6-month winter FC (area mean) precipitation: total (red), CO_2 fit from regression (black), and the residual or difference between these (dashed blue). Frequency distributions based on gamma fits of 3-year running mean 6-month winter FC (area mean) precipitation, for the (*B*) observed data (corresponding with above) and (*C*) CMIP5 model simulations, comparing historical and histNat runs. Quantile thresholds based on the total (in *B*) and historical (in *C*) are shown at 2%, 5%, and 10% (dotted lines). The tables indicate the percentage of actual (*B*) observed (sample size 76) and (*C*) model simulated (sample size 46 × 72 for histNat and 69 × 72 for historical) occurrences exceeding the respective thresholds.

results supports the attribution of the century-long negative trend in precipitation to the rise in anthropogenic greenhouse forcing and to the role of the latter in the devastating early 21st century Syrian drought.

Mechanisms

We examine the low-level (850 hPa) regional atmospheric circulation by comparing a composite of driest minus wettest winters (Fig. 4*B*) to the difference between the periods 1989–2008 and 1931–1950, representing the long-term change, or trend (Fig. 4*C*). Climatologically, the flow is from the west, bringing moist air (shading represents specific humidity) in from the Mediterranean Sea and allowing moisture convergence that sustains precipitation (Fig. 4*A*). In both the composite dry anomalies and the trend, the climatological westerly flow is weakened. In both cases, there is a positive geopotential height anomaly over the Mediterranean Sea (consistent with higher surface pressure) and an anomalous anticyclonic (clockwise) circulation (arrows). In the composite case, this anomaly extends over Turkey and beyond the eastern Black Sea, resulting in anomalous northeasterly flow over the FC, advecting dry air and generating anomalous moisture divergence. In the trend case, by contrast, the positive geopotential height anomaly does not extend over most of Turkey, and the flow anomaly is more northerly over most of the FC. This difference between the composite and trend anomalies can be seen in the specific humidity anomalies (Fig. 4 *B* and *C*,

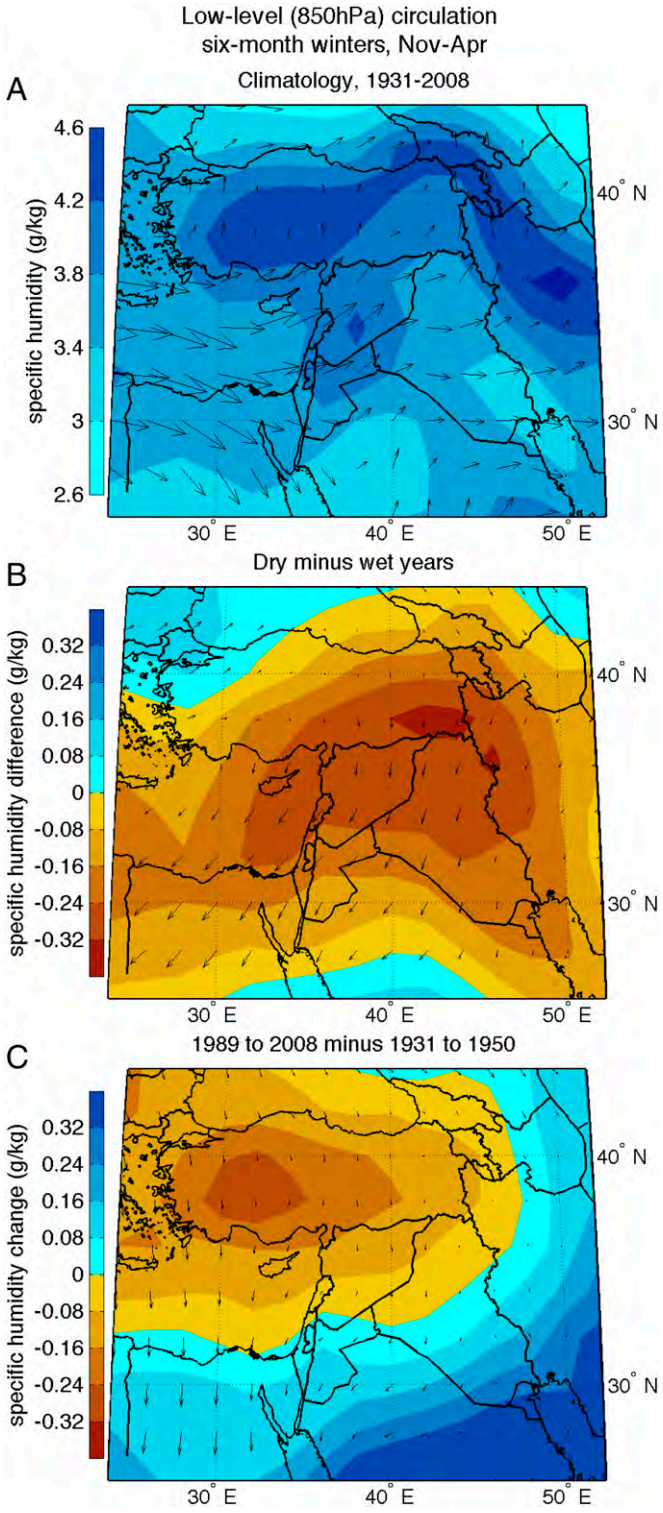

Fig. 4. The 6-month winter low-level (850 hPa) horizontal winds (arrows) and specific humidity (shading) for the period 1931–2008. Shown are the (*A*) climatology, (*B*) composite difference between driest and wettest years (those outside of ±1 SD) and (*C*) the change, or difference between the recent 20 years and the 20 years at the beginning of the period.

shading); in the composite, the center of the anomaly is located over the FC and southeastern Turkey and northern Syria, Iraq, and Iran, whereas in the trend case, it is centered over western Turkey. Thus, the trend in the circulation enhances drying in naturally occurring FC dry years by strengthening the northerly flow, dry air advection, and moisture divergence anomalies. In 2005–2008, the long-term trend combined with a dry phase of natural variability to produce the most severe drought in the instrumental record over the greater FC.

Summary

We have here pointed to a connected path running from human interference with climate to severe drought to agricultural collapse and mass human migration. This path runs through a landscape of vulnerability to drought that encompasses government policies promoting unsustainable agricultural practices, and the failure of the government to address the suffering of a displaced population. Our thesis that drought contributed to the conflict in Syria draws support from recent literature establishing a statistical link between climate and conflict (25–27). We believe that the technical challenges to this work (41) have been adequately answered (42, 43). A more fundamental objection (27) is that data-driven methods do not provide the causal narrative needed to anoint a "theory" of civil conflict, and the quantitative work on climate and conflict has thus far not adequately accounted for the effects of poor governance, poverty, and other sociopolitical factors. Our analysis of the conflict in Syria shows an impact of an extreme climate event in the context of government failure, exacerbated by the singular circumstance of the large influx of Iraqi refugees.

Multiyear droughts occur periodically in the FC due to natural causes, but it is unlikely that the recent drought would have been as extreme absent the century-long drying trend. We argued, with support from analyses of observations and climate model simulations, that the observed long-term trends in precipitation and temperature are a consequence of human interference with the climate system. The attribution to anthropogenic causes is also supported by climate theory and previous studies (see *Supporting Information*). Fortunately for this line of argument, this is a region where models compare reasonably well with 20th century observations in terms of simulation of the climatology of precipitation and its trend (44). The strong agreement between observations and climate model simulations in century-long trends in precipitation, temperature, and sea-level pressure (Fig. S4) adds confidence to the conclusion that in this region, the anthropogenic precipitation signal has already begun to emerge from the natural "noise" and that the recent drought had a significant anthropogenic component. It also implies that model future projections of continued drying for Syria and the FC are reliable.

An abundance of history books on the subject tell us that civil unrest can never be said to have a simple or unique cause. The Syrian conflict, now civil war, is no exception. Still, in a recent interview (45), a displaced Syrian farmer was asked if this was about the drought, and she replied, "Of course. The drought and unemployment were important in pushing people toward revolution. When the drought happened, we could handle it for two years, and then we said, 'It's enough.'" This recent drought was likely made worse by human-induced climate change, and such persistent, deep droughts are projected to become more commonplace in a warming world.

Materials and Methods

In this study, the winter and summer seasons are represented by the 6-month periods November through April and May through October, respectively. Timeseries of FC area means are here defined by the domain 30.5°N–41.5°N, 32.5°E–50.5°E (as shown in Fig. 2). Three datasets were used for observed precipitation: the UEACRU version 3.1 (46, 47) and Global Precipitation Climatology Centre v6 (48) gridded (0.5° by 0.5° horizontal resolution) precipitation data sets and the GHCN beta version 2 station precipitation data (49). CRU v3.1 was also used for observed surface temperature. We used 16 CMIP5 global climate models (Table S1) assessed in the Intergovernmental Panel on Climate Change Fifth Assessment Report. For the 20th century, we compare the "historical" using all forcings and "historicalNat" simulations including natural forcings only. To compare with 20th century observations,

we first linearly interpolated the models to the same 0.5° by 0.5° horizontal grid as the CRU observations. To determine the change due to trend, we applied linear least-squares fits, except in the case of the estimation of multiyear droughts, when regression onto global CO_2 mixing ratios was used. For the latter, this nonlinear detrending provided a more conservative estimate of the residual than linear detrending. We also examined the sensitivity of using global mean surface temperature rather than CO_2 and found almost no difference in the resulting residual. For analysis of the regional circulation, we used the Twentieth Century Reanalysis Project, with a horizontal resolution of 2° by 2° (50). For composites, dry and wet years are here defined as those outside of ±1 SD (based on the CRU 1931–2008 period).

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Native American Activist Winona LaDuke at Standing Rock: It's Time to Move On from Fossil Fuels

SEPTEMBER 12, 2016 | STORY

TOPICS

Dakota Access Pipeline
Indigenous
Natural Gas & Oil Drilling
Native American

GUESTS

WINONA LADUKE
longtime Native American activist and executive director of the group Honor the Earth.

While Democracy Now! was covering the Standing Rock standoff earlier this month, we spoke to Winona LaDuke, longtime Native American activist and executive director of the group Honor the Earth. She lives and works on the White Earth Reservation in northern Minnesota. She spent years successfully fighting the Sandpiper pipeline, a pipeline similar to Dakota Access. We met her right outside the Red Warrior Camp, where she has set up her tipi. Red Warrior is one of the encampments where thousands of Native Americans representing hundreds of tribes from across the U.S. and Canada are currently resisting the pipeline's construction.

TRANSCRIPT

This is a rush transcript. Copy may not be in its final form.

AMY GOODMAN: This is *Democracy Now!*, democracynow.org, *The War and Peace Report*. I'm Amy Goodman. While *Democracy Now!* was covering the standoff at Standing Rock earlier this month, on Labor Day weekend, we spoke to Winona LaDuke, longtime Native American activist, executive director of the group Honor the Earth. She lives and works on the White Earth Reservation in northern Minnesota. She spent years successfully fighting a pipeline similar to Dakota Access, the Sandpiper pipeline. We met her right outside the Red Warrior Camp, where she has set up her tipi. Red Warrior is one of the encampments where thousands of Native Americans, representing hundreds of tribes from across the U.S. and Canada, are currently resisting the pipeline's construction. Her tipi is painted with animals that are threatened by climate change. We began by asking Winona LaDuke why communities are now protesting the pipeline.

WINONA LADUKE: It's time to end the fossil fuel infrastructure. I mean, these people on this reservation, they don't have adequate infrastructure for their houses. They don't have adequate energy infrastructure. They don't have adequate highway infrastructure. And yet they're looking at a $3.9 billion pipeline that will not help them. It will only help oil companies. And so that's why we're here. You know, we're here to protect this land.

AMY GOODMAN: Explain what happened to the Sandpiper pipeline, the one that you protested, the one that you opposed.

WINONA LADUKE: What we opposed, yeah. So, for four years, the Enbridge company said that they absolutely needed a pipeline that would go from Clearbrook, Minnesota, to Superior, Wisconsin. That was the critical and only possible route. They proposed a brand-new route that would go through the heart of our best wild rice lakes and territory, skirting the reservations, but within our treaty territory. They did not consult with us, and they made some serious errors in their process. They underestimated what was going to happen there.

And so, for four years, we battled them in the Minnesota regulatory process, which is a process which is more advanced and slightly more functional than North Dakota's regulatory process, which, from what I can see, is largely nonexistent. And in that process, we attended every hearing. We intervened legally. We rode our horses against the current of the oil. We had ceremonies. And they cancelled the pipeline. That's what they did, after four years' very, very ardent opposition by Minnesota citizens, tribal governments, tribal people, you know, on that line.

And that pipeline, you know, big problem—we still have six pipelines in northern Minnesota to go to Superior, the furthest-inland port. But their new proposals are not going to happen there. Enbridge has said that they still want to continue with their proposals for line three. The first pipeline they want, they want to abandon. The beginning of a whole new set of problems in North America, the abandoning of 50-year-old pipelines, with no regulatory clarity as to who is responsible. And so we are opposing them on that, that they cannot abandon, and they cannot—they still cannot get a new route.

But when they announced that, you know, in my area, I could have said, "Hey, good luck, y'all. We beat it here. Good luck." You know? But, no, we said we're

going to follow them out here, too, because we believe that—you know, we could spend our lives fighting one pipeline after another after another, but someone needs to challenge the problem and say, "This is not the way to go, America. This is not the way to go for any of us." So, we came out here to support these people.

AMY GOODMAN: So talk about everyone who's out here.

WINONA LADUKE: There are a lot of people out here, you know? It's very funny, because I feel like I've been like the Standing Rock switchboard, the travel guide, for the past two weeks. You know, everybody hits me up on Facebook, calls me up: "Hey, LaDuke, I want to bring out this. I got some winter coats. You know, what should I do?" I was like, "Oh, my gosh!" You know?

So, a lot of people are coming here, united. You know, so what I know is out here is like—you know, I go walk in here, and I've seen people from the—you know, from Wounded Knee in 1973. I've seen people I worked with in opposing uranium mining in the Black Hills in the 1970s and '80s, you know, out here. I mean, I've been at this a while. You know, it's like Old Home Week out here. I've seen people from Oklahoma that opposed the Keystone XL pipeline, and Nebraska. And I've seen people from, you know, out in our territory that are opposing the pipelines here. The tribal chairman of Fond du Lac is here, and, you know, a whole host of Native and non-Native people. And there are a lot of people that just do not believe that this should happen anymore in this country, that are very willing to put themselves on the line, non-Indian people, you know, as well as tribal members, and they are here. And it is a beautiful place to defend.

AMY GOODMAN: For people who are watching in New York and Louisiana, in California and India, China and South Africa, why does this matter to them?

WINONA LADUKE: This matters because it's time to move on from fossil fuels. You know, this is the same battle that they have everywhere else. You know, each day or each week, there's some new leak, there's some new catastrophe in the fossil fuel industry, as well as the ongoing and growing catastrophe of climate change. The fact that there is no rain in Syria has directly to do with these fossil fuel companies. You know, all of the catastrophes that are happening elsewhere in the world has to do with the fact that North America is retooling its infrastructure and going after the dirtiest oil in the world—the tar sands oil and the oil out of North Dakota, the fracked oil—rather than—you know, they were

working with Venezuela's—it also has to do with crushing Venezuela, because Venezuela has the largest oil reserves in the world. And rather than do business with Venezuela, they were bound and determined to take oil from places that did not want to give it up, and create this filthy infrastructure. So, this carbon—this oil is very heavy in carbon and will add hundreds of millions of tons of CO2 to the environment, if these pipelines are allowed through. So, that is—you know, it affects everybody.

AMY GOODMAN: Now, some tribes are for the pipeline. Can you describe the division?

WINONA LADUKE: You know, I don't know that I would say some tribes are for it. I would say some interests in Indian country have been for the pipeline. I mean, historically, the Three Affiliated Tribes is an oil-producing tribe, but they came down here to support the opposition to the pipeline. They came down there. Their whole tribal council came down here a couple of days ago. You know, but the fact is, is that, you know, some tribes have been forced into production of fossil fuels. Eighty-five percent of the Navajo economy, for instance, is fossil fuel-based. About the same percentage of the Fort Berthold economy is fossil fuel-based.

So, you know, just to give a little historic picture: You come out here with your smallpox, and you wipe out 95 percent of the people, the Mandan, Hidatsa and Arikara people, in the early 1800s. They live along these villages, you know, just trying to hang in there. Then you come out here, and you flood their lands. And the agricultural crops that they produced are now owned by Monsanto and Syngenta as trademarked varieties that they created. Right? And then you're out here in North Dakota, and everybody in the country flies over North Dakota and looks down and says, "Well, that's North Dakota." Nobody comes out here. And so stuff continues out here for a hundred years, where these people are treated like third-class citizens, you know, where they have no running water in their houses, and they have oil companies coming out here. And you have high rates of abuse and violence against women and children, and it accelerates and increases in the oil fields, until you have an epidemic of drugs, which now hits this community. This community doesn't get any benefit from oil, but the meth and heroin that came out of those fields is here, you know? Because those dealers came up here, and then they saw these Indian people, and they said, "Well, we'll just go there." And so these reservations are full of it. You know? And then you say, you know, to that tribe up there, the BIA cuts some backyard deals and starts oil extraction. And so, then you—

AMY GOODMAN: The Bureau of Indian Affairs.

WINONA LADUKE: Bureau of Indian Affairs. And then you end up with oil—you end up with haves and have-nots in the oil fields. And you end up with a tribe that now has oil revenues that are coming in. And they look out there, frankly, and they say, "You know? Things haven't been going too well for us, so we're going to sign a few more of these leases, because, after all, you know, nothing has ever worked out well for us. And so, we're going to get a little bit of money." And that's how you get—you know, you force people into that, with a gun to their head, and then they end up destroying their land, you know, which is what is happening up there on that reservation. And they've had huge investigations into corruption at the leadership. But, you know, you force poor people. You force people into that situation, and that's a perfect storm.

AMY GOODMAN: You've talked and written about Native Americans having PTSD, post-traumatic stress syndrome.

WINONA LADUKE: Yeah, we have ongoing; I didn't finish it, I still have it. You know, you say "Enbridge," and I get this little like quirk, you know, and because the Indian wars are far from over out here. But, you know, what you get is intergenerational trauma, is what it is known as, historic trauma. And other people have it. But you have a genetic memory, and you look out there, and you see—every day you wake up, and you see that your land was flooded. And that big power line that runs through this land, that doesn't benefit you. You still have to—you know, everything that is out here was done at your expense, but you still have to pay for it. And every day you go out there, and some—you know, you got a roadblock, that the white people put up, coming into your reservation. And every day you go out there, and you look at your houses, and you see that you've got crumbling infrastructure, and nobody cares about it. And you've got a meth epidemic, and you've got the highest suicide rates in the country, but nobody pays attention. You know, and so you just try to survive. That's what you're trying to do. Like 90 percent of my community, generally, I would say, is just trying to survive.

You know, I mean, in my community, we have rice. We still have our wild rice. And we can go, and we can harvest wild rice. And we can be Anishinaabe people. You know, we can still live off of our land. You know, these people have a much tougher time living off of their land. The buffalo were wiped out, you know? But this year is their stand. This is their stand. They've got a chance to not have one

more bad thing happen to them. And from my perspective, my perspective is, is that $3.9 billion pipeline, these guys don't need a pipeline. What they need is solar. What they need is wind. Look at this wind. You know, what they need—they have like class 7 wind out here. What they need is solar on all their houses, solar thermal. They need housing that works for people. They need energy justice. This is this chance, America, to say, "Look, this community does not need a pipeline. What this community needs is real energy independence." They call this energy independence, you know, shoving a pipeline down people's throats, so that Canadian oil companies can benefit, and, you know, a bunch of people can—the world can worsen. That is not energy independence. Energy independence is when you have solar. Energy independence is when you have wind. Energy independence is when you have some control over your future. That's what these people want.

AMY GOODMAN: That was Winona LaDuke, longtime Anishinaabe activist from White Earth Reservation in northern Minnesota.

emerging today must be addressed squarely. For all her vivid writing and journalistic effort, Naomi Klein's monochrome synthesis promotes only a politics of evasion and despair. The world society that has developed in the last half-century has some features never seen before and many that are perennial. Any way forward will be worked out by China, Europe, the USA and regional leaders such as Russia, India, Brazil and South Africa. They will build on an existing diversity that is hardly illuminated by catch-all phrases like 'neoliberalism' and 'American capitalism'.

We are in the middle of an economic disaster, all right. So far the politicians, bankers and CEOs who got us into this mess seem to be surviving, even prospering. But before long, people everywhere will be asking loudly 'What happened to our money, our jobs and our houses? How did we let them get away with it? How can we make sure it doesn't happen again?' Things are likely to become a lot more turbulent yet, and debates about political economy will then need much more historical substance than literary fashion seems able to offer at present. ●

Anthropology and the fossil fuel era

Guest editorial by Thomas Love

Thomas Love is professor of Anthropology and Environmental Studies at Linfield College, Oregon. He specializes on rural livelihood in the Peruvian highlands and adjacent Amazonia, as well as in his native US Pacific Northwest. His current focus is on the social and cultural implications of oil consumption patterns in these regions. His email is tlove@linfield.edu.

Humanity today faces several converging crises, but our prolific use of fossil fuels, particularly oil, underlies and links together several of these, including pollution and global warming. Our need for continued access to fossil fuels drives many of the conflicts we see today, whether in the Middle East or elsewhere. Should growth in demand continue to outpace a declining supply, we shall be forced to make difficult choices about our ways of life.

In his essay on energy and human evolution, the late David Price noted how human beings use energy as heterotrophs, in other words by capturing and storing autotrophs (which in turn store energy from solar radiation). Humans differ from both autotrophs and other heterotrophs in their abundant use of extrasomatic energy, i.e. capturing and storing energy outside of the body. Following Leslie White, Price argued that humans have used this energy to sustain life in ever denser settlements requiring plenty of cheap energy. Once energy becomes scarce, humans have problems: 'if there are survivors, they will not be able to carry on the cultural traditions of civilization' (Price 1995: 1).

Humanity is already in ecological overshoot (Catton 1980). No known alternatives have the quality and usefulness of our current energy base. A barrel of oil contains the energy equivalent of about 25,000 hours of human labour; the average citizen of an OECD country now lives materially better than the wealthiest elites a century ago. People around the world, especially in India and China, are stepping up their consumption of fossil fuels.

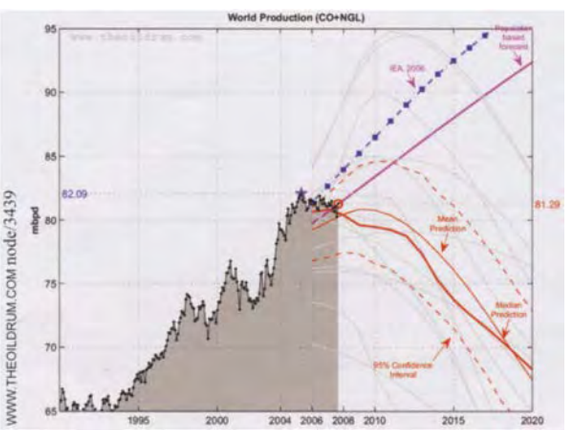

Fig. 1. *World oil production from 1990 and as forecast through to 2020 AD.*

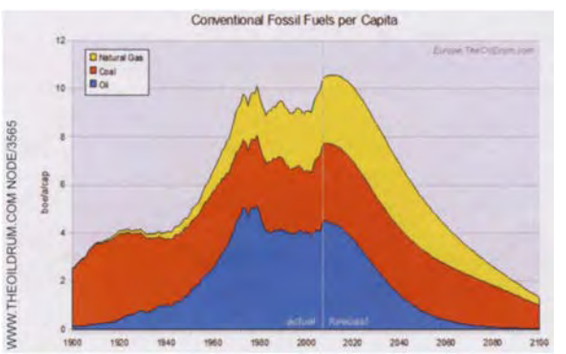

Fig. 2. *Consumption of conventional fossil fuels per capita, actual and as forecast through to 2100 AD.*

From the mid-19th century onwards, petroleum (literally 'rock oil') and other fossil fuels took over from horsepower, wood, whale oil and coal. With their apparent abundance, we quickly found a multitude of uses for them. Modern civilization is built on cheap fossil fuels, which accounted for 88% of the total commercial energy consumed in 2005, with oil alone constituting 39% of that total. Oil is at the hub of the world economy. Humanity's seemingly insatiable demand for it has transformed human life and cultures in producing and consuming societies alike. The price of food and agricultural products, petrochemicals and plastics, the cost of anything transported by air or over land rises with the price of oil. Rising oil prices contribute to inflation and influence monetary policy and interest rates, and in turn affect US, UK and other countries' foreign policies. The appeal of the US dollar as a world currency is being reduced as US domination of world oil markets diminishes, and access to oil has become a matter of national security deemed to merit military intervention.

Oil is so vital to our growth economy today that we find it almost impossible to imagine a world without it. Whilst the notion that we are near the peak of world oil production is still being debated, with oil prices doubling in 2007 to now surpass an all-time high of US$100 a barrel, the stresses and strains of inelastic supply are beginning to show and are not easily resolved. Escalating oil prices are already encouraging development of alternative energy sources, but this hardly helps us deal with oil's scarcity in the short, medium and even long term.

We are in the last days of cheap oil. Based on 13 models, Figure 1 shows how world oil production is predicted to peak between 2008 and 2010 at 77.5-85.0 million barrels per day (Foucher 2007). Decline in the rate of production after 2010 means that we need to find large new deposits every year just to stay even, let alone fuel the growth in demand we are experiencing. We are now consuming oil at four times the rate it is being discovered; coupled with increasing domestic demand in the oil-producing and other non-OECD countries, this portends serious shortages in the near future. Figure 2 adds natural gas and coal to this analysis, along with population growth trends, to demonstrate how humanity faces an imminent crisis of peaking fossil fuels (de Sousa 2008).

No known combination of alternative fuels can be scaled up quickly enough to avoid major supply shocks in the short and medium term. Since alternatives to oil can be used to produce electricity, rather than primarily liquid

fuels, electrification of industrial processes and transport is essential. But what combination of nuclear (with all the concerns surrounding it) and renewable sources will be the primary means for generating electricity? While renewables (wind, solar, hydro, tidal etc.) will help, and impressive developments are already under way, we need a crash programme of renewable and nuclear development at least ten years before oil production peaks to avoid the disruptions which now loom (Hirsch et al. 2005).

* * *

Nobody can predict how this will unfold. Maybe some combination of genetically modified organisms, nuclear power, enlightened leadership and luck will make for a softer landing for most. Meanwhile, in the medium term at least, we need to prepare to face the consequences.

Rising energy prices may prolong availability for those who can afford it, but they will cause uneven economic contraction and threaten globalization. They will contribute to the deterioration of labour conditions in sweatshop economies. If the growth paradigm itself is threatened, people may borrow and consume less, ushering in a deflationary spiral after initial inflation from higher oil prices. Devaluing currency is a policy often used to respond to the mounting costs of maintaining complexity and the state's deepening fiscal crisis (Tainter 1988).

Intensification of class conflict seems inevitable. While the poorest people will suffer first and most, both those on the global periphery and the lower classes in the industrial centres, with economic contraction middle classes will feel downward pressure on wages and be hard pressed to keep suburban sprawl functioning. The Asian regions that industrialized too late in the cheap fossil fuel era seem likely to be hard hit.

As we begin to reach these limits to growth, a broad process of relocalization – more reliance on regional and local products and systems – is already under way. This has many implications, from learning new skills of production to developing and rediscovering forms of social capital and relearning what it means to live in local community. On the other hand, how will hard-won universal rights be defended in a more fragmented, relocalized world?

Of particular concern are agriculture and the dependence of the industrialized food system on cheap fossil fuels. How are seven billion of us going to feed ourselves? The UN predicted 2007 as the year when more than half the world's people would have become urbanized, and the majority are dependent on oil-derived agricultural products. Freed up from direct agricultural production, most people now are deeply ignorant about how food is produced and where it comes from. While people in the developed economies have yet to see serious increases in food costs, the converging forces of climate change, markets and attempts to diversify out of fossil fuel (e.g. into bioethanol) are already resulting in soaring grain prices, seriously affecting the world's poor majority. Nevertheless, the total amount of fossil fuel devoted to agriculture is still small in relation to the overall economy. As oil scarcity effects deepen, people and governments will have to prioritize food at the expense of other uses, with huge policy and economic implications.

Political pressures to address declining net energy are building, entailing what appears to be the increasing militarization of energy supply chains. With Europe's growing dependence on Russian natural gas, for example, one can imagine major geopolitical realignment. The oil-driven world economy is basically run by a set of mutually dependent elites (the Saudi royal family and US offering a type case) who are all aware of the difficulties of maintaining security of access to supplies.

Economic contraction will certainly deepen states' fiscal crises and instability. Should there be a big turn toward nuclear energy, how well will weakened states maintain the centralized control and management nuclear power requires? A big push toward solar, wind and other renewables, on the other hand, suggests other consequences. New political power may accrue to states in the solar energy- and biomass-rich tropics.

* * *

The complexity of the interwoven problems sketched above calls for a holistic examination to which anthropologists can contribute by documenting and understanding how people make sense of these issues and frame their responses. How does this crisis resemble previous ones? What metaphors and symbols do people use to make sense of it all? To what discursive structures will people turn to make sense of the potential unravelling of their worlds? How has the fossil-fuelled growth system already affected the lives of people in producing areas?

We need cross-cultural perspectives and commitment to ethnography to understand how such large-scale forces play out on the ground in the everyday lives of ordinary people. Detailed grasp of the non-fossil-fuelled ways of living of pre- and non-industrial peoples will convey to interested publics and policy-makers alternative ways of organizing human society. We can help understand how humans might manage to power down without precipitating collapse.

Peak oil pessimists envision a return to harsh pre-industrial agrarian conditions. Some rely on Joseph Tainter's (1988) work, which represented collapse of complex societies as an economizing strategy: the marginal costs of maintaining complexity simply become no longer worthwhile to bear.

Yet the spectre of marauding bands of starving urbanites need not materialize. Recent research suggests that humans are genetically predisposed to fairness, even at cost to ourselves: think of the normative pressure among foragers toward generalized reciprocity (Heinrich et al. 2004, Richerson and Boyd 2005). This would suggest that powerdown could be managed if the burden of reducing consumption were shared more or less fairly, as is indeed evident in experiences of scarcity in the industrial countries during the Great Depression and World War II as well as the daily burden of living on a low energy budget for the world's poor majority. Economic contraction would encourage ethnogenesis and cultural diversification, making use of known and new cultural materials. But how might emerging local communities protect local adaptations from the corrosive effects of corporate-driven, mass media-propagated high consumption?

Cheap energy made it possible for the offspring of a temporarily prosperous middle class to be freed up from manual labour and to savour philosophy, literature and the arts. Anthropology itself is hardly immune to these larger processes, having been constructed in the flush of 19th-century industrialization, when fossil-fuelled industrial production helped liberate significant proportions of humanity from drudgery, disease and poverty. Large conferences and frequent trips to distant research sites will become more difficult.

Wandering around Washington, DC, at the 2007 AAA meetings, I recalled my visit to the majestic crumbling pyramids at Tikal; I wondered how future archaeologists might gaze at our monumental architecture. Will they grasp how power was accumulated and exercised, how global was the reach of this civilization, how temporarily prosperous was the average person's lot in life before conflicts over energy so fundamentally changed our lives? Let us examine the real crises upon us. ●

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Carbon Democracy

POLITICAL POWER IN THE AGE OF OIL

Timothy Mitchell

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Introduction

Fossil fuels helped create both the possibility of modern democracy and its limits. To understand the limits, this book begins by exploring what made the emergence of a certain kind of democratic politics possible, the kind I call carbon democracy. Before turning to the past, however, let me explain some of the contemporary limits I have in mind.

In the wake of the US invasion of Iraq in 2003, one of those limits was widely discussed. A distinctive feature of the Middle East, it has often been said, is its lack of democracy. For many who write about the region, this lack has something to do with oil. Countries that depend upon petroleum resources for a large part of their earnings from exports tend to be less democratic. The wave of uprisings that spread across the Arab world in 2011 appeared to confirm this relationship between large oil earnings and the difficulty of mounting claims to a more democratic and egalitarian life. By and large, the less oil a country produced, and the faster its production was declining, the more readily the struggles for democracy unfolded. Tunisia and Egypt, where the uprisings began, and Yemen, Bahrain and Syria, where they quickly spread, were among the region's smallest oil producers, and in all of them the production of oil was declining. Of the eight large producers in the Middle East, only in Libya, the smallest producer among them (and where production had also suffered a recent decline), did a similar political struggle gain momentum, although the conflict in the Libyan case was the quickest to collapse into violence and foreign intervention.[1]

Most of those who write about the question of the 'oil curse', as the problem is sometimes called, have little to say about the nature of oil and how it is produced, distributed and used. They discuss not the oil but the oil money – the income that accrues after the petroleum is converted into government revenue and private wealth. The reasons they offer for the anti-democratic properties

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1 In 2010, oil production for the first five countries ranged from 668,000 barrels per day (Egypt) to 44,000 bpd (Bahrain). The eight large producers (Algeria, Iran, Iraq, Kuwait, Libya, Saudi Arabia, and the United Arab Emirates, plus Qatar), produced from 10.51 million bpd (Saudi Arabia) to 1.79 million bpd (Libya); Qatar produced only 1.43 million bpd of oil, but had the largest production per capita, and in addition was the region's second-largest producer of natural gas. Oman (869,000 bpd, mild political protests in spring 2011) fell neatly between the two groups. The five countries of the region with minimal or zero oil production include four whose political dynamic is interconnected through the Palestine conflict more than oil politics (Israel/Palestine, Jordan and Lebanon) and one dependent on a different mineral export, the booming phosphate industry (Morocco). Figures are for crude oil and other liquids, from www.eia.gov.

of petroleum focus on this surplus revenue: it gives governments the resources to repress dissent, buy political support, or relieve pressures for a more equal sharing of prosperity, with public handouts and price subsidies. The explanations have nothing to do with the ways in which oil is extracted, processed, shipped and consumed, the powers of oil as a concentrated source of energy, or the apparatus that turns this fuel into forms of affluence and power. They treat the oil curse as an affliction only of the governments that depend on its income, not of the processes by which a wider world obtains the energy that drives its material and technical life.[2]

Ignoring the apparatus of oil production reflects an underlying conception of democracy. This is the conception shared by an American expert on democracy sent to southern Iraq, nine months after the US invasion of 2003, to discuss 'capacity building' with the members of a provincial council: 'Welcome to your new democracy', he said, as he began displaying PowerPoint slides of the administrative structure the Americans had designed. 'I have met you before. I have met you in Cambodia. I have met you in Russia. I have met you in Nigeria.' At which point, we are told, two members of the council walked out.[3] For an expert on democracy, democratic politics is fundamentally the same everywhere. It consists of a set of procedures and political forms that are to be reproduced in every successful instance of democratisation, in one variant or another, as though democracy occurs only as a carbon copy of itself. Democracy is based on a model, an original idea, that can be copied from one place to the next. If it fails, as it seems to in many oil states, the reason must be that some part of the model is missing or malfunctioning.

An idea is something that is somehow the same in different places – that can be repeated from one context to another, freeing itself from local histories, circumstances, and material arrangements, becoming abstract, a concept. An expert in democracy has to make democracy into an abstraction, something that moves easily from place to place, so that he can carry it in his suitcase, or his PowerPoint presentation, from Russia to Cambodia, from Nigeria to Iraq, showing people how it works.

Once one has made democracy into something that moves around the world as an idea, in order to move with it, one is committed to a particular

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2 An important exception to this tendency to ignore the materiality of oil in discussions of the rentier state is Fernando Coronil, *The Magical State: Nature, Money and Modernity in Venezuela*, Chicago: University of Chicago Press, 1997, where the problem is connected to a wider erasure of nature in understanding the formation of wealth. See also Michael Watts's discussion of the 'oil complex' and the 'governable spaces' it builds, drawing on pre-oil political structures, in 'Resource Curse? Governmentality, Oil and Power in the Niger Delta, Nigeria', *Geopolitics* 9, 2004: 50–80; and Robert Vitalis's examination of the labour regime and image-making that organised the production of oil in Saudi Arabia, in *America's Kingdom: Mythmaking on the Saudi Oil Frontier*, 2nd edn, London: Verso, 2009.

3 Rory Stewart, *Occupational Hazards: My Time Governing in Iraq*, London: Picador, 2006: 280.

way of explaining how the idea works, how people become democratic. If democracy is an idea, then countries become democratic by the idea getting into people's heads. The problem of democracy becomes a question of how to manufacture a new model of the citizen, one whose mind is committed to the idea of democracy.

A central theme in discussions of the contemporary Middle East in the United States has been the question of how to manufacture new kinds of citizen. In debates about the war in Iraq, economic reform, the future of Palestine, political Islam, obstacles to democratisation, the spread of anti-Americanism, and the 2011 uprisings, one finds a recurrent interest in the question of how to produce a new kind of political agent. How can one create subjects of power who are adequately equipped to impose limits on authority? How does one form a citizenry that refuses to authorise authoritarianism? What kinds of education, enlightenment, training or experience are required to engender forms of economy based on agents who act according to their rational self-interest rather than corruption or cronyism? What produces forms of politics based on mutual trust and respect for opponents rather than suspicion and repression? In short, these debates ask, how can people learn to recognise themselves and respond as subjects of new forms of power? What forms of power, conversely, can engineer the liberal or democratic political subject?

There has been plenty of criticism of the way these questions have been posed and answered, especially in the debates about democratisation, often faulting them for ignoring the so-called 'larger forces' at work. American writings on the problem of democracy in the Middle East typically have little to say about capitalist globalisation and the work being done to turn people into the docile workers and willing consumers required to solve economic crises in the West; about the forces of empire for whom democratisation schemes are a minor, diplomatic part of wider efforts to shore up a weakening hegemony; and about the tools of violence and repression that occupying powers and military regimes deploy. Such criticisms, however, overlook what is interesting in these debates: the notion that democracy is an engineering project, concerned with the manufacture of new political subjects and with subjecting people to new ways of being governed.

Take a recent example of research on democratisation in the Middle East, the Arab Barometer project. The project carried out opinion surveys in five Arab countries, in order to measure the presence of individual attitudes and orientations that might be conducive to the establishment of democracy. These orientations include 'political tolerance, respect for diversity, civic engagement, and interpersonal trust'.[4] The project was funded, initially, by the Middle East

4 Mark Tessler and Amaney Jamal, 'Political Attitude Research in the Arab World: Emerging Opportunities', *PS: Political Science and Politics* 39: 3, 2006: 433–7.

Partnership Initiative of the US Department of State and governed by a board that includes scholars from each of the countries whose political culture the project seeks to measure and record. The Arab Barometer project forms part of a wider initiative called the Global Barometer, which carries out similar research in Africa, Latin America and other regions. The Arab version, along with a number of similar surveys of the region, has published results of opinion surveys that claimed to put in question many of the prevailing assumptions in official circles in the United States about political attitudes in the Arab world.

Whatever the usefulness of showing us some of the limits of official discourse, the project seems at first sight to suffer from a weakness that affects much of the research on questions of democratisation and civil society. It appears to be looking for what one might call 'democracy without democratization'.[5] The premise of the project is that 'successful democratization requires a citizenry that values democracy and possesses the elements of a democratic political culture'.[6] Yet there is no reliable evidence, as far as I am aware, that the presence of a civic culture – attitudes of trust, tolerance, mutual respect and other liberal virtues – facilitates the emergence of democracy. There is, in fact, no shortage of historical evidence to suggest the opposite. One can find repeated examples in the history of democratic struggles in the West of tolerant, educated, liberal political classes who were opponents of democratisation, fighting to prevent the extension of effective political rights to those who did not own property, to religious and racial minorities, to women, and to colonial subjects. In many cases, the civic virtues that dominant political classes possessed provided the grounds on which to oppose democratisation. Their own civility and reasonableness, they often claimed, qualified them to act as spokespersons for the interests of those who were not yet ready to speak for themselves. Once democratic rights have been achieved, their exercise may encourage the development of virtuous civic attitudes, at least among members of the expanded political class – virtues whose inculcation and practice become a mode through which people subject themselves to democratic authority. Democratisation, on the other hand, has often been a battle against those attitudes. It has required a more intransigent set of engagements and practices.[7]

This book is concerned with those more intransigent engagements, and with the ways in which carbon energy helped manufacture forms of agency capable of effective intransigence.

I began writing the book because I wanted a better understanding of the relations between democracy and oil. Initially, like everyone else, I thought of oil as

5 Ghassan Salamé, ed., *Democracy Without Democrats*, London: I. B. Tauris, 1994.

6 Tessler and Jamal, 'Political Attitude Research'.

7 See Bruno Latour, *Politics of Nature: How to Bring the Sciences into Democracy*, Cambridge, MA: Harvard University Press, 2004; and Lisa Disch 'Representation as "Spokespersonship": Bruno Latour's Political Theory', *Parallax* 14: 3, 2008: 88–100.

one thing and democracy as another, and wanted to make better sense of why one seemed to be bad for the other. But after following the way the oil industry was built in the Middle East, as I traced the ways in which people had explored for oil, built pipelines and terminals, transformed the petroleum into forms of heat energy and transportation, converted the income from those processes into profits, and sought ways to circulate and govern those flows of money, it became increasingly clear that carbon energy and modern democratic politics were tied intricately together. Rather than a study of democracy and oil, it became a book about democracy *as* oil – as a form of politics whose mechanisms on multiple levels involve the processes of producing and using carbon energy.

When studies of oil and democracy confine their attention to the problem of oil money – the income from oil and its corrupting powers – rather than starting with the process through which oil is produced and distributed, they are unconsciously imitating the way energy networks were first built. In 1914, when Royal Dutch/Shell began producing oil in Venezuela, the country's dictator, General Gómez, asked the company to build its refinery offshore, on the Dutch island of Curaçao. He wanted the money from oil, but did not want the large concentration of workers and accompanying labour demands that a refinery would bring.[8] A decade later, when the company now known as BP began building an oil industry in Iraq, it planned a pipeline to carry the oil across neighbouring countries to the Mediterranean, from where most of the oil would be shipped to refineries in Europe, stretching out the thin line of oil production over an even greater distance. When a nationalist government later requested that BP build a modern refinery in Iraq, the company vigorously opposed the demand. In other words, if oil appears to affect the producer states largely after its transformation into flows of money, that appearance reflects the building of pipelines, the placing of refineries, the negotiation of royalties, and other arrangements that from the start, in their effort to evade the demands of an organised labour force, were concerned with questions of carbon democracy. The transformation of oil into large and unaccountable government incomes is not a cause of the problem of democracy and oil, but the outcome of particular ways of engineering political relations out of flows of energy.

Failing to follow the production and circulation of oil itself, accounts of the oil curse diagnose it as a malady located within only one set of nodes of the networks through which oil flows and is converted into energy, profits and political power – in the decision-making organs of the individual producer states. This diagnosis involves isolating the symptoms found in producer states that are not found in non-oil states. But what if democracies are not carbon copies, but carbon-based? What if they are tied in specific ways to the history of

8 Coronil, *Magical State*: 107.

carbon fuels? Can we follow the carbon itself, the oil, so as to connect the problem afflicting oil-producing states to other limits of carbon democracy?

The leading industrialised countries are also oil states. Without the energy they derive from oil their current forms of political and economic life would not exist. Their citizens have developed ways of eating, travelling, housing themselves and consuming other goods and services that require very large amounts of energy from oil and other fossil fuels. These ways of life are not sustainable, and they now face the twin crises that will end them.

First, new discoveries of oil are unable to keep pace with the exhaustion of existing supplies. Although estimating reserves of fossil fuels is a politico-technical process involving rival methods of calculation, it appears that we are about to enter an era of declining supplies.[9] The earth's stores of fossil fuels will not be exhausted. As coal and oil become more scarce and the difficulty in extracting them increases, the cost and the expenditure of energy their extraction requires will bring the era of fossil fuels to an end, with consequences that we cannot know.[10] The earth's stock of this 'capital bequeathed to mankind by other living beings', as Jean-Paul Sartre once described it, will be consumed in a remarkably short period.[11] In the case of oil, the fossil fuel that was the easiest to extract but has now become the most difficult to increase in supply, more than half the total consumed in the 150 years between the 1860s, when the modern petroleum industry began, and 2010 was burned in the three decades after 1980.[12] From the perspective of human history, the era of fossil fuels now appears as a brief interlude.

The second crisis is that, in using up these sources of energy, humankind has been 'unwittingly conducting a vast geophysical experiment', as the US President's Science Advisory Committee warned almost half a century ago, in 1965. By burning within a few generations the fossil fuels that had accumulated in the earth over the previous 500 million years, humanity was injecting carbon dioxide into the atmosphere that by the year 2000 was expected to increase the concentration of atmospheric CO_2 by 25 per cent. 'This may be sufficient to produce measurable and perhaps marked changes in climate', the 1965 report had warned, adding that

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9 See Conclusion.

10 Vaclav Smil, *Energy in Nature and Society: General Energetics of Complex Systems*, Cambridge, MA: MIT Press, 2008: 204. On the increasing quantity of energy required to produce fossil energy as supplies become more difficult to extract, a problem known as declining EROI (energy return on energy invested), see ibid.: 275–80.

11 Jean-Paul Sartre, *Critique of Dialectical Reason*, vol. 1, *Theory of Practical Ensembles*, London: Verso, 1977: 154.

12 Until recently it was assumed that coal reserves would long outlast oil, with plentiful supplies for hundreds of years. Recent studies suggest that estimates of coal reserves are even less reliable than those for oil, that production in the US – the country with the largest reserves – has already peaked and begun to decline, and that global production may peak as early as 2025. Werner Zittel and Jörg Schindler, 'Coal: Resources and Future Production', EWG Paper no. 1/01, 10 July 2007, available at www.energywatchgroup.org.

these changes could be 'deleterious from the point of view of human beings'.[13] The experiment proceeded more rapidly than expected. Levels of carbon dioxide in the atmosphere have now increased by 40 per cent since the start of the industrial age, with half that increase happening since the late 1970s. The consequent changes in the earth's climate threaten to become not just deleterious from the human point of view, but catastrophic on a planetary scale.[14] A larger limit that oil represents for democracy is that the political machinery that emerged to govern the age of fossil fuels, partly as a product of those forms of energy, may be incapable of addressing the events that will end it.[15]

Following the carbon does not mean replacing the idealist schemes of the democracy experts with a materialist account, or tracing political outcomes back to the forms of energy that determine them – as though the powers of carbon were transmitted unchanged from the oil well or coalface to the hands of those who control the state. The carbon itself must be transformed, beginning with the work done by those who bring it out of the ground. The transformations involve establishing connections and building alliances – connections and alliances that do not respect any divide between material and ideal, economic and political, natural and social, human and nonhuman, or violence and representation. The connections make it possible to translate one form of power into another. Understanding the interconnections between using fossil fuels and making democratic claims requires tracing how these connections are built, the vulnerabilities and opportunities they create, and the narrow points of passage where control is particularly effective.[16]

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13 R. Revelle, W. Broecker, H. Craig, C. D. Keeling and J. Smagorinsky, 'Atmospheric Carbon Dioxide', in *Restoring the Quality of Our Environment: Report of the Environmental Pollution Panel*, Washington: White House, President's Science Advisory Committee, November 1965: 126–7.

14 Intergovernmental Panel on Climate Change, *Fourth Assessment Report*, 2007, available at www.ipcc.ch. Research by James Hansen and his colleagues on paleoclimate data suggests that feedback loops in the melting of ice can cause a rapid acceleration in the loss of ice cover, forcing much more extreme climate change with potentially cataclysmic consequences. These findings make even the dire warnings from the IPCC look absurdly optimistic. James Hansen, Makiko Sato, Pushker Kharecha, Gary Russell, David W. Lea and Mark Siddall, 'Climate Change and Trace Gases', *Philosophical Transactions of the Royal Society A*, vol. 365, 2007: 1,925–54.

15 Elmer Altvater offers a lucid account of these twin threats, and goes on to suggest that they represent the end of a period of 'congruence' between the logics of capitalism and the physical properties of fossil energy ('The Social and Natural Environment of Fossil Capitalism,' *Socialist Register* 43, 2007: 37–59). In the chapters that follow I offer a different account of those properties – the transportability of oil, for example, is very different from that of coal – which is difficult to fit with the idea of capitalism as a historical process with a set of unchanging 'logics'.

16 Gavin Bridge directs attention away from the exclusive focus on producer states and the resource curse, to look at the diverse network of firms involved in oil, from production, refining and distribution, to those now involved in the capture and storage of carbon and the trading of carbon credits, each of which may be governed by a different political regime. 'Global Production Networks and the Extractive Sector: Governing Resource-Based Development', *Journal of Economic Geography* 8, 2008: 389–419. On the sociology of translation, and 'obligatory passage points', see Michel Callon, 'Some Elements of a Sociology of Translation: Domestication of the Scallops and the Fishermen of St Brieuc Bay', in John Law, ed., *Power, Action and Belief: A New Sociology of Knowledge?*, London: Routledge, 1986.

Political possibilities were opened up or narrowed down by different ways of organising the flow and concentration of energy, and these possibilities were enhanced or limited by arrangements of people, finance, expertise and violence that were assembled in relationship to the distribution and control of energy.

Like energy from fossil fuels, democratic politics is a recent phenomenon. The development of the two kinds of power has been interwoven from the start. This book traces the way they were co-assembled, starting in Chapter 1 with coal and the rise of mass politics in Europe and America in the late nineteenth and early twentieth centuries. It has long been understood that the rise of coal, made possible by the use of steam power to access seams of carbon deep underground, allowed the development of large-scale manufacturing and the modern city, and that out of mines, factories and modern urban life emerged the forces that struggled for democracy. But these forces have usually been thought of, one-sidedly, as 'social movements'. Gathering in workplaces, labour unions, and political clubs, it is said, people forged a political consciousness with which they fought for more egalitarian and democratic collective lives. The account is one-sided because it leaves out the equipment with which this political agency was assembled, and ignores the technical vulnerability to which oligarchic forms of rule were now exposed. As Chapter 1 shows, the socio-technical worlds built with the vast new energy from coal were vulnerable in a particular way, and it was the movement of concentrated stores of carbon energy that provided the means for assembling effective democratic claims.

Keeping in mind this new understanding of the relations between energy flows and the emergence of democracy, I turn in Chapter 2 to examine the beginnings of the oil industry in the Middle East. The standard history tells a story of heroic pioneers discovering oil in remote and difficult locations and of far-sighted statesmen on the eve of the First World War acting to secure this strategic prize. Having learned from the history of coal and democracy that the politics of energy involves acquiring the power to interrupt the flow of energy as much as securing its supply, I propose a different account. I explore how oil companies collaborated to delay the emergence of an oil industry in the Middle East, and politicians saw the control of oil overseas as a means of weakening democratic forces at home. From its beginnings, the history of Middle Eastern oil forms part of the making and unmaking of democratic politics.

The struggle against democracy helped trigger the First World War, out of which emerged the League of Nations and a new machinery to control the oil regions of the Middle East – the system of League of Nations Mandates. These events are usually described as a battle between the idealism of President Woodrow Wilson's 'Fourteen Points', championing the democratic principle of self-determination, and the self-interest of the European powers that took control of the main oil regions of the Middle East, in particular Iraq. Chapter

3 provides a different history, in which a wartime battle for a more democratic control of imperialism and the acquisition of raw materials, fought by the European left, was translated into an undemocratic machinery for producing 'the consent of the governed'. The most important site for producing this 'consent' to imperial rule was Iraq. In Chapter 4 I examine how political forces in Iraq and other parts of the Middle East responded, and the way in which control over the oil reserves of Iraq was forged. The subsequent construction of an oil industry in Iraq and neighbouring countries opened up new possibilities for organising democratic political claims. At the same time, the distribution and scale of the new energy flows made the advancing of those claims increasingly difficult.

The term 'democracy' can have two kinds of meaning. It can refer to ways of making effective claims for a more just and egalitarian common world. Or it can refer to a mode of governing populations that employs popular consent as a means of limiting claims for greater equality and justice by dividing up the common world. Such limits are formed by acknowledging certain areas as matters of public concern subject to popular decision while establishing other fields to be administered under alternative methods of control. For example, governmental practice can demarcate a private sphere governed by rules of property, a natural world governed by laws of nature, or markets governed by principles of economics. Democratic struggles become a battle over the distribution of issues, attempting to establish as matters of public concern questions that others claim as private (such as the level of wages paid by employers), as belonging to nature (such as the exhaustion of natural resources or the composition of gases in the atmosphere), or as ruled by laws of the market (such as financial speculation). In the mid-twentieth century, this 'logic of distribution' began to designate a large new field of government whose rules set limits to alternative political claims: the field that became known as 'the economy'.[17]

Chapter 5 traces the making of the economy as a new object of politics in the mid-twentieth century (most accounts mistakenly locate the emergence of the economy one or two centuries earlier). It also examines how the production of rapidly increasing quantities of low-cost carbon energy, in the form of oil, contributed to this new mode of political calculation and democratic rule. In contrast to the forms of material calculation characteristic of government in the age of coal, the new calculations made possible by the abundance of oil allowed ways of administering collective life based on the novel principle of unlimited economic growth. The management of economic growth provided new kinds of reason and modes of regulation to govern carbon democracy.

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17 Cf. Jacques Rancière, *Hatred of Democracy*, London: Verso, 2006, which discusses democratic struggles as a battle against a logic of distribution that designates some matters as public and others as private.

While the making of the economy provided ways of ordering material life at the level of the nation-state, it was unable to manage the forces that many people considered responsible for the crisis of democracy in the interwar period: the flows of private international capital whose speculative movement had caused the collapse of European financial and political systems. Here, too, oil appeared to provide an answer, underwriting the creation, after the Second World War, of a new method of controlling international capital. Alongside the making of the national economy, Chapter 5 traces the building of international financial mechanisms that were intended to curb the threat of speculation by private international banks – a threat to democratic politics that was to re-emerge on a new scale later in the twentieth century. Since the new machinery of control operated partly by governing flows of oil, and the Middle East was becoming the main source of the world's oil, organising the region under imperial control again became important for the possibility of democracy as a mode of government in the West. Postwar attempts to place Middle Eastern oil under a form of US-run 'international trusteeship' were blocked by the oil companies, to be replaced with the simpler framework of the 'Cold War'. The logic of distribution that designated certain areas as inappropriate arenas for advancing democratic claims incorporated the Middle East as just such an area.

My account of carbon democracy began by tracing a rather simple relationship between the vulnerabilities created by a dependence on coal and the ability to make effective egalitarian demands. By this point in the book, however, it has taken on multiple dimensions, reflecting the switch from coal to the increasing use of oil, the much more extended networks for producing and distributing energy, the new forms of collective life that abundant fossil fuels made possible, and the rapidly expanding circulations of goods and finance that were dependent upon the production of oil.

In Chapter 6 I return to Iraq and the wider Middle East, examining how domestic political struggles in the 1950s and 1960s were transformed into struggles with the oil companies over the control of oil. The history of the rise of OPEC is well known, along with the role of nationalist forces in driving the effort by the oil-producing states to assert control, first over the rate at which the production of oil by foreign companies was taxed, and then over the ownership and operation of those companies. From the perspective of carbon democracy, however, we need to emphasise new aspects of this story. The chapter traces the battle over oil at the level of refineries, pipelines and shipping routes, and of their sabotage; it explores how the purchase of high-tech weaponry by the oil states, beginning with Iran, could provide a uniquely tailored mechanism for recycling oil revenues, and how new doctrines of 'security' were packaged with arms sales; and it connects the question of oil in the Middle East to new methods of managing democratic political demands in the West. These developments led to the crisis of 1973–74, explored in Chapter 7. Misleadingly called

simply an 'oil crisis', the pivotal events of this period involved a transformation in modes of governing international finance, national economies and flows of energy, placing the weakened carbon democracy of the West into a new relationship with the oil states of the Middle East. The shift in US relations with oil-producing states also allowed political forces on the right, opposed to the management of 'the economy' as a democratic mode of governing collective life, to reintroduce and expand the laws of 'the market' as an alternative technology of rule, providing a more effective means of placing parts of the common world beyond the reach of democratic contestation.

Over the three decades that followed, from the 1979 Islamic Revolution in Iran to the Arab uprisings in the spring of 2011, two themes came to dominate discussions of oil and democracy in relation to the Middle East. One was the rise of Islamist political movements that appeared to many to present an obstacle to building more democratic forms of politics. The other was the growing level of military violence in which the oil states were involved – in particular the series of wars in the Gulf, culminating in the US invasion of Iraq in 2003. A popular study of this period described its dynamic as a conflict between the globalising powers of capital and the narrow forces of tribal and religious identity, or 'Jihad vs. McWorld'. Chapter 8 offers a different way of thinking about the relations between oil, so-called globalisation, and the powers of political Islam, using the concept of 'McJihad'.

In the concluding chapter, I return to some of the contemporary limits to carbon democracy: the ending of the era of abundant, low-cost carbon energy, as the difficulty of replacing depleted oil fields with new discoveries deepens, and as new discoveries become increasingly expensive and energy-intensive to exploit; and the accelerating threat of climate collapse, as existing forms of democratic government appear incapable of taking the precautions needed to protect the long-term future of the planet. I show how the technical uncertainty around these questions allows a certain form of reasoning – that of economic calculation – to occupy the space of democratic debate, and argue that the socio-technical understanding of carbon democracy pursued in this book offers a better way to overcome this obstacle to our shaping of collective futures.

CHAPTER 5

Fuel Economy

We are learning to think of democracy not in terms of the history of an idea or the emergence of a social movement, but as the assembling of machines. Those who assembled the supply of coal into an apparatus for democratising the industrialised world had tried to extend its mechanisms to govern relations with non-European regions. Following the crisis of the First World War, they proposed devices to govern the international flow of finance and redirect its profits to beneficial ends. The imperial powers, in uneasy alliance with local forces, managed to forge an alternative device, one that replaced democratic claims with the process of 'self-determination' and substituted for the democratic control of international capital the emergent apparatus of 'development'.

The difficulty in governing the movement of money continued to be an obstacle to the growth of more egalitarian and democratic politics, an obstacle increasingly connected with the flow of oil. A generation later, in the wake of the failure of democratic governments in Europe and a second global war, another effort was made to devise a method for managing the international flow of finance, the arrangement known as the Bretton Woods system. Its development coincided with new forms of democratic politics in industrialised countries, based on the management of what had recently come to be called 'the economy'. Both the international financial arrangement and the apparatus of 'the economy' were devices for governing democracies; both systems, as we will see, were constructed in ways that took advantage of the rapidly increasing use of non-renewable carbon energy, which with the shift to the age of oil continued its exponential rate of growth. In order to grasp the changing relation between carbon energy and democracy in the second half of the twentieth century, we must explore the place of oil in these two machineries of government.

OIL TO DRIVE THE MONEY LENDERS FROM THE TEMPLE

The collapse of democracy in Europe in the 1920s and 1930s, the rise of fascism and the slide towards another world war were understood to have been caused by the collapse of methods for maintaining the value of money. In central and eastern Europe, countries were forced to abandon the attempt to base the value of their currencies on reserves of gold. One by one their domestic financial systems collapsed, middle classes were pauperised, the poor endured widespread unemployment, and interwar democracy was destroyed. 'The breakdown of the

international gold standard', Karl Polanyi wrote in 1944, was 'the mechanism which railroaded Europe to its doom'.[1]

During the Second World War, Britain and the United States made plans to engineer a new mechanism for managing the international movement of money. At a meeting in July 1944 at the Mount Washington Hotel in Bretton Woods, a faded New Hampshire resort built in 1902 with the fortune of a Pennsylvania coal magnate, the forty-four Allied states reached agreement on a plan, setting up the International Monetary Fund and International Bank for Reconstruction and Development, today known as the World Bank. The Bretton Woods agreement abandoned a system that had been built on the wealth and technologies of coal and replaced it with one based on the movement of oil.

To prevent a repeat of the interwar financial catastrophe and another collapse of democracy, governments had to control those whose actions had caused it – the currency speculators. The discovery of the Witwatersrand goldfields in southern Africa in the 1880s (see Chapter 3), and the consolidation there of the British gold-mining monopolies and their racialised labour regime, had allowed the expansion of international trade regulated by reserves of gold. It also encouraged the growth of large private banks, which profited from speculation in the value of national currencies. The goal of the Bretton Woods reforms was to eliminate the power of the bankers to speculate. In his address at the closing of the Bretton Woods talks, the Secretary of the US Treasury, Henry Morgenthau, said that the purpose of the new monetary system was to 'limit the control which certain private bankers have in the past exercised over international finance' and drive 'the usurious money lenders from the temple of international finance'.[2] To curb large-scale speculative movements of capital, the value of currencies was to be tied not to reserves of gold but to the exchange of goods, whose value reflected human and material wealth. Declaring that no people or government 'will again tolerate prolonged or wide-spread unemployment', Morgenthau argued that with the new international financial machinery 'men and women everywhere can exchange freely, on a fair and stable basis, the goods which they produce through their labor'.

The new system managed to limit the destructive power of private currency speculators for about two decades. It achieved this, however, by connecting the value of currencies not to the general flow of goods produced by the labour of men and women, but principally to the movement of oil. The speculators were able to weaken the mechanism in the late 1960s thanks to stresses created by the

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1 Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time*, New York: Farrar & Rinehart, 1944: 20.

2 'Address by the Honorable Henry Morgenthau, Jr., at the Closing Plenary Session' (22 July 1944), in Department of State, ed., *United Nations Monetary and Financial Conference: Bretton Woods, Final Act and Related Documents, New Hampshire, July 1 to July 22, 1944*, Washington DC: US Government Printing Office, 1944: 7–10, available at www.ena.lu.

movement of oil, and destroyed it in the 1980s when they devised new ways to speculate in currencies.[3]

Currency systems are always material as well as calculative devices, built out of technical processes. The gold standard, the previous mechanism, had been initially made possible by coal and steam power, in ways we will examine later. Gold reserves could no longer provide the instrument to secure international financial exchange, because the European allies had been forced to send all their gold bullion to America to pay for imports of coal, oil and other wartime supplies. By the end of the war the United States had accumulated 80 per cent of the world's gold reserves. At Bretton Woods, the United States agreed to fix the value of the dollar on the basis of this gold, at $35 per ounce. The other participating countries agreed that the dollar would be the only reserve currency convertible at a fixed rate to gold, and that the value of their own currencies would be tied to the dollar, and thus indirectly to the American gold monopoly. However, the circulation of dollars soon began to outpace American accumulations of gold, in part because the gold miners of South Africa could not increase their production of gold as fast as world trade, fuelled by the easier flow of oil, began to grow.[4] In practice, what sustained the value of the dollar was that countries had to use the American currency to purchase the essential materials that formed the bulk of international trade, above all oil.

In both value and volume, petroleum had become the largest commodity in world trade. In 1945 the United States produced two-thirds of the world's oil, and more than half of the remaining third was produced in Latin America and the Caribbean.[5] Under the arrangements that governed the international oil trade, the commodity was sold in the currency not of the country where it was produced, nor of the place where it was consumed, but of the international companies that controlled production. 'Sterling oil', as it was known (principally oil from Iran), was traded in British pounds, but the bulk of global sales were in 'dollar oil'. The rest of the world had to purchase the energy they required using American dollars. The value of the dollar as the basis of international finance depended on the flow of oil.

The place of oil in international finance escapes most standard accounts of the postwar financial system. Yet it was clearly understood in postwar planning documents.[6] John Maynard Keynes and Harry Dexter White, the

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3 Donald A. MacKenzie, *An Engine, Not a Camera: How Financial Models Shape Markets*, Cambridge, MA: MIT Press, 2006.

4 Barry Eichengreen, *Global Imbalances and the Lessons of Bretton Woods*, Cambridge, MA: MIT Press, 2007: 40–1.

5 Degolyer & MacNaughton, *Twentieth Century Petroleum Statistics*, Dallas: DeGolyer & MacNaughton, 2009.

6 See for example Cornelius J. Dwyer, 'Trade and Currency Barriers in the International Oil Trade', Walter J. Levy Papers, Box 22, Folder 4, Laramie, Wyoming: American Heritage Center, University of Wyoming, 1949. Dwyer was assistant chief, Petroleum Branch, Economic

architects of the Bretton Woods system, had argued for a third institution alongside the International Monetary Fund and the World Bank, to manage trade in oil and other essential raw materials.[7] Their proposals for rebuilding the international financial system after the war included schemes to create stockpiles of oil, rubber, sugar and other commodities to prevent shortages, gluts and price swings. Even those opposed to Keynes – in particular the nascent neoliberal movement, which objected to the government regulation of international banking – accepted the need to reduce financial speculation by tying the movement of money to trade in key commodities such as oil. Drawing on Benjamin Graham's proposal for 'a modern ever-normal granary', Friedrich Hayek, the intellectual leader of the movement, argued for an 'international commodity standard' to replace the gold standard, in which currency would be issued in exchange for 'a fixed combination of warehouse warrants for a number of storable raw commodities'.[8] Both sides of the debate about preventing the speculative destruction of currencies believed that postwar financial stability, and thus the future of democracy, depended on managing the storage and exchange of key commodities. Increasingly the movement of just one commodity, petroleum, provided the mechanism that stabilised, or threatened to disrupt, the democratic order.

The concern with oil was visible in the sequence of meetings that established the new arrangements. Between the talks at Bretton Woods in July 1944, which created the postwar financial regime, including the IMF and the World Bank, and those at Dumbarton Oaks in the autumn of the same year, where the allied powers formulated arrangements for a successor to the League of Nations, a third meeting was held: representatives of Britain and the United States met in Washington in early August to draw up a postwar petroleum order. The meeting finalised plans to establish a permanent body to be called

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Cooperation Administration (the US government agency that administered the Marshall Plan). The neglect of oil in standard histories of the international financial system can be seen, for example, in Barry Eichengreen, 'The British Economy Between the Wars', in Rodrick Floud and Paul Johnson, eds, *The Cambridge Economic History of Modern Britain*, Cambridge, UK: CUP, 2004, and *Globalizing Capital: A History of the International Monetary System*, 2nd edn, Princeton: Princeton University Press, 1996; and in Francis J. Gavin, *Gold, Dollars, and Power: The Politics of International Monetary Relations, 1958–1971*, Chapel Hill: University of North Carolina Press, 2004.

7 Harry Dexter White argued for an 'international essential raw material development corporation' whose function would be 'increasing the world supply of essential raw materials and assuring member countries of an adequate supply at reasonable prices'. Harry Dexter White, 'United Nations Stabilization Fund and a Bank for Reconstruction and Development of the United and Associated Nations', preliminary draft, March 1942, Chapter III: 30. Harry Dexter White Papers, 1920–55, Box 6, Folder 6, Public Policy Papers, Princeton: Seeley G. Mudd Manuscript Library.

8 F. A. Hayek, 'A Commodity Reserve Currency', *Economic Journal* 53: 210/211, 1943: 176–84; Benjamin Graham, *Storage and Stability: A Modern Ever-Normal Granary*, New York: McGraw-Hill Book Company, Inc., 1937.

the International Petroleum Council. Just as the IMF was intended to limit the chaos caused by the speculative dealings of international banks, the parallel organisation for petroleum was intended to limit the trouble caused by international oil companies – and to pre-empt the oil-producing countries, especially in the Middle East, from taking control of the oil themselves. In an echo of the mandates established under the League of Nations to obstruct the demand for political independence in the Arab world, the International Petroleum Council was envisaged as a form of 'trusteeship' to facilitate Anglo-American control of Middle Eastern oil.

A TRUSTEESHIP OF THE BIG POWERS

The major oil companies cooperated with the scheme for an international oil body as an alternative to Keynes's wider plans for the international control of commodities – plans that were to be discussed at the inaugural meeting of the United Nations in April 1945. The head of Shell's US subsidiary warned that if the companies failed to support the International Petroleum Council they risked a 'master agreement made in San Francisco that proposes to cover all sorts of commodities with all sorts of countries'. In the special oil agreement, he said, 'we have something we have had a hand in making'.[9] The impetus to create a new regime governing Middle Eastern oil also came from the weakened position of the American international oil companies in their main overseas region, Latin America. There was alarmist talk from oil executives about the depletion of US reserves and new military needs for petroleum, which helped them win subsidies from Washington for developing Middle East production. But the real problem they faced was to the south.

Immediately before the war, the 'rude expropriations' of American interests in Bolivia and Mexico, as the State Department's petroleum adviser put it, and the move towards state monopolies or much stiffer concession terms in the rest of Latin America, had made it more difficult for US firms to make large profits there.[10] Postwar profits would have to be obtained increasingly from the Middle East, where large undeveloped oil resources continued to pose a threat, but pressure for national control of oil resources seemed easier to prevent. US companies had acquired concessions there in the interwar years, but made little effort to develop them. With declining wartime need for oil from the Middle East, they were able to scale back their modest operations. In 1945 the Middle

9 Minutes of National Oil Policy Committee, 18–19 April 1945, cited in Stephen J. Randall, *United States Foreign Oil Policy, 1919–1948: For Profits and Security*, Montreal and Kingston: McGill-Queen's University Press, 1985: 206.

10 Herbert Feis, 'The Anglo-American Oil Agreement', *Yale Law Journal* 55: 5, 1946: 1,174–5; Michael B. Stoff, 'The Anglo-American Oil Agreement and the Wartime Search for Foreign Oil Policy', *Business History Review* 55: 1, Spring 1981: 59–74.

East produced only 7.5 per cent of the world's oil, two-thirds of which came from the British-controlled oilfields in Iran.[11]

In building oil industries in Venezuela, Mexico and other parts of Latin America, the oil companies had been obliged to deal with sovereign states, independent for more than a century and increasingly able to negotiate more equitable oil agreements. In the Middle East, sovereign states were still forming out of older local and imperial forms of rule. The oil companies could portray their role there as the 'development' of remote and backward peoples, and impose less equitable arrangements.

The State Department wanted to prevent the US oil companies from causing the same problems for themselves in the Middle East that they had created in Latin America. An international framework, in agreement with Britain, would give corporate oil operations the appearance of a trusteeship, the new term for the old idea of the mandate. A petroleum agreement could frame Anglo-US control of the oilfields of the Middle East as a means of making the oil available to every country that needed it, and present this 'equitable' management as a principle that disqualified the claims of producer countries to control their own oil. A report for the State Department by the Office of Strategic Services suggested, 'The principle of equitable distribution and exploitation overrides to some extent the sovereign rights of the oil producing countries and presupposes a kind of trusteeship of the big Powers over the world's oil resources.'[12]

Initially Washington intended to have a government agency play the role of trustee. In 1943, the US Petroleum Administration for War established a government oil company, the Petroleum Reserves Corporation, to assume control of the oil reserves of Saudi Arabia. It planned to take majority ownership of the California-Arabian Oil Company, the American joint venture that owned rights to the oil. Washington also extended wartime Lend Lease aid to Saudi Arabia (relieving US oil companies of the need to subsidise the rule of Ibn Saud), and drew up plans to construct a US government-owned pipeline to carry oil from the Saudi oilfields to the Mediterranean. By taking control of the oil of Saudi Arabia, the State Department hoped to do a better job than the oil companies in preventing nationalisation, in part by funnelling financial support to the region's ruling families to use for 'development'.[13] After the First World War, the British government had envisioned its mandate over Iraq as a scheme for the 'development' of the country's material resources, to create a new form of protectorate and encourage the oil companies to invest in the stability of imperial power. Washington's plans for trusteeship were a new version of imperial development.

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11 DeGolyer & MacNoughton, *Twentieth Century Petroleum Statistics*.

12 OSS, Research and Analysis Branch, 'Comments on a Foreign Petroleum Policy of the Unites States', cited in Randall, *United States Foreign Oil Policy*: 147.

13 Robert Vitalis, *America's Kingdom: Mythmaking on the Saudi Oil Frontier*, 2nd edn, London: Verso, 2009: 62–125.

The American owners of the Saudi rights, Standard Oil of California (later renamed Chevron) and Texaco (now merged with Chevron), blocked Washington's attempted takeover. To create the impression of an official American partnership with the Arab state, they changed the name of their joint venture from the California-Arabian to the Arabian-American Oil Company (Aramco). Rather than allowing the government to invest in the company, they raised the capital they needed for postwar expansion by arranging for the Standard Oil Companies of New Jersey and New York (now ExxonMobil) to buy a 40 per cent share in Aramco. They also defeated the pipeline plan, but then demanded government support for building themselves (see map overleaf).

Similar American plans for a 'trusteeship' over oil were unfolding in Iran, which Britain and Russia had occupied during the war. Attending a meeting with Churchill and Stalin in Tehran at the end of 1943, at which a tentative plan for creating the UN was agreed, President Roosevelt took up State Department ideas for framing the US role in postwar Iran as an international trusteeship. He described the team of fifty US administrative advisers already working in Iran as a 'clinic' that was 'demonstrating the practicability, and something of the form of the projected new "trusteeship"'.[14] Like the mandate for Iraq after the First World War, the trusteeship idea for Iran offered a way for the United States to challenge Britain's control of the oil, while pushing the American oil companies to take steps towards the country's broader 'development.' The State Department pressed the Standard Oil companies and another US firm to bid for oil concessions, but when American petroleum geologists failed to find good prospects in the south-east, and began surveying in the north near the border with the Soviet Union, Moscow responded by asserting its own claims to an oil concession in the north.

The reason why Middle Eastern oil should be placed under American control was sometimes hard to clarify. Herbert Feis, a former economic adviser at the State Department who had chaired its Committee on International Oil Policy in 1943, tried to explain to the public the need for the international oil agreement. 'Nations that lacked oil had to bargain or barter for it; they became dependent on the will and bounty of others', he wrote, adding with barely veiled sarcasm: 'the United States was unused to the idea'.[15] A senior economic policy-maker may have enjoyed pointing out, after leaving office, that for oil companies the principle of market exchange – bargaining for something and depending on this interaction with others – was an unfamiliar idea. The Cold War soon provided the oil companies with a way to deflect such cynicism.

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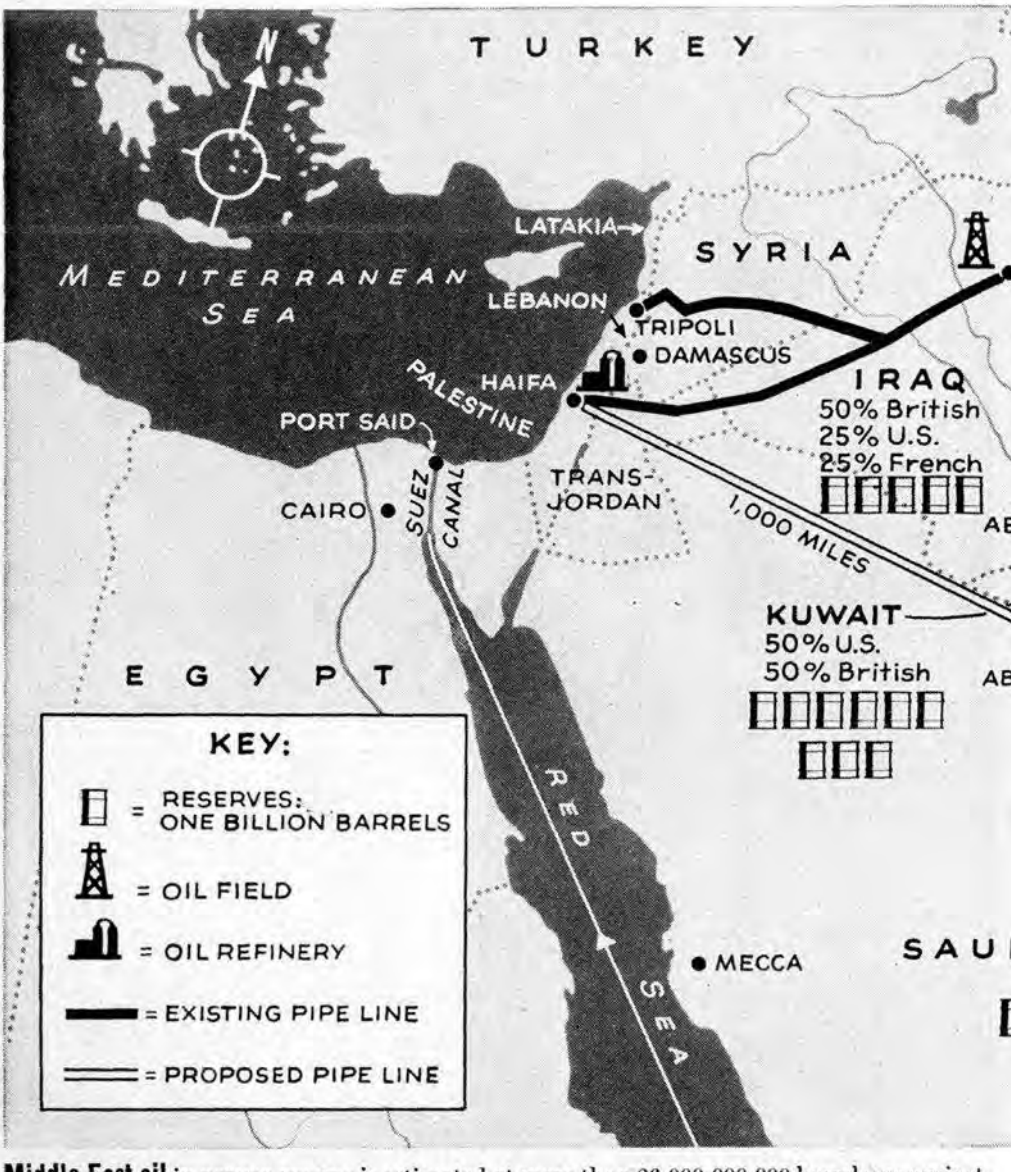
14 Arthur Millspaugh, *Americans in Persia*, Washington, DC: Brookings Institution Press, 1946: 8, cited in Simon Davis, '"A Projected New Trusteeship"? American Internationalism, British Imperialism, and the Reconstruction of Iran, 1938–1947', *Diplomacy & Statecraft* 17: 1, 2006: 31–72.

15 Feis, 'Anglo-American Oil Agreement': 1,174.

Middle East Oil CONTINUED



Middle East oil in proven reserve is estimated at more than 26,000,000,000 barrels, as against U.S. reserve of 20,000,000,000, enough to last 15 more years at present rate of consumption. Britain monopolizes all the working Iran fields. Russia would like north Iran oil and Dutch have a great unexplored concession in northwest Iran. Britain controls Iraq oil (*see next page*) but

'Middle East oil: Trouble erupts as great powers jockey for the power that petroleum provides', *Life*, 11 June 1945

U.S., French and Dutch have interests there. U.S. operates Bahrein (*see pp. 32–33*), has inside track in Saudi Arabia (*pp. 34–37*) and shares the new Kuwait field with British. Only fields shown above are those explored and working (but nonproducing Qatar and Kuwait are shown because of importance). Proposed U.S. pipeline across Arabia is far shorter than water route.

The ambition of the State Department in establishing an oil agency to stand alongside the IMF and the World Bank, in the words of a departmental memo, was to create a 'worldwide system of actual administrative control of the world's petroleum resources'.[16] The Anglo-American Petroleum Agreement, drawn up in 1944 to provide the framework for the post-war petroleum order, called for 'the efficient and orderly development of the international petroleum trade', and said this required 'international agreement' among producing and consuming countries – a clear alternative to the unilateral actions of the Latin Americans. Article 1 of the agreement laid out the new formula for the defeat of any further efforts by producer countries to control their own oil: supplies of petroleum should be made available in international trade to all countries 'on a competitive and nondiscriminatory basis' and 'within the framework of applicable laws and concession contracts'; thereby, 'the interests of producing countries should be safeguarded with a view to their economic advancement'. In other words, the large oil companies would represent the interests of all countries in managing access to oil, on the basis of the existing system of concession agreements, while compensating producer countries by contributing to their development. To further these goals the agreement proposed the creation of a body called the International Petroleum Commission, to collect statistics and publish reports. Feis, the former economic adviser, dismissed the agreement as a proposal 'to create no more than a continually active conference room, attended by a staff of experts, and supplied with a multigraph machine'.[17] He was right, but failed to note that holding multilateral meetings and duplicating endless statistical reports would help make oil 'international', countering any claims that producer countries might make to treat the oil as a national resource.

FAILURE OF LONG-RANGE PLANS

The international petroleum agreement was never implemented. The rivalry between Britain and America over the control of oil was unresolved. The major oil companies forced the revision and weakening of the agreement, and domestic US oil companies blocked its ratification in the Senate. Meanwhile the plans for trusteeships over the oil of Iran and Saudi Arabia were dropped, and the United States found a simpler way to claim control of the region's oil, and thus secure the circulation of dollars.

The British had one main goal in the oil negotiations: to organise the production and flow of oil in a way that would rebuild the value of the pound sterling, as a second international reserve currency alongside the dollar. Britain wanted an agreement that would allow it to exclude American oil imports from

16 Randall, *United States Foreign Oil Policy*: 138.
17 Feis, 'Anglo-American Oil Agreement', 1,187.

British markets (the so-called sterling area, consisting of most countries of the British Empire, plus Iraq, Kuwait, and other Persian Gulf territories). It also hoped to strengthen the pound by increasing postwar British oil production in the Middle East. Since there was, as usual, more oil available than could be produced without lowering prices and reducing the large flows of company income on which the value of sterling increasingly depended, it also sought to limit any postwar expansion of US production in the Middle East.

Britain's attempt to defend the pound sterling as a rival international currency was a struggle over oilfields. When the heads of the Trans-Arabian Pipeline Company, the non-profit joint venture set up by the US oil companies to ship Saudi oil to Europe, were deciding the route for the pipeline, they initially planned to terminate it in Palestine, a state to which Britain, before the war, had promised independence by 1949. After the UN voted instead to partition Palestine into three states (one Arab, one Jewish, and an internationalised city of Jerusalem), but provided no way to carry out the break-up of the country or the eviction of the Arab population from the Jewish state, allowing the Zionist movement to seize most of it by force, the oil companies changed their minds. They briefly considered a southerly route terminating on the northern coast of the Sinai Peninsula, in Egypt. Egypt, however, remained within the British sphere of influence. That raised a further problem besides the question of the troubles in Palestine. Egypt was a member of the sterling area. In fact, Egypt and Iraq were the only non-Commonwealth members of this exchange mechanism.[18] The American oil companies wanted to use the route of the pipeline to undermine the sterling area. To assist with this financial engineering, they diverted the pipeline north into Syria and Lebanon. Meanwhile the British built a rival pipeline at the same time, to increase the flow of sterling oil from Iraq to the Mediterranean. But whereas the Americans built a thirty-inch line, the British line was half that size (carrying about one-third as much oil), 'the limitation of diameter to 16-inch being enforced by the inability of sterling-area manufacturers to produce larger pipe and the equal impossibility of obtaining dollars'.[19] The battle over the postwar international monetary system was being fought in pipeline routes and in rival diameters of pipe.

Oil was so large a component of its international trade that a 1955 report on the treatment of oil in Britain's trade accounts suggested that 'the international

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18 For an explanation of the currency mechanism see Elliot Zupnick, 'The Sterling Area's Central Pooling System Re-Examined', *Quarterly Journal of Economics* 69: 1, February 1955: 71–84. Egypt agreed to leave the sterling area in July 1947, hoping to convert its sterling balances, accumulated in London during the Second World War, into dollars. Shortly after, however, Britain broke the terms of the agreement by suspending the convertibility of Egypt's sterling balances. Frederick Leith-Ross, 'Financial and Economic Developments in Egypt', *International Affairs* 28: 1, 1952: 29–37.

19 Stephen Longrigg, *Oil in the Middle East: Its Discovery and Development*, 3rd edn, London: OUP, 1968: 79–80.

ramifications of the oil industry (including its tanker operations) are so large and so complex as almost to constitute oil [as] a currency in itself'.[20] Europe and other regions had to accumulate dollars, hold them and then return them to the United States in payment for oil. Inflation in the United States slowly eroded the value of the dollar, so that when these countries purchased oil, the dollars they used were worth less than their value when they acquired them. These seigniorage privileges, as they are called, enabled Washington to extract a tax from every other country in the world, keeping its economy prosperous and thus its democracy popular.

In February 1945, on his way home from a second conference of the Big Three powers, at Yalta, President Roosevelt stopped in Egypt and held meetings with three regional monarchs – the rulers of Saudi Arabia, Egypt and Ethiopia. The meeting with Ibn Saud is taken to mark the sealing of a special relationship with Saudi Arabia, concerned with Middle Eastern oil. This was not the reaction of William Eddy, the agent in the Office of Strategic Services (a forerunner of the CIA) who helped arrange the meeting and went on to a career in the CIA under the cover of working as a political agent for Aramco. Six months later, a fellow US agent in the region was bemoaning to Eddy the failure of their hopes for 'a long range plan for Saudi Arabia' after 'we all worked like dogs on it in Washington' – a reference to their failure to win large-scale US support for the country.[21] The programme of Lend Lease aid enjoyed by Saudi Arabia and Iran during the war was cancelled, the Saudi request that America not support the Zionist programme for making Palestine into a Jewish state was ignored, and wartime plans for trusteeships and large-scale development programmes for Iran and Saudi Arabia were dropped.[22]

Later on, President Truman would refuse to extend a programme of Marshall Aid to the Middle East, offering instead the Point IV programme. America would not be able to share capital or material wealth with the world's 'underdeveloped areas', Truman explained, for those resources 'are limited'. As a consolation, Washington would offer them ideas. US businesses would be encouraged to share their 'imponderable resources in technical knowledge', which 'are constantly growing and', in contrast to material wealth, 'are inexhaustible'. Technical knowhow would enable countries to use their existing material resources to produce more food, clothing and mechanical power.[23] The idea of

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20 Steven Gary Galpern, *Money, Oil, and Empire in the Middle East: Sterling and Postwar Imperialism, 1944–1971*, Cambridge, UK: CUP, 2009: 15.

21 'Letter to Eddy from Paul H. Alling, Legation of the United States of America, Tangier, Morocco, August 9, 1945', William A. Eddy Papers, Box 8, Folder 6, Public Policy Papers, Department of Rare Books and Special Collections, Princeton University Library.

22 See Vitalis, *America's Kingdom*: 79–86; Simon Davis, '"Projected New Trusteeship"'.

23 Harry S. Truman, 'Inaugural Address', 20 January 1949, available at the American Presidency Project, www.presidency.ucsb.edu. Linda Wills Qaimmaqami argues that Truman's business-led model of development helped precipitate the nationalisation of oil in Iran: 'The Catalyst of Nationalization: Max Thornburg and the Failure of Private Sector Developmentalism in Iran, 1947–51', *Diplomatic History* 19: 1, 1995: 1–31.

development would play a subsidiary but important role in US relations with the non-West, but its role would be to manage the difference between extraordinary levels of affluence for some and modest levels of living for the vast majority of the world, rather than to offer effective means of addressing those differences.

Meanwhile, another way of managing relations with the non-West, including the oil states of the Middle East, was emerging. Following the Yalta talks, the US had begun planning to move armed forces rapidly from Europe to the Pacific theatre, and wanted arrangements for landing rights and refuelling in the Middle East. This concern, rather than cementing a new relationship over oil, was the main reason for Roosevelt's meeting with Ibn Saud. Unable to get further large-scale financial support from Washington, Aramco and Ibn Saud settled for the building of an airport at Dhahran, which was to serve as a US air base. By the time the funds for the base were approved, the war in the Pacific was over and the US Department of War had decided that the airfield was 'of doubtful military usefulness'. Aramco, however, realised that playing on fears of military vulnerability offered a method for securing continued subsidies from Washington.[24] With the abandoning of larger development plans, oil companies could now begin to recast their interests not as a 'trusteeship' over the world's oil but, in a parallel language, as necessary for securing 'strategic' concerns.

A larger opportunity soon emerged for creating a strategic frame in which to place American oil interests, and thus to organise postwar international finance. As the Second World War ended, the dispute with the USSR re-emerged over oil concessions in Iran, triggered by American oil prospecting near the Soviet border. Over the following months, the United States turned the dispute over Iranian oil into an international crisis. This gave American officials the opportunity to make Iran into a different kind of clinic – a place in which to incubate a new context to support American oil policy in the Middle East, and an expansion of American power more generally. At the height of the Iranian oil concession crisis, in February 1946, George Kennan dispatched the famous Long Telegram from Moscow, his 'psychological analysis' arguing that the Soviet Union acted not on the basis of rational calculation of its interests but through the complex psychology of a paranoid commitment to absolute power, and thus to filling 'every nook and cranny available to it in the basin of world power'. To counter this threat, Kennan argued, democratic states had to become, in effect, less democratic, and operate more like the state that was said to threaten them. This pervasive threat could not be effectively countered by 'the sporadic acts which represent the momentary whims of democratic opinion', but only by policies that were 'no less steady in their purpose, and no less variegated and resourceful in their application' than those of the paranoid Russian state. The threat required 'the adroit and vigilant application

24 Vitalis, *America's Kingdom*: 82.

of counter-force at a series of constantly shifting geographical and political points'. The feeble whimsy of democratic politics was to be replaced by an all-encompassing imperial vigilance. Democratic weakness was also to be countered at home, by taking incisive measures 'to solve internal problems of our own society, to improve self-confidence, discipline, morale and community spirit of our own people'.[25]

Opponents of this programme to transform American rivalry with the Soviet Union into a global political, cultural and psychological battle labelled it the 'Cold War' – the term that the neoliberal critic Walter Lippmann had borrowed from George Orwell's essay warning of the oligarchic and technocratic state that would emerge from a condition of permanent war.[26] The critics lost, the Cold War was constructed, and ordinary corporate ambition to control resources overseas, in the increasingly difficult context of postwar decolonisation and the assertion of national independence, could now be explained by invoking and elaborating this global 'context'. In the Middle East, devices like the mandate and the trusteeship, and grandiose plans for development, were no longer necessary. US officials and oil executives could explain why American oil companies needed to control production in the region by referring to its 'strategic importance' in a situation of permanent war, without mentioning corporate profits or the need to restrict the supply of oil from the Middle East. Academic analysis could then repeat the language of strategic necessity, helping to build the Cold War into a long-term device for managing American interests overseas, for organising financial flows through the control of oil, and for countering democratic threats to social discipline and community spirit at home. This way of talking about oil continues even today.

I concluded Chapter 1 with the Marshall Plan and the construction of the Cold War in Europe. After networks of coal production had enabled the assembling of forms of democratic agency that allowed the advancement of new claims for political justice, the Marshall Plan helped engineer a political and financial setup in Western Europe that was less vulnerable to such claims, by making Europe increasingly dependent on oil and the dollar. These arrangements were to be based on the development and control of Middle Eastern oil, and the trading of that oil in dollars. Thus the sites of democratic contestation and vulnerability were shifted to the Middle East.

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25 George Kennan, 'The Chargé in the Soviet Union to the Secretary of State', 22 February 1946, US Department of State, *Papers Relating to the Foreign Relations of the United States, 1946*, Washington DC: US Government Printing Office, 1946, 6: 696–709, and (revised and published under the pseudonym 'X'), 'The Sources of Soviet Conduct', *Foreign Affairs* 25: 4, 1947: 566–82, at 575, 576.

26 George Orwell, 'You and the Atomic Bomb' (1945), in Sonia Orwell and Ian Angus, eds, *The Collected Essays, Journalism and Letters of George Orwell*, New York: Harcourt, Brace & World, 1968; Walter Lippmann, *The Cold War: A Study in US Foreign Policy*, New York: Harper, 1947.

The Anglo-American Petroleum Agreement, envisioned as the basis for an international petroleum commission to operate alongside the Bretton Woods institutions, had attempted to extend this engineering of democratic politics by providing the Anglo-American control of Middle Eastern oil with a collective international framework. The 1945–46 crisis in Iran, emerging as the US tried to challenge Britain's dominant position in Middle Eastern oil and consolidate the dollar-oil mechanisms, allowed the extension of an alternative framework to govern the control of oil and the management of democracy: the Cold War.

Postwar democracy in the West appeared to depend upon creating a stable machinery of international finance, an order assembled with the help of oil wells, pipelines, tanker operations and the increasingly difficult control of oil workers. The fact that flows of oil were the basis for intersecting networks of global energy supply and global currency movements helped introduce a disjuncture that would become increasingly apparent by the end of the 1960s, leading to the energy, dollar and Middle East crises of 1967–74. The following chapter will consider those interlocking crises. Before that, let us explore a second dimension of postwar carbon democracy, a dimension that was also linked to oil and would also be transformed in the 1967–74 crises: the mid-twentieth century politics of 'the economy'.

THE CARBON ECONOMY

John Maynard Keynes, the economist who played a leading role in devising the postwar apparatus for tying the value of money to the movement of oil, helped formulate and describe another innovation of the mid-twentieth century: the modern apparatus of calculation and government that came to be called 'the economy'. A further set of connections between oil and mid-twentieth-century democratic politics concerns the role of economic expertise. Like twentieth-century democracy, twentieth-century economic expertise developed in a specific relationship to the hydrocarbon age.

Keynes's main contribution to the making of this object was to devise new ways of describing and managing the domestic circulation of money. In a memorable passage in *The General Theory*, his classic treatise of 1936, he explained the difference between the market devices of *laissez-faire* economics and the modern need for government to organise the circulation of money by picturing banknotes buried in disused coalmines:

> If the Treasury were to fill old bottles with bank notes, bury them at suitable depths in disused coal mines which are then filled up to the surface with town rubbish, and leave it to private enterprise on well-tried principles of *laissez-faire* to dig the notes up again . . . there need be no more unemployment and, with the help of the

> repercussions, the real income of the community, and its capital wealth also, would probably become a great deal greater than it actually is.[27]

British coal production peaked in 1913. By the time Keynes began writing *The General Theory*, twenty years later, the country's coal mines were being exhausted at an unprecedented rate. William Stanley Jevons, the author of an earlier revolution in British economic thinking, the mathematical calculation of individual utility of the 1870s, had published a book warning of the coming exhaustion of coal reserves. Keynes was reading that book as he published *The General Theory*, and gave a lecture on Jevons in 1936 to the Royal Statistical Society.[28] It is indicative of the transformation in economic thinking in which Keynes played a role that the exhaustion of coal reserves no longer appeared as a crisis. The management of coal reserves could now be replaced in the mind, and in the textbooks of economics, with reserves of currency. In the era that Keynes's thinking helped to define, the supply of carbon energy was no longer a practical limit to economic possibility. What mattered was the proper circulation of banknotes.

The shaping of Western democratic politics from the 1930s onwards was carried out in part through the application of new kinds of economic expertise: the development and deployment of Keynesian economic knowledge; its expansion into different areas of policy and debate, including colonial administration; its increasingly technical nature; and the efforts to claim an increasing variety of topics as subject to determination not by democratic debate but by economic planning and knowhow. The Keynesian and New Deal elaboration of economic knowledge was a response to the threat of populist politics, especially in the wake of the 1929 financial crisis and the labour militancy that accompanied it and that re-emerged a decade later. Economics provided a method of setting limits to democratic practice, and maintaining them.

The deployment of expertise requires, and encourages, the making of sociotechnical worlds that it can master. In this case, the world that had to be made was that of 'the economy'. This was an object that no economist or planner prior to the 1930s spoke of or knew to exist. Of course, the word 'economy' existed prior to the 1930s, but it referred to a process, not a thing. It meant government,

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27 John Maynard Keynes, *The General Theory of Employment, Interest, and Money*, London: Macmillan, 1936: 129.

28 William Stanley Jevons, *The Coal Question: An Inquiry Concerning the Progress of the Nation and the Probable Exhaustion of Our Coal-Mines*, London: Macmillan, 1865. Jevons's son, H. Stanley Jevons, returned to the question of the exhaustion of coal reserves in *The British Coal Trade*, London: E. P. Dutton, 1915. He revised his father's estimate of the date of the possible exhaustion of British coal mines from one hundred years to 'less than two hundred years' (756–7). John Maynard Keynes, 'William Stanley Jevons 1835–1882: A Centenary Allocation on his Life and Work as Economist and Statistician', *Journal of the Royal Statistical Society* 99: 3, 1936: 516–55. Lecture delivered on 21 April 1936. *The Coal Question* is quoted on p. 517.

or the proper management of people and resources, as in the phrase 'political economy'.[29] The economy would now become the central object of democratic politics in the West – a process that paralleled the emergence of 'development' outside the West. The economy became an object whose management was the central task of government, requiring the deployment of specialist knowledge.

CIVILISATION IS THE ECONOMY OF POWER

Most thinking about the relationship between economics and the economy continues to reflect the influence of the great Austrian-born social theorist Karl Polanyi. Polanyi argued that the economy emerged as an institutional sphere separate from the rest of society in the nineteenth century. Before this moment of separation, the economy was absorbed or embedded in wider social relations. It follows, he argued, that the formal rules of classical, Ricardian economics relate only to a particular historical period, when market exchanges ceased to be a minor aspect of broader social relations and became an apparently self-regulating system to which other social spheres were subordinated. Moreover, he argued, classical political economy helped to achieve this separation of the market system from society, in particular by formulating ways of treating land, labour and money as though they were merely commodities – a set of fictions that were essential to the formation of the economy as its own institutional sphere.[30] Treating money, in particular, as though it were a commodity, in which speculators could trade, Polanyi suggested, had later led to the collapse of European democracies.

The consensus that the economy became a distinct object of intellectual knowledge and government practice in the late eighteenth or the nineteenth century overlooks a surprising fact. No political economist of that period refers to an object called 'the economy'. In the sense of the term we now take for granted, referring to the self-contained structure or totality of relations of production, distribution and consumption of goods and services within a given geographical space, the idea of the economy emerged more than a century later, in the 1930s and 1940s. Both in academic writing and in popular expression, this meaning of the term came into common use only during the years around the Second World War.

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29 This and other sections of this chapter draw on Timothy Mitchell, 'Economists and the Economy in the Twentieth Century', in George Steinmetz, ed., *The Politics of Method in the Human Sciences: Positivism and Its Epistemological Others*, Durham, NC: Duke University Press, 2005: 126–41.

30 *In The Great Transformation* (1944), Polanyi describes the emergence of 'society' in the nineteenth century as a system of regulations and controls attempting to limit the spread of market relations. In later writings, he describes the latter as the emergence of 'the economy'. Karl Polanyi, Conrad M. Arensberg and Harry W. Pearson, *Trade and Market in the Early Empires: Economies in History and Theory*, Glencoe: Free Press, 1957.

From the works of Thomas Mun and William Petty in the seventeenth century to Adam Smith in the late eighteenth, political economy was not concerned with the structure of production or exchange within an economy. In *The Wealth of Nations*, Adam Smith never once refers to a structure or whole of this sort. When he uses the term 'economy', the word carries the older meaning of frugality or the prudent use of resources: 'Capital has been silently and gradually accumulated by the private frugality and good conduct of individuals . . . It is the highest impertinence and presumption . . . in kings and ministers, to pretend to watch over the oeconomy of private people.'[31] The objects of political economy were the proper husbanding and circulation of goods and the proper role of the sovereign in managing this circulation. An earlier tradition of writing on the economy or management of the large household or estate was extended to discussions of the management of the state, imagined as the household of the sovereign. The term 'economy' came to refer to this prudent administration or government of the community's affairs.[32] Political economy referred to the economy, or government, of the polity, not to the politics of an economy.

As countries moved from the agrarian world of the eighteenth century to an increasingly industrial and urban life in the nineteenth, the phrase 'political economy' continued to refer to the management or government of a polity, even as writers debated the need for new forms of government. The German-American journalist Friedrich List, whose *National System of Political Economy* (1856) is sometimes read as a precocious study of 'the national economy' in its twentieth-century sense, wrote in these terms. Popularising American arguments about the need for government policies to encourage and protect the development of industry, List contrasted 'the financial economy of the state', which referred 'to the collection, to the use, and the administration of the material means of a government', with 'the economy of the people', which referred to 'the institutions, the regulations, the laws, and the circumstances which govern the economical conditions of the citizens'. The term 'economy' denoted the forms of administration, regulation, law and social circumstance that defined the processes known as government.[33]

The book Keynes had been reading on the coal question, published by William Jevons in 1865, illustrates the meanings of economy before the twentieth-century invention of 'the economy', and their relation to the growth of coal and

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31 Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, London: Methuen, 1950 [1776]: 327–8.

32 Keith Tribe, *Land, Labour, and Economic Discourse*, London: Routledge & Kegan Paul, 1978: 80–109; Michel Foucault, *Security, Territory, Population: Lectures at the Collège de France 1977–1978*, London: Palgrave Macmillan, 2007.

33 Friedrich List, *Das Nationale System der Politischen Oekonomie*, Stuttgart and Tübingen: J. G. Cotta'scher Verlag, 1841. English translation, *National System of Political Economy*, transl. G. A. Matile, Philadelphia: J. B. Lippincott & Co., 1856: 281.

steam power. Jevons suggested that the economy or prudent management of resources applied especially to the resource that had made industrial civilisation possible. He contrasted the vast dissipation of force and matter that occurs in nature with the tiny fraction of power whose economy was the basis of civilisation. 'Material nature presents to us the aspect of one continuous waste of force and matter beyond our control', he wrote. 'The power we employ in the greatest engine is but an infinitesimal portion, withdrawn from the immeasurable expanse of natural forces.' However, he continued, 'while the sun annually showers down upon us about a thousand times as much heat-power as is contained in all the coal we raise annually, yet that thousandth part, being under perfect control, is a sufficient basis for all our economy and progress'. Quoting the German chemist Justus von Liebig, he described this efficient management and control of the power of fossil fuels as the basis of the work of civilisation. 'Civilization, says Baron Leibig, is *the economy of power*, and our power is coal. It is the very economy of the use of coal that makes our industry what it is; and the more we render it efficient and economical, the more will our industry thrive, and our works of civilization grow.'[34]

CALCULATION IN THE AGE OF COAL

Nineteenth-century writing about political economy reflects the world of coal mines and steam engines. The mines and the engines, however, did more than provide objects of reflection. They helped form a world of calculation, circulation and control of which the doctrines of political economy became a part. The gold standard provides a good example of this. As Britain's overseas empire grew, and with it the national debt that funded colonial wars, the country needed a system of money that could increase greatly in quantity and travel over large distances, yet retain its value. The solution was to introduce token money: coins whose value resided not in the metal itself, of which the actual worth was slightly less than the value the coin represented, but in stores of gold held by the government that issued them. Token coinage had to be too expensive to counterfeit, yet affordable enough to manufacture in large quantities. The development of coal-powered, steam-driven rolling mills and presses made it possible to solve this problem. In the Great Recoinage of 1816–17, which inaugurated the use of silver coins as token money, the eight coining presses at the Royal Mint in London produced up to 250,000 coins per day.[35] Steam-powered coinage allowed Britain gradually to implement the gold standard (the rest of

34 Jevons, *Coal Question*: 122, 125; emphasis in original.

35 Great Britain, Committee on the Royal Mint, Report from the Select Committee on the Royal Mint, London: HMSO, 1849: 74; Angela Redish, 'The Evolution of the Gold Standard in England', *Journal of Economic History* 50: 4: 789–805.

Europe followed only after 1870), which contributed to the dominant role of British finance in world trade. It also contributed to the development of new ways of knowing about questions of money and wealth. The coining and circulation of money on a large scale produced new problems, including inaccuracy in striking coins and coins losing weight through usage. The problems were the object of repeated investigation, including a Royal Commission of 1849, and of an innovative statistical study by Jevons, who organised a survey of the age and weight of coins held by banking houses from which he calculated the average rate of wear.[36] In other words, an industrial, coal-fired coinage system generated forms of circulation, storage, accounting and investigation, one of several such developments though which an empirical science of political economy could emerge.

Other forms of steam-powered machinery laid out other forms of circulation, calculation and control. During his stay in America in the 1820s, Friedrich List became briefly involved in coal mining in Pennsylvania, and joined a venture to build a rail line to carry coal to its consumers. On his return to Germany, he began to champion an expanded use of railways, not just as lines connecting two points, but as webs of commerce and communication that could engineer a common space of exchange. 'The needs of industry and communication', he wrote in 1836, 'will compel the railway systems of the larger Continental nations to form a net-like shape, concentrating on the main points in the interior and radiating from the centre to the frontiers'.[37]

Coal production itself generated a new space of calculation and debate. Jevons wrote his study of the rate of exhaustion of coal supplies to draw popular attention to the use of statistical methods, by showing how the new tools he had helped develop to analyse tables of statistical information could be applied to questions of the day.[38] He wanted to show that statistics could be used to measure a natural law, the Law of Social Growth. He took estimates of remaining supplies of coal in Britain published by the geologist Edward Hull and statistics from the Mining Record Office to estimate the annual rate at which British coal consumption was increasing. Hull had estimated that, at the current consumption rate of 72 million tons a year, the country's recoverable coal was sufficient to last more than a thousand years. While acknowledging that consumption had doubled over the last twenty years, and that if it continued to increase at the same rate supplies would be exhausted in only 172 years, Hull argued that

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36 See Sandra J. Peart, '"Facts Carefully Marshalled" in the Empirical Studies of William Stanley Jevons', *History of Political Economy* 33, 2001, annual supplement: 252–76.

37 List, 'Deutschlands Eisenbahnsystem in militärischen Beziehung' (1836), cited in Keith Tribe, *Strategies of Economic Order: German Economic Discourse, 1750–1950*, Cambridge, UK: CUP, 1995: 63; translation of the term netzartig ('net-like') modified.

38 Peart, '"Facts Carefully Marshalled"'; Margaret Schabas, 'The "Worldly Philosophy" of William Stanley Jevons', *Victorian Studies* 28: 1, 1984.

supplies from America and 'greater economy' in 'the getting and using of the mineral' would extend Britain's supply, and that one should not suppose 'that any part of the Creator's universe has been regulated on so short-sighted a plan, that it shall become disorganized because some of the elements necessary to its economy have failed'.[39]

Jevons set out to dispel these 'plausible fallacies' of the geologists. To understand and measure progress, he argued, what matters is not the absolute amount by which production of a good increases, which tells us nothing, but the rate – the increase relative to the increase in a previous period. If the amount of coal a country produces increases in one year by a million tons, but that increase is smaller than the increase in the preceding year, then although its total production has increased, the rate of increase has declined. 'In statistical matters', he explained, one must cultivate the habit of treating all quantities 'relatively to each other'. The rate of growth indicated not a fixed annual increase of consumption, but a geometric process of growth, in which the amount of each year's increase would be greater than the previous year. Describing the novel social experience that coal and steam power had created, the experience that today we would call 'exponential growth', in which practically infinite values are reached in finite time, Jevons showed how quickly even very large stores of coal might be depleted. Applying his methods to the consumption data of the Mining Record Office, Jevons arrived at a figure by logarithmic calculation of 3.5 per cent annual growth. At that rate, the supplies of coal identified by Hull would last not for a thousand years, but only for one hundred.[40]

Jevons then showed that problems would arise much sooner, perhaps within twenty or thirty years. It was erroneous to think that 'some day our coal seams will be found emptied to the bottom, and swept clean like a coal-cellar', or that the country's fires and furnaces would 'be suddenly extinguished, and cold and darkness will be left to reign over a depopulated country'. Long before that, the rising cost of coal as its recovery became more difficult would cause 'the climax of our growth' and 'the end of the present progressive condition of the kingdom'.

From these calculations he drew an immediate and practical conclusion. In the few remaining decades while the country's revenue was expanding and wealth accumulating, efforts had to be made 'to raise the character of the people'. Pointing out the undeniable fact that 'the whole structure of our wealth' was built upon 'a basis of ignorance and pauperism and vice', he argued for a reduction in the employment of children in manufacture and a general system of education to dispel 'the ignorance, improvidence, and brutish drunkenness of our lower working classes'. Instead of spending current material wealth on 'increased

39 Edward Hull, *The Coal-Fields of Great Britain*, 2nd edn, London: Edward Stanford, 1861: 236, 238–9, 243.

40 Jevons, *Coal Question*: 4, 170, 236–40.

luxury and ostentation and corruption', the country should spend it on creating 'the increased efficiency of labour in the next generation'. He concluded with the warning that 'we are now in the full morning of our national prosperity, and are approaching noon. Yet we have hardly begun to pay the moral and social debts to millions of our countrymen which we must pay before evening.'[41]

Three themes emerge from Jevons's writing on coal, which we will follow forward to understand what was different for the making of the economy under the subsequent dominance of oil. First, the supply of carbon energy, like the industrial circulation of coinage and the development of railway lines, formed a concentrated movement of materials that, as a process, was reported, measured, tracked across time and compiled into tables. As problems and disputes arose, methods of inspection and information-gathering increased. The Mines Inspection Act of 1850, for example, led to the appointment of government inspectors of coal mines, who in 1854 began to compile the system of Mining Records, making available the statistics on which Jevons based his work. Second, these statistics made possible the mathematical measurement of progress, rates of growth, and the depletion of resources. The questions of material limits, the exhaustion of nature and future decline became matters of increasing concern. Third, with the consequences of modern industrial and urban life, a parallel concern developed with the measurement and amelioration of the moral condition of the poor, and its relationship to the efficiency of labour.

Following Jevons, the development of social statistics took two different paths. One was research on the measurement of poverty, the living conditions of the poor, and industrial accidents. By the end of the nineteenth century, almost all industrialised states had bureaus of labour statistics, created in response to the economic crises of 1873–95 and to the growing political strength of labour organisations. The information they collected on the life of the working classes shaped the new measures of social welfare, such as retirement pensions and various forms of industrial and medical insurance, and helped to implement the new programmes. The wartime campaign to generalise these measures, as we saw in Chapter 3, led to the creation of the International Labour Office as part of the Treaty of the Versailles at the end of the First World War.

The second path was research on race development and eugenics. The work of Francis Galton on the statistical analysis of heredity, inspired by the evolutionary theory of his half-cousin Charles Darwin, first appeared in 1865, but was unable to win wider support until the 1890s. Towards the end of the century, governing classes in Europe and America became alarmed by evidence of what was considered the deterioration of racial quality, revealed in Britain by the difficulty of recruiting physically healthy soldiers for the South African war, and elsewhere by fears that the poor and the less physically fit were reproducing

41 Ibid.: v, xxiii–xxvi.

faster than the racially strong part of the population, leading to the risk of 'race suicide'.[42] Galton and his followers proposed controlled breeding to improve racial quality, and to counter the effects of the widening of voting rights. People are not 'of equal value, as social units', Galton warned, 'equally capable of voting, and the rest'.[43] To advance the study and improvement of racial quality, Galton developed new statistical methods. In fact, modern, mathematical statistics with its methods of correlation, regression and error analysis, was developed for the purpose of the eugenics movement.[44] The work was continued by Galton's student, Karl Pearson, whose drive to universalise mathematical statistics was particularly successful in its influence in economics in the early twentieth century, where Irving Fisher and others 'were soon refining the method of correlation to use it as a test of the quantity theory of money'.[45] The monetarists simplified their theories to fit the ultra-empiricism of statistical correlation, looking for a single indicator that could reveal the role of the money supply in determining economic cycles. By the 1920s American economists were 'correlating furiously and indiscriminately and with an inverse correlation between zeal and discretion', wrote Jacob Viner. 'As might have been anticipated in a world full of nonsense correlations, the results were grotesque.'[46]

NATURAL RESOURCES AND RACIAL VIGOUR

In the early decades of the twentieth century, a battle developed among economists, especially in the United States, that shaped the future of economic knowledge and its relation to nature and the material world. The battle was to have important consequences for the way questions of natural resources entered democratic debate. One side wanted economics to start from natural resources and flows of energy, the other to organise the discipline around the study of prices and flows of money. The battle was won by the second group, who created out of the measurement of money and prices a new object: the economy.

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42 G. R. Searle, *A New England? Peace and War 1886–1918*, Oxford: Clarendon Press, 2004: 375–6.

43 Theodore M. Porter, *The Rise of Statistical Thinking, 1820–1900*, Princeton: Princeton University Press, 1986: 130.

44 Donald Mackenzie, *Statistics in Britain, 1865–1930: The Social Construction of Scientific Knowledge*, Edinburgh: Edinburgh University Press, 1981; Porter, *The Rise of Statistical Thinking*: 129–46, 270–314; Alain Desrosières, 'Managing the Economy: The State, the Market, and Statistics', in Theodore Porter and Dorothy Ross, eds, *The Cambridge History of Science*, vol. 7: *Modern Social Sciences*, Cambridge, UK: CUP, 2003.

45 Porter, *Rise of Statistical Thinking*: 314.

46 Jacob Viner, 'The Present Status and Future Prospects of Quantitative Economics', *American Economic Review*, March 1928 (supplement), reprinted in J. Viner, *The Long View and the Short*, Glencoe: Free Press, 1958: 451, cited in Thomas M. Humphrey 'Empirical Tests of the Quantity Theory of Money in the United States, 1900–1930', *History of Political Economy* 5: 2, 1973: 307.

In the emergent profession of academic economics, many economists were concerned to measure the exhaustion of the earth. In the United States, leading economists like Richard T. Ely, a founder of the American Economics Association, and his student Thorstein Veblen, whose theory of capitalism as a system of 'sabotage' we encountered in Chapter 1, became preoccupied with questions of natural resources and their depletion, with excess or 'conspicuous' consumption, and with the dissipation and conservation of 'energy'. Economics, in their view, was to be a study not of the laws of markets but of material flows and resources.[47] These men lost the battle to shape the discipline they helped found to the rival forces of the price theorists, led by men like Irving Fisher. Economics became instead a science of money; its object was not the material forces and resources of nature and human labour, but a new space that was opened up between nature on one side and human society and culture on the other – the not-quite-natural, not-quite-social space that came to be called 'the economy'.

Many new devices and arrangements made it possible, during the first half of the twentieth century, to develop the forms of calculation and practices of representation that enabled people to talk about and manage the circulations of money that represented the 'national economy'. Rather than describe all the work that went into building it, we can illustrate some of the mundane and interconnected ways in which it came into being with the example of Irving Fisher – the man whom the *New Palgrave Dictionary of Economics* in 1987 called 'the greatest economist America has produced'.[48]

A disciple of the work of William Jevons, Fisher is remembered as the man who built the first working model of the economy. The model consisted of a tank of water fitted with cisterns, pipes, valves, levers and stoppers. He used this hydraulic-mechanical apparatus in his lectures at Yale as an experimental device to investigate how a shock to demand or supply in one of ten different commodities affected the overall level of water, or prices, in a general equilibrium system. A more practical example of the work of making the economy was Fisher's invention of the 'Index Visible', a device for managing information on small cards that is known today as the Rolodex, which he patented in 1913. He set up a company in his house in New Haven, the Index Number Institute,

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47 Veblen argued that business should be run by engineers rather than businessmen, for engineers understood material processes and were orientated towards the more efficient use of resources, whereas businessmen were concerned only with profits. In response to the great anthracite coal strike of 1902, a movement among engineers in the US wanted to take control of the 'economic', not just of the 'technical', efficiency of business, and called for an alliance between engineers and organised labour. Donald R. Stabile, 'Veblen and the Political Economy of the Engineer: The Radical Thinker and Engineering Leaders Came to Technocratic Ideas at the Same Time', *American Journal of Economics and Sociology* 45: 1, 1986: 41–52.

48 James Tobin, 'Irving Fisher (1867–1947)', in J. Eatwell, M. Milgate and P. Newman, eds, *The New Palgrave: A Dictionary of Economics*, vol. 2, London: Macmillan, 1987: 369–76.

where assistants working in the basement used the new equipment, along with the index formulas Fisher had devised, to calculate the first indices of commodity prices and the purchasing power of the dollar. The *New York Times* and other newspapers published his price indexes every week, together with a commentary by Fisher, enabling 7 million readers to follow and participate in the price movements that would come to be called the economy.

There were many other mechanisms for removing nature and material resources from economics and turning it into a science of prices – not as simple as the Rolodex, or as uncontroversial. For example, Fisher became a champion of eugenics. His mentor at Yale was William Graham Sumner, America's leading social Darwinist. In 1906, Fisher helped establish the Race Betterment Society, and in 1922 founded and became the first president of the American Eugenics Society. Racial improvement formed a logical part of his economic theory. Human labour was a form of wealth or capital stock. Like non-human capital, it was a resource that could be improved or left to degenerate. The progress of society depended on the decisions individuals took about whether to consume in the present or invest for the future. These decisions were affected by an individual's self-control, life expectancy, thrift and degree of foresight – something that inferior races, and degenerate members of a superior race, lacked.[49]

Appointed to President Theodore Roosevelt's National Conservation Committee, set up in 1908 to address growing concerns over the exhaustion of natural resources, Fisher produced a report arguing that the most important means of conserving nature was not for the government to regulate its exploitation, but to take measures to prevent 'racial degeneracy', since 'one of the first symptoms of racial degeneracy is decay of foresight', while 'the more vigorous and long-lived the race, the better utilization can it make of its natural resources'. Economics would withdraw from studying the capacities and resources of nature and attend instead to the capacities and resources of the human. Fisher advocated establishing a federal Department of Health as the main instrument of racial improvement, but economics too could work on the enhancement of human capabilities. It could extend individual powers of foresight by developing prosthetic devices like the Rolodex and the newspaper commodity price index, and subsequently by elaborating the entire machinery of calculation called the economy.[50]

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49 Mark Aldrich, 'Capital Theory and Racism: From Laissez-Faire to the Eugenics Movement in the Career of Irving Fisher', *Review of Radical Political Economics* 7: 3, 1975: 33–42.

50 After his stint on the National Conservation Committee, Fisher taught a new course at Yale on 'National Efficiency', which was described as a 'study of natural resources, racial vigor, and social institutions'. William J Barber, 'Irving Fisher of Yale', *American Journal of Economics and Sociology* 64: 1, 2005: 49.

MONEY ECONOMY

In the discipline of economics, the easiest place to trace the appearance of the idea that the economy exists as a general structure of economic relations would be in the publication of John Maynard Keynes's *General Theory of Employment, Interest and Money*, in 1936. Although tending to employ phrases like 'economic society' or 'the economic system as a whole', where today one would simply say 'the economy', the *General Theory* conventionally marks the origin of what would come to be called macro-economics.[51]

The economy was formed as a new object in the context of broader developments. Jan Tinbergen, a pioneer of the mathematical measurement of 'the economy', developed his first econometric model in response to a Dutch government request for policies to combat the depression.[52] Keynesian theory was also a response to the experience of mass unemployment and depression, and to the emergence of fascist, Soviet, New Deal and other general economic programmes that addressed not just individual human behaviour but the interaction of aggregate and structural factors such as employment, investment and money supply. Also important was the emergence after the First World War of the welfare and development programmes for European colonies (Keynes's first job was in the Revenue, Statistics and Commerce Department of the India Office), in response to the growing threats to colonial rule.

These broader events were not just the context for the emergence of a new conception of the economy. While the possibility of making the economy in the mid-twentieth century arose out of these events, economics was itself involved in the reconfiguring of social and technical worlds that gave rise to the economy, as we have seen with the work of Fisher. We can mention two larger aspects of this reconfiguration: new forms of circulation of money; and the weakening of European empires and other forms of imperial control, accompanied by the creation of 'national economies'.

The interwar period saw a significant alteration in the forms of circulation of money in countries such as Britain and the United States. The most dramatic change was the increase in the use of money – in particular paper money – for everyday transactions. Before the First World War, Keynes had remarked on how seldom people in Britain used token or paper money for financial transactions. He could think of only two purposes for which he himself regularly used money – to purchase railway tickets and pay his domestic servants.[53] Most everyday transactions were settled by running an account or writing a cheque. In the United

51 Michael Bernstein, *A Perilous Progress: Economics and Public Purpose in Twentieth-Century America*, Princeton: Princeton University Press, 2001; Philip Mirowski, *Machine Dreams: Economics Becomes a Cyborg Science*, Cambridge, UK: CUP, 2002.

52 Mary S. Morgan, *The History of Econometric Ideas*, Cambridge, UK: CUP, 1990: 102.

53 John Maynard Keynes, *Indian Currency and Finance*, London: Macmillan, 1913.

States, federal bank notes had been introduced by the National Currency Act of 1863, but their supply was limited. Their use remained unpopular, and they competed with a range of other regional bank notes and local scrips.[54] Again, local accounts and personal cheques were by far the most common ways to settle transactions. During the war the situation began to change, with the rapid increase in the printing of money, and the relaxation and later abandonment of the gold standard in most countries. The creation of the US Federal Reserve in 1913, and similar reforms in other countries, led to a standardisation of bank notes and the widespread and rapid acceptance of the use of paper money.

This transformation in the use and circulation of money illustrates how economic knowledge helped to form its new object. In the first place, economists developed new theories of money, entering into the political battles over questions of currency reform, the gold standard, and government control of exchange rates and money supply. Keynes's first published work, *Indian Currency and Finance* (1913), was a practical contribution to this politics, and was followed by the publication of *A Treatise on Money* (1930). In the United States, the conflict between Irving Fisher's quantity theory of money and the 'real bills' doctrine of J. Laurence Laughlin and his students shaped the creation of the Federal Reserve system.[55] The conceptions and calculative technologies provided by economists were built into the new financial institutions. In other words, economists developed practical tools for measuring and managing the value of money that became part of the novel day-to-day machinery of monetary circulation that was soon to be recognised as 'the economy'.

The next step was to begin to see this new mechanism of money circulation as a system in its own right, rather than just another 'market'. Following the publication of *A Treatise on Money* (1930), Keynes made a decisive break with the ideas of his predecessors at Cambridge, Marshall and Pigou, as well as with the work of Fisher and Frisch. Earlier theorists, he argued, had treated money as simply a neutral signifier of value, and thus saw no essential difference between a system of exchange using money and a barter system. In the earliest surviving drafts of *The General Theory*, which date from 1932–33, and in fragments of his Cambridge lecture notes from the same period, he discusses the differences between the 'real-exchange economy' or 'neutral' economy of classical economic theory, and the 'money economy' of the real world of the present.[56] These notes represent his first use of the concept of 'the economy' in its contemporary sense.

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54 Viviana A. Zelizer, *The Social Meaning of Money: Pin Money, Paychecks, Poor Relief and Other Currencies*, Princeton: Princeton University Press, 1997.

55 Perry Mehrling, 'Retrospectives: Economists and the Fed: Beginnings', *Journal of Economic Perspectives* 16: 4, Autumn 2002: 207–18.

56 John Maynard Keynes, *The Collected Writings of John Maynard Keynes*, ed. Donald Moggridge, London: Macmillan, 1971–89, vol. 13: 396–412, 420–1; vol. 29: 54–5; Robert Skidelsky, *John Maynard Keynes*, vol. 2: *The Economist as Saviour, 1920–1937*, London: Macmillan, 1992.

Keynes's breakthrough was to conceive of the new totality not as an aggregation of markets in different commodities, but as the circulation of money: the economy was the sum of all the moments at which money changed hands.

THE NATIONAL ECONOMY

A further step in the making of this economy was to construct mechanisms for measuring all the instances of spending and receiving money within a geographical space – the new national income accounts. Before the interwar period, attempts to calculate national wealth or 'national dividend' had come up against a series of insuperable obstacles. There was the problem of counting the 'same' goods or money twice. For example, commodities sold at wholesale could not be counted again, it was thought, when sold at retail. Income earned as a professional salary should not be included in national wealth a second time when paid as wages to the servants. And, as Alfred Marshall pointed out, there was the problem of accounting for all the waste that was incurred in the production of wealth – not only the depreciation of tools and machinery, but also the exhaustion of the country's natural resources.[57]

After the First World War, the Dawes Committee, set up to estimate Germany's 'capacity to pay' economic reparations, discovered the lack of not just reliable data concerning national income but of a manageable conception of what one was trying to count. In both Germany and the US there were extensive interwar efforts to remedy this problem.[58] It took two decades to solve it. The solution was not to count things more accurately, but to re-conceive the object being counted. No longer was the goal to count the nation's wealth or dividend, but rather its aggregate 'national income' – the sum of every instance of money changing hands. Each such instance represented income to the recipient, however productive or unproductive the activity and regardless of the waste incurred. The work of Keynes again played a critical role, and he and his students worked closely with the Treasury in London to design the methods of estimating national income.

In the United States, Simon Kuznets of the National Bureau of Economic Research systematised the new methods. In 1942 the US Department of Commerce began publishing national economic data, and in his 1944 budget speech President Roosevelt introduced the idea of 'gross national product'.[59]

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57 Alfred Marshall, *Principles of Economics*, 8th edn, London: Macmillan, 1920: 523.

58 J. Adam Tooze, 'Imagining National Economies: National and International Economic Statistics, 1900–1950', in Geoffrey Cubitt, ed., *Imagining Nations*, Manchester: Manchester University Press, 1998: 212–28. See also J. Adam Tooze, *Statistics and the German State, 1900–1945: The Making of Modern Economic Knowledge*, Cambridge, UK: CUP, 2001.

59 Daniel Bell, *The Coming of Post-Industrial Society: A Venture in Social Forecasting*, New York: Basic Books, 1976: 331–2.

Kuznets warned that 'a national total facilitates the ascription of independent significance to that vague entity called the national economy'.[60] The warning was of no use. The subsequent elaboration of the GNP of each economy made it possible to represent the size, structure and growth of this new totality. The making of the economy provided a new, everyday political language in which the nation-state could speak of itself and imagine its existence as something natural, spatially bounded and subject to political management.

The emergent national economy was dependent upon a 'nationalisation' of political and administrative power – the emergence of large-scale, techno-scientific governmental practices based upon the vastly expanded administrative machinery of post-1930s national governments. It also contributed to the making of these nationalised machineries of government, in which economics superseded law as the technical language of administrative power.[61]

For orthodox, pre-Keynesian economics, the sphere of economic behaviour was the individual market. This was the abstraction in terms of which the relations between costs, utilities and prices were to be analysed. When Keynes's *General Theory* replaced this abstraction, which had no geographical or political definition, with the 'economic system as a whole', it was a system defined by a set of geopolitical boundaries. The system was represented in terms of a series of aggregates (production, employment, investment and consumption) and synthetic averages (interest rate, price level, real wage, and so on), whose referent was the geographic space of the nation-state. This 'national' framing of the economy was not theorised, but introduced as a commonsense construct providing the boundaries within which the new averages and aggregates could be measured.[62] Subsequently, the division of economics into the separate fields of macro- and micro-economics inscribed this commonsensical reference to the nation-state in the structure of the discipline, where it remained unnoticed. Thinking of the national economy as simply 'the macro level' provided a substitute for a theoretical analysis of its geopolitical construction. In place of a study of the institutional forms of the state, economics reproduced this institutional structure within the structure of the discipline.

The forming of the economy in terms of the nation-state was related to the re-casting of the international order. The dissolution of the European and Japanese empires before and after the Second World War destroyed an older framing of political power in terms of position in an imperial order. Here too the economy provided a new way of organising geopolitical space. Previously

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60 Simon Kuznets, *National Income and Its Composition, 1919–1939*, Vol. 1, New York: National Bureau of Economic Research, 1941: xxvi.

61 Theodore J. Lowi, 'The State in Political Science: How We Become What We Study', *American Political Science Review* 86: 1, 1992: 1–7.

62 Hugo Radice, 'The National Economy: A Keynesian Myth?' *Capital and Class* 8: 1, 1984: 121.

it had made little sense to talk of, say, the British economy, so long as Britain's economic realm was thought to include India and its other colonies. More generally, a world that was pictured as consisting outside Europe of a series of extensive but discontinuous European and other empires could not easily be imagined to contain a large number of separate economies, each coinciding with a self-contained geographical space and consisting of the totality of economic relations within that space.

The collapse of empire and the growing hegemony of the United States created a new order, consolidated first by the League of Nations and then by the UN, the World Bank and the International Monetary Fund, in which the world was rendered in the form of separate nation-states, with each state marking the boundary of a distinct economy. Again, the new macro-economics took these imagined objects as its untheorised referents: international trade was measured in terms of aggregates (imports and exports of goods and capital) and averages (terms of trade, exchange rates) that were defined in terms of the transactions between national economies.[63] Economic expertise, institutionalised in the World Bank, the IMF and other new agencies, helped construct the new global political order through the publication of statistics and the proliferation of political programmes defining as their object these separate economies.

The framing of the Keynesian national economy was part of a programme to limit and reduce the operation of market competition, through increased management of finance, trade and migration, and above all through the prevention of a global market in labour. It can thus be seen as a successor to the colonial order – an earlier and much older system of limiting market forces by means of monopoly, managed trade, the control of labour, and political repression, which began to collapse in the interwar period. Seen in this light, the making of 'the economy' should be connected with a parallel development that also sought to frame politico-economic relations to exclude the operation of market competition: the development of the large corporation, including its largest and most powerful variant, the multinational oil corporation.

Joseph Schumpeter argued that economists had more justification than natural scientists for using mathematical models to describe the world they studied.[64] This was because the economic world, unlike the natural world, was actually constructed out of numerical phenomena – prices, measures of quantity, interest rates, and so on. He saw this as an argument for the further development of quantitative and formal methods of economic analysis. This affinity between the methods of economics and the make-up of the world it studied was certainly a strength, but it was a strength that had further consequences.

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63 Ibid.

64 Joseph Schumpeter, 'The Common Sense of Econometrics', *Econometrica* 1: 1, January 1933: 5.

It made it relatively easy for economic knowledge to become involved in the everyday making of the objects of economic analysis.[65] As a result, there could never be any simple divide between the models and representations developed by academic economics and the world it claimed to represent.

These transformations created in the twentieth century a political and material world densely imbued with the expertise, calculative techniques and conceptual machinery of modern economics. The so-called material world of governments, corporations, consumers and objects of consumption was arranged, managed, formatted and run with the help of economic expertise. The readiness with which it seemed that this world could be manipulated and modelled by economics reflected not simply that it was a naturally 'quantitative' world, as Schumpeter suggested. It reflected this imbrication of the concepts and calculations of economic science in the world it was studying.

FUEL MONEY

We can now connect the assembling of 'the economy' with the transition from a coal-based energy system to a predominantly oil-based one. The conception of the economy depended upon abundant and low-cost energy supplies, making postwar Keynesian economics a form of 'petroknowledge'.

The conceptualisation of the economy as a process of monetary circulation defined the main feature of the new object: it could expand without getting physically bigger. Older ways of thinking about wealth were based upon physical processes that suggested limits to growth: the expansion of cities and factories, the colonial enlargement of territory, the accumulation of gold reserves, the growth of population and absorption of migrants, the exploitation of new mineral reserves, the increase in the volume of trade in commodities. All these were spatial and material processes that had physical limits. By the 1930s, many of those limits seemed to be approaching: population growth in the West was levelling off, the colonial expansion of the United States and the European imperial powers had ended and was threatened with reversal, coal mines were being exhausted, and agriculture and industry faced gluts of overproduction. The economy, however, measured by the new calculative device of national income accounting, had no obvious limit. National income, later renamed the gross national product, was a measure not of the accumulation of wealth but of the speed and frequency with which paper money changed hands. It could grow without any problem of physical or territorial limits.

Oil contributed to the new conception of the economy as an object that could grow without limit in several ways. First, oil declined continuously in price. Adjusting for inflation, the price of a barrel of oil in 1970 was one-third of

65 Michel Callon, *The Laws of the Markets*, Oxford: Blackwell, 1998.

what it had sold for in 1920.[66] So although increasing quantities of energy were consumed, the cost of energy did not appear to represent a limit to economic growth. (In fact, economists explained the growth of their new object without reference to the consumption of ever-increasing quantities of physical energy, measuring only the input of capital and labour. This left an unexplained 'residual' growth, which for a long time they tried to attribute to factors outside their economic models that they called 'technology'.[67])

Second, thanks to its relative abundance and the ease of shipping it across oceans, oil could be treated as something inexhaustible. Its cost included no calculation for the exhaustion of reserves. The growth of the economy, measured in terms of GNP, had no need to account for the depletion of energy resources. The leading contributions to the academic formulation of the economy – Keynes's *General Theory*, Hicks's *Value and Capital*, Samuelson's *Foundations*, and the Arrow-Debreu model – paid no attention to the depletion of energy.[68] The economics of growth of the 1950s and 1960s could conceive of long-run growth as something unrestrained by the availability of energy.[69] Moreover, the costs of air pollution, environmental disaster, climate change and the other negative consequences of using fossil fuels were not deducted from the measurement of GNP. Since the measurement of the economy made no distinction between beneficial and harmful costs, the increased expenditure required to deal with the damage caused by fossil fuels appeared as an addition rather than an impediment to growth.[70] In all these ways, the availability and supply of oil contributed to the shaping of the economy and its growth as the new primary object of mid-twentieth-century politics.

The abundance of hydrocarbon energy contributed to the new forms of calculation in further ways, two of which were of particular significance. One was the industrialisation of agriculture. To earlier economic thought, land appeared as a primary source of wealth and as a limited resource, unable to

66 The price of oil fell from $31 a barrel in 1920 to $9 in 1970 (in 2006 prices). The average price per decade also declined, from $18 per barrel in the 1920s, to $15 per barrel in the 1930s and 1940s, $14 per barrel in the 1950s and $12 per barrel in the 1960s. *BP Statistical Review of World Energy 2007*, available at www.bp.com.

67 Dale W. Jorgenson, ed., *The Economics of Productivity*, Cheltenham: Edward Elgar, 2009. Robert U. Ayres and Benjamin Warr show that including a measure for energy, or rather exergy – energy when converted into useful work – provides a better accounting for all US growth since 1900. Ayres and Warr, 'Accounting for Growth: The Role Of Physical Work', *Structural Change and Economic Dynamics* 16: 2, 2005: 181–209.

68 Keynes, *General Theory*; John Hicks, *Value and Capital*, Oxford: OUP, 1939; Paul A. Samuelson, *Foundations of Economic Analysis*, Cambridge, MA: Harvard University Press, 1947; Kenneth J. Arrow and Gerard Debreu, 'Existence of an Equilibrium for a Competitive Economy', *Econometrica* 22: 3, 1954: 265–90.

69 Geoffrey M. Heal and Partha S. Dasgupta, *Economic Theory and Exhaustible Resources*, Cambridge, UK: CUP, 1979: 1.

70 Herman E. Daly, *Steady-State Economics: The Economics of Biophysical Equilibrium and Moral Growth*, San Francisco: W. H. Freeman, 1977.

increase at the rate of population growth and liable to degeneration and exhaustion. The introduction of synthetic fertilisers after the First World War, manufactured from natural gas, and of chemical herbicides and insecticides after the Second World War, appeared to remove these natural limits to growth. The other contribution was the rise of synthetic materials, manufactured with hydrocarbons, which appeared as a direct answer to resource depletion. In 1926, a meeting of the Institute of Politics in Williamstown, Massachusetts, brought together mining engineers, geologists and chemists to talk with political scientists about the threat of resource depletion. The mining engineers warned about the threat of exhaustion of key minerals; but the chemists disagreed, arguing that the new synthetic materials developed during the First World War would make it possible to create any resources that ran short by artificial means. 'The mining engineers argued that when present stocks of important materials are exhausted, our civilization will be profoundly dislocated', according to a report on the meeting. 'The experts in chemistry, on the other hand, were pervaded with a striking optimism.' Acknowledging the possibility of temporary shortages, 'they looked forward with assurance to replacing exhausted materials with others equally suited to human needs.' The difference of view extended to political issues. The mining engineers warned that 'the natural distribution of resources is distinctly unequal, so that a condition approaching monopoly exists in many essential resources', oil being the most obvious example. The chemists, on the other hand, 'felt that synthetic products would, in many cases, break up national monopolies, and restore a really competitive situation'.[71]

If oil played a key role in the making of 'the economy', it also shaped the project that would challenge it, and later provide a rival method of governing democratic politics: the 'market' of neoliberalism. A group of European intellectuals under the leadership of Friedrich Hayek launched the neoliberal movement at a colloquium in Paris, organised in August 1938, to discuss the work of Walter Lippmann criticising the New Deal, as a movement against this new object of planning, the economy, and against planning itself as a method of concentrating and deploying expert knowledge. Neoliberalism proposed an alternative ordering of knowledge, expertise and political technology – the political apparatus that it named 'the market'. This was not the market of David Ricardo or William Jevons, but a term that began to take on new meanings in the hands of the nascent neoliberal movement. Drawing on Lippmann's warnings in *The Phantom Public* and *The Good Society* about the dangers of public opinion and the need to expand the areas of concern that are reserved to the decisions of experts, neoliberalism was envisioned by

71 Henry M. Wriston, 'Institute of Politics', *American Political Science Review* 20: 4, 1926: 853–4.

Hayek and his collaborators as an alternative project to defeat the threat of the left and of populist democracy.

The development of neoliberalism was delayed by the war and the programmes of postwar reconstruction. Its political challenge to the Keynesian apparatus got gradually underway a decade later, in modest form, with the founding of a think tank in London in 1955 called the Institute of Economic Affairs. The launch was triggered by the first postwar crisis in the oil-currency system: Britain's attempt to preserve the sterling area as a mechanism of currency regulation, despite the loss of its control of the hub of that mechanism, the Anglo-Iranian Company's oilfields in Iran. The desperate measures with which London tried to retain the pound's value despite the loss of the oil wells through which its value had been manufactured provided the point of vulnerability where the neoliberal movement first began to construct an alternative to the economy.

Likewise in the US, the origins of the neoliberal movement were tied to the struggles over the postwar issues of oil and the regulation of international financial speculation. The State Department's plans for American oil policy in 1945 were blocked by the Petroleum Industry War Council, whose foreign policy committee was chaired by Albert Mattei, president of the Honolulu Oil Corporation. Mattei warned the officials attempting to create an international body to regulate postwar oil development, 'we are going to come in with constructive suggestions, and if you don't accept our suggestions we are going to tear your playhouse down'.[72] He went on to help kill the Anglo-US Petroleum Agreement. A powerful northern California Republican, Mattei was a founding board member in 1946 of the Foundation for Economic Education – the original inspiration for Hayek's Institute of Economic Affairs in London. One of its first publications was Henry Hazlitt's *Will Dollars Save the World?*, an attack on the Marshall Plan and the forms of state planning in Europe on which it was based, as well as the ideas about the dollar and other currencies that it reinforced. Hazlitt called for the US to go on the real, not just the formal gold standard, and for others to follow.[73]

The oil wells and pipelines of the Middle East, and the political arrangements that were built with them, helped make possible the assembling of the Keynesian economy and the forms of democracy in which it played a central part. Democratic politics developed, thanks to oil, with a peculiar orientation towards the future: the future was a limitless horizon of growth. This horizon was not some natural reflection of a time of plenty; it was the result of a particular way of organising expert knowledge and its objects, in terms of a novel world

72 Stephen J. Randall, *United States Foreign Oil Policy 1914–1948*, 2nd edn, Montreal and Kingston: McGill-Queen's University Press, 2005: 199–200.

73 Henry Hazlitt, *Will Dollars Save the World?* New York: Appleton-Century, 1947. His analysis of Europe began with an attack on allied control of the German economy, based on the arguments of the ordoliberal Wilhelm Röpke.

called 'the economy'. Innovations in methods of calculation, the use of money, the measurement of transactions and the compiling of national statistics made it possible to imagine the central object of politics as an object that could increase in size without any form of ultimate material constraint.

We have now expanded the meaning of the term 'carbon democracy'. At first it referred to the central place of coal in the rise of mass democracy, and then to the role of oil, with its different locations, properties and modes of control, in weakening the forms of democratic agency that a dependence on coal had enabled. Oil has now taken on a larger significance in our understanding of democracy. In the postwar period, democratic politics was transformed not only by the switch to oil, but by the development of two new methods of governing democracies, both made possible by the growing use of energy from oil. One of these was an arrangement for managing the value of money and limiting the power of financial speculation, which was said to have destroyed interwar democracy – a system built with the pipelines, oil agreements and oligarchies that organised the supply and pricing of oil. It was accompanied by the construction of the Cold War, which provided a framework for the policing of the postwar Middle East that replaced the need for mandates, trusteeships, development programmes and other scaffoldings for imperial power. The other new mode of governing democracies was the manufacture of 'the economy' – an object whose experts began to displace democratic debate and whose mechanisms set limits to egalitarian demands. In the years 1967–74, as we will see in Chapter 7, the relations among these disparate elements were all transformed, just as they are being transformed again today. To understand the so-called 'oil crisis' of that period, we must first understand how political forces in the Middle East brought the postwar petroleum order to an end.

CHAPTER 6

Sabotage

While operating as part of an international financial system, and as the energy that made it possible to imagine the limitless growth of 'the economy', oil was a fluid that petroleum workers in production fields in different parts of the world recovered from beneath the ground, stored in tanks, processed in treatment plants, pumped into pipelines, loaded onto tankers and transported across oceans. The drilling rigs, pumps, pipelines, refineries and distribution networks of the oil industry were not as vulnerable to stoppages or sabotage as the carbon energy networks of the coal age. Nevertheless, as the Middle East replaced Latin America as the world's second-most-productive oil region after the United States, the possibilities for local disruption increased.[1]

Governments eventually came to power in Iraq, Algeria, Syria and Libya that were independent of British and French political influence, while the two American client states, Iran and Saudi Arabia, began attempting to loosen foreign control of their oil. These changes allowed local disputes and disruptions to be built into something more effective. Interrupting or reducing the supply of oil could become an instrument to be used for larger political purposes, aimed at altering the control of oil or changing other aspects of the political order in the Middle East. The construction of this instrument is usually described in terms of the emergence of a new political consciousness: the growth of a more assertive Arab nationalism. Equally important, however, were the practical forms of recalcitrance: the rerouting of oil supplies, the building of new refineries, and the acts of sabotage that made possible the first sustained challenge to the way Western oil companies managed the flow of oil.

REVOLUTION IN IRAQ

During the 1960s, the oil-producing states of the Middle East sought a way to take national control of their oil reserves without suffering the fate of Iran a decade earlier. When the government of Muhammad Mossadegh nationalised the assets of the Anglo-Iranian Oil Company in 1951, Iran had taken over the production of oil but was unable to sell it. The British blockaded exports from the refinery at Abadan, persuading tanker fleets and major oil companies to

1 Oil production in the Middle East and North Africa surpassed that of Latin America and the Caribbean in 1953, and of the US ten years later. DeGoyer & MacNoughton, *Twentieth Century Petroleum Statistics*, Dallas: DeGolyer & MacNaughton, 2009.

refuse to handle the oil. Anglo-Iranian made up the lost supplies by doubling production in the neighbouring oilfields of Kuwait, which became the largest producer in the Middle East. Since oil formed a large part of Iran's export revenues, the blockade threw the country into economic crisis, leaving the government an easy target for the Anglo-American-organised military coup of August 1953. The coup removed Mossadegh's parliamentary-based government, restored and enhanced the oligarchic rule of the shah, and exposed the left to violent repression.

Iraq was the next focus of the struggle between the oil firms and the producer countries. Like Iran it had a large agrarian population, while its cities were growing with the migrant poor driven from the countryside by the concentration of land in the hands of large landowners whose control over rural life and livelihoods had been consolidated under the British. In the oilfields, the railway yards and the textile mills, the workforce had formed active trade unions. The leadership of these and other popular political forces came largely from the Communist Party of Iraq, the largest and best-organised party in the country. The left campaigned for jobs, housing and other improvements to collective welfare, for ending the private control of large estates that caused misery in the countryside, for democratic rights in place of political repression and for ending foreign control of the oil industry.[2]

As the control of oil became the focus of popular political forces, it led to their undoing. The power of sabotage – the capacity to block or slow the flow of oil, a capacity that had previously been monopolised largely by the international oil companies – would be organised not by the workers who operated the oil industry, but by the state. When nationalist army officers led by Abd al-Karim Qasim overthrew the British-backed monarchical government in 1958, they relied initially on the Communists for popular support while trying to unify the country around a campaign for the control of oil. For Qasim and his successors, taking state ownership of the country's petroleum resources would offer a way to finance social reforms while bypassing those modes of wealth-creation that make the well off vulnerable to egalitarian demands. Oil revenues would remove the need to create national wealth through a radical redistribution of land and a large increase in manufacturing.

In other parts of the world (in much of East and South Asia, for example), effective agrarian reform was a critical instrument for building more egalitarian and democratic ways of life. Limiting the size of farms to the area that a family could work on its own removed from the wealthy the option of earning

2 Hanna Batatu, *The Old Social Classes and the Revolutionary Movements of Iraq: A Study of Iraq's Old Landed and Commercial Classes and of its Communists, Ba'thists, and Free Officers*, Princeton: Princeton University Press, 1978: 764–865; Joe Stork, 'Oil and the Penetration of Capitalism in Iraq', in Petter Nore and Terisa Turner, eds, *Oil and Class Struggle*, London: Zed Press, 1980: 172–98.

large rentier incomes from land, obliging those seeking to accumulate wealth to build it through the development of manufacturing. Such a change has a double effect, creating more equality (and smaller, more productive farms) in the countryside, while making those with capital gradually vulnerable to the power of an industrial workforce. Democratisation has generally depended on engineering such forms of vulnerability. The vulnerability arises not because manufacturing allows workers to gather and share ideas, or form what is called a 'social movement', but because it can render the technical processes of producing concentrations of wealth dependent on the well-being of large numbers of people.

The new Iraqi government attempted a redistribution of large agrarian estates, but struggled to implement the programme in the face of landlord opposition and a succession of serious droughts. It set the upper limit on landholding at 250 hectares (over 600 acres) of irrigated land, and double that area of rain-fed land.[3] In East Asia, governments driven by the fear that peasants and their allies might try to emulate the Communist revolution in China carried out land reform programmes that set limits on owning irrigated land as low as three hectares. Retaining their large estates, those with capital in Iraq had no need to take the difficult path of earning wealth through manufacturing, and would later enjoy the opportunities in trade, contracting and other services required by a government steadily enriched by oil. While manufacturing depends on complex human–mechanical processes that are vulnerable to sabotage, giving large industrial workforces the ability to make effective political demands, national control of oil would place its revenues in the hands of the state, gradually strengthening the powers of government and reducing its initial dependence on popular forces.[4]

Among the four large oil-producing countries of the Middle East in that period – Iran, Iraq, Saudi Arabia and Kuwait – Iraq's situation was peculiar. It was the country where the companies that controlled the world's major oil regions least wanted to produce more of it. The industry was under the management of the Anglo-Iranian Oil Company, now renamed British Petroleum.

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3 Edith Penrose and E. F. Penrose, *Iraq: International Relations and National Development*, London: Ernest Benn, 1978: 240–8.

4 Studies of the impact of oil on democracy fail to consider these questions. Michael L. Ross, 'Does Oil Hinder Democracy?' *World Politics* 53: 3, April 2001: 325–61, for example, demonstrates a negative correlation between oil exports as a percentage of GDP and degree of democracy, as estimated in the Polity data set. The data are derived from an evaluation of the institutional procedures by which the candidate for chief executive is selected, elected and held accountable. The narrowness of this conception of democracy, the unreliability of its measurement, and the assumption that diverse institutional arrangements can be compared and ranked as embodying differing degrees of a universal principle of democracy, are among the many problems presented by the data. Ross is unable to establish reasons for the statistical relationship between oil exports and Polity data ranking, or to account for places, such as Venezuela and Indonesia, that experienced a different relationship between the development of oil and the emergence of more democratic forms of rule.

From the creation of the Iraqi oil industry in the 1920s, BP had sought to develop the country's oil more slowly than production in neighbouring countries. The company produced oil on behalf of a consortium, the Iraq Petroleum Company, in an arrangement similar to that in the neighbouring countries (including Iran after 1953). BP's partners in Iraq, however, included not only other members of the 'seven sisters', the cartel formed by BP, Shell and the five major US oil firms, but the French oil consortium Compagnie Française des Pétroles (known today as Total) and its ally Calouste Gulbenkian, the go-between who had built the consortium. Raising production in Iraq increased the market share of the French and Gulbenkian, whereas growth in the other three countries was shared only among the cartel.[5] As a result, oil production in Iraq grew at a much slower rate than among its neighbours.

BP delayed the completion of the pipeline to export the oil, deliberately drilled shallow wells to avoid discovering additional supplies, and plugged wildcat wells that yielded large finds to conceal their existence from the government. Although Iraq's reserves were comparable to those of the other three countries, its production in the 1950s and 1960s was kept at about half the level of the others, or less. BP and its partners used Iraq as the swing producer, with a large undeveloped capacity that was increased only to meet exceptional demand.[6]

Compared to Iran, where nationalisation had already been defeated, Iraq's position was even weaker. The bulk of its oil was exported by pipeline through Syria to the Mediterranean, so it did not control the point of shipment. It had a small refinery to process oil for domestic consumption, but the main refinery supplying regional markets was placed at the Mediterranean end of the pipeline, leaving Iraq no independent means of processing oil for export.

RELINQUISHMENT

When Qasim and his fellow army officers overthrew the British-backed monarchical government in 1958, they realised that these weaknesses would enable the major oil companies to defeat any attempt to nationalise the industry. Qasim's initial goal was to construct the equipment to overcome this vulnerability. He proposed that the Iraq Petroleum Company (IPC) lay a pipeline from the Mosul oilfields in the north to Basra in the south, and build a refinery there for export. The oil companies refused. They had no wish to give Iraq the ability to process

5 Independent companies had a token share in the Iran consortium, but in Iraq the CFP/Gulbenkian share was a much more significant 27.5 per cent. The operating companies in Kuwait and Saudi Arabia were not, strictly speaking, consortiums, but jointly owned subsidiaries of the parent companies.

6 *Twentieth Century Petroleum Statistics*; John Blair, *The Control of Oil*, New York: Pantheon Books, 1976: 81–5; Gregory Nowell, *Mercantile States and the World Oil Cartel, 1900–1939*, Ithaca: Cornell University Press, 1994: 270–5.

and export its own oil. Unknown to Qasim, moreover, there was already more than enough oil in the south. IPC estimated that the North Rumaila field near Basra might be the largest or second-largest oilfield in the world. In negotiations with the Iraqi government, however, BP kept this secret, noting that it would not be prudent at this stage 'to mention latent possibilities of greater Rumaila development'.[7]

The annual dividend BP paid its shareholders had grown from 16 pence per share in the early 1950s to 43 pence in 1954, or 43 per cent of the original value of each share. Given the postwar economic austerity in Britain and the demand of Iraq and other producer countries for a greater share of the income, the senior minister at the British Treasury had become embarrassed by the level of shareholder profits, and demanded in private that it be reduced. 'It is impossible to go on with these *stooges*', he wrote in an internal memo, threatening to publicly repudiate the directors of 'this unpatriotic organization'. BP refused to bend, pointing to the criterion that mattered most: its rival, Shell, paid higher returns. The 43 per cent return was soon surpassed; BP increased its dividend to 75 pence per share in the late 1950s, and to 117 pence in 1960.[8] Since increased production would lower prices and threaten this extraordinary rate of surplus income, BP was anxious not to see a new field like North Rumaila developed.

Unable to nationalise IPC, Iraq planned to develop a national oil industry alongside it. It proposed that the company relinquish part of the concession area, which covered almost the entire country. Under the original concession agreement of 1925, IPC had been required to relinquish all except about 0.5 per cent of the concession area within thirty-two months of starting exploration, but the consortium had forced the government to remove this provision from the revised agreement of 1931. BP and its partners now agreed to discuss giving up 50 per cent of the area – an offer later increased to 54 per cent – provided the area given up was expressed in square miles rather than as a percentage of the total (to make it more difficult for other countries to demand an equivalent deal).[9] The companies also insisted on deciding which areas to relinquish. Iraq was willing to let IPC keep all currently producing wells and areas with proven reserves, but wanted a say in which remaining areas were given up, so as to have

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7 United Kingdom, Foreign Office, 'Searight's Account of His Interview with the Prime Minister', 9 April 1959, FO 371/141062, and 'IPC Believes Rumaila Oilfield Has Huge Potential', 14 June 1961, FO 371/157725, National Archives of the UK: Public Record Office: Foreign Office: Political Departments: General Correspondence from 1906 to 1966, referred to in subsequent notes as FO 371, followed by the piece number. For a detailed history of the negotiations between IPC and the government of Iraq, see Samir Saul, 'Masterly Inactivity as Brinkmanship: The Iraq Petroleum Company's Route to Nationalization, 1958–1972', *International History Review* 29: 4, 2007: 746–92.

8 James Bamberg, *History of the British Petroleum Company*, vol. 3: *British Petroleum and Global Oil, 1950–1975: The Challenge of Nationalism*, Cambridge, UK: CUP, 2000: 131, 135.

9 'IPC Negotiations with Iraqi Government', 30 July 1959, FO 371/141068.

attractive prospects to offer other companies with which it might work. The Foreign Office in London feared that Iraq might respond by annexing Kuwait, previously a dependency of Basra province. By depriving BP of the Kuwaiti oilfields it had used to replace Iranian supplies when it imposed its embargo on Iran in 1951, Baghdad could make it harder for BP to impose an embargo on Iraq in the event of nationalisation.[10] To the disquiet of officials at the Foreign Office, who found Iraq's proposals on relinquishment 'not in fact unreasonable', the oil companies rejected them.[11]

A PREFERENCE FOR CRISIS

The oil companies preferred to provoke a crisis. As the Foreign Office noted, the IPC owners 'may prefer to have 75 per cent taken away from them than to surrender 54 per cent, in view of implications in other areas'.[12] Forcing Iraq to act unilaterally would give the impression that IPC had no say in the matter, and make it harder for other countries to request similar arrangements. More importantly, it would enable the IPC partners to threaten litigation against any company that agreed to work in the confiscated areas, as BP had done successfully in Iran in 1951. Unable to reach an agreement, in December 1960 Iraq passed Law 80, cancelling the 1931 concession agreement and expropriating 99.5 per cent of the concession area, leaving IPC its producing wells but not the fields it had refused to develop, including North Rumaila. Its remaining 0.5 per cent share corresponded to the area it would have been allowed to retain under the original 1925 concession. The oil companies resolved 'to wait out Qasim', in the words of the authorised history of BP, 'hoping for a change of government'.[13]

The US and Britain, it seems, had already decided to eliminate Qasim. The CIA's attempt to kill him in February 1960 failed, as had an effort to assassinate him the previous year, but he was removed from power and murdered in the military coup of February 1963.[14] The US supplied the new government with the names of more than a hundred leftists for its death squads to hunt down,

10 'Nationalization of IPC', 1 April 1959, FO 371/141061.

11 'IPC: Points Causing Breakdown in IPC Meeting', 2 October 1959, FO 371/141069.

12 'IPC Relinquishment', June 1959, FO 371/141066.

13 Bamberg, *History of British Petroleum*, vol. 3: 167.

14 Penrose and Penrose, *Iraq*: 288; Thomas Powers, 'Inside the Department of Dirty Tricks: Part One, An Isolated Man', *Atlantic Monthly*, August 1979; Roger Morris, 'A Tyrant 40 Years in the Making', *New York Times*, 14 March 2003: A29; Malik Mufti, *Sovereign Creations: Pan-Arabism and Political Order in Syria and Iraq*, Ithaca: Cornell University Press, 1996: 143–4. Brandon Wolfe-Hunnicutt assesses the evidence from these sources and explains the shifting battle in the US government between those open to working with Qasim and those arguing for his elimination: 'The End of the Concessionary Regime: Oil and American Power in Iraq, 1958–1972', PhD thesis, Department of History, Stanford University, 2011: 26–90.

many of them prominent intellectuals, and Britain reported within a week that the 'winkling out' of the Communists was succeeding and 'the army has the situation under control'.[15] Large numbers of the leadership and rank-and-file of the country's popular political movement were killed, and thousands more imprisoned. James Akins, an American diplomat in Kuwait, from where the US was said to have liaised with the coup plotters, returned to Baghdad following the coup. 'We were very happy', he later recalled. 'They got rid of a lot of communists. A lot of them were executed, or shot. This was a great development.'[16] The military government requested that IPC turn over a disused pumping station to house political prisoners, asking the oil company 'to help equip the station and build it up into a concentration camp' capable of holding 1,200 political prisoners. IPC preferred not to become involved in the construction of a concentration camp – the term used by the government – but agreed to supply piped water to the desert prison.[17]

With Qasim out of the way and the left and the labour movement eliminated or 'under control', America and Britain were disappointed to discover that IPC was still uncooperative. The British embassy in Baghdad told London that 'the whole basis of the IPC concession here is out of date' and should be replaced with a partnership with an Iraqi state enterprise.[18] IPC, however, demanded that the new regime rescind the expropriation of its concession area. While continuing to pump the limited supplies of oil it wanted from Iraq, the consortium persuaded the US government to pressure independent oil companies not to take up any oil contracts offered by Iraq as long as the dispute over Law 80 was unresolved, and meanwhile delayed settling the dispute.[19]

The method of provoking a crisis and delaying its resolution was aided by a series of regional crises. In 1966, Syria tried to obtain higher transit fees from IPC for using the pipeline that carried Iraqi oil to the Mediterranean. Rather than pay the higher fees, IPC preferred to halt the pumping of oil through the pipeline. The closure lasted from November 1966 until the following March, and reduced

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15 'Assessment of Iraqi Regime', 14 February 1963, FO 371/170502. On the list of names, see Wolfe-Hunnicutt, 'The End of the Concessionary Regime': 84–6.

16 Frontline, 'The Survival of Saddam', Interviews: James Akins, at www.pbs.org/wgbh/pages/frontline/shows/saddam/interviews/akins.html. See also Douglas Little, 'Mission Impossible: The CIA and the Cult of Covert Action in the Middle East', *Diplomatic History* 28: 5, 2004: 663–701.

17 'IPC Considers Options', 12 September 1963, FO 371/170505.

18 'Assessment of the Iraqi Regime', 14 February 1963, FO 371/170502.

19 'US Government Concerned About the Non-Cooperative Position Seemingly Adopted by IPC', 15 May 1963, FO 371/170504; see also FO 371/175777 and FO 371/17578. After Iraq asked the Italian company ENI for technical support in the event of nationalisation, the British embassy in Rome tried to pressure the Italian government to prevent ENI's collaboration (FO 371/157725). In February 1964, the US and Britain again asked the Italian government to dissuade ENI from taking up any oil contracts in Iraq (FO 371/175777). See also Wolfe-Hunnicutt, 'End of the Concessionary Regime': 144–74.

Iraq's oil income by two-thirds.[20] BP was happy to shut down Iraqi production, as this offered a way to deal with the problem of oversupply, while causing a further crisis with Iraq. In June 1967, Israel launched the Six-Day War against Egypt and Syria, and in protest the Syrian government cut the pipeline again.

The strategy of crisis and delay gained the major oil companies a decade, but came to an end in the aftermath of the 1967 war. In August 1967, Iraq rescinded a proposal to restore the large North Rumaila field to IPC, a plan favoured by the Oil Ministry but blocked by nationalist opposition to the role of the international oil companies. Over the following months the government made agreements for the state-owned Iraq National Oil Company, established in 1964, to develop the country's oil resources with partners not susceptible to pressure from the oil majors or the US government. In December 1967 it agreed a joint venture with a French state-owned oil company, and the following April it invited bids for technical support to develop North Rumaila and build a pipeline to a new refinery at Basra, to be operated not as a partnership but as an enterprise run directly by the Iraq National Oil Company. An offer from the Soviet Union was finalised a year later, after a coup in July 1968 that brought to power right-wing army officers allied with the Ba'th Party. Iraq was now able to build the independent capacity to process and export oil that Qasim had first sought in 1959.[21]

Arab states that had developed oil industries outside the jurisdiction of the world's seven large oil firms had already established national control. Syria nationalised its small petroleum industry in 1964, Algeria took majority ownership of its French-built industry in February 1971, and Libya began to nationalise foreign-owned oil production in December 1971. The following year, Iraq became the first Middle Eastern producer to wrest control of oil from the dominant Anglo-American cartel. When production from the Rumaila field began in April, IPC cut its production in the north by 50 per cent. After preparing austerity measures and taking two leaders of the Communist party into the cabinet to ensure popular support, on 1 June 1972 the Ba'thist government nationalised the Iraq Petroleum Company.[22]

BOXED IN

In the oil-producing states the powers of sabotage over which oil workers and oil firms had struggled were being increasingly taken over by governments – which were equipping themselves with the palace guards and intelligence services that

20 George Ward Stocking, *Middle East Oil: A Study in Political and Economic Controversy*, Nashville: Vanderbilt University Press, 1970: 270–99; Marion Farouk-Sluglett and Peter Sluglett, *Iraq Since 1958: From Revolution to Dictatorship*, 3rd edn, London: I. B. Tauris, 2001: 99–100.

21 On the details of these developments, see Wolfe-Hunnicutt, 'End of the Concessionary Regime': 209–62.

22 Bamberg, *History of British Petroleum*, vol. 3: 171, 469–70.

by the late 1960s made them immune to further foreign- or domestic-organised military coups. In industrialised countries, the 'power of inhibition' underwent a different change.[23] The rise of oil had weakened the old alliance of coal, which brought together miners, railwaymen and dockworkers, allowing them unprecedented power. By 1948, spurred by the role of the Marshall Plan in subsidising the switch from coal to oil, the era of the mass strike was over. In its place emerged a new method of making political claims, based on new ways of interrupting industrial processes.

In 1958 the French sociologist Serge Mallet studied workers at the CalTex oil refinery at Bec d'Ambes on the Gironde Estuary, near Bordeaux. CalTex was a joint venture created by the owners of Aramco to market oil from Saudi Arabia, originally operating in Africa and Asia. In 1947, when construction began on the Tapline to bring Saudi oil to Europe, CalTex took over the former Texaco refinery near Bordeaux, which had been destroyed during the war, and rebuilt it with Marshall Plan funds to handle the new shipments from Saudi Arabia. So the Bec d'Ambes refinery was part of the equipment installed to manufacture a less recalcitrant labour force in Europe.

Ten years later, unaware of this history, Mallet described the formation at Bec d'Ambes of what he called the 'new working class'.[24] The oil refinery exemplified a form of industrial production, dating from the 1930s but spreading rapidly since the 1950s, based on the automated processing and synthesising of materials. Unlike the old assembly-line methods in which workers directly constructed objects, Mallet argued, in a refinery or petrochemical plant workers supervised a flow of substances and managed the automated assembling of complex new materials. In oil refining, synthetic chemicals, electrical energy and telecommunications, workers were now managers, governing automated, computer-controlled processes. The same methods of automated processing were spreading to car manufacturing, railways, steel making, and even coal mining. Work was becoming technicised, eliminating many of the differences between manual labour and lower management: 'Between the operator of a cracking unit who, in a white collar, watches over the continuous flow of oil and the diverse pressures to which it is subjected and the engineer or higher level technician who supervises him, there is no longer a difference in kind, simply a difference of hierarchical situation.'[25]

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23 Thorstein Veblen, 'On the Nature of Capital', *Quarterly Journal of Economics* 23: 1, 1908: 106.

24 Serge Mallet, *The New Working Class*, translation of *La nouvelle classe ouvrière* (1969), transl. Andrée Shepherd and Bob Shepherd, Nottingham: Bertrand Russell Peace Foundation for Spokesman Books, 1975: 85–118.

25 Serge Mallet, *Essays on the New Working Class*, ed. and transl. Dick Howard and Dean Savage, St Louis: Telos Press, 1975: 41.

The rise of forms of labour based on the supervision of continuous, automated processes did not eliminate industrial action. It produced a new form of strike. Rather than attempting to shut down an enterprise indefinitely through a total stoppage of work – an action difficult to sustain given its impact on the income of strikers – workers were now able to use their technical knowledge and critical role in automated processes to bring about 'the systematic disorganization of production' by causing limited work stoppages, 'spread out along the production process at the most sensitive places'. Brief interruptions aimed at vulnerable points or critical moments within an industrial process could paralyse an industry for months, without workers feeling the impact on their household income.[26]

From the 1880s to the 1940s, workers had built the power to sabotage critical processes at the level of national coal-based energy systems. They had used this power to organise mass parties and win radical improvements in their conditions of social vulnerability. By the 1950s and 1960s, the location, scale and duration of effective sabotage had shifted, now focusing on critical points and flows in complex chemical, metallurgical, communication and other processes. Its more localised scale made this power appear less revolutionary. But the strike waves of the later 1960s, Mallet argued – including the great upheavals of 1968, in which his writings became influential – suggested workers could use this power to acquire greater control of production.

By the late 1960s, as a struggle over the control of energy supplies unfolded in the Middle East, in the industrialised world the efforts among the forces of labour to protect or improve levels of income and conditions of work had intensified. The conflicts were found in the new manufacturing processes, but also in an older industry where the coordinated flow of materials could still be successfully interrupted: transportation. Disruptions to railways, shipping and docking, and increasingly aviation, accounted for 35 to 40 per cent of world labour unrest in the 1950s and 1960s. Shipping and docking, where stoppages had the most power to affect multiple upstream and downstream processes, accounted for more than half this unrest.[27]

The most effective challenge to these struggles once again made use of oil. A generation earlier, the switch to oil as a source of fuel for motive power was decisive in the defeat of the coal miners. The vulnerability of rigid regional energy networks carrying coal had been overcome with flexible, transoceanic energy grids, which isolated the producers of primary energy from those who put it to work in the main industrial regions. Once again, the fix that petroleum offered

26 Ibid., 43.

27 Beverly Silver, *Forces of Labor: Workers' Movements and Globalization Since 1870*, Cambridge, UK: CUP, 2003: 98–100.

was partly spatial, and was based on the introduction of more fluid processes.[28] This time, the transoceanic separation rested on the use of cheap oil to transport a standardised metal box.

This second change was made possible by containerisation. The introduction of metal shipping containers of standard dimensions that could be carried by road, rail and sea allowed goods to be moved in bulk without using labour to unload, stack and reload the individual merchandise as it switched from one mode of transport to another. Much as the fluidity of oil allowed energy to move easily over great distances because it could be pumped onto tankers, eliminating coal heavers and engine stokers, the shipping container made the movement of solid, manufactured goods into a fluid, uninterrupted process. Earlier attempts to introduce the use of containers had failed because different shippers preferred different sizes, making it difficult to stack the containers or build trucks, trains and ships to an optimum size. The escalation of the American war against the Vietnamese people in 1965 produced a logistics crisis as the supply of military goods overwhelmed Saigon's port facilities, leading the US military to introduce containerisation and speed the adoption of standard container dimensions. In 1969, shipping companies introduced huge new custom-built ships that could carry more than 1,000 containers in their holds and on deck. Containers eliminated most of the skilled labour and unionised power of dockworkers, and helped bring a halt to the 'unprecedented advance' in the conditions of labour in industrialised countries in the two decades after 1945.[29]

The container did more than reorganise relations of control at the narrow point where dockworkers could exercise power. Combined with the cheap oil of the 1960s, it made possible the moving of manufacturing overseas, just as the supply of energy used in industrialised countries had earlier been outsourced. After delivering military supplies from the US to Vietnam, the container ships returned empty. Looking for ways to earn additional income, the shippers began to stop in Japan and pick up manufactured goods to carry back to the US, cutting dramatically the cost of shipment and creating the boom in Japanese exports to the US.

Industrial labour could now be threatened with lower costs and unemployment, caused by outsourcing production to Japan and other countries with less unionised, lower-paid workforces. In the decade after 1966, the volume of international trade in manufactured goods increased at double the rate of the volume of global manufacturing.[30] The expansion of global shipping increased the demand for oil, helping create conditions that contributed

28 On the 'spatial fix', see David Harvey, *Spaces of Capital: Towards a Critical Geography*, Edinburgh: Edinburgh University Press, 2001.

29 Marc Levinson, *The Box: How the Shipping Container Made the World Smaller and the World Economy Bigger*, Princeton: Princeton University Press, 2006: 4.

30 Levinson, *The Box*: 11, 184–8.

to an increase in oil prices. The jump in oil prices in 1973–74 interrupted the development of outsourcing, as savings from containerisation were suddenly offset by much higher fuel costs for transoceanic shipping. In 1976, however, stable energy prices and the introduction of a new generation of even larger container ships allowed the growth of outsourcing to resume. At the same time, as we will see, the oil crisis and its market laws provided the 'shock' to explain the ending of improvements in conditions of labour, and a gradual reappropriation of the political powers and more egalitarian forms of life won over preceding decades.

INSTITUTIONALISED USELESSNESS

In 1964, the British government had tried to encourage the new military government in Baghdad to settle the dispute with the foreign owners of the Iraq Petroleum Company by offering it something in exchange: weapons. At a meeting with the Iraqi prime minister to discuss the oil law passed by the Qasim government before its overthrow the previous year, the British ambassador 'took the opportunity of making a reference to our supplying Iraq with arms and equipment'. Reporting that he 'merely juxtaposed the two things', he told London that its plan to use the sale of military equipment to gain concessions in the oil dispute was unlikely to succeed, since 'they are really doing us a favour in buying arms from us'. The Iraqis were supporting Britain's weakening trade balance by 'paying large sums in sterling', he explained, and at the same time were 'well aware of our desire that they should not seek alternative sources of supply'. A month later the Foreign Office noted in the same file that Iraq was now purchasing arms from the Soviet Union, and that 'partly as a result of poor after-contract performance by major British firms', Britain would 'have to fight hard to persuade the Iraqis to continue to buy British'.[31]

Although the ambassador pretended that oil and weapons were merely juxtaposed, in fact the two fit together in a particular way: one was enormously useful, the other importantly useless. As the producer states gradually forced the major oil companies to share with them more of the profits from oil, increasing quantities of sterling and dollars flowed to the Middle East. To maintain the balance of payments and the viability of the international financial system, Britain and the United States needed a mechanism for these currency flows to be returned. This was especially a problem for the US, since the value of the dollar was fixed in relation to gold, and provided the basis for the Bretton Woods financial system. Arms were particularly suited to this task of financial recycling, for their acquisition was not limited by their usefulness. The

31 'Roger Allen, Ambassador in Baghdad, to Foreign Office', 8 February 1964, FO 371/175780; cover note added 12 March 1964.

dovetailing of the production of petroleum and the manufacture of arms made oil and militarism increasingly interdependent.[32]

The conventional explanation for the rapid increase in arms sales to the Middle East, beginning in the mid-1960s, relies on the arguments offered by the arms salesmen, and by the governments that supported their business. Since the arms trade encouraged the militarisation of Middle Eastern states, its growth shaped the development of carbon democracy. To understand this dimension of the relationship between oil and democracy, we need to unpack the justifications used for selling weapons and provide an alternative account.

The purchase of most goods, whether consumable materials like food and clothing or more durable items such as cars or industrial machinery, sooner or later reaches a limit where, in practical terms, no more of the commodity can be used and further acquisition is impossible to justify. Given the enormous size of oil revenues, and the relatively small populations and widespread poverty of many of the countries beginning to accumulate them, ordinary goods could not be purchased at a rate that would go far to balance the flow of dollars (and many could be bought from third countries, like Germany and Japan – purchases that would not improve the dollar problem). Weapons, on the other hand, could be purchased to be stored up rather than used, and came with their own forms of justification. Under the appropriate doctrines of security, ever-larger acquisitions could be rationalised on the grounds that they would make the need to use them less likely. Certain weapons, such as US fighter aircraft, were becoming so technically complex by the 1960s that a single item might cost over $10 million, offering a particularly compact vehicle for recycling dollars. Arms, therefore, could be purchased in quantities unlimited by any practical need or capacity to consume. As petrodollars flowed increasingly to the Middle East, the sale of expensive weaponry provided a unique apparatus for recycling those dollars – one that could expand without any normal commercial constraint.

Since 1945, the United States had relied upon the 'institutionalised waste' of peacetime domestic military spending to soak up surplus capital and maintain the profitability of several of its largest manufacturing corporations.[33] It

32 Nitzan and Bichler offer an important study of this relationship. They locate its dynamic in the dominant place of arms manufacturing among leading US corporations and the superior profitability of arms exports over supplying domestic government demand. However, they downplay the role of dollar recycling and the deliberate wastefulness of military sales, especially in the case of oil states for which alternative spending options were limited. Jonathan Nitzan and Shimshon Bichler, 'The Weapondollar-Petrodollar Coalition', in *The Global Political Economy of Israel*, London: Pluto Press, 2002: 198–273.

33 Thorstein Veblen noted the role of 'conspicuous waste' in *The Theory of the Leisure Class: An Economic Study of Institutions*, New York: Macmillan, 1899: 36–42, but did not connect it with military spending, even in his subsequent discussion in *Imperial Germany and the Industrial Revolution*, New York: Macmillan, 1915.

enhanced this mechanism of waste with spending on the Korean and Vietnam wars. When projections for expenditure on Asian warfare began to drop in the later 1960s, America's two dozen giant military contractors were in urgent need of new outlets for their hardware. No longer able to rely on increased purchases by the US government, they sought to transform the transfer of weapons to foreign governments, previously a relatively small trade financed mostly through US overseas development aid, into a commercial export business.[34] The financiers concerned with dollar recycling now had a powerful ally.

Meanwhile, for the autocrats and military regimes of the Middle East, arms purchases provided a relatively effortless way to assert the technological prowess of the state. More importantly, once the West turned the supply of arms from a form of government-to-government aid into a commercial business, a space opened for middlemen to operate as brokers between the local state and the foreign firms. Members of ruling families, their in-laws and their political allies were well placed to fill this role, allowing a part of the revenues from oil, recycled as arms purchases, an easy diversion into prodigious levels of private accumulation.

After 1967, Iraq turned to France and the Soviet Union for arms, rewarding the countries that were helping it develop a national oil industry. For Britain and the US, the main recycling point was Iran, which imported almost three times as much weaponry as Iraq in the decade after 1967.[35] In 1966, the shah of Iran agreed to a large purchase from General Dynamics of its new F-111 fighter-bomber, an aircraft that was over budget, failing to meet performance targets, and frequently crashing in test flights.[36] He then persuaded the Western oil consortium to increase production by 12 per cent a year to finance this and future military spending. The following year the companies were able to increase production by double that amount, thanks to the Arab oil embargo during the June 1967 Arab-Israeli war, but in 1968 and 1969 Iran demanded even larger increases in revenue. As the supply of weapons and equipment accelerated, increasing numbers of arms contractors, bankers, construction companies, consultants, public relations firms and military officers began to profit from the flow of finance, building themselves into the capillaries and arteries through which it flowed. US banks and arms manufacturers, aided by their British,

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34 See Nitzan and Bichler, 'Weapondollar-Petrodollar Coalition': 206–10, where the core arms firms are identified. In the 1950s about 95 per cent of US arms exports were financed by government aid; by the 1990s the figure was about 30 per cent. Ibid.: 216.

35 Arms Transfers Database, Stockholm International Peace Research Institute, at www.sipri.org/databases/armstransfers.

36 The smaller naval variant of the aircraft, the F-111B, had so many faults it was cancelled soon after going into production and replaced with the Grumman F-14, the plane eventually delivered to Iran in a deal that saved Grumman from bankruptcy. Marcelle Size Knaack, *Encyclopedia of US Air Force Aircraft and Missile Systems*, vol. 1, Washington, DC: Office of Air Force History, 1978: 222–63; Anthony Sampson, *The Arms Bazaar*, London: Hodder & Stoughton, 1977: 249–56.

French and Italian counterparts, transformed the export of weapons into one of the West's most profitable export industries.[37]

THE GUAM DOCTRINE

Since arms sales were useful for their uselessness, and there was no precedent for the volume of weapons sold, they needed a special apparatus of justification. The work of transforming the superfluous consumption of weaponry on a gargantuan scale into necessity was performed by a new rhetoric of insecurity, and by a series of US actions to produce or sustain the required experience of instability and uncertainty.

The old rhetoric of the postwar period about a communist threat to American interests in the Middle East was proving hard to keep alive. Having finally found a foothold in the oilfields of the Gulf, the Soviet Union had failed to threaten supplies of oil to the West, despite the warnings of Cold War experts. Soviet aid in exploiting the vast reserves of North Rumaila, offered in 1968, would allow Iraq to produce oil from a field whose development Western companies had spent four decades trying to delay (or seven decades, if one counts back to the days of the Baghdad Railway). Instead of threatening the security of the West's oil supplies, the Soviet Union was threatening to increase them.

The Arab defeat in the June 1967 war weakened Arab nationalists and strengthened the conservative, Western-backed regimes in the Gulf. The defeat also hastened a financial crisis in Britain. The brief Arab oil embargo and the closing of the Suez Canal interrupted the supply of Britain's sterling oil from the Gulf, creating a balance of payments crisis that forced the Labour government to devalue the pound and abandon its postwar effort to maintain sterling as an international trading and reserve currency. To address the financial crisis, Britain announced in January 1968 that it would end its role as an imperial power in the Middle East, withdrawing all military forces from the sheikhdoms of the Gulf within four years.[38]

Militarists at right-wing think tanks in Washington, in particular the new Center for International and Strategic Studies, began to warn that the British withdrawal would create a 'power vacuum' in the region. In reality it was thanks to the creation of a vacuum, or at least a 'deflation' in local power, that Britain could justify ending its military presence in the Gulf. Since the 'revolutionary Arabs' had been 'completely deflated' by the 1967 defeat, the Foreign Office noted, the sheikhdoms of the Gulf could survive without a

37 Nitzan and Bichler, 'Weapondollar-Petrodollar Coalition': 198–273; James A. Bill, *The Eagle and the Lion: The Tragedy of American-Iranian Relations*, New Haven: Yale University Press, 1988.

38 Steven G. Galpern, *Money Oil and Empire in the Middle East: Sterling and Postwar Imperialism, 1944–1971*, Cambridge, UK: CUP, 2009: 268–82.

British military presence.[39] The State Department official responsible for the Arabian peninsula agreed, arguing that the claim of the US ambassador in Tehran that hostile forces were ready to fill 'a vacuum' in the Gulf caused by the British departure was 'overdrawn if not inaccurate'. He pointed out that the major Arab powers, Egypt, Syria and Iraq, 'are pinned down elsewhere by the Israelis and Kurds' (whose rebellion in northern Iraq was funded by Israel), while the conservative Arab states saw an armed Iran 'more as a threat than a reassurance'.[40]

The shah of Iran seized the opportunity of Britain's departure to portray the large Iranian military purchases already underway as a scheme to turn Iran into the region's policeman. The only significant threat the shah faced was the growing number of domestic political opponents his government hunted down and imprisoned, a form of police work that had no need for most of the weapons he wished to purchase. He nevertheless demanded to buy ever more sophisticated and expensive arms, and to be given the increased oil revenue and large US government loans to pay for them. The US ambassador relayed to Washington the arguments the shah picked up from the American arms manufacturers, reporting his view that increased arms sales 'would benefit US industry (he mentioned DOD [was] obliged to bail out Lockheed), substantially help difficult US balance of payments situation, and serve our own vital strategic interests in Gulf and Middle East'.[41]

The arms manufacturers helped promote the doctrines of regional insecurity and national military prowess, instructing their agents to discuss arms sales not as commercial arrangements but in terms of strategic objectives. In September 1968, Tom Jones, the chief executive of Northrop Corporation, wrote to Kim Roosevelt (the former CIA agent who had engineered the overthrow of Mossadegh in 1953, and whose consulting firm now facilitated arms sales to the shah) about trying to sell Iran Northrop's P530 lightweight fighter, for which it had been unable to find buyers: 'In any discussions with the Shah', Jones explained, 'it is important that they be kept on the basis of

39 Foreign Office Minute, May 1971, FCO 8/1311, cited in William Roger Louis, 'The Withdrawal from the Gulf', in *Ends of British Imperialism: The Scramble for Empire, Suez and Decolonization: Collected Essays*, London: I. B. Tauris, 2006: 877–903, at 888. For a similar US assessment, see Central Intelligence Agency, 'National Intelligence Estimate 34-69-IRAN', 10 January 1969, in US Department of State, *Papers Relating to the Foreign Relations of the United States, 1969–76*, vol. E-4: *Documents on Iran and Iraq, 1969–1972*, ed. Monica Belmonte and Edward C. Keefer, Washington DC: US Government Printing Office, Document 1, available at history.state.gov, referred to in subsequent notes as FRUS.

40 William D. Brewer, 'Memorandum from the Country Director for Saudi Arabia, Kuwait, Yemen and Aden to the Country Director for Iran', 27 February 1970, FRUS, Document 51; Douglas Little, 'The United States and the Kurds: A Cold War Story', *Journal of Cold War Studies* 12: 4, 2010: 71.

41 DOD refers to the Department of Defense. Douglas MacArthur, 'Embassy in Iran to the Department of State', 19 March 1970, FRUS, Document 55.

fundamental national objectives, rather than allow it to take the appearance of a sales plan.'[42]

In 1969 the newly elected administration of Richard Nixon inadvertently offered the arms manufacturers and their clients a new term for these 'fundamental national objectives' – the so-called Nixon Doctrine. On a trip to south-east Asia in July, the president made some off-the-record remarks to the press at a stopover in Guam, intended to reassure the American-backed military dictatorships of the region that his promise to begin withdrawing forces from Vietnam did not imply any overall change in US policy, which would continue to rest on arming and assisting its client states to fight the threat of popular and democratic movements – or what Washington called 'subversion' – with the US intervening overtly only when local counterinsurgency programmes failed. The remarks about the limited role of direct intervention also provided cover for the action on which the Nixon government was secretly embarking, behind its public promise – a large escalation of the war against Vietnam and its extension into Cambodia and Laos. Since the reassurance about continuing to arm client states was off the record and could not be quoted directly, the US press started referring to it in shorthand as the Guam Doctrine, and then simply as the Nixon Doctrine, a term later adopted by Nixon's foreign policy team. This continuation of longstanding American military relations with client states was heralded in the American media as marking a new direction in American policy, a claim subsequently echoed in almost all academic scholarship on US foreign policy and the Middle East.[43]

The advantage of turning existing US counterinsurgency policy into a 'doctrine' was that rulers like the shah, and his allies in American arms firms and think tanks, could now appeal to it and demand to be given the same role as the south-east Asian dictatorships. Insisting that Washington either subsidise his weapons purchases with Congressional loans or pressure the American oil companies to pump more Iranian oil to pay the arms bills, the shah told the US ambassador 'he could not understand why we did not want to help him implement [the] Nixon doctrine in [the] Gulf area where our and our allies' interests were also threatened'.[44]

Deploying the Nixon doctrine enabled the shah and his supporters to overcome opposition in the State Department and other parts of the US government. By 1972 the American ambassador to Tehran was writing to Henry Kissinger, the national security advisor, criticising those in Washington who argued that

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42 Cited in Sampson, *Arms Bazaar*: 248.

43 Jeffrey Kimball, 'The Nixon Doctrine: A Saga of Misunderstanding', *Presidential Studies Quarterly* 36: 1, 2006: 59–74. Mahmood Mamdani, *Good Muslim, Bad Muslim: America, the Cold War, and the Roots of Terror*, New York: Pantheon, 2004: 63–118, traces the continuity in US counterinsurgency strategy.

44 MacArthur, 'Telegram 1019'.

the US should do what was possible 'to prevent Iran, in our studied wisdom, from overbuying'. Using a back-channel communication to bypass the State Department, he warned that Britain, France and Italy were competing for arms contracts, and insisted 'there is no reason for us to lose the market, particularly when viewed over the red ink on our balance of payments ledger'. In the margin of the message Kissinger added a handwritten note: 'In short, it is not repeat not our policy to discourage Iranian arms purchases.'[45]

Facing a collapse in the value of the dollar, and increased lobbying from the arms firms, the Nixon administration decided to sell the shah all the weapons that he and his American lobbyists were demanding, allowing the sales to circumvent the normal governmental reviews and creating what a Senate report called 'a bonanza for US weapons manufacturers, the procurement branches of three US services, and the Defense Security Assistance Agency'.[46] Since Congress was unwilling to finance additional military sales credits, and the large New York banks were beginning to voice concerns about the shah's ability to maintain payments on the money they were lending him to buy weapons, the US government also began to push for an increased price of oil to pay for them.[47] The decision to weaponise the oil trade with Iran, and later other oil states, was announced as an extension of the 'Nixon Doctrine' to the Gulf, supplying the extraordinary levels of arms transfers with the equipment needed to explain them. Subsequent histories of these events faithfully reproduce this apparatus of justification.

As we will see in the following chapters, the Nixon administration also blocked the efforts of the UN and the Arab states, and at times even its own State Department, to settle the Palestine question, helping to maintain the forms of instability and conflict on which American 'security' policy would now increasingly depend. In Kurdistan, the other conflict keeping Arab states 'pinned down', Washington was unable to prevent Iraq from reaching a settlement with the Kurds in 1970, but responded to this threat of stability in the Gulf two years later by agreeing with Israel and Iran to reopen the conflict with renewed military support to one of the Kurdish factions. The aim was not to enable the Kurds to win political rights, according to a later Congressional investigation, but simply to 'continue a level of hostilities sufficient to sap the resources of our ally's neighboring country [Iraq]'.[48]

The arms sales to Iran and their supporting doctrine played no important role in protecting the Gulf or defending American control of the region's oil. In fact the major US oil companies lobbied against the increased supply of weapons

45 Harold Saunders, 'Memorandum for Dr Kissinger', 14 July 1972, FRUS, Document 212; see also Wolfe-Hunnicutt, 'End of the Concessionary Regime': 273.

46 Bill, *The Eagle and the Lion*: 200.

47 On the New York banks, see MacArthur, 'Telegram 1019'.

48 Bill, *The Eagle and the Lion*: 205; Little, 'The United States and the Kurds': 74–85.

to Iran and the doctrine used to justify them. They argued that political stability in the Gulf could be better secured by America ending its support for Israel's occupation of Arab territories and allowing a settlement of the Palestine question. The Nixon administration had also initiated a large increase in the sale of arms to Israel, although weapons sent to Israel were paid for not with local oil revenues but by US taxpayers. Arming Iran, an ally of Israel, the companies argued, only worsened the one-sidedness of America's Middle East policy. The oil companies also objected to the extraordinary level of weapons sales to Iran because the increased oil revenues Tehran required to pay for the weapons would force them to switch more production away from the Arab states, weakening the companies' relations with those states and benefiting the European oil firms and independent US firms that shared production in Iran. It might also lead Iran to demand an even higher share of profits.[49]

The absurdity of the scale of arms sales to the oil states later became apparent, when the hyper-armed Iranian state was brought down by street protests and a general strike led by oil workers in the 1979 revolution, and when the tens of billions of dollars Saudi Arabia spent on weapons left it helpless in 1990 against Iraq's occupation of Kuwait. Whatever the excess, however, the arms sales also militarised the oil states, with continuing consequences for local populations. The Kurds of Iraq had already discovered this in the 1960s, when the government used its British-supplied weapons against them, and would discover it again when Iran and the US abruptly cut off support for the Kurdish insurgency in 1975. Protesters in Iran felt the consequences when the government deployed American-supplied helicopters to fire on political demonstrations in 1978–79, and in countless other episodes. The militarisation also lined up numerous interests in the US that preferred to see regional crises unresolved and wars in the Middle East prolonged.[50]

REORGANISING THE POWER OF SABOTAGE

Iraq had assembled the political power to take control of its oil by developing an oilfield, a pipeline and a refinery. Taking full control of oil required more: not just the ability to produce oil independently of the major American and British oil companies, but the coordinated ability to cut back production as a means of putting pressure on the companies. Up to this point, producer states had been individually demanding an increased volume and share of production. They now sought to construct the collective capacity to limit production. Libya was the first producing country to achieve this, but the ability to cut back was assembled out of wider acts of sabotage.

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49 Wolfe-Hunnicutt, 'End of the Concessionary Regime': 242–3.
50 Nitzan and Bichler, 'Weapondollar-Petrodollar Coalition'.

To reach refineries and markets in Europe, where most of it was consumed, oil from the Middle East was carried in pipelines running from Iraq and the Gulf to the Mediterranean, and in oil tankers along another narrow conduit, the Suez Canal. These conduits and the points where they branched, narrowed or terminated were among the most significant parts of the energy system. Their control was a leading concern of the handful of transnational oil companies that, until the 1970s, still dominated the production of oil in the Middle East. This control was not simply a question of keeping the conduits open. The oil majors also wanted the power to limit the flow of oil, in order to deal with the persistent threat of oversupply, and thus declining prices and lower profits. They tried to limit the development of independent conduits outside their control that would undermine their agreements on production quotas and price-fixing. And they needed to maintain a grid of alternative supply routes and sources. These would function like an electrical grid, so that particular production sites or transmission routes could be shut down or bypassed if they were disrupted or subject to disputes.

Until the late 1960s, this management of oil flows remained largely intact, surviving a series of crises in the 1950s and early 1960s. It even survived the Soviet threat. This was not the imaginary threat discussed in public, ever since the Soviet attempt to keep American oil companies out of northern Iran had been used in the manufacturing of the Cold War in 1946 – namely that the Soviet Union might try to seize the oilfields of the Middle East, imagined as a continuation of the 'Great Game' of Russian expansion to the south, whose invention we encountered in Chapter 2. The more serious concern was that the USSR might find a way to connect its Caspian oilfields and the extensive new fields of the Volga region and western Siberia to customers in western Europe, thereby subjecting the multinational oil companies to the threat of price competition. In the 1950s, after recovering from the wartime destruction of the Caspian fields, the Soviet Union began trying to export oil to Europe. The multinationals blocked these sales, relying on their control of distribution channels and on the US government, which pressured NATO members on 'security' grounds not to allow Soviet oil into Western Europe.[51] With the containment of the Soviet threat, the main challenge to the oil majors in the 1960s had been the rise of smaller, independent producers, refiners and distributors. These had begun to build a small share of the oil trade by undercutting the prices fixed by the cartel of major companies, forcing the majors to discount downstream

51 Sweden provided the main exception to this embargo. It was not a member of NATO, and its coal, iron and steel, and petroleum refining conglomerate, A. Johnson and Co., was powerful enough to act independently of the oil multinationals and trade with the Russians. Hans de Geer, 'Trading Companies in Twentieth-Century Sweden', in Geoffrey Jones, ed., *The Multinational Traders*, New York: Routledge, 1998: 141–4; and Peter R. Odell, *Oil and World Power*, Harmondsworth: Penguin, 1979: 48–71.

prices (in refining and distribution) and rely increasingly on their enormous profit margins from production in the Middle East.[52]

From the late 1960s the situation began to change. In the June 1967 Arab-Israeli war, the Iraq–Syria pipeline was cut again, the Suez Canal was blocked to shipping, oil workers in Bahrain shut down two refineries, and a general strike by oil workers in Libya stopped exports from Tripoli. The Arab states imposed an embargo on oil supplies to the US and other states that supported Israel's attack, including Britain and West Germany. Iraq proposed that the embargo be extended for three months from 1 September, on the grounds that only by restricting supplies during winter would the embargo have an effect. Iraq also called for the nationalisation of local oil-production companies. But Saudi Arabia succeeded in getting the embargo lifted, while the Libyan government ended the oil strike and imprisoned its leaders.[53]

In May 1969, a Palestinian resistance group blew a hole in the Tapline, the pipeline that carried oil from Saudi Arabia to the Mediterranean, where it passed through a part of Syria now occupied by Israel. Although such acts of sabotage were normally repaired within a few hours, Israel refused to allow Aramco to repair the pipe unless it agreed to pay Israel a fee for protecting it. The dispute kept the pipeline closed for four months.[54] Israel was simultaneously maintaining the closure of the other major conduit for carrying oil to Europe, the Suez Canal. Its invasion of Egypt in 1967 blocked the Canal, and its rejection of UN and American proposals for a peace settlement based on a return to the pre-1967 borders kept the waterway closed.

Although the story is little known, the blocking of the Canal enabled Israel itself to become an oil conduit. The Israeli government collaborated with Iran to build a pipeline from Eilat to Ashkelon, financed in secret by West Germany. The pipeline carried Iranian oil from the Red Sea to the Mediterranean, bypassing the Suez Canal, allowing Iran to loosen the control of the major oil companies over its oil industry. It also enabled Israel to export oil it took from an Egyptian oilfield in Sinai, which its forces had seized in the war.[55] To evade the

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52 Stocking, *Middle East Oil*, 416–33.

53 John Wright, *Libya: A Modern History*, Baltimore: Johns Hopkins University Press, 1982: 105; M. S. Daoudi and M. S. Dajani, 'The 1967 Oil Embargo Revisited', *Journal of Palestine Studies* 13: 2, 1984: 71–2, 80. The Saudis had already allowed Aramco – the US company that controlled the Trans-Arabian Pipeline, or Tapline, which carried oil from the Saudi fields to the Mediterranean – to resume pumping oil, even though a few miles of its route cut across the north-east corner of the Golan Heights, the part of southern Syria now under Israeli occupation.

54 The Tapline Company agreed to pay for the repair and cleanup and to cover the cost of protecting the pipeline. James Feron, 'Israel in Accord with Aramco on Repair of Damaged Tapline', *New York Times*, 11 July 1969: 7; 'Israeli Jets Strike Military Targets in Egypt and Jordan', *Washington Post*, 17 September 1969: A26.

55 Uri Bialer, 'Fuel Bridge across the Middle East: Israel, Iran, and the Eilat-Ashkelon Oil Pipeline', *Israel Studies* 12: 3, 2007: 29–67. The pipeline replaced a smaller one, built using 200 kilometres of pipes, together with pumps and other equipment stolen from Egypt during Israel's 1956

oil majors' control of marketing, Iran and Israel sold the oil through a Swiss-registered joint venture, Trans-Asiatic Oil Ltd, shipping most of it via Romania to Spain, where the fascist government under Franco had successfully excluded the international oil companies from operating.[56] Meanwhile, Egypt tried to build a pipeline to bypass the Suez Canal on the other side, connecting the Gulf of Suez to the Mediterranean, but its efforts to open a conduit outside the control of the oil majors were blocked by the British government.[57]

The closing of the Suez Canal also hastened another weakening of the oil majors' control over supply routes. Western Europe began to obtain significant supplies of oil from the Soviet Union, evading the embargo the transnational companies had tried to enforce since the Second World War. Following the first closing of the Suez Canal in 1956, the Italian state oil company, ENI, led by Enrico Mattei, had begun to obtain oil from the Russians. In 1968 the Soviet Union completed a pipeline to the Baltic Sea, terminating at Ventspils on the Latvian coast. Soviet oil could now be shipped cheaply to northern Europe.[58]

These disruptions and alterations to the flow of Middle Eastern oil had further effects. Since the grant of the first oil concession in southern Iran in 1901 – which was partly motivated, as we saw in Chapter 2, by an earlier effort to block the export of Russian oil – Western oil companies had controlled the flow of oil from the Middle East, using this control to manage its price around the world. Seven decades later, within three years of the upheavals of the 1967 war, that ability had been destroyed.

On 1 September 1969, a group of army officers seized control in Libya and removed the monarchy from power. They released from prison the thirty-six-year-old leader of the 1967 oil strike, Mahmud Sulaiman al-Maghribi, and appointed him initially as prime minister and the following April, after Captain Muammar Qaddafi emerged as leader of the coup and took al-Maghribi's place as prime minister, as head of a team to renegotiate the terms of the country's

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invasion of Sinai, and used to bring smaller quantities of Iranian oil to the refinery at Haifa. The post-1967 pipeline secured supplies to Israel, but was also intended to reduce Europe's dependence on Arab oil.

56 In the 1970s, the trader who handled the Israeli pipeline oil, Marc Rich, used it to break the contract system for oil sales and create the spot market in oil, which would end the method of pricing oil through agreements within and among the large oil companies and allow the development of speculative markets in oil futures. Previously part of the Bretton Woods mechanism for limiting the global threat of financial speculators, oil would itself become a medium of financial speculation. Daniel Amman, *The King of Oil: The Secret Lives of Marc Rich*, New York: St Martin's Press, 2009: 64–86.

57 Elie Podeh, 'Making a Short Story Long: The Construction of the Suez-Mediterranean Oil Pipeline in Egypt, 1967–77', *Business History Review* 78: 1, 2004, 61–88.

58 Marshall I. Goldman, 'The Soviet Union', in Raymond Vernon, ed., *The Oil Crisis*, New York: Norton, 1976: 130. Enrico Mattei also maintained contacts with the FLN in its independence struggle against the French in hydrocarbon-rich Algeria (P. H. Frankel, Mattei: *Oil and Power Politics*, London: Faber & Faber, 1966: 120).

contracts with foreign oil companies.[59] Talks with Exxon and Occidental made no headway, until Libya's position was reinforced by a Syrian bulldozer. On 3 May 1970, a mechanical excavator laying telephone cable in southern Syria near the Jordanian border cut the Tapline. The Saudis called the incident 'planned sabotage'.[60] Using the interruption in supplies to negotiate higher transit fees, Damascus refused to allow repairs and kept the line closed for nine months.[61] Two weeks after the pipeline was ruptured, the Syrian oil minister met with his Libyan and Algerian counterparts (Algeria was demanding a revision of its oil agreement with France), and agreed to 'set a limit to the lengthy and fruitless negotiations' with the oil companies, implement their demands for a higher share of the oil income by unilateral action if necessary, and set up a fund for mutual support in any confrontation with the oil companies.[62] With 500,000 barrels a day of Saudi supplies to Europe cut off, Libya was able to pressure Occidental Petroleum, a relatively small California-based company with no alternative sources of oil, to agree to a new tax rate, breaking the united front among oil companies. Libya became the first producer country to use an embargo on supplies to win an increase in the level of taxation of oil production.

POSTED NOTES

Reinforced by the interruptions in supply from the Gulf, the Libyan embargo had broken the ability of the oil companies to dictate to the countries with large oil reserves the tax they would pay on their profits from the production of oil.

Since the 1930s, world oil prices had been governed by the international oil companies, which attempted to limit the supply of oil from the Middle East, in collaboration with a system of government production quotas and import controls in the United States. Overseas, the cartel agreement made between the seven major international oil corporations in 1928, in response to the large discoveries in Iraq and to the 'oil offensive' from the Soviet Union, established exclusive territories for each company and set quotas intended to maintain world prices at the level of US prices.[63] From 1932 the Texas Railroad Commission set

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59 Joe Stork, *Middle East Oil and the Energy Crisis*, New York: Monthly Review Press, 1975: 153–7.

60 Francisco Parra, *Oil Politics: A Modern History of Petroleum*, London: I. B. Tauris, 2004: 122.

61 'Hopes Rise for Tapline Repair', *Washington Post*, 6 December 1970: 25; 'Pipeline in Syria is Reopened After Nine Months', *New York Times*, 30 January 1971: 3; Paul Stevens, 'Pipelines or Pipe Dreams? Lessons From the History of Arab Transit Pipelines', *Middle East Journal* 54: 2, 2000: 224–41.

62 'Chronology: May 16, 1970–August 15, 1970', *Middle East Journal* 24: 4, 1970: 500.

63 Alzada Comstock, 'Russia's Oil Offensive', *Barron's*, 30 January 1928: 17. See also Chapter 4.

quotas to regulate domestic US production.[64] As production in the Middle East began to increase after the Second World War, threatening to lower the price of oil, Congress pressured the major oil companies to protect US oil prices by limiting imports from the Middle East. In 1954 the Oil Policy Committee, an industry-government body, established regular US import quotas, formalised by a proclamation by President Eisenhower in 1959, limiting imports to 9 per cent of domestic demand.[65] The blocking of imports allowed domestic US production to continue expanding despite the availability of oil at much lower costs of production in the Middle East. As a result, American oil reserves were exhausted more quickly than those of other regions. By 1971, US production had started to decline, as the volume of reserves in the lower forty-eight states passed their peak. Declining production, coupled with continually rising demand, meant that the US no longer had the surplus capacity required to regulate prices.

In 1960, in response to the drop in demand for non-US oil caused by Eisenhower's import quotas, Venezuela and Saudi Arabia – together with the other three large Gulf producers, Iraq, Kuwait, and Iran – set up the Organization of Petroleum Exporting Countries (OPEC). For Venezuela, where a revolution had overthrown the military government and brought an elected government to power, the aim was to imitate the collective arrangement among US states for restricting production, in order to negotiate an increased share of oil revenues and conserve supplies, and thus to allow an orderly process of economic growth and avoid a premature depletion of reserves. Initially the Middle East producers were trying to maintain their tax revenues from oil by increasing the volume of production. Only a decade later were they in a position to increase revenues by adopting the US method of limiting the volume of production.[66]

Part of the difficulty facing the producer states in negotiating the tax revenues to be paid by the production companies was that, before the mid-1960s, there was no 'market' price for crude oil. US prices were established by government production and import quotas, while elsewhere most crude was transferred by the large firms to their own refining affiliates, or traded from one major to another at low prices under long-term contracts. The level of tax paid to the

64 The Texas quota system was reinforced by the federal Connally Act, known as the 'Hot Oil' Act, of 1935. Harold F. Williamson, *The American Petroleum Industry*, 2 vols, Evanston: Northwestern University Press, 1959–63, vol 2: 543–4. Thirty years later, OPEC took the Texas system as a model for its system of international quotas. Anthony Sampson, *The Seven Sisters: The Great Oil Companies and the World They Made*, London: Hodder & Stoughton, 1975: 92.

65 Williamson, *American Petroleum Industry*: 543–4. 'Overland' imports were exempt from the import quota, to protect Canadian suppliers whose pipelines gave them no alternative market. Mexican suppliers had no pipelines to carry oil to the US, but took advantage of the same exemption: tankers that had previously shipped Mexican oil to New Jersey were diverted to Brownsville, Texas, from where the oil was carried in tanker trucks twelve miles south across the Mexican border and then re-imported overland. Richard H. K. Vietor, *Energy Policy in America Since 1945: A Study of Business–Government Relations*, Cambridge, UK: CUP, 1984: 130.

66 Parra, *Oil Politics*: 89–109.

producer countries was calculated in reference to an artificial figure called the 'posted price' – a benchmark set by the oil firms, with the tax per barrel set at 50 per cent of that figure. Following Eisenhower's introduction of import quotas, the companies lowered the posted price, thereby reducing their tax payments to the producer states. When the latter responded with the creation of OPEC, the companies agreed after 1960 to leave the benchmark at a fixed level. This guaranteed the producer states a set income per barrel of oil produced, even as the price of oil outside the US began to decline due to competition from independent oil companies and from the Soviet Union. Since the posted price was not adjusted for inflation, however, the real tax rate per barrel of oil fell, especially in the later 1960s when the value of the dollar began a rapid decline.

Meanwhile, a group of independent, mostly German oil dealers started to publish regular figures on the price of refined oil products in Europe. An American oil economist, Morris Adelman, was able to take these figures, deduct known costs for refining and shipping, and infer for the first time an approximate 'market price' for Middle Eastern oil (it would take another decade to create a functioning global oil market). His figures showed that in 1960 the oil companies were producing oil at a cost of 10¢ cents per barrel, including a 20 per cent return on invested capital, and earning a profit above that return of 68¢ per barrel. For the major oil companies, Adelman later remarked, 'a market price was an uninvited intruder'.[67]

The general public failed to notice the intruder for almost a decade – an ignorance from which the oil companies continued to benefit. Negotiations over rates of taxation on the extraordinary profits that international firms were earning from Middle Eastern oil took the form of attempts to raise the posted price. Unaware that the 'posted price' was simply a device for calculating tax rates, the news media and the public assumed these were negotiations over the price of oil. The companies could then portray the increased taxation of their windfall profits from oil as an increase in its 'price' – an increase that they would be obliged to pass on to the consumer.

Following the success of Libya in winning a new tax rate in 1970, OPEC was in a position to challenge the setting of tax rates by the major US and European companies. Iran led the OPEC states in demanding a general increase in the posted price, along with an increase in the tax level based on that price from 50 to 55 per cent. This represented an attempt by the producer countries not to increase the price of oil, but to return real tax rates to the levels they had enjoyed before inflation, Israel's closing of the Suez Canal and other factors had pushed up the oil price in the later 1960s.

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67 Morris Adelman, 'My Education in Mineral (Especially Oil) Economics', *Annual Review of Energy and the Environment* 22, 1997: 21; and *The Genie Out of the Bottle: World Oil Since 1970*, Cambridge, MA: MIT Press, 1995: 41–68.

Supported by the State Department, which arranged for the Justice Department to waive anti-trust regulations, the companies met together and decided to accept an increase in the benchmark. Undersecretary of State John Irwin had circulated a memo following the Libyan deal pointing out that, given the import quotas that made crude oil prices in the US much higher than in Europe, an increase in Middle East prices would be to America's benefit:

> Many claim that access to cheaper energy sources has given European producers an advantage over goods produced in the United States, particularly in certain industries such as petrochemicals. The Libyan settlements will increase energy costs to Europe (and probably to Japan) and could reduce whatever competitive advantage those areas enjoy over the US because of access to lower cost oil.[68]

By April 1971, the companies had agreed with OPEC to raise the posted price from less that $2 per barrel to more than $3. The price at which oil from the Gulf actually traded remained at just over half the posted price, rising from about $1.30 to $1.70 per barrel – still below the level of the mid-1950s in nominal terms, and well below that level when adjusted for inflation. Meanwhile, refined oil products were selling in Europe at a price of more than $13 per barrel, 60 per cent of which represented government taxes in the consumer country. Following the 1971 OPEC tax increase, in other words, European states were still earning about four times as much revenue from each barrel of oil as the OPEC states.[69]

The 50 per cent increase in tax rates was only a temporary measure. It ensured the OPEC countries a higher share of oil profits, but the system of allowing international companies to earn all the profits from oil and then attempting to tax those profits was itself coming to an end. Led by Iraq, the large producer states had gradually built the infrastructure and the expertise to take control of production themselves. Iraq announced its nationalisation of the British-controlled Iraq Petroleum Company in 1972. Iran had already warned the oil companies that, when the 1954 consortium agreement expired in 1979, it would expect a radically different arrangement.[70] Saudi Arabia negotiated a gradual transfer of ownership of Aramco to the state, threatening the company

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68 Cited in Tore T. Petersen, *Richard Nixon, Great Britain and the Anglo-American Alignment in the Persian Gulf: Making Allies out of Clients*, Brighton: Sussex Academic Press, 2009: 38.

69 Parra, *Oil Politics*: 110–34; V. H. Oppenheim, 'Why Oil Prices Go Up (1): The Past: We Pushed Them', *Foreign Policy* 25, Winter 1976–77: 24–57; Morris Adelman, 'Is the Oil Shortage Real? Oil Companies As OPEC Tax-Collectors', *Foreign Policy* 9, Winter 1972–73: 86.

70 'Telegram 7307 From the Embassy in Tehran to the Department of State, December 23, 1971, 1300Z', Documents on Iran and Iraq 1969–1971, Document 155, available at history.state.gov.

with the same fate as the Iraq Petroleum Company if it refused to negotiate. By the end of 1972, the other large producers in the Gulf, Kuwait and Iran, were making similar arrangements.

GOLD FINISH

Facing the loss of their control of the oilfields in the Middle East, the international oil companies now needed a means of generating a large increase in the price of oil. A much higher price would enable them to open up new production sites in less accessible areas, such as the North Sea and Alaska. It would also allow them to realise a greater share of profits from the downstream refining and marketing, compensating for the loss of profits from producing Middle Eastern oil.

There were three changes that would allow the reorganisation of the mechanisms for pricing oil. First, following the successful collaboration developed to raise the Libyan oil price, the producer states had to take over from the oil companies the system of restricting production, to prevent surplus oil from lowering the price. This would be easier for a group of sovereign states to achieve than for a cartel of oil companies liable to anti-trust investigation if they were seen to be forcing prices up.

Second, the international firms, which would process and market oil for the new state-run production companies, had to find ways to sell more oil and protect it against rival sources of energy. To raise the price of oil, it was not enough for those producing it to make the supply scarce. A higher price would simply drive consumers to switch to cheaper alternatives. The oil companies needed ways to 'sabotage' the supply not only of oil, but also of coal, natural gas and nuclear power. For this reason, as we will see in the following chapter, what is now remembered as the 1973–74 oil crisis was first discussed not as a problem of oil, but as an 'energy crisis'. Since oil was the largest commodity in world trade and shaped the international flow of dollars, the transition to a new petroleum order also began as a financial crisis.

Third, to maintain demand for oil as its price increased, the international oil companies needed to open up new markets. The largest market to which their access was restricted was the United States. The US import quotas helped prevent lower-priced Middle Eastern oil from competing with domestic production, which in the first half of 1971 was selling for $3.27 a barrel – almost double the new price of oil from the Persian Gulf. However, the import controls had become a mechanism of the postwar international financial system, protecting the value of the dollar. By restricting imports of oil into the United States, Washington reduced the flow of dollars abroad, limiting the accumulation of dollar reserves overseas. Later it tried to give further support to the dollar's value by interventions in the London gold market. When these two mechanisms

proved insufficient, a third technique was added: the rapid increase in arms exports to oil-producing countries, especially Iran.

The oil companies needed an alternative to the use of oil (and escalating arms sales) to control dollar flows. The quota on US oil imports was denying them access to the world's largest petroleum market, and the drive to sell arms to Iran was putting pressure on them to increase production there. The solution for which the oil companies had begun to argue was to abandon Bretton Woods.[71]

In March 1967, Chase Manhattan Bank, the Rockefeller financial house closely tied to Standard Oil of New Jersey (Exxon), proposed that the United States abandon the gold standard. The American Bankers Association condemned the proposal, and Chase quickly offered a retraction. Questioning the automatic convertibility of dollars into gold was considered a threat to the stability of the postwar international monetary system and to America's political and financial authority. Eight months later, however, Eugene Birnbaum, senior economist at Standard Oil, published a report entitled *Changing the United States Commitment to Gold*. The report called for the US to end the Bretton Woods system unilaterally by rejecting the obligation to convert dollars into gold. Birnbaum's arguments were critical to making the idea of abandoning Bretton Woods acceptable.[72]

A year after Birnbaum's report, in November 1968, America's decade-long effort to support the value of the dollar collapsed. The US tried to transform Bretton Woods into a mechanism that allowed the gold peg to float. In an effort to combat inflation by lowering domestic oil prices, Washington began removing the controls on oil imports in 1970, but this caused more dollars to flow abroad. By the following year, the US had used up most of its non-gold reserves, and only 22 per cent of its currency reserves were backed by gold. When European banks requested payment for their dollars in gold, the US defaulted. Abandonment of the gold standard in August 1971 amounted to a declaration of bankruptcy by the US government.[73]

The transformation in methods of controlling flows of oil and finance was completed in the 1973–74 crisis, to which the following chapter turns. We do not know for certain how far these changes were planned by the oil companies,

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71 The major oil companies wanted the import quotas rationalised, to remove the hundreds of exemptions that favoured mostly small operators, and steadily increased. Vietor, *Energy Policy in America*: 135–44.

72 Eugene Birnbaum, *Changing the United States Commitment to Gold*, Princeton: Department of Economics, Princeton University, 1967.

73 Fred Block, *The Origins of International Economic Disorder: A Study of United States International Monetary Policy from World War II to the Present*, Berkeley: University of California Press, 1977: 164–202; William Engdahl, *A Century of War: Anglo-American Oil Politics and the New World Order*, 2nd edn, London: Pluto Press, 2004: 127–49. In contrast to Engdahl, Block makes no mention of the oil dimension of the crisis.

and how far the transformation came about through the rivalries between them, their conflict with the producer countries, and the changing agendas of the US government. But there was no doubt that the creation of a crisis made it easier to blame outside forces for the radical alterations that occurred.

Politics, ecology, and the new anthropology of energy: exploring the emerging frontiers of hydraulic fracking

Anna J. Willow[1]
Sara Wylie

Ohio State University, USA
Northeastern University, USA

Abstract

This article reviews recent literature relevant to the ongoing shale gas boom and introduces the *Journal of Political Ecology*'s Special Section on hydraulic fracking. We highlight the need for ethnographic studies of the tumultuous social and physical transformations resulting from, and produced by, an unfolding frontier of energy production that unsettles social, economic, and ecological landscapes. We examine how intercommunity connections are vital to recognizing the shared structural conditions produced by the oil and gas industry's expansion, through examining the roles played by the oil field services industry, the sequestration of information and agnotology (the deliberate production of ignorance), divide and conquer tactics, and shared experiences of risk and embodied effects. Summarizing the contributions of the five articles included in the Special Section, we offer recommendations for further inquiry. We examine how social science studies of hydraulic fracking are producing new and innovative methodologies for developing participatory academic and community research projects.

Key words: digital media, embodiment, energy, hydraulic fracturing, oil field services industry, shale gas

Résumé

Cet article est une revue de la littérature récente pertinente sur le boom du gaz de schiste, pour cette section spéciale dans le *Journal of Political Ecology* sur la fracturation hydraulique. Nous soulignons la nécessité d'études ethnographiques des transformations sociales et physiques résultant d'une déroulement de la production d'énergie qui déstabilise les paysages sociaux, économiques et écologiques. Nous examinons comment c'est essentiel a reconnaître les similitudes structurelles existent entre les différentes communautés par l'expansion de l'industrie du pétrole et du gaz. Conclusions importantes concerne les rôles joués par le secteur des services de champ pétrolier, la séquestration de l'information et agnotology (la production délibérée de l'ignorance), les tactiques de diviser et conquérir, et les expériences partagées de risques et effets intrinsèques. Résumant les contributions des cinq articles inclus dans la section spéciale, nous concluons avec des recommandations pour des enquêtes plus approfondie. Enfin, nous examinons comment les études en sciences sociales de la fracturation hydraulique produisent de nouvelles méthodes pour le développement de projets de recherche universitaires et communautaires participatives.

Mots clés: médias numériques, l'énergie, la fracturation hydraulique, l'industrie des services pétroliers, le gaz de schiste

Resumen

Este artículo revisa la literatura reciente en curso y relevante al auge del "gas de esquisto" para esta sección especial sobre fractura hidráulica del *Journal of Political Ecology*. Destacamos la necesidad de estudios etnográficos acerca de las transformaciones tumultuosas sociales y físicas resultantes de y producidas por el despliegue de la producción energética que perturba los paisajes sociales, económicos y ecológicos. Examinamos como las conexiones entre las comunidades son vitales para el reconocimiento de las

[1] Dr. Anna Willow, Assistant Professor, Department of Anthropology, Ohio State University, USA. Email: willow.1 "at" osu.edu. Dr. Sara Wylie, Assistant Professor of Sociology/Anthropology and Health Sciences, Social Science Environmental Health Research Institute, Northeastern University, USA Email: s.wylie "at" neu.edu. We thank the many article reviewers for the Section. This is the introduction to Willow, A.J. and Wylie, S. (eds.) 2014. "Energy, environment, engagement: encounters with hydraulic fracking", special section of the *Journal of Political Ecology* 21: 222-348.

condiciones estructurales compartidas y producidas por la expansión de la industria del petróleo y gas, esto mediante la exanimación de las funciones desempeñadas por las industrias de servicios petroleros, el posicionamiento ilícito de información y la agnotología (producción deliberada de ignorancia), técnicas de división y conquista, al igual que experiencias compartidas de riesgo y efectos incorporados. Resumiendo las contribuciones de los cinco artículos incluidos en la sección especial ofrecemos recomendaciones para consultas posteriores. Examinamos como los estudios de ciencias sociales sobre fractura hidráulica están produciendo nuevas e innovadoras metodologías para el desarrollo de proyectos de investigación académicos y proyectos comunitarios participativos.

Palabras claves: Medios de comunicación, personificación, energía, fracturamiento hidráulico, industrias de servicios petrolíferos, gas de esquisto (*shale gas*)

1. What is *fracking* and why is its relevant?

Technological advances have made it possible and profitable to extract fossil fuels (especially natural gas, but also oil and coalbed methane) that were until recently believed to be out of reach. In the past decade, a technique borne of the merger of hydraulic fracturing and horizontal drilling—known in the industry as *high-volume slick water horizontal hydrofracturing*—has been exported from the United States to every inhabited continent on earth. This process (colloquially and hereafter known as *fracking*) entails pumping a mixture of water, proppants (silica sand and/or manufactured granules used to prop rock fractures open), and assorted chemicals deep into the ground at high pressure. As a result, small fractures are produced in the target rock layer, releasing the hydrocarbons contained within. In some places, the resulting rush to extract these resources has already significantly altered physical environments, economic systems, community structures, and human health. Although proponents have celebrated unconventional fossil fuel development as a key to energy independence and a critical catalyst for economic recovery, it has numerous detractors (MITEI 2011).

It is not merely its abrasive sound that led environmentalist author Bill McKibben (2011) to declare *fracking* "the ugliest word in the English language." As indicated by the intensity of ongoing anti-fracking campaigns—some of them documented in this special section—many seem to agree. Commonly voiced ecological and human health concerns surround water quality and availability, discharges of toxic substances into the environment, air emissions released during production and processing, explosions from methane build-up, and earthquakes. While actual and potential environmental degradation resulting from fracking has received a significant amount of scholarly attention (e.g., Entrekin *et al*. 2011; Holzman 2011; Howarth, Santoro, and Ingraffea 2010; Jackson *et al.* 2013; McKenzie *et al.* 2012; Osborn *et al*. 2011) and is currently being investigated by the United States Environmental Protection Agency (2012), equally devastating—and clearly interrelated—sociocultural consequences have been comparatively overlooked.[2]

The number of published social science studies on the impacts of fracking is steadily growing. Much of this work, however, has been informed by quantitative survey methods rather than qualitative ethnographic inquiry (e.g., Anderson and Theodori 2009; Brasier *et al*. 2011; Jacquet 2012; Theodori 2009). Notable exceptions include Simona Perry's comparative consideration of the place-based consequences of regional and national energy politics in the "global countryside" (2011), Perry's more direct demonstration of ethnography's value as a tool for monitoring community health in unconventional energy production zones (2013; see also Wylie 2011), recent examinations of the political production and/or obfuscation of risk in the face of uncertainty about fracking's actual effects (Cartwright 2013; Finewood and Stroup 2012), and ethnographic overviews of unfolding conflicts surrounding unconventional extraction (e.g., de Rijke 2013a, 2013b; Pearson 2013; Willow *et al.* 2014). These articles have added valuable voices to the conversation and, in the process, made a strong case for qualitative research on fracking. Still, critical analyses that

[2] The EPA released a progress report in 2012 and is expected to release a draft of the compete study for public comment and peer-review later this year. For more information and updates, see http://www2.epa.gov/hfstudy [accessed February 22 2014].

illuminate the consequences, implications, and cultural practices associated with fracking have yet to appear in significant volumes.[3] This Special Section aims to fill this gap.

The articles included here have their origins in two overlapping organized conference sessions that took place in late 2012 and early 2013. Recognizing the need to foster coordination and communication among anthropologists seeking to understand the social and cultural impacts of ongoing unconventional energy development, Anna Willow (of the Ohio State University) organized a panel on the theme of hydraulic fracking for the November 2012 American Anthropological Association meeting in San Francisco, California. Sara Wylie (of Northeastern University) served as a discussant for this panel. Thomas Pearson (of the University of Wisconsin-Stout) organized a similar panel and a productive roundtable discussion for the March 2013 meeting of the Society for Applied Anthropology, held in Denver, Colorado. These events led to the development of a new (and still growing) scholarly network, sowed the seeds of fruitful collaborative relationships, and revealed widespread interest in this timely topic.

Fracking merits close social scientific attention. As it proliferates, impacts are poised to increase exponentially, not only in extraction zones but also throughout the global system that supplies the oil and gas industry and demands the continued production of fossil fuel energy. Because commodity-chain effects are experienced worldwide and because national and international political and economic decisions have emplaced implications, the anthropology of hydraulic fracking demands attention to global connection as well as local specificity. Presenting perspectives from New York, Ohio, Pennsylvania, and Australia, the articles that follow approach the cultural contexts and consequences of hydraulic fracking with numerous questions in mind: How are community structures, social networks, land use decisions, and the cultural meanings of rural landscapes changing as a result of fracking? How is ongoing and impending energy development transforming people's experiences and understandings of the landscapes they inhabit, utilize, and/or work to protect? How do the human impacts of resource extraction converge and diverge over time and space? What new dialogues, political formations, social movements, and alliances are emerging, and which discussions and discourses are being emphasized or obscured? How can new ethnographic formats deepen our understanding of these changes?

In the United States and beyond, the rapid intensification of fracking provides a new and urgent lens through which to explore the diversity, dynamism, and politics of human-environment relationships. Increased scrutiny of oil and gas activity has resulted in new prospects for collaborative mobilization and inspired academic studies aimed at influencing environmental public policy and industrial practices. With uneven transformations in regulatory terrain alternatively designed to speed, moderate, or halt development, exciting new opportunities are emerging for comparative case studies in anthropology, public policy, and environmental history.[4] Social scientific studies of fracking have much to contribute to imperative discussions about energy futures, global climate change, and other definitive challenges of twenty-first century life. While the case studies included in this special section are diverse, contributors all aim to apply a holistic understanding of the human impacts of hydraulic fracking to the larger task of promoting the best possible future for our planet and the people who share it. Collectively, they underscore the fact that fracking—like other anthropogenic ecological disturbances—must be approached not only as an environmental issue, but as a cultural and political one as well.

2. Contexts and connections

Human experience is at the front line of changing technological, economic, and social conditions. Attending to local ethnographic detail as well as broad systemic inequity, the articles reveal that residents of

[3] The *Journal of Environmental Studies and Sciences* and *Culture, Agriculture, Food, and Environment* have published special issues on this topic in 2014 and 2013, spotlighting Marcellus Shale development and energy more broadly.

[4] Within the United States and internationally, policy decisions governing shale development have varied considerably. In the United States, recent regulatory changes have served to speed extraction in some states (e.g., Ohio and New Jersey), while others have effectively brought citizen and environmental perspectives to the table to encourage environmental and human health protection alongside resource development. New York and Maryland, for example, have moratoria in place that effectively postpone shale development, and Vermont has banned the practice outright. Similar diversity is seen internationally, with Australia, the United Kingdom, South Africa, and Poland eager to develop shale resources even as France and Bulgaria have banned such development (de Melo-Martín *et al.* 2014).

geographically distributed and culturally distinct regions are experiencing strikingly similar situations. Unconventional energy extraction presents formidable challenges for those living in close proximity to it (Perry 2011, 2013; Wylie 2011). The lives of people in industrial supply areas, and consumers of energy, are also altered by changes in international production and distribution systems. Here, we identify common contexts, highlight unifying themes, and identify important opportunities for future research.

Fracking in historical context

Viewing celebratory television advertisements and passing billboards offering cash for subsurface leases (for those of us who are residents of fracking zones) or reflecting on the numerous public campaigns and policy battles fought by those who oppose unconventional energy extraction (for concerned citizens everywhere), it's easy to forget how recently fracking has arrived on the scene. In the second decade of the 21st century, fracking has captured the interest not only of those individuals who confront its environmental, economic, and social effects directly, but also of scholars, advocates, and activists seeking to understand how emerging forms of unconventional resource extraction are resulting in new kinds of displacement and disempowerment, transforming relationships between people and technology, and altering relationships between people and the environments they inhabit.

Fracking is an outgrowth of established energy production patterns, as well as a novel socio-technical phenomenon. Even as it employs new processes and generates new hazards, fracking extends trajectories of physical and social impact initiated in earlier resource extractive eras. Unmapped, abandoned, and decaying infrastructure from previous oil and gas extraction are just one of the many failures of effective regulatory oversight that are being unearthed as debates over the health and safety of fracking unfold (Horwitt 2011). And, given that oil field wastes have historically been largely unregulated (EWG 2009), the expanding use of chemicals has brought significant media and public attention to the toxicity of oil and gas production. Ironically, public concern over the environmental and human health threats associated with fracking has served to open the industry to the potential for more effective monitoring. This is creating new avenues for state and federal oversight of fossil fuel extraction.

Previous phases of fossil fuel extraction (especially oil and coal) also provide a baseline for comparative/diachronic social analyses. Since the 1970s, rural sociologists have been investigating what is commonly known as the "boomtown" phenomenon or syndrome (e.g., England and Albrecht 1984; Freudenburg 1981; Gilmore 1976) in which rural areas experience rapid industrialization and population growth catalyzed by the discovery of natural resources. Researchers have found that the negative consequences of development often outweigh the advantages; even as the availability of jobs and local tax revenues increase, strains on physical infrastructure, housing, and social services combine with social disruption caused by rapid population growth and perceptions of environmental degradation to produce an overall decrease in community satisfaction (Anderson and Theodori 2009: 115). On the other hand, longitudinal studies have led some observers to propose a "boom-bust-recovery" cycle in which many of the initial problems associated with rapid growth are resolved over time (Brown *et al*. 2005; Rolston 2013). Although communities undergoing rapid increases in hydraulic fracking activity can be expected to follow the sequential social stages of boomtown development (enthusiasm- uncertainty-panic-adaptation), many of the current impacted areas have histories, topographies, environmental and economic conditions, and regulatory structures that differ considerably from those examined previously (Brasier *et al.* 2011: 37-38). Due to these differences and to the process's unique technological and social attributes, the current fossil fuel boom diverges from historical oil and gas production in important ways.

The effects of fracking on water resources, for instance, have been widely recognized as posing novel risks that differ from conventional oil and gas extraction (Merrill 2013).[5] After the 11th Circuit Court of Appeals ruled in 1997 that fracking should be regulated as a form of underground injection by the "plain language of the Safe Drinking Water Act," it appeared that emerging technology would be monitored

[5] The potential impacts on fresh water and ecosystems are immense (United States Environmental Protection Agency 2012). Millions of gallons of water are utilized in each fracking procedure, with scores of potentially harmful and/or carcinogenic chemicals injected into the ground, and flowback (a term used to describe the up to 70% of the fluid injected into a well that returns to the surface) that may contain naturally occurring radioactive materials (NORM).

federally by the EPA and by individual states through Underground Injection Control (UIC) plans. UIC plans would have required state-level reporting of chemical hazards in fracking, monitoring, and protection of underground sources of drinking water (LEAF 1997). However, seeking to preserve their market niche and to expand the development of unconventional fossil fuel reserves, the oil field service industry successfully lobbied for an exemption to the Safe Drinking Water Act of 1974 as part of the 2005 Energy Policy Act (Wylie 2011; Wylie *et al.* 2014). Closing this loophole—sometimes referred to as the "Halliburton Loophole"—has been a subject of fierce debate.

Also layered upon a complex array of emerging public health and policy issues is the unique physical landscape of shale energy extraction. While conventional extraction involved seeking pockets of oil or gas trapped beneath a non-porous capstone, the oil and gas contained within shale formations is spread out in a matrix. The small seismic events produced by fracking create routes for this distributed gas to travel to the well. The implication is that any well drilled into a shale formation could potentially be made to produce, dramatically increasing the density of wells on the surface.

How, in this context, might the rapid intensification of fracking challenge the dynamics documented by boomtown researchers and transform our understandings of energy development's social effects? How do local histories of extraction and factors like gender, age, and class shape residents' reactions? These questions are particularly pertinent in locales with long resource extraction legacies, such as the Pennsylvania coal mining country discussed here and elsewhere by Anastasia Hudgins and Amanda Poole, where local residents draw stark contrasts between the emplaced family narratives of the coal mining past and the "disaggregated, transient, and nonunionized" labor and uneven costs-benefits distribution associated with ongoing fracking development (Hudgins 2013: 55; Hudgins and Poole 2014; Poole and Hudgins 2014).

Fracking and embodied experience

Because global patterns of energy extraction create as well as respond to local conditions, *energopolitics* (defined as "power over (and through) energy" (Boyer 2011: 5)) must be examined at multiple scales. At its most intimate, this means contemplating how fracking affects human bodies. Our bodies are our interface with the external world. And, as historian Joy Parr notes, "…our senses are the conduits through which knowledge of technology and the environment flow and, through retuning habit and reflex, the ways we habituate to our changing habitat" (2010: 1). Technology shapes our experience of the world in ways that are both positive and negative, both conscious and intuitive. For individuals on the ground, concerns about unconventional energy development are often initially evident through sensory experiences. Foul odors and discolored waters reveal the presence of potentially hazardous wastes, spills, and/or pollution. Our senses tell us when something is wrong. Deborah Davis Jackson coined the useful term *dysplacement* to underscore how perceptible pollution can transform formerly positive sensory experiences of place to experiences of profound alienation (Jackson 2011). In other words, even when people are not physically displaced, the sensory experience of environmental degradation can lead to equally damaging *dysplacement*.

Qualitative research in anthropology and related fields is uniquely positioned to address the experiential dimensions of energy development. To be sure, quantitative scientific research contributes in important ways to understanding the embodied effects of fracking. But exclusively quantitative projects are unable to account for personal narratives and the scientific discourse from which they derive may undermine or effectively delegitimize local residents' perspectives. As Melissa Checker argues, in many cases "perceptions of risk contrast sharply with official evaluations of risk" (Checker 2007: 113), with official pronouncements regularly disregarding residents' convictions that very serious problems exist. Concerned citizens of fracking zones are often discredited as irrational within the wider public discourse (Finewood and Stroup 2012; for a broader treatment of this issue see Button 2010). It is not enough, therefore, to collect samples and compile statistics; we need to tell real stories that speak to real people's experiences, to give voice to views that may otherwise remain unheard.

Several of the articles that follow tell such stories (Hudgins and Poole 2014; Simonelli 2014; Willow; 2014; Wylie and Albright 2014). In so doing, they concurrently—though usually implicitly—contest the universality of Western science by questioning who has the power to affirm the existence of hazard and risk. Regardless of which version of reality is officially accepted, residents of impacted areas respond according to

their own perceptions and fears (Rappaport 1994). The surge in actual and impending environmental transformation resulting from fracking development has thus been met by an analogous surge in grassroots activism, a topic also addressed by articles in this special section (Mercer, de Rijke, and Dressler 2014; Simonelli 2014). Heeding calls to consider pollution as a form of social relation (Kirsch 2006: 220) and health as an ecological relation (Mitman 2007), the authors in this section work at the intersection of society, embodiment, and environment, thereby challenging modernist visions of an ontological separation of human culture from non-human nature (see Latour 1993).

Fracturing communities, fostering connections

As a new form of fossil fuel extraction, fracking has the capacity both to fracture formerly cohesive communities and to bring formerly disparate communities together. Wherever it takes place, fracking reshapes the social fabric. Local, state, and federal agencies are often overwhelmed by the pace of permitting and extraction and under-resourced to provide services to the communities experiencing it. These impacts are felt at the ground level, with landowners who encounter impacts (e.g., chemical spills on their property) forced to navigate bureaucratic warrens designed to reactively respond to hazards rather than proactively prevent them. The daily functioning, political machinations, and effectiveness of previously little-monitored and little-studied state and federal environmental resource and management agencies have become sites of contestation and intervention for proponents and critics alike. Especially in rural areas unzoned for certain land uses, few local regulations or regulatory bodies exist to intervene or influence extractive industrial development. This tends to encourage the rapid expansion of unconventional extraction and offers residents few opportunities to collectively contest or direct the development process.

Particular challenges are confronted by people who own the surface rights to their property but not the underlying subsurface minerals. Since mineral lease holders have the legal right to develop their resource, surface owners are frequently unable to participate in decisions concerning mineral development on their own property. Because leases negotiated by individual landowners are based on various categories of mineral or surface ownership, neighbors often have distinctly different experiences with the industry, with low-income surface owners and renters commonly experiencing the most detrimental effects. The resulting "divide and conquer" dynamic creates new divisions between community residents. Just as oil extraction companies operating in Ecuador deliberately deploy divide-and-conquer techniques to turn inhabitants against each other (in this case by differentially offering contracts for labor and land use to existing tribal groups and even working to constitute newly "authentic" ones) (Sawyer 2004), a similar process has deepened divisions between "haves" and "have nots" in fracking zones in the United States and elsewhere.

Interestingly, however, fracking is also creating unanticipated new connections between rural and urban areas as landowners in both places struggle with a loss of local control over their social, economic, and physical circumstances. For instance, suburban residents of Cleveland, Ohio have found themselves working with rural Texans and citizens' alliances from New Mexico (Wylie 2011), and impacted individuals in Pennsylvania and Colorado have found ways to share information through new digital forums (Wylie and Albright 2014). Grassroots coalitions are also reaching across national and state boundaries as local alliances and national nonprofits work to create community-to-community education and solidarity. Considering the notion of connection more literally, many of the environmental health debates surrounding fracking stem from concern that the subsurface fractures it generates could produce undesirable interconnections between gas-bearing formations and groundwater. The potential for surprising and unwelcome links have been the foundation for water contamination lawsuits and vitriolic disagreement between proponents of fracking who argue that the distances between aquifers and target formations is too great for contamination to occur (MITEI 2011) and critics who cite suppressed EPA studies showing how abandoned oil and gas wells can create such conduits to dispute this hardline separation (Horwitt 2011).

Inaccessible places, inaccessible information

Surface owners and residents of resource extraction zones are often the last to know about the shale reserves beneath their feet. In many instances, the industry is able to secure leases and access target resources before residents are able to mobilize resistance. It is therefore vital to examine the oil and gas

industry systematically and structurally in order to understand how and why the isolation of surface owners is produced. Oil and gas extraction is typically marked by an enclaving process, through the establishment of what Andrew Barry (2005) calls "technological zones," to which only certain people have access and in which space and time are marked differently (Appel 2011; Bowker 1987; Ferguson 2005; Santiago 2006). Access to technological zones is limited to employees, and their distinction from the surrounding landscape is further emphasized by particular spatial and temporal arrangements. These technological zones have reached an extreme form in offshore oil-rigs, which are run on 24-hour cycles and staffed by workers pulling 12-hour shifts (Appel 2011).

Such enclaves form a crucial part of "oil ecologies" organized to channel oil and the wealth it generates from regions of extraction to regions of social and political power (Peluso and Watts 2001; Santiago 2006; Watts 2003, 2005). Writing of the Ecuadorian and Nigerian contexts, Watts describes "petro-imperialism" as a Faustian pact in which "…a national project (modernity, development, civilization)…is purchased at the expense of sovereignty, autonomy, independence, tradition and so on" (Watts 2001: 205). Suddenly, through narratives that create networks across scales, a quiet and isolated rural region's fate is determined by global actors (Tsing 2005). Technological zones are a physical instantiation of these emerging global market relationships. These zones appear to be technically justified, but simultaneously hide their political and economic interests. Such disengaged or, as Appel (2011) describes them, "modular" technical arrangements provide for the perpetuation of an oil and gas industry in which alternative modes of life and populations in producing regions are continually made structurally irrelevant to the success of resource extraction. Whereas the structure of oil and gas development in the United States formerly stood as an exception to the enclaving practices developed in international and postcolonial contexts, these practices are now being re-imported into the United States to facilitate the present natural gas boom.

The current boom further differs from previous boom-bust cycles dependent upon the discovery and tapping of resources in new regions - not so much because of the nature of the technology itself, but because of the intellectual property associated with it. Hydraulic fracking is controlled by a unique and powerful sub-sector of the oil and gas industry, namely oil field services companies (Casselman 2008; Hamburger and Miller 2004; Nijhuis 2006). Beyond the emergence of new regimes for managing physical property, then, oil and gas development is sped by the drive to secure intellectual property, with prominent companies like Schlumberger and Halliburton now fighting vigorously to retain sole control over the processes and chemicals that make hydraulic fracking possible (Wylie 2011). These multinational corporations (which include some of the wealthiest in the world) make their money neither from owning territory nor from controlling pipelines, but from controlling intellectual property—in this case the technological knowledge associated with high-volume slick water horizontal hydrofracturing (Bowker 1994; Wylie 2011). This has important consequences for the public availability of information about the chemicals employed in fracking. The "Halliburton Loophole" exemption to the Safe Drinking Water Act, described above, means that companies are rarely required to report or monitor the chemicals they use. It has also prevented the Environmental Protection Agency from regulating the practice at the federal level.

From a "down-hole" to a life-cycle approach

Chemicals used in hydraulic fracking have become central to vociferous national and international debates about the health and safety of the ongoing unconventional fossil fuel boom. Concerns about the toxicity of these chemicals to humans and the environment are cited as primary causes for concern, as multiple articles in this special section confirm. At the same time, however, environmentalism's traditional focus on wildlife and protected area legislation makes it easier to prevent fracking in wilderness and other "natural" areas than in urban or rural locales. Analyses of environmentalism in Science and Technology Studies (STS), toxicology, and the field sciences have argued that the development of laboratory science—along with well-funded corporate chemical research and development programs—make it structurally difficult to link illness to chemical exposure (Langston 2010; Murphy 2006; Nash 2006; Oreskes and Conway 2010). Through "informated environmentalism" (Fortun 2004)—in which environmental organizations generate research and share data digitally—NGOs, citizens' alliances, and online organizations are contributing new ways to study and respond to the environmental health issues posed by fracking chemicals (see also Fortun 2011; Wylie 2011). New ways of producing and sharing environmental

knowledge are emerging as communities organize "bucket brigades" and as citizen water monitoring projects and online mapping and databasing tools are developed in attempt to fill gaps in knowledge and monitor the true environmental and health impacts of fracking (Martinez-Alier *et al.* 2014; Penningroth *et al.* 2013; Steinzor *et al.* 2013; Wylie 2011).[6]

The fusion of embodied experience of the oil and gas industry and informated environmentalist efforts to document chemicals used in the hydraulic fracking process, connect those chemicals to health effects, and prove exposure and damage has inspired a shift from a limited "down hole" perspective on the safety of fracking to a life-cycle approach that empowers and interrelates local residents' experiences. As a result, the following calls are now being heard in activist, advocacy, and academic circles:

- Supply chain analyses are needed to address the widespread impacts of the unconventional fossil fuel boom, including the extraction of sand for proppants and the manufacture and storage of hazardous chemicals.
- A greater understanding of seismic imaging and leasing processes is required.
- Broad monitoring of fracking operations is needed, not only at well sites but also as energy development impacts truck traffic and the development of allied infrastructure such as roads, pipe-lines, and compressor stations.
- Further analysis and monitoring of waste disposal and storage—including injection wells—is imperative.
- Finally, longitudinal studies of the industry's social, environmental, economic, and political impacts must be pursued and their results connected to meaningful regulatory reforms.

How this extensive monitoring will be achieved is an open question that is currently being answered in the United States through citizen science as well as EPA and Presidential panel investigations. Given the importance of documenting fracking zone residents' experience across communities, qualitative researchers are uniquely situated to assist in advising, conceptualizing, coordinating, and conducting studies that make constructive sense of the cumulative effects of hydraulic fracking.

3. The importance of ethnography

Social scientific studies of unconventional energy development are well-positioned to begin building vital bridges between technical discourse and human experience. On the ground, qualitative ethnographic details can complement quantitative scientific risk-assessment processes and make underrepresented voices more audible (Checker 2005, 2007). While individual scholars will undoubtedly continue to choose their own paths, many seem to agree that we have a moral and ethical duty to bear witness when injustice impacts those with whom we work and from whom we learn (Healy 2014). Stuart Kirsch, who has worked extensively with Yonngom residents of New Guinea affected by the environmentally and culturally devastating Ok Tedi mine, suggests that "by documenting political violence and representing its human costs, anthropologists can amplify indigenous forms of political expression, bring the resources of the discipline and the moral weight of the academy to bear on injustice" (Kirsch 2006: 187). In the case of fracking, "indigenous" expressions are also often our own (Simonelli 2014).

In the first featured article, "The new politics of environmental degradation: Un/expected landscapes of disempowerment and vulnerability," Anna Willow (2014) investigates connections between fracking in the Midwestern United States and indigenous experiences of environmental injustice. The article begins in the author's home state of Ohio, where citizens are discovering their lack of ability to influence the expansion of

[6] For information on some of these projects, see:
- The Endocrine Disruption Exchange: www.endocrinedisruption.com/chemicals.introduction.php
- FracTracker: http://www.fractracker.org/
- Global Community Monitor: http://www.gcmonitor.org/section.php?id=224
- Skytruth: http://blog.skytruth.org/2012/11/skytruth-releases-fracking-chemical.html

shale gas into their communities. The surprising similarity between emerging middle-class vulnerability to environmental degradation and Willow's prior ethnographic work documenting chronic environmental injustices experienced by an Anishinaabe First Nation in Canada triggers her theoretical analysis of unconventional energy extraction as a neoliberal process of environmental and social dispossession. Focusing on the experience of environmental degradation as a hallmark of changing social position, Willow investigates a troubling and potentially socio-politically transformative new parity between middle-class Americans and indigenous communities. She argues that

> …even as distinctive historical and cultural contexts set these situations apart, common perceptions of disempowerment and vulnerability seem to suggest extensive systemic changes, as growing numbers of people from increasingly diverse walks of life are now being forced to face immediate—and often very serious—environmental challenges that they did not authorize and do not benefit from (p. 240).

In "Home rule and natural gas development in New York: civil *fracking* rights", by Jeanne Simonelli, we learn about New York State residents' response to fracking and to the infrastructure connected to it. Simonelli (2014) reviews the growth of a social movement for civil rights and home rule that has accompanied oil and gas development. A longtime resident of the region, the author explores how community understanding of the impact and infrastructure associated with hydraulic fracking has translated into social action within the social, political and ecological context of rural New York. She uses actual and virtual interviews and oral histories to provide a case study of a struggle for environmental justice amidst conflicting visions and experiences of rural life in one New York region in order to show how "individual townships in the shale gas regions of the state have used home rule in an attempt to chart their own development course" (p. 263). Intersecting with Willow's analysis, the author notes, this movement has built upon listservs, websites, and protest tactics similar to those developed by the Zapatistas in Mexico. Accordingly, Simonelli looks to the global context, noting that although the historical and political conditions surrounding the Zapatista movement and the NY anti-fracking movements are different—and injustice is on a different scale—the threat to life and lifestyle gives rise to similar long term responses. Individuals have come together to learn to use the legal and political power available to them, in the interest of a collective struggle for both the local and global environment.

Transporting readers to the other side of the globe (but remaining as relevant in the North American context as the preceding articles are elsewhere), Alexandra Mercer, Kim de Rijke, and Wolfram Dressler (2014), authors of "Silence in the midst of the boom: coal seam gas, neoliberalizing discourse, and the future of regional Australia", employ text-based critical discourse analysis to examine the similarities and differences apparent in documents produced by the oil and gas industry, the Queensland state government, and a social movement called Lock the Gate. Approaching neoliberalism as an unfolding process, the authors demonstrate how both industry and government construe economic decisions as apolitical and see engaging with political questions as threatening "good economic outcomes" (p.286). Lock the Gate, in contrast, calls on decision-makers to take a myriad of non-economic issues (e.g., health, food, water) into account, thus challenging the neoliberalizing "economy is everything" perspective associated with the coal seam gas industry and the government that supports it.

Calling attention to the development of local social movements in response to fracking, the relevance of environmental and social justice perspectives, and anthropology's distinctive appreciation for the primacy of human experience, these articles show that the structural disempowerment that accompanies fracking is not an isolated local phenomenon, but is instead shared by residents of distant places who possess diverse cultural backgrounds and different personal interests. Through rich ethnographic narratives, the intensely stressful nature of the fracking process as well as the ongoing fear, uncertainty, and confusion it causes are made tangible. Fracking, these articles clearly demonstrate, *goes far beyond the well that is drilled* and fractured; it is also—and, we believe, even more importantly, like all issues interrogated from a political ecology perspective—about *a much broader set of interrelated political, ecological, and social impacts*. Finally, these articles encourage us to think in new ways about the now commonplace notion that people

understand the environment in very different ways. Fracking reveals existing differences in how people construct, conceive, and know "nature" and exposes human-environment relationships as constantly in flux. Today's technological changes are transforming physical environments as well as relationships among environmental, social, and political elements of our world that were formerly perceived as disparate. Although it has not always been recognized, these elements have always been interconnected. We are now realizing, confronting, and contemplating these connections in new and urgent ways, as they are transformed before our eyes.

4. Methodological innovations

Together, the articles in this special section illustrate how collaborative activities and communication networks can shed new light on wider structural and systemic issues that are currently being experienced at the individual level. Some contributing authors are reaching for new ethnographic methods that empower concerned citizens to control and comprehend the impacts of unconventional energy development on social, political, and economic lives and on physical and cultural landscapes.

The fourth featured article, "Framing fracking: private property, common resources, and regimes of governance," by Anastasia Hudgins and Amanda Poole (2014), examines new forms of neoliberal industrial governance emerging in the context of Marcellus Shale drilling in Pennsylvania. Like the article by Mercer, de Rijke, and Dressler, it describes how industry—often in concert with state government—demands impacted individuals "reframe their human needs and desires to parallel those of capital" (p.305) and shows how forms of expertise that are not amenable to the interests of industry are effectively shut out. Building on previous analyses of the relationship between the state, capital, and civil society, Hudgins and Poole offer a case study that illustrates how political processes are able to convert manufactured consent into actionable legislation. They argue that a "new regime" is emerging in rural Pennsylvania, as land, water, and people are re-categorized, resistance minimized, and profit maximized (p. 304). Hudgins and Poole also suggest that the discourse of patriotism and job creation constructed by proponents of shale gas development obscures troubling realities and inequities—a problem also recognized by other authors in this Section. Based on innovative methodology involving the development of an ethnographic field school for students at the Indiana University of Pennsylvania (held in the summer of 2012), Hudgins and Poole's work demonstrates how local students can become involved in ongoing debates about unconventional energy development. By facilitating a field school, a unique opportunity was created for communities to comprehend and reflect upon shared interests and structural differences.

"WellWatch: reflections on designing digital media for multi-sited para-ethnography," by Sara Wylie and Len Albright (2014), also draws on and describes innovative ethnographic methods. Wylie and Albright consider the role of digital media in developing new networked approaches to oil and gas industry monitoring by concerned citizens and academics. They argue that " networked online databases provide a methodological framework for responsive community-based academic research " (p. 323). As "…both a research tool and intervention" (p.341), the WellWatch project allowed residents impacted by oil and gas development to post personal stories and to connect with others experiencing similar situations in an attempt to "intervene in the technical and informational asymmetries between [the oil and gas] industry and impacted landowners by developing closer relationships between communities and academics and developing free, open source tools for communities and community organizations" (p. 324). As the article details, WellWatch proved useful for affected individuals and community members as well as for researchers seeking to understand the impacts of energy development. The construction of a new kind of digital infrastructure allowed people in locations as distant as Pennsylvania and Colorado to speak for themselves and to compare their own health impacts, feelings of vulnerability and fear, and experiences of corporate/government negligence with others.

5. Conclusion: changing roles, changing scholarship

That the number of engaged scholars turning their attention to hydraulic fracking and other forms of resource extraction is rising rapidly speaks to an ongoing transformation in how we define our roles, how we conduct our work, and how we construct our fields of study. It is our hope that the pieces presented here—

along with those of others who seek to give their scholarship similar substance—contribute not only to enriching our collective knowledge about humanity and the world we share but also to constructive ways of envisioning and enacting a positive future. Over three decades ago, Laura Nader made an apt observation: "The energy problem is not a technological problem," she wrote, "it's a social problem" (1982: 104). This point is more relevant than ever.

While each of these articles can be appreciated independently, reading this theoretically and methodologically diverse Special Section as a single entity leads to additional insights. The articles included here illustrate how multiple methodological approaches—ranging from field school facilitation and technologically-assisted online ethnography to text/media-based discourse analysis and participant-observation/interview strategies—can elicit rich ethnographic data to reveal striking similarities in the social, cultural, and political impacts of oil and gas development as it plays out across time and space. Contributors are forging new fieldwork trajectories based upon collaborative research philosophies. All of the included articles seek to connect academic work and advocacy. All constitute vehicles for sharing human experience. And, all are frankly critical of neoliberal economic policy, industrial domination, and the displacement of human concerns that appears to follow unconventional energy development wherever it goes. Some authors use writing as a primary strategy for creating these connections (e.g., Mercer, de Rijke, and Dressler 2014; Simonelli 2014; Willow 2014), constructing critical analyses and narratives that question the current state of affairs. Others (e.g., Hudgins and Poole 2014; Wylie and Albright 2014) have concurrently developed active and empowering new platforms for community collaboration that break down the structural barriers that too often separate not only industry/government and citizens, but also citizens and academics.

The barriers that once existed between scholarship and advocacy—reflected in purported divisions between academic and applied social science—are being broken down (Checker and Fishman 2004; Ginsburg 2004). The articles featured in this collection forge links between these formerly isolated ways of knowing the world, thus contributing to important conversations about the future of academia. Given that many of us are employed by universities, we are compelled to ask what engaged scholarship means when universities are leasing land for unconventional energy development (or considering doing so). What does it mean when many university departments and centers are structurally embedded in scientific and technical developments that seek to increase energy extraction? And, more broadly, what does it mean when researchers are also *residents* of impacted areas who sometimes have pressing and highly personal motives for exploring energy extraction? Together, the articles in this Special Section begin to answer these important questions and chart a course toward an engaged anthropology of energy that is emerging in zones of hydraulic fracking, and in other places where resource-extractive industrial development is changing lives.

Energy, environment, engagement: encounters with hydraulic fracking
Edited by Anna Willow and Sara Wylie

1. Anna J. Willow and Sara Wylie: Introduction to the special section: Politics, ecology, and the new anthropology of energy: exploring the emerging frontiers of hydraulic fracking
2. Anna J. Willow: The new politics of environmental degradation: un/expected landscapes of disempowerment and vulnerability
3. Jeanne Simonelli: Home rule and natural gas development in New York: civil *fracking* rights
4. Alexandra Mercer, Kim de Rijke, and Wolfram Dressler: Silence in the midst of the boom: coal seam gas, neoliberalizing discourse, and the future of regional Australia
5. Anastasia Hudgins and Amanda Poole: Framing fracking: private property, common resources, and regimes of governance
6. Sara Wylie and Len Albright: WellWatch: reflections on designing digital media for multi-sited para-ethnography

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Native Representation, Popular Culture, and Criticism

Race, Colonialism, and the Politics of Indian Sports Names and Mascots: The Washington Football Team Case

Kevin Bruyneel
Professor of Politics
Babson College
kbruyneel@babson.edu

Introduction

In July 2014, the Center for American Progress released a study entitled "Missing the Point: The Real Impact of Mascots and Team Names on American Indian and Alaska Native Youth." Written by Erik Stegman and Victoria Phillips, this study further substantiated that the use of Indian team names and mascots has a clear negative social and psychological impact on Indigenous people, especially young people. (Stegman, 2014; Fryberg, 2008) To introduce and publicize the report, the Center invited guest speakers and a panel to address the topic. The keynote speaker was Congresswoman Betty McCallum (D-MN), who in discussing the controversy over the Washington football team's name noted that if a derogatory word for people who are Jewish, African American, or Chinese was proposed as a sports team name, it "wouldn't be allowed, no one would stand or it, but for some reason, the term 'Redskin,' gets a free pass." (Center for American Progress, 2014) Rep. McCallum is firmly on the side of those seeking to end the use of these names and mascots for sports teams at the high school, college, and professional level in the United States. At the same time, her "for some reason" statement reveals an underlying confusion about why this is even an issue at all, and why there has not been comprehensive indignation and swift action to end this practice. McCallum is not alone in her confusion, as it is articulated often by those who oppose such names and mascots. The source of this confusion is the inability to grasp the manner in which settler colonialism is both ubiquitous and, for most people, relatively invisible in U.S. political and cultural life. The history and present of settler colonial violence toward and dispossession and appropriation of Indigenous people's bodies, territory, and identity is everpresent in the sports names and mascots issue. However, what most political actors and observers see and discuss in this debate is not settler colonialism but rather race and racism. To deem as racist names such as the 'Redskins' is not so

much wrong as it is analytically incomplete and thus politically off the mark for grasping why these names and mascots get a‘free pass’ – why they were created in the first place, persist, and are so vehemently defended today by those who seek to maintain the status quo.

The present debate and politics regarding Indian sports names and mascots, such as with the case of the Washington football team’s name, provides an excellent opportunity to politicize and center settler colonialism as a historical and contemporary structuring force of the United States. The sports names and mascot issue is a persistent and public practice of U.S. settler colonial rule. It is a mnemonic device that disavows the dispossession of Indigenous territory and the violent and aggressive assimilatory practices against Indigenous peoples. Paying attention to the political functioning of memory matters here because understanding and intervening in this and other issues requires more than just getting the historical facts straight. Facts matter, but an awareness of facts will not do enough politically to generate change, and this is where we need to see and directly engage with collective memory, specifically settler memory. Settler memory refers to the mnemonics – that is, the functions, practices, and products of memory – of colonialist dispossession, violence, appropriation, and settlement that shape settler subjectivity and governmentality in liberal colonial contexts such as the United States. Settler mnemonics include not only places and teams named after Indigenous peoples, but also calendric commemorations such as Columbus Day and Thanksgiving, military nomenclature such as Apache helicopter, and many other examples. These mnemonics are so ubiquitous that they are, at once, present and absent in American collective memory. That is, in settler memory Indigenous people are both there and not there at the same time, before our eyes across American culture but also disavowed of active political meaning in and by the settler imaginary – ubiquity and invisibility as two sides

of the same settler colonial coin. This disavowal is not a forgetting of colonialism and settlement. The problem with American settler society's relationship with its past resides in the manner in which the nation and its component parts remembers and reproduces its past, as facts and myths, and the important role of this remembering in the re-legitimation of contemporary violence, dispossession, and appropriation. This is a cycle that replays and reproduces settlement on a mnemonic loop. Indian team names and mascots are a public example of this contemporary loop in the American settler memory and imaginary, whereby Indigenous people are both everywhere in symbolic appropriative form but relatively invisible as active, contemporary political subjects.

In this essay, I turn first to the history of the issue, seeing the emergence and development of these names and mascots as coterminous with and reflective of U.S. Indian policy and settler colonial practices of late 19th century and first half of the 20th century. Upon this basis, I then examine the role of race in the contemporary debate over this issue, revealing the prevalence of this discourse and its popularity in mainstream American political culture, especially to the degree that it relies upon and reproduces the presumptions of racial liberalism. The predominance of the discourse of race makes invisible the practices of colonialism, and leaves Indigenous people to be seen, if they are seen, as another minority group within the United States, rather than as Indigenous nations that have a history of a nation-to-nation treaty-based relationship with the U.S. federal government. The point of this critique is not to marginalize race for the sake of colonialism, but rather to approach our analyses with an appreciation of their distinctive dynamics and co-constitutive relationship. In that regard, what I see at work here in perpetuating the Indian sports name and mascot phenomenon are the dynamics of colonial racism, which racially categorizes and generates hierarchies in the name of preserving settler

colonial relations and white supremacy. After setting out a corrective that centers settler colonialism, I analyze and critique two popular claims made in defense of these team names and mascots; that it is a tradition of the team and an honoring of Indigenous people. While I focus on the example of the Washington team name, I see the dynamics at work in that case to be representative of the wider politics and discourse around this issue.

The Historical and Political Context: The Allotment Era

The history of the Washington football team's name points to how this naming practice is deeply tied to settler colonial governance. In 1933, George Preston Marshall re-named his Boston based National Football League (NFL) team the "Redskins;" the name had been the "Braves" in 1932, the team's inaugural season. As to the name itself, while the etymology of the term 'Redskins' can be traced back to the late 18th and early 19th centuries when, according to one historian, it was not a derogatory, negative term, by the late 19th century one could no longer make such a case. (Goddard, 2005:1) For example, in the wake of the U.S.-Dakota War of 1862 an ad in the September 24, 1863 edition of the *Winona Daily Republican* in Minnesota offered the following: "The State reward for dead Indians has been increased to $200 for every red-skin sent to Purgatory. This sum is more than the dead bodies of all the Indians east of the Red River are worth." (*Winona Daily Republican*, and see Routel, 2013) The genocidal tone and aims for which 'red-skin' is utilized in this public forum shows that the word fit comfortably as part of settler colonial discourse and practices of the time. This colonialist racialization dehumanizes Indigenous bodies as objects of commodification through genocidal violence. This is colonial racism. Putting the team name in historical and political context also reveals that the naming of

the Washington team in 1933 marked the end, or close to the end, of a defining era in U.S. Indian policy.

In his comprehensive study of the history of the topic of Indian team names and mascots, J. Gordon Hylton discovered that "the practice of identifying professional teams by Indian names most likely began in 1886." (Hylton, 2010: 895) Prior to that there were no such names for professional teams, but soon after they begin to proliferate and most of the team names with which we are now familiar emerged between 1886 and 1933. The baseball Boston Braves (eventually located to Milwaukee and then to Atlanta) got their name in 1912, Cleveland Indians in 1915, Chicago Blackhawks in 1926, and then the Washington football team in 1933. After 1933, one still sees intermittent cases of such naming – the Kansas City Chiefs in 1960 for example – but there is a clear decline and no new names of this sort after 1963. Hylton's study, however, does not point out the relevance of this time period that starts with 1886 and ends, for the most part, in 1933. Infamously, 1887 marks the passage of the General Allotment (Dawes) Act, commencing the massive dispossession of Indigenous people's territory through the allotment of collectively owned tribal property into individual parcels to adult male tribal members who were expected to earn U.S. citizenship over time and assimilate by becoming private property holders in a liberal capitalist polity. The surplus of land beyond that distributed to Indigenous adult males was then made available for sale as private property on the free market. This process reduced Indigenous territorial holdings from 138 million acres in 1887 down to 48 million acres in 1934. (Hoxie ed. 1996: 154; Hirschfelder and Kreipe de Montano eds. 1993: 20-22) Also, 1890 marks the low point in terms of the recorded population of Indigenous people in the U.S. context, at 248,000 people. (Thornton, 1987) These are just two

features of a time period that saw massive land dispossession and appropriation by and into liberal capitalism that went hand in hand with the genocidal practices and policies that involved not only direct killing of Indigenous people, but also the effort to remove Indigenous people from their nations and assimilate them into the American population. In this regard, consider President Theodore Roosevelt's words, from 1901: "In my judgment the time has arrived when we should definitely make up our minds to recognize the Indian as an individual and not as a member of a tribe. The General Allotment Act is a mighty pulverizing engine to break up the tribal mass." (Roosevelt, 1901) Along with General Allotment Act, other settler colonial measures taken to "pulverize" tribes and forcibly assimilate Indigenous people included the 1924 Indian Citizenship Act, which unilaterally made Indigenous people U.S. citizens, regardless of whether they consented or not. (Bruyneel, 2004) Also, as Jennifer Guiliano demonstrates in her studies of the gendered discourse of Indigenous sports naming and mascotry, the growth of college and professional sports during this historical period provided an important vehicle for the expression and production of the racial and gendered superiority of white middle class masculinity in the United States by means of white male participation in and support of an emergent, popular sports culture. (Guiliano, 2010 & Guiliano, 2015) In all, the U.S. Indian policies and related political developments from the 1880s through the 1930s shaped the context for the emergence and flourishing of the naming of professional sports teams after Indigenous people. The timing of these two developments is not a coincidence, as they mark the compatible relationship between the ubiquity and invisibility of settler colonial governance and of Indigenous people in the American settler imaginary.

Policies such as the General Allotment Act and the Indian Citizenship Act were components of a public, active, comprehensive effort to make Indigenous people disappear, either through death or forced assimilation, and to destroy tribal communities and landholdings. The increasing invisibility of Indigenous people as distinctly Indigenous in their territorialized, collective existence, both as a reality in some sense as a consequence of said policies and more actively as a component of the American settler vision of Indigenous people as a disappearing people, opened the space for and was also fostered by the active symbolic appropriation of Indigenous identity for the sake of the reproduction of American settler identity and belonging. As American state actors and American settlers forced Indigenous people more to the margins through policies and practices of displacement, violence, and assimilation, symbolic Indigeneity moved increasingly and necessarily to the center of the settler imaginary. This mutually constitutive dynamic reflects the relationship among the three pillars of settler colonialism; focusing on territory, people, and identity. The appropriation of territory and the violence toward and forced assimilation of Indigenous people are two key pillars of settler colonialism, and the third pillar is the appropriation of Indigenous identity and culture. The naming and mascot phenomenon is just such an appropriative settler practice, which requires the first two pillars to clear the way for and are also facilitated by the third. I refer to this as a settler practice because it helps to constitute and acculturate a sense of settler belonging on this land through the production of a settler tradition that both acknowledges the presence of Indigenous people as historical beings while disavowing their presence as contemporaneous beings. Thus, to the settler imaginary, Indigenous people and settler colonialism itself are both everywhere and nowhere, ubiquitous and invisible, a vibrant, generative if tragic part of America's past rendered absent in the American present. It

is this dynamic that shapes and constrains the politics over team names and mascots to this day, and this is because it is reproduced through settler memory.

To conclude this section, I return to the history of the Washington football team. George Preston Marshall's motivation for giving the team this name derived from his "long time fascination with Native Americans" and in honor of the identity of his coach William 'Lonestar' Dietz, who was "believed to be a Native American," from the Sioux Nation, although in all likelihood he was not. (Hylton, 2010: 888; Waggoner, 2013: 1) Dietz's previous positions included coaching at the Haskell Indian School, and he recruited six Indigenous men, a number from Haskell, to play for the 1933 Boston team. (Hylton, 2010: 888-9) As well as introducing the new name, that year Marshall also required Coach Dietz to "walk the sidelines wearing a Sioux headdress" and he had the players, white and Indigenous, "wear war paint when they took the field." (Hylton, 2010: 902). In this way, the white settler own imposed not only the name but an entire performance of stereotypical Indigeneity, one reflective not of actual Indigenous practices but of the owner's settler imaginary. This settler imaginary is also deeply shaped by anti-blackness, as Marshall's actions showed after he moved the team to Washington, D.C. in 1938.

By 1961, the Washington football team stood as the only the NFL team to have never had a Black player on its roster. Under the new John Kennedy administration and with the presence of an increasingly powerful Civil Rights Movement, Kennedy's Secretary of the Interior, Stewart Udall, pressured Marshall to sign a Black player so that the team residing in the nation's capital would no longer be, in Udall's words, "lily-white," or the "paleskins" as he called them. Marshall resisted, cementing his reputation as a notorious, open white supremacist, stating at one

point that “We’ll start signing Negroes when the Harlem Globetrotters start signing whites.” Marshall had supporters in his effort to resist the Kennedy administration’s pressure to integrate the team. Notably, the American Nazi Party marched in support and one photo shows two distinct signs carried by the uniformed Nazis. The first is a banner stating “America Awake,” with a Swastika positioned between these two words. Next in line is a marcher holding a sign that says: “Mr. Marshall: Keep Redskins White!” (Park, 2013)

Udall eventually compelled Marshall to cede on this issue and integrate his team because the Secretary had important leverage over the owner. Marshall had recently signed a 30 year lease on the stadium in which his team would play, and that stadium – at the time called D.C. Stadium, and then RFK stadium – resided on federal lands. As such, Marshall’s landlord was the Department of Interior, and Udall threatened to deny use of these lands if the team persisted in its discriminatory practices. (Smith T., 2011) Here settler colonial invisibility and its modern functionality and material presence came in to play. These lands are part of the traditional territory of the Powhatan Confederacy, specifically the Nacotchank people. British colonizers and settlers seized this land in the late 17th and early 18th century. In the late 18th century, 10 square miles of the land was turned over to the federal government in order to locate and build the nation’s new capitol in Washington D.C. The complicated, mutually constitutive relationship between settler colonialism and white supremacy is evident in the history of Marshall’s ownership of the team, and it foreshadows the contemporary debate over the team’s name.

To start, take note of the American Nazi claim to “Keep Redskins White,” which echoed Marshall’s effort to keep Black players off of his team. Here, the preservation of whiteness is

maintained through direct anti-blackness, the core of U.S. white supremacy. It also premised upon a foundation of settler colonialism in which an overt claim to an identification with and appropriation of Indigeneity in the early 1930s does not upset the desire for racial purity, because in settler memory Indigenous people have been made functionally absent, a safe part of the past. This is the work of a white settler tradition that deploys settler colonial practices of appropriation and dispossession to generate settler belonging and also the work of white supremacist practices of anti-blackness that affirm white racial superiority. This particular story ends with the Kennedy Administration succeeding with regards to ending Marshall's practice of a particular form of anti-blackness, that being the exclusion of Black people from the marketplace – in this case that of professional athletics – due to racial discrimination. Marshall was violating a tenet of racial liberalism, in the nation's capital no less. The settler government's claim over this land proved the leverage needed for Marshall to eventually and very reluctantly allow for the inclusion of Black players on his team. This was a victory for racial liberalism won through the deployment of settler colonial governing power over land dispossessed from Indigenous people. The difficult relationship of settler colonialism to white supremacy and Indigeneity to race witnessed in this historical moment resonates in the contemporary debate, revealing both potential problems but also possibilities in how to understand, frame, and intervene in the public discussion occurring over this issue.

The Contemporary Debate: The Anti-Naming Claim of Racism

Just as in the early 1960s when the Washington football team stood at the center of a storm over a violation of racial liberalism and the owner's anti-blackness, in the contemporary era this same franchise in the most profitable professional sports league in the United States is under intense

scrutiny over the team's name. A wide range of Indigenous and non-indigenous political actors have voiced their opposition to the name, demanding that present team owner Dan Snyder change it. They include Suzan Shawn Harjo, Cheyenne and Muscogee writer and activist who legally challenged the trademark status of the team name, the Oneida Nation under the leadership of Ray Halbritter, the National Congress of American Indians (NCAI), the Leadership Council on Civil and Human Rights (a coalition that includes the National Association for the Advancement of Colored People, the American Civil Liberties Union, Human Rights Campaign, the National Council of La Raza, and American-Arab Anti-Discrimination Committee), and President Barack Obama, who stated that if he was the owner of a team with a name "that was offending a sizeable group of people, I'd think about changing it." (Vargas, 2013) Halbritter, while leading the Oneida Nation's public campaign against the name, also wrote a 2014 editorial critiquing what he saw to be hypocrisy in the NFL pondering a plan to penalize players for saying the word "nigger" on the field while the Redskins remained the name of one of its franchises. Comparing the N-word and the R-word, Halbritter argued that the latter is like the former in that it is a well-recognized racial slur. (Hallbritter, 2014) And in the wake of the National Basketball Association banning Los Angeles Clippers' owner Donald Sterling in April, 2014 for making racist statements in the private realm, a number of public figures have used this moment as an opportunity to demand the NFL take action on the Washington team name, seeing the two situations as analogous. Football player Richard Sherman, when asked if the NFL would have taken the same stance on racist statements as did the NBA, stated: "No, I don't. Because we have an NFL team called the Redskins." Senator Majority Leader Harry Reid (D-NV) implored the NFL to follow the NBA's lead, mocking those who defend the Washington team name as a matter of tradition, stating "what tradition, a tradition of racism." Representative Henry Waxman

(D-CA) has called for a Congressional hearing on the team's name stating that the Committee "could play a constructive role in challenging racism" by calling Goodell and Snyder to testify and defend the name. And on May 21, 2014, 50 U.S. Senators, all Democrats, signed on to a letter to Commissioner Goodell calling for a change to the Washington team's name. The letter also builds on the NBA example and includes the following claims and statements:

> …that racism and bigotry have no place in professional sports;
>
> What message does it send to punish slurs against African Americans while endorsing slurs against Native Americans?
>
> This is a matter of tribal sovereignty – and Indian Country has spoken clearly on this issue.
>
> At the heart of sovereignty for tribes is their identity. Tribes have worked for generations to preserve the right to speak their languages and perform their sacred ceremonies…. Yet every Sunday during football season, the Washington, D.C. football team mocks their culture.
>
> The NFL can no longer ignore this and perpetuate the use of this name as anything but what it is: a racial slur. (U.S. Senators, 2014)

This issue may be getting close to a so-called tipping point, as an increasing number and range of individuals and organizations feel comfortable taking a clear public stance against the Washington football team's name. This emerging movement against the team name is a positive development in that it may mean the name will be changed in the not too distant future. On the other hand, one 2013 poll found that 79% of Americans think the Washington team should not have to change its name. (Steinberg, 2013) Thus, while the issue has gained momentum to the degree that mainstream political and public figures are comfortable speaking out against the name, a significant portion of the public does not see it as a serious problem. To makes sense of these twinned dynamics, we need to take a close look at the politics and discourse of race deployed here.

The predominant claim made by those opposing the Washington team name is that the name is racist, a slur upon Indigenous people. One can find this claim throughout the public realm, and

especially across social media as people call out and protest the use of the identities and imagery of Indigenous people for team names and mascots. The claim that this practice is racist, or a racist slur, is clearly defensible in that the Washington football team is a dictionary defined slur and a dehumanization of Indigenous people. The problem here is not the charge of racism itself, but that it has become hegemonic in the debate. In so doing, this discourse marginalizes to the point of making invisible the idea and claim that these team names and mascots are persistent practices of settler colonalism that exist in a constitutive relationship with white supremacy. The relative invisibility of settler colonialism in this debate is as much a product of disavowal than it is a consequence of a lack of knowledge or as a mere byproduct of the predominant focus on race. For example, the letter from the U.S. Senators asserts that the issue is a matter of tribal sovereignty, which thus conveys their knowledge of that fact Indigenous nations stand in a distinct relationship to the United States. This assertion might have opened a path to defining this naming practice as a settler colonial one – one of appropriation built upon genocidal and dispossessive practices against peoples who assert their status as sovereign nations. But the Senators' letter closes with the presumptive assertion that the team's name is "what it is, a racial slur." This is unsurprising, as U.S. Senators – specifically Democratic Senators – can comfortably stand against racism in this particular form while also standing, if implicitly, for the maintanance and reproduction of American settler colonialism in the form of liberal colonialism. By liberal colonialism I mean polities comprised of institutions, norms, and practices that reflect a compatible encounter between liberal-democracy and colonialism in the political development and contemporary formation of nations such as the United States. Within a liberal colonial context there is no tension between an open opposition to practices that explicitly violate racial

liberal principles and the simultaneous disavowal and reproduction of settler colonialism. They go hand in hand.

To be more precise on racial liberalism, the liberal discourse about race is one that marks out for attention and potential amendment those evident exclusions and discriminations that could forestall some form of standing as equal or with the potential to be equal in the U.S. polity, as defined by Civil Rights era norms of inclusion to an ideal of a racially egalitarian, even post-racial, American republic. With the Washington football team of the early 1960s we saw government intervention to stop then team owner Marshall from excluding Black players from eligibility to be employed by his team. Now, in the early 21st century, mainstream politicians and public actors and activists are seeking to get present owner Snyder to change the Washington team name based upon the notion that it is a form of racial discrimination that excludes Indigenous people from realizing the norm of treatment under racial liberalism. This emerging popular and mainstream movement against the Washington team name is built upon a very narrowly tailored sense of what counts as racism. To refer to the issue of the Washington team name as a matter of racial discriminaton frames the problem and the solution within the assimilatory logic of racial liberalism, which does not allow room to productively mention, let alone debate and challenge, the role of historical and contemporary settler colonialism. Rather, as with the conflict over the Washington team's exclusion of Black players in the 1960s, the existence of settler colonial governance is presumed, both invisible and ubiquitous.

Political theorist Robert Nichols sheds light on the tensions that emerge when anti-racist politics and critiques that focus on closing the gap between the ideals of a racially egalitarian society and

the reality of a racially unjust society presume the persistence of settler colonialism and the settler state. He notes, "antiracist critique may inadvertently reproduce the official state narrative of the settler colony, in which the (colonial) state is the best approximation of the ideal social construct and indigeneity is understood as a derivation or deviation from this ideal, in need of additional normative justification…. In fact, it is often through the removal of so-called race-based barriers to integration and subsequent enclosure and incorporation of previously self-governing Indigenous polities that settler colonialism has operated." (Nichols, 2014: 103) As a consequence: "Insofar as this form of antiracist critique enables settler colonial sovereignty to structure the terms of its own contestation, it is classically, hegemonic." (Nichols, 2014: 113) It is this hegemony that is in play in the race-based critique of team names and mascots, one in which race-based discriminations and barriers become the primary focal point of the discourse such that not only is settler colonialism rendered invisible, but the resolution to this racial violation follows the logic of inclusion within and thus affirmation of settler colonial governance. The resolution to the exclusion of Black players from the Washington football team in the early 1960s came by means of settler state actors using as leverage against a white supremacist team owner the fact that said team owner sought to profit from long term access to lands dispossessed from Indigenous peoples. Racial inclusion was achieved and settler colonial governance was the means to achieving this aim, which thereby reaffirmed the settler state's status and authority over territory dispossessed from Indigenous people. When settler colonial governance shapes the "terms of its own contestation" in this way, the deeper historical and political sources and meaning of the appropriation of Indigenous identity and imagery for team names and mascots get subsumed and disavowed. As a consequence, so does the distinction between various group experiences in relation to American liberal colonialism.

With this critical perspective in mind, I see in the example of the letter from the 50 U.S. Senators as well as other forms of opposition to the Washington team name and similar sports names a form of liberal colonial discourse at work. This discursive work can be seen in the popular rhetorical trope referenced by Representative McCallum, by which one posits a hypothetical in which there is an analogous appropriation of the identities and imagery of non-Indigenous racial and ethnic others to the white Christian norm. A visual example of this device can be seen in the image widely shared across social media that shows three baseball caps side by side, that of the New York Jews, the San Francisco Chinamen, and the Cleveland Indians, each with its own derogatory caricature of an individual from these respective groups.

This particular image is from a poster and social media campaign produced and disseminated by the *National Congress of American Indians* (NCAI). The image includes the following tag line: "No race, creed or religion should endure the ridicule faced by the Native Americans today.

Please help us put an end to this mockery and racism by visiting www.ncai.org." (Graham, 2013) The point being made here is that if one finds unacceptable the hypothetical New York and San Francisco teams names and mascots, then one should by racial liberal analogy find the third, that being the actually existing Cleveland Indians and their grotesque logo/mascot Chief Wahoo, also unacceptable. In terms of short term political maneuvering it may make sense for activists to utilize this form of race-based discourse to generate public attention to the issue. However, this is likely less a calculated political move than an example of the hegemonic power of the discourse of race, and racial liberalism in particular. It is fair to question at a practical level whether this race-based approach does indeed work best in the short term in the effort to address and overcome the arguments made to defend such names/mascots and, connectedly, what this approach means in the long term effort to maintain and further generate an anti-colonial politics. The potential problems with a discursive move such as the example of the three baseball caps are that; first, it is premised upon the idea that the experiences and resolutions to the injustices perpetuated upon these groups are analogous; and secondly, in so doing it also undermines the effort to grasp why Indigenous sports names and mascots persist. This baseball cap analogy does not answer the question of why Indian team names and mascots get the 'free pass,' but instead unintentionally serves to further inscribe this pass. This is because the question that the hypothetical poses – how can we tolerate the Cleveland Indians when we would not tolerate the New York Jews or San Francisco Chinamen? – portends to be exposing the hypocrisy or inconsistency in the application of racial liberalism, but what it really does is mask the deeper, disavowed problem. The problem being that colonial relations define the production and persistence of names like the Redskins and mascots such as Chief Wahoo, which exist in a constitutive relationship to race, but cannot be collapsed as a matter of race, and race alone.

The creation and the persistence of these naming and mascot practices are deeply tied to the Allotment Era appropriations of land, and the violence and assimilative practices toward Indigenous peoples that remain structuring forces of U.S. liberal colonialism. Thus, deconstructing the baseball cap analogy for the settler dynamics at work here does not serve, first and foremost, to reveal that in contemporary life most people would not tolerate the New York Jews or San Francisco Chinamen as team names and mascots. Instead, it sheds light on the fact that in U.S. history there is no point in which the creation of such team names and mascots would have made sense in the first place. This is the critical historical and political point that is missed when settler colonialism is not placed at the center of this debate. Compared to settler appropriations of Indigenous identity, settler memory finds much less identificatory fuel in anti-Semitic or racist anti-Asian representations. This is not to say that Jewish and Asian people did and do not experience structural discrimination productive of American political identity and development, but rather that there is a more distinct, constitutive role for Indigenous identity and settler colonialism in relation to American settler identity and political development. Without such a shift of registers from racial liberalism to settler colonialism and its corollary colonial racism, the issue as presently and predominantly debated is more likely to reproduce than challenge and disrupt settler colonialism. I turn now to address a couple of the main arguments made in defense of Indian team names and mascots to reveal the theoretical and political benefit of directly upsetting the productivity of settler memory in the contemporary debate.

Two Defenses of Naming/Mascots, and Anti-colonial Responses

There are two prevalent contemporary arguments made to defend the practice of Indian team names and mascots: 1) For the team and its fans, the name or mascot is an important tradition worthy of respect and preservation, and 2) These names and mascots are meant to honor Indigenous people, culture, and traditions, and in that spirit they are utilized to reflect and enhance team pride. These two arguments are often articulated in the defense of the Washington football team's name, and they are important to analyze because of their constitutive relationship to white settler memory and identity. In particular, the argument that these names are meant as an honor to Indigenous people reveals settler practices that are tightly tied to white supremacist presumptions.

It's a Tradition

In an October 9, 2013 letter to the season ticket holders of the Washington football team, team owner Dan Snyder addressed the controversy over the team's name. While stating that "he respects the feelings of those who are offended by the team name," over the course of the letter Snyder invokes a number of common defenses of the name, in particular that of it being a tradition and an honoring. I start with the way he concludes the letter:

> So when I consider the Washington Redskins name, I think of what it stands for. I think of the Washington Redskins traditions and pride I want to share with my three children, just as my father shared with me -- and just as you have shared with your family and friends.
>
> I respect the opinions of those who disagree. I want them to know that I do hear them, and I will continue to listen and learn. But we cannot ignore our 81 year history, or the strong feelings of most of our fans as well as Native Americans throughout the country. After 81 years, the team name "Redskins" continues to hold the memories and meaning of where we came from, who we are, and who we want to be in the years to come.
>
> We are Redskins Nation and we owe it to our fans and coaches and players, past and present, to preserve that heritage. (Snyder, 2013)

Dan Snyder's assertion that the team's name is a tradition that is meaningful to him and to the fans should be taken as a sincere, legitimate claim. He is right, it is a tradition; a settler colonial tradition. In no small part, a settler colonial tradition is one that supplants and replaces Indigenous people's history and presence with a settler history that seeks to establish a sense of settler belonging in the territory. Historian and Indigenous Studies scholar Jean O'Brien refers to this as a "replacement narrative" that effects a "stark break from the past, with non-Indians replacing Indians on the landscape." (O'Brien, 2010: xxii-xxiii) O'Brien's focus is on the production of the replacement narrative in 19th Century New England, and she finds "five locations" in which it can be read: "the erection of monuments to Indians and non-Indians, the celebration of historical commemorations of various sorts, the enterprise of excavating Indians sites, the selective retention of Indian place-names, and claims Non-Indians made to Indian homelands." (O'Brien, 2010: 57) I see Indian sports names and mascots as forms of a monument and historical commemoration that serve a similar purpose of establishing settler belonging at the expense of Indigenous presence, and Snyder's words explicitly concede the production of such a narrative.

In response to protests, Snyder counters with a claim premised upon the weight and meaning of the over 80 year history of the Washington team's name. It is his team's history, what he refers to as a nation, that he positions as under threat from those who seek to change the name. For Snyder, this 80 year historical span has generated a collective identification and belonging, explicitly avowed in his assertion that the name "continues to hold the memories and meaning of where we come from, who we are, and who we want to be in the years to come." These are settler memories built upon the appropriation, representation, and replacement of Indigenous

identity and presence by an emergent settler tradition and identity. Snyder constructs a 'we' comprised of non-Indigenous people, of settlers, who find in the Washington team a mnemonic bond that links together fans and players of the "past and present." Snyder's construction of the 'we' is demonstrated by the fact that he starts his mnemonic tale with the meaning the name has for his own family, extends that feeling out to "your family and friends," and finally to "most of our fans as well as Native Americans." The latter is a telling construction in that it splits off a settler fan base from Indigenous people. And even if Snyder included settlers and Indigenous people in his 'we' of the Redskins nation, the tradition he is defending is a settler tradition in its creation, development, and purposes. This a tradition built upon locating active Indigenous identity in the past that settlers then *honor* via appropriation in the present day. In this way, the Washington team name and the team name and mascot phenomenon in general are active components of a contemporary replacement narrative that constitutes and with each articulation reconstitutes the story of settler belonging as a tradition unto itself.

To take at face value the claim to tradition and then deconstruct and consider the meaning of such a claim is to engage in an anti-colonial critique by marking it as an appropriative practice that serves in the constitution of settler identity. This goes further politically and critically than the claim that the name is racist. This approach refuses to allow settler colonial governance to set the terms of this debate. It does so by putting the team name's into historical and mnemonic perspective as part of a persistent, deeply rooted settler colonial logic and set of practices traceable from the past to the present and thereby tying it to, rather than cleaving if off from, the history and present of settler colonial governance. Thus, when Dan Snyder makes the claim that names and mascots matter because they convey memories about "where we came from, who we

are and who we want to be in the years to come," opponents of such names and mascots can concur with him and then take him up on the very historical arc invoked here, one which goes right back to the Allotment Era and all that it has wrought. As well, this critical approach places settler colonialism at the center of this debate such that it can facilitate the articulation of a racial critique that goes beyond the parameters of racial liberalism. I draw this relationship out in the next section, regarding the claim that these names and mascots honor Indigenous people.

It's an Honor

The claim that this naming practice is not a slur but is, to the contrary, an honoring of Indigenous peoples is closely bound up with the view that Indian team names and mascots are a tradition. Both the claim to tradition and to honoring articulate an implicit concern with defending settler identity, meaning, and memory. Here are three examples of its deployment in reference to the Washington team name. First, the following is an excerpt from NFL Commissioner Roger Goodell's June, 2013 letter to two Congressional representatives:

> Neither in intent nor use was the name ever meant to denigrate Native Americans or offend any group. The Washington Redskins name has thus from its origin represented a positive meaning distinct from any disparagement that could be viewed in some other context. For the team's millions of fans and customers, who represent one of America's most ethnically and geographically diverse fan bases, the name is a unifying force that stands for strength, courage, pride and respect. (Goodell, 2013)

Second, in an August, 2014 interview with the television sports network ESPN, Dan Snyder offered the following in response to the question: What is a Redskin? "A Redskin is a football player. A Redskin is our fans. The Washington Redskin fan base represents honor, represents respect, represents pride. Hopefully winning. And it's a positive." (Steinberg, 2014) Finally, the website Redskinsfacts.com, a team alumni website funded by Dan Snyder with the listed support of such former players as Joe Theismann, Billy Kilmer, Mark Moseley, and Clinton Portis,

makes the following claim: "**We believe the Redskins name deserves to say.** It epitomizes all the noble qualities we admire about Native Americans—the same intangibles we expect from Washington's gridiron heroes on game day. Honor. Loyalty. Unity. Respect. Courage. And more." (redskinsfacts.com, emphasis original)

Just as original team owner Marshall saw the name as an honorific that would stand as a positive symbol for his team in 1933, the parties supporting the name in the early 21st century are likely being sincere when they say that the name speaks to the "noble qualities" they admire about Indigenous people. In the conclusion to his book*, Playing Indian*, Historian and Indigenous Studies scholar Philip Deloria spoke to the function that 'playing Indian' serves for Americans in the production and meaning of their national identity, stating: "The self-defining pairing of American truth with American freedom rests on the ability to wield power against Indians – social, military, economic, and political – while simultaneously drawing power from them. Indianness may have existed primarily as a cultural artifact in American society, but it has helped *create* these other forms of power, which have then been turned back on native people." (Deloria, 1998: 191) The key word here is power. The comments of Goodell, Snyder, and on the team alumni website articulate a vital, constitutive relationship between the honor that the name purports to convey to and about Indigenous people and the power that the team and its fans get from the name, as a "unifying force," signifying "intangibles" they "expect from Washington's gridiron heroes on game day. Honor. Loyalty. Unity. Respect. Courage." The components and purpose of honoring as defined here by significant figures of the NFL and the Washington team expressly invokes a process of drawing power from Indigeneity as a cultural artifact for the sake of enhancing the power of the collective identity of the team and its fans. The purpose here is to

constitute settler identity, as the claim to honoring shows itself to be an appropriative practice for which the Washington team name is a metonym for the wider dynamic constitutive of American self-identity. This appropriative practice of honoring is also a form of replacement narrative, in which settler collective identity – the American nation, the Redskins nation – draws power from Indigeneity conceived as cultural artifact that in its noblest form is ubiquitous in the past and invisible in the present. The replacement narrative here implicitly asserts that noble Indigenous people have tragically disappeared and we, the settlers, honor them by taking up their name as our own in contemporary settler form.

In referring to honoring as a practice of appropriating Indigenous identity, I mean this as both building upon and occurring alongside the appropriations/dispossession of Indigenous territory and the effort to eliminate and undermine Indigenous people as a distinct people. Regarding this latter point, in their study of the psychological impact of American Indian Mascots, Psychologist Stephanie Fryberg et al., discovered that there are indeed negative impacts to such names and mascots, especially for Indigenous youth, and these "effects are not due to negative associations with mascots." They found that even when Indigenous youth have, in Dan Snyder's terms, "a positive" association with an Indian team name or mascot there was still a negative impact on the self-esteem of these young Indigenous people." These researchers conclude:

> Although pro-mascot advocates suggest that American Indian mascots are complimentary and honorific and should enhance well-being, the research presented runs contrary to this position. American Indian mascots do not have negative consequences because their content or meaning is inherently negative. Rather, American Indian mascots have negative consequences because, in the contexts in which they appear, there are relatively few alternate characterizations of American Indians. The current American Indian mascot representations function as inordinately powerful communicators, to natives and nonnatives alike, of how American Indians should look and behave. American Indian mascots thus remind American Indians of the limited ways in which others see them.

In sum, the appropriation here diminishes and confines the ways in which many young Indigenous people understand and enact their sense of identity. This is a deeply colonialist practice premised upon the enforced invisibility of Indigenous people as contemporary agents, and the ubiquity of limited representations of Indigenous people through such cultural forms as sports team names and mascots. And as a colonial practice it concomitantly serves to embolden settler identity, as supported by Fryberg et al., who reference two studies which "revealed that after exposure to various American Indian representations, European Americans reported higher self-esteem compared to the control condition and to a nonnative mascot, namely, the University of Notre Dame Fighting Irish." (Fryberg, 2008: 216) As such, just as the colonialist appropriation of Indigenous territory reduces and limits the territory of Indigenous people in the process of enhancing the territorial claims of the settler population, so does the appropriation of Indigenous identity through team names and mascots undermine the self-esteem and sense of identity of many young Indigenous people while enhancing the self-esteem of settlers, of European Americans.

The relationship between appropriation of territory and of identity is indicative of the wider colonialist dynamics at work here. What I marked out as a mutually constitutive relationship during the Allotment Era continues to this day. As with the response to the tradition defense, an anti-colonial response to the honoring defense does not need to challenge the idea of it being a positive representation, an honor, or a sign of admiration. Whether an image is meant as an honor or to be derogatory is not the fundamental point, as the psychological studies themselves show. Rather, the point to be made is that these names and mascots are created by the colonizer to represent the identity and existence of the colonized, drawing power to the former from the

latter at a symbolic and cultural level that is tightly tied to the appropriations and violence which occur in the material and political sense. This anti-colonial response to the honoring defense refuses to allow this debate to be reduced to race alone while providing the opportunity to reveal the important constitutive relationship between colonialism and white supremacy.

While in U.S. Indian policy the period from the 1880s to the 1930s is known infamously as the Allotment Era, in the history of formalized white supremacy this time period represents a portion of the Jim Crow era that did not formally end until the mid-1960s. In a nation built upon the cheap labor garnered through the violent enslavement of Africans and their descendants and the cheap territory gained through violent dispossession of territory from Indigenous people, during the Allotment/Jim Crow Eras sports teams turned to Indigenous identity to draw power in order to generate their honorable, noble, and courageous team identities. However, they did not turn to African American identity for this same purpose. The production of white American settler identity did involve the appropriation and drawing of power from African American identity, but in different form and with distinct meaning. As Eric Lott shows in his book, *Love and Theft*, since well before the U.S. Civil War the wearing of "blackface" by white Americans was a product of their feelings of both admiration of and repulsion for African Americans, and these minstrel performances served in the production of, in particular, white American male working class identity that was negotiating and defining the parameters of racial designations, meanings, and hierarchies. (Lott, 1993) There are two important differences between these forms of appropriation that speak to why a debate over team names and mascots reduced to the terms of racial liberalism does not recognize the more fundamental and persistent role of anti-blackness at work here. First, blackface minstrelsy presumed and continues to presume the presence of

African Americans in an abject state at the bottom of the racial hierarchy of U.S. white supremacy, whereas Indian team names and mascots presumes the disappearance of the noble Indigenous people who are honored as a cultural artifact. Second, in the post-Civil Rights era Blackface minstrelsy has become culturally and politically taboo, almost universally accepted as offensive and inappropriate, whereas the presence of Indian team names and mascots remains acceptable to many. In white American settler memory, the abjected, everpresent Black American at the bottom of the hierarchy of U.S. white supremacy and the noble Indigenous person made tragically invisible by U.S. settler colonial practices signify two distinct and compatible, constitutive imaginaries. In the white settler imaginary the abjected presence of Blackness stabilizes white superiority in the U.S. racial hierarchy and noble, disappearing Indigeneity stabilizes the settler replacement narrative and claim of settler belonging. When looked at in this way one can safely posit that to white settlers in the early 20th century the idea of looking to draw power from Black American identity so as to create an honorable team name was, quite literally, unimaginable, whereas utilizing Indigenous identity was readily imaginable, ubiquitously so. In this regard, original Washington team owner Marshall's views exemplify the manner in which anti-Blackness and the claim to honoring while replacing Indigeneity go hand in hand.

While present-day fans of the team would certainly disavow previous owner Marshall's open white supremacy, as well as the assertion of the American Nazi Party to "Keep Redskins White," the team's very public history on this account is not a mere exception to the rule of settler memory and tradition, but rather speaks to a collaborative relationship between settler colonialism and white supremacy in the U.S. context. This collaborative dynamic matters a great

deal when attending politically to the likes of Goodell, Snyder and so many others who do not view the use of the N word and the R word as being analogous, because while they concede the N word is a slur they insist that the R word is an honor. That the likes of Goodell and others do not see the two words to be analogous was only further proven in 2014 when, as noted earlier, the NFL seriously considered instituting a new on-field penalty for the use of the N-word by one player towards another, a situation that occurred primarily amongst African American players. (Burke, 2014) To those opposed to the Washington team name, this further demonstrated that the R-word was a getting a free pass. (Moya-Smith, 2014) While this response is understandable, these two situations are analogous only if one sees them through the framework of racial liberalism. An anti-colonial perspective reads the banning of the N-word and the maintenance of the R-word as further evidence that the persistence of the latter is in no small part premised upon the view of Black Americans as abject, as the un-honorable who need white American protection from further dishonor so as not to violate the tenets of racial liberalism and upset the white American myth that we now exist in a post-racial society. One can see colonial racism at work here in the manner in which a profound anti-blackness is subtly woven into the honoring defense, especially in light of the potential N-word ban. In the context of the NFL proposed policy regarding the N-word, the claim that the Washington team name honors Indigenous people implies that one particular group, Indigenous people, is worth the honor of white settler admiration while another group, African Americans, is worthy of only white liberal paternalism from further symbolic denigrations that openly reference abjected presence. To draw upon Professor Andrea Smith's formulation, these moves in relation to the R-word and the N-word mutually reinscribe the binaries of Indigenous-settler and Black-white. The former binary presumes the disappearance/invisibility of Indigenous people. The latter binary presumes the

presence and abjection/exploitability of Black Americans. (Smith A., 2012) This pairing of the honoring/invisibility of Indigenous people and abjection/presence of Black people forms the core of a colonial racism. This tightly tied historical and political relationship is not a significant part of the debate over team names and mascots in the 21st century, and this absence undermines the effort to generate more radical political arguments, interrogations, and alliances.

An anti-colonial, and thus anti-colonial racist, approach in this debate would make clear that the disappearing, noble and honorable Indian that Dan Snyder and his supporters posit relies historically and logically upon the co-constitutive unhonorability, exploitability, and ever-presence of African Americans. In so doing, this more radical approach maintains the focus on settler colonialism and white supremacy as deeply inter-related structures. In this case, it does so by taking the honoring defense at face value and re-posing it as one that relies upon both Indigenous invisibility/honorability and Black American abjection/exploitability. This approach does not appeal to the inclusive, assimilatory framework of racial liberalism, but instead sees the team name as a component of a larger dispossessive, appropriative, exploitative, and violent set of colonial racist practices. In response to the honoring defense, an anti-colonialist argument does not say we would never tolerate a derogatory name like the New York "Negroes" so we should not have the Washington team name, but instead asks why would the former have never entered the white settler imaginary in the first place whereas the latter was ubiquitous in its formative period and persists to this day, and what is the relationship between these two dynamics today? This more radical political question speaks to the history and present of settler colonialism and white supremacy so as to push the way towards a more profound and disruptive response to the honoring defense. Such a response begins with not reducing the issue to a solely

racial discourse in which colonialism is rendered invisible, but instead traces and interrogates the role of colonialism and colonial racism in the politics of Indians team names and mascots.

Conclusion

The free pass enjoyed by the Washington football team persists to the degree that settler colonialism remains invisible in this political debate. In making this case, the purpose of this paper is not to discredit the efforts of those seeking to do the important work of bringing an end to these names and mascots, but rather to consider the implications of the arguments that are deployed and to suggest alternative, more historically attentive and politically radical, ways to intervene in the debate and politics of this issue. The political efforts to oppose names and mascots have a great opportunity to upset the mnemonic loop that reproduces settler colonial logic. They can do so through a direct focus historically on the Allotment Era in order to argue that this present practice of names and mascots is part of a connected chain of appropriations and dispossessions that continues right on up to our day. However, if these efforts to raise and engage Indigenous political issues remain within the logic and narrative of racial liberalism in a post-Civil Rights era paradigm that defines the mascot issue as a matter of offensiveness, exclusion, and discrimination rather than an anti-colonial focus on appropriation, dispossession, and violence, they are more likely to reproduce, even if unintentionally, settler memory as a practice that sustains liberal colonialism. The present politics of Indian team names and mascots can bring the politics of settler colonialism to the center of public debate, and this can be done not at the exclusion of questions of race but rather to push this discussion in an even more radical direction. In the least, it is imperative to engage in a politics that works to refuse the invisibility of settler colonialism and Indigenous people, and while this may complicate the argument a bit

more than it is at present the benefit would be to compel the widening of the discourse on this issue beyond the narrow parameters of racial liberalism.

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The Radical Conscience in Native American Studies

by Elizabeth Cook-Lynn

Most of the time when I begin a discussion of Native American Studies, I begin by addressing the past, the educational practices which have failed, the hypocritical goals of assimilationists, the self-serving agendae of those whites who have been in charge of educating America's first people. This time, however, I would lilke to begin by talking about the present, by examining the modern influences which have been so astonishingly and profoundly forcing those of us who would like to consider ourselves scholars in the discipline in inappropriate and puzzling directions, both in our intellectual lives as well as our social lives.

I began giving some serious consideration to this influence after I saw the film *Dances with Wolves*, that movie which genuinely touched me, that movie which so effectively used with subtitles the language of my real life, that film which, without any hesitation whatsoever, I would take my grandsons, who are four and nine years old, to see. It is a movie about Indians which, in the year before the Columbus quincentennial, has made all of America remember that this country once belonged to the Indians and, perhaps, still does.

After the glow of that film showing, however, as is the case in every seduction, I clearly saw the movie as part of the problem, not as a part of the solution. For that reason, I've begun to believe that it is important for us to try to disengage ourselves from the distortions so evident in our conntemporary and professional lives, and to do that we might proceed on the bases that, first, pop culture, as an instrument of social change and intellectual pursuit, is no less dangerous today than it was in 1860 when the soap opera novel *Ramona* became enormously popular and overshadowed the essential work that Helen Hunt Jackson was doing in publishing *A Century of Dishonor*; and second, that Indian Studies as an academic discipline can survive its subordination to the popular imagination of America only by carefully examining its true mission in the context of the radicalization of academic thought of the 1960s and early 70s.

First of all, we must start by admitting that popular culture as a vehicle for social change has worked *for* us as well as *against* us. Those of us who in the sixties insisted that whatever the intellectual tradition, it had to be validated by our own interests, i.e., our tribal values and histories, are the same people who started out as students and graduate fellows to eventually become the directors of programs, the professors, scholars, writers, researchers. We were the challengers then and we continue to share that legacy today. Some say we have won the first phase, in that Native American Studies centers exist at institutions of higher learning all over the country and abroad. Our demands for relevance in humanistic study which merged with the so-called popular cultures of the sixties brought about the progressive stance of universities across the country which included *us*, a precious few of us, to be sure, as well as our courses on Indian America, the very courses which have become the core curriculum of the discipline.

The radicalization of the academic consciousness that we all shed blood for back in the sixties brought about Indian Studies as we know it. It achieved visibility by mounting a significant assault upon the narrow-minded notion that there are fixed authorial and western values that distinguish good from bad. We moved away from the idea that we could validate homogeneity of thought by sifting little "homilies" from every historical event, every piece of literature, from all the texts, most of which have been written by the male European thinkers of the past.

Twenty years later, and at its most imperious, the popular imagination which brings us the movies and

fiction and poetry of the nineties seems to suggest that we are still back there, back in the pre-sixties never-never land, where the white man's imagination about Indians was valid. It suggests that we are still at the mercy of those non-Indians who would imagine for us what our histories mean. You know, back when any improbable idea about Indians was legitimate.

The Kevin Costner movie which has invaded the consciousness of all of us, Indian and white alike, seems to suggest that after the Civil War in the mid-1860s there was some bridgeable gap between Indians and whites, if only on an isolated and individual level. It examines a wonderfully poignant notion about justice toward Indians and an appreciation of their cultures as though it really had some significance at that time and in that place. Indians, of course, and Sioux in particular, know that these sentiments are neither clear-eyed nor realistic and probably so rare as to be mythical.

The reason the movie is important and the reason that the discussion of the popular imagination of America is part of our intellectual inquiry in Indian Studies is not because it says something real about history but because it says something significant about the popular culture concerning Indians in this country. It is important because it tells us that America still cannot abide any real disruptive implications about the history that it shares with Indians, that America, in its popular imagination, still wants the simple solutions to the massive racial issues brought about by its own imperialistic origins. *Dances with Wolves*, is, more than any movie in recent times, a machine for dispensing the congenial implication that the American colonialist is capable of expressions of benevolent humanism.

Well, you ask, what's wrong with that? It, surely, cannot be all bad, to believe that your fellow man is capable of compassion.

What's wrong about it, even dangerous, is that it co-opts the historical fact that the U.S. military machine in the mid-1860s turned its guns on the American Indian in terrible, obscene wars of annihilation, bathing the northern plains in Lakota/Dakota blood, triggering federal policies of extermination which are still in place today, at least they are on the Indian homelands that I know. In light of the recent war, this recognition of the past seems more than ever to be important.

It is absurd to try to have some confidence in this movie's brand of nineties-style boy scout benevolence toward Indians when, in fact, the genocidal policies, the making and breaking of treaties with the Indians, the thefts of land, the political assassinations of Native leadership, the utter contempt shown by scholars, historians, and politicians toward Indian lives have been the dynamic thrust of nearly all intellectual and political pursuits in this country of the last hundred years. This movie asks us to believe that all of the crimes and vices of the American/European colonialist's character are somehow outweighed by Kevin Costner's boyhood wish to "be an Indian."

In this instance, the popular imagination as an instrument for social change will work against us not only because it trivializes our common histories but because there is not one item on any Indian political or cultural or intellectual agenda which can be addressed through the misleading notion perpetuated by this movie that some kind of social cohesion is possible between the murderer and murdered, the thief and the victim, the rapist and the raped. The position that the oppressed and the oppressors are all Americans together is indefensible, especially when the resultant effects of the oppressors, i.e., the paternalism and poverty of modern American Indian life, is rarely addressed and never transcended.

A good example of that is the Black Hills Land Case which the Lakota/Dakota people have had in the courts since the 1920s, a case which the white politicians in South Dakota are loathe to take forward for a political solution even though the Supreme Court in 1980 affirmed that the theft by the federal government was "rank." The modern Sioux are asking for land reform so that they may hold land "in common" as they once did, and so that their economic needs may be addressed in some platform other than beggary. The feds have simply offered a "pay-off" which will keep the Sioux in poverty for the next century as they have been for the last century. A land-base reform measure is essential to alleviating the appalling economic conditions of this Indian nation, yet not one important politician in the state of South Dakota will address the issue on tribal terms.

If the popular culture has failed to achieve a genuine alternative view of the Indian world which may have been expected of it by some of us who are "throw-backs" to the sixties, it is because it is in the charge of the so-called bottom-line, and these days that means it has given in to the economic interests of the world. Movies must make money. Novels will be accepted by filmmakers or for television miniseries development because they offer the easy solutions that American audiences want and sponsors promote, not because they have a lively and realistic grasp of Indian-white relations.

The distortions, then, must be taken up as the intellectual work of those of us who claim a vested interest in developing Native American Studies as an

academic discipline. The integrity of what we do comes from the sober understanding of, and the regulating, and defending of the parameters of that discipline, parameters which may be either tribally specific or global or panindian.

The first is the cultural parameter which asserts a claim upon the spiritual and philosophical notions embedded in language and literature and religion and mythology; and second, its counterpart, is the historical parameter which examines the legal status of Indian nationhood and Indian citizenship, the mechanism upon which all indigenous legal rights and political condition are dependent. The integrity of our work comes from believing that the definition of Indian Studies, i.e., the "endogenous consideration of American Indian Societies and Nations," first articulated in an essay published in the mid-seventies by sociologist Dr. Russell Thornton, means that American Indian scholars must study their own societies and histories and what they find out in this intellectual pursuit must provide the essential bases for the development of the discipline. If we expect a restoration of integrity to our historical and present lives, we as Indian people and native scholars have a particular obligation to promote the theory that our societies have a sense of values which we, as functioning members of those societies, mean to examine in a modern intellectual framework, not in the popular imagination of those who "want to be Indian," i.e., the Costners. There is nothing radical about this, but we may expect to be called radical, especially by outsiders who suggest that the only important contributions to knowledge have been made by European technological societies. We may expect to be labelled radical by our own constituencies as well because all of this suggests drastic change. The institutions which have been responsible for our survival in the modern world, including the new tribal governments instituted in our own time, did not exist immemorially, neither have the educational ones and, so, we are charting new ground.

The functions of the parameters of the discipline have been several. First, they set about defining an alternative regime of intellectual thought, distinguishing Indian Studies from Anthropology and History and the social sciences and related disciplines, not only through content but through methodology. Scholars have begun to regulate the development of the discipline within various institutional settings by bringing about a number of models, some of which are more appropriate than others. Some models are tribally described, presuming to serve particular societies, nations, cultures within the state's borders, or within the university's regional perspective. These are, in my view, the most important models since they seem to be the most impervious to outside interests such as the popular American culture we have just spoken of but, more importantly, because their faculties are generally made up of the tribal intelligentsia, native language speakers, reservation-based scholars, native poets and singers and dancers and writers. Their curricula are generally geared to the economic, political, and cultural realities of the people. Other models are global in their approach to curriculum development. Even other models seem to be geared toward urbanization as an essential and inevitable movement in indigenous life. Some models seem to exist without any input from the native communities at all and they see themselves as mostly informing the non-native student and population about Indians. They center their interests on cultural diversity courses and the discussion of "minority" groups in the United States, discrimination, and racism in America. These models oftentimes seem unconnected, scattered; they are inherently suspect because they are seen as unable or unwilling to enter into the business of political transformation so necessary to Indian Education.

The defensive function of the parameters is most effective in the tribally described models since the discipline is obliged to serve the tribal nation rather than the state or the United States, or the non-Indian populations. They often have their own Indian Board of Trustees, and it is, therefore, the disciplinary model most likely to resist the assimilationist view so prevalent in the educational services available to Indians. These models stress the matters of treaty-making, sovereignty as a concept, the nation-to-nation legal status of tribes, an historical view which is oftentimes ignored in other educational institutions. A reactionary or a merely symptomatic stance in the development of curricula is, of course, a danger in these models but that is generally offset by the transformative function of the discipline, i.e., the research and writing that must accompany the development of any body of thought.

Some of these models in various university settings have thrived, others withered. The survival of many, the birth of others, and the changes rendered in all of them by the educational conservatism and the discriminate budget slashing of the Reagan and Bush years, not to mention the white backlash to Affirmative Action policies, suggest that the next twenty years of development in Native American Studies will face powerful challenges.

The most important question facing Indian Studies professors in the coming decades is, *on what terms are are we willing to go on with the work in the*

American university systems that have emerged from the sixties' radicalization of academia?

Are we content with filmmaker Costner's proposition that a collective benevolent humanism of the nineties erases history? I, for one, am not. I would like to see myself riding (philosophically, at least) from Ft. Yates, North Dakota, to Wounded Knee with the Minneconjou and Oglalla during the Big Foot Commemoration. I want to be part of that historic recreation which took place in December 1990, about which the mainstream media and academia were virtually silent! I want to continue to ask, "What is my responsibility to my ancestors and to my grandchildren, and to what extent can that responsibility relate to the educational goals of America?"

I also want to know whether or not we will be intimidated by the white scholars (as well as some scholars of color--Steele, D'Asuza, Rodriguez) who say that Affirmative Action is a policy which does away with standards of merit and forces upon U.S. institutions our inferiority. If we are intimidated, our young scholars will find themselves doing the slave work of the universities, not the intellectual work of their tribes. They will think that hiring policies, salaries, tenure and promotion problems are the issues of the day. They will ask, *How can I advance my career?,* not *Is what I am doing important to the tribes?* There is reason enough to believe that they are, even now, congregating as faculties at these universities for selfish reasons.

Will we address the "token" status which is so much a part of our existence? I am talking about the isolation in which we do our work. I am talking about the extraordinary numbers of hours which our faculty members are obliged to put in serving on every committee on campus simply because we meet the federal requirements for "minority" consultation. We are asked to give lectures in other courses at a rate far higher than the average faculty person, but, of course, we say cynically, "It will look good on my vita." I wonder if we will continue to be all things to all people, the door mats at institutional entrances.

Are we to be distracted by the charge that we in Native American Studies, along with our Black and Chicano brethren, are "ghetto-izing" the concepts of "liberal education" and the free exchange of ideas and knowledge itself? Are we to take seriously the charge that because we are not talking about academic issues but about politics we cannot separate truth from falsehood? I would be much more comfortable in a sober discussion on this argument, and, indeed, I may have even at one time in my career embraced it if it weren't for the fact that I have for too long seen that universities are the "cemeteries of ideas," to use a Chicano colleague's phrase. We cannot allow universities to continue to be the burial places of creative thought. There is simply too much at stake. Therefore, I urge all of us to dismiss the "ghetto-izing" charge as a specious one meant only to keep us from our work.

More important to all Indian people, I think, is the question of whether or not we wish to defend the sovereign right of Indian nations to be in charge of conferring citizenship upon our own people. Indian nations still retain that right, you know. And, we as individuals can possess only what our tribes possess, both in terms of status as well as knowledge. Lately, we seem to be content to let the self-identification method for both faculty and students prevail. It has now become the subject of controversy, secrecy, and fraud (i.e., The Foster Carter *The Education of Little Tree* Controversy). Why should the university systems of this country and Indian Studies units and publishing houses define who an Indian is? This is absurd. Why not devise Indian Studies as a mechanism which defends the Indian nation's right to do what it has always done. Such a mechanism would defend the notion, too, which is implicit in the definition of our discipline, that Indians themselves must be in charge of this intellectual developmennt which is by its very nature tribally-specific. In the long run such a mechanism would defend us from nefarious and dangerous pretenders who have become numerous as flies in this modern valueless world, writing books and conducting workshops on everything from moon ceremonies for the middle-aged woman to religious-freak pipe ceremonies to how to save the earth, Indian-style.

Though none of the answers to these questions appear to be finalized, it is essential to our future that we pose them. That the next step in the development of Native American Studies appears to politically dangerous is evident. That the white academic communities would like to continue the paternalistic and colonialistic ways of the past is also evident. It is up to this generation of scholars to remember that for most of our history, the issues of our sovereignty as Indian nations has been linked to education in the most oppressive way. We have been asked over and over again, in the name of education, to violate the parameters of culture and history in order to participate in the university system, never to defend them. And many of us have paid that price. Never, until the radicalization of academia in the sixties which, in my mind at least, can in large part account for the advent of Indian Studies, has that educational link been boldly in defense of sovereignty, in defense of our cultures and histories, in defense of the idea that American Indians, alive and well in the twen-

tieth century, can enrich and vitalize the educational institutions of America by their presence.

It is up to this generation of native scholars to continue to believe that the western values as they apply to American Indians which have dominated the intellectual mileau of America, offer us only the narrowest view of humanity, that our exlusion, our domination, our destruction has been the price that we have had to pay for our admission to the universities of this country. As some of the early native scholars reduce their teaching loads as I have done, or go on to writing and research careers, or retire, it is up to the new generation of American Indian academics to develop new and continuing radical alternatives.

No one says it will be easy. It isn't just a question of victimization, racism, exlusion, poverty, or powerlessness. Nor is it a question of real Indian existence or Indian Studies being co-opted by the influence of Costner's *Dances with Wolves*, the most recent example of the pop-culture, as we approach the 1492 "discovery." It is a question of embracing the idea that all knowledge is historically and socially conditioned, that it is neither inferior nor superior in that conditioning, nor is it certain or false. It exists and it survives and in doing so it has no claim to special reverence, only a claim to its own integrity. That our knowledge is encompassing those worldviews of indigenous peoples, having survived the colonization period, can no longer be denied us is an ethical idea worthy of representation in the academic institutions of America.

If it is true as Professor Vine Deloria, that consummate Sioux Indian scholar has said in his latest essay, "The most important question that an Indian student can ask him/her self is, *is what I am learning useful to Indians?*, (and I believe it to be), it is even more true that Idian intellectuals must ask, *"is what I am teaching and writing and researching of value to the continuation of the Indian Nations of America?"*

Elizabeth Cook-Lynn is Professor Emeritus at Eastern Washington University and Visiting Professor at the University of California, Davis. This paper began as a university lecture at U.C. Davis.

Elan

(a poem for the young men who are the Big Foot Memorial Riders of 1990)

by Elizabeth Cook-Lynn

Sometimes after the glare of sunrise
but before the moon shines
they ride the frozen wind,
danse du ventre in killing snow;
he holds the broken heart of a grieving god
in elegaic memory, bears in his gloved had the sacred eaglestaff.
Courage! *Il ne passeront pas!*

Between the monasticism of
priesthood and the flaring love
of a warrior's ways he
holds his whitened breath and
becomes heroic
to the nation he honors.

ANTI-INDIANISM IN MODERN AMERICA

A Voice from Tatekeya's Earth

Elizabeth Cook-Lynn

University of Illinois Press
Urbana and Chicago

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Looking for a place to cross the creek
I hear a beaver splash and see him
hurry away in spirals of transparency
model busybody on his own
private journey to get home in one piece
alive and well. Like most translators
of these waterways, tributaries to the
vast Mni Sosa, he avoided
the great bluffs where I stood
and dropped into low waters
when he heard me intrude.
Predictable, sensible, he
feared the tread of humans,
probably learned he was no match
for the damn builders
whose turbid reservoirs could be heard
upstream for eight hundred miles.

Dusty trails along the tree-lined creek
turn to mud in shaded spots, cow
trails and horse paths lead to the
struggle for meaning of a hardscrabble
life, traditional values of the people
who lived here for thousands of years
displaced as easily as the river chewing
at its banks. Like a Muslim amid
the relics and ruins of any holy city
I weep for Tatekeya's Earth.

—Cook-Lynn, *I Remember the Fallen Trees* (1998)

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Preface

In my lifetime the inexorable logic of Indian life in America has undergone deliberate diminishment. In my lifetime hundreds of thousands of acres of treaty-protected indigenous lands have been lost to Sioux Nation title, thousands of Lakotas and Dakotas have been forced away from their homelands because of anti-Indian legislation and poverty and federal Indian policy; and white Americans, by and large, have no more respect for or understanding of native cultures and political status than they did during Jefferson's time, though they continue, as he did, to collect bones and Indian words and delay justice. It is because of these losses that I write.

Today, America's tongue is cloaked in ignorance and racism and imperialism as much as it was during the westward-movement era; and "removal" is still the infuriating thrust of Indian/white relations. The tribal tongue o Nativism, by contrast, struggles to foretell a future filled with uncertainty. I is because of this reality that I write.

The agency town—military fort where I was born, *kudwichacha,* is nestle in the fluvial hills of Mni Sosa. It was famous as one of the guarded places o U.S. overseers of Indian policy, and its inhabitants were mostly ex-military active missionaries, Catholic priests, merchants, public-health doctors an nurses, schoolteachers, white hangers-on, and, of course, Sioux Indians About twenty years before I was born they took down the fifty-foot-hig board fences that protected them from my people, whom they saw as th arrogant, mad Dakota Sioux who gave the country its name.

I am stunned by the natural beauty of that place, horrified by the destruc

eral decades, and we must concern ourselves with the development of internships for our native students in the areas we feel are significant.

We must promote research and writing in appropriate and meaningful ways, which means that we don't need too many more doctoral dissertations on "Who Am I?," "Who Is an Indian?," "What I Learned from My Cherokee Grandmother," and "Mother Earth Is My Friend." We don't need too many more doctoral dissertations on the life of N. Scott Momaday (interesting though that may be), unless the scholarship includes a critique of his outrageous defense of the Bering Strait Theory and the role of science in describing native origins, and what this essential conflict means to indigenousness (a major concept of the discipline) on this continent. This defense of science concerning native origins by Momaday appeared in the *New York Times,* and a rebuttal by Vine Deloria appeared in *Indian Country Today,* which gives us some notion of the places noted scholars publish their works. It is successful Indian novelists who get to publish in the *New York Times,* where they write on subjects they often know very little about.

We need dissertations on the Yankton Land Case that will reveal the anti-Indian legislation that comes out of Congress and is promoted by the state and federal court systems. We need to publish the facts of the Dann Case and the Utah Land Case revealing more of the illegal activity of lawmakers that reduces reservation life to a life of poverty. We need to study the water rights cases of the Missouri River tribes and we need to pnblish our stndies.

Obviously, as a writer who has struggled to make sense of the political world, I believe we need to train our young people to do research and to write and publish. They must learn the fundamentals of research design and writing and publication. This may be the most important set of skills they can bring back to their tribes from university training.

It is our responsibility to continue the struggles toward a decent future for Indian people and the empowerment of Indian nations. In our twentieth century, the antagonists, the enemies of our nations, the thieves who want our land and water and other resources, they are still out there. I believe that the 1990s task force on Indian education, which says that our nations are at risk, is something we all should take very seriously.

Lecture given at the University of South Dakota at Vermillion, Oct. 10, 1998, to an audience of students and faculty and directors of NAS institutes and programs.

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RECONCILIATION, DISHONEST IN ITS INCEPTION, NOW A FAILED IDEA

Hau. . . . nape che u za pe. . . . This is a brief greeting used now by contemporary Sioux speakers to ingratiate themselves with their audiences, a greeting used to say that I, the speaker, am friendly and on good terms with you, the audience. I am not sure how appropriate that phrase is for me to use today, because when I look at the focus of our coming together at this university today, "Reconciliation" and "Tribal and State Relations," I realize that I have little to say that is friendly. Indeed, I will probably, on the contrary, have many unpleasant things to say.

I know that Mandela and Bishop Tutu talk of reconciliation in South Africa to those who have murdered and oppressed them for most of this century. I know that the Irish now talk of peace, and the Palestinians and Israelis talk of how to forgive one another. In the face of all that recognition, I want to talk seriously to you about why, in my view at least, the so-called Indian/white reconciliation movement in South Dakota, apparently initiated by newspaperman Tim Giago, a member of the Oglala Sioux Tribe, and George Mickelson, a former governor of the state, is a dumb idea and should end up on the scrap heap of dumb ideas. Reconciliation, so far as I undertand the word, means "to cease hostility or opposition," or "to accept or be resigned to something not desired." It could mean "to compensate someone." That latter definition has been used as a tactic in the Black Hills Case, and it is nnacceptable to those Indians from whom the state of South Dakota and the U.S. federal government stole the Black Hills. Since 1980, in a century-long litigation brought by the tribes, that "acceptance" or "resignation" or

"opposition" or "compensation" has been unacceptable. It is important to recognize the unacceptability of these tried and failed solutions.

Before we can talk of "ceasing of hostility" we need land reform in the state of South Dakota, and that means that stolen lands must be returned to their rightful owners. This is not a church matter, after all, in which we can give in to the buying and selling of indulgences and various forms of penances. This, instead, concerns the very survival on this earth of a nation of people, the Sioux, who occupied the land for millennia before the white man's invasion. We need to have a state government that is based in ethics and history rather than greed, racism, and tourism, and a federal government that will stand up to pressure.

My talk today will attempt to convince you that the reconciliation movement of the 1990s is ill-advised and doomed to fail, and is in fact, at this moment, if not defunct, certainly moribund. I will tell you why.

I want to start by telling you a brief little story. It was, I think, in the summer of 1980 that I went to a tribal water meeting with my father, who was then very old and very ill and was no longer an elected official of the tribe as he had been. He was using a cane and could no longer drive his car and had to rest frequently. Another old man, a white man whose name was Bill Veeder, was there. He was an old water-rights lawyer from Washington, D.C., who had worked with the tribes for many years, and that's why we were there, so my father, a longtime rancher and politician from the Crow Creek Sioux Reservation, could visit with the old lawyer, whose business was the defense of tribal water rights along the Missouri River and its tributaries.

I remember the speech very well that Mr. Veeder gave that day. The old Washington, D.C., water-rights lawyer talked about land and water monopolists and states' rightists and racists. He talked about the courts and the Winters Doctrine, which most of you know was first enunciated in the upper Missouri River basin back in 1907, a very important piece of legislation that defended tribal rights to the use of the Missouri River and its tributaries. Implicit in the Winters Doctrine, the old lawyer said, is the fact that Native American tribes are sovereign nations. Explicit in the doctrine and many others, not the least of which are the treaties, is that our forefathers guaranteed to the tribes that their reserved rights are exempt from state control and jurisdiction. Our forefathers. That means white forefathers as well as Indian forefathers. All of the white people who live in South Dakota should understand that it was an agreement their forefathers made with Indians and Indians made with them.

As you know, the Secretary of the Interior and the Corps of Engineers totally ignored the Winters Doctrine rights of the Sioux tribes in the Pick-Sloan

Plan, which brought about the development of hydro power dams in the Missouri—Garrison, Fort Randall, Oahe, and the others. Up the river for hundreds of miles, lands were seized and inundated and the tribes were paid a pittance payoff and deprived of any participation in the economic development for years and years. Had we participated appropriately in that development we would today have a sound economic base on Indian reservations up and down the Missouri River. We did not. So we have Bingo palaces and casinos. And poverty. And substandard houses in which we raise our children and take care of our grandparents.

This kind of history is repeated throughout the West. Salt River rights of White Mountain Apache in Arizona. Ahtanum Creek rights of the Yakima Nation in Washington state. The Colvilles. The Spokanes. We could name tribe after tribe.

When the old water-rights lawyer Bill Veeder talked of these matters seventeen years ago, he said this: "The Missouri River is now *totally controlled and channelized* and Indians find themselves in irreconcilable conflict with politically powerful water users who are claiming rights under state law."

While some may argue that much of this dilemma has been attended to through recent legislation and state government action, "state/tribal compacts," various "agreements" reached, coalitions established, quite the opposite is true. Even the much-touted Mni Sosa Water Coalition is a strategy to *quantify* tribal water rights, not defend them.

At present, there is what is being called a "land transfer" bill in Congress promoted by thrice-elected (soon elected a fourth time) Bill Janklow and Senator Tom Daschle that is called "South Dakota Land Transfer and Wildlife Habitat Mitigation Act of 1997," which is designed to diminish tribal sovereign status in the state, to claim land for the state that is treaty-protected land, to broaden a tax base for the state, and to claim jurisdiction concerning hunting and fishing. Look at that bill carefully and you will see that it is another land grab by the state, that it will benefit no tribe along the Missouri River economically on a long-range basis. Yet it is touted as a measure to "put to rest" all jurisdictional questions over hunting and fishing.

The tribes do not need this legislation to reserve and protect native hunting and fishing rights along the Missouri River. These rights are, according to water-rights lawyer Bill Veeder, implicit in treaty and history. Tribal nations have the right to use, to administer, to control and exercise the property rights independent from state control and interference. And they should be developing the strategies to assert those rights. Moreover, the federal government in its fiduciary role must assert its defense of tribes through pro-

viding funding and assistance for tribal development along these waterways independent of the greedy and self-serving state and county governments.

The kind of legislation that prevails, unfortunately, brought to bear by pressure from state officials, the Secretary of the Interior, and officials of the federal government, should be recognized for what it is, a failure of the "fiduciary" responsibility of the federal government, and an effort to drastically limit the claims of Indians. In the kinds of "reconciliation" legislation offered here, something called "settlements" are undertaken. These "settlements" attempt to convince the tribes that their rights are being preserved and protected. But in actuality, their rights are being sacrified over and over again in the furtherance of the needs of greedy water monopolists and states' rightists. Non-reservation-based farmers. Hog producers. Cattlemen. We should know that. And we do know that. The deception practiced by the Secretary of the Interior to seize the invaluable reserved rights to the use of water from the tribes was known when the great Sioux Nation lost its rights in the Pick-Sloan Plan. This is a superb example of the kind of manipulation that is ubiquitous in native/state relations. No one should feel that the future is secured by the now-agreed-upon Mni Sosa Water Coalition, because it denies the sovereign rights of native water holders and does nothing to ensure an economically sound future.

In a *Rapid City Journal* article last December, the offices of Janklow and Daschle put out some information to the public concerning a "settlement" idea about land "transfer" and "wildlife habitat mitigation" and it sounded good to the uninformed public. The headline read "Legislation Ends Missouri Dispute," and it referred to their self-centered, state-inspired legislation on "mitigation," a new word, perhaps, for the now-trite "reconciliation." The article quoted the officials as saying that the dispute would be ended because "the Federal Government is no longer the *middleman* [my emphasis] in deciding who owns land and who has jurisdiction."

What kind of history is this? What kind of law is this? Everyone knows that the federal government has *never* been a middleman between tribes and state governments. It has been a "trustee" of Indian lands and it holds a "fiduciary" responsibility to its treaty co-signatories, the United Sioux Tribes. What this kind of talk and this kind of legislation mean is that at the end of the day, the federal government, the fiduciary in the cases the Sioux Nation faces with the state, forgoes its legal responsibility and enriches itself and the state while draining the assets of the tribes to which it owes treaty obligations. It's like an estate lawyer selling off his client's assets to enrich himself. For such

actions in the real world, lawyers go to jail!! Only in Indian cases is the fiduciary rewarded for such illegal behavior.

I find the public silence toward this strategy of white politicians in their dealings with Indians very interesting. Where is the free press? Where are the scholars? Where are the educators? Where is the native leadership? In the highly organized "misconduct" and "malfeasance" which have characterized the behavior of one government toward another, there is a consistent theft of not only the corporate assets of the tribe like land and water, but also the very sovereign status embedded in our concomitant histories. And there is no outcry from the public, by and large. The reason is that *the general public benefits from every one of these thefts* from Indians and always has. Indians don't need leveraged buyouts or insider trading or greenmail. Indians just need congressional legislation or executive order or an inert tribal governing body, along with a state attorney general at the local level who believes it is his *duty* to constantly harass and confront the tribes in court, appeal every decision, argue and thwart every move the tribes make. What I want to point out here is this: the success of these outlaw maneuvers is dependent upon the public silence that accompanies them.

Many times, the kinds of issues talked about here between governments and government officials are called "conflicts." I'm reminded of the Minnesota history that calls the theft of Santee country in 1862 the *Dakota Conflict.* That is what it is called in the history books that are written. The truth is, the Minnesota event of 1862 was not an "uprising," or "conflict"; rather, these histories can be described as acts of war, and Santee chieftain Little Crow was unambiguous about declaring war, leading his people in opposition to the U.S. military. This war ended with the hanging of members of the Dakota forces by the United States of America, the largest mass execution in U.S. history of the only people to be hanged by a colonial government for defending themselves. Certainly there was no mass hanging of Confederate military men during or after the Civil War during that same era. These modern acts of war against the Indians are generally perpetuated by the elected and appointed officials of one of the most powerful countries in the world against some of the poorest, colonized, and oppressed people in America not because the victims are poor, not because they are freemen or slaves, but because they are Indians, non-Christian indigenous peoples claiming to be landowners.

If you want another example of "reconciliation" efforts, look at the recently litigated case *Yankton Sioux Tribe v. South Dakota,* in which the state of South Dakota and the courts have "diminished the Yankton Sioux treaty-protect-

ed tribal lands by 168 thousand acres," and, in fact, the state of South Dakota in that case argued for the total elimination of the Yankton Sioux Reservation. This is astonishing behavior on the part of the courts of this democratic country now, at the turn of the century, a time when we are supposed to have learned something from history, a time of supposed enlightenment concerning race relations. It's not only wrong. It's genocide.

Your elected officials are responsible for this. Jim Abourezk, the former state senator who now has a law firm of his own that does "business" with the tribes, and who took this case to the courts in spite of hesitation on the part of some local tribal leaders, has tried to put the best face on this enormous loss by saying that tribal leaders have said "they can live with divided jurisdiction." If that is the case, tribal leaders are as complicit as anyone. But whether or not that statement is accurate, that is hardly the point. What is made clear here is that any "reconciliation" effort to litigate fairness has always meant to Indians that they be resigned to their fate—continued land loss and rights and underdeveloped economic systems. The point is, Indians and the future of Indian nationhood have once again been sacrificed.

This recent Yankton court case, we are told, is based upon past federal legislative action. Thus, a racist history begets a modern racist legal interpretation. Explicitly, according to the legal argument, the court decision to give the state 168,000 acres of Yankton Sioux land is based on an 1894 Act of Congress that "opened unalloted lands to white settlement," in which, it is said, the Yanktons voluntarily "ceded" these lands. This argument is wrong morally, ethically, and probably legally. If you understand history, you understand that this Act of Congress was undertaken just four years after hundreds of Lakotas were murdered at Wounded Knee by the U.S. Army. The so-called cession of Yankton lands occured just four years after that massacre by U.S. government troops, which were, by that time, stationed on all Sioux homelands. Four years. Hardly enough time for the grass to grow over the grave. And the U.S. military was stationed within the borders of the reservation, a fearsome occupation army. Does anyone believe Indians were voluntarily "ceding" lands during that period of time?

This 1894 Act of Congress, which is cited in 1997 as evidence for further land theft, rose out of a policy of extermination and genocide. A policy that was put in place because the Sioux could not be defeated on the battlefields of the Northern Plains. They could not be coerced, in a hundred other ways that were tried, into giving up their lives. The Sioux efforts to survive thirty years of warfare in defense of their place on the Northern Plains was dealt with by these illegal actions of Congress and the courts and other bureaucracies in which the Sioux had no status. This Act of Congress in 1894 was inspired by the officials who made up the government of South Dakota, which was then in its infancy. Its powerful land monopolists were everywhere. Today, these same powerful interests in South Dakota, sitting in high places and throughout the country, prevail upon their racist past to continue land theft. They do it through government and the courts. Make no mistake, this 1997 court decision to "remove" Indian lands from Indian title and "transfer" them to the state is a crime not only against the Yanktons but against all peoples who are powerless and colonized.

The state has not been, as anyone can tell you, an innocent bystander in the continued theft of lands and rights, and for us to suggest that a people's movement in this state toward "reconciliation" can have any meaning while these acts of war continue is foolish. The Santees, the Oglalas, Hunkpapas, Ihanktowan, Sicangu, Minneconjou, and Sihasapa, all of us have suffered from this kind of paper warfare that not only legalizes land theft but legalizes the death of the tribes. To have your courts legally declare the tribes nonexistent, in case you care to give a name to it, is called genocide. Isn't genocide a crime? In Bosnia? Iraq? But not in the United States? No wonder our Sioux leaders have gone to the international courts in the last few years to try to get a hearing on what is happening to us. In the international arena there may be more of a chance for an appropriate discussion of the consequences with those who perpetuate genocide as national policy.

The governor of our state considers the Yankton Reservation case resolved. He is "optimistic" about building relations with the Yankton Sioux and he now wants to talk about "tracking down" Indian parents who do not support their children. If this kind of inequality and hypocrisy is allowed to continue in our state and on our reservations, untold crimes will follow and we will be horrified by them. Child abandonment will be the least of them.

There is a term that needs to be used here. The term is Anti-Indianism. In the same way that Anti-Semitism was in the beginning the offspring of religious persecution, Anti-Indianism here in our region has been the child of legal and church institutions that govern our lives. What history has shown us is that even when the Jews gave up their religion and their identities, they were still unacceptable to German society, and Hitler began to move toward their complete extermination. Likewise, even as Sioux Indians became Christians, there has been no avenue of escape from political oppression and massacre and discrimination, and, finally, the theft of the homelands. If there is to be a peace process here, we must begin with the return of land for two important reasons: first, there is no more important value to colonized peo-

ple than the land; and second, it is in the land that the native finds his morality and religion, his life and his survival.

What Indians here in our region have understood is that we have had very little power to affect the body politic in the state of South Dakota and this has always been true. When we have no way to affect the body politic in our state, we have tried to believe that we could depend on the federal government, with which we have signed solemn treaties. Unfortunately, the federal government, our "trustee" that holds our lands in limbo, has proven to be as corrupt and unreliable as any other self-serving institution in its dealings with us. When you cannot affect the body politic and when your "trustee" is corrupt, you turn to the courts. It has taken a long time to learn the lesson that we cannot depend on the courts either to go all the way with us. Halfway justice is no justice at all.

In the last decades, the courts have turned out to be the last places Indians should turn to for justice. Indeed, a 1994 case called *Hagen v. Utah* has been a central case in what is now called the "diminishment" movement, a movement led by key states in the West, among them Utah, Washington, New Mexico, and South Dakota. I call this twentieth-century movement a movement of legalized genocide, which is traced to a denied history. The decision in *Hagen v. Utah* holds that Utah state courts have jurisdiction over Indians as to crime on land within original reservation boundaries. This is based on a ruling that Congress in past acts had the intent to diminish the reservation. A ruling which, if upheld, is evidence of a genocidal federal policy. Obviously, this is an effort on the part of states to place land outside of Indian Country as defined in 1902, and it clearly indicates the ambiguity concerning Indian tribal survival. On the one hand, the courts say they try to be fair. On the other, they express the historical view that America must be rid of tribal nations once and for all.

You might be interested to hear Blackmun's and Souter's dissenting views from the Supreme Court on the Utah case. They wrote:

> ... the state of Utah lacked jurisdiction because lands where the offense occured were Indian Country, since (1) there was no clear expression in either the face, surrounding circumstances, or legislative history of the 1902 statute that Congress INTENDED to diminish the reservation and (2) even if the 1902 statute's public domain language constituted express language of diminishment, such language did not remain operative in the 1905 statute, which actually opened reservation lands for settlement, but did not restore unalloted lands to the public domain.

Blackmun and Souter did not agree that jurisdictional issues in Indian Country could be decided on such flimsy evidence of historical intent. Dissenting views do not always carry the day, but they are often concerned with the larger issues and are often used in defense of further legal, political, and legislative dialogue. In the view of many, we have not heard the last of this discussion. The unfortunate fact about this kind of behavior on the part of the courts and certain ideologues who sit in high places is that sooner or later these decisions will have to be reexamined, and very likely overturned or rewritten in the name of justice and fairness. In the meantime, tribes have spent hundreds of thousands of dollars in defense of themselves, money that could have been used to develop tribal economies. In the meantime, tribes remain in poverty and dependent on the church or the Bureau of Indian Affairs or the tribal government, or gaming, for reservation jobs. And in the meantime people wonder why racial relations suffer in the very contested places where it is vital that the people learn to live together in harmony.

Under these circumstances, I do not talk to anyone about "reconciliation." I feel it is inappropriate and hypocritical to talk of reconciliation in the face of this kind of massive assault on tribal lands and rights. This current "diminishment" movement is a powerful one, and it is backed by states' rightists and several current governors, senators, and the courts, and if anyone cares about fairness between the races, he or she had better be informed about who these antagonists are and what their motives and strategies are. White folks in this state don't need to learn our tribal language, white people don't need to invade our sun dances and other religious rites of the people. European-inspired sculptors and politicians don't need to blow up mountains in the Sacred Black Hills and call it Crazy Horse Mountain, when his people live desperate lives not a hundred miles away. No one even needs to talk about Wounded Knee to come to some kind of rational thinking on these matters. What is needed is a critical examination of the institutions that surround all of us, Indians and whites, with racist strategies.

What is needed is political opposition to what is now the status quo in the legislative and political arena here, discourse concerning the Black Hills land-reform issue and a way to keep the governor off the Missouri River—real things that affect the real lives of real people.

Let us be honest and admit there are many antagonists to tribal sovereignty and the defense of tribal rights, land, and resources, not the least of which is the powerful state government and its agencies, which are the center of the current move to diminish Indian rights. This should come as no surprise to

anyone, since state governments everywhere in the American states have always had contentious relationships with tribes. The history of the state of Georgia and the Cherokees a hundred years ago taught us about the risk to tribal nations in the aggressive rise of state power. The state of South Dakota has been constant in its desire to dispossess the Sioux. There is no ambiguity about where the state stands on matters of land and jurisdiction. Before we can talk about reconciliation, South Dakotans have to understand this history of dispossession and its connection to present life. White South Dakotans who have benefited from this dispossession and continue to benefit have to be willing to return stolen lands to tribal title and jurisdiction. They must honor and respect old agreements before new ones can be made.

Drastic measures are sometimes needed. Right now we hear that in New Mexico, the Pueblo Indians, who are just outside of Albuquerque and who have been in constant litigation over jurisdiction with the state, are talking of blockading main highways and freeways, I-25 for example, the main artery that crosses Pueblo lands. There is serious talk in some sections of Indian society in New Mexico of blockade and it is reported in the newspapers of the state; this shows how desperate Indians can get. In fact, this talk by the Pueblos is in response to the reality that the Pueblo casinos pay hundreds of thousands of dollars in taxes to the state of New Mexico. Some of these groups, among the poorest people on the face of the earth, pay as much as a quarter of a million dollars to the state every year and never see anything in return except racism and joblessness.

I want to return, as I close this talk, to a quote from that old water-rights man, Bill Veeder, who spoke with my father twenty years ago. He said this: "It is an ongoing practice in America to devastate Indian tribes. You tribal people must expose the deadly consequences of being subjected to state court jurisdiction. There must likewise be exposed the devastating consequence of federal and state officials practicing deceit upon the Native American tribes under the guise of 'settling' conflicts among the tribes and non-Indian claimants."

Not much has changed in twenty years. The old man, that day, was talking to tribal people. He did not say what well-meaning white people should do or could do. Today, "settlements" and "reconciliations" go forward, but there is no dialogue concerning land reform, the return of stolen lands, the sacred Black Hills, the return of the state-run Bear Butte Park, the illegal allotment act, which devastated tribal economies for the last hundred years with the result of "checker-boarded" Indian lands, the wrongs commited by Congress and the courts in diminishing the tribal land base. Indeed, since the old man spoke to my father and the general public that day, hundreds of thousands

of acres of tribal lands all over this country have been removed from tribal title and tribal peoples are further impoverished.

The violation of the tribes' vested and reserved rights for the benefit of greedy developers of this country has to be stopped before tribes and tribal people can talk seriously about reconciliation. At universities like this one, we must not become irrelevant to the struggle for justice and the struggle for decency in Indian lives and on our homelands. We must inspire our children by doing the right thing; by understanding the crimes of the past and paying the price of punishment. We do that through self-examination, by looking critically at the institutions that govern our lives and reforming them.

No one would deny, and certainly not an old college professor like myself, that what we talk about and what we teach to one another about American history is critical to self-understanding. Surely we should include in our teaching the study of the Constitution, 1889 statehood, the Civil War, Thomas Jefferson, brave pioneers, explorers, and scientists. But what we have to say about all of that history is that it dispossessed the indigenous peoples of this country, among them the Sioux in South Dakota, through verifiable criminal behavior that has been legitimized in the courts. What we must say is that this criminal behavior still goes on in our present lives. What we must say about this so-called reconciliation movement is that it has provided a mechanism that has allowed us to excuse past crimes, to cover them up with avoidance and denial, and that there has been an intention to fool ourselves concerning equality and the right and the possibility of Indians to make a good life.

Most of all, we should teach our children that crimes, just like the rivers that have been exploited, stolen, and damaged, do carry footprints. Those footprints are what have kept the Sioux people from sharing in the abundance of their own lands, but they are also the footprints of our ancestors, who fought wars and signed treaties so that we could live.

In conclusion, I say that it is time for all of us to examine those footprints. They are the footprints of history. It remains to be seen whether the United States can reform its behavior toward its indigenous peoples and take its place among nations that live up to their treaty obligations. It remains next to inquire whether or not the state of South Dakota can live with its Indian coresidents or whether it will continue its relentless effort to extinguish us and our rights as tribal people entirely before it will be satisfied. At the close of the twentieth century these matters are crucial. It is time to look closely at the genocidal practices I've talked about here today and stop them.

As you know, it is not easy to do the right thing. I tell this often to my children and my grandchildren. It is not easy to do the right thing. But it is no-

ticeable in all of the conversations that I have with people now how often this phrase, "Do the right thing," appears and reappears. That, in itself, is a hopeful thing.

Presented at the seventh annual history conference of South Dakota State University at Brookings, Feb. 25, 1998. The theme was "State/Tribal Relations."

17

AMERICAN INDIAN STUDIES: AN OVERVIEW

Good Afternoon!

The title of this conference, "Translating American Indian Cultures: Representing, Aesthetics, and Translation" is a bit intimidating, especially to a tribal scholar like myself who has always thought of Indians in America in terms of *nationhood.* Culture, it seems, has been left to Anthropology, and there seems little sense in pursuing that line of scholarship if we are concerned with the struggle to survive as nations-within-a-nation political entities.

Nationalism, I think, is the major focus of Native American Studies as an academic discipline, in contradistinction to Anthropology. So the title of this conference is broad and, yes, intimidating, but of course quite useful to all of us who have gathered here at this moment to discuss the differences in disciplinary approaches to bodies of knowledge.

I'd like to begin by saying that there is a disturbing reality about the academic dialogue these days concerning the intent of NAS, and much of it is centered in the language we have used and the languages we have invented for whatever purposes have emerged. Much of the dialogue suggests that unless you are willing to talk about diversity or multiculturalism or postmodernism or postcolonialism, you are simply out of the loop, to use a George Bush phrase with which we have become familiar. In fact, there is even a native scholar of our acquaintance who is now promoting the use of the term *post-Indian* in his particular dialogues.

Post-Indian? What is this? Could it be an effort to conceptualize the annihilation of Indians or their nations or their histories? Well, maybe not. I can

18

ANTI-INDIANISM AND GENOCIDE: THE DISAVOWED CRIME LURKING AT THE HEART OF AMERICA

Just before my latest non-fiction book, *The Politics of Hallowed Ground,* a book about the politicization of Indian histories and the Massacre at Wounded Knee was going into its second printing, I picked up a local newspaper and read in a column written by the conservative Republican television "talking head" George Will that the "Serbian atrocities in Kosovo [taking place in the last decade of the twentieth century] are *not* genocide, but they are war crimes." In the same newspaper Zbigniew Brezinski, National Security Advisor to President Jimmy Carter, wrote that "the Serbs are engaging in what may be called *mini*-genocide."

This confusion about the violent and oftentimes criminal actions of western governments is nothing new, yet there is something terribly disturbing about this confusion as we move into the new century. Often such crimes have been placed into the historical dialogue to describe what is a "just" war and what is an "unjust" war, but rarely have they been admissions of campaigns to exterminate an entire people. For example, when Theodore Roosevelt said that the American war with the "savage Indians" over this land was the most "just" war in all of history, he made the stealing of native lands and the murder of its possessors a most admired history, and he deliberately confused the killings done by the United States of America with what we may call justifiable homicide. It was a brilliant tactic of historical manipulation by a powerful man in the most powerful of nations, and it was a mark of his influence that continues today.

Teddy Roosevelt and countless other leaders of colonizing nations have no

doubt believed and acted upon what Pericles in ancient Athens was supposed to have said: "Before I praise the dead, I should like to point to the institutions and by what *principles* of action we rose to power and under what *institutions* and through what *manner* of life our empire became great" (Thucydides, *History of the Peloponnesian War*). Pericles went on to enumerate the virtues of Greek civilization, i.e., "We are called a democracy," "The law secures equal justice to all alike," "Our style of life is refined," "The fruits of the whole earth flow in upon us," "We contend for a higher prize," and so on and so on. Under this kind of persuasion, it is easy to think colonization is a virtuous thing, and even easier to enlist the national population to destroy whatever stands in its way. The war of the Athenians with Sparta lasted twenty-seven years; they made slaves of women and children and killed all male children of military age of many surrounding nations. They put Socrates to death for the crime of speaking his mind.

In light of the atrocities of the past perpetuated in the struggle for power by democratic and non-democratic entities alike, the desire of western and non-western-style civilizations to achieve status in the twentieth century seems to predict continuing violence. Though they are thought by some to be rare throughout the world, look at some of the more obvious events: the Pinochet rule in Chile, Serb massacres of Muslims in the 1990s, the bloodbaths of African countries like Rwanda, and the murders by Pol Pot of his own people, as well as the over 100 million people who have died in the "just" and "nnjust" wars of the last decades. We are living, then, in the bloodiest century in human history.

By contrast, the 1890 Wounded Knee Creek killings and violations of civilized human rights in the Northern Plains, the subjects of my latest book, seem a pittance. A mere 300 or 400 Indians. Primitives, after all. Savages in the wilderness. Yet to understand the unrelenting atrocities by the powerful against the weak that continue into present time, we must first expose those who claim to be innocent, and then we must try to understand the nature, the origin, the cause(s) of state-sponsored genocide.

The first thing to acknowledge is that on a cold December afternoon four days after the newcomers to western Dakota Territory finished celebrating the holy rebirth of their savior, Jesus Christ, their armed forces slaughtered over 300 hunted, starving, tyrannized, and unarmed Lakotas traveling through their own country under a white flag, threw them into a mass trench, and covered them up. The first thing to acknowledge is that this was not just an "accident." It did not "just happen." It was not some kind of tragedy of war. This deliberate, premeditated slaughter of a non-Christian people who

could not be defeated on the battlefields of their own territory took place along a frozen tributary called Wounded Knee Creek, in the hills of a prairie ridge covered with pines, and it was a planned, inevitable crime committed by the U.S. military, an occupational force, and its legislature and its courts.

This crime, though still unacknowledged by many U.S. historians, the military, as well as scholarly and popular writers of history, has come to represent the federal policy of Genocide, which characterized relations with the indigenous occupants of the American continent and the West. Since the violent worldwide events of the last several decades, and particularly since the Vietnam era, this event at Wounded Knee has undergone some revision and is now described by some as it never was for a hundred years: a criminal act. It has come to represent the thousands of such killings of indigenous peoples across the land as the unexamined crimes at the core of a great nation developed since 1776 on the provocative principles of capitalistic democracy, principles based on the exploitation of resources and land.

Genocide, the systematic killing of a people, is always denied by powerful, tyrannizing, colonizing nations, and when they have talked of it, they have struggled to declare their innocence through careful defining of the word. To add to the problems of holding criminals responsible, those bent upon invading other nations and colonizing or destroying its people, which is seen as a major cause for the crime, rarely have left compelling evidence or written documentation of their policy and criminal behavior. America and its treatment of the indigenous peoples of this continent is no exception to this historical reality.

Throughout American history, the agonizing discourse concerning Indian/white relations is spoken of as "conflict," or "assimilation," or "postcolonial" in nature, but never as "genocide." As the twentieth century closes, it seems obvious that Genocide, in the matter of Indian/white relations in America, has not been just a matter of physical extermination. It has been broadened to include the concept of Ecocide, the intentional destruction of the physical environment needed to sustain human health and life in a given geographical region.

In the international arena there is dialogue concerning the deliberate destruction by the government of the United States of the buffalo in the Northern Plains and the salmon in the Northwest and the rivers throughout the land as a tactic to force submission of tribal peoples during the treaty era and since, and these acts are now debated as a function of genocide. This destruction, called ecocide (the killing of the earth) and deicide (the killing of god), is well documented. In the present light of nationalistic crimes across the

globe, this destruction has become a persuasive feature in the classical definition of historical genocide.

The repression of American native peoples during the last century is one of the least known genocidal stories of our time. Few pay any attention to the fact that native people in the Americas are among the most economically deprived and the least well educated of any of the peoples of the world, that they live as domestic nations in one of the most repressive governmental systems ever devised in a democracy. Hardly anyone says out loud or writes in the public media that the neglect of Native American health issues is the shame of the modern world. No one understands the brutal impact on a people of the loss of two-thirds of their national/tribal land base in the last eighty years. There is little discussion of the flooding of 550 square miles of treaty-protected lands along the Missouri River for hydro power, one of the most ecologically destructive acts of "progress" in the world, as representative of the actions of an ecocidal policy toward all the rivers on the continent. Few admit that these are the fruits of the national denial of historic genocide in the United States toward indigenons peoples, and that they characterize the codified behavior of the United States toward countries throughout the globe.

In contrast to those omissions in domestic public discourse, the capitalistic democracy called the United States believes itself to be benign toward Native Americans, known as an unfortunate and pathetic race of inferior people; believes it pours money down a bottomless pit called the "Indian reservation" system, and often expresses its contempt for native peoples who have tenaciously survived 500 years of Genocide. They often express these thoughts much in the same manner that the eminent (and retiring) senator from New York, Patrick Moynihan, expressed them in his 1993 book *Pandaemonium and Ethnicity in International Politics* when he said: "Reservations. Our worst mistake or worst dilemma as you wish." Except for reservations, he says, "the U.S. has been spared autonomous regions, bantustans, enclaves."

He should have said that except for reservations, the indigenous peoples of the North American continent have been dispossessed and murdered. Nothing is said in all of Moynihan's work, as far as I know, about the crime of genocide perpetrated by the United States against the natives of this land. And little is said publicly about the virtue that would be implicit if the modern development of Indian reservation lands were to be promoted as *treaty-protected homelands* for the indigenous peoples of democratic America. The native peoples who have survived the ongoing, persistent holocaust of the nineteenth century in America would be pleased to hear of such public discourse, for they know their reserved lands to be areas rich in resources, histories, and wonder, which have nurtured them for generations.

"The systematic killing of a people" was said in the old days to exist legally in three contexts: religious, racial, and ethnic. Whatever the label, the United States has failed to accept its history as a genocidal country in any of these contexts, or in the related spheres of ecocide and deicide. The United States continues to claim its historical innocence and benign intention. In the future, however, with the world as witness to modern nationalistic and human events in Europe and Africa and Asia, colonial America might have to broaden its perspectives on this subject if for no other reason than to refrain from looking foolish.

It is in these recent human behaviors that the United States may more appropriately understand its own tragic role. Whatever context is given, and whatever hopes we as members of modern civilizations may assess, it should be obvious that all forms of genocide are interrelated, pervasive, and criminal in every society known to mankind. Genocide, the world must admit as it views its own history and present condition, is *always* premeditated, forethought, purposeful, designed. Genocide does not, contrary to public notions, *just happen,* the fateful events known only to uncaring gods. Its motives are sometimes obvious, sometimes not, and they often seem fathomable to those who examine them.

Religious genocide is mistakenly thought to be a feature of ancient history, as exemplified by, for example, the Middle Ages, when the Crusades or the Spanish Inquisition or other like atrocities went relentlessly on, even if and when the killing of an entire people ran counter to a specific theology held by the society. In spite of a theology that may have argued against the mass killing of "others," genocide persisted in religious praxis, with religious zeal more than reason or theology supplying the fuel. And it was not just an "ancient" phenomenon, as students of recent history in Africa and Europe and elsewhere around the globe can attest.

Racial and *ethnic* genocide, a feature of the more modern histories exemplified by the German killing of the Jews in Europe in the twentieth-century Nazi Holocaust, is still thought to be a function of ancient history, old irrational hatreds against "others," and kept alive through a religious intolerance in the mainstream, coupled by zeal in the military. There seems to be little historical sense of the present-day so-called ethnocide in the former Yugoslavia, except that it is a function of the historical persistent and pervasive cleavages between the sections that have made up the country for many gen-

erations. Racial and ethnic genocide is premeditated in every instance known to history, whether or not it is admitted to by the perpetrators.

Political or *economic* genocide usually arises out of colonization; thus, it is a feature of pluralistic societies created through the activities of migrating and settling. The plural society brought about by invasion and colonization provides a structural base for genocide as pressures for domination, exploitation, and subjugation arise. America's history finds firm ground in this definition.

All of these types of genocide have several traits in common. First, the societies that are the perpetrators of genocide often *pass laws* designed to bring about or prohibit certain behaviors, and these laws are thought to appropriately give license for the complete destruction of a people in their midst. These laws give veracity to deliberate acts committed with the intent to destroy the language, religion, or culture of a national, racial, or religious group within the larger colony. Often laws are passed to prohibit the use of certain languages in daily intercourse or schools, and they destroy the libraries or repositories or objects or otherwise criminalize their use. In the case of indigenous peoples of the United States, laws against the practice of traditional religions and cultural customs were swiftly enacted and rigourously enforced. The Sun Dance was outlawed on the Northern Plains while at the same time Christian ministers prevented traditional marriage patterns and child-rearing practices by instituting compulsory educational institutions. There can be no doubt, despite the defensive rejoinder concerning intent, that these are genocidal laws put in place by a powerful and brutal colonizer intent upon extermination.

Second, societies that are the perpetrators of genocide *construct "badges"* or distinguishing characteristics to be exhibited by the victims as well as the perpetrators suggesting origin and praxis, and this often is intended to subjugate or dominate a people and deny to them their basic human rights. The Jews in modern Germany wore a yellow star. Others must carry cards that identify them with their out-group. Natives in America had to be given "permissions" of various kinds by their oppressors to hunt or gather domestic or religious materials from the countryside. Today they carry cards to identify themselves as tribal persons in order to sustain their treaty rights, which would otherwise be denied.

Third, societies that are the perpetrators of genocide *concoct theories of conspiracy* meant to assist the general populus in understanding the need to destroy or exploit their victims. These theories are upheld through educational institutions and assemblies of various kinds, and provide the structural bases

for longstanding and blatant aggression. *The stories of the Ghost Dance ceremonial, as the frenzied acts of a crazed Indian population* that preceded the Wounded Knee Massacre *has been concocted by apologist historians as the rationale for the mass killing.* This conspiracy theory is perpetuated even by present-day historians. The idea that Indians of that era by participating in an essentially religious ceremonial were agreeing to perform together an illegal, treacherous act that endangered their white neighbors has become a compelling rationale for genocide. By and large, western and European historians have accepted and promoted this explanation, rarely refuting it as a concoction of excuses. Even today, the governor of the state of South Dakota is quoted in the newspapers as fearing that Indian political action concerning land-reform issues in the state must be seen as an effort by Indians "to get the whole of western South Dakota returned to them." This kind of conspiracy theory has been a mainstay in the political power of white politicians.

Finally, societies that are the perpetrators of genocide often build or *arrange appropriate centers for destruction,* annihilation, or subservience. The most blatant example in modern history for the annihilation of the Jews all over Europe was the construction of incinerators and concentration camps. It has been suggested that in the United States the development of "plantations" in the southern states for the subjugation and exploitation of African Americans for slave labor would be another example of genocidal centers for destruction.

Some suggest that "reservations" for American Indians in the West were and are extermination centers, and it may have been the intent of the predatory democracy called the United States of America to kindle in this way an end either by death and starvation or economic destruction for the native peoples with whom they had fought wars of annihilation for many decades for possession of the land.

However, the leaders of the hundreds of Indian nations who signed treaties with the U.S. government after the war period, in order to "set aside" reserved homelands for the protection of the people, take an entirely different view of reserved land bases, and have probably taken that different view from the very beginning of the treaty-signing process in the seventeenth and eighteenth centuries. The citizens of Indian nations now believe "reservations" to be their homelands, and they defend them legally and economically on a daily basis. They do not deny the political possibility that at least some segments of American power structures at one time in the historical past set aside these lands and meant them as concentration camps and extermination centers for peoples they considered unassimilable. There is much written evidence that people sitting in high places in the governments of the

United States believed that such lands would serve to do away with an unwanted and unassimilable population.

How these "reserved land bases," now called Indian reservations or reserves, are viewed and described by modern America is critical not only to the survival of the native peoples of this continent, but to the promotion of world peace and cooperation. These treaty-protected enclaves, now called domestic "nations-within-a-nation," inhabited by the original peoples of North and South America, internal now to a democratic society called the United States of America, can become, in the future, an example of how a hated minority resulting from generations of war and land theft and exploitation can rise above the domination and subjugation and exploitation ordinarily accompanying European colonization and invasion. In general, today's American Indians from First Nation enclaves view the accompanying assimilation techniques of a colonial power on their homelands in government and school structures to be the continuation of genocidal practices, and they therefore seek and assert domestic sovereignty.

The extermination of an entire people, which can occur at any juncture in the relationship between various segments of a national society, are dependent upon certain elements and specific developments. The elements usually have to do with Law, and the developments usually have to do with Economics. Until World War II there was no competent tribunal, no global general assembly, no criminal court to investigate the issues of genocide throughout the world. Thus, the thousands of massacres of American Indians in North and South America were rarely investigated at all, and even more rarely investigated as criminal acts. No criminal perpetrators sitting in high places were indicted, and little real punishment was ever meted out. Much of that genocidal activity was simply charted as reasonable and inevitable colonial conflict, and it continues to be described in that way in most written histories.

After World War II, however, in 1948, a United Nations convention was held in order to try to understand the nature of the deliberate and systematic killing of a people in terms of the international crime of Genocide, the description of legal parameters of the crime, and the appropriate pnnishment of those who commit the crime. The interesting result of those U.S.-led conventions has been the persistent evasion of the issue of genocide in terms of its own history toward native peoples. The United States is willing to indict Adolf Hitler of Nazi Germany, Idi Amin of Uganda, and Pol Pot of Khmer Rouge fame, but not the hated Zionist leader Menachem Begin, or the U.S. frontier defender Philip N. Sheridan, or the Methodist minister-turned-colonel John Chivington, or the relentless Manifest Destiny president and perpetrator of murderous policies toward Indians Theodore Roosevelt. This unwillingness is inherent in colonial origins.

From the beginning of the settlement of this country by the French, English, and Spanish colonizing nations, the systematic killing of the indigenous peoples of the continent was a fact of life and death. It was relentless and premeditated. Demographers say that by 1650 about 95 percent of the population of Latin America was wiped out, and by the middle of the 1800s there were said to be 200,000 Indians left in continental America. These survivors have now, at the close of the twentieth century, come back from oblivion. They have defended what is left of their meager land bases, and they continue toward the future as dual citizens—of Indian nations and of the United States. It is said that they are one of the fastest-growing "minority" groups in the country.

The deliberate and premeditated genocide of the early years of invasion and theft, however, has moved on from religious fervor and ethnic and racial hatred to economic genocide and ethnocide. These genocidal tactics are ongoing not only through denial practices but also through outright aggressive governmental tactics. The story of the national denial of this reality is evidenced in national parks all over this country, where there exist plaques and gravestones suggesting that Indian families and tribes "gave of themselves and their land so that this great nation might be born and grow." The fur trade is romanticized in history books and in movies as just a capitalistic or economic event, not a genocidal one. Land laws were passed that removed over half of the treaty-protected lands from Indian title. And, outrageously, in the 1950s, termination and relocation laws were promulgated by the U.S. Congress in order to remove Indians from what remained of the homelands and force them to assimilate into the "mainstream" of American culture. Because of these laws, two-thirds of the indigenous population of America now reside in cities, landless and poor, rather than on their own reservation homelands, which remain, for the most part, underdeveloped enclaves of poverty. With appropriate care and legal remedies, these reservations could become communities well organized to meet the needs of their citizens.

Genocide is not now nor has it ever been just a matter of the physical extermination of a people through mass killings, enslavement or torture, or enforced segregation or colonial apartheid. *It is the denial of basic human rights through the development of a nationalistic legal and social and intellectual system that makes it impossible for a domestic people or domestic nation to express itself collectively and historically in terms of continued self-determination.*

In spite of the reasonableness of any critique of history, nations that have developed genocidal practices toward others within their own nation or society, or even outside of their province, protest their innocence by bringing up the matter of "intent." The United States as well as countless other colonizers have used the rejoinder of "intent" to any critical analysis of their history: "We never *intended* to destroy the natives," they claim. Therefore, if there is and was no "intent," there was and is no "genocide." Even as genocidal legislation and land and resource theft is passed by the modern U.S. Congress without the consent of the tribes, the people who benefit from the colonial practices of the past will excuse themselves as it concerns "intent" by saying, "But I haven't done these things. Maybe these things happened in history, but I am not personally responsible for what happened way back then." They generally excuse and rationalize a history so ugly it cannot be acknowledged.

Even today advocates of an innocent U.S. history say to protesting Indians, "You still exist, don't you? You still have land, don't you?" The suggestion is that if there were crimes committed, they were just the unfortunate incidents of economic development of a country. Indeed, when Brazil was charged with genocide against the Indians in the Amazon region in the mid-1960s, representatives of the Brazilian government said to the world human rights organizations that there was no "malice" toward the Indians, and there was no "intent" to destroy them. And therefore there was no genocide. They even claimed ignorance, saying that they didn't know it was against any law to kill Indians. These are arguments accepted by many of the countries that make up the world investigative bodies.

In Vietnam and Cambodia, there has been the attempt by critics of the wars there to say that the United States committed genocide in those countries for political power in the region and the world, but the colonial answer is always the same: we didn't intend to extinguish an entire people. The defenders of the U.S. policy there attempt, often, to distinguish between the acts themselves, such as the massive bombings that destroyed entire ethnic communities, and the intentions of the United States, which was there to protect other groups in the region. If the intentions were noble, then genocide did not occur, and there is often a massive but bogus paper trail constructed for the benefit of apologetic historians. Quite possibly, in the modern context, the Nazis who frenetically documented their crimes in Germany, have offered a model of what *not* to do if you want to get away with your criminal acts.

In spite of many ambiguities, the Vietnam argument is especially significant to the indigenous peoples of North and South America because the concept of *ecocide,* the intentional destruction of the physical environment needed to sustain human health and life in a given geographical region, has now been accepted in the international arena as part of the analysis of the term *genocide.* Its continuation into the present era is in need of further analysis.

This policy of deliberate destruction of the environment and resources and the continuing theft of Indian lands, which is, unlike the physical destruction endured by the people, well documented and available to researchers, could well become a persuasive feature in the definition of historical genocide as it concerns native peoples.

Indeed, contemporary federal policy, current court litigations brought by the tribes in the last forty years since the tribes have acquired access to the federal court system, must have as their main focus the examination of history in the context of U.S. nationalistic movements. The Wounded Knee genocide must be restored to the memory of the United States, studies must be conducted and human rights commissions must be instructed to reject the neutral stand always taken with regard to the sufferings of the indigenous populations in the Americas. An exhaustive and complete list of atrocities must be compiled and a civilized international community must lead a movement toward land reform and economic and cultural restoration. The humane treatment of oppressed and indigenous populations everywhere can no longer be discarded or avoided.

NATIVE APPROPRIATIONS

(http://nativeappropriations.com

(http://nativeappropriations.com) > Urban Outfitters is Obsessed with Navajos

Urban Outfitters is Obsessed with Navajos

In copyright (http://nativeappropriations.com/category/copyright), Navajo (http://nativeappropriations.com/category/navajo), trademark (http://nativeappropriations.com/category/trademark), tribal fashion (http://nativeappropriations.com/category/tribal-fashion), tribal trends (http://nativeappropriations.com/category/tribal-trends), urban outfitters (http://nativeappropriations.com/category/urban-outfitters) by Adrienne K. / September 23, 2011 / 22 Comments (http://nativeappropriations.com/2011/09/urban-outfitters-is-obsessed-with-navajos.html#comments)

(http://4.bp.blogspot.com/-IUrN0rxcNeI/TnyQ7tiOhZI/AAAAAAAAA4c/W0uGbQADk5o/s1600/Screen+shot+2011-09-

23+at+9.59.52+AM.png)

"Navajo Nations Crew Pullover (http://www.urbanoutfitters.com/urban/catalog/productdetail.jsp?id=22138945&color=004&color=004&itemdescription=true&navAction=jump&search=true&isProduct=

A search for "Cherokee" on the Urban Outfitters website reveals 1 result. A search for "Tribal": 15. A search for "Native": 10. "Indian": 2. But Navajo? 24 products have Navajo in the *name* alone.

This post started as a massive Urban Outfitters take-down, I spent an hour or so last week scrolling through the pages of the website, and adding anything to my cart that was "Native inspired" or had a tribal name in the description. I got through JUST the women's clothes and accessories (no mens or apartment), and had 58 items in my cart. So, then, like any good researcher, I began to code my cart for emergent themes, and the one that jumped out far above the rest? Urban Outfitters is obsessed with Navajos.

I want to show you some examples, and then talk a little about the issues with using tribal names in products that are decidedly not-. Finally, I want to share what the Navajo Nation in particular is doing about it, and the action they've taken is pretty cool.

Without further ado, some of the "Navajo" products to grace the pages of Urban:

From the basic:

(http://2.bp.blogspot.com/-b75z0oQpCQ0/TnyN6ECKXbI/AAAAAAAAA4A/4nDnNG-530k/s1600/Screen+shot+2011-09-23+at+9.46.59+AM.png)

“Title Unknown Techno Navajo Quilt Oversized Crop Tee (http://www.urbanoutfitters.com/urban/catalog/productdetail.jsp?id=21004734&color=004&color=004&itemdescription=true&navAction=jump&search=true&isProduct=

(http://2.bp.blogspot.com/-E7r_Ptsv5Hw/TnyOf0LWIZI/AAAAAAAAA4E/5_iSp8OYPEw/s1600/Screen+shot+2011-09-23+at+9.49.34+AM.png)

“Truly Madly Deeply Navajo Print Tunic (http://www.urbanoutfitters.com/urban/catalog/productdetail.jsp?id=18762765&color=061&color=061&itemdescription=true&navAction=jump&search=true&isProduct=

To the totally random:

(http://2.bp.blogspot.com/-zaGeko7hCds/TnyPIoVP4vI/AAAAAAAAA4I/pxS0OuR13nU/s1600/Screen+shot+2011-09-23+at+9.51.58+AM.png)

“Navajo Feather Earrings (http://www.urbanoutfitters.com/urban/catalog/productdetail.jsp?id=18428243&color=046&color=046&itemdescription=true&navAction=jump&search=true&isProduct=

(http://4.bp.blogspot.com/-hoYgL--Iy4U/TnyPftYxscI/AAAAAAAAA4M/93tqO3SuGyo/s1600/Screen+shot+2011-09-23+at+9.53.40+AM.png)

"Navajo Sock (http://www.urbanoutfitters.com/urban/catalog/productdetail.jsp?id=21170246&color=006&color=006&itemdescription=true&navAction=jump&search=true&isProduct=

The Antiquated:

(http://2.bp.blogspot.com/-uuLWamzWsm4/TnyP4HIMuJI/AAAAAAAAA4Q/JfGh_-IjX7k/s1600/Screen+shot+2011-09-23+at+9.55.26+AM.png)

"Leather Navaho cuff bracelet (http://www.urbanoutfitters.com/urban/catalog/productdetail.jsp?id=14890123&color=001&color=001&itemdescription=true&navAction=jump&search=true&isProduct=

And, finally, the totally offensive:

(http://3.bp.blogspot.com/-G2Czo7pzkZU/TnyQQIxl_DI/AAAAAAAAA4U/8WqhzDky3Tk/s1600/Screen+shot+2011-09-23+at+9.57.02+AM.png)

"Navajo Print Fabric Wrapped Flask (http://www.urbanoutfitters.com/urban/catalog/productdetail.jsp?id=18576884b&color=055&color=055&itemdescription=true&navAction=jump&search=true&isProduct

(http://3.bp.blogspot.com/-48cb7F3o2gU/TnyQjz6ZGPI/AAAAAAAAA4Y/jLx__5VKdiQ/s1600/Screen+sh 09-23+at+9.58.24+AM.png)

"Navajo Hipster Panty (http://www.urbanoutfitters.com/urban/catalog/productdetail.jsp?id=21234208&color=010&color=010&itemdescription=true&navAction=jump&search=true&isProduct=

Of course, there are many more if you head over to the site and search "Navajo" (http://www.urbanoutfitters.com/urban/search/search.jsp?searchPhrase=navajo&listViewSize=&indexStart=0&sortBy=&sortOrder=&categories=&categories2=&c

So what's inherently wrong with using Navajo in product names? And what can tribal nations do about it?

First of all, these products represent a stereotype of "southwest" Native cultures. The designs are loosely based on Navajo rug designs (maybe?) or Pendleton designs, but aren't representations that are chosen by the tribe or truly representative of Navajo culture. Associating a sovereign Nation of hundreds of thousands of people witl a flask or women's underwear isn't exactly honoring.

Additionally, it's more than likely that Urban chose "Navajo" for the international recognition–to most of the world Navajo (and Cherokee)= American Indian (my Jamaican friend didn't even know there were other tribes in the US until she met me). This conflation of Navajo with "generic Indian" contributes to the further erasure of the distinct tribes and cultures in the US and solidifies the idea that there is only one "Native" culture, represented by plains feathers and southwest designs.

Navajo has taken a bold step, and actually holds trademarks for 12 derivatives of "Navajo", three of which I'm citing below:

> 2061748: NAVAJO Sportswear; namely, slacks, shorts, skirts and jeans.
>
> 2237848: NAVAJO Clothing; namely, tops, vests, shirts, sport shorts, polo shirts, golf shirts, * jackets, * T-shirts and sweat shirts.
>
> 3602907: NAVAJO Online retail store services; namely, on-line ordering services in the field of clothing—specifically, men's and women's sportswear, namely, jeans, tops, shirts, sport shorts, polo shirts, golf shirts, T-shirts and sweatshirts.

I'm no law expert, but it feels like the products above might be violating the trademarks?

A few months ago, they Navajo Nation Attorney General actually sent a cease and desist letter to Urban Outfitters, and there are some great quotes from the letter (I'll try and post it in full in another post):

Your corporation's use of Navajo will cause confusion in the market and society concerning the source or origin of your corporation's products. Consumers will incorrectly believe that the Nation has licensed, approved, or authorized your corporation's use of the Navajo name and trademarks for its products – when the Nation has not – or that your corporation's use of Navajo is an extension of the Nation's family of trademarks – which it is not. This is bound to cause confusion, mistake, or deception with respect to the source or origin of your goods. This undermines the character and uniqueness of the Nation's long-standing distinctive Navajo name and trademarks, which—because of its false connection with the Nation—dilutes and tarnishes the name and trademarks. Accordingly, please immediately cease and desist using the Navajo name and trademark with your products.

As a Nation with a distinguished legacy and unmistakable contemporary presence, the Nation is committed to retaining this distinction and preventing inaccuracy and confusion in society and the market The Nation must maintain distinctiveness and clarity of valid association with its government, its institutions, its entities, its people, and their products in commerce.When an entity attempts to falsely associate its products with the Nation and its products, the Nation does not regard this as benign or trivial. TheNation remains firmly committed to the cancellation of all marks that attempt to falsely associate with the institution, its entities, its people or its products. Accordingly, immediately cease and desist using Navajo withyour products.

I haven't heard what the response was from Urban, if any, but I think it is a bold and positive choice for the tribe to take matters into their own hands and push back on instances of misrepresentation and cultural appropriation.

What do you think? Should tribes go the route of Navajo and trademark their tribal names? Do you think this will be an avenue for positive change or just mean tribal courts will be mired in lawsuits, taking away time from other important tribal business?

(Thanks Marj, Brian, and Aza!)

rcl • 5 years ago

Adrienne, I've got to thank you for continuing to explore this subject.

This weekend, I went to Ikea and was looking at the kids toys and saw that they were selling a cloth feathered headband (i.e. the feathers were sewn and filled with polyester crap to make them stand up from the band part) obviously made to look generically Native. The incident was kind of surreal for me, as I was with my partner (who is Saulteaux) at the time. How can we buy "make believe" dress up clothes for our kids or sell them in our stores while the "make believe" people who still wear forms of regalia in seriousness exist, and patronize those shops? I don't know what the fuck I would do if I walked into a store and they said they were selling "Icelandic sweaters" with some shitty Nordic pattern printed onto a bastardized hoodie. Probably become a lecturing idiot and find the manager and say "Um, excuse me, to be an Icelandic sweater, this needs to be made of honest to God 100% itchy, uncomfortable Icelandic sheep's wool. And it needs to be made in Iceland. And it needs honest to God silver buttons with intricate filigree if it has buttons at all. Sorry, but no!" I would feel like my long-amma's old old handmade wool carders were a joke. I would feel like my mom telling me stories about relatives making yards and yards of yarn were "myths" instead of history. I would feel lost between a fairy tale past and a consumer-based future.

I think if people like you didn't keep pushing this subject of cultural appropriation, people (even people like me who are "educated" and "aware" and know that it is "bad" or "wrong" or "patronizing") wouldn't really get it, in the sense that we can know it's bad, but we can't empathize because we've never had our histories taken away and turned into lore and we

NATIVE APPROPRIATIONS

(http://nativeappropriations.com

Magic in North America Part 1: Ugh.

In Uncategorized (http://nativeappropriations.com/category/uncategorized) by Adrienne K. / March 8, 2016 / 480 Comments (http://nativeappropriations.com/2016/03/magic-in-north-america-part-1-ugh.html#comments)

Fourteenth Century – Seventeenth Century

By J.K. Rowling

Yesterday I wrote about the trailer for JK Rowling's new multi-part background pieces on Pottermore, entitled "Magic in North America." You should read the post here if you need context (http://nativeappropriations.com/2016/03/magic-in-north-america-the-harry-potter-franchise-veers-too-close-to-home.html). Even before that, back in June, I wrote about my concerns with the bringing of the "magic universe" to the States. You can read that here. (http://nativeappropriations.com/2015/06/dear-jk-rowling-im-concerned-about-the-american-wizarding-school.html)

So this morning at 9am, part one of this mess was released. It's really short, I don't know what I was expecting, but definitely go over and read it in full (https://www.pottermore.com/collection-episodic/history-of-magic-in-north-america-en).

There are a number of things that stand out and deeply concern me, but the response to my critiques on my twitter timeline is even worse. I'll talk about that after I walk you through the text. Because, like with everything I critique, it's not just the mascot/image/text/movie/fashion itself, it's the response, how it's used, and the impact. This has the perfect storm of all of those categories. I really could write a dissertation about this, but I have a million papers to grade and work to do, so a quick rundown:

Part 1 of MinNA, The 14th to 17th century, starts with this:

Though European explorers called it 'the New World' when they first reached the continent, wizards had known about America long before Muggles (Note: while every nationality has its own term for 'Muggle,' the American community uses the slang term No-Maj, short for 'No Magic'). Various modes of magical travel – brooms and Apparition among them – not to mention visions and premonitions, meant that even far-flung wizarding communities were in contact with each other from the Middle Ages onwards.

So first off, we're centering Europeans, calling brutal colonizers benign "explorers" (yes, it's written for children, but I don't think anyone would argue the HP canon is absent of intense violence. I'm just *fascinated* to see how Rowling will address the brutality and complexity of colonization in the next stage). Also, "America" didn't exist during this timeframe.

The Native American magical community and those of Europe and Africa had known about each other long before the immigration of European No-Majs in the seventeenth century. They were already aware of the many similarities between their communities. Certain families were clearly 'magical', and magic also appeared unexpectedly in families where hitherto there had been no known witch or wizard. The overall ratio of wizards to non-wizards seemed consistent across populations, as did the attitudes of No-Majs, wherever they were born. In the Native American community, some witches and wizards were accepted and even lauded within their tribes, gaining reputations for healing as medicine men, or outstanding hunters. However, others were stigmatised for their beliefs, often on the basis that they were possessed by malevolent spirits.

"**The** Native American community." Oh man that loaded "the." One of the largest fights in the world of representations is to recognize Native people**s** and communitie**s** and culture**s** are diverse, complex, and vastly different from one another. There is no such thing as one "Native American" anything. Even in a fictional wizarding world.

The legend of the Native American 'skin walker' – an evil witch or wizard that can transform into an animal at will – has its basis in fact. A legend grew up around the Native American Animagi, that they had sacrificed close family members to gain their powers of transformation. In fact, the majority of Animagi assumed animal forms to escape persecution or to hunt for the tribe. Such derogatory rumours often originated with No-Maj medicine men, who were sometimes faking magical powers themselves, and fearful of exposure.

So, this is where I'm going to perform what Audra Simpson (http://pages.ucsd.edu/~rfrank/class_web/ES-270/SimpsonJunctures9.pdf) calls an "ethnographic refusal," "a calculus ethnography of what you need to know and what I refuse to write in." In her work with her own community, she asks herself the questions: "what am I revealing here and why? Where will this get us? Who benefits from this and why?"

I had a long phone call with one of my friends/mentors today, who is Navajo, asking her about the concepts Rowling is drawing upon here, and discussing how to best talk about this in a culturally appropriate way that can help you (the reader, and maybe Rowling) understand the depths to the harm this causes, while not crossing boundaries and taboos of culture. What did I decide? That you don't need to know. It's not for you to know. I am performing a refusal.

What you do need to know is that the belief of these things (beings?) has a deep and powerful place in Navajo understandings of the world. It is connected to many other concepts and many other ceremonial understandings and lifeways. It is not just a scary story, or something to tell kids to get them to behave, it's much deeper than that. My own community also has shape-shifters, but I'm not delving into that either.

What happens when Rowling pulls this in, is we as Native people are now opened up to a barrage of questions about these beliefs and traditions (take a look at my twitter mentions if you don't believe me)–but these are not things that need or should be discussed by outsiders. At all. I'm sorry if that seems "unfair," but that's how our cultures survive.

The other piece here is that Rowling is completely re-writing these traditions. Traditions that come from a particular context, place, understanding, and truth. These things are not "misunderstood wizards". Not by any stretch of the imagination.

Here is how Rowling responded to questions online about the term:

and here was my response:

Dr. Adrienne Keene
@NativeApprops
8 Mar

It's not "your" world. It's our (real) Native world. And skin walker stories have context, roots, and reality. twitter.com/jk_rowling/sta…

Dr. Adrienne Keene
@NativeApprops
Follow

You can't just claim and take a living tradition of a marginalized people. That's straight up colonialism/appropriation @jk_rowling.

10:14 AM - 8 Mar 2016

448 461

Dr. Adrienne Keene
@NativeApprops
8 Mar

These are not my traditions. So I'm asking for permission, figuring out how to respect while being able to critique #MagicInNorthAmerica

Follow

Dr. Adrienne Keene
@NativeApprops

This is clearly not legwork @jk_rowling did with this writing. Native communities use reciprocity, respect, and relationships as benchmarks.

1:30 PM - 8 Mar 2016

119 160

I have more to say, but I'll end with this. These are things you don't mess with. So good luck with that.

The Native American wizarding community was particularly gifted in animal and plant magic, its potions in particular being of a sophistication beyond much that was known in Europe. The most glaring difference between magic practised by Native Americans and the wizards of Europe was the absence of a wand.

The magic wand originated in Europe. Wands channel magic so as to make its effects both more precise and more powerful, although it is generally held to be a mark of the very greatest witches and wizards that they have also been able to produce wandless magic of a very high quality. As the Native American Animagi and potion-makers demonstrated, wandless magic can attain great complexity, but Charms and Transfiguration are very difficult without one.

This whole wandless magic thing is bugging me. So Rowling has said multiple times that it takes a lot more skill to perform magic without a wand (Dumbledore does it at several points in the books), but points out that wands are what basically *refines* magic. Wands are a European invention, so basically she's demonstrating Eurocentric superiority here–the introduction of European "technology" helps bring the Native wizards to a new level. AKA colonial narrative 101.

The response online today has been awful. My twitter mentions have been exploding non-stop all day, with the typical accusations of my oversensitivity and asking if I understand that Harry Potter is fictional, and more directed hate telling me my doctorate is being misused and I'm an idiot. In addition are the crew who "would love to know the real history" of these concepts (again, not for you to know), or are so grateful that JK Rowling is introducing them to these ideas for the first time. This is not the way to learn about or be introduced to contemporary and living Native cultures. Not at all.

Decolonization: Indigeneity, Education & Society
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An interview with Tania Willard on *Beat Nation*, Indigenous curation and changing the world through art

Jarrett Martineau

Jarrett Martineau: First, many thanks from everyone at *Decolonization* for taking the time to participate in this interview! We are pleased to have you join us for this special issue on "Indigenous art, aesthetics and decolonial struggle." Please introduce yourself and what nation you are from.

Tania Willard: My name is Tania Willard, Secpwemc Nation... and mixed Euro-Canadian. At times other white people and family have asked why I don't define the other 'half' of me. For me it is political to uphold my Secwepemc heritage: first, as an attempt to address the purposeful erasure of Aboriginal story, place, culture, spirituality and land. I reassert my Secwepemc heritage, story, land and rights in recognition of the whole story of these Indigenous territories we call a country.

You're the curator of *Beat Nation,* an exhibit that focuses on hip hop as Indigenous culture; can you tell us a bit about your own creative and curatorial practice? What guides or informs the art you make and curate?

Beat Nation has grown and become something less intimate than how it started and I have learned lessons in that. So, first of all, I never really set out to be a curator; I come to it as an artist and an activist, which I think is a well understood trajectory in Indian Country. We have amazing models and histories to see of all kinds of creative minds, philosophers, and leaders who sought creative ways to have their voices heard.

I went to art school at the University of Victoria, before Taiaiake Alfred and all of the Indigenous Governance programming there now. I think I was the only native student in Fine Arts at the time, or at least the only one who actively identified that way - and the Gustafsen Lake stand-off happened while I was at UVIC. I was active with things like Food Not Bombs and an anarchist,

youth-run info shop, so I was already politicized. But it was in this period that I started making prints and artwork outside of art school for political means. This is all to set the foundation for my approach to *Beat Nation*. After travelling through anarchist squats in Europe, I landed in Vancouver and after some time got back in touch with *Redwire Magazine,* who I had encountered before leaving Victoria and was really inspired by them. *Redwire* was largely born out of the *Native Youth Movement* and native youth stepping up and calling out the BC Treaty Process for not acknowledging our needs and futures and also negotiating away our rights. So, I got hooked up doing stuff with *Redwire* for years; we did a magazine distributed throughout Turtle Island that was native youth led and expressed our ideas, stories, politics, histories and more. We organized art shows - Tahltan artist and curator, Peter Morin, and I both had art backgrounds, so we went to demonstrations and conferences and did community engaged work. We hosted conferences and at times raised a stink. We were banned in schools for a while. We almost got sued… I think even years later, a news story ran in the right wing media (Sun News network) asking why the government funded us because, they alleged, we printed some illicit material around sabotage.

Anyway, so hip hop was all a part of this; *Native Youth Movement* folks were out at the Indian conferences using hip hop to talk amongst our communities about things like the BC Treaty Process, how it was not in the interest of our overall rights to the land and our children's futures, and all of that encompassed a lot of other ideas. So, then, as part of the music and the politics of hip hop there was also a whole lot of fashion and art and ideas floating around out there that many different artists were working with. I had phased out of *Redwire* by this time; we had always run it as a youth project (I think I was almost 27) and it felt like we needed to have fresh young minds in there, so there was a turn over. *Redwire* was one of these projects where, at different times, it was not radical enough and, alternately, too radical, depending on who you were taking to. We were funded. I was good at writing grants and we were a unique project, I think, but there were lots of internal political disagreements and ideals and one of the most dominant was this idea that we shouldn't be funded by the government. Which definitely has its ins and outs but, anyway, I wanted to be more liberated, less political dogma; more experimental and conceptual ideas that were freed from fitting, even into a radicalized politics, were engaging to me. I was making art as an artist and still active in many ways within a social and cultural community; curating felt like a way to organize and present some of these ideas.

At least that is what I thought when grunt gallery asked me to curate. Most of the early work was online curation, including the original beatnation.org, which I did before being accepted for a Canada Council for the Arts aboriginal curatorial residency with grunt gallery. So, in some ways, the original *Beat Nation* was somewhat before I started curating... kind of. Anyway, Glenn at the [grunt] gallery had asked Skeena Reece and I to co-curate this idea around native youth and

hip hop. Skeena was an amazing performer, involved in hip hop herself, and an activist. She had recently started a Native youth art collective at *Knowledgable Aboriginal Youth Advocates* (another UMAYC funded program like *Redwire* and involving similar people).

I am giving you a lot of backstory here (laughs). But it is the more holistic version of things. Skeena and I set about doing this for the website. And because it was coming from artists we knew and worked with and the hip hop movement, music was a part of that and it had to be part of the art - we were purposeful about that. Skeena later became an artist - I saw her performance in the Sydney Biennale in Australia and she blew me away - and her work was really important to *Beat Nation* as an exhibition.

I trusted Kathleen [Ritter, Associate Curator at the *Vancouver Art Gallery* (VAG)] and we worked well together, I gave space and she gave space and we negotiated *Beat Nation* into what it was at the VAG. We pushed for certain works like Duane Linklater's "Tautology" [2011], other works fell into place and they just had all these conversations with each other in some ways; the works had a way of storytelling with each other. Working at the VAG was new to me, I never intended *Beat Nation* to be a big show or a tour; it grew into that in ways I couldn't have predicted.

I have lots of questions about what it means to bring political work into institutions but I am also aware of the chasms that are left when the work is not there or those politics are not articulated. One of the behind-the-scenes negotiations was around sponsorship. I didn't feel I could hold the ideas in the show together if I felt compromised by sponsorship from major resource extraction projects, since almost all of those kinds of projects are contested within Indian Country. People have different views on that, and I am not steadfast one way, but for this work and for me it wouldn't have worked.

In other ways I think I didn't do enough, as much as possible. I was involved in the tour but in reality a touring exhibition and its logistics have these entire systems and processes. And, at times I let myself say, 'hopefully the show can speak for itself' because, you know, I can't be there to define and program and babysit everything. And thank goodness there were so many people who got it and stepped up in ways that were supportive and in solidarity with the exhibition and my ideas. And, other times, it was merely another art show, part of many that a gallery produces. So I am left with both amazing experiences and lots of questions about art and its effectiveness when it comes to social justice, politics, curating. And I haven't figured it out yet… so that propels me in my own process of unwinding and rewinding to find meaning.

I approach curatorial work with curiosity; I let passion and a sense of justice lead me, and I let myself open up to other ideas and mediums. And I try to do my best to keep to those ideas while negotiating all the many bureaucratic and logistical things curators do.

Is there a word for art in your language?

There are a few; there is a word for drawing that has the same root as writing. And then, I have to check on this but someone had said, the word for creating something like an object/art form was related to the word for birth… I'm going to ask my language mentors to clarify that in Secwepemcstin! I think the whole 'no word for art' is a bit bogus – we all had/have creative practices with whole bodies of language and knowledge around them, so I think it is more around the confusion of the English word for art and what that means to us.

What are Indigenous aesthetics? And how does this figure in your work?

I don't think you can really define them; they are as varied as each individual, in each distinct Nation, and then maybe even more so than that. But at some point I think they are informed by the experience of being informed by your family roots/heritage; even if that is an expression of a loss of those, it somehow embodies the work. This is different, I think, then saying it is identity-based; it certainly does not have to look like someone Native made it, but at some point I think in Indigenous aesthetics you can draw a parallel with some ancestral knowledges, philosophy, connection, loss, cultural practice, customs, contemporary context. So, there is Indigenous aesthetics, but defining it narrows it; you know it when you see it, or you know it when you feel it, I think. Without being too dreamy about it, art is often a communication with a different part of our brain – we absorb it and its possibilities differently than reading, or hearing a talk. It is very experiential, in some ways, even less direct than music. I think it functions on a much more esoteric level.

What makes Indigenous art political? Does, or should, Indigenous art have a responsibility to engage political struggle in form/content/practice/process?

Indigenous art is political because Indigenous people make it. Indigenous art should not have a 'responsibility' to engage in political struggle, it should have an opportunity or invitation or availability, but not an obligation. Indigenous people are already dying, fighting, struggling, learning, working – I don't think we need to limit ourselves. That said, depending on your experiences, your Nation, your family, teachings, and spirituality, you may be expected to carry your voice forward in a way that advances political struggle. I feel 'responsibility' in lots of ways; my community struggles like other smaller, rural ones. We also have outstanding talent and showing that, or creating a context to show that, becomes a political act, when so much of dominant culture is based on erasure, or what exists as a platform for Aboriginal people is already so weighted and constructed that there is only so much expression and freedom to those spaces.

What responsibilities do Indigenous artists carry in their work and practice that are unique to Indigenous people?

Well, that is a bit of an epic question! 'Indigenous artists' is just too diverse a

category. I can only speak to my experience and this isn't a definition of what I think that needs to be. I suppose one of the strongest struggles is negotiating spaces and places where you can be free to be who you are, without 'teaching' others or 'schooling' them or 'preaching' or being 'stereotyped' - all those isms get pretty heavy at times. So that affects a lot of Indigenous artists I think. For me, this idea of battling a never-ending tide, where you always have to unpack and relearn and reframe the way dominant histories and experience are told. It is creating space to not feel conflicted in who you are, but I don't think that is necessarily unique to Indigenous people.

We have to dislocate the ways we operate with this idea of homogeneity as an equalizing method. You may, as an Indigenous person, carry unique knowledges, languages, and practices and how you deal with those as an artist will be different than from a non-Indigenous artist. But it will also likely be different from another Indigenous artist, if you are from different nations, etc.

What has the response been to *Beat Nation* as the exhibit has traveled beyond Vancouver? Why do you think it has attracted such a huge audience?

I can't say I entirely know. For me, when Kathleen pitched the idea to bring *Beat Nation* to the VAG, it just felt right. It gave me chills and I followed that; I had reservations about the institutional space and many other things but I wanted to see these artists work in this space. I believed in what their work had to say and that it could bring down barriers. I was passionate about it, Kathleen was passionate about it, and as we worked on it what I hope comes through is a deep respect and excitement about the work.

Many Indigenous artists in *Beat Nation* and beyond have used hip hop and remix aesthetics in their work to respond to the legacy of colonialism and to the appropriation and misrepresentation of Indigenous cultures. What is the connection to hip hop culture and remix aesthetics that makes this appealing? Are there underlying affinities between Indigenous cultural production and hip hop/Black cultural production?

I used to work powwow's selling fruit for my auntie; one year a break dance crew came through the Kamloops Powwow, I was bowled over seeing them - and this was like more than 15 years ago now. Hip hop has been Indigenized for a long time… but back then most of the kids on the rez were still wearing metal shirts - it was metal, I would say, that in advance of hip hop expressed a sense of discontent with the way things were and expressed working class or poor people's ideals. But metal was pretty white. And when hip hop came it was real for people. I mean, hip hop has just made such deep inroads. It was basically storytelling, but in a way that allowed it to be used by young people to express their stories - not just traditional stories, but also traditional stories. It held such power as a medium because there was so much possibility there.

I think sometimes artists are working with remix culture, other times it is unmixing,

unravelling to find a clearer essence, excavating the cityscape to reveal Indigenous presence, singing in your language, telling your story.

Following this line of thought, what is the future of remix culture or, I guess, what comes after remix?

Re-mastering? (laughs) I don't think about art in some kind of linear way like, 'we had this art movement and then this one and now we are heading to this one.' Cultural and artistic expression form these interesting textures that weave all around us, sometimes encasing us, holding us, tying us, sometimes folding, embracing and carrying us.

Why is Indigenous art so relevant and "popular" in the current moment? Why now? Will it last?

You know, I think it always has been. We are creative people and we have dynamic ways of being in the world and maybe the landscape would look very different if artistic and cultural ways weren't so subject to a hierarchy of capitalism. I would hope that maybe the wider society around us is ready to start looking at ways of unravelling and remaking and remixing the histories of racism and oppression in this country...or what we call this country, this huge expanse of distinct Indigenous territories.

How important is self-representation (speaking to and for ourselves) in Indigenous art vs. speaking to non-Indigenous audiences? What role does audience play in your work?

A complicated one.

Is the 'traditional vs. contemporary' or 'two worlds' binary that is often associated with Indigenous art still a relevant consideration or distinction?

In terms of 'two worlds', which is to say segregation, I think a lot of people dismiss that idea these days as limiting. But I live back on my rez, in a fairly rural area, in an area of resource extraction, and that is still pretty real to me. And likely to others in even more remote communities etc. 'Traditional vs contemporary,' I never sit well with - contemporary is just a series of interventions and adaptations that become cemented from tradition; it is this cycle, and continuum, not a trajectory. Beadwork with glass beads is actually pretty contemporary, based on existing aesthetics and materials, and people are working in many different ways with this medium right now. I mean, painting and drawing can be considered traditional in a European art context too, but they are simultaneously current and contemporary and it doesn't confuse us. I think we can see different mediums and ways in which artists work with them in reference to both traditions, and contemporary contexts, and maybe customs.

Is art-making a form of decolonization? How, or perhaps when, is art decolonizing? Are there works, artists, or projects that you see successfully accomplishing this?

I think art can give voice to decolonization and it can be part of a process of

decolonizing, but I don't think it itself is only, or exactly, a form of decolonization. There are problems with art functioning as a form of social justice. I think art can be an initiator, an instigator, and inspiration but it needs to be a part of a community and other ways that are building and challenging existing ways with inspired revolutionary methods. Art can't be separate from community for it to be decolonizing. I think of it like ceremonial ways, where something might work on you without you even knowing it. I think every artist in *Beat Nation* is doing this in diverse ways, and then we are all also not doing it. There still needs to be people at the blockade, in the conference rooms, at the daycares; we can't think about artists as set apart from our community and struggle. We are all involved and hopefully support each other with the skills that we feel healthy and good about sharing, sharing what we can to make ourselves stronger together.

I have too lofty goals. People ask what I wanted *Beat Nation* to do and, really, as hilariously naive as it is, I want it to change the world. I want inequality to be lifted, I want our ways and languages back, I want it all, and I hope that the work I do in some ways – in both clear and strategic ways and in mysterious ways – does that.

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***Tania Willard**, Secwepemc Nation, works within the shifting ideas of contemporary and traditional as it relates to cultural arts and production, often working with bodies of knowledge and skills that are conceptually linked to her interest in intersections between Aboriginal and other cultures. Willard has worked as an artist in residence with gallery gachet in Vancouver's Downtown East Side, the Banff Centre's visual arts residency, fiction and Trading Post and was a curator in residence with grunt gallery. Willard's recent curatorial work includes Beat Nation: Art Hip Hop and Aboriginal Culture, featuring 27 contemporary Aboriginal artists.*

***Jarrett Martineau** is Cree/Dene from Frog Lake First Nation in Alberta and a Ph.D. Candidate in Indigenous Governance at the University of Victoria. His research examines contemporary Indigenous political communication at the critical intersections of media, technology, art, aesthetics, music, and performance. His dissertation focuses on the role of art and creativity in Indigenous struggles for nationhood and decolonization. He is the co-founder and Creative Producer of Revolutions Per Minute (RPM.fm), a global new music platform to promote Indigenous music culture and an organizer with the Indigenous Nationhood Movement. He is currently a 2013-14 Fulbright visiting scholar at Columbia University and CUNY's Center for Place, Culture and Politics.*

Education, Schooling, and Pedagogy

Introduction: Unfolding the Lessons of Colonization

Marie Battiste

As the twentieth century unfolds to a new millennium, many voices and forums are converging to form a new perspective on knowledge. Many of these voices belong to the Indigenous peoples who have survived European colonization and cognitive imperialism. They represent the thoughts and experiences of the people of the Earth whom Europeans have characterized as primitive, backward, and inferior – the colonized and dominated people of the last five centuries. The voices of these victims of empire, once predominantly silenced in the social sciences, have been not only resisting colonialization in thought and actions but also attempting to restore Indigenous knowledge and heritage. By harmonizing Indigenous knowledge with Eurocentric knowledge, they are attempting to heal their people, restore their inherent dignity, and apply fundamental human rights to their communities. They are ready to imagine and unfold post-colonial orders and society.

This book reveals some of these voices of commitment. They emerged from the meetings of the delegates of the United Nations Working Group on Indigenous Populations, held every year in Geneva, that converged in debates and drafting sessions on Indigenous rights. In 1996, many of these committed voices gathered at the University of Saskatchewan in Saskatoon, Canada, to honour Rigaberto Menchu Tum, Chief Ted Moses, and Erica-Irene Daes, "organic" leaders in Indigenous human rights initiatives. In the intense summer days and nights of 1996, delegates from many lands – lands that colonizers called Australia, New Zealand, South America, Europe, and North America – assembled for an unprecedented honouring ceremony and a focused talking circle to seek remedies for the colonization of the minds and souls of their peoples. The participants were Indigenous teachers and scholars and non-Aboriginal "friends" or allies. In the following collection of essays, the voices of commitment and action articulate their teachings, stories, perspectives, and reflections in many

different styles – passionate, scholarly, poetic, painful, practical – all of them visionary.

A significant starting point for discussing these themes was the story of the elder's box as told by Eber Hampton, a Chickasaw educator and the president of the Saskatchewan Indian Federated College, the national post-secondary educational institute of the First Nations of Canada. He told of an elder who asked him to carry a box. Thinking well of his own youthful stature, he felt proud to be chosen and agreed willingly. The elder then thrust forward what appeared to be an empty box, which puzzled him:

> His question came from behind the box, "How many sides do you see?"
> "One," I said.
>
> He pulled the box towards his chest and turned it so one corner faced me. "Now how many do you see?"
>
> "Now I see three sides."
>
> He stepped back and extended the box, one corner towards him and one towards me. "You and I together can see six sides of this box," he told me. (Hampton 1995, 42)

Just as the elder revealed that there is more than one perspective required to view a box holistically, the gathering revealed many perspectives on how to map and diagnose colonization, how to heal the colonized, and how to imagine and invoke a new society. In group sittings and stories told in many dialogues and related in many texts, the gathering found multiple layers of experience and knowledge about colonization that profoundly challenged us to find remedies. We began to see the many sides of our confinement, our box.

Through our sharing, listening, feeling, and analyzing, we engaged in a critique of the trauma of colonization. We examined the frameworks of meaning behind it, we acknowledged the destructiveness that it authorized, and we imagined a postcolonial society that embraced and honoured our diversity. We shared many sides of a box that we came to know more fully. We came to see colonization as a system of oppression rather than as personal or local prejudice. We came to understand that it is the systemic nature of colonization that creates cognitive imperialism, our cognitive prisons (Battiste 1996).

Over the course of those ten days, the voices in the gathering converged to address strategies for neutralizing the systemic nature of our oppression, identifying its viral sources, and understanding how it imprisons our thoughts. Together we sought to find ways of healing and rebuilding our nations, peoples, communities, and selves by restoring Indigenous ecologies, consciousnesses, and languages and by creating bridges between Indigenous and Eurocentric knowledge. We discovered that we could not

be the cure if we were the disease. Discovering the cures that will heal and restore our heritage and knowledge is an urgent agenda occupying the daily and intellectual lives of Indigenous peoples. It will be the most significant problem facing Indigenous peoples in the Decade of the World's Indigenous Peoples, 1995-2004, as Indigenous peoples around the world continue to struggle against oppression. Understanding the processes that we detected in the course of our gathering will help to unravel ethnic tensions and wars and allow humanity to rebuild society based on diversity rather than on an ancient quest for singularity.

The participants were unique representatives of their peoples who brought to the meeting diverse ecological consciousnesses, languages, and cultures, as well as similar expressions of caring and kindness. They were the first generation of Indigenous scholars accomplished in both Eurocentric and Indigenous thought, thus providing a bridge that allowed us to enter into a dialogue and translate Indigenous knowledge and heritage. Each had walked in the colonizers' moccasins, learned to speak their languages and know their methodologies, thus earning their critiques and their respect as valued leaders and resources to protect the heritages of their nations, peoples, and communities.

Led by Leroy Little Bear, an eminent Blackfoot philosopher and scholar, now retired from the University of Lethbridge and the American Indian Programs at Harvard University, we worked together to solve the mystery of the box. He enriched our analyses and imagined the possibility of a postcolonial society that would enable us to create our own sustaining and nourishing realities. He gently urged us to respect the process of developing ourselves in healing and renewing ways and to dream for those equitable and shared benefits that we felt were necessary. He led our dialogues to sharpen our insights gained from our experiences, and he helped us to confirm our commitment to forms of inquiry both timely and exacting, as we developed new networks of solidarity.

Under the Medicine Wheel processes of the northern Plains, the sessions were organized around four related themes: mapping colonialism, diagnosing colonialism, healing colonized Indigenous peoples, and imagining postcolonial visions. As we shared our thoughts in our group dialogues, we sought to address some of the essential questions of colonization. What is it in the nature of European cultures that has resulted in the oppression of so many peoples worldwide? What is it in the nature of Indigenous peoples' culture that has allowed colonization to happen? What can we do now, and what principles can we bring forward to achieve these visions from those ten days together?

The participants shared their personal and collective pain, anguish, and analyses of their experiences with colonialism. Each had experienced most

or some aspects of colonization and was enmeshed in reforming colonial governments, laws, education, economies, and institutions that sought to erase their identities, languages, and cultures, creating new colonized identities that would be impoverished in the wake of violence and destruction. Each had experienced a side of the box that others had not experienced; for some of us, there were parts of the box that we could not fully access but we still felt their presence.

These sharing sessions and dialogues are enfolded within these essays, which represent modern Indigenous voices and syntheses of the experience of colonization and Indigenous thought in many styles and from many different points of view. Many of the essays contain the "orality" of Indigenous traditions, aspects that could not be changed without destroying these voices. These essays declare an Indigenous framework of meaning and of what has been destructive that is rarely shared. They provide new frameworks for understanding how and why colonization has been so pervasive among Indigenous peoples, as well as what Indigenous peoples desire and imagine as a better life in a postcolonial context. They also offer existing and new methodologies, conceptual designs, and approaches for implementing the healing and cultural restoration of Indigenous peoples across disciplines.

The writings seek to move beyond the existing Indigenous experience of colonization by liberating Indigenous thought, practices, and discourses rather than by relying on existing Eurocentric or colonial theory. Indigenous thinkers use the term "postcolonial" to describe a symbolic strategy for shaping a desirable future, not an existing reality. The term is an aspirational practice, goal, or idea that the delegates used to imagine a new form of society that they desired to create. Yet we recognized that postcolonial societies do not exist. Rather, we acknowledged the colonial mentality and structures that still exist in all societies and nations and the neocolonial tendencies that resist decolonization in the contemporary world. Such structures and tendencies can only be resisted and healed by reliance on Indigenous knowledge and its imaginative processes.

Postcolonial Indigenous thought should not be confused with postcolonial theory in literature. Although they are related endeavours, postcolonial Indigenous thought also emerges from the inability of Eurocentric theory to deal with the complexities of colonialism and its assumptions. Postcolonial Indigenous thought is based on our pain and our experiences, and it refuses to allow others to appropriate this pain and these experiences. It rejects the use of any Eurocentric theory or its categories.

The writings in this book firmly embed the fundamental concept that Indigenous knowledge exists and is a legitimate research issue. Many parts of the existing Eurocentric academy have not fully accepted this principle,

arguing that there is no such thing as an Indigenous perspective. Postcolonial, Aboriginal, and postmodern scholars have had to confront this position, as they have had to confront the institutions in which they function. Most delegates from university communities were having trouble articulating the differences between these two systems of knowledge, but through the shared dialogues they became aware of the singularity of Eurocentric thought – even if some of the issues around the diversity of approaches to life and nature remained unresolved. They came to understand the prevailing authority of Eurocentric discourses and how the unreflective dominance of these discourses in academia has led to the historical and contemporary immunity to understanding and tolerating Indigenous knowledge.

Indigenous knowledge, including its oral modes of transmission, is a vital, integral, and significant process for Indigenous educators and scholars. It has been upheld by the Supreme Court of Canada as a legitimate form for understanding and transmitting Indigenous knowledge, history, and consciousness. The Supreme Court of Canada has ordered the legal profession, in *Delgamuukw* v. *The Queen* (1997), to include and respect Indigenous oral traditions in standards of evidence, overruling centuries of development of the British rules of evidence. The justices of the Supreme Court held that Indigenous oral traditions are legitimate sources of evidence and ordered the courts to modify rules of evidence and procedures to acknowledge and value these traditions. This decision offers a powerful analogy for the interpretive monopoly of existing standards of research scholarship. If the courts are required to consider oral traditions, then all other decision makers should likewise consider the validity of oral traditions, including oral dissemination within Aboriginal and non-Aboriginal communities, as significant sources for the distribution and dissemination of Aboriginal knowledge and scholarship.

The necessity of bringing forward Aboriginal knowledge, perspectives, and research is being increasingly felt at all levels of scholarship. In a speech to the university community, the president of the Social Sciences and Humanities Research Council of Canada aptly pointed out that the traditions of the university to "publish or perish" have been globally tested and that the new agenda for universities will need to be "go public or perish" (Marc Renaud, Sorokin Lecture, University of Saskatchewan, Saskatoon, February 4, 1999).

Indigenous scholarship, along with research that requires moral dialogue with and the participation of Indigenous communities, is the foundation for postcolonial transformation. This scholarship evolves from a need to comprehend, resist, and transform the crises related to the dual concerns of the effect that colonization has had on Indigenous peoples and the ongoing erosion of Indigenous languages, knowledge, and culture

as a result of colonization. It has involved clarifying the contested interests that occur in the many disciplines and fields of thought.

Much of the focus of Indigenous scholarship in the early years was on liberal solutions that attempted to make modal adjustments to existing institutions and their modes of delivery. There has been a growing awareness of late that we need a more systemic analysis of the complex and subtle ideologies that continue to shape postcolonial Indigenous educational policy and pedagogy. The writings in this book document action-oriented research practices. These practices identify sites of oppression and emancipation. They also support the agenda of Indigenous scholarship, which is to transform Eurocentric theory so that it will not only include and properly value Indigenous knowledge, thought, and heritage in all levels of education, curriculum, and professional practice but also develop a cooperative and dignified strategy that will invigorate and animate Indigenous languages, cultures, knowledge, and vision in academic structures.

This book offers a complex arrangement of conscientization, resistance, and transformative praxis that seeks to transform the dual crises related to colonization and culture. It is constructed on the multidisciplinary foundation essential to remedying the acknowledged failure of the current Eurocentric system in addressing educational equity for Indigenous peoples, in particular the diverse groups of disempowered peoples around the world. Similarly, it recognizes that Indigenous education is not one site of struggle but multiple struggles in multiple sites. Thus, these diverse struggles cannot simply be reduced to singular, one-dimensional solutions. Interventions and transformative strategies must be correspondingly complex, and they must be able to engage with and react to the multiple circumstances and shapes of oppression, exploitation, assimilation, colonization, racism, genderism, ageism, and the many other strategies of marginalization. This collection seeks not to resolve all tensions or their complex interfaces but to acknowledge and expose their existence and to take account of the factors as they appear in multiple sites, including epistemology, curriculum, schools, and teacher education (Smith 1997).

This book seeks to clarify postcolonial Indigenous thought at the end of the twentieth century. It is not a definitive work, but it is a good reflection. It represents the voices of the first generation of Indigenous scholars and seeks to bring those voices, their analyses, and their dreams of a decolonized context further into the academic arena. It urges an agenda of restoration within a multidisciplinary context for human dignity and the collective dignity of Indigenous peoples. It recognizes the existing right of self-determination, and it urges Indigenous peoples to promote, develop, exercise, and maintain their orders and laws and to determine their political status and pursue freely their cultural destiny within supportive social and economic development.

One Indigenous educator, Nata Inn ni Maki–Sacred Hawk Woman (Rose von Thater), has written about the knowledge and experience that she gained at the gathering:

> We were bringing to conscious recognition those elements foreign to our knowing that had entwined themselves within us, sapping us of our natural strength. We were seeing the experiences that had defined our lives with new eyes. We were looking at our history, accounting for its impact, taking ourselves to the doorways of understanding, discovering new possibilities, other strategies, watching as sources of power and strength emerged to reveal themselves in a new light. From this place and from these days together we were selecting, like artists, the elements that would tell a new story, taking from the past, re-ordering the present, envisioning a future that felt very much like a vision that had been held for us until we could reach out and hold it for ourselves. (Personal communication, June 27, 1997)

Indigenous peoples worldwide are still undergoing trauma and stress from genocide and the destruction of their lives by colonization. Their stories are often silenced as they are made to endure other atrocities. Many of these Indigenous peoples were unable to attend the institute to share their stories, despite their efforts. For them and for all Indigenous peoples worldwide, we seek to initiate dialogue, advance a postcolonial discourse, and work actively for a transformation of colonial thought. It becomes our greatest challenge and our honour to move beyond the analysis of naming the site of our oppression to act in individual and collective ways to effect change at many levels and to live in a good way. These writers are actively seeking to reject the categories assigned to them and to make a difference in creating sustainable communities. Our efforts are to reveal the inconsistencies, challenge the assumptions and the taken for granted, expose the ills, and search from within ourselves and our Indigenous heritages for the principles that will guide our children's future in a dignified life. Our efforts are enfolded within the deep meaning of poet Antonio Machado's beautiful thought: "Caminante, no hay camino, se hace camino al andar" ("Traveller, there are no roads. The road is created as we walk it [together]") (as cited in Macedo 1994, 183).

Using the Medicine Wheel to guide and illustrate the interconnectedness and continuous flux of ideas, I have used the four directions of the Sacred Circle Wheel (the winds of West, North, East, and South) to characterize the divisions of this interrelated dialogue. The Medicine Wheel illustrates symbolically that all things are interconnected and related, spiritual, complex, and powerful. Indigenous writers have explained elsewhere about

the teachings of the Sacred Directions (Battiste 1995; Calliou 1995; Hampton 1995). I start with the Western Door, an unlikely place for most Aboriginal people to begin their journeys, as most Aboriginal people begin their ceremonies with the East. However, my friend Eber Hampton, in "Redefinition of Indian Education" (1995), has offered his understandings of the meanings of the directions taken from within traditional ceremonies, and for me the Western Door is appropriate for the theme of *mapping colonialism* because the west is the direction of "Autumn, the end of summer, and the precursor of winter. On the great plains, thunderstorms roll in from the west. In Lakota cosmology, the good red road of life runs north and south and the road of death runs east and west. The coming of Western civilization (meaning western European), with its Western forms of education, to this continent was the autumn of traditional Indian education" (31). The Western Door thus begins with mapping the contours of the ideas that have shaped the last era of domination underpinning modern society and the varied faces of colonization as it is maintained in the present era. It is introduced in the prologue by Erica-Irene Daes and developed in subsequent essays.

The Northern Door is the "home of winter." Long nights of darkness evoke feelings of struggle and cold; long winters are when our very survival is challenged. Indigenous peoples are challenged by winter, but from their experience they learn endurance and wisdom. The north, as Eber has pointed out, is cold and dark, with just a hint of light that makes it possible for us to hope and dream. This direction represents the theme of *diagnosing colonialism*. Whenever I teach my course Decolonizing Aboriginal Education, I find that my graduate students are enriched by the diagnosis of colonialism and by their own unravelling of their experience, whether they are the colonizers or the colonized. The Northern Door is the direction from which the diagnosis of colonialism emanates. It goes beyond the practice of colonial oppression to explore the unquestioned and conflicting assumptions that underpin oppressive relationships.

The Eastern Door is the direction of spring, of the sun rising. "The east is, through its association with the sunrise, a place of beginnings and enlightenment, and a place where new knowledge can be created or received to bring about harmony or right relations" (Calliou 1995, 67). In the morning, as we turn to the east, we pray for our children, our nations, and our future generations. We are conscious of how so many of our peoples have suffered through the winter, and now we look to find new ways to warm, nourish, and heal our fragile spirits. We can turn to the Earth, as Linda Hogan suggests, to find a different yield or to invoke new understandings from the collective efforts of Indigenous peoples, whether they come from political thought, constitutional reform, or international law. The Eastern Door of *healing colonized indigenous peoples* presents the

intellectual and practical challenges to current ways of pursuing humane relationships. It is a process of healing ourselves, our collective identities, our communities, and the spirit that sustains us.

Finally, the Southern Door is "the direction of summer, the home of the sun, and the time of fullest growth" (Hampton 1995, 28). The summer resounds with the healthy sounds of our peoples as we convene to honour our teachings, our elders, and our ancestors in ceremonies and gatherings. It calls to mind long summer days and nights in dialogue and laughter and sharing around campfires, at feasts, pow wows, potlatches, and multiple ceremonies. Our traditions, as Eber has pointed out, preserve and sustain us. Thus, the final section of this book resounds with hope and anticipation as we turn to our traditions to preserve our communities, our education, our governance, and our future through focusing on the integrity of Aboriginal knowledge, systems, and their applications. It offers the foundation for reclaiming ourselves and our voice, as we *vision the Indigenous renaissance* based on Indigenous knowledge and heritage.

Raising consciousness of the struggles of oppressed Indigenous peoples throughout the world has been an intensely challenging objective but one that Erica-Irene Daes has achieved quietly and laboriously in her role as chairperson of the United Nations Working Group on Indigenous Populations. In her essay, "The Experience of Colonization Around the World," Erica introduces the theme of mapping colonization. She acknowledges that the anguished and urgent voices that she hears persistently are linked inextricably with aggression, violence, repression, and domination. These acts of oppression tear at the very spirit of individuals, denigrating the relevance and meaningfulness of their individual human lives. But being oppressed and marginalized, they are also, she notes, closest to an understanding of their oppression and to the sources of their healing and renewal. She outlines the social and psychological process of self-discovery in an emerging postcolonial world and the concomitant need for rebuilding alliances, making commitments, and holding nations accountable for their peoples. Her note of optimism is a fresh breeze on a still, hot summer day.

Western Door

Domination and oppression cannot be altered without the dominated and the dominators confronting the knowledge and thought processes that frame their thinking, their complacency, and their resistance. In "The Context of the State of Nature," James Youngblood (a.k.a. Sákéj) Henderson maps the contours of the false context that has shaped the recent era of domination that underpins modern society. He describes the foundational constructs of an artificial social contract and the laws and institutions that

sustain it. The modern liberal state in Canada is the outcome of historic events. Sákéj suggests, however, that the liberal state was and is by no means the only alternative for developing a social contract for society. Treaty commonwealth is a social and legal alternative to colonization that challenges the current artificial context of the liberal state. As Sákéj explains, it is a viable alternative that represents rules of negotiation, consent, and remedies that embrace a more equitable relationship among people in a natural society.

Robert Yazzie, Chief Justice of the Navajo Supreme Court, contextualizes colonization among the Navajo, describing a series of laws, practices, and schemes that sought to control and dominate Native Americans in the United States. In "Indigenous Peoples and Postcolonial Colonialism," he chronicles the historical destruction of the Navajo and the consequences of this destruction for their worldview, traditions, and beliefs. He explains how historical clashes between Navajo and Eurocentric worldviews are manifested in legal and social discontinuity today. He offers a model of Navajo restoration of justice that is reemerging as a foundation for decolonized forms of justice and peacemaking within the Navajo Nation and that yields programs of recovery, reconciliation, and healing.

Poka Laenui (a.k.a. Hayden F. Burgess), a leading Indigenous lawyer, provides the voice of resistance of the Indigenous peoples of Hawaii. In his essay, "Hawaiian Statehood Revisited," he relates the cost of statehood to self-determination and raises vital questions for the future of the Indigenous people of Hawaii. The annexation of the islands that were called Hawaii to the United States was characterized as a glorious moment of celebration, a seemingly win-win liaison of positive value and merit to both Hawaii and the United States. However, a decade later the Indigenous voices of opposition began to be heard amid the large-scale destruction of Indigenous lands, rights, and sovereignty. Fraud rooted in colonial attitudes and policies led to Indigenous lands being "ceded" to the United States. The call for self-governance in the territories, a process meant to break the chains of colonization, ultimately led to an intentional perverting of the alternatives to statehood for Indigenous Hawaiians, which led to their further colonization.

Northern Door

Dismantling colonization to create a postcolonial state is an unfolding vision for Indigenous peoples worldwide. Sákéj Henderson, in "Postcolonial Ghost Dancing: Diagnosing European Colonialism," continues his analysis of colonization by examining the strategies, techniques, and competing components that constitute the system of colonialism. The theory of universality and the strategy of difference that underpin Eurocentric

thought serve colonial domination by universalizing negative caricatures of Indigenous peoples to justify aggression, control, and domination. In the late nineteenth century, in their desperate longing to restore their past, the Plains Indians danced the Ghost Dance. The Ghost Dance that Indigenous peoples are dancing today is for the restoration of their worldviews in all areas of scholarship and professional practice.

Leroy Little Bear, the animator of the ten-day summer institute, provided ongoing analysis of the clashing worldviews of Aboriginal people and Canadian immigrants. His mapping of the Plains Indian worldview, culture, socialization, and methods of social control in "Jagged Worldviews Colliding" explains the jagged edge of empire that the Blackfoot encountered. It also explains how colonization results in overlapping, contentious, and competing cultures in modern society. Recognizing how these differences create discontinuity, division, and dissent among oppressed Indigenous peoples, including areas of law and education, Leroy seeks a new global order built on respect for diversity.

The psychological consequences of colonization for the oppressed have been largely characterized by Western psychology's attempt to achieve a state of "normalcy," an identity projected onto Indigenous peoples from European origins and images. In "Applied Postcolonial Clinical and Research Strategies," Bonnie and Eduardo Duran investigate cross-cultural psychology and seek a recognition of the sociohistoric reality that created the psychology of the oppressed – their acute and chronic reaction to genocide and colonization. They seek a decolonized analysis that includes giving credence to Native American history, identities, traditions, dreams, and visions, as well as utilizing Native people's own theories and methods for restoring the self and the nation. This essay, drawn from their book *Native American Post-Colonial Psychology,* seeks to reconceptualize cross-cultural psychology and to build bridges between Western therapy and Native American healing methods.

The psychology of the oppressor and the psychology of the oppressed are different faces of the same coin, dependent on each other for their value. Ian Hingley, a Saskatchewan teacher, chronicles his personal journey as dominator in "Transforming the Realities of Colonialism: Voyage of Self-Discovery," an introspective narrative that brings him to the awareness of his own privilege. He outlines his growing awareness of a systematically internalized mind-set that benefited from the subjugation and oppression of others. His journey to aspire to social justice, he acknowledges, must come with an awareness of his own privileges, often gained at the cost of others. He describes his awakening realization of his personal responsibility to make a conscious choice for change, a change that will result in a postcolonial world where privilege is not an inherent ingredient of oppression and self-honesty can lead to a collaboratively structured society.

Eastern Door

Our visions and dreams of a postcolonial world are not just emerging from a cognitive realm, and thus subject to the great or small minds of humanity, but they are also evolving from the whole Earth, which has its own yield. "A Different Yield," by Linda Hogan, is excerpted from her book *Dwellings: A Spiritual History of the Living World.* In it she offers a view, taken from an Aboriginal awareness, of the Earth as alive – thinking, creating, cautioning, and offering a new and humane alternative. She reminds us that the Earth responds to kindness, respect, prayers, and songs in the same way that humans do. She urges humanity to listen to the underground language in us. Its currents pass between us and nature to reveal a new clarity and reverence for life found in an ecology of the mind, a yield that returns us to our own sacredness, self-love, and a respect that will extend to others.

People speak their languages and relate their stories not just to tell of subsistence or sovereignty but also to tell of all that is meaningful for understanding ourselves, individually and collectively, as human beings. In "From Hand to Mouth: The Postcolonial Politics of Oral and Written Traditions," J. Edward Chamberlin reminds us how the world of reality and the world of imagination are sites of struggle for authenticity and authority. These worlds are manifested in languages, which are instruments of both survival and power. Chamberlin draws on language to examine the parameters of postcolonial theory, as one way but not the only way of looking at the lands, livelihoods, and languages of Indigenous peoples. He anticipates that postcolonial theory can open new understandings of the situation faced by peoples involved in the challenge of decolonization.

Asha Varadharajan provides a critical examination of the Western intellectual tradition that has institutionalized racial and cultural differences, thereby excluding "Others," and she urges a dialogue about the ideological conflicts in the Western intellectual tradition. In her essay, "The 'Repressive Tolerance' of Cultural Peripheries," she argues that it is not particularly useful to find or declare who is guilty in Western culture for colonialization, or to substitute one culture for another, but it is vital for modern society to explore the paradigmatic power of Western conceptions and to interrogate their function as normative categories in colonization. Her essay relates how race, sex, and class configure the critical discourse of Western thought from what is essentially a position of difference and how race, sex, and class subsequently inform anticolonial dissent and a vision of an antiracist future.

In "Processes of Decolonization," Poka Laenui again brings forward the Hawaiian example to illustrate the processes of colonization and decolonization and to describe what the processes of rediscovery, recovery,

mourning, dreaming, commitment, and action mean in the context of Hawaii's quest for sovereignty.

This book raises some essential questions for Indigenous peoples. How do we create a postcolonial society? How do we create a just society and an innovative consciousness? How do we heal people who continue to suffer? Recognizing the role that society and its institutions have played in imposing their script on Indigenous peoples, Sákéj Henderson examines the legal system of jurisprudence. In "Postcolonial Ledger Drawing: Legal Reform," he points out both the cognitive and ideological prisons of modern legal thought and the postcolonial dreams and processes that can in practice empower peoples. Restoring rights to the diverse worldviews, languages, identities, and treaty orders of Indigenous peoples in the supreme law of Canada is not just a dream; it has been achieved in the Constitution of Canada in sections 35 and 25, which affirm and protect the rights of Aboriginal people. Aboriginal orders, visions, and dreams are entrenched in the Constitution. These constitutional rights offer one layer of restoration for Indigenous peoples; the next layer is one for each of us to undertake, to implement restoration in responsible and reciprocal ways.

Aboriginal peoples have been invisible. Their rights have been trampled on by nation-states that protect themselves behind domestic and international laws that simultaneously speak out against standards of injustice, while they routinely normalize the genocide and torture of Indigenous peoples. The principle of non-interference in the internal affairs of states has led to massive human rights violations. The Indigenous peoples of Canada in small but vocal groups have made their way to the international forums to find people of like mind who have had to endure similar treatment worldwide and who are ready to stand together in solidarity against these oppressions. In "Invoking International Law," Ted Moses, Ambassador to the United Nations for the Cree Nation, describes the efforts made in bringing Indigenous issues to the international community and the struggles that continue in multiple layers of diplomatic activity as Indigenous peoples persist in their efforts to protect their Indigenous right for self-determination.

Southern Door

Seeking a postcolonial education begins with Indigenous peoples exploring their own symbols, expressions, and philosophy of Indigenous education and creating the context that they need, not only to make sense of who they are but also to assert that sensibility in all aspects of their lives. It begins with Indigenous peoples knowing their languages, their metaphors, their symbols, their characters, their stories, their teachers, and their teachings. In "Indigenous Knowledge: The Pueblo Metaphor of Indigenous Education," Gregory Cajete offers some Pueblo teachings embedded

in the symbols of his people as a way to reflect on how we can use the tools of education in the process of redefining and reinventing the contemporary philosophy of Indigenous education. These teachings reverberate in Indigenous societies throughout North America in many different forms and practices and serve as a model for reconnecting with what was once hidden or suppressed, to find ourselves whole, balanced, open, and responsive, ready to assume the map that we have inherited and enfolded within each of us.

Given the persistent travesty of trust of Indigenous children in federal and public schools in Canada, the challenge for postcolonial educators is to transform education from its cognitive imperialistic roots to an enlightened and decolonized process that embraces and accepts diversity as normative. In the essay "Maintaining Aboriginal Identity, Languages, and Culture in Modern Society," I have sought to unravel and challenge the assumptions of modern society and to seek alternatives and processes that acknowledge the rights outlined in the Canadian Constitution and United Nations conventions and declarations. Legislation and policies that advance equitable education and respect for distinctive perspectives and understandings and ways of knowing are offered as a means of achieving these goals. Modern Western society has much to gain by learning about and from Indigenous peoples, but without a structural framework to achieve these ends the goals of decolonization will fall short of being actualized.

In the course of seeking a postcolonial vision, Indigenous peoples find many sites of struggle where they must actively assert themselves, their visions, and their knowledge to make transformative change a viable and lasting process. Sharing the Maori manifesto of Aotearoa (New Zealand) in "Protecting and Respecting Indigenous Knowledge," Graham Hingangaroa Smith addresses some of the central themes of decolonization and offers the Maori experience to illustrate some of the resistance and proactive strategies that have resulted in many of their successes. No longer content with mere social equality or good race relations that serve the status quo, the Maori have coalesced their struggle into a vision of self-determination. Drawing on their own schools and language to educate their children to their greater destiny, they have merged their Indigenous knowledge with their objectives and have developed the holistic vision and philosophy of Kaupapa Maori. Kaupapa Maori has defined and solidified their individual and collective roles, responsibilities, and processes to empower their vision and their future.

The need for a decolonized context inspires Indigenous peoples to break their silence and regain possession of their humanity and identity. Linda Tuhiwai Te Rina Smith, a leading Maori scholar, identifies the challenges for Maori people in making research a retrieved space from which to carry

out the aims of Kaupapa Maori philosophy. Her essay, "Kaupapa Maori Research," maps out the developing field of an Indigenous epistemology that is as much emerging philosophy as it is adherence to a cultural worldview and process. It involves Maori peoples taking responsibility for what gets researched, as well as for how research is done, not just from some vague Western codes of ethics but also from within the parameters of Maori language, culture, and philosophy. Good Kaupapa Maori research takes into account the people, their history, their philosophy and principles, their legitimacy, and their struggle for autonomy over their own self-determination, their *tino rangatiratanga*.

The remaining obstacles to understanding Aboriginal consciousness and order are challenged in Sákéj Henderson's final essay, "*Ayukpachi:* Empowering Aboriginal Thought." Sákéj explores the application of the Aboriginal mind, spirit, and language to modern challenges and explores how that application remains interrelated with their traditional ecology and the knowledge base developed within their worldview and language. Mapping out some of the "langscape" of those Indigenous worldviews, he illustrates how an indeterminate yet empowered future can unfold from reliance on Indigenous thought, rather than from total reliance on Eurocentric thought.

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Reclaiming Indigenous Voice and Vision

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Maintaining Aboriginal Identity, Language, and Culture in Modern Society

Marie Battiste

Aboriginal people in Canada pose a serious question to the Canadian educational system: How should schools be structured and content developed and delivered to offer equitable outcomes for Aboriginal peoples in Canada? Aboriginal peoples articulated their goals for education in 1972, when the National Indian Brotherhood sought to take control of Indian education. These goals have not changed in the intervening years. Aboriginal parents still wish for their children to participate fully in Canadian society but also to develop their personal and community potential through a fully actualized linguistic and cultural identity and from within their own Aboriginal context.

There have been innovations in Aboriginal education in the past twenty-five years, both at the First Nations and at the provincial levels, but these reforms have not gone far enough. The existing curriculum has given Aboriginal people new knowledge to help them participate in Canadian society, but it has not empowered Aboriginal identity by promoting an understanding of Aboriginal worldviews, languages, and knowledge. The lack of a clear, comprehensive, and consistent policy about Aboriginal consciousness has resulted in modern educational acts that suppress these integral cultures and identities. Most public schools in Canada today do not have coherent plans about how teachers and students can know Aboriginal thought and apply it in current educational processes.

Educators have suggested that problems arise because the "style of learning" through which Aboriginal students are enculturated at home differs markedly from the teaching style of the classroom. Linguists have pointed out that these differences may lead to sociolinguistic interference when teachers and students do not recognize them. These theories, however, do not get to the root of the problem. Non-Aboriginal scholars have avoided the major evaluative issue, which I have previously called cognitive imperialism or cognitive assimilation.[1] Scholars within the United Nations have called it cultural racism.[2] Cognitive imperialism, also known

as cultural racism, is the imposition of one worldview on a people who have an alternative worldview, with the implication that the imposed worldview is superior to the alternative worldview.

The 1996 report of the Royal Commission on Aboriginal Peoples reaffirms both the goals of Aboriginal parents for the education of their children and the gaps in the current educational system.[3] It explains how current educational policy is based on the false assumption of the cultural superiority of European worldviews, and it recommends ways to eradicate the many obstacles that stand in the way of the advancement of Aboriginal peoples in Canada today. The report attests to the need for the transformation of knowledge, curriculum, and schools. It recognizes that the current curriculum in Canada projects European knowledge as universal, normative, and ideal. It marginalizes or excludes Aboriginal cultures, voices, and ways of knowing. In this chapter, I will explore how Aboriginal identity, languages, and cultures can be maintained in the current educational system of Canada and what innovations are required to do this. I will also explore the challenges that lie ahead for educators in effecting an education that respects and nourishes Aboriginal languages, cultures, and identity.

It should be stressed that Aboriginal consciousness cannot be maintained without first challenging the assumptions of modern society. Confronting the difficulties in maintaining Aboriginal consciousness in modern thought may be too much for the current educational system, but language revival, maintenance, and development remain as a challenging task for Aboriginal peoples to undertake in their quest for decolonization and self-determination.

Public School Education: Benign Fragmentation

Most Canadians trust their educational system. Education is not only the arena in which academic and vocational skills are developed but also the arena in which culture, mores, and social values are transmitted to the student. The educational system, fostered by government and society, is the basis of Canadian cultural transmission. However, for children whose languages and cultures are different from mainstream immigrant expectations, this educational system is a form of cognitive imperialism.

The military, political, and economic subjugation of Aboriginal peoples has been well documented, as have social, cultural, and linguistic pressures and the ensuing detrimental consequences to First Nations communities, but no force has been more effective at oppressing First Nations cultures than the educational system. Under the subtle influence of cognitive imperialism, modern educational theory and practice have, in large part, destroyed or distorted the ways of life, histories, identities, cultures, and languages of Aboriginal peoples.

Most Canadians, both Aboriginal and non-Aboriginal, have long accepted some of the fundamental assumptions underlying modern public school education. We have assumed that education is a kind and necessary form of mind liberation that opens to the individual options and possibilities that ultimately have value for society as a whole. On the face of it, education appears beneficial to all people and intrinsic to the progress and development of modern technological society.

But public schooling has not been benign.[4] It has been used as a means to perpetuate damaging myths about Aboriginal cultures, languages, beliefs, and ways of life. It has also established Western science as a dominant mode of thought that distrusts diversity and jeopardizes us all as we move into the next century. After nearly a century of public schooling for tribal peoples in Canada, the most serious problem with the current system of education lies not in its failure to liberate the human potential among Aboriginal peoples but in its quest to limit thought to cognitive imperialistic policies and practices. This quest denies Aboriginal people access to and participation in the formulation of government policy, constrains the use and development of Aboriginal cultures in schools, and confines education to a narrow scientific view of the world that threatens the global future.

There are two different points at issue here. The first is the right of Aboriginal peoples to exercise their own culture; the second is the benefit that the Western world can derive from this culture. Western scholars are gradually realizing how important Aboriginal knowledge may be to the future survival of our world. Not only is it important that Aboriginal cultures are preserved and encouraged, but it is also important that they are recognized as the domain of Aboriginal peoples and not subverted by the dominant culture.

Two international conferences since the mid-1970s have drawn attention to the right of Aboriginal peoples to the preservation of their cultures in the face of cognitive imperialism. The World Conference on Indigenous People in 1978 "endorse[d] the right of Indigenous Peoples to maintain their traditional structure of economy and culture, including their own language."[5] In 1989, a United Nations seminar on the effects of racism and racial discrimination on the social and economic relations between Indigenous peoples and states concluded that global racism was taking on the new form of state theories of cultural, rather than biological, superiority, resulting in rejection of the legitimacy or viability of the values and institutions of Indigenous peoples.[6]

Ironically, although the value of Indigenous culture is devalued by cognitive imperialism, the dominant society has a tendency to take elements of traditional Aboriginal knowledge out of context and claim them for itself. In 1993, the chairperson of the Working Group on Indigenous Populations, Dr. Erica-Irene Daes, prepared a report condemning the widespread

and continued exploitation of traditional knowledge and culture by Eurocentric institutions and scholars.[7] She described this as the final stage of colonialism, following the exhaustion of Indigenous peoples' tangible assets. Daes argues for the urgency of taking international action to protect the dignity, privacy, and identity of Indigenous peoples without waiting for the adoption of the declaration. The principles laid out by the working group acknowledge that the heritage of an Indigenous people is a complete knowledge system with its own concepts of epistemology, philosophy, language, and scientific and logical validity that needs protection from Eurocentric exploitation. In the 1990s, designated by the United Nations as the International Decade of the World's Indigenous Peoples, the Working Group on Indigenous Populations and related activities are developing an understanding of and a cure for cultural racism and are furthering the immediate, practical processes of cultural restoration in decolonized states.[8]

Confronting cultural racism in Canada is a difficult task because cultural racism cannot be contained to any one portion of the state. It is a systemic form of racism that cannot be dealt with in schools through classroom supplements or add-on courses. Confronting the problem requires a holistic understanding of modern thought and the purpose of education.

Curriculum, Colonialism, and Incoherence

Although the notion of "one best educational system" has been largely discredited, the notion that there is "one best remedy" for our educational ills has not. Modern society is still looking for and frequently is offered simple cures for these ills, one-ingredient prescriptions that claim to be panaceas. But there is no cure-all, no educational antibiotic to be administered externally by injection into the state to cure the modern ills.

To understand how education in Canada continues to suppress or exterminate Aboriginal consciousness, one has to understand modern thought. The existing body of research, which normally provides reference points for new research, must be examined and reassessed. This is no small task. Few Canadians understand the relationship of modern thought to the educational system. Most educators assume that modern thought is an accurate description of reality, and this assumption is at the centre of the modern curriculum. Yet modern thought establishes an artificial and imaginary realm. The immigrants left their own societies and entered tribal Canada. In our Aboriginal homeland, they began to develop a society that they imagined into being through laws and regulations. The affirmation and continuation of this imaginary realm are supplied through the provincial educational system. This imagined immigrant society is distinctive from Aboriginal societies, whose customary rules are grounded in the laws of nature.

The purpose of education is to transmit culture to new generations. But culture remains elusive; it is implicitly summed up by skills and shared traditions. Since there is no agreement about transmitting culture, the real purpose of education is to affirm the political and social status quo. The task of education in Canada is to explain the immigrant's broad privileges and wealth in another's homeland. The curriculum has to justify immigrant privileges in Aboriginal America. In the past, the immigrants relied on the racism built into their political system to justify their privileges. Since the United Nations human rights declarations and covenants in the 1990s, these foundational standards have been universally rejected, and the necessary justification to sustain privilege has moved into the educational and cultural arenas.

In every educational circumstance, much of what is learned depends on the context in which it is learned. Within the context of public school education, one can identify a few basic preconceptions about reality that exercise an overwhelming influence over education in this country. The modern Canadian educational structure has its theoretical ambitions pinned to the development of a supposed science of history and society. This supposed science is based on false concepts of race and evolutionary thought; however, in the modern curriculum, these frameworks are taught as if Canadians were mere puppets of them and of the forces that generate and sustain them.

The supposed science of history and society presents humans as the product of an evolutionary or cultural logic on the one hand and of deep-seated, unalterable economic, organizational, or psychological constraints on the other. Educational institutions insist that abandoning this way of viewing the world would lead humans to theoretical nihilism and destroy the established social order. Educational theory does not argue that society can be remade or reimagined; instead, it postulates that, without recognizing this evolutionary logic and these practical constraints, humans and society will lose intellectual guidance. As a result, education must affirm the existing social order and its theory of control. Other forms of culture or social life are recognized in the curriculum as expressions of a different way of being human within the evolutionary logic or practical constraints.

The modern political theory of democracy, on the other hand, argues that humans can completely override these institutional arrangements. Modern experience in constitutional debates and in legislation with these arrangements shows that often these frameworks are put aside. Canadians think and act, incongruously and surprisingly, as if institutional arrangements or frameworks are not for real, as if they merely pretend to obey them while awaiting an opportunity to defy them. They can disrupt these established arrangements; they can replace them, if not all at once, then piece by piece.

Following the recent work done under the auspices of the United Nations, theorists of modern society in Canada have been forced to acknowledge that current social arrangements do not reflect a higher rational or practical necessity. Instead, modern political theory establishes immigrant society as a form of society that can be reinvented and reformulated at will. Modern educational theory is thus in a predicament. It is based on justifying and perpetuating the status quo, yet it has to acknowledge the recent shift in thinking that immigrant society is an invented society that can be recast. In defending immigrant society, it can no longer rely on discarded theories of racial or cultural superiority, but it cannot refer to an overarching set of objective values for justification either. Aboriginal societies reflect the patterns of nature; they are grounded in the world around them. In contrast to this grounding of Aboriginal society in an order outside itself, there exists no theory of Canadian immigrant society that reflects social order as an eternal pattern of human nature or social harmony. The contrast between the political theory of modern society and educational theory shows how fragile these arrangements and ideas are in daily life.

Schools affirm the status quo by talking of "training men and women the age needs." Who determines what the age needs? If there are some sorts of people every age needs, then there should be permanence in education. This training helps to preserve class structures and selects the elite rather than sorting everyone out according to their innate capacities. This sorting also passes family or parental responsibility on to the state, leading to a disintegration of the family for the abstraction of the society.

What is apparent to Aboriginal peoples is the need for a serious and far-reaching examination of the assumptions inherent in modern educational theory. How these assumptions create the moral and intellectual foundations of modern society and culture has to be studied and written about by Aboriginal people to allow space for Aboriginal consciousness, language, and identity to flourish without ethnocentric or racist interpretation. The current educational shortcomings may or may not be in the curriculum, or in finance, or in testing, or in community involvement, but no one will ever know this – nor the changes necessary for improvement – without a deeper philosophical analysis of modern thought and educational practices.

Decolonizing Education and Cultural Restoration

When most non-Aboriginal people think of why they would support the maintenance of Aboriginal consciousness and language in modern education, they view it as enabling Aboriginal students to compete successfully with non-Aboriginal students in the imagined immigrant society. Educators argue that school systems can maintain Aboriginal identity, culture,

and languages by making a conscious effort to teach the children how to act in the modern classroom. They do not know or understand the cognitive shock they would be forced to endure if Aboriginal consciousness and language were to be respected, affirmed, and encouraged to flourish in the modern classroom.

Cognitive imperialism is a form of cognitive manipulation used to disclaim other knowledge bases and values. Validated through one's knowledge base and empowered through public education, it has been the means by which whole groups of people have been denied existence and have had their wealth confiscated. Cognitive imperialism denies people their language and cultural integrity by maintaining the legitimacy of only one language, one culture, and one frame of reference.

As a result of cognitive imperialism, cultural minorities have been led to believe that their poverty and impotence are a result of their race. The modern solution to their despair has been to describe this causal connection in numerous reports. The gift of modern knowledge has been the ideology of oppression, which negates the process of knowledge as a process of inquiry to explore new solutions. This ideology seeks to change the consciousness of the oppressed, not change the situation that oppressed them.

Whether Aboriginal or black or other visible minority in Canada, a similarity in treatment and themes of denial and oppression have resounded in society and through educational practices. In her book *Invisibility in Academe*, Adrienne Rich describes the result: "When someone with the authority of a teacher, say, describes the world and you are not in it, there is a moment of psychic disequilibrium as if you looked into a mirror and saw nothing."[9]

In the Canadian educational system today, Aboriginal people continue to be invisible.[10] Occasional pictures in books are the only images of our participation in the educational world. The content of these books, however, does not represent our worldview. Aboriginal people have had to endure a "planting out" of our systems when students were boarded in white homes to learn proper behaviour and acceptable skills for working in lower-class occupations. They have had to submit to child sexual and psychological abuse and boarding schools from age five to sixteen. The cultural imperialistic curriculum in these schools has degraded and demoralized cultural minority students, assigned them to transitional classes, failed them, and then accused them of lacking motivation, attention, or spirit.

As we approach the twenty-first century, we need to take a look at where we have been and where we are going. First we must become painfully aware of what has happened to children and to Aboriginal people across Canada, and then we must seek to find ways to resolve those problems. We must find resources to enable all children to have the rights outlined

in the *Canadian Charter of Rights and Freedoms* and the United Nations *Convention on the Rights of the Child.*

Aboriginal languages are the basic media for the transmission and survival of Aboriginal consciousness, cultures, literatures, histories, religions, political institutions, and values. They provide distinctive perspectives on and understandings of the world, which educational research has ignored. The suppression or extermination of this consciousness in education through the destruction of Aboriginal languages is inconsistent with the modern constitutional rights of Aboriginal peoples.

Aboriginal languages are the means of communication for the full range of human experiences, and they are critical to the survival of the culture and political integrity of any people.[11] These languages are a direct and powerful means of understanding the legacy of tribal knowledge. They provide the deep and lasting cognitive bonds that affect all aspects of Aboriginal life. Through sharing a language, Aboriginal people create a shared belief in how the world works and what constitutes proper action. The sharing of these common ideals creates a collective cognitive experience for tribal societies that is understood as tribal epistemology.

Where Aboriginal knowledge survives, it is transmitted through Aboriginal language. There is clear and convincing evidence that student achievement and performance in school and pride in Aboriginal communities and heritages are directly tied to respect for and support of the students' Aboriginal languages.[12] Although it is clearly in the interests of the educational system to encourage the full academic and personal achievements of Aboriginal students, absolutely nothing has been done by the federal or provincial governments in Canada to remedy this educational problem. Nothing has been done to preserve, protect, and promote the rights and freedoms of Aboriginal people to use, practise, and develop Aboriginal languages in Canada. Canadian lawmakers and educators have overlooked the right of Aboriginal languages to exist as a medium of instruction in the schools, failed to recognize the official status of Aboriginal languages for conducting Aboriginal business, and failed to encourage educational institutions to allow the same academic credit for proficiency in Aboriginal languages as for proficiency in foreign languages. In contrast, the United States[13] and the United Nations[14] have passed legislation recognizing the right of Aboriginal peoples to use their traditional languages.

Many Aboriginal students still speak their Aboriginal languages, but there are no courses and extremely limited materials for helping them to make the transition to the working languages of Canada. These students, labelled "at risk," are relegated to the lower levels of academic achievement, where most remain. Limited ability in English (or French) impedes the progress of many minority children throughout Canada.[15] Teaching English (or French) as a second language must be unilaterally implemented

in all schools where the students' language is different from the school's language.

Instead of requiring Aboriginal students to submit to a third language (French in English-speaking Canada and English in French-speaking Canada), they should have the opportunity to explore their first language in a provincially accredited course in elementary and secondary school, as well as to find appropriate ways to explore their understandings and expand their knowledge and usage of their second language of English or French. Being required to learn French or English as a third language, without a good handle on their first or second language, imposes yet another major hurdle that impedes Aboriginal students from achieving educational equity.

Books and materials in provincial public schools do not accurately depict the history and cultural diversity of Canada. Although some provinces have made great strides in correcting the blatant racism found in texts, the truth is still obscured in favour of a more rational and polished early existence in Canada. Beautiful images of Aboriginal peoples in Native regalia cannot be allowed to subvert the historical truths that publishers wish not to discuss. Polished texts obscure Aboriginal history, cultures, and languages while perpetuating the myth of an empty land in the New World that was ripe for discovery by European explorers. Kits and thematic units prepared by public education in some areas of Canada depict a prehistoric life of Aboriginal peoples, complete with teepees, skins, animal bones, rock tools, and arrowheads. Aboriginal peoples are depicted as primitives, gone after the arrival of the early settlers or working their way toward assimilation in urban areas.

Provincial public education has denied our people the right to speak to the issues of the past, to explain and understand the courses of action that we have had to take in these periods of adversity, and to be honoured for those choices. It is our heritage that we were given the right and the responsibility to pass on to our children. As yet, we have not been allowed the dignity to choose what is important to pass on through the public schools.

All First Nations and provincial schools require new teaching materials that depict, accurately and adequately, the culture, history, heritage, worldviews, and philosophies of Aboriginal peoples. Currently, only a few schools are producing materials in Aboriginal languages: most Aboriginal language programs publish their own. Book companies are reluctant to publish language materials that reach only a small group of people; however, the need has been established in Canada for the reevaluation of curriculum content in the schools and for a concerted effort to integrate Aboriginal knowledge into it. We need to encourage book companies to enlist other language groups into their book productions. Encouraging

various Aboriginal communities to offer English texts so that they can decide if the content can be appropriately translated at a lower cost is an additional incentive to have materials in the Aboriginal languages.

Elders are the critical link to Aboriginal epistemology through the Aboriginal languages. The last vestiges of Aboriginal languages exist in pockets of the Aboriginal population. There they are secured by certain families in a collective community consciousness. By introducing language and cultural education in First Nations-operated schools, Aboriginal people are attempting to retain and sustain their languages, cultures, and tribal knowledge through the assistance of elders and a bare-bones curriculum development program.

Some First Nations schools have provided flexibility and openness to new ideas and have used Aboriginal pedagogy to bridge epistemologies. Taking schooling out into the bush and bringing elders into the classroom are two ways in which First Nations schools have enriched the knowledge not only of students but also of teachers.[16] This flexible approach helps to spread tribal knowledge, but it has sometimes been at a cost to some part of the compulsory public school curriculum. As one area is enriched, some other area of the regular school curriculum is affected. The result is that Aboriginal students sometimes do not have the same cumulative knowledge as their non-Aboriginal counterparts, just as the non-Aboriginal students do not have the cumulative knowledge of their Aboriginal counterparts.

To maintain its flexibility, community-controlled Aboriginal education must remain outside the arena of provincial administrative regulations. Another reason for this distance is to ensure that a central administration does not profit from the progressive ideas developed in such educational milieus. For instance, the acceptance of tribal knowledge by some scientists and scholars, including David Bohm, David Peat, David Suzuki, Rupert Ross, and others, and the elevation of tribal epistemologies in research and roundtables and think tanks will have the profound effect of pushing modern knowledge to new questions and ways of thinking about problems and solutions.[17] The ownership of these ideas must remain with Aboriginal people. We must nurture this growth, guide it with our elders and tribal scholars, and find ways to share tribal epistemology beyond history and culture.

The real justification for including Aboriginal knowledge in the modern curriculum is not so that Aboriginal students can compete with non-Aboriginal students in an imagined world. It is, rather, that immigrant society is sorely in need of what Aboriginal knowledge has to offer. We are witnessing throughout the world the weaknesses in knowledge based on science and technology. It is costing us our air, our water, our earth; our very lives are at stake. No longer are we able to turn to science to rid us of the mistakes of the past or to clean up our planet for the future of our

children. Our children's future planet is not secure, and we have contributed to its insecurity by using the knowledge and skills that we received in public schools. Not only have we found that we need to make new decisions about our lifestyles to maintain the planet, but we are also becoming increasingly aware that the limitations of modern knowledge have placed our collective survival in jeopardy.

The public school curriculum is limiting the knowledge base of our children. They are being denied access to knowledge bases that they need to sustain themselves and the planet in the future. To deny that tribal epistemology exists and serves a lasting purpose is to deprive Aboriginal children of their inheritance, as well as to perpetuate the belief that different cultures have nothing to offer but exotic food and dance or a shallow first chapter in the story of what is to come. To allow tribal epistemology to die through the loss of the Aboriginal languages is to allow another world of knowledge to die, one that could help to sustain us. As Aboriginal peoples of this land, we have the knowledge to enable us to survive and flourish in our own homeland. Our stories of ancient times tell us how. Our languages provide those instructions.

With the recent development of First Nations schooling, we have once again resolved to involve the elders and our life ways in our development as human beings. We have begun by utilizing Aboriginal languages to teach the sacred knowledge of our ancestors. Our curriculum is based on the language, thematically taught, and aligned to the cycles, relationships, and rhythms of our existence. In this way, we are beginning to provide the balanced spectrum of education that we were denied under earlier federal policies of assimilation.

Western education has much to gain by viewing the world through the eyes and languages of Aboriginal peoples. The earth and its resources must be viewed through the lens of tribal knowledge if we are to understand how to protect the universe. Rituals and ceremonies that cleanse and heal, maintaining the balances, must be respected and honoured. Western science has promoted the development of modern society, which has initiated the best and worst of development from environmental and economic perspectives. Today we are faced with how we are to survive the global disasters created by our scientific ingenuity, as well as how we can bridge knowledge gaps created by the diversity of people and thought. Aboriginal languages and education can be the means to opening the paradigmatic doors of contemporary public education. Creating a balance between two worldviews is the great challenge facing modern educators.

Developing Legislation to Protect Constitutional Rights

Because modern society has no idea about the worldview within Aboriginal consciousness, the best way to encourage inclusion of this worldview

in the modern curriculum is through a comprehensive federal act. Under the existing constitutional rights of Aboriginal people, the federal government must enact legislation to provide an adequate quantity and quality of educational services based on Aboriginal consciousness, as well as equal access for Aboriginal people to an education distinct from the needs of other groups or peoples in Canada.

While legislation appears to be an obvious solution to the problem, this course of action has not been proposed in the recommendations put forward by the Assembly of First Nations in *Toward Rebirth of First Nations Languages* or in the *House of Commons Standing Committee on Aboriginal Affairs Report* on Aboriginal literacy and empowerment. Both of these groups suggest consultation, task forces, and institutional arrangements, which I endorse. I also endorse the spirit and intent of their recommendations. Still, these consultations, task forces, and institutional arrangements must lead to a federal act implementing our existing rights in modern society. Such a federal act is a more permanent framework for understanding the problem and carrying out solutions.

Such an act should declare community-based education as an existing Aboriginal and treaty right that must be fully complied with and supported. A delivery system must be developed to facilitate the flow of service and program funds in the most direct and immediate manner to the local program level with a minimum of delay and administration. Such an act must recognize the viability of funding community-based educational institutions as conduits of all aspects of Aboriginal education.

Aboriginal languages are irreplaceable resources that require protection and support. In particular, Aboriginal languages require official status in Canada, constitutional recognition, and accompanying legislative protection. In addition, provincial and federal schools should provide credit within the school system for Aboriginal language study.

Experience has shown, however, that it is not enough to formulate policy that recognizes the viability of community-based educational institutions for Aboriginal people in an act. Funding and administrative policies must ensure that weighing criteria exist for preserving and developing Aboriginal consciousness and languages in those educational institutions. There are more than enough modern thought–based schools and classrooms in Canada; the problem is to create an Aboriginal language–based curriculum. No politician, administrator, or educator should be able to destroy Aboriginal consciousness or language because of other priorities. Thus, explicit funding and policies must ensure that First Nations politicians or administrators cannot confiscate funding designated for the preservation of Aboriginal consciousness or languages for other temporal schemes. This is the lesson of our history with education.

Aboriginal communities should be encouraged to assume full control of

their education with adequate resources and funding to create an educational system that will develop Aboriginal consciousness through the development of Aboriginal language, culture, and identity. Where Aboriginal communities have instituted language policies in educational systems, these policies should be recognized and acknowledged by the federal government, and financial resources should be available to develop these policies and link these systems to other agencies and services that permit the development of languages.

Such an act must establish guidelines and funding incentives that will ensure that preserving and developing Aboriginal consciousness and languages is not viewed as a lesser part of the curriculum. Literacy is a Canadian resource that Aboriginal students must develop in their own languages before they are required to learn English. Funds must be provided to make Aboriginal literacy viable for schools to incorporate into their early childhood educational programs, in particular in the development of books and materials in the Aboriginal languages.

The act should encourage and require grantees to set aside a certain percentage of grant funds for in-service training and staff development programs on Aboriginal consciousness and languages to understand the scope and implication of the differences from modern thought. The existing network of provincial programs must be revamped to target program monies into enhancing Aboriginal consciousness and languages in all levels of the curriculum. The federal government should provide adequate resources to First Nations to ensure the development of language structures, curriculum materials, First Nations language teachers, resource centres, and immersion programs.

A network of regional curriculum centres for Aboriginal languages is justifiable. The regional centres would offer support for curriculum development with the assistance of local language informants and elders. Curriculum centres should be developed on a regional base suited to Aboriginal people so that they do not have to leave their communities for extended periods of time. Centres should be able to evaluate the established curriculum and work out solutions. The centres would offer curriculum developers and educational resources for the development of books by Aboriginal thinkers, as well as offer printing services at a reasonable rate. Some books may be accepted by other language groups in the region or nationally and, where appropriate, could be translated and printed, offering advantages such as lower rates due to the large number of books printed.

These centres should fund writing workshops and support writers who embrace Aboriginal thought and knowledge and apply it to methods of teaching. They should support and fund the research and writing of Aboriginal pedagogy and language curriculum and teaching. They should raise

the consciousness of the Canadian public about the positive value to all society of inclusive education as opposed to the current exclusionary model. They should provide information to communities about the stages of language loss and the restorative process that they may use to guide the growth of a healthy language base. These centres should develop and/or encourage curriculum advisory boards or committees composed of elders in the community who will guide the development of curriculum and the development of language research for educational purposes.

Such an act must waive the requirement for teaching credentials and overcome other barriers to the employment of Aboriginal elders who speak their Aboriginal languages in federal or provincial schools. Elders in Aboriginal communities are the custodians of endangered Aboriginal languages, and they must have dignity and an acknowledgment of the value of their services. Elders require the support of other elders and flexibility in timing and scheduling. They should be provided with these necessary amenities.

It seems obvious that elders and others who can pass on Aboriginal identity, languages, and culture should be directly involved in the modern educational system. Yet seldom has any government confronted the educational biases in modern thought or educational practice that exclude them from this role. A modern legislative solution to this problem is found in the *Native American Language Act.*[18] Section 104(s) declares that it is the policy of the United States to "allow exceptions to teacher certification requirements for Federal programs, and programs funded in whole or in part by the Federal Government, for instruction in Native American languages when such teacher certification requirements hinder the employment of qualified teachers who teach in Native American languages, and to encourage State and territorial governments to make similar exceptions."

Aboriginal languages cannot be isolated in the way that politics or economics can be isolated in modern thought. Advocates of cultural studies argue that no person from another worldview can learn about other cultures except by being there and listening. (This is called "fieldwork.") Languages are said to be learned, not genetically encoded. Learning any language requires time and patience – one cannot simply use one's imagination to invent other cultural worlds, methods, and perceptions. Human imagination is as culturally formed as are distinctive ways of weaving, performing a ritual, raising children, grieving, or healing. All these activities are specific to certain forms of life.

In this era, discussion of limited funding is merely another way to avoid implementing constitutional rights and human rights. Yet without funding, the future costs for developing a curriculum that includes Aboriginal knowledge and languages are horrific. A base formula must be established

to offer stable funding for Aboriginal education – funding at a level equal to provincial standards. The finances should be derived by implementing a procedure that identifies tax revenue already collected at the municipal, provincial, and federal levels, including money that normally flows into the existing tax revenue from treaty entitlements to the Crown, Aboriginal resources, and Aboriginal economic development activities.

This tax revenue has never been considered as having emanated from Aboriginal or treaty rights or from Indian reserves and communities, which in fact contribute a major portion of tax revenue to governments. After the federal government has identified and isolated dollars from a tax study and estimates have been made of these dollars, the monies may be supplemented by federal appropriations.

The act should encourage Aboriginal youth to obtain technical and professional levels of education once they have had the chance to learn the history of their own nations. When they perceive that education can have a positive impact on their own lives and those of their people; when there are Aboriginal role models who reflect the best values of their nations and who nurture culture and language development in their communities; and when good economic opportunities are created so that they can remain in their communities – all this can reflect on the existing body of Aboriginal knowledge. Still, each one of these solutions requires major changes.

Little classroom research has been done on the effects of teaching students about their culture, history, and languages, as well as about oppression, racism, and differences in worldviews, but consciousness-raising classes and courses at the elementary and junior high school levels, and at the college and university levels, have brought to the surface new hopes and dreams and have raised the aspirations and educational successes of Aboriginal students. Our people are slowly coming to understand that poverty and oppression are not their fault and are not the result of their faulty language, consciousness, or culture. They have begun to understand that poverty and oppression are tools created by modern society to maintain the status quo and to foster and legitimize racism and class divisions. As band schools offer courses in Aboriginal language and thought, and as economic opportunities are made available to Aboriginal peoples on reserves through education, racism and its residual effects in the non-Native community and family are being exposed.

First Nations government is a critical element in this development. First Nations must institute policies of hiring Aboriginal people whose first language is an Indigenous language and who will encourage its function and use in the workplace. If a language has little function in the daily lives of people, it will die. Leaders of the First Nations must inspire the youth to acquire an education so that they can benefit from increased

responsibilities. The leaders must also inspire the youth to develop their skills for the nation and their valued language and culture. The First Nations must allow their own educated Aboriginal people to assume responsible positions in their community development, positions that nurture respect and honour, instead of passing these jobs to non-Aboriginal people or to family members with lesser qualifications. The strength of tribalism lies in our collective values, which must be fostered toward a collective consciousness as opposed to individual gain. Schools and community leaders must seek to nurture among the youth these traditional attitudes of collective community as they seek to develop their nation's growth. As the collective gains, so also do its parts. Collective healing in our community of the pains of the past and present will shape the attitudes of the youth. They must understand their past and the context of their present to embark on a new vision of the future.

Notes

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10 House of Commons Standing Committee on Aboriginal Affairs, *You Took My Talk: Aboriginal Literacy and Empowerment* (Ottawa: Queen's Printer, 1990), 29-35.
11 This is one of the findings of the United States Congress in *Native American Language Act*, P.L. 101–477, section 102(9) (1990).
12 Assembly of First Nations, *Towards Rebirth of First Nations Languages* (Ottawa: AFN, 1992); *You Took My Talk* (see note 10); Assembly of First Nations, *Towards Linguistic Justice for First Nations* (Ottawa: AFN, 1990); and Assembly of First Nations, *Tradition and Education: Towards a Vision of Our Future* (Ottawa: AFN, 1988).
13 *Native American Language Act*, P.L. 101–477, section 102(9) (1990).
14 Since Canada ratified the UN Human Rights Convention in 1976, Aboriginal people as linguistic minorities within Canada were supposed to enjoy freedom from discrimination and have the right to enjoy their own culture and to use their own language (GA Res. 2200a, 21 UN GAOR Supp. [No. 16] 49, UN Doc. A/6546 at 56). This right has never been translated into federal law or policy. The most recent UN statement is in International Labor Organization Convention 169, the *Indigenous and Tribal People Convention* 1989, articles 26, 27, 28. This convention has not been ratified by Canada.

15 See Mary Heit and Heather Blair, "Language Needs and Characteristics of Saskatchewan Students: Implications for Educators," and Catherine Littlejohn and Shirley Fredeen, "Indian Language Programs in Saskatchewan: A Survey," in Sonia Morris, Keith MacLeod, and Marcel Danesi, eds., *Aboriginal Languages and Education: The Canadian Experience* (Oakville, ON: Mosaic Press, 1995).

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18 This federal act by the United States is part of the *Tribally Controlled Community College Assistance Act*, Public Law 101–477.

16
Protecting and Respecting Indigenous Knowledge

Graham Hingangaroa Smith

During the 1996 International Summer Institute at the University of Saskatchewan, I listened intently to the speakers and discussions and then organized my thoughts in order to respond interactively with issues previously raised. While the topic addressed at the institute generally kept faith with the theme of respecting and protecting Indigenous knowledge, I deliberately broadened my presentation to reflect upon some of the critical issues that had been raised by different speakers in the institute. This chapter closely reflects the original contribution made at the institute, which was presented in the traditional Maori form of oral presentation, *whaikoreo.* The appropriate *mihi* ritual introduction was performed, the words were spoken from the heart, the "truth" spoken by the speaker was laid out before the people for validation, the speech was delivered orally, and it was concluded with a traditional *waiata* or song. The presentation has been altered minimally to conform to printed conventions.

In this chapter, I will attempt to do three things. First, I want to deal with the protection of Indigenous knowledge within the context of the institute: that is, I want to respond to some specific challenges that came from voices gathered at the institute. Second, I want to explore what I call the "new formations of colonization" and look at one example in particular: the way in which Indigenous knowledge has become "commodified" as a result of the development of an emphasis on free-market economic forces. Third, I want to relate some of the specific strategies of resistance that are being developed within our context in New Zealand. In particular, I would like to describe the Maori case study as a possible example for other Indigenous communities to consider. I offer this example not to assert the definitive answer to the problems raised by colonization but to offer insights into what is and what is not working for us. You, of course, must decide for yourselves what is relevant and useful for your own situations. The key thing that I hope will interest people is the transformative

processes we chose to adopt. This particular discussion is not so much about the structure of our interventions as it is about the processes we used to put those interventions in place. This, I think, is one of the ironies of Indigenous struggle: it is the actual process of struggle that makes us strong and committed and that helps us to consolidate why we are struggling. That is, struggle constantly forces us to identify and review what we stand for and what we stand against.

Seven Challenges Raised by the Summer Institute

The first challenge I want to respond to is what I call the challenge to Indigenous people to engage in positive, proactive initiatives rather than resorting to reactive modes of action. This proactive type of action can be illustrated in the tensions within the following dichotomies: the difference between having a fence at the top of the cliff and an ambulance at the bottom; the difference between prevention and cure; the difference between seeing oneself as responsible for Indigenous problems as opposed to understanding the wider societal structures; the difference between biological explanations and sociological explanations with respect to social and cultural differences. I am not suggesting that these positions are always absolute opposites; however, my view is that we Indigenous peoples should be concerned with accentuating preemptive and proactive actions rather than being sidetracked into being overly concerned with reactive responses. In Freire's terminology, we must "name the world for ourselves." While we should acknowledge that there are multiple sites where the struggle against oppression and exploitation might be taken up, Indigenous peoples must set the agenda for change themselves, not simply react to an agenda that has been laid out for us by others. With respect, I have felt a little uncomfortable with some of the discussion that has taken place at this institute when it has clearly come from a reactive mode of thinking. I would encourage the members of this institute to reflect carefully on the difference between being proactive and being reactive.

I would like to revisit some of the points made by Poka Laenui, who argued for the development and adoption of five steps of decolonization. My concern with this focus is that we might again be spending too much time in a reactive mode. The point here is the extent to which we are drawn into engaging with and justifying ourselves to the dominant society. I believe that such a process puts the colonizer at the centre, and thereby we become co-opted into reproducing (albeit unintentionally) our own oppression. While there is an important place for critical deconstruction of colonization (and I do not wish to diminish the powerful and valuable words offered by Poka Laenui), my concern is to concentrate our limited energies and resources on what it is that we want.

This latter point can be illustrated from the context out of which I've

POWER *and* PLACE:
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BY VINE DELORIA, JR.,
& DANIEL WILDCAT

American Indian Graduate Center
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Fulcrum Resources
16100 Table Mountain Parkway, Suite 300
Golden, Colorado 80403
(800) 992-2908 • (303) 277-1623
www.fulcrum-resources.com

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PREFACE

by Vine Deloria, Jr.

Formal Indian education in America stretches all the way from reservation preschools in rural Native communities to prestigious urban universities far away from Indian cultural centers. The educational journey of modern Indian people is one spanning two distinct value systems and worldviews. It is an adventure in which the Native American sacred view must inevitably encounter the material and pragmatic focus of the larger American society. In that meeting ground lies an opportunity for the two cultures to both teach and learn from each other.

Power and Place examines the issues facing Native American students as they progress from grade school through college and on into the professions. Subject matter as diverse as the school systems of the Five Civilized Tribes in the early 1800s to what Albert Einstein's theory of relativity *really* means is found on these pages. Native people navigating American systems of higher education must absorb a great deal of factual content, and they must also place that knowledge into the context of their own tribal and community traditions. For American Indian students the scientific method and the Western worldview coexist with Native spirituality and a deep connection with the earth.

This collection of fifteen essays on Indian Education is at once philosophic, practical, and visionary. Beginning with an essay on American Indian metaphysics and progressing to a bold, uplifting scenario for an Indian future grounded in education, *Power and Place* offers a concise reference for administrators, educators, students, and community leaders involved with Indian education.

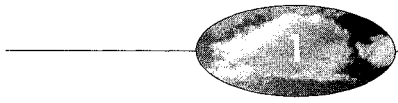
PREFACE

PRELUDE TO A DIALOGUE

by Daniel Wildcat

Let's begin with the big picture, because at the most basic level that is precisely what Vine Deloria, Jr., addresses in *Power and Place*. Those familiar with Deloria's work over the last four decades know his appraisal of why we, Indians, are still such a problem for America's dominant social institutions—for example, religion, politics, education, economics, and so on. In short, we do not fit comfortably or conveniently within Western civilization. This is not a regret. It is an affirmation—a living testimony to the resilience of American Indian cultures. If there is another group of people in America who have faced all the forces this society and its government could bring to bear in destroying their identity and fundamentally reshaping them in the image of the dominant society, I would like to meet them. Consequently, these essays are a criticism of the formal and official institutions of Indian education. Additionally, and more importantly, I believe, they constitute an explicit effort to open discussion about what a truly American Indian or what I would call an *indigenized,* educational practice would look like.

This book is proposing nothing less than an indigenization of our educational system. By *indigenization* I mean the act of making our educational philosophy, pedagogy, and system our own, making the effort to explicitly explore ways of knowing and systems of knowledge that have been actively repressed for five centuries. Make no mistake about it, what Deloria is proposing is radical and exciting. *Power and Place* introduces an agenda for much hard work—intellectual, social, and political—that can only be accomplished within institutions that we build based on our own indigenous North American insights and, most fundamentally, metaphysics.



AMERICAN INDIAN METAPHYSICS

V. Deloria

A PRELUDE TO UNDERSTANDING INDIAN EDUCATION

For many centuries whites scorned the knowledge of American Indians, regarding whatever the people said as gross, savage superstition and insisting that their own view of the world, a complex mixture of folklore, religious doctrine, and Greek natural sciences, was the highest intellectual achievement of our species. This posture of arrogance produced some classic chapters in the history of the Western Hemisphere: Ponce de Leon wandering around the southeastern United States vainly searching for the fountain of youth, Swedish immigrants on the Delaware River importing food for thirty years because they could not grow anything in this country, and the Donner Party resorting to cannibalism because of their fear of the local Indians.

In recent years there has been an awakening to the fact that Indian tribes possessed considerable knowledge about the natural world. Unfortunately, much of this appreciation has come too late to enable anyone, white or Indian, to recapture some of the most important information on the lands, plants, and animals of the continent. In a parallel but unrelated development, Indian religious traditions are now of major interest to whites, whose own religious traditions have either vanished or been swamped in reactionary fundamentalism. Fluctuating between a recognition of Indians' practical knowledge about the world and outright admiration for their sense of the religious is unsettling and

nonproductive; it does not attribute to Indians any consistency, nor does it suggest that their views of the natural world and religious reality had any more correspondence and compatibility than do Western religion and its science. Instead of talking of an Indian "science" or even an Indian "religion," we should focus our attention on the metaphysics possessed by most American Indian tribes and derive from this central perspective the information and beliefs that naturally flowed from it.

Metaphysics has had a difficult time regaining its intellectual respectability in Western circles. Its conclusions were greatly abused by generations of Europeans who committed what Alfred North Whitehead called the "fallacy of misplaced concreteness," which is to say that, after they reached the conclusions to which their premises had led them, they came to believe they had accurately described ultimate reality. Metaphysics need not bear the burden of its past, however, if we understand it as simply that set of first principles we must possess in order to make sense of the world in which we live. In this sense the Indian knowledge of the natural world, of the human world, and of whatever realities exist beyond our senses has a consistency that far surpasses anything devised by Western civilization.

The best description of Indian metaphysics was the realization that the world, and all its possible experiences, constituted a social reality, a fabric of life in which everything had the possibility of intimate knowing relationships because, ultimately, everything was related. This world was a unified world, a far cry from the disjointed sterile and emotionless world painted by Western science. Even though we can translate the realities of the Indian social world into concepts familiar to us from the Western scientific context, such as space, time, and energy, we must surrender most of the meaning in the Indian world when we do so. The Indian world can be said to consist of two basic experiential dimensions that, taken together, provided a sufficient means of making sense of the world. These two concepts were place and power, the latter perhaps better defined as spiritual power or life force. Familiarity with the personality of objects and entities of the natural world

enabled Indians to discern immediately where each living being had its proper place and what kinds of experiences that place allowed, encouraged, and suggested. And knowing places enabled people to relate to the living entities inhabiting it.

Western scientists frequently suggest that the Indian way of looking at the world lacked precision because it was neither capable of nor interested in creating abstract concepts or using mathematical descriptions of nature. But, as Carl Jung pointed out with respect to the so-called primitive mind, once a person knew the places of things, a mere glance was sufficient to replace counting and, in most instances, was more accurate. The Indian mind was considerably more interested in learning the psychological characteristics of things than in describing their morphological structure. Hence, in some instances when defining common personality traits that people and animals shared, the Indian seemed to be talking nonsense. He or she appeared to be combining aspects of things that, at first glance, could not and should not be together. Today, as Western science edges ever closer to acknowledging the intangible, spiritual quality of matter and the intelligence of animals, the Indian view appears increasingly more sophisticated.

Indian students today are confronted with the monolith of Western science when they leave the reservation to attend college. In most introductory courses their culture and traditions are derided as mere remnants of a superstitious, stone-age mentality that could not understand or distinguish between the simplest of propositions. Additionally, they are taught that science is an objective and precise task performed by specialists who carefully weigh the propositions that come before them. Nothing could be further from the truth. Western science traditionally represents the consensus of the established scientists who almost always reject new ideas out of hand and spend their time gathering evidence to bolster outmoded paradigms. Much of the progress made by Western science has been made by amateurs and martyrs who have been disparaged and cursed in their lifetime, only to be canonized by a new generation that has learned to accept the smallest of changes with more grace than their parents and teachers.

Indian students are further misled by outrageous claims made by science, which suggest that the various fields of inquiry, if taken together, represent the sum total of human knowledge. In fact, almost all of Western science is reductionist in nature and seeks to force natural experience and knowledge into predetermined categories that ultimately fail to describe or explain anything. The whole process of Western science is that of finding common denominators that can describe large amounts of data in the most general terms, rejecting anything that refuses easy classification as "anomalous," existing outside the generally accepted labels and, therefore, not to be given standing or serious attention. This way of gathering information about the world—and ourselves—is, of course, absurd.

One of the most painful experiences for American Indian students is to come into conflict with the teachings of science that purport to explain phenomena already explained by tribal knowledge and tradition. The assumption of the Western educational system is that the information dispensed by colleges is always correct, and that the beliefs and teachings of the tribe are always wrong. Rarely is this the case. The teachings of the tribe are almost always more complete, but they are oriented toward a far greater understanding of reality than is scientific knowledge. And precise tribal knowledge almost always has a better predictability factor than does modern science, which generally operates in sophisticated tautologies that seek only to confirm preexisting identities.

We live in an industrial, technological world in which a knowledge of science is often the key to employment, and in many cases is essential to understanding how the larger society views and uses the natural world, including, unfortunately, people and animals. Western science has no moral basis and is entirely incapable of resolving human problems except by the device of making humans act more and more like machines. Therefore, Indian students, as they study science and engineering, should take time and make the effort to regain a firm knowledge of traditional tribal lore. Even if many of the stories seem impossible under existing scientific explanation of phenomena, Indian students should not easily

discard what their tribes have traditionally believed. There is most assuredly a profound knowledge present in many things that the tribes have preserved.

Richard Ford's article "Science in Native America" is a good representative piece recognizing the knowledge of Indians. It fairly surveys the various aspects of knowledge that Indians had and gives reasonable explanations of some of the ways in which our ancestors understood natural phenomena. Considering the present state of things, it is important for scholars such as Ford to begin to help us break the ice of ignorance and neglect that has been thrust upon our traditions for more than half a millennium. Without the voices of respected white scholars, there is little chance that we can get sufficient attention from the scientific establishment in order to plead our own case. But we must remember that every article attempting to discuss this problem should be understood as a call for each of us to enter into the exchange of knowledge. In this sense, Ford calls us as Native Americans to become more truly scientific—to offer our knowledge to the larger benefit of our species.

We must not, however, rely on the assistance of sympathetic non-Indian thinkers for guidance, as they often do not see the kinds of relationships that traditional Indian knowledge reveals. The current tendency of younger Indian scholars is to find where the tangent points exist with Western science and to proclaim, quite rightly, that Indians arrived at the same conclusions using a much different epistemology or metaphysics. Recognizing these points where communication is possible is but halfway to the goal. We may grant that the energy described by quantum physics appears to be identical to the mysterious power that almost all tribes accepted as the primary constituent of the universe. But what does this conclusion say about the theories of disease, powers of spiritual leaders, or interspecies communications with sympathetic birds and animals? Surely when we reach these conclusions we should see more clearly how Indians then accommodated their ways of living to this knowledge.

Most adventures in metaphysics attempt to fix upon a few basic concepts and, using these abstract ideas, explain the remainder of

the experiential world in those terms. Indians use a peculiar way of maintaining a metaphysical stance that can best be termed as "suspended judgment." People did not feel it obligatory that they reach a logical conclusion or that they could summarize the world of experience in a few words and sentences. Black Elk, after telling John Neihardt the story of the reception of the sacred Pipe, said, "Whether it happened so or not, I do not know. But if you think about it, you will see that it is true." The hallmark of the true Indian philosopher was the ability to hold in suspended judgment the experiences he or she had enjoyed or was told, and to file away that bit of knowledge until the time when more data of closely related content came his or her way.

Indian students, therefore, should consider themselves to be standing in the shoes of their grandparents as metaphysicians. While specific answers are required within the context of Western science, we should remember that these answers are only a temporary statement that is subject to rejection or further refinement at any time. If the non-Indian or even Indian teacher or professor absolutely insists that a certain conclusion is true, remember the grievous sin of the Western mind: misplaced concreteness—the desire to absolutize what are but tenuous conclusions. Students should further remember that while the Indian knowledge is designed to relate to other kinds of experience and knowledge, Western science does not necessarily form a unity. In the reduction of knowledge of phenomena to a sterile, abstract concept, much is lost that cannot be retrieved. By maintaining the personal involvement typical of wise Indian elders, the students should be able to maintain themselves as practical and competent metaphysicians.

Indigenizing Education: Playing to Our Strengths

D. Wildcat

Power and Place constitutes a declaration of American Indian intellectual sovereignty and self-determination. It is essentially a tribal intellectual and moral mandate requiring action, unless we want our current educational system to be like our contemporary political structures and practices, which all too often merely reflect the dominant society's institutions. Consequently, the decision to begin a discussion of American Indian education with a consideration of metaphysics is challenging and well-founded.

Even a cursory examination of the numerous problems facing modern technological societies and the failure of modern education systems to find solutions to these problems, which are essentially moral and ethical in character, suggests something is fundamentally amiss in the dominant education systems of the United States. The conflict between Western science and religion, and the inability of the vast majority of Western thinkers to find a common ground or consistent intellectual framework, speak directly to the central problem with Western metaphysics: the failure to produce a coherent worldview encompassing the processes of the world and how we humans find meaning in those processes.

The late Carl Sagan recognized this problem in his posthumously published work *Billions and Billions: Thoughts on Life and Death at the Brink of the Millennium.* Sagan described and reported on the truce or, I am tempted to say, treaty, reached between Western science and religion. But his and other scientists' immersion in

Western metaphysics, as indicated in their appeal "Preserving and Cherishing the Earth: An Appeal for Joint Commitment in Science and Religion," is symptomatic of the schizophrenic nature of Western metaphysics. American Indians know from experience that forming an alliance or making a treaty does not address irreconcilable differences in worldviews. Furthermore, such an alliance is of little help if the problems of the earth are largely exacerbated by both the Western institution of religion and that of science, as Deloria has persuasively argued in *God Is Red*, *The Metaphysics of Modern Existence*, and most recently in *Spirit and Reason*.

The institutions of Western science and religion are like partners in a dysfunctional marriage: caught up in a relationship of codependency. The good news is that within both institutions some individuals and groups are seeking changes. Especially in science, a whole new generation of researchers is moving from long-standing scientific models or theories (to be discussed shortly) to approaches for understanding the world that sound increasingly like the wisdom conveyed in many traditional American Indian stories, ceremonies, and practices. There are some affinities or convergences between cutting-edge Western science—for example, Cajete's *Look to the Mountain*, Suzuki's *Wisdom of the Elders*, and Thomas's *Tribe of Tiger* to name a few—and traditional experiential knowledge, or what has recently been called traditional ecological knowledge. Increasing evidence suggests that there are good reasons for American Indian students not to discard knowledge traditionally held by their tribes—knowledge at once ecological, moral, practical, and most certainly philosophical. The very fact that these words or categories were not used to describe this knowledge tells us a great deal about holistic thinking, its sources, and the kinds of knowledge such thinking produces.

WHAT MUST CHANGE

This book is for teachers, parents, students, and leaders who recognize that something of great value existed in the "old ways." We must not romanticize the past—everything was not perfect. But if we want to truly exercise self-determination, there is no

better place to start than with an effort to give our children an inheritance too many generations of American Indians were outright denied or have struggled mightily to maintain: identity within tribal cultures we were actively engaged in, as opposed to existence within a culture of indoctrination facilitated most effectively through U.S. government education programs.

It is critical to understand that Deloria's essays are not primarily about raising standards or improving test scores; rather they constitute a reasonable call to consider the advantages of building an educational practice on a foundation of American Indian metaphysics that "is a unified worldview acknowledging a complex totality in the world both physical and spiritual." This undertaking will not be easy, and we do need allies.

There is much work to be done and need for serious dialogue in comparing what is described as the Western metaphysics of space, time, and energy to the American Indian metaphysics of place and power. A true dialogue is long overdue. With respect to morality, the dialogue is easily started with the explicit rejection of what archconservative William Bennett has called the need to fix or find the "moral compass." Beginning a dialogue with a map, so to speak, of Western civilization's metaphysical landscape is critical, for it is distorted and consequently its moral compass is askew. Unlike William Bennett's reformist solution to the problems facing American education—going back to the core values of Western civilization—Deloria argues that the very tradition and system of knowledge Bennett wants Americans reconnected to is actually the problem. Consequently, we must begin a discussion of education in America with the metaphysical assumptions of Western civilization implicit in and underlying modern notions of curriculum and pedagogy, given that so little attention is paid to the topic today.

The problem with Indian education in America is really the problem of education in America, regardless of whether recipients of the education are, figuratively speaking, red, yellow, black, or white. Of course, the historically racist character of American education cannot and should not be minimized. Rather the point ought to be made that the early formulation of Indian education,

as articulated by its architects, should have been seen as the "miner's canary," warning of problems with the underlying assumptions implicit in Western civilization and its system of education.

For all of the fuss about innovation in educational methods, curriculum, and pedagogy today, it is worth noting that, with respect to higher education, the basic organization of the institution, the division of subjects, and teaching methods have changed little since the establishment of the first colleges and universities in Europe during the twelfth and thirteenth centuries. Curriculum, at all levels of American education, bears the largest imprint of Western metaphysics. It is easy to see the influence of Aristotle's categorizing of experience and knowledge at work in how we divide and teach subjects. The medieval division of the seven liberal arts into the trivium (grammar, logic, and rhetoric) and the quadrivium (geometry, astronomy, arithmetic, and music) conforms with Aristotle's philosophic division of subjects. The natural sciences, as we now recognize them, were not added until the eighteenth and nineteenth centuries. Aristotle's legacy within Western metaphysics, especially as it continues to shape Western notions of education, cannot be underestimated.

Higher education in America is one of the most conservative Western cultural institutions in America. The fact that obtaining a higher education is a widely accepted goal in America suggests that elementary, middle, and secondary schools are critical in preparing students to succeed in an institution more representative of Western metaphysics than any other. Therefore, the hope for American Indian education lies first in the explicit identification of features of the Western tradition or worldview that produce many of the problems we are immersed in today; and second, in the active reconstruction of indigenous metaphysical systems, which, I believe, result in experiential systems of learning.

WESTERN SCIENCE: MATERIALISM AND MACHINE METAPHYSICS

The first task can be accomplished by articulating the main features of the Western tradition and then counterpoising key features of

American Indian or indigenous North American metaphysics. For example, most of science, continues to reduce reality to a physical world. Consequently, knowledge itself becomes reduced to generalizable principles by which atoms, genes, or "things" appear to act. The method of inquiry, the methodology of science, is reduced to essentially taking things apart—dissection, whether on a lab table or in a controlled experiment. In spite of new research in the areas of ecology, complexity, the phenomenon of chaos, the process of emergence, and much of cutting-edge physics, science as taught in most schools is reductionist—in terms of what counts as reality, knowledge, and the appropriate methods for acquiring knowledge.

If one doubts this characterization, one need only look at the talented ecologist E. O. Wilson's commentary for the sesquicentennial of the American Association for the Advancement of Science, "Integrated Science and the Coming Century of the Environment." Wilson reduces life itself to genetic mechanisms, although this reductionism does not keep him from concluding, "The unavoidable compliment of reductionism is synthesis." But a synthesis at what level, based on what metaphysical assumptions? Wilson's answer is clear: a unified system of knowledge in the natural and social sciences as well as the humanities will be integrated at the level of biology and chemistry. The problem of understanding life is merely a question of measurement, of developing the tools (technology) for unlocking the mysteries of life found in the microscopic particles (parts or pieces) of genes, and telescopic exploration into the birth of galaxies. The popular and published works of Wilson and neo-Darwinist Richard Dawkins, of *The Selfish Gene* fame, suggest the humanities, the social sciences, and psychology itself are reducible to chemical and biological, in other words, genetic structure.

Another complementary and lingering feature of Western thought, albeit one increasingly under attack, is the idea of the world as machine. The mechanistic worldview continues to be applied to many of the physical sciences and biology and, as stated above, very quickly results in a methodology that is essentially

dissective in character. Proponents of this "popular mechanics" view of the world in the biological and physical sciences share an optimistic faith in the belief that once the instruments and tools (technology) are developed that will allow us to observe and measure the smallest pieces of the world, that is, genetic codes and subatomic particles, we will be able to understand the world. This view is strangely "comforting" to all who strive to arrive at objective knowledge by taking their selves out of the picture, so to speak, by avoiding our own selves' emotions and feelings, attachments and dislikes, which arguably determine more of our everyday lives in the world than biochemical processes identified in laboratories.

Let's be clear: certain "things" can be understood using the metaphysics of time, space, and energy. However, a great deal of what we experience cannot be explained within the metaphysics of Western science, and that is the critical point. An entire realm of *human experience in the world* is marginalized, declared unknowable, and, consequently, left out of serious consideration. This reality cannot fit in the objective experimental box of mechanical cause and effect, and no tool or technology will change this situation unless we merely say that all there really is to the world is mechanics (in the structural sense) and tools. Western notions of reality and corresponding ideas of knowledge are not far from this cold "scientific" assessment.

Indigenous Metaphysics

Compare the scientific worldview to widely shared tribal views in which humans understand themselves to be but one small part of an immense complex living system, something like Lovelock's Gaia Hypothesis. This hypothesis offers a holistic worldview in the most profound sense, where attention to relations and processes is much more important, at least initially, than attention to the parts of our experience. The point should be obvious: we, human beings, in all our rich diversity, are intimately connected and related to, in fact dependent on, the other living beings, land, air, and water of the earth's biosphere. Our continued existence as part of the biology of

the planet is inextricably bound up with the existence and welfare of the other living beings and places of the earth: beings and places, understood as persons possessing power, not objects.

Traditional American Indian cultural practices actively acknowledge and engage the power that permeates the many persons of the earth in places recognized as sacred not by human proclamation or declaration, but by experience in those places. And it is experience that shapes indigenous education and necessitates the awareness of self as crucial in order for knowledge to be attained. In American Indian metaphysics, unlike the dominant system of Western metaphysics, awareness of one's self is the beginning of learning, and it certainly precedes the times most of us can think back to or remember. Child and cognitive psychologists now agree that most of the learning we do as human beings happens before we are five years old. A study of child development from an indigenous standpoint would lead to insights that popular causal models cannot. Deloria's formulation that power and place equal personality is ripe for exploration in the study of human development.

Among so much sadness and dysfunctionality in our world today, it is at once sobering and energizing to think of what we might accomplish by giving our children something our parents and grandparents stubbornly held on to but were never given the opportunity to openly embrace: a way of living that found lessons on humility, generosity, and hope in the world—hope not for something in the distant future but hope in the sense of acting with the confidence and expectation that something good will happen. Ask any child psychologist—such a condition is not romantic, but crucial for the full development of healthy adults.

A good deal of the ills surrounding us today are the fault of a society where children learn life lessons that make their formal education often seem meaningless. After all, most of what we know is *not* a result of explicit pedagogy or teaching; it is learned through living. Many human beings seem so caught up in their machines and technology that they have forgotten or lost the very real sense of what it means to live: to make choices that enrich life as opposed to making existence more comfortable.

Science has accomplished much in the latter case and, as Deloria notes, little in the former case: "Western science has no moral basis and is entirely incapable of resolving human problems except by the device of making humans act more and more like machines." "Making humans act more and more like machines"—this may be the most modern of reductionisms. It also explicitly illustrates an increasingly impoverished notion of experience and reality, and one that, thankfully, increasing numbers of human beings are questioning. It is hard to understand something if one is always controlling and taking it apart.

Fortunately, a growing number of modern ecologists, environmental scientists, biological scientists, and geographers now readily accept the wisdom that Chief Seattle spoke to nearly 150 years ago: "We are all related ... whatever befalls the earth befalls man." The concepts of the food chain, ecosystem management, population dynamics, and a host of cycling processes are, at one level, scientific expressions of the traditional American Indian wisdom Chief Seattle spoke to so eloquently. At this easily observable and documentable level, science seems to be moving closer to traditional American Indian wisdom.

At the most fundamental level this interconnectedness and relatedness of human beings to the earth provides the first principle for our rich spirituality. A spirituality that is literally grounded in our experience of the natural world as full of creation's power; a spirituality that denies the dichotomies that most often define Western religions. This is not romanticism; it is acknowledgment of a living people's experience, and something science too often anesthetizes its students and practitioners to.

PLAYING TO OUR STRENGTHS

It is at the level of experience that our traditional and ancestral indigenous scholars have left us the richest legacy—insights of the processual, interconnected, and interrelated nature of the phenomenal world; insights too often precluded by indoctrination in the metaphysics of Western science and, more generally, the modern Western worldview. At the heart of *Power and Place* is the suggestion

that before we all become specialized mechanics of different aspects of the phenomenal (so-called objective) world, we seriously explore and attempt to recollect a way of knowing where interpretation or meaning (subjective) is integrated in the realm or reality of experience.

Few thinkers have written about the objective-versus-subjective and nature-versus-human dichotomies of Western thought as perceptively as Alan Watts, a scholar of Eastern thought, in the introduction to his book *Nature, Man, and Woman.* Watts notes that Western humankind's faith in intelligence has led many to "think we know" how the world works, and consequently, to presume we have some right to control the organization of life itself. He states:

> This is an astonishing jump to conclusions for a being who knows so little about himself, and who will even admit that such sciences of the intelligence as psychology and neurology are not beyond the stage of preliminary dabbling. For if we do not know even how we manage to be conscious and intelligent, it is most rash to assume that we know what the role of conscious intelligence will be, and still more that it is competent to order the world. (p. 2)

In Western thought scientific theories of reality, knowledge, and methods for knowing are logically consistent. The problem is that they constrain, even preclude, any discussion of our human experience and life as a part of processes involving power(s), which are irreducible to discrete objects or things.

Convergences

There is reason to be cautiously optimistic. The relatively new concept of emergence as used in ecology and physics may capture how personality, as defined by Deloria, develops in specific places possessing power. Emergence refers to a model of change or development where change is not reducible to a discrete factor or factors, but rather the interaction of multiple factors or causes that are understood as processual in character as opposed to mechanical. I am of the opinion, as are a number of scholars and scientists, both

indigenous and nonindigenous, that when everything is said and done the concepts of complexity, self-organization, ecology, and even evolution (as reformulated in primarily a space-dependent process as opposed to a time-dependent model) are actually ideas that are part of ancient indigenous intellectual traditions in North America. I like to tell modern nonindigenous scientists that I am glad to see that their modern science is finally catching up with very ancient indigenous wisdom. This at least always gets their attention! Although philosophers of science have pointed out various problems with the dominant Western view and a fair number of scientists would acknowledge those problems, the vast majority still do science the old-fashioned way. As my Salish friend Jaune Quick-To-See-Smith summarizes, Western scientists theorize a hypothesis (a cause and effect), design an experimental process—which is by design far removed from the world we live in—and produce a result or a finding that too often is then understood as "fact."

Nevertheless, the worldview or paradigm shift now underway in cutting-edge physics (chaos theory, nonlinear models of development and change) and biology (complexity, emergent properties, bio- and phytoremediation, etc.) is predicated on the recognition that the old Western metaphysics on which science was built results in certain kinds of knowledge, but not all knowledge. Most important, the old Western metaphysics of time, space, and energy never allows one to get the "big picture" of the world. The essays in this book are advocating a holistic worldview, one resulting from experience in the earth's living systems. Ultimately, *Power and Place* advocates big-picture worldviews containing metaphysical systems that, most significantly, integrate the physical and spiritual dimensions Western civilization presents as opposed to each other.

American Indians are natural systems thinkers, as Indian entrepreneur Rebecca Adamson has remarked, because even today many American Indians seem to intuitively perceive the interrelatedness of problems and recognize that solutions required to solve them must be holistic in nature. The strong affinity or convergence between what I call the new complex view of science and American Indian metaphysical traditions is worth exploring; both

are at odds with the old mechanical and naive physical views of the world. At a certain point it seems the phenomenal world was bound to assert its presence on what might best be described as Western intellectual asceticism—that is theoretical abstraction disconnected from experience in the world.

Indigenous Life Lessons

God Is Red was the first book to really trace the deep roots of the ongoing conflict between Western civilization and American Indian worldviews to the Judeo-Christian tradition and its overwhelming influence on Western thought. It seems reasonable today to question whether Western science itself has unconsciously carried a considerable amount of baggage from its early roots in religious institutions. Simply think of the degree to which theory, paradigm, and model construction in Western science and, sadly, in education itself, develop not based on—but in spite of—human experience and worldly evidence, and the historical extrapolation from religious asceticism to scientific asceticism seems appropriate.

The ultimate irony for the followers of Enlightenment ideals of liberty, reason, and justice is that the rationality they have most fully developed is of a mechanical and technical nature. The practices and products of Western science have, intentionally or not, had the net effect of making "humans act more and more like machines," and why should we be surprised? All of the genuine enthusiasm for the final mapping of the human genome is an ex post facto demonstration of the extent to which modern science is preoccupied with mechanics. If life itself is viewed mechanically, why should humans be any exception?

Welcome to the brave new world—not Huxley's book, but the citadels of contemporary DNA science. Orwell's *1984* had it half right: Big Brother need not worry about watching you, nor you worry about being watched by Big Brother. So long as He is sure you are watching him. Imagine the influence of a culture that induces members to passively watch—the news, advertisements, and TV sitcoms. We do indeed live in an industrial, technological world, and many of us have now reached the place where it

seems important to ask why so many suffer emotionally, economically, physically, and spiritually. Education ought not be reduced to mechanics. Today we must play to our strengths. Indeed, what we need are indigenous life lessons, and that is what *Power and Place* explores: indigenous life lessons emergent from experience in the world.

BEGINNING AN HONEST DIALOGUE

It is easy to criticize any system of thought or culture, especially the less direct experience one has of the lives of the people possessing those ideas or that culture. I hope these essays will not be read as a bashing of Western civilization, but rather as the beginning of a long-overdue honest dialogue. With respect to culture, a person can have only the most superficial understanding of a people, especially their culture, if it is based primarily on the written word and only limited direct experience of their everyday lives. It is not surprising, therefore, that with only a few exceptions members of the larger, essentially Western, or immigrant, American culture have great difficulty understanding American Indian or indigenous North American peoples and their cultures.

Of course when the same logic is applied and the circumstances are reversed, most American Indians are better prepared to understand and critique the Western tradition because they, like it or not, have had a five-centuries-long history of being pushed and pulled into the dominant culture, although the culture they experienced in the boarding schools could hardly be called normal or ordinary—even by Western standards. Indeed, the legacy of government and parochial boarding-school experiences explains a significant degree of the dysfunctionality found in American Indian institutions, communities, and homes and has also unintentionally formed the catalyst for some of the most hopeful developments to emerge for American Indians in the last half century.

Today most American Indians, such as they have received a formal education and, until very recently, employment, have done so in the context of Western-inspired institutions. Amazingly some have been able to hold on to many of their indigenous tribal

beliefs, values, and practices alive within their Native communities and reservations. The general point is that American Indian educators, in particular, unlike their non-Native counterparts, are better prepared and well suited by experience to critically look at the deep roots of Western-inspired institutions and practices. Because of their bi- and often multicultural experience we can and should explore creative ideas and ways of establishing healthier Indian communities and sovereign Indian nations.

Let us go even a step further. If "we talk and you listen," as Deloria suggested three decades ago, non-Natives might even learn something useful. Indigenous people obviously have benefited from some of the technological innovations developed by Western scientists. Unfortunately, the arrogance or faith instilled by Western civilization's claim to ownership of Universal Truth has, until now, dissuaded Americans from seriously listening to what American Indians have to say. Their loss is, I believe, great.

For those non-Indians who choose to listen, the following is intended as an invitation to discussion, even exploration of some ground literally and figuratively, seldom covered today. Few adults in the United States learn and work in institutions formed on principles outside of or distinct from Western civilization; this includes most American Indians. Almost all Indian education studies, reports, and commissions have described, analyzed, and bemoaned a Western-inspired institution built on curriculum, methodologies, and pedagogy consistent with the Western worldview. This much-studied educational system was and, sadly, remains too often directed toward cultural assimilation into the dominant society. Fortunately, some American Indians still live and understand the world indigenously. Circumstances—political, economic, technological, and spiritual—have brought many in America today to places where a reintroduction or resurgence of Indian education in America can seriously be entertained. We have come to places in modern industrial and postindustrial societies where experiences are suggesting we might have valuable lessons to learn by exploring what once existed throughout this hemisphere: indigenous education systems.

POWER AND PLACE EQUAL PERSONALITY

V. Deloria

Western science resolves itself into certain "laws" that describe the natural world. These laws are makeshift descriptions of the manner in which physical reality appears to operate, but they are often regarded by Western scientists as inviolable. Phenomena that fall outside the prescribed patterns of behavior are said to be "anomalies," which can be disregarded when explaining how the physical universe functions. Eventually, of course, the Western scientist must deal with the so-called anomalies. These phenomena form an increasingly large body of knowledge and facts that cannot be explained using the acceptable paradigm into which the rest of scientific knowledge is deposited.

American Indian knowledge of the world does not suffer this structural handicap. While tribal peoples did not have a detailed conception of the whole planet in the sense that Western scientists presently do, they did have a very accurate knowledge of the lands they inhabited and the plants, animals, and other life-forms that shared their environment. It is also becoming increasingly clear that they had a fairly comprehensive knowledge of the heavens, with their own sets of constellations and stories.

The boundaries of American Indian knowledge were those of respect, not of orthodoxy. For instance, certain stories about the stars could not be told when the constellations in question were overhead. Some other kinds of stories involving animals, plants, and spirits could only be told at a particular time of year or in a specific place. There were no anomalies because Indians retained the ability to wonder at the behavior of nature, and they remembered even the

most abstruse things with the hope that one day the relationship of these things to existing knowledge would become clear.

The key to understanding Indian knowledge of the world is to remember that the emphasis was on the particular, not on general laws and explanations of how things worked. Consequently, when we hear the elders tell about things, we must remember that they are basically reporting on their experiences or on the experiences of their elders. Indians as a rule do not try to bring existing bits of knowledge into categories and rubrics that can be used to do further investigation and experimentation with nature. The Indian system requires a prodigious memory and a willingness to remain humble in spite of one's great knowledge.

Although the rank-and-file professors may reject this rather cumbersome method of obtaining knowledge, it has been recognized by some important thinkers as being equal to the reductionist procedure. Percy W. Bridgman, one of the giants in physics in this century, made this remark in his book *The Way Things Are:*

> I may have observed all men, including Socrates, and found that they were mortal, and summarized by researches in the statement "all men are mortal," which I then filed away in my mind for future use. Later when I may have forgotten all the details of my former research, I may find a rational basis for charging Socrates for annuity which I am selling him, and my assurance that Socrates is mortal, which I get from my mental file, guides me in setting my price. The syllogism thus has economic value for me in this situation. The unlettered American Indian, however, confronted by the same situation, would doubtless meet it by recalling that he had once verified that Socrates in particular was mortal. (p. 91)

So we have different paths to the same conclusions.

Keeping the particular in mind as the ultimate reference point of Indian knowledge, we can pass into a discussion of some of the principles of the Indian forms of knowledge. Here power and place are dominant concepts—power being the living energy that

inhabits and/or composes the universe, and place being the relationship of things to each other. It is much easier, in discussing Indian principles, to put these basic ideas into a simple equation: Power and place produce personality. This equation simply means that the universe is alive, but it also contains within it the very important suggestion that the universe is personal and, therefore, must be approached in a personal manner. And this insight holds true because Indians are interested in the particular, which of necessity must be personal and incapable of expansion and projection to hold true universally.

The personal nature of the universe demands that each and every entity in it seek and sustain personal relationships. Here, the Indian theory of relativity is much more comprehensive than the corresponding theory articulated by Einstein and his fellow scientists. The broader Indian idea of relationship, in a universe that is very personal and particular, suggests that all relationships have a moral content. For that reason, Indian knowledge of the universe was never separated from other sacred knowledge about ultimate spiritual realities.

The spiritual aspect of knowledge about the world taught the people that relationships must not be left incomplete. There are many stories about how the world came to be, and the common themes running through them are the completion of relationships and the determination of how this world should function. Such tales seem far removed from the considerations of science, particularly as Indian students are taught science in today's universities. However, when the tribal concepts are translated into scientific language, they make a good deal of sense. Completing the relationship focuses the individual's attention on the results of his or her actions. Thus, the Indian people were concerned about the products of what they did, and they sought to anticipate and consider all possible effects of their actions.

And on Appropriateness

The corresponding question faced by American Indians when contemplating action is whether or not the proposed action is

appropriate. Appropriateness includes the moral dimension of respect for the part of nature that will be used or affected in our action. Thus, killing an animal or catching a fish involved paying respect to the species and the individual animal or fish that such action had disturbed. Harvesting plants also involved paying respect to the plants. These actions were necessary because of the recognition that the universe was built upon constructive and cooperative relationships that had to be maintained. Thus, ceremonies such as the First Salmon and Buffalo Dance and the Strawberry Festivals and the Corn Dances celebrated and completed relationships properly or ensured their continuance for future generations.

We can view this different perspective in yet another way that will speak more directly to Indian students studying Western science. Very early, at least beginning with Greek speculation on the nature of the world, the Western peoples seemed to have accepted a strange binary system of reasoning in which things are compared primarily according to their size and shape. Out of this perspective came the natural sciences as we have them today. Eventually distinctions were made primarily on the basis of shape, and from this tendency came the great theory of evolution that now reigns in the West. All our knowledge of the natural world within the Western framework derives from a crude comparison between skeletons of animals. Very little knowledge exists about the animals themselves except relative bone structures. We only speculate on how they see the world, think, and understand emotional experiences. Increasingly, studies show them to have as complete an emotional/intellectual life as we do.

American Indians seem to have considered this kind of thinking at one time because there are tribal stories comparing humans to various animals. The stories always emphasized that while humans cannot see as well as hawks, they can see; they are not as strong as the bear, but they are strong; not as fast as the deer, but they can run; and so forth. However, when these comparisons are carefully analyzed, one finds that both physical and psychological characteristics are described. Indians derived their knowledge of birds

and animals from actual experiences, and therefore physical structure meant little to them as they anticipated encountering these creatures in the future and needed to know how they behaved for hunting and protection purposes. Thus Charles Eastman was taught that when approached by a bear or mountain lion, one should pick up a stick immediately so that the animal would think he was armed and dangerous.

When using plants as both medicines and foods, Indians were very careful to use the plant appropriately. By maintaining the integrity of the plant within the relationship, Indians discovered many important facts about the natural world that non-Indians only came upon later. The Senecas, for example, knew that corn, squash, and beans were the three Sisters of the Earth, and because they had a place in the world and were compatible spirits, the Indians always planted them together. Only recently have non-Indians, after decades of laboratory research, discovered that the three plants make a natural nitrogen cycle that keeps land fertile and productive.

Plants, because they have their own life cycles, taught Indians about time. George Will and George Hyde, in their book *Corn Among the Indians of the Upper Missouri*, point out that it was the practice of the agricultural tribes to plant their corn, hoe it a few times, and then depart for the western mountains on their summer buffalo hunt. When a certain plant in the west began to change its color, the hunters knew it was time to return home to harvest their corn. This knowledge about corn and the manner in which its growth cycle correlated with that of the plants of the mountains some 500 miles away was very sophisticated and involved the idea of time as something more complex than mere chronology. Time was also growth of all beings toward maturity.

Star Knowledge

Much Indian knowledge involved the technique of reproducing the cosmos in miniature and invoking spiritual change, which would be followed by physical change. Hardly a tribe exists that did not construct its dwellings after some particular model of the

universe. The principle involved was that whatever is above must be reflected below. This principle enabled the people to correlate their actions with the larger movements of the universe. Wherever possible the larger cosmos was represented and reproduced to provide a context in which ceremonies could occur. Thus, people did not feel alone; they participated in cosmic rhythms.

Star knowledge was among the most secretive and sophisticated of all the information that the Indians possessed. Today archeoastronomers are finding all kinds of correlations between Indian practices and modern astronomical knowledge. Very complex star maps painted on buckskin hides or chiseled on canyon walls give evidence that Indians were astute observers of the heavens, and their ceremonial activities were often based on the movement of the heavens. A good deal of Indian star knowledge continues to exist, but religious prohibitions and restrictions still limit the propagation of this information. Some star knowledge goes very far back into the past when the sky looked different. The Sioux said there was once a bright star in the middle of the Big Dipper. Today we can suggest that a black hole does properly exist there.

THE PRINCIPLE OF CORRELATION

Star knowledge gives us an additional principle of Indian information gathering. That principle is correspondence, or correlation. Being interested in the psychological behavior of things in the world and attributing personality to all things, Indians began to observe and remember how and when things happened together. The result was that they made connections between things that had no sequential relationships. There was, consequently, no firm belief in cause and effect, which plays such an important role in Western science and thinking. But Indians were well aware that when a certain sequence of things began, certain other elements or events would also occur.

A kind of predictability was present in Indian knowledge of the natural world. Many ceremonies that are used to find things, heal, or predict the future rely upon this kind of correlation between and among entities in the world. The so-called medicine powers

and medicine bundles represented this kind of correlative understanding of how different things were related to each other. Correlation is responsible, for example, for designating the bear as a medicine animal, owls as forecasting death or illness, and snakes as anticipating thunderstorms.

This kind of knowledge is both tribal- and environmental-specific. In diagnosing illness, for example, medicine people might search for the cause of sickness by questioning their patients on a variety of apparently unrelated experiences. They would be searching for the linkages that experience had taught them existed in these situations. Here again, there was considerable emphasis on the heavens. One need only examine the admonitions of different tribes with respect to shooting stars, different configurations of the moon, eclipses, and unusual cloud formations to understand how correlational knowledge provided unique ways of adjusting to the natural world.

A More Realistic Knowledge

The Indian method of observation produces a more realistic knowledge in the sense that, given the anticipated customary course of events, the Indian knowledge can predict what will probably occur. Western science seeks to harness nature to perform certain tasks. But there are limited resources in the natural world, and artificial and wasteful use depletes the resources more rapidly than would otherwise occur naturally. The acknowledgment that power and place produce personality means not only that the natural world is personal but that its perceived relationships are always ethical. For that reason, Indian accumulation of information is directly opposed to the Western scientific method of investigation, because it is primarily observation. Indians look for messages in nature, but they do not force nature to perform functions that it does not naturally do.

Indian students can expect to have a certain amount of difficulty in adjusting to the scientific way of doing things. They will most certainly miss the Indian concern with ethical questions and the sense of being personally involved in the functioning of the natural world. But they can overcome this feeling and bring

to science a great variety of insights about the world derived from their own tribal backgrounds and traditions. They must always keep in mind that traditional knowledge of their people was derived from centuries, perhaps millennia, of experience. Thus, stories that seem incredible when compared with scientific findings may indeed represent that unique event that occurs once a century and is not likely to be repeated. Western knowledge, on the other hand, is so well controlled by doctrine that it often denies experiences that could provide important data for consideration.

By adopting the old Indian concern with the products of actions, students can get a much better perspective on what they are doing and how best to accomplish their goals. By maintaining a continuing respect for the beliefs and practices of their tribes, students can begin to see the world through the eyes of their ancestors and translate the best knowledge of the world into acceptable modern scientific terminology.

Most important, however, are the contributions being made by American Indian scientists. With their expertise, we can better frame our own ethical and religious concerns and make more constructive choices in the use of existing Indian physical and human resources. It is this linkage between science and the community that we must nurture and encourage. We must carry the message that the universe is indeed a personal one. It may, indeed, be a spiritual universe that has taken on physical form and not a universe of matter that has accidentally produced personality.

Understanding the Crisis in American Education

D. Wildcat

Maybe we do live in an information age. In fact, it would seem reasonable to say we are witnessing an information revolution, and as heretical as this may sound, it may be a large part of the most disturbing problems we see surrounding us today. The so-called Information Highway may be a curious phenomenon, but it is amazing that almost no one stops to inquire as to where it is taking us. I heard an elder once remark, "If you don't know where you are going, any road will get you there." This modest insight may sum up better than any National Indian Education reports, panels, or committees the crisis of not just Indian education today, but education in America.

Today what counts as knowledge in mainstream education is too often short-term memorization of "facts." What counts as understanding is specialization in a narrow topic within a field or discipline. Understanding is so narrowly framed that it is often difficult for the specialists, let alone students, to effectively connect or relate their knowledge and understanding to the everyday lives of nonscientists. Because people desire just the "facts" without any understanding of the relations and connections between the "facts" and the rest of the world, we have the search-engine model of education. Faster, more powerful, and increasingly smaller computers, though great at processing data and performing quantitative analysis, cannot tell us what the data mean.

We are drowning in information, the bits and pieces of dot.com minutiae that more often than not are advertisements and amusements; swimming in knowledge (the organized insights into

highly specialized aspects of the phenomenal world—significant parts of our experience), albeit at various depths; and dying of thirst for what Deloria calls understanding and I would call wisdom, a "big picture," a worldview in which information and knowledge are integrated meaningfully. Deloria's discussion of American Indian notions of knowledge and understanding reminds us that ultimately, understanding or wisdom ought to be the goal of education.

Lest this point be misunderstood, computers, the World Wide Web, and technology are not necessarily the problem. All of the above are quite simply tools—material and technological aspects of modern industrial societies. However, unlike prior technological innovations in human history, whose applications and implications seemed relatively obvious within specific environments (e.g., the bow, the block and tackle, the saddle and stirrup, etc.), information technology today seems little understood in terms of environmental and cultural contexts. Although one might think information technology, especially in light of its service toward what is often referred to as globalization, cannot possibly serve indigenous peoples and their places. However, the Global Learning and Observations to Benefit the Environment Project, an experiential and inquiry-based educational use of the World Wide Web, suggests there might be reason for some optimism. Imagine indigenous schoolchildren from Malaysia, the Altai mountains of Siberia, and the desert Southwest going out in their homelands and experientially learning about their environments, collecting their own "data," and learning how to analyze their data by doing, as opposed to being taught about, science. More importantly, the Internet and World Wide Web may in fact give indigenous peoples around the world the opportunity to compare notes on what is happening in their homelands and, even more significantly, discuss what their observations mean.

The heart of the problems facing Indian education in America is found in the largely abstract metaphysics of time, space, and energy. Western metaphysics yields a very different conception of reality than an experiential American Indian metaphysics of place and

power. One crucial difference in the two metaphysics is that the Western concepts presume to objectively describe the world at the expense of taking for granted, or at least leaving undeveloped, issues and questions regarding the nature of reality—that is, what Deloria calls the personality of the human beings doing the conceptualizing. It is the philosophical equivalent of a radar scan for which the subject, the conceptualizer and intellectual model-builder, is off the screen and not even registering as a blip.

It is symptomatic of the problems of modern Western thought, and specifically science, that one has to look back to Socrates, over two millennia before Immanuel Kant, G.F.W. Hegel, Ralph Waldo Emerson, William James, and John Dewey place the problem of human consciousness and spirit back into the debate between idealist and realist metaphysics. Only when modern Western psychology, social psychology, and sociology are born is the problem of personhood or the subject picked up on the metaphysical radar of Western science. This fact alone is very symbolic of the major weakness of the Western metaphysics of time, space, and energy. The Western metaphysics of science makes identification of things and some basic interactions relatively easy to identify; however, it provides almost no "enlightenment" regarding living relationships, processes between subjects, and the formation of what Deloria calls personalities—be they plants, animals, or geologic and geographic features of the world where we reside.

Deloria's proposal that we explore an indigenous (in this case American Indian) metaphysics must be among the first projects American Indian educators undertake if we are to not only decolonize, but also actively "indigenize" and truly make Native educational institutions our own. American Indians have a long history of rejecting abstract theologies and metaphysical systems in place of experiential systems properly called indigenous—indigenous in the sense that people historically and culturally connected to places can and do draw on power located in those places. Stated simply, *indigenous* means "to be of a place." The oratories of Tecumseh, Ten Bears, Sitting Bull, and Chief Joseph, to name but a few great leaders, speak eloquently to this point.

Indigenous people represent a culture emergent from a place, and they actively draw on the power of that place physically and spiritually. Indigenism, as discussed here, is a body of thought advocating and elaborating diverse cultures in their broadest sense—for example, behavior, beliefs, values, symbols, and material products—emergent from diverse places. To indigenize an action or object is the act of making something of a place. The active process of making culture in its broadest sense of a place is called indigenization.

Cajete's work *Look to the Mountain* should be required reading for all teachers wanting to indigenize their pedagogy and curriculum and provide a framework for students to explore meaning in their life experiences. Western scientists and engineers are good at identifying the pieces, parts, and things in the world. This is commonly what we refer to as knowledge, "a set of technical beliefs [and, I would add, skills] which, upon mastering, admit the pupil to the social and economic structures of the larger society." Jacques Ellul's observation of nearly four decades ago in *The Technological Society*, that even the modern way of thinking has become technical or technology-shaped, today seems prescient.

Institutions of the larger society provide little support for the emotional and spiritual development of individuals. Tocqueville remarked in the 1830s that he was amazed that a society so deeply committed to diversity of opinion and free thought had so little of either. He also identified the real danger in American democracy as the tendency for Americans to become so preoccupied with their individual economic gain that little time remained for direct participation in public life or community. He seems to have been on target, for in American education the purpose seems less and less about shaping responsible and respectful persons and more about, as Deloria says, the "training of professionals."

The absence in formal education today of the discussion of meaning—or awareness of the emergence of meaning—in our lives shows the success of a metaphysics that uncritically and for the most part unconsciously shapes education for all Americans. And, as Deloria points out, science will leave the questions of meaning

to those institutions that appear to scientists as the embodiment of fuzzy or unclear thinking: the discipline of psychology and/or the social institution of religion. Understood in the context of Western metaphysics as portrayed by Deloria, it is easy to understand the necessary separation in modern Western thought between science, and religion and psychology (in all but its most reductionist biochemical versions).

The deep opposition in Western thought between science and religion is the most critical and fundamental obstacle to integrating modern science and American Indian wisdom born of an experiential metaphysics. Our ancient Native understanding begins with the necessary task—the problematic—of establishing what Deloria calls our personality: who we are. Learning comes early in indigenous institutions, not through lectures but through experience: customs, habits, and practices. The primary lesson learned is and was that knowledge and understanding come from our relatives, the other "persons" or "beings" we have relationships with and depend on in order to live. And it is through these relationships, physical and psychological, indeed spiritual, that human beings begin to understand who, why, and even to some degree what we are. A value-free, neutral, objective science of things cannot give us that, and it is this discovery of meaning through very complex relationships that is the hallmark of American Indian education.

Given Western metaphysical systems, as Deloria has described them, it is fitting and predictable that many learned persons in Western civilization today are concerned about finding a solution to the energy crisis they created. Make no mistake about it, technology alone is neither the problem nor the solution. The real issue is how we live in modern industrial societies. Yet it is obvious that the citizens of modern industrial and/or postindustrial societies are lacking the wherewithal to solve the problem.

The problem is *not* finding, renewing, conserving, or producing more energy, and the solution is not another cutting-edge technology. From the standpoint of an American Indian metaphysics of place and power, the problem is not about something called energy,

but more realistically about power and the places we live—basically, how we live. We should not underestimate the deep-seated roots of the problem. Where do we start? At the beginning. This was the approach Deloria took nearly four decades ago with the publication of *God Is Red,* and, I believe, remains the best approach. We need a generation or two of articulate American Indian philosophers, scientists, and engineers learning rather than being taught lessons our elders can demonstrate for us—right where they live.

I believe science is moving from a mechanistic reductionist model to a holistic nonlinear or complexity, model, science view. Consequently, it seems reasonable to speak of a convergence of new scientific theories and understanding with what I would call indigenous North American worldviews and intellectual traditions. The hypothesis I challenge scientists, engineers, historians of science, and ethnographers to explore is the extent to which much of the so-called new knowledge and understanding of complexity, nonlinear systems, and emergence resides in American Indian tribal customs, habits, and social organization: the way we lived and live. Here the use of a concept of habitude seems worth consideration. Although *A Dictionary of Modern English Usage* may see the word *habitude* as superfluous and synonymous with *habit,* I believe its use justified when considered as an attitude or awareness of a deep system of experiential relations on which the world is building or living. The key here is recognizing that experience is the undeveloped and untheorized site where the divisions between subjective and objective, material and spiritual, and an entire series of dichotomies disappear.

To many of us who are part of tribes with clan systems, an obvious example of what I mean by *habitude* is the understanding one acquired as a part of a clan-based social system: knowledge first and later an understanding that the clan system not only indicated a certain tribal human organization, but also actually existed as a symbolic representation of the ecology and environment that we human beings were and are a part of. Learning through custom and habit, a tribe's clan structures and societal roles and responsibilities conveyed a significant amount of knowledge. It is not only possible to figuratively lay out the clans of various tribes—for example,

the plants, animals, features of the natural world, and material objects represented in clan names, totems, and interclan relations—and actually produce a report about where and how people lived, it is necessary to do so in order to understand the comprehensive nature of their geographic and ecological knowledge.

A good example from the southeastern United States would be a comparison of the Cherokee clan system to the Euchee clan system. The Euchee share a large number of clans with the Seminole, but we both have a clan that the mountainous Cherokee do not possess. Knowledge of where the Seminole and Euchee historically resided solves the puzzle. The Seminole, living in the rich wetlands of south and central Florida, and the Euchee, who settled along the shores of the Savannah River but hunted throughout the Southeast and into northern Florida, have alligator clans, and the Cherokee do not. Considering where both tribes lived it is clear why the Seminole and Euchee acknowledge an important relationship with an animal species that the Cherokee do not.

Looking at the interfaces between our indigenous customs, habits, and ceremonies and our identity, spiritual being, and the natural world, it is clear that a rich repository of knowledge exists that suburban commuters cannot download from the internet. The general public has so divorced their lives from places, environments, and living ecosystems that it is easy to understand the ignorant questions often asked about American Indians—for example, "What is the American Indian religion?" Well, for whom, which American Indians, where? Yes, the Euchee lived on a river, but we did not have a Salmon Ceremony; Native people of the eastern Chesapeake Bay region never had Buffalo Ceremonies.

It is obvious when we consider the symbolic aspects of our cultures, ceremonial life, and even the social organization—the clan systems and special societies we created in our tribal communities—that these all contained accurate empirical information about how our ancestors lived in relationships with real ecosystems and environments.

In fact, I would suggest that there is knowledge contained in these cultural practices that modern science cannot acquire using

a mechanistic and dissective approach, especially when the Western idea of universal objective truth reduces itself to abstract mathematical formulas. Western science is very good at that. But contrast this knowledge system and its product to one where knowledge claims literally emerge from a place—an experience in the world. This kind of knowledge will be fundamentally different from the knowledge produced through laboratory experiment or dissection.

You see and hear things by being in a forest, on a river, or at an ocean coastline; you gain real experiential knowledge that you cannot see by looking at the beings that live in those environments under a microscope or in a laboratory experiment. You experience places and learn, if attentive about processes and relationships in those places.

When we start examining issues of complexity, emergence, the principles of self-organization, the biological phenomena of morphological or structural change within species, all of that knowledge is perfectly and completely consistent with indigenous worldviews. Our ancestors understood that the world is a dynamic and living place. I am not aware of any Native traditions that do not as a part of their oral histories accept that changes have occurred over time, often in a very short time sequence, catastrophic and otherwise. Some are more formal about this than others—Hopi and Diné traditions have very explicit discussions about the different stages of creation that have occurred. The fundamental notion is that the world and its entire biosphere is a dynamic living system.

This insight of course leads to the recognition that traditional ecological knowledge culture (e.g., language, tools, clothing, technology, etc.) in nonindustrial or nonmodern societies is emergent from specific places of the planet. Throughout Africa, Asia, the Pan-Pacific Rim, and to the homelands of our brothers and sisters in Central and South America, traditional Native peoples possess personalities and culture born of places. The power we possess as Potawatomi, Ute, Abanaki, Salish, Lummi—as indigenous peoples—is found in places even today. The power we still possess, although it is constantly threatened and in many peoples greatly impoverished, expresses itself in an attitude of humility and moral

integrity still found most often in our elders. Not only wisdom sits in places, as Keith Basso reminds us in his work on the Western Apache, but so does power and personality.

This realization offers a powerful way of talking about the manner in which biological diversity and cultural diversity are intimately connected. It requires recognition that culture is an emergent property—that is, a reality resulting from a complex process containing a multitude of interactions. In short, cultures have causes, but not the kind most biologists or social scientists can easily test in a laboratory or replicate in linear causal models. Because the world we inhabit is a very diverse place, we ought to understand what nearly all American Indian worldviews readily acknowledge: cultural diversity is not an issue of political correctness but is a geographic, historical, and biological reality.

Recognizing this point highlights the most devastating feature of the Western worldview in its general character and practical application: the destructive notion already forming by the time Cristobal Colon (Columbus) arrived in the Caribbean Islands that Europeans possessed the Truth and that it was their job to make sure all people they met on the planet were shown the Truth. This confidence, initially buttressed by the domination of the Church, that Western civilization represented the highest development of humankind was central to the Western worldview. The mandate to do things the way they did, pray the way they did, and virtually live the way they did was and, sadly, remains symptomatic of the extent to which the Western worldview of learned Europeans was already an abstract time-based ideology. They literally could not understand any history other than their own because their history became and was understood as The World History.

If one understands this Western self-conscious faith in (1) abstract universal truths and (2) the European moral duty to remake the world (in accordance with these truths) in their own image, then the incredible force of these ideas explains much of human history for the last 500 years. The worldview shaped by this twofold faith precluded recognition of knowledge, understanding, and power residing in places. It informs the practices of colonialism

yesterday and today, and it suggests just how important cultural diversity is to the life of the planet and its people.

Before Hegel, the preeminent modern idealist, developed his idea of world spirit, Kant had written two telling essays: "Idea of a Universal History with a Cosmopolitan Intent" and "What Is Enlightenment?" Both essays signal very clearly the profoundly interior nature of the world Kant lived in and the extent to which reason (i.e., rationality), history, progress, and enlightenment itself were understood as embodied in the world and reflected in the modern Western worldview. The manifestation of European Enlightenment idealism in the institutions of Western Europe had a very dark side, one that Nietzsche, Dewey, Marx, and the Frankfort School of critical theorists all saw in one respect or another, but that indigenous peoples all over the world experienced.

Again it matters little if you were (are) in Asia, Africa, South America, or Malaysia. The treatment of Native peoples around the world is an ex post facto demonstration of the Western linear idea of history, where Western Europeans understood themselves to be at the cutting-edge of history with everybody else requiring instruction to be brought "up to speed." This idea, so informative of European colonialism, was and is pure ideology, and if turnabout is fair play, the best example of what we Indians would call modern Western "mythology."

Western European colonizers were not tolerant of people who refused their instruction. This is a still living history—it is not a contentious claim. By the time of the American and French Revolutions, those few Europeans receiving a formal education had been taught that their way of living signaled the highest development of human potential as could exist in this world. While such talk has ended in this age of political correctness, the walk has not. Western-inspired institutions continue to walk (behave) the old Western way. Just ask indigenous peoples throughout the world, who are often fighting to keep from being trampled over.

It is not enough to simply collect oral histories, study the language, learn the toolmaking procedures, and know the arts and

crafts of our indigenous societies. All of this is being done and ought to be done, but we must explore experientially living in the world. Unless we incorporate features of our cultures into a holistic and integrated indigenous process of education, what we have produced is most likely "educational tokenism."

What we still possess, amazingly, not as individuals but as members of tribes, not nation-states, is big-picture wisdom born of experience, not pedagogical indoctrination. The work ahead of us is at once exciting and daunting. The task is daunting, for to a great extent we must undertake something our ancestors never had the necessity, opportunity, or wherewithal to undertake: an explicit discussion about the metaphysical foundation underlying our diverse indigenous worldviews. The work is exciting because it plays to our strengths: customs, habits, values, and how we live as indigenous people, not in some romanticized ideal or abstract past, but in the world. Power and place equal personality: Deloria's formulation is founded on experience in the world. A good place to begin Indian education in America is with the lived experiences of peoples who have resided in places long enough to know and remember what it means to be Native to a place.

KNOWING AND UNDERSTANDING

V. Deloria

Modern American education is a major domestic industry. With the collapse of the cold war, education may well become the industry of the American future. Indeed, in the 2000 election both candidates stressed education. Because education significantly impacts Indian communities and has exerted great influence among Indians from the very beginning of European contact, it is our duty to draw back from the incessant efforts to program educational opportunities, and evaluate what we are doing and where we are going in this field. It should come as no surprise to people in Indian communities that in recent months one report on Indian community colleges has been released, and plans have been announced to conduct yet another study on what is happening in Indian education. We seem to occupy the curious position of being pilot projects and experimental subjects for one group of educators, and the last communities to receive educational benefits as determined by another set of educators, primarily administrators. So the time has come to try to make sense of what education has been, presently is, and conceivably might be for American Indians.

The Western scientist has been personified, by Western peoples themselves, as Dr. Faustus, Dr. Frankenstein, and Dr. Strangelove—the person who steps outside the boundary of acceptable behavior and becomes a monster and a threat to humankind. One of the pressing ethical questions of today, with regard to genetics and atomic research, is whether when we think we can do something, we are then obligated to do it. The real question should be whether what we propose is ethical in the larger sense, not whether or not we

can do something. This missing element of the ethical is a value that can only be properly understood in the Indian context.

European civilization has a determined and continuing desire to spread its view of the world to non-European countries. Within a generation of the conquest of Mexico, the Spanish had founded schools in Mexico City for the education of indigenous youths. An important part of mission activities for the next 300 years was the education of both young people and adults in the Christian religion and the niceties of European customs. French colonial policy dictated a kind of education in which prominent families within the Indian tribe and the French colonial families exchanged children for a short period of time. This was to ensure that customs would be properly understood and civility between the two groups would not be violated by thoughtless or ignorant actions.

English education, represented first by benevolent members of the aristocracy who gave funds to support Indian schools, and later embodied in the U.S. government's encouragement of mission activities among the frontier tribes, represented, and still represents, an effort to effect a complete transformation of beliefs and behaviors of Indians. Education in the English-American context resembles indoctrination more than it does other forms of teaching because it insists on implanting a particular body of knowledge and a specific view of the world, which often does not correspond to the life experiences that people have or might be expected to encounter. With some modifications, and with a considerable reduction in the intensity of educational discipline, the education that Indians receive today is the highly distilled product of Christian/European scientific and political encounters with the world and is undergirded by specific but generally unarticulated principles of interpretation. Because the product is so refined and concise, education has become something different and apart from the lives of people and is seen as a set of technical beliefs, which, upon mastering, admit the pupil to the social and economic structures of the larger society. Nowhere is this process more evident than in science and engineering, fields in which an increasing number of American Indian students are now studying.

Education today trains professionals but it does not produce people. It is, indeed, not expected to produce personality growth, in spite of elaborate and poetic claims made by some educators. We need only look at the conflict, confusion, and controversy over prayer in schools, sex education, and the study of non-Western societies and civilizations to see that the goal of modern education is to produce people trained to function within an institutional setting as a contributing part of a vast socioeconomic machine. The dissolution of the field of ethics into a bewildering set of subfields of professional ethics further suggests that questions of personality and personal values must wait until the individual has achieved some measure of professional standing.

This condition, the separation of knowledge into professional expertise and personal growth, is an insurmountable barrier for many Indian students. It creates severe emotional problems as the students seek to sort out the proper principles from these two isolated parts of human experience. The problem arises because in traditional Indian society there is no separation; there is, in fact, a reversal of the sequencer in which non-Indian education occurs: in traditional society the goal is to ensure personal growth and then to develop professional expertise. Even the most severely eroded Indian community today still has a substantial fragment of the old ways left, and these ways are to be found in the Indian family. Even the badly shattered families preserve enough elements of kinship so that whatever the experiences of the young, there is a sense that life has some unifying principles that can be discerned through experience and that guide behavior. This feeling, and it is a strong emotional feeling toward the world that transcends beliefs and information, continues to gnaw at American Indians throughout their lives.

It is singularly instructive to move away from Western educational values and theories and survey the educational practices of the old Indians. Not only does one get a sense of emotional stability, which indeed might be simply the impact of nostalgia, but viewing the way the old people educated themselves and their young gives a person a sense that education is more than the process

of imparting and receiving information. Indeed, that it is the very purpose of human society, and human societies cannot really flower until they understand the parameters of possibilities that the human personality contains.

The old ways of educating affirmed the basic principle that human personality was derived from accepting the responsibility to be a contributing member of a society. Kinship and clan were built upon the idea that individuals owed each other certain kinds of behaviors, and that if each individual performed his or her task properly, society as a whole would function. Because everyone was related to everyone else in some specific manner, by giving to others within the society, a person was enabled to receive what was necessary to survive and prosper. The worst punishment, of course, was banishment, as it meant that the individual had been placed beyond the boundaries of organized life.

The family was not, however, the nuclear family of modern-day America, nor was it even the modern Indian family, which has, in addition to its blood-related members, an FBI undercover agent, an anthropologist, a movie maker, and a white psychologist looking for a spiritual experience. The family was rather a multigenerational complex of people, and clan and kinship responsibilities extended beyond the grave and far into the future. Remembering a distant ancestor's name and achievements might be equally as important as feeding a visiting cousin or showing a niece how to sew and cook. Children were greatly beloved by most tribes, and this feeling gave evidence that the future was as important as the present or past, a fact that policy makers and treaty signers have deliberately chosen to ignore as part of the Indian perspective on life.

Little emphasized, but equally important for the formation of personality, was the group of other forms of life that had come down over the centuries as part of the larger family. Neoshamanism today pretends that one need only go into a sweat lodge or trance and find a "power animal." Many people, Indians and non-Indians, are consequently wandering around today with images of power panthers in the backs of their minds. But there seems to

have been a series of very early covenants between certain human families and specific birds, fish, grazing animals, predatory animals, and reptiles. One need only view the several generations of Indian families with some precision to understand that very specific animals will appear in vision quests, sweat lodges, trances, and psychic experiences over and over again. For some reason these animals are connected to the families over a prolonged period of time and offer their assistance and guidance during times of crisis during each generation of humans.

Birds, animals, plants, and reptiles do not appear as isolated individuals anymore than humans appear in that guise. Consequently, the appearance of one animal suggests that the related set of other forms of life is nearby, is willing to provide assistance, and a particular role to play in the growth of human personality. In the traditional format there is no such thing as isolation from the rest of creation, and the fact of this relatedness provides a basic context within which education in the growth of personality and the acquisition of technical skills can occur. There is, of course, a different set of other forms of life for each human family, and so dominance and worthlessness do not form the boundaries between the human species and other forms of life.

Education in the traditional setting occurs by example and not as a process of indoctrination. That is to say, elders are the best living examples of what the end product of education and life experiences should be. We sometimes forget that life is exceedingly hard and that none of us accomplishes everything we could possibly do, or even many of the things we intended to do. The elder exemplifies both the good and the bad experiences of life, and in witnessing their failures as much as their successes we are cushioned in our despair of disappointment and bolstered in our exuberance of success. But a distinction should be made here between tribal and nontribal peoples. For some obscure reason, nontribal peoples tend to judge their heroes much more harshly than do tribal peoples. Tribal peoples expect a life of perfection and thereby partially deify their elders. At least they once did. Today, watching the ethical failures of the non-Indian politician, sports hero, and television preacher, it is

not difficult to conclude that nontribal peoples have no sense of morality and integrity at all.

The final ingredient of traditional tribal education is that accomplishments are regarded as the accomplishments of the family and are not attributed to the world around us. We share our failures and successes so that we know who we are and so that we have confidence when we do things. Traditional knowledge enables us to see our place and our responsibility within the movement of history as it is experienced by the community. Formal American education, on the other hand, helps us to understand how things work, and knowing how things work and being able to make them work are the marks of a professional person in this society. It is critically important that we do not confuse these two kinds of knowledge or exchange the roles they play in our lives. The major shortcoming in American institutional life is that most people cannot distinguish these two ways of knowing; and for many Americans there is no personal sense of knowing who they are, so professionalism always overrules the concern for persons.

Today we see a great revival of traditional practices in many tribes. Younger people are bringing back crafts, songs and dances, and religious ceremonies to make them the center of their lives. These restorations are important symbols of a sense of community, but they must be accompanied by hard and clear thinking that can distinguish what is valuable in the old ways from the behavior we are expected to practice as members of the larger American society. In this movement it is very important for younger Indians to take the lead in restoring the sense of family, clan, and community responsibility that undergird the traditional practices. In doing so, the next generation of Indians will be able to bring order and stability to Indian communities, not because of their professional expertise but because of their personal examples.

The Schizophrenic Nature of Western Metaphysics

D. Wildcat

In order to clearly "distinguish what is valuable in the old ways from the behavior we are expected to practice as members of the larger American society," American Indians must elaborate our own indigenous systems of metaphysics and contrast them with the dominant metaphysics of Western civilization. Failure to deal with the problem of practices and values at their roots or foundations will result in serious confusion later.

The best way to illustrate the fundamental difference between a Western metaphysics and an indigenous North American metaphysics is to begin with the most vexing issue confronting Western-influenced societies: the irreconcilable duality between facts and values, most often discussed as the science-versus-religion conflict. We are flooded with media reports of the conflicts daily—for example, the evolution controversy, human cloning, abortion, development of biological and nuclear weaponry, use of animals in medical research, product safety testing, and so on. What is the source of these conflicts?

Experiential Metaphysics in the World

An American Indian response, I would argue, would identify the source of many of these conflicts in the failure of Western metaphysics to produce an integrated big picture of human experience in the world as opposed to a big picture of the world. The distinction between an indigenous metaphysics of human beings in the

world versus a Western metaphysics of the world is crucial. The latter requires a level of abstraction beyond human experience, while the former requires abstract concept formation in the service of experience.

The "metaphysics of the world" is nothing less than the transference and unconscious resurrection of the medieval "God problem" as the modern Western problem of the certainty of human knowledge. Medieval scholastic philosophers successfully demonstrated through logic that God must be omnipresent, omniscient, and omnipotent. In the seventeenth and eighteenth centuries logic was of little use in addressing growing doubt among Western intellectuals of the existence of God, although logic was increasingly demonstrated as useful to humans in their attempts to control and use nature. Today the irreconcilable conflict between meaning/values and knowledge/facts in Western metaphysics is obvious. This is clearly demonstrated in the inability of Western legal institutions to grasp American Indian and Alaska Native claims that some places on the planet possess a degree of sacredness that precludes treatment as real estate, private property, or public lands. Nowhere is the schizophrenic nature of Western metaphysics more obvious than in the current lack of religious freedom for many indigenous people in America.

The poverty of religious freedom is evidenced in recent U.S. Supreme Court decisions that increasingly reduce religion to a set of deeply held beliefs unrelated to where people live and how they live. At the very moment people around the world are awakened to the fact that our planet is one complex web of ecological systems resplendent with biological and cultural diversity, the group of people most representative of cultural and ethnic diversity in the United States—American Indians and Alaska Natives—are implored to explain their widely shared understanding that the earth is sacred. It is ironic that the most diverse peoples of the Americas are now placed in a position where we are required to explain, document, and provide evidence for our spiritual and religious traditions in order to protect religious ceremonies and practices that ensure the very biological diversity that our spiritual traditions rest on.

This turn of events is not surprising given the dominant Western view that religion is not of this world—in other words, natural but an other-worldly (supernatural) phenomenon. Since long before the passage of the American Indian Religious Freedom Act in 1978, American Indians and Alaska Natives have been fighting to defend the notion—no, the practical reality—that religious experiences are in a profound sense a part of the power that "sits in places." We reject abstract theologies and metaphysical systems in the place of experiential systems properly called indigenous or emergent from a place.

What explains the tremendous divide between our experiential traditions and Western theological abstractions? Two very different metaphysical systems: Native systems, where explanation is often discussed in terms of experiential correspondence and understood as irreducible to simple mechanical causality, versus the now dominant Western metaphysical system, where the logic of causality established by David Hume nearly three centuries ago mandates empirical generalizations of mechanical cause-and-effect relationships.

The Problem with Descartes and Hume

The conflict between science and religion in the Western tradition is indicative of the schizophrenic nature of Western metaphysics. An American Indian metaphysics has the advantage of designating science and religion not as mutually exclusive realms of experience or areas of human interest, but as fundamental questions of knowledge and understanding found on a "continuum of experience." It is not an overstatement to see Descartes's deductive, even mathematical, rationalism and Hume's systematic empiricism as flip sides of the same coin. Both point to a world encountered by learned European minds as being without spirit or power in a tangible phenomenal sense. Although Descartes's rationalism seems to emphasize the human mind or, as one modern philosopher remarked, place a "ghost in the machine," this does not discount the basic point that his clear and distinct ideas are only appertained within a human mind that is understood as a logical machine.

Teaching American Indian and Alaska Native students Descartes's *Meditations on First Philosophy* and *Discourse on Method of Rightly Conducting Reason and Reaching the Truth in the Sciences* is difficult because the problem he poses is foreign to the general metaphysical foundation of indigenous North American worldviews. To doubt one's own existence seems not only unreasonable but suggestive of serious illness within indigenous worldviews. The famous "I think, therefore I am" is an ex post facto truism not only at the level of logic but at the level of experience too. That Descartes found it necessary to logically prove something that could be accepted by virtue of experience only indicates the extent to which experience in the world became increasingly problematic for the Western psyche.

Descartes's focus on subject-centered, self-conscious awareness is interesting and peculiar. Subjective awareness and consciousness would seem a good bridge to an exploration of human experience in a broader context. However, what I will call Descartes's extreme logical interiorizing of awareness in his "I think, therefore I am" precludes any such exploration. Existence in a Cartesian worldview is so intellectually abstract relative to experience that we might suggest Descartes initiates a modern tradition of experiential agnosticism—that is, experience as unknowable—in Western thought. What may be even more amazing and ironic is that Hume's radically empiricist version of human experience and existence produces a similar agnostic view of experience, albeit from a completely opposite point of departure.

Hume's response to the increasingly problematic nature of experience in the world was set out in *A Treatise of Human Nature,* and later in a reworking of part one of that work known as *An Enquiry Concerning Human Understanding*. Hume's notion that ultimately all knowledge comes from sense impressions results in his claim that causality is nothing more than a constant combination between perceived objects called causes and effects. In fact, he consistently and quite radically claims that any so-called natural laws of causality are little more than empirical generalizations based on custom and habit. He denies there exists any necessary

relation or connection between objects. Not surprisingly, Native students often remark that after Hume's inquiry all that remains for certain are uncertain beliefs and no knowledge.

Hume's *Enquiry* is rightly recognized as the benchmark for modern skepticism, but from the standpoint of an American Indian metaphysics, Hume's thought is fatally flawed by the reduction of experience to impressions of objects and their more vague relations. Not surprisingly, Hume's attitude toward God and miracles is skepticism, as both by definition within Hume's philosophical epistemology (system of knowledge) are outside the realm of knowledge—irreducible to impressions. If one reduces experience to impressions of objects, then much of what challenges our understanding in the world will be unintelligible. Hume demonstrated that empiricism and rationalism both result in reasoned skepticism, but to what end? The obvious point is that Hume's "miracles" confront him as nothing more than mysteries or events without explanation at the present time or beyond reason. It would indeed be an improvement if scientists today read and understood Hume, for at least some modesty regarding their own knowledge claims would certainly ensue.

Unfortunately, the part of Hume's thought that was most lasting was his simple construction of cause and effect and the reduction of all causal relationships to the constant conjunction of objects. These two ideas have certainly served the mechanics-illustrated view of life well.

The problem with seventeenth- and eighteenth-century rationalism and empiricism is that both left undeveloped (or one might even say avoided) the realm of experience and, consequently, the realm of power. An alternative to Hume's empiricism (and inevitable skepticism) and Descartes's rationalism is a reconstruction of American Indian metaphysics suggested by Deloria: a reconstruction that overcomes the Western dualisms of knowledge versus beliefs, and science versus religion. The difficult task for many of us first-generation "academic" intellectuals —Euchee, Lakota, Salish, or otherwise—is to recognize that the wisdom we want to explore is born of experience. In addition, for those *traditional*

scholars or elders deeply imbued with this understanding, self-conscious discussion or analysis of their so-called metaphysical systems would be difficult at best and may rightly seem foolish or dangerous—possibly both.

Fortunately, we academically trained Native scholars have an advantage. If we avoid the traps of Western metaphysical schizophrenia, we can explore indigenous systems of thought by becoming attentive to how our traditional scholars or elders continue to live. The incredible gulf between Western and indigenous metaphysics is best summed up as follows: in the Western context metaphysics became a study for philosophers; in indigenous communities metaphysics would be understood as the basis for living well—attentively, respectfully, and responsibly—in this world.

Religious Beliefs Versus Scientific Knowledge

As we enter the twenty-first century, the fact that Native students are often confused by the question "What is the difference between knowledge and beliefs?" is hopeful. For unlike many non-Indian students today who think their beliefs, as such, excuse them from having any intelligible discussion in support of these beliefs or correspondence with reality, American Indians and Alaska Natives still seem to grasp that beliefs are most fundamentally about what we know and understand.

A very good friend and scholar in the Western tradition, George Kaull, used to constantly say, "Faith is believing something you know ain't so," and, "Religion is the problem!" As a student of the Western tradition, I understood his point: for if knowledge becomes reducible to materialist mechanics, and those experiences and most deeply felt aspects of our existence are irreducible to such mechanical explanations, then religion (broadly understood as encompassing such aspects and experiences of our existence) becomes a realm of faith: unknowable and unexplainable.

Indigenous American Indian religions exist independent of this metaphysical burden. While explainability seems necessary in

rationalist accounts of religion, it makes religion merely a large set of potentially infinite, abstract logical systems. So what one begins to know about religion in the Western tradition is a philosophical system or theology. Faith becomes critical and necessary when one wants to know how these elaborate abstract systems correspond or operate in the world, for there exists within the dominant Western metaphysics no way of knowing—in other words, Descartes's doubt or Hume's skepticism.

American Indian, essentially tribal, religious traditions offer a stark contrast to the metaphysical schizophrenia submerged deep in the Western tradition. First, rationalist explanation is unnecessary if one depends on experience. This does not make the discussion of religion easy, it merely suggests that what we can discuss is limited, not just by tribal tradition, but by its very nature (reality). Indigenous people might agree with Hume, although for much different reasons, that the most meaningful aspects of religion are unexplainable by either the rationalist or the empiricist mandates of Western metaphysics. However, in the continuum of experience, indigenous people depend on experiential verification, not logical proof.

It is not the least bit personally or communally troubling to indigenous peoples that all of our human experiences, especially "religious" experiences, are not reducible to objects or logic. William James's *The Varieties of Religious Experience* debunked what he called "medical materialism" over a century ago, and his basic critique of scientific explanations of religious experiences still holds up. Experience remains the unexplored metaphysical terrain of the twenty-first century. And it is likely that the best scouts will be Indians—not by virtue of superior "intellect" as commonly understood, but simply because there remains among many of us a predisposition to live in the world as opposed to living on, above, or in control of the world.

Sam Deloria gave an excellent illustration of the fundamental difference in Western and indigenous worldviews during a presentation at Haskell Indian Nations University. He commented that one of the difficulties in having our traditional elders testify before

Congress on issues relating to "religion" or "religious freedom" was the immediate miscommunication that ensued. When asked by committee members to speak about their religion, elders would often respond by telling committee members that they did not have a "religion." They were absolutely right, but their stance was predictably confusing to congressional committee members, who were in no position to understand what our traditional scholars and spiritual leaders were telling them.

Osage theologian George Tinker summarizes the basis for this communication problem quite well:

> Most adherents of traditional American Indian ways characteristically deny that their people ever engaged in any religion at all. Rather, these spokespeople insist, their whole culture and social structure was and still is infused with a spirituality that cannot be separated from the rest of the community's life at any point. Whereas outsiders may identify a single ritual as the "religion" of a particular people, the people themselves will likely see that ceremony as merely an extension of their day-to-day existence, all parts of which are expressed within ceremonial parameters and shall be seen as "religious."

The sacredness of life was felt, acknowledged, and expressed throughout one's activities in the world.

It is difficult to say exactly why experience in the world became so frightful to civilized Western humankind. *God Is Red* made a good case: the problems ensued shortly after the life of Jesus was no longer seen as the life of a single community member in a very specific place on the planet, but as the outline for an abstract, worldwide, theology-based religion. But other events seem to have played a role too, including rapid technological advancement, development of the modern nation-state (or reemergence thereof), and incredible social and biological catastrophe in the fifteenth century. It seems plausible that Kirkpatrick Sale's judgment

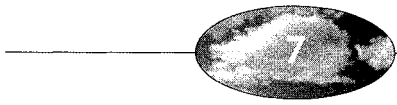
in *The Conquest of Paradise* of the voyages of Cristobal Colon may be right: Columbus was not so much trying to discover a new land but escape a declining, chaos-ridden old land.

The distrust of experience is nowhere more evident, as we have seen, than in the philosophy of Descartes, who logically introduces God as a kind of insurance policy for reality. And the fear of experience in the world may have been the motive for the greatly diminished conception of experience in Locke's and Hume's empiricism. Nevertheless, Descartes's rationalism offers little hope of resolving the dual personality of Western metaphysics, as abstract logic affords establishment of as many gods as human beings can think up.

Humankind may indeed have a gift for thinking things up, creativity, imagination, and inventiveness, but human societies and the earth's ecosystems seem threatened by a human creativity and imagination that has literally and figuratively lost touch with the earth. My friend George Kaull came to believe late in life that science also had a share of the "problem" he used to ascribe to religion. If faith is "believing things you know ain't so," a good number of scientists are guilty.

The silence of the sciences about the most pressing problems of our world today is indicative of the schizophrenic nature of the metaphysics underlying much of their modern practices. Descartes's rationalism and Hume's empiricism are flip sides of the same coin, a worldview in which humans presume themselves to be the measure of all things. Unfortunately, neither tackles the real question—so what of humankind, what of this unit of measure, so to speak?

The problem with Western science (both rationalist and empiricist denominations) reminds me of what the great pitcher Satchel Page told a young player seeking advice. To paraphrase: "Remember, it's not what you don't know that gets you in trouble, it's what you know that just ain't so that causes problems."



TRADITIONAL TECHNOLOGY

V. Deloria

Education today is wholly oriented toward science and secularism. At the core of every curriculum is the belief that we can look at phenomena with a completely rational and objective eye and find abstract principles underlying all behavior, from atoms to masses of people. This perspective implies, of course, that the natural world and its inhabitants are completely materialistic, and that even the most profound sentiments can be understood as electrical impulses in the brain or as certain kinds of chemical reactions. We have arrived at this state of affairs through the application of a methodology of reductionism, a tendency to divide, subdivide, and subdivide again in order to find the constituents of an entity or event.

The reductionist view of the world is further enhanced by the spectacular success of modern technology. Natural forces are being brought under human control, and cosmic energies bring us both power and entertainment. If a person were to chart out the relationships of the various academic disciplines, the resulting outline might find physics and mathematics as coequal partners at the top of a pyramid of knowledge with chemistry, biology, psychology, and eventually the humanities as imperfect subsets or special cases of the application of physics to selected phenomena. This outline has dominated most of this century, but recent theoretical developments are now beginning to call this simplistic perspective to account. The Gaia Hypothesis, among other new theories, suggests that we should begin to look at things organically and that we might indeed be a minor episode in a larger scheme of life. Whether this hypothesis proves fruitful enough to

become a dominant paradigm in the social/scientific future is beside the point. The issue today is that we are no longer bound to use mechanistic models exclusively to tell us how to think about the world.

The knowledge and technology of tribal peoples, primitive peoples, and ancient humans does not really appear in the modern scientific scheme, unless it is to be found within the minor articulations of the concept of cultural evolution hidden in the backwaters of anthropology, sociology, and history. This knowledge that served our ancestors so well emerges from time to time when modern scientists advocate a novel interpretation of data and, in order to claim some historical roots for their ideas—as new ideas are forbidden in academia— ancient or tribal peoples are cited as societies who once used certain practices or held certain beliefs. But the presentation of the ideas is usually accompanied by the patronizing view that although tribals and primitives did originate the idea or the practice, they could not have possibly understood its significance.

What would be some of the aspects of traditional technology? Foremost would be establishing relationships with the larger cosmic rhythms and following those cycles. It is not simply correlating the growth of corn with the maturing of mountain plants as earlier mentioned. The Tohono O'odham regulated their harvest of desert plants according to the passage of star formations so that other creatures could use the desert plants when it was best for them, humans standing aside while they did so, after which humans could harvest what they needed. Technology would be the burning of woods and grasses to ensure proper growth and elimination of the buildup of undergrowth that would cause catastrophic fires. Traditional technology involved knowing when to harvest plants and how to approach them. Sand cherries would be sour if picked when the wind was blowing from humans to plants and sweet when it blew from plants to humans.

Immense knowledge of horses was possessed by many tribes. An old tradition says that the Nez Perce created the Appaloosa by putting mud compacts on pregnant mares where they wanted spots to

be on the colts when they were born. Bows made from different kinds of wood produced different effects, and consequently people had to wait until the different woods could be harvested for bows. Teas and poultices made from herbs had to be harvested at the right time or they would not have the proper potency. Watching birds approach and use trees and shrubs enabled people to learn the correct time for harvesting. Medicine rocks abounded and certain kinds of crystals were used for divining future events. Watching how animals related to each other often showed the best ways to approach various animals. Almost everything in nature gave lessons on how the human should most profitably live.

Indian students who come from traditional homes have considerable difficulty assimilating the practices and beliefs they learned as children with the modernist attitude of science. And for Indian students who grew up in urban areas and whose experience in reservation communities is limited to sporadic summertime visits, an even greater difficulty in assimilating this attitude exists. These students often believe certain things about tribal knowledge and techniques as a matter of faith because their experiences are very limited. But they want to recapture as much knowledge of their own tribal past and practices as possible, so the problem becomes an emotional as well as an intellectual dilemma.

A good deal of the traditional knowledge was placed in a family context so that it was not difficult to remember. Thus animals and plants were believed to be not simply peoples but families within that peoplehood. It was therefore possible to establish intimate relationships with specific plants and animals and gain the precise knowledge that they possessed about the world. Although much of that knowledge has been lost with the confinement of our peoples to small reservations, it is still possible for the next generation of Indians to regain much information that we once had. Through precise observation and through ceremonies, we can once again connect with the lives and minds of the other entities of the creation.

Today numerous new studies suggest that many species have their own languages. Birds, prairie dogs, beavers, bears, and others

are now given credit for having a substantial mental and emotional life. One might even project that they have their philosophies as we have ours. It would be foolish to deny that possibility when purchasing tapes of whale songs at our local New Age store. Now, these creatures often spoke to our grandparents in our language and also taught them some of their language. Imitating birds and animals was not simply an entertainment talent but spoke of the intimacy of organic life in a way that Western science may take decades to understand. So at many points where the West relies on doctrinal explanations, traditional Indian knowledge can provide both ideas and data to bridge the gulf and expand human understanding.

CREATION STORIES

If one should track backward into the past of most tribal groups to find how things originated, one would quickly discover that specific instructions were given to the old people regarding plants, animals, birds and reptiles, and stones, as well as the technology for living in community with them. These instructions came in dreams, visions, and unusual incidents, and more often than not the relationship with plants and animals was a result of interspecies communications. The primary focus of creation stories of many tribes placed human beings as among the last creatures who were created and as the youngest of the living families. We were given the ability to do many things, but not specific wisdom about the world. So our job was to learn from other, older beings and to pattern ourselves after their behavior. We were to gather knowledge, not dispense it. Western science really traces itself backward to the Garden of Eden scenario in which humans are also last created, but it is believed that they are given mastery over the rest of the world. Humans are, in the Western scheme of things, the source of knowledge and information, but they are also isolated from the rest of creation by standing alone at the top of the pyramid.

Because we gather knowledge from older beings who have the wisdom of the world within their grasp, we must maintain a relationship with the rest of creation. Consequently, the clan and kinship systems that guided the social organization of the world were

not only modeled after observed behavior of other beings, but also sought to preserve the idea of relationships of the natural world within the technology that arose as a result of our learning experiences. Western science learned its lessons from observation and then from experimentation with the entities of the natural world. There was no sense of community because humans had been placed too far above the rest of creation, and there was no hesitancy among Western people to use the rest of creation in any manner it could conceive. But the price of using others as objects was that absolute values had to be maintained, and space, time, and matter became absolute concepts within Western science. Both science and its reductionist methods remained absolute as long as these ideas were regarded as absolute.

In a fundamental sense, which many people in science do not yet recognize, the theories of Albert Einstein created tremendous gaps in the Western scientific scheme. Einstein's work challenged the absolute status of space, time, and matter, and his major contribution was to reduce the absolute nature of these ideas to a relative status; he introduced the context into modern science in a way that could not easily be refuted. But the importance of relativity for traditional thinking is that it began to shift the focus from the absolute materialistic framework science had constructed to an idea that things are related. Not many people in the academic community have yet applied this idea to the world as a totality, and certainly many of them would rebel at the idea that science is shifting significantly toward a tribal understanding of the world. They continue to believe that relativity means that there are no absolutes. In fact it means that things are related in some fundamental ways that had previously been excluded. There may not be as many anomalies and coincidences as we have previously supposed.

Many tribes described relationships in terms of correspondence between two things ordinarily thought to be distinct, isolated, or unrelated. The old saying in religious ceremonies, "as above so it is on earth," is such a correspondence; so is the gathering of things for equipping medicine bags, for making drums, weapons, household goods, and clothing, and for creating altars and blessing

dwellings. In each of these activities a variety of materials are used, and they are said to "represent" certain things. *Represent* here is not taken as a symbolic gesture, but usually to mean that the power and knowledge of these things are actually present in the creation of something new.

WISDOM AND VISION
ACKNOWLEDGING THE LIFE AND POWER IN ALL THINGS

Today we have the artifacts of every tribe lining the shelves of museums and being described as great primitive art. And, indeed, if we think of these artifacts only as useful utensils and implements, apart from the tribal context, they may be simple instruments, extensions of people's limbs and desires as Robert Ardrey once edified describing weapons and tools. The important part of the relationship, however, was that all things were alive, and consequently their own power and wisdom was incorporated with them wherever they were represented. Modern humans use weapons, tools, and instruments to extend the capabilities of their own selves, and they use these things mechanically. Tribal people in using their instruments did not simply extend the scope of their own capabilities, but enhanced their abilities through the addition of the powers inherent in the relationships they had with other living things.

Today we attend colleges and universities in order to learn the principles of how things work and how to use instruments properly. Tribal people learned these things in religious ceremonies, depending on the intensity and scope of the vision a person received, or the frequency with which spirits informed him or her concerning the proper attitude to take when exercising certain powers. Thus, it was a holistic understanding that undergirded tribal technology, and use of the technology was vision-specific. That is to say, the knowledge the old ones attached to their technology demanded that they use their powers sparingly and on the proper occasions. A person could not indiscriminately use powers as we casually use our instruments today. This lesson is important because today with modern technology we tend to believe that we can apply it on a

rather indiscriminate basis, and we are learning that often we do not really understand the side effects such use creates.

The old anthropology and history of religious schools used to paint tribal peoples as a superstitious lot who cringed in fear of the natural elements and made up simplistic explanations for all things they did not understand in an effort to create some kind of science for themselves. Modern science tends to use two kinds of questions to examine the world: (1) "How does it work?" and (2) "What use is it?" These questions are natural for a people who think the world is constructed to serve their purposes. The old people might have used these two questions in their effort to understand the world, but it is certain that they always asked an additional question: "What does it mean?"

HEALING THE LACK OF BALANCE

The old people, surveying a landscape, had such a familiarity with the world that they could immediately see what was not in its place. If they discerned anything that seemed to be out of its natural order—a nocturnal animal in the daytime, unusual clouds or weather conditions, or a change of the plants—they went to work immediately to discover what this change meant. Many observers have said that this ability to perceive anomalies meant that the people could see when nature was out of balance, and I certainly would not quarrel with this characterization. When the people saw an imbalance, their understanding of the natural ordering of cosmic energies informed them that their responsibility was to initiate ceremonies that would help bring about balance once again.

Eventually it was recognized that the world had a moral being and that disruptions among human societies created disharmony in the rest of the world. This belief corresponded to modern professional ethics but differed from them in that the whole tribal society was involved in healing the lack of balance. Today it is only the professional who sees the imbalance, and the general society comes to believe that the scientist can create the technology needed to bring balance back again. Thus, in spite of a clearly deteriorating

physical world brought about by industrial society, we still think in mechanical, technological terms when we discuss restoration of what we have disrupted. Because no one actually "sees" quantum waves, what is quantum physics except scientific mysticism?

Traditional technology may seem outdated to many Indian students now undertaking a scientific education. If so, they are not getting the full story from historians and apologists of science. It is said that Albert Einstein had holistic and sometimes substantial visions of the world, and that he spent most of his life looking for the proper mathematics to describe what he had experienced. One need only look at the many instances in which noted scientists had visions or dreams that solved the problem they were confronting. The world in which we live, at its very foundations, is unified and cannot be reduced by techniques and rationality. Where traditional Indians and modern science are quite different is in what they do with their knowledge after they have obtained it. Traditional people preserve the whole vision, and scientists generally reduce the experience to its alleged constituent parts and inherent principles. These principles then become orthodoxy and stumbling blocks to future generations.

A great gulf exists between these two ways of handling knowledge. Science *forces* secrets from nature by experimentation, and the results of the experiments are thought to be knowledge. The traditional peoples *accepted* secrets from the rest of creation. Science leaves anomalies, whereas the unexplained in traditional technology is held as a mystery—accepted, revered, but not discarded as useless. Science operates in fits and starts because the anomalies of one generation often become the orthodoxy of the next generation—witness the continental drift theories, catastrophism, and the fictional theories about the Bering Strait.

GIVING TRADITIONAL TECHNOLOGY A CAREFUL LOOK

Indian students would do well to understand the traditional approach to learning about the world in addition to taking the scientific courses to gain entrance to professions. They should be

prepared in their work, as students and later as professional people, to answer the question "What does it mean?" in addition to answering any other questions that as professional people they will be expected to answer. Traditional technology can be extremely useful because it always reminds us that we must take our cue about the world from the experiences and evidence that the world gives us. We may elicit and force secrets from nature, but nature is only answering the specific questions we ask it. It is not giving us the whole story as it would if it were specifically involved in the communication of knowledge. What is given willingly is much more valuable than what is demanded as a matter of force.

Because many Indian students will be working for their tribes once they receive their professional degrees, it would benefit them to give traditional technology a careful look. Tribal lands and resources have always been used on a sustained-yield basis, and this attitude is in distinct contrast to the American propensity to exhaust resources for short-term gains. Modern technology might indeed be useful in repairing the damages already done to tribal lands so that the lands can once again be put on a traditional use pattern and become productive. And even this possibility can be learned from the world as it responds to ceremonies and human societies who understand their place in the larger cosmos. As science progresses, so do the ceremonies, and as we look ahead there is considerably more to be gained by combining insights than by ignoring them.

Technological Homelessness

D. Wildcat

The United States is a nation of homeless people. A modest estimate would place three-fourths of U.S. citizens in a condition of homelessness: a technology-induced condition of homelessness. I am not talking about the desperate situation of the far too many Americans without any real means to provide for a domicile or residence with a definite address. These individuals and families have real problems, though their lack of housing, ironically, might be straightforwardly addressed and solved to a great extent given a little moral courage and political will. No, the problem of homelessness demanding attention concerns the vast majority of Americans today living in houses, condos, and apartments, residences with addresses, who have taken advantage of our society's modern education systems and technologies and still feel lost, disconnected, ungrounded, or what we call homeless.

By *homeless,* I mean without a home as the *American Heritage Dictionary* secondarily defines *home:* "an environment or haven of shelter, of happiness and love." In industrial and postindustrial societies, human beings, especially in U.S. suburbs, live less in shelters than bunkers, strategic enclaves where they do not so much live as primarily sleep. Happiness and sleep among those "with means" in America are only a pharmaceutical prescription away, and for those "without means" happiness is predictably defined by success in attaining the material wealth a great many of the unhappy "with means" possess. As for love, the line of a popular song states, "What's love got to do with it?" As it turns out, for many, very little.

It is disturbing to have to point these facts out, especially because we are surrounded by them daily. Alexis de Tocqueville, almost two centuries ago, feared for democracy in America because he saw Americans so preoccupied with material success that they had little time for participation in democracy. Only three decades after Tocqueville's assessment, Suquamish leader Seattle noted that human beings seemed to have lost the knowledge of how to live. By the middle of the nineteenth century Americans were already in a struggle for survival. The irony is obvious: we have learned more about the manipulation of the physical or material elements of the world for our human comfort and convenience, and yet American workers are experiencing increasing rates of anxiety, depression, and stress. Not surprisingly, in the last decade American workers have surpassed the Japanese in time spent working. The United States is now the longest-working advanced industrial nation in the world.

The economy may be good for some or even many, but good for what, or good at what? The answer is simple: making money. It is often quoted that after the successful detonation of the atomic bomb (the preeminent example of technological achievement in a scientistic worldview), Einstein lamented that everything had changed but the way human beings think. There is nothing new in the judgment that industrialization and manufacture have disproportionately benefited a few financially, and in terms of material comfort and convenience benefited many, although inequitably. But at what cost to ourselves and our ecological communities? Indices and rates of mental illness are all up, especially when one includes those illnesses labeled neuroses. Ironically, it appears we may have bought more with the materialist mantra of comfort than we bargained for—a significant amount of discomfort to our spirits.

In the Western tradition the critique of industrialization has largely been over the control and management of the system of production, and consequently, the distribution of the industrial economy's benefits. Apart from a neglected anarchist moral critique and a recent strain of criticism referred to as neo-Luddism,

only a few have questioned the overall effects of technology on the human condition and on how we live, and what it means to be a human being.

I wish all young Indian students would read Stan Steiner's *The New Indians.* It documents a history too few Indian students today know. They should at least read the foreword, in which Steiner recounts the following incident. In the 1960s Vine Deloria, Jr. was invited to a civil rights fund-raiser to see how things were done. As the event was winding down the topic of Red Power was raised, and the featured keynote speaker laughed and quickly dismissed the notion, to which Deloria replied:

> Red Power will win. We are no longer fighting for physical survival. We are fighting for ideological survival. Our ideas will overcome your ideas. We are going to cut the country's whole value system to shreds.
>
> It isn't important that there are only 500,000 of us Indians. What is important is that we have a superior way of life. We Indians have a more human philosophy of life. We Indians will show this country how to act human. Someday this country will revise its constitution, its laws, in terms of human beings, instead of property. If Red Power is to be a power in this country it is because it is ideological.

When told again that Indians should be fighting for equality and civil rights, not Red Power, Deloria continued:

> We do. But that isn't the question. The question is, What is the nature of life? It isn't what you eat, or whether you eat, or who you vote for, or whether you vote, or not. What is the ultimate value of a man's life? That is the question.

To linear thinkers the above statements may seem out of place in a discussion of technology, but they are the most fundamental questions to be considered as we think of the development and use of technology: to what ultimate end or purpose are these tools?

Education today must now undertake a serious examination of these questions, and there is no better place to begin than classrooms in American Indian communities. Here, there still exists an experiential metaphysics and worldview that approaches technology as essentially a question of nature and how we human beings live with and in nature.

For the sake of clarification, I submit that two very different understandings of technology are the issue. A deeply seated (metaphysically based) Western view of technology as science applied to industrial (manufacture) and commercial objectives, versus a (metaphysically based) American Indian, or rather indigenous, view of technology as practices and toolmaking to enhance our living in and with nature. The Western conception and practices of technology are bound up in essentially human-centered materialism: the doctrine that physical well-being and worldly possessions constitute the greatest good and highest value in life. Indigenous conceptions and practices of technology are embedded in a way of living life that is inclusive of spiritual, physical, emotional, and intellectual dimensions emergent in the world or, more accurately, particular places in the world.

We cannot afford to minimize or soft-sell the situation in which we find ourselves. The problems we most likely, and certainly our children and grandchildren, will face are monumental: environmental degradation, technological imperialism, consumerism for consumerism's sake (what Thorstein Veblen called conspicuous consumption), and increasing social dysfunction. Yet there is reason to be cautiously optimistic, because we have literally reached a place, or I should say places, in the modern world where the plethora of problems that surround us are rising to level where they cannot be ignored.

Nevertheless, there is hope for our children because, in spite of what some of humankind has sought to improve and control in the natural world, tremendous beauty and wisdom are still around us. The challenge of indigenous education is to expand the ability of children to experience the world—the world they are a part of as their home, an environment or refuge of happiness (with hard

work) and love (with respect). We can and must educate a generation of children who find home in the landscapes and ecologies they inhabit.

As we make great strides in ecological knowledge at the beginning of the twenty-first century, the problem human beings face today is simply summed up by the following question: "What exactly is the ecological niche of human beings?" Although scientists have painstakingly sought to classify and analyze all the other lifeforms on our planet, it strikes me as odd that they have spent so little time considering just what our (human beings') "niche" might be.

Many of us human beings have sought to distinguish ourselves from the rest of nature, but to what end, what purpose? Human beings in modern Western civilization have historically identified culture as the primary feature distinguishing us from other animals. Specifically, toolmaking, or technology, and language have until very recently been thought to clearly demarcate us, humans, from them, other animals. Some of us have found great solace in thinking of ourselves, with our culture, as above other animals and the natural world in general.

It is this human "cultural context" that must be placed in a broader understanding of natural "history" if we are to understand ourselves; and within culture, technology must be carefully scrutinized. Indigenous American Indian traditions, we believe, are our best guides for reassessing technology, for they represent practical ways of seeing technology as a part of nature.

It is difficult for many adults in modern American industrial or postindustrial society to understand that the natural world—and to be precise, local ecosystems—ought to play a major role in determining the technologies we employ. The examples are so obvious in hindsight—I repeat, in hindsight—that we would do well to pause before we leap headlong into the bioengineering utopia we are presently being promised.

Living close to the confluence of the Kansas and Missouri rivers for the last three decades, it has been interesting to watch people's reaction in the 1990s to having, within the span of several years,

two 500-hundred-year floods. Dams and levees, while good for urban development and large agribusiness, are overall ill-conceived given the degradation to riparian ecosystems and water quality, not to mention the flood damage and costs to the federal government.

Dakota anthropologist Bea Medicine has discussed the destruction to sustainable Dakota agricultural practices that ensued with the damming of the Missouri River on the Standing Rock Sioux reservation. Wisely, the Dakota farmed in the rich river bottoms but set up their villages above them. They knew better than to set up villages on the river's edge, although in fair weather there was no obstacle to camping there. No synthetic fertilizers were needed, for when the floods came as they surely would, the soil would be enriched and replenished. Likewise, there were no damages to human-made dams, levees, and domiciles.

My friend and colleague Cynthia Annette, a riparian ecologist, likes to say, "Rivers have memories." No matter where we (humans) want them to go, they remember ancient paths. The Dakota knew this and chose to live in a manner that respected the Missouri River's memory. The counterpoint to this understanding is the U.S. Army Corps of Engineers, who have never met a river they could not dam. Compared to genetic engineering, building dams and levees to control rivers ought to be relatively easy, but rivers are hard to control. All the variables that combined to produce the incredible flooding, we are now told, could not have been predicted. In short, nature and the rivers had their way. The notion that technology can translate into control of nature is, as stated earlier, nothing more than—to borrow a phrase, if turnabout is fair play—a mythology, although a very modern one.

TECHNOLOGY IN THE BIG PICTURE

"Bridging Gaps in Technology and Culture." This was the theme at the 1998 Hazardous Waste Research Conference, where I suggested to scientists and engineers they address this problem by first acknowledging a complex set of interrelations in a formula I called TC3. Technology, community, communication, and culture

are intimately related. Try to imagine any one of the four existing among human beings without the other three—you cannot. I summarized this relationship for scientists and engineers as the TC3 formula.

Haskell Environmental Research Studies Center programs and projects over the last five years have reminded me of the importance of the TC3 formula because unfortunately, most Americans live as if this relationship is unknown. That we speak of gaps in or between technology and culture is crucial, for it is symptomatic of a serious obstacle to understanding. These gaps obscure the reality that technology is a part of culture as are the forms that community and communication assume. Still, the recognition that gaps exist suggests the issue is far from academic. Rather, the issue strikes at the core of how we ought to think about technology and what education and environmental research ought to be about today: the way we live and our respect for the places where we live (our homes and communities). The advantage of Deloria's power-and-place-equal-personality equation is that when applied to technology, it forces one to frame technology in the big picture.

Many scholars, scientists, and engineers are engaged in problem solving and research as if TC3 were unimportant. Disciplinary boundaries and professional specialization force many to work in conceptual boxes, and we increasingly live literally in isolated/insulated physical boxes. The result is a natural and social forgetfulness about the way in which technology, community, communication, and culture are related. Collectively our human ancestors may very well have possessed a wisdom modern human societies desperately need—a wisdom not produced by superior "intelligence" or rationality, but born of direct experience and subsequent reflection. The wisdom resides in the recognition that the modern dichotomy between human/social issues versus technology/technical issues is a false one, an invidious distinction. Technology and humanity are as inseparable as human beings are from their natural environments.

Reading human history, one is impressed by the extent to which it is full of humankind's self-declared superiority. However, most

recent entries appear to revolve around technological achievements. For good reason: human evolution has resulted in an attribute that is anything but physical or adaptive as it is ordinarily conveyed in beginning biology courses. Our uniqueness, as a species, is found in the ability to use technology to live in environments that would otherwise be largely uninhabitable by humans and the societies on which we depend.

Our capacity to manipulate environmental elements to compensate for our physiological awkwardness is what nature has given us two-legged persons to work with to secure our lives. It appears natural selection has not selected us for a particular niche or place on the planet, but has selected traits that have allowed human beings, with the use of technology, to adapt to different places and environments on our Mother Earth.

Central among those traits is our sociability or social nature. Unlike the social dimension found in many animals—for example, big cats, wolves, bears, dolphins, and of course higher primates—our physiological awkwardness dictates a necessity for toolmaking and manipulation absent among other animal species. This is less a sign of human superiority than a sign of biological difference. In my mind this explains why in our traditional indigenous ways of speaking and praying we so often describe ourselves as pitiful beings. Humans depend on many good relations and relatives to live and survive in this world—hardly superstition, just ecological fact. Nature, nurture, and technology are intimately connected.

Our American Indian societies understood this profoundly important point: our evolutionary past has not made human beings superior but merely different. We identify our culture or social spheres as what distinguishes us from other biological life, but with respect to other animals this is less a case of absolute uniqueness than an issue of degree. Elizabeth Marshall Thomas has demonstrated this in her wonderful book *Tribe of the Tiger*. Yet it is the degree to which our social behavior revolves around the development of technology that distinguishes us from other animals and explains why we should consider technology as central to human nature and history. We ought to give up on our modern notions of

human superiority, lest our technological "successes," as typically measured, become our defeat and the destruction of our home—the earth's biosphere—and many of the relatives we share it with.

From primitive toolmaking to the advent of modern machinery, our primary goal was to fashion material culture—clothing, shelter, utensils, and so on—that provided a social and cultural adaptation to environments and places. Throughout most of human history, places and environments shaped and limited the kinds of cultures humans created. Places, technologies, and cultures were inextricably connected.

Deloria's power-and-place-equal-personality equation, or P3 formula, makes for a spatial metaphysics of experience. The TC3 expression, technology, community, communication, and culture, is an attempt to identify the natural cultural feature of human beingness. P3 and TC3 are not rigorous mathematical expressions; rather, I think of both as symbolic expressions that can serve as mnemonic devices that preclude thinking of technology, or for that matter any of the key features of human culture, as outside of nature.

Our biologically and geographically diverse natural environments shaped how we lived—our livelihood activities, shelters, clothing, and much of our symbolic nonmaterial culture. Keith Basso's book *Wisdom Sits in Places* brilliantly documents the extent to which Western Apache history is less about time than places, or what might be called a sense of place.

New technologies have given humans the ability to reshape environments and geographies to accommodate comfort and convenience. And we are increasingly preoccupied with the physical rearrangement, manipulation, or engineering of natural environments. John Locke set out the rationale for this mode of living 300 years ago. In Locke's philosophy the rest of nature existed ultimately for humankind's benefit and convenience. It was a short step to reason that if natural environments do not meet our human standards of comfort, convenience, and aesthetic beauty, we ought to change them to do so.

Modern technology allows us to do precisely this, but at what cost? I believe the cost is a growing absence of a sense of place

for human communities and correspondingly modern culture, which are literally "groundless." Thirty years ago Vine Deloria, Jr., described modern societies as rushing to create an "Artificial Universe." Vine Deloria may be one of the few nontechnical scholars unsurprised by discussions about artificial intelligence, globalization, and virtual "realities," "communities," "persons," and so forth. Human beings fail to experience the world as our ancestors did, and as many of my living indigenous elders do, because our technologies increasingly insulate us from direct experience and the acquisition of experiential knowledge from natural environments.

Automobiles, television, air conditioning, and computers, to pick four obvious examples, result in human convenience, entertainment, comfort, and escape from incredible drudgery. But I interact less directly and physically in time and space with other human beings and the natural environment because of the ease, comfort, privacy or relative isolation with which I can use these technologies. Technology, in general, has reshaped most people's everyday lives, often in measurably positive ways. But here is the irony: as we disengage technology from communities (which include plants, animals, and geographic/geologic features) with a sense of place, and thereby create cultures and forms of communication that are relatively abstract, we unconsciously destroy conditions for our human survival and threaten the lives of many other plants and animals with whom we share this biosphere.

I am not anti-technology; my human nature dictates otherwise. But my nature also requires community (nurture), and currently we pose the quest for community and new technologies as if they were mutually exclusive endeavors. They are not. This knowledge ought to give us reason to pause, not because of fear for what technologies literally do, but out of concern for their residual effects: the unintended byproducts of our human use of the technology.

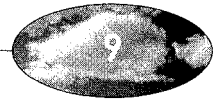
Fortunately, there is some promise in the fact that we are beginning to have powerful allies in the dominant and mainstream system of education. Leading educators, child psychologists, and psychiatrists recently endorsed a report by the Alliance for Child-

hood, "Fool's Gold: A Critical Look at Computers in Childhood," and signed a petition suggesting "an immediate moratorium on the further introduction of computers in early childhood and elementary education."

It might be hoped that adults take notice of what extended computer-time does to them. A study by scientists at Carnegie Mellon University found that as individuals increased time on computers, they also increased feelings of loneliness and depression. What does it tell us when the high-tech interconnectivity of "webs" and "nets" leaves us feeling disconnected? It tells us that technology is potentially impoverishing and harmful to the soul, to our spiritual and interior lives that are formed by the number of good relations we acknowledge and maintain.

If we human beings begin our understanding of the natural world with the big picture, we must acknowledge our relatively recent arrival to our Mother Earth's biosphere. The result ought to be a kind of biological modesty, for many of our biosphere community members have been here much longer than we have. In the minds of many scientists, such as Richard Leaky, some of our biosphere neighbors may outlive us. Our traditional indigenous cultures are literally grounded in the geographies and natural environments to which we are historically connected. In fact, history itself, and our worldviews, philosophy, and material culture, were and in varying degrees still are shaped by a sense of place. If human beings continue to live as if ecology and evolution have given us a privileged place in the natural order of things, our human history may very well be a footnote in the life story of our Mother Earth.

It would be an ancient coyote story writ large if the technology human beings used to ensure our physical and material comfort and convenience resulted in no place to live on this planet—an ultimate form of homelessness that resulted in our extinction. We can bridge the technology and culture gap if we are willing not only to acknowledge the TC3 relationship but also to change the way we live. Human survival and the survival of many of our relatives may depend on it.



TRANSITIONAL EDUCATION

V. Deloria

Education has a transitional function of moving individuals from one status or condition to another. In the old days we used to mark these transitions by giving the individual a new name, a name that would more accurately summarize his or her achievements. Today we award certificates, diplomas, and degrees to mark each step the student takes. But education itself is transitional. New theories and concepts are continually intruding into established patterns of teaching and institutional organization so that the experience of education changes radically from generation to generation. For American Indians there is an additional element to be considered, because Indian school systems are at best transitory. There is no predictability in the actions of Congress that would reassure the people that a decent education will always be available to them. Indian education is conceived to be a temporary expedient for the purpose of bringing Indians out of their primitive state to the higher levels of civilization. Presumably, when this ill-defined status is reached there will be no more use for special programs in Indian education.

The goal of much of modern education seems to be socialization. That is to say, with some few exceptions, we are training people to present an acceptable profile to the corporate industrial world. Our undergraduate degrees actually certify that the student has a smattering of knowledge about a number of fields, is fairly well acquainted with one particular field, and can accommodate himself or herself to institutional life. We pretend otherwise, but this goal is what we actually have in mind. Indian education is some-

what unique in that it has always been premised upon the idea of assimilation without regard to socialization. From the very beginning, first missionaries and later government teachers sought to erase the cultural backgrounds of Indian children with the naive belief that once a vacuum was created, Western social mores and beliefs would naturally rush in to replace long-standing tribal practices and customs.

A review of Indian education programs of the past three decades will demonstrate that they have been based upon very bad expectations. In 1960 there were approximately 2,000 Indians in higher education, financed primarily by private scholarship funds and individual and family efforts. In 2000 best estimates show that we have something like 70,000 Indians in various forms of higher education, financed by a bewildering variety of sources, including colleges and universities, private groups, state scholarships, and several forms of federal assistance. In spite of our continual complaints, it should be obvious that Indian education has made some major progress since 1960, and that while funds are hard to come by for many students, the overall picture appears very bright.

Yet we are all discontented with what is happening in Indian education and we cannot quite put our finger on why. The majority of funds in Title IV and other programs have concentrated on the sciences and administration and management, and yet, as we look around at both reservation programs and the distribution of Indians in private industry, we find little evidence that the efforts of the last forty years have made a difference. We still need many Indian educational administrators, we have a pressing need for management personnel, and we still have great difficulty finding Indians working in industry. Reservation and border-town schools appear to be falling even farther behind the national norms, and many schools are simply thinly disguised holding pens to keep the young people institutionalized during the day until they reach a certain age when we can demand that they behave like adults. The outbreak of devil worship on some reservations and the growing drug problems on others demonstrate the inadequacy of the present situation.

So What Problem Are We Actually Facing and How Do We Deal with It?

Education has generally been misunderstood by its practitioners. It is defined as both process and content, and it is exceedingly difficult to tell from educational behavior and philosophy whether or not the educator is making the proper distinctions. We can divide Indian education into two basic periods: the period of content and the period of process. From the beginning of the Republic, in fact from the beginning of contact, education was primarily a matter of providing content, new ways of thinking of things and new facts. From the Meriam Report of 1928 until the present we have been living in the age of process—which is to say, we have been more concerned with *how* children learn than with *what* they learn. During the past forty years we have been exclusively concerned with how they learn and have almost studiously avoided asking what it is they are learning.

This situation is particularly difficult for students who are studying science because, in most respects, science is content and not process. Consequently, after educating Indian young people in schools that stress learning experiences, we suddenly place upon them the demand that they accommodate themselves to the scientific enterprise—which is to say, build scientific expertise on a secondary education that has very little content. The student has no choice except to attempt to learn the scientific curriculum as well as gain background in the mass of conflicting ideas that now passes for Western civilization. When the social adjustment from Indian community-based culture to non-Indian urban networking culture has to be made at the same time, many students adopt a very rigid posture concerning personal, group, and community values. Too often they model themselves after the professionals in their academic field or their institutional situation. This adjustment then forces them outside their Indian circle and greatly inhibits their ability to draw from their own tribal traditions the lessons that could be profitably learned regarding both science and the social world in which they

live. That we are producing any Indians in science at all is a tribute to the perseverance of this generation of Indian young people.

Where then do we start to make changes in Indian education so that we can deal with the problems we perceive? Perhaps the first step we can take is to admit that education is transitional and that it has both a beginning and an end. Indian education must certainly begin within the Indian community, be it a reservation, small town, or urban setting. Recent legislation, most notably the Indian Education Act, has attempted to deal with this, beginning by requiring that schools receiving federal funds have Indians on their school boards and advisory committees. Here Indians were placed within the process of education but not allowed to determine its content. In Indian survival schools, Indians were allowed to determine the content but were generally isolated from the process of education. Consequently, few schools at the primary and secondary levels have been able to do very much about improving education as a whole.

When we look closely at the idea of a transitional process, we must note that the goal or result should have been contained within the beginning and should flow directly out of it as the potential to be realized. The old Indians saw this necessity at once. The famous saying of Sitting Bull, basically that the people should take what is good of the white person and reject what is bad, assumed from the start that Indians would begin in, and always have recourse to, their own communities and cultural traditions. The missing element here, or rather the conclusion that we always avoid drawing, is the context in which education occurs. Context is also the beginning; it is not only the place to start, it is the channel within which all other developments must occur. Modern Indian education too often looks at the present poverty context of Indian communities and then devises programs that are supposed to deal with and overcome the handicaps that present conditions contain. Thus we have educational programs for every conceivable kind of social and community handicap and disability. But the products of these programs are often worse for the wear, and the best students emerging from them represent but a very small percentage of the total student population.

Compensatory programs fail because they take the Indian context as the immediate conditions under which Indians live. This analysis is a common characteristic of the Western way of thinking, but it is certainly not a traditional Indian way of thought, nor is it the manner in which many Indian parents conceive of education or of their lives. In politics we always speak about the coming generations, and anthologies are filled with clever sayings and quotations about the lands of our grandparents and the next generation of Indians. The essence of these sayings is a view of the world that encompasses many generations of people. That is to say, the proper context of Indian education should be whatever existing conditions are plus the traditional manner in which the tribe has faced its difficulties. In other words, the proper context is the history and culture of the tribe, regardless of the present location of its membership.

We do not have good present examples of how Indian education has worked when the context defined both the content and the process of education, but the school systems of the Five Civilized Tribes certainly functioned in this manner—and they functioned very well indeed. Tribal college graduates could generally speak their own language and English, and they had a reading knowledge of a European language. These were school systems designed by the tribes themselves, funded by the tribes through annuity accounts in the federal treasury, and staffed and operated by tribal governments. The Creek school system invented the school warrant system of finance that was adopted by a good many of the non-Indian school districts in the western states in succeeding years. Additionally, the Five Tribes had seminaries that educated the young women of the tribe and orphanages to take care of the homeless children.

We have part of the message of the Five Tribes educational system today—tribal control—but we do not have the tribal concern to make education the primary function of the tribal government. In those days tribal officials made an annual visit to each school in the tribal system. Students were expected to recite what they had learned in order to demonstrate that they had mastered the content of what was taught. Scholarships for higher education were not handed out on a tribal membership basis. Students had to earn

tribal support after their secondary school days were completed. At graduation whole families came to the school and listened to the students demonstrate their knowledge of the various subjects they had studied. The old tribal custom of reciting deeds done on war parties was translated wholly into a recitation of schoolwork completed. School graduations were the big social event of the year. When we try to summarize the basic philosophy of these schools, we find that there was a general belief that education was something for the tribe, not for the individual. School became an integral part of tribal customs. It was not something imposed on the people.

It is not possible for tribes to fund their own schools today. Indeed, most American communities do not support their own schools but receive federal, state, county, and private financial assistance so that, to a certain degree, no school district in the United States has the financial freedom to determine either the process or the content of its education. Funding is not the issue, however. The issue is providing the context in which what is taught and the processes by which it is taught make sense. Here tribes have a very decided advantage over non-Indian school districts. An individual is a tribal member all his or her life, and consequently the tribe always has a central core constituency of people who represent the individual's interest. Non-Indian communities, on the other hand, are hardly what a person could truly call communities. Apart from small towns that have a greater resemblance to Indian tribes than to other non-Indian communities, most American cities and suburbs are merely places through which people travel. It is an exceedingly rare non-Indian who lives in the same town where his or her grandparents spent their adult lives. As a result, non-Indian communities are themselves in transition. That is to say, they lack context, and consequently their educational programs are increasingly educating fewer and fewer people.

Without a context, science quickly becomes a technology, the application of theory to practical use without so much as a thought about the consequences of the application. This process has been determining the fate of American communities for most

of this century, but now with increasing scientific knowledge we are coming to the end of the period when we can thoughtlessly apply science. In the next decade we will see a massive backlash by ordinary citizens against the use of technology for corporate and private profit, in defiance of the health and living conditions of people in affected areas. A quick reading of any magazine or newsletter devoted to ecological issues, civil rights, animal rights, or agricultural concerns will reveal the scope of the modern reform movement. In short, for the first time since the beginning of the American industrial revolution, which probably began in the 1880s, Americans are now trying to build a context in which the content of education will have some value.

Indian education can exercise an enormous amount of influence in the future if we can place it once again within the tribal context. Almost every book now published by the New Age movement is crammed full of sayings by Indians to the effect that the earth's resources are limited, to the effect that people should have priority, and to the effect that there is an important spiritual dimension to human life, that human life has definite meaning that transcends the technological world in which we find ourselves. All of this attention is merely the exploration by non-Indians of windows into the Indian understanding of the universe. There is a deeply held belief that by appropriating a few wise sayings of Indians, long-standing problems brought about by the misuse of science and greedy capitalism can be solved. But merely appropriating ideas only provides slogans, not understanding.

Until the present time, the theory underlying Indian education was that it would provide a transitional process for turning the Indian child into an acceptable citizen. Education thus moved from an Indian context into a condition where the original context, the Anglo-Saxon Protestant world, was itself eroding because it was adopting an education of process and not content. If we now see the fallacy in this process and redefine Indian education as an internal Indian institution, an educational process that moves within the Indian context and does not try to avoid or escape this context, then our education will substantially improve. It will originate as

part of the tribal perspective about life and pick up additional information on its return to Indian life.

Establishing the Indian context, in view of the absence of clearly defined tribal goals and philosophies, can be easily done by present Indian students. The primary question they should ask themselves is whether or not what they are learning will have some meaning to tribal people. And the answer, at first glance, will be a resounding "No." We presently do not know how to bring knowledge and information back to the tribe because we have not paid sufficient attention to the history and culture of our people. We have been deluded into thinking that there is no applicability of information on behalf of the tribe or no possibility of making our knowledge meaningful. So we must use what we learn about the scientific understanding of the world to ask questions of our people about how our ancestors understood the world, remembering that the tribe exists over many generations and possesses a cumulative knowledge that transcends any particular generation.

The answers that we will receive, when we ask elders and when we read recorded accounts of beliefs and practices, will often seem strange and many times irreconcilable with our scientific knowledge. But we must not use the scientific method to determine the truth or falsity of our comparison. We must learn to place the difference within the tribal context and there reconcile conflicting points of view. As Indians we know some things because we have the cumulative testimony of our people. We *think* we know other things because we are taught in school that they are true. The proper transition in Indian education should be the creative tension that occurs when we compare and reconcile these two perspectives.

Indigenizing Politics and Ethics: A Realist Theory

D. Wildcat

Transitional education challenges us to establish a "creative tension" as we compare and reconcile, where possible, Western scientific knowledge and information with our own cumulative tribal wisdom. As we prepare to think about political sovereignty as an educational initiative, I can think of no better creative tension to explore than that between Western political models and an indigenous American Indian conception of politics and ethics.

American public policy making and administration are informed by a whole set of principles and concepts entrenched in the worldview of Western civilization. They are based on principles, categories, and relationships that are unconscious and seldom questioned. Unless we explore practical public policy issues facing American Indians from entirely different worldview or, more specifically, from a widely shared foundation (what Deloria calls metaphysics) of indigenous North American worldviews, we will continue to make many social problems worse. And we will continue to fall short of democratic promises far removed from classical social contract theory. Public policy makers, managers, scientists, and the general public might gain much by developing policies and practices for human societies based on an indigenous model of politics and ethics, which builds on an American Indian metaphysics of place and power.

The indigenous theory of public policy making and administration offered here comes from what I will call a protoscientific

understanding of the natural world: an understanding based on human experience and empirical trial and error found in "the cumulative testimony of our people." In order to understand this indigenously grounded theory of politics and ethics, three key premises must be explored and understood.

First, public policy issues in Native worldviews involve consideration for the rights or we might say more accurately, following Deloria, the "personalities" of plants, animals, and the physical features of the natural world—for example, land, air, and water—as well as our relationships among our humankind. This is not a naive or romantic premise, for if considered with the full force of its implications, it will be understood as signaling a profound shift in awareness. In the eyes of most modern peoples immersed in America's modern industrial consumer society, it will, according to their Western worldview, entail an "irrational" sacrifice on the part of humankind. Of course, seen through the eyes of traditional Native peoples, today's governmental policies, especially natural resource and energy policies, seem unwise or unsustainable at best and at their worst comparable to a biological holocaust.

Second, the goals of this indigenous theory are practical and utilitarian in a sense akin to Aristotle's *summum bonum;* however, as emphasized above, the framework for the measurement of the *summum bonum,* or the "greatest good," is not human society but the ecosystem or natural environment that forms one's political and ethical community in the broadest sense. In short, the Native view advocates an understanding of the public sphere, which includes many persons, including many other-than-human persons. In fact, it seems to me that Deloria's proposal to understand place and power as the central features of an American Indian metaphysics perfectly grounds the theory I am offering for exploration.

Third, and contrary to many misinterpretations of Native worldviews, nearly all indigenous North American worldviews that I am familiar with consider the world as dynamic, not static. These views acknowledge the biological and physical principles of emergence—especially in their accounts of creation—which on the whole are much less anthropocentric and much more ecological

and evolutionary (albeit in a sense not reducible to popular genetic models) than classical Western accounts of creation, whether Greek, Roman, or Judeo-Christian.

The ideas presented here are the collective cultural wisdom of the many indigenous peoples I have had the good fortune to study with and, most importantly, live with during my last sixteen years at Haskell Indian Nations University. I am merely synthesizing what has become obvious to me and many other American Indian scholars: that a foundation for an indigenous practice and theory of politics and ethics exists. Fortunately, at a general conceptual level this indigenous foundation for politics and ethics can be conveyed by comparison with what easily counts as the foundation of Western political theory and ethics: Aristotle's *Politics* and *The Nicomachean Ethics.*

Aristotle's Politics and Ethics

Two key insights shape Aristotle's thought: first, the recognition that humans are by nature political animals; and second, the understanding that ethics are the result of custom and habit. Politics, for Aristotle, is understood as the study of social arrangements, whereby individual human virtues are developed to their fullest. Inquiry into ethics is defined by Aristotle as the study of the greatest good within social arrangements or relationships. Aristotle's genius is in the implicit linking of politics to ethics.

Aristotle correctly recognizes that human beings are by nature political, or social, animals, but this does not imply that human beings are "by nature" ethical in their behavior. If not born ethical actors, Aristotle rightly concludes one's ethics will be a result of learning through experience in a community—through inculcation by custom and habit. On this point, Aristotle's reliance on the formation of values and beliefs through societal experience, as opposed to a system of ethical values produced through teaching or preaching, has a great affinity with American Indian thinking about the source of ethics. *God Is Red* pointed out that the strength of American Indian value systems, including ethics, is

found in the context of their "communities"—the natural environments from which they emerge. Aristotle's emphasis on the state, custom and habit, and the greatest good provides the basis for a comparison to an American Indian or indigenous conception of politics and ethics.

In Aristotle's logic all things move toward their natural end, that end being the full development of the essence of that thing: the revealing of its real nature. He contends the essence of being human involves our ability to reason. However, because this ability to reason (to make choices) regarding what we ought to do is only fully developed in the context of society, it is necessary that the study of ethics leads to the study of politics. Aristotle believed that a human being, either unable to live in or without need of society, "must be either a beast or a god: he is not a part of a state. A social instinct is implanted in all men by nature.... For man, when perfected is the best of animals, but when separated from law and justice, he is the worst of all" (*Politics*, Book I).

Human nature leads to the creation of society, but the form that society takes is not determined by the nature of human beings. If it were, we would not see the diversity of social arrangements and phenomena throughout the world we today identify as culture.

Aristotle's recognition of diversity in human virtue and various forms of the state also facilitates a comparison to American Indian politics and ethics. Aristotle's empiricism leads him to pose both human virtue and the structure of the state as complex totalities reflective of each other. He never loses sight of the fact that virtue for human beings is manifold, with many different forms and specific practices composing the totality of what is understood as virtuous.

His treatment of virtue as complex allows him to see the state as the institutional embodiment of the greatest good—the *summum bonum*. For the greatest combination or sum of virtues making up the *summum bonum* can only be found in the state, which exists to allow all individuals to fulfill their virtue to the fullest, whether they be slave, servant, soldier, or musician. A virtuous leader and a good state are those that allow every individual person to develop their unique share of virtue to the fullest for accomplishment of the greatest good.

Nevertheless, Aristotle does suggest a hierarchy of values. He clearly determines the virtue of a ruler superior to the subject, and likewise, freeman compared to slave, adult male compared to female and child. He also indicates slaves are slaves by nature and rulers are rulers by nature. Aristotle's worldview is not one with equal opportunity with respect to virtue. While his theory is at its weakest in the manner in which the complex totality of virtue is hierarchically divided, his idea that human virtue is complex and his hierarchical prejudices are clearly explained by the empiricism he adopts in lieu of following Plato's idealism.

Aristotle recognizes that each individual possesses some share or part of virtue, not some universal abstract conception of virtue. As no individual possesses identical or all shares of the complex totality that constitute human virtue, society becomes the site where human beingness is most fully recognized. Because communities, and ultimately states, arise from the nature of human beings, it follows that the structures of communities and states must necessarily reflect the complex and diverse totality of human virtue. Aristotle believes "the good" exists in every person realizing his or her essence or true nature. Because every human being has a different share of virtue, which can only be realized in society, then the organization of society ought to be directed toward all members of society, each and every person, realizing their respective virtue(s) to the fullest. In Aristotle's mind the function of the state must be to allow every person to realize her or his virtue to the fullest. Ethics and politics are inextricably bound together.

Aristotle's naturalistic moral element is implicit throughout his discussion of politics. The leadership of a society or state, regardless of whether it be the leadership of one, a few, or the many, ought to work toward the goal of realizing virtue in its full, manifold, complex totality—a complex and diverse totality of human virtues. Failure of the state to accomplish this goal merely reflects the corruption of human activities and organization.

In Aristotle's mind there is no single or ideal form of the state like Plato's *Republic*. Instead, numerous forms, good and bad, of the state exist, but in all cases the distinction between the good and the

bad state is made according to the ability of the state and its leaders to allow all human beings therein to realize their share or part of virtue to the fullest. The distinction between a good state structure and its leader(s), and a corrupt state structure and its political leader(s), rises and falls with the ability of both leader and structure to allow all humans in society to develop their virtue to the fullest. Ethics and politics are inextricably linked in Aristotle's thought.

The key elements to Aristotle's political and ethical theory are human beings, the state, and the *summum bonum.* One can and ought to read Aristotle's reference to the "state" as government. Aristotle's experience in fourth-century Greece explains why he understood the state as the highest good of all. The city-state was the largest and most extensive social institution in Greece. Its formal creation of law and respect for custom and habit created the natural social environment for human development. Consequently, Aristotle sees the state as the institution "which embraces all the rest, aims at good in a greater degree than any other, and at the highest good" (*Politics,* Book I).

Aristotle recognizes that people require a social existence to be most fully human. He recognizes that social experience, primarily through custom and habit, plays a substantial role in shaping one's values and beliefs. Although born political, that is, social, animals, our ethics or lack thereof will necessarily be products of the society and political institutions that shape us. Therefore, the study of ethics—morality—entails the examination of the social arrangements and relations in which we find human beings. Although Aristotle's basic logic is similar to that underpinning indigenous North American politics and ethics, the terms of his theory are significantly different from indigenous theory.

A Comparison of Aristotle's Ideas to Indigenous Thought

Traditional Native thought agrees with Aristotle's linkage between an individual's ethical development and one's community. However, unlike Aristotle's treatment of the "state" or community, which

consists exclusively of human beings, traditional Native thinkers include as a part of their political communities many other-than-human persons, including persons that swim, winged persons, four-legged persons, and so on. In short, while Western thought, following Aristotle's lead, defines politics and ethics as exclusively human issues and endeavors, Native thought and, more importantly, practices have defined politics and ethics as involving a much broader conception of persons. This point is obvious in the stories, oral traditions, and ceremonies and social life of Native peoples. Many of our languages even offer evidence in support of this claim.

In their earliest interactions with the Iroquois, French Jesuits recorded that the Iroquois seemed confused with respect to who or what constituted a person. The confusion was the Jesuits', not the Iroquois'. The Iroquois understood the concept of person, or personhood, to include plants, animals, and other natural features of their environment, and their language expressed this understanding. As a result, when they considered their moral and political community, it was perfectly reasonable to include the non- or other-than-human persons—plants, animals, and some other natural phenomena—as community members.

This very ancient idea is the basis of an implicit environmental ethos, an ethos that leads one to fundamentally different notions about how we ought to relate to the environment, apply technology, and generally live with the earth. The worldview attendant to this ethos requires one to speak of a moral sphere that goes beyond merely thinking that morality is about the relationships you and I have as human beings. Morality and politics have to do with a reality that involves relationships we have with other-than-human persons of the biosphere and the ecology we (human beings) are a part of.

Morality and politics require that we acquaint ourselves with the many personalities we interact with daily. Natural resource "managers," public policy makers, scientists, and the general public can gain much by developing policies and practices informed by this key feature of indigenous North American worldviews. The best illustration of how Native peoples include many other natural objects

and living beings as members of their community is found in Native clan systems and totems. It is frustrating to constantly hear non-Native peoples speaking romantically of the Indians' "closeness to nature" or "love of nature." The relationship is more profound than most people can imagine, and the implications of this relationship will imply uncomfortable consequences for many. To be Wolf, Bear, or Deer clan means that you are kin to these other persons. These are known and understood as your relatives. As Onondaga elder Oren Lyons remarked during the twenty-fifth-anniversary Earth Day celebration in Washington, D.C.: "We don't call a tree a resource, we don't call the fish a resource. We don't call the bison a resource. We call them our relatives. But the general population uses the term resources, so you want to be careful of that term—resources for just you?"

A radical shift in awareness and behavior occurs when one no longer considers nature as full of resources but of relatives. Like all kinship relations certain obligations and rights are assumed with membership in a clan. The customs, habits, obligations, and rights that correspond with clan and special societies in our tribes served to constantly remind us of the complex community that shapes our identity and ensures our continued existence.

As Native peoples our clan identities and numerous ceremonies exist to, among other things, reinforce this awareness of our relatedness and connection to these other beings. We persons, inclusive of plant and animal persons and the human beings, are all related and connected. These are the so-called new insights of evolution, ecology, and environmental science, and they are the very ancient wisdom of our traditional elders or true indigenous scholars.

Because in nearly all of our Native creation stories animal and plant persons existed before human persons, these kin exist as our elders. These animal and plant elders, as much as our human elders, are our guides. They are members of our community. Aristotle proposed that our values—guiding how we ought to live—are learned from our fellow community members. From an indigenous perspective Aristotle's basic reasoning was right, but his notion of community and its members was wrong.

Native people would argue that it makes no sense to limit the notion of politics and ethics to only human beings. How we human beings live will indeed reflect the communities we belong to; however, by limiting the definition of *persons* to human beings, Aristotle created a false and far too narrow sense of community and corresponding spheres of political and moral life. The inclusion of other living beings and natural objects into a category of persons, which includes human beings, requires a notion of politics and ethics inclusive of these other community members.

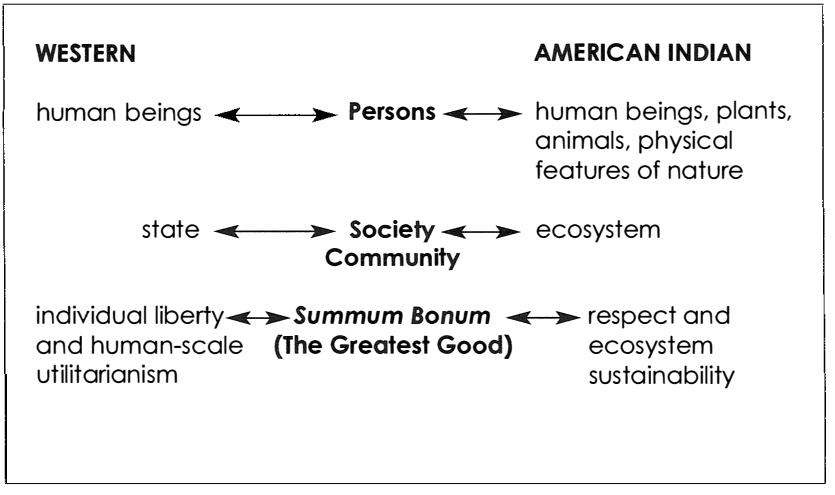
The comparison to Aristotle can be further extended. Aristotle recognized that it took human beings with many different parts of virtue to make a community. Artists, builders, farmers, designers, and so on are all required to make a strong community. Each person has what I have chosen to call a different share of virtue. Today we often speak of personal/professional strengths and weaknesses—Aristotle's point is obvious: we are not all good at the same thing. All of us are much better at doing some things than others; in Aristotle's mind this is natural and to be expected. The manner in which Aristotle develops this idea to create a hierarchically divided sense of virtue is necessarily limited given the incompleteness and partiality of his observations.

As a result of Aristotle's limited experience he inevitably speaks of different virtues as more virtuous than others. However, if Aristotle's notion of virtue is treated as a complex totality, a concept with manifold parts, it seems to me that what is right about Aristotle's reasoning can be kept and what is wrong can be discarded.

Aristotle's argument seems reasonable, but he stopped short of seeing the big picture, as figure 1 illustrates. Replace the key elements of Aristotle's theory, humans beings, society, and the *summum bonum,* with American Indian conceptions of persons, ecosystems, and ecosystem sustainability or health, and you have a complex living system of politics and ethics.

According to Aristotle, it is the political and moral sphere of human existence that distinguishes human life from the rest of the natural life on earth. Aristotle was right to see the good state and the good leader(s) as those that allowed members to develop their

FIGURE 1—A Comparison: Aristotelian (Western) and Indigenous Politics and Ethics.



particular or shares of virtue to the fullest. However, from a Native standpoint, Aristotle stops short of grasping the big picture in a more accurate and immediate way. He too narrowly defines persons and community, or more properly the state. In so doing he poses a view of the greatest good that fairly ensures the environmental mess human beings have created. By excluding the many other-than-human persons of the natural world from active full participation in determination of the greatest good, ecological catastrophe seems guaranteed.

Whether intentional or not the result of this single idea has been to create a worldview where humans are thought to be above the rest of nature (superior by virtue of the fact that human evolution has resulted in our species possessing an intraspecies adaptive ability to reason), an idea that has brought us to the brink of a global ecological crisis by reducing the question, the very idea, of the *summum bonum* to be about relationships among human beings.

An indigenous conception of the *summum bonum* is rich and complex when compared to Aristotle's fairly simple conception of it. By

analogy, the Iroquoian concept of personhood and community, as concisely summarized by John Mohawk in "Animal Natives Right to Survive," entails a concept of the greatest good that includes the four-legged persons, the winged persons, the persons that swim, and the plant persons. It is, in fact, more complex. The Iroquoian concept of the greatest good requires that human beings have more relationships, interdependencies, and persons to be attentive to when considering how to act—from a moral and political viewpoint—to realize the *summum bonum*. (John Mohawk, 1988).

I propose it is precisely this experiential insight that allows comparison to indigenous notions of relatedness and connectedness. Although a virtual cottage industry has developed among some scholars seeking to debunk any claim that Native peoples were unlike their recently arrived European neighbors in their interaction with their natural environment, it seems to me many have missed the crucial point. Our ancestors possessed technology, and they certainly used it to affect their environment. However, their use of technology was guided by an underlying premise that Bacon, Locke, Newton, and most modern engineers would have found incredible: our natural environments contain many more persons than our human selves, and these other-than-human persons are members of our political and ethical "community" and require respect.

Experience shaped Aristotle's and Native peoples' conceptions of politics and ethics. Aristotle's careful observations of human society led him to abandon a single ideal form of the state for a general theory that allowed for the particularity and diversity of various human situations and conditions. He concluded that the state was the highest expression of virtue because it constituted the site where the fullest expression of virtue could occur. The ethical dimension of the state was found in its character as the active and healthy combination of all virtues, or what I have called the manifold shares or parts of virtue as a complex totality. Indigenous thought suggests power does reside in the places and personalities that surround us. Consequently, possessing the power to do the right thing depends on understanding the entire ecosystem as the community in which virtue can be fully recognized in its complex totality.

Modern ecology and indigenous models of politics and ethics have much in common: they are both about the complex relationships between living organisms and their environments. Indigenous thought has, in my mind, one key advantage: it sees the ecosystem as the appropriate site for the study of politics and ethics. The error of Aristotle's thinking, and the great error of subsequent Western thinking about politics and ethics, is that it mistakenly and artificially takes human beings out of the community that in the most direct physical and spiritual sense our existence and identity depend on.

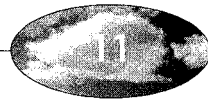
Not surprisingly, many non-Native environmentalists and ecologists have made the connection between biology, environment, and the very important questions about how we ought to live. What passes today as the science of ecology is nothing more than a restatement of very old Native North American concepts. Unfortunately, once again this has been treated as a great discovery—a little like the discovery of "America" some 500 years ago. To Native peoples this knowledge is not new, it is very ancient.

Although the scientific treatment of reality and the concepts that describe it are to some extent different, the knowledge of the physical attributes and relationships held by many traditional Natives is equivalent, if not superior, to the knowledge held by modern ecologists. It is superior primarily in the sense that traditional indigenous scholars operate minus the ideology that humans are somehow in their "unique" nature destined to live above the rest of the natural world.

The ideas offered here should not be misconstrued as suggesting (1) a carte blanche return to previous nonmodern ways of living or (2) a condemnation of all things modern, for it is neither. The suggestion is to evaluate the ideas independent of a simplistically abstract (in fact, idealist) linear view of history that sees Western civilization (including some of its "scientistic" practices) at the front or leading edge of history, with all other cultures behind and retarded, or behind and hoping to catch up.

A traditional American Indian view of politics and ethics facilitates understanding of a view of history that accords space or place

at least as much importance in a conception of history as that given to time and chronology in Western civilization. What is thereby gained is an entire body of collective tribal experience—a foundation, really—that can serve to literally ground an education for life or living: a foundation shaping practices and thought that are more applicable to the issues we face on the planet today than the dominant Western model of politics and ethics, because it contains an inherent or implicit environmental ethos.



Property and Self-Government As Educational Initiatives

V. Deloria

Indian students tend to look at education as a formal institutional experience. Core courses, graduation requirements, and electives when taken in sufficient quantities produce degrees and certificates. We are then authorized to perform certain functions in the adult world or become qualified to move on to the next level of educational complexity and attainment. In recent decades practical experience, the summer and semester internship and on-the-job training have begun to supplement formal academic studies, and the development of the paraprofessional in a number of areas offers a temporary resting place for those who are still uncertain of the attractiveness of the profession. Substantial education begins when the student, well trained in a profession, actually begins to perform professional tasks. At that point the accumulated experiences of applying abstract knowledge and principles to real-life problems and duties provides the final educational opportunity. We learn as we live and bring ideas and actions together.

In America the practical side of learning is taken for granted and in most instances is regarded as a higher activity than mere book learning. That is why we say that things are "academic" when we mean that they are essentially useless and have a certain degree of novelty. But the glorification of the self-made person, the worship of the school of hard knocks, and the demand that leadership have practical experience in identifiable fields mean that we cherish what we have been able to accumulate in the way of practical

wisdom much more than we admire abstract thinking and precise intellectual analysis.

Students in higher education should become aware of the high premium that American society places on practical knowledge because it constitutes the hidden side of federal policy, and it is seen by most policy makers as a realistic alternative to formal academic training and services. Tracing federal efforts to provide academic training for American Indian children is not difficult. Educational experiments leap out of the pages of books and reports and are always described in highly emotional language. From the initial overture of English colonists in Virginia through the Meriam Report to the modern Kennedy Report, formal academic training is touted as the salvation of Indians and as the primary vehicle for assimilating Indians into the American mass society. But we have to dig carefully to see the other side of the coin, to see the multitude of times when Congress, frustrated at dealing with Indian problems, simply washed its hands of the whole thing and declared that Indians could learn by doing things for themselves. James Watt was not radically different from impatient bureaucrats of two centuries ago when it came to understanding the benefits of a practical education.

Looking at the history of federal policy, we can identify two areas in which Congress frequently refused to deal with complexities and instead advocated policies that would force Indians, whether they were prepared or not, to learn to live in American society using only their experiences as a guide. The two areas are the use and ownership of property and the efforts to establish a modicum of self-government. The guiding principle behind federal policy in these two areas is that Indians must be placed in a situation in which they have to confront and solve certain kinds of abstract and practical problems. Two entirely predictable results are produced by these policy changes. Indians sometimes succeed far beyond the expectations of Congress. If they are very successful it produces intense jealousy among neighboring whites and fear among federal bureaucrats, and then steps are taken to limit the potential of the program or it is terminated altogether. If the Indi-

an adjustment does not make sense in the white person's terms, even if the Indians are pleased with the results, then the program is declared a failure. But the responsibility for the failure is placed on the Indian response, not on the rationality of the policy proposal in the first place.

We can easily illustrate the operation of these principles in the history of federal policy. First, however, we should examine the nature of practical education, as it is that practical aspect of things that non-Indian policy makers take for granted and upon which they rely even when all indications are that the direction policy takes will be a disaster. Practical education is the application of the abstract principle to conditions of real life. It is also the means of discovering principles for predicting future events based upon a vast reservoir of experiences of the same or similar events. While wholly academic knowledge is predictable, because we arrange it in a manner so that it will be predictable, knowledge gained through experience cannot be controlled. We learn both good and bad things from life, and consequently policy that naively believes that by creating conditions under which people learn through experience can have but one result—and that one a beneficial product—is not good policy. The flaw in the policy is that we cannot control the end product, and therefore we should not rely upon an abstract knowledge unless it has become such a part of community life that it is also practical knowledge. Let us now take a few examples from Indian history and see how practical knowledge or education has been a part of policy and what has happened to it.

Examples from Indian History

In the early colonial days in Massachusetts, missionaries spent considerable time seeking converts among the tribes. People accepting Christianity were encouraged to adopt colonists' dress and habits, leave their families and communities, and take up residence in what came to be known as "Praying Towns." Sometimes, of course, whole families would convert, and occasionally bands and villages would make the transition to Christian life. It wasn't long before Massachusetts had a number of Praying Towns that were

organized as regular townships with the same social and political institutions as other subdivisions of the Commonwealth. In making the transition—that is to say, in creating a town government, church, market, and all of the other institutions that New England life required—Indians learned both good and bad things from the whites around them. The result was that while some Indian towns functioned as well as their white neighbors, others did not. Shortcomings were blamed on the Indian character, and consequently Massachusetts introduced a trusteeship over the Indian towns. By the 1870s they had virtually eliminated self-government for the Indians of the state. Political status and property rights were essentially eliminated and the justification for divesting the Indians of these things was basically that they had learned the wrong lessons in the classroom of life.

The Removal Policy demonstrates even more clearly the relationship between practical education and political status and property rights. It was exceedingly difficult for federal representatives to deal with the tribes west of the Appalachians in the post–Revolutionary War period. So the tribes were told that if they adopted forms of government comparable to those used by the states and the federal government, it would facilitate the process of diplomacy and enable the federal government to provide services and protection for the tribes on a much more efficient basis. We can trace modifications of forms of government in almost every tribe who had dealings with the United States in the early decades of the nineteenth century. No changes are as clear as those adopted by the Cherokees, who sought to create a modern government and largely succeeded.

Presumably the success of the Cherokees in transforming their traditional ways into modern political institutions should have been sufficient to ensure them protection of their political status and property rights. However, the Cherokees were too successful. The local whites coveted the Cherokee lands, and eventually the state of Georgia simply moved its people in on those lands. When the problem reached the Supreme Court, it chose to define the Cherokees as a people in "tutelage," a people still on the verge of

national existence but lacking the practical education and experience to make a successful transition. The Cherokees, and subsequently all Indian tribes thereafter, were described as "wards" of the government, as people who lacked sufficient education and maturity to make their own decisions.

As a result of the Removal Policy a large number of tribes were moved to Kansas and Oklahoma, the hope being that once beyond the reach of bad whites, the tribes could make a successful transition to civilized life. The Kansas Indians, learning through the school of hard knocks, became moderately successful in farming and adopted so many of the characteristics of their white neighbors that the state of Kansas believed they were no longer Indians and sought to tax them. The Supreme Court said no, and beginning with the Civil War and continuing a decade afterward, the Kansas tribes were pressured to sell their Kansas lands, most of which had been allotted, and move to Oklahoma where they would be given lands in communal status once again. The practical knowledge that they had acquired in Kansas was discounted by Congress because it had produced unexpected results. Thirty years later the tribes were again forced to take their lands in severalty so that they could once more learn from practical experience how to manage farming-sized tracts of land.

The pattern only becomes stronger as we approach contemporary times. The General Allotment Act was justified on the basis that the Indians needed to learn how to manage their property. In 1891, only four years after the passage of the act, it was amended to allow the secretary of the interior to manage allotments on behalf of the individuals. Presumably he was a more apt pupil—or perhaps needed the experience more. The Indian Reorganization Act of 1934 was touted as a great experiment in self-government. This in spite of the fact that the tribes had governed themselves adequately for thousands of years and had at least managed to preserve something of a homeland using the makeshift governments organized by the federal government in the 1870s and 1880s. Coincident with the allotment of lands and the support for self-government came changes in the federal government's educational programs.

Off-reservation boarding schools were being established in precisely the years that reservations were being allotted. During the Indian Reorganization Act, a loan fund was established to encourage Indians to attend college and advanced vocational and trade schools. By the time of the New Deal, educational programs both supported the existing trends in policy and forecast the future of policy direction.

In the 1950s termination became the dominant federal policy, and it was supposed to "free" Indians from unnecessary federal restrictions and allow them to use their property in the same manner as other American citizens. No sane capitalist, however, would have sold a large virgin standing forest as the Klamaths were forced to do, and no white businessperson would have agreed to use his or her sawmill as the sole tax base for a county as the Menominees were required to do. Additionally, and here is where the theory of termination was revealed as totally bankrupt, both the Klamaths and Menominees were placed under private trustees so that the practical experience they were supposed to receive from termination became, once again, an education that their trustees enjoyed to the detriment of the tribes.

Termination of the various tribes coincided with the push to relocate individual Indians and their families to western and midwestern urban centers. Relocation and vocational training were the major emphases of the federal government until the mid-1960s, when, because the program was such an embarrassment to the federal government, it was retitled "Employment Assistance" and relegated to a minor item in the Bureau of Indian Affairs' budget. In terms of both formal academic and the more practical vocational education, the 1950s demonstrated that an intimate link existed between what was offered to Indians in the way of educational programs and desperate attempts by Congress to make the natural resources of the reservation lands available to white Americans and to reduce tribal government to nearly an advisory capacity.

RECENT EVENTS AND PROGRAMS

The last four decades are very interesting when examined in this larger historical pattern. Events and programs have moved so fast

that there is no longer a time lag between manipulation of property and tribal status and the promulgation of additional educational programs. Indian tribes were supposed to absorb simultaneously the policy of self-determination, rapid development of reservation lands, and rapid changes in educational programs. The result was a rare intersection in which educational programs were narrowed to produce administrators and managers, with a smattering of science and professional fields factored in. Among the problems created in this massive change were the shifting reservoir of resources available to the tribes to develop programs, the educational requirements necessary to operate programs, and the absence of a time lag between the conception and operation of programs.

Many economic development programs were funded under the guise of vocational training; other economic programs had to be recast as vocational training because of a lack of Indian experience in certain fields. Eligibility for employment in some programs depended wholly on academic achievements, and Indians with degrees in forestry and other hard sciences often found themselves operating educational programs or trying to administer complicated umbrella development programs. Evaluations of programs funded with federal dollars often began at about the same time that the programs themselves started, making it impossible to judge what effects the program actually would have on the reservations. Not only were conditions extremely confusing, but under Ronald Reagan, George Bush, and Bill Clinton, federal funding was reduced drastically, making it imperative that Indian tribes find alternative sources of funding for economic development, tribal government, and education. As we begin the new century, many tribes can be described as existing at ground zero, reduced to providing the very minimal programs their communities need to exist.

Although many tribal leaders take a pessimistic view of the present situation, when we see modern conditions in a historical perspective we can see that there is reason for considerable optimism. It is no longer possible for Congress to announce a new program of changing the status of tribal governments or tribal

property with the naive hope that through practical education Indians will be able to accomplish some nebulous goal of assimilating into American society. Indeed, the new federalism, even if it is to remain but an unfounded slogan, clearly shows that the tendency of Congress is to devise new methods whereby Indians can define their paths for the future. Blithe views of the efficacy of private property no longer prevail, and even though recent Supreme Court decisions have tended to limit the scope of tribal powers, the legislative trend is clearly to vest more programs, powers, and responsibilities in tribal governments.

THE MODERN EDUCATIONAL EXPERIENCE

What is the relevance of connecting practical education, as seen in policy changes of the past, with modern educational problems? And what further insights can be gained by today's college-age Indian students in viewing, in this much longer historical perspective, the educational programs in which they are engaged? What does the relationship of practical, ill-conceived education and formal academic training have to tell us about the immediate prospects of jobs for graduating Indian students? These questions and many others now surround the modern educational experience. Taken together they suggest that we look at professional education in an entirely different manner. The professional education, particularly that education in the hard sciences and computers, has basically replaced practical education because the lack of lag time between when a policy is initiated and when it is supposed to be operating has been reduced to practically zero. We need expertise in order to consider programs. For the first time in Indian history we can place practical, on-the-job training after the authorization of policy changes.

Indians with professional expertise must now be prepared to offer their tribes predictive scenarios based upon their professional training. The degree to which an Indian professional can succeed with any tribal program will be measured by the number of possible scenarios with which he or she presents the tribe. It will then

be the task of the tribe to choose among possible competing scenarios. Tribes will have to choose from alternatives based upon their analysis of existing resources and level of education. Even more important, however, is that much of modern scientific thought, particularly that dealing with the environment, closely parallels traditional perspectives on how lands, peoples, and resources should be used. The absence of a time lag between articulation of policy and the mustering of resources to carry it out suggests that for the first time in history there can and must be Indian input into program planning.

Some planners may argue that there has always been Indian input in reservation development plans, but this argument is difficult to sustain. While the Bureau of Indian Affairs was busy expanding the number of Indian college students during the early 1960s, Congress was significantly expanding the potential for tribes to lease their lands for ninety-nine years, and the bureau was pressuring tribes to develop massive programs to exploit natural resources of the reservations. Although the gap between professionally trained Indians and tribal activities was lessening during this period, it was certainly not in any sense being coordinated in order to produce maximum or even any sensible results. The uranium mining and strip-mining programs of the 1960s and 1970s probably could not occur today on many Indian reservations because professional expertise has caught up to or is only slightly behind proposed projects.

Indian students working with tribal development programs will notice a slight but important shift in emphasis in tribal perspectives. They will no longer be expected to provide direction for tribal programs, but they will be expected to provide a significant amount of technical information so that tribal councils can make proper decisions. We can characterize modern Indian students as fulfilling the function of scouts in the old hunting culture. They did not direct tribal activities as much as they provided information upon which the community could act. Indian education from colonial days until very recently was conceived as producing individuals who could and would lead their people into American society's

economic mainstream. While many of today's programs are still phrased in those terms, they are not the conditions under which Indian professionals will be helpful to their tribes in the future.

We can learn an additional important lesson from this longer perspective on practical education. Any future effort by Congress to manipulate either the use of reservation natural resources or the political status of tribes will almost certainly produce a massive reaction in the field of education. Perhaps the newer studies of Indian education will be triggered by the rapid expansion of gambling activities on reservations or by the drastic budget cuts of recent years. What we must always remember is that education does not stand alone among other Indian and congressional activities. It is always an intimate part of policy considerations, and educated Indians must at all times be aware of events taking place in noneducational fields.

The relationship between education and lands and political status is an area of cultural conflict that has not been resolved in this half millennium of contact between Indians and other peoples. All education, formal academic education and practical educational learning experiences, exists in the gulf between Indians and other peoples and their perspectives on the nature of the world. There would be no use for formal education if worldviews were more similar. But if the white majority has chosen education as the field in which the difference in cultural perspective must be worked out, then Indians have to be particularly alert as to the nature of education and what non-Indians seek to accomplish with it. Whatever Indians are asked to do must be done from within the traditional Indian perspective, from a critical examination of the nature of the task, and with the understanding that professional expertise is but a specific body of knowledge existing within the gulf between the two cultures.

Indian students must therefore look at their professional education not simply from its set of coherent internal logics that make the professional field unique but also from two additional perspectives. How does what we receive in our educational experience impact the preservation and sensible use of our lands, and how does

it affect the continuing existence of our tribes? These questions must always be asked during the educational years of training. There will not often be good answers because of the difficulty in applying abstract information to existing human communities. Nevertheless, Indian students will find a much more rewarding educational experience if they raise these questions in every educational context in which they find themselves.

Practical Professional Indigenous Education

D. Wildcat

Deloria raises a number of issues that should be considered by Indian students and teachers alike if we are to advance tribal interests through education in general, and specifically "professional" education. Three issues I want to expand on are as follows. First, what kind of institution can create professionals with indigenous values and beliefs? Second, how can we use the disappearance "of a lag time between articulation of policy and the mustering of resources to carry it out" to the advantage of education and self-determination? And third, given what I will call the "damned if you do and damned if you don't" consequence of federal educational initiatives, how do you ensure that the goals or ends of tribal initiatives are practical?

Practical Indigenous professionals

What kind of professionals do we need in "Indian Country?" The necessary condition is that they receive the requisite technical knowledge, skills, and abilities to advise Indian communities on an array of possible solutions and scenarios to address specific problems/issues. However, this is not a sufficient condition to meet the tribal needs of culturally distinct indigenous peoples. Any tribal councilperson or politically engaged tribal member can testify to the fact that often when non-Indian professionals are hired to do things for tribes, the clash in underlying worldviews—that is, indigenous-versus-Western conflict—makes accomplishment of tribal goals difficult, if not impossible.

The problem of professional expertise in institutions of higher education is that "expertise" is thought of as culture-free or value-neutral. It is true that most American Indian students feel they are "caught between two cultures" throughout their technical and professional education, but I would argue that professional and technical education in fact is not "a specific body of knowledge existing within the gulf between two cultures." Rather, professional education and the resulting "expertise" are implicitly value-laden and reflective of the schizophrenic metaphysics of Western society.

We can fairly easily describe the attributes we want American Indian professionals to have and identify the questions we hope they will keep foremost in their minds. Also, there can be little doubt that students in science, engineering, and business programs often feel caught between two cultures. I have seen students confront these professional programs with considerable disorientation. In fact, there is no greater ex post facto demonstration of the existence of indigenous cultures than the dominant Western culture in America; nor is there a better demonstration of the schizophrenic nature of the world that modern Western institutions, and especially educational institutions, create and advocate. According to one dictionary, *schizophrenia* is defined as "a psychotic disorder characterized by loss of contact with environment and by disintegration of personality." An introduction into most American institutions of higher education should predictably result in disorientation to any person who understands their personality as emergent from a specific environment or *place.*

How do we address this profound experiential disorientation? I suggest we create our own indigenous institutions to prepare American Indian professionals. Some will say we have those institutions, we have the tribal colleges. Yes, we do, and they are often working miracles in spite of the limited resources they possess. But the overhead costs—equipment, supplies, facilities, and so on—of operating science and engineering programs are much higher than for liberal arts programs. Also, given the size of reservation populations served by the tribal colleges and the already limited resources for existing programs, it is simply unfeasible for

each tribal college to implement and develop programs resulting in their own science/engineering degrees. Typically this leaves two options to tribes and/or their colleges: (1) working with majority institutions (state universities) to create bridge programs, Two Plus Two or Two Plus Three programs that address the "academic" needs of Indian students who will matriculate to the majority institution to acquire their degree by completing coursework they cannot get at the tribal college, or (2) sending their students to colleges and universities with support programs to assist American Indian students in successful matriculation to majority institutions.

Both options are inadequate, for they fail to confront in a meaningful manner the root of the struggle Indian students face. Deloria, maybe more than any other scholar living today, has positioned the questions about self-determination and sovereignty in the most radical context possible: the real world or, if you want a technical description, a phenomenological critical realism.

Deloria is correct to refer to a disorientation resulting from the conflict between cultures, not worlds; we must avoid the error of talking about life in two different worlds or realities. Sorry, postmodernist and critical deconstructionist, but as I read Deloria, I find his point for almost four decades has been to suggest in the broadest sense that questions about our indigenous education, and for that matter the future of humanity itself, revolve precisely around who we are and how we choose to live in the world. We American Indians have done ourselves a great disservice by speaking of "living in two worlds"—the Western or dominant American culture and our own tribal indigenous cultures.

The needs that both typical options address are almost exclusively academic or intellectual. Do not misunderstand my point. Reasoning skills and intellectual needs are real, what I called the necessary condition for indigenous professionalization, but they are insufficient in and of themselves and possibly counterproductive in creating professionals with a complex integrated or holistic indigenous understanding of our lives in the world. The above options fail to address the question of how scientific and technical

knowledge are understood as a part of a large living system of which we human beings are but one small part.

The problem with the typical options Indian students must choose from is that, as usual, that they miss the point—the big picture. At the University of Kansas Red Power Conference in the fall of 2000, Ladonna Harris made the point emphatically: "We do not live in two worlds. If you try to do that you will be schizophrenic." We are surrounded by a society of metaphysical schizophrenics: people who do not see the phenomenal world for what it is—a living, complex reality with multiple dimensions. A good number of these metaphysical schizophrenics are scientists and engineers who have, with considerable harm to their person (or personality) as human beings, convinced themselves that their feelings or emotions have no place in their objective science. This is the metaphysics of the world writ large.

AN INDIGENOUS INSTITUTE OF SCIENCE AND TECHNOLOGY IN CULTURE

I would propose American Indian leaders, students, and professionals get together to examine practical consideration of how American Indians and Alaska Natives might create our own MIT—Massachusetts Institute of Technology. We can call it whatever we like, but the goal would be practical indigenous professionalism: technology with an indigenous personality.

I expect all kinds of objections. Some will fear an institute of pan-Indian culture and technology, others will worry about funding and control, and still others may suggest technical issues are distinct from cultural questions. Nevertheless, the reality in Indian country today is most of our tribes are depending—no, dependent—on the advice of non-Indian scientists and engineers who work with conceptual blind spots relative to our indigenous worldviews.

We desperately need indigenous scientists and engineers, but not in the mold of those produced by the dominant educational institutions of the United States. Can we create our own indigenous institutes of science and technology in culture? I think a cur-

sory look at the moneymaking activities among some tribes suggests the answer is yes. But will we? This remains to be seen, but I hope so. It would require a strategic long-term, multi- or intertribal effort for an institution the likes of which has never been seen. Given the never-ending rounds of seminars for strategic planning, empowerment, and creative problem solving that foundations and organizations are constantly holding in Indian country, I have no doubt about our ability to create a plan.

The challenge, and opportunity, really, is to develop a network of indigenous philanthropy, something that only recently has it made sense to talk about, which can ensure a substantial period of infrastructure building. The cost will be high in dollars; however, the cost of not creating indigenous institutions to our peoples and the places where we live will be exponentially higher.

Sobering is the only way I can describe my reaction after attending two environmental justice conferences recently. If one contemplates the enormity of the problems facing rural and urban minority communities, including those of indigenous peoples, in the United States and throughout the world, one certainly comes away sobered. But hopefully one is reinvigorated too, with a dedication to finding creative ways to solve environmental problems we human beings have produced—not intentionally, but by virtue of a relatively abstract universal worldview where first, humans are the measure of all things, and second, an Aristotelian compartmentalizing and categorizing of human experience prejudices exploration of human experience itself.

Basic research, technology transfer, reliable information, bioremediation (ecology-based as opposed to genetics-oriented) technologies, and ultimately community service—all of these can be accomplished by creating an institution that prepares and provides indigenized professional education: practices supportive of cultural diversity emergent out of the diverse geographies and ecologies of the places we call home. We have a long history of being given bad advice, and we are paying the price today. If we are going to make mistakes—and we will—let them be our mistakes. Much of the technology we see being used today has been developed to

address environmental cleanup activities; our actions are essentially reactive in character.

On a recent visit to a sister institution, something struck me as we watched the demonstration of a state-of-the-art technology developed to address accidents involving the release of deadly airborne chemicals. Much of what scientist, engineers, and businesspeople work on today is cleanup. My colleague and Potawatomi ecologist George Godfrey has talked often about the creation of a cadre of American Indian environmental scientists and engineers who would achieve success and a status comparable to the highly praised American Indian "smoke-jumpers" in the U.S. Forest Service.

INDIGENIZING PROFESSIONAL INTERNSHIPS

We have plenty of environmental "fires" to put out in our communities, and we need well-trained American Indian professionals to do so. Here then is precisely the place where we use the disappearance of lag time between policy development and mustering of resources to realize policy goals to the advantage of practical indigenous professionalism. Our young scientists, engineers, and entrepreneurs would serve required yearlong internships in communities, working on problems people are facing. This will not be easy; the level of coordination and direction from professionals will be time-intensive. However, the much ballyhooed technology of the Internet and World Wide Web could actually serve to have students working on problems in real places, in communities, where beliefs, values, and practices count for something. This experiential learning will accomplish what case studies or "virtual" realities can merely suggest: the world is more complex than our models and neat conceptual categories lead us to believe.

Community service ought to be expected, and I can think of no better service than holistic learning experiences in which students learn that the best solution to a problem will be power-, place-, and personality-specific. The irony in doing so is that the experience itself overcomes the greatest obstacle to the biological, environmental (ecological), and cultural diversity on the planet: an abstract system of analytical education that rivals the heights of

medieval scholastic education. In fact, serious consideration ought to be given to reinstituting community service (something that occurs naturally in nonmodern societies) through all the grades of education. Such activities would indeed be practical and, with a little thought to who we are as tribal peoples, indigenizing.

We can take advantage of the disappearing "time lag between the conception and operation of programs" by situating professional programs in our communities. It is a disservice to everyone to continue to think "experts" go off to school somewhere and then come back with the all the answers. Now, everyone will say, we all know that, the real world just does not work that way. Okay, then why do we continue to "educate" in exactly that manner? If we create professional internships for scientists, engineers, and business professionals, the world they live in would engender practical, creative insights into the largely artificial disciplinary boxes our institutions of higher education perpetuate.

The knowledge human beings all over this planet once possessed was of places; modern technologies have certainly reduced the "time constraints" of distance. But what time is it? It depends on where you are. Once we disabuse ourselves of the abstract and essentially linear universal notion of world historical time, as Deloria critiqued three decades ago in "Thinking in Time and Space" in *God Is Red,* we may indeed reexamine our histories in a light much different than the current progress-of-civilization model. In our human lifetimes (appointment books, clocks, schedules, and calendars) we have disconnected ourselves from natural histories much larger than ourselves and with the aid technology forgotten what geographies and natural environments have to give us: unique cultural identities in the place of an increasingly homogenized global consumer identity. Western civilization, as the vanguard of globalization, seems to have forgotten this valuable gift that indigenous cultures have not.

No Longer "Damned" Up

Deloria has put his finger on the problem with federal Indian initiatives in general. It matters little whether the issues were oriented toward property, self-government, or education, as the cultural gulf

between the majority of Americans and American Indians was so great that success, even if assessed by essentially Western measures, and failure, which was always seen in the eyes of federal lawmakers as an issue of *not* measuring up, inevitably meant we were, colloquially speaking, "damned if we do and damned if we don't."

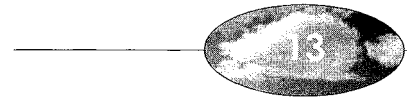
The modest but meaningful gains that our indigenous nations have made in self-determination mean that we have choices our ancestors did not. As my friend and colleague Michael Yellowbird frames the situation: although we have moved from a colonial situation, the question remains, are we intellectually colonized, have our worldviews, so to speak, been colonized? Our children today and grandchildren tomorrow will soon find out.

Can we escape the "damned if we do and damned if we don't" maxim? Only if we set our own goals by our own set of measures, which is much easier said than done. We have been subject to so many experiments, pilot programs, and policy initiatives that the first obstacle is to get over a knee-jerk aversion to sitting down to identify goals and objectives, and discussing ways to meet them. We can do it, but long years of experience taught us that "our" goals inevitably meant their goals. Consequently, many of us are immediately suspicious the moment discussion of such things comes up.

An even more fundamental problem is that we have been struggling for existence itself for so long that too many of us have had little time to explore precisely what are our particular tribe's measures of success. Fortunately, we have elders who retain the wisdom and who have much to teach, although not necessarily through pedagogy but through living. We also have large numbers of indigenous professionals and scholars who know what was missing in their formal education. We have allies as we enter the twenty-first century—increasing numbers of young people and more than a few of their teachers who are struggling to find more meaningful ways of learning and living.

One measure of indigenous success, I believe, would be a generation of professionals who understand the world as not revolving around humankind, but rather humankind as surrounded by relatives,

including other-than-human persons. Oren Lyons, Onadoga elder, remarked at the twenty-fifth anniversary of Earth Day that the difference between American Indian and Western views of nature is that while European immigrants looked at nature and saw resources, we looked around and saw relatives. Indigenous professionals who live in the world with relatives and focus on relations would be very different than professionals who study resources (objects) and focus on control. This would be progress, not as it is typically thought of today, but as a sign that a return to questions about living, as opposed to struggling for existence, is still possible and more crucially necessary.



Higher Education and Self-Determination

V. Deloria

During the 1950s Congress authorized a program of rapid termination of federal trust responsibilities for American Indians. The policy was ill-conceived, seeking to reduce federal expenditures that were minimal, and badly executed, allowing private banks to exercise a restrictive supervision over the assets of tribes who lost their federal eligibility. Virtually no development of tribal assets occurred during this period, and educational programs were generally oriented toward vocational training and relocation of Indian families to designated urban areas. With the New Frontier and the Great Society programs came a radical redirection of Indian programs. Economic development was stressed and the federal government began to provide scholarship funds for Indians in higher education.

We have been living in the era of self-determination since about 1966, and, although appropriations suffered immensely during the Reagan and older Bush years, the trend of policy has firmly supported preserving tribal life and enhancing the powers of tribal self-government. The two major thrusts of federal policy from the very beginning have been the education of the next generation of Indians in the ways of the white people and the exploitation and/or development of the reservation resources. Today the government seems intent on stressing the economic aspect of Indian life to the detriment of its educational component, a policy exceedingly shortsighted in view of the continuing economic crisis of the United States and the limited resources Indian reservations actually contain.

Self-determination grew like a weed over the past four decades, and it never was clearly defined at the onset of the era. It was a concept that originally surfaced in international relations to describe the desire of formerly colonized peoples to break free from their European oppressors and take control over their own lives. These peoples were, for the most part, geographically distinct and distant from their former colonial masters, and consequently independence, while painful, seemed more logical because the connections established by colonizing powers seemed and were wholly artificial. Indian tribes, with the possible exception of western and north-slope Alaskan villages, have always been viewed as internal to the United States and hence part of its domestic problems. That the Supreme Court has continually characterized Indian tribes as foreign to the United States in cultural and political traditions is difficult for most people to understand, so they make little effort to do so and prefer to consider Indians as simply another racial minority, albeit one with considerably fascinating habits.

Self-determination inevitably had to take on a different meaning when applied to Indian tribes and reservations. And as the original goal of the Kennedy and Johnson administrations was to delay termination of federal services until such time as tribes achieved some measure of economic parity with their white neighbors, self-determination in the Indian context basically has meant that Indians can administer their own programs in lieu of federal bureaucrats. Education was conceived as the handmaiden of development. One need only look at the fields in which Title IV fellowships are being given to understand that federal higher education programs were meant to train a generation of people who could function as low-level bureaucrats in drastically underfunded programs—programs intended only to keep Indians active and fearful of losing their extra federal funding.

Two major emphases characterized Indian economic development. Tribes were encouraged to allow major American corporations to control their energy resources in exchange for a few token jobs and a small income. Employment programs were designed to provide temporary wage labor in fringe industries that were them-

selves in danger of disappearing. Some wage industries, such as the moccasin factory at Pine Ridge, attempted to exploit the public stereotypes of Indians, and others, such as recreational ventures, placed the Indian workers in the permanent status of servants to a rich non-Indian clientele. Administration and management have thus become the favorite programs of the federal government and private foundations, the belief being that Indians feel more comfortable in performing menial jobs or watching their forests and coal reserves being exhausted if some token Indians are involved.

Unfortunately, administration and management have never been areas in which Indians have excelled. These types of jobs require that people be viewed as objects and that masses of people be moved and manipulated at will in order that programs achieve maximum efficiency. This kind of attitude and behavior is the antithesis of Indians' ways as is the fact that management and administration are always dressed up in "people" language to make them more palatable. Many Indians did not realize that the programs they were administering were designed to manipulate people, and they unintentionally transformed administrative procedures to fit Indian expectations. The result was that program efficiency declined, and some programs fell apart even while an increasing number of people were being served. Many programs considered as failures from the non-Indian perspective have been outstanding successes when considered from the Indian side of the ledger, even if they have given bureaucrats ulcers.

Indian education of the past four decades has done more than train Indian program chiefs, however. While Indians have been penetrating the institutions of higher learning, the substance and procedures of these institutions have also been affecting Indians. Indians have found even the most sophisticated academic disciplines and professional schools woefully inadequate. This is because the fragmentation of knowledge that is represented by today's modern university does not allow for a complete understanding of a problem or of a phenomenon. Every professor and professional must qualify his or her statements on reality and truth with the admonition that their observations are being made from a

legal, political, sociological, anthropological, or other perspective. These statements then are true if confined to the specific discipline and methodology by which they are formed. That they represent little else may escape the professor or professional, but it does not escape the Indian student, who often dismisses theory, doctrine, or interpretation when it does not ring true to his or her experience.

The revolt against social sciences is not simply a few Indian activists criticizing anthropologists and the suspicion with which Indians in science and engineering view theories in their fields. Rather, the problem is the credibility and applicability of Western knowledge in the Indian context. The objections are easily understood. Western technology largely depletes resources or substitutes a monocultural approach to a complex natural system. We tend to hide this fact by talking about production rather than extraction, but this linguistic acrobatics is not sufficient to escape Indian critique. Social science in the Western context describes human behavior in such restrictive terminology that it really describes very little except the methodology acceptable to the present generation of academics and researchers. While an increasing number of Indian students are mastering the language and theoretical frameworks of Western knowledge, there remain the feelings of incompleteness and inadequacy about what has been learned.

More importantly, whatever information is obtained in higher education must, in the Indian context, have some direct bearing on human individual and communal experience. In contrast, in the non-Indian context the knowledge must simply provide a means of identification of the experience or phenomenon. It helps to deal with specific examples to illustrate the point. A Western observer faced with the question of how and why certain species of birds make their nests is liable to conclude that it is "instinct." And this identification of course tells us nothing whatsoever, but it does foreclose further inquiry because a question has been answered.

In the Indian context the answer would involve a highly complicated description of the personality of the bird species, be it eagle, meadowlark, or sparrow; and the observed behavior of the bird would provide information on time of year, weather, absence

or presence of related plants and animals, and perhaps even some indication of the age and experience of the particular bird. In this comparison Indian knowledge provides a predictive context in which certain prophetic statements can be made. Western science, for all its insistence on reproduction of behavior and test conditions and predictability of future activities, provides us with very little that is useful.

Indian knowledge is designed to make statements that adequately describe the experience or phenomenon. That is to say, they include everything that is known about the experience even if no firm conclusions are reached. There are many instances in the oral traditions of the tribe in which, after reviewing everything that is known about a certain thing, the storyteller simply states that what he or she has said was passed down by elders or that he or she marveled at the phenomenon and was unable to explain it further. It is permissible within the Indian context to admit that something mysterious remains after all is said and done. Western science seems incapable of admitting that anything mysterious can exist or that any kind of behavior or experience can remain outside its ability to explain. Often in the Western context the answer is derived by the process of elimination. Thus with the theory of evolution, it is accepted primarily because other explanations are not popular or are distasteful.

Western engineering presents a special case. Its validity depends primarily on its ability to force nature to perform certain tasks that we believe are useful to human beings. Its knowledge derives from physical experiments, and more recently on complicated mathematical formulas that predict certain kinds of phenomena if certain kinds of things are done under conditions controlled by human beings. There is no question that if engineers restrict our understanding of the world to particular things we want to do, and set up the conditions under which they must occur, the results are spectacular. But does the engineer really understand nature or the natural world? Does he or she not simply force natural entities to do specific tasks and provide a theoretical explanation for what has happened? In forcing nature to behave in certain controlled ways,

have we not set in motion other forces that nature must make manifest so that the demands of the experiment can be met?

Today there is no question that our society is approaching the brink of an ecological meltdown. We have identified certain aspects of our forceful interferences with nature and have come to believe these things to be the cause of the deterioration we have observed. We have no way of knowing how things relate to deterioration because our context is too small. Would the widespread use of electricity, for example, have anything to do with the ozone problem? Does increased radiation have anything to do with the rapid disappearance of amphibians around the world? Is cancer a function of crowding people together, or is AIDS a function of chemically treated foods and chemical disposal into domestic water supplies? When we begin to ask questions that try to bring byproducts of our technology into new combinations so that we can test effects and do further investigations, we are virtually helpless because we have no good context within which to ask the questions that should be asked. In this society, we must spend immense amounts of time and energy simply identifying the proper questions.

When Indian students take all of the knowledge received in colleges and universities, along with certifications for professional work and perhaps even for managerial activities, they are led to believe that Indians are prepared to exercise self-determination because educated Indians are now able to begin to compete with the non-Indian world for funds, resources, and rights. But we must ask ourselves, where is the self-determination? What is it that we Indians as selves and communities are determining? We will find that we are basically agreeing to model our lives, values, and experiences along non-Indian lines. Now, the argument can be made that because we are geographically within the United States, we must conform to its values, procedures, and institutions. At least we must do so if we are to measure success according to the same standards and criteria. And all of our education informs us that these standards are nationally acceptable and may indeed even be universal throughout the cosmos.

It is increasingly apparent, however, that the myths of Western civilization are also the cause of its rapid degeneration, so that it is hazardous to measure ourselves according to those standards. As a nation we no longer produce wealth as much as we borrow from the future. If an individual really wants to make money he or she would do better to master complicated tax laws than to start a new business. Professors stand more chance of getting their ideas accepted if they are immensely popular with their peers than if they actually have something to contribute. The possible existence of a Supreme Being is a great embarrassment to religious people. Poor people are or should be incubators and organ donors for rich people. Wisdom consists of frequent appearances on television shows. Athletes need not be skillful, but they must win regardless of the circumstances. Any form of change in any other country can be regarded as a threat to the United States—and of course all forms of progressive change within the United States are perceived as threats to its security. It is exceedingly difficult to distinguish between American moral values and bumper sticker slogans.

The practical reality of these insights provides both the criteria for public success and the uncomfortable feeling among educated Indians that something is missing. Most Indians do not see themselves and their relatives within the popular American truisms, and they are greatly embarrassed when other people force them to acknowledge that these criteria really are accepted by a majority of Americans. Minimally, Western mythology describes a society that is not even polite. That is the key to understanding how to transcend the attitudes and perspectives of non-Indian education, so that Indians can determine for themselves and by themselves what they want to be, even if they are wholly within the confines of American society.

When we talk of the old days and old ways, we frequently give special emphasis to the manner in which people treated each other, the sense of propriety, gentility, and confidence that the elders had. Being polite springs primarily from a sense of confidence in one's self and one's knowledge about the world. Indian

narration of knowledge about the world fell into a particular format, and out of a plenitude of data, the speaker would choose the set of facts most pertinent to the explanation. He or she would formulate the story so that it ended on a proper note—*oh han* as the Sioux say. Now, a person cannot bring a teaching to a close, invoke the right response in the listener so that the information is taken seriously, and have some impact without closing off the discussion on a proper note. Real knowledge creates politeness in the personality, and one can see this trait in many wise non-Indians. It is, in fact, their foremost personality trait.

In the past four decades, while the movement for self-determination was proceeding, we have witnessed a drastic decline in politeness and civility in Indian communities. Indian meetings are many times difficult to attend because they consist of little more than people clamoring for attention and people busy impressing each other. The outstanding characteristic of Indian students today is the emergence of politeness as a personality trait. Science and engineering students more than others now seem to possess this most precious of all the old traditional personality traits. Here we may have an indication that the current generation of Indian youth is moving beyond the boundaries established for non-Indian self-determination, and now this generation stands ready to bring something entirely new to the process of applying Western scientific knowledge to Indian problems.

If this observation is correct, then we will witness some very unusual things happening in Indian communities in the future. Indians who are now working at the professional level, particularly in science and engineering, will work their way through corporate and academic institutions and begin appearing as independent consultants and owners of small, technologically oriented businesses working in ecological restoration and conservation areas. Research institutes headed by Indians will begin to appear on certain college and university campuses doing complex research projects. Almost all of this first generation of Indians will be active in traditional religious practices, even though many of them will be living away from their reservations. One or two of these people

will write extremely sophisticated papers and books that will be highly regarded in their professions.

Indian students in colleges and universities will begin to combine majors, putting together unlikely and unpredictable fields. They will have some degree of difficulty doing so because of the departments' inability to reconcile the students' interest within traditional Western disciplinary relationships. An increasing number of Indian students will choose very specific new majors that represent non-Indian efforts to do interdisciplinary work and that are almost entirely outside the fields being chosen by present Indian students. Indian graduate students will be doing very sophisticated dissertations, and in hard sciences, highly innovative research projects.

Indian community colleges will begin to show an increasing non-Indian enrollment, some people being nonresidents who come to these schools specifically to study with certain tribal elders. The number of four-year community colleges will dramatically increase, and community colleges themselves will begin to appear on the national scene in scholarly conferences and meetings. Most of the larger community colleges will have their own publishing and TV production programs, and some of them will be producing programs for national educational television. Some faculty at reservation community colleges will begin thriving consultant businesses because state and private universities far from the reservation will want to establish working relationships with the tribes. Community colleges will play an increasingly influential role in tribal economic and political problems and programs.

Tribal governments will develop new ways to organize the reservation communities and will develop specific programs for a wide variety of land uses. Tribal governments will have a considerably larger role in determining high school curricula, and some reservation high schools will have entirely new formats for study and graduation. Formal and informal networks of elders will begin to resolve some of the reservation problems, radically changing the kinds of topics that tribal councils are asked to handle. New and smaller communities will be built in different parts of the reserva-

tion, eliminating the concentrations at agency towns and having new kinds of local governing powers. Self-determination will not be an issue because people will be doing it in forms that even they will not recognize.

Although it appears easy to make vague predictions concerning the future of Indians and education, none of these ideas is an ad hoc concept. Rather, everything flows from the original idea of education acting as the motivational force in self-determination. The policy makers four decades ago *assumed* education would radically change Indian young people while also assuming that they would hold, as a constant, the value of returning to their tribes to take the lead in development projects. Higher education really was thought to be higher than the knowledge and experiences that Indians brought from their homes and communities. Higher education might have been more complicated, but it was too departmentalized, and consequently the chinks in the armor were all too apparent and left most Indian students with a feeling of having an incomplete knowledge. Unable to bring academic knowledge to its proper unity, more and more students are now supplementing the shortcoming of Western thought by placing it in the context of their own tribal traditions.

Once the process of supplementation began, it would naturally follow that individuals would begin to compare specific items of Western knowledge with similar beliefs derived wholly from the traditions of their tribes. We see this process now emerging as an identifiable intellectual position of this generation of Indians. It will take a considerable period of time for a new theoretical posture to be developed by this generation, but some individuals are well on their way to doing so. As a new perspective is formed, individual Indians who have moved completely through the institutional structures will take all conceptions of Indians beyond the ability of Western ideas to compete, and this conceptual shift will focus attention on the cultural knowledge of the community colleges. Once community colleges articulate a new conception of what it means to be an Indian and an Indian community, the rest of the shift is apparent and predictable.

In a previous essay I discussed the fact that much of American education is really just training and indoctrination into the Western view of the world. Basically this view is held together by the sincerity of its followers. It does not have an internal consistency of its own except in general methodological patterns whereby information is classified. Indians, over the long run, are exceedingly hard to train because they get easily bored with the routine of things. Once they have understood and mastered a task it seems like a waste of time to simply repeat an activity. So for an increasing number of Indians the training received at institutions of higher learning only raises fundamental questions that are never answered to their satisfaction.

We can visualize the effects of education on Indians as follows. Non-Indians live within a worldview that separates and isolates and mistakes labeling and identification for knowledge. Indians were presumed to be within this condition except they were slower on the uptake and not nearly as bright as non-Indians. In truth Indians were completely outside the system and within their own worldview. Initiating an accelerated educational system for Indians was intended to bring Indians up to the parity of middle-class non-Indians. In fact, this system has pulled Indians into the Western worldview, and some of the brighter ones are now emerging on the other side, having transversed the Western body of knowledge completely. Once this path has been established, it is almost a certainty that the rest of the Indian community will walk right on through the Western worldview and emerge on the other side also. And it is imperative that we do so. Only in that way can we transcend the half millennium of culture shock brought about by the confrontation with Western civilization. When we leave the culture shock behind we will be masters of our own fate again and able to determine for ourselves what kind of lives we will lead.

THE QUESTION OF SELF-DETERMINATION

D. Wildcat

WHAT IS SELF-DETERMINATION?

Locating education within the framework of self-determination is critical, for Deloria is asking the question seldom asked: "What do we, indigenous peoples of the Americas, mean by self-determination?" If we accept the standards and criteria of mainstream education in America and its fundamental Western claim of universal and objective applicability to the world and the cosmos itself, then, whether we are aware of it or not, we have accepted the metaphysical assumptions and premises that lead to a good number of problems Western society seems unable to address. American Indians are now in the position to, as Deloria states, "compete with the non-Indian world for funds, resources, and rights," and he continues, "We must ask ourselves, where is the self-determination? What is it that we as selves and communities are determining? We will find that we are basically agreeing to model our lives, values, and experiences along non-Indian lines."

I think many of our ancestors and present elders would see good and bad in the proposition that we culturally conform to the dominant values, procedures, and institutions of the United States. But before we grab hold of the obvious improvement in terms of physical and material comforts, we must assess our experience in the big picture of life. Once we acknowledge this larger, more complex context, we will see that the issues are not about what is practical in some normative cultural context, but about the nature of reality itself.

It is not surprising that in modern American society economic initiatives inevitably overshadow education programs. Education as an institution reflects the values of the larger society, and the only thing historically distinguishing so-called Indian education from mainstream education is the direct and blatant regimen in which culture was instilled. Today the notion that educational "progress" is identified with economic measures is so widely accepted that the business of education has become business. Many neoliberal economists even argue that the marketplace will democratize backward, nondemocratic peoples and instill in them the values of liberty and justice for all—making individuals, in the words of Milton Freidman, "free to choose," or more correctly, as friend and sociologist Dean Braa used to say, "free to lose." Our challenge as we enter the twenty-first century is to ensure that as we focus on gains, we do not forget about what we might lose as indigenous peoples in undertaking certain activities.

SELF-DETERMINATION IN THE ABSTRACT

The question "What is self-determination?" is the easiest question in the world to answer in the abstract, and, for the most part, that is precisely how it has been answered. In the abstract we can say self-determination is when one freely chooses to act or think a certain way. That accepted, here is the rub for Western political thought: where does authority reside? Or, as John Dewey observed in *Human Nature and Conflict,* the question of choice arises and the issue of morality comes into existence naturally. Yet even among the most brilliant and compassionate scientists of the last two centuries, the extent to which morality and values are seen to lie outside of nature is but one more example of humankind's mistaken notion that we are ultimately segregated in one very crucial aspect from the entirety of nature.

The idea that morality and values cannot be found in nature is one of the single most erroneous notions Western civilization and modern science have produced and one of the major reasons American Indian students often find science uninviting. Even

conceding that nature has indeed equipped humankind with more choice behaviorally than other animals, and certainly plants, this cultural or nurture aspect of human existence is not a repudiation of our natural propensities; rather, it is an affirmation that morality itself is a natural product. It does no good to invoke the old nature-versus-nurture or nature-versus-culture (social) dichotomy, for what it exposes is less valuable than what it obscures: that humankind's heavy dependence on culture, nurturing, or socialization is natural—given by nature.

I would suggest it is more accurate and useful to think of our cultural or social behavior as instinctive, albeit in a nonreductionist manner. In short, human beings have no choice about choice. The invocation of instinct as a product of nature, and morality as a product of culture, is unhelpful when looking at the question of morality, since it in essence assigns nature—the world itself—a mechanical character. It reduces humankind's natural character to instinct—biological mechanism. This reduction of "natural" humans to instinct is not surprising but certainly enlightening, for it again illustrates the extent to which humankind's self-proclaimed moral autonomy from nature is dependent on a reductionism that is at its core mechanical, naively empirical, and teleologically closed—precluding the possibility of change.

Predictably, once the majority of human behavior (that which most humans acknowledge involves choice) is given an autonomous realm or space in which to operate, we enter the postmodernist room full of mirrors, where any attempt to talk about reality or what is real dissolves into digressions on meaning and multiple realities. While I appreciate the postmodernist critique of modernist thought and its unmasking of the arbitrariness of Western civilization, I fundamentally reject its antirealist conclusions. Postmodernists examined modern, essentially Western, theories of the real world, and finding them wanting, simply discarded the phenomenal world and kept theory.

The postmodernist rejection of an objective reality or truth is predictable and well within the intellectual heritage of Western thought. However, its embracing of a purely cultural determination

of reality leaves the door open to a cultural relativism and an antirealist position relative to knowledge. The point missed by modernist theories immersed in the Western tradition and postmodernist theories rebelling against the Western tradition is that both forget their ideas are about something, and that something is experience in the world. Try as humans might to put knowledge in boxes—the experimental method, abstract categories, subjectivistic lockboxes, and so on—we are still left with the large remainder of daily experience. A substantial amount of the wisdom of our indigenous ancestors is still with us in the experience of places too often now taken for granted.

Power and Place is a proposal to reflect on critical issues about experience and what we can learn in the larger experiential realm of existence. The issues and questions raised are to a large extent avoided today in formal educational settings: questions about the nature of the world and our human place in the world. They are the important questions, the ones that reductionist science and a Western metaphysics of the world cannot answer. The most fundamental of these questions is, "How shall we live?" and this question is at its core a moral question encompassing power, place, personality, and, ultimately, self-determination.

Indigenous Self-Determination

Indigenous self-determination begins with attentiveness to the relations around us, whether they be typically understood as economic, political, ecological, or spiritual. The everyday experiential world of casinos, manufacturing, so-called natural resource management, and all of the business decisions tribal governments make are central to self-determination. They are central because we are just as free to lose as we are free to choose. We indigenous peoples lose if we make choices without considering the consequences to our unique tribal identities as indigenous peoples emergent from diverse places of this planet. Thankfully, most American Indians still recognize the fact that spiritual questions are inextricably bound up with practical questions, everyday issues,

although we may be struggling to make sense of how to meaningfully integrate both when surrounded by a society that so successfully segregates and compartmentalizes human actions and experiences in the world. If all of humankind would seriously undertake to reconnect to places in the practical way their ancestors once did—and many indigenous people still do—we might be much better off.

There is no way to get around the fact that Indian education in America has been and, one might argue, continues to exist as the handmaiden of assimilation. The assimilation of differently minded indigenous people into the dominant, essentially Western Culture, and I mean culture with a big *C*—the values, beliefs, customs, habits, practices, technology, and languages of Western civilization—has been up to now Indian education. That education is an assimilation process ought to be intrinsically troubling to anyone with democratic values.

I have little problem with people's deciding how to bring their children into their own society and culture. The Pennsylvania Amish maintain their own education system and have even gained the protection of the U.S. Supreme Court to do so. Families have a recognized right within certain guidelines to home-school. In short, democracy suggests people have a right to educate children in accordance with their societal values and beliefs. Why should we expect anything less in our Native communities?

Problems inevitably begin when someone else determines what religion or education ought to be for a particular people's children. In addition, these fundamentally democratic issues become more complicated if groups of people find themselves, for whatever reason, living in a more multicultural human environment. The more heterogeneous the human cultural context, the more difficult it is to declare what core values and beliefs ought to be inculcated through education of children—the future members of a given society. Yet this multicultural reality, more than any argument or ideology, ought to underscore the current challenge in education. Diversity, multicultural society, postmodern critiques of hegemonic, that is, totalizing and universalizing, ideologies—such topics

predominate many discussions in education today. The endless debates in and criticism of higher education serve as a de facto demonstration of how pointless this intellectual industry will be unless the debates about curriculum become literally "grounded," contextualized to the environments and places we call home. Human cultures until very recently were emergent out of places; they were literally grounded in the experience of nature in particular places on the planet. If we indigenize or reindigenize self-determination, then it will entail a reordering of values and signal an effort to live in a manner respective of the power, places, and persons surrounding us.

POWER

Power, "the living energy that inhabits and or composes the universe," is what moves us as human beings—all of the connections or relations that form the immediate environment or that small part of the world each of us inhabits. While energy in physical mechanics is quantifiable, Deloria's concept of power is nonquantifiable. Power is a qualitative dimension shaping our thoughts, desires, habits, actions, and institutions that operates to a great extent without us thinking about it. In ordinary language we can call power amorphous, for it takes many forms, some overt and some latent. We are conscious of the former, while the latter lie dormant and have an existence of (to) which we are not initially conscious. We can also describe power as diffuse, for it surrounds us as an *atmosphere of influences,* including the very practical economic influences in the world. Power is quite literally flowing around and into us; if we are properly attentive, power can be used by us.

An indigenous North American metaphysics would agree with the formulation that knowledge is power, but object to the narrow Western idea of knowledge and the anthropocentric, human-centered notion of power. Like the concept of personhood, American Indians and Alaska Natives have a much broader notion of knowledge one that includes knowledge born of direct experience of what I call the atmosphere of influences. Deloria's likening of American Indian metaphysics to a social reality is

helpful, for it directs us properly to the character of this atmosphere of influences. Social reality is not what one narrowly thinks of as social; instead, to follow Deloria's suggestion, "social" is as close as we might presently get to describing the substantive character or reality of power. Like society itself, the power allowed as social by most human beings, with the exception of a few intellectuals called methodological individualists, is readily acknowledged in its observable effects. We know society has forces we call social because we experience them and not only see, but also feel, their effects. The nature of social reality has certainly dogged philosophers of science and some serious social scientists. I would suggest that they consider the problem of social reality as only one part of a much larger and more serious exploration of the "nature" of reality in general. To say as Karl Marx first did, and as many sociologists since have said, that we are simultaneously products of and producers of society and history, is a way of saying our human lives are part of a life process we are engaged in—not by choice, but as a consequence of our living existence.

I find it easy to accept that the environment Marx experienced made it relatively simple to see life as a struggle for existence primarily shaped by an economic class struggle. However, it is not romanticism to suggest that Seattle, Ten Bears, Chief Joseph, and many other American Indian leaders of the nineteenth century lived in environments where the notion of a "struggle for existence" never crossed their mind—although concern for living well did. Although it is fashionable today to bash any defense of a tribal aesthetics of cooperation with nature as romantic, I find it difficult to discount the impressions of so many non-Native persons, from conquistadores to Harvard anthropologists, who, in spite of incredibly ethnocentric, if not racist, assessments of our ancestors, all saw indigenous North American societies possessing something they found admirable and lacking in their own Western societies: generosity and a social well-being. Cristobal Colon (Columbus) himself marveled at the goodness of the Taino Indians during his first visit to the Caribbean Islands, and William Howells in *The Heathens* even acknowledged:

> American citizens live in an advanced and comfortable nation, yet great numbers of them feel insecure and uncertain, either individually or in groups, to the point of bitter unhappiness.... Primitive people have long ago put into practical religious forms many things that your countrymen are trying to find for themselves in lectures and books on the good society or how to find happiness or on what is wrong with them.

Good societies, happiness, and individual well-being—or to quote directly from Colon's diary entries of December 24 and December 25, 1492, "They [the Indians] are very gentle and without knowledge of what is evil nor do they murder or steal," and "They love their neighbors as themselves": not bad accomplishments for "savage heathens." Unfortunately, these qualities were not much valued by Colon and many of the Europeans who followed him. The very character of the first interactions between the Caribbean Natives and their strange visitors from Europe remains indicative of the fact that both peoples held very different worldviews. Given what we know of European history, I think most persons would prefer to arrive as strangers at the doorsteps of people like the tribal Taino as opposed to the doorsteps of the civilized Europeans.

We can acknowledge that North America had its own hierarchical states or societies centuries before Cristobol Colon arrived. One of the largest within the geographical boundaries of the present United States, Cahokia, collapsed before A.D. 1100, as did most of the great mound cultures of the Southeast United States and the great Mayan states of Central America. What exactly happened is still open to much research, but in the case of the Mound Builders and the Mayans, I would say, to borrow a popular phrase, "Been there! Done that!" The fact that there seemed no great effort to rebuild these indigenous empires after their collapse suggests to me that some American Indians learned a lesson in self-determination that Western historians embracing a pseudo-evolutionary, or linear, view of world history will find problematic. If, as many North American indigenous worldviews suggest, social

organization and culture *ought* to emerge out of our environment—understood as constitutive of an ecological, political and necessarily ethical community—it may be that the earliest state structures in North America demonstrated an incongruity with the environments where they developed. History always occurs in places and never on abstract timelines.

Place

Most American intellectuals and educators continue to talk exclusively about history and cultural issues as if they were disengaged or relatively autonomous from the other features, or as I prefer to acknowledge, the other persons or relatives of our ecological and environmental communities. Much of what I have elaborated in my essays goes back to a three-decades-old insight found in *God Is Red:*

> When the domestic ideology is divided according to American Indian and Western European immigrant, however, the fundamental difference is one of great philosophical importance. American Indians hold their lands—place—as having the highest possible meaning, and all their statements are made with this reference point in mind.... When one group [American Indian] is concerned with the philosophical problem of space and the other [Western European immigrant] with the philosophical problem of time, the statements of either group do not make much sense when transferred from one context to the other without the proper consideration of what is happening.

If we seriously add "places" in their ecological, and fundamentally indigenous, sense to the consideration of ideologies, it brings the purely "cultural" problems as conceived by the metaphysics of dominant "American' society into even starker relief. For the cultural wars among those operating in the Western metaphysics of time, space, and energy seem little more than abstract disagreements between antiseptic ideologies—strange visions

about human life and culture disengaged or alienated from the land and places.

By reducing success, progress, and self-determination to cutthroat economic measures, we create a Culture (with a big *C*) possessing little value for community among our own species, let alone a broader experience of community, one inclusive of other persons in our immediate world. Deloria is correct to find that meaning in a place is crucial if we are to improve the human condition on this planet, and I believe we will inevitably make progress once we give up the invidious distinctions and dichotomies that have haunted modern Western thought, including nature versus culture (nurture), conservation versus development, and science versus religion (values).

The question of self-determination from the standpoint of an American Indian practice of education is essentially a question of the degree to which individuals and communities are actively engaged in making their future—not in the abstract but in places and in what Dewey called the "lived-in" present. For we are all involved in a living process—some are merely less conscious or, I prefer to say, less aware than others about the future they are enabling through their present activity.

Place or space is concrete and palpable. It is in a profound sense where one discovers his or her self, what Deloria calls personality, as opposed to the casual sense of where one just happens to find one's self. Place is not merely the relationship of things, resources, or objects, it is the site where dynamic processes of interaction occur—where processes between other living beings or other-than-human persons occur. At this point it seems worth noting that history as spatial relations offers a view of change wherein one might think of change as timeless, or at least not time-dependent but space-dependent. Change is understood in a nonmechanistic relational- and process-dependent manner, with processes understood as changes in spatial relations and constellations of power. Thankfully, physics and the life sciences are beginning to acknowledge that the old mechanical and time-dependent view of our lives in this world allowed us to do certain things,

manipulate and build things; humans can indeed send people to the moon and have them safely return.

In terms of acting or behaving with a moral intelligence, our human successes have been less than impressive. I believe this is in large part because our pride in controlling/manipulating small "elements" and understanding some processes have made us good at doing some things, but facilitated our losing sight of the big picture and the necessity of asking what things mean. Some will respond, why worry about meaning if one knows how to do things, if one knows how things work? One answer seems incontrovertible: modern or postmodern humankind knows little about how meaning works and consequently little about our human selves.

We live in places today marked by it seems two extremes in human behavior: those who turn almost exclusively inward to find "themselves" and those who define and give meaning to their lives through the outward acquisition of things. One seeks another world in which meaning can be found, and the other decides to literally buy or make his or her world. Both behaviors are odd to tribal persons who find meaning in the world and recognize through experience that they are of a people and place.

Personality

I understand Deloria's idea of personality as the substantive embodiment, the unique realization, of all the relations and power we embody. Because each of us is someplace and, but for a few exceptions, never in exactly the same place as anybody else, our personalities are unique. Our phenomenal existence entails a spatial dimension and variations in power relations with other persons in the world. Therefore, *personality* as Deloria uses the term is a metaphysical concept, fundamentally different from the popular science view that what and who we are can be reduced to genetics or biochemical mechanisms. In the current reductionist genetic model of "personalities," the critical interaction between environment and personality is all but lost. Even at the most general and abstract level of contemporary evolutionary theory the concept of species masks the uniqueness of individuals.

What I mean can be understood by anyone who has had the long-term friendship of a dog, cat, bird, or "individual" of another species. We (each of us having such a friendship) know our other-than-human person is an individual, different from others of the same kind or breed. Why? Because we know them as persons: we learn through experience their personality. "Pets," however, are a special case given their social circumstances. Anyone attentive to animal groups living outside of human control for an extended period begins to distinguish unique personalities of individuals in the herd or social group. American Indian traditions suggest many of our peoples fully understood how much our own human personalities depended on what could be learned from the other-than-human persons in the world. Our personalities or selves, what Carl Jung called "anima" and Paul Tournier called "persons," as individuals within communities, require this recognition and interaction lest we become merely another demographic minority.

In a world of human-created "virtual" persons, places, and communities, as well as biologically engineered plants and animals, humans seem prepared to become not merely the measure of all things but the creators of the "brave new world" Aldous Huxley foresaw in his cautionary novel by that name. And like Huxley's *Brave New World,* there is one thing missing in the human-created ethernet world of virtual persons and artificial intelligence: a spiritual reality residing in persons and places unmanufactured and not engineered by human-the-creator. A spiritual reality permeates the world we experience, and incredible power exists in places where human creations do not get in the way or become the primary focus of our attention. This is not an argument, as my Comanche friend and colleague Ray Pierotti likes to emphasize, to take humans out of nature or for the maintenance of a pristine wilderness, a Garden of Eden, so to speak. Quite the contrary, it is a declaration that among the atmosphere of influences we move through daily, some powerful and unique influences exist in places not dominated by humankind. One need not read New Age texts to understand this; a survey of the diversity and complexity of distinct human cultures that have

existed thus far and are daily threatened proves the point. The world is a diverse and complex reality. The best place to begin an understanding of this reality is with critical reflection regarding our experience. Self-determination requires reflection.

Critical Reflection

Self-determination is reflective in two senses. First, in the sense that we can never act consciously until we have arrived at an understanding of who we are—each of us in our own unique place in the world. Here the metaphysics of living in the world draws a clear distinction between itself and the metaphysics of the world whose attendant psychology finds human self-discovery in aesthetic retreat from the world. In many indigenous traditions there are indeed "places" where one might think individuals retreat from the world for reflection and even revelation. Such a conclusion would be false, however, for in these practices the intention is not escape from the world but to seek out a better connection in the world, a connection to influences—power—that cannot be casually acquired. Heightened awareness of this/these power(s) does indeed require self-conscious reflection; however, reflection, or even contemplation, is not focused on some abstract or ideal sense of self but, if you will, on a process of discovery.

And it is this process of discovery that brings us to the second reflective feature of the question of self-determination: the focus of our attention is to the relations and connections that influence who we are and are constitutive of our being, or what Deloria calls personality. Tribal traditions were not guided by a formal rule of law but by custom and habit. Browning Pipestem once asked Haskell students, "What is 'the law'?" After they struggled mightily with the question, he gave an excellent answer and one illustrative of indigenous traditions: "The law," he said with a pause, "is a contract—an agreement—between strangers." Modern legal theory, in fact the law, is to a large extent an abstract human construction. However, and here is the critical point, in modern societies and nation-states, it is necessarily more meaningfully congruent with vague ideologies than customs, habits, and ceremonies in a

land-based community of persons we know—experientially. Modern law is quite literally no respecter of real persons, but a definer and defender of persons in the abstract. That human beings in modern legal theories are philosophical constructions is an ex post facto demonstration that persons constructing laws no longer share an experiential place, as well as a demonstration of the evaporation of culture emergent from a place. In an indigenous practice of education informed by an experiential metaphysics, the focus of self-determination is on the manner in which our being and identity itself is constituted of the number of good relationships we are part of and actively maintain. Self-determination cannot be an individual question, for the reflective sense in which our selves are grounded in life among our relations and in the relationships surrounding us requires engagement with the community of persons, both human and other-than-human, when we determine what we ought to do, what choices we should make, and how we should be self-determining.

Such a notion is indeed complex if left entirely to rational calculation, but experience gives us a source for estimation that goes beyond rational calculation. Self-determination in the dominant Western society is essentially about calculation, and appropriately so, for it has emerged in a legal culture of abstractions, of abstract persons, with abstract rights or freedoms. In such a model of politics—law, rights, responsibilities (of which there are few, for the most part), and power—solving political questions is like solving a problem in mathematics, given the right terms and operations. Legal constructionists, sympathetic to the points made above, get quickly frustrated, for in acknowledging the complexity of political environments as experienced, they quickly give up on rational elaboration of such complex models. To use an analogy from the quantitative social sciences, once one factors in more than a couple of independent variables in a computer-generated regression model of causal variables, the interaction effects are such that it grows increasingly difficult to say precisely what the effect of any single variable is. Rational calculation gets interminably difficult and hence, so the argument goes, impractical. I could not agree more.

However, the problem is solved once one gives up on calculation and abstraction and instead redirects attention to experience through custom, habit, ceremony, and what I choose to call the development of a synthetic attentiveness. By synthetic attentiveness I mean a heightened sense of awareness that operates without thinking about it or paying attention to it. Synthetic attentiveness is the "I experience, therefore I am" indigenous response to Descartes's famous "I think, therefore I am." I have seen this keen awareness or synthetic attentiveness operate numerous times with traditional elders who demonstrate the amazing ability to be aware of events, processes, and activities surrounding them that most of us miss. Whether visiting a classroom, having a meeting with governmental officials, or being in wetlands or on a grassland prairie, I have often been surprised in discussions afterward by what these elders "noticed" without seeming to notice at all. This ability to what I will call process processes is not magical, and it only seems mysterious to those insistent on a rational schematic or mechanistic model to explain what happens. I can offer neither. I see no need to; rather, this processing of processes seems acquired by paying attention—by learning to be attentive to the world we live in.

The question of self-determination is one of degree: how engaged, connected, and attentive are we to our community? This will seem contradictory and paradoxical to Western-thinking students and teachers. The more attentive one is to their community, the more self-determining they can be; the less attentive, the more selfish and self-destructing they will be. Christopher Lasch struck a chord with many in his description of Western culture, and contemporary American culture in particular, as a *Culture of Narcissism*—a culture of self-love. I would merely extend Lasch's insightful commentary to the love of all things or objects embodying selfishness.

Metaphysics for Living

Indigenous metaphysics offers insights into many of the most troubling problems modern or postmodern societies face, by recognizing the world as having living physical and spiritual dimensions,

not as a fast and fixed thing. Space, places, ecosystems, and environments are not the "final frontier" waiting to be conquered and controlled by modern ideologies; rather, they constitute the context through which we escape the abstract relativism of postmodernist thought and find what it means to be self-determining.

American Indian metaphysics has the advantage of framing all questions of knowledge as fundamentally moral questions that literally reside in our everyday life. The way many of us live today makes it easy to compartmentalize different aspects of our life. The strength that Deloria has always found in American Indian metaphysics is their emergence from a way of life. As we think about what it means to exercise self-determination, we must *not avoid* examining so-called economic, political, and social aspects of our lives as part of larger moral questions and what it means to be indigenous today. It may very well be as the elder Dan in *Neither Wolf Nor Dog* told Kent Nerburn: living with honor is just as important, if not more important, than living with freedom. We are obsessed with freedoms, but freedom to do what? If we fail to ask these foundational questions in education, it seems disingenuous to complain about behavior later. So let us think about self-determination indigenously: about what living with honor means to Peoples still connected to places.

THE PERPETUAL EDUCATION REPORT

V. Deloria

This essay was originally written in 1992 at the beginning of the Clinton Administration. We never did hear very much about that educational report, and, after a fancy gathering in New Mexico at the start of Clinton's term, we never did hear much about anything. Now we have a new administration and—we can easily predict—a new education report.

In authorizing the report the secretary of education is following an age-old and revered tradition in Indian education: It is better to talk about education than to educate. The ink will hardly be dry on this report before another organization, or another federal agency, has the urge to investigate, and the cycle will begin again. From the Reverend Jedidiah Morse in the 1820s through Senator Kennedy to the present, the refrain is the same: "We are not doing anything, we need more money, and Indians need to be involved."

Why is it that, in spite of sincerity oozing from every pore in their bodies, investigators of Indian education reach the same dull, stifling, and uncreative conclusions? Educational professionals argue that the problems are always the same, that the federal government never has adequately funded its educational branches, and consequently each report is basically dealing with past and existing inadequacies. I don't buy it. Big-city school superintendents give the same argument, and when you give them additional funds, they add an incredible number of bureaucrats, cut classroom budgets,

dress up a few motivational programs, and begin laying the groundwork for a new bond issue. That Washington educators would do less is difficult to believe. Graduate schools of education across the nation teach these people that abusing the taxpayer is their *only* function.

The second most popular argument in Indian education is that Indians are really a different cultural set and therefore generate different kinds of problems. Cultural differences should have been reasonably clear in 1492 and by the early 1700s when formal educational efforts for Indians began. Someone should have started to think about what cultural difference meant. Certainly after almost three centuries people ought to be getting a grip on the nature of this cultural difference. But now, after 500-plus years of European contact, it should not come as any surprise that Indians really do represent an entirely different set of cultural beliefs and practices, even though many of the most profound differences have disappeared over the last century.

Each education report concludes with the proposition that the government has to do more to get Indians involved in education. In some instances involvement means organization of parent advisory groups, at other times Indian school boards; and occasionally we are told that it is sufficient to scold Indian parents so that they will act like white parents, a good many of whom are more delinquent than all the Indians put together. In practice, Indian involvement usually means bringing a large crowd of Indians together so they can listen to a panel of educators tell them that they should become more involved in education.

If there really are profound cultural differences, if Indian parents should be more involved in their children's education, and if more funds should be spent, what is it that dooms reform efforts when minimal programs are devised to meet these perceived needs? The thing that has always been missing in Indian education, and is still missing today, is Indians. In spite of the many advisory committees, national organizations, and graduate programs in education that purport to deal specifically with Indian education, we see nary a trace of Indianness in either efforts or results.

Such an argument must certainly offend the many Indians who serve on these committees and work in national educational organizations, but the truth is that when they join these groups and take on these responsibilities, they generally leave their Indian heritage behind and adopt the vocabulary and concepts of non-Indian educators and bureaucrats, following along like so many sheep. There is some sincerity in their efforts. Many of them feel that in adopting the technical language of modern education they are making Indian needs relevant to influential people who can help turn Indian education around. The sad fact is that in modern American education, frenetic activity is mistaken for ability and capability.

Indians do play an inhibiting role in the development of new ideas in education by insisting that any policy-making group have an Indian membership. This demand goes far back into the early 1960s, when it was necessary to insist on some Indian representation in the many task forces and investigating committees that were being formed to work on Indian poverty. But it is necessarily a useless concept and fruitless requirement if the Indians who are being appointed fail to represent Indian interests. A committee composed entirely of Indians who parrot the educational party line is perhaps worse than a committee composed wholly of non-Indians who have some glimmer of what problems are and how they can be addressed. Let us take the three identifiable issues, cultural difference, family involvement, and funding problems, and discuss how these concepts should be used to support changes in Indian education.

Cultural Differences

So many cultural differences exist between Indians and non-Indians that almost any cultural trait can be chosen to illustrate possible changes. For our purposes we will take the continuously observed fact that Indians are not competitive. This argument is not to say that Indians never compete but rather that aggressive public demonstrations of competition are regarded as crude behavior. American education is designed to encourage people to compete with their peer group and measures individuals against

each other. The system taken as a whole relies heavily upon the experiences and values of the middle class, and consequently test scores are based upon the worldviews that mainstream Protestant Americans believe to be true, whether they are in fact or not. Teachers frequently cite the lack of Indian competitiveness as a detriment to learning and seek ways to overcome Indian children's shyness.

If we really understood cultural differences and developed our educational programs to build upon the strengths of each culture, teachers would not be concerned with overcoming shyness, they would build on it. One need only read Charles Eastman's book *Indian Boyhood* to see how Indians handled peer-group pressures in education. The boys were asked to choose which of the birds was the best mother and were given time to formulate their answers. Each boy chose an appropriate characteristic of bird behavior and motherly concerns, made his argument, and was prepared to turn aside other evidence. Discussion was lively, something that would make any modern teacher envious, and each answer given was a sophisticated blending of the knowledge of birds and the interpretation of their behavior using human analogs. In a sense this was competition between the boys in picking the proper bird. In a larger sense, each boy's reasoning was given a measure of respect as he did demonstrate that he had chosen reasonable virtues from among the many he could identify.

Tribal elders today teach a good many techniques and tribal history using the same methods of instruction, and almost every comprehensive book on tribal histories and culture will have some space devoted to tribal teaching practices. Consequently, there is no excuse for avoiding traditional ways of teaching in favor of non-Indian techniques that have proven themselves failures. Using either the oral traditions or some of the written materials that are available, it would not be difficult to reconstitute a class of Indian children and instruct them in much more efficient ways. Storytelling with the further requirement of being able to recite the story accurately after hearing it several times would make the accumulation of knowledge fun again.

The Indian view of the world tends to see unities both in the structure of physical things and in the behavior of things, and we have recently been describing it as "holistic" in that it tries to present a comprehensive picture in which the parts and their value are less significant than the larger picture and its meaning. That is not to say that Indians could not deal with specific items of knowledge. Most Indian languages have a multitude of words to describe phenomena, and Indian words can easily be arranged to provide new words and concepts. In fact, Indian language can achieve more precision than English, even while conveying the emotional nuances necessary to make knowledge come alive and remain with the person.

Look at the curriculum that Indian children are asked to use. Knowledge of the world is divided up into separate categories that seem to be completely isolated from each other. So profound is this separation that most children, Indian and non-Indian, rebel when they are asked to write complete sentences in classes other than English, or to show any comprehension of mathematics in any course except mathematics and physics/engineering. We are asking children to divide the world into predetermined categories of explanation and training them to avoid seeing the complete picture of what is before their eyes. Efforts of the last three decades have been somewhat bizarre when this question is faced directly. Quite often the images familiar to Indians are used instead of traditional white, middle-class images, and this change in pictorial representation is supposed to cure the defect in the child's perspective. If the child wants to understand the whole, we simply dress up the parts in buckskin and pretend that we have answered the problem.

Family Involvement

The original intent of Indian education was to wean the child away from his or her family, community, relatives, clan, band, and tribe. People seriously believed that if an Indian child was brought within the purview of non-Indian education at an early age, the corruptive influences of Indian people would not affect them and

they would grow up to be "normal." That is to say, they would naturally adopt and exemplify all the values and perspectives of the non-Indian society. I remember meeting a high-level educator in the 1970s who was absolutely convinced that Navajo children would have automatically spoken English if they had been anywhere else than the reservation. These attitudes, while not completely eliminated, changed profoundly after the Meriam Report, which gave emphasis to building programs on the basis of what actually existed in the reservation communities.

If family involvement is so important, why is it that developments in the past four decades have made it impossible to connect the family and the school? During the New Deal there was a great emphasis on the reservation day schools. These schools were located wherever there was a significant concentration of people on the reservations, and they serviced a small population, often in one-room schoolhouses. Teachers lived in the local communities and knew the parents, grandparents, and families and participated in all local activities. Indeed, the schoolhouse, no matter how insignificant, was the center of local social activity. Families felt they were part of education because everyone who had anything to do with the schooling of their children was an important part of their community.

Today we have monstrously large school plants that resemble nothing so much as prisons. Indian children ride buses for hours each day to attend school. The enrollment in large consolidated schools is so big that discipline becomes a problem, and school activities, while certainly more plentiful and attractive, become exercises in mass movement. Large schools require an immense administrative staff, most of whom spend their time pushing forms from one desk to another or attending conferences to learn how to make administration even more complicated. Indian children are lost in these gigantic institutions, and to survive, we now see them organizing gangs on reservations. We have imported the urban environment; we have not brought education to the reservation at all.

For the past twenty years there has been a big emphasis on getting parents involved with this educational machine. Both the

tribes and federal educators have preached PTA and parent activities, and advisory committees on various programs and activities of the school have blossomed like runaway zucchini. With some rare exceptions, no provisions have been made to include grandparents and uncles and aunts, the people who traditionally took responsibility for much of the children's education. PTAs and other parent groups have been organized using entirely artificial criteria, primarily residence within a certain geographical area—as if people shared some mysterious social cement by geography alone.

The psychological burden of even attending a meeting in a big, formal, brick building is intimidating to many reservation parents. It calls back memories of their childhood and the summons to come to the agency, which always meant problems. Families are herded through large school plants every year at "welcome back to school" days, but the format used, the quick tour with smiling teachers defending their classroom doors, makes it clear to parents that they are outsiders and are not to appear at the school unless they are asked. Multiply this feeling by several thousand and you can experience the feelings of the Indian child the first several weeks of school.

The presence of consolidated schools makes reform in this area a difficult proposition at the present time. Changes in the educational system are probably dependent upon corresponding and prior changes in the tribal governments that vest more self-governing powers in local communities. In fact, the major reform that needs to be made on many reservations is a change of perceptions about what tribes and reservations are. They should be understood in their national character, which is to say, as instrumentalities expressing the national existence of the people and dealing with primarily outside forces and entities. Local communities should take on the characteristics of municipalities and formal village institutions that include local control of education and social activities.

Wherever possible local communities should begin to take control of primary and part of secondary education, even if it starts in one-room schoolhouses. Local control should emphasize control over curriculum, with teaching about tribal history, tribal customs

and traditions, and tribal language at the earliest possible age with maximum use of traditional people. The activity should be perceived as Indian or tribal. This emphasis is in contrast to the present orientation, which is that the participants are Indian, but that the kinds of activities they are asked to support are basically non-Indian in origin. A considerable part of the school activities, particularly including much of the testing, should be transformed into social/educational events of the community. When the Five Civilized Tribes operated their own school system, they used to have several days of formal recitation of what students had learned or were learning in school, and the communities played an integral role in judging whether or not the school system was educating their children.

We need not project futuristic plans that may never become feasible. A good way to begin involving families and communities would be to introduce two subjects to Indian primary and secondary education: family genealogies and tribal traditions. These two subjects provide a solid foundation for children's personal identity as well as serving as a context for teaching all manner of social skills and development of memory and recollection. In a world of large institutional restraints, knowledge of family and tribe would provide a significant set of skills to provide confidence in the child that he or she is part of an ongoing human experience. The best possible setting in which these kinds of teaching can take place is informally outside the school building, using a conversational method of instruction. If Indians presently involved in Indian education would but stop and think of their own knowledge of the world, they would realize that while they cannot remember anything of what they were taught in grade school, they have instant and highly accurate recall of stories they heard elders tell several decades ago in informal, casual settings.

FUNDING PROBLEMS

If ever there was a school superintendent who thought he or she had sufficient funds to operate during the school year, the world would have come to an end. Federal bureaucrats can stand in the

midst of incredibly wasteful expenditures and weep real tears about how inadequately they are funded. In addition to outright squandering of resources on administrative perks, conferences, and research projects, the federal Indian education budget reflects the contemporary institutional configuration on the reservations and in state school districts—neither of which allocates funds on a sensible basis. Funds derived from Johnson-O'Malley, PL 874, and the Indian Education Act are all seen as supplemental to existing state, local, and federal programs and budgets. Consequently, everything in the funding area is oblique to the purpose of education and is designed not specifically to educate Indians, but to ensure that the Bureau of Indian Affairs and local non-Indian school districts prosper. If Indian children happen to get an education in the process, fine.

With large consolidated schools, budgets reflect the size of the plant and operations, with teaching a minor component in the overall scheme of things. It is difficult to get national figures on various specific items of expenditure, but it would not be surprising if there were one administrator and/or staff person for each teacher actually in the classroom. With the increasing shortage of oil escalating the cost of fuel, busing children will now substantially distort the expenses of every school serving Indian children. It is impossible to estimate the cost of heating and cooling large buildings as opposed to smaller schoolhouses, but the differences must be significant.

Included in the funding area, although only of related importance, is the incredible amount of money being spent on various kinds of research in Indian education, including special supplementary programs of enrichment. With the exception of California and a few school districts scattered across the country, it is possible for a person to get a degree in "education," taking courses that are essentially method and theory classes in education, and having minimal course work in the subjects that are actually going to be taught. These credits are frequently survey courses that give a minimum knowledge of the subject. When these teachers try to teach students, they discover they have such a sparse background

that it is nearly impossible to hold students' interest. Thus, the cry goes out for better textbooks and curriculum. The problem is not the curriculum but the inadequate training of the teacher. So countless dollars are spent in research on curriculum, when better teacher educational requirements are actually needed.

Finally, the politics should be taken out of Indian education funding, particularly in the Title IV funds. It is not difficult to look at the Title IV awards, compare them with the politics of NACIE and NIEA—which have been the two leading Indian organizations involved in making educational policy as part of the movement toward self-determination in education—and understand what is happening. And a glance at the various universities that perennially receive large educational grants, but produce few graduates, will show the interfacing of the Indian and non-Indian educational old-boy network. The shifting of personnel within the Bureau of Indian Affairs school system will also provide a means of tracking Indian political decisions. As long as Indian education is a function of Indian national politics, we should not hear Indian educators complain too loudly about the failures of the federal government in this field.

A good argument can be made that the Indian educational network is now so entrenched that no reforms are possible. During the past three decades we have seen an endless parade of people occupy the major positions in Indian education. We are now at the point where we are recycling people—if the latest appointments are any indication of the state of affairs. Why is it that after nearly twenty-five years of producing Indian educational administrators, the short list for appointments always looks like the bimbo finalist list?

We define the problem in education as originating in the difference in cultural outlook. If this observation is really true, why do we have educators put in charge of correcting the problem? It might be far better to appoint a well-trained humanist instead of a recycled Indian politician. For all the fanfare we have had about putting Indians in charge of the bureau and Indian education, the best people we have seen in policy-making positions have been John Collier, a bohemian social worker, and Philleo Nash, a renegade

anthropologist. There is much to be said about putting someone in charge who knows about people and not another person who can manipulate rules and regulations to the satisfaction of Indian political cliques.

Indian education doesn't need another shallow report. In view of the impending collapse of American institutions, such as the family farm, local banks, and the housing market, it would appear that our society will be undergoing major disruptive changes for the next several decades. Because about half of the Indians live on the reservations, it may be necessary to move to some kind of subsistence economy if the people are going to survive the upcoming economic catastrophe. The financial choices in Indian education will become apparent. We will either continue to operate existing school systems with declining funds or start to make fundamental changes in how we educate children and allocate resources to do so.

Instead of boring us with another tedious recital of the failure of the federal government to educate Indians—which is embarrassingly obvious—the secretary of education would do well to find some way to confront the reality of Indian culture, community, and history and devise an educational program to meet this specific challenge. If traditional institutions, programs, and teaching have to be changed, so be it. After five centuries of contact, it does not seem too much to ask non-Indian educators and institutions to come to grips with the reality that is the American Indian.

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Introduction

"The *guerrero del amor* becomes a warrior lover who understands struggle and battle as expressions of commitment, loyalty, sharing of self—a selflessness that is not sacrifice but fulfillment through collectivity."
—James & Gordon (2008)

The past ten years have ushered in extraordinary change. When I first wrote *Red Pedagogy*, the field of Native American and Indigenous studies was still emerging, critiques of capitalism were generally relegated to the radical left, and theorizations of the United States as empire were both forestalled and animated by the events of September 11. But as the vicissitudes of settler colonialism, amplified through neoliberalism, increasingly came to condition both life and death, so too has the counter-hegemonic blowback.

According to a recent study, the number of global protests against domination has steadily and significantly increased, moving from fifty-nine in 2006 to 112 protests in the first six months of 2013 alone. The Arab Spring, *Indignados*, Occupy Wall Street, and Idle No More movements, among others, helped to revive faith in direct action as an effective and integral component of resistance, perhaps emboldening more recent collective uprisings around #BlackLivesMatter and #ICantBreathe.

Such on-the-ground struggles have been anticipated and supported by corresponding surges in intellectual critique. Treatises on empire, imperialism, settler, and other colonialisms are no longer relegated to the margins of academic discourse and have become central to a variety of fields and disciplines. As a result, the landscape has shifted significantly since I wrote *Red Pedagogy*, with new and revived synergies between scholarship and activism pushing deeper considerations of the limits of liberal theories and discourses. More specifically, within Native American and Indigenous studies,[1] a new subfield of critical Indigenous studies (CIS) has emerged wherein CIS schol-

ars undertake (Western) critical theory as a means of "unmapping" the structures, processes, and discourses of settler colonialism at the same time they use it to disrupt and redirect the matrix of presuppositions that underlie it (Byrd, 2011).[2]

Such "unmappings" have compelled examinations of self-formation, governance, and political power; normative conceptions of justice; the articulation of Indigenous structures within the grammar of empire (i.e., sovereignty, nationhood, recognition); the dialectics between governance and economic systems (i.e., capitalism, socialism, nonmonetized systems of reciprocity); and the relationship between settler colonialism, patriarchy, and heteronormativity (Grande & Nichols, 2014).

In education, the relationship between on-the-ground struggles and the broader intellectual life of the field is more tenuous but strengthening. While anti-testing and anti-privatization movements (e.g., Opt Out and Save Our Schools) have proliferated in response to the intensification of neoliberal reform efforts aimed at restructuring schools to be "more conducive" to capital,[3] principal academic organizations and editorial outlets hold fast to liberal discourses and modes of educational research.[4] Such liberal stances of "neutrality" do more to legitimate than disrupt the fundamental assumptions of the reform agenda: that teachers are inadequate and public schools are failing. While the discipline of critical pedagogy remains a perennial site of contestation, it is still marginalized within the broader field of education. Although this could be an indicator of the continued hegemony of dominant educational discourses, it could also mean that what was once considered "radical" analyses from old-school leftists has become more integral to a more general grammar of critique shared among sub-fields and disciplines. In other words, if critical pedagogy has plateaued as a *discrete* field of study, it could be because a broader range of disciplines is undertaking its logics and analytics.

Perhaps the greatest divide between on-the-ground-struggle and research remains in the field of Native American education. The primary reasons for this are essentially the same as they were a decade ago: the relentless pressure to address the more immediate sociopolitical urgencies of communities is given precedence over engagement with theory (Grande, 2004, p. 2). Moreover, significant decreases in state and federal funding have imposed an even greater reliance on corporate funding sources (e.g., Gates, Walton, Teach for America) with neoliberal agendas attached. That being said, undertakings of critical theory are still more present that they were ten years ago, particularly in the articulation of Indigenous (and decolonial) research methodologies.[5]

LOVE'S LABORS LOST

Given recent developments, I am truly grateful to have this opportunity to revisit and (re)vision my work alongside a deeper field of critical Indigenous scholarship as well as in a moment when the violence of the settler state is more widely visible and questioned. That being said, when the idea of publishing a tenth anniversary edition was first presented to me, I was reticent. I wrote *Red Pedagogy* as a young scholar—and by young I don't mean in terms of age or professional rank but rather in terms of experience.[6] To be clear, my reticence is not about the quality of my words or ideas (I stand by them) but rather about the culture of academia in which they were undertaken—too fast and too soon. Over the past ten years, I have come to an even deeper realization of how academia objectifies knowledge (and authorship) as a pre-condition of its commodification and reification, both of which serve the broader project of corporatization.

More specifically, following the publication of *Red Pedagogy* I was quickly and unexpectedly positioned as an "authority" in the field, inundated by a profusion of invitations to speak in a variety of communities, most of which were not my own. Generally speaking, authority and public voice in Indigenous communities emerge alongside age and experience; the young are expected to cultivate listening skills while elders are ceded both the actual and metaphoric floor.

The basic understanding is that because history, experience, and (institutional) memory matter, "new" and young knowledge is to be met with caution and restraint while important "teachings" are learned from elders and ancestors whose voices serve as important fetters for the intemperance of youth. Thus, as I started to make the rounds of the academic circuit, I became increasingly troubled by the experience of being positioned to assume a voice-too-public-and-bold-for-its-experience. As I gathered my wits about me, I started to begin talks with an acknowledgments section that ended with the statement, "and to any elders present today, I ask your forgiveness for speaking so boldly and out of turn."

While such a gesture helped to assuage a modicum of discomfort, it did nothing to address the more structural and systematic erasures at play. In particular, as an arm of the settler state, one of the many ways that the academy refracts colonial logics is through the overvaluing of "young" and individual voices and the undervaluing of elder and collective voices.[7] And, in a system that overvalues "new" knowledge, fast productivity, and solitary thinking, paradigms of connection, mutuality, and collectivity are inevitably undermined.

The distinction between Indigenous and settler protocols around public voice (as well as author and authorship) mark the edges of the binary that colonial logics seek to eliminate: *the difference between subjectivities pro-*

duced in and through relationship to land and those produced under and through significations of property. Thus, in the following sections, I engage in a deeper theorization of the relationship between the academy and settler logics. More specifically, I apply the work of CIS scholars developing analyses of Indigenous-state relations to theorize the relationship between the academy and settler logics. Specifically, theorizations of the politics of *reconciliation, recognition,* and *refusal* are employed as frameworks for articulating the academy as a space where capitalist social relations and modes of production (particularly of knowledge) are reconstituted within the academy. Beginning with a short history, I discuss the role of *reconciliation-* and *recognition*-based politics in maintaining the hegemony of the settler academy as well as of *refusal* to help imagine alter-Native modes of participation.

THE PERILS OF ACADEMIC RECOGNITION AND RECONCILIATION

From the beginning, Euro-American cupidities were so enmeshed that every attempt to "civilize" was one to Christianize, and every effort to Christianize, one to capital-ize. At stake were not only the bounty of minds and souls for Christ but also the currency—the property—that the primitive accumulation of Red bodies signified for the state. Education became the nexus between these capitalist and religious missions, manifesting the campaign to "kill the Indian and save the man" under the auspices of schooling and the establishment of universities. It wasn't long before investment in Indian education became the subtext for the appropriation of Indian land.[8]

Axtell (1985) writes, "underwriting an educational institution with a potentially long corporate life" appealed to the settler class as they "who had never seen an Indian felt comfortable in contributing to schools that promised to solve America's native problem in a relatively inexpensive and appropriately civilized way" (p. 216). Ironically, despite centuries of state sanctioned programs to "civilize" Indians through schooling, a report issued in 1932 found that only fifty-two American Indian students had earned college degrees and fewer than five institutions offered scholarships to Native students (Szasz, 1974, p. 135).

While, on one level, this could be understood as an effect of Native resistance or refusal, my central concern here is the material cost of this calculus. Specifically, given the number of schools founded on Indian land, with Indian money, or monies earmarked for Indian services, the sheer paucity of Native students and graduates vividly illustrates the historical materialist relationship between the academy and Indigenous dispossession.

It wasn't until the late twentieth century that the university sought to *reconcile* this history by incrementally shifting its strategies and apparatuses

to "include" Native peoples, extending "opportunity" through liberal and assimilative discourses of respect, mutuality, and tolerance. The appeal of *reconciliatory* discourses is that they occlude the need and forestall demands for structural change through the strategic deployment of performative acts of "healing" and "unity." For example, an institution can effectively display an ethic of multicultural tolerance by celebrating Native American Heritage month while at the same time resisting more structural changes (i.e., hire more Native faculty or repatriate the Indigenous lands upon which the campus is undoubtedly constructed). Though perhaps preferred to explicit forms of exclusion, models of *reconciliation* are not only insufficient but ultimately serve as "transits" of settler authority and continued domination (Byrd, 2011). That is, they fail because they are "always already conceived through the prior disavowed and misremembered colonization of indigenous lands that cannot be ended by further inclusion or more participation" (Byrd, 2011, p. xxvi).

Similar to models of reconciliation are *recognition*-based models that "seek to overcome the colonial character" of Indigenous-settler (state) relations by "recognizing and affirming the value of Aboriginal cultural identities" and their distinctive forms of governance and political formation (Coulthard, 2003, p. 2). While still undergirded by the liberal discourses of the modernist state, self-determination enacted via the politics of recognition has effected some substantive outcomes, securing various entitlements for Native nations including land claims (e.g., *Joint Tribal Council of the Passamaquoddy Tribe v Morton*, 528 F.2d 370 1st Cir. 1975), reparations (e.g., *Cobell v Salazar*), and Indigenous "rights" (e.g., United Nations Declaration of the Rights of Indigenous Peoples).

Despite these achievements and the overall aim of *recognition* to fetter the damage of *non*recognition (or misrecognition as noted by Taylor, 2004), such models ultimately sustain colonial systems of power and undermine Indigenous sovereignty by keeping intact the asymmetric relations of power whereby the dominant agent (settler state) retains the authority to "recognize" the subjugated polity (Indigenous peoples).[9] Moreover, Wolfe (1999) cautions against the collateral and dilatory effects of "inducements" gained via the politics of recognition. He writes, "from the treaty era onwards Indigenous peoples have been subjected to a recurrent cycle of inducements" (e.g., allotments, citizenship, tribal enrollment) "each of which has sought to present domination as empowerment" and thereby assist Natives' consent to their own dispossession" (p. 259).

Coulthard (2007) similarly warns against the effects of inducements, particularly as they result in economic gains for individuals. He argues that when recognition is granted through mainstream forms of economic development, it inheres the potential for creating a "new elite of Aboriginal capital-

ists" whose "thirst for profit" comes to "outweigh their ancestral obligations" (p. 452).

As an arm of the settler state, the academy similarly traffics through a "cycle of inducements"—prestigious grants, awards, titles, and endowments—that proffer "domination as empowerment." The thirst for such forms of (academic) recognition drives a culture of competition and self-promotion that mirrors the broader "inducements" of settler colonialism and "seductions of empire" (Agathangelou, Bassichis, and Spira, 2008). The danger of academic inducement is not just the cultivation of individualism or creation of an "Aboriginal elite" but also the engendering of an academic arms race that misrepresents the (fast) production of knowledge as "progress" or worse as a transit for intellectual imperialism. Thus, as understood within the broader context of the settler project, academic recognition refracts the colonialist logics of "remove to replace" (slow for fast, old for new, aged for young), that ultimately serves to obscure the violence and material effects of epistemicide (Wolfe, 1999).

THE POSSIBILITIES OF ACADEMIC REFUSAL

In working past and through the aporias of reconciliation and recognition, scholars of CIS have advanced theorizations of *refusal*—a politics that Garland (2013) defines as "the negation of that which negates us" (p. 375). The logic of *refusal* is "less oriented around attaining an affirmative form of recognition from the settler-state and society, and more about critically revaluating, reconstructing and redeploying culture and tradition in ways that seek to prefigure . . . a radical alternative to the structural and psycho-affective facets of colonial domination" (Coulthard, 2007, p. 456).

For example, Gómez-Barris (2012) theorizes the hunger strikes staged by the Mapuche peoples for the return of their lands as acts of refusal: "As extreme bodily performance and political instantiation, the Mapuche starving body literally enacts the condition of precariousness, specifiying the meanings of social death for indigenous peoples living within a state of permanent war" (p. 120). Coulthard (2007) and Alfred and Corntassel (2005) similarly take up *refusal* as a pre-condition to (or in dialectical relationship with) the political project of Indigenous resurgence.

Within the field of Indigenous research, Simpson (2011) theorizes *refusal* and sovereignty at the "level of method and representation," exposing the colonialist underpinnings of the (academic) "demand to know" as an instantiation of settler logic. She posits *ethnographic refusal* as a stance/space wherein Indigenous subjects limit access to be known (p. 73). Mignolo (2011) and Quijano (1992) similarly take up *refusal* in relation to knowledge formation. Specifically, they assert Indigenous knowledge as a space of *epistemic disobedience* that is "delinked" from Western, liberal, capitalist understandings of "knowledge as production" or as a search for newness. They write, "Indigenous knowledges take us to a different place" and beginning—not just a "new temporality within the same space" but to an alternative site of "struggle and building" that represents an actual "paradigmatic break" (p. 45).

Understood as a radical assertion of sovereignty, the act of "refusal" is threatening to the settler state and thereby dangerous for the Indigenous subject—Native peoples worldwide continue to be "disappeared" or murdered at disproportionate rates. While the sanctions for "refusal" in the academy are not about life and death, "refusal" to comply with the normative publish-perish, tenure-promotion disciplinary strategies can lead to increased marginalization, exploitation, and job loss as well as decreased funding. And, in a system where Indigenous scholars comprise less than 1 percent of the professorate, such consequences not only bear hardships for individuals but also whole communities.

Nevertheless, the material gains accessed through reconciliatory and recognition agendas have even deeper costs and consequences. As Byrd (2011) reminds us, the colonization of Indigenous lands, bodies, and minds will not be ended by "further inclusion or more participation" (Byrd, 2011, p. xxvi). Indeed, particularly in this moment of a metastasizing settler state, I believe it is incumbent upon each and every one of us to refuse, reimagine, and rearticulate assimilative logics in all of their (low and high intensity) forms.

ACADEMIC SURVIVANCE

The inspirational work of critical scholars and community activists has compelled me to think hard about this anniversary edition, to carefully weigh the options. Undertaken as a form of recognition, it could take the form of a commemorative text, following the usual protocol of updating the core chapters while adding a new introduction and conclusion. Given the tenor of times and urgings of the field, this approach seemed counter-productive if not antithetical to the overall project. Alternatively, in the spirit of refusal, I could have simply turned down the opportunity, letting the text fade into respectable obscurity. While I seriously considered this option, the opportunity presented itself just as my mom (Ona) herself began to fade—and, something about the juxtaposition of these events seemed important—to not let go, to hold tightly, to come to terms.

Within this context, I decided to capture the moment as an opportunity to delink the tenth anniversary of *Red Pedagogy* from the politics of recognition and reimagine it as a project of both refusal and renewal. Specifically, in refusal of the solitary, "expert" voice, this edition presents a collectivity of

students and scholars, each of who are contributing from across a variety of fields and subject positions to the field of critical Indigenous studies. Moreover in refusal of an essentialist identity politics and as a means of refracting the diversity of voices that currently populate the field of critical Indigenous studies, essays were solicited from Indigenous and non-Indigenous scholars. Specifically, rather than write an updated and revised text that would capture the shifts in the field and the broader socio-political conditions of settler society and Indigenous communities, I decided to leave the original text intact, an invite scholars doing work in each area (i.e., history, governance, Indigenous feminism etc.) to write response essays that would, "engage, extend, critique, speak back to, and intensify the contents of the chapters and, thus, the book overall." The text of the original invitation read as follows:

> Part of my initial motivation for writing *Red Pedagogy* was to address the lack of interchange between critical theorists and Indigenous scholars, particularly in the field of education. I intended to start a conversation. This Anniversary Edition is an effort to model that conversation, demonstrating that the field is now deep and broad enough to sustain internal critique. In particular, while the text continues to reflect my major intellectual commitments, I wrote it straight out of graduate school and my thoughts have matured since then. Also, ten years ago, the field of critical Indigenous studies had yet to be established and now it is burgeoning and supported by a number of new organizations and journals. *The time is ripe for this work to be revisited.* My hope is that as a collective we can write in refusal of Manichean academic logic that either confuses condemnatory discourse or substitutes sycophantic praise for critique, committing instead to engage, extend, trouble, speak back to, and intensify the text, building a deep, sustained and critical dialogue that engages in the analysis of ideas. Toward this end, I offer up my own words and their understood limitations for your consideration and rigorous engagement.

I am honored that so many agreed to think alongside me. Gathering this particular assemblage has made me think of the potential of constituting a more permanent body, perhaps writing under and through a nom de guerre (similar to the Combahee River Collective). That is, if furthering Indigenous resurgence (not individual recognition) is indeed paramount, then the more radical refusal would be to write together as one, enacting a kind of Zapatismo scholarship, a balaclava politics of concealment, where the work of the collectivity transcends the one; voice, body, life. Until then, I offer this collectivity of Indigenous and non-Indigenous voices working to "unmap" the structures, processes and discourses of settler colonialism.

Responses begin with Miryam Yataco's preface-as-offering which customarily prepares the ground upon which we write. Prayers and acknowledgements typically precede work in Indigenous communities to ensure that it is undertaken in a blessing way. The first section of the text, the architecture or "bones" as Peter McLaren writes, is reinforced by the work of four established scholars. John Tippeconnic opens with a gracious but firm reminder that if the work of critical Indigenous studies is to matter, that scholars will need to make deeper and more sustained connections with those on the front lines of struggle, particularly students and teachers. John's contribution reflects ongoing conversations in the field that call attention to the need to work with communities, that raise questions about the need for interlocutors, and/or the responsibility of scholars to write for multiple audiences. Next, Alyosha Goldstein extends the discourse by re-mapping the "terrain of struggle" through a careful consideration of the more recent and important court cases that continue to frame (which is to say mitigate) Indigenous sovereignty and their subsequent analyses. In so doing, Goldstein reminds of the importance of grounding the undertaking of *settler colonialism* and *decolonization* (in both in theory and practice) in the "specificity, social etymology, and complex genealogies of the terms." The second chapter, "Competing Moral Visions: At the Crossroads of Democracy and Sovereignty," is first responded to by Audra Simpson who more deeply contextualizes the antagonisms. Her analysis, as well as her work more generally,[10] carefully maps the contours of the settler state and its logics, reminding us of the ways in which "sovereignty" is a distinctive political project that operates outside the bound of "inequality." Following this cogent analysis, long time cultural-worker, Peter McLaren speaks back to the text through his reassertion of the enduring significance of the social relations of production (and the political class conflicts taking place within these relations) as the central antagonism. In so doing he foregrounds a reassessment of the possibilities of Marx(ism) in creating a "socialist alternative . . . that might be useful for Indigenous educators."

Next, Greg Cajete and Donna Houston take up what might be considered the heart of the text: the question of land. In his essay, Cajete focuses the analysis, providing a pedagogical model for rethinking Western science through Indigenous ontologies. He submits that a "participatory" Native science is "desperately needed to balance the imbalance" that has manifested from the misapplication of modernist science. Donna Houston follows with a similar call for a "re-animation" of critical pedagogy through a deeper alignment with Indigenous struggles for land justice. In so doing, she calls attention to the important scholarship that has emerged within the field of critical pedagogy in response to the critiques of its anthropocentrism. Insofar as land is life (and identity) for Indigenous peoples, the next responses by Jodi Byrd and Leigh Patel take up the question of subjectivity; both extend the discourse through a more vigorous engagement with the normative categorizations inherent in settler logics. More specifically, Byrd, extends and reframes the discourse to account for the important interventions in the field of Native studies by queer and feminist scholars, theorizing how "heternormativity and heteropatriarchy work in tandem with racism and colonialism to further In-

digenous dispossession, loss of identity and culture." Patel provides insight to the distinctions and commonalities between the social movements of Indigenous peoples and undocumented subjects. She argues that the "blunt tools" of settler colonialism have failed to disrupt the core and deficient logics of the "innocence/guilt/legality/illegality" frameworks, looking instead to critical analyses of coloniality.

Rounding out this section is the work of Eve Tuck and Andrea Smith both of who make important interventions to the original texts' nascent engagement with feminist discourses and their relevance to the struggles of Native women and communities around issues of gender and (hetero)sexism. Tuck grounds her essay in the real-existing world of settler violence on the bodies of Native women. Her poignant references to the missing and murdered Indigenous women at the center of the #AmINext movement, is a sobering reminder that the bridges of liberal settler discourses continue to be written upon the backs of red and other women of color. Smith, a leading feminist-scholar-activist, writes a sharp essay that cogently addresses the perceived aporias of the first edition.

I would feel remiss if I didn't mention the current controversy regarding Smith's claims to Indigenous identity. As someone who is neither a citizen of the Cherokee nation, nor her relation, I don't see it as my place to comment on her identity but I am compelled to speak to the impact of the controversy on the field of Native studies. First, it should be clear that for this chapter, Eve Tuck was invited as the Indigenous voice and each chapter pairs an Indigenous and non-Indigenous voice. Second, I invited Andy based on the circulation and impact of her work. Her first book, *Conquest: Sexual Violence and American Indian Genocide* (2005), made a critical intervention, moving the field toward deeper analyses of the relationship between patriarchy and state sanctioned violence.

Scholars are just beginning to discuss whether and how the reading and analysis of Smith's work shifts if it was indeed written from the subject position and voice of a white woman. While it's not possible to speak to the whole of her work, I can comment on her contribution to this volume. Smith always remained a staunch advocate of (Indigenous) feminism, not just in terms of its politics or frames of analysis, but as a subject position. When I wrote *Red Pedagogy*, Native feminism (along with critical Indigenous studies) was not yet a vibrant field of study. Thus, when *Conquest* first emerged (it was published one year after *Red Pedagogy*) it pushed my thinking in productive ways. I continue to appreciate her analysis of sexual violence as a tool of settler colonialism and patriarchy as she rearticulates it in her response essay "The Indigenous Feminist Revolution." Though my critique in *Red Pedagogy* (2004) turned upon whether feminism grounded in liberal and statist, which, is to say settler logics, was a viable space for theorizing Indigenous formations, analyses and politics of gender and sexuality and I'm not sure her essay adequately addresses this assertion.

That being said, I now read Smith's defense of feminism *qua* feminism differently if indeed it is voiced from the subject position of a white woman. Particularly in this essay, Smith's support of Native women as feminists draws upon a troubling narrow range of antecedents (e.g., Rayna Green who has also been called into question for her claims to Cherokee identity). It is additionally curious that, writing ten years later, she does not call upon the brilliant works of Joanne Barker, Jodi Byrd, Sarah Deer, Jennifer Denetdale, Mishuana Goeman, Sarah Hunt, Lisa Kahaleole Hall, Dian Million, Dory Nason, Noenoe Silva, Audra Simpson, or Kim TallBear among many other contemporary Indigenous feminist scholars. While I still do not identify as a "feminist" for much the same reasons I don't identify as "Marxist" (though I find Marx critically important and useful), I continue to learn and be schooled by these amazing women and their commitment to Indigenous feminism. I also continue to support the broader effort to (re)center gender and sexuality in analyses of settler colonialism and Indigenous resurgence.

Next, in response to the original concluding chapter, Malia Villegas and Kevin Bruyneel raise substantive questions that aim to complicate and further the discourse and thereby the field of Native studies. Bruyneel urges a deeper consideration of the relationship between settler colonialism, white supremacy and anti-black racism. Given the recent emergence of the #BlackLivesMatter movement alongside the #AmINext and Idle No More movements, theorizations of these intersection may be the definitive task for the field. Malia Villegas, literally and figuratively, brings us home. Writing from the front lines of policymaking, she aims to bend the arc of Red Pedagogy toward a "stewardship framework" of self-governance, bringing the questions of, "in what way," and "toward what end" to the forefront.

The final section, "Teaching Red Pedagogy" is new to this edition and includes a mix of new and distinguished scholars as well as students from across a variety of disciplines. The section opens with Robert Stam and Ella Shohat's essay discussing the relevance of *Red Pedagogy* to their courses on colonial history, media, and discourse. As distinguished professors and authors of the classic text *Unthinking Eurocentrism* (1994), they enter into a "dialogue" with the text, making artful and seamless connections among questions of Indigeneity, coloniality, and Western philosophical thought. Mary Hermes, professor and lead researcher for the Ojibwe Conversational Archives at the University of Minnesota, discusses the implications of the text for language revitalization. She issues a careful reminder that while "grand narratives" may be helpful in framing the broader issues of language loss (i.e., epistemicide), the "real work" of language (re)acquisition requires specificity and community grounding. Sweeny Windchief, Tim San Pedro, and Jeremy Garcia write together as early career scholars who work closely

with Indigenous students and their communities. They raise questions about academic discourse and issues of accessibility, moving to "rehumanize" the road between theory and practice.

Floridalma Boj Lopez and Lakota Pochedly write insightfully about their graduate student encounters with *Red Pedagogy*. Lopez poses important questions about Indigenous (im)migrants and their relationship to "the original peoples of the places they inhabit." Such questions are reminiscent of (though arguably more politically charged than) Shona Jackson's work on Creole Indigenity (2012) and Dean Saranillo's on Asian settler colonialism (2013), rethinking the sociopolitical positionality of Indigenous (im)migrants in the United States.

Pochedly writes in reflection of her work with students with multitribal identities in the Oklahoma school system, raising similarly complex questions about teaching *Red Pedagogy* in a "multicultural" context. Together, their work extends the discourse on subjectivity in ways of increasing importance as the Indigenous population continues to shift. Finally, distinguished professor and author of the classic text *Imperial Eyes: Travel Writing and Transculturation* (1992) Mary Louise Pratt maps the central ontological tensions between Indigeneity and (settler) colonialism, refining and sharpening the edges of the "contact zone."

That such distinguished scholars and students would take up the text is truly humbling. However, for me, the greater significance is that intergenerational voices came together to form a scholarly collective, one that inheres its own possibility. That is, insofar as form suggests function, I have been thinking more about what it means for scholars committed to enacting a "politics on the boundaries" to form a collectivities of sovereignty; to exercise intellectual in support of Indigenous resurgence (Bruyneel, 2007). The aim of such collectives could be to cultivate spaces of thought and action that not only *refuse* forms of knowledge and knowledge-making contingent upon settler imperatives but also to conscientiously enact others grounded in Indigenous specificity and well-being. Together, we could work toward *academic survivance*, operating beyond (i.e., in refusal of) the bounds of mere survival and toward "an active presence" in society and the academy (Vizenor, 1993, p. 15).

In her end of days, Ona demanded never to be alone. She often called out my name, requiring that I not only make my presence known but also that I sit with her "skin to skin." I have come to understand these moments as radical assertions of connectivity borne through love and rage, the affective economies of both revolution and resurgence. I offer the following chapters in the spirit of Dylan Thomas, who reminds us to refuse to "go gently into that good night," but rather to collectively burn, "rage, and rage against the dying of the light."

NOTES

1. Over the passing decade, Native studies has burgeoned from a nascent to a major field of study supported by and through the newly established Native American and Indigenous Studies Association.

2. Scholars from across disciplines, tribes, nations, and subjectivities are coming to define CIS including key thinkers such as Kevin Bruyneel, Jodi Bryd, Glen Coulthard, Mishuana Goeman, Scott Morgensen, Mark Rifkin, Andrea Smith, Dean Saranillio, Aileen Moreton-Robinson, Robert Nichols, Noenoe Silva, Audra Simpson, Eve Tuck, Dale Turner, and Patrick Wolfe, to name just a few.

3. Reformists have adopted the Chicago-school Friedmanist logic of "crisis" in order to deploy strategies of school closure, displacement, and removal, to privatize public education (mainly by undermining unions and public participation). Such strategies are deployed universally but more intensively in poor and communities of color—the new palimpsest of manifest destiny.

4. As one indication, despite his spearheading of privatization schemes that undermine teachers, unions, and urban/high need schools, Secretary of Education Arne Duncan was invited by the American Educational Research Association to address the membership at its annual meeting in 2013. While there were some protest efforts, they did not represent the majority of the membership. Also, unlike other national organizations, the American Educational Research Association has not taken a public stand in defense of public education or teachers. In 2014, a new organization, the Network for Public Education, was launched, though it is made up mostly of practitioners, not scholars in the field.

5. Another promising development is the emergence of a new scholarly journal, *Decolonization: Indigeneity, Education & Society*.

6. To be clear, I wrote *Red Pedagogy* straight out of graduate school. It was the dissertation I *wasn't* allowed to write as a student and kept locked in a file on my desktop labeled, "The Book." It came to fruition during my year as a Ford Foundation post-doctoral fellow for which the American Indian Leadership Program at Penn State University graciously served as my "host institution" and Dr. John Tippeconnic as my mentor.

7. Indeed, success in the academy is contingent upon the production of single-authored, monographs that ostensibly contribute "original knowledge" to the field—with the greatest pressure to produce exerted *early* in one's career—instantiating capitalist desire for the young and new.

8. Harvard is a prime example. Founded in 1636 by "the Great and General Court of the Massachusetts Bay Colony," the college was established in name only. It didn't have a single building, teacher, or student until 1638 when John Harvard, a young minister of Charlestown, died leaving his library and a significant portion of his estate to the new institution. Even so, nearly two decades later, the fledgling institution was on the brink of bankruptcy. In a last ditch effort, then Harvard President Henry Dunster (re)engineered the College Charter (1650) to include the civilizing mission and thereby gain access to public and private funds available for such efforts (Wright, 1997). Dunster's scheme paid in dividends. The "trustees of the missionary fund" bestowed Harvard the necessary capital to build an "Indian College." It wasn't long, however, before the use of such funds aroused suspicion as the proposed building expanded to four times the estimated cost and not a single Indian student had been admitted (Wright, 1997, p. 74). Despite the absence of Indian students, Harvard officials saw no reason to let the new college stand vacant and filled its halls with expectant white students. Until its dismantlement in the 1690s, the "Indian College" at Harvard graduated only one Native student, Caleb Cheeshahteaumuck (Wampanoag).

9. A growing number of CIS scholars are engaging in analyses of the role of the politics of recognition in sustaining colonial power. For example, in *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism*, Beth Povinelli (1998) examines the ways in which land title and other forms of Australian recognition of Aboriginal peoples ultimately furthered the reach of the contractual state. Working within a Canadian context, Glen Coulthard (2007) articulates the limits of recognition through the critical purchase of Fanon's work, arguing that colonial structures of dominance rest on their ability to entice

Indigenous peoples to come to *identify* with the profoundly *asymmetrical* and *non-reciprocal* forms of recognition either imposed or granted by the colonial state (p. 439).

10. See her award winning book, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Durham, NC: Duke University Press, 2014).

1

Mapping the Terrain of Struggle: From Genocide, Colonization, and Resistance to Red Power and Red Pedagogy

Sandy Grande

"The War for Indian Children will be won in the classroom."

—Wilma Mankiller

"The right to be indigenous is an essential prerequisite to developing and maintaining culturally appropriate and sustainable education for indigenous peoples."

—The Coolangatta Statement
on Indigenous Peoples' Rights in Education (1.5)

The miseducation of American Indians precedes the "birth" of this nation. From the time of invasion to the present day, the church and state have acted as coconspirators in the theft of Native America, robbing Indigenous peoples of their very right to be Indigenous.[1] In terms of education, the thievery began in 1611 when French Jesuits opened the first mission schools expressly aimed at educating Indian children "in the French manner"[2] (Noriega, 1992, p. 371). Not to be outdone, Spanish and British missionaries soon followed, developing full-service educational systems intent on "de-Indianizing" Native children. By the mid-eighteenth century Harvard University (1636), the College of William and Mary (1693), and Dartmouth College (1769) had all been established with the charge of "civilizing" and "Chris-

tianizing" Indians as an inherent part of their institutional missions. The American school was therefore a well-established weapon in the arsenal of American imperialism long before the first shots of the Revolutionary War were ever fired.

While it falls outside the bounds of this book to provide a thorough history of American Indian education, its importance is duly noted.[3] The following brief review of some significant moments in American Indian education is meant only to provide a rudimentary template from which to theorize the contemporary landscape. We begin with an examination of the historical relationship between American Indians and schooling, followed by a brief review of the literature on critical pedagogy. The reviews of the history of American Indian education and critical pedagogy are then interfaced, mapping the tensions and intersections between these analyses as a means of developing the framework for a Red pedagogy.

THE HISTORICAL RELATIONSHIP BETWEEN SCHOOLING AND AMERICAN INDIANS

Though the history of Indian education is mapped in a variety of ways (e.g., chronologically, thematically), it is delineated here in terms of eras that reflect the prevailing systems of power: (1) the period of missionary domination, from the sixteenth to the nineteenth centuries; (2) the period of federal government domination from the late nineteenth to the mid-twentieth centuries; and (3) the period of self-determination from the mid-twentieth century to the present (Szasz, 1999; Thompson, 1978).

Perhaps at no other time in U.S. history did the church and state work so hand in hand to advance the common project of white supremacy as it did during the period of missionary domination. During this era, missionary groups acted as the primary developers and administrators of schools while the federal government served as the not-so-silent partner, providing economic and political capital through policies such as the Civilization Fund.[4] In 1819, Secretary of War John Calhoun declared it was the duty of all employees in government-funded missions, particularly teachers, to promote U.S. policies aimed at "civilizing" Indians. In Calhoun's words, it was their job to "[i]mpress on the minds of the Indians the friendly and benevolent views of the government . . . and the advantages to . . . yielding to the policy of the government and cooperating with it in such measures as it may deem necessary for their civilization and happiness" (Layman, 1942, p. 123, cited in Reyhner and Eder, 1992, p. 40). Indeed, the work of teachers, church leaders, and missionaries were hardly distinguishable during this era; saving souls and colonizing minds became part and parcel of the same colonialist project.

While missions retained control well into the late nineteenth century, the period of federal government domination ideologically commenced with the passage of the Indian Removal Act in 1830.[5] The fallout from removal necessitated the appointment of a commissioner of Indian affairs, tellingly positioned in the U.S. Department of War. The collateral damage levied by removal, namely, the decimation of Indian economies via displacement, required a systematic effort to "reeducate" Indians to live "domesticated" lives. Thus, in addition to dealing with the removed tribes, the commissioner was charged with overseeing a retooled system of Indian education, one which emphasized vocational training as the new panacea for assimilating Indians to industrial society.

In the following decades, the church and state conspired in the development of a variety of "manual labor schools." In addition to providing vocational training, such schools introduced the concept of forced labor as part of Indian education, transforming the ostensibly "moral" project of civilizing Indians into a for-profit enterprise. Under this experiment, churches were endowed with hundreds of acres of land for Indian children to plow, maintain, and harvest. Many dioceses yielded high profits from the "free" labor, creating a windfall that ignited increased competition for federal funding. Ironically, the ensuing friction and discord among rival churches contributed to the repeal of the Civilization Fund (1873), bringing their reign of power to an end. The federal government stepped in to fill the void, ushering in a new era of federal control over Indian schools (Reyhner and Eder, 1992).

Building on the models established by manual labor and earlier boarding schools (e.g., Dartmouth and the Choctaw Academy), the government looked to define its own system of Indian education. Federal planners were weary of the established day school model, which "afforded Indian students too much proximity to their families and communities." Such access was deemed detrimental to the overall project of deculturalization (Noriega, 1992, p. 380), making the manual labor boarding school the model of choice. The infamous Carlisle Indian School (1879–1918) was the first of its kind in this new era of federal control.

By the turn of the century, the Bureau of Indian Affairs (BIA) was operating twenty-five such boarding schools in fifteen states. Administering the entire apparatus was the newly created education division of the BIA (Reyhner and Eder, 1989). Like earlier models, the "new" boarding schools were designed, first and foremost, to serve the purposes of the federal government and only secondarily the needs of American Indian students. Such imperialistic purposes were reflected in curriculums that included teaching allegiance to the U.S. government, exterminating the use of Native languages, and destroying Indian customs, particularly Native religions (Spring, 2001).

Though the above aims for Indian education were all integral components of the colonialist curriculum, perhaps the most important feature of boarding

schools was the inculcation of the industrial or "Protestant" work ethic. In his annual report in 1881, Commissioner of Indian Affairs Hiram Price argued that previous attempts to civilize Indians failed because they did not teach "the necessity of labor" (Spring, 1997, p. 173). He maintained that this ethic could only be taught by making Indians responsible for their own economic welfare, achievable through the cultivation of a proper appreciation for private property. Price specifically advocated for an allotment program that conferred Indians "a certain number of acres of land which they may call their own."[6] Richard Pratt, founder of the Carlisle Indian School, echoed the sentiments of the commissioner, attacking the tribal way of life as socialistic and contrary to the values of civilization. Indeed, Pratt laid the "failure" of Indian assimilation at the feet of missionary groups and their failure to "advocate the disintegration of tribes." In a letter to the commissioner of Indian affairs, he wrote: "Pandering to the tribe and its socialism as most of our Government and mission plans do is the principal reason why the Indians have not advanced more and are not advancing as rapidly as they ought to."[7] As such, Pratt made indoctrination to capitalist logic an explicit aim of Indian education.

The era of Indian boarding schools reigned from the nineteenth century through the early twentieth century. Such schools worked explicitly with the U.S. government to implement federal policies (i.e., allotment) servicing the campaign to "kill the Indian and save the man." The process began with the (often forcible) removal of young children from their homes and communities and transporting them to a geographically and ideologically foreign place. Upon arrival, children were subjected to English-only and Anglocentric curricula and to a cocurriculum that incorporated paramilitary structures of forced labor and "patriotic" propaganda. In addition, children were often undernourished and subjected to overcrowded living spaces that encouraged "the spread of tuberculosis and trachoma." Moreover, compulsory attendance laws made it virtually impossible for children to escape, exposing a hidden curriculum that not only advocated the termination of Indian-ness but also of Indians (Spring, 1997, p. 175).

By the turn of the century, the combined effects of rapidly increasing enrollments (due to compulsory attendance laws), a decrease in federal funding, a changing political tide, and a growing resistance among tribes began to encumber the boarding school experiment, rendering it too unwieldy for federal officials to maintain. Not only did the schools become political and economic liabilities, but also proved to be an ineffective means of achieving the government's aim of complete assimilation. As Noriega (1992, p. 383) reports, "despite the efforts of BIA officials, missionaries, and teachers to stamp them out, Indigenous languages, spiritual practices, and sociopolitical forms were not only continued by tribal elders, but transmitted from generation to generation." The century thus ended with a pervasive sense of futility

and failure regarding Indian education and with the government continuing to search for the next best solution to the "Indian problem." Despite the growing litany of failed experiments, belief in the virtue of forced assimilation persisted, continually compelling new strategies and tactics.

In 1906, Commissioner of Indian Affairs Francis Leupp initiated the next grand plan—the wholesale transfer of Indian students into public schools. In addition to saving the government from the ever-increasing cost of Indian education, the immersion of Indian children into public and predominantly white schools was seen as a strategic means of propelling the process of "Americanization." By 1912, there were more Indian children in public schools than government (BIA) schools, and by 1924, the "Committee of One Hundred Citizens" officially sanctioned Leupp's assessment of public education as the most efficient means by which to train Indians to "think white."[8]

The transition from boarding schools to public education was mounted in the wake of the Meriam Report in 1928, which not only dealt the final blow to the boarding school experiment but also levied the decisive political spark that launched the next era of "reform." Among other things, the report not only harshly criticized the existing educational policies of removing Indian children from their homes and communities, but criticized the institutional practices of forced manual labor and severe discipline as well. The report summarily states that the most fundamental need in Indian education was a "change in government attitude" (Spring, 1997, p. 176). In 1933, leading reformer and advocate of Indian "rights" John Collier became the commissioner of Indian affairs. He oversaw the implementation of many recommendations iterated in the Meriam Report, including the end of allotment, increased Indian religious freedom, and greater tribal self-government[9] (Reyhner and Eder, 1992). Also passed during Collier's tenure was the Johnson-O'Malley Act, which authorized payments to states or territories for the education of Indians in public institutions. Such reforms were prominent features of Collier's "Indian New Deal," the net impact of which significantly increased the number of Indian children being served by both federal (BIA) and public educational institutions.

Over time, the notion of reform popularized by Collier's "New Deal" fueled liberal sentiments to "free" the Indian from government control, particularly from the reservation system. During the so-called termination period (1945–1968),[10] the government sought to relocate Indians to urban areas, turning the responsibility for Indian education over to individual states (Reyhner and Eder, 1992). Despite its "liberatory" rhetoric, however, Margaret Connell Szasz (1999, p. 137) contends that the aim of termination was to support "any action that would assimilate the Indian into urban society."

Along with other aspects of termination, the educational implications of relocation were devastating. Hildegard Thompson, director of the branch of

education, criticized the lack of foresight in educational planning. For instance, in reference to the "termination" of the Paiutes, she stated, "We all recognize that the [termination of the Paiute] was enacted without too much preplanning with the Tribe" and that in the future "such programs and contracts should come in the preparation stage with the Tribe instead of at the termination time" (Szasz, 1994, p. 138). The experience of the Paiutes was not an isolated one, as the vast majority of tribes were ill-informed and unprepared for the myriad and pervasive effects of termination. Therefore, it was not long before this program was added to the pile of failed government experiments, brought down by its own inherent deficiencies and a growing tide of Indian resistance.

While resistance took many forms, Indians implicitly expressed their antipathy toward termination by refusing to enroll in the associated ill-conceived vocational training programs ostensibly designed for their benefit (read: ready labor exploitation). By the dawn of the civil rights movement, American Indians were more directly voicing their opposition to termination and other oppressive government policies. Such displays of resistance psychologically marked the beginning of the era of self-determination.

By the 1960s, tribes had developed a core leadership capable of articulating Indian rights and concerns (Reyhner and Eder, 1992, p. 54). In addition to their protests of existing federal policies, the new Indian leadership advocated an agenda of self-determination or the idea of "letting Indian people . . . determine their own destiny." The spirit of self-determination gave rise to a number of Indian organizations, including the National Indian Education Association in 1967, the Coalition of Indian Controlled School Boards in 1971, and the American Indian Movement in 1972. The political energy of such organizations helped galvanize efforts to establish tribally controlled schools such as the Rough Rock Demonstration School and Navajo Community College, founded in 1966 and 1968, respectively.

The efforts of Indian educators and leaders also prompted the publication of two major studies in Indian education: "Indian Education: A National Tragedy—A National Challenge" (U.S. Senate, 1969), commonly known as "The Kennedy Report" and "The National Study of American Indian Education" (Havighurst, 1970). These reports helped secure passage of the Indian Self-Determination and Education Act in 1975, which provided American Indians increased control over their children's education. Among other measures, the act authorized special funding for programs in reservation schools and, for the first time, off-reservation, urban schools. It also advocated for parent involvement in program planning, for the establishment of community-run schools, and for culturally relevant and bilingual curriculum materials (Reyhner and Eder, 1992, chapter 3; Szasz, 1999). A number of seminal political documents were also published during the era of self-determination, including the "Indian Nations at Risk" report in 1991, the "White House

Conference on Indian Education" report in 1992, the "Comprehensive Federal Indian Education Policy Statement" in 1997, and the "Executive Order on American Indian and Alaska Native Education" in 1998. In general, these reports indicate that while the past thirty years witnessed much progress in Indian education, the road ahead was replete with challenges, providing a litany of statistics that portend a grim picture for Indian education. Specifically, in addition to exhibiting the highest dropout and lowest achievement rates, American Indian and Alaska Native students were reported to endure Euro-centric curriculums, high faculty and staff turnover rates, underprepared teachers, limited access to relevant cultural library and learning resources, limited access to computers and other technologies, and overt and subtle forms of racism in schools. Such conditions were exacerbated by a general decline in federal spending, particularly for BIA schools and tribal colleges.

Above all, however, the reports testify to the fact that centuries of genocidal and assimilationist polices cannot be undone in a matter of years. The voices of prominent American Indian scholars, educators, and leaders are registered throughout, collectively asserting that systematic oppression, levied at the hands of the federal government, requires an equally systematic federal plan of affirmative action. In other words, an education for decolonization. The "Comprehensive Federal Indian Education Policy Statement," in particular, reflects the virtual consensus among leaders that school reform must be systematic and inclusive of all aspects of tribal life. The relationship between educational reform and the struggles to "preserve tribal homelands, governments, languages, cultures, economies, and social structures" is made explicit (National Indian Education Association and National Congress of American Indians, 1996, p. 3).

Ironically, though the Comprehensive Federal Indian Education Policy Statement is often referred to as a revolutionary document in the history of American Indian education, it ultimately states little that is either new or revolutionary. Rather, it merely rearticulates the scope of federal responsibility as defined in existing laws, treaties, and policies. Beginning with a directive for the "recognition and support of tribal sovereignty," the report details the responsibilities of various federal agencies to assist tribes in assuming "control of education programs and governance of Indian education" (National Indian Education Association/National Congress of American Indians, 1996, p. 4). It covers everything from the "support of native languages and cultures" to provisions for "Indian education outside of Indian country," and is contextualized in language that makes it definitively clear that the federal government must act in consultation with, and in service to, the tribes. Furthermore, it stipulates that this "government-to-government" relationship should be heeded as an inherent aspect of tribal sovereignty and not as a delegated privilege.

Due to its comprehensive nature, the Comprehensive Federal Indian Education Policy Statement served as the model for "The Executive Order on American Indian and Native Alaskan Education" issued in 1998 by the Clinton administration. Much of its original, somewhat strident, language was, however, lost in the translation from political statement to federal policy. In particular, the importance placed on the need for broad-based educational reform, institutionalized recognition of Indian sovereignty, and accountability of federal agencies to uphold their moral, legal, and fiscal responsibility to support Indian education was noticeably diminished. Nevertheless, the issuance of this executive order was a historic moment, symbolizing the efforts of contemporary American Indian leaders to not only insist on self-determination but also on the government's acknowledgment of this inherent right.

Indian Education in the Twenty-First Century

While at the beginning of the twenty-first century it is important to recognize that progress has been made, Indian students, in comparison to all others, are still the most disproportionately affected by poverty, low educational attainment, and limited access to educational opportunities (Beaulieu, 2000, p. 33). Their severely marginalized status is perhaps most evident in the overrepresentation of Native youth engaging in high-risk behaviors. A study conducted by the U.S. Department of Health and Human Services in 2001 (cited in Clarke, 2002) reported the following data regarding American Indian/Alaska Native youth aged twelve to seventeen:

- Illicit drug use is more than twice (22.2 percent) the national average (9.7 percent).
- Binge alcohol use is higher (13.8 percent) than the national average (10.3 percent).
- Heavy alcohol use is higher (3.8 percent) that the national average (2.5 percent).
- Motor vehicle and other accidents are the leading cause of death among American Indian/Alaska Native persons aged fifteen to twenty-four, whose death rate due to accidents is higher than the rate for the total U.S. population.
- Suicide is the second leading cause of death for American Indian/Alaska Native youth aged fifteen to twenty-four, and the overall suicide rate is 2.5 times higher than the combined rate for all races in the United States.

In recognition of the seeming sociocultural nature of these behaviors, some educators have advocated multicultural education for American Indian students (Butterfield, 1994; Hamme, 1996; Reyhner, 1992; St. Germaine, 1995; Wilson, 1991). According to Nieto (1995), multicultural education can be defined as "a process of comprehensive school reform and basic education for all students."

It challenges and rejects racism and other forms of discrimination in schools and society and accepts and affirms the pluralism (ethnic, racial, linguistic, religious, and gender, among others) that students, their communities, and teachers represent. Multicultural education permeates the curriculum and instructional strategies used in schools, as well as the interactions among teachers, students, and parents, and the very way that schools conceptualize the nature of teaching and learning.

While acknowledgment of the relationship between education and culture is important, unless the relationship between culture and the socioeconomic conditions within which it is produced is recognized, the so-called at-risk conditions common to peoples living under siege will persist. With regard to American Indians, this means understanding that "the Indian problem" is not a problem of children and families but rather, first and foremost, a problem that has been consciously and historically produced by and through the systems of colonization: a multidimensional force underwritten by Western Christianity, defined by white supremacy, and fueled by global capitalism.

Indian education was never simply about the desire to "civilize" or even deculturalize a people, but rather, from its very inception, it was a project designed to colonize Indian minds as a means of gaining access to Indian labor, land, and resources. Therefore, unless educational reform happens concurrently with analyses of the forces of colonialism, it can only serve as a deeply insufficient (if not negligent) bandage over the incessant wounds of imperialism. The call to engage Indian education reform from a macroperspective—one that emanates from a historical–material analysis of the relationship between U.S. society and Native communities—is not new. One of the more eloquent and passionate entreaties issued on behalf of the need for comprehensive reform was delivered by Mike Charleston (1994, p. 15) in the draft report of the Indian Nations at Risk task force entitled, "Toward True Native Education: A Treaty of 1992."[11] He begins:

> It is time for a new treaty, a Treaty of 1992, to end a shameful, secret war. For five hundred years, our tribal people have been resisting the siege of the non-Native societies that have developed in our native land. The war is over the continued existence of tribal societies of American Indians and Alaska Natives. We inherited the conflict from our ancestors. Our children face the consequences of this war today. Every tribal member has felt the bitter pangs of this relentless siege. It dominates our lives. It is killing our children. It is destroying our Native communities.

Charleston's piercing language, particularly the use of such metaphors as "war" and "siege" to describe the imperialistic relationship between the Unit-

ed States and tribal societies, indicates his understanding of the systemic and unrelenting nature of colonialism. In addition, while he rightfully places liability in the hands of the U.S. government, Charleston also acknowledges that change will only occur when Native and non-Native societies make the commitment to work together, referencing the importance of political solidarity and coalition-building.

Though the final published report of the task force is an obviously tempered version of Charleston's impassioned plea, it still manages to identify colonization as the central culprit in creating and maintaining the marginalized "at-risk" status of Native nations. Specifically, it begins from the standpoint that Native nations are at risk because:

- Schools have failed to nurture the intellectual development and academic performance of Native children.
- Schools have discouraged the use of Native languages in the classroom.
- Indian lands and resources are constantly besieged by outside forces interested in further reducing the original holdings of the Indians.
- Political relationships between tribes and the federal government fluctuate with the will of the U.S. Congress and decisions by the courts.

Though the relationship between schools and colonialist forces is only implied, the tacit correlation remains both pointed and powerful. In the end, both documents generated by the task force deliver the resounding message that school reform is merely one battleground in the "war" against colonialism. The central implication is that the struggle for self-determined schools must be engaged alongside other revolutionary struggles, specifically those that seek to end economic exploitation, political domination, and cultural dependency. Consequently, such are the aims of critical pedagogy.

CRITICAL PEDAGOGY AND ITS DISCONTENTS

Simply stated, critical pedagogy is that discourse that emerged when "critical theory encountered education" (Kincheloe and Steinberg, 1997). Typically envisioned as leftist or *beyond* multicultural education, the "theoretical genesis" of North American critical pedagogy is traced back to the work of Paulo Freire, John Dewey, and other social reconstructionists writing in the post-Depression years (McLaren, 2003a). According to Peter McLaren, leading exponents have always "cross-fertilized critical pedagogy with just about every transdisciplinary tradition imaginable, including theoretical forays into the Frankfurt School . . . [with] the work of Richard Rorty, Jacques Lacan, Jacques Derrida, and Michael Foucault" (2003, p. 66). With such transdisciplinary beginnings, it is not surprising that critical pedagogy has emerged, in

more recent years, as a kind of umbrella for a variety of educators and scholars working toward social justice and greater equity (Lather, 1998). As such, postmodern, post-structuralist, feminist, postcolonial, Marxist, and critical race theorists have all developed their own forms of critical pedagogy. Even so, there is a core of unifying principles and salient features that constitute the heart of the discipline.

According to McLaren (2003a), critical pedagogy is first and foremost an approach to schooling—teaching, policymaking, curriculum production—that emphasizes the political nature of education. "The antagonistic terrain of conflicting and competing discourses, oppositional and hegemonic cultural formations, and social relations linked to the larger capitalist social totality" forms the foundation of schooling (McLaren, 2003a, p. 66). As such, critical pedagogy aims to understand, reveal, and disrupt the mechanisms of oppression imposed by the established order, suturing the processes and aims of education to emancipatory goals.

Leading critical scholar Henry Giroux (2001, p. 3) emphasizes the emancipatory nature of critical pedagogy, asserting that, at base, critical pedagogy must be envisioned as "part of a broader ethical and political project wedded to furthering social and economic justice and making multicultural democracy operational." In terms of the pedagogical implications of such a project Giroux (2001, p. 20) writes:

> Critical pedagogy must address the challenge of providing students with the competencies they need to cultivate the capacity for critical judgment, to thoughtfully connect politics to social responsibility and expand their own sense of agency in order to curb the excesses of dominant power, to revitalize a sense of public commitment, and to expand democratic relations. Animated by a spirit of critique and possibility, critical pedagogy at its best attempts to provoke students to deliberate, resist, and cultivate a range of capacities that enable them to move beyond the world they already know without insisting on a fixed set of meanings.

Though such aims are often dismissed as idealistic, critical scholar Glenda Moss (2001, p. 11) found that "real" teachers, in "real" classrooms, are able to employ critical pedagogy. Specifically, she found that such teachers used "reflective-reflexive" skills to institute "changed practices that work for authentic participation of all members of the broader society." Buttressed by the work of others, Moss (2001) identified the following pedagogical practices to be common among critical educators: (1) they question whose beliefs, values, and interests are served by classroom content and practices, challenging the hidden curriculum that socializes students into the dominant culture; (2) they address social oppression as tied to race, gender, and class; and (3) they challenge the "banking" or transmission style of teaching as a learning ritual that maintains the status quo.

Though a modicum of consensus has been achieved among critical practitioners, the multifarious nature of critical pedagogy's theoretical foundation has bred intellectual tensions among critical scholars. Indeed, Patti Lather (1998, p. 487) maintains that "an ensemble of practices and discourses with competing claims of truth, typicality, and credibility" among critical scholars have always been present, especially between (postmodern/post-structuralist) feminist and (Marxist) critical scholars. Though at times petty and unproductive, the publicly aired differences and ongoing interchanges between such scholars—commenced by Elizabeth Ellsworth's critique (1989) of critical pedagogy as a white, male discourse—has helped to articulate one of the central fissures in the field. That is, whether the struggle for educational equity is primarily cultural or economic. The fulcrum upon which the conflict turns is Marxist theory.

Advocates of liberal forms of critical pedagogy—postmodernists, post-structuralists, and (liberal/postmodern) feminists—are suspicious of Marxism and indeed of any "grand narrative" that invokes the "masculinist voice" of abstraction and universalization (Lather, 1998, p. 488). They reject the extension of what they view as positivistic macrotheories or "grand narratives of legitimation" in favor of a microtheory and politics that deals with the nature of "difference" (Lyotard, 1984). The general cadence of such theories signals a movement away from the certainty and totalizing effects of grand narratives toward what Lather (1998, p. 488) refers to as "Jacques Derrida's 'ordeal of the undecidable' and its obligations to openness, passage and non-mastery." In such a theoretical space, writes Lather (1998, p. 495) "questions are constantly moving and one cannot define, finish, or close. . . . [It] is a praxis of not being so sure" (1998, p. 488). The aim of such postmodern/post-structural theories is to trouble and disrupt the masculinist or patriarchal presumptions of modernist theories and their universalizing projects, embracing instead a "praxis that moves away from the Marxist dream of 'cure, salvation, and redemption'" (Lather, 1998, p. 495).

Insofar as they theorize against "certainty," postmodernists tend to advocate a negative pedagogy, one more identifiable by what it stands against than what it stands for. The discomfort with asserting any one affirmative and universal claim stems from a (postmodern) sense of the world as being "too complex, the range of views too wide, and the diversity of concerns too differentiated to imagine that there can, any more, be some simple unanimity of goals or interests that unites [us all]" (Shapiro, 1995, p. 20). The implications of such a world for critical educators, according to Svi Shapiro, is to struggle "for a public discourse that privileges no one group of people; one that tries to speak to and include the experience, needs and hopes of a broad spectrum of people in our society" (1995, p. 32). In other words, postmodernists argue that the multiplicity of the millennial world necessitates a political imaginary that is as reflexive and indeterminate as the social imaginary.

As such, it isn't that postmodernists reject the validity of grand narratives (e.g., the anti-capitalist agenda of Marxist theories), but rather that they perceive them as too narrow and therefore insufficient for imagining a new social reality. As Shapiro writes: "[T]he politics that emerge from the fluidity and complexities of identity in contemporary America do not, it must be emphasized, negate those historically important struggles. . . . [O]ur goal is however, to offer an educational language—and later an agenda—that can be as inclusive as possible, to recognize the fullest possible range of human struggles and concerns" (1995, p. 29–30). In other words, postmodernists presume a "praxis of undecidability." That is, one that resists modernist impulses to privilege "containment over excess, thought over affect, structure over speed, linear causality over complexity, and intention over aggregate capacities" (Lather, 1998, p. 497). In so doing, they seek to replace the "one right story" of universalist discourses with a "nonreductive praxis that calls out a promise of a practice on shifting ground" (Lather, 1998, p. 497).

Despite the potential allure of theories that valorize difference and heterogeneity—particularly for peoples marginalized by the modernist project of white supremacy—not all critical scholars embrace the marriage of critical pedagogy to postmodern and post-structural theories. Marxist scholars have been especially critical of what they perceive as the abandonment of emancipatory agendas, in general, and of the struggle against capitalist exploitation, in particular. As McLaren (2003, p. 67) notes, in their effort to try to be everything to everyone, postmodern theorists have (re)cast the net of critical pedagogy so wide and so cavalierly that it has come to be associated with everything from "classroom furniture organized in a 'dialogue friendly' circle to 'feel-good' curricula designed to increase students' self-image." Moreover, insofar as postmodern and other progressive scholars have distanced themselves from the labor/capital problematic, they are construed by radical educators as advocating pro-capitalist forms of schooling. The central argument is that while post-al theories of education have undoubtedly advanced knowledge of the hidden trajectories of power, particularly within processes of representation and identity, they have been "woefully remiss in addressing the constitution of class formations and the machinations of capitalist social organization" (Scatamburlo-D'Annibale and McLaren, 2002, p. 4). In short, revolutionary theorists argue that postmodernism has been used to substitute the project of radical, social transformation with a politics of representation.

In the wake of the relentless march of capitalism, Marxist and other radical scholars view such a stance as grossly insufficient, if not negligent. They contend that to ignore the "totalizing effects" of capitalism and to reduce class to just another form of "difference" is to act as an accomplice to capitalist imperatives and desires. In other words, to remain "enamored with the 'cultural' and seemingly blind to the 'economic'" in this moment of late capitalism is not simply an act of ignoring, but one of complicity (Scatam-

burlo-D'Annibale and McLaren, 2002, p. 4–5). It requires turning a blind eye to the roughly 2.8 billion people (nearly half the world's population) living on less than two dollars a day (McQuaig, 2001, p. 27) and the 100 million people in the industrial world living below the poverty level (Scatamburlo-D'Annibale and McLaren, 2002).[12] Radical educators view such statistics as clear indicators that the inherent contradictions of capitalism are "taking us further away from democratic accountability" and closer toward what "Rosa Luxemborg referred to as an age of 'barbarism'" (McLaren and Farahmandpur, 2001, p. 277). Thus, from the vantage point of revolutionary critical scholars, we do not simply need an education for equity and social justice, but rather an anti-capitalist education for economic democracy.

Advocates of radical forms of critical pedagogy thus insist on a theory and praxis of schooling with an unabashed emancipatory intent, one that is future-centered and forward looking to a time when "wage labor disappears with class society itself" (McLaren, 2003a, p. 80). In accordance with these aims, critical scholars have developed a "revolutionary critical pedagogy" (Allman, 2001)—the synthesis of contemporary Marxist scholarship with a rematerialized critical pedagogy. Leading advocates of revolutionary critical pedagogy include Paula Allman (who penned the term) and Peter McLaren, as well as Mike Cole, Terry Eagleton, Ramin Farahmandpur, Dave Hill, Jane Kenway, Helen Raduntz, Glen Rikowski, and Valerie Scatamburlo-D'Annibale. Others whose work has greatly influenced the formation of revolutionary critical pedagogy include Teresa Ebert, Paulo Friere, Martha Gimenez, Antonio Gramsci, Henry Giroux, Rosemary Hennessy, Chrys Ingraham, Karl Marx, and Ellen Meskins Wood.

While each of these scholars emphasizes different aspects of the discourse, they all remain committed to a core of abiding principles that formulate the foundation of revolutionary critical pedagogy: (1) to recognize that capitalism, despite its power, is a "historically produced social relation that can be challenged (most forcefully by those exploited by it)" (McLaren and Farahmandpur, 2001, p. 272); (2) to foreground historical–materialist analysis that "provides critical pedagogy with a theory of the material basis of social life rooted in historical social relations" and assigns primacy to uncovering the structures of class conflict and the effects produced by the social division of labor (McLaren, 2002, p. 26)[13]; and (3) to reimagine Marxist theory in the interests of the critical educational project. As McLaren and Farahmandpur write, "Marxist revolutionary theory must be flexible enough to reinvent itself . . . [and] is not set forth here as a universal truth but as a weapon of interpretation" (2001, p. 301–02).

Beyond the theoretical commitments of revolutionary critical pedagogy, some practical implications have also been established. In order to prepare students "to glimpse humanity's possible future beyond the horizon of capital" (Allman, 2001, p. 219), McLaren and Farahmandpur (2001, p. 299) submit that revolutionary students and educators must "question how knowledge is related historically, culturally, (and) institutionally to the process of production and consumption," and ask: How is knowledge produced? Who produces it? How is it appropriated? Who consumes it? How is it consumed? With such questions formulating the base, McLaren (2003, p. xvii) defines the following foundational principles of revolutionary critical pedagogy that parallels Deborah Brandt's (1991) five pillars of popular education.[14]

1. A revolutionary critical pedagogy must be a *collective process*, that involves utilizing a Frierian dialogical learning approach.
2. A revolutionary critical pedagogy must be *critical*; that is, by locating the underlying causes of class exploitation and economic oppression within the social, political, and economic infrastructure of capitalist social relations of production.
3. A revolutionary critical pedagogy is profoundly *systematic* in the sense that it is guided by Marx's dialectical method of inquiry, which begins with the "real concrete" circumstances of the oppressed masses and moves toward a classification, conceptualization, analysis, and breaking down of the concrete social world into units of abstractions to get at the essence of social phenomena. It then reconstructs and makes the social world intelligible by transforming and translating theory into concrete social and political action.
4. A revolutionary critical pedagogy is *participatory*, involving building coalitions among community members, grassroots movements, church organizations, and labor unions.
5. A revolutionary critical pedagogy is a *creative process* incorporating elements of popular culture (i.e., drama, music, oral history, narratives) as educational tools to politicize and revolutionize working-class consciousness.

Whereas McLaren (2003) outlines the academic principles of revolutionary critical pedagogy, Allman (2001, p. 177–86) defines the more visceral, motivating principles or "vital powers" necessary in the struggle for social justice. McLaren (2002, p. 31) recounts these principles as those of:

> mutual respect, humility, openness, trust and co-operation; a commitment to learn to "read the world" critically and expending the effort necessary to bring about social transformation; vigilance with regard to one's own process of self transformation and adherence to the principles and aims of the group; adopting an "ethics of authenticity" as a guiding principle; internalizing social justice as passion; acquiring critical, creative, and hopeful thinking; transforming the self through transforming the social relations of learning and teaching; establishing democracy as a fundamental way of life; developing critical curiosity;

and deepening one's solidarity and commitment to self and social transformation and the project of humanization.

Such principles are clearly relevant to American Indian students and educators and their need for pedagogies of disruption, intervention, affirmative action, hope, and possibility.

Insofar as the project for colonialist education has been imbricated with the social, economic, and political policies of U.S. imperialism, an education for decolonization must also make no claim to political neutrality and engage a method of analysis and social inquiry that troubles the capitalist, imperialist aims of unfettered competition, accumulation, and exploitation. Beyond an approach to schooling that underscores the political nature of education, American Indian students and educators also require a praxis that enables the dismantling of colonialist forces. They need a pedagogy that cultivates a sense of collective agency, both to curb the excesses of dominant power and to revitalize Indigenous communities.

These aims and imperatives of American Indian education not only illuminate the deep deficiencies of off-the-shelf brands of multiculturalism, which espouse the empty rhetoric of "respecting differences" and market synthetic pedagogies that reduce culture to the "celebration" of food, fad, and festivals, but also point to the relevance and necessity of critical pedagogies of Indigenous education. Indeed, revolutionary critical pedagogy's conception of culture as conditioned by material forces and of schooling as a site of struggle offers great potential for Indigenous peoples working toward pedagogies for self-determination.

AMERICAN INDIAN EDUCATION AND REVOLUTIONARY CRITICAL PEDAGOGY: TOWARD A NEW RED PEDAGOGY

In the end, though the history of American Indian education and, more broadly, the history of the relationship between the U.S. government and American Indian nations is often characterized as being one of cultural domination, a critical examination reveals the principal relationship as one of exploitation—that is, the imposed extraction of labor and natural resources for capital gain. For example, while the Indian Removal, Dawes, and Termination Acts can all be viewed as legislated attempts to destroy Indian culture, in the end they all provided greater access to Indian lands and resources and, as such, proffered the federal government a windfall in capital gains. Similarly, while manual labor and boarding schools attempted to extinguish Indianness by imposing culturally imperialistic curriculums, they also profited from child labor as well as helped to establish a permanent Indian proletariat.

Though the federal government is no longer as explicitly connected to schooling as it once was, exploitative relations between the U.S. government and American Indian nations persist. As such, the unambiguous anti-capitalist aims of revolutionary critical pedagogy make it more applicable to the imperatives of American Indian education than liberal/progressive forms. That being said, there are significant points of tension between the structures of revolutionary theory and the concerns of American Indian schools and communities.

The central tension is that revolutionary theorists, like other Western scholars, often fail to consider, and thus, theorize, the fundamental "difference" of American Indians and their dual status as U.S. citizens and members of sovereign "domestic dependent nations." Indeed, the myriad implications of this basic failure form the foundation of each subsequent chapter in this book. For instance, in chapter 2, this tension is discussed in terms of the implications of Marxist pedagogies (still contingent on Western notions of democracy) for Indigenous schools and communities. The question is, do Marxist pedagogies of emancipation sustain a geopolitical landscape any more receptive to the notion of Indigenous sovereignty than capitalist pedagogies? In chapter 3, the failure of radical scholars to consider that even in the socialist-democratic imaginary, the end game remains human liberation: a profoundly anthropocentric notion, rooted in a humanist tradition that presumes the superiority of human beings over the rest of nature. In other words, both Marxists and capitalists view land and natural resources as commodities to be exploited, in the first instance, by capitalists for personal gain, and in the second, by Marxists for the good of all.

In chapter 4, the tension is discussed in terms of its implications for the construction of American Indian subjectivity. Specifically, while the theorizations of feminist, postmodern, and post-structural scholars are essential to understanding the complex layers of American Indian subjectivity, their displacement of a "politics grounded in the mobilization of forces against the material sources of political and economic marginalization" is deeply problematic (Scatamburlo-D'Annibale and McLaren, 2002, p. 7). Indeed, the historical–material realities of American Indian schools and communities require emancipatory pedagogies that retain clear and explicit emancipatory agendas. Finally, in chapter 5, the failure of "mainstream" feminists to recognize that most American Indian women view their lives as shaped, first and foremost, by the historical–material conditions of colonization and not some "universal" patriarchy is discussed. By insisting on gender as the primary conceptual framework from which to interpret inequality, such theorists not only blur the actual structures of power but also obfuscate feminism's implication in the projects of colonization and global capitalism. Thus, as previously stated, it is critical to question how the experiences and historical–material realities of Indigenous peoples are reshaped and transformed when articulated through the epistemic frames of Western theory, whether liberal or revolutionary. As American Indian scholar and educator Greg Ca-

jete (1994, p. 3) notes, Indian people must question the effects of contemporary educational theories on the collective cultural, psychological, and ecological viability of Indigenous communities.

Further examination of the tensions and intersections between American Indian education and revolutionary forms of critical pedagogy unfolds in the subsequent chapters. This analysis takes seriously the assertions of McLaren and Farahmandpur, who note, "no theory can fully anticipate or account for the consequences of its application but remains a living aperture through which specific histories are made visible and intelligible" (2001, p. 301). The quest for a new Red pedagogy is, thus, at base, a search for the ways in which American Indian education can be deepened by its engagement with critical educational theory and for critical theory to be deepened by Indian education. While a Red pedagogy privileges "revolutionary critical pedagogy" as a mode of inquiry, it does not simply appropriate or absorb its language and epistemic frames, but rather employs its vision as one of many starting points for rethinking Indigenous praxis. The aim is "to diversify the theoretical itineraries" of both Indigenous and critical educators so that new questions and perspectives can be generated (McLaren, 2002, p. 29).

Finally, what distinguishes Red pedagogy is its basis in hope. Not the future-centered hope of the Western imagination, but rather, a hope that lives in contingency with the past—one that trusts the beliefs and understandings of our ancestors as well as the power of traditional knowledge. A Red pedagogy is, thus, as much about belief and acquiescence as it is about questioning and empowerment, about respecting the space of tradition as it intersects with the linear time frames of the (post)modern world. Most of all, it is a hope that believes in the strength and resiliency of Indigenous peoples and communities, recognizing that their struggles are not about inclusion and enfranchisement to the "new world order" but, rather, are part of the Indigenous project of sovereignty and indigenization. It reminds us that Indigenous peoples have always been peoples of resistance, standing in defiance of the vapid emptiness of the bourgeois life.

This is the spirit that guides the ensuing engagement between critical theory and American Indian education. The hope is for a Red pedagogy that not only helps sustain the lifeways of Indigenous peoples but also provides an explanatory framework that helps us understand the complex and intersecting vectors of power shaping the historical–material conditions of Indigenous schools and communities. A logical place to begin this journey of understanding is at the point of "encounter," examining the various dimensions of conflict and contradiction between the sovereign peoples of the Americas and the colonizers, asking the question: Can democracy be built upon the bloody soils of genocide?

NOTES

1. I use the phrase "right to be Indigenous" with the same intent and manner as it is used in the "Coolangatta Statement on Indigenous Peoples' Rights in Education," that is, a right that embraces Indigenous peoples' language, culture, traditions, and spirituality, including the right to self-determination.

2. Specifically, the Jesuits provided academic instruction in French language and customs, and vocational training in the areas of animal husbandry, carpentry, and handicrafts.

3. Perhaps as a reflection of the relegated role of Native Americans, the literature is replete with histories of Indian education. For example, see Szasz (1998; 1999), Reyhner and Eder (1989), and Fuchs and Havighurst (1972), among numerous other seminal articles.

4. According to Szasz (1999, p. 270), in 1819, the first year in which Congress voted for a fund for "civilization" of the Indian, total expenditures did not exceed $10,000; by 1880, congressional appropriations reached $130,000 and continued to rise exponentially through the following decade. Also, in addition to congressional funding, many treaties incorporated "provisions" for such educational and civilization purposes, with some incorporated at the request of tribes who began to associate survival with access to Anglo education (Reyhner and Eder, 1992).

5. The Indian Removal Act (chapter 48, 4 *Stat.* 411), passed May 26, 1830, by the Twenty-first Congress, provided for "an exchange of lands with any of the Indians residing in any of the states and territories, and for their removal west of the river Mississippi." Passage of this act set in motion the mass forced relocations of the Creek, Cherokee, Choctaw, Chickasaw, and Seminole, among other Eastern nations. In the words of Churchill and Morris (1992), "the idea was to 'clear' the native population from the entire region east of the Mississippi, opening it up for the exclusive use and occupancy of Euroamericans and their Black slaves."

6. "Indian Commissioner Price on Civilizing Indians, October 24, 1881," in *Documents of United States Indian Policy*, as quoted in Spring (2001, p. 173).

7. Quoted in Joel Spring's *The American School: 1642–2000* (1997, p. 173).

8. U.S. House of Representatives, Committee of One Hundred, *The Indian Problem: Resolution of the Committee of One Hundred Appointed by the Secretary of the Interior and Review of the Indian Problem*, as cited in Noriega (1992).

9. Such reforms were implemented as part of the Indian Reorganization Act, commonly known as the Wheeler-Howard Act.

10. The termination policy was embodied in House Concurrent Resolution No. 108, passed August 1, 1953. It reads:Whereas it is the policy of Congress, as rapidly as possible, to make Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship; and Whereas the Indians within the territorial limits of the United States should assume their full responsibilities as American citizens; Now, therefore, be it Resolved by the House of Representatives (the Senate concurring), That it is declared to be the sense of Congress that, at the earliest possible time, all of the Indian tribes and the individual members thereof located within the States of California, Florida, New York, and Texas, and all of the following named Indian tribes and individual members thereof, should be freed from Federal supervision and control and from all disabilities and limitations specially applicable to Indians. (U.S. Congress, 1953, 67 Stat. B132)

11. According to Deputy Project Director of the Task Force Gaye Leia King, Dr. Charleston's version was not submitted as the final report as "the majority of the (task force) members believed that Mike's preliminary draft was too harsh and would offend most people." Moreover, she notes that the political climate of the times determined the "need to critically strategize on the content of the report" in order to ensure its release to the public (King, 1994).

12. Even more problematic is the fact that casualties continue to mount. For example, in 2001, there were 1.3 million more poor people in the United States than in 2000.

13. Unlike other contemporary narratives that focus on one form of oppression or another, Scatamburlo-D'Annibale and McLaren (2002, p. 14) note that the power of historical materialism resides in "its ability to reveal (a) how forms of oppression based on categories of differ-

ence do not possess relative autonomy from class relations but rather constitute the ways in which oppression is lived/experienced within a class based system and (b) how all forms of social oppression function within an overlapping capitalist system."

14. These principles are articulated by Farahmandpur (2003, p. xvii) in the foreword of McLaren's seminal text *Life in Schools*.

Critical Theory, Red Pedagogy, and Indigenous Knowledge: The Missing Links to Improving Education

Response 1

John Tippeconnic III

> "The first and foremost need in Indian education is a change in the point of view."
>
> —Meriam Report, 1928

> "American Indian tribes and Alaska Native communities are nations at risk. Our schools have failed to nurture the intellectual development and academic performance of many Native children."
>
> —Indian Nations At Risk Task Force, 1991

When asked to contribute to the tenth anniversary edition of *Red Pedagogy*, I felt honored to be a part of the seminal scholarly work that has made a difference in reframing and applying theory, critical pedagogy, and critical thinking to education since it was published in 2004. I am an educator, part Cherokee, and a member of the Comanche Nation. My experience has been primarily in education systems at the school, federal, and higher education levels, including tribal colleges.

I have been a participant and observer of Indian education for a long time. One conclusion is evident: tribal nations and communities are different and any effort to address education must be based on the local context. My comments below are based in practical experience with the hope that critical theory and *Red Pedagogy* will someday make a significant difference in how American Indian[1] students are educated.

Sandy Grande clearly and emphatically states that the connection among critical theory, American Indian intellectuals, and American Indian education is needed so we can discover, renew, or further develop and apply critical thinking as a way to improve schooling for Indigenous students, and to use theory and critical pedagogy when examining why too many students continue to struggle and fail in contemporary schooling. And, to think about what is missing in the numerous past and current studies and reform efforts that attempt to improve education so "no child is left behind," and why schools fail too many Indigenous students and deny them the fundamental right to an education. In essence, critical pedagogy leads us to ask questions like: What is the purpose of formal education in schools? Who is in control of education? What are students learning in classrooms? How has colonization impacted education? And, how do we decolonize education?[2]

Formal education within the enclosed walls of schools continues to be a forceful weapon used by dominant powers to create boundaries to control and mold the minds of youth and adults, to eradicate or weaken their Indigenous identity, and to assimilate them into mainstream society. Various American Indian policies (including self-determination), acts of Congress, court decisions, and approaches over time to educate American Indians has resulted, today, in the failure of the education enterprise to prepare students that are successful in life as grounded tribal citizens, knowledgeable in their Indigenous ways, and with the necessary reading, writing, math, and science skills to have a good life, to think critically, and to make changes to maintain, to revitalize, and to sustain what it means to be an American Indian person now and into the future.

I have been involved in the education of American Indians and Alaska Natives for over forty years and have experienced the frustrations, discouragement, hope, small victories, loss of hope, and anger as to why we have not been more successful in educating Indigenous students, especially at the kindergarten through twelfth-grade level. Yes, there are more students who are very successful and graduate from high schools and colleges than ever before. However, there are far too many students who struggle and are not successful. The challenge in Indian education today is similar to those of years past, mainly to decolonize Western education by taking control of schools with Indigenous traditional knowledge as the foundation for teaching and learning.

INDIAN EDUCATION STRUGGLES CONTINUE

There have been changes in the education of American Indians and Alaska Natives and the connection between education and critical pedagogy is stronger since *Red Pedagogy* was published in 2004. Self-determination remains the federal policy, although in education, the results today are not what we hoped for in the 1960s and 1970s. After Indian education was declared a "national tragedy and a national challenge,"[3] Indian control of education, with Rough Rock Demonstration School on Navajo as the model, was recognized as an alternative to public and Bureau of Indian Affairs education with the hope that Indian education would be improved. McKinley, Bayne, and Nimicht (1970, p. 22) expressed the importance of controlling education by stating, "If a community is to control its own destiny, it must have control of its children." Indian control of education continues to be a strategy to improve Indian education.

Today, 125 of the 183, or 68 percent, of the Bureau of Indian Education (BIE) schools and dormitories are Indian controlled, an increase of only 5 schools since 2004.[4] The slow growth in the conversion of BIE-operated schools to Indian-controlled schools raises questions about whether there is real and total control, especially when the federal government controls funding and the curriculum through promoting and essentially mandating national standards. The best examples of Indian control are the tribal colleges and universities; since 2002, four tribal colleges have been established in Oklahoma.

In addition, since 2004, the number of students in BIE schools decreased from 47,909 to 41,000—with the majority of schools not meeting academic standards as measured by No Child Left Behind criteria.[5] This represents a crisis situation for students and their communities, but also for the future of the BIE federal school system at the kindergarten to twelfth-grade level. The dwindling student numbers and the poor quality of instruction threatens the end of BIE and in the process the erosion of tribal sovereign, the trust responsibility, and the federal responsibility in education.

Approximately 650,000 students attend public, BIE, charter, and private schools. Students attending public schools continue to increase while those in BIE-supported schools decrease. A large majority of students, around 93 percent, attend public schools while 41,000 are at BIE schools. A smaller number attend private and charter schools. An increasing number of American Indian students are attending public schools in urban areas where often they represent a small part of the student body and where there might be a number of tribes represented. The significance of this is that a vast majority of students are in public education where education is a state responsibility and sovereignty has limited, if any, authority and the voices of tribes and parents receive little consideration.

Changes in higher education include more students: the Chronicle of Higher Education[6] reports approximately 210,160 American Indians/Alaska Natives enrolled; there are also more tribal college students. Tuition and fees have increased and there has been a strong focus on the science, technology, engineering, and math fields. Student access, retention, and graduation re-

main challenges, with retention being the major issue.[7] The corporate or business model with its profit motive is on the rise in education where programs are expected to raise funds to sustain themselves and students are viewed as sources of revenue.

THE EDUCATION PEDAGOGY IS NOT RED

Teaching in public and BIE kindergarten to twelfth-grade schools has become more entrenched in standardization and embedded in one-size-fits-all direct instruction approaches where student test scores in reading, math, and science are accepted as the key measures of academic success; there is little flexibility to include culturally responsive pedagogy in schools. No Child Left Behind has not only narrowed the curriculum to reading, math, and science, but it has also had a negative impact on creativity and adapting education to local community needs. Common Core standards are now the rage; their implementation is likely to have the same results for Indigenous students.

The failure of schools and systems to educate American Indian students is well documented; the latest sources are the National Indian Education Studies and a recent report by The Education Trust. American Indian students continue to score lower in math and reading compared to non-Natives. Dropout rates remain high, attendance low, and parent involvement weak. The lack of strong academic programs at the kindergarten to twelfth-grade levels carries over to higher education, where many students are often not academically prepared to complete college-level work.

A major reason for this continuing tragedy and mounting crisis in Indian education is the strong resistance from the educational establishment to include critical theory in the discourse of educational reform. During my years in education, the consideration of critical theory and critical pedagogy were extremely rare in any efforts to develop strategies and programs to improve education for American Indian students. The approach usually was to take the established Western goals and strategies and "Indianize" them by adding acceptable references to Native languages and cultures.

Schools are so tightly structured and controlled that teachers, administrators, and others are consumed with immediate situations, they are in the moment reacting to demands, mandates, standards, and student academic achievement as measured by test scores. There is little time to be proactive and think critically about education.

Also, programs in mainstream colleges and universities that prepare educators are based on certification standards with little room for critical theory, critical pedagogy, and Indigenous knowledge. The purpose of education remains to assimilate Indigenous peoples into the mainstream without serious consideration to cultural, linguistic, values, and the devastating and disrespectful treatment of Indigenous peoples since colonization.

IDENTITY AND INCREASED COMPLEXITY

The complexity of Indian education has intensified over the past ten years and will become even more complicated in the future. Education is greatly influenced by political and economic agendas, social conditions, health disparities, legal issues, changing demographics, geographic location, the rapid grown in technology, and social media. Families and communities are also influenced by these factors and students bring their life experiences into classrooms, which make teaching and learning very complex.

A major reason for this complexity has to do with the identity of American Indians, both individually and collectively, as members of tribes. As Sandy Grande notes in *Red Pedagogy* (p. 92), the preoccupation with identity politics prevents a critical discourse on oppression and power. True, but the obsession with identity will continue as American Indians grow in numbers, become tribally and racially mixed, pursue tribal membership, and seek eligibility for real or perceived benefits for tribal members. Indian identity politics will continue to be divisive, especially in the distribution of goods and services, decision-making, and with political and economic agendas.

In education, individual tribal identity is a challenge for schools, especially schools with multitribal representation in their student bodies, often found in urban areas. It is difficult for such schools to focus on a particular tribal language or culture, and what usually happens is "common" Indian values are developed and used, which is okay, but does not get at a deep specificities and meaning of Indigenous identity.

MAKING THE CONNECTION

During the past ten years, there has been some movement to connect American Indian educators and critical theorists, and between critical theory and Indigenous education, although I do not think the connection has been strong. The connection primarily comes from Indigenous scholars in academe.[8] For example, I have noticed an increase in the use of Safety Zone Theory (Lomawaima and McCarty, 2006), Tribal Critical Race Theory (Brayboy, 2005), Indigenous methodologies (Smith, 1999), and Indigenous education (Battiste, 2013; Cajete, 1994) in academic publications and graduate student research.

Faculty in American Indian/Native American/Indigenous studies programs have taken the lead in making the connections; most embrace critical

theory and critical pedagogy in their scholarly work. The American Indian studies program at Arizona State University is a prime example. We developed an American Indian studies (AIS) paradigm[9] that is the foundation of our academic program. The paradigm states in part:

> AIS is grounded in the experiences of American Indian nations, peoples, communities, and organizations from American Indian perspectives. Its principles are rooted in the concepts of sovereignty and indigenousness. It recognizes that disparate worldviews, literatures, knowledge systems, political structures, and languages characterize Indian societies within the United States but that they share commonalities than link them with other indigenous peoples of the world. It acknowledges that colonialism has impacted the sovereignty, human rights, landholdings, religious freedom, health, welfare, and cultural integrity of Indian nations . . . and focuses on the protection and strengthening of Indian sovereignty, self-determination, self-sufficiency, and human rights . . . provides a curriculum for the intellectual, ethical, and social development of students so they will acquire a comprehensive and practical understanding of U.S. Indian law and policy, colonization/decolonization, and nation building.

It is expected that our students will emerge as critical thinkers who will make differences in their communities.

That being said, there remains a noticeable disconnect between critical theory and kindergarten to twelfth-grade education in public and BIE schools. If critical theory and *Red Pedagogy* have implications for school improvement, and I think they do, then the connection needs to be made with educators in schools. Critical theorists need to work with teachers, counselors, school administrators, school boards, educator training programs at colleges and universities, and policy makers at local, tribal, state, and national levels to apply their theories, pedagogies, and methodologies to promote and implement critical pedagogy in schools.

A DAUNTING TASK

The formal education of American Indians is at a crisis level; it is not acceptable to have schools fail a large number of students and get away with it. Such failure has been a recurring theme for years with little overall improvement with the inclusion of Indigenous knowledge as part of the regular curricula of schools still sparse. There is scarce, almost nonexistent acknowledgment and critical discussion among educators about the impact colonization has and continues to have in present day Indian education. As Marie Battiste (2013, p. 186) notes, attempts "to decolonize education and actively resist colonial paradigms is a complex and daunting task." If the overarching goal of *Red Pedagogy* is decolonization (p. 166), then the hope is that education of American Indian students can be fundamentally changed through the integration of critical theory, critical pedagogy, and sovereignty in the efforts to improve Indian education. The connection needs to be made.

NOTES

1. "American Indian," "Native American," and "Indigenous" are used interchangeably for the purposes of this chapter. It is acknowledged that there are differences in meaning and use.
2. *Decolonizing Education, Nourishing the Learning Spirit* (2013) by Marie Battiste is an excellent source when responding to this question.
3. Known as the Kennedy Report, published in 1969, the U.S. Senate Special Subcommittee on Indian Education conducted an investigation into the problems of education for American Indians and titled their report, *Indian Education: A National Tragedy-A National Challenge*.
4. The number of BIE schools was obtained from the Bureau of Indian Affairs annual budget request to Congress, known as the green books, found at http://www.bie.edu/Schools/index.htm.
5. The larger concern is the No Child Left Behind criteria and the resulting failing schools beyond BIE schools; even wealthy suburban schools are being deemed as "failing," which points to how unjust the criteria was, possibly revealing the actual rationale to privatize public education.
6. *The Chronicle of Higher Education* publishes an almanac of higher education annually that reports enrollment and other data. The enrollment information is taken from the August 31, 2012, edition.
7. Two recent books, *Beyond the Asterisk: Understanding Native Students in Higher Education* (2013) by Heather Shotton, Shelly Lowe, and Stephanie Waterman, and *Postsecondary Education for American Indian and Alaska Natives* (2012) by Bryan McKinley Jones Brayboy, Amy Fann, Angelina Castagno, and Jessica Solyom, address these issues in detail.
8. Scholars like Brian Brayboy, K. Tsianina Lomawaima, Teresa McCarty, Marie Battiste, Linda Tuhiwai Smith, Maria Villegas, Gregory Cajete, Elizabeth Cook-Lynn, and Tim Begaye are among the academic scholars leading the way.
9. See the article "An American Indian Studies Paradigm Statement" by James Riding In published in the Fall 2011 issue of *Wicazo Sa Review* for the full text of the AIS paradigm.

Colonialism Undone: Pedagogies of Entanglement

Response 2

Alyosha Goldstein

Colonialism in North America continues to be undone. It is unfinished and ongoing, yet is also subject to interruption, contestation, and disassembly by Indigenous peoples. As Sandy Grande so eloquently insists, the insurgent process of disruption and undoing entails "political/pedagogical strategies that go beyond simply resisting settler relations of power" and demands working "to redefine the epistemological underpinnings through which the colonial world order is maintained."[1]

The first chapter of *Red Pedagogy*, "Mapping the Terrain of Struggle," thus begins with the violence and didacticism of colonial ordering, as well as the dynamic persistence of Indigenous ways of knowing and living otherwise. While colonial cartographies seek to naturalize the ideologies of conquest, to control and confine Indigenous peoples, to enframe territory and enforce the boundaries of property, they nevertheless remain shaped in response to those people they aim to pacify and the places they claim to occupy.

Always a consequence of these constitutive antagonisms, colonial reason and its modes of governance are symptomatic of that which they disavow. In contrast to the unconditional and peremptory conventions of colonial spatial delineation, Mishuana Goeman argues that Native mapping often describes relations to place that are polyvocal and contingent, living in stories told and retold.[2] Despite its professed inevitability, settler colonialism in North America is a project of perpetual failure and immanent crisis. *Red Pedagogy* specifies what it means for Indigenous peoples to contend with the brutal

perseverance and entanglements of this failure, as well as its still virulent economies of dispossession.

Grande's opening chapter generatively sketches colonial predicaments that invite ongoing consideration. What are the material conditions under which Indigenous peoples enact and assert self-determination during the present moment? Under these conditions, why do anti-colonial pedagogies necessitate "a method of analysis and social inquiry [that] troubles the capitalist, imperialist aims of unfettered competition, accumulation, and exploitation" (p. 26)? How are circumstances of Native peoples living under U.S. occupation shaped in relation to what Lisa Marie Cacho describes as the "differential devaluation of racialized groups"[3] and discrepant colonial formations throughout the world? This chapter is intended to build upon the foundation provided in Grande's chapter, expanding upon some of the principal concepts and ideas and their enduring significance since *Red Pedagogy*'s original publication.

The current historical conjuncture is not simply the most recent moment in the continuous procession of Indigenous dispossession by U.S. empire and settler colonialism. Just as neoliberalism is not simply an extension of classical liberalism but is instead a reactive formation that aims to dismantle the conciliatory regulatory mechanisms of mid-twentieth century liberal capitalism in pursuit of the upward redistribution of wealth in the "Global North," Indigenous dispossession assumes specific tactical forms in response to present-day practices of and possibilities for indigenous self-determination. The intensified redeployment of colonial predation and necropolitical inclusion takes many forms, some of which manifestly accentuate the constitutive contradictions of neoliberal multiculturalism.

As a way of marking this continuance and its impact on Indigenous youth, one need only to consider the recent 2013 U.S. Supreme Court ruling in *Adoptive Couple v Baby Girl*. The highly controversial case effectively undermined key provisions of the Indian Child Welfare Act of 1978 and used a reactionary post–civil rights era discourse of racial preference and alleged "special rights" of tribal nations to undermine protective gains made by the 1978 law. Indeed, much like the recent U.S. legislation that discarded core aspects of the Voting Rights Act of 1965 by claiming that the racist practices that necessitated the law were now resolved, commentary in support of the 2013 Supreme Court ruling suggested that Indian Child Welfare Act was outdated, emphasizing that the legislation was "more than thirty years old." In the context of the ruling, efforts by organizations such as the National Indian Child Welfare Association and the Lakota People's Law Project to stop the ongoing theft and abuse of Indigenous children have shifted to address the particularities of contemporary U.S. colonial governmentality, specifically, "post-racial" assertions of white entitlement and retooled ideologies of anti-tribalism that aim to justify further erosion of Indigenous sovereignty.

In the neoliberal offensive of the past forty years, the uneasy historical entwining of Indigenous education, a particular version of self-determination, and the reduction of life to the calculus of market relations appear in at least two modes of containment and hegemonic realignment. On the one hand, neoliberal multiculturalism extends the simultaneous promise of autonomy and inclusion. On the other hand, an insistence on accountability for the conditions of colonial and racialized dispossession has been diverted to support standardized testing and assessment that accelerates inequities and devaluations under the aegis of settler normativity.

For instance, the anti-colonial movement for control of schooling by and for Native peoples—from the Navajo Nation's Rough Rock Demonstration School established in 1966 to the Red Power community survival schools to the Coalition of Indian Controlled School Boards to Deganawidah-Quetzalcoatl University—helped compel the Indian Self-Determination and Education Assistance Act of 1975. Yet, although the 1975 legislation established significant changes in federal Indian policy, its mandate for Indigenous self-governance devolved administrative authority to tribes in ways that did not fundamentally challenge the ultimate plenary power of congress.

Likewise, the U.S. settler state responded to grassroots pressure for more adequate investment in education for both impoverished communities of color and Indigenous peoples with the rhetoric of accountability set out in the means-tested disciplinary regime of No Child Left Behind—a regime that has only intensified since the original publication of *Red Pedagogy*.[4] As intimated by Grande, both trajectories partially build from and work to dismember preceding strategies for Indigenous liberation and sovereignty. Nevertheless, the colonial norms of recognition that seek, as Audra Simpson argues, to instantiate an Indigenous autonomy that "is exercisable only because recognition is conferred" are always also symptomatic of the pernicious "ambivalences of exigencies of settlement itself" and "the needs and desires of states that are new, that are in process, that are complicated, and struggling always not to fissure."[5]

Similarly, in response to the student movements of the 1970s and 1980s for ethnic studies and Native American self-determination, the U.S. educational system responded with inclusive pedagogies for minoritization and neoliberal multiculturalism. Indeed, the notion of "minority" here is precisely a consequence of the colonial attrition that has in fact minoritized peoples through circuits of conquest, displacement, and slavery. Roderick Ferguson points out that during this moment state and capital began to adopt a simultaneously affirmative and preemptory discourse of anti-racist diversity "through the regulated incorporation of minorities and minoritized intellectual and cultural production" so as "to forestall the redistribution of resources

to economically and racially disfranchised communities."[6] Although such forms of minoritization operate primarily through a logic of race that concertedly disavows colonial difference and Indigenous sovereignty, it is imperative nonetheless to attend to the tensions, entanglements, and disjunctures—what Jodi Byrd describes as "cacophony"—between subalternized racialized groups and Indigenous peoples that remain more complex than the normative lens of the U.S. state, educational system, and neoliberal multiculturalism allows.[7]

Since the 1970s, U.S. Indian policy affirming recognition of Indian self-determination has operated in tandem with new forms of economic disposability, social abandonment, and environmental plunder. As Grande observes, "Indian education was never simply about the desire to 'civilize' or even deculturalize a people, but rather, from its very inception, it was a project designed to colonize Indian minds as a means of gaining access to Indian labor, land, and resources" (p. 19). She makes clear that both contesting the possessive and extractive logics of colonization and creating the possibilities for a "new Red pedagogy" demand grappling with how Indigenous ways of being and knowing cannot be reduced to these conditions of material expropriation. At the same time, neither Euro-American forms of knowledge nor Indigenous forms of knowledge are thoroughly discrete[8]; instead, each are heterogeneous and—to various degrees—unevenly entwined, even if the arrogance of Euro-American knowledge production continues to disclaim its debts and culpability for the death worlds of logocentricism.

As *settler colonialism* and *decolonization* are increasingly invoked by non-Indigenous scholars and activists, it becomes especially important to engage the specificity, social etymology, and complex genealogies of each term. Decolonization is not an analogy for struggles against domination in general.[9] Decolonization is least helpful when used to suggest a binary relation to colonialism or the retrieval of a more authentic prior to colonial rule. Yet, as much as international law has codified decolonization as a series of mandates and protocols susceptible to the ongoing maintenance of neocolonial and imperial formations, it nevertheless serves to evoke other possible relations and refusals. As Grande contends, "'decolonization' (like democracy) is neither achievable nor definable, rendering it ephemeral as a goal, but perpetual as a process" (p. 166). Decolonization is thus a shifting configuration of strategies and actions, not an event, even as it is nonetheless eventful. Decolonization is a means without end. It is a creative response that necessarily exceeds legibility and reconciliation from the perspective of the conditions from which it arises.

The terrain of struggle mapped by *Red Pedagogy* a decade ago continues to exceed the political boundaries, militarized borders, and knowledge regimes of imperial nation-states. Scholars and activists have grounded their work in ways that both confront the imposed limitations and elisions of the state form and build anti-colonial alliances born of shared conditions of colonial possibility.[10] The practice of "red pedagogy" so forcefully charted by Grande entails the sustained and difficult labor of discerning and enacting these multiple forms of struggle in relation to one another without losing sight of their mutual frictions, tensions, and incommensurabilities.[11]

In this sense, the ethics of being accountable to one another as living radical relationality is itself the possibility of contesting and further disrupting the colonial conditions that continue to be undone. A declaration of radical hope and potentiality, *Red Pedagogy* theorizes with the insurgent forms of knowledge that arise from and sustain decolonization as a collective overcoming and becoming in perpetuity by Indigenous peoples. The urgency of this declaration only intensified in the ten years since *Red Pedagogy* was first published.

NOTES

1. Sandy Grande, "Accumulation of the Primitive: The Limits of Liberalism and the Politics of Occupy Wall Street," *Settler Colonial Studies* 3.3–4 (2013): 376.
2. Mishuana Goeman, *Mark my Words: Native Women Mapping Our Nations* (Minneapolis: University of Minnesota Press, 2013).
3. Lisa Marie Cacho, *Social Death: Racialized Rightlessness and the Criminalization of the Unprotected* (New York: NYU Press, 2012): 13–18.
4. Teresa L. McCarty, "The Impact of High-Stakes Accountability Policies on Native American Learners: Evidence from Research," *Teaching Education* 20.1 (2009): 7–29.
5. Audra Simpson, "Under the Sign of Sovereignty: Certainty, Ambivalence and Law in Native North America and Indigenous Australia," *Wicazo Sa Review* 25.2 (Fall 2010): 108. For further discussion, see Audra Simpson,*Mohawk Interruptus: Political Life across the Borders of Settler States* (Durham, NC: Duke University Press, 2014).
6. Roderick Ferguson, *The Reorder of Things: The University and its Pedagogies of Minority Difference* (Minneapolis: University of Minnesota Press, 2012): 190, 191.
7. Jodi A. Byrd, *The Transit of Empire: Indigenous Critiques of Colonialism* (Minneapolis: University of Minnesota Press, 2011).
8. This was a point incisively made by Chris Andersen at the Native American and Indigenous Studies Association meeting, Austin, Texas, May 2014.
9. Eve Tuck and K. Wayne Yang, "Decolonization is Not a Metaphor," *Decolonization: Indigeneity, Education & Society* 1.1 (2012): 1–40.
10. M. Bianet Castellanos, Lourdes Gutiérrez Nájera, and Arturo J. Aldama, (eds.), *Comparative Indigeneities of the Américas: Toward a Hemispheric Approach* (Tucson: University of Arizona Press, 2012); Noelani Goodyear-Ka'opua, *The Seeds We Planted: Portraits of a Native Hawaiian Charter School* (Minneapolis: University of Minnesota Press, 2013); Brenda J. Child and Brian Klopotek (eds.), *Indian Subjects: Hemispheric Perspectives on the History of Indigenous Education* (Santa Fe, NM: SAR Press, 2014); The Kino-nda-niimi Collective (ed.), *The Winter We Danced: Voices from the Past, the Future, and the Idle No More Movement* (Winnipeg, MB: Arbeiter Ring Publishing, 2014).
11. Harsha Walia, *Undoing Border Imperialism* (Oakland, CA: AK Press, 2013); Tiffany Jeanette King, "In the Clearing: Black Female Bodies, Space, and Settler Colonial Landscapes," PhD dissertation (College Park: University of Maryland, 2013); Luam Kidane and Jarrett Martineau, "Building Connections across Decolonization Struggles," *ROAR Magazine*, October 29, 2013. http://roarmag.org/2013/10/african-indigenous-struggle-decolonization/.

WHITESTREAM FEMINISM AND THE COLONIALIST PROJECT: A REVIEW OF CONTEMPORARY FEMINIST PEDAGOGY AND PRAXIS

Sandy Grande

Department of Education
Connecticut College

INTRODUCTION

I feel compelled to begin by stating that I am not a feminist — rather, I am Indígena.[1] Accordingly, this review begins at the intersection of my subjectivity as an indigenous woman and the contemporary feminist project. While, like other indigenous women, I recognize the invaluable contributions that feminists have made to both critical theory and praxis in education, I also believe their well-documented failure to engage race and acknowledge the complicity of white women in the history of domination positions "mainstream" feminism alongside other colonialist discourses. Indeed, the colonialist project could not have flourished without the participation of white women; therefore, as M. Annette Jaimes notes, some American Indian women continue to hold white feminists in disdain because they are perceived first and foremost as constituents of the same white supremacy and colonialism that oppresses all Indians.[2] Thus, like other indigenous women, I theorize and act in public life from a standpoint that presumes *decolonization* (not feminism) as the central political project. In contrast to dominant modes of feminist critique that locate women's oppression in the structures of patriarchy, the project of decolonization begins with the understanding that the collective oppression of indigenous women results primarily from colonialism — a multidimensional force underwritten by Western Christianity, defined by white supremacy, and fueled by global capitalism.

One of the central assertions of decolonization is that the heterogeneity of experience, though significant, does not preclude the power and existence of "grand narratives" (such as colonialism, global capitalism, and the Enlightenment). According to Henry Giroux, grand narratives provide for the historical and relational placement of different groups within some "common project."[3] Thus, while indigenous

1. Though indigenous women share with other women a position of marginality and the experience of structural subordination, I believe their distinct subjectivity as colonized people and members of tribal "domestic dependent nations" places the historical materiality of their lives more on par with indigenous men than with any other subcategory of woman.

2. M. Annette Jaimes, *The State of Native America: Genocide, Colonization, and Resistance* (Boston: South End Press, 1998), 311–344.

3. Henry Giroux, "Crossing the Boundaries of Educational Discourse: Modernism, Postmodernism, and Feminism," in *Education: Culture, Economy, Society*, eds. A.H. Halsey, Hugh Lauder, Phillip Brown, and Amy Stuart Wells (Oxford: Oxford University Press, 1997), 113–131.

women may differ in everything "from blood-quantum to skin color," they share a common experience of being historically and relationally placed within the "common project" of conquest and colonization.[4] Furthermore, this placement connects the lives and experiences of indigenous peoples (the colonized) to each other while it distinguishes them from whites (the colonizers).

Generally speaking, such "binaries" (colonizer/colonized) are anathema to "mainstream" feminism, dismissed as everything from essentialist and universalizing to masculinist and coercive.[5] Among other things, indigenous women view this dismissal as a convenient rhetorical device that not only relativizes difference but that also allows white women to deny their shared complicity in the colonialist project (including the benefits they reap from its mandates and imperatives). Indeed, rather than recognize their participation, "mainstream" feminists have historically presumed a universal sisterhood among all women, erasing important differences in power and social status. As a result, indigenous, "third-world," and other marginalized women have long taken issue with "mainstream" feminists, documenting their failure to acknowledge both the intersections of race, class, gender, and sexuality and the historic dispensations of whiteness.

As a result, what has long passed as "mainstream" feminism is perhaps more appropriately termed "whitestream" feminism — that is, a feminist discourse that is not only dominated by white women but also principally structured on the basis of white, middle-class experience; a discourse that serves their ethno-political interests and capital investments.[6] Other characteristics of whitestream feminism include a heavy dependence on postmodern/poststructuralist theories, a privileging of "academic feminism" over the feminist political project, and an undertheorizing of patriarchy as the universal oppression of all women — all features that have been critiqued by feminists of color and other radical scholars.[7]

Postmodern and poststructural theories have greatly contributed to the project of "radical democracy": by advancing our knowledge of the "hidden trajectories of power within the processes of representation"; the formation of subjectivity and

4. Devon A. Mihesuah, *Native Americans and Academics: Researching and Writing About American Indians* (Lincoln: University of Nebraska Press, 1998), 38.

5. See Patti Lather, "Critical Pedagogy and Its Complicities: A Praxis of Stuck Places," *Educational Theory* 48, no. 4 (1998): 487–497.

6. Adapting from the feminist notion of "malestream," Canadian sociologist Claude Denis coined the term whitestream to connote the idea that, while society is not white in sociodemographic terms, it remains principally structured around the basis of white, Anglo-Saxon experience. See Claude Denis, *We Are Not You: First Nations and Canadian Modernity* (Toronto: Broadview Press, 1997). Leading proponents of whitestream feminism include Judith Butler, Drucilla Cornell, Gilles Deleuze, Jane Gallop, Elizabeth Grosz, Felix Guttari, Donna Haraway, and Patti Lather, among others.

7. The critique of whitestream feminism has been led by women of color, including Jacqui Alexander, Gloria Anzaldúa, Patricia Hill Collins, Angela Davis, Trinh Minh-ha, bell hooks, M. Annette Jaimes, Cherríe Moraga, Chandra Talpade Mohanty, Chela Sandoval, and Barbara Smith, among others.

SANDY GRANDE is Assistant Professor of education at Connecticut College, 270 Mohegan Ave., New London, CT 06320-4196. Her primary areas of scholarship are American Indian education, critical theory in education, and feminist theory in education.

identity; and the relations among "difference," language, and cultural configurations. Nevertheless, radical and revolutionary scholars have developed trenchant critiques of the failure of postmodern and poststructural theories to move beyond the discursive/cultural/textual and their displacement of "a politics grounded in the mobilization of forces against the material sources of political and economic marginalization."[8] Peter McLaren challenges the "questionable assumptions" and dangerous implications of such a discourse:

> [Postmodernists/poststructuralists] view symbolic exchange as taking place outside the domain of value; privilege structures of deference over structures of exploitation, and relations of exchange over relations of production; emphasize local narratives over grand narratives; encourage the coming to voice of the symbolically dispossessed over the transformation of existing social relations; reduce models of reality to historical fictions; abandon the assessment of the truth value of competing narratives; replace the idea that power is class-specific and historically bound with the idea that power is everywhere and nowhere — they end up advancing a philosophical commission that propagates hegemonic class rule and reestablishing the rule of the capitalist class.[9]

Feminist theories that operate under these assumptions have been defined by Teresa Ebert as "ludic feminism" — theories that, following dominant postmodern theories, rearticulate politics as almost exclusively a cultural politics of representation that not only replaces radical critique with "assumptions about linguistic play, difference, and the priority of discourse," but that also separates feminist theory from feminist struggle and practice.[10] In other words, ludic feminists redefine politics as a purely academic exercise. As bell hooks notes, unlike earlier forms of feminist theory, the contemporary production of feminist theory is sequestered behind the ivy walls of academia, where the growing social distance between whitestream academics and the lived experiences of "real-world" women has enabled "high status feminists" to build lucrative careers by theorizing the lives of "other" women — a situation that replicates the relation between colonizer and colonized.[11]

In addition to exacerbating the fissure between feminist theory and practice, the discursive tactics of postmodern/poststructuralist theories allow whitestream feminists to distort the material significance of their privileged position. Following Michel Foucault, whitestream feminists understand power as "diffuse, asystematic, contingent, and 'aleatory' — that is marked by chance and arbitrariness" rather than as something historically and materially determined.[12] In a discourse that reduces politics to a "language effect...aimed at changing cultural representations," it becomes possible to reduce the emancipatory project to one simply concerned with

8. Valerie Scatamburlo-D'Annibale and Peter McLaren, "The Strategic Centrality of Class in the Politics of 'Race' and 'Difference,'" in *Cultural Studies/Critical Methodologies* 3, no. 2 (2003): 148–175.

9. Peter McLaren, "Revolutionary Pedagogy in Post-Revolutionary Times," *Educational Theory* 48, no. 4 (1998): 442–443.

10. See Teresa Ebert, *Ludic Feminism and After: Postmodernism, Desire and Labor in Late Capitalism* (Ann Arbor: University of Michigan Press, 1996); and Teresa Ebert, "For a Red Pedagogy: Feminism, Desire and Need," *College English* 58, no. 7 (1996): 795–819.

11. Bell hooks, *Teaching to Transgress: Education as the Practice of Freedom* (New York: Routledge, 1994) 62.

12. Ebert, "For a Red Pedagogy," 795.

"giving voice" to the "silenced desires" of (white) women — a pedagogy primarily concerned with how white women feel and whether they are free to express and act upon how they feel.[13] According to Ebert, this discourse routinely equates the pleasure and desires of "first-world," white, bourgeois women with those of "third-world" and other colonized women; by extension, in the realm of feeling, experience, and cultural representation, it becomes possible to equate "the oppressed" with the "distressed." Thus, just as the discursive tactics of postmodernism privilege the indeterminacy of the subject, they also construe power as indeterminate and diffuse.

Ironically, while whitestream feminists employ the postmodern indeterminacy of power to absolve themselves from the colonialist project, at the same time they revert to modernist readings of power in their assertions of patriarchy as a universal and totalizing system. Women of color have taken issue with this undertheorizing of patriarchy. On this point, hooks is worth quoting at length:

> [The universal assumption of patriarchy] is an argument that has led influential Western white women to feel that the feminist movement should be the central political agenda for females globally. Ideologically, thinking in this direction enables Western women, especially privileged white women, to suggest that racism and class exploitation are merely an offspring of the parent system: patriarchy. Within the feminist movement in the West, this has led to the assumption of resisting patriarchal domination as a more legitimate feminist action than resisting racism and other forms of domination. Such thinking prevails despite radical critiques made by black women and women of color who question this proposition. To speculate that an oppositional division between men and women existed in early human communities is to impose on the past, on these non-white groups, a worldview that fits all too neatly within contemporary feminist paradigms that name man as the enemy and woman as the victim.[14]

The critique that feminism is a field dominated by white women and whitestream theories has come to be viewed as a historical problem, a relic of the difficult transitional period between second- and third-wave feminism. Along with this relegation to history comes the implicit (or sometimes explicit) assertion that the argument, "feminism is a whitestream discourse," is passé, a well-rehearsed argument that no longer holds validity. The current plurality of "feminisms" operating in the field is often cited as evidence of the death of whitestream feminism. I agree that liberal, postmodern, Marxist, critical race, socialist, lesbian, womanist, and transnational feminisms, among others, do all occupy a proper and legitimate place in the feminist diaspora. But this apparent eclecticism can be deceiving.

In preparation for this review, I embarked on a tour of contemporary feminism; and while I found a remarkably diverse terrain, I also perceived an uneven playing field where whitestream feminists commandeer "the center" and women of color occupy the margins. Thus, while multiple feminisms clearly operate in the field, it seemed to me that a persistent whitestream discourse continues to define the public face of feminism. This implicit structure marks the feminist terrain as not simply "pluralistic" but, more critically, ghettoized — indicating that whitestream feminists merely perform multiplicity, continuing to resist any significant attenuation of the racial divide.

13. Ibid., 805.

14. Bell hooks, *Talking Back: Thinking Feminist, Thinking Black* (Boston: South End Press, 1989), 19–20.

TEXTS AND CONTEXTS

Insofar as they reflect the profound plurality of the field, the texts at the center of this review provide a representative sample of the literature: Amanda Coffey and Sara Delamont's *Feminism and the Classroom Teacher*; Frances Maher and Janie Victoria Ward's *Gender and Teaching*; Frances Maher and Mary Kay Tetreault's *The Feminist Classroom*; and Kathleen Weiler's *Feminist Engagements*. Indeed, the only common theme that emerges among these books is the examination of the relation between women and education. Beyond that, they have little in common. For example, not all of the texts employ feminist analysis, and those that do engage different and even contradictory feminist theories.

As such, one of the primary aims of this analysis is to test my own perceptions by examining whether whitestream feminism has indeed given way to more complicated readings of gender and power that work not only to "include" the voices of women on the margin but also to incorporate their frames of intelligibility into feminist theory and practice. More specifically, given that the constructs of "race" and "whiteness" evolved in the context of colonialism and imperialism (which is to say the emergence of capitalism and industrialism), I look at whether the feminist project is theorized through a historical-materialist framework — that is, one that engages the intersection of race with questions of capitalism, labor, and economic power. I also look for a feminism that moves beyond textual analysis, providing "a pedagogy of critique that enables us to explain how exploitation operates in the everyday lives of people" for the express purpose of engaging in collective struggle to change exploitive relations.[15] A feminist discourse that engages all of these issues would provide hope and possibility to indigenous and other colonized women, serving as the basis for revolutionary theory and struggle and as the pedagogical home for the project of decolonization.

FEMINISM AND THE CLASSROOM TEACHER: RESEARCH PRAXIS AND PEDAGOGY[16]

SUMMARY. In this text, Coffey and Delamont draw together a "critical mass of literature" in order to "explore the relationships, histories and futures of feminism and teaching" (*FCT*, 2). While the authors draw most heavily on North American and British literature, they work to "employ a variety of research modes and theoretical perspectives...drawing together the polemical and empirical, the cited and the more diverse and scattered bodies of material," to serve as the basis for a feminist analysis of the "everyday realities" of the classroom teacher (*FCT*, 2).[17]

They begin the first chapter with a discussion of feminisms, postfeminisms, and postmodernism in order to situate "the place of feminist analysis in a postmodern

15. Ebert, "For a Red Pedagogy," 816.

16. Amanda Coffey and Sara Delamont, *Feminism and the Classroom Teacher* (London and New York: Routledge Falmer, 2000). This book will be cited as *FCT* in the text for all subsequent references.

17. More specifically, the authors report that they use "liberal feminist theory" in their analysis of the myriad "imbalances" between men and women in teaching and "radical feminist theories" in their critique of "malestream" epistemologies dominating educational research.

intellectual climate"; in the following chapters they examine different aspects of teachers' work, including "the practical contingencies of the classroom," the "intellectual knowledge work of the teacher," the "teaching career path," and the "day-to-day biographies and experiences of teachers" (*FCT*, 2). Based on the evidence presented in these chapters, Coffey and Delamont conclude that women teachers continue to struggle in school systems defined by patriarchy, where prevailing notions of masculinity continue to dominate management strategies, disciplinary practices, the distribution of power, and the school curriculum.[18]

Moving from an analysis of the working life of teachers, the authors explore feminist contributions to the history of teaching, examining the material realities of the profession's "foremothers." Women teachers of "the pioneering days" are depicted as courageous early champions of both feminism and education, advocating for structural improvements and curricular innovations in schools. Following this era, women teachers are depicted as persisting and resisting through times of economic depression and ideological oppression, tirelessly campaigning for the extension of educational opportunity, equal pay, and an end to the "marriage bar" (*FCT*, 105). Coffey and Delamont conclude their historical analysis with an examination of the advent of coeducation and its negative effects on women's careers, asserting that the career structures of women were disrupted as men usurped top management and supervisory positions and thus displaced both women and women's authority.

In the final chapter of *Feminism and the Classroom Teacher*, the authors return to "the feminist project in education," addressing feminist epistemology and research praxis. In this analysis they "demystify" research as objective and neutral and recast it as socioculturally situated (that is, "personal, emotional, sensitive, [and] reflective"), concluding that "feminist research" is more determined by its application and context than by its method.[19]

ANALYSIS. Insofar as this text examines women, feminism, and the feminist project in essentialist terms (that is, where women and feminism are positioned in contrast to men and patriarchy), without any consciousness of how such constructs are informed by race, it sits squarely in the whitestream tradition. Indeed, Coffey and Delamont's examination of sexuality represents their only substantive effort to complicate gender.[20] Furthermore, while they examine issues of class, they do so in a manner that treats class as another form of individual difference, not as a historically determined social construct.

18. Due to this climate, the authors report "many self-identified feminist teachers resist being openly identified as feminist in the same way that lesbian teachers often resist or actively mute a lesbian label, fearing it 'dangerous' or a catalyst for further ridicule" (*FCT*, 73).

19. They note, for example, that even surveys in the positivistic tradition (once seen as the "antithesis" of feminist research) can be constructed in ways that provide valuable data for feminist research.

20. More specifically, the authors examine the different experiences of lesbian teachers, particularly their struggles with managing the disclosure of sexual identity, teaching sexuality, and "queering the curriculum."

For example, while the authors recognize the existence of a class-tiered system in education, they do not discuss the implications of such a system for a democratic society. Rather, they are only concerned with the mitigating effects of class structure on the careers and professional opportunities of individual (white) women. Their historical analysis of "the feminist influence" on working-class elementary schools and fee-paying secondary schools for middle- and upper-class girls exemplifies this problem: The schools are discussed only in terms of the role they played in opening avenues to higher education and professional training. According to Coffey and Delamont, middle-class schools created jobs that were "socially respectable and paid a sufficient salary for a woman to live independently without the economic support of her father, or a husband" (*FCT*, 95). In contrast, working-class schools were notable for their relatively poor employment opportunities and "harsh" working conditions. The authors bemoan that white middle-class women teaching in working-class schools were subjected to "Spartan" living accommodations and were expected to do "domestic" work:

> Teaching in the elite schools was hard work, but the salary and status made it a reasonable choice. The pupils and students taught, and their parents, came from a similar class and there were common values. The lives of those who taught the working classes were harder. Salaries were lower, saving less possible, the status lower, and the conditions of work much worse. Classes of forty, in dreadful buildings, with children who would smell, refuse discipline, and exhaust their teachers meant that staying in the job was a brave decision (*FCT*, 98).

Apparently, from the authors' perspective, a "feminist analysis" of the history of teaching looks only at the working conditions of white women and the impact of such conditions on their opportunities for social and economic mobility. Missing is any structural analysis of a capitalist system that exploits members of the working class or of a colonialist system that privileges white women and their desires for equality and social mobility over the democratic imperative of extending access and equity across class and racial groups. Instead, members of the working class appear only to represent undesirable ("smelly" and "undisciplined") impediments to the feminist pursuit for adequate careers and equal pay for equal work.

Moreover, by failing to mention the struggles of people of color to gain access to education, the authors disregard the concerns of racially disfranchised groups, treating them as immaterial to the employment opportunities of white, middle-class women teachers. One of the most egregious examples of privileging white women's experience appears in Coffey and Delamont's concluding thoughts on "the foremothers" of today's teachers: "the women who taught in the 'Wild West,' in the virgin territory of Australia, and in the pioneering girls' schools like Wycombe Abbey were heroines and deserve to be remembered, not least because of the struggles they overcame and the legacies they left" (*FCT*, 105). The use of such language as "Wild West" and "virgin territory" to describe Indian and Aboriginal territories in the United States and Australia reveals the authors' racist construction of indigenous peoples as either savage ("wild") or invisible. Moreover, their concomitant construction of the white teachers as "heroines" fails to account for the complicating fact that such women were first and foremost colonizers: middle- and upper-class missionaries working to "civilize" and claim indigenous lands, cultures, minds, and bodies.

Indeed, such women do "deserve to be remembered for the legacy they left" — a legacy that includes the deculturalization and colonization of indigenous lands and peoples.

Coffey and Delamont's work, therefore, epitomizes whitestream feminism. They not only fail to problematize gender by examining its intersections with race and class, but they also maintain the distortions and aporias of a whitestream logic that privileges the desires and fantasies of the dominant class over the experiences and concerns of the culturally marginalized and politically disfranchised.

GENDER AND TEACHING[21]

SUMMARY. In comparison, Maher and Ward theorize gender as a more complex and fluid category, one that engages race, class, and sexuality. They identify their theoretical approach as "radical social reconstructionist," taking into account the "larger cultural, social and political dynamics" of both school and society, and examining how such dynamics operate to marginalize poor, working-class, gay/lesbian, female, and nonwhite students.[22]

The authors examine this interplay in part I of the text by presenting four case studies, which are essentially classroom scenarios in which a teacher is forced to negotiate a situation that involves issues of race, class, gender, or sexuality.[23] The presentation of each case study is followed by "reader reactions" solicited from prospective and practicing teachers and administrators. These reactions are intended to represent "some of the many and diverse ways in which people both in and outside of school systems tend to act and deal" with issues of gender, race, class, and sexuality (*GT*, 110). Finally, Maher and Ward provide a summary and a set of follow-up questions to conclude each case study.

In part II of *Gender and Teaching*, the authors engage a broader theoretical discussion of gender in which "conservative," "liberal progressive," "women-centered," and "radical multicultural" frameworks are discussed as the prevailing "public arguments" that guide perspectives on gender and educational policy.[24] The case studies are then reconsidered through each of these frameworks. The discussion ends with a set of questions intended to encourage readers to consider the

21. Frances A. Maher and Janie Victoria Ward, *Gender and Teaching* (New Jersey and London: Lawrence Erlbaum Associates, 2002). This book will be cited as *GT* in the text for all subsequent references.

22. Though they recognize the interplay of gender, race, class, and sexuality, Maher and Ward clearly foreground gender as the central lens through which difference is negotiated. See, for example, *GT*, 110.

23. Case 1 portrays a "Hispanic" teacher faced with negotiating sexism within her own community and classroom; case 2 concerns two teachers with differences of opinion regarding the behavior of one African-American boy and the societal phenomenon of disproportionate numbers of black boys being referred to special education; case 3 focuses on recurring instances of sexual harassment and homophobia in one high school class; and case 4 explores "the gendered, racialized, and sociocultural aspects of the teaching profession."

24. To summarize, the conservative argument is defined as that which supports maintenance of women's "traditional" roles in the family and the importance of discipline, character building, and "the basics" in the classroom. This position simultaneously delegitimizes group identity, multiculturalism, and the ostensibly "water-downed curriculum" it engenders. The "liberal-progressive" argument is defined as that which promotes recognition of gender equality (not difference) as the central feature of democratic and

implications of each line of argument and to determine their own location on the ideological/political spectrum. Finally, in part III of the text, the authors define their own perspective, "radical social reconstructionist," which they describe as being most similar to the radical multiculturalist model with "admixtures of all the others" (*GT*, 110).

Overall, Maher and Ward recognize the importance of analyzing gender through its intersections with race, class, and sexuality, as well as the need to examine school as a site of social struggle where asymmetries of power are played out. They also stress how important it is for teachers to play an active role in reimagining school and society along democratic aims: "teachers must work to challenge the social inequalities that operate in each and every classroom...[making] sure the curriculum contains explicit references to inequality and resistance" (*GT*, 117).

ANALYSIS. Though Maher and Ward promote a radical politics of difference and social change, they ultimately adhere to a "liberal progressive" epistemological frame that privileges individual choice, objectivity, and impartiality over social transformation. At several points in the text they remind the reader that the book is simply a tool intended to assist the development of their own viewpoints. This approach is particularly apparent in the section where "public arguments" are articulated. First, a menu of arguments is provided with each being delineated as equally tantalizing and legitimate. Among the offerings is the "conservative" argument, which views feminists as anti-family, multiculturalism as the politics of victimhood, and schools as being taken over by "a host of anti-white, anti-male, anti-family, and anti-religion fanatics" (*GT*, 76). Next, the reader is invited to make their selections, guided by such questions as "What aspects of this viewpoint are appealing to you?" and "What aspects do you disagree with?" While this approach may encourage development of the reader's point of view, it also ignores the ways in which such liberal approaches to pedagogy, cloaked in veils of objectivity and rational discourse, contribute to the maintenance of dominant paradigms by presenting them as equally legitimate alternatives.

Marxist feminist Ebert argues that such discourse legitimates, among other things, "a pragmatic pluralism that tolerates exploitation as one possible free choice" and ultimately privileges the importance of individual choice over radical social transformation.[25] Thus, while Maher and Ward articulate a "radical politics of

student-centered education. Liberal-progressives resist the "male-versus-female trap" by focusing on the individual, working to right past discrimination through the equal inclusion of all voices. The "women-centered" argument is defined as that which recognizes the importance of gender differences and the need to give more attention to "women's perspectives on the world." Emphasis on "women's ways of knowing" and "women-centered classrooms" are advocated as a means of rethinking education in order to prepare students for the productive as well as reproductive aspects of society. Finally, the "radical multiculturalist" argument is positioned in contrast to all others: it rejects the conservative aim of preserving the economic and political status quo, the liberal focus on equality and individualism, and the essentialism inherent in women-centered pedagogies. Radical multiculturalists construct gender, race, class, and culture as interlocking categories of discrimination, oppression, and potential empowerment and advocate for equity in both school and society.

25. Ebert, *Ludic Feminism and After*, 17.

difference" that examines gender through its connections and intersections with the "structural dynamics and practices" of race, class, and culture, their presentation of material fails to assert this agenda as a democratic imperative. Rather, they position the need for social transformation as merely one option among many, including the maintenance of social control by the dominant class. While there is pedagogical value in engaging students in critical reflection and decision making, the authors should consider the costs of academic feminism, particularly if it comes at the expense of feminist struggle and social change.

Finally, their failure to analyze gender as one of many different power relations that emerge through the projects of global capitalism and colonization tethers their analysis to the imperatives of these projects. In other words, when not explicitly tied to a politics aimed at dismantling capitalism and decolonization, feminist struggles for equal access and power are suspect, covertly operating as struggles for equal access to material resources and for the power to consume and, ultimately, to dominate.

THE FEMINIST CLASSROOM: DYNAMICS OF GENDER, RACE, AND PRIVILEGE[26]

SUMMARY. This text is essentially an account of its authors' examination of feminist pedagogies in action. Specifically, Maher and Tetreault study practitioners working at several different institutions who have been identified by their feminist colleagues as "well known for their commitment to women's studies and to fine teaching" (*FC*, 4).[27] Next, they analyze the data through four analytic themes — mastery, voice, authority, and positionality — that cut across differences in pedagogical style as well as classroom and institutional demographics (*FC*, 22).[28]

In this second edition of *The Feminist Classroom*, Maher and Tetreault not only provide documentation and analysis of their original findings, but they also revisit their initial analysis, adding new reflections, insights, and commentary. In particular, they acknowledge that one of the major aporias of the first edition (as noted by readers and reviewers) was an insufficient analysis of race, especially in terms of how "the workings of unacknowledged whiteness" shapes classroom discourse: "like other white feminists [we] focused on the situations and experiences of women as

26. Frances A. Maher and Mary Kay Thompson Tetreault, *The Feminist Classroom: Dynamics of Gender, Race, and Privilege* (Lanham, Massachusetts: Rowman and Littlefield, 2001). This book will be cited as *FC* in the text for all subsequent references.

27. Initially, five schools with nationally visible projects in gender and women's studies were chosen: three liberal arts colleges (one of which was a historically black women's college), one research university, and one state university. A sixth school (San Francisco State University) was added midstream when the racial homogeneity of the initial five schools presented limitations to their study. The six schools included in their final sample were University of Arizona, Towson State, Lewis and Clark, Wheaton College, Spelman College, and San Francisco State.

28. Mastery refers to the myriad ways in which feminist praxis entails "struggle for control" (over construction of knowledge, research procedure, and methodology). Voice refers to student subjectivity and the power of voice to shape classroom knowledge. Authority is examined in terms of how the professors perceive and exercise authority in their classrooms and how the researchers perceive and exercise authority in the processes of their study. Positionality refers to the knower's sociocultural location in terms of "gender, race, class and other socially significant dimensions," and the ways in which this positionality influences the construction of knowledge.

victims of oppression," downplaying the complex relations of power presented by race (*FC*, 8). To address this issue, the authors have added a new chapter that focuses specifically on how assumptions of whiteness influence classroom discourse.

It should be noted that the authors' struggle to understand the implications of race are not mirrored in their treatment of sexuality. While the concerns of lesbian feminists and considerations of queer theory were not explicit aims of their analysis, such issues surfaced through the lives and narratives of participants who, in one form or another, struggled with sexuality and its impact on the formation of knowledge and classroom discourse. The authors also seemed to anticipate the effects of sexuality in ways that they did not anticipate (or even exhibit consciousness of) in their analysis of race.

Nevertheless, in *The Feminist Classroom* Maher and Tetreault work to articulate the distinctive challenges presented by the myriad and intersecting aspects of subjectivity and the error of constructing "woman" as a homogenous category, explicitly distancing themselves from forms of "cultural feminism" that engage such simplistic analyses.

ANALYSIS. While the authors demonstrate adeptness at *theorizing* the intersections of gender, they do not always synthesize their understandings into their conceptualization of feminist praxis. In the real world of classrooms, the authors tacitly adhere to a rather essentialist notion of feminist pedagogy, one that relies upon classroom practices that are student-centered, nonauthoritarian, and collaborative/cooperative in nature. Similarly, pedagogical practices that are decidedly teacher-centered, authoritarian, and individualistic are implicitly categorized as nonfeminist or patriarchal.

More significantly, while individual practitioners problematize the values of "student-centered," "nonauthoritarian," and "cooperative" as being raced and classed, these values are, by the end of the text, still assumed to be universal characteristics of "feminist" praxis and "women's" ways of knowing. While it could be argued that feminist pedagogy requires adherence to some abiding values and structures, Maher and Tetreault never make this argument explicit.[29] On the contrary, they persist in their construction of "the feminist classroom" as a space in constant flux, where all things are continually negotiated. The contradiction inherent in characterizing feminist pedagogy as both indeterminable and finite is not examined, particularly in terms of its implications for the political project of feminism and the ways in which postmodern feminisms may inhibit broad-based political action and social change.

The authors' failure to consider the connection between postmodern/academic forms of feminism and the political inertia of the feminist project is evident in their dismay over the current divide between generations of feminist scholars: "another clue about the unfinished business of feminism in the academy comes from

29. In other words, if feminist pedagogy is a space in which all approaches are equally valid, there would be nothing to distinguish it from nonfeminist forms of classroom teaching and organization.

observations our older informants made about the new generation of feminist scholars" (*FC*, 272). One of these observations was that younger faculty do not share the same commitment to feminism, instead "see[ing] feminism as a theoretical position, not a political agenda" (*FC*, 273).

While the political apathy of young feminists is indeed distressing, Maher and Tetreault, rather than thoroughly examining its origins, facilely indict the patriarchal nature of the institution and its resistance to change as the force behind young feminists' disenchantment with politics. The possibility that the "new generation" of feminists might be disenchanted with whitestream feminism's privileging of textual analysis over a politics of engagement is not even considered.

FEMINIST ENGAGEMENTS: READING, RESISTING, AND REVISIONING MALE THEORISTS IN EDUCATION AND CULTURAL STUDIES[30]

SUMMARY. This edited collection is significantly different from the other texts reviewed here in that it is primarily theoretical and aimed at defining the relation between feminist theory and the "intellectual heritage of men" (*FE*, 3). Editor Kathleen Weiler acknowledges that, while education feminists have been profoundly influenced by "classic male theorists" (such as John Dewey, Foucault, Paulo Freire, Antonio Gramsci, and Stuart Hall), the relation between feminist theory and "critical, democratic male theorists" is uneasy. At the outset, she poses the following critical question: "[though] our ultimate goals may be very similar...what do we take on if we imagine ourselves as the inheritors of these 'gender blind' theories and...apply them to our concerns as feminist women?" (*FE*, 3).

The text essentially unfolds as a collective response to this question, with different feminist scholars articulating their particular intellectual relation to male theorists. Though the authors define a wide variety of approaches, Weiler roughly categorizes their responses as follows: (1) those that employ "negative engagement" or use "critique as a point of departure for feminist analysis"; (2) those that engage "appropriation and application" or apply "the ideas of male theorists to feminist concerns with little or no critique"; and (3) those that employ "critical engagement" — that is, subject the conceptual frameworks of male theorists to feminist analysis — engaging in strategic readings that make use of the theories for "defined political goals" (*FE*, 5–6). Weiler recognizes the legitimacy of both "negative engagement" and "appropriation and application," but she clearly privileges critical feminist theory as the most potent approach, identifying it as the "stance most frequently taken by writers in the collection" (*FE*, 6).[31] According to Weiler, critical feminists are committed to "alliances across race and ethnic lines" and to putting forth complex readings of male antiracist theorists who articulate goals of liberation and human

30. Kathleen Weiler, *Feminist Engagements: Reading, Resisting, and Revisioning Male Theorists in Education and Cultural Studies* (New York: Routledge, 2001), 3. This book will be cited as *FE* in the text for all subsequent references.

31. In correspondence with Weiler's own estimate, five of the nine authors explicitly claim to write from a "critical feminist" perspective, indicating that the majority of authors work to disrupt the whitestream discourse.

rights in "powerful and poetic rhetoric" but ignore "women's concerns" in the process (*FE*, 6). Through this approach, they explore the dangers of "using a male intellectual tradition that has objectified or ignored women" as the theoretical foundation of a feminist critique of that same tradition. In addition, critical feminists perceive themselves as "speaking directly to white and heterosexual women about their blindness to their own privilege and their ignorance of the profundity of differences among women" (*FE*, 4–5).

ANALYSIS. Despite Weiler's initial proclamation, most of the essays in *Feminist Engagements* do not demonstrate consistent adherence to the principles of critical feminism. First of all, only two of the nine authors are women of color — one self-identified black-Jamaican woman and one African-American woman — indicating that critical feminists' "commitment across racial and ethnic lines" begins and ends at the black–white divide.[32] Moreover, while some of the white women address race in their essays, it is clear that the race question is relegated to the women of color. In other words, Cally L. Waite (who writes about W.E.B. Du Bois) and Annette Henry (who writes about Stuart Hall) have clearly been designated as the theorists of color "assigned" to write about black male theorists and to confront the question of black women and education. In addition to the theoretical deficiencies that result from examining race in terms of color and culture, the majority of contributors also fail to problematize race through its intersections with class and its connections to capitalist exploitation and colonization. Rather than examine gender–power relations through the historical and socioeconomic structures in which they are embedded, most of the authors extend an analysis grounded in simplistic readings of a universal and abstract "patriarchy." Thus, only two authors — Weiler and Jane Kenway — actually engage a "critical feminist" analysis as Weiler defined it in her introduction to the collection. Since these two essays represent the kind of (anti-whitestream) feminist discourse I am calling for, I provide a more detailed account and analysis or these works.

In her essay "Rereading Paulo Freire," Weiler begins by acknowledging feminism's grounding in both racist and patriarchal (Western) theories:

> The social and political goals of U.S. feminism were originally framed around liberal, Enlightenment conceptions of rights and justice for women; it has subsequently condemned patriarchal desires and practices using the Western discourses of psychoanalysis and poststructuralism. This grounding in the Western tradition has been a profound limitation for feminism, as the work of women of color and feminists outside the dominant Western tradition have so forcefully made clear (*FE*, 67).

Weiler goes on to acknowledge the dangers and limitations of feminist theories that operate on essentialist constructions of both men and women, noting that "such approaches tend dangerously toward recasting the same old story of Western patriarchy, in which rationality is the province of men, and feeling and nurturance that of women" (*FE*, 70).

32. While it could be argued that this divide is the most significant in terms of the intellectual history of U.S. feminism, such an argument is not provided, and the voices of Asian-American, Latina, indigenous, and other marginalized women are ultimately excluded in both theory and practice.

What makes Weiler's analysis unique, however, is that it moves beyond a mere critique of whitestream feminism and integrates a more complex analysis of racial and class difference into the foundation of her own theory. She begins by recognizing the privileges inherent to her own positionality (as a white middle-class woman) and examines the ways in which her "social and historical location" (as outside "the oppressed") shapes her work and, in this instance, her critique of Freire. She cautions against "women" positioning themselves "on the same side" as the oppressed without any regard for the differences in power and privilege among women: "the fallacy of assuming there is a single category — woman — hides the profound differences among women in terms of their race, class, nationality, and other aspects of their identities" (*FE*, 75).

Ultimately, the power of Weiler's critique lies in the parallels she draws between whitestream feminists' failure to theorize race and class and male liberatory theorists' failure to theorize gender. Unfortunately, her analysis loses some ground when she turns to the specifics of Freire's work, holding him accountable in a tone and manner that she does not take with her feminist colleagues. Nevertheless, Weiler extends a powerful critique of any form of liberatory scholarship that does not theorize the intersections of race, class, and gender — including feminism. Though she does not write specifically about the connection between liberatory political projects and the imperatives set in motion by global capitalism and colonialism, her work leaves open the possibility of engaging this analysis.

Where Weiler merely alludes to the importance of historical-materialist critique, Kenway expressly calls for critical feminists to undertake this project. In her essay "Remembering and Regenerating Gramsci," Kenway argues that a firm grounding in materialist analysis is essential to the feminist project. She notes that feminist scholars of the mid-1980s (such as Madeleine Arnot, Sandra Kessler, and Patti Lather) were committed to defining the ways Gramsci's work could inform feminism; she argues that, as a result, scholarship of this era developed a "nonclass reductionist reading of Gramsci" that blends "the small scale with broader questions about how the social order reproduces itself in complex and contested ways through education" (*FE*, 59). Kenway observes that, since the mid-1980s, partly due to the influence of postmodernism, Gramsci is no longer considered a "fashionable theorist" among feminists. She itemizes the ill effects postmodern discourse has had on emancipatory projects:

> This [postmodern] theoretical move has seen an eroded interest in the economy and social class, an intensified concern with discourse, difference, and subjectivity and with consumption rather than production. Throughout this period there has been much more interest in mini-narratives rather than metanarratives, multiple identities rather than political identities, positioning rather than repositioning, discourse rather than politics of discourse, performance rather than poverty, inscription rather than political mobilization and deconstruction rather than reconstruction. Culture has been much more the focus of analysis than the economy — even its cultural elements — and notions of difference and plurality have held sway over the trilogy that emerged in the 1980s of class, race and gender (*FE*, 60).

According to Kenway, the net effect of postmodern feminism is that a "politics of recognition" is privileged over the "politics of redistribution," signaling a retreat from engagement in "practical political activity" (*FE*, 59–60). She finds such a retreat

intolerable and seeks to reinvigorate feminist theory with "matters economic" and theories of difference with an understanding of subaltern groups as those subject to economic exploitation, marginalization, and deprivation (*FE*, 61).

Most important, however, Kenway insists on re-grounding feminist theory in historical-materialist analysis, maintaining that such a Gramscian view of feminism would require "serious empirical attention to the relationships among the ideological processes and economic and political arrangements of contemporary, globalized times" (*FE*, 61). More specifically, she calls for feminist studies that examine "present forms of economic colonization" and the new material conditions of alienation and exploitation that they engender. Such new forms of "feminist class analysis" would theorize the ways in which struggles over meaning and identity articulate with struggles over other resources, highlighting "the multiple registers of power and injustice" (*FE*, 61).

Above all, Kenway is confident that a renewed commitment to historical-materialist analysis would reinvigorate the feminist political project, rendering it "better prepared" to engage "the big issues" of our time (*FE*, 62). The advocacy of such an agenda places Kenway's analysis squarely at the intersection of race, class, and gender, as well as "on the same side" as analyses generated by women from subaltern groups. Unlike Weiler, who registers her unease with women positioning themselves "on the same side as" the oppressed, Kenway avoids enacting the presumptions of whiteness by developing an analysis that accounts for the complex intersections of power. In terms of its ability to theorize these intersections and to offer an analysis that accounts for the effects of colonialism and global capitalism, Kenway's essay not only stands apart from the rest of the articles in *Feminist Engagements* but also from the other texts examined for this review.

While Kenway's work represents the antithesis of whitestream feminism, Lather's "Ten Years Later, Yet Again: Critical Pedagogy and its Complicities" stands in stark contrast, (re)committing all of its original sins.[33] In her essay, Lather works to undermine the legitimacy and relevance of historical-materialist analysis for feminist work, seeking instead to "sensitize" the discourse of radical critique to the issues raised by poststructuralism" (*FE*, 184).[34] According to Lather, critical pedagogy's concern with a conscious unitary subject, economic materialism, "totalizing categories," and positions of closure all derive from a patriarchal view of the world, creating an inherent tension between critical and feminist pedagogies. Though this tension was previously aired in a series of exchanges between education feminists and "the

33. "For the purposes of economy and concentration," Lather limits her critique of critical pedagogy to the analysis of *one essay* by Peter McLaren. As a school of thought, critical pedagogy spans at least seventy years and McLaren's work alone spans more than twenty years. To limit a review of critical pedagogy to one essay by one author seems highly reductionistic, ironically violating one of the principles of the kind of feminist analysis Lather endorses.

34. For a more extensive discussion of Marxist and Marxist-feminist responses to Lather's critique of historical-materialist analysis and Marxism, see Dave Hill, Peter McLaren, Mike Cole, and Glenn Rikowski, eds., *Marxism Against Postmodernism in Educational Theory* (Lanham, Maryland: Lexington Books, 2002).

boys" of critical pedagogy nearly ten years ago, Lather regards the problems as still relevant, producing "the truth of critical pedagogy as a 'boy thing' and the use of poststructuralism to deconstruct pedagogy as a 'girl thing'" (*FE*, 184). She explains, "this is due not so much to the dominance of male authors in the field as it is to the masculinist voice of abstraction, universalization, and the rhetorical position of 'one who knows'" (*FE*, 184).

In contrast to the "certainties" presumed by critical pedagogy, Lather proposes a feminist praxis of "not being so sure," or one in which "questions are constantly moving and one cannot define, finish, close" (*FE*, 184). She further asserts that "rather than return to historical materialism...my interest is in a praxis in excess of binary and dialectical logic, a praxis that disrupts the horizon of already prescribed intelligibility" (*FE*, 189). Ultimately, she calls for a feminist praxis that attends to the "poststructural suspicions of rationality, philosophies of presence, and universalizing projects," that embraces undecidability and the unforeseeable (*FE*, 189–190).

At base, it seems that Lather calls for feminism to move away from standing for something (as in being *against* exploitation and *for* emancipation) to nothing, the unknown, the undecidable, the unforeseen. Ironically, she levies this call for uncertainty and incompleteness with a great deal of certitude, adopting the voice of "one who knows" to argue that poststructuralism is "the one right story."[35] In so doing, Lather writes in the dominant voice of whitestream feminism — a post-Marxist, postmodern, poststructural voice that rejects the so called patriarchal and "masculinist" theories of Karl Marx and other emancipatory theorists, taking issue with the goal of emancipation itself as "messianic."

CONCLUDING THOUGHTS

The aim of this analysis has been to determine where contemporary forms of feminism have maintained their adherence to whitestream logic and where they have moved beyond this logic to engage in historical-materialist analyses that account for both the intersections of gender and power (as specifically expressed through race and racism) and the forces of global capitalism and colonization. The texts under review here ultimately reveal a discourse that, by and large, is unconcerned with or merely genuflects to race; that remains fundamentally "academic" and stubbornly resistant to more complicated analyses of gender and power; and that ignores the issues of production, labor, and economic power — the machinery of capitalism and colonization. In other words, these texts simply theorize race as color and culture; gender as white, female, and middle class; and class as just another form of difference.

Such analyses are not only deeply insufficient, erasing the "real historical, material, specificity of bodies" and their struggles over "the relations of production," but they also work to obfuscate feminism's implication in the larger social contradictions of colonization and global capitalism.[36] Indeed, the whitestream feminist

35. Lather, "Critical Pedagogy and Its Complicities," 488.

36. Ebert, "For a Red Pedagogy," 808.

dismissal of emancipatory theories that take the issues of economics, labor, production, and exploitation seriously — treating them as little more than ventures in masculinist discourse and "messianism" — is voiced so adamantly that it begs the question: Who gains from abandoning the problems of labor? One response is that it allows white middle-class women to ignore the fact that the gains they have made in terms of power and resources have come at the expense of poor women and women of color both nationally and internationally. In this sense, Ebert draws a distinction between *emancipatory pedagogies*, which explain how exploitative relations operate in the everyday lives of people so that they can be changed, and *liberatory pedagogies*, which privilege the desiring subject at the center of their politics, protecting the material interests of the powerful and propertied classes. In this light, Lather's resistance to "totalizing" and "universal" categories (and her subsequent assertions of indeterminacy) is revealed as a "legitimization of the class politics of an upper-middle-class Euroamerican feminism obsessed with the freedom of the entrepreneurial subject."[37] In other words, the "master discourses of liberation" (such as whitestream feminism) ultimately work to privilege the desires of the white, bourgeois, female subject over the collective emancipation of all peoples.

Based on the texts considered for this review, it appears that whitestream feminism's failure to engage more substantive analyses of power can mainly be attributed to the emergence of "ludic" postmodern and poststructural feminist theories. The capriciousness of such theories enables whitestream feminists to disregard the political imperatives of radical critique and to replace them with "poststructuralist assumptions about linguistic play, difference, and the priority of discourse."[38] As a result, academic feminists have virtually transformed the feminist project into a textual practice that isolates language and ideas from their historical and materialist frames of reference.

The writings of whitestream feminists reviewed here provide various rationales for privileging the personal world of text over the so-called patriarchal world of social transformation. They claim that writing in an intimate voice, about local knowledges, and with partial understanding is an act of resistance against the "masculinist voice" of universalization and truth, which depicts oppression in "essentialist" terms. Despite such claims, the rejection of "totalizing" narratives, particularly those that depict "oppressor" and "oppressed" in a binary relation, ultimately enables difference to be relativized and the power and ubiquity of totalizing projects such as colonization to be diminished. Indeed, it becomes impossible, if not profane, in whitestream feminism to speak of the relations of colonizer/colonized and oppressor/oppressed, as such language is viewed as the "residue of modernity" and patriarchal oppression.[39] Although they claim that they use postmodern tactics to put "emancipatory agendas under suspicion for their coercion, rationalism, and

37. Ebert, *Ludic Feminism and After*, 31.

38. Ibid., 3.

39. Carmen Luke and Jennifer Gore, *Feminism and Critical Pedagogy* (New York: Routledge, 1992), 45.

universalism," these tactics ultimately serve the whitestream quest for absolution and desire more than they serve the projects of emancipation or decolonization.

In the final analysis, feminist pedagogies that merely assert the equality of female power and desire are accomplices to the projects of colonialism and global capitalism. As an indigenous woman, I understand such discourse as a "theory of property holders," of privileged subjects unwilling to examine their own complicity in the ongoing project of colonization. Until feminism's participation in the forces of domination is widely acknowledged, indigenous and other colonized women will continue to resist its premises.

4

Dangerous Difference: A Critical–Historical Analysis of Language Education Policies in the United States

Teresa L. McCarty
University of Arizona

> [U]nless the stream of [German] importation could be turned ... to other Colonies, ... they will so out number us, that all the advantages we have will not ... be able to preserve our language, and even our government will become precarious.
>
> —U.S. statesman and inventor Benjamin Franklin, in a letter to a British member of Parliament, May 9, 1753 (cited in Crawford, 1992, p. 19).

> No unity or community of feeling can be established among different peoples unless they are brought to speak the same language, and thus to become imbued with like ideas of duty. Deeming it for the very best interest of the Indian, both as an individual and as an embryo citizen, ... no school will be permitted on the reservation in which the English language is not exclusively taught.
>
> —Commissioner of Indian Affairs J. D. C. Atkins, in his annual report of 1887 (cited in Crawford, 1992, pp. 50–51).

> *Gobernar es poblar* translates "to govern is to populate".... Will the present majority peaceably hand over its political power to a group that is simply more fertile? ... As Whites see their power and control over their lives declining, will they simply go quietly into the night? Or will there be an explosion?

> —John Tanton, cofounder of U.S. English and founder of the Federation for American Immigration Reform, in a memorandum to supporters, October 10, 1986 (cited in Crawford, 1995, p. 68).

As ideological constructs, language policies both reflect and (re)produce the distribution of power within the larger society. Language policies may be officially sanctioned, as in the 1887 dictate of Commissioner Atkins, just mentioned, or as exemplified a century later in the 1986 passage of California's Proposition 63, making English the state's official language. Language policies are often assumed to involve "government action or lack of it" regarding language statuses and uses (Ricento & Burnaby, 1998, p. 33). This definition, however, tends to reify official acts and formal state policies, and to obscure the complex human dynamics these policies represent. Here, I view language policy as a *sociocultural process*: that is, as modes of human interaction, negotiation, and production mediated by relations of power (see, e.g., Bourdieu, 1977; Levinson, Foley, & Holland, 1996; Wiley, 2000). From this perspective, language policy includes public and official acts and documents, but equally important, it constitutes and is constituted by the practices each of us engages in every day. "When we fight in support of a community-based language program," Pennycook (2001) writes, "when we allow or disallow the use of one language or another in our classrooms, when we choose which language to use in Congress, conversations, conferences, or curricula, we are making language policy" (p. 215). Holm (in press), and Parsons-Yazzie (1996/1997) provide a more specific and intimate example: When a bilingual Navajo child hears a request in Navajo from her parent and chooses to respond in English, that child is also responding to a wider discourse on language policies. At the same time, child and parent are negotiating the language policy of the home.

Schools are among the most dominating discursive sites in which both official and unofficial language policies are produced and legitimated. In this chapter, I offer a critical–historical analysis of these enactments in the education sphere. Grounded in critical pedagogy and a historical–structural approach to language planning (see, e.g., Bourdieu, 1977; Forester, 1985; Freire, 1970, 1993, 1998; Pennycook, 1999; Tollefson, 1991, 2002), this analysis assumes that medium-of-instruction policies are neither historically nor socially neutral. As Pennycook (2001) points out, they are not simply about "the educational efficiency of one code over another" (p. 195). Rather, choices about media of instruction, whether officially sanctioned or not, concern struggles for political and economic participation, democracy, and human rights. Expanding on an earlier analysis of Indigenous educational and linguistic rights (Lomawaima & McCarty, 2002; McCarty, 2002a), I argue that these struggles can be conceptualized as contests over what constitutes "safe" versus "dangerous" difference in human social life.[1] In these contestations, language becomes a proxy for social class and race.

For example, how do we explain the paradox of the value placed on foreign language instruction in U.S. schools, and the simultaneous devaluing of those same "foreign" languages among Indigenous and immigrant minorities? In Arizona, the state with the most restrictive antibilingual education policy to date, public school districts have been placed in the position of expunging non-English languages from English language learners (ELLs), while being simultaneously required to provide foreign language instruction as part of the core K–12 curriculum. Who are the intended recipients of these two different medium-of-instruction policies? Whose interests are being served by sorting language education in these ways? And, if we assume a federal commitment to eradicate Indigenous languages, as articulated by Commissioner Atkins in 1887, how do we explain the subsequent federally sponsored development and dissemination of Native language teaching materials? How do the 1968 Bilingual Education Act, the 1975 Indian Self-Determination and Educational Assistance Act, and the 1990/1992 Native American Languages Act square with widespread standardizing regimes focused on English (only) and scripted reading programs?

In the context of historically constituted power relations, these apparent policy contradictions can be seen as responses to larger political, socioeconomic, and demographic forces. When linguistic and cultural diversity have been viewed by dominant interests as instrumental, "safe," or nonthreatening—as was the case in the colonial United States, Benjamin Franklin's protestations notwithstanding—linguistic and cultural pluralism has been tolerated and even supported in official and unofficial ways (Heath, 1992). "Dangerous" difference—manifest, for instance, in the presence of enslaved Africans who were systematically denied access to English literacy, and more recently in the Ebonics controversy—is frequently associated with what Hill (2001) calls "language panics." The Ebonics controversy, in which the Oakland, California school board's recognition of the vernacular language of its African American students unleashed months of media furor, is one illustration of a "national language panic" (Hill, 2001, p. 250). One response to the controversy was the introduction of bills in the California legislature and the U.S. Congress disapproving the use of state or federal funds for Ebonics instruction, and requiring that any existing funds for such instruction be immediately shifted to the teaching of English (Chen, 2001; Hill, 2001). Language panics, Hill (2001) asserts, "are not really about language … they are about race" (p. 245). And, I argue, they are about social class, power, and control.

The United States provides an especially revelatory context for the analysis of these struggles over medium-of-instruction policies. As the most powerful country in the world in which English dominates as the national if not the official language, debates over the status and role of English have shaped educational practices for centuries. The United States also repre-

sents a colonial power with ongoing territorial interests. In Puerto Rico, language education policies continue to be hotly debated, and the schools, especially, have become "a battleground over Americanization" (Crawford, 1992, p. 11; see also Delgado Cintrón, 1994; García, Morín, & Rivera, 2001; Language Policy Task Force, 1992).

Finally, the United States is one of the most linguistically and culturally diverse countries in the world. At the end of the 20th century, "people of color made up 28% of the nation's population.... The [U.S. Bureau of the Census] predicts that their numbers will grow to 38% of the nation's population in 2024 and 47% in 2050" (Banks, 2001, p. ix). A significant proportion of this population are English language learners who speak over 150 different languages and who represent the "new immigration"—those who have come to the United States since 1965, when Congress abolished the national origins quota system (Qin-Hilliard, Feinauer, & Quiroz, 2001). Unlike earlier waves of immigration, which originated in Europe and were largely White, the "new immigrants" come primarily from Latin America, Southeast Asia, and the Caribbean (Qin-Hilliard et al., 2001; Suárez-Orozco, 2001). These demographic shifts are having a profound impact on U.S. schools. According to Suárez-Orozco (2001), immigrant children are "the fastest growing sector of the U.S. child population .... Nationwide, there are now over 3.5 million ELL youth enrolled in U.S. schools" (pp. 351–352).

Efficacious medium-of-instruction policies that build on this growing diversity, treating it as an individual and a collective resource (Ruiz, 1984), could not be more timely. Instead, we are witnessing another seeming paradox: Even as pressures mount for cultural and linguistic homogenization—reflected most visibly in English-only mandates and the growing standardization movement—a clear pattern of heightened social, economic, and educational stratification exists. Virtually every social indicator demonstrates a widening gap between those with and without access to economic and social capital. Indigenous and other minoritized students[2] experience the lowest rates of educational attainment, the lowest family incomes, and, particularly among Indigenous youth, the highest rates of depression and teen suicide (Garcia, 2002; Lomawaima & McCarty, 2002; Valdés, 2001). Suárez-Orozco (2001) notes further that, "Among immigrants today, the length of residence in the United States seems associated with *declining* health, school achievement, and aspirations" (p. 354). Acculturation, ostensibly a force for homogenization, appears to lead not to a more equitable distribution of resources and opportunity, but rather "to detrimental health, more ambivalent attitudes toward school, and lower grades" (Suárez-Orozco, 2001, p. 354).

A critical–historical analysis of medium-of-instruction policies sheds a revelatory light on these processes. In this chapter, I examine key episodes in the enactment of language education policies in the United States. This

informs an examination of more recent developments, particularly anti-bilingual/anti-immigrant legislation and the "New Literacy Movement" (Gutiérrez, 2001), characterized by phonics-driven reading programs and a renewed emphasis on school "accountability" and testing. Although these developments illuminate the levers of power that have been clamped on difference deemed to be proscribed, or dangerous, they also reveal the windows of opportunity that have been levered open by minoritized groups in struggles for linguistic and educational self-determination.

This is not a comprehensive historical overview. For that, readers are referred to the classic analyses of Fishman (1966), Kloss (1977), and Ferguson and Heath (1981), and to the more recent work of Crawford (1992), González & Melis (2001a, 2001b), Piatt (1990), Ricento and Burnaby (1998), and Wiley (2000, 2002). However, I do cover a wide historical horizon, beginning with the first encounters between Native peoples and Europeans.

EXPEDIENT TOLERANCE

In the swirl of interests that engulfed the North American continent following the European invasion, multilingualism was both common and necessary, a tool of trade and intertribal communication among Native peoples, and of the diffusion of Christianity and European ideas. Goddard (1996) documents 62 language families and more than 300 distinct languages indigenous to North America—a remarkably rich diversity of peoples and mother tongues. Although less diverse, colonial languages also flourished, with Spanish, French, English, Dutch, German, and Russian being the most numerically significant. It is not surprising, then, that there also was widespread use of regional lingua francas, both among Indigenous speakers and between them and Europeans, as a means of practical communication for specific purposes (Silverstein, 1996, p. 117).

Beginning with Christopher Columbus' late 15th century voyage, and continuing in the 16th century with Ponce de Leon's colonization of Puerto Rico and Florida, and the subsequent expeditions of Cabeza de Vaca, Cortés, de Soto, Alarcón, and Oñate, "Spaniards held a virtual [colonial] monopoly over the southern half of this country for one entire century before the arrival of other Europeans" (Castellanos, 1992, p. 14). In his comprehensive treatment of the overlapping "cycles of conquest" in what is now the southwestern United States and northwestern Mexico, Spicer (1962) asserts that the ruling principle of the Spanish Catholic Church—"an obligation to civilize the barbarians"—"was never questioned as the *raison d'etre* of the Spanish conquest" (p. 281). Native life was to be reorganized around the missions, led by the Jesuits in the south (until their expulsion from New Spain by the King of Spain in 1767), and the Franciscans in the north. The fundamental change introduced by the missionaries "was

summed up in the conception of 'reduction'"—that is, settlement in compact villages where Native people presumably would be more susceptible to social manipulation and ideological management (Spicer, 1962, p. 288). The indoctrination of children was a major focus of the missionaries' efforts, and in schools in or near the missions, they taught literacy and numeracy in Spanish (Spicer, 1962).

Instruction in Native languages also was fundamental to the Spanish program. Particularly among the Jesuits (less so for the Franciscans, at least in northwest New Spain), there was an emphasis on the missionaries' acquisition of Native languages. Indeed, according to Spicer, some Jesuit missionaries hesitated to teach Spanish because of its perceived destabilizing effects on Native people who gravitated to Spanish mining settlements in search of employment. "To distribute land to [Natives] …to encourage Indians to mingle with the riffraff of the frontier settlements would … break up the little kingdoms of God" (Spicer, 1962, p. 307).

Nearly all Indigenous languages of Sonora and Chihuahua were committed to writing by Spanish Jesuits. The oldest surviving Native North American grammar of Timucua, spoken in what is now Florida and Georgia, was completed by the Franciscan missionary Francisco Pareja (Goddard, 1996). Goddard (1996) writes that, "Many Timucuas, both men and women, learned to read and write using Pareja's books" (p. 18). And, as early as 1688, there is evidence of Native literacy in Apalachee, a Muskogean language spoken in what is now the Florida Gulf Coast (Goddard, 1996).

The policy of using Indigenous languages as media of instruction, and of developing Indigenous writing systems to create religious texts, continued with the English and French Jesuits in New England and New France. In 1663, working with Native speakers, Congregationalist minister John Eliot completed a translation of the Bible into Massachusett. Like other Puritan missionaries, Eliot deemed Native peoples to "have no principles … nor wisdome of their own" (Eliot, 1651, cited in Szasz, 1988, p. 106). One of his chief projects was the Indian praying town, small, self-governing villages where Native children could be removed from the influences of family and tribal community, and instructed in Christianity and the "civilized" arts. Native languages were essential to the civilizing process, and in the 18th century, "Native literacy became widespread in the praying towns" (Goddard, 1996, p. 23).

German Moravian, Russian Orthodox, Dutch Reformed, Presbyterian, and Roman Catholic missionaries adopted similar practices. A primer in Delaware, an Eastern Algonquian language, was developed by Moravian missionary David Zeisberger and became "the first school book used in the state of Ohio" (Goddard, 1996, p. 23). Working with Cherokee speaker David Brown, Congregationalist missionary Daniel Buttrick produced a Cherokee spelling book in 1819 (Buttrick & Brown, 1819, cited in Goddard, 1996,

p. 31; see also Noley, 1979). This was displaced by Sequoyah's syllabary in 1821. In accordance with 19th century church policy, Russian Orthodox missionaries also developed alphabets, grammars, dictionaries, and primers in Aleut and Central Yup'ik (Goddard, 1996).

Missionaries were not alone in the instrumental value they attached to Indigenous languages and literacies. Thomas Jefferson recorded vocabularies of Unquachog and Unami, spoken in what is now Long Island and New Jersey. William Anderson, a member of Captain James Cook's 18th century maritime expeditions, compiled a Nootka vocabulary. Meriwether Lewis and William Clark collected linguistic data on their cross-country expedition, and numerous other European traders and invaders found it expedient to become knowledgeable of Indigenous languages (see, e.g., Goddard, 1996).

Thus, from the initial invasion through the early 1800s, there was a striking consistency in the formal and informal policies of Europeans toward Native languages and their speakers. These policies can be characterized as ones of expedient tolerance. Although the transmission of colonial languages was clearly a priority, this aim, and the larger ones of religious conversion and territorial usurpation, could only be achieved *through* knowledge and use of Native tongues.

Early colonial policies toward Native languages, however, cannot be decoupled from the larger colonizing agenda and its more diffuse and deadly impacts. Although estimates vary, prior to European encroachment, the Native North American population numbered in the tens of millions (Dobyns, 1983; see also Lomawaima, 1995, p. 332). Two centuries of contact and conflict with Europeans decimated that population, leaving fewer than 250,000 in 1890 (Adams, 1988, p. 3; Lomawaima, 1995, pp. 332–333). Native people often felt the impact of Europeans well before they saw a European. Western European crops, material culture, livestock, and disease spread more quickly than did the Europeans, transforming Indigenous sociopolitical systems and cultural practices. Corruption and brutality among both state and church officials was rampant (see, e.g., Spicer, 1962). Language policies were but one aspect of a much broader cultural transformation project carried out by several competing colonial powers—all intent on asserting dominion over Native lands and lives.

CALCULATED TOLERANCE

As missionaries and colonial civil authorities prosecuted their interests, "settlers from almost every northern and western European nation continued to arrive in the Americas" (Castellanos, 1992, p. 15). In 1664, 18 European languages, in addition to Indigenous Algic languages, were spoken by people of 20 nationalities in what is now Manhattan Island (Castellanos, 1992).

In much the same way that missionaries and traders found it advantageous to learn Indigenous languages, statesmen and other colonists in the emerging republic placed an instrumental value on the use and coexistence of multiple colonial languages. Among the founding leaders of the new republic there was an ideological commitment to democracy, and an explicit rejection, at least with regard to White Europeans, of any appearance of aristocratic coercion (Heath, 1992). Silverstein (1996) also notes that at this time, many European languages were only emerging as "standardized, written vehicles and communicative emblems of crowns, of nation-states, and of aggressive colonial enterprises" (p. 117). In other words, there were "no colonial language policies or programs to build upon" (Heath, 1992, p. 20). There also seems to have been a pragmatic recognition of the value of multiple languages for diffusing the ideals of the new government: "[I]f leaders recognized the potential of plural languages to spread the ideas of the new government, the citizens would become capable of helping legitimate the new government" (Heath, 1992, p. 24). And, it was recognized that the spread of English might be more readily achieved without coercion, as English became associated with liberty (Heath, 1992, p. 24). Heath (1992) characterizes this as a dual ideology of universalism—the notion that the ideals of political liberty are universal—and pragmatism (see also Crawford, 1992, p. 9). Between 1780 and 1820:

> The national elite recognized the plural nature of American society .... During this period ... [d]iversification in language choice, change, and use not only prevailed, but was purposefully left unrestrained by leaders' repeated failure to provide a national language academy. (Heath, 1992, pp. 30–31)

The case of German in the emerging republic is of particular interest. Wiley (1998) notes that German was then "in an analogous position to that of Spanish in the United States today" (p. 215). But German enjoyed a much more elevated status than Spanish ever has in the U.S. For example, the Continental Congress published extracts of many of its documents in German (Piatt, 1990). During this time there were significant regional concentrations of Germans and, in the early 19th century, German immigration increased. By the 1830s, there were 100,000 Germans in New York alone (Wiley, 1998).

Not surprisingly, in areas with large concentrations of Germans, German was used as a medium of instruction. In 1840, the first German public school was established. According to Crawford (1995), during this period "no uniform language policy prevailed" (p. 23)—at least with regard to native speakers of European languages.[3] Bilingual education, Crawford (1995) maintains, "was likely to be accepted in areas where language-minority groups had influence and to be rejected where they had none" (p. 23).

It was not until the latter part of the 19th century that state legislatures began to pass measures intended to suppress non-English colonial lan-

guages. In the case of German, this was largely in reaction to German Catholic schools "as tools for the Holy Roman subversion" (Wiley, 1998, p. 218; see also Crawford, 1995, pp. 24–25). Still, at the turn of the 20th century, more than a half-million German students were being schooled in their mother tongue (Crawford, 1995).

The U.S. entry into World War I brought on a full-fledged language panic. German Americans were suspected of sabotaging food supplies, and newly created state councils of defense took the use of German in schools, churches, and newspapers as a sign of disloyalty. Wiley (2002) reports that Germans were beaten, tarred and feathered, and otherwise threatened. German book-burnings were common, both by xenophobic mobs and German Americans desperately trying to demonstrate their patriotism. Thousands of Germans were fined for "language violations" (Wiley, 1998, p. 223).

During this period, several states passed legislation banning instruction in languages other than English, focusing especially on the primary grades "to make foreign languages inaccessible during those ages when children would have the best opportunity for acquiring them" (Wiley, 2002, p. 232). It was in this context that, in May of 1920, a teacher in Hamilton, Nebraska was charged and convicted under Nebraska law for using a German Bible to teach reading. The teacher, a Mr. Meyer, appealed to the state supreme court, arguing that his 14th amendment rights to due process had been violated. When the state court upheld the conviction, Meyer appealed to the U.S. Supreme Court. What is important for present purposes is that in overturning the Nebraska court's ruling, the U.S. Supreme Court recognized the constitutional right to speak one's mother tongue. (For greater detail on the 1923 Meyer v. Nebraska case, see, e.g., Piatt, 1990.)

Meyer v. Nebraska is significant in another sense, for it was the first U.S. Supreme Court decision in which language rights were contested. That the Supreme Court found in favor of Meyer is a positive sign for the protection of language rights, as is the fact that *Meyer v. Nebraska* has never been overturned. That the case was brought at all, however, suggests a deeper subtext. It is not coincidental that during the same period, 20 states enacted legislation establishing Americanization programs "to insure that all immigrants would learn English" (Piatt, 1990, p. 17). Large manufacturing companies, including Ford Motor Company and International Harvester, offered English classes for employees. In 1921, Congress introduced national immigration quotas, and in 1924, the National Origin Act was passed, limiting immigration to 150,000 Europeans per year, placing quotas on immigrants from other nations, and prohibiting immigration from Japan (Piatt, 1990, p. 18).

In the industrializing United States, linguistic and cultural tolerance was giving way to nativism, and difference was becoming dangerous and proscribed.

THE CIVILIZING PROJECT

Following the American revolution, the new federal government turned its attention to pacifying and "civilizing" Native peoples, "so that they would live on small farms and, therefore, make available their hunting grounds to White settlers" (Spring, 1996, p. 12). Toward this end, Congress passed the 1819 Civilization Fund Act to support the work of missionaries on the frontier. Education and civilization were synonymous, as illustrated by this coterminous statement to Congress by the House Committee on Indian Affairs:

> Put into the hands of [Indian] children the primer and the hoe, and they will naturally ... take hold of the plow; and as their minds become enlightened and expand, the Bible will be their book, and they will grow up in habits of morality and industry, ... and become useful members of society. (cited in Adams, 1988, p. 2)

Throughout the 19th century, the campaign for Indian removal and containment continued through a policy of military aggression, removal to reservations, and formal schooling. Toward the end of the century, as treaty-making ended, the federal government looked increasingly to schooling as the solution to the "Indian problem." "There is something whimsical in planting schoolhouses where no man [sic] can read," a missionary to the Lakota reflected at the time. "It is a remedy for barbarism we think ... and so we give the dose" (cited in Adams, 1988, p. 3). Unlike earlier missionary efforts, the goal was now complete annihilation of Indigenous languages and lifeways. In the words of the same missionary: "Uncle Sam is like a man setting a charge of powder. The school is the slow match. He lights it and ... in time it will blow up the old life, and of its shattered pieces will make good citizens" (cited in Adams, 1988, p. 3).

In 1887, Congress initiated a two-fisted policy designed to "blow up the old life." The General Allotment or Dawes Act provided for dividing reservation lands into 160-acre family plots, with the "surplus" to be sold to Whites. The effect of the Allotment Act was to dispossess tribes of millions more acres of their land. At the same time, the federal government declared a policy of compulsory school attendance for Indian children, with threats of imprisonment for parents who failed to comply. Adams (1988) characterizes the federal goal as "education for citizenship focused on [English] language instruction and political socialization" (p. 8). English-only policies were "largely instrumental," Adams maintains, with the real objective being "the Indian's political socialization" (Adams, 1988, p. 9).

The chief instruments of this plan were the boarding schools. "Schools ... could not only civilize," Adams (1988) points out, "they could civilize quickly" (p. 12). Over the next century, on- and off-reservation boarding schools proliferated as sites where Indian children could be isolated for

years at a time, until their deculturation and re-ethnification were complete. The boarding school experience has been well documented (see, e.g., Ellis, 1996; Horne & McBeth, 1998; Lomawaima, 1993, 1994, 1996; McCarty, 2002b; Trennert, 1988), and I will not repeat that here. What is of interest for present purposes are the shifts in educational policy that have attended federal efforts to discern what constitute "safe" or allowable practices, versus those that are so dangerously different that they must be neutralized (Lomawaima & McCarty, 2002).

For part of the 20th century, the boarding schools remained the bedrock of the government's assimilation campaign (Ellis, 1996, p. 20). Prohibitions against speaking Indigenous languages were strictly enforced. "There is not an Indian pupil … who is permitted to study any other language than our own," Commissioner of Indian Affairs Atkins affirmed in 1887, articulating a policy that would remain in effect well into the 20th century (Crawford, 1992, p. 49). Stories abound of students having their mouths "washed" with yellow bar or lye soap, or of standing for hours holding stacks of books over their heads as punishment for speaking the Native language (McCarty, 2002b, p. 45).

Coupled with an English-only curriculum was a program of military drill, harsh discipline, and training in the manual trades—all aimed at preparing Indian people as a working class, "amenable to federal control" (Lomawaima, 1995, p. 332). Textbooks included such titles as *Baking Dictionary* (Rhodes, 1953a), *Shoe Repairing Dictionary* (Rhodes, 1953b), *Please Fill the Tank* (Benton & Kinsland, 1953), *Be a Good Waitress* (Payne, Wallace, & Shorten, 1953), and *I Am a Good Citizen* (Williamson, 1954).

The abuses of the boarding schools eventually came under public scrutiny, prompting Secretary of the Interior Hubert Work to commission an independent survey of school conditions. In 1928, the study's director, Lewis Meriam, issued his team's report, a scathing indictment of federally controlled Indian education (Meriam et al., 1928). Over the next few decades, the Bureau of Indian Affairs (BIA) loosened its stranglehold over the use of Indigenous languages in schools, and in the context of the progressive education movement, authorized the development of some Native-language teaching materials. Under Commissioner of Indian Affairs John Collier, who served President Franklin D. Roosevelt from 1933 to 1945, the Indian New Deal included tribal economic development, self-government, and "civil and cultural freedom" for tribes (Szasz, 1974, p. 41). Although the Collier-era reforms represented a decided break with the past, they did not radically alter the status quo. Newly authorized tribal governments were patterned after the U.S. constitution, with BIA oversight. And newly created day schools—intended in theory to be schools from which children would return to their families at the end of the day— were in practice little more than local boarding schools. Although the edifices had changed, the

ideologies held by BIA school personnel were not so easily modified (see, e.g., Szasz, 1974, pp. 71–72). "'We weren't allowed to talk Navajo,' one day school graduate recalls, '[a]nd our visitation from our parents was very limited—maybe 5 or 10 minutes, that was it" (McCarty, 2002b, p. 49).

Through the 19th and part of the 20th centuries, federal Indian education policy was one of almost zero tolerance for linguistic and cultural difference. The underlying agenda was the complete subjugation of Indian people and the confiscation of their lands. This agenda was justified by a civilization-savagery Protestant ideology (Adams, 1988; Spring, 1996). Although John Collier and his successors instigated important reforms, including the introduction of bilingual instruction at selected locales, the assimilationist goals and ideology of racial superiority were never threatened. As late as 1953, BIA Education Director Willard Beatty—an architect, with Collier, of New Deal reforms—wrote that Indian education required "a recognition that the richest future for Indians … lies in a mastery of the material culture of the dominant race" (1953, pp. 10–11).

SELF-DETERMINATION OR MASKED COLONIZATION?

The government's assimilationist agenda was not simply received by its intended targets. "Formal education did change my behaviors and attitudes," boarding school graduate Galena Sells Dick writes. "At the same time, I maintained a strong belief in my language and culture. Looking back, … this foundation led me to become a bilingual teacher in my own community" (Dick, 1998, p. 24).

One unintended outcome of the boarding school system was the nurturing of an alliance of Native people from diverse tribes who grew up together in the schools, and who shared the sentiments espoused by Galena Dick, just mentioned (see, e.g, Horne & McBeth, 1998; Lomawaima, 1994). In the context of the Civil Rights Movement and liberal-Democratic reforms, these experiences and sentiments found expression in a growing movement for Indigenous self-determination. Perhaps more than any other episode in the history of American education, the struggle for self-determination lays bare the fault lines between "safe" and "dangerous" difference.

In 1970, President Richard M. Nixon delivered a historic message to Congress, proclaiming "every Indian community wishing to do so should be able to control its own Indian schools" (American Indian Policy Review Commission [AIPRC], 1976, p. 111). Nixon's address inaugurated a policy of Indigenous self-determination. This policy, however, did not emanate from sudden federal enlightenment. Just months before, the Senate Subcommittee on Indian Education, chaired by Robert Kennedy and, after his assassination, by his brother Edward Kennedy, had released a report on a 2-year Congressional investigation that condemned federal Indian educa-

tion policy as "one of coercive assimilation" (U.S. Office of Education, 1969, p. 21). Moreover, in 1966, the Navajo community of Rough Rock, Arizona, had established the first Indian school to have its own governing board, and to teach in the Native language (McCarty, 2002b; Roessel, 1977). Other Indian communities were poised to follow suit.

These developments had been foreshadowed in the strong support for education of Presidents John F. Kennedy and Lyndon B. Johnson. In 1954, *Brown v. Topeka, Kansas Board of Education* reversed a century-and-a-half of legal doctrine upholding "separate but equal" racial segregation sanctified in *Plessy v. Ferguson* in 1886, and in 1964, Congress passed both the Civil Rights Act and the Economic Opportunity Act, which, respectively, provided legal protection from discrimination and authorized community development programs for the poor. A spirit of innovation and emancipation characterized the field of education (Crawford, 1995, p. 12). In 1968, Congress passed the Bilingual Education Act (authorized as Title VII of the 1965 Elementary and Secondary Education Act [ESEA]), calling for new and imaginative programs that used children's native language while they learned English. In a reversal of past policies, the Bureau of Indian Affairs embraced bilingual education as one of the most promising approaches for educating Indigenous students (Bauer, 1970, p. 223).

For a time, state interests and those of Indigenous and other minoritized communities seemed fortuitously aligned. In 1972, Congress passed the Indian Education Act (initially Title IV of the ESEA)—the first federal legislation to support Indigenous bilingual/bicultural materials development and teacher preparation—and in 1975, the Indian Self-Determination and Educational Assistance Act (P.L. 93–638) was passed, codifying the procedures for Indian tribes and communities to run their own schools. Together with the Bilingual Education Act, this legislation laid the legislative and financial framework for placing American Indian education under local control (McCarty, 1997, p. 46).

By 1978, there were 34 American Indian community-controlled schools. Supported by Title IV, Title VII, and P.L. 93–638, Indigenous communities across the nation were producing a corps of bilingual teachers, a corpus of Native-language teaching materials, and evidence of substantial student benefits (AIPRC, 1976, p. 265). The policy paradigm had shifted.

But the liberatory goals of Native educators have not gone uncontested by the federal bureaucracy, and many have been curtailed or turned back. When its funding was reauthorized in 1974, the Bilingual Education Act took on an explicitly remedial emphasis. In subsequent years, the trend has been toward transitional bilingual education as well as alternative approaches (such as English immersion programs) that do not include bilingual instruction at all. (See the discussion of "English for the Children" statutes below. See also Grinberg and Saavedra [2000]

for an insightful critique of the processes through which the Bilingual Education Act has been subverted from its original emancipatory goals, to a new form of minority docilization.)

Furthermore, the exercise of Indigenous self-determination has been undermined by the very legislation ostensibly designed to promote it. From the beginning, Indian community-controlled schools have operated under a constant cloud of financial insecurity. Delays in contract negotiations between Indigenous school boards and the BIA were notorious (see, e.g., AIPRC, 1976). "The system we operate under would defeat the President of General Motors," Rough Rock School Director Ethelou Yazzie stated in federal testimony. "It is a political game in which the community or school that refuses to lie down and die wins just enough to stand up for the next punch" (AIPRC, 1976, p. 311). "We are made to feel like the proverbial stepchild," the Coalition of Indian Controlled School Boards pointed out in federal testimony; "too much time and effort goes into securing funds rather than focusing on the educational needs of our children" (AIPRC, 1976, p. xii). Other critics have charged that achieving self-determination under P.L. 93–638 was "like trying to climb a greased pole" (Senese, 1986, p. 153).

The 1988 passage of P.L. 100–297, which provided a forward-funding system for Indian community-controlled schools, has been touted by federal officials as a cure for these problems and a boost to Indian self-determination (see DeConcini, in White House Conference on Indian Education, 1992, p. 6). Participating in these forward-funding arrangements, however, requires schools to meet standards determined not by local school boards, but by national accrediting organizations. Thus, Native American schools have been plunged into the treacherous waters of English-only standards, accountability, and high-stakes testing. In this scenario, there is little room for instruction that incorporates local languages and knowledge.

In 1974, Richard Nixon's Commissioner of Indian Affairs pledged that, "From any angle you … look at the Bureau's education program today—and increasingly so in the future—you will see emblazoned on the school walls: Indian control" (AIPRC, 1976, p. 119). That federal rhetoric was and is tethered to a bureaucracy that cannot shake loose its colonial moorings. The fact that Native people have managed to survive in this system and to carve out places of difference, such as community-controlled schools, is testimony to their ingenuity, perseverance, and genuine belief in self-education as an inherent human right. Two hundred years after the first federal forays into American Indian education, that fundamental right is still under assault.

DANGEROUS DIVERSITY

As these battles have continued in American Indian and Alaska Native education, a wider struggle for linguistic human rights and educational self-determination has gained momentum across the United States. In-

deed, as Fishman (1991, 1994, 2001) and Skutnabb-Kangas and Phillipson (1994) demonstrate, the struggle is international in scope (see also Phillipson, 2000; Skutnabb-Kangas, 2000; Tollefson, 2002). In the United States, this struggle has centered on moves to make English the nation's official language, and to outlaw bilingual education in public schools.

The English-Only movement had its official beginnings in 1981, when Senator S. I. Hayakawa introduced an amendment to the U.S. constitution that would make English the nation's official language. Two years later, Hayakawa and John Tanton, a physician who had earlier founded the Federation for American Immigration Reform (FAIR), started U.S. English, a group determined to stop what it called "the mindless drift toward a bilingual society" (Crawford, 1995, p. 65).

Between 1981 and 1995, 14 Official English bills were introduced in Congress (Chen, 2001, pp. 61–62). To date, none has been approved. Although still working at the national level, English-Only supporters have taken their message—and their dollars—to the state level. In 1986, with financial support from U.S. English, California—the state with the fastest growing "minority majority," primarily Latinos—declared English the state's official language. Within 2 years, nine additional states adopted official English statutes (Piatt, 1990, p. 22; for more on the English-Only movement, see Adams & Brink 1990; Crawford, 1992; Fishman, 1988; González & Melis, 2001a, 2001b). How is it that citizens feel compelled to safeguard a language that, without official safeguards, has become the most power-linked language in the world?

If we look closely at the recent history of immigration to the United States, we see certain striking parallels. In 1965, following proposals by President Kennedy, Congress abolished national origin quotas on immigration. As indicated earlier in this chapter, the vast majority of recent immigrants have come from Latin America, the Caribbean, and Southeast Asia. As the racial and ethnic background of newly arrived immigrants has shifted, Congress and some states (e.g., California) have imposed tighter immigration laws. In 1986—the same year as California's official language referendum—Congress passed the Immigration Reform and Control Act, the first legislation to impose sanctions on employers who hire undocumented workers, and to require English proficiency as a condition of permanent residence and citizenship (Piatt, 1990, p. 20).

Difference in the United States has taken on not only new languages, but new colors. In an increasingly conservative and nativist sociopolitical environment, the new colors of diversity are perceived by many in the dominant White mainstream as dangerous indeed.

REPRODUCING THE GREAT DIVIDE

With the passage of twin English-for-the-Children statutes in California (1998) and Arizona (2000), the movement to officialize English has been

taken to the classroom. Initiated and financed by California software millionaire Ron Unz, both statutes require public schools to replace multi-year bilingual education programs with 1-year English immersion for English language learners. In California, Proposition 227 was followed by the adoption of an English-Only school accountability program (Gutiérrez et al., 2002). In Arizona, exceptions to the statute may be granted if parents request a waiver, subject to approval by the school superintendent and "under guidelines established by … the local governing body and … state board of education" (A.R.S. Title 15, Chapter 7, Article 3.1, Section 15–753). The waiver requires that parents provide "written documentation of no less than 250 words," demonstrating their child's "special needs." This document must then be placed in the child's permanent file.

Arizona's Proposition 203 makes clear that its authors understand perfectly the distinction between safe and dangerous. In Section 15–753, B.1, parental waivers are unproblematic for children who already know English and score at or above grade level on standardized tests—that is, enrichment bilingual and foreign language instruction is not to be denied to middle- and upper-class (White) students. On the other hand, non-English-speaking children—those who already possess native fluency in the languages their middle- and upper-class peers will acquire less well through enrichment and foreign language programs—are constructed in the statute as deficient, abnormal, and underachieving. Worse, they are permanently ensnared in this construction, as the documentation of it—*penned in their parents' hands*—will follow them for the remainder of their school careers. The hegemonic entrapment could not be more complete.

There is nothing neutral or impartial about these media-of-instruction policies. Furthermore, they are not disconnected from more widespread standardizing regimes and scripted reading programs. The latter constitute what Gutiérrez (2001) calls the New Literacy Movement: "reductive literacy practices [that] are bolstered by English-only legislation" (p. 565). In school districts across the country, phonics-based reading programs have become the panacea for "dismal test scores, high student mobility, and the growing demographic of English language learners" (Gutiérrez, 2001, p. 565). Affluent and middle-class White students elude these pedagogies by virtue of their social position and access to private and gifted education (see, e.g., Gee, in press). Those most disadvantaged by these pedagogies, Lankshear (1998) points out, "are those *already* most marginal within educational, economic, and social life" (p. 368).

Elsewhere I argue that these dynamics represent a 21st century "Great Divide" (McCarty, in press). Great Divide arguments can be traced to the distinction first made by Goody and Watt (1963) between oral and written language and, by extension, between those with and without literacy (Collins, 1995). It is not far from this distinction to related claims for single, standard, or "pure"

forms of language and literacy. When these claims intersect with ideologies of meritocracy and privilege—as they inevitably do—the result is the naturalization of existing power hierarchies, "whereby deviations from the norms are defined as deficiencies and disabilities" (Collins, 1995, p. 83).

Great Divide ideologies are implicit and explicit in current U.S. media of instruction policies, and they are constructing two kinds of people: those with and without access to opportunity and resources. Despite the calls of conservative politicians to "leave no child behind"—codified in Federal education policy under President George W. Bush—an unconscionable number of English language learners, students of color, and working-class children are, in fact, being left behind (see, e.g., Cummins, in press). When we examine the policies underwriting English for the Children and the New Literacy Movement, we must ask whether that is not exactly what those policies are intended to do.

CONCLUDING THOUGHTS

This analysis would be incomplete without highlighting real possibilities for positive change. For example, in the summer of 1988, Native American educators from throughout the United States came together to draft the resolution that would become the 1990/1992 Native American Languages Act. NALA is the only federal legislation that explicitly vows to protect and promote Indigenous/minoritized languages. It might be argued that, given more than two centuries of federally sponsored linguicidal policies and the attendant decline of Native languages,[4] NALA is a relatively innocuous and symbolic act. Nevertheless, this legislation has spurred some of the boldest efforts in heritage language recovery to date (see, e.g., Hinton & Hale, 2001; McCarty, Watahomigie, & Yamamoto, 1999). These initiatives, and similar ones among other minoritized communities, are fundamental to cultural survival and self-determination.

There is no question, however, that the United States is in the midst of a national language panic, where language has become a proxy for social class and race (Hill, 2001). Spanish speakers, in particular, have been singled out as the targets of national language hysteria. The horrific events of September 11, 2001 have exacerbated these xenophobic trends, placing Arabic speakers—indeed, all those who "look Middle Eastern" (see, e.g., Noonan, 2001)—in great jeopardy as well. In the current sociopolitical environment, racial and linguistic profiling, antibilingual measures, and the New Literacy Movement can be seen as all of the same cloth. Enacted in official decrees, in government rhetoric and media disinformation, and informally in everyday practice, these policies serve to discipline minoritized groups, reminding them "that they can be defined as illegitimate members of the larger population" (González, 2001, p. xxviii).

Can these truly dangerous forces be resisted and transformed? During his first year as head of the bureau of education in Sao Paulo, Paulo Freire (1993) observed that education "is not a lever for the transformation of society, but … it *could* be" (p. 48; emphasis added). Medium-of-instruction policies are at the heart of the challenge—and the possibilities—of what education *could* be. Although these policies can be instruments of linguistic and cultural imperialism, they also can be tools for strengthening the rich diversity that is the nation's heritage and its future. This vision of education has the power to lead the United States out of the either–or politics and pedagogies of English-for-the-Children and the New Literacy Movement, toward a more democratic, just, and equitable educational system for all.

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ENDNOTES

1. I am indebted to my colleague, K. Tsianina Lomawaima, for first pointing out to me the policy implications of "safe" versus "dangerous" difference in American Indian education (Lomawaima & McCarty, 2002).

2. I prefer the term *minoritized* to *minority*, as the latter term can be stigmatizing and is often numerically inaccurate. Minoritized more accurately conveys the power relations by which certain groups are socially, economically, and politically marginalized. It also implies human agency and the power to effect positive change.

3. The notable exceptions were federal policies toward American Indians, state policies toward enslaved Africans, and policies toward deaf students. With the passage of the Civilization Fund Act in 1819, federal policy became increasingly oriented toward the eradication of Indigenous languages. At the same historical moment, "Every Southern state except Tennessee had laws expressly forbidding instruction for African Americans" (Smith, 1998, p. 191). And, throughout much of the 19th and 20th centuries, audism and oral methods emphasizing speech competency over the use and development of American Sign Language have been the rule in schools serving deaf students (Nover, 1995).

4. According to Krauss (1998), there are now 175 Indigenous languages still spoken in the United States, only 20 of which are being naturally acquired by children.

II

Language in Post-Colonial States

3

RESEARCH AS RELATIONAL

Introduction

Across Chapters 1 and 2, I situated educational research in its settler colonial contexts, providing an analytic frame for understanding how and why educational research has so consistently failed to deliver on its avowed premise of ameliorating educational disparity. Given the pervasive and long-standing structure of settler colonialism, then, begs the question whether educational research is doomed to enliven these logics. In this chapter and the next, my optimistic offering is no, this is not a teleological given or *fait accompli*. Research is a fundamentally relational project—relational to ways of knowing, who can know, and to place. It has, for centuries, been situated within and animated settler colonial logics. The logics of property and ownership are undergirded by colonial needs for stratification and categorical divides but are not inherent to educational research or research writ large. While I do not suggest here that shifting referents and patterns is a simple undertaking given hundreds of years of colonial structuring, I also do not concede that the pursuit of knowledge is doomed to colonial referents. In fact, regarding research as fundamentally a relational endeavor of seeking and communicating knowledge opens up materially transformative inquiries into the coordinates used. The search and communication of knowledge is imbued with relations to social and material contexts, epistemologies, and living beings. In this chapter, I frame research as a permeable and relational force, consistently shaping and being shaped throughout the various "parts" of a research design and process. This stance productively destabilizes overly linear conceptualizations of cause, effect, objectivity, and implications while also not shirking responsibility.

Research is Relational to Contexts

That all research is situated contextually may seem somewhat obvious, given the extant literature that has described the project of research itself, from situating the origins and sociopolitical uses of the bell curve (Gould, 1996), to historical analyses of higher education (Wilder, 2013), to analyses of the ways specific nondominant populations experience higher education, the primary institutionally sanctioned location of research (Muhs, Niemann, González, Harris et al., 2012). Research is a project and product of culture, sociopolitics, and material conditions. It does not exist outside of trajectories of thought and action but firmly within. This perspective, though, stands in direct opposition to science, as commonly and historically understood in Westernized contexts, as a practice of tried and true methods that can only be undertaken by specially trained (social) scientists, and because of that special training, able to operate from and measure its worth in terms of objectivity and neutrality. These referents of objectivity and neutrality, though, are themselves far from their ideal but rather are nestled in settler logics. As Marie Battiste notes in her book on decolonizing education,

> Eurocentric science seeks principles that are universal and, as such, can be applied anywhere and any time. Born of empirical observation, made sense of by hypotheses which can, in turn, be empirically tested, Eurocentric science contradicts the faith in its knowledge. In effect, it suggests that all information is open to be disproved, thus severing it from temporal and geographic specificity. In so doing, it loses its meaning to context, and as David Suzuki has offered, such "a story ... has lost its meaning, its purpose and its abilities to touch and inform."
>
> (Battiste, 2013, citing Suzuki, 1997, pp. 19, 20)

To understand research as contextually influenced and influential, though, is not to resign ourselves from being able to enter it. We do not exist in isolation from social and material contexts, separated from each other. This is true in the sense of humans being connected as well as human and nonhuman entities being connected and coming into existence with each other. This is a long-standing tenet of much of Indigenous knowledge systems. In 1995, Yupik scholar Oscar Kawagley wrote about ethnoecology, the study of humans and material environments in dynamic inter-relation, in his book, *A Yupiaq Worldview: A Pathway to Ecology and Spirit*. Kawagley's (2006 [1995]) book was, in relation to Western knowledge systems, preternatural in its discussion of ecology beyond an object/subject relation of human study and consideration, but of humans and nonhumans in dynamic relation with each other. But in relation to Indigenous knowledge systems, Kawagley's work speaks out loud a centuries-old (if not older) epistemology such that Western(ized) audiences might be able to read it, as well as exploring what this knowledge system means in an era marked not by

interconnection but by the Anthropocene. In this way, Kawagley's work and how it is situated is itself an example of relationality, of ideas never being absent of thinkers in specific contexts. "Science is not an agentless juggernaut sweeping us along; there are agents in every corner of every context playing roles" (N. Drane, personal communication, March 14, 2015).

These entanglements of ideas, people, and material conditions are also one of the central areas of inquiry and analysis that Karen Barad (2007) explores in her book, *Meeting the Universe Halfway*. Barad, a quantum physicist who is also an expert in feminist social theory, explores the ways in which the meanings that we make of material conditions are intricately imbued into, through, and with those conditions and vice versa. This is particularly impactful in understanding the relationship between research and knowledge. Rather than separated as a static and isolable set of factors, phenomena are intricately bound up in attempts to measure them. In an apt example, Barad draws attention to what we know, or more so what we cannot know, scientifically about light. Measured through one set of coordinates, light is a particle; through another, a wave. According to each set's logics, the results are undeniably true, but how can two truths be accurate if they are incommensurable? Barad proposes, drawing on insights from quantum physics and critical social theory, that they are true because of the more fundamental reality that all matter and ways of knowing about matter are impermanently, continuously, and contiguously interconnected. Barad uses the term, intra-action rather than interaction, to highlight the simultaneously co-constitutive and intertwined nature of research and knowledge.

Consider this more detailed example from Barad's exploration of matter and measurement tools, themselves matter as well, specifically piezoelectric transducers, apparatuses that use electric pulses to measures shifts in surface and subsurface materials. These devices are used in a variety of industries, but Barad is focused on their medical use with pregnant women and fetuses. Piezoelectric transducers do not exist in and of themselves as might be thought, still-standing and as pure objects, lying inert in complete physical form and only slightly less inert when being used. Rather, they have been and are continually put in

> intra-action with a multitude of practices, including those that involved medical needs, design constraints (including legal, economic, biomedical, physics, and engineering ones); market factors; political issues; other R & D projects using similar materials; the educational background of the engineers and scientists designing the crystals and the workplace environment of the engineering firm or lab; particular hospital or clinic environments where the technology is used; receptivity of the medical community and the patient community to the technology; legal, economic, cultural, religious, political, and spatial constraints on their uses; positioning of patients during examination; and the nature of training of technicians and physicians who use the technology. (2007, p. 203)

Similarly, educational research has taken shape, continues to take shape, and will continue to take shape in dynamic relation, in intra-relation, as Barad would put it, with its sociopolitical, economic, and cultural contexts. Or more fundamentally, more radically expressed by Kawagley before Barad and articulated with his frequent co-author, Barhhardt,

> Alaska Native people have their own ways of looking at and relating to the world, the universe, and to each other. Their traditional education processes were carefully constructed around observing natural processes, adapting modes of survival, obtaining sustenance from the plant and animal world, and using natural materials to make their tools and implements. All of this was made understandable through thoughtful stories and demonstration. Indigenous views of the world and approaches to education have been brought into jeopardy with the spread of western social structures and institutionalized forms of cultural transmission.
>
> (Kawagley and Barnhardt, 1999, para. 5)

Kawagley and Barnhardt respectively articulate the differences between Indigenous and Western worldviews, and in part, they do so in order to demonstrate the ways Alaska Native peoples have, as is their history, present, and future, adapted projects of well-being and balance in the face of contradictory Western frameworks. This is not to say Native peoples have adopted these contradictory frameworks or assimilated within them. Indigenous epistemologies, as well as many Eastern and African thought traditions speak of all actions, reaction, practices, and thought being interactive. Such views demand an attention to balance and health throughout. Knowledge and practice emanating from knowledge is always in context.

Seeing all knowledge as contextual and shaping context is neither to capitulate the shape of educational research to contextual realities, such as the prominence of certain definitions of science, nor to hold it overly powerful and agentic in its own right. It is tied to and ties, binds up with humans, human history, physical objects, the planet, and the intentional and unintentional practices of all of these entities. Such an understanding is also posited in the well-known work of the philosopher Jacques Derrida, who asserted that no text or word is authoritative; they are all imbricated with traces, shadows, and referents. To date, particularly in Westernized post-industrial contexts that exhibit neocolonial logics of settler relationships, these intra-actions have shaped research to be something that has been commodified to serve the logics of property, ownership, and societal stratification.

Let's consider more, in detail, the parallels in educational research as it intra-acts with just a few of the practices that Barad lists: design constraints, market forces, and the educational background of professionals in a given area. I start with Barad's work because it speaks first, and foremost, to Western technologies. It is likely to connect most readily with Western-based readers. After the

discussion, I'll return to how Barad's ideas can be read and bracketed with Kawagley's work. I include both to connect to the entry points of many readers of this text, but it is important to note that citation practices and more fundamentally, epistemic genealogies hold material force in not just our histories but our possible futures. This is a point that has been made by several critical, Indigenous and third world scholars, such as Linda Tuhiwai Smith, Eve Tuck, and Ngugi Wa Thi'ongo.

Design Constraints

Educational research has accepted design elements that render some studies more authoritative than others. There are two strong strains to this. First is the strain of objective, empirical research, with experimental, inferential quantitative designs prevailing. In many ways, the definitions of science that were solidified through this cultural space, those of reliability and validity, shaped qualitative research for many years. Qualitative research itself grew out of anthropology's methods of ethnography, an inauspicious commencement whose very design hinged on axes of researcher and the other (Somerville, 2013). Ethnography, literally meaning to write the people, from its Greek root words of *ethno* and *grapho*, fundamentally is about the study of peoples and the way they are written about. Within that entanglement, then, is the fact that someone is doing that writing and another being written about. Qualitative research for many decades embraced its particular disciplinary space of studying specific cultures (and not others) while also attempting to answer to questions of reliability (are the findings reproducible in other contexts?) and validity (do the measures capture the desired phenomena?) that had been established through concepts of research driven by neutrality and objectivity.

These concepts, though, stand in direct contradiction to an Indigenous worldview that sees all living beings and the planet in constant flux. The concepts of objectivity and immutable, isolable factors also stand in contrast to physical realities in which the actions of all beings and entities impact each other. Perhaps at no other time has this fundamental truth been so readily comprehensible. In the current Anthropocene (Somerville, 2013) era, as it's been termed, humans and their industrial technological developments have fundamentally and deleteriously impacted the planet's well-being and balance. From this understanding of the momentum of damage done in the name of universality, then, the claim of replicability, of stand-alone actions that can be measured by themselves and unhinged from the measurer, the measurement, or the specifics of place seems naive. However, this genealogy of social science has created design constraints that invoke these ideas as standards, with aberrations requiring specific justifications, often through the language of the existing standards (Wilson, 2009). Critical qualitative and critical ethnographic studies (e.g., Daza, 2009) have thoroughly critiqued such attempts to filter qualitative research through objectivist-driven concepts, which has yielded more space for research designs to draw from and

produce decidedly multi-perspectival stances. The growth of postmodern and poststructural studies has also influenced educational research, particularly in qualitative, decolonial, and critical research designs. The open access academic journal, *Decolonization: Indigeneity, Education, and Society*, for example, explicitly seeks, among other formats, empirical research from qualitative designs, delineating this preference out of a decolonial dismissal of imperial notions of objectivity and generalizability (http://decolonization.org/index.php/des). Design of research, though, is just one aperture into the particular cultural, sociopolitical, and material realities that have contributed to its sanctioned versions.

Market Factors

While we may not like to consider research as being subject to economics and markets, the pursuit of knowledge in racist capitalist settler societies, particularly when coupled with career and livelihood, is intricately tied to market forces. Because education and educational research are part of a larger societal fabric, ideas and perspectives come in and out of favor and experience trends, and therefore some research projects and publications are more strongly supported, literally, through funding, and somewhat more figuratively, although still linked to economic capital, through status and reputation. Studying and writing about immigration, as I've been doing for the past several years, during this large wave of push–pull of beings across fictive nation-state borders may have more market appeal than it did in the 1970s, but at the same time, writing about the racialization processes that immigrants from the global South experience may not connect with market preferences. This dichotomy is connected to the pervasive grip of the meritocratic ideals of the American Dream that may hold much stronger sway in what consumers (the granting agency, those with status already in the system) and larger politic discourses of meritocracy demand. For example, most studies about nondominant populations are framed in such a way as to address what is often termed to be a concerning exclusion of the said populations from upward social mobility and/or the American Dream (e.g., the immigrant paradox of not being able to fully access upward social mobility after the first generation). This referent has political mettle that gives it purview and market stamina despite the historical reality that upward social mobility has only been precariously granted to specific populations, most often contingent on their abilities to shed what are seen as ethnic traditions to be accepted as U.S.-born white (Ignatiev, 2008). Perhaps because the ideologies of meritocracy and social opportunity still pervade so strongly in the U.S. as well as other settler colonies, the market for research that addresses structural racism as a given and protected feature of this settler colony has less of a broad-based market value, although there are niches where such scholarship can be found.

In conjunction with the content and focus having more or less traction socioeconomically, the perception of specific researchers also comes into play.

Barad also mentions the educational background of the engineers and scientists designing the crystals used in the piezoelectric transducers. In terms of educational research, this can be understood in terms of the larger demographics of higher education and its historical and contemporary practices that have shaped and continue to shape these demographics. While the nation's student population is becoming increasingly diverse, the overwhelming majority of full-time faculty positions continue to be filled by white men and women (Muhs et al., 2013). From 1997 to 2007, the percentage of students of color enrolled in U.S. colleges and universities climbed from 25 to 30 percent, yet in 2007, women of color held only 7.5 percent of full-time faculty positions (Ryu, 2009). White men persist in composing the majority of tenure-track faculty positions, holding close to 90 percent of the nation's appointments to full professor (Fast Facts, 2013). While the whiteness of the American K–12 teaching force is a widely known entity (Sleeter, 2001), the whiteness of the professoriate and more specifically, the teacher education faculty nationwide is less addressed in relation to durable patterns of inequity (Gordon and Radway, 2008). However, if there is one learning that has been widely accepted from understanding race to be a strategically devised social, political, and cultural construct, it is that white supremacy affords access to intertwined sets of privileges and protection from complementary sets of social ills and dangers (Harris, 1993). This is of course not to say that white people do not experience prejudice or suffering, but that this prejudice is not institutionalized and is not subject to the craven exponentializing forces that systematically marginalize populations of color, poor populations, and nongender conforming and nonnormatively abled bodies. Whites across class, gender, and sexual identity lines experience far less physical, socio-emotional, cognitive, and spiritual violence than do their counterparts of color.

Educational researchers, of course, do not sit outside these dynamics but are as thoroughly entangled in these realities as anyone else. While extant white educational researchers may well have sharp and sophisticated intellectual analyses about racialization as a system of oppression, they still experience ongoing contexts of colonization within the protective wrap of white privilege. This may be part of the explanation of why the mythology of the American Dream and associated research frames that justify their premise from a withholding of the Dream for just some populations may continue to flourish. If one's personal experience of society has largely been a series of doors opening with new opportunities, a well-intentioned teacher, teacher educator, or researcher might seek a professional vantage to make this dream more available, perhaps more viable for other populations. It is perhaps much easier to believe in the American Dream or perhaps more palatable to use it as a frame for necessary research on those who have not succeeded within the United States. I do not mean to say that all white educational researchers hold an acritical belief in meritocracy, nor that researchers of color necessarily are more critical. In fact, no one's beliefs and epistemologies are intractable or easily essentialized with phenotype. Rather,

when a concentration of an upper middle social class that has racialized protection predominates in the demographics of paid researchers, there will be population-level echoes in the ideological, methodological, and material impacts on the field of educational research (Henrich, Heine, and Norenzayan, 2010).

That this privileged population persists in control of the uppermost spaces of the academy perhaps explains why, even 30 years after the death of ethnography was proclaimed (Somerville, 2013), problematic patterns persist in white researchers pursuing and speaking of research about racially minoritized populations, to presumably white audiences. It raises questions of the larger patterns that are echoed when a young white upper middle class female ethnographer can be celebrated for her undergraduate and graduate studies of African Americans living in inner city Philadelphia.

Alice Goffman began volunteering as a tutor in a predominantly Black neighborhood in West Philly, situated next to but not integrated with the campus of the elite institution, the University of Pennsylvania, when she was an undergraduate. While she wrote about mothering in this Black community, she did not think she could add very much to the existing research literature on the topic. She did, however, see an opportunity in studying young Black men living in a police state of surveillance, control, and persecution. She became a participant observer in this culture, and her book (Goffman, 2014) provides details on the reach and contours of this police state as well as the ways that the young Black men who allowed her into their worlds, or parts of it, crafted life and vibrancy in these difficult spaces. In her work, Goffman employs the concept of fugitivity, which Keguro Macharia defines as "seeing around corners, stockpiling in crevices, knowing the un-rules, being unruly, because the rules are never enough, and not even close" (as quoted in Sharpe, 2014). In contrast to this theoretical base of fugitivity, Goffman provides her rendering of the details of these fugitive practices for the gaze and view of whites with better social status, such as herself. In many ways, how could she not do this? It is the lens through which she looks, the path upon which she walks, and the cultural context in which she, the daughter and granddaughter of well-known academic ethnographers, was socialized. To put it more simply, she comes by this honestly. But as with the example of Jared Diamond's (1999) work in Chapter 1, the point here is not Goffman as a lone researcher or unusual example but rather what the celebration of a clearly problematic text reveals about the assumptions of competence and the ability to annotate others' lives. The high-profile and positive reception of her book within academia conveys the durable comfort levels that exist for peering into cultures of color through white, even with self-avowed naive, lenses. The question is not whether Goffman does or does not offer some valuable sociological analyses of this cultural and structural space. The question is how such a perspective, one that recreates an Other and dominant culture ethnographer, receives not just unfettered passageway as institutionally sanctioned research but is celebrated, verily ushered, into academic and market prominence (Sharpe, 2014).

Goffman's work and the impact of her social location, and extant parallel examples, can be further theorized through Barad's conceptualizations of action, intra-action, and assemblage. Different than postmodern takes on knowledge being subjective, a consideration of Barad's work pushes the reader of Goffman's ethnographies to consider how her material experiences of the world, including her upbringing, and her project of ethnography, make experiences come into existence, hearable, seeable, and then scriptable within the market-based academy. However, while Barad's work speaks to the intricacies of matter and meaning, with human beings as one element, it lacks a grounding in ethics, in spirituality that is just as fundamental in shaping how matter comes into existence. Kawagley's work addresses meaning and matter as co-constitutive, as foundational to not just the nature of matter but also as investment and deference to the life of matter and life itself. In other words, understanding that the knowledge is inseparable from materiality does not necessarily move to a less colonial stance. Understanding matter, beings, and meaning as part of a broader ecology begs the question of what are more generative stances.

Parallel to the question of what research lenses are assumed preferential and competent is what work could be foregrounded instead. Public scholar activists like Ruthie Wilson Gilmore and Mariame Kaba engage, design, and facilitate direct actions and public scholarship from within and for specific communities and challenges. There are many other examples, but here I focus on the work they engage for a few specific reasons. The first is that their work is not their work alone. I provide their names in order to follow and find their resultant collective places and projects. Kaba helped to create Project NIA, the Chicago-based advocacy and popular education organization that works to end youth incarceration. Gilmore's award-winning book, *Golden Gulag* (2006), a scholarly contribution that dismantles many taken-for-granteds in understanding the growth of the prison industrial complex as a state strategy, was borne of her work with the mothers of incarcerated young people whose questions were about why incarceration had become the norm. Kaba's and Gilmore's projects share in common a resolute grasp of societal conditions, praxis that is considerate of those conditions, and ongoing practices that reach beyond critical analyses. As Gilmore puts it in the opening pages to *Golden Gulag*, "On the contrary, in scholarly research, answers are only as good as the further questions they provoke, while for activists, answers are as good as the tactics they make possible" (2006, p. 27).

All of these are entanglements of knowledge, and there is not a static identity or social location that is empirically better for researchers to have. How we engage in and with research, though, would benefit from a constant consideration of its ethnoecologies with privilege, oppression, coloniality, and for quite some time now, historical patterns of seduction and betrayal (Newkirk, 1996). How can educational research contend with being entangled with histories, currents, and do so in ways that engage futurities outside of settler colonial logics? To paraphrase from Kawagley and Barnhardt, how can knowledge be found and

illuminated with a deep respect for our subsistence, not status, as dependent on future knowledge? One of many reasons why it's important to see Kawagley and other Indigenous scholars' work as foundational is that their projects of survivance (Vizenor, 2008) are simply longer and better, out of necessity and ethics.

One move toward acting on behalf of ethnoecologies is to constantly ask essential questions of any research endeavor. The first questions that I propose are in no way new ones. They are found within many nonWestern spiritual and thought traditions, as they defer to interconnections and responsibility. In Chapter 4, I take up more specifically the referents that educational research as a field should steward. Here, I provide these questions as a way to attend to relationality.

Why This? Why Me? Why Now?

Research is a relational and ontological practice. It is always entangled with specific researchers in specific spaces and with specific outcroppings. Very little of this dynamic is linearly predictable, and yet, precisely because of the variances among and within dynamics, a closer attention and rigor should be paid to questions of coordinates and ongoing responsibilities and relations among peoples, places, and practices. This stance has a long history in many worldviews and even some research traditions, such as Participatory Action Research (PAR) approaches, but by and large, is not commonplace in institutionally sanctioned research within the Western academy. As detailed in Chapter 1, most doctoral programs encourage apprentice researchers to look to the existing research literature, find a gap within that literature, and justify a research focus based on that gap. Sometimes, personal knowledge sets are germane, but generally, they are not. When introduced and mentioned, personal perspectives are often invoked in order to be "bracketed" (Tufford and Newman, 2010), that is, either set off to the side or made explicit so that the reader can ascertain the lenses through which the research is presented.

Because of the long-standing and ongoing harmful relationships between researchers working from dominant cultural backgrounds and those who are likely to be dispossessed through research that frames them as at-risk, then, researchers working in the social sciences should be attending to questions other than gaps in the literature. While we have a responsibility to understand, contribute to, and be fluent in existing research, we also are responsible for our ontological entry-points and impacts as researchers. Because all research is conducted by living beings, with specific histories, we are beholden to consider and answer, perhaps always incompletely, the three core questions of "Why me?", "Why this?", "Who now?"

Why Me?

This question should not be misconstrued as a prompt for exceptionality or destiny. In contrast to the oft-imbued message at elite institutions of higher

education that further anoint already societally privileged populations (Deresiewisz, 2014), this question should prompt a humble pause and reflection on the specifics of individuals' experiences that make them appropriately able to craft, contribute, and even question knowledges. This is a necessary and ongoing set of reflexive practices that push beyond the reflexivity responses to critiques of ethnography in the 1980s. Those practices took hold in qualitative research, but have not been seen as something that all researchers should interrogate. On the contrary, views that pursue objectivity and neutrality would eschew discussions of specific entanglements of personhood, space, and materiality. And yet, all research is entangled. To deal more straightforwardly with how individuals are entangled in the research they conduct affords spaces to discuss the ways in which specific manifestations yield specific locations for the knowledge being offered. For example, educational researchers who investigate the experiences of migrant youth in schooling will present a specific set of perspectives if they themselves come from lived migrant experiences, speak more than one language, have been racialized across different nation/state/cultural settings, and on. This is not to say that being a migrant will automatically create more useful research that addresses the experiences of migrant communities. There are simply far too many other factors and entities that are in complex inter- and intra-relation with each other to be able to parse these out in isolation from each other for the purposes of predication. But it also should raise more frequent questions about the utility of so much social science research conducted by members of the dominant culture within cultures that have been historically marginalized.

In her 2009 "A Letter to Communities," Eve Tuck advised both Indigenous communities and outsider researchers to consider the cumulative effects that come from predominant framings of marginalized communities as damaged. This holds effects both for those community members and arguably more subtly for how it positions the external researcher as a change agent, perhaps because he or she is not a member within the community. Tuck's piece has been widely cited, in part, because damage-based frames are ubiquitous through social science, and because she disrupts monolithic and unitary concepts of identity that still work from modernist frames. Central to my discussion of "Why me?" is a responsibility to consider ones' place within and among longitudinal and vast patterns of who has been researched, by whom, and from what theoretical frameworks.

For those who are insiders to communities, the contours are no less complicated but substantively different. Julie Kaomea, a Native Hawaiian scholar, wrote about the ways that she needed to approach research with both knowledge and humility, particularly when bringing to light potentially concerning practices (2001). Kaomea frames her article through a use of several theoretical stances that, at times, might seem to be contradictory, but that are also familiar for culturally marginalized groups that know incommensurate existences intimately. Kaomea then provides a glimpse into a paradox of findings and commitment to community:

> I knew full well that if I chose to continue with my critique of this Hawaiian-initiated program, there would probably be many Hawaiians who had been involved in the original design and implementation of the curriculum and numerous others who are strong supporters of the program whom I might unintentionally offend.
>
> (p. 71)

Kaomea cites Maori scholar Linda Smith's now-classic work in *Decolonizing Methodologies* (2012), and the often difficult position that Indigenous scholars are put in when faced with findings that challenge taken-for-granted or long-held community beliefs. Kaomea, in a telling move, returns to Native Hawaiian referents to determine how to share information that, while potentially painful, also holds important potential gains. She asks for forgiveness for the likely pain and contextualizes her work in the contextual necessary good that may result form the pain. In and of itself, this is a fundamentally relational act of research pursuit and sharing.

As the reader might expect, in keeping with a view that knowledge and ways of knowing are intricately tied and co-influential, there is not a static set of experiences, preferred personhoods, or social locations befitting educational research. Rather, we must be able to ask and articulate an answer to "Why me?" that is attentive to connections beyond academic qualifications and institutional affiliations. Our responsibilities should lie in how we frame, approach, and attend to the constantly fluctuating dynamics being researched and how the research is exacting impacts. These specifics, though, should be addressed, and in ways that are rigorously taken up throughout a research project and its products, not bracketed into a few introductory or concluding paragraphs.

Why This?

How we frame a research problem and its context is pivotal to understanding how it has already been understood, perhaps misunderstood, and what stances are fruitful for further understanding it.

As Barad notes, "the positioning of patients during examination," is an element that will have material intra-play with all the other elements she lists. Such is the case with anyone who is invited to be part of a social science project. They are being positioned, by the researcher, and such a positioning will have immediate and ongoing, yet not fixed ramifications for everything else in the research project and products. How Black-on-Black violence is understood, for example, through the theoretical lenses of intersectional and settler colonial theories would be subtly yet substantively different than mainstream narratives afford. Users of settler colonialism would foreground a consideration of violence among people of color in reckoning with anti-blackness (King, 2010), chattel labor for settler dominance that discriminates between respectable chattel (e.g., model minority) and criminal chattel (e.g., Black menaces, migrant as illegal) as part of conjoined projects of

colonialism and imperialism (Arvin, 2013), or internal and external colonialism, as Tuck and Wayne Yang put it. Theorizing violence amid people of color through the lens of intersectionality would afford and demand an analysis of the conjoined legal and institutional categorical locations that vulnerabilize populations of color and provide articulation about how those dispossessed locations, through categorical constructs, often manifest in violence as a culturally fluid and available resource. While intersectionality does explicitly critically examine legal categories for the ways they simultaneously protect white male hetero privilege, it does not necessarily link such an analysis to land and relationships to land. Settler colonialism is insistent on this point. How a social "problem," is framed, then, even in seemingly compatible anti-oppression frameworks actually holds important differences. This insight is not a new one, particularly to beginning social scientists who have the very legitimate and frequent question of how one chooses theoretical lenses if so many address similar phenomena. Many theories can be used to explain experiences and data, but they do not do so equally.

The issue at hand, though, is that while social scientists, experienced and novice alike, may grapple with the fit and affordance of various theoretical concepts, less often are theoretical frameworks interrogated for their own social locations. In the introductory pages to his book, *Habeas Viscus*, Alex Weheliye (2014) interrogates the critical theoretical work of biopolitics from esteemed theorists Giorgio Agamben and Michel Foucault for its frequent omission of racialization processes and recurrent reinstantiation of race as empirically biological. Contrasting their work, ubiquitously popular in the social sciences, with the work of feminist theorists of blackness and anti-blackness, Sylvia Wynter and Hortense Spillers, Weheliye situates the popular yet race-muted theories of white male Europeans within a settler–Indigenous–chattel perspective.

The question "Why this?" should include the kind of analysis and consideration that Weheliye offers. He explores the content-centered consideration of what a theory affords, but also what the theory backgrounds, to what effects, and how the theory's uptake in the social sciences and citations in publications contribute materially to, in this case, settler colonial structures. Relevant questions to consider with the use of theories is what the theory affords analytically, what the theory backgrounds, to what effect, how this has played out in historical trajectories of citation and reputation, what and whose voices have been silenced, and how land and relationship to land is theorized and/or invisibilized? All of these questions are legitimate to pose to any social science research project. In the area of educational research, which I will take up more explicitly in Chapter 4, these questions are specifically located in relation to learning and knowledge (for and to the planet, humans, and nonhumans).

Why Now and Why Here?

By posing the questions "Why now?" and "Why here?", I foreground the responsibility to think about context. In their book, *Place in Research*, Tuck and

McKenzie (2015) situate all research as connected to place, meaning geographically, chronologically (but not linearly), and spatially. Attending to context, to place, to temporality, is perhaps one of the strongest ways that educational researchers can interrupt coloniality. Coloniality, with its thirst for universal truths, values placelessness, in part, because this implicitly justifies the seizure of land and the forced movement of people and resources for the interest of landowners. The fundamental colonial view of knowledge is as objective, as residing above place and space, but the terms of that objectivity cede to those who hold it, as then follows with land. Learning and knowledge are never placeless. How humans and nonhumans learn and grow is always situated in specific places, in specific dynamics.

In a mainstream magazine article, entitled, "Speaking in (Green) Tongues: Scientist Discovers New Plant Language" (Mejia, 2014) the journalist describes how Jim Westwood, a professor of pathology, physiology, and weed science, "discovered" ways that some plants communicate with each other, particularly about risks that may be coming. But these practices are not vaguely present in the same way, from any plant to any other plant. The practice is specific, and is shaped by material conditions of soil, air, water, and levels and forms of host and parasite interactions. And, the practice is not empirically new, of course, but is only new to the researcher. The article's problematic framing of discovering this language is a cue to both the colonial stance that presumes that a practice has not existed before it has been documented and analyzed by a sanctioned researcher as well as how little Western science traditions operate from assumptions of interconnectedness.

Understanding all research as being placed does not mean that we cannot know or connect across spatialities, but simply that we must be cognizant that there is not an automatic transferability to knowledge, skills, or dispositions. For example, in the popular rush to examine what has made education in Finland successful, the contrast with the United States holds important lessons, but also equally important, cautions about the distinctly different sociohistorical, cultural, and political differences across these nation-states (N. Drane, personal communication, April 17, 2015). This also means that what might be vitally important in a particular moment and place may not be so vitally important elsewhere. For example, I am an unabashed supporter of the need for more critically conscious researchers who come from nondominant backgrounds, particularly those who are Indigenous and/or racially minoritized; however, I see this as a situated need because of the long-standing deference to whiteness as intellect, capacity, and even more fundamentally, humanness. I am unequivocal about this priority, and therefore see the project of dismantling white supremacy threatened when race-neutral justifications for diversity are used, as they are most often invoked in order to deny systemic racism and support liberal humanist justifications for individuals' property holdings (Bell, 1979; Bonilla-Silva, 2009). With many of the central shifts that this book calls for, including situating research as a relational endeavor and learning as transformation (Chapter 4), there may have to be exaggerated, protective, and vigilantly self-critical engagements as we

unfurl literally centuries of settler colonial logics. "Why now?/Why here?" reminds us to stay steadfast with this mantle.

What Does Research Being Relational Mean for Methods? Or Can I Still Interview People for My Dissertation?

Each fall, faculty are contacted by prospective doctoral students who are interested in furthering their education, acquiring more credentials, becoming researchers, and sometimes looking for another way of being an educator. When students call or email expressing interest, we faculty respond back, often invite them for a visit to campus, and at least where I work, there is usually one full day of mutual vetting. During the meetings I've had with prospective doctoral students, at some point in this process the student asks about my research and, then almost always, asks about potential involvement in the work. It goes something like this, "Your work sounds important/intriguing/*insert adjective that conveys interest*. If I were to come here would I be involved in that research?"

Usually I blink while thinking, "Hmmm. We just met."

It's not that I have any illusion about the strategic question of these prospective doctoral students – they should be asking about the kinds of research projects sponsored at an institution if they intend to become researchers. Nor do I operate under the illusion that research institutions are not very much about preparing paid researchers, and that does not happen very much or very effectively outside of conducting actual research. And of course I am as functionally aware as I can be of how much of a non-treat it is to work with me specifically. No, the "hmm" in my reaction is that there is no way of knowing if this person's involvement in the collaborative research I've been part of would be beneficial to the people involved outside of the university. Research is a fundamentally relational, cultural, and political practice. As an intentionally community-involved, collaborative researcher, such a question without contextual knowledge leaves me at a complete loss. I shouldn't be able to answer that question, as it is simply not up to me completely, and relationships for a newcomer have to be built all around, not just with the person who holds the institutional designation of principal investigator.

When we engage in many academic research activities, though, there tends to be a generic, tacit reference to accepted graduate students (and more so faculty for that matter) as inherently, perhaps unilaterally, capable of conducting research. For example, in applying for and procuring grants, an essential activity for any faculty member at a research institution, it is wise to include line items to fund graduate students, to both people the work of the research as well as to support their stipends, tuition needs, and their development as researchers. But here's the problem: acceptance into a graduate program does not necessarily tell us very much about the ability to be of service to a specific population in specific contexts working on often multi-faceted, hydra-headed issues (Picower and Mayorga, 2015) of equity and oppression. Considering the demographics of those who

make it into doctoral programs at research-intensive universities, the viability of what population knowing the needs, logics, and intelligences in communities far flung from the academy should minimally be up for discussion. Of course, neither do the initials P, h, and D necessarily tell a person, particularly one not intimately familiar with the academy, anything about those capacities. In fact, those initials have far too often meant seduction, betrayal, and opportunism. It is for these good reasons that so many communities have enacted their own processes (Indigenous Rights Radio, 2014) of ascertaining how and when to grant external researchers entry. In fact, while it has become the bane of some researchers' existences, the practice of several Indian nations, school districts (e.g., Navajo Human Research Board, 2007), and other collectives to have minimally named their own research clearance procedures and sometimes barred external researchers should be seen as a powerful act of empowerment and refusal (Tuck and Wayne Yang, 2014) in the face of so much appropriation.

Working across the very different and sometimes oppositional needs of marginalized communities and university-based researchers should not be, as it has often been, a question of how the researcher can "gain access." In participatory approaches to research, for example, access itself is an insufficient if not problematic concept. Most participatory approaches to research are long-term and multi-perspectival and as such, access is neither a single point of entry nor singly conferred. It takes a long time to establish trust, to build relationships, to engage in ongoing, messy dialogues and practices that interact with systemic issues, which are, by definition and reality, never a single-fulcrum issue. To put this in terms used by Barad and Somerville, they are entanglements. None of that, though, is well reflected in traditional linear research designs of problem, literature review (from the academic library), methods, findings, and results.

This, however, does not mean that tactics like observation, watching, interviewing, and mapping, to name the methods most frequently found in qualitative designs, are no longer viable. The tension arises when such methods are used in a fashion that mimics a desire for the mythological objectivity most frequently claimed through inferential statistical designs. It is more than possible and exists in extant examples, to devise and roll out qualitative research projects involving interviewing, observing, and coding. The questions and approaches that control for variables are important, but for different questions than those that tend to be asked and pursued by marginalized communities finding ways to survive despite what a heteropatriarchal racist settler state might have in mind for them. Life just isn't that controllable outside of labs. It's much messier, and it should be. The mess also yields insights, if we can shake off the logarithms of the academic processes long enough to see them.

For example, in a collaboration with a group of youth, educators, and social justice activists living in the same city, I was working with two graduate students to investigate the contours of settings outside of school that support critical consciousness of youth. In this mix, sometimes some of the youth have sophisticated

analyses about a just society, and sometimes not, as would be the case with any group. At one meeting, there were some strongly misogynistic phrases thrown around at the end of one of our sessions. Now, adherence to the previously designated inquiry into social justice development might mean asking some of the youth to participate at a later date because their comments and practices do not resonate with any descriptor of social justice praxis and therefore would yield little in the way of data. In such a scenario, the graduate students might interview those who remained in the program and conduct some activities with them, but they wouldn't necessarily be directly making central decisions about who should remain in the program, as those decisions would be for the principal investigator, not the apprentice graduate students. But in this approach, insight from the graduate students was crucial to making meaning of the interactions. They had been onsite, working as long-term substitutes with these youth and therefore, could pose plausible theories to make meaning of the comments within a larger knowledge base of these youth, and provide suggestions on how to proceed. These "students" have that place as researchers because of their time in the school, certainly, but that would not have come to be without their ability into those roles in the school, be effective teachers of the youth, and to be critically reflective practitioners. It also helps that they understand aspects of navigating the world from nondominant social locations through their own lived experiences. In such embedded and complex projects of knowledge pursuit, it is my hope that these graduate students are learning something much more important than a textbook-worthy semi-structured interview protocol. I'm hoping they're learning that if the research is worth its mettle, it won't simply seek the cherries in the data that all but shout "quotable," but that the research makes the theories work as well as works the theories in relation to the data. That is research that is considerate of its fundamental nature of movement and impact without trying to control every aspect.

Which brings me back to the blinking I do when asked if someone I just met three minutes ago would be able to work, to be of service, to be a "researcher" in such a setting. I've yet to arrive at a better, more honest answer than "Let's see how it goes" because that contains my desire to delay making promises that serve academic processes but at the backgrounding of other participants.

Does Answerability Mean that Everyone Should Be Doing Participatory Action Research or Qualitative Research?

No. While we have a long and vast history of imperialist-infused prominence of protecting stakes in objectivity and neutrality, social science and educational research more specifically should not lurch to uniformly adopting a different particular epistemic stance, methodology, or approach, particularly while so few are fluent with the echoes and ongoing structure of settler colonialism. Decolonization requires, at minimum, a consideration of how ideologies impact material practices, how practices are always epistemically shaped, and vice versa.

To swap, then, a set of material practices for another flirts with cosmetic changes that may do precious little to interrupt material coloniality. In the greater Mikmaq and Wamponoag lands, more commonly known as Boston, there are now over 60 institutions of higher education. Of those, about a dozen have doctoral programs in educational research. Imagine if just half of those doctoral programs began requiring their students to use participatory approaches with "the community." Of immediate concern is the need to better consider who and what counts as "the community," and how that nominal does work to also name and locate higher education and research as beyond the community. But more central to my point here is that schools, community-based organizations, families, and spaces would be quickly inundated. Already poorly compensated nonprofit workers, who are strapped for fiscal, human, and material resources, would be in the unenviable position of hosting graduate students and paid researchers who may be helpful but also would require training to learn some of the institutional history, of the nonprofit organizations. Worse yet, they might ride roughshod over the cultural specifics of the nonprofit organization's population's needs. What happens in the spaces where the needs of the nonprofit organization are incommensurable with the needs of the institutionally affiliated personnel, such as university institutional review board clearances, timelines for graduation, and captured data? What happens when, as more and more higher education moves from public funding sources to short-term private sources, the grant runs out?

For example, in some of my work with undocumented youth (Patel, 2013), the university-based procedures for informed consent ran counter to the participatory and activist goals that we had as a collective. Typically in science, and particularly within qualitative studies, masking the identities of participants is seen to be one of the pre-eminent ways to protect participants. One of the projects I've been involved with sought to interrupt narratives of meritocracy as they are applied to undocumented migrants. In this project, undocumented youth activists used their names and their stories in loud and explicit ways as forms of public pedagogy, activism, and social agitation. None of them wanted their names masked in the research. To them, this seemed to be completely out of keeping with what they were trying to counter: an anonymizing of identity to deny personhood. To conduct research with them into these practices begged at minimum a reconsideration of what is seen to be default "good practice" in university-sanctioned research. For a more thorough discussion of the social, political, economic, and cultural locations of consent in university research, see Tuck and Guishard (2013).

Does Prioritizing Holism and Intra-Relationships Mean That It's Incorrect to Look Closely at Specifics?

One of the great draws and strengths of advanced higher education is the ability to focus in closely on a topic and/or particular methodologies. To become expert

in a field requires depth in the field and an automaticity with its particular schematics. However, one of the drawbacks of this rigor of study is a segmented and isolated set of expertises. While there is not anything inherently wrong with depth and expertise, it becomes problematic when expertise sets are incapable of speaking to each other and lose a sense of how multiple forces interact in everyday lives. For example, in the late 1980s and early 1990s, several studies indicated that there is an extremely strong correlation between lead levels and occurrence of violent crime in cities. However, these compelling results were not taken up or even pursued by criminologists. As Drum explores in his 2013 article about the general shrug that this compelling finding received, part of the answer to why this has not been taken up has to do with how specializations tend to privilege certain types of explanations, and background others. He quotes public policy professor Mark Kleiman, who has studied promising methods of controlling crime. Kleinman stated that because criminologists are sociologists, they are more drawn to sociological explanations, not medical ones. Without a doubt, all disciplines are susceptible to this kind of patterned meaning making. The problem, therefore, is not in deep knowledge, but in siloed knowledge that rarely has the opportunity to be filtered and connected through a different lens. This is a particularly robust place for educational research to show deeply needed research. Educational research is not a discipline unto itself. It is a geographic space in society. To understand it, economists, sociologist, linguists, anthropologists, historians, and psychologists could all contribute perspectives. As a field, though, educational research should draw from and work across those disciplines, having each be essential and simultaneously insufficient on its own.

Conclusion – Educational Research as Relation

Education and educational research have always been entangled with intra-acting with material conditions of children, teachers, families, communities, and the planet. However, this stance of seeing research relationally, inextricably bound in its material contexts, has not been commonly taken up. Perhaps this is because of an echoing default to and desire for an objective or removed position of research and therefore researchers. However, to be so, educational research would have to be an overwhelmingly unique and spontaneous generator of decontextualized phenomena. Clearly, this is not the case. What would it mean, then, for educational research to be more explicit about how it is situated within, affecting, and affected by other material conditions and ideologies?

Headlines bring the frequent newest case of legal and extralegel violence against people from non-dominant communities, but rarely is it asked how research is part of this history and contemporary structure. In the summer of 2013, George Zimmerman, a white self-appointed neighborhood watchperson, was acquitted of legal charges stemming from his arrest after shooting and killing unarmed Trayvon Martin, a young black male who was out for a walk. For

populations of color, the murder and subsequent acquittal were testimony to the engrained structural racism endemic to the United States. Around the same time as the acquittal, educational researchers in the United States, as well as other locations, were nearing the deadline to submit proposals to the largest convening of educational researchers in the continent, the American Educational Research Association. I wrote the following short essay out of sheer frustration at seeing a disconnect between so many conference proposals, manuscripts, and the societal context in which they take place. It seems an appropriate summation of what it means to see educational research as relational and then seek realistic coordinates from a place of integrity.

WHAT DOES THE TRAYVON MARTIN CASE HAVE TO DO WITH EDUCATIONAL RESEARCH?

I write this still reeling from the Zimmerman verdict that verified, again, that the infrastructure of this nation is one built to support and maintain white supremacy. My social media feeds are flooded by the posts of pain, anger, and resentment that people of color are feeling as they are reminded of the core truths about this nation. Many of my educational researcher colleagues are also likely preparing their proposals this week to present at the American Educational Research Association that takes place every spring.

What does one have to do with the other? Everything. Schooling is one of the key locations of social reproduction in society. That means, put less academically, that schools are one of the core spaces where some are privileged and others are marginalized. It is where standards of competency and images of intellect are conveyed, all culturally based and typically, biased. Schools, as a part of a nation built on white supremacy, reflect this culture. From pedagogy and curriculum to policy and private interests, schools do the bidding of a nation constructed to eradicate Indigenous populations, ensure that populations of color are trained to populate low-income home, work, and incarceration spaces, and maintain property rights for European Americans.

Educational research undoubtedly figures into this equation and therefore we must ask what our research does to advance, topple, or create alternatives outside of this deliberate design of domination. As we prepare our proposals and proofread the required sections of theoretical framework, research methodology, and significance, let us do so with some modicum of answerability to the ways in which schooling has acted, for centuries, to name Indigenous peoples as savage to treat them savagely, African American people as thugs to treat them thuggishly, and immigrant populations as peripheral to place them on the side. Higher education and the research industrial complex are a fundamental part of this landscape and calculus of schooling.

> The proposals that we prepare should minimally explicitly address how the research we present addresses a system that requires individualistic ideas of meritocracy to maintain a white heteropatriarchal supremacy. Meritocracy tells us that if we work hard, play by the rules, and are good people, this system will reward us. Put in terms of higher education, this is the logic used to position publications in high status journals as the sure route to promotion and tenure. Put in terms of K-12 schooling, it comes down to the grades and, increasingly, test scores.
>
> So, for AERA, if the research is about increasing those beloved test scores, at least be explicit about what Eve Tuck implores social science to do and address your theory of change: how exactly will the better scores alter the "open season on black boys" as Gary Younge put it so eloquently? A bit more broadly construed, how might this research help different populations locate their social advantage and act responsibly from those places? I don't imagine educational research to be able to speak to the triage needs that many of us are feeling right now, but neither should it require six steps of extrapolation to address explicitly systems of codified colonialism, racism, and patriarchy.
>
> Educators and educational researchers often work from the theory that with a good education, social mobility and achievement and safety is likely in the United States. Trayvon Martin was an honor student with a 3.7 GPA and had a full-ride scholarship to a college. He played by those oh-so-precious rules of meritocracy, but Zimmerman played by the much more fundamental rules of white supremacy and violence.

This essay has within it initial, incomplete but necessary stances to engaging research as answerable to not just "larger" societal problems but as having played a role in coloniality for hundreds of years. However, this is not a commonly shared or rigorously understood history. Because of that, there have been, and we should expect that there will continue to be, ways that educational research is connected to contexts in less than helpful ways. Attending to our role within shifting contexts, our own shifting roles, in a constant state of flux with each other is, at the onset, a seemingly daunting task, particularly when we understand the premise that there cannot be a pure knowability of any phenomenon, educational or otherwise. However, this stance also affords the opportunity to unfurl the grip on control and instead situate ourselves as answerable. While this is a preferable stance for anyone, particularly given the historical stance of ownership and territory that is fundamental to settler colonial logics, as educational researchers we are also able/obligated to be specific about what we are answerable to. In the next chapter, I discuss three key tenets that educational research should be answerable to: learning as transformation, knowledge as impermanent, and genealogies of coloniality.

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Indigenous Environmental Education for Cultural Survival

Leanne Simpson, Trent University, Canada

Abstract

Aboriginal Peoples are facing a number of serious and complex environmental issues within their territories. Post-secondary environmental education programs in Canada have been slow to adopt curriculum and develop programs to meet the needs of Aboriginal students and their communities. This manuscript outlines necessary components of successful Indigenous environmental education programs at the post-secondary level based on the author's participation in three such programs as a program developer/director, curriculum developer and instructor, the current literature, and, in addition, her experiences as an Anishinaabe student studying Western science.

Résumé

Les peuples autochtones font face, sur leurs territoires, à de sérieuses et complexes questions de nature environnementale. Les programmes d'éducation environnementale offerts au niveau postsecondaire au Canada tardent à concevoir des programmes et à adopter un programme d'enseignement qui soient en mesure de répondre aux besoins des étudiants autochtones et à ceux de leur communauté. Le présent manuscrit donne un aperçu des composantes nécessaires au succès d'un programme postsecondaire d'éducation environnementale pour les Autochtones. L'auteure se prononce en vertu de sa participation à trois programmes d'éducation environnementale (en tant que directrice et conceptrice de programme, conceptrice de programme d'enseignement et enseignante) et en vertu de la littérature actuelle publiée à ce sujet. Le manuscrit fait suite à l'expérience personnelle de l'auteure, une Anishinaabe ayant étudié la science occidentale.

Many Aboriginal Peoples face devastating environmental degradation impacting their ways of life, knowledge systems, traditional governance systems, foods, and cultures. While larger Aboriginal Nations and tribal council organizations are often able to hire personal to address and manage some of these issues, it is difficult for smaller communities to find the monetary resources and personnel to develop and fill such positions. Consequently, few communities are equipped with the necessary resources to effectively deal with the over-whelming number of environmental issues facing their people and their lands.

The root cause of many of the environmental issues facing Aboriginal communities lies in the process of colonization and subsequent colonial policies

that continue to grip our Nations in contemporary times. Aboriginal Nations still do not have control over their Traditional Territories. We are still not able to make decisions about how our land will be used, or not used, how we will govern, and to a large extent, how our children will be educated.

The Canadian government and Aboriginal leaders have often promoted education as the answer to injustices we face in our communities (Castellano, Davis, & Lahache, 2000). Currently, there are very few post-secondary educational programs in Canada that root their curriculum in Aboriginal languages, content, processes, perspectives, philosophies, knowledge, and Indigenous methods of teaching and learning (Royal Commission on Aboriginal Peoples (RCAP) Volume 3, 1996). Further, few programs are designed to enable students to address the issues of colonization and colonialism in their communities, effect healing and decolonization at the individual, community and national levels, facilitate resistance strategies in response to current injustice, and promote the building of healthy, sustainable Aboriginal communities and Nations based on traditional cultural values and processes. These skills are essential to enable Aboriginal students to return to Aboriginal communities and urban organizations and effect change. More often post-secondary educational programs are designed to prepare students to fully participate in the economic and academic life of the dominant society (RCAP Volume 3, 1996). This leaves Aboriginal students in a difficult position. Having been told that education is the key to their future, they are often keen and committed to programs that will better the social, environmental, and political conditions in their communities and for their children. Yet the vast majority of these programs are geared towards the learning needs of non-Aboriginal students, leaving Aboriginal students with little knowledge they can apply to the situations they face in their communities and few skills to ensure the cultural survival of their people. This situation is particularly real for Aboriginal students with the desire to become environmental problem solvers within Aboriginal communities, and Aboriginal political or urban organizations.

Environmental Issues in Aboriginal Communities

Aboriginal Nations currently face some of the most devastating effects of environmental destruction in Canada. The Gwitch'in and First Nations in the Yukon are battling toxic contamination brought to their territories through long-range transport, industry, and government ignorance. Inuit Elders in Nunavut warn of the dire consequences of global warming as they witness accelerated climate change. The Mohawks of Akwesasne in southeastern Ontario continue to fight against industrial contamination of their waters, air, land, fish, and animals in addition to the human health impacts of that contamination. The Pimicikamak Cree Nation in northern Manitoba demand to be treated fairly and equitable by governments responsible for flooding 1.2 million hectares

of their land for hydroelectric development. The Innu Nation in Labrador confront low level military flight testing on their territory in addition to mining and forestry interests. Burnt Church First Nation in New Brunswick continue to exercise their Treaty Right to fish lobster despite non-Native violence and injustice on the part of the Department of Fisheries in Oceans. Traditional Métis farmers in Manitoba and Saskatchewan are concerned with the impact of biotechnology on their traditional seed stocks. In the west, the Haida and Gitsan Nations are working to protect their forests from unsustainable industrial clear cutting, while the Nuu-chah-nulth and Shuswap Nations try to protect their lands from the impacts of tourist development and deforestation and their waters from exploitation.

These struggles are not easy. Indigenous Peoples often find themselves challenging government-supported multinational corporations who exploit their territories for profit with no acknowledgment that their operations are on Indigenous lands, or that the industrial waste products they produce negatively impact local Aboriginal communities. Yet protecting our Traditional Territories is paramount for our cultures and Nations to flourish. Our spiritualities, identities, languages, and systems of governance come from the land. The sustenance of our wisdom, worldviews, philosophies, and values comes from the land. The source of our knowledge and our teachers themselves come from the land and the spirit-world it encompasses.

Arming Aboriginal students with the skills and knowledge to address these issues is a difficult task, particularly when they will often have to find funding and infrastructure within their communities to support their efforts upon graduation. Our continuance as peoples will be dependent upon the ability of our youth to protect traditional lands; reclaim, revitalize, and nurture our traditional systems of knowledge and language; and build sustainable local economies.

I come to this work as an Anishinaabekwe (Ojibwe woman) with training in both Anishinaabeg Knowledge and Western science. Throughout the completion of my PhD, I was repeatedly asked by different Aboriginal organizations to develop curriculum and courses around the environment that included both Western science and Indigenous Knowledge. This is a difficult task, and the following paper is a result of five years of curriculum and program development in addition to teaching in different post-secondary programs designed to deliver Indigenous environmental education to varying degrees.

I am involved in three different environmental education programs at the post secondary level. The first, Soaring Eagle (Gaa Bi Ombaashid Migizi), is a four-week community-based cultural immersion program for Aboriginal youth (18 to 30) concerning different environmental issues from both Western and Aboriginal perspectives. Much of the program takes place on the land and the curriculum is rooted both pedagogically and epistemologically in Anishinaabeg Knowledge. Western science is presented as a useful tool for Aboriginal communities to address particular issues within this context. I am involved with the program and curriculum development in addition to the delivery of the program.

I have also been an instructor and curriculum developer in the First Nations Environment and Education Training Program at the Centre for Indigenous Environmental Resources in Winnipeg for the past five years. This program promotes both Indigenous and Western scientific pedagogy and content to Aboriginal students from across Canada. Teams of instructors including an Elder, a Western scientist and an Aboriginal academic or community person teach each course. Over the 18 month program, there is an emphasis on hands-on learning, support for field trips onto the land and into communities, and scientists are encourage to adopt an issues based approach to their course material (Simpson, 1998; Sellers, McDonald, & Wilson, 2001).

Currently, I am the Director of the Indigenous Environmental Studies Program at Trent University. This program encompasses a two-year diploma program designed primarily for Aboriginal students in Indigenous Environmental Studies in addition to a special emphasis degree program for both Aboriginal and non-Aboriginal students. The program is taught within a university system presenting numerous barriers to realizing and employing elements of Indigenous education models. I attempt to expose these students to issues surrounding Indigenous Knowledge in academic and environmental management type situations and employ Indigenous ways of teaching and learning as much as the university environment permits.

The following paper outlines components of successful post-secondary Indigenous environmental education models as realized through my own experiences as a program/curriculum developer and instruction, interactions with Elders, and a review of the pertinent academic literature (that with the exception of one or two authors contains very little pertaining to Indigenous environmental education in Canada). The first section entitled, "Indigenous Knowledge in Indigenous Environmental Education Programs" outlines necessary components of programs designed to promote Indigenous Knowledge, traditional Aboriginal environmental philosophies, and Indigenous teaching and learning processes. The second section, "Western Science in Indigenous Environmental Education," outlines necessary program elements when including Western science in Indigenous environmental education programs. My perspectives are strongly informed by my experiences as an Aboriginal student studying science at Canadian universities for six years in addition to the traditional teachings of Anishinaabeg Elders.

Indigenous Knowledge as the Foundation of Indigenous Environmental Education

Founding Indigenous Environmental Education programs within Indigenous Knowledge systems is one of the most important ways of strengthening our cultures, promoting environmental protection, the realization of sustainable local economies, and supporting students through healing and decolonizing

processes. It requires the participation and leadership of the Elders in all aspects of the program, access to the land, the application of Indigenous education models and philosophies of education, the employment of Indigenous teaching and learning mechanisms, and a constant decolonization process for both instructors and students. It is a transformative process in its very nature. Ultimately, this approach requires not only consistent financial support but also a strong commitment to educating students in not just *culturally appropriate* ways, but *culturally inherent* ways. It requires flexibility and open-ness on the part of the post-secondary institutions that house these programs and a willingness to completely recognize Indigenous Knowledge and Indigenous education philosophies on their own terms, as valid ways of teaching and learning, equal to their Western counterparts. The following elements are necessary for programs attempting to promote Indigenous Knowledge as the foundation of Indigenous environmental education.

Including Elders as Experts

"Elders are keepers of tradition, guardians of culture, the wise people, the teachers. In Aboriginal societies, elders are known to safeguard knowledge that constitutes the unique inheritance of the nation" (RCAP Volume 3, 1996). As such, Elders must be included, supported and looked upon to provide guidance and direction for both instructors and students in post-secondary Indigenous environmental education programs. In order to do this, programs must consider Elders as valuable Gifts, not as "extras" or "guest speakers." Programs must adapt to provide teaching and learning environments that compliment Elders' cultural teaching styles and comfort levels in addition to the special needs of Elders. Programs must ensure that Elders are properly compensated for their participation, leadership and instruction. Our Elders provide us with the inspiration, knowledge, and guidance to face contemporary environmental issues and to assume our roles within our cultures, communities, and Nations. Promoting Indigenous Knowledge as the foundation of Indigenous environmental education programs necessitates our experts, the Knowledge-Holders, to be at the fore of program and curriculum development as well as course instruction.

Grounding Programs in Indigenous Philosophies of Education

Numerous Aboriginal researchers have written about the importance of grounding Aboriginal education in Aboriginal educational philosophies in order to promote healthy identities (Antone, 2000; Corbiere, 2000; Fitznor, Haig-Brown, & Moses, 2000; Castellano, Davis, & Lahache, 2000; Cajete, 1999; Graveline, 1998; RCAP Volume 3, 1996). While this is not disputed, it can be difficult to fully ground programs in Indigenous education philosophies

within post-secondary institutions in Canada because this requires programs and courses to be run in a fundamentally different way than what occurs in the majority of post-secondary education institutions. Indigenous education has been well documented in the literature and is generally described as wholistic education (RCAP Volume 3, 1996), education that is tailored to the person, and encompasses learning from emotional, intellectual, physical, and spiritual realms. Indigenous education philosophies also embrace hands-on-learning techniques where students are able to apply their learning to real-world situations. They promote life long learning, personal reflection and change, and flexible teaching and learning processes based on the needs of individual students. Developing programs and curriculum grounded in Indigenous philosophies of teaching and learning entails employing the processes of Indigenous teaching and learning encompassed in Indigenous pedagogies.

Utilizing Indigenous Ways of Teaching and Learning

Employing Indigenous ways of teaching and learning, including ceremonies, dreams, visions and visioning, fasting, storytelling, learning-by-doing, observation, reflecting, and creating, not only allows students to share and learn in a culturally inherent manner, but also reinforces the concept that Indigenous Knowledge is not only content but also process (Simpson, 1999, 2000a; Graveline, 1998; Cajete, 1994; Peat, 1994). Incorporating a diversity of teaching methods amongst time for personal reflection and emotional, intellectual, physical, and spiritual support can re-focus post secondary education programs from content driven curriculum to process-oriented learning. Teaching Circles can be used to ensure students have the chance to participate in class discussions, while Sharing Circles can assist students in working through emotional aspects of the curriculum (Hart, 1996). All of these components promote Indigenous Knowledge as a process and support the essence of Indigenous education philosophies.

Language

Many Elders and Aboriginal academics have written about the importance of promoting Aboriginal languages as a means to ensure cultural survival (Corbiere, 2000; Antone, 2000). Aboriginal languages are the basic repositories of Aboriginal worldviews and thus contain within their grammatical structures the values and teachings of the people that construct them (Little Bear, 1998; Armstrong, 1995). Language instruction within post-secondary Indigenous environmental studies programs is virtually non-existent except in a very few university/college programs where students can take a language course as part of their larger program of study, yet language remains a vital link between the land, Aboriginal Peoples, and our knowledge. Promotion of

Aboriginal languages within Indigenous environmental educations programs is an essential skill for communication within Aboriginal communities and with Elders, it reinforces a deeper understanding of Aboriginal knowledge and it lays the foundation for cultural survival.

Connecting to the Land

Connecting to the land is critical if Indigenous ways of teaching and learning are to be employed and programs are to be grounded in Indigenous educational philosophies. "Being out on the land" is the place where Elders are often most comfortable teaching and interacting with students. Since Indigenous knowledge comes from the land, it is imperative that students are given the opportunity to connect to the land in an emotional, spiritual, physical, and intellectual way. This means instructors and programs must have the necessary resources and established relationship to enable instruction to occur outside of the classroom and often out of urban areas for extended periods. It can also mean that programs have to be willing to support students who are parents in either arranging child-care or bringing their children with them. The latter option usually works well with traditional education models (in which children were always included in daily life), as children are not only consider to be important teachers, but can remind students and instructors of their original motivation for engaging in a formal learning process.

Making a Space for Resistance

In addition to grounding the processes of teaching and learning in Indigenous Knowledge, and basing the curriculum in Indigenous content, students and instructors must also be encouraged to think about how our Ancestors have resisted the processes of colonization, colonialism, and assimilation in the past. This injects the learning process with power and hope with the recognition that our peoples have worked hard to protect our Traditional Territories, cultures, and knowledge in the past, and it counters the stereotype that Aboriginal Peoples were simply helpless victims in these horrific processes. It assists students and instructors in recognizing their responsibilities to the coming generations and allows students to develop the skills they need to engage in effective resistance strategies once they graduate. Engaging students in a community project or practicum component provides them with the opportunity to gain supported real-world experience in fund raising, proposal writing, budget making, project management, and decision-making. This can also link students together in a powerful support network that can continue well after programs end.

Supporting Decolonization

Decolonization is a personal process that involves a great deal of time and effort for each individual (Anderson, 2000; Graveline, 1998). At the same time we are encouraging students to critically analyze the processes and worldviews contributing to contemporary environmental issues in Aboriginal Territories, we must also work actively to revitalize cultural knowledge and positive alternatives for the future based on traditional Indigenous values. Theatre, singing, drumming, dancing, and storytelling, in addition to humour are all excellent culturally inherent ways of facilitating these processes. Elders can also provide appropriate ceremonies and counseling support. The theme of decolonization and cultural reclamation should be consistent and run throughout the program, rather than attempting to compartmentalize the process into a unit or learning module. These processes are intensely personal and emotional, so programs must ensure that appropriate support mechanisms are in place. Students should be encouraged to work through these issues at their own pace and must be given time and space their personal decolonization path. Instructors should be prepared to engage in a learning processes in a way that is much more intense and time consuming than mainstream university or college teaching.

Grounding programs in Indigenous Knowledge provides students with some of the wisdom and many of the skills needed to facilitate change in their communities and in the field of the environment. It is also important for students to gain Western scientific literacy and competency. This allows Aboriginal environmental problem solvers to use knowledge and skills from both knowledge systems in addition to enabling students to deconstruct and critique scientific evidence used to justify environmental destruction in their territories. Western scientific literacy can assist students in hiring scientists, co-ordinating community-based scientific research, and in becoming a liaison between the community and Western scientific experts once they graduate.

Western Science in Indigenous Environmental Education

Western science has been closely linked to imperialism and colonialism throughout history (Tuhiwai-Smith, 1999). In Aboriginal communities, Western science is often perceived as the primary tool governments and industry use to nullify environmental impacts created by unsustainable industrial and resource development, particularly in impact assessment proceedings. Western scientific literacy however, is also often seen an important and necessary tool for Aboriginal Peoples working in the field of the environment at the community and tribal organization level, yet mainstream science education has failed miserably at attracting and retaining Aboriginal students (Cajete, 1999). Despite advances made in the past decade in graduating

Aboriginal students in post-secondary education programs, the lowest participation rates for Aboriginal students at universities in Canada occur in agriculture, biological sciences, mathematics, and the physical sciences. The reasons for these low participation rates are complex. Much university science education focuses on theory and is taught in the lecture/lab format, teaching styles and philosophies that run contrary to Indigenous traditions in education. Aboriginal students are concerned with the relevance of this approach, particularly when their educational decisions are based on the real-world needs of their communities and nations (Simpson, 2000b). Other Native students become frustrated with the lack of Aboriginal content in science programs, particularly when much of mainstream Western scientific education is in direct contrast to traditional Aboriginal worldviews, knowledge, philosophies, and values. Little room is made to accommodate Aboriginal students who need to work through these contradictions and controversies.

Gregory Cajete, a Tewa educator writes:

> Teaching the basic concepts forming the foundations of modern science, students are led to believe that:
>
> - Time is uniform and flows in a single linear direction from a past to a present and on to a future;
> - Matter is made of particles that obey universal laws which never change;
> - Our mind is our brain;
> - Only the fittest survive through the process of natural selection;
> - Modern science will eventually solve all major mysteries of the universe; and
> - Scientists are totally objective and scientific knowledge is universally applicable [Hayward, 1984, p. 66]. (1999, p. 37)

Aboriginal worldviews directly contradict each of the above statements. So unless time, space, and guidance is give to Aboriginal students as they come to terms with these inherent differences, science can serve either to assimilate Aboriginal students into its framework or further alienate them by undermining their own knowledge systems. The situation is only made worse given that Western science is so dominant in Euro-Canadian society, and that it is often used to support and maintain oppressive power relationships between Indigenous Peoples and the state. These realities must be acknowledged. Challenging the popular scientific assumption that science is the *only* way of knowing is also important and Western science can begin to become more palatable to Aboriginal students if it is presented as another tool they can use to advance the agendas of their people and the environment. Presenting case studies of communities and Nations that have employed science as part of a resistance or environmental justice strategy can also spark student's interests in the value of science. However, instructors must be very cognizant of the exclusionary nature of the discourse around science and actively promote Western science as just another way of knowing, not one

that is more valid, or more reliable than Indigenous systems. Again, Aboriginal students need time to discuss these issues, express themselves emotionally, and they need space to reflect. Elders can be most helpful in these situations, because they can assist students coming to an understanding of these apparent dichotomies and contradictions within their own cultural philosophies, theories and knowledge systems.

Oftentimes, Aboriginal students have negative first encounters with Western science either within their own communities or within the public school system. The historic (and often contemporary) relationship between Western science and Indigenous Peoples has been laden with racism, power imbalance, and oppression (Tuhiwai-Smith, 2000). Aboriginal students need to be afforded the opportunity to express these experiences, seek validation, and heal from pain this has caused them.

Based on my experiences as an Aboriginal science student at the undergraduate and graduate level, and six years of teaching and developing curriculum for Aboriginal environmental education programs, of which at least a part are grounded in Western science, I have found the following to be necessary elements of successful programs:

- The use of Aboriginal instructors and scientists as much as possible is important to provide students with role models, and people who can answer their questions about perceived/actual conflicts between Western science and Aboriginal knowledge and culture;
- The employment of scientists who have experience working with Aboriginal Peoples and in Aboriginal communities, and who are sensitive to the needs and realities of Aboriginal communities ensures that Aboriginal students understand that there are concerned sensitive individuals working within scientific fields;
- Students must be able to personally identify with course content and the real-world applications of that content. This means designing courses and programs with substantial Aboriginal content, issues, and case studies at the fore in addition to using Aboriginal teaching and learning methods to present Western ideas;
- Curriculum must be used that acknowledges science as one knowledge system, not the only system. It must also acknowledge explicitly and implicitly that Aboriginal Peoples have been employing complex technologies, engineering knowledge, mathematics, and methods of experimentation for thousands of years, that both knowledge systems have their benefits and weaknesses;
- Curriculum must also include a critical evaluation of Western science from Aboriginal perspectives including the negative impacts of science on Aboriginal communities in the past and in contemporary times. This analysis must make space for students' personal reactions to the content in addition to providing positive examples of how contemporary communities are using science as a tool to advance their agendas;

- Content should be useful and applicable to the situations students will find themselves in the future—i.e. working on environmental issues for communities and Aboriginal organizations, not just preparing students for post-graduate programs;
- Space must be made for students' concerns, anger, confusion, and conflict between science and Aboriginal knowledge. This is often a necessary part of coming to terms with Aboriginal knowledge and Western science. This will require culturally based methods of healing, conflict resolution and the leadership of Elders;
- Programs and curricula that employ applied and issues based approaches must not be viewed as being less academically rigorous simply because they present science in a different way than traditional science courses; and
- Effort needs to be channeled into modifying curriculum so that it is process-oriented rather than content and theory driven. This means letting go of many of the standard evaluation techniques used in post-secondary science programs (quizzes, tests, multiple choice exams) and embracing appropriate alternatives (community reports, critiques, field reports, journals, etc.)

Looking to the Ancestors to Prepare for the Future

Over the past five years, a few post-secondary Indigenous environmental education programs in Canada have begun to address the needs of Aboriginal students and Aboriginal communities with regard to environmental education. By grounding programs in Indigenous education philosophies and Indigenous knowledge students are better prepared to take on their responsibilities in their communities and Aboriginal organizations upon graduation. By modifying mainstream Western scientific instruction, students can also successfully gain the necessary scientific literacy to assist in becoming environmental problem-solvers.

Our Elders teach us that the Earth is sick, and that when the earth is sick we will all suffer the consequences. The philosophical foundations of Aboriginal education have been well documented in the literature. Post-secondary institutions are eager to attract Aboriginal students to their institutions. Approaching the development of Indigenous Education programs with the needs of Aboriginal students and communities at the fore, and with cultural prosperity as the goal, can produce programs that promote Indigenous Knowledge, Indigenous processes of teaching and learning, and the appropriate use of Western science to counteract the environmental destruction in Indigenous Territories. Protecting the land and building healthy, sustainable local economies will provide future generations of Aboriginal Peoples with the wisdom and tools to strengthen their relationships to the land and to continue to decolonize their communities and Nations.

Notes on Contributor

Leanne Simpson is of Anishinaabeg ancestry. She is currently the Director of Indigenous Environmental Studies at Trent University in Peterborough, ON.

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Decolonizing Methodologies

Research and Indigenous Peoples

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Introduction

From the vantage point of the colonized, a position from which I write, and choose to privilege, the term 'research' is inextricably linked to European imperialism and colonialism. The word itself, 'research', is probably one of the dirtiest words in the indigenous world's vocabulary. When mentioned in many indigenous contexts, it stirs up silence, it conjures up bad memories, it raises a smile that is knowing and distrustful. It is so powerful that indigenous people even write poetry about research. The ways in which scientific research is implicated in the worst excesses of colonialism remains a powerful remembered history for many of the world's colonized peoples. It is a history that still offends the deepest sense of our humanity. Just knowing that someone measured our 'faculties' by filling the skulls of our ancestors with millet seeds and compared the amount of millet seed to the capacity for mental thought offends our sense of who and what we are.[1] It galls us that Western researchers and intellectuals can assume to know all that it is possible to know of us, on the basis of their brief encounters with some of us. It appals us that the West can desire, extract and claim ownership of our ways of knowing, our imagery, the things we create and produce, and then simultaneously reject the people who created and developed those ideas and seek to deny them further opportunities to be creators of their own culture and own nations. It angers us when practices linked to the last century, and the centuries before that, are still employed to deny the validity of indigenous peoples' claim to existence, to land and territories, to the right of self-determination, to the survival of our languages and forms of cultural knowledge, to our natural resources and systems for living within our environments.

This collective memory of imperialism has been perpetuated through the ways in which knowledge about indigenous peoples was collected, classified and then represented in various ways back to the West, and then, through the eyes of the West, back to those who have been

colonized. Edward Said refers to this process as a Western discourse about the Other which is supported by 'institutions, vocabulary, scholarship, imagery, doctrines, even colonial bureaucracies and colonial styles'.[2] According to Said, this process has worked partly because of the constant interchange between the scholarly and the imaginative construction of ideas about the Orient. The scholarly construction, he argues, is supported by a corporate institution which 'makes statements about it [the Orient], authorising views of it, describing it, by teaching about it, settling it, ruling over it'.[3] In these acts both the formal scholarly pursuits of knowledge and the informal, imaginative, anecdotal constructions of the Other are intertwined with each other and with the activity of research. This book identifies research as a significant site of struggle between the interests and ways of knowing of the West and the interests and ways of resisting of the Other. In this example, the Other has been constituted with a name, a face, a particular identity, namely *indigenous peoples*. While it is more typical (with the exception of feminist research) to write about research within the framing of a specific scientific or disciplinary approach, it is surely difficult to discuss *research methodology* and *indigenous peoples* together, in the same breath, without having an analysis of imperialism, without understanding the complex ways in which the pursuit of knowledge is deeply embedded in the multiple layers of imperial and colonial practices.

Many researchers, academics and project workers may see the benefits of their particular research projects as serving a greater good 'for mankind', or serving a specific emancipatory goal for an oppressed community. But belief in the ideal that benefiting mankind is indeed a primary outcome of scientific research is as much a reflection of ideology as it is of academic training. It becomes so taken for granted that many researchers simply assume that they as individuals embody this ideal and are natural representatives of it when they work with other communities. Indigenous peoples across the world have other stories to tell which not only question the assumed nature of those ideals and the practices that they generate, but also serve to tell an alternative story: the history of Western research through the eyes of the colonized. These counter-stories are powerful forms of resistance which are repeated and shared across diverse indigenous communities. And, of course, most indigenous peoples and their communities do not differentiate scientific or 'proper' research from the forms of amateur collecting, journalistic approaches, film making or other ways of 'taking' indigenous knowledge that have occurred so casually over the centuries. The effect of travellers' tales, as pointed out by French philosopher Foucault, has contributed as much to the West's knowledge of itself as has the systematic gathering of scientific data. From some indigenous perspectives the gathering of

information by scientists was as random, *ad hoc* and damaging as that undertaken by amateurs. There was no difference, from these perspectives, between 'real' or scientific research and any other visits by inquisitive and acquisitive strangers.

This book acknowledges the significance of indigenous perspectives on research and attempts to account for how, and why, such perspectives may have developed. It is written by someone who grew up within indigenous communities where stories about research and particularly about researchers (the human carriers of research) were intertwined with stories about all other forms of colonization and injustice. These were cautionary tales where the surface story was not as important as the underlying examples of cultural protocols broken, values negated, small tests failed and key people ignored. The greater danger, however, was in the creeping policies that intruded into every aspect of our lives, legitimated by research, informed more often by ideology. The power of research was not in the visits made by researchers to our communities, nor in their fieldwork and the rude questions they often asked. In fact, many individual non-indigenous researchers remain highly respected and well liked by the communities with whom they have lived. At a common sense level research was talked about both in terms of its absolute worthlessness to us, the indigenous world, and its absolute usefulness to those who wielded it as an instrument. It told us things already known, suggested things that would not work, and made careers for people who already had jobs. 'We are the most researched people in the world' is a comment I have heard frequently from several different indigenous communities. The truth of such a comment is unimportant, what does need to be taken seriously is the sense of weight and unspoken cynicism about research that the message conveys.

This cynicism ought to have been strong enough to deter any self-respecting indigenous person from being associated with research. Obviously, in this case, it has not, which leads to my other motivation for writing about indigenous peoples and research. This is a book which attempts to do something more than deconstructing Western scholarship simply by our own retelling, or by sharing indigenous horror stories about research. In a decolonizing framework, deconstruction is part of a much larger intent. Taking apart the story, revealing underlying texts, and giving voice to things that are often known intuitively does not help people to improve their current conditions. It provides words, perhaps, an insight that explains certain experiences – but it does not prevent someone from dying. It is with that sense of reality that the second part of the book has been written. Whilst indigenous communities have quite valid fears about the further loss of intellectual and cultural knowledges,

and have worked to gain international attention and protection through covenants on such matters, many indigenous communities continue to live within political and social conditions that perpetuate extreme levels of poverty, chronic ill health and poor educational opportunities.[4] Their children may be removed forcibly from their care, 'adopted' or institutionalized. The adults may be as addicted to alcohol as their children are to glue, they may live in destructive relationships which are formed and shaped by their impoverished material conditions and structured by politically oppressive regimes. While they live like this they are constantly fed messages about their worthlessness, laziness, dependence and lack of 'higher' order human qualities. This applies as much to indigenous communities in First World nations as it does to indigenous communities in developing countries. Within these sorts of social realities, questions of imperialism and the effects of colonization may seem to be merely academic; sheer physical survival is far more pressing. The problem is that constant efforts by governments, states, societies and institutions to deny the historical formations of such conditions have simultaneously denied our claims to humanity, to having a history, and to all sense of hope. To acquiesce is to lose ourselves entirely and implicitly agree with all that has been said about us. To resist is to retrench in the margins, retrieve what we were and remake ourselves. The past, our stories local and global, the present, our communities, cultures, languages and social practices – all may be spaces of marginalization, but they have also become spaces of resistance and hope.

It is from within these spaces that increasing numbers of indigenous academics and researchers have begun to address social issues within the wider framework of self-determination, decolonization and social justice. This burgeoning international community of indigenous scholars and researchers is talking more widely about indigenous research, indigenous research protocols and indigenous methodologies. Its members position themselves quite clearly as indigenous researchers who are informed academically by critical and often feminist approaches to research, and who are grounded politically in specific indigenous contexts and histories, struggles and ideals. Many indigenous communities and organizations have developed policies about research, are discussing issues related to control over research activities and the knowledge that research produces, and have developed ethical guidelines and discussion documents. The second part of this book addresses some of the issues currently being discussed amongst indigenous communities that relate to our own priorities and problems. These priorities often demand an understanding of the ways in which we can ask and seek answers to our own concerns within a context in which resistance to new formations

of colonization still has to be mounted and articulated. In other words, research is not an innocent or distant academic exercise but an activity that has something at stake and that occurs in a set of political and social conditions.

If in a sense this book is simply another contribution to the ways in which social science researchers in general think about methodologies and approaches to research – in this case among people and communities who hold research in high disdain – it has not been written with that intention. Rather, it is addressed more specifically to those researchers who work with, alongside and for communities who have chosen to identify themselves as indigenous. A growing number of these researchers define themselves as indigenous, although their training has been primarily within the Western academy and specific disciplinary methodologies. Many indigenous researchers have struggled individually to engage with the disconnections that are apparent between the demands of research, on one side, and the realities they encounter amongst their own and other indigenous communities, with whom they share lifelong relationships, on the other side. There are a number of ethical, cultural, political and personal issues that can present special difficulties for indigenous researchers who, in their own communities, work partially as insiders, and are often employed for this purpose, and partially as outsiders, because of their Western education or because they may work across clan, tribe, linguistic, age and gender boundaries. Simultaneously, they work within their research projects or institutions as insiders within a particular paradigm or research model, and as outsiders because they are often marginalized and perceived to be representative of either a minority or a rival interest group. Patricia Hill Collins refers to 'the outsider within' positioning of research.[5] Sometimes when in the community ('in the field') or when sitting in on research meetings it can feel like inside-out/outside-in research. More often, however, I think that indigenous research is not quite as simple as it looks, nor quite as complex as it feels! If I have one consistent message for the students I teach and the researchers I train it is that indigenous research is a humble and humbling activity.

Indigenous researchers are expected, by their communities and by the institutions which employ them, to have some form of historical and critical analysis of the role of research in the indigenous world. In general, this analysis has been acquired organically and outside of the academy. Despite the extensive literature about the life and customs of indigenous peoples, there are few critical texts on research methodologies which mention the word indigenous or its localized synonyms. Critiques by feminist scholars, by critical theorists, by black and African American scholars have provided ways of talking about knowledge and

its social constructions, and about methodologies and the politics of research. But the words that apply to indigenous researchers have been inserted into the text, then read with our own world in/sight. I hope that what is written here provides space for further dialogue within a framework that privileges the indigenous presence, that uses 'the words' (such as colonialism, decolonization, self-determination), and that acknowledges our continuing existence. It has not been written, therefore, as a technical book about research for people who talk the language of research, but as a book which situates research in a much larger historical, political and cultural context and then examines its critical nature within those dynamics.

The term 'indigenous' is problematic in that it appears to collectivize many distinct populations whose experiences under imperialism have been vastly different. Other collective terms also in use refer to 'First Peoples' or 'Native Peoples', 'First Nations' or 'People of the Land', 'Aboriginals' or 'Fourth World Peoples'.[6] Some groups prefer the labels that connect us to Mother Earth, and to deeply significant spiritual relationships. While not denying the powerful world views embedded in such terms, within my own cultural framework as within others, they are not the terms that will be used here. A recent phenomenon which partly explains such a position is the Western fascination with New Age spiritual meanings which makes our own belief systems available, yet again, for further mining and exploitation. In some contexts, such as Australia and North America, the word indigenous is a way of including the many diverse communities, language groups and nations, each with their own identification within a single grouping. In other contexts, such as New Zealand, the terms 'Maori' or *tangata whenua* are used much more frequently than 'indigenous' as the universal term, while different origin and tribal terms are also used to differentiate between groups. Although the word 'Maori' is an indigenous term it has been identified as a label which defines a colonial relationship between 'Maori' and 'Pakeha', the non-indigenous settler population. For many of the world's indigenous communities there are prior terms by which they have named themselves. There are also terms by which indigenous communities have come to be known, initially perhaps as a term of insult applied by colonizers, but then politicized as a powerful signifier of oppositional identity, for example the use of the term 'Black Australia' by Aborigine activists. Inside these categories for describing or labelling are other terms that describe different layers of relationships and meanings within and between different groups. Some of these terms are about the classification systems used within the local colonial context, and others are about a prior relationship with groups whose territories now span different states.

'Indigenous peoples' is a relatively recent term which emerged in the 1970s out of the struggles primarily of the American Indian Movement (AIM), and the Canadian Indian Brotherhood. It is a term that internationalizes the experiences, the issues and the struggles of some of the world's colonized peoples.[7] The final 's' in 'indigenous peoples' has been argued for quite vigorously by indigenous activists because of the right of peoples to self-determination. It is also used as a way of recognizing that there are real differences between different indigenous peoples.[8] The term has enabled the collective voices of colonized people to be expressed strategically in the international arena. It has also been an umbrella enabling communities and peoples to come together, transcending their own colonized contexts and experiences, in order to learn, share, plan, organize and struggle collectively for self-determination on the global and local stages. Thus the world's indigenous populations belong to a network of peoples. They share experiences as peoples who have been subjected to the colonization of their lands and cultures, and the denial of their sovereignty, by a colonizing society that has come to dominate and determine the shape and quality of their lives, even after it has formally pulled out. As Wilmer has put it, 'indigenous peoples represent the unfinished business of decolonization'.[9]

The word 'indigenous' is also used in ways which are quite contrary to the definitions of the term just described, but which are legitimate meanings of the word itself. For example it is used to describe or account for the distinctiveness of colonial literary and/or feminist traditions. It has been coopted politically by the descendants of settlers who lay claim to an 'indigenous' identity through their occupation and settlement of land over several generations or simply through being born in that place – though they tend not to show up at indigenous peoples' meetings nor form alliances that support the self-determination of the people whose forebears once occupied the land that they have 'tamed' and upon which they have settled. Nor do they actively struggle as a society for the survival of indigenous languages, knowledges and cultures. Their linguistic and cultural homeland is somewhere else, their cultural loyalty is to some other place. Their power, their privilege, their history are all vested in their legacy as colonizers.

Part of the project of this book is 'researching back', in the same tradition of 'writing back' or 'talking back', that characterizes much of the post-colonial or anti-colonial literature.[10] It has involved a 'knowingness of the colonizer' and a recovery of ourselves, an analysis of colonialism, and a struggle for self-determination. Research is one of the ways in which the underlying code of imperialism and colonialism is both regulated and realized. It is regulated through the formal rules of individual scholarly disciplines and scientific paradigms, and the

institutions that support them (including the state). It is realized in the myriad of representations and ideological constructions of the Other in scholarly and 'popular' works, and in the principles which help to select and recontextualize those constructions in such things as the media, official histories and school curricula. Ashis Nandy argues that the structures of colonialism contain rules by which colonial encounters occur and are 'managed'.[11] The different ways in which these encounters happen and are managed are different realizations of the underlying rules and codes which frame in the broadest sense what is possible and what is impossible. In a very real sense research has been an encounter between the West and the Other. Much more is known about one side of those encounters than is known about the other side. This book reports to some extent on views that are held and articulated by 'the other sides'. The first part of the book explores topics around the theme of imperialism, research and knowledge. They can be read at one level as a narrative about a history of research and indigenous peoples but make much more sense if read as a series of intersecting and overlapping essays around a theme.

One of the issues examined relates to the way research became institutionalized in the colonies, not just through academic disciplines, but through learned and scientific societies and scholarly networks. The transplanting of research institutions, including universities, from the imperial centres of Europe enabled local scientific interests to be organized and embedded in the colonial system. Many of the earliest local researchers were not formally 'trained' and were hobbyist researchers and adventurers. The significance of travellers' tales and adventurers' adventures is that they represented the Other to a general audience back in Europe which became fixed in the milieu of cultural ideas. Images of the 'cannibal' chief, the 'red' Indian, the 'witch' doctor, or the 'tattooed and shrunken' head, and stories which told of savagery and primitivism, generated further interest, and therefore further opportunities, to represent the Other again.

Travellers' stories were generally the experiences and observations of white men whose interactions with indigenous 'societies' or 'peoples' were constructed around their own cultural views of gender and sexuality. Observations made of indigenous women, for example, resonated with views about the role of women in European societies based on Western notions of culture, religion, race and class. Treaties and trade could be negotiated with indigenous men. Indigenous women were excluded from such serious encounters. As Memmi noted in his 'Mythical Portrait of the Colonized', the use of zoological terms to describe primitive people was one form of dehumanization.[12] These images have become almost permanent, so deeply embedded are they

in the way indigenous women are discussed. 'How often do we read in the newspaper about the death or murder of a Native man, and in the same paper about the victimisation of a female Native, as though we were a species of sub-human animal life?' asks a First Nation Canadian woman, Lee Maracle. 'A female horse, a female Native, but everyone else gets to be called a man or a woman.'[13] Across the Pacific, Maori women writers Patricia Johnston and Leonie Pihama make reference to Joseph Banks's description of young Maori women who were as 'skittish as unbroke fillies'.[14] Similarly, in Australia, Aborigine women talk about a history of being hunted, raped and then killed like animals.

Travellers' tales had wide coverage. Their dissemination occurred through the popular press, from the pulpit, in travel brochures which advertised for immigrants, and through oral discourse. They appealed to the voyeur, the soldier, the romantic, the missionary, the crusader, the adventurer, the entrepreneur, the imperial public servant and the Enlightenment scholar. They also appealed to the downtrodden, the poor and those whose lives held no possibilities in their own imperial societies, and who chose to migrate as settlers. Others, also powerless, were shipped off to the colony as the ultimate prison. In the end they were all inheritors of imperialism who had learned well the discourses of race and gender, the rules of power, the politics of colonialism. They became the colonizers.

The second part of the book examines the different approaches and methodologies that are being developed to ensure that research with indigenous peoples can be more respectful, ethical, sympathetic and useful. The chapters in the second part ought not to be read as a 'how to' manual but as a series of accounts and guidelines which map a wide range of research-related issues. Feminism and the application of more critical approaches to research have greatly influenced the social sciences. Significant spaces have been opened up within the academy and within some disciplines to talk more creatively about research with particular groups and communities – women, the economically oppressed, ethnic minorities and indigenous peoples. These discussions have been informed as much byth e politics of groups outside the academy as by engagement with the problems which research with real, living, breathing, thinking people actually involves. Communities and indigenous activists have openly challenged the research community about such things as racist practices and attitudes, ethnocentric assumptions and exploitative research, sounding warning bells that research can no longer be conducted with indigenous communities as if their views did not count or their lives did not matter.

In contemporary indigenous contexts there are some major research issues which continue to be debated quite vigorously. These can be

summarized best by the critical questions that communities and indigenous activists often ask, in a variety of ways: Whose research is it? Who owns it? Whose interests does it serve? Who will benefit from it? Who has designed its questions and framed its scope? Who will carry it out? Who will write it up? How will its results be disseminated?[15] While there are many researchers who can handle such questions with integrity there are many more who cannot, or who approach these questions with some cynicism, as if they are a test merely of political correctness. What may surprise many people is that what may appear as the 'right', most desirable answer can still be judged incorrect. These questions are simply part of a larger set of judgements on criteria that a researcher cannot prepare for, such as: Is her spirit clear? Does he have a good heart? What other baggage are they carrying? Are they useful to us? Can they fix up our generator? Can they actually do anything?

The issues for indigenous researchers seeking to work within indigenous contexts are framed somewhat differently. If they are 'insiders' they are frequently judged on insider criteria; their family background, status, politics, age, gender, religion, as well as on their perceived technical ability. What is frustrating for some indigenous researchers is that, even when their own communities have access to an indigenous researcher, they will still select or prefer a non-indigenous researcher over an indigenous researcher. There are a number of reasons this happens, sometimes based on a deeply held view that indigenous people will never be good enough, or that indigenous researchers may divulge confidences within their own community, or that the researcher may have some hidden agenda. For quite legitimate reasons the indigenous researcher may not be the best person for the research, or may be rejected because they do not have sufficient credibility. The point being made is that indigenous researchers work within a set of 'insider' dynamics and it takes considerable sensitivity, skill, maturity, experience and knowledge to work these issues through. Non-indigenous teachers and supervisors are often ill prepared to assist indigenous researchers in these areas and there are so few indigenous teachers that many students simply 'learn by doing'. They often get hurt and fail in the process. I have heard this articulated by indigenous researchers as 'being burned' or 'being done over'. The second part of the book provides some ways for thinking about such issues.

In writing a book that focuses on research I have drawn together a range of experiences and reflections on both indigenous and research issues. I have a childhood familiarity with museums, having helped my father – a Maori anthropologist – pursue his own research in the back rooms of the Auckland War Memorial Museum and other museums in the United States. I cannot really recollect how, specifically, I helped him

because many of my strongest memories are of playing hide and seek in the cupboards and corridors. I do remember quite vividly, however, the ritual of cleansing ourselves by sprinkling water over us which my mother insisted on when we returned home. My grandmother was not too thrilled with the idea of my being in a museum at all. Many other Maori people, I was aware, were scared of what lay in the cupboards, of whose bones and whose ancestors were imprisoned in those cases. Later, my first ever paid job was as an assistant working at the Peabody Museum in Salem, Massachusetts. I helped my father, when required, to photograph intricately carved Marquesan adzes which ships of the East India Company had taken back from the Pacific to Salem. My paid job was to work in the basement of the museum typing labels to put on the logbooks of ships which had sailed from New England during the American Revolution. What was especially ironic was that there I was, a 16-year-old Maori, in the basement of a museum in Salem, Massachussetts, working on material related to the American Revolution – and none of it was new to me! I had already had a strong diet of British, European and American history.

In a sense, then, I grew up in a world in which science and our own indigenous beliefs and practices coexisted. I did not become an anthropologist, and although many indigenous writers would nominate anthropology as representative of all that is truly bad about research, it is not my intention to single out one discipline over another as representative of what research has done to indigenous peoples. I argue that, in their foundations, Western disciplines are as much implicated in each other as they are in imperialism. Some, such as anthropology, made the study of us into 'their' science, others were employed in the practices of imperialism in less direct but far more devastating ways. My own academic background is in education, and in my field there is a very rich history of research which attempts to legitimate views about indigenous peoples which have been antagonistic and dehumanizing. Discussions around the concept of intelligence, on discipline, or on factors that contribute to achievement depend heavily on notions about the Other. The organization of school knowledge, the hidden curriculum and the representation of difference in texts and school practices all contain discourses which have serious implications for indigenous students as well as for other minority ethnic groups.

My own career in research began in the health field, working alongside a team of respiratory physicians, paediatricians, epidemiologists and psychologists who were trying to make sense of the ways families manage asthma in young children. As coordinator of this project I had to learn very quickly how to participate in discussions on a wide range of matters, how to gain access to some very serious bureaucratic systems

such as hospital wards and emergency clinics, and how to talk about research to a range of audiences, from medical doctors to families with limited English language. I enjoyed the challenges of thinking about what things mean, about why things happen and about the different ways in which the world can be understood. I also enjoyed interviewing people and, even more, analyzing the responses they gave. While I enjoyed the hands-on level at which I was working I found that the more rewarding work involved me in trying to 'think through' a problem, 'working with' the data and bringing it together with my own readings. Mostly, however, I found that the particular issues I faced as an indigenous researcher working with indigenous research participants were never addressed by the literature, my own training or the researchers with whom I worked. Later I became involved in other research projects in education, evaluation, tribal research and community-based projects. I began to teach others about research and have since become involved in managing much larger research projects that train indigenous and non-indigenous researchers. I have spoken about research to First Nations peoples in Canada, to Hawai'ian and other Pacific Islands researchers, and to Aborigine audiences as well as to many Maori groups who have become active as research communities. I supervise indigenous students carrying out their research projects, participate in research groups and lead some of my own projects.

In positioning myself as an indigenous woman, I am claiming a genealogical, cultural and political set of experiences. My *whakapapa* or descent lines come through both my parents. Through them I belong to two different major 'tribal' groups and have close links to others.[16] In my case, these links were nurtured through my early years by my extended family relationships and particularly by my maternal grandmother. It is through my grandmother that my sense of place became so firmly grounded. That was especially important because my parents worked away from either of their tribal territories. My grandmother insisted, and my parents supported this although she gave them no choice, that I return to her as often as possible. When I had to return to my parents she would pack food parcels for me just in case they did not feed me well enough! Although she developed in me the spiritual relationships to the land, to our tribal mountain and river, she also developed a sense of quite physical groundedness, a sense of reality, and a sense of humour about ourselves. It may be those qualities that make me sceptical or cautious about the mystical, misty-eyed discourse that is sometimes employed by indigenous people to describe our relationships with the land and the universe. I believe that our survival as peoples has come from our knowledge of our contexts, our environment, not from

some active beneficence of our Earth Mother. We had to know to survive. We had to work out ways of knowing, we had to predict, to learn and reflect, we had to preserve and protect, we had to defend and attack, we had to be mobile, we had to have social systems which enabled us to do these things. We still have to do these things.

Politically, my dissent lines come down through my tribal lines but also through my experiences as a result of schooling and an urban background. One of my tribes, Ngati Awa, is part of what is referred to as the *raupatu*. The *raupatu* refers to those tribes whose territories were invaded and whose lands were confiscated by the New Zealand Government last century. The grievances which have come about through the *raupatu* form the basis of our claim to the Waitangi Tribunal. That particular dissent line is part of a legacy shared by many other indigenous peoples. My other dissent lines, however, were shaped by the urban Maori activism which occurred in New Zealand in the late 1960s and early 1970s. I belonged to one group, Nga Tamatoa or 'Young Warriors', and was at one point its secretary. We had several aims, although the main two were the recognition of the Treaty of Waitangi and the compulsory teaching of our language in schools. We formed a number of different alliances with other radical groups and some of our members belonged simultaneously to two or three groups. One of my roles was to educate younger Maori students about our aims. This took me into school assemblies and to situations where young people gathered. From those beginnings I became a primary or elementary teacher, then a secondary school counsellor, a health researcher and then a lecturer at university. While my professional career was developing I also helped in the early development of Te Kohanga Reo, the Maori language nests, and was one of the group which initiated an alternative Maori elementary school movement known as Kura Kaupapa Maori. I write, therefore, from the position of an indigenous Maori woman from New Zealand. Like indigenous peoples in Australia, Canada, the United States and Western Europe I write from the context of the First World, a world described in Julian Burger's *Report from the Frontier* simply as rich.[17] Despite the very powerful issues which locate many First World indigenous peoples in Third World social conditions we still, comparatively speaking, occupy a place of privilege within the world of indigenous peoples. That does not mean that indigenous peoples from the First World have better ideas or know anything more. It may mean that such things as access to food and water can be taken for granted or that the politics of food and water can be played out in vastly different ways within the First World than is possible within developing states.

One of the many criticisms that gets levelled at indigenous

intellectuals or activists is that our Western education precludes us from writing or speaking from a 'real' and authentic indigenous position. Of course, those who do speak from a more 'traditional' indigenous point of view are criticized because they do not make sense ('speak English, what!'). Or, our talk is reduced to some 'nativist' discourse, dismissed by colleagues in the academy as naïve, contradictory and illogical. Alternatively it may be dismissed as some modernist invention of the primitive. Criticism is levelled by non-indigenous and indigenous communities. It positions indigenous intellectuals in some difficult spaces both in terms of our relations with indigenous communities and within the Western academy. It is not a new phenomenon either, the matter having been addressed previously by Frantz Fanon, for example. More recent writers have situated discussions about the intellectual within debates about post-colonialism.[18] Many indigenous intellectuals actively resist participating in any discussion within the discourses of post-coloniality. This is because post-colonialism is viewed as the convenient invention of Western intellectuals which reinscribes their power to define the world. For each indigenous intellectual who actually succeeds in the academy, however – and we are talking relatively small numbers – there is a whole array of issues about the ways we relate inside and outside of our own communities, inside and outside the academy, and between all those different worlds.

Language and the citing of texts are often the clearest markers of the theoretical traditions of a writer. In this book I draw on selected ideas, scholarship and literature. These may or may not be attributed to either Western or indigenous traditions. I say that because like many other writers I would argue that 'we', indigenous peoples, people 'of colour', the Other, however we are named, have a presence in the Western imagination, in its fibre and texture, in its sense of itself, in its language, in its silences and shadows, its margins and intersections. The selection of ideas has been informed by a preference for, and a grounding in, particular forms of analysis which are probably already evident. Like many other Maori undergraduate students who attended university in the 1970s I read some texts for my formal course of study and another set of alternative readings to keep sane, to keep connected to the rest of my life and, more importantly, to make sense of things that were happening around me. Much of that alternative reading course is now collected in anthologies labelled as cultural studies.

In addition to this literature, however, are the stories, values, practices and ways of knowing which continue to inform indigenous pedagogies. In international meetings and networks of indigenous peoples, oracy, debate, formal speech making, structured silences and other conventions which shape oral traditions remain a most important way of developing

trust, sharing information, strategies, advice, contacts and ideas. In Maori language there is the expression *Kanohi kitea* or the 'seen face', which conveys the sense that being seen by the people – showing your face, turning up at important cultural events – cements your membership within a community in an ongoing way and is part of how one's credibility is continually developed and maintained.[19] In First Nations and Native American communities there are protocols of being respectful, of showing or accepting respect and reciprocating respectful behaviours, which also develop membership, credibility and reputation. In Hawai'i *kanaka Maoli,* or native Hawai'ian researchers, have talked of the many aunties, uncles and elders whose views must be sought prior to conducting any interviews in a community. In Australia Aborigine researchers speak also of the many levels of entry which must be negotiated when researchers seek information. Other indigenous researchers speak of the long-term relationships which are established and extend beyond a research relationship to one involving families, communities, organizations and networks.

Some methodologies regard the values and beliefs, practices and customs of communities as 'barriers' to research or as exotic customs with which researchers need to be familiar in order to carry out their work without causing offence. Indigenous methodologies tend to approach cultural protocols, values and behaviours as an integral part of methodology. They are 'factors' to be built in to research explicitly, to be thought about reflexively, to be declared openly as part of the research design, to be discussed as part of the final results of a study and to be disseminated back to the people in culturally appropriate ways and in a language that can be understood. This does not preclude writing for academic publications but is simply part of an ethical and respectful approach. There are diverse ways of disseminating knowledge and of ensuring that research reaches the people who have helped make it. Two important ways not always addressed by scientific research are to do with 'reporting back' to the people and 'sharing knowledge'. Both ways assume a principle of reciprocity and feedback.

Reporting back to the people is never ever a one-off exercise or a task that can be signed off on completion of the written report. Some of my students have presented their work in formal ceremonies to family and tribal councils; one has had his work positioned amongst the wreaths which have surrounded the casket of a deceased relation. I have travelled with another student back to an area where she carried out her interviews so that she could present copies of her work to the people she interviewed. The family was waiting for her; they cooked food and made us welcome. We left knowing that her work will be passed around the family to be read and eventually will have a place in the living room

along with other valued family books and family photographs. Other indigenous students have presented a symposium on their research into native schools to an international conference, or given a paper to an academic audience. Some have been able to develop strategies and community-based initiatives directly from their own research projects. Some have taken a theoretical approach to a problem and through their analyses have shown new ways of thinking about issues of concern to indigenous peoples.

Sharing knowledge is also a long-term commitment. It is much easier for researchers to hand out a report and for organizations to distribute pamphlets than to engage in continuing knowledge-sharing processes. For indigenous researchers, however, this is what is expected of us as we live and move within our various communities. The old colonial adage that knowledge is power is taken seriously in indigenous communities and many processes have been discussed and enacted in order to facilitate effective ways of sharing knowledge. Indigenous communities probably know more than the dominant white community about issues raised by the Human Genome Diversity Project, for example, or the General Agreement on Tariffs and Trade (GATT) agreement. I recall, when attending the Indigenous Peoples World Conference on Education in Woollongong, New South Wales, an Aborigine woman telling me that 'we are always waiting for them [white Australia] to catch up. They still don't know.' I use the term 'sharing knowledge' deliberately, rather than the term 'sharing information' because to me the responsibility of researchers and academics is not simply to share surface information (pamphlet knowledge) but to share the theories and analyses which inform the way knowledge and information are constructed and represented. By taking this approach seriously it is possible to introduce communities and people who may have had little formal schooling to a wider world, a world which includes people who think just like them, who share in their struggles and dreams and who voice their concerns in similar sorts of ways. To assume in advance that people will not be interested in, or will not understand, the deeper issues is arrogant. The challenge always is to demystify, to decolonize.

In reading this book you may well think that it is an anti-research book on research. There is certainly a history of research of indigenous peoples which continues to make indigenous students who encounter this history very angry. Sometimes they react by deciding never to do any research; but then they go out into the community and, because of their educational background and skills they are called upon to carry out projects or feasibility studies or evaluations or to write submissions that are based on information, data, archival records and interviews with

elders. They are referred to as project workers, community activists or consultants, anything but 'researchers'. They search and record, they select and interpret, they organize and re-present, they make claims on the basis of what they assemble. This is research. The processes they use can also be called methodologies. The specific tools they use to gain information can also be called methods. Everything they are trying to do is informed by a theory, regardless of whether they can talk about that theory explicitly.

Finally, a brief comment on non-indigenous researchers still researching with indigenous peoples or about indigenous issues. Clearly, there have been some shifts in the way non-indigenous researchers and academics have positioned themselves and their work in relation to the people for whom the research still counts. It is also clear, however, that there are powerful groups of researchers who resent indigenous people asking questions about their research and whose research paradigms constantly permit them to exploit indigenous peoples and their knowledges. On the positive side, in the New Zealand context, work is being carried out in terms of bicultural research, partnership research and multi-disciplinary research. Other researchers have had to clarify their research aims and think more seriously about effective and ethical ways of carrying out research with indigenous peoples. Still others have developed ways of working with indigenous peoples on a variety of projects in an ongoing and mutually beneficial way. The discussion about what that means for non-indigenous researchers and for indigenous peoples is not addressed here directly. It is not that I do not have views on the matter but rather that the present work has grown out of a concern to develop indigenous peoples as researchers. There is so little material that addresses the issues indigenous researchers face. The book is written primarily to help ourselves.

Notes

1 Thompson, A. S. (1859), *The Story of New Zealand. Past and Present – Savage and Civilized*, John Murray, London. Thompson writes that, 'The comparative smallness of the brain is produced by neglecting to exercise the higher faculties of the mind, for as muscles shrink from want of use, it is only natural that generations of mental indolence should lessen the size of brains', Vol. 1, p. 81.

2 Said, E. (1978), *Orientalism*, Vintage Books, London, p. 2.

3 *Ibid.* p. 3.

4 See, for a summary of issues, Burger, J. (1987), *Report from the Frontier. The State of the World's Indigenous Peoples*, Zed Books, London.

5 Collins, Patricia Hill (1991), 'Learning from the Outsider Within: the Sociological Significance of Black Feminist Thought', in *Beyond Methodology. Feminist Research as*

Lived Research, eds M. M. Fonow and J. A. Cook, Indiana University Press, Bloomington.

6 Aga Khan, Sadruddin, and Hassan bin Talal (1987), *Indigenous Peoples, a Global Quest for Justice: a Report for the Independent Commission on International Humanitarian Affairs*, Zed Books, London.

7 For background see *ibid.* and Wilmer, F. (1993), *The Indigenous Voice in World Politics*, Sage, California.

8 Burger, J. (1990), *The Gaia Atlas of First Peoples*, Gaia Books, London.

9 Wilmer, *The Indigenous Voice*, p. 5.

10 I am not quite sure who said it first but several writers and texts have employed this concept in their titles and writing. Salman Rushdie wrote that the 'Empire writes back to the center'. African American women writers have taken the theme of 'talking back' or 'back chat' in similar ways to which Maori women speak of 'answering back'. Also important was a critical text on racism in Britain written by the Center for Contemporary Cultural Studies, University of Birmingham (1982): *The Empire Strikes Back: Race and Racism in 1970s Britain*, Hutchinson.

11 Nandy, A. (1989), T*he Intimate Enemy: Loss and Recovery of Self under Colonialism*, Oxford University Press, Delhi.

12 Memmi, A. (1965), *The Colonizer and the Colonized*, expanded edition (1991), Beacon Press Boston, pp. 79–89.

13 Maracle, L. (1996), *I Am Woman. A Native Perspective on Sociology and Feminism*, Press Gang Publishers, Vancouver, p. 21.

14 Johnston, P. and L. Pihama, (1994), 'The Marginalisation of Maori Women', in *Hecate*, Vol. 20, No. 2, pp. 83–97.

15 See for example, Smith, L. T. (1985), 'Te Rapunga I Te Ao Maori', in *Issues of Research and Maori*, eds, G. H. Smith and M. K. Hohepa, Research Unit for Maori Education, Education Department, University of Auckland.

16 The term 'tribal' is problematic in the indigenous context but is used commonly in New Zealand to refer to large kinship-based, political groupings of Maori. Our preferred name for a 'tribe' is *iwi*.

17 Burger, *Report From the Frontier*, pp. 177–208.

18 See, for example, essays by Spivak, Gayatri (1990), *The Post-Colonial Critic*, ed. S. Harasym, Routledge, New York.

19 Bishop, R. and T. Glynn (1992), 'He Kanohi Kitea: Conducting and Evaluating Educational Research', in *New Zealand Journal of Educational Studies*, Vol. 27, No. 2, pp. 125–35.

CHAPTER 8

Twenty-Five Indigenous Projects

The implications for indigenous research which have been derived from the imperatives inside the struggles of the 1970s seem to be clear and straightforward: the survival of peoples, cultures and languages; the struggle to become self-determining, the need to take back control of our destinies. These imperatives have demanded more than rhetoric and acts of defiance. The acts of reclaiming, reformulating and reconstituting indigenous cultures and languages have required the mounting of an ambitious research programme, one that is very strategic in its purpose and activities and relentless in its pursuit of social justice. Within the programme are a number of very distinct projects. Themes such as cultural survival, self-determination, healing, restoration and social justice are engaging indigenous researchers and indigenous communities in a diverse array of projects. The projects intersect with each other in various ways. They have multiple goals and involve different indigenous communities of interest. Some projects, for example, have been driven by indigenous lawyers and constitutional experts, others by indigenous women and health workers, or by social workers and policy analysts. This chapter sets out 25 different projects currently being pursued by indigenous communities. The projects constitute a very complex research programme. Each one intersects with the agenda for indigenous research discussed in Chapter 6 in two or three different ways, that is by site/s and by processes. Each project is outlined to give a bare indication of the parameters offered within it and how these may link in with some of the others.

The projects are not claimed to be entirely indigenous or to have been created by indigenous researchers. Some approaches have arisen out of social science methodologies, which in turn have arisen out of methodological issues raised by research with various oppressed groups. Some projects invite multidisciplinary research approaches. Others have arisen more directly out of indigenous practices. There are two technical

points to make here. First, while most projects fall well within what will be recognized as empirical research, not all do. Some important work is related to theorizing indigenous issues at the level of ideas, policy analysis and critical debate, and to setting out in writing indigenous spiritual beliefs and world views. Second, the focus is primarily on social science research projects rather than what may be happening in the natural or physical sciences or technology. There is one technical distinction to clarify. In the chapter I draw on Sandra Harding's very simple distinction between methodology and method, that is, 'A research methodology is a theory and analysis of how research does or should proceed ...' and, 'A research method is a technique for (or way of proceeding in) gathering evidence.'[1] Methodology is important because it frames the questions being asked, determines the set of instruments and methods to be employed and shapes the analyses. Within an indigenous framework, methodological debates are ones concerned with the broader politics and strategic goals of indigenous research. It is at this level that researchers have to clarify and justify their intentions. Methods become the means and procedures through which the central problems of the research are addressed. Indigenous methodologies are often a mix of existing methodological approaches and indigenous practices. The mix reflects the training of indigenous researchers which continues to be within the academy, and the parameters and common sense understandings of research which govern how indigenous communities and researchers define their activities.

The Projects

The following projects are not ranked or listed in any particular order.

1 Claiming

In a sense colonialism has reduced indigenous peoples to making claims and assertions about our rights and dues. It is an approach that has a certain noisiness to it. Indigenous peoples, however, have transformed claiming into an interesting and dynamic process. Considerable work and energy has gone into developing the methodologies which relate to 'claiming' and 'reclaiming'. For some indigenous groups the formal claims process demanded by tribunals, courts and governments has required the conducting of intensive research projects resulting in the writing of nation, tribe and family histories. These 'histories' have a focus and purpose, that is, to establish the legitimacy of the claims being asserted for the rest of time. Because they have been written to support claims to territories and resources or about past injustices, they have been constructed around selected stories. These claiming histories have

also been written for different audiences. One audience is the formal court or tribunal audience, who are generally non-indigenous, another the general non-indigenous population, and a third the people themselves. For this last audience the histories are also important teaching histories. They teach both the non-indigenous audience and the new generations of indigenous peoples an official account of their collective story. But, importantly, it is a history which has no ending because it assumes that once justice has been done the people will continue their journey. It may be that in time the histories have to be rewritten around other priorities.

2 Testimonies

> 'My Name is Rigoberta Menchu, I am twenty-three years old, and this is my testimony.'[2]

Testimonies intersect with claiming because they are a means through which oral evidence is presented to a particular type of audience. There is a formality to testimonies and a notion that truth is being revealed 'under oath'. Indigenous testimonies are a way of talking about an extremely painful event or series of events.[3] The formality of testimony provides a structure within which events can be related and feelings expressed.[4] A testimony is also a form through which the voice of a 'witness' is accorded space and protection. It can be constructed as a monologue and as a public performance. The structure of testimony – its formality, context and sense of immediacy – appeals to many indigenous participants, particularly elders. It is an approach that translates well to a formal written document. While the listener may ask questions, testimonies structure the responses, silencing certain types of questions and formalizing others.

3 Story telling

Story telling, oral histories, the perspectives of elders and of women have become an integral part of all indigenous research. Each individual story is powerful. But the point about the stories is not that they simply tell a story, or tell a story simply. These new stories contribute to a collective story in which every indigenous person has a place. In a book called *The Wailing: A National Black Oral History*, Stuart Rintoul has called the oral histories he gathered 'stories handed down in the homes of Black Australians, told to new generations, taught in explanation of racism and mistreatment, recited with rage and dignity and sorrow'.[5] Rintoul writes further that the stories are also 'memories of injustice ... an avalanche of voices crying out in hundreds of countries across innumerable Dreamings'.[6] For many indigenous writers stories are ways of passing down the beliefs and values of a culture in the hope that the new

generations will treasure them and pass the story down further. The story and the story teller both serve to connect the past with the future, one generation with the other, the land with the people and the people with the story. As a research tool, Russell Bishop suggests, story telling is a useful and culturally appropriate way of representing the 'diversities of truth' within which the story teller rather than the researcher retains control.[7] Bishop also suggests that 'the indigenous community becomes a story that is a collection of individual stories, ever unfolding through the lives of the people who share the life of that community'.[8]

Intrinsic in story telling is a focus on dialogue and conversations amongst ourselves as indigenous peoples, to ourselves and for ourselves. Such approaches fit well with the oral traditions which are still a reality in day-to-day indigenous lives. Importantly, story telling is also about humour and gossip and creativity. Stories tell of love and sexual encounters, of war and revenge. Their themes tell us about our cultures. Stories employ familiar characters and motifs which can reassure as well as challenge. Familiar characters can be invested with the qualities of an individual or can be used to invoke a set of shared understandings and histories.

4 Celebrating survival

Celebrating survival is a particular sort of approach. While non-indigenous research has been intent on documenting the demise and cultural assimilation of indigenous peoples, celebrating survival accentuates not so much our demise but the degree to which indigenous peoples and communities have successfully retained cultural and spiritual values and authenticity. The approach is reflected sometimes in story form, sometimes in popular music and sometimes as an event in which artists and story tellers come together to celebrate collectively a sense of life and diversity and connectedness. Events and accounts which focus on the positive are important not just because they speak to our survival, but because they celebrate our resistances at an ordinary human level and they affirm—our identities as indigenous women and men. Celebrating survival as an approach is also a theme running through the collections of elders' stories. In one such collection told to Sandy Johnson she writes of the way in which '[the elders] speak openly of their personal struggles to stay on the path against impossible odds. Their stories of what they have lost and what they have fought to save are both tragic and heroic.'[9] Gregory Cajete writes that 'celebrating is a natural outcome of spiritual sharing and it too can take a diversity of forms. It is an individual and communal process that celebrates the mystery of life and the journey that each of us takes. Celebration is a way of spreading the lights around.'[10]

5 Remembering

The remembering of a people relates not so much to an idealized remembering of a golden past but more specifically to the remembering of a painful past and, importantly, people's responses to that pain. While collectively indigenous communities can talk through the history of painful events, there are frequent silences and intervals in the stories about what happened after the event. Often there is no collective remembering as communities were systematically ripped apart, children were removed for adoption, extended families separated across different reserves and national boundaries. The aftermath of such pain was borne by individuals or smaller family units, sometimes unconsciously or consciously obliterated through alcohol, violence and self-destruction. Communities often turned inward and let their suffering give way to a desire to be dead. Violence and family abuse became entrenched in communities which had no hope. White society did not see and did not care. This form of remembering is painful because it involves remembering not just what colonization was about but what being dehumanized meant for our own cultural practices. Both healing and transformation become crucial strategies in any approach which asks a community to remember what they may have decided unconsciously or consciously to forget.

6 Indigenizing

This project has two dimensions. The first one is similar to that which has occurred in literature with a centring of the landscapes, images, languages, themes, metaphors and stories in the indigenous world and the disconnecting of many of the cultural ties between the settler society and its metropolitan homeland. This project involves non-indigenous activists and intellectuals. The second aspect is more of an indigenous project. The term is used more frequently in South and Central America. The concept of indigenist, says Ward Churchill, means 'that I am one who not only takes the rights of indigenous peoples as the highest priority of my political life, but who draws upon the traditions – the bodies of knowledge and corresponding codes of values – evolved over many thousands of years by native peoples the world over'.[11] The term centres a politics of indigenous identity and indigenous cultural action. M. Annette Jaimes refers to indigenism as being grounded in the alternative conceptions of world view and value systems, 'These differences provide a basis for a conceptualisation of Indigenism that counters the negative connotations of its meanings in third world countries, where it has become synonymous with the "primitive", or with backwardness among superstitious peoples.'[12] Lester Rigney, an Aborigine researcher in New South Wales, names the approach he takes

as indigenist research, an approach which borrows freely from feminist research and critical approaches to research, but privileges indigenous voices.

7 Intervening

Intervening takes action research to mean literally the process of being proactive and of becoming involved as an interested worker for change. Intervention-based projects are usually designed around making structural and cultural changes. Graham Smith describes this approach as a necessary approach when faced with crisis conditions. Smith argues

> firstly, that Maori educational crises continue – this points to a failure of educational policy reforms, research and researchers. Secondly, educational researchers have continued to fail to intervene because of the lack of responsibility and accountability placed on researchers and policy makers. Thirdly much of research has been counter productive to Maori interests, and has merely served the dominant Pakeha group interests, by maintaining the status quo of unequal power distribution.[13]

It is not ethical to walk away, or simply to carry out projects which describe what is already known. State policies for indigenous peoples were also interventionist in profoundly destructive ways. The indigenous intervening project carries with it some working principles. For example, the community itself invites the project in and sets out its parameters. The various departments and agencies involved in such a project are also expected to be willing to change themselves in some way, redirect policy, design new programmes or train staff differently. Intervening is directed then at changing institutions which deal with indigenous peoples and not at changing indigenous peoples to fit the structures.

8 Revitalizing

Indigenous languages, their arts and their cultural practices are in various states of crisis. Many indigenous languages are officially 'dead' with fewer than a hundred speakers. Others are in the last stages before what is described by linguists as 'language death'. Revitalization initiatives in languages encompass education, broadcasting, publishing and community-based programmes. While the Welsh people are not formally part of the indigenous peoples' movements as described in Chapter 6, their programmes are often studied as examples of indigenous achievement. The Welsh language programme is promoted as a model for language revitalization. Welsh schools, from kindergarten to secondary schools, offer teaching through the medium of Welsh. This is supported officially through government funding. Television and newspapers in the medium of Welsh – which include children's programming, drama,

documentaries, news, and sports – provide a comprehensive approach to language revitalization. The European Bureau of Lesser Languages has a role of supporting the diverse minority languages of Europe. Maori language development has followed a similar pattern to the Welsh language example, with an official Language Act and associated educational programmes. In the case of Maori and Welsh language, there is a clear singular language. Many places have to battle for the survival of several languages spoken by small populations. In Canada, for example, most of the indigenous languages could be categorized as being on the verge of extinction. British Columbia has a diverse range of indigenous languages, all of which require support. The Squamish language, for example, has few native speakers. The Squamish Nation helped co-host a conference on indigenous languages in 1989 in order to stimulate discussions and seek solutions to the language crisis. Their Nation's Band Office has an education centre whose staff develop resources for schools and encourage the use of the language by their remaining native speakers. For much of the indigenous world there is little proactive coordination or support. Literacy campaigns tend to frame language survival programmes. Such campaigns are designed around either official languages or one or two dominant languages. The indigenous language is often regarded as being subversive to national interests and national literacy campaigns.

9 Connecting

The importance of making connections and affirming connectedness has been noted also by other minority group researchers. Connectedness positions individuals in sets of relationships with other people and with the environment. Many indigenous creation stories link people through genealogy to the land, to stars and other places in the universe, to birds and fish, animals, insects and plants. To be connected is to be whole. The project of connecting is pursued in New South Wales in one form as literally connecting members of families with each other. A link programme has been designed to restore the descendants of 'stolen children', ones forcibly taken from their families and adopted, to their family connections. Forced adoption and dehumanizing child welfare practices were carried out in many indigenous contexts. Being reconnected to their families and their culture has been a painful journey for many of these children, now adults. Connecting also involves connecting people to their traditional lands through the restoration of specific rituals and practices. In New Zealand one example of this is the practice of burying the afterbirth in the land. The word for afterbirth is the same as the word for land, *whenua*. The practice was prohibited as Maori mothers were forced to have their babies in hospitals rather than

at home. The policies and hospital practices have now changed and Maori parents have reinstituted the practice of taking the afterbirth and burying it in traditional territory. Connecting children to their land and their genealogies through this process is also part of a larger health project designed to encourage young Maori mothers to take better care of themselves and their babies through stronger cultural supports. Connecting is related to issues of identity and place, to spiritual relationships and community wellbeing.

There are other challenges in relation to the project of connecting. Researchers, policy makers, educators, and social service providers who work with or whose work impacts on indigenous communities need to have a critical conscience about ensuring that their activities connect in humanizing ways with indigenous communities. It is a very common experience to hear indigenous communities outline the multiple ways in which agencies and individuals treat them with disrespect and disregard. Connecting is about establishing good relations.

10 Reading

Critical rereading of Western history and the indigenous presence in the making of that history has taken on a different impetus from what was once a school curriculum designed to assimilate indigenous children. The new reading programme is motivated partly by a research drive to establish and support claims, but also by a need to understand what has informed both internal colonialism and new forms of colonization. The genealogy of colonialism is being mapped and used as a way to locate a different sort of origin story, the origins of imperial policies and practices, the origins of the imperial visions, the origins of ideas and values. These origin stories are deconstructed accounts of the West, its history through the eyes of indigenous and colonized peoples. The rereading of imperial history by post-colonial and cultural studies scholars provides a different, much more critical approach to history than was previously acceptable. It is no longer the single narrative story of important white imperial figures, adventurers and heroes who fought their way through undiscovered lands to establish imperial rule and bring civilization and salvation to 'barbaric savages' who lived in 'utter degradation'.

11 Writing

Indigenous people are writing. In Chapter 1 the writing project was named as 'the empire writes back' project. In a localized context, however, writing is employed in a variety of imaginative, critical, and also quite functional ways. Maori author Witi Ihimaera has assembled a

five-volume anthology of Maori literature which he argues represents the 'crossroads ... of a literature of a past and a literature of a present and future'.[14] The title of an anthology of Native Women's writings of North America, *Reinventing the Enemy's Language*, gives a sense of the issues being explored through writing.[15] Similar anthologies and works of indigenous literature are being published around the world by indigenous writers for indigenous reading audiences.[16] The boundaries of poetry, plays, song writing, fiction and non-fiction are blurred as indigenous writers seek to use language in ways which capture the messages, nuances and flavour of indigenous lives. The activity of writing has produced the related activity of publishing. Maori newspapers, which were quite common in the nineteenth century, have been revived as different organizations and tribes seek to provide better information than is available in the mainstream media. Language revitalization initiatives have created a demand for multi-media language resources for children. In the Western Isles of Scotland, a Stornaway publishing house called Acair has produced children's comic books in Scottish Gaelic and cookbooks and other material which supports the Gaelic language. Similar small publishing groups are operating across the indigenous world. Writing workshops and writing courses offered by indigenous writers for indigenous people who want to write are held in many places. The work of authors such as Patricia Grace, Paula Gunn Allen, Louise Erdrich, Witi Ihimaera and Sally Morgan is read by both indigenous and non-indigenous audiences. Biographies and autobiographies including those which are accounts 'told to a non-indigenous person', are sought after by a new reading audience of indigenous people.

12 Representing

Indigenous communities have struggled since colonization to be able to exercise what is viewed as a fundamental right, that is to represent ourselves. The representing project spans both the notion of representation as a political concept and representation as a form of voice and expression. In the political sense colonialism specifically excluded indigenous peoples from any form of decision making. States and governments have long made decisions hostile to the interests of indigenous communities but justified by a paternalistic view that indigenous peoples were like children who needed others to protect them and decide what was in their best interests. Paternalism is still present in many forms in the way governments, local bodies and non-government agencies decide on issues which have an impact on indigenous communities. Being able as a minimum right to voice the views and opinions of indigenous communities in various decision-making bodies is still being struggled over. Even at the minimal level of representation indigenous communities

are often 'thrown in' with all other minorities as one voice amongst many. The politics of sovereignty and self-determination have been about resisting being thrown in with every other minority group by making claims on the basis of prior rights.

Representation is also a project of indigenous artists, writers, poets, film makers and others who attempt to express an indigenous spirit, experience or world view. Representation of indigenous peoples by indigenous people is about countering the dominant society's image of indigenous peoples, their lifestyles and belief systems. It is also about proposing solutions to the real-life dilemmas that indigenous communities confront and trying to capture the complexities of being indigenous. Many of the dilemmas are internalized stress factors in community life which are never named or voiced because they are either taken for granted or hidden by a community. There is an element of the raw, tough and unsympathetic representation of indigenous life by a writer such as Allen Duff who wrote the novel *Once Were Warriors*. And there is the humour of Alexie Sherman who wrote *Reservation Blues*. Film makers such as Merata Mita have a very clear purpose in their work which locates it firmly within a decolonization framework. She says that,

> Not surprisingly, when my obsessive struggle with filmmaking began, it was with the issues that most concerned us as Maori women that I became pre-occupied – the issues of injustice, land, te reo Maori [Maori language], the Treaty, and racism. Add to that women and gender issues, and for those who don't know, these are the things that consume us, consume our energy, beset us every moment of our daily lives, they are brutalising, violent, and some of us die because of them.[17]

13 Gendering

Gendering indigenous debates, whether they are related to the politics of self-determination or the politics of the family, is concerned with issues related to the relations between indigenous men and women. Colonization is recognized as having had a destructive effect on indigenous gender relations which reached out across all spheres of indigenous society. Family organization, child rearing, political and spiritual life, work and social activities were all disordered by a colonial system which positioned its own women as the property of men with roles which were primarily domestic. Indigenous women across many different indigenous societies claim an entirely different relationship, one embedded in beliefs about the land and the universe, about the spiritual significance of women and about the collective endeavours that were required in the organization of society. Indigenous women would argue that their traditional roles included full participation in many aspects of

political decision making and marked gender separations which were complementary in order to maintain harmony and stability. Gendering contemporary indigenous debates occurs inside indigenous communities and while it is debated in other contexts, such as in Western feminist debates, indigenous women hold an analysis of colonialism as a central tenet of an indigenous feminism. A key issue for indigenous women in any challenge of contemporary indigenous politics is the restoration to women of what are seen as their traditional roles, rights and responsibilities. Aroha Mead gives an account of a statement delivered by two Maori women to the Twelfth Session (1994), of the United Nations Working Group on Indigenous Peoples which addressed the way colonialism has influenced indigenous men and had a detrimental affect on indigenous gender relations. She says that

> never before have I witnessed what occurred while the full statement was being read out. Indigenous women sitting within their delegations were visibly moved – some looked around to see who was talking about their pain – some gave victory signals and physical signs of agreement, and many, perhaps even the majority, sat stoically, with tears swelling in their eyes. The words broke through the barriers of language and regionalism. A raw wound was clearly touched.[18]

14 Envisioning

One of the strategies which indigenous peoples have employed effectively to bind people together politically is a strategy which asks that people imagine a future, that they rise above present day situations which are generally depressing, dream a new dream and set a new vision. The confidence of knowing that we have survived and can only go forward provides some impetus to a process of envisioning. In New Zealand, for example, tribes which began their grievance claims against the Crown last century have not only had their claims heard but are negotiating a settlement. For the people who began the process these settlements were simply dreams. If they had listened to politicians, taken the mainstream media seriously, taken heed of scholars and commentators, they would not have begun. Similarly, communities who have worked to revitalise their language or build a new economic base or renegotiate arrangements with governments have worked on the basis of a shared vision. The power of indigenous peoples to change their own lives and set new directions despite their impoverished and oppressed conditions speaks to the politics of resistance.

Sometimes the visions which bind people were set a long time ago and have been passed down the generations as poems, songs, stories, proverbs or sayings. Every indigenous community probably has special

sayings, predictions, riddles and proverbs which are debated frequently and raised both informally and formally. Children are socialized into these sayings and pass them down to their own children. The profound statements of indigenous leaders from the last century and the centuries before are often written in diaries and notebooks, carved into stone, distributed by T-shirt and poster. Often the original source of the comment has been forgotten but the power of the words remain. They make our spirits soar and give us hope. Indigenous people have borrowed freely from each other and it is not uncommon to find the saying of an Indian chief stuck to the kitchen wall in a Maori home, or the saying of a Maori chief embroidered into a wall hanging in an Aborigine home. These sayings have acted like resistance codes which can be passed down by word of mouth to the next person, to the next generation.

15 Reframing

Reframing is about taking much greater control over the ways in which indigenous issues and social problems are discussed and handled. One of the reasons why so many of the social problems which beset indigenous communities are never solved is that the issues have been framed in a particular way. For example, governments and social agencies have failed to see many indigenous social problems as being related to any sort of history. They have framed indigenous issues in 'the indigenous problem' basket, to be handled in the usual cynical and paternalistic manner. The framing of an issue is about making decisions about its parameters, about what is in the foreground, what is in the background, and what shadings or complexities exist within the frame. The project of reframing is related to defining the problem or issue and determining how best to solve that problem. Many indigenous activists have argued that such things as mental illness, alcoholism and suicide, for example, are not about psychological and individualized failure but about colonization or lack of collective self-determination. Many community health initiatives address the whole community, its history and its wider context as part of the problem and part of the solution.

Reframing occurs in other contexts where indigenous people resist being boxed and labelled according to categories which do not fit. This is particularly pertinent in relation to various development programmes, government and non-government. In the case of Maori, for example, a Maori language initiative for young children from birth to school age – known as Te Kohanga Reo, or Maori language nests – constantly has to explain why it is not a child-care centre but a language and culture initiative for young children. The problem of definition is important in this case because it affects funding, but the constant need to justify

difference is experienced by many other communities whose initiatives are about changing things on a holistic basis rather than endorsing the individualized programme emphasis of government models. The need to reframe is about retaining the strengths of a vision and the participation of a whole community.

Reframing occurs also within the way indigenous people write or engage with theories and accounts of what it means to be indigenous. In the politics of indigenous women, for example, there is continuing resistance to the way Western feminists have attempted to define the issues for indigenous women and categorize the positions in which indigenous women should be located. Moves to discuss patriarchy without addressing imperialism and racism are always reframed by indigenous women, and of course other minority women, as inadequate analyses. Similarly moves to attack indigenous culture or indigenous men 'as a group' are also resisted because for indigenous women the issues are far more complex and the objective of analysis is always focused on solving problems. In the end indigenous men and women have to live together in a world in which both genders are under attack.

16 Restoring

Indigenous peoples across the world have disproportionately high rates of imprisonment, suicide and alcoholism. Some indigenous activists regard these rates as the continuation of a war. Says Bobbi Sykes, 'The main question, which has not been addressed by government, is the legitimacy or otherwise of the assumption that white domination of Aboriginal people is in itself a concept of justice.'[19] For Aborigines the high rates of black deaths in custody eventually provoked the establishment of a Royal Commission of Inquiry in 1987 into a problem which had been hidden for many years. The Aborigine rates of death in custody was said to be higher than the rate in South Africa. Inside the incarceration rates for indigenous peoples are similar rates for youth offending and for indigenous women. In the health arena indigenous people have high rates of morbidity and mortality. Maori women have one of the highest rates of lung cancer in the world. Maori suicide rates, both male and female, have risen sharply over the last decade, with New Zealand rates amongst the highest in OECD countries. Aborigine rates of illness have frequently been cited as examples of the Fourth World, rates, which are worse than the rates in developing Third World states, and are made more horrific by the fact that these communities live in nations that have the highest standards of living. At a recent gathering of Pacific leaders, for example, the Australian Prime Minister John Howard was reported to have been reluctant to agree on helping to counter the effects of global warming, citing his duty to put the standard

of living of Australians first. He was not talking about indigenous Australians.

The restoring of wellbeing spiritually, emotionally, physically and materially has involved social workers and health workers in a range of initiatives, some of which have been incorporated into mainstream programmes. Restorative justice in Canada, for example, applies concepts of the 'healing circle' and victim restoration which are based on indigenous processes. These systems have been discussed widely and used to motivate other societies to develop better ways of dealing with offenders and victims. In New Zealand adoption policies and programmes for dealing with children have similarly coopted indigenous practices. Restoring is a project which is conceived as a holistic approach to problem solving. It is holistic in terms of the emotional, spiritual and physical nexus, and also in terms of the individual and the collective, the political and the cultural. Restorative programmes are based on a model of healing rather than of punishing. They sometimes employ concepts such as public shaming as a way of provoking individual accountability and collective problem solving. Health programmes addressing basic health issues have begun to seek ways to connect with indigenous communities through appropriate public health policy and practice models. The failure of public health programmes to improve the health of indigenous communities significantly has motivated a self-help approach by communities. It is especially infuriating when projects such as the Human Genome Project are justified on the grounds that knowledge about genetic resistances to various diseases will 'benefit mankind' when Western health has failed to benefit indigenous human beings.

17 Returning

This project intersects with that of claiming. It involves the returning of lands, rivers and mountains to their indigenous owners. It involves the repatriation of artefacts, remains and other cultural materials stolen or removed and taken overseas. Sykes lists the following examples: 'pickled heads, human gloves, scrotum tobacco pouches, dried scalps, pickled foetus, cicatured skins, complete stuffed, mummified children's bodies and women with child'.[20] In New Zealand the current Minister of Maori Affairs, who is a Maori, has set out a plan to return all tattooed Maori heads which are housed in museums and other collections across the world. They apparently number in the hundreds. In a previous chapter I discussed the house Mataatua which has now been returned to Ngati Awa.

Returning also involves the living. One major tribe in New Zealand has negotiated the return of traditional food gathering sites which will

be marked out for their exclusive use by tribal members. Other programmes have been initiated to repatriate people either through ensuring their membership in official tribal registers or by physically reclaiming them. Adopted children, for example, are encouraged to seek their birth families and return to their original communities.

18 Democratizing

Although indigenous communities claim a model of democracy in their traditional ways of decision making, many contemporary indigenous organizations were formed through the direct involvement of states and governments. Legislation was used to establish and regulate indigenous councils and committees, indigenous forms of representation and indigenous titles to lands. They are colonial constructions that have been taken for granted as authentic indigenous formations. Furthermore many such councils, because they were established through colonialism, have privileged particular families and elite groups over other indigenous families from the same communities. Needless to say, many councils were created as exclusively male domains while the health and welfare programmes were assigned to the women. Maori lawyer Annette Sykes argues, for example, in relation to a claim being made by Maori women to the Waitangi Tribunal, that

> The essence of the claim is to bring to the forefront of the current Treaty jurisprudence, the need to look at notions of governance in Aotearoa and the exclusionary practices that exist, which inhibit and prevent participation by Maori women in the tribal models for self-determination, that have been erected under New Zealand legislation, and the erosion that this in itself has had on Te Mana Wahine in Te Ao Maori [the *mana* of women in the Maori World].[21]

Democratizing in indigenous terms is a process of extending participation outwards through reinstating indigenous principles of collectivity and public debate.

19 Networking

Networking has become an efficient medium for stimulating information flows, educating people quickly about issues and creating extensive international talking circles. Building networks is about building knowledge and data bases which are based on the principles of relationships and connections. Relationships are initiated on a face to face basis and then maintained over many years often without any direct contact. People's names are passed on and introductions are used to bring new members into the network. The face to face encounter is about checking out an individual's credentials, not just their political credentials but their

personalities and spirit. Networking by indigenous peoples is a form of resistance. People are expected to position themselves clearly and state their purposes. Establishing trust is an important feature. In many states police surveillance of indigenous activists and their families is common practice. In some states, such as Guatemala, the disappearance of indigenous peoples has also been common practice. In these contexts networking is dangerous.

Networking is a way of making contacts between marginalized communities. By definition their marginalization excludes them from participation in the activities of the dominant non-indigenous society, which controls most forms of communication. Issues such as the Conventions on Biodiversity or GATT, for example, which have a direct impact on indigenous communities, are not addressed by mainstream media for an indigenous audience. Indigenous peoples would not know of such agreements and their impact on indigenous cultural knowledge if it were not for the power of networking. The project of networking is about process. Networking is a process which indigenous peoples have used effectively to build relationships and disseminate knowledge and information.

20 Naming

This project takes its name from Brazilian educator Paulo Freire whose saying, 'name the word, name the world' (which was about literacy programmes), has been applied in the indigenous context to literally rename the landscape. This means renaming the world using the original indigenous names. Naming as a project of Maori people can be seen in the struggles over the geographical names of some of New Zealand's mountains and significant sites which were renamed randomly after British people and places. Many of the Maori names have now been restored. Naming can also be seen in the naming of children. Indigenous names carried histories of people, places and events. As a result of Christian baptism practices, which introduced Christian names and family names, and schooling practices, where teachers shortened names or introduced either generic names or nicknames, many indigenous communities hid their indigenous names either by using them only in indigenous ceremonies or by positioning them as second names. A more recent assertion in Maori naming practices has been to name children again with long ancestral names and to take on new names through life, both of which were once traditional practices. Children quite literally wear their history in their names.

Naming applies to other things as well. It is about retaining as much control over meanings as possible. By 'naming the world' people name their realities. For communities there are realities which can only be

found in the indigenous language; the concepts which are self-evident in the indigenous language can never be captured by another language.

21 Protecting

This project is multifaceted. It is concerned with protecting peoples, communities, languages, customs and beliefs, art and ideas, natural resources and the things indigenous peoples produce. The scale of protecting can be as enormous as the Pacific Ocean and the Amazon rainforest or as small as an infant. It can be as real as land and as abstract as a belief about the spiritual essence of the land. Every indigenous community is attempting to protect several different things simultaneously. In some areas alliances with non-indigenous organizations have been beneficial in terms of rallying international support. In other areas a community is trying to protect itself by staying alive or staying off alcohol.

Some countries have identified sacred sites and have designated protected areas. Many of these, unfortunately, become tourist spots. Issues about the protection of indigenous knowledge have been discussed at various indigenous conferences which have produced charters and conventions aimed at signalling to the world at large that indigenous knowledges ought to be protected. History seems to suggest that many of these calls for international adherence to such charters will be at best highly selective. The need to protect a way of life, a language and the right to make our own history is a deep need linked to the survival of indigenous peoples.

22 Creating

The project of creating is about transcending the basic survival mode through using a resource or capability which every indigenous community has retained throughout colonization – the ability to create and be creative. The project of creating is not just about the artistic endeavours of individuals but about the spirit of creating which indigenous communities have exercised over thousands of years. Imagination enables people to rise above their own circumstances, to dream new visions and to hold on to old ones. It fosters inventions and discoveries, facilitates simple improvements to people's lives and uplifts our spirits. Creating is not the exclusive domain of the rich nor of the technologically superior, but of the imaginative. Creating is about channelling collective creativity in order to produce solutions to indigenous problems. Every indigenous community has considered and come up with various innovative solutions to problems. That was before colonialism. Throughout the period of colonization indigenous peoples survived because of their imaginative spirit, their ability to adapt and to think around a problem.

Indigenous communities also have something to offer the non-indigenous world. There are many programmes incorporating indigenous elements, which on that account are viewed on the international scene as 'innovative' and unique. Indigenous peoples' ideas and beliefs about the origins of the world, their explanations of the environment, often embedded in complicated metaphors and mythic tales, are now being sought as the basis for thinking more laterally about current theories about the environment, the earth and the universe.

Communities are the ones who know the answers to their own problems, although their ideas tend to be dismissed when suggested to various agencies and governments. Visits to communities which have developed their own programmes demonstrate both the creativity alive and well at the community level and the strength of commitment shown when the programme is owned by the community.

23 Negotiating

Negotiating is about thinking and acting strategically. It is about recognizing and working towards long-term goals. Patience is a quality which indigenous communities have possessed in abundance. Patience and negotiation are linked to a very long view of our survival. When one reads of the decisions made by various indigenous leaders to accept the terms and conditions of colonization, what emerges from those stories is the concern shown by leaders for the long-term survival chances of the collective, of their own people. That was the basis of their courage and, despite the outrage younger generations of indigenous people might feel about the deal which some leaders accepted, the broader picture across several indigenous contexts is one of dignity and acceptance of a specific reality. Their negotiations were undertaken quite literally with guns held at their heads, with their people starving and with death around them.

In today's environment negotiation is still about deal making and it is still about concepts of leadership. Negotiations are also about respect, self-respect and respect for the opposition. Indigenous rules of negotiation usually contain both rituals of respect and protocols for discussion. The protocols and procedures are integral to the actual negotiation and neglect or failure to acknowledge or take seriously such protocols can be read as a lack of commitment to both the process and the outcome. Many indigenous societies are socialized into some forms of negotiation because they are part of trading practices or basic communication styles. The contemporary negotiation project is related to self-determination, in that indigenous nations are negotiating terms for settlements which often mean semi-autonomous government or statutory representation or control over key resources, such as natural

resources within their own territories. Negotiation also occurs where small gains are at stake, however, such as when local communities have worked out an agreement with a local government or agency or another local community. The formality of negotiation is important in protecting the sanctity of the agreement which emerges from a negotiation. Indigenous peoples know and understand what it means for agreements to be dishonoured. The continued faith in the process of negotiating is about retaining a faith in the humanity of indigenous beliefs. values and customary practices.

24 Discovering

This project is about discovering Western science and technology and making science work for indigenous development. There are very few indigenous scientists who remain closely connected to their own indigenous communities. Indigenous students across many contexts have struggled with Western science as it has been taught to them in schools. Science has been traditionally hostile to indigenous ways of knowing. Science teaching in schools has also been fraught with hostile attitudes towards indigenous cultures, and the way indigenous students learn. There are huge debates within the scientific community about the nature of science and how it ought to be taught. This debate is over the notion of constructivism, and concerns the extent to which knowledge is socially constructed or exists 'out there' as a body of knowledge which students simply learn. The development of ethno-science and the application of science to matters which interest indigenous peoples such as environmental and resource management or biodiversity offer some new possibilities for indigenous people to engage with the sciences which they decide are most relevant.

25 Sharing

The final project discussed here is about sharing knowledge between indigenous peoples, around networks and across the world of indigenous peoples. Sharing contains views about knowledge being a collective benefit and knowledge being a form of resistance. Like networking, sharing is a process which is responsive to the marginalized contexts in which indigenous communities exist. Even in the context of New Zealand – a small country, relatively well-off in terms of televisions and communications – Maori people learn more about the issues which affect them at one of the many community gatherings which are held on *marae* then they do from the mainstream media. These gatherings may be for weddings or funerals but they are also used as opportunities to keep the community informed about a wide range of things. The face-to-face nature of sharing is supplemented with local newspapers which

focus on indigenous issues and local radio stations which specialize in indigenous news and music. Sharing is also related to the failure of education systems to educate indigenous people adequately or appropriately. It is important for keeping people informed about issues and events which will impact on them. It is a form of oral literacy, which connects with the story telling and formal occasions that feature in indigenous life.

Sharing is a responsibility of research. The technical term for this is the dissemination of results, usually very boring to non-researchers, very technical and very cold. For indigenous researchers sharing is about demystifying knowledge and information and speaking in plain terms to the community. Community gatherings provide a very daunting forum in which to speak about research. Oral presentations conform to cultural protocols and expectations. Often the audience may need to be involved emotionally with laughter, deep reflection, sadness, anger, challenges and debate. It is a very skilled speaker who can share openly at this level within the rules of the community.

Summary

The projects touched on in this chapter are not offered as the definitive list of activities in which indigenous communities are engaged. There are numerous collaborative projects being undertaken with non-indigenous researchers and organizations. Many of these research partnerships help to develop a trained workforce through the mentoring and guidance provided by the non-indigenous researchers. There are also the more standard types of research projects and methodologies in the social sciences that have not been mentioned here. Some of these approaches, for example those in critical ethnography, have been written about and theorized by scholars working in those disciplines. The naming of the projects listed in this chapter was deliberate. I hope the message it gives to communities is that they have issues that matter and processes and methodologies which can work for them.

Notes

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Article

CHALLENGING KNOWLEDGE CAPITALISM. INDIGENOUS RESEARCH IN THE 21ST CENTURY

MAKERE STEWART-HARAWIRA
University of Alberta

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Biographical note
Makere Stewart-Harawira, Waitaha, is part of the New Zealand Maori diaspora in Canada. She is the author of *The New Imperial Order: Indigenous Responses to Globalization.* Her research and scholarship are driven by her conviction of the necessity for active critical engagement in the local and global crises of governance and sustainability that confront us in the 21st century; the necessity for a re-visioning of how we live together on this planet; and the vital contribution of traditional Indigenous knowledge systems and languages. She may be reached at makere@ualberta.ca.

There is, of course, nothing new about the idea that Indigenous people conduct research. Indigenous peoples have been conducting research since time immemorial, in the sense of investigating and uncovering knowledge and developing new ways of understanding the world. Arguably what might be new, at least as far as the last thirty or so years are concerned, is the formalizing and positioning of Indigenous research as both an act of re-claiming Indigenous sovereignty and authority and as an anti-colonial process of engagement by Indigenous scholars and researchers with mainstream, western science, an engagement that is transforming western research. At the same time, Indigenous researchers claim their ways of knowing and doing research as valid, legitimate and essential ways of understanding and interpreting the world.

The last decades have also seen re-newed attempts within some sections of the academe to discredit both Indigenous ontologies and research methods. In such cases, Indigenous research is deemed inadequate unless it meets western standards of validity. In the context of the neoliberal turn, with its emphasis on market relationships and the related pressures to monetarize research, the efforts to discredit Indigenous researchers take on a dangerous new dynamic. In the past, political correctness concerns dismissed Indigenous research as the misguided political appeasement of disgruntled 'minorities'.

Now such political correctness issues are recast as an insistence on the importance of promoting markets and private-public, or Indigenous-industry partnerships. Indigenous research is deemed important only insofar as it is compatible with overriding concerns for knowledge that creates profits. As I have argued elsewhere, the elevation of the market as the main driver of the academy has profound implications for how we think about knowledge. For Indigenous peoples in particular, this approach constitutes a form of cognitive imperialism which impacts on Indigenous knowledge and Indigenous scholarship in deeply contradictory but ultimately very damaging ways.

In this article, I reflect on these issues within the context of an environment that is in many ways familiar in its relative inhospitality to Indigenous research and in other ways changing at bewildering speed. But first there are some important disclaimers. I make no attempt in this article to define Indigenous people, an important and extensive debate that is however outside the scope of this paper. Nor do I attempt an authoritative definition of either Indigenous knowledge or Indigenous research. Just as there is no single definition of Indigenous people or even of 'western' knowledge or research, nor can there be single, authoritative definition of the nature of Indigenous knowledges and research. Rather, I briefly explore concerns raised by Indigenous scholars and raised by my own and other Indigenous experiences before considering the potential for radically rewriting the postcolonial project against new forms of imperialism, including within the academy. As Foucault points out, the genealogy of subjugated knowledges is important. Thus I take as my starting point the trajectory of Indigenous research within the academy.

Historicizing Indigenous research

Since the earliest days of colonialism over five hundred years ago, the colonial endeavor has sought to codify, quantify and tabulate flora, fauna and peoples. Early anthropologists in 19th century Britain, for instance, literally 'collected' specimens of Indigenous peoples and displayed them in zoos. Within the last hundred years, the identification and study of Indigenous peoples, including their knowledge, ways of being and cultural practices has been dominated by anthropologists and to a lesser but still important degree by historians. The trajectory of Maori Studies in Aotearoa New Zealand underlines the role of anthropology in particular (see Steve Webster (1989), Ranginui Walker (1990), Hirini Mead (1983) and Catriona Timms (2007).

Maori Studies was established as a separate subject of academic study as early as 1952, when the University of Auckland established a branch of Maori Studies within the department of Anthropology. As Hirini Mead observes, the predominant view at the time was that Maori Studies was not worthy of a place within the academy in its own right and should not be "seen as separable from anthropology" (Mead, 1983, p. 335, cited Timms, 2007). These were the heady days of an 'Enlightenment' tradition that for centuries has

treated 'others' as their own private zoo to be identified, categorized, codified and tabulated (c.f. Stewart-Harawira 2005: 61-64), sometimes literally as we have seen. In particular, cultural anthropologist Steve Webster (1989:49) describes the detrimental influence of the positivist tradition of noted anthropologists Malinowski and Firth for Maori peoples and culture. These social scientists redefined and reconstructed Maori culture in ways that made sense to them within a worldview both foreign and in many ways opposed to Maori culture, accruing considerable prestige and advancing their careers at the same time as they developed deformed and distorted accounts of Maori social and cultural life.

At that time, measuring 'acculturation' was an important anthropological project, associated with a covert assimilation agenda and implying the inevitable absorption of the Maori into colonial development. The merger of social anthropology and psychology during the 1950s and 1960s saw the strengthening of the assumption of western social scientists of the right to explain and defines Maori social functioning, personality development and the directions for future Maori social and economic development. Indices for measuring 'Maoriness' (Ritchie 1963: 39) based on the survival of belief and behavior from pre-European Maori culture discounted more recent elements of Maori world views and cultures and simultaneously assumed non-Indigenous 'experts' had the authority to decide who was and was not Maori. As settler anthropologist James Ritchie asserted in his study "Rakau Maoris who continue to base their identity on their Maoriness do so at their own peril" (Richie, 1963: 191). In other words, as Webster argues, anthropologists' cultural definitions and normative assumptions about the 'dangers' of continued Maori identity, as defined by anthropologists, were an expression of colonial power, both over what constitutes Maori identity and regarding the (lack of) desirability of that identity in a context where settler development was assumed to be the destiny of Maori peoples (Webster 1989: 48) 55). The assimilationist agenda of social psychology and anthropology became the commonsense belief of many Maori who absorbed the notion that they must subsume their 'Maoriness' for the greater good, although there has always been important Maori resistance.

It is against this history that Maori research in particular, and Indigenous research more generally, can be understood. In claiming the rights of self-definition, the right to tell their own histories, recover their own traditional knowledge and culturally grounded pedagogies, epistemologies and ontologies, Indigenous scholars are engaged in an arena of struggle which is systemic and sustained. In Aotearoa New Zealand, as elsewhere, at the centre of this struggle are relationships of power and the right of Maori to sovereignty. Nor is this story unfamiliar outside of the Maori context. The complaint that Aboriginal people had been "researched to death" reported by Marlene Castello (2000: 31) regarding the 1992 Royal Commission on Aboriginal Peoples in Canada echoed complaints from many Indigenous communities over many decades. To a large degree this sense of being "researched to death" drove Indigenous initiatives to assert their own sovereign authority

over the right to name and claim their own identities, definitions, traditional knowledge and cultural practice. Most notably, this encompasses the right to their Indigenous intellectual and cultural property and to the repatriation of cultural treasures referred to in the social science community as 'artifacts'. Integral to this movement was the politicization of Indigenous communities and activists during the 1960s and 1970s. The background and details of this global Indigenous movement and its connection to ongoing misappropriation of traditional lands and the loss of language and cultural knowledge has been well recounted by those who were in the forefront of this movement (c.f. Harold Cardinal [1969] 1999; Linda Tuhiwai Smith [1999] 2012; Graham Hinangaroa Smith 1997, Kathy Irwin 1994; Marie Batiste 2000). In Aotearoa New Zealand, Canada and the USA, Indigenous education initiatives by and for Indigenous people emerged alongside legal challenges to states for redress of illegal land appropriations (Smith, 2005; Walker, 1990). In Aotearoa New Zealand, early childhood immersion language programs in Maori expanded to include elementary schools and colleges and leading ultimately to the establishment of autonomous Maori Studies programs in certain universities (for a more detailed account, see Smith, 2005). Similar processes occurred in Australia Canada, the US and elsewhere

In the early 21st century, Indigenous studies programs are significantly different from colonially oriented studies of Indigenous peoples. Once, such studies limited their attention to the cultural artifacts of ethnic groups who expected to pass peacefully or otherwise into oblivion. Today, Indigenous Studies Faculties, Schools and Departments exist within multiple universities across Aotearoa New Zealand, Australia, Canada, the United States and the Pacific, testimony to the ongoing survival and strength of Indigenous communities once programmed for cultural and in some cases, physical, genocide. These academic programs include post-graduate instruction in Indigenous law, international politics, arts and literature, pedagogy, epistemology and research, all recognized as integral to the success of Indigenous post-secondary students and programs and to the broader project of decolonization, not least within the university. Yet these successes have not been achieved without constant and determined negotiation and re-negotiation on the part of Indigenous scholars who have continued to struggle within and without a system whose environment today, while familiar in many ways, is undergoing rapid changes. First signaled in the late 1980s by the World Bank followed by the Organization for Economic Cooperation and Development in the 1990s, the reconceptualization and reconstruction of the academy as the driver of the new 'knowledge economy' heralded a new kind of struggle over the nature and meaning of knowledge (Peters 2003). Accompanying this redefinition of knowledge within the academy, without the academy has been an inexorable resurgence of the re-appropriation of Indigenous lands and identities, often through legislative measures which redefine Indigenous self-determination as economic development, remove environmental

protections over lands and waterways, and reduce requirements to consult the traditional Indigenous landholders prior to initiating resource development activities on those lands.

The politics of reclaiming

Before turning to the new challenges posed by this reconceptualization of the university, it is necessary to consider the politics of reclaiming historical research by and for Indigenous peoples. As discussed above, Indigenous historiographies have frequently been subjected to invisibilization, misrepresentation and misinterpretation by historians trained in the positivist tradition, as well as some more critical traditions. Thus the reclaiming of those historiographies and the insurrection of subjugated Indigenous cosmologies and ontologies continue to be central in Indigenous peoples' resistance to the homogenising impulse of modernity, including in its current manifestations. At the heart of the decolonizing project has been the restoration and legitimation of Indigenous knowledge systems and methods of conducting research. For some Indigenous scholars, an important step on the journey has been to see the convergences between Indigenous and qualitative research methods (see for instance Kahakalau, 2004; Smith, 2008) For others the most important part of the process is to distinguish the nature of Indigenous knowledge and research from dominant western forms of knowledge, for example comparing individually based approaches to knowledge and research to the collective approaches of most Indigenous communities (c.f. Bishop, 1998; Urion, 1999). Often these comparisons take the form of 'writing back' against mainstream interpretations which describe Indigenous peoples' information-gathering methodologies as evidence of the 'prescientific', precausal nature of Indigenous knowledge systems, proof of an inability to conceptualize in an objective symbolic manner (c.f. Widdowson and Howard, 2008). Thus it is not unusual to see Indigenous thought systems described by Indigenous scholars (and some non-Indigenous scholar) as circular or spiral in nature and inclusive of both experiential and intuitive data. This contrasts with western knowledge systems, frequently described as linear and concerned primarily with empirical data and materiality. Lakota scholar Vine Deloria Jr. describes Indigenous conceptions of knowledge as intrinsically connected to the lives and experiences of human beings, both individuals and communities and emphasizes that all data and all experience is seen as relevant to all things. All human experiences and all forms of knowledge contribute to the overall understandings and interpretations, with no experience or piece of data seen as invalid. The critical task, Deloria (1999) explains, was (and is) to find the proper pattern of interpretation. Knowledge itself is commonly described as sacred, having come from the Creator. Rather than being limited to a 'codified canon', a canon separated from everyday life and taking place only in the special conditions of the laboratory, the experiment, as 'field work' and in other highly codified ways, traditional or Indigenous

knowledge is an expression of life itself, of how to live, and of the connection between all living things. From an Indigenous perspective, everything is living. This includes inanimate objects that are understood to hold their own energy, or in Maori terms, *mauri*, through which they are connected to the energetic web of the entire planet. Thus, as Vine Deloria wrote, nothing is considered in isolation, rather, all data within the whole system is carefully included.[1]

In short, interconnectedness, or relationality, is frequently described as the foundational principle in Indigenous ontologies and cosmologies and the epistemological and ontological base of Indigenous research. In this respect, it has much in common with some kinds of 'western' scientific discoveries in the field of quantum physics and related canons, although there may be important differences too. For instance, Métis professor Carl Urion insists that Indigenous knowledge is at once spiritual, emotional, physical and mental. In contrast, even 'holistic' western approaches like quantum physics fail to take seriously spiritual and emotional experiences as well as physical, material and mental ones. From this Indigenous concept of relationality derives sets of ethical principles that define the boundaries for engaging in Indigenous research.

Considering method

Indigenous research operates within a complex set of interrelationships and rules whose specifics are always determined by the Indigenous community itself. Indigenous research has been defined as emerging from an epistemological base that foregrounds the legitimacy and validity of locally determined Indigenous ontologies, epistemologies and methodologies (cf Pihama, Cram, and Walker 2002), is conducted only with the full consent and participation of the Indigenous communities concerned, and within the boundaries, protocols, principles and practices determined by the community. Within this space, protocols, relationships, reciprocity, methods, process and ownership of data and findings define the parameters of the research project and are carefully and thoroughly negotiated with the community. At the heart of Indigenous research lie issues of who benefits, how, and to what purpose. Not infrequently, these questions may be negotiated over and over again in the process of a major research project. At any given point, the community may decide to discontinue the research. And at that point, the research stops. In a very important sense, then, this is the heart of Indigenous research.

Intuition, dreams, and insights and ceremony frequently play an important role in the protocols of Indigenous research. Ceremony, the details of which vary widely from continent to continent and group to group, can prepare and open the mind to the possibility of intuition and insights. As well as opening the mind, ceremony and prayer are important mechanisms for ensuring that the researcher is of good mind, good heart,

[1] This section has to a large extent been drawn from Stewart-Harawira 2005, pp. 35-39.

and good motive – all three critical in conducting Indigenous research – and that the proposed research is in alignment with the highest good. Often a project will not begin without this preparation. Notwithstanding that intuition, insight, and reams have not infrequently been the catalyst for new discoveries and understandings within 'western' sciences, principles and practices such as these that are often the target of mainstream scholars' critiques which understood them as 'unscientific'.

Another common target for critique is the recovery of data that is orally held and sourced. Indigenous research recognizes that important historical and cultural knowledge is often held in Indigenous communities in the form of story and songlines. Jo-ann Archibald (2008) describes deep storying, or storywork, as an Indigenous research methodology which builds on seven critical principles of respect, responsibility, reciprocity, reverence, holism, interrelatedness, and synergy that form a framework for understanding the characteristics of stories, appreciating the process of storytelling, establishing a receptive learning context, and engaging in holistic meaning-making (Archibald, 2008). Meaning-making can involve the process of comparing and cross-matching oral accounts and it also involves careful interpretation of the language in which the information is held, be it song, chant, story. Linguistic changes over time mean that often such knowledge is described in language not readily accessible today, thus the need for careful discernment of the pattern of interpretation, as Deloria points out. On this basis, the notion that orally held knowledge lacks validity and verifiability is readily challengeable by those who have access to understanding these processes. Stories' in fact provide a rich source of verifiable data that can be cross-matched and compared from multiple perspectives when viewed through the right lens. The trick is in the knowing. Just as mainstream knowledge systems have their own processes for 'gate-keeping', Indigenous communities also have strategies for protecting the integrity of knowledge. These are but some of the critical issues that are shaped and negotiated within particular frameworks and relationships when entering the space of research negotiation with and for Indigenous communities.

Inevitably, gate-keeping strategies have both positive and negative consequences. Among the latter are gross misinterpretations and misrepresentations of, for example, the rationales for particular cultural practices, the genealogy of certain aspects of knowledge – often delivered in only partially accurate forms, in order to protect both the receiver and the knowledge itself. For instance Maori have commonly held the view that in certain cases the right to particular aspects of knowledge has to be earned, whereas in other cases that right may be ascribed. Similarly, aspects of historical events, practices, and rationales, may be creatively reinterpreted for the listener. In each situation the objective is protection of that knowledge base. The difficulty, of course, is that these partial truths are often replicated through dissemination activities by western scholars and administrators such as presentations, publications, and texts. Ironically, these partial truths are frequently mobilized by western scholars to justify attacks on the credibility of

Indigenous cultural knowledge and research methods; in fact, this is simply partial knowledge that has been decontextualized and therefore robbed of its meaning, which appears only within the proper relational context.

Careful observation and testing, often over hundreds and thousands of years, is equally part and parcel of Indigenous research methods. When Indigenous scholars write about Indigenous scientific knowledge they are referring to minutely detailed knowledge of the natural world and comprehensive understandings of the nuances that signal phases of change within the natural world. Some of this is reflected in the traditional practices of naming, as is also well documented and hardly needs recounting here (see for example Basso, 1996) From the multitude of possible examples from Aotearoa New Zealand, Huhana Smith's (2008) doctoral thesis carefully tabulates five years of painstaking, rigorous community research seeking out, analyzing and applying the necessary information to restore a badly polluted and diverted river system. This provides an outstanding example of an Indigenous methodological approach to research. The methods utilized by Huhana Smith and the community included identifying, cross-matching and analyzing oral stories and histories, songs, proverbs and other forms of orally recorded information. The vast reservoir of traditional knowledge that emerges from such painstaking tabulation and recording certainly can and does contribute immeasurably to eco-system restoration. Its importance in enlarging scientific understandings of the impacts of, for instance, climate change or industrial development has been well documented (c.f. Gadgil, Berkes, Foke, 1993; Berkes, 2008; Green, D. & Raygorodstky, 2010; Tyrell, 2011). The astronomical and cosmological knowledge recorded in some communities may also contribute to our understandings of the potential effects of proposals to mitigate the effects of its climate change. The possibilities are limited only by the narrowness of our gaze.

As the academy undergoes deep and radical reconstructions, the unequal status and ongoing attacks upon Indigenous knowledge and research demonstrates the "epistemological tyranny" of 'Western' science, its rules for determining truth and so its rules for disqualifying and marginalizing Indigenous ways of knowing (Kinchloe & Steinberg 2008, pp.144-145). On the extreme end of such critiques are scholars such as Widdowson and Howard who insist that the term 'traditional knowledge' is tendentious, and that each item of purported traditional knowledge should be evaluated on the basis of the evidence for and against it. Unless and until subjected to scientific (western) methods of validation, traditional knowledge – which they distinguish from Indigenous knowledge defined as a postmodern construct – can make no claims to validity. On the other hand, they argue, if traditional knowledge is subject to the same kinds of scientific method as western knowledge e.g. replicating and testing, what is the point of distinguishing it from scientific knowledge? (Widdowson & Howard 2008, p. 231-240). Small wonder that Indigenous scholars tend not to rely for validity on western science research methods by which 'heads, you lose; tails, you lose'. Yet arguments such as those presented by

Wddowson have been met with enthusiasm by many western scholars and critics of the Indigenous turn in the early twenty-first century.

New Zealand scholar Elizabeth Rata, whose critiques of cultural relativism target Maori education policy and practice, is more refined in her argument. Rata attacks the equalizing of status of Indigenous knowledge in New Zealand universities, the unfortunate creation of what she terms a 'global industry' (2011, 1-22), arguing that the deployment of culturally appropriate pedagogies in education and by extension, traditional cultural knowledge which is described as an expression of "immanentism – the practice of asserting a necessary movement of history that confers subordinate groups with objective interests in radical change" – works against social justice goals for those whom it is intended to benefit. Her argument rests on what she holds to be the blurring of the social knowledge and disciplinary knowledge within the curriculum following the turn towards constructivism. The problem, she argues, lies with the relativist claim that all knowledge is socially constructed, a claim that extends to worldviews, ways of knowing, and 'knowledges' and consequentially to the equalizing of status between social and disciplinary or 'scientific' knowledge. Attacks of this nature are symptomatic of an ongoing and systemic cognitive imperialism, an imperialism that fails to recognize the ways that western science is historically and socially constructed. Far more troubling than such attacks, however, is the radical shift to monetized knowledge and research and the implications of this for Indigenous knowledge and research within the academy.

Futures for Indigenous research

As universities are reconstructed as the drivers of knowledge capitalism, the challenges to Indigenous scholarship and research are significant. The conundrum faced by Indigenous scholars and researchers in this environment is played out in our entry into the global market model of knowledge capitalism in scholarship, in the discourses of excellence and best practice, and in academic performance reviews which measure the value of research in terms of its marketability. This substitution of industry and the operation of the market for the pursuit of truth and meaning as the main driver of the academe constitute a new form of cognitive imperialism which impacts on indigenous knowledge and indigenous scholarship in deeply contradictory but ultimately damaging ways.

On one hand, the new 'knowledge economy' operates to marginalize Indigenous philosophical knowledge and traditional ways of being in the world as valid and legitimate forms of study, insofar as Indigenous ways of knowing do not immediately produce profitable research. On the other hand, it repositions (some) Indigenous knowledge and scholarship within the discursive framework of innovation, excellence and contribution to economic wealth. As university-industry partnerships substitute public funding and demands and scholars and researchers are faced with monetizing

their teaching and research in order to maintain programs and spaces of engagement, there are difficult decisions to be made, especially by those of us who see our work as holding the space for Indigenous community-University relationships and engagement. At the root of these decisions lie ethical and philosophical principles that are complex, contested and contradictory. For Daniel Heath Justice (2004), the academy is a place of engagement where "the world of ideas can meet action and become lived reality." It is here, he argues, in this borderland space of profound contradiction that cultural recovery work can begin. Here also, I believe, is the place where the intersection of western and Indigenous science can address the triple crises of ecological and economic catastrophe and human wellbeing that confronts us – and which our children, and their children's children, will inherit (c.f. Addison, et al, 2010). On this account, a radically different paradigm is required. Perhaps that, after all, is the true challenge of decolonization. Most certainly, outside the academy, that sits at the heart of the rising crescendo of struggle over the right to maintain, protect and preserve lands, waters, and ecosystems.

There is no question that inequity regarding Indigenous research and knowledge is prevalent within the academy. There is equally no question that Indigenous knowledge and research together with those of social and natural sciences provide a complex and dynamic set of skills and understandings. These may yet enable humanity to find its way out of the worst set of crises in the known history of humankind and towards a radical reconceptualization of the complexity of interrelationship and the nature of being.

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Learning from the land: Indigenous land based pedagogy and decolonization

Matthew Wildcat
University of British Columbia

Mandee McDonald
Dechinta Bush University

Stephanie Irlbacher-Fox
University of Alberta

Glen Coulthard
University of British Columbia

Abstract
This paper introduces the special issue of *Decolonization* on land-based education. We begin with the premise that, if colonization is fundamentally about dispossessing Indigenous peoples from land, decolonization must involve forms of education that reconnect Indigenous peoples to land and the social relations, knowledges and languages that arise from the land. An important aspect of each article is then highlighted, as we explore the complexities and nuances of Indigenous land-based education in different contexts, places and methods. We close with some reflections on issues that we believe deserve further attention and research in regards to land-based education, including gender, spirituality, intersectional decolonization approaches, and sources of funding for land-based education initiatives.

Keywords: *land based education; Indigenous Knowledge; Indigenous Resurgence; decolonization*

Introduction

What does it mean to think of land as a source of knowledge and understanding? How do our relationships with land inform and order the way humans conduct relationships with each other and other-than-human beings? How do we offer education to people on the land in ways that are grounded in Indigenous knowledge? What does it mean to understand "land" – as a system of reciprocal social relations and ethical practices – as a framework for decolonial critique? These are a few of the central questions that have been answered by contributors to this special edition on land-based education, in *Decolonization: Education, Indigeneity and Society*.

Settler-colonialism has functioned, in part, by deploying institutions of western education to undermine Indigenous intellectual development through cultural assimilation and the violent separation of Indigenous peoples from our sources of knowledge and strength – the land. If settler colonialism is fundamentally premised on dispossessing Indigenous peoples from their land, one, if not the primary, impact on Indigenous education has been to impede the transmission of knowledge about the forms of governance, ethics and philosophies that arise from relationships on the land. As Leanne Simpson argues in the feature article of this issue, if we are serious about decolonizing education and educating people within frameworks of Indigenous intelligence, we must find ways of reinserting people into relationships with and on the land as a mode of education.

Key to the set of inquiries contained in this special issue is moving from *talk* about the land within conventional classroom settings, to studying instances where we *engage* in conversations with the land and on the land in a physical, social and spiritual sense. In addition to the comprehensive theoretical engagement with land based practices, the ten articles in this issue provide us with a specific examples of how land based activities are occurring on and with the land. What is gained from moving the classroom to the land? As Leanne Simpson, in a recent interview conducted by Eric Ritskes with her and Glen Coulthard, summarizes, land-based education sustains and grows Indigenous governance, ethics and philosophy – and life:

> We're practicing conflict management, agency and transparency and the things that Indigenous political cultures value. We're asking students to engage in a fairly rigorous process from a Dene perspective, in an intellectual, emotional and a spiritual and a physical way… we have to remember the ways that we replicated our nations through education and what were those critical components that produced people who could embody our political cultures and survive in our lands and think within Nishinaabeg or Dene thought and live a life where they were promoting more life in the coming generations. (Simpson & Coulthard, 2014)

In that same interview, Glen Coulthard also reflects on how land based education has been fundamental to his own understanding of Dene knowledge:

> I had learned as much as I could in the archive, talking to people, and reading about that history, but it was only when I started to commit myself to re-learning those practices and re-embedding myself in those social relationships with place, that I understood in a more concrete and embodied way, what was wrong with the forms of economic development that have come to be dominant in the North and elsewhere. (Simpson & Coulthard, 2014)

Land-based education, in resurging and sustaining Indigenous life and knowledge, acts in direct contestation to settler colonialism and its drive to eliminate Indigenous life and Indigenous claims to land.

In their own unique ways, each contribution to this volume aims to sever the historical and contemporary relationship between education and the reproduction of settler-colonial power and associated forms of knowledge. On the one hand, the pairing of colonial domination with western education has had a devastating effect on Indigenous students, contributing to a contemporary educational deficit that expresses itself in lower academic success rates and experiences of racism and alienation in the classroom. On the other, institutions of mainstream education have fostered high levels of ignorance regarding Indigenous issues within the non-Native student and educator community. In different ways, each paper in this collection takes stock of what settler colonialism makes lost, damaged, and destroyed, as well as what is being and can be changed, gained and restored through various forms of land-based resurgence. In doing so, the examples of Indigenous land-based pedagogy discussed in this volume all offer a way of fostering individual and collective empowerment for students by re-embedding them in the land-connected social relationships that settler-colonialism, through education and otherwise, sought to destroy. The initiatives discussed in this issue, each focused on resurging Indigenous knowledges, leaves us with room for optimism despite the stranglehold that colonial education currently has in Canada and other settler nations. But, contrary to mainstream discourse, ours is not an optimism grounded in the ideal or hope of reconciliation through inclusion. Our optimism is grounded in a call for Indigenous resurgence and settler reckoning.

This issue highlights the diversity of land-based education and is a major contribution to the *Indigenous Resurgence* paradigm of intellectual thought. For scholars working on Indigenous political issues within Canadian universities and elsewhere, Indigenous resurgence has become one of the most robust scholarly paradigms to study Indigenous politics from. The term owes its intellectual origin to Taiaiake Alfred's (2009) work in *Wasase: Indigenous Pathways of Action and Freedom* and is now widely used by many scholars in the field including many of the editors and contributors to this journal issue. For Alfred, the resurgence paradigm was a way of theorizing how a shift in the consciousness of Indigenous peoples, away from reconciliation and towards decolonization, would provide the foundation of an Indigenous social movement capable of transforming Canadian society.

To create this social movement, what was needed was initially a *regeneration* of Indigenous cultural, spiritual and political practices. This revitalization would provide the

personal and collective strength necessary for a confrontation with Canadian society. Having undergone cultural regeneration, an Indigenous resurgence would engage in an outward, disciplined confrontation with settler society. Due to the protracted struggle and engagement with this Indigenous movement, settler society would be forced into reckoning with its colonial past and present and undertake in its own decolonizing journey.

This issue can then be read as a useful contribution to the resurgence paradigm in its emphasis on both the importance of cultural regeneration, as well as outward resurgence and contestation with settler colonial incursions and violence in the realms of education, and more broadly against Indigenous peoples, knowledges, languages, and the relationships with the land that sustain these. This issue is a reminder that Alfred's original formulation equally emphasized regeneration of Indigenous knowledges and ways of being in the world, as well as their necessary contestation with settler colonial power.

The issue begins with a feature article by Leanne Simpson and then traverses ten articles, two creative writing pieces, a video and a poem. We encounter Mohawk lives disrupted by industrial pollution and Métis landscapes transformed through the rise of industrial capitalism; Tlingit and Mono places whose names, stories and ecological realities have been overwritten by colonial relations; contributions from three Anishnaabe authors who discuss land as both culturally grounding and contested; the social relations of Chisasibi Cree; stories from the land provided by a Swampy Cree author and a Tłı̨chǫ author; and we see the perspective of a Maori knowledge keeper in film. Many of these contributions include collaborations between settler scholars working in the academy and Indigenous community members, and we also have two great contributions from settler scholars working in collaboration with Indigenous peoples of Denedeh/NWT. Including the cover from a Coast Salish artist and the work of Plains Cree and Yellowknives Dene editors, we have here an edition with contributions from Indigenous people from 12 different nations.

Taken together, we believe the issue offers a nuanced and diverse appreciation for the significance of land based pedagogy and practices as a catalyst for regenerating Indigenous social, spiritual and physical land-connection. In lieu of descriptions of each piece, our introduction will highlight important insights provided by the ten articles and two creative writing pieces. These insights provide only a small sample of the theoretical complexity and empirical richness developed by the authors. We conclude by examining areas for further exploration and inquiry in land-based education.

Issue overview

Leading off the issue, Leanne Simpson's article prompts deeper thinking about ways in which mainstream education is at odds with resurgent life ways. Simpson provides a compelling argument for the necessity of raising Indigenous youth who are strongly connected to the land and the Indigenous cultures and languages that the land sustains. Employing the story of Kwezens, she anchors her argument within a Nishnaabeg intellectual framework. Using this

frame provides a "critical intervention into current thinking around Indigenous education, because Indigenous education is not Indigenous or education from within our intellectual traditions unless it comes through the land, unless it occurs in an Indigenous context using Indigenous processes" (p. 9). For people working in Indigenous education at any level or locale, this article represents one of the most definitive statements on the importance of land-based education for Indigenous cultures and the resurgence of them.

As Simpson states in her opening footnote, her paper was generated "inside a community of intellectuals, artists, Elders and cultural producers to whom I am both influenced by and accountable to" (p. 1). While her article did not go through a standard academic peer review process, it is important to note that drafts were peer-reviewed by four prominent Nishnaabeg thinkers. Given that the majority of our articles in this issue were written or co-written by Indigenous scholars, and written in conversation and collaboration with Indigenous communities and educational projects, Simpson's approach is a powerful challenge to how peer review is conducted in the context of land-based education and Indigenous resurgence. Namely, we should not assume that 'peers' in these circumstances are university professors, nor demand that the review process require submitting papers for anonymous feedback. It is a challenge to think about how we create review processes that involve people from the communities that support and foster these land-based initiatives. As Coulthard points out about his role as an academic in collaboration with community, "we're not renegades that are dropped into territories and determine what the most radical and transformative educational experiences *we* think would be relevant for *them*; it's done in a spirit of reciprocity, with community engagement and input" (Simpson and Coulthard, 2014). This requires academics to think further about how we can practice and foster reciprocity with communities in order to create land-based sites of education.

Aldern and Goode, in part, focus on how Indigenous intellectual thought can be mobilized in land management decision-making. Their article provides an account of ways that land-based methods influence ecological policy in the traditional territory of the North Fork Mono peoples, in what is today known as the Sierra National Forest area in central California. They expertly outline a method that combines traditional Mono narratives with site visits that happen with the leadership and presence of Mono elders and other knowledge holders. They discuss how this method is applied to government policy decisions with respect to the endangered Pacific Fisher (weasel). Critically, Aldern and Goode demonstrate that including Mono knowledge within ecological decision-making is not done solely for the sake of fulfilling requirements of consultation. Rather, Mono knowledge arises from deeply rooted land relationships that can improve ecological outcomes, while at the same time transforming settler-privilege, which is further discussed by Irlbacher-Fox in her contribution. After a site visit to the forest with author Ron Goode, a federal biologist "remarked that he saw the forest in a new way …something that was not easy to imagine without getting out onto the land" (p. 43). Being present on the land provides powerful ways of seeing one's relationships to the land and other-than-humans, as well as new ways in contesting settler colonialism and its sense making mechanisms.

While Goode and Aldern's article offers an example of ways to challenge settler colonialism's formula of Indigenous dispossession, Jennifer Adese provides a careful account of ways in which industrial modes of production structure Métis relations to land. Adese relies on Métis Elders' life stories to illustrate changing relationships with land. She shows that industrial life ways have fundamentally and negatively impacted Métis relations with land. Importantly, this argument avoids any reliance on tropes that believe contact with modernity renders Indigenous peoples 'inauthentic' (see Raibmon, 2005) by bringing forward descriptions from Métis autobiographies about their changing relationship with land and the various ways in which Métis peoples navigate these changes. Quoting from the biography of Elmer Ghostkeeper, Adese describes the transition as moving from "living with the land to living off the land," requiring Ghostkeeper to deny and suppress "his inclination to understand the world around him through the prism of relatedness, leading to his detachment from the land" (p. 62). Building on the work of Chris Andersen and Adam Gaudry, this contribution is also a counter to Métis histories authored by non-Indigenous writers that essentialize the Métis and their histories through racialized understandings of 'mixedness', without reference to how Métis actually understood their own lifeways through relationship to place and land.

Erin Freeland Ballantyne, in her article, positions Dechinta Bush University as a site of decolonizing praxis in her analysis of settler colonial capital and the history of the public education system in Denendeh. Arguing that Indigenous-led land-based education has the potential to undermine petrocapitalism in the north, she draws from Dechinta's five years of land-based programming to demonstrate that land-based learning supports individuals and communities ability to live and envision life outside of the enclosures of capital. While self-identifying as a settler and calling for settler people to take responsibility for settler colonialism, the site of decolonizing praxis she describes is inclusive of people and families who are both Indigenous and non-Indigenous. She articulates a site of multi-cultural decolonizing praxis where all students learn from the land in a shared space in which Indigenous epistemologies are central. She writes, "Building strong relationships of reciprocity with the land results in the crumbling of settler capitalism because it fundamentally shifts the relationships people experience and what they believe about who they are, how they are in relation to and with land, and what they believe to be true" (pp. 76-77).

Equally intriguing, Ballantyne argues that settler capital can and should be realigned and reconfigured to serve the resurgent goals of Indigenous communities. This is an important and probably contentious point in the world of anti-colonial activism, as many organizers and activists are vocally apprehensive about 'buying into' what's termed the non-profit industrial complex or funding mentality. This article addresses this question in an important way by grounding this dilemma within a space of learning that is reliant on funding from social innovation funders, but that has also consistently received evaluations from students who speak of Dechinta as providing a transformative experience.

One of the most comprehensive overviews of land-based programming is provided by Radu, House, and Pashagumskum. The three-year old "Chisasibi land-based healing program"

provides a space for those seeking to overcome addictions and mental health issues. Participants learn from two elders who combine counselling methods with "teaching Indoh-hoh[1] (Cree bush skills) and values embedded in the Cree language" (p. 88). This article shows how combining land-based activities can work in conjunction with other institutional requirements. The authors make two valuable theoretical contributions. First is an exploration of how ecological connectedness promotes good health. For Eddie Pash, one's connection to nature encourages reflection upon what healthy relationships look like. He states: "All through these traditional ways of living we respect nature. If you respect nature, you have to respect each other too, and you have to respect yourself… Respect is a gift in our traditions, because it is the way to be happy" (p. 94). Second, the article positions healing as a central component of decolonization. For the authors, healing is a "relational process that fosters spaces in which social and familial bonds are strengthened and make possible community conversations about what is needed to mend local relationships that is in line with Indigenous life-worlds" (p. 97). While this is important for the decolonizing journey of the community, it also creates a situation where: "healing fosters decolonization by empowering individuals and communities to engage in transforming the Indigenous-State relationship" (p. 97).

The article by Schreyer, Corbett, Gordon and Larson describes the development of a place names website using participatory mapping and crowd sourcing techniques. The website was created through a collaboration between the Taku River Tlingit and a team from University of British Columbia – Okanagan. The authors provide a description of their website, where users can manually upload place names onto the traditional territory of the Taku River Tlingit. This approach is guided by a commitment to stewardship as a guiding principle of decision making and promoting an appreciation of the close connection between the Tlingit language and the landscape. The authors describe the application of these values as being able to "talk to the land." The website has only recently been completed and the authors also provide a useful discussion of the potential pitfalls in such a project, such as the possible decontextualization of Indigenous knowledge from place. In response, they also point out how the website can be used in conjunction with people engaging in land based activities. In doing so, their honest and reflexive description of their project animates the kinds of difficulties encountered in the course of land-based initiatives which is instructive for others considering similar approaches to foster language learning and land-based connections.

Taiaiake Alfred details a cultural apprenticeship program in the Mohawk community of Akwesasne. For those familiar with the work of Alfred, this piece provides an important corrective to those who claim Alfred's theorizing is impractical in the face of societal and institutional constraints. Alfred details his work as principle consultant for the Mohawks of Akwesasne as they moved through the Natural Resources Damages Assessment process, remediation projects that are more commonly known as "Superfund" sites. While the Mohawks of Akwesanse clearly face legal and legislative barriers in undertaking the process, they were also able to "put forward and defend their understanding of cultural loss within the context of

[1] See the glossary at the end of their article for a detailed definition of the term.

their nationhood" (p. 135). The "superfund" process asks groups to negotiate settlements that remediate the natural environment and establishes a monetary settlement to compensate for lost economic opportunities. The Mohawks of Akwesasne were able to alter the terms of compensation to focus on how 'cultural injury' caused by pollution would be addressed by instituting measures and mechanisms aimed at restoring "relationships that are crucial to the expression of Mohawk identity" (p. 139). Alfred summarizes how the restoration plan for the Mohawks of Akwesasne created a land-based cultural apprenticeship program targeting youth, instead of the typical approach that asks groups to simply negotiate a monetary figure that will compensate for past harm.

Irlbacher-Fox focuses on what decolonization requires in settler colonial contexts. Drawing on a combination of personal experience and scholarly thought, Irlbacher-Fox traces the role settler privilege plays in blocking the establishment of structures that enable Indigenous peoples from having effective political power and control. Here we see how self-reckoning with settler privilege is fundamental to creating spaces of respect, in order to work towards creating a context of co-existence in which Indigenous knowledge and practice can safely circulate. Many of the contributions in this special issue describe Indigenous-funded or controlled and/or Indigenous generated initiatives; here, Irlbacher-Fox provides an important addition by focusing on a conceptual framework for how settler people can work towards enacting decolonization. For Irlbacher-Fox, in order to achieve respectful co-existence in the future, settlers must engage in forms of co-resistance that challenge settler privilege in the present. Irlbacher-Fox provides us with an important conceptual framework for settlers attempting to tear down institutional barriers, such as those described by Leanne Simpson's observations on mainstream education or Goode and Aldern's on curriculum and policy development.

The final two articles deal with sites of Anishnaabe resurgence. Unlike the other land-based programs described in the edition, both of these sites do not receive funding or material support from government, non-profit or corporate sources. Yerxa provides us with an examination of a recent resurgence project she is involved in. For the past two years, Anishnaabe from multiple communities have come together to Gii-kaapizigemin (we roast) manoomin (wild rice) neyaashing (at The Point). In this article, Yerxa characterizes this collective organizing as a 'Manoomin Movement' and, building on the work of Avery Kinew, Yerxa outlines how "making manoomin is a ceremonial act, as much as it is a practical act, as much as it is a political act" (p. 108). Roasting manoomin at the point is a political act because it foregrounds a history of dispossessing Anishnaabe jurisdiction in the area. In 2009, a ninety-nine year lease expired on The Point and Anishnaabe moved to reassert ownership and control. Four Anishnaabe Nations are pursuing the matter through the specific land claims process to regain control of The Point, an approach Yerxa problematizes. She states: "Through this process we automatically negate what we are trying to assert - Anishinaabeg nationhood - because we grant authority to the Canadian state to decide matters over our lives and our lands" (p. 109). As an alternative, people from four communities have come together to roast wild rice and 're-presence' themselves on their traditional territory. Yerxa calls for a 'Manoomin movement', where roasting wild rice at

The Point every fall provides the basis of a resurgence that has the ability to overwrite the land with Anishnaabeg law.

Continuing the themes explored by Yerxa, Gardner and Giibwanisi discuss the creation and maintenance of the Oshkimaadziig Unity Camp. The authors describe the camp as a land reclamation conducted in the same spirit as other camps such as Grassy Narrows, Kitchenuhmaykoosib Inninuwug, or Elsipogtog. One notable difference is that this camp arose in response to the settlement of a Specific Land Claim by four surrounding First Nations, instead of in response to incursions by resource extraction projects, and the authors contextualize the camp within Canada's attempt to retroactively legitimize its claimed sovereignty through the specific land claims process. Although the Oshkimaadziig Unity Camp is meant to challenge the legitimacy of Canadian law over the claim area, an action that aligns with Audra Simpson's (2014) theorizing on 'refusal', the camp is equally focused on internal acts of regenerating Anishnaabe connections to land. From this standpoint, the authors concisely discuss four modes of internally directed regeneration. First, establishing connection with land as a necessary aspect of Anishnaabe ceremony and governance. Second, the camp as a method of passing on teachings to the next generation. Third, the camp as a method of establishing just relations between Indigenous and settler peoples. And, finally, the camp as a source of alternative social relations and practices that model a more just world.

To conclude, the special issue takes a more creative turn. Tłı̨chǫ writer and storyteller Richard Van Camp and our editor, Maskîkow graduate student and Dechinta Program Manager Mandee McDonald, provide us with two pieces of creative writing, fiction and non-fiction respectively. Van Camp's story introduces us to two young cousins, recent high school graduates facing the next stage of life. We follow the young men on a hunting trip with their Father/Uncle. Van Camp's piece is an important illustration of how spending time on the land allows generations to connect and form bonds, but it also depicts the land as a source of joy and happiness for the characters. This same theme illuminates the creative non-fiction piece written by Mandee McDonald. Her story telling approach is enlivened by the emotions of her experiences on the land, which in turn determines the flow of her narrative: Moose Hides, Bears, Fish, and Hunting. McDonald's account of her experiences on the land brings some of the broad theoretical insights from the issue into focus as they circulate in her lived experience. Her story situates the land as an animating force of teaching and learning. McDonald also reminds us that to build self-determining futures, Indigenous peoples must find ways to practice governance that centres love for the land and each other as the basis of the courage necessary to see it through.

Future directions

Although the contributions made in this issue are substantial and important, many readers will no doubt have questions or concerns about the lack of discussion on some issues. We would like to reflect on three issues that deserve further attention in future research on land-based education. These are gender, spiritual values, and intersectional approaches to settler colonialism.

Gender is touched upon by a number of the authors, but it is not the primary focus of any author. Discussing the story of Kwezens, a young girl discovering maple syrup, Simpson points out how the discovery could only be made in a context where observation and creativity are fostered in young children, and trust is reciprocated between the young girl, her family and other community members. In this story, trusting the teaching of the young girl is central to Nishnaabeg intelligence. Many other contributions bring forward and value the voices of women, and those wanting to think about those issues will find important contributions to think about, especially in the contributions of Adese, McDonald and Irlbacher-Fox. Yet, as a whole, the issue reveals rather than addresses the need for more thoughtful consideration towards gender. These considerations include focusing on gender relations in contemporary land-based contexts, how we might queer land-based pedagogy, and discussing the role gender plays in understanding the land as a source of knowledge.

Such analyses might illustrate how the internalization of colonial patriarchy and heteropatriarchy in Indigenous communities informs contemporary gender relations, values and roles when it comes to land-based practices - specifically regarding ceremony and harvesting protocols. The prevalence of violence against women in land-based contexts is also an unfortunate reality requiring critical attention, support and awareness, as land-based educational settings are often remote and novice learners or practitioners can be in vulnerable positions of dependence and isolation.

Spirituality or spiritual beliefs are clearly infused throughout the issue, or at least seem to inform many of these articles. In particular, Radu, House and Pashagumskum speak to the spiritual healing that occurs at Chisasibi's land-based healing program, stating that "the reciprocal and dialogic relationship with nature provides not only the material needs but also the ethic, moral and spiritual underpinnings of living a good life" (p. 93). Spiritual healing and grounding is an important benefit that comes with cultivating a strong relationship to land. This is more than a fortunate by-product of engaging in land-based practices. Teachings and practices based in spiritual values are critical components of learning and teaching on the land. Protocols that demonstrate respect and reciprocity, such as putting down tobacco, making offerings, ceremonies, or particular ways of harvesting or treating unused animal parts, are a part of Indigenous land-based education. The question that arises from this discussion is, how does the internalization and adoption of Euro-western religious values impact our abilities to pass on traditional land-based knowledge that is rooted in Indigenous spiritual values, and how are the knowledge and practices themselves potentially altered?

Many of the articles in this issue deal with settler-Indigenous relations, and the impact of settler colonialism in our contemporary context. The discussions of settler colonialism within the issue implicitly revolve around white settler – Indigenous relations. We do not have contributions that broach the much discussed topic of how non-Indigenous people of colour do or do not fit into the concept of settler and how this impacts discussions of land-based education and solidarity against colonialism. Nor does the issue deal with how Indigenous critiques of settler colonialism intersect with other anti-colonial critiques and radical traditions connected to

place. Various other intersections with other axes of oppression could be pointed out here, such as racism, heteronormativity, ablelism or ageism and the list could go on. It might be easy to write these concerns off as beyond the scope of discussing Indigenous land-based pedagogy but recent scholarship on settler colonialism and within critical Indigenous studies has continued to make it clear that we must bring intersectional and nuanced approaches to the fore of our analysis.

Land-based education and funding

Finally, we cannot ignore the issue of funding and institutional capacity for land-based initiatives. One of the reasons we believe Leanne Simpson's article is a vital read for people working in Indigenous education is because she calls on us to increase the energy we devote to fostering sites of land-based education. Yerxa and Gardner & Giibwanisi show us how it is possible for people to undertake these activities without funding from mainstream institutions. These and other grassroots initiatives provide us with an important baseline for those who may argue that we lack the funds to undertake land-based practices.

Yet, simply saying funding is not an issue ignores how economic disparities within Indigenous communities gives those with resources greater access to the land. This is a tension brought to light by Eden Robinson (2008), "For instance, you have to be fairly well-off to eat traditional Haisla cuisine. Sure, the fish and game are free, but after factoring in fuel, time, equipment, and maintenance of various vehicles, it's cheaper to buy frozen fish from the grocery store than it is to physically go out and get it" (pp. 214-215). Freeland also discusses this phenomenon, in her discussion of students who have grown up in northern communities, where histories of dispossession have hindered young people from acquiring bush skills and denied them access to the land.

This brings us to the dilemma outlined by Coulthard (2013) in regards to land-based practices:

> Although all of these place-based practices are crucial to our well-being and offer profound insights into life-ways that provide frameworks for thinking about alternatives to an economy predicated on the perpetual exploitation of the human and non-human world, [these practices require participation in capitalist economies] in order to generate the cash required to spend this regenerative time on the land.
>
> A similar problem informs self-determination efforts that seek to ameliorate our poverty and economic dependency through resource revenue sharing, more comprehensive impact benefit agreements, and affirmative action employment strategies negotiated through the state and with industries tearing-up Indigenous territories. [Although these resources could be spent on cultural revitalization, they are] entirely at odds with the deep reciprocity that forms the cultural core of many Indigenous peoples' relationships with land.

Freeland-Ballentyne makes a valuable first foray into addressing this dilemma but more work needs to be done to explore the forms of education that are capable of fostering Coulthard's call for the creation of "Indigenous political economic alternatives." At the very least, this will mean creating forms of education that allow us to teach people within Indigenous philosophies and pedagogies, that in turn will guide how we select economic activities to engage in, how we organize work and labour within our economic activities, and how we distribute the products and resources generated through our economic activities.

To create these sites of education we must also think about how we can push forward institutional capacity. Although Indigenous peoples as a whole remain in an impoverished condition and resources are scarce, furthering land-based education is a necessary undertaking. Increasing capacity to offer land-based education is going to require a discussion of how various First Nation governments and organizations might cooperate with each other in order to foster these sites of learning. This is going to require moving beyond a practice where individual First Nations governments undertake programs and services in isolation from each other, as well as in isolation from other parts of the Indigenous political landscape such as urban communities, and Métis and non-status people. As Giibwanisi states in regard to the Oshkimaadziig Unity camp, "We want to be a connector between the city and the land. The broader work of being a connector is bringing together community-building strategies in urban areas and community building work at Oshkimaadziig. Settler colonialism, here and now, affects and implicates us all" (p. 173).

Of course, this does not mean centralizing or standardizing the delivery of land-based education. While we will learn from each other, the delivery of land-based education must always be rooted in place and the histories of Indigenous peoples from those places. Rather, the call to consider how we foster cooperation in service of furthering land-based education is a call to consider how we practice forms of governance between communities. While grassroots initiatives will always remain important within land-based learning, the institutional funding that Indigenous peoples do have control of must also contribute to land based initiatives. Typically, Band Councils in Canada have political authority over a membership and territory (both reserve and traditional) that is held in exclusion to other Band Councils and other aspects of the Indigenous political landscape. If we maintain these rigid boundaries, First Nations governments will not only limit their ability to support land-based education, but we will hinder traditional forms of governance that fostered connections between communities. As James Anaya (2004) argues: "Any conception of self-determination that does not take into account the multiple patterns of human association and interdependency is at best incomplete and more likely distorted" (p. 103). In short, we need to find ways for multiple communities to weave their authority together in service of fostering sites of land-based education.

Conclusion

Although we feel this issue is a valuable and important contribution to the literature on land-based education, it only represents a beginning. Rather than filling a gap in the literature on Indigenous land-based education – a gap far too large for any one volume to fill – we hope this issue provides a platform for further study. The research of the editors, as well as the editorial process of this issue, has made it clear that further studies and publications focusing on land-based education are required. Longitudinal evaluations of existing land-based healing and education programs that indicate the impacts these experiences have on participants would be incredibly useful research. Such findings would prove useful for organizations in their efforts to secure funding for programs already known and understood to be vitally important. While a diverse range of land-based initiatives is contained in this special issue, this edition only represents a small sample of efforts that we are aware of. This means there is a great need to continue and further the conversation moving into the future.

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Visualizing Resistance and Water Protectors

Photos Show Why The North Dakota Pipeline Is Problematic

A proposed oil pipeline is set to begin construction on tribal lands in North Dakota. Members of various Native American reservations gathered Monday to try to stop it.

posted on Aug. 17, 2016, at 10:12 a.m.
Kate Bubacz
Senior Photo Editor, News
Daniella Zalcman
BuzzFeed Contributor

Riders from the Standing Rock, Rosebud, and Lower Brule Lakota reservations came together on horseback to push back a police line that had formed between a group of protesters and the entrance to the Dakota Access Pipeline construction site. Daniella Zalcman

Last week, the federal government gave final approval to the construction of the Dakota Access Pipeline, which will run for 1,172 miles to transport crude oil from North Dakota's Bakken oilfields to Patoka, Illinois.

Hundreds of protesters, primarily Lakota and Dakota from Native American reservations within a several-hundred-mile radius, convened over the weekend at the edge of the Standing Rock reservation in North Dakota to voice their anger.

The pipeline would travel through lands sacred to the Lakota people, and cross under the Missouri, Mississippi, and Big Sioux rivers.

A possible spill, which can occur with pipelines, would mean contaminating farmland and drinking water for millions.

After a series of tense interactions with North Dakota state police on Monday, the protesters succeeded in temporarily halting the beginning stages of construction.

Protesters stand at the front barricades of the protest zone, holding signs that read “Water is sacred” and “Mni Wiconi” (“Water is life” in Lakota). Daniella Zalcman

Horses and riders from the Rosebud reservation arrive to support the Standing Rock community. The horses are in traditional Lakota regalia. Daniella Zalcman

Protesters congregate next to a construction site for the Dakota Access Pipeline on Monday morning, as a crew arrives with machinery and materials to begin cutting a work road into the hillside. The flag in the foreground belongs to the American Indian Movement. Daniella Zalcman

North Dakota state police form a line between the protesters and the entrance to the construction site as a tank truck turns into the property. Daniella Zalcman

A protester is arrested for standing on the outer layer of barricades that separate the protest site from the police line and construction zone on Monday morning. Daniella Zalcman

A protester is arrested for standing on the outer layer of barricades that separate the protest site from the police line and construction zone on Monday morning. Daniella Zalcman

Two young Lakota boys watch as construction machinery drives onto the Dakota Access Pipeline construction site, just over a mile from the banks of the Missouri River. Daniella Zalcman

After the protesters disrupted the construction site and shut down work for the day, a group marched up to the main gates. Daniella Zalcman

Children play in the Missouri River, a mile from the proposed construction of the Dakota Access Pipeline. Daniella Zalcman

Kate Bubacz is a Senior Photo Editor for BuzzFeed News and is based in New York.
Contact Kate Bubacz at kate.bubacz@buzzfeed.com.
Daniella Zalcman is a documentary photographer based between London and New York. Her work tends to focus on the legacy of western colonization. She is a multiple grantee of the Pulitzer Center on Crisis Reporting, a fellow with the International Women's Media Foundation, and a member of Boreal Collective.
Contact Daniella Zalcman at dani+bf@dan.iella.net.

From 280 Tribes, a Protest on the Plains

By JACK HEALY SEPT. 11, 2016 New York Times

Susan Leopold, a member of the Patawomeck tribe of Virginia, watching the sun rise over an encampment where thousands have come to protest an oil pipeline near Cannon Ball, N.D. Credit Alyssa Schukar for The New York Times

NEAR CANNON BALL, N.D. — When visitors turn off a narrow North Dakota highway and drive into the Sacred Stone Camp, where thousands have come to protest an oil pipeline, they thread through an arcade of flags whipping in the wind. Each represents one of the 280 Native American tribes that have flocked here in what activists are calling the largest, most diverse tribal action in at least a century, perhaps since Little Bighorn.

They have come from across the Plains and the Mountain West, from places like California, Florida, Peru and New Zealand. They are Oglala Lakota, Navajo, Seneca, Onondaga and Anishinaabe. Their names include Keeyana Yellowman, Peter Owl Boy, Santana Running Bear and Darrell Holy Eagle.

Some came alone, driving 24 hours straight across the Plains when they saw news on social media about the swelling protest. Some came in caravans with dozens of friends and relatives. One man walked from Bismarck.

Others finished the journey in canoes. They brought ceremonial pipes, dried sage, eagle-feather headdresses and horses that they ride bareback through the sea of prairie grass. They sleep in

tepees, camper trailers and tents, and they sing and drum by firelight at a camp that sits on Army Corps of Engineers land.

On Friday, the federal government announced that it was temporarily blocking construction of the pipeline at an important river crossing just up the road from the camp.

“We say ‘mni wiconi’: Water is life,” said David Archambault II, the chairman of the Standing Rock Sioux, whose reservation sits just south of the pipeline’s route. “We can’t put it at risk, not for just us, but everybody downstream.”

He added: “We’re looking out for our future, the children who are not even born yet. What is it they will need? It’s water. When we start talking about water, we’re talking about the future generations.”

Here are stories about a few of the people who have come to this remote rolling corner of North Dakota.

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Credit Alyssa Schukar for The New York Times
Howard Eagle Shield
Sioux of North Dakota

“This is my home, and my granddaughters are going to be here long after I’m gone,” Mr. Eagle Shield said.

He grew up in North Dakota, on the Standing Rock Reservation. “There was trees all the way through here, all the way down to the Nebraska border,” he said of his youth. “There were trees

big enough that it would take five or six guys to hold their hands around to circle those trees. And they're all flooded out; they're gone after they put this dam up."

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Credit Alyssa Schukar for The New York Times
Joseph and Kinehsche' Marshall
Hoopa Valley tribe of Northern California

"I've been telling her since she was a little person that she's the storyteller," Mr. Marshall said of Kinehsche', his 9-year-old daughter. "When we're all gone, she's going to be the one telling the story. So it was really important that as soon as I found out I was going, I was like, 'Kinehsche', you're going with me.' "

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Credit Alyssa Schukar for The New York Times
Apesanahkwat
Menominee tribe of Wisconsin

Apesanahkwat spent 30 years as the tribal chairman of the Menominee. “It wasn’t something I chose when I came home from Vietnam,” he said. But it led him into a career in Washington, D.C., which is near where he now lives.

When he heard of the events in North Dakota, he felt compelled to drive to the Sacred Stone Camp. “All of these things that are happening are incredibly beautiful,” he said.

-

Credit Alyssa Schukar for The New York Times
Aaron Makwa Chivis, Joe Amik Syrette and Cece Stevens
Anishinaabek of Michigan

“The water that comes from Mother Earth is like her blood, which gives life,” said Mr. Syrette, center.

“A lot of our teaching is to respect all women,” he said, explaining that the ability to bear children in water was one source of the respect. “So they have that connection. For myself to be here, it’s a representation of all of the women in my life. Starting with my ancestors, to my grandmother, my mother, my wife, my sister, my daughters.”

Credit Alyssa Schukar for The New York Times
Arrow Heart
Lakota and Dakota of South Dakota

Arrow Heart, a senior at Little Wound School in Kyle, S.D., travels with his family to the Standing Rock Reservation every year for the annual pow wow, a spiritual gathering for indigenous communities.

“I’ve been doing that for 15 years now. Haven’t missed it once,” he said, adding that it was “awesome that people are getting together to protect the water.”

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Credit Alyssa Schukar for The New York Times
Ceanna Horned Eagle
Nakota and Kickapoo of Kansas

“Many of our ways — our culture, our way of life, our spirituality, our language — we have slowly lost it,” said Ms. Horned Eagle, who has a prayer fan tattooed on her neck.

“But I have seen a change. We’re trying to relearn it or to gain it back. And this coming together gives me hope that my kids won’t have to fight as hard as my parents did, as I have,” she said.

Credit Alyssa Schukar for The New York Times
Whitney Custer
Cheyenne of Kansas

Ms. Custer, who drove to Cannon Ball from Atchison, Kan., says she grew up with the knowledge that she is a fifth-generation descendent of Gen. George Custer and a Cheyenne woman.

“This water is sacred, and this water is important,” she said. “I’m here because that water — not only does it feed this state, it goes through many states, and it goes directly through the city I live in. I have four children of my own, and my children deserve to have clean water.”

Credit Alyssa Schukar for The New York Times
Charles Baker
Lakota and Swinomish of Washington

“Our water matters, and they can’t just put a pipeline through it,” Charles, 13, said.

His father is Lakota from Standing Rock and his mother is Swinomish from La Conner, Wash. The family returns to Standing Rock often to visit relatives.

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Credit Alyssa Schukar for The New York Times
Catcher Cuts the Rope
Aanii and Nakota

An Army veteran who was wounded in Falluja, Iraq, Catcher Cuts the Rope spoke of his hope for a nonviolent resolution to the dispute over the Dakota Access pipeline. “We will stop the pipeline, and we will do it peacefully,” he said.

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Credit Alyssa Schukar for The New York Times
John Thomas Arnel
Northern Arapaho of Wyoming

“The veterans that are here, we fought for this country,” Mr. Arnel said. “We fought for this land to preserve it for our future generations to enjoy it.”

“We helped defend with nontribal members,” he continued, “and other people that have different points of view from all around the world. We were all united as military, but once you get out and come back to the civilian sector, you’re automatically put into a demographic scale.”

“But,” he added, “we’re all Americans.”

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Credit Alyssa Schukar for The New York Times
Melanie Thompson
Standing Rock Lakota of South Dakota

“You can feel the strength of the prayers here,” said Ms. Thompson, who had been at the camp for four weeks. “Poisoning the water is not good for anybody, and especially Mother Earth.”

She added, “We don’t need the poison to cut right through the middle of the United States.”

Credit Alyssa Schukar for The New York Times
Julius Page
Grandson of a Cherokee from South Carolina

“I know a big part of the discrimination here is due to ignorance, because our history books don’t tell the whole story for us, for Native Americans,” said Mr. Page, who lives in Fargo, N.D. “And people are stuck in those beliefs.”

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Credit Alyssa Schukar for The New York Times
Jakob Cordero
Chumash, Sioux, and Hunkpapa of California

Jakob, 11, is spending two weeks at the camp with his family. “Some parts are super cold, and the rest is warm,” he said of the Cannonball River, which he swims in almost every day.

Credit Alyssa Schukar for The New York Times
Thayliah Henry-Suppah
Paiute of Oregon

Ms. Henry-Suppah wears a traditional wing dress with ribbons, beaded necklaces, shells, otter furs and basket earrings for a ceremony.

She said she kept the following Native American proverb in mind while in North Dakota: “Treat the earth well. It was not given to you by your parents. It was loaned to you by your children.”

“We’ve lived without money,” she added. “We can live without oil, but no human being can live without water.”

Credit Alyssa Schukar for The New York Times
Stanley Perry
Diné of Arizona

Mr. Perry walked 45 miles to the Sacred Stone Camp from Bismarck, N.D., after flying there from Arizona.

“We are all like water,” he said. “And if you hurt water, then you hurt us — us meaning the United States.”

Credit Alyssa Schukar for The New York Times
Shirley Romero Otero
Chicana of Colorado

“When we heard about this particular struggle, our hearts pulled us this way,” Ms. Otero said, “because the next battle after losing our land is truly the fight for water.”

Ms. Otero’s community in San Luis, Colo., is dealing with its own fight for water.

Striking Photos Show The Inside Of The Dakota Pipeline Camp

BuzzFeed

posted on Sept. 15, 2016, at 7:38 p.m.
Kate Bubacz
Senior Photo Editor, News
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Photographer Amber Bracken traveled to Sacred Stone Camp outside Cannon Ball, North Dakota, where a protest against the Dakota Access Pipeline has been ongoing for months. Images and footage from the protests have attracted widespread attention, drawing thousands to the camp in support.

Robert Young, a Lakota from Rosebud, South Dakota at Sacred Stone Camp on Sept. 11, 2016. Young hangs his flags upside down as the international sign of distress, so people will know that there is trouble with the pipeline. Amber Bracken for BuzzFeed News

Felicia arrived from El Paso, Texas, to the Sacred Stone Camp on Sept. 10, 2016. She said she felt called to pray for the water and to stand with the protesters. Amber Bracken for BuzzFeed News

Sacred Stone Camp staff bearers Phil Littlethunder, left, and Shannon Rivers, close the gates to a pipeline construction site after marching to where workers were supposed to be removing

equipment north of Cannon Ball on Sept. 13, 2016. They prayed and held speeches just outside the site. Amber Bracken for BuzzFeed News

Sacred Stone Camp on Sept. 10, 2016. Amber Bracken for BuzzFeed News

Winona Kasto, Cheyenne Sioux from South Dakota at Sacred Stone Camp on Sept. 11, 2016. “I’m not leaving,” she said. She has been at the camp since the beginning and said she will be there until the end. She has drying crookneck squash (pictured), corn and meat in preparation for the winter. Amber Bracken for BuzzFeed News

Sacred Stone Camp on Sept. 12, 2016. Amber Bracken for BuzzFeed News

A horse, nicknamed Whitey, at the Sacred Stone Camp on Sept. 9, 2016. Amber Bracken for Buzzfeed News

Laundry at Sacred Stone Camp on Sept. 12, 2016. Amber Bracken for BuzzFeed News

Sacred Stone Camp on Sept. 12, 2016. Amber Bracken for BuzzFeed News

Sacred Stone Camp on Sept. 12, 2016. Amber Bracken for BuzzFeed News

Richard Fisher, from Enemy Swim in Sisseton Reserve, South Dakota, pictured at Sacred Stone Camp on Sept. 12, 2016. Fisher, whose dad was a Black Panther and whose mom was involved in the American Indian Movement, said he is a "revolution child." "We're not expendable, not

trying to be extinct. We're just trying to live like everyone else," he added. He has been using his skills as a chef to feed the people. Amber Bracken for BuzzFeed News

Sacred Stone Camp on Sept. 11, 2016. Amber Bracken for BuzzFeed News

Erica Ryan-Gagne, traditional name Gidinjaad (Eagle-woman), with her children Xaay.ya (Sunshine), 4, left, and Taajuu (Windy) Gagne on Sept. 12, 2016. The family traveled 7 hours by ferry and 30 hours in a car to come from Haida Gwaii, British Columbia to North Dakota. Amber Bracken for BuzzFeed News

Cousins Ohiya Shaw, 8, left to right, Aniimiiki Shaw, 4, Jiselle Ross, 8, and Jules Ross, 11, wake up for the first time at Sacred Stone Camp on Sept. 11, 2016. The Lakota and Ojibway family traveled from Minneapolis in part because the eldest daughter was following the issue on social media and was upset it wasn't being talked about more. Amber Bracken for BuzzFeed News

Sacred Stone Camp on Sept. 9, 2016. Amber Bracken for BuzzFeed News

Sacred Stone Camp on Sept. 10, 2016. Amber Bracken for BuzzFeed News

Sacred Stone Camp on Sept. 11, 2016. Amber Bracken for BuzzFeed News

Sacred Stone Camp on Sept. 10, 2016. Amber Bracken for BuzzFeed News

Spray painted equipment at a pipeline construction site west of Sacred Stone Camp on Sept. 12, 2016. The equipment was tagged by demonstrators during a march. Amber Bracken for BuzzFeed News

Sacred Stone Camp on Sept. 10, 2016. Amber Bracken for BuzzFeed News

Tyler Fourth, a Standing Rock Sioux, dances while working a checkpoint at Sacred Stone Camp on Sept, 9, 2016. Fourth is cautiously optimistic about the situation but has no intention of leaving yet, saying “it’s not over till it’s over.” Amber Bracken for BuzzFeed News

A family sits by their fire at Sacred Stone Camp on Sept. 10, 2016. Amber Bracken for BuzzFeed News

Kate Bubacz is a Senior Photo Editor for BuzzFeed News and is based in New York.
Contact Kate Bubacz at kate.bubacz@buzzfeed.com.

10 Photos That Show the Magnificent Light Shining on Standing Rock

Despite all the news of pipeline regulation, court appeals, and activist arrests, Native photographer Josue Rivas reminds us that it is actually a peaceful place.

Yes! Magazine

Josue Rivas posted Sep 19, 2016

A month and a half ago, I was deeply moved by an urgent plea for support from friends and relatives who are in solidarity with the people of the Standing Rock Sioux reservation in North Dakota. As a Native photojournalist, I believe it's important to let our people tell their own stories. That's why I drove 1,545 miles to connect with the protectors of this land and report on what is happening here. This tribe has been fighting to protect their clean water, critical habitats, and sacred sites from an oil pipeline that would cross under the Missouri River.

For the most part I've been documenting the action on the front lines, but there came a moment when I realized I had to take a step back and see something else. I don't consider myself a landscape photographer, so learning how to capture the beauty of the land was a challenge.

One day I sat near the Cannonball River and listened to the water. It was then that the spirits of this land told me to just follow my light. This is what I saw.

Sunrise at the Oceti Sakowin camp near Cannon Ball, North Dakota.

Horses roam free near the Cannonball River.

Sunset at the Cannonball River in North Dakota.

Mississippi River near Fort Yates, North Dakota.

Tree and clouds on Hwy 1806 near Mandan, North Dakota.

Prairie near the Sacred Stone Camp in North Dakota.

Sunset at Sacred Stone Camp.

A tipi stands over night at Sacred Stone Camp in North Dakota.

Unspoiled critical wildlife habitat where the prairie meets the Missouri.

The moon rises at the Oceti Sawokin camp.

Josue Rivas wrote this article for YES! Magazine. He is a member of the Mexica Tribe and a photographer and activist based in Los Angeles. Follow him on Instagram @josue_foto and Twitter @josue_foto.

Images from Standing Rock

Lakota photographer Jaida Grey Eagle shares her experience with art and activism from the protector camps near Standing Rock. The Institute of American Indian Arts in Santa Fe, where Grey Eagle is a student, will host a benefit show Oct. 16 featuring her images and other artwork.

STORY & PHOTOS BY JAIDA GREY EAGLE, Native Peoples Magazine

Chad Browneagle (Shoshone/Spokane), IAIA Class President. Photo by Jaida Grey Eagle (Oglala Lakota).

Last month, I joined several of my artist friends on a journey to Standing Rock, where hundreds of tribal nations and thousands of protectors have gathered since spring to oppose construction of the **Dakota Access Pipeline (DAPL)**.

In July, the US Army Corps of Engineers authorized the $3.7 billion pipeline, which, if constructed, will carry some 470,000 or more barrels of crude oil a day from North Dakota's Bakken oil fields to a hub in Illinois, where it would go on to reach other refining markets.

The Standing Rock Sioux Tribe has been fighting DAPL since its early planning stages in 2014, when most people were concentrating solely on the now-defunct Keystone XL pipeline. The tribe's drinking water, as well as sacred cultural sites and economy, are threatened by the pipeline's route and its construction.

We made the decision to travel from Santa Fe, New Mexico, up to North Dakota, because we wanted to use our creative energy to help raise awareness of this moment of Indigenous unity. **Click here** to see a slideshow of more of my images.

We brought canvas, paint and brushes for anyone who wanted to create with us. It was absolutely wonderful to see the kids painting what was around them, everything from tipis to water to flowers and horses. Each one of their paintings reaffirmed their strength -- and mine -- and why we are fighting DAPL and protecting life for our future.

George Alexander (Muscogee Creek), paints with a youth at the Sacred Stone Camp.

We brought some of the canvases back with us to Santa Fe and will be holding an art show Oct. 16 from 2-4 p.m. at the Institute of American Indian Arts, where I am a student, with all funds raised benefiting the Sacred Stone School and Standing Rock. **Check out this link for more information about the art show**.

We spent a few days meeting new people and reconnecting with others. Like many who visit the Sacred Stone Camp and surrounding communities, we immediately found ourselves caught in the power of this amazing Indigenous and ally unity.

Sacred Stone Camp.

What's happening in Standing Rock is a tremendous and beautiful moment in our history, and I am honored to share these images I captured while at the camp. With these photographs, I wanted to share the light and joy happening amidst the chaos of what is trying to be accomplished against corporate greed and systemic, state-sponsored oppression.

The experience at protector camps was one of the most incredible of my life and something I will tell my grandchildren about someday. Everyone was so welcoming, giving, open and peaceful.

My name is **Jaida Grey Eagle**. I am Oglala Lakota. After being told my entire life that I am an artist, I am finally starting to believe it. My photography gear includes a Canon 5D Mark II and a Canon EF 50mm f/1.4 USM. You can see more of my photographs from this visit to Standing Rock **here**. I can be reached at *jaida.greyeagle@gmail.com*.

For more information about how you can help the efforts in Standing Rock, check out **this article** written by *Native Peoples* editor Taté Walker.


CANT
DRINK
OIL!

Click the image above to see a **photo slideshow** of more amazing Sacred Stone Camp images by Jaida Grey Eagle.

Photos: a Visit to the Standing Rock Pipeline Protest Camp in North Dakota

By Council Brandon • Oct 14, 2016 NPR

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  View Slideshow 1 *of* 13

A large group of teenagers visited the camp, representatives from different tribes, to join forces with Standing Rock's Youth Council.

Protesters are challenging the Dakota Access Pipeline with concerns that it will eventually contaminate area drinking water.

Since April, protesters against an oil pipeline have been camping in tents, tipis, and trailers at a site just across the Missouri River from the Standing Rock reservation in North Dakota. For a few days, I stayed at the camp, and met people who gathered there to support the effort.

The camp is known as Oceti Sakowin, meaning Seven Council Fires, a reference to the origin of the Sioux tribe.

The unarmed protesters call themselves Water Protectors. They are challenging the Dakota Access Pipeline, or DAPL, a 1,172-mile-long crude oil pipeline meant to transport oil from North Dakota to Illinois.

The Standing Rock tribe has voiced worries that the pipeline, which is proposed to pass under the Missouri River, would inevitably burst, and contaminate their drinking water.

Energy Transfer Partners, the private company behind the project, has met protesters at the front line with dogs, tear gas, army vehicles, and guns. As the weather gets colder and construction moves slowly forward, the camp and Standing Rock Tribe continue their opposition of the DAPL, sustaining discussion about the future of energy and conservation.

Facebook Hill

The day I arrived, more than 20 campers had been arrested while returning from a prayer ceremony at a DAPL construction site. The next morning was quiet.

Early risers climbed “Facebook Hill” to watch the sun rise while charging their cell phones. Smoke began to rise from fire pits while a few cars left to go to the front line. Chatting with other campers revealed that there wasn’t going to be much direct action for a few days; time was needed to regroup.

Early risers climbed Facebook Hill to watch the sun rise while charging their cell phones.
Credit © Council Brandon

"The day I arrived, more than 20 campers had been arrested while returning from a prayer ceremony at a DAPL construction site."
Credit © Council Brandon

Monitoring the Monitors

Every day, at sunrise and noon, a helicopter sent by Energy Transfer Partners comes from the north and flies around the entire camp. I asked a young woman if she knew why they did this.

“They want to look scary,” she told me. People pulled out their phones and filmed the helicopter making its daily rounds.

Smartphones are almost always being used at Oceti Sakowin. Although service is difficult to find below the hills, people record everything, streaming live on Facebook when they can, and posting their experiences on social media. As with police shootings, phone cameras have become mechanisms for protection at the Standing Rock camps and actions.

People pulled out their phones and filmed the helicopter making its daily rounds. Smartphones are almost always being used at Oceti Sakowin.
Credit © Council Brandon

“People are getting more used to the idea that we need our phones and cameras out,” my friend Thomas told me. He was also camped with the Hoopa kitchen and was doing a lot of organizing within the camp. “We use our devices to prove that something is happening here.”

I heard rumors of moles hired by ETP or the FBI taking drone footage of the camp and recording conversations. Many people that I talked to were skeptical of these accounts, but everyone agreed that the camp was being monitored closely.

Sustenance

The main kitchen and sacred fire are situated on a low hill, right next to Oceti Sakowin’s entrance. The spot serves as the primary gathering place.

Most people come to this kitchen for breakfast and a late dinner. Everyone in the camp is invited to make use of a PA system. Elders and community organizers come first, but artistic performances, musical acts, jokes, and storytellers are always welcomed alongside history lectures, prayers, and appeals to the camp.

The main kitchen and sacred fire are situated on a low hill, right next to Oceti Sakowin's entrance. The spot serves as the primary gathering place. Most people come to this kitchen for breakfast and a late dinner.
Credit © Council Brandon

Play

People have moved their entire lives to the camp, bringing their horses and basketball hoops with them to Standing Rock. Basketball provides a social and competitive activity during long, harsh winters, and young men bring old tribal rivalries with them to games, playing for the honor of their families and communities. At Oceti Sakowin, sports and horse-riding keep boredom at bay.

When the young children of the camp were not in classes at the makeshift school, they would roam the grounds with their bikes and skateboards, rolling down hills and makeshift jumps. Older youths would grab horses from friends' campsites and ride them bareback through the camp.

I saw people sitting around their campfires chatting all day. Others put themselves to work doing physical labor, including cooking, chopping wood, and building kitchens or showers. The community feeling was one of a shared life.

When the young children of the camp were not in classes at the makeshift school, they would roam the grounds with their bikes and skateboards, rolling down hills and makeshift jumps. Credit © Council Brandon

Basketball provides a social and competitive activity during long, harsh winters, and young men bring old tribal rivalries with them to games, playing for the honor of their families and communities.
Credit © Council Brandon

A child on a skateboard at the camp.
Credit © Council Brandon


At Oceti Sakowin, sports and horse-riding keep boredom at bay.
Credit © Council Brandon

Readying for the Cold

Winterization is a major point of concern at the camp. The campers cannot stay on the current grounds for much longer, and the site needs to become more organized and sustainable.

There are plans for solar homes and a couple hundred tipis, available for anybody who needs one. There is a constant need for donations and physical laborers. The camp ran out of water and firewood one day I was there -- both are needed daily for cooking and heat.

The camp did not have enough tipi poles for canvases, and was waiting on a group from Colorado to bring a truckful of poles. Still, campers said they needed more if they were going to provide enough shelter for people camping through the winter.

Thomas told me the organizers and Standing Rock Tribal Council want the camp to be a model for the world of sustainable living, depending entirely on renewable energy.


"The camp ran out of water and firewood one day I was there -- both are needed daily for cooking and heat."
Credit © Council Brandon

Standing for Peace

While getting lunch at the main kitchen, I ran into Arnie, whom I'd I met earlier that day. He introduced me to three young Mohican men he had traveled with to Standing Rock. I asked if I could take their photo.

Arnie asked me what I'd been doing since our breakfast encounter, where he introduced himself to me as an Amish man with two PhDs (he wouldn't tell me what they were in) and asked me if he looked like a man with two PhDs. I studied his ensemble — socks with sandals, sweatpants, a long black coat, a baseball cap and a gray beard — and I told him no. Arnie laughed.

Three young Mohican men visiting the camp.
Credit © Council Brandon

As we sat watching the morning's announcements and prayers, he told me that the violence and hatred circling the Standing Rock movement reminded him of his own village, when a man murdered several Amish children. One of them had been Arnie's.

"We need to not only stand for peace, but also make peace," he told me. "In my town, after those children were killed, we got together some money and gave it to the murderer's parents as a gift, because we knew they needed to heal. We made peace. We produced it. That needs to happen here, too, and everywhere really — we have to create peace and loving kindness. It can't be effortless."

"We Are the Mexica"

The Oceti Sakowin camp has drawn people from across the globe. One afternoon, a large group of youth and traditionally dressed dancers marched through the camp to the sound of drums. "We are the Mexica," announced one of the dancers. He pronounced it as Me-she-cah.

"You know us as the Aztecs, but this is not our original name." They brought a large group of teenagers with them, representatives from different tribes, to join forces with Standing Rock's Youth Council.

The march ended at the main camp, where one of the Standing Rock elders told the crowd about the ancient Amazon prophecy of the Condor and the Eagle — two different ways of life, the

heart and the mind — and of the potential for these two paths to join to create a new consciousness for humanity.

“Our Mexica friends have brought the Condor to the Eagle,” he said. “We must fulfill our potential.”

A Mexica dancer smudges a member of Standing Rock's Youth Council.
Credit © Council Brandon


A large group of teenagers visited the camp, representatives from different tribes, to join forces with Standing Rock's Youth Council.
Credit © Council Brandon

Protest and Prayer

Much of the conversation at Oceti Sakowin revolved around how to remain positive despite the difficulties the camp has to overcome.

Late one afternoon, I met a man who was deeply upset about the lack of constant action by the Council and by the elders. He felt that the whole camp should be rising every day to be at the front line, trying to stop construction no matter what.

"Protest is not in our native tradition. Our young people want to get up and yell and hold signs, but we are here to fight this battle with prayer."
Credit © Council Brandon

When I brought up this encounter with Tribal Councilman Robert Taken Alive, he told me, “Protest is not in our native tradition. Our young people want to get up and yell and hold signs, but we are here to fight this battle with prayer.” I talked about it with some fellow campers over a late-night fire. Several people echoed Robert’s statement.

One young man advised us all that we needed to focus on turning negative talk and patterns of thought into positive ones. If we respond to others’ fears and worries with more fears and worries, we allow space for disunity. Without unity, he said, it all falls apart.

Council Brandon is a film student from Hartford, Connecticut. She is currently taking a gap year.