To the Faculty of Washington State University:

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*time immemorial.*
DARK LEGACIES: TRACING ROOTS
OF U.S. SETTLER COLONIALISM IN
CONTEMPORARY TRIBAL ISSUES

Abstract

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Chair: C. Richard King

Drawing on the traditions and perspectives of ethnic studies, history and anthropology, I examine historical roots of U.S. settler colonialism and how they shape contemporary tribal issues in the U.S. Driven by the forces of territoriality and occupation, colonial strategies and derivative mechanisms have fostered misconceptions about the unique socio-political status of tribal nations and, in turn, prompted a range of responses within Indigenous communities. Deconstructive analysis of works by non-Native and Indigenous scholars illuminates settler colonialism’s historical formation and lasting legacies. Tracing Indian responses and resistance reveals an extensive history of Indigenous perseverance that traces back 600 years and continues into the present day.

Two broad issues occupy the analysis: 1) U.S. colonial policy with its racializing legacy of “blood quanta” established during the Allotment Era in the late 1800s extends into present-day controversies surrounding eligibility requirements for tribal membership, and 2) varied colonial assaults on Indigenous cultural landscapes threaten traditional land-use treaty rights for hunting, fishing, and gathering on Indian, federal, and public lands, continuing to facilitate colonial strategies of appropriation, assimilation, and elimination that began as early as the 1600s.
I conclude this project with a contemporary example of strategic Indigenous agency by Colorado Southern Utes against U.S. settler colonial normalization and subjugation followed by valuable insights from Pawnee attorney, activist, tribal judge, and author, Walter Echo-Hawk. Final closing remarks punctuate the imperative of educating the non-Native public to recognize and acknowledge the role of settler colonialism in major contemporary tribal issues in order to clarify misconceptions, promote understanding, facilitate intercommunications, and encourage future collaboration with Indigenous nations in U.S. society.
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This dissertation is dedicated to all of my numerous Indigenous friends, but in particular, Leo Ariwite, Frances Roy, and Erwin & Carolyn Taylor who graciously extended kindness, hospitality, wisdom, and friendship beyond measure during a long, arduous journey to accomplish this daunting task.
INTRODUCTION

When I first began my journey toward a Ph.D. in 2000—before multiple surgeries and a medical leave initiated a seven-year interruption—I struggled to marshal a raging sense of indignation when others in the American Studies program pointed out that I was “privileged” by virtue of my white identity. *Me?* I replied with incredulity. Internally, I immediately rolled out a litany of protests. My father never went past the eighth grade, and I spent my teen years as the oldest of three kids growing up in a 14-foot-wide trailer. I worked from the age of 15, left home at 18, and became a single mom at 34. I was diagnosed with ADD along with my five-year-old daughter at 40 and then physically disabled from a catastrophic fall at 49. I was also the first and only child in my family to attend college, but racked up hundreds of thousands of dollars in school loan debt in the process. How could I be considered privileged?

Back then I thought if my peers just knew the whole story, there was no way they could—or would—consider me privileged. I felt that way because I suffered from a crucial lack of awareness about the why and how of white privilege. Our privilege does not stem from how much money we do or do not have, or how hard we work or whether we suffer disadvantages or tragedy. White privilege is a legacy of perception—especially in U.S. society. Regardless of other circumstances, being perceived as white will always give us a leg up in this country. The social perception of race based on arbitrary physical characteristics with the most prominent feature emerging as skin color demonstrates a long history in societies. In the U.S., race as a colonial tool exists from our very conception as a colony in the womb of the British empire. In the hands of any colonial power, race is historically wielded to categorize, classify, and marshal specific members of a society into a rigid social hegemonic hierarchy that determines our wealth, our rights, our freedoms, and all too often, our very existence.
Most people in contemporary U.S. society stubbornly cling to the notion that we can identify a person as Black, or Indian, or Asian by simply looking at them in a persistent belief that race is a biological fact and not just a social construction—and a specifically, historically-situated one at that. But as Patrick Wolfe astutely points out in one of his journal articles: “[T]he mere fact that race is a social construct does not of itself tell us very much [because] different racial regimes encode and reproduce the unequal relationships into which Europeans coerced the populations concerned.” Wolfe clarifies his point with an example from U.S. history that demonstrates how Indians and Blacks were “racialized in opposing ways that reflect their antithetical roles in the formation of US society.” Enslavement of Blacks “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. 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.” Because of their unique socio-political status in the U.S., racializing Indians ultimately served an inherent purpose in a variety of colonial strategies that began in the 1600s and then shifted over the centuries to adapt to present-day constraints.

Scientists know and understand that race is a social myth. Sociologists know it. Scholars know it. But John and Josie Q. Public adamantly maintain their beliefs—on both sides of the color line. However, white people in particular patently ignore the elephant in the room even more vigorously because to do otherwise would be to acknowledge that we are indeed

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1 While Indigenous peoples in the U.S. prefer their specific cultural identity such as Sioux, Shoshone, Blackfoot, etc., they use a wide variety of terms to refer to their “collective” identity, including but not limited to Native, Native American, American Indian, Indian, Tribal, or Tribal Nation. For the purposes of this project, I use specific Tribal identities whenever possible. Depending on the context, I use collective terms interchangeably when speaking about U.S. Indigenous peoples as a whole.
privileged. Even more threatening is the realization that white privilege is laid on a foundation with no more substance than a wisp of cloud on the air. And ultimately, inexorably, with that realization must come acknowledgement of the price that Others have paid and continue to pay to sustain white privilege. The price that Indigenes paid and continue to pay is compounded by the deadly combination of white privilege and settler colonialism.

Today, Indigenous peoples in the U.S. pay that price in ways that are politically, socially, and legally unique by virtue of their status since 1924 as “dual” citizens of the U.S. and of their tribe as a sovereign nation with treaty rights. Unfortunately, the definition of tribal sovereignty historically shifted with the winds of U.S. political preference, alternately expanded or limited either legislatively by the plenary power of Congress or judicially by U.S. Supreme Court definitions that emerged from within its interpretations of “extra-constitutionality” and “trust responsibility.” But while the U.S. federal government and the individual state governments are intimately aware of the unique status—and rights—of tribal people in the U.S., the average non-Native citizen is not. But it is unfair to cast all the blame on individuals who have been deliberately left in the dark by a K-12 educational system that cherry picks historical events to initiate and sustain an image of the U.S. as a “reluctant superpower.” And even though we see some marginal improvement at the college level when a few courses offer a more inclusive view of U.S. History—warts and all, American Indians have steadily disappeared off the pages of our history textbooks until today, they are virtually invisible to a large majority of the non-Native public.

In this project, I explore how legacies of U.S. settler colonialism distort tribal history and promote misconceptions that fuel and exacerbate contemporary tribal issues with national and international implications. Within this project, I first contribute to the field of studies on settler
colonialism by unveiling my theory of the cyclical nature of five major strategies which I identify as Assimilation, Elimination, Removal, Distortion, and Erasure. These strategies encompass concepts with a broad purpose that produce mechanisms and techniques such as allotment, appropriation, warfare, blood quanta, racialization, isolation, cultural genocide, stereotyping, Social Darwinism, and scientific racism to facilitate and sustain a strategic purpose with specific actions, policies, and social attitudes. These five strategies and their attendant mechanisms are by no means an all-inclusive list, nor do they present throughout history in a strict linear or chronological manner; they do, however, illustrate how and why legacies of U.S. settler colonialism continue to present in contemporary tribal issues today which is the unifying thesis for this entire project.

Examining these strategies also illuminates the imperative need to educate the non-Native public, beginning with children in our K-12 educational system, progressing into our post-secondary institutions, and continuing into elder populations. Without this education, confusion and misconceptions about tribal histories and contemporary issues for U.S. Indigenous communities will continue to prevail whereas raising conscious awareness in the colonial settler mindset helps defuse tensions, facilitate communications, and encourage collaboration when addressing contemporary tribal issues, especially when those issues impact Natives and non-Natives alike. Additionally, increased understanding allows Natives and non-Natives to seek opportunities to work together at a local or regional level, initiate further positive changes in federal policies that reflect active efforts to acknowledge historical colonial actions, and discontinue or at least mitigate contemporary colonial practices.

I define settler colonialism by its primary driving force, territoriality, which finds its application in permanent occupation through a process wherein the colonialist government first
displaces Indigenous peoples and then replaces them with colonial settlers. I then apply Foucault’s concept of disciplinary power in the processes of normalization and subjugation in an Indigenous context to identify major strategies and their derivative mechanisms. Over time, these strategies and mechanisms emerge, recede, adapt, evolve, and then re-emerge in a cyclical process. Ultimately, in a historical dialectic, colonial resistance repeatedly emerges in new ways in response to new forms of Indigenous resistance.

Initially, philosophical concepts mandate eliminating, removing, assimilating, distorting, and/or erasing Indigenous peoples in the process of acquiring their land and its resources with mechanisms that include but are not limited to Manifest Destiny, Doctrine of Discovery, and Civilizing the Savage. Then, legal, social, and political rationalizations provide colonialist justifications for specific actions that further define and classify Indigenes thereby vesting ultimate power over them in the colonial nation-state with mechanisms like Trust Responsibility, Limited Sovereignty, Plenary Power, Social Darwinism, and Scientific Racism. Finally, colonial strategies respond to Indian agency and resistance by developing mechanisms that continuously adapt and re-emerge to begin a new cycle within a chronologically identifiable era; i.e., the Treaty Era, Allotment Era, Relocation Era, or Covert Operations Era.

Equally important to recognize is that a strategy may function in isolation or several strategies may work in tandem with each other thereby employing multiple strategies with shared mechanisms that facilitate both purposes. Detailing a summary of the experiences of the Sacajawea’s people, the Lemhi Shoshone, through one of these colonial cycles, I illustrate my theory with a diagram that I constructed in Figure I.1 on page 6. The diagram and accompanying summary illustrate how the strategies of appropriation, assimilation, and elimination interface during the Allotment Era.
Colonial settlers first displaced the Lemhi Shoshone Tribe in the early to mid-1800s by appropriating traditional lands that encompassed the present-day states of Idaho, Montana, and Wyoming. Lemhi Shoshones peacefully resisted until seasonal migrations were increasingly reduced by settler encroachment. Between 1823 and 1832, the U.S. Supreme Court rationalized U.S. actions with several pivotal rulings known as The Marshall Trilogy, determining that Indians did not have full sovereignty, but rather limited sovereignty influenced by the Doctrine of Discovery. These rulings also vested sole jurisdiction over Indian relations in the U.S. federal government under a concept of trust responsibility thereby establishing a paternalistic relationship akin to that of a guardian (the U.S. federal government) for a ward (the Indians). Even with limited sovereignty, Indians could still legally negotiate treaties, so the Lemhis, led by Chief Tendoy, again resisted with the only tool left to them—treaty negotiations—signing both a Treaty and a Cession Document in September 1868. The Treaty of 1868 languished in the Senate awaiting ratification for over three years. Adapting to Indian resistance with an eye toward forced assimilation, Congress ended treaty-making in 1871; therefore the Lemhi Treaty of 1868 was never honored. When President Grant signed an 1875 Executive Order to establish the Lemhi Valley Indian Reservation near present-day Salmon, Idaho, the federal government adapted by coercing them for the next twenty-five years to move onto the Fort Hall Reservation to the south. In the late 1800s, the federal government also began removing Indian children across the nation to boarding schools like Carlisle Indian Industrial School established in 1879. Congress then passed the Dawes Severalty Act of 1887 (a/ka/ the General Allotment Act), which rendered smaller reservations like the Lemhi’s especially vulnerable. Although Lemhis resisted for nearly forty years after first signing the Treaty of 1868, they were forcibly removed to Fort Hall under military escort in May 1907, the Lemhi Reservation was shut down, and the lands appropriated. Ultimately, the Dawes Act started a new cycle as it eliminated tribal governments, authorized surveys and allotments of Indian lands, established the Dawes census rolls based on blood quanta, and opened up a “surplus” of land to colonial settlers that eventually totaled a loss of ~90 million acres before Congress passed the Indian Reorganization Act in 1934.
In attempts to rationalize colonial actions and behavior, strategies employed such mechanisms as allotment to justify appropriating land, resources, and intellectual knowledge; racializing which included pseudo-science in order to classify Indians as inferior sub-humans or barbarians in need of Euro-American civilization; derogatory stereotyping to add an artifice of weight to the existence of an “Indian Problem;” dehumanizing in efforts to justify racism and biological warfare, and infantilizing to justify both paternalistic federal policy and authorizations that deemed Indigenous individuals “incompetent” during the Allotment Era. Meanwhile, these strategies are continually adapting to the fluctuating winds of social change. In particular, self-rationalization in the United States takes on specific significance in light of political claims that the U.S. formed in the 1770s as a nation-state based on “democratic” principles in direct contrast to the imperial, colonialist monarchies of Great Britain and France. Consequentially, the inevitable rise of social movements demand accountability on a regular basis throughout U.S. history.

Under the heavy hand of U.S. settler colonialism, the U.S. federal government and its officials who wielded colonial power in various capacities operated overtly at the outset; but increasingly, prudence dictated a more camouflaged presence to facilitate a strategy of erasure that subtly rendered American Indians increasingly invisible within processes of normalization and subjugation. Within the exercise of disciplinary power to institute these processes, settler colonialism developed major strategies that implemented specific mechanisms to advance their prime imperative: territoriality. One of the most effective strategies to accompany territoriality is erasure, and in the U.S., Indigenous erasure remains ongoing.

Over the past twenty-five years, personal experience in my K-12 Teacher Certification program at Montana State University in History and English, teaching experiences in History
courses in the high school, interactions with non-Native college students on the Washington State University campus, and finally, personal coursework throughout my Masters and Ph.D. have led me to make the following observations. Accounts of U.S. history taught in high schools in the 1990s moved increasingly in three directions: 1) ignoring or condoning the absence of Native perspectives or outright deletion of the entire Native story in historical events—especially when that story cast colonial settlers in a particularly ugly or negative light; 2) promoting the superficial inclusion of generic Indians as broadly generalized stereotypes which elided Indigenous diversity; and 3) the continuation of romanticized distortions such as Thanksgiving plays still performed in elementary schools with Indian figures promoted by a non-Native, predominantly white, imaginary that subsequently reifies those images in literature, television, and film.

To their credit, the U.S. states of Montana and Washington enacted legislation in 2015 to include history of local or regional tribes in K-12 schools. In 2015, Montana passed Annotation 20-1-501 to clarify and enforce legislative intent of a constitutional policy established in 1972. In her article as Editor of HuffPost Education, Rebecca Klein offers a brief summary of legislative action in Montana between 1972 and 2005 leading up to the 2015 action:

In 1972, Montana added language to its constitution pledging to use education to preserve the unique cultural heritage of Native Americans. After nearly 30 years of inaction, this pledge was codified with the Indian Education for All (IEFA) Act, which says that every student in Montana, whether native or not, should “be encouraged to learn about the distinct and unique heritage of American Indians in a culturally responsive manner.” Several years later still, in 2005, this act was logistically implemented when the state legislature gave the initiative financial backing.4

In order to clarify “the constitutionally declared policy of this state to recognize the distinct and

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unique cultural heritage of American Indians and to be committed in its educational goals to the preservation of their cultural heritage.” the 2015 Montana declaration of legislative intent specifically iterates the following:

(2) It is the intent of the legislature that in accordance with Article X, section 1(2), of the Montana constitution:
   (a) every Montanan, whether Indian or non-Indian, be encouraged to learn about the distinct and unique heritage of American Indians in a culturally responsive manner; and
   (b) every educational agency and all educational personnel will work cooperatively with Montana tribes or those tribes that are in close proximity, when providing instruction or when implementing an educational goal or adopting a rule related to the education of each Montana citizen, to include information specific to the cultural heritage and contemporary contributions of American Indians, with particular emphasis on Montana Indian tribal groups and governments.

(3) It is also the intent of this part, predicated on the belief that all school personnel should have an understanding and awareness of Indian tribes to help them relate effectively with Indian students and parents, that educational personnel provide means by which school personnel will gain an understanding of and appreciation for the American Indian people. 

On May 8, 2015, Governor Jay Inslee of the state of Washington approved Substitute Senate Bill 5433 with an effective date of July 24, 2015 (see Appendix A). A full history of SB 5433 with links to review the original bill and the bill as passed by the legislature is available online. As strikethroughs on the copy of SSB 5433 demonstrate, while the original bill “encouraged” school districts similar to the language used in Montana, the substitute bill exhibits more forceful language that legally “requires” school districts to comply; e.g., “shall incorporate curricula” and “shall meet the requirements of this section by using curricula.” As laudable as these efforts are, that still leaves 48 states without any legislative mandates whatsoever. Such

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omissions speak volumes about entrenchment of a national perspective that continues to support an inadequate settler colonial paradigm for teaching U.S. History. But mine is hardly the only voice—or even a new one—expressing concern about sustaining a colonial paradigm that either excludes or distorts U.S. Indigenous history.

In a 2010 guest lecture in a World History course, Brian Kemp, a tenured faculty member in both the School of Biological Science and the Department of Anthropology at Washington State University, observed that when we establish a paradigm, we essentially block out any other ideas that might exist outside that paradigm. Eventually, those ideas can knock at that paradigm so insistently that the door is reluctantly forced open to expand the paradigm; but I contend that we need to do more than just expand this colonial paradigm in the U.S., we need to shatter it. In her essay entitled “When Women Throw Down Bundles” within her book, Sacred Hoop: Recovering the Feminine in American Indian Traditions, Laguna Pueblo/Sioux Paula Gunn Allen makes a passionate observation that lends support to my contention:

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. This is reinforced by the loss of rituals, medicine societies, and entire clans through assimilation and a dying off of tribal members familiar with the elder rituals and practices. Consequently, Indian control of the image-making and information-disseminating process is crucial, and the contemporary prose and poetry of American Indian writers, particularly of woman-centered writers, is a major part of Indian resistance to cultural and spiritual genocide.

Further support stems from analysis of eminent post-colonial scholar Dipesh Chakrabarty who devotes his 2008 book, Provincializing Europe, to expanding a specific paradigm of

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historical analysis in an effort to develop strategies for thinking about historical difference despite the fact that the knowledge protocols of academia are not independent of the globalizing effects of the European Modern heritage.\textsuperscript{10} I agree with Chakrabarty that this heritage is inherently inescapable at the same time that it is utterly inadequate. I also agree that we need to find ways that “this thought—which is now everybody’s heritage and which affects us all—may be renewed from and for the margins…margins [that] are as plural and diverse as the centers.”\textsuperscript{11}

On pages 38-9, Chakrabarty indicts historians who fall back on transparent maneuvers such as what he calls an old ‘dialectical’ card trick: the “negation of negation” to deny a Native voice that expresses resistance. With profound echoes of both Foucault and Toby Miller, he points to a significant undercurrent that seeks to “make Indian history look like yet another episode in the universal (and in their view, the ultimately victorious) march of citizenship…. It is the figure of the citizen that speaks through these histories. And so long as that happens, my hyperreal Europe will continually return to dominate the stories we tell…. ” Continuing with a quote of Meaghan Morris on her concept of a “known history” as something which has already happened elsewhere and is then merely reproduced with a local content, Chakrabarty proposes a history that resists and challenges European mandates with unrelenting forays into marginal diversity—a history that is informed by a multiplicity of voices and not just the primary voice of a dominant center that retains the sole authority to determine the acceptability or validity of those voices based on a selective and self-serving paradigm.\textsuperscript{12}

In the United States, Chakrabarty’s “hyperreal Europe” informed academic knowledge protocols via a “Euro-American” paradigm and historically sanctioned the efforts of the U.S.

\textsuperscript{11} Ibid, 16.
\textsuperscript{12} Ibid, 39.
government to impose a specific “history” of the indigenous people as fact. This known history, as Morris tells us, is actually an unoriginal reproduction that has been superficially glossed with a local variation on a dominant theme. More specifically, U.S. Natives face a particularly intense challenge because their oral tradition—a tradition that believes in their storyteller as a sacred human vessel of history—is not only ignored, but is utterly invalidated by that paradigm. This is especially problematic when contemporary storytellers attempt to translate the oral tradition onto the written page, and tribal history is then derided as mere creative fiction.

A “Euro-American” version of history is first falsely imbued with a sense of Truth and then inculcated into the very fiber of dominant American society with social studies and history courses from K-12 through undergraduate collegiate levels—exemplifying the historical impact of disciplinary powers that Foucault discusses throughout his germinal text, *Discipline and Punish*, and contemporary manifestations of those powers that Toby Miller expands upon throughout *Cultural Citizenship*, particularly in Chapter 1 wherein he defines “What is Cultural Citizenship?” 13 One example of the culmination of this inexorable process can be seen in officially sanctioned holidays such as Columbus Day. There have been valiant efforts by high school teachers and college professors alike to swim against the tide, but they do so in the face of three powerful undertows: textbooks that either conveniently omit or deliberately distort history, literary canons that reinforce the idea that Native versions of history are colorfully rendered fictions, and the inexorable trend to eliminate certain courses from the curriculum and condense others into a shorter time period that will negate any realistic possibility of in-depth inquiry.

For example, textbooks might devote a diluted paragraph to the outrageous, and what could be considered today as impeachable, acts of President Andrew Jackson in the 1830s; but

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by and large, texts reinforce a historical image of the “white man’s Indian,” to coin a phrase from Robert Berkhofer. It is pertinent to note that when it was published nearly forty years ago in 1978, Berkhofer’s observations were effusively lauded by both the *Chronicle of Higher Education* as a “splendid inquiry into, and analysis of, the process whereby white adventurers and the white middle class fabricated the Indian to their own advantage” and by Leo Marx from the *New York Times* as a “compelling and definitive history…of racist preconceptions in white behavior toward native [sic] Americans.”¹⁴ Nevertheless, white-infused images of U.S. Indians predominate still today.

While teaching as Assistant Professor of History at the University of Colorado, Philip Deloria gave us a more recent, insightful Native perspective into this social phenomenon with his book entitled *Playing Indian*. Published in 1998, Deloria was also highly praised by academia and media alike. However, as the entry by Dianne Zuckerman from the Denver Post demonstrates, praise from a “non-native” is not only stunning in its understatement, but couched within the positivistic framework of the Euro-American paradigm: “Deloria makes a convincing case for ways in which Americans have used Indian symbols and items for their own purposes and identities.”¹⁵ These observations from Berkhofer and Deloria remain pertinent today because despite efforts that span two decades from 1978 to 1998—and continue into the present of 2016—both Native and non-Native advocates alike are screaming into a vacuum. Why? Because a paradigm pushes alternative voices into a vacuum that exists outside of itself—a vacuum that helps to maintain the self-serving colonial interests that created the paradigm in the first place.

What I propose goes well beyond tweaking or even expanding a paradigm of historical inquiry—Euro-American or otherwise. In order to genuinely construct a history that embraces a

multitude of voices, we must shatter the very concept of paradigm itself. I propose that the term itself is archaic for the very reason that, by definition, it is impossible to expand in any organic way. Because a paradigm insists on immutable boundaries, it cannot embrace the fluidity of growth and change—especially when technology and the acquisition of knowledge means that change is occurring at a profoundly accelerated pace. A paradigm’s fixity rejects the very idea of alternative perspectives; it linguistically denies that connotations even exist. The Euro-American paradigm in particular, fueled by racism and self-interested appropriation of both property and image, is in dire need of not just expansion, but eradication. Tracing roots of U.S. settler colonialism and how colonial legacies radically inform accounts of tribal history in the U.S. emphatically demonstrates this need to eliminate the Euro-American paradigm.

Today, U.S. tribal communities continue to slip into an out-of-sight/out-of-mind existence in the non-Native public consciousness even while tribal nations exhibit profound “agency” with landmark decisions in U.S. Federal Courts, volumes of scholarly publications and Native literature, and an increasing proliferation of programs that nurture cultural revitalization within reservations. Sadly, the average non-Native U.S. citizen simply does not see Indians, much less thoughtfully reflect on their legal, political, or social status in the U.S. or how that status plays a role in contemporary issues.

As a result, non-Natives are woefully uneducated, misinformed, misled, or confused about serious contemporary issues that can and do impact Native and non-Native alike—especially when tribal issues spill over into the back yards of local non-Native communities. But geographic proximity to a tribal community is not a prerequisite for colonial abuse that exacerbates tensions. Because Mother Nature knows no boundaries—geographical, political, or legal—harmful environmental contaminants literally hitchhike on trade winds over thousands of
miles, transcending national and international boundaries, to affect Native communities in particular with profound consequences. And even though these particular consequences result indirectly from colonial strategies that entail commercial exploitation, they also further a colonial agenda of elimination that works particularly well in tandem with the colonial strategy of erasure.

As Dr. Laurie Mercier from Washington State University-Vancouver so astutely pointed out in a conversation over lunch in January 2014, erasing Indians in U.S. History is nothing new. While I do not deny this reality, three questions occurred to me upon later reflection. First, why did I encounter less Native American inclusion in my Ph.D. coursework from 2010 to 2012 than I did in my Masters coursework from 1993 to 1996 and my early Ph.D. coursework from 2000 to 2003? Second, how is the way Indians are excluded today different from the way they were excluded ten, twenty, fifty, or even 150 years ago? Finally, how does exclusion today specifically escalate tensions between Natives and non-Natives regarding contemporary tribal issues? While the first and second questions contribute to observations about current approaches to teaching tribal history within U.S. History courses at both K-12 and post-secondary levels, the third question emerges as most relevant for my inquiries in this project.

While earning my Masters in English with a focus on Native American literature at Eastern Washington University from 1993 to 1996, I was intrigued by the expansion of anthologies that specifically included Native authors, speakers, and historical figures in each chronologically grouped section of literary works, encompassing every genre from famous speeches to poetry to both fictional and non-fictional prose. Indians also accomplished huge
federal legislative victories in the 1990s—successfully occupying courtrooms as, to paraphrase Sisseton-Wahpeton Sioux Susan Williams: Indian warriors became Indian lawyers.\textsuperscript{16}

We certainly witnessed a profound American Indian social movements in the 1960s that operated alongside Martin Luther King and the Civil Rights Movement with the American Indian Movement (AIM) in militant occupations at Wounded Knee and Alcatraz offering high profiles. That movement initiated legislative and judicial victories in the 1970s that would yield their greatest harvests over the next two decades. An additional movement to expand academic inquiries and embrace Indigenous figures in U.S. History also surged in the 1990s. Then as we trudged our way through the perfect storms in the first decade of a new millennium with unprecedented acts of terror like 9/11 in 2001, an alarming increase in K-12 school shootings, and economic recessions that threatened to topple the entire U.S. financial structure, we seemed to lose that momentum. When I took a graduate course in Race & Ethnicity in the Fall of 2011, I was first stunned and then dismayed when, unlike Blacks or Asians or Hispanics who had entire books devoted to their specific history in the U.S., our extensive reading list did not include a single text devoted exclusively to U.S. Indians. And, only David Roediger as one out of nine book authors gave substantial attention to tribal peoples; the others never mentioned them at all.

Early on in his book entitled “How Race Survived US History: From Settlement and Slavery to the Obama Phenomenon,” Roediger acknowledges that “social practices of white supremacy” exhibited a presence in both “plantation slavery” and “the dispossession of the Indians.”\textsuperscript{17} He continues this discussion of the Indian role in the social construction of “race” in

\textsuperscript{16} Susan Williams, Interview, \textit{Chicago Sun Tribune}, Interviewer: Norma Libman, October 28, 1990, qtd. in Gloria Valencia-Weber, “Law School Training of American Indians as Legal-Warriors,” \textit{American Indian Law Review} 20, no. 1 (1995-1996): 5-6. Williams, a Sisseton-Wahpeton Sioux, is an attorney who was inspired by her great-great-grandmother, a Sioux warrior. During her interview with Norma Libman of the \textit{Chicago Sun Tribune} in 1990, she stated: “I felt that the way to be a warrior, or protector, of the people was to become a lawyer.”

the U.S. throughout his book; i.e., drawing parallels between Indians and blacks throughout two-thirds of his text as he points out how federal law draws the “color line, directly linking race and citizenship.”

He includes a sub-section entitled “Settler Revolutionaries and Indian Enemies” in Chapter 2 from pages 51-54 wherein he discusses individual tribes and their diverse unique stories and draws close parallels between Black and Indian experiences with colonialist patriarchal distortions of both slave insurrections and Indian captivity narratives that seek to generate fear in colonial settler communities. Roediger also examines the crucial significance of the Louisiana Purchase with its geographical impacts for both slavery and the “Indian problem.”

He then closes Chapter 2 with a specific emphatic declarative: “The removal of Indians from the land east of the Mississippi, and then hemming them in smaller and smaller territories beyond it, would ensure that the republic would long continue to be built on Indian graves, slave sales, and white supremacy.”

A unique convergence of these three formative components—white supremacy, plantation slavery, and Indian dispossession—puts down roots in the Cherokee Nation in the 1820s-1830s, grows increasingly tense between the 1860s and the 1930s during the Era of Allotment and Assimilation, eventually starts simmering in the 1980s, and then boils over nearly 200 years later into the acrimonious, protracted litigation known today as the “Cherokee Freedmen” controversy. There were “Black Indians” in other tribes; e.g., the Southern Ute Taylors descended from John Taylor, a former slave and buffalo soldier, whose fifth and last wife in the 1800s was a Southern Ute girl named Kitty Cloud. John Taylor often served as an

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19 Ibid., 58.
20 Ibid., 60-62.
21 Ibid., 63.
22 The Cherokee Freedmen controversy serves as my first case study in Unit II (see Chapter 3).
interpreter for the tribe, and his descendants served and continue to serve in influential positions and leadership roles as fully recognized members of the tribe.

Cherokees, however, along with Choctaws, Chickasaws, Creeks, and Seminoles offer a unique historical perspective on racialization in the U.S. in several ways. First, the Cherokee Nation ultimately resisted white settler encroachment by engaging in a legal battle against the state of Georgia instead of going to war like some of their neighboring tribes. Second, the government was targeting tribes whose people had not only embraced the “white settler” lifestyle, but owned African American slaves; ergo, their designation as the Five Civilized Tribes. However, even the Cherokee Nation’s 1831 landmark legal battle, Cherokee Nation v. Georgia, which marked the second decision of the Marshall Trilogy in the U.S. Supreme Court, could not forestall Andrew Jackson’s abuse of executive power and subsequent forced removals that set thousands of tribal people—and their slaves—on a 1200-mile trek away from their homelands under military escort.

Nevertheless, the Cherokee Freedmen controversy with all of its high-profile publicity waxes and wanes in relative obscurity in the collective mind of the general non-Native public. Like most “Indians” in the U.S., Cherokees are lumped together in an out-of-sight/out-of-mind mentality that renders them invisible. When I come across someone who is intrigued by my studies and my work, I always ask them the same question: How many federally recognized

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23 The phrase “Five Civilized Tribes” was coined by the U.S. colonial government at a time when “civilized” in direct juxtaposition to “savage” or “barbarian” was defined by the degree to which a Tribe adapted to dominant white Euro-American lifeways, attitudes, language, values, and religion. Choctaws and Chickasaw earned this “elevated” status by virtue of their military alliances with colonists against the British during the American Revolution and fighting alongside Andrew Jackson (with his personal acclaim) in the War of 1812—punctuating the bitter irony of Jackson’s Indian Removal Policy in the 1820s and 1830s. Cherokees present an especially stark example of a Tribal nation whose people adopted Euro-American clothing, spoke the English language, settled down on farms (as opposed to nomadic roaming), converted to Christianity (albeit often a synthesis of Euro-American and Native beliefs), and even owned slaves. They also garnered distinction in U.S. History because when the state of Georgia began appropriating Cherokee lands, the Cherokee people responded not by going to war, but by pursuing legal recourse within the U.S. Supreme Court instead in Cherokee Nation v. Georgia.
tribes do you think currently exist just in the United States? Answers usually range between 15 and 50, a rare few respond with 100, and one person ventured as high as 300. No one except a graduate student in History ever came close to the correct answer: 565 — and counting.

Most non-Natives are shocked to learn about the extent of Native diversity and the rich histories and cultures that accompany even the slightest inquiry about Native communities of the United States. Even more concerning is that most of the non-Native general public has no clue about the unique political, legal, and social status that Indians hold in the U.S. As a result, on the rare occasion that they do “see” Indians, they express outrage steeped in ignorance over imagined preferential treatment, promote racist stereotypes that change colors like a chameleon in different environments, and maintain indefensible opinions based on misconceptions and even outright fantasies. But if educators do not share the whole picture with kids from K-12 through college, can we realistically expect young adults to behave any differently than their forebears?

**Purpose and Contribution of this Project.**

Before I delve into the nuts and bolts of this project, I wish to explain how I ended up here, and why, as a non-Native, I chose to focus on Indigenous history and contemporary issues. First, I need to clarify at the outset that I do not wish or intend to speak *for* Indigenous people in any capacity. As this project demonstrates, U.S. tribal people have been and remain fully capable of speaking for themselves since time immemorial. My purpose within this project is to speak to other non-Natives in U.S. society in an effort to 1) raise conscious awareness about the full history of tribal nations in the U.S., 2) clarify their unique political, social, and legal status in U.S. society, 3) emphasize their stunning degree of diversity to demonstrate how stereotyping and prejudice compromise that recognition, and ultimately, 4) elucidate how U.S. settler colonialism historically impacted and continues to impact relations between tribal nations and
the rest of U.S. society. I remain firmly convinced that a lack of proper K-12 education coupled with ingrained colonial settler attitudes conditioned by racism engenders confusion, misconceptions, and outright hostility between non-Native and Native communities—all of which exacerbate tensions, continue to proliferate time-worn stereotypes while creating new ones (e.g. the drunken casino Indian), and seriously hamper efforts to address major contemporary issues for tribal communities.

Popular discourse should be as well informed as scholarly discourse by a comprehensive, accurate, and inclusive history of the United States in order to 1) dispel harmful, derogatory, racist stereotypes that denigrate, misrepresent and malign while they elide diversity; 2) redress misconceptions that hamper understanding and contribute to antagonism and conflict on local and regional levels; and 3) address contemporary issues with tap roots that extend deep into U.S. history and the nation’s foundations in settler colonialism. Facilitating communications at grassroots levels, in turn, can have a profound impact on addressing and/or resolving contemporary issues that may find jurisdiction between sovereign tribal nations and the United States, but play out in local and regional communities.

Finally, integrating insights from Culture & Race Studies, History, and Anthropology encourages a more balanced understanding of social and cultural issues thereby improving ways to more effectively educate U.S. society, improve inter-communications and initiate constructive dialogues with members of tribal nations, and assist development of public policies in both U.S. federal and tribal governments that fully and fairly address the concerns of all stakeholders.

**Methodologies.**

As a graduate student in the Individual Interdisciplinary Doctoral Program (IIDP), I am required and privileged to draw upon theories, research protocols, and methodologies of three
separate disciplines. Add the fact that one of my three disciplines, Culture & Race Studies, is itself an interdisciplinary field of study, and the scope of the final product can be quite disconcerting. But even scholars in Cultural Studies—a field oft noted for its past reluctance to bring any explicit discussion of methods and methodology—partially explained by its renegade character, and its conscious dissociation from established academic disciplines—recognized in 2008 that methods could be defined within this “interdisciplinary” discipline. As methods offer explanations, frameworks, and guidelines for doing research, they also illustrate how academic disciplines in the humanities and social sciences have increasingly gravitated toward integrated, interdisciplinary approaches. Indeed, my coursework in Culture & Race Studies, History, and Anthropology over the past five years reveals increasing intellectual “crossover” between each discipline and its specific research protocols. What remains firmly in place within Cultural Studies though is the emphasis on a pluralist philosophy that “advocates using mixed methods [by] taking an eclectic approach to research topics rather than confining research activity to any single avenue of investigation.”

Nevertheless, efforts to present a cohesive synthesis of ideas within a project with clear connections between seemingly disparate topics presents unique challenges. As an interdisciplinary doctoral candidate, clarifying topical connections and the research methods that I engaged within each discipline or across disciplines to make those connections in the first place remains my responsibility. But before I specify methodologies within each of my three disciplines, I need to clarify that all of my research in this project—regardless of specific disciplinary methodology—is linked by a commitment to examine how U.S. “settler colonialism” and its endemic racism constructed historical foundations for contemporary tribal

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issues that still proliferate in present-day U.S. society. First, I clarify specific methodologies specifically linked to each of the three disciplines beginning with Culture & Race Studies, followed by History, and culminating with Anthropology.

Culture & Race Studies

Methodologies from Culture & Race Studies drive a focus on political dynamics and the continued significance of “race” that must necessarily accompany any discussion of colonialism regardless of its stripe or country of origin. Specifically, deconstructive analysis of U.S. settler colonialism and parallel racist stereotyping accompanies interrogations about how and why racist colonial legacies increasingly erase U.S. Indigenous peoples from accounts of U.S. history, elide their profound tribal cultural diversity in the process, and continue to play out today in major contemporary issues. Examinations of colonial legacies also address reasons why U.S. tribal nations may still incorporate some of these racist legacies in their tribal governments.

In both units, I apply textual analysis with techniques of close reading as methodologies most effectively learned in my Cultural Studies course with Lisa Guerrero. For example, a close reading of David Roediger’s book on the survival of “race” in U.S. history informs an earlier section of this Introduction as well as my discussion of the persistence of “race” in U.S. history as exemplified by the Cherokee Freedmen issue. Additionally, textual analysis with a close reading of the U.S. Supreme Court ruling in Worcester v. Georgia as the third decision in the Marshall Trilogy delineates its specific significance for the Cherokee Nation in Chapter 3. Textual analysis of works by both non-Native and Indigenous authors (e.g., Foucault, Wolfe, Biolsi, Veracini, Smith, Green, and Deloria) is endemic to discussions in Unit I on colonial strategies in general, U.S. settler colonial strategies in particular, and U.S. colonial adaptations in response to Indian agency and resistance movements.
History

Oral history as a research method holds a particularly important, specific relevance when researching U.S. tribal history. Unfortunately, it can also be an extremely difficult methodology to implement; this is true within any group of individuals when the researcher is an outsider—but never more so than with U.S. tribes. University IRB requirements pale in comparison to navigating the political waters of tribal governments—particularly when prior bad acts by “researchers” have set tribal members on guard with a fully justified sense of distrust that can so easily boil over into overt hostility.

Fortunately, hospitality, guidance, teachings, and conversations with tribal nations, various Indigenous groups, and specific tribal individuals offered invaluable insights at multiple events such as: the 2011 and 2012 Lemhi Shoshone Agai’ Dika Annual Gatherings; the 2013 Lemhi Shoshone First Annual Virginia City Treaty Days; the 2013 Shoshonean Reunion including bands of Lemhi Shoshone, Shoshone-Bannock, Western Shoshone, Eastern Shoshone, Gosiute, Ute, Southern Ute, and Comanche; the 50th Annual Fort Hall Indian Festival in 2013; and a four-day visit in September 2013 with Southern Ute Elder Erwin Taylor and his wife Carolyn at their home on the Southern Ute reservation in Colorado.

Besides openly sharing their personal family history and Southern Ute culture, Erwin and Carolyn Taylor introduced me to their children, their grandchildren, and other Southern Ute Elders. They also accompanied me to the Southern Ute Pow Wow, guided me around the Southern Ute reservation and its impressive museum, drove me through Mesa Verde and up to the Vallecito Reservoir, and offered education on cultural landscapes and seasonal activities in the San Juan Valley. I could not have completed this project without such gracious contributions from so many individuals in these various Native communities.
My invitations from Lemhi Shoshones and Shoshone-Bannocks to cultural events and ceremonies, along with my three-day sojourn with Southern Ute Erwin and Carolyn Taylor who insisted that I stay at their home, are examples of a “variation” of participant observation – a fundamental methodology intrinsic to cultural anthropology. I qualify my use of this method as a variation because although I was living in two different tribal cultures on multiple occasions, the length of time on any one occasion was not “extended” by strict anthropological definition. However, these experiences all yielded significant insights on Lemhi Shoshone, Shoshone-Bannock and Southern Ute cultures. Indeed, it was at the three-day Shoshonean Reunion immediately preceding the 50th Annual Fort Hall Indian Festival in 2013 where I learned that Comanches, Utes, and Gosiutes self-identify as bands of the Shoshone people thus prompting brief forays into linguistics to further inform my research throughout this project.

Theory and methodologies within the branch of anthropology known as Cultural Resources Management (CRM) predominate in my research and discussions, especially in Chapter 4 regarding the Yakama Nation26 and the Sawtooth Berry Fields within Gifford Pinchot National Forest in the state of Washington. While all branches of Anthropology interact with both the disciplines of History and Culture & Race Studies, the significant relevance of this integrated relationship manifests in CRM with the application of Section 106 in the National Historic Preservation Act and related legislation that profoundly impacts tribal nations. Specifically, I address the relevance of fully protecting the Sawtooth Berry Fields as a “cultural

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26 Yakama Nation Official Website, “Yakama History,” accessed March 20, 2015, www.yakamanation-nsn.gov/history3.php and www.yakamamuseum.com/home-history.php. In the mid-1990s, the Yakima Nation renamed itself “YAKAMA” to more closely reflect the proper pronunciation in their Native tongue. Tribal Resolution T-053-94 recognizes the new spelling of the word “YAKAMA” and later, Resolution T-172-99 removed the word “Indian” to correct the Tribe’s official name to: “Confederated Tribes and Bands of the Yakama Nation.”
landscape” and illuminate similar, prior, and ongoing efforts of archaeologists, anthropologists, and forest rangers collaborating with the Yakama Nation to this end.

Cross-cultural comparison furthers discussion within three Indigenous communities that illustrate how detrimental environmental immediate “contamination” or long-term “degradation” present dire threats to Indigenous traditional land-use treaty rights and the ability to maintain traditional diets in an aspect of cultural genocide. A necessarily brief treatment of challenges for Alaskan Inuit stemming from environmental contamination initially introduces the processes of bioaccumulation, biomagnification, and the grasshopper effect—which also play a significant role in Shoshone-Bannock struggles with environmental contamination in Southern Idaho. Comprising the entirety of Chapter 4, my second case study in Unit II extends analysis to the Sawtooth Berry Fields in Gifford Pinchot National Forest as a significant cultural landscape for the Yakama Nation, exploring how a more subtle, long-term environmental “degradation” that stems from a devastating combination of colonial federal policy and commercial exploitation threatens traditional land-use treaty rights.

Interdisciplinary Synthesis

A synthesis of participatory observations also informs my research. During my trip to the Fort Hall Reservation in 2013, I stayed with my friend, Shoshone Frances Roy, for a week and a half while she guided me to significant cultural landscapes and taught me about their ceremonial significance in Shoshone culture. My trip to Fort Hall also included touring the Shoshone-Bannock Tribal Museum and attending The 50th Annual Indian Festival with its array of Native foods, gifted Native artisans, breathtaking Indian Relay Races, and an immense Pow Wow with nearly 800 dancers. The three-day Shoshonean Reunion held at the new five-star Shoshone-Bannock Hotel immediately preceding the Festival entailed highly relevant informative panels.
One such panel featured Shoshone-Bannock Chairman Nathan Small in a discussion about environmental contamination which informs my discussions in Chapters 2 and 4 concerning preserving cultural landscapes and mitigating threats to traditional land-use treaty rights.

Multiple discussions regarding language and cultural revitalization with emphasis on the importance of oral history and Native languages, classes on beading and sewing ribbon shirts, and cultural demonstrations by various Shoshone bands offered a dazzling array of cultural education. Prior to my field research trip to Fort Hall, I spent three days on two separate occasions living with Lemhi Shoshone at their Annual Agai’ Dika Gatherings in 2011 and 2012 where I not only learned how to debark lodge pole pines and erect a tipi which I then lived in for the next three days, but I helped prepare meals, and was deeply honored to accept an invitation to judge at the Pow Wow.

While in Fort Hall at the Shoshonean Reunion, I accepted an invitation from Elder Erwin Taylor to visit the Southern Ute Reservation in Ignacio, Colorado. Even though I could only stay three days with Erwin and Carolyn at their home, they found time to take me around the reservation including a two-hour walk through the stunning new Southern Ute Tribal Museum with invaluable archives and photographs. They also guided me through Mesa Verde and pointed out the Ute Mountain Ute Reservation on the way home. After a visit to the Vallecito Reservoir, Caroline taught me about the seven significant rivers in the Pine River Valley, referred multiple significant books and videos, and shared their intimate family history. Erwin also taught me how to bugle using an elk caller after taking the three of us out on a three-wheeler where we observed a herd of a dozen cows, a majestic bull, and several calves. It is these spontaneous interviews and casual conversations transpiring during my brief cultural immersions that so enlightened my understanding about the history and traditions of Shoshone-Bannock and Southern Ute Tribes.
My field research trip to Fort Hall concluded with an “auto tour” of Goodale’s Cutoff as I explored significant Shoshone-Bannock cultural landscapes between Fort Hall and Mountain Home, Idaho. This methodology bears some resemblance to the manner in which Keith Basso engaged ethnography to explore a “sense of place” in his germinal text *Wisdom Sits in Places*, albeit I did not have a Shoshone-Bannock guide. Nor did I have as much time as Basso. I did not even have eighteen days, much less eighteen months, to traverse nearly 300 miles by automobile with an eye toward cultural and social dimensions. Consequently, a trek on horseback with a Shoshone guide must take its place alongside future plans for formal interviews with tribal Elders. Nevertheless, actually “seeing” cultural landscapes such as the *Shoshone Ice Cave* and *Craters of the Moon National Monument* that I had only read or heard about from tribal individuals in videos or during evening storytelling at Agai’ Dika Gatherings, offers a visceral, kinetic sense of learning that is simply inaccessible any other way. I am reminded of my first trip to the Grand Canyon when I realized that I could never fully comprehend its awe-inspiring immensity until I stood on the canyon rim and gazed straight down for two miles as the Colorado River threaded its way along the bottom. A brief look at my visit to the Shoshone Ice Caves reiterates the power of physically observing a cultural landscape versus just reading about it.

The *Visit Idaho* website reveals that Indigenous peoples used ice caves as a historic form of refrigeration. Located west of Craters of the Moon and sixteen miles north of the tiny town of Shoshone, the *Shoshone Indian Ice Caves* site is a natural wonder that despite the plural connotation now consists of only one 1000-foot lava tube with an ice depth ranging from 8 to 30 feet in height and constant below freezing temperatures even at the peak of summer.²⁷ A popular

tourist destination complete with guided tours, the site includes a museum. Figure 1.2 includes photos from my auto trip in August 2013 and gives us a peek inside one of these tours.

![Shoshone Ice Cave - August 13, 2013](image)

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<th>Shoshone Ice Cave</th>
<th>Lava Beds Near Shoshone Ice Cave</th>
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Figure 1.2

Craters of the Moon National Monument offers a sublime example of another cultural landscape that transcends its description as “three-quarters of a million acres of lava beds.” Standing on a tiny patch of ebony-black volcanic rock and rotating 360° instills a “sense of place” that allows us to “partake of cultures, of shared bodies of ‘local knowledge’ (the phrase is Clifford Geertz’s) with which persons and whole communities render their places meaningful and endow them with social importance.”

Shoshone-Bannocks still travel to this sacred site to gather volcanic rocks for use in ceremonial sweat lodges revealing how traditions of modern tribal people inform the history and past culture of their ancestors and vice versa. This brief glimpse at the Shoshone Ice Caves and Craters of the Moon serve as an excellent segue into a discussion of the Great Camas Prairie as a premiere cultural landscape for the Shoshone-Bannock people.

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Not only does detailed analysis of the Great Camas Prairie field as a cultural landscape inform the issue of environmental threats to traditional land-use treaty rights, but tracing its historical significance exposes a colonial tap root for tensions and hostilities between the Shoshone-Bannock Tribe and the State of Idaho today when this cultural landscape played a pivotal role in a notable historical event. As Dr. Gregory Smoak, an Assistant Professor from Colorado State University who specializes in American Indians and the environment, explains: the primary catalyst for what came to be known as “The Bannock War” can trace its origins to a “Broken Promise” in the 1868 Fort Bridger Treaty over 140 years ago that promised a portion of the “flowering prairie at the foot of the Sawtooths to the Shoshone-Bannocks.”

A fifteen-mile stretch of land along Highway 20 that bursts into glorious bloom with the blue Camas Lily in early June, the Camas Prairie remains a cultural landscape that offers crucial insights into the Shoshone-Bannock “sense of place.” As they have done for thousands of years, Shoshone-Bannocks still exercise their treaty rights by seasonally migrating to the Great Camas Prairie to harvest the Camas plant with their present-day Camas Prairie Homecoming, honoring a long-standing tradition of annual gathering that holds special meaning and social importance in their culture. Known in the Shoshone language as psigoo (literally water sego), the more commonly known camas is an essential traditional staple food for Shoshone-Bannock peoples; a member of the lily family, it grows best in open valleys and parklands between 5,00 and 7,000 feet in elevation. Dr. Smoak cites Dawn Stram Statham, Robert F. and Yolanda Murphy, and Sven S. Liljeblad to reveal how Native peoples harvested, prepared, and consumed this vital staple in their diet: “Native peoples dug up the plant’s nutritious bulbs in late spring and early

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summer. They were then baked, roasted, dried or eaten raw.”32 Smoak also reveals that “North of the range of the piñon pines, camas was the most important vegetal food gathered by the native peoples of southern Idaho [who] also gathered numerous other wild roots, including sweet sage, onions, carrots, and bitterroot.”33

As I stated earlier, exploring the Camas Prairie as a cultural landscape informs contemporary discussions about how detrimental environmental impacts ultimately threaten traditional land-use treaty rights of hunting, fishing, and gathering. While the threat to gathering rights appears obvious, the threat to hunting and fishing rights also emerges because wildlife in the region suffers as well. A mental snapshot of the immense diversity of landscape and wildlife in and around the Camas Prairie expanse—in close proximity to the Sawtooth Mountain range—emerges on the websites for the Idaho Department of Fish and Game and the USDA Forest Service. The Fish and Game website alone lists thirty-two Wildlife Management Areas in seven Fish and Game regions, including the Camas Prairie in the Magic Valley Region.34

Further discussion in Chapter 2 details the Camas Prairie’s historical significance in the “Bannock War” and its contemporary significance in modern-day colonial attempts of “land grabs” by the state of Idaho for the past fifty years, including the most recent attempt in 2013. Thus, the Camas Prairie story not only introduces the historical significance of cultural landscapes and how they relate to serious contemporary issues, but it reinforces my premise that the importance of preserving Indigenous cultural landscapes cannot be overemphasized.

**Sequence of Presentation.**

I organized this project into two Units with two chapters in each unit.

33 Ibid., 1.
In **Unit I**, I focus on theory with deep textual analysis and some exemplification to 1) define and illustrate U.S. settler colonialism with its derivative concepts and strategies, and 2) trace pertinent historical influences beginning in the 1600s and chart the progression of U.S. settler colonialism into the present day. Deconstructive analysis of U.S. settler colonialism unveils the application of Foucault’s “disciplinary power” in specific contexts for U.S. tribal nations, and deep textual analysis of an article by Lorenzo Veracini includes an exploration of persistent academic resistance to the application of post colonial theory in discussions of decolonizing settler colonialism. Examination of historical and present-day negative stereotypes demonstrates the historical longevity and continued significance of “race,” and helps explain why tribal nations still incorporate certain colonial legacies in tribal governments. Finally, tracing how colonial strategies adapt to Indian agency and resistance exposes colonial legacies that continue to exacerbate tensions in contemporary issues for tribal communities today.

Specific case studies in Unit II exemplify the role of U.S. settler colonialism in two major contemporary issues with national and international implications: 1) the “Cherokee Freedmen” controversy reveals how the Dawes legacy of “blood quanta” used in eligibility criteria for tribal membership reifies a colonial racist practice with historical longevity and subsumes traditional tribal cultural values with troubling implications for tribal sovereignty; and 2) the Yakama case study demonstrates how the one-two punch of environmental degradation combines with the colonial imperative of territoriality over both land and resources to threaten traditional-use treaty rights for tribal hunting, fishing, and gathering on federal and Indian lands. I conclude with a detailed exemplification of historical and contemporary Indigenous agency and resistance in the Southern Ute story followed by invaluable contributions from Pawnee activist, attorney, and author Walter Echo-Hawk.
In Chapter 1, I begin my exploration by offering insights garnered from an analogy of Michel Foucault’s tenets of disciplinary power and how these tenets specifically manifest within U.S. settler colonialism with specific consequences for and impacts on U.S. tribal nations. I continue a deconstructive analysis of U.S. settler colonialism, keeping in mind Patrick Wolfe’s emphatic declaration that the “the primary motive for elimination [of Indigenous peoples] is not race (or religion, ethnicity, grade of civilization, etc.) but access to territory. Territoriality is settler colonialism’s specific, irreducible element.”35 Per Wolfe, “the logic of elimination … strives for the dissolution of native societies” because settler colonialism must destroy the old in order to “erect a new colonial society on the expropriated land base.”36

While I concur with Wolfe’s central observation, I interrogate and complicate his declarative with the idea of rendering Indians “invisible” as a nuanced strategy of Wolfe’s “logic of elimination” that works in tandem with mechanisms developed within two Foucaultian-type strategies that I identify as “distortion” and “erasure.” Insights from Postdoctoral Fellow Tobold Rollo who works in Political Science with specialization in democratic theory at the University of British Columbia, also extend Wolfe’s definition of settler colonialism to offer more nuanced, covert applications of colonial territoriality that function in our contemporary socio-political climate.

In 2011, Dr. Rollo commented online about the “settler colonial studies” website maintained by Edward Cavanagh and Lorenzo Veracini, noting that while Cavanagh and Veracini provide a definition of settler colonialism on their website that is very helpful in “distinguishing it from other forms of coloniality,” their definition “needs modification.” Extending his discussion to Peter Wolfe’s 2006 argument that settler colonialism is predicated on

36 Ibid., 388.
the elimination of Indigenous ways of life, Rollo expresses concern that such a narrow definition “overlooks ways in which coloniality works through a settler community’s willingness and efforts to preserve Indigenous ways of life, not to eliminate them but to contain them.” As Rollo clarifies: “Settler states can be perfectly content to preserve Indigenous ways of life up to the point that, for example, self-determination starts impinging on state sovereignty.” Furthermore, Rollo cautions:

More dangerous perhaps…is that there are significant segments of settler society which are engaged in a struggle to preserve Indigenous ways of life by channeling Indigenous claims through institutional processes that may perpetuate rather than challenge colonial relations.37

While Rollo noticed the most recent subtle shift in colonial objectives from elimination to containment, I propose that this adaptation is but one of many that occur in cyclical fashion as settler colonialism adapts to both Indigenous resistance and dramatic shifts in the social and political climate of U.S. society. These cyclical adaptations facilitate settler colonialism and enable this pernicious form of coloniality to prevail with such formidable tenacity. Ergo, the need for “constant modification” of the definition of settler colonialism which, in turn, demands reciprocal adaptations in any attempts at decolonization.

Exploring perspectives of various scholars offers additional insights on the ways in which the U.S. federal government exercised colonial power in the past and still wields that power in the present to mitigate against Indigenous strategies of resistance, thereby presenting unprecedented challenges as ever-changing, adaptive forms of settler colonialism emerge in more resilient and more insidious ways. Most importantly, this discussion reveals ways in which territoriality continues to operate in today’s political climate. Illuminating guerrilla tactics of

logic specifically spotlights ways in which U.S. colonial strategies changed and adapted as Indigenous societies and individuals challenged them over time. As historic strategies progressively failed, colonialists parried the blows and adjusted; their strategies then dove deeper into the sublevels of American society morphing into more sophisticated, more insidious, and more evasive ways to operate covertly.

Contemporary strategies trace their roots to historic attempts to physically exterminate Indigenous peoples via biological genocide and/or assimilate them via cultural genocide; but when overt attitudes can no longer stand up under national or international scrutiny, colonialists tap into techniques of illusion, misdirection, and camouflage, rendering colonial strategies and their specific mechanisms increasingly difficult to detect. Eventually not only the strategies, but Indigenous peoples themselves become more difficult to see. Exposing the wizard(s) behind each curtain reveals how colonialists historically employed overt strategies, adapted to increasing resistance, and eventually employed covert tactics to accomplish what overt actions could not. The result: Indigenous peoples are racialized, isolated, distracted, compromised, and ignored as each process repeatedly undulates forwards and backwards in a non-linear trip through time with paradoxical complexity. Later in this project, the case studies presented in Chapters 3 and 4 exemplify how these strategies and the specific mechanisms that develop within those strategies manifest in two specific, contemporary tribal issues with profound ramifications on a national scale for all U.S. tribal communities.

Indeed, a disturbing parallel between the state of Idaho’s repeated attempts to appropriate land illicit ominous echoes of the state of Georgia’s successful land grab in the 1820s that led to removal of the Five Civilized Tribes, culminating with removal of the Cherokee Nation in the early 1830s. Although Idaho’s attempts have been unsuccessful so far, this parallel demonstrates
that territoriality as the prime imperative of U.S. settler colonialism is not only alive and well in the present, but it punctuates the fact that settler colonialism has come full circle as exemplified by the cyclical nature of colonial strategies as illustrated in Figure I.1 wherein colonialists at all levels of U.S. government thrust, parry, adapt, and then thrust again.

In Chapter 2, I delve more specifically into complex intersections between racism, colonial strategies, federal policies that emerge concurrently, and Indigenous agency through tribal activism. My examination of American Indian stereotypes includes a specific adaptation of the historic “Vanishing Indian” into the contemporary “Invisible Indian.” Buttressed by racism, historical strategies that reinforced the enduring myth of the “Vanishing Indian” ranged from overt physical genocide (e.g., warfare) and cultural genocide (e.g., Indian boarding schools) to federal policy and colonial tactics that first stripped tribal nations of sovereignty as defined for other foreign nations such as Canada or Mexico (i.e., the Marshall Trilogy) and then superimposed dominant racist policies on tribal governing structures (i.e., the Dawes Act of 1887). Today, contemporary strategies that render Indians invisible are more covert—camouflaged out of necessity in various efforts to survive particularly powerful social movements over the past sixty years.

Strategies and movements that demonstrate a vibrant, steadfast resistance from tribal people using a variety of platforms date back to the 1600s with individuals like Wampanoag Chief Metacom (known as King Philip to colonists) and consistently weave throughout U.S. history into the present day. For example, Southern Utes’ successful circumvention of federal efforts to curb what U.S. society deemed undesirable “nomadic tendencies” in the late 1800s and early 1900s, social movements with militant occupations in the 1960s, and a landslide of favorable legislation in federal Indian law in the 1990s are just a few examples that demonstrate
a continuous, sustained history of Indigenous agency. Equally compelling are individual efforts of tribal nations to establish tribal departments, tribal charter schools, and tribal colleges that nurture revitalization of cultures and languages. Establishing Tribal Liaisons within the tribal government also reflect powerful agency—especially when Tribal Liaisons collaborate with scholarly advocates in a variety of disciplines. For example, Lemhi Shoshone Leo Ariwite from the Department of Language and Cultural Preservation at the Fort Hall Shoshone-Bannock Reservation has collaborated with historian and scholarly advocate Dr. Orlan Svingen for over fifteen years.

Recent efforts to include Indigenous perspectives in accounts of U.S. history also reflect Indigenous agency; e.g., adding the perspectives of Shoshone-Bannocks to colonial settlers’ accounts of the “Oregon Trail” across ancestral lands in Southern Idaho. Focusing on specific historical events that are often intimately familiar to the non-Native public and then “adding” knowledge from Indigenous perspectives demonstrates the myriad of benefits that entail from such inclusion and delineates the incalculable harm that results when we continue a colonial practice of exclusion in educational accounts of U.S. history. Instead of flattening the rich diversity within tribal communities in the U.S. or reducing their tribal history to a stereotypical conglomeration, what initially unfolds as a history lesson expands to include lessons from culture and race studies, molecular anthropology, cultural anthropology, and sociology.

In **Unit II**, two representative case studies identify pivotal colonial foundations and illustrate how those colonial legacies specifically exacerbate tensions within two major contemporary issues in U.S. tribal communities. The first case study on the Cherokee Freedmen issue illuminates how U.S. settler colonialists initially established “blood quantum” requirements that ultimately subsume traditional tribal cultural beliefs and entrench a racist colonial
mechanism for tribal membership with troubling implications for self-governance, self-determination, and tribal sovereignty. The second case study on the Yakama Nation’s cultural landscape in Gifford Pinchot National Forest explores how federal colonialist policy with a 106-year-old ban on controlled burning and colonial settler exploitation by commercial pickers combine to produce long-term environmental degradation that threatens traditional land-use treaty rights. Analysis of this case study reveals how and why Indigenous cultural landscapes in general, and the Sawtooth Berry Fields in particular, warrant protection under the Historic Preservation Act and under federal treaty law.

In Chapter 3, national significance of the Cherokee Freedmen controversy emerges with recognition of three salient facts. First, U.S. colonial actions serve as powerful tap roots that we can trace 195 years into the past with passage of U.S. Supreme Court rulings between 1823 and 1832 that comprise the Marshall Trilogy and subsequent passage of the General Allotment Act in 1887. These judicial and legislative acts lay a foundation for what transpires over a century later in the 1980s and subsequently explodes into the bitter controversy that continues to the present day. Second, overt strategies in the formative years of the nation necessarily evolved into covert strategies with much more subtle mechanisms as Indigenous resistance gained a more prominent public profile both in the news and in the courts. Third, U.S. tribal nations have learned to approach litigation with great caution and circumspection because whatever decision is ultimately handed down—for good or ill—impacts every tribal nation across the breadth and depth of the United States.

In this light, the Cherokee Freedmen controversy takes on a national perspective with vital relevance for “self-government” and “self-determination” as two fundamental components of tribal sovereignty. Specifically, the Cherokee Freedmen controversy, which hinges on
eligibility criteria for tribal membership in the Cherokee Nation of Oklahoma, retains relevance for all tribes across the nation because so many tribal nations continue to use “blood quanta” as eligibility criteria for membership. These highly arbitrary blood quanta trace their conception to the Spanish crown’s use of *castas* in the 1600s to establish their rigid socio-political hierarchy; they descended as a powerful racist legacy of the Allotment Era when U.S. government officials began using blood degrees on the Dawes Census Rolls in the late 1800s and early 1900s to establish “who was Indian” and who was thus entitled, or not, to an allotment of land.

Later exacerbated by Jim Crow laws and the Removal policies of Indian Commissioner Dillon Myer, racist legacies continue to feed directly into the Cherokee Freedmen controversy which has yet to reach full resolution in 2016. Today, these evolutive legacies operate with near invisibility themselves, camouflaged by such a long passage of time and aided by the short attention span of the U.S. general public, particularly in contemporary U.S. society which has rendered Indians nearly invisible in the non-Native public consciousness. Reductionist oversimplification of opposing arguments then result to the detriment of all parties except the federal government who often legally sidesteps Indian issues when it deems it politically possible and advisable to do so by first wielding “extra-constitutional” or “unique political status” as a weapon against the tribes and then declining to “hear” a case. Essentially, the federal government bludgeons the tribes, using their own “tribal sovereignty” as a weapon. It is no coincidence either that the chimera of tribal sovereignty as constructed by the Marshall Trilogy can wax and wane between the appearance of “full sovereignty” and “limited sovereignty” depending on the express desires of the U.S. federal government and the ever-present threat of plenary power that still resides in U.S. Congress.
Fundamentally, I argue that when tribes use blood quanta, they reify racializing policies established by the U.S. government in the Allotment/Assimilation/Jim Crow/Removal eras between 1875 and 1975. In doing so, they can actually hobble efforts to base “self-government” and “self-determination” on their own cultural traditions, oral histories, and tribal archives. However, when we explore why tribes find it necessary to constitutionally codify a blood quantum in their eligibility criteria today, we recognize that U.S. colonial policy created a Catch-22 dilemma when U.S. federal approval of tribal constitutions initially mandated a blood quantum requirement when seeking recognition under the Indian Reorganization Act of 1934.

Citing the research of Donald L. Fixico, Charles F. Wilkinson, and Eric R. Biggs, Patrick Wolfe informs us:

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.38

Ironically, the Secretary of the Interior in the early 2000s refuses to approve the Cherokee constitution as redrafted in the first decade of the new millennium precisely because of their use of the Dawes census rolls to ostensibly disenfranchise currently enrolled Black Indians who are documented descendants of emancipated Cherokee slaves. So even though the Cherokee constitution does not directly specify a fractional blood quantity, using the Dawes Rolls as the only criteria for tribal membership essentially constitutes the use of a blood quantum by proxy. The issue is further complicated when close examination reveals that the Dawes Rolls are rife with errors and omissions. Even more frightening for the Cherokee Nation, however, are potentially severe sanctions if they refuse to make changes to the eligibility criteria—once again

38 Wolfe, “Settler Colonialism and Elimination,” 400.
demonstrating what happens when a tribe pokes the dragon of plenary power—even in the supposedly enlightened environment of the new millennium.

Discussions in *Uneven Ground* by David Wilkins and K. Tsianina Lomawaima further elucidate the finer political and legal points of this argument and its corollaries while my analysis of the Cherokee Freedmen Issue offers a specific example. In closing Chapter 3, I explore alternative ways for tribes to establish membership criteria without using blood quanta; i.e., basing eligibility on each tribe’s cultural traditions, oral history, and tribal archives. For the Cherokee Nation specifically, this could include the historical newspaper that Cherokees established in Indian Country even before the local settler communities did. In so far as they are useful at illuminating inter-relationships, tribes could continue to use primary written documentation and oral history from non-Native sources such as local government archives and church or missionary records of births, deaths, and marriages in conjunction with their tribal records. The key is to avoid sole reliance on one flawed U.S. colonialist resource, but rather value a beneficial integration of multiple Native and non-Native resources.

In *Chapter 4*, two major imperatives emerge to demand our attention. First, long-term environmental degradation that results from a combination of colonial policy with commercial exploitation threatens essential traditional land-use treaty rights that protect hunting, fishing, and gathering in and on cultural landscapes located within Indian, federal and public lands. Secondly, contemporary applications of colonial territoriality in state-sanctioned, modern-day “land grabs” threaten to appropriate the very lands that those treaty rights are predicated upon in the first place. In this capacity, this bilateral issue demonstrates significant relevance on a national scale in the U.S. But related examples that examine more immediate environmental “contamination” (versus the subtle, long-term impacts of environmental “degradation”) reveal relevance on a
global scale—particularly for U.S. Indigenous peoples like the Arctic Inuits in Alaska and Canada where specific processes in nature concentrate toxic pollutants in the Northern regions with particular virulence. While an in-depth, full-chapter examination of environmental impacts on Arctic Inuits takes us too far afield in our discussion of U.S. settler colonialism in this project, a brief foray here in the Introduction serves as a relevant preface to not only the Shoshone-Bannock discussions in Chapter 2 and the extended Yakama case study in Chapter 4, but for future inquiries and analysis that will inevitably extend from beginnings initiated within this project.

In their overview of the United States/Mexico 1998 bi-national conference Indigenous Intellectual Sovereignties hosted by the Native American Studies Department of the University of California-Berkeley, Inés Hernández-Ávila and Stefano Varese emphasize the growing need for hemispheric perspectives in the studies of Indigenous communities:

> Since its inception, our Native American Studies program has recognized and articulated the need for a hemispheric perspective in the analyses and interpretation of the histories, cultures, and movements of Native communities of the Americas; integral to this perspective are the critical elements of reciprocity (between intellectuals in the community and intellectuals in the academy), participatory research, and social practice.  

Furthermore, the authors’ declaration that “these gatherings foretell the evolving direction of Native intellectual work, especially that which is grounded in not only the histories and cultures of indigenous peoples, but also, perhaps most importantly, in the everyday struggles of community-based movements” demonstrates specific relevance for this project.

To put it bluntly, U.S. Alaskan Indigenes are repeatedly overlooked when addressing U.S. Indigenous issues—lending additional support to the imperative for hemispheric


perspectives. The fact that the U.S. had to pass additional legislation in 1936 in the form of the Composite Indian Reorganization Act for Alaska because the 1934 Indian Reorganization Act did not address the specific tribal status of Alaskan Native communities offers a glaring illustration of this problem. As I stated above, a full comparative analysis between Canada and the U.S. in a hemispheric perspective moves beyond the scope of this project. However, a brief inquiry into the compelling challenges for Arctic Inuit which embraces Indigenous communities in both the U.S. and Canada reveals core knowledge about contemporary processes of environmental contamination like biomagnification, biointensification, and the “grasshopper effect.” More specifically relevant for this project, the Inuit story also reveals how these processes threaten the ability of Indigenous communities to maintain traditional diets—a colonial mechanism that exhibits in both biological and cultural genocide.

The Northern Contaminants Program, a program started in 1991 under the Indian and Northern Affairs of Canada (INAC), defines and illustrates these biological and environmental processes throughout their 2003 Canadian Arctic Contaminants Assessment Report II. *Bioaccumulation* is the buildup or storage of substances in the bodies of animals over time as animals drink water and eat other plants and/or animals containing contaminants. Contaminants that bioaccumulate either do not change or are very slow to change into a form that can be digested and eliminated by the animal. Because fat soluble/water insoluble contaminants that are consumed in food cannot be excreted, they accumulate as they are stored in the tissues of living organisms. The related process of *biomagnification* occurs because the concentration of contaminants increases as organisms continue to eat contaminated plants and animals and materials pass up the trophic levels of the food chain in an ecosystem. Because an animal consumes all the contaminants stored in food when it eats a plant or another animal,
contaminants biomagnify as the amount of the contaminant increases with each step from prey to predator.\textsuperscript{41}

The grasshopper effect, so termed because it often occurs in a series of geographic hops, is a weather phenomenon that transports contaminants over great distances and explains how certain contaminants concentrate in colder regions of the North from warmer regions of the globe thousands of miles away. As pollutants evaporate or are emitted into the atmosphere, they travel north on air currents until they collide with a cold front causing them to condense and fall to the earth's surface. When the weather heats up again, contaminants evaporate and cycle back into the atmosphere where they continue to ride the air currents north. This repetitive cycle allows pollutants to slowly “hop” their way north hundreds of miles, and sometimes even thousands of miles, from where they originate. Colder, drier climates at latitudes in the Northern Hemisphere further inhibit the breakdown of these contaminants resulting in an increase in bioaccumulation and biomagnification as the contaminants move up the food chain.\textsuperscript{42}

These natural processes emphasize that Mother Nature knows no boundaries as her trade winds slice through artificially constructed, political boundaries with impunity, rendering all Indigenous communities from the tip of the Arctic to the U.S. southern border with Mexico who rely on traditional diets particularly vulnerable to environmental contamination. And even though the NCP focuses on Canadian Indigenes, the grasshopper effect, bioaccumulation, and biomagnifications carry equally dire implications for U.S. tribal nations as well. One example that hits closer to home for continental Indigenes involves the Shoshone-Bannock Tribes of Fort Hall, Idaho which I discuss in more detail in Chapter 2. Both overt, short-term, immediate


\textsuperscript{42} INAC\_NCP 2003, \textit{Canadian Arctic Contaminants}, 37.
environmental contamination and subtle, long-term environmental degradation inherently threaten traditional land-use treaty rights and demonstrate undeniable causal links to colonial appropriation, exploitation, and abuse of not just the land itself, but the resources upon, below, and within it.

The Shoshone-Bannock example in Chapter 2 specifically addresses “contamination” with toxic by-products of colonial mining operations to initiate this discussion. The issue of modern-day colonial exploitation and appropriation unfolds in the Yakama case study in Chapter 4 to reveal other types of “environmental degradation” as the result of commercial exploitation and harmful federal policy. Specifically, the Yakama case study demonstrates how 106 years of U.S. colonial policies that banned “controlled burning” combined with commercial exploitation by non-Native settlers beginning in the Depression-Era 1930s to wipe out nearly 14,000 acres of the Sawtooth Berry fields in Gifford Pinchot National Forest—effectively eliminating Yakama Nation treaty gathering rights. The Yakama case study is particularly relevant since the landmark Supreme Court ruling in United States v. Winans in 1905 that upheld the Yakama Treaty of 1855 serves as the cornerstone for the fundamental rights of U.S. tribal nations to hunt, fish, and gather on traditional lands. 43

Specifically, a combination of colonial attitudes that prohibited “controlled burning” for 110 years (until 2011) in tandem with inadequate regulation by U.S. government to mitigate damage and abuses stemming from commercial pickers resulted in a devastating loss of 90% of the Sawtooth Berry Fields since 1800—with nearly 60% of that loss transpiring in the last 80 years. Despite laudable, individual efforts by U.S. Forest Service rangers in Gifford Pinchot National Forest Service to set aside ~3500 acres for exclusive Native use in the unprecedented “Handshake Agreement of 1935,” a whopping 15,000 acres of berry fields that had flourished

under Yakama nurturing and harvesting practices for at least 7,000 years dwindled to a pitiful 1500 acres by 2011.

This loss essentially invalidates the Handshake Agreement which was later documented in writing with a Memorandum of Understanding because Yakamas can no longer harvest enough berries for their personal consumption and ceremonial use. For all practical purposes, they can no longer exercise their gathering rights as protected by the Yakama Treaty of 1855, the Handshake Agreement of 1935, and their more recent Memorandum of Understanding because the cultural landscape is nearly destroyed. Present-day USFS Forest Archaeologists Cheryl Mack and Rick McClure demonstrate empathetic concern for not only the Sawtooth Berry Fields, but multiple sensitive archaeological sites surrounding them and my analysis includes their efforts in collaboration with the Yakama Nation to address these concerns. I close out Chapter 4 by submitting a proposal to return the Sawtooth Berry Fields in Gifford Pinchot National Forest to the Yakama Nation in order to nurture the remaining acres of berry fields back to ecological health under the caring hands that have tended them for over 7,000 years.

**Conclusion.** Followed by the wisdom of Pawnee attorney, activist, and author Walter Echo-Hawk, I open my conclusion of this project with the modern-day success story of the Southern Utes in Ignacio, Colorado. The stunning success of the Southern Ute Tribe not only epitomizes the more recently coined concept of “practical sovereignty,” but exemplifies the contemporary application of a cultural practice among Indigenous people with profound historical longevity: “intercultural borrowing.” The Southern Utes serve as a supreme example of a tribal nation whose strategic Indigenous agency against settler colonial normalization and subjugation, which actually began in the 1800s, demonstrates how Indigenous people can succeed in the wake of settler colonialism without necessarily sacrificing their traditional values.
Stories like those of the Southern Ute Tribe remind me of why I began that arduous journey into U.S. Native American Studies fifteen long years ago. Their story re-ignites my passion to continue on this path—despite the potholes that I occasionally stumble into or the hills that I often must climb. More importantly, my experiences over these past fifteen years have taught me humility. Gratefully, that misguided indignation so rampant in 2001 has long since dissipated in the face of enlightened conscious awareness. I have my many tribal friends to thank for their open hearts, their generosity, and their unqualified willingness to grant me entrance into their worlds for even a few brief moments. This project is humbly dedicated to each and every one of them. May I never forget their grace as I continue my travels down their Native trails.
UNIT I

Theoretical and Rhetorical Interrogations of U.S. Settler Colonialism in Indigenous Contexts

Chapter 1
Defining & Deconstructing U.S. Settler Colonialism with Specific Focus on U.S. Tribal Nations

Chapter 2
Complex Intersections: Colonial Strategies vs. Indigenous Agency and Resistance
CHAPTER 1
Defining & Deconstructing U.S. Settler Colonialism
with Specific Focus on U.S. Tribal Nations

Its framework explains why decolonization of U.S. settler colonialism presents supremely difficult challenges (beyond the obvious impracticality of relocating over 322 million colonial settlers in the U.S. population in order to return the land to Indigenes). Although settler colonialism is structurally linear, the colonial strategies that implemented it and continue to sustain it are definitively not. In this project, I identify five major U.S. settler colonial strategies (elimination, relocation, assimilation, distortion, and erasure) and illustrate how they do not follow a strict linear or chronological progression with definitive beginning and ending points, but rather, each functions in a cyclical process, sometimes in isolation, but often in tandem.

Furthermore, as colonialists encounter Indigenous resistance, colonial mechanisms produced within each strategy constantly emerge, recede, adapt, and then re-emerge in a modified form to attack their target with an innovative approach. And, these five strategies are by no means all inclusive. Just as new modes of Indigenous resistance develop, their colonial counterparts do as well. And each new colonial strategy, such as the more recent strategy of “accommodation,” produces new adaptive mechanisms. But to understand how U.S. settler colonialism initiates its strategies and sustains their existence, we must first examine how disciplinary power manifests in the U.S. to facilitate the process of what Michel Foucault calls “normalization.” What follows is an exploration of how that process functioned and continues to function in application to U.S. Indigenous peoples, beginning with an analogy of Foucault’s four tenets of disciplinary power in the context of establishing U.S. tribal reservations.
Foucault’s Disciplinary Power in Tribal Contexts

In his germinal text, *Discipline and Punish*, Michel Foucault introduces the concept of “normalizing” within the regime of disciplinary power in a society. Its relevance for this project lies in identifying how this disciplinary power specifically manifests within U.S. settler colonialism as we ascertain its social imperative and functions within the process of normalizing U.S. Indians: “The perpetual penalty that traverses all points and supervises every instant in the disciplinary institutions compares, differentiates, hierarchizes, homogenizes, excludes. In short, it normalizes.”[^44] It is important to recognize that the process of normalization in a U.S. colonial context operated—and continues to operate—in an increasingly covert manner over the centuries. As Foucault clarifies, camouflaged normalization results from disciplinary power whereas overt condemnation derives more openly from judicial penalty.

Foucault’s crucial delineation of step-by-step tenets of disciplinary power relate to U.S. colonial actions with direct relevance for Indians throughout the 1800s and into the early 1900s. We can better understand colonial practices by deconstructing U.S. settler colonialism in the context of Foucault’s “tenets” of disciplinary power in U.S. efforts to normalize Indians; e.g., with strict spatial partitioning (reservations), ceaseless inspection (annual reports from “Indian Agents”), surveillance based on a system of permanent registration (tribal membership and classification on census rolls with blood quanta), and purification via analysis (rewards or punishments for conformity). When these mechanisms manifest in conjunction with policies grounded in racism, colonialists develop and redevelop malleable strategies that constantly shift over time in response to Indigenous resistance—resistance that has ebbed and flowed since initial encounters with colonists in the 1600s.

Undergirding every strategy, every step of the way, is a dominant colonial hegemony that insists on a Euro-American, predominantly white construction of what is *normal*. Social constructions of race and subsequent racist rationalizations expand an increasingly complex scale of what Foucault calls “degrees of normality” to codify degrees of “abnormality” or “deviations” which are then swiftly condemned in the social arena and/or harshly adjudicated in the politico-legal arena as “the Normal is established as a principle of coercion.”

Foucault’s insights reveal that examination (as a function of normalizing) introduces a strategic mechanism that links a specific formation of knowledge to a certain form of exercised power; specifically, examination transforms the economy of visibility into the exercise of “disciplinary power.” What Foucault means unfolds more clearly in the following passage:

Traditionally, power was what was seen, what was shown and what was manifested and, paradoxically, found the principle of its force in the movement by which it deployed that force. Those on whom it was exercised could remain in the shade; they received light only from that portion of power that was conceded to them, or from the reflection of it that for a moment they carried. Disciplinary power … is exercised through its invisibility; at the same time it imposes on those whom it subjects a principle of compulsory visibility.

But in a perverse paradoxical twist, as Indian are increasingly rendered highly visible to the U.S. federal government, they become increasingly invisible to the colonial settler communities.

Nevertheless, Foucault defines a fundamental component of normalizing that exists within “settler colonialism” as it functioned within the United States and led directly to the formation of both reservations and Indian boarding schools as normalizing hallmarks of its disciplinary power. Within process of normalization, I demonstrate how the strategy of assimilation produces “examination” as a colonial mechanism that objectifies its subjects as it materializes in the exercise of disciplinary power over Indians in the U.S. The end result: the

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46 Ibid., 187.
U.S. “reservation Indian” of the 1880s and early 1990s who was increasingly defined, perpetually circumscribed, and incessantly monitored by the Office of Indian Affairs.

Due in no small part to profound Indian agency and activism, U.S. tribal nations today certainly exercise a far greater degree of sovereignty and self-governance, albeit still “limited” by Congress. However, reality for U.S. Indian Reservations in the 1800s dictated that Indians required a pass to even travel beyond the boundaries of their reservation for any reason, and local Indian Agents with no more qualifications for the post than those conveniently supplied by political (or economic) connections submitted arbitrary annual reports. These reservations bore a frightening resemblance to Foucault’s description below as he explains how disciplinary power manifests its potency in a space of domination wherein the “examination becomes the ceremony of this objectification:”

This enclosed, segmented space, observed at every point, in which the individuals are inserted in a fixed place, in which the slightest movements are supervised, in which all events are recorded, in which an uninterrupted work of writing links the centre and periphery, in which power is exercised without division, according to a continuous hierarchical figure, in which each individual is constantly located, examined and distributed among the living beings, the sick and the dead—all this constitutes a compact model of the disciplinary mechanism.47

What Foucault calls an “inversion of visibility” in the function of disciplinary action assures the exercise of power even in its “lowest manifestations” as we enter “the age of the infinite examination, compulsory objectification” and ultimately, “compulsory documentation.”48

After labeling this inversion of visibility as panopticism, Foucault delineates four specific tenets of disciplinary power and explains how each tenet functions to develop panopticism. In an analogy with U.S. settler colonialism, I explore each tenet within an Indigenous context.

47 Ibid., 187.
48 Ibid., 189-191.
First, disciplinary power must establish a “strict spatial partitioning.”

When colonialists could not exterminate Indians with disease or war, they set about “removing” them from the Eastern seaboard to lands that lay west of the Appalachian range of mountains until relentless settler expansion prompted further removal west beyond the Mississippi with no regard and little recognition for Indigenous peoples who already resided there. When settlers inexorably continued their westward expansion, Indians were increasingly herded like cattle into smaller and smaller physical spaces—often forcing multiple tribes into confederations that exacerbated historical tensions while further eroding non-Native awareness of their incredible diversity.

Such conglomerations fertilized an already thriving colonial tendency to lump all Indigenous peoples together in one stereotypical view of Indians—an elision of diversity that I discuss further in Chapter 2. At the same time, this forced co-existence often fostered internal social and political tensions within and between tribal communities—some of whom were historical enemies. This “strict spatial partitioning” eventually materialized with “reservations” that were established by official “treaties” until 1871; however, “agreements” and/or “executive orders” continued to create and destroy reservations (and sometimes surreptitiously “define” who could then and can now inhabit them) at the U.S. colonial government’s discretion.

In his journal article, “The Birth of the Reservation,” Tomas Biolsi presents a comprehensive analysis of “internal pacification” of the Lakota Sioux in present-day South Dakota between the 1880s and the 1930s (coinciding with the Allotment Era) with a “focus on how the state constructed new kinds of bureaucratically knowable and recordable individuals, with new kinds of self-interest that could be predicted and manipulated by the officials.” Within that analysis, Biolsi identifies four administrative processes that he calls “after Foucault, modes

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49 Ibid., 195.
of subjection: property ownership, determination of ‘competence,’ registration of Indian ‘blood’ quanta, and recording of genealogy.”

A more detailed analysis of Biolsi’s concept of internal pacification follows this Foucaultian analogy and a detailed examination of the Allotment Era.

This first tenet created the initial reservations that, in turn, allowed what Foucault describes as “modes of subjection” to operate within the larger process of normalizing thereby facilitating the settler colonialist strategy of assimilation. By the 1880s, the reservation became the U.S. colonial panopticon from which a relentless normalizing gaze tightened its focus on each and every individual in a tribal community. Dawes census rolls ensured that they had a record (at least initially) of every tribal member, and travel passes attempted to curb the Indian “nomadic tendency” and ensure that those properly identified and classified stayed on the reservation where they could be monitored and observed.

Second, “inspection functions ceaselessly.”

A truly integral component of panoptic surveillance, paternalistic oversight that grossly infantilized tribal peoples functioned in a severe capacity. For example, when reservations were first established, Indians could not legally leave their reservations without a pass—not even to attend as invited participants in a settler “carnival” or similarly romanticized celebrations of the “wild west.” Such restrictive measures so disturbed John Taylor, a former slave and buffalo soldier who married into the Southern Ute Tribe, that he often bounced between identity as a Southern Ute, or as a freed black man, and sometimes even as a settler. In his Masters thesis for Northern Arizona University, Louis Gregory McAllister cites Sarah Platt Decker who observes:

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51 Foucault, *Discipline and Punish*, 195.
“The fact that the Utes had to have passes to leave the reservation most likely resonated with Taylor’s experience of slavery.”\textsuperscript{52}

Still today, all federally recognized tribes ultimately answer to the Bureau of Indian Affairs (BIA) within the Department of the Interior (DOI). Significantly, as I reveal in Chapter 3 with the still simmering Cherokee Freedmen controversy, until very recently, all tribes were required to seek and obtain “approval” of their own Tribal constitutions — which disarticulates a stark reality of the multi-faceted complexity that is “tribal sovereignty” within the context of settler colonial normalizing and disciplinary power.

\textit{Third, “surveillance is based on a system of permanent registration.”}\textsuperscript{53}

Once reservations formed, the U.S. government established “Agencies” to monitor individual reservations, and each Agent sent annual reports to the Commissioner of Indian Affairs at the federal offices of the Office of Indian Affairs (OIA) — including “census” records of individual tribal members. However, the OIA, known today as the Bureau of Indian Affairs (BIA) after a name change in 1947, did not stop at requesting reports on mere demographics; Agents routinely informed, and more often complained, about Indian “conduct”— especially those who actively and relentlessly resisted normalization and assimilation. And each and every individual—no matter how stellar his or her reputation prior to installation on the reservation— was subject to scrutiny, judgment, and punitive action.

For example, Tendoy, Chief of the Lemhi Shoshone (Sacajawea’s people) who still retained their reservation near Salmon, Idaho in the 1890s, experienced the bitter taste of sanction less than three months after the U.S. government granted him a pension on December

\begin{footnotesize}

\textsuperscript{53} Foucault, \textit{Discipline and Punish}, 196.
\end{footnotesize}
18, 1892 by a Special Act of Congress upon the request of Idaho’s 1892 U.S. Senator George L. Shoup. In his submission of Bill S. 2612, Shoup recommends a pension for the sixty-year old chief to recognize and acknowledge “Tendoy’s life in the Lemhi Valley, the circumstances concerning his ascendancy to the chieftanship [when Chief Snag was murdered by white settler cum outlaw Buck Stinson], his aid to the settlers during the Indian wars [which included the diplomatic strategy of taking his “warriors” on buffalo hunts to defuse tensions], and his honesty in dealing with the settlers.”

Decades of laudatory leadership, peaceful interventions, and diplomatic interactions with the U.S. federal government instantly vanished like a wisp of smoke upon a petty complaint from Lemhi Agent George Monk to the Commissioner of Indian Affairs that grossly mischaracterized Tendoy with a “defiant attitude.” After the Commissioner swiftly forwarded the missive to the Department of the Interior (DOI), the DOI just as swiftly shot back its instructions to the Commissioner of Indian Affairs. Two terse paragraphs exemplify a tone that while certainly not unexpected considering the prevailing attitudes in the 1890s, remains disturbing as the DOI simultaneously distances itself with cold, officious language while it objectifies and demeans the Lemhi Chief, admonishing him as if speaking to a recalcitrant child instead of a sixty-year old, revered Chief who had peacefully, without exception, led his people for thirty years:

You are therefore requested to instruct the U.S. Indian Agent at said Agency to inform Tendoy that, unless he submits to the authority of the Agent, the Department will recommend to Congress at its next session that the act granting him pension be repealed. You will also instruct him to furnish said Chief a copy of this communication, and to report, at the beginning of the next session of Congress, on the conduct of said Tendoy in the meantime, [so] that the Department may be advised as to the propriety of recommending to Congress the repeal of said act.

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Monk’s letter in July of 1893, despite his modified retraction and lukewarm praise of Tendoy, continues in this vein of paternalistic condescension and what I term a “superiority complex” that characterized the colonial mindset in the latter half of the 1800s.

Thomas Biolsi also addresses this colonial practice of constant critical assessment in his section on “determination of competence” within his analysis of internal pacification as he traces the history among the Lakota Sioux Nation of what Foucault calls “subjection.” Biolsi initially explains that Lakota shared application of the second mode [of subjection], ‘competence,’ with wards and inmates in “total institutions.” Later, Biolsi further clarifies this link between “wardship” and “competence” in his in-depth discussion of competence: “The reservation system of the late 19th and early 20th centuries was based on the congressionally authorized and judicially sanctioned status of wardship applied with considerable administrative discretion [with wardship itself] founded on the assumption of Indian incompetence [emphasis added] ….”

This colonial policy of constant surveillance and relentless critical assessment would peak with brazen acts perpetrated by Congress in the Allotment Era that first rival then surpass Andrew Jackson’s abuse of executive power in the 1830s. The devastating loss and dire consequences for tribal peoples over the next century pass into oblivion until the scathing indictment of the Meriam Report in 1928 and passage of the Indian Reorganization Act in 1934. However, the loss of over 90 million acres of Indigenous land — nearly two-thirds of the total Indigene land base — could not then, if ever, find redress. It is during the Allotment Era, that we saw the prime imperative of U.S. settler colonialism—territoriality—at its zenith in U.S. History. But what many in the non-Native public of U.S. society do not recognize is how the continuing legacy of historical colonial hegemony impacts tribal communities today.

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The Indian Land Tenure Foundation explains how deleterious effects from historical actions of U.S. settler colonialism continue to ripple throughout tribal communities in a disturbing multitude of political, legal, and social directions:

In the end, land that been held in common by the entire tribe was now divided into a jumbled mix of trust lands, and lands owned by the tribe, individual Indians and non-Indians. Today the loss of tribal land, combined with the mixed ownership patterns within reservation boundaries, poses serious challenges for the sovereignty and self determination of Indian nations. Loss of access to sacred and cultural sites makes it harder for each successive generation to remain rooted in Native culture. The checkerboard ownership pattern creates jurisdictional challenges and makes it very difficult to use reservation land for economic development. Billions of dollars in income are derived from these alienated lands, but the money goes off the reservation instead of to the Indian communities that need it most.57

And as I illustrate later in this project, the prime imperative of territoriality is far from dead, or even dormant, in an alleged “post-colonial” U.S. society of the 21st century.

Fourth, a process of purification begins as “discipline brings into play its power, which is one of analysis.”58

As Social Darwinism and “scientific racism” emerged around the same time in the late 1700s, “purification” for Indians in the U.S. colonial sense manifested with the unwavering push for assimilation. Various campaigns waged from the mid-1800s through the 1950s including the horrifically brutal, culturally devastating, military-style Indian Boarding Schools that peaked alongside the aforementioned Allotment Era between 1875 and 1934. Progressive reformer John Collier effected much in the way of positive change as Commissioner of Indian Affairs during President Franklin Delano Roosevelt’s administration. In an abstract of Collier’s 1934 article published in Literary Digest, authors on the educational website History Matters note:

58 Foucault, Discipline and Punish, 197.
John Collier's appointment as Commissioner of Indian Affairs by Franklin Roosevelt in 1933 marked a radical reversal—in intention if not always in effect—in U.S. government policies toward American Indians that dated back to the 1887 Dawes Act. An idealistic social worker, Collier first encountered Indian culture when he visited Taos, New Mexico, in 1920, and found among the Pueblos there what he called a “Red Atlantis”—a model of living that integrated the needs of the individual with the group and that maintained traditional values. Although Collier could not win congressional backing for his most radical proposals, the Indian Reorganization Act of 1934 dramatically changed policy by allowing tribal self-government and consolidating individual land allotments [at least what was left of Indigenous lands after settler appropriation] back into tribal hands. Collier set out his vision for what became known as the “Indian New Deal” in [his] 1934 article …. Although he was sympathetic to Indians, [in true settler colonial fashion, even] he depicted them in a stereotypical manner.\(^59\)

More importantly, despite his sympathetic leanings, Collier must take full responsibility for a devastating BIA policy that resulted in the wholesale slaughter of Navajo sheep and goats in the “livestock reduction” of the 1930s—actions that comprise nothing short of cultural genocide for the Navajo people as further elucidated in a 1985 Academy Award winning documentary Broken Rainbow.\(^60\) Robert McPherson, author and Professor of History at Utah State University-San Juan Campus, also identifies the livestock reduction policy of the 1930s as “one of two major tragedies in the Navajos’ tribal memory” based on oral interviews that reflect Navajo perspectives from tribal members who “lived through this period as adults, participated in the traditional livestock economy, and witnessed its destruction.” As he explains: “The trauma of the first tragedy, the round up and incarceration of the people at Fort Sumner between 1864-68, has been passed down by word of mouth for generations as a time of defeat, degradation, and removal at the hands of the white man. The destruction of livestock in the

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\(^{60}\) Maria Florio and Victoria Mudd, DVD Broken Rainbow, Prod: Maria Florio, Dir. Victoria Mudd, (Beverly Hills: Earthworks Films, Inc., 1985), DVD.
1930s was, to the Navajo, an economic form of the same thing—defeat, degradation, and removal.”  

After Collier departed in 1945, the colonialist strategy of assimilation receded and a new strategy surged to the forefront with renewed impetus under the decade-long, retrograde BIA policies of “Termination” and “Relocation” initiated by Dillon Myer as Commissioner of Indian Affairs in the 1950s. Myer’s other infamous claim to fame was his obsequious service from 1942 to 1946 as Director of the War Relocation Authority (WRA). The WRA was the government agency charged with the forced removal and “resettlement” of Japanese Americans in the Japanese Internment Camps—a euphemistic term that belied the reality that these incarcerations in a U.S. version of “prison camps” unfairly detained many legitimate Japanese-American citizens in a kneejerk reaction during World War II. With such a precedent on his résumé, Myer’s colonialist attitudes and subsequent actions toward U.S. tribal nations were grimly predictable.

Even though Myer ostensibly claimed in his later years that he regretted the mass incarcerations of Japanese Americans, in the very same breath, he could not resist a caveat to claim that it brought some positive results. Especially relevant for this project is a wildly inappropriate and grossly inaccurate comparison that he made in his book entitled *Uprooted Americans* published over 25 years later in 1971 when he likens Indian reservations to the Japanese prison camps as “an institutionalized environment, which in turn produces frustration, demoralization, and a feeling of dependency among the residents.”

First, this conveniently tailored perspective allowed Myer to elide the U.S. federal government’s culpability for overt

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colonial efforts to forcibly shape the environment of reservations during the Allotment Era. More importantly, his singularly negative and ethnocentric view of tribal reservations completely denies any Indian agency by tribal peoples who sought refuge with the reservation to sustain community values, retain individual tribal languages and cultural traditions, and protect cultural landscapes—and ultimately successfully persevere in the face of profoundly oppressive colonial pressure to conform.

When coupled with his views on assimilation as expressed in the following quote concerning “resettlement” of Japanese internees, Myer’s policies as Commissioner for the Office of Indian Affairs should come as no surprise: “My underlying idea is that since these people are going to continue to be American citizens, they will have to merge into our economy and be accepted as part of it, otherwise we are always going to have a racial problem.”63 Once again, the fickle scythe of settler colonialism swings as Myer, maintaining a political position in polar opposition to John Collier’s, attempts to turn back the clock and resurrect assimilationist positions espoused in the 1870s to enforce his policies of Termination and Relocation as he sets out to dismantle the progressive policies of his 1930s predecessor.

Today, tribes continue to battle the “disciplinary power” of the U.S. government that still occasionally flexes its political muscles overtly, but more often than not, remains submerged or camouflaged—recognizing the necessity of operating covertly in a society conditioned by social activism, protest, and most recently, an explosive and unprecedented access to information via the internet. The inversion of visibility that renders the disciplinary power vested in U.S. settler colonialism invisible remains intact. However, as I revealed earlier, interrogation of Foucault’s analysis of “panopticism” revealed a paradox for U.S. Indigenous peoples: as U.S. tribal people firmly within the reach of disciplinary power remained highly visible to the U.S. federal

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63 Dillon Myer, *Uprooted Americans*, 56.
government and only marginally less visible to state governments, settler colonial strategies rendered them virtually invisible to most non-Native individuals in U.S. society in a colonial campaign that took several decades to gestate and over two centuries to mature.

Thus, U.S. settler colonialists’ exercise of disciplinary power manifests with specific consequences for tribal nations as all four tenets combine to produce colonial strategies that facilitate subjugation with a process of normalization that continues into the present day, albeit with considerably more subtlety. From within the colonialist strategies of elimination, relocation, and assimilation operating in tandem, powerful mechanisms emerged with grim portent in the late 1800s, but none with so much grim portent as that of Allotment.

**Allotment: Ultimate Facilitation of Territoriality**

Ultimately, no amount of subtle intercultural borrowing, adaptation, or even outright acculturation could withstand the force of relentless colonial settler demands for more and more Indigenous lands. Once all pretenses were thrown off, Indigenous peoples were first socially racialized (subordinated, dehumanized, demonized, and infantilized) and then politically disenfranchised as sovereign nations. Eventually colonial settlers forcibly herded them west like cattle beyond the Appalachian Mountains into “Indian Country”—at least until the unquenchable settlers’ hunger for land fanned a slow burn into a conflagration with the discovery of additional valuable resources that could be extracted from the land itself. As technology progressed, so did discoveries of vast resources which, in turn, prompted wars and pushed tribal peoples onto increasingly diminished “reservations” with rewrite after rewrite of tribal treaties. Finally, the U.S. government flexed its colonial muscles and mandated a complete halt to any treaties in 1871.
According to educators on the www.nebraskastudies.org website, Congress abandoned the treaty system for two reasons:

First, white settlers needed more and more land, and the fact that tribes were treated as separate nations with separate citizens made it more difficult to take land from them and “assimilate” them into the general population. Assimilation had become the new ideal. The goal was to absorb the tribes into the European-American culture and make Native people more like mainstream Americans.

Second, the House of Representatives was angry that they did not have a voice in these policies. Under the Constitution, treaties are ratified by the U.S. Senate, not the House, even though the House has to appropriate the money to pay for them. So Congress passed a compromise bill in 1871 that, in effect, brought an end to the treaty system. The bill contained the following language buried in an appropriations law for the Yankton Indians:

PROVIDED, 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.  

Language in a poster entitled “Indian Land for Sale” illustrated on the above-referenced site not only supports the authors’ observations, but reflects both colonial attitudes of the settlers and colonialist policies of the U.S. Federal government with encouragements such as “Get a Home of Your Own * Easy Payments,” “Perfect Title * Possession Within Thirty Days,” and “Fine Lands in the West.” Notable as well is the phrase at the bottom of the poster that states: “In 1910 the Department of the Interior Sold Under Sealed Bids Allotted Indian Land as Follows:

The poster image on the Nebraska.org site is cut off, but the Alto Arizona! website offers a full view as the poster continues with a table listing lands by location, acres, and average price per acre in twelve different states. Prices ranged from $7.27 in Colorado to $24.85 in Idaho to $36.65 in Nebraska with the highest listed at $41.37 in Washington state. The poster also states:


“For the Year 1911 it is estimated that 350,000 acres will be offered for sale” and advises that interested buyers can write to the “Superintendent U.S. Indian School” for a booklet entitled “Indian Lands for Sale” for “information as to the character of the land.” This poster, which circulated in 1910-1911, leaves little doubt about what motivated the U.S. federal government to ban treaties in 1871 and pass the Dawes Allotment Act in Congress shortly thereafter with the last of the Dawes Census Final Rolls completed in 1907.

Following closely on the heels of the 1871 ban on treaties, the historic Era of Allotment began with passage of the 1887 General Allotment Act (also known as the Dawes Act after its lead proponent). Additional amendments to the Allotment Act fueled this unprecedented, federally sanctioned appropriation of Indigenous lands including the 1898 Curtis Act which specifically allotted lands for the “Five Civilized Tribes,” the 1902 legislation known as the “Dead Indian Act” that allowed Indians to sell lands they inherited even if they were still in trust, the 1906 Burke Act which authorized the Secretary of the Interior (SOI) to determine any Indian’s “competence” to manage his or her lands, and the Act of May 29, 2908 which supplemented the Burke Act and further authorized the SOI to sell allotments of deceased Indian landowners after he deemed their heirs incompetent. 67

Although the U.S. federal government had toyed with the policy of allotment since 1798, including provisional clauses in several treaties that required a specific tribe to “divide” the stated land among individual tribal members, “there was no broad vehicle to allot lands to individual Indians across the U.S.” until the Allotment Act in 1887 which represented the U.S. federal government’s direct response to an increasing demand for a “national federal policy to

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break up Indian land and assimilate Indian people.” Allotment from this point forward illustrates the prime imperative of territoriality at its zenith. Nearly 90 million acres designated by treaties as Indian land was appropriated as “surplus” and opened up to colonial settlers between 1871 and 1934 when the Allotment Era came to an official close with passage of the Indian Reorganization Act (also known as the Wheeler-Howard Act).

In a twist of bitter irony, the creation and ultimate elimination of the reservation in Salmon, Idaho for Sacajawea’s people, the Lemhi Shoshone, exemplifies the roller coaster ride for tribes between 1871 and 1934 as descendants of the famous Shoshone woman who served as ambassador, interpreter, guide, and diplomat for the Lewis and Clark Corps of Discovery are divested of their land. First falling victim to the Congressional mandate of “no more treaties” in October 1871 even though their treaty was negotiated and signed three years earlier, the reservation was signed into existence by Executive Order of President Ulysses Grant only to land on the chopping block during the reservation-busting era of Allotment. Few examples speak more loudly to the determined drive of settler colonialism’s “territoriality” when defined as the acquisition of land via displacement of Indigenous peoples or to the duplicitous hypocrisy of the colonial U.S. government that negotiated a legitimate treaty in 1868, let it languish unratified for three years until Congress mandated “no more treaties” in 1871, then arbitrarily invented a sham “treaty” eighteen years later in 1889 to force the Lemhi Shoshone to relinquish their lands. The devil is in the details that follow.

By the mid 1800s, the Lemhi Shoshones consisted of two Shoshone bands, Agai’ Dika (salmon-eaters) and Tuku’ Dika (sheep-eaters) along with some Bannocks—descendants of Northern Paiutes who had banded with Shoshone after they began travelling with them in pursuit

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68 Ibid.
of buffalo in the 1600s. On September 24, 1868, Lemhi Shoshone Chief Tendoy led his tribe to Lauret, Montana where he negotiated and signed a Treaty with Indian Agent W. J. Cullen; all parties then gathered in Virginia City the next day to sign the Cession Document. History Professor Orlan Svingen from Washington State University, who has worked with Lemhi descendants for well over a decade, comments on the website TrailTribes.org that the reservation comprised “two townships of land on the Salmon River, twelve miles north of Fort Lemhi, close to present-day Salmon, Idaho.” Furthermore, the treaty “acknowledged the claim of the Lemhis to a vast holding, extending westward from the Yellowstone River to the Bitterroots Mountains. Lands noted in the Virginia City Treaty, moreover, were preferable to the Snake Plains near Fort Hall because they supported Lemhi traditional hunting and fishing activities.”

However, neither the Treaty nor the Cession Document was ever ratified by the U.S. Senate before Congress mandated “no more treaties” in 1871; subsequently the Lemhi Reservation did not exist for the government of the United States. President Ulysses S. Grant responded by signing the reservation into existence with an Executive Order on February 12, 1875. The Executive Order clearly states that the President set apart a tract of an estimated 100 square miles on the Lemhi river “in lieu of the tract provided for in the third article of an unratified treaty made and concluded at Virginia city, Montana Territory, on the 24th of September, 1868.”

But, the Department of Interior (DOI) initiated efforts in May of 1880—nine years after the Congressional ban on further treaties—to eliminate the reservation formed by Executive

Order and force the Lemhi Shoshone onto their own Trail of Tears to Fort Hall in Southern Idaho in 1909. As David Crowder first informs us: “To become more efficient in caring for the Indians on reservations, the Department of the Interior developed a policy whereby the small reservations were …closed down [and the] Indians … moved onto large reservations so that ‘better and cheaper facilities for taking care of them’ might be provided.”

Then, citing John Rees from a 1918 work, Crowder reveals how the real purpose of the DOI policy—one that directly facilitates settler colonialist territoriality—emerges in the language that directly follows this facetious claim to be acting in the best interests of the Indians: “At the same time, ‘more lands [would become] available for white settlers.’”

Appendix III of Daniel Crowder’s book includes a full copy of the sham “treaty” of 1889 that the U.S. government produced in efforts to force the Lemhis off of their reservation. A close reading reveals that this document is not a treaty (nor could it be since Congress itself had already banned all further treaty-making since 1871). Instead, it is an “An Act [of Congress] to Accept and Ratify the Agreement Submitted by the Shoshones, Bannacks [sic], and Sheepeaters of the Fort Hall and Lemhi Reservation in Idaho [on] May Fourteenth, Eighteen Hundred and Eighty [1880], and For Other Purposes.” First, the language implies that the Indians initiated this spurious document; the reality is that DOI officials who were surreptitiously implementing allotment policy hounded them relentlessly for twelve years after the Lemhis signed their Virginia City treaty in good faith in 1868. Second, the tag “For Other Purposes” actually implicates allotment policy specifically. Finally, Section 4 clarifies that the Act shall take effect only after Presidential approval, but, more importantly, that the Lemhis conditioned

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72 Crowder, Tendoy, 78.
74 Crowder, Tendoy, “Appendix III,” 125.
validity of the Agreement upon a majority vote of all adult, male members of the Shoshone-Bannock and Sheepeater Tribes:

Sec. 4. That this act, so far as the Lemhi Indians are concerned, shall take effect only when the President of the United States shall have presented to him satisfactory evidence that the agreement herein set forth as been accepted by the majority of all the adult male members of the Shoshone, Bannack [sic], and Sheepeater tribes occupying the Lemhi Reservation, and shall have signified his approval thereof.”

According to Svingen: “While approval was never forthcoming, it was used as leverage by the federal government to brow beat the Lemhis into moving to a location that had been historically and overwhelmingly rejected.”

Furthermore, research by Washington State University graduate students, John Mann and Shirley Stephens, who worked on a recognition project with Dr. Svingen “were unable to find solid evidence the Indians had signed onto the plan.” Mann and Stephens found documents containing signatures of people who supposedly witnessed the signatures of male tribal members, but there was no record of the Lemhi signatures themselves.

David Crowder reveals ample documentation of threats from the U.S. government that support Svingen’s observations—including an ultimatum from James McLaughlin who was sent by the Department of the Interior in 1905 to “the Lemhi Reservation with explicit instructions for the removal of the Indians to Fort Hall. McLaughlin was to ‘try to prevail upon them for the last time to remove to Fort Hall, under the provision of the Treaty of 1880, or the Government would henceforth withdraw its protection.”

Note still another example of the U.S. government’s inappropriate use of the word “treaty” to confer a chimera of legitimacy and weight to self-

75 Ibid., 125-128.
78 Crowder, Tendoy, 89.
serving, colonial “agreements” couched within Acts of Congress at the same time that the Lemhis’ legitimate Virginia City Treaty of 1868 was arbitrarily invalidated and patently ignored. Crowder also claims that while Tendoy did eventually ask and receive approval from the adult male members of the tribes after an eloquent speech, the members almost instantly regretted granting approval. More importantly, Tendoy himself later revealed that he was both badgered and deceived—an all too common occurrence in U.S. colonial history.

In the end, we come full circle to a dark realization that the DOI’s desire was more easily accomplished because the Lemhis’ Virginia City Treaty was never ratified by the U.S. Senate, and the reservation was created by Executive Order. Even more patently obvious: this maneuver that eventually succeeded in forcing the Lemhis off their reservation in June of 1909—over forty years after they signed their Treaty in 1868—was one more facet of the Allotment Era whereby the U.S. government appropriated Indian lands and opened them up to non-Native (mostly white) settlers. It is no coincidence that the Lemhi “removal” transpired at the height of allotment transgressions. The colonial mechanism of allotment and how it facilitates territoriality as the prime imperative for settler colonialism boldly unfolds in the first specification of the Act to Accept and Ratify the Agreement (not treaty) of 1880:

First. The chiefs and head men of the Shoshones, Bannacks [sic], and Sheepeaters of the Lemhi Agency hereby agree to surrender their reservation at Lemhi, and to remove and settle upon the Fort Hall Reservation in Idaho, and to take up lands in severalty of that reservation as hereinafter provided.79

The double-edged sword of reservations cut both ways as U.S. history unfolded and the federal government sought to bend their existence to colonial purposes. Reservations were established by treaties as tribal nations sought to “reserve” as much of their homelands as possible while reserving traditional land-use treaty rights that would guarantee continued access

to cultural landscapes. The U.S. government colonialists, on the other hand, viewed reservations as a means to safely “contain” Indians in an out-of-sight/out-of-mind fashion after forcing them off their homelands while they exercised other means to further eliminate, relocate and assimilate in order to address what they called the “Indian Problem.”

As colonial settlers pushed further and further west, reservations labored beneath a yo-yo of federal policy as an unremitting strategy of assimilation reasserted itself time and time again in various guises. The Dawes Act dismantled them with allotment, the Indian Reorganization Act restored them under the progressive administration of John Collier, but the policies of Termination and Relocation under the administration of Dillon Myer sought, yet again, to destroy reservations through a combined process of slow attrition and erosion. But during the Allotment Era, an additional mechanism emerged to run in tandem with appropriation—a mechanism that Thomas Biolsi identifies as “internal pacification.” What the military could not accomplish with blatant force, more covert federal policy hoped to accomplish on the sly as colonialists ramped up efforts of a more subtle, but equally coercive assimilation to coincide with allotment.

**Biolsi and “Internal Pacification”**

With their traditional livelihoods eliminated and many means of surviving in their “new” homelands gradually siphoned off by the early 1900s, many tribal reservation communities descended deeper and deeper into levels of poverty that still today surpass any other marginalized segment of U.S. society. Originally intended as “reserves” of safety, an enclave where they could continue to live as they had for thousands of years, some reservations shrank into desperate Native versions of urban ghettos. Other ancestral homelands, to quote Shoshone-
Bannock Chairman Nathan Small, fell victim to the “rip, rape, and run” philosophy of settler colonialist capitalism that followed in the wake of settler colonial agriculture. Regardless of their specific circumstances though, all tribal communities in the reservation system fell victim for a period of time to what Dr. Thomas Biolsi termed “internal pacification.” How some of them fared in the aftermath varies widely. Biolsi examines that specific impact on the Lakota Sioux of South Dakota.

In 1995, Thomas Biolsi, Professor of Anthropology and Director of Native American Studies at Portland State University, published his article entitled “The Birth of the Reservation: Making the Modern Individual among the Lakota.” In his article, Biolsi notes that colonialists considered the Lakota Sioux of South Dakota as militarily pacified by 1885, but not “internally pacified” or properly brought “under predictable, bureaucratic control.” Biolsi cites criteria from Timothy Mitchell’s book Colonising Egypt to clarify that: “If colonialism is about making the colonized ‘legible,’ ‘readable,’ and ‘available to political and economic calculation’ (Mitchell 1988:33), the Lakota were yet to be colonized.”

In his Abstract, Biolsi further clarifies that his article “traces the means by which the Lakota people of Pine Ridge and Rosebud Reservations in South Dakota were internally pacified, that is, penetrated by the state apparatus in the form of the United States Office of Indian Affairs [OIA] during the period from 1880 to the mid-1930s” –a time period that coincided with the Allotment Era. Biolsi (along with most academics in American Indian studies) recognizes that allotment as a project to “civilize” Indians was a “fanciful figment of the Victorian colonial mind” and that, in reality, allotment served as a more effective tool to transfer Indian lands and property to non-Indians.

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Biolsi therefore maintains his focus on “how the state constructed new kinds of bureaucratically knowable and recordable individuals with new kinds of self-interests that could be predicted and manipulated by the officials.” His analysis closely aligns with Foucault’s exercise of disciplinary power within the process of normalizing that I discussed earlier. Indeed, Biolsi explicitly identifies four administrative processes that he calls, “after Foucault, modes of subjection” that he maintains provide the means by which these new Lakota individuals were made: property ownership, determination of “competence,” registration of Indian “blood” quanta, and genealogy records.82

At the outset, Biolsi offers an excellent definition of Foucault’s concept of “subjection” that bears repeating in toto:

Subjection is the construction by the powerful of spaces in which human beings are enabled to participate in the social life of public institutions, in the economy, and in the body politic of the nation. It involves the official promulgation of fundamental social classifications through which individuals are to be known (by themselves, by other individuals, and by the officials) and allowed to act. Subjection also involves the linkage of these social classifications to power, both negative and positive: not only can individuals be punished by the officials for violating the social classifications, they quickly come to find that abiding by them opens up avenues of enablement. Thus, subjection is not absolutely imposed from above; it also seduces the subaltern to live by its rules, and thereby shapes new and predictable self-interest, outlooks, and behavior patterns (see Foucault 1979, 1980). Subjection can be seen as the creation of a “matrix of individualization” (Foucault 1983:215), the axes of which constitute modes of subjection.83

Nevertheless, all four modes of subjection and the creation of “bureaucratically knowable and recordable individuals” in the U.S. could not have transpired without the allotment of lands in severalty that not only forced private property ownership onto tribal communities (the first mode of subjection), but as Biolsi points out, “helped to secure a new sovereignty on the

82 Ibid., 28.
83 Ibid., 30.
reservations.” As he explains: “This was because private property under capitalism … presupposes the state as a protector of the common interests of individual property owners.”

In my previous discussion of allotment, I included additional federal acts that amended the allotment act, including the Burke Act of 1906 that authorized the Secretary of the Interior (SOI) to determine any Indian’s “competence” to manage his or her lands, and the Act of May 29, 2908 which supplemented the Burke Act and further authorized the SOI to sell allotments of deceased Indian landowners if he deemed their heirs incompetent. Biolsi reveals the magnitude of these two acts within the context of his analysis of a second mode of subjection: competence.

The fact that Lakota shared the application of the second mode, competence, with wards and inmates in “total institutions” resounds with ominous portent—a foreboding that is borne out as the Lakota people are surveilled, infantilized, and demeaned in a gross extension of the judicially sanctioned status of wardship that granted ungodly power to administrative lackeys who served as Reservation Agents or Superintendents of the Office of Indian Affairs or OIA. As Biolsi clarifies: “What was termed incompetence was rooted in the essentialized characteristics of most Indians presumed in the colonial gaze.” The end result was infantilization coupled with Social Darwinism that mandated that the “survival of the fittest will apply” as quipped by the Rosebud agent in 1889.

Such wholesale character assassinations also served to justify shipping Indian children hundreds of miles away to military-style boarding schools like Carlisle where small children would spend their entire childhoods without any visits to or from family until fully grown. It is no coincidence that during the same period of Biolsi’s analysis, from 1880 to the mid-1930s, the BIA founded boarding schools based on the assimilation model of the Carlisle Indian Industrial

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84 Ibid., 31.
85 Ibid., 35.
86 Ibid., 36.
School founded in 1879. Most disturbing was the shockingly high incidence of widespread infectious disease that resulted from meals with insufficient nutrition, overcrowding, poor sanitary conditions, and overwork. The 1928 Meriam Report revealed that death rates for Native American students were six and a half times higher than for other ethnic groups.\footnote{Lewis Meriam, \textit{The Meriam Report: The Problem of Indian Administration} (Baltimore: Johns Hopkins Press, 1928), 314-339.}

In his 2013 Masters Thesis entitled \textit{A Blueprint for Death in U.S. Off-reservation Boarding Schools: Rethinking Institutional Mortalities at Carlisle Indian Industrial School, 1879-1918}, former Dartmouth Graduate Alumni Preston McBride presents compelling evidence to reveal that Carlisle was “far more lethal than previously known, and that more than five hundred students died there” in contrast to the 186 children who are actually buried in the Carlisle cemetery. One popular method of deflating the actual death rates was to send a terminally ill child home to die so that he or she did not die while actually in residence at the school.\footnote{Preston S. McBride, “Abstract,” \textit{A Blueprint for Death in U.S. Off-reservation Boarding Schools: Rethinking Institutional Mortalities at Carlisle Indian Industrial School, 1879-1918} (Hanover: Dartmouth College, 1983).}

Currently pursuing his Ph.D. at the University of California, Los Angles (UCLA), McBride (who is of Comanche and Italian descent) is also a Book Review Editor for the American Indian Culture and Research Journal and has continued his inquiries into Carlisle, as well as California’s Sherman Institute, as demonstrated by multiple conference presentations in 2015 that confirm and expand upon his initial findings in 2013.\footnote{Preston S. McBride, Website, www.history.ucla.edu/people/graduate-students/graduate-students?lid=7489, accessed November 2, 2015.}

While Indigenous children were forcibly indoctrinated at boarding schools like Carlisle, adults on the reservations endured a similar fate. Essentialized negative characterizations of Lakota as lazy, unreliable, slovenly, improvident, shiftless, and irresponsible were consistently and repeatedly reinforced in reports from Agents, Superintendents, and even the Commissioner
of Indian Affairs. And heading the top of the list as a highly undesirable characteristic by their colonial standards sat nomadism. Nomadism, in no uncertain terms, was to be stamped out; ergo, allotment that dictated sedentary farming practices and mandatory “travel passes” to monitor travel off the reservation. While Biolsi analyzes the Lakota experience in great detail, that tribal nation was certainly not an isolated example. Nor was Indian resistance suppressed entirely—especially with regards to their traditional cultural and seasonal travels which the colonialists denigrated as “nomadism.” I offer a more detailed discussion of Indigenous agency and resistance in Chapter 2, however a brief examination of specific resistance to particularly fervent colonial efforts to eradicate nomadism is warranted here.

Various “Shoshonean” bands united by a common Uto-Aztecan language base with increasingly diverse dialects include not only Lemhi Shoshone, Northern Shoshone, Eastern Shoshone, Western Shoshone, and Goshutes, but those who separated from Shoshoni bands and migrated further geographic distances such as Comanches and Utes who further differentiate with Northern, Southern, Ute Mountain, and other smaller bands.\(^9\) Historically renowned for their horse cultures and riding prowess, and accustomed to traveling the length, width, and breadth of the entire western half of what is now the U.S., members of these diverse tribal nations were not easily intimidated by colonial “policies.” Complicated by Indigenous views of reservation boundaries as a means to keep “settlers out” not “Indians in,” many tribes routinely ignored colonial mandates and proceeded with business as usual. Settler colonialists may have had their assimilation strategies and colonial mechanisms such as allotment, but Indigenes had centuries of intertribal and intercultural relations, particularly with Hispanics in Southwest Colorado, that offered rich opportunities for resistance.

In his book entitled *Ordeal of Change*, Frances Leon Quintana points to “bonds of cultural identity and blood kinship” between the Northern Utes and Utes of Southwestern Colorado specifying how those bonds circumvented colonial strategies:

[B]onds of cultural identity and blood kinship … were constantly renewed by visits and by transfer of individuals and families from one jurisdiction to another. These transfers continued well beyond the allotment years and were often preceded by years of living away from the jurisdiction of allotment. By living away from their allotments, many Utes both of Utah and of southwestern Colorado escaped pressure to take up farming. Their allotments were leased [often to Hispanic friends and neighbors with whom they had interacted for centuries] and they lived on the income therefrom plus their annuities. In this sense, …relations between Northern and Southern Utes [and Hispanics] acted as a barrier to the program of directed culture change.⁹¹

Referring to the Federal Records Center (FRC) in Denver, Colorado, Quintana also provides “abundant evidence for continuing mobility” as further resistance, especially among the Southern Utes of Ignacio in southwestern Colorado who consistently circumvented OIA efforts to curb their “nomadic” tendencies. Despite forcing property ownership and restricted travel without “passes” upon them, Southern Utes simply did not care what officials reported about them. Some maintained positive relations with Hispanic friends and neighbors cultivated over centuries and relied on them to work the land for them as “tenant farmers” while Ignacio Utes “visited” relatives hundreds of miles away in Utah and even as far away as South Dakota for extended periods of time.

Sourly referring to them as “runaway Indians,” official reports are replete with complaints as agents and census-takers express their frustration over the inability to locate or “count” individuals for months or even years at a time. Quintana’s research into FRC records demonstrates that after allotment, “prolonged visits by Ignacio Utes to the Utah jurisdiction and elsewhere” kept them suspended for years between Agencies, prompting delays in enrollment

transfers that sometimes extended for equivalent years while exasperated colonial officials attempted to determine their whereabouts. Quintana’s 1917 example of Corson, Abigail, and Susan Dickinson who had been missing for over nine years serves as a sublime reminder of Indian agency that consistently and quietly simmered just below the surface.  

But as the agency bureaucracy cast its “normalizing gaze” with increasing intensity, all Indians (including the elusive Southern Utes and counterparts from other tribal nations) were continuously measured against a colonial construction of competence wherein “white” colonists set the standard of desirable “traits” used to determine who and what was “normal.” Most importantly, as Biolsi points out:

> The authorities’ record-keeping and their self-righteous, patronizing, racist, and invidious character appraisals of individual Lakota were not just matters of “discourse” understood as purely representational. …The files and appraisals had serious, practical consequences for people. Because Lakota individuals were wards (unless declared otherwise), they were supervised in everything from their expenditure of cash to their public assemblies, and the files and character appraisals (both formal and informal) had a significant impact on official decisions in individuals cases.  

Because the 1906 Burke Act and its supplemental May 1908 Act authorized the Secretary of the Interior to 1) declare any Indian incompetent and 2) sell his or her lands, those “serious, practical consequences” of a negative file or character appraisal could result in a total loss of property, leaving an individual and his or her family destitute. By 1928, as the Meriam Report would expose, the shocking loss of land and resources and subsequent decline in every quarter of tribal communities throughout the U.S. sparked a scathing reprisal leveled against those responsible beginning with a radical reassessment of the 1875 Allotment Act. Until then however, the U.S. government exercised its burgeoning colonial disciplinary power without constraint.

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92 Quintana, 86.  
Working in tandem with its relentless normalizing gaze, the 1880s colonial expansion of wardship eventually “entailed a complex set of formal and informal character appraisals that were applied to Lakota persons,” including an “Industrial Survey” of all families on reservations in the United States which began in 1923. The OIA used this survey to collect data on the relative standing of families in ‘the march of progress’—to evaluate OIA programs and individual families’ advancement (Office of Indian Affairs 1923).”\(^{94}\) Included in the data recorded were blood quanta which form the third axis in Biolsi’s four modes of subjection; this mode of subjection proves most highly relevant to the purposes of this project in light of my discussion of one of two major contemporary issues: the reification of colonial practices by tribal nations with the contemporary use of blood quanta in eligibility requirements for tribal membership. Therefore, Biolsi’s discussion of blood quanta also informs my discussion of the Cherokee Freedmen controversy in Chapter 3.

According to Biolsi, the registration of blood quanta was fundamentally connected to the colonial resolution of “the Indian problem” with “elimination of discrete Indian tribes and of the protected legal status of Indian individuals.”\(^{95}\) Allotment required the registration of blood quanta in a tribal census to effect the division and distribution of all tribal lands to “identifiable” Indian individuals; but allotment was merely the first step. The stated goal of Federal Indian policy also included:

- the division and distribution of tribal trust funds into pro rata shares, the removal of the trust protections on individual allotments and bank accounts, the termination of special federal services to Indians (such as law and order, education, health care, rations, and federal employment), and the graduation of Indian people into United States citizenship [with subsequent] extension of state and local jurisdiction over erstwhile reservations.\(^{96}\)

\(^{94}\) Ibid., 36.
\(^{95}\) Ibid., 40.
\(^{96}\) Ibid., 40.
Blood quanta comprised one of several administrative techniques that anticipated, measured, and facilitated the process of elimination/assimilation. To use my framework for analyzing settler colonialism, blood quanta were a colonial mechanism produced by the strategies of elimination and assimilation within the U.S. process of normalization. It seems counterintuitive therefore that tribal nations today would use blood quanta in their eligibility requirements for tribal membership. However, as the Cherokee Freedmen controversy illustrates in Chapter 3, the reasons are bound up in a complex Catch-22 dilemma complicated by concurrent battles over sovereignty, self-determination, treaty rights, ICC claims, and judicial actions for recompense that have become entangled over nearly 300 years of U.S. history.

Biossi makes another significant observation about the special significance of “racial registration for Indian assimilation” by contrasting the use of blood quanta with racialization of African Americans under the “one drop rule” or “hypodescent” wherein the “latter entails rigid social and legal boundaries between discrete and clearly demarcated “races.” On the other hand, blood quantum registration, “was a matter of a gradient; inevitably, it generated the interpenetration of “races” –both conceptually and practically.” Blood quanta were used by colonial disciplinary powers to blur racial boundaries and facilitate assimilation versus separation. This “inter-mingling of the races” was further facilitated by allowing white settlers to purchase Indian land from which trust status had been removed.97

Unlike intermingling and intermarriages between African Americans and whites which was viewed as “contamination” and eventually outlawed by Jim Crow laws in the 20th Century that criminalized miscegenation, intermingling which resulted in intermarriages and sexual contact between Indians and whites was initially sanctioned as a step toward assimilation. However, racialization and subsequent race relations were deeply complicated between the mid-

97 Ibid., 40-41.
1800s through the mid-1900s by the presence of “Black Indians” throughout tribal nations across the U.S. In his Masters Thesis entitled *John Taylor and Racial Formation in the Ute Borderlands 1870-1935*, Louis Gregory McAllister relates how one grandson of Buffalo Soldier John Taylor who married into the Southern Ute Tribe had to negotiate the “Jim Crow color line” in the late 1950s—a story that interrogates the complex issues of intermarriage between Blacks, whites, and Indians as racialization evolved from the Allotment Era into the violently oppressive Jim Crow era with pertinent parallel implications for my analyses of the Cherokee Freedmen controversy in Chapter 3.

As a descendant of John Taylor, Erwin Taylor’s “blood quantum” deemed him \( \frac{3}{4} \) Southern Ute and \( \frac{1}{4} \) Black. Under the deeply racist mandates of the “one-drop rule,” a person with any amount of African ancestry was racially classified as Black. Erwin met Carolyn McIntyre, a white woman, when they attended Bayfield High School together and they began dating despite her parents’ disapproval who stated that she was dating a Black man, not an Indian. Furthermore, Carolyn’s family origins actually stemmed from Oklahoma where there was not only a clear racial divide between African Americans and whites with a 1908 miscegenation statute that classified violation as a “felony punishable by a fine of up to $500 and imprisonment from one to five years in the penitentiary.”98 More significantly, by 1921, an additional miscegenation statute prohibited marriage between Indians and Blacks as well. Classified as a misdemeanor in Colorado with a range of less severe penalties, Erwin’s story therefore adds still another layer to white colonial racialization of both Indians and Blacks by demonstrating how blatantly arbitrary Jim Crow laws were from state to state.

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In 1960, a miscegenation law in Colorado did prohibit intermarriage between Blacks and whites; however, marriage between Indians and whites remained legal. Because the Taylor family’s ancestry was so well known in La Plata County, Erwin and Carolyn decided to elope in 1960 and traveled to Manasa, Colorado where they believed the officials would be less knowledgeable. However, the Justice of the Peace took one look at the couple and initially refused to issue a marriage license because he believed that Erwin was black based on his appearance. It was only after Erwin stated: “I am not black; I am Indian” that the official relented. As McAllister points out, and historical photographs support, Southern Utes did exhibit darker skin which may have convinced the Manasa officials that he was full Indian and not part Black. McAllister also notes that “Erwin was proud of his African ancestry, but under these circumstances, he chose to cross the color line dividing [B]lacks from Indians.”

Biolsi also points out the definitive correlation between degree of blood and competence wherein the full-blood class of Indian was by definition deemed less intelligent than a mixed blood. This colonial attitude that equated competence to a lower degree of Indian blood had powerful material consequences; i.e., in 1917, the OIA unilaterally removed trust authority over all fee-patented Indians of less than one-half Indian blood and declared them U.S. citizens. No longer wards of the government, their allotments were fully commoditized and thereafter subject to state taxes, and they received unrestricted control of monies. “In conformity with this policy, 319 fee patents were issued on Rosebud and 463 on Pine Ridge. Most of this land was rapidly lost (Department of Indian Studies 1981).”

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Additionally, “Lakota people quickly came to recognize that standard of living directly connected to the number of tribal members competing for resources,” 101 laying the groundwork for the use of blood quanta by tribal nations in the future despite their historic origins as a powerful and deadly effective weapon in the colonial arsenal to first divest Indigenes of their land and then facilitate their forced assimilation into U.S. society thereby subjecting them to total federal and state jurisdictional control. In other words: No more tribal sovereignty. No more treaty rights. No more federal protection against state predation. In a deadly catch-22 dilemma for Indigenes, colonialists wielded blood quanta as a colonial weapon in one of two multi-step processes: 1) colonialists deemed “full-blood” Indigenes inferior, declared them incompetent, and then sold their allotment lands out from under them; or, 2) colonialists deemed “lower-quantum” Indigenes superior (with a progressively lower quantum of Indigenous blood equating to a complementary higher superiority), encouraged them to apply and receive “fee patents” and thereby removed all federal trust authority, subjected allotted lands to total federal and state jurisdiction and control, and finally, coerced forfeiture of Indigenous lands through the ensuing, bewildering, legal process.

In his conclusion, however, Biolsi declares an important caveat to his analysis that speaks once again to the resilience of Indigenous perseverance:

My examination of the processes of subjection is not meant to imply that a distinct Lakota culture was erased…. Although there was clearly “culture change” …that entailed both new identities and some “deculturation”—an autonomous Lakota culture survived and even thrived: the language, a rich social and ceremonial life, a native kinship system entailing rights and obligations, and an indigenous form of political process. 102

Biolsi then continues with a “But…” statement that hearkens back to Toby Rollo’s comments about “containment” versus “elimination” in a nuanced definition of settler colonialism: “But

101 Ibid., 41.
102 Ibid., 44.
the state apparatus and the capitalist social formation could live with this native cultural persistence—as long as the Lakota were subjected to the new definitions of the individual.”

And blood quantum requirements were an essential colonialist tool for establishing parameters for these definitions. Nevertheless, whether colonialists were employing mechanisms of containment or elimination, the survival of Lakota culture as documented above confirms that Indigenous peoples sustained agency and resistance during even the darkest years of colonial territorial appropriation, subjugation, and attempts at cultural genocide that employed multiple mechanisms of assimilation.

**Veracini & Decolonizing Settler Colonialism**

Demonstrating the highly significant relevance of his article entitled “Settler Colonialism and Decolonisation” for this project, Lorenzo Veracini opens his discussion with a firm belief:

> Appraising the evolution of settler colonial forms during the second half of the twentieth century can contribute to an appraisal of decolonization processes … because settler colonial forms have existed in an extraordinary variety of sites of European colonial expansion (and have survived in a number of postcolonial polities), and because, contrary to other types of colonial practice, settler colonialism has been in many ways remarkably resistant to decolonization.

Furthermore, Veracini integrates his appraisal of settler colonialism within discussions of decolonization with an introduction of decolonization itself to analyses in settler colonial contexts. Veracini also quotes Patrick Wolfe who concurs that “settler colonialism is relatively impervious to regime change,” and that as a result, settler colonialism has been increasingly separated from other colonial phenomena in historical literature. And despite a remarkable

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103 Ibid., 44.
“revival” of the “historiography of decolonization,” the “decolonization of settler colonialism phenomena” remains largely neglected.¹⁰⁵

More importantly, Veracini stresses that it is this very “narrative deficit” specifically associated with conceptualizing the decolonization of settler colonialism that further contributes to a widespread reluctance to “enact meaningful postcolonial passages” on the subject.¹⁰⁶ His observation about a narrative deficit within postcolonial discussions truly resonates with me—especially in light of academic postures in more than one encounter with professors throughout my doctoral coursework who adamantly maintain that “postcolonial” theory does not apply to U.S. settler colonialism. On the face of it, I concede that the template for post colonial theory may not “fit” perfectly for discussions of settler colonialism, but that does not mean we should not try to construct a new template. After all, as I observed in my Introduction the discipline of cultural studies itself is grounded in an eclectic, non-restrictive approach to theory and methodologies. Apparently, Veracini and a number of his colleagues including Todd Shepard, Anthony Moran, Anna Johnston, Alan Lawson, and Roger Moody agree.¹⁰⁷

Veracini’s specifically references Moody’s 1993 Introduction as Editor of The Indigenous Voice: Visions and Realities, a collection of documents outlining the emergence of the “Fourth World,” a term that enjoys widespread use since 1974 with the publication of Shuswap Chief George Manuel’s book entitled The Fourth World: An Indian Reality. According to the Center for World Indigenous Studies (CWIS) website, Manuel thought of the Fourth World as the “indigenous peoples descended from a country’s aboriginal population … who today are completely or partly deprived of the right to their own territories and its riches.” Although the CWIS maintains that this remains a valid definition, for a variety of reasons that

¹⁰⁵ Veracini, “Settler Colonialism and Decolonisation,” 1.
¹⁰⁶ Ibid., 1.
¹⁰⁷ Ibid., 1-2.
include addressing prejudices and misconceptions surrounding the terms “aboriginal” and “indigenous” and the latter’s exclusive association with New World “Indians,” the CWIS presents an abbreviated definition of Fourth World as “internationally unrecognized nations … the 5,000 to 6,000 nations representing a third of the world’s population whose descendants maintain a distinct political culture within the states which claim their territories. In all cases, the Fourth World nation is engaged in a struggle to maintain or gain some degree of sovereignty over their national homeland.”\(^{108}\)

Veracini is specifically interested, as am I, in how Moody “became progressively interested in Indigenous issues during the 1960s, after it [became] apparent that the Cold War, national liberation processes and struggles, and decolonization in general were bypassing a number of ‘forgotten people’ who could not make their struggles visible.”\(^{109}\) Veracini first notes that Indigenes often “straddle” existing categories such as “First World” and “Third World” (terms still in use in 2007 although they were on their way out in an increasingly politically correct or pc-sensitive environment). Veracini then observes that “Indigenous peoples’ ongoing struggle for visibility may yet have to overcome a number of conceptual blockages associated with an inclination to separate ‘First’ and ‘Third’ Worlds in ways that do not allow for Indigenous autonomy.” Nevertheless, even as they struggle with a “Fourth World” status and attendant issues with “visibility” and the fact that the “historiography of decolonization” may have forgotten them, “Indigenous peoples have certainly not forgotten decolonization and have collectively and recurrently demanded acknowledgment of their inherent sovereignties.”\(^{110}\)


\(^{110}\) Veracini, “Settler Colonialism and Decolonisation,” 2.
Veracini also cites an observation by Ann Curthoy in 2000 about Australia that demonstrates equal relevance for the United States. First, Veracini maintains that the U.S. is both “colonial and postcolonial” as well as “colonizing and decolonizing” at the same time. As contradictory as this sounds it actually helps to make sense of my theory of the cyclical nature of colonial strategies as they emerge, submerge, and re-emerge over time with adaptive mechanisms. Veracini clarifies that Curthoy’s observation underscores the ambiguity of postcolonial passages, illustrating with the following example:

In the US, the colonial issue is generally understood as definitively settled by 1783 (and perhaps reopened in 1898, but only as ‘an aberration’), which tends to pre-empt an appraisal of a couple of hundred years of settler colonization. If a settler colonial condition is characterized by being at the same time colonized and colonizing, a focus on external relations and sovereign independence or autonomous self rule against a colonizing metropolitan centre inevitably obscures the position of internally colonized indigenous constituencies.  

Accompanying this conundrum is the reality that the colonial settler himself or herself not only colonizes, but is colonized as well.

As if it is not already complex enough, decolonization in the U.S. is further complicated by the fact that any decolonization of territory such as Tribal Land Buy-Back programs or President Nixon’s 1976 revision of the Yakama reservation boundaries “is not matched, even symbolically, by an attempt to build decolonized relationships. Indeed, settler departure conceptually mirrors and reinforces settler colonialism’s inherent exclusivism, and confirms a ‘winner takes all’ settler colonial frame of mind that demands that settler sovereignties entirely replace Indigenous ones.”

As a result, any “settler departure” in the U.S. not always, but far too often engenders additional resentment in the colonial settler who feels unjustly divested of territory that he or she had “won” in the past—a resentment that is further fueled by a colonial

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111 Ibid., 4.
112 Ibid., 4.
normalizing influence that has had centuries to instill a pre-existing hostility toward Indians who will not “assimilate” into U.S. society.

Echoing the sentiments of Tobold Rollo, Veracini also notes how a diversity of projects initiated by colonialist federal governments ostensibly aimed at reconciliation can actually “represent a possible type of postcolonial institutional endeavour in settler societies.” I identify such an effort in my framework of settler colonialism as adapting a mechanism to maintain colonial strategies that prior to now subtly shifted back and forth between elimination or assimilation, but now seek to present a more palatable posture of “accommodation.” Such initiatives continue to prop up the imaginary of the U.S. as meeting Indigenous peoples halfway.

In a closer examination of this colonial spirit of “reconciliation,” Veracini challenges a North American suggestion of a “renewed historiographical tradition” with a suggested focus on a “middle ground,” with the query: “…considering a history of Indigenous extinction, removal and subordination, couldn’t a focus on the ‘middle ground’ also be understood as one form of ‘retrospective utopia’?”\(^\text{113}\) In the U.S. this middle ground constitutes a continuing colonial effort to deny the uglier side of U.S. History—a serious bone of contention with contemporary tribal communities who now emphatically point out the crucial difference between compromising and being compromised. What puzzles me is how historical revisionists seem to have no problem revealing the uglier side of U.S. History regarding African Americans, but balk over applying the same standards of full disclosure regarding Native Americans. It hints at the same type of perverted logic that maintains that the word “nigger” is egregiously offensive under any circumstances, but the word “redskins” is a perfectly acceptable name for a national football team—in our nation’s capital city no less where a Black man still resides as President.

\(^{113}\) Ibid., 5.
I am reminded of an intellectual conversation with Yakama Shawn Lamebull following one of my presentations at an American Studies Colloquium on the Washington State University campus in 2011 who told me that he did not prioritize the use of the word “Redskins” because his people had “more important” matters to deal with, such as sovereignty, treaty rights, poverty, and the health/social issues that accompany cultural genocide. On the one hand, Shawn is correct in his assessment that challenging a sports team name can appear trivial in the face of the multitude of contemporary issues that tribal communities face on a daily basis. However, after deeper reflection on his comment, I realized that it is neither the team name nor the sports mascot that we are challenging, it is the insidious, endemic racism that normalizes that behavior that we must challenge—a racist attitude that has fueled every colonial attitude, every colonial policy, and every colonial action since initial contact with Indigenous peoples.

Racism fueled the 1600 demands that Indians conform to white settler values and sparked King Phillip’s War. Racism dehumanized Indigenes and undergirded military aggression that wiped out a peaceful Cheyenne village of women, children, and elders at Sand Creek, Colorado. Racism infantilized Indigenes and then “legally” deemed them “incompetent” thereby facilitating appropriation during the Allotment Era of not only their land, but any resources on, under, or within it. Racism extended the application of Jim Crow laws in the early to mid-1900s, including miscegenation, to Oklahoma Cherokees who had already intermarried and cohabitated with Blacks for decades after the Civil War. Racism promoted Dillon Myer’s 1950s relocation policies as Commissioner of Indian Affairs in his poorly disguised efforts to revive the colonial strategy of assimilation and break up reservations through a process of attrition instead of appropriation. And it is racism that fundamentally permeates every contemporary issue that
Indigenes confront today—including the ones that Shawn Lamebull specifically iterated with such fervor.

The reason why racism against Indigenes within the sports “arena” does deserve priority is because it is the exemplar of how colonial strategies centuries in the making have so deeply normalized a particularly virulent covert racism in today’s society that many non-Natives can no longer even recognize it as racism—even when it comes out of hiding and overtly manifests in the open. Witness an exhibition of Foucault’s “evolutive historicity” in a supreme example of masterful colonial subterfuge in contemporary U.S. society. And as long as that racism sits at the core of the colonial settler mindset, any attempts to decolonize settler colonialism, academic or otherwise, will struggle for a solid foothold in a steep uphill climb. That’s because the greatest strength of settler colonialism lies in the colonial settler individual who, as Veracini illustrates, colonizes at the same time that he or she is colonized by the disciplinary powers of the colonial nation-state—disciplinary powers which, in turn, have normalized racism in the U.S. colonial settler’s mindset for over 600 years.

Veracini presents a third circumstance that must be considered in attempts to decolonize settler colonialism: “where the detection of the colonising structures of the settler colonial polity, let alone the possibility of their discontinuation was never placed on public agendas.”\(^\text{114}\) This circumstance speaks to my observation of how colonial strategies and the wide variety of their adaptive mechanisms grew increasingly invisible themselves at the same time that they rendered Indigenes increasingly invisible to the colonial settler communities. Veracini’s observations support my argument that as long as the invisibility of imperial and colonizing

\(^{114}\) Ibid., 4.
endeavors remains conventional thinking, “enacting post-settler decolonization for U.S. Indigenes remains unlikely.”

When Veracini “imagines settler decolonization,” he immediately insists that because of its ambivalent nature as pointed out by Curthoy, any decolonization of settler colonialism “requires at least two moments: the moment of settler independence and the moment of indigenous self-determination [which is] further complicated by the fact that one decolonization (settler independence) inevitably constitutes an acceleration of colonizing practices at the other end.” This is why, according to Veracini, “processes of constitutional rearrangement involving Indigenous constituencies in settler nations have necessitated a significant revision of traditional historical narratives and a comprehensive reinterpretation.” However, those revisions and reinterpretations initiate an entirely new set of problems because as historical revisions challenge entrenched foundational narratives, they inevitably engender a counterpoint view. A defensive ‘settler’ type of historical discourse then reappears in response. If we ever do succeed in revising our K-12 accounts in U.S. History, we may encounter similar “History Wars” like those that epitomized historical revisionist efforts in Australia by 2003.

Veracini maintains that because they lack a clearly defined decolonizing moment, settler colonial contexts retain policy objectives of their colonizing pasts (i.e., further extinction and/or assimilation of Indigenous law, tenure, autonomy, and identity). I agree with Veracini that the structure of settler colonialism itself appears “linear” because by definition, settler colonialism is predicated upon the permanent “displace and replace” imperative of territoriality. In his words: unlike other “circular” colonial structures wherein “getting out of the colonies” could represent “forward movement” that “allows one to proceed forward even when one is going back,” there is

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115 Ibid., 5.
116 Ibid., 5.
117 Ibid., 6.
no “going back” in settler colonialism: “Conversely, in settler colonial contexts, withdrawing from colonial practices of Indigenous dispossession could only be perceived as a “backward” movement signaling the demise of original settler claims (a linear narrative form does not allow much scope for reform).”

However, I expand on Veracini’s observation of settler colonialism’s “linear” structure to maintain that the methodologies or what I term “strategies” that initially established settler colonialism in a territory, and continued to sustain it over time up to and into the present, are not “linear” like settler colonialism itself, but “circular” or “cyclical” in an evolutionary process of adaptation. Colonial settlers themselves may not “go back” to their point of origin, but variations upon a theme in their strategies return time and time again, re-emerging with new, adaptive mechanisms that seek to accomplish variations of original objectives in the face of resistance. This occurs because that same nature of “permanence” inherent in the definition and “linear” structure of settler colonialism itself mandates continuous “circular” adaptation and reapplication of mechanisms in order to sustain its permanent existence.

It makes sense then that academics who seek to explore decolonization of settler colonialism can include postcolonial narratives that address the strategies and mechanisms themselves rather than bashing our heads against the unyielding linear structure of settler colonialism itself. Yes, colonial settlers are here to stay. And that linear structure of settler colonialism eliminates any realistic possibility of removing the colonial settlers—especially in a nation-state like the U.S. where Indigenes only comprise 2% of a population that numbers over 322 million people to date.118 However, we can still maintain efforts to “decolonize” the colonial settlers themselves and address how colonialist strategies have impacted relations

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between settlers and Indigenes in the past as well as confront how those colonial strategies continue to facilitate distortions and exacerbate tensions in the present. This is of course a seriously complex endeavor, but when has decolonization in any capacity ever been a simple one?

**Academic Challenges to Settler Colonialism**

On page 11 of the introductory chapter of his 1998 book on *Colonial Discourses*, Richard King traces a path of disillusionment that begins with recognizing the irony that his “efforts to challenge EuroAmerican sociocultural formations depended on romantic renderings of Native Americans, no less than the privileged position from which to appropriate and exploit these simulations.” He further explains:

> Before grasping the significance of this paradox, I became disillusioned with the micropolitics of social movements. Abandoning grass roots politics, but not my desire for the authenticity, identity, and exteriority which I thought obtainable through alterity, I (dis)located myself in anthropology. [But] a series of encounters with critical reactionary, revisionary, and interdisciplinary, forgotten, and marginalized projects shattered my naïve faith in either humanistic or positivistic approaches to culture studies. … I acquainted myself with the history of anthropology, and came away shell-shocked.¹¹⁹

At this point in my reading, I am reminded that Claude Levi-Strauss did not brand anthropology the “handmaiden of colonialism” without cause.

Like Richard King, I too struggled with profound disillusionment, and also like King, it led me onto certain constructive paths. For King, this “process of disillusionment” combined with his ethnographic experiences to clarify “the importance of thinking about American empire in anthropological terms.”¹²⁰ For me, it led to developing an interdisciplinary approach to expose how U.S. colonial strategies effectively camouflage the reality of the U.S. as an “empire”


¹²⁰ King, “Colonial Discourses,” 11.
that wields colonial power in all of its historical and contemporary chimerical forms. King also recognized specific ways that U.S. Indians are deliberately written out of history—that is, however, when they are not distorted to sanction the “appropriation and naming of difference, mirroring the power to take, name and recreate spaces, to simultaneously dispossess and redistribute people.”\textsuperscript{121} As King explains, by fixing the past, legitimating hierarchies and asymmetries within narrative histories, and interpreting cultures to their own advantage to reinforce national myths and justify unjust federal policies, particular intersections of historical and anthropological discourses “secured colonial contexts.”\textsuperscript{122} Excluding tribal history in general and Indigenous perspectives in particular further reifies those colonial contexts. And contemporary distortions that continue to build on historical colonial foundations further strengthen colonial settler misconceptions, such as maligning tribal casinos and promoting contemporary derogatory stereotype of the drunken, casino Indian.

In their book entitled \textit{Indian Gaming and Tribal Sovereignty: The Casino Compromise}, Steven Andrew Light and Kathryn R. L. Rand make the astute observation that “one cannot understand Indian gaming without understanding the context of tribal sovereignty.”\textsuperscript{123} In a similar way, one cannot understand Native American history without understanding the context of oral tradition and the unique role of the Storyteller within that tradition. The importance of understanding U.S. Native history also has a parallel with the purpose of Light and Rand’s book: to dispel stereotypes and misinformation about indigenous peoples. Specifically for my purposes, stereotypes that pervade popular discourse despite herculean efforts within academia to debunk these harmful images find their roots in racism. Whether romanticized as the “Noble Warrior” or

\textsuperscript{121} Ibid., 5.  
\textsuperscript{122} Ibid., 5.  
\textsuperscript{123} Steven Andrew Light and Kathryn R. L. Rand, \textit{Indian Gaming and Tribal Sovereignty: The Casino Compromise} (Lawrence: University Press of Kansas, 2005), xii.
the “Indian Princess” or demonized as the “Bloodthirsty Savage,” stereotypes viciously misrepresent while they severely curtail the rich diversity of hundreds of different tribal societies. Nevertheless, they permeate U.S. History courses in mythologized renderings that reduce Native women to caricatures of Pocahontas or Sacajawea, or denigrate them as “squaws,” and reinforce a stubbornly persistent, iconic image of all Indian men as hunting buffalo on horseback and living in tipis.

Equally important to comprehending tribal history is conscious awareness of how tribes or nations retain their history with sacred oral traditions passed down through the generations from father to son and from mother to daughter in intimate settings; the sacred human vessel for the tribe as a whole is the Native Storyteller. Any inquiry into Native American society must necessarily include an exploration of Native oral tradition—it is at the heart of their cultural existence. Earning my Masters in English initially set my feet on the long and winding path to even remotely understanding the unique role of the Native Storyteller in tribal society. In my thesis entitled Seeking the Chameleon: The Influence of Native Rhetoric and The Oral Tradition on Native American Literature, I include a discussion of the Old English storyteller known as a scop or widseth who initially fulfilled the role of “historian” for early European society.124 In U.S. Native American society, we can draw an extremely cautious parallel, but must acknowledge cultural differences that remain highly relevant in contemporary Native society and manifest most profoundly in Native American literature.

In short, Native American literature is not easily confined to traditional European classification schemes that seek to place a work into a genre; i.e., fiction, non-fiction, or poetry. And certainly, by European standards of academia, any classification within “literature”

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automatically removes that work from classification as “history.” In contrast, Native Americans not only view tribal stories as history, but imbue those stories with a sense of the Sacred. As further explained in my thesis, the Storyteller in Native American society often retains a multi-faceted role as historian, entertainer, teacher, shaman or healer, and/or religious leader. Significantly, this revered individual could be either a man or a woman—qualification was predicated on natural gift not gender. For non-Natives who are accustomed to the classification scheme of genre, it becomes increasingly difficult to draw clear lines of demarcation between fiction, non-fiction, and history when accessing Native American “stories.” For this project, insights from research into the Native Oral Tradition are essential to not only comprehending, but appreciating how tribal history manifests in stories of specific cultures, and how those stories can integrate with more traditional historiography as it functions within a predominantly Euro-American epistemology.

Even in non-Native contexts, history should not serve a passive or trivial purpose to satisfy mere curiosity because by tracing the roots of our past, we can comprehend the intricate interwoven complexity of contemporary issues. For instance, we can perceive a glimmer of interconnections when we revisit Light and Rand’s clarification of the fundamental purpose of their text Indian Gaming and Tribal Sovereignty: “We believe that a clear account of the law and politics undergirding the development of Indian gaming, viewed through the lens of tribal sovereignty, is needed to fully understand tribal gaming today, as well as to create sound law and public policy governing Indian gaming for tomorrow.” 125

Indian Gaming is just one example of contemporary issues that involve legal actions between sovereign tribal nations and the U.S. Government—legal actions that, in turn, impact public policy at the federal, state, and local levels and often generate misguided antagonism in

125 Light and Rand, Indian Gaming, 3.
local non-Native communities. Other examples include, but are not limited to heated battles over Indigenous fishing/hunting/gathering rights, ownership to mineral rights, rights of access to and use of water, preservation and repatriation of ancient remains and relics, and, of course, ownership of land. Quite simply, public opinion in the form of popular discourse—and all of its attendant perceptions or misconceptions—are crucial in maintaining public policy because even when the wheels of justice turn in favor of a tribe, the difficulty of enforcing that justice becomes a monumental task if decisions are not fully understood by all the stakeholders. Ensuring that our nation’s History is inclusive, comprehensive, fair, and accurate is only the first step: we need an uncompromising program of education in U.S. History at all levels to displace harmful myths in popular discourse which ultimately hurt everyone—Native and non-Native alike.

A compelling concern emerges when we acknowledge that Native history has been consistently appropriated by incorporation and distorted by revision that wrested ownership away from Native peoples for political purposes—often to socially or politically justify land seizures, relocation, and exploitation. While Native activism has sought redress and succeeded in some measure, the intensity of distrust that prior bad acts engendered is certainly understandable. Admitting culpability is a responsible first step, but then wallowing in counter-productive guilt only serves to refocus the lens away from pro-active Natives once again. Instead, studies in race and culture may focus on, for example, recognizing and discouraging stereotypes that not only gravely misrepresent Indigenous peoples in historical contexts but usually do so in denigrating ways.

Additionally, non-Natives need to recognize that, despite their amply justified distrust or even outright hostility, tribal people do not automatically reject anything and everything that does not originate within their communities any more than other groups of people do. However
they do justifiably demand respect and are actively seeking “ownership” of their own history as an additional form of Indian agency that combats still another form of colonial appropriation: that of intellectual property. For example, if knowledge about their history stems from a scientific source or a non-tribal methodology, Indians will not automatically reject it on its face. The difference lies in accessing knowledge in collaboration, acknowledging the validity of Indigenous sources, respecting their point of view, and acceding to Indian rights of ownership over that knowledge for whatever purpose.

At this point, I wish to reiterate that regardless of any particular methodology, I am not seeking to “prove” or “disprove” any one Native story, nor do I want to “speak” for any other group of people as a pseudo-expert whose authority is primarily vested in academic degrees.

During a formal discussion panel when he was still a WSU Doctoral Candidate and Instructor in 2012, Native David Warner eloquently expressed sentiments about teaching non-Natives about Native American women: “I do not want to speak for Native women—they are quite capable of doing that themselves. I seek to provide opportunities for them to speak.”

Reminded of Warner’s compelling insight, it occurred to me that my greatest task, and greatest opportunity for making a difference, lies in communicating with other non-Natives to raise conscious awareness about our own privileged status, what that privilege means in the context of contemporary tribal issues, and how we can effect meaningful change in our own lives and our own behavior. Then, pay it forward.

For me personally, particularly as an Interdisciplinary Doctoral Candidate, additional tangential intersections or parallels between Native oral tradition and mainstream theories and methodologies in History and Anthropology reveal if, when, and how correlations intersect. For

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example, in *Messages From Frank’s Landing*, Charles Wilkinson discusses “traditional
Nisqually ways” which reveal a gold nugget of information about Nisqually ancestry and serve
as another excellent example of collaboration:

Tribal accounts [within oral tradition] explain that the Nisqually originally resided
far to the south, in Central America. As the glaciers receded, the people moved to
the Great Basin, south and east of their present home. When the earthquakes
shook the ground, the Nisqually crossed the southern slope of Mount Rainer and
settled in the Nisqually watershed. Archaeologists have dated one Nisqually
village at over 5,000 years old. Human occupation of the southern Puget Sound
has been established at least 12,000 years ago, and those ancestors are surely the
ancestors of today’s Nisqually Tribe.¹²⁷

While I am keenly interested in the origins of Indigenous peoples in the Americas, I am
even more interested in how this knowledge informs historical and cultural insights on a
particular Native community or society, which in turn, inform additional perspectives in accounts
of U.S. History. In that capacity, all of my research returns to the multi-purpose goals in this
project to shatter stereotypes, dispel misconceptions, address areas of serious misinformation,
recognize the rich diversity of Indigenous societies, and more fully acknowledge Indigenous
roles in U.S. History. These goals converge within an overarching objective to raise public
awareness in popular discourse, improve communications between non-Native and Native
members of U.S. society, and thus, facilitate resolution of serious contemporary issues that
impact tribal people across the nation.

As I mentioned earlier, Richard King discusses a “path of disillusionment” in his 1998
book on *Colonial Discourses* which prompted him to abandon “grass roots politics.” However,
as a personal experience with Obama’s 2008 Campaign for Change revealed for me, the problem
with grassroots politics is not garnering the power of the people—Obama’s stunning success
demonstrated how brilliantly it can still be done when he incorporated Marshall Ganz’s

principles of grassroots organizing as the cornerstone of an election campaign that swept a black man into the highest political office in the land. The problem is sustaining the momentum. The stunning decline of his Organizing for America (OFA) program when this mighty ship no longer had his strong hand at the helm demonstrates how swiftly people can lose focus and motivation without a charismatic leader directly energizing the movement. The minute he necessarily turned his attention to the daunting load of duties as President of the United States, OFA began to drift off course and founder. As an Obama Organizing Fellow, I was a direct witness to both socially cataclysmic events.

The accomplishments of grassroots organizations, even those that can sustain their momentum, seem precariously vulnerable even at the height of a watershed moment such as passage of the U.N. Declaration of Rights for Indigenous Peoples. As Walter Echo-Hawk stressed in his presentation during his book tour at Washington State University in 2014, this landmark moment holds out so much promise; but that promise will not be realized if colonialists and Native Americans cannot first translate its international message in a national context. More importantly, we will never realize its full potential if we cannot effectively implement its provisions in cooperation and consultation with U.S. tribal nations and their people—especially when the government has not met with Native Americans to discuss how we might go about that task.  

Echo-Hawk is directly on point with his characterization of the UN Declaration as a signal event that could change the course of history with “promises to shape humanity in the post colonial age.”

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Certainly the Declaration begins to address Veracini’s 2007 observations as iterated earlier in this chapter regarding minimum requirements for any type of decolonization of settler colonialism to any extent. Realistically though, if U.S. settler colonialism is interpreted by its defining characteristic of territoriality, it is logistically impossible to “totally” decolonize the U.S. because that would require the unrealistic withdrawal of ~322 million non-Native individuals from the lands and the return of those lands to ~649,000 Natives. And as recent actions of U.S. states like Idaho indicate, some colonial U.S. government branches are still actively attempting to wrest additional lands away from Indigenous peoples. They are hardly inclined to give anything back.

It also remains to be seen whether or not the Declaration’s “inherent right to self-determination” will be borne out by U.S. federal policy. Even though Echo-Hawk clarifies that this tenet has actually been “the centerpiece of federal Indian policy in the United States since 1970,” it has been consistently circumvented by Congressional plenary power and judicial interpretations of “limited” sovereignty. Those historic attitudes have been borne out by colonial response time and time again, and battles continue to wage to date over exactly what “self-determination” in the U.S. actually means—as I further demonstrate in Chapter 3 with the Cherokee Freedmen controversy.
CHAPTER 2

Complex Intersections:
Colonialist Strategies vs. Indigenous Agency and Resistance

Contemporary Colonial Territoriality

In the past decade, Shoshone-Bannocks in Southern Idaho have engaged the state of Idaho and local corporations in a pitched battle over dire toxic contaminations of the land, aquifer, lakes, ponds, rivers, and hot springs. The resulting deleterious impacts on plants, wildlife, and people manifest in Native and non-Native communities alike, but they manifest with a particular intensity for Indigenous communities who not only rely on a traditional diet, but face increasing threats to treaty rights that protect traditional use of federal and unoccupied lands for hunting, fishing, and gathering.

But the Shoshone-Bannocks and other regional tribes are waging an equally crucial and highly related battle on a different front. Idaho’s November 1980 and more recent 2013 attempts to gain title to federal public lands within state boundaries represent a modern-day version of a “land grab” with frightening similarities to the 1830s battle between the state of Georgia and the Cherokee Nation over 185 years ago. As Edward Johnson reveals in his article entitled “Issues: The Indian Perspective,” tribal leaders in the Great Basin, including the Shoshone-Bannocks at Fort Hall in Idaho, are “concerned with issues that have affected Indian people and their lands in the 1970s and 1980s—treaty and agreement rights, waters rights, jurisdiction, economic development, and educational and social needs.”

Thirty-five years ago, in testimony before the Subcommittee on Mines and Mining of the U.S. House Committee on Interior and Insular Affairs on November 22, 1980, the Fort Hall

Shoshone-Bannocks Business Council stressed the validity of off-reservation treaty rights of the Fort Bridger treaty of 1868 and the Agreement of 1898, strenuously objecting to the turnover of federal lands—primarily National Forest and Bureau of Land Management areas—to the states.

In his statement as General Counsel for the Shoshone-Bannock Tribes at that time, Pawnee Larry J. Echo Hawk clarified how traditional land-use treaty rights with federal jurisdiction transcend strict legal interpretation with their cultural and spiritual significance, his remarks stress that mere lip service to honoring Indian treaty rights is not enough:

Exercise of these traditional use rights...reaches to the essence of the Shoshone-Bannock culture and subsistence economy. These traditional activities remain sacred to the Shoshone-Bannock today, just as they were 6,000 years before the birth of Christ. Advocates...have not carefully considered the disastrous consequences that will follow generally from any state takeover of federally owned lands. Even less consideration has been given to the specific legal, social, and cultural impact of such a takeover upon Indian tribes. Such consideration must consist of more than uninformed verbal “guarantees” that Indian treaty rights must be respected. The history and nature of those treaty rights must be understood. Overriding federal law and the honor of this Nation, as well as the states, demand no less.  

One such landscape with profound cultural and spiritual relevance is the Great Camas Prairie. Shoshone-Bannocks were so closely associated with the Great Camas Prairie that “white officials regularly referred to Shoshone and Bannock groups as ‘Cammas,’ ‘Kammas,’ or ‘Kammas’ Indians.” In 1865, then Secretary of the Interior James Harlan even instructed Idaho Territorial Governor Caleb Lyon to seek a treaty with the “Great Kammas Indians.” More significant to note was the secretary’s suggestion for a two-part reservation that encompassed

131 Larry J. Echo Hawk, Testimony, “Statement as General Legal Counsel for Shoshone-Bannock Tribes of the Fort Hall Indian Reservation,” Subcommittee on Mines and Mining, U.S. House Committee on Interior and Insular Affairs, November 22, 1980, qtd in Edward C. Johnson, “Issues: The Indian Perspective” in Handbook of North American Indians: Volume 11 Great Basin, (Washington, D.C: The Smithsonian Institution, 1986), 593. In a supremely ironic juxtaposition, Echo Hawk’s political career as ardent advocate for the Shoshone-Bannocks Tribes in 1980 ultimately culminates thirty-one years later in his position as Assistant Secretary for Indian Affairs under the Obama administration—embroiling him in opposition to the Cherokee Nation at the height of the Cherokee Freedmen Issue in late 2011 as detailed in Chapter 3 of this project.

fisheries on the Snake River as well as a “summer reservation in the vicinity of the Great Kammas Prairie.” Both the spelling of “Kammas” and the suggestion for a two-part reservation were major considerations because the Fort Bridger Treaty was specifically supposed to accomplish that objective—an objective that was supremely complicated by a clerical error that misspelled the *Great Kammas Prairie* as the *Great Kansas Prairie*. Common sense dictated that Kansas was supposed to be Kammas (or Camas), and the treaty was interpreted correctly on several separate occasions. Nevertheless, the error added confusion to an already complex, unprecedented proposal and further fueled the fire of unrelenting white settler claims to the area.

The second reservation on the Great Camas Prairie never materialized despite repeated efforts, but the federal government still recognized the need to specifically protect this area. The state of Idaho’s recent actions in 2013 present a dire threat to this irreplaceable cultural landscape, and tribal leaders responded swiftly in united opposition including Shoshone-Bannock Chairman Nathan Small. In an eerie replay of 1980 events, Chairman Small testified at the 2013 hearing before the Federal Land Interim Committee emphasizing concerns that add an ominous layer to the controversy: devastating environmental contamination.

In her article in the tribal newspaper, the *Sho-Ban News*, reporter Betsy Russell quotes Chairman Small in his testimony as he expresses outrage not only over the request to transfer title of federal public lands to the state, but over profound deleterious environmental impacts:

> The Tribes unequivocally oppose this notion, Small said. The wealth of public lands within Idaho’s borders is intended to protect the [Shoshone-Bannock] way of life … from generation to generation. It’s not to be sold off to private entities, or used for corporate interests—those [who] would come out, rip, rape, and run—because that’s what they do when they get done with a place, a piece of property, …they run. He noted that 17 phosphate mines in eastern Idaho are Superfund sites. “Are you proud of that legacy?” he asked. “Everybody made a few dollars at the time.”

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133 Ibid., 2.  
In this venue, Chairman Small could only hint at the prior bad acts by corporations at sites that contaminated not only the land, but the aquifer, lakes, rivers, and ponds and pitched them against the Sho-Ban Tribes in a heated battle over appropriate levels of “clean-up.” The phosphate ore mines — including the Gay Mine which sits directly on reservation land — and the Simplot Fertilizer plant in Pocatello remain the sources of greatest concern, especially when they spew high levels of phosphates into the water. Phosphates accelerate ecological aging of lakes and streams in a process called eutrophication which first turns a lake into marsh, then bog, then meadow. Additionally, in 1996, livestock deaths associated with selenium uptake in close proximity to past mining operations prompted concern regarding harmful ecological effects and potentially dire consequences for human health.\footnote{Idaho DEQ (Idaho Department of Environmental Quality), “Selenium Investigations in Southeast Idaho,” \textit{Online Public Records}, accessed March 21, 2015, www.deq.idaho.gov/regional-offices-issues/pocatello/southeast-idaho-phosphate-mining/southeast-idaho-selenium-investigations.aspx.}

In addition to mentioning prior bad acts by corporations in his testimony, Chairman Small, a former attorney in Tribal Court, broached a parallel issue about how all these actions combine to threaten treaty rights:

The United States, he told the lawmakers, “entered into a solemn treaty with the Shoshone-Bannock Tribes and peoples,” guaranteeing them the “off-reservation fishing, hunting and gathering rights which we continue to exercise on unoccupied lands of the United States. It’s essential that we have that opportunity to leave the reservation to hunt, to fish, to gather and to protect our cultural sites out there. Our treaty says you shall have those rights so long as you make the reservation your permanent home. We didn’t give up nothing out there other than to live on the reservation. We retain all those rights.” Small noted that his tribes’ off-reservation cultural sites “are anywhere from hundreds to 12,000 to 14,000 years old. We have been here. Prior to the state becoming a territory, prior to the state becoming a state, we lived here through all of those times.”\footnote{Russell, “Small: Tribes Oppose.”}
When Chairman Small continued, he talked about how the Sho-Ban people once lived in what is now the “Boise valley” until they scattered and ended up at the Fort Hall Reservation, the Duck Valley Reservation, and other reservations in Oregon. As he emphasizes:

[Tribes] came under the present locations that they were moved to, or where they ran to…. You’ve got to understand that when we made that treaty … it [meant] that we would have that opportunity to continue to come out into these areas, as long as these lands were under some type of federal control or unoccupied lands of the United States. We feel that this notion to transfer [the land] all to the state is going to diminish [this] right that we have made with the United States.  

Tribal leaders and officials of the Coeur d’Alene and Nez Perce Tribes voiced similar concerns about treaty rights. Helo Hancock of the Coeur d’Alene Tribe pointed out that only the federal government can transfer the lands, then going a step further, he declared: “If the government is going to transfer title to any lands, they should be transferred back to their rightful owner, which would be Indian tribes.” And even though non-Natives are also affected by environmental contamination; e.g., residents of Pocatello, the impacts upon Indigenous peoples wax more profoundly because their intensive reliance on traditional foods is so deeply ingrained with both spiritual and cultural significance.

When we root out the hypocrisy of “camouflage campaigns” by the U.S. government that effectively dilute tribal treaty rights while simultaneously giving legal lip service, then combine these concerns with the impacts of environmental contamination or degradation, this issue looms even larger on a national scale. Many treaties specifically predicate hunting treaty rights on the “continued existence of game” in traditional land areas—or, by extension, gathering rights to the continued presence of a particular plant such as the Camas bulb in Southern Idaho or the Sawtooth huckleberry in Gifford Pinchot National Forest. If the wildlife and plants disappear due to environmental abuses, what happens to the treaty rights? With plants, still another aspect of

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137 Ibid.
138 Ibid.”
colonial exploitation raises an ugly visage: the biological appropriation of Indigenous traditional foods and medicinal plants by individuals, agri-corps, and pharmaceuticals for astronomical profits that chart billions of dollars in profit margins or the commercial exploitation of a plant like the Cascadium Vaccinium huckleberry with its extremely high retail value. Ultimately, contemporary issues like these exemplify how and why “decolonizing” settler colonialism presents such monumental challenges.

First and foremost, its primary defining characteristic, the relentless imperative of territoriality directed not only toward the land but encompassing all resources on, within, and under the land, continues to assert itself with impunity still today. More specifically, the Shoshone-Bannock’s protracted battles with the state of Idaho and private corporations clarify links to Peter Wolfe’s “logic of elimination” by exposing modern-day mechanisms that more covertly threaten traditional land-use treaty rights. As colonialists more effectively “eliminate” the native by gradually eroding these treaty rights, the process of elimination is camouflaged to the non-Native general public. A more specific application of territoriality known as “displace and replace” reinforces the primary difference between colonialism and settler colonialism within a strategy of elimination. Contemporary tribal “buyback programs” and court battles exemplify Indigenous agency that seeks redress for the appropriation of land under the auspices of this core strategy.

As I stated in my Introduction, its framework with strategies that do not follow a strict linear or chronological progression with definitive beginning and ending points, and mechanisms within those strategies that adapt and return with innovative responses to Indigenous resistance, explains why decolonization of settler colonialism remains so supremely difficult. Today, tribal peoples find themselves caught in a vise between overt actions like modern-day state land grabs
combined with environmental degradation and covert actions like deleting tribal histories within our educational system combined with derogatory stereotyping—both of which foster misconceptions about tribal nations, fan the flames of animosity in the non-Native public, and polarize parties on both sides into oppositional stances.

**Distortion, Erasure, and Foucault’s Inversion of Visibility**

Foucault’s inversion of visibility finds relevance in a tribal context in the frustrating paradox that while Indians are far more visible to the federal government, they are far less visible to the non-Native general public. At the same time, the federal government and its colonial strategies and mechanisms are far less visible to general society as well. As Foucault explains, the power in hierarchical surveillance functions like a piece of machinery and enables disciplinary power to be both “absolutely indiscreet” since it is everywhere with constant supervision and “absolutely discreet” as it functions permanently, but largely in silence.\(^{139}\)

While Foucault’s inversion of visibility and the resulting paradox for tribal nations laid the groundwork, Biolsi’s concept of “internal pacification” in the late 1800s and early 1900s revealed additional insights on surveillance and high visibility under the increasingly relentless gaze of the federal government. Additionally, Biolsi, Smith, Shanley, and Green all offer insights on how the colonial strategies of erasure and distortion facilitate territoriality. Specifically, the mechanism of elision within the strategy of erasure works in tandem with the mechanism of stereotyping within the strategy of distortion to perform a magical sleight of hand wherein Indians appear to disappear. Elision and distortion within the context of Indigenes includes glossing over diversity, distorting or entirely deleting tribal histories, and blending non-Native images into stereotypes that serve a specific purpose. An initial examination of colonial distortion reveals how the mechanism of stereotyping tills the soil for elision and acts of erasure.

\(^{139}\) Foucault, “Discipline & Punish,” 177.
The stereotype of the “Vanishing Indian” permeates many scholarly discussions about U.S. colonial reliance on this myth in the late 1800s and early 1900s. In its historical garb, this myth served as the foundation for a variety of public policies and federal legislation, undergirded by various intensities of racism—even in the efforts of “well-intentioned” individual activists who sought progressive reform in federal Indian policy. However, this stereotype’s insidious persistence and more sophisticated camouflage in its contemporary form as the “Invisible Indian” is not as well addressed. Contemporary adaptations of the “Vanishing Indian” into the “Invisible Indian” revitalize the colonial practice of distortion via both overly romantic and highly derogatory stereotypes. Intersections of this contemporary “Invisible Indian” with other current “imagining” of U.S. Indigenous peoples which has grown increasingly more derogatory than romantic over the past three centuries demonstrate how these mechanisms of distortion erase Indigenous histories, elide tribal diversity, facilitate cultural genocide, and exacerbate tensions with the non-Native public.

Many authors who offer perspectives and textual analysis on the topic of decolonization in general and decolonizing U.S. settler colonialism in particular reveal grave concerns over pervasive, pernicious efforts to render Indigenous peoples invisible throughout the historical formation of what we now call the United States. Specifically, colonialists use these mechanisms within the imperatives of territoriality to advance a settler colonial agenda.

For example, in *Conquest*, published in 2005, Andrea Smith expands upon Kathryn Shanley’s use of the phrase “present absence” in an Indigenous context stating that: “Native peoples are a permanent ‘present absence’ in the U.S. colonial imagination, an ‘absence’ that reinforces at every turn the conviction that Native people are indeed vanishing and that the
conquest of Native lands is justified.”¹⁴⁰ Smith then cites Ella Shohat and Robert Stam to further describe this absence as: “an ambivalently repressive mechanism [which] dispels the anxiety in the face of the Indian, whose very presence is a reminder of the initially precarious grounding of the American nation-state itself.”¹⁴¹ Finally, Smith cites Rayna Green from “The Tribe Called Wannabee” wherein Green established an ominous link between territorial appropriation of land and territorial appropriation of intellectual knowledge in 1988.

Over twenty-seven years ago, Green specifically clarified that colonial settlers first justify spiritual and intellectual appropriation and then use that same cultural appropriation to justify territorial appropriation of land. Specifically, Green explains that to this day colonialists maintain the propaganda “that Native peoples are vanishing, and white people must preserve indigenous cultural practices since Native peoples are unable to do so. Through cultural appropriation, white people establish themselves as the true inheritors of Indianness. As a result, they can [also] lay legitimate claim to Indian lands.”¹⁴² In the 1800s and even into the 1900s, these colonialist justifications and subsequent appropriations were blatant, loudly, fervently, and publicly proclaimed. In the second half of the twentieth century, attempts at appropriation began to take a more covert turn as Indian agency pitched mounting resistance with increasing success.

Today, subtle, highly sophisticated, contemporary strategies are themselves invisible, expertly camouflaged, and thus, more insidious as they worm their way into the national psyche of the colonial settler and feed on fears that have been fanned by misguided fanatical patriotism and deliberate racist stereotyping. At this juncture, when viewing racism as a colonial tool, I am

reminded of George Lipsitz’s revelations about a “possessive investment in whiteness” that is responsible for the racialized hierarchies of U.S. society. Most relevant to this project is his observation that far from disappearing in the wake of the 1960s social revolution, formerly overt racist strategies simply burrowed underground to subterranean levels of the American consciousness and then re-emerged in even more virulent adaptations: “We have so demonized the white racists of 1960s Mississippi that we fail to see the way in which many of their most heinous practices and policies have triumphed in our own day.”

Lipsitz continues in this vein by offering his state of residence, California, as an example of a state where “demagogic political leaders and a frightened electorate” launched a series of decidedly racist attacks in the form of propositions and initiatives while “legally constituted authorities” refused to enforce protective laws thus making “California in the 1990s the human rights equivalent of Mississippi in the 1960s.” And one of the most popular tools of the day was “racist scapegoating to protect the possessive investment in whiteness.” It is not difficult at all to see how Lipsitz’s “possessive investment in whiteness” functions with a vengeance against Indigenes within territoriality as the prime imperative of settler colonialism.

Exploring guerrilla tactics of logic spotlights specific ways in which U.S. colonial strategies changed and mechanisms adapted as Indigenous societies challenged them over time sometimes with non-Native scholarly advocates or other political allies at their side. Historically, as settler colonial efforts progressively failed, colonialists parried the blows and made minor adjustments to their overall strategies. In response to increasing criticism from all quarters of U.S. society as well as Tribal communities, the mechanisms within those strategies dove deeper into the sublevels of the non-Native general public’s conscious awareness and morphed into more sophisticated, more insidious, and more evasive ways to render Indigenous peoples

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invisible with hidden agendas that adapted to specific Indigenous resistance with ominous success.

When historic strategies to eliminate, relocate, or assimilate Indigenes floundered, colonialists tapped into derivative mechanisms of distortion and erasure capitalizing on techniques of illusion, misdirection, and camouflage in an increasingly complex double entendre that renders not only Indigenous peoples, but the strategies themselves, more difficult to see. Covert tactics of U.S. disciplinary power within a deliberate process of normalization eventually accomplish what overt actions could not as Indigenous peoples are increasingly racialized, isolated, distracted, compromised, ignored, and ultimately, Natives are rendered as invisible as the strategies wielded against them.

**Foucault’s Inversion of Visibility, Settler Acts of Erasure, and Historical Distortion**

The historic decimation of U.S. Indigenous populations from epidemics, war, and outright thievery has been well documented even if it is no longer bandied about in high school courses on U.S. History. What is not as well known among the average, non-Native members of U.S. society are the more sophisticated colonial strategies like what Fujikane and Okamura call “acts of erasure” that help to maintain the colonization of Natives by creating a “settler imaginary” that continuously eliminates all references to colonialism thereby naturalizing U.S. illegal activities and facilitating a “perplexing situation where many settlers are unaware of the existence of colonialism and their participation in it.”¹⁴⁴ Comparative analysis of Foucault’s tenets of disciplinary power illuminates other distortions of U.S. History that facilitated, and continue to facilitate, acts of erasure; e.g., the myopic, colonial mindset that insists on viewing American Indians as savages while patently ignoring a history of sophisticated civilizations

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including: 1) the Iroquois who contributed to the fundamental philosophical foundations in the formative years of a fledgling U.S. government in the late 1700s, and 2) an ancient Indigenous people who built the city of “Cahokia” (so named by the first French explorers who arrived in the 17th century) that flourished from 600 to 1400 CE.

Importantly, as Fujikane and Okamura point out: “Settler acts of erasure are denials of wrongdoings. They are an intrinsic and necessary part of settler life—sanctioning colonialism by avoiding references to it or disavowing knowledge of it.” Complicating Foucault’s inversion of visibility with an additional layer, acts of erasure allow settlers to disconnect from the political subjugation of Indigenous peoples. U.S. acts of erasure exist throughout the continental U.S., Alaska, and Hawai’i and in the current “territories” (a modern-day euphemism for colonies) that still function under U.S. political administration such as Puerto Rico, Guam, and American Samoa. Fujikane and Okamura stress the importance of countermeasures like “strategies of exposure”—that “should ‘bring to light’ the simultaneous pervasiveness of colonialism and the problem of its invisibility.” These strategies of exposure acquire even greater significance in the face of ramifications that stem from persistent racism working in tandem with modern-day settler colonial strategies.

As George Lipsitz further observes in *The Possessive Investment in Whiteness*, “power, property, and the politics of race in our society continue to contain unacknowledged and unacceptable allegiances to white supremacy. …Whiteness is everywhere in U.S. culture, but it is very hard to see.” Also lending further support for my theory of cyclical adaptation, Lipsitz continues: “Reproduced in new form in every era, the possessive investment in whiteness has always been influenced by its origins in the racialized history of the United States—by its legacy

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146 Ibid., 205.
of slavery and segregation, of ‘Indian’ extermination and immigrant restriction, of conquest and colonialism.”148 Most importantly, Lipsitz points out:

[T]oday the possessive investment is not simply the residue of conquest and colonialism, of slavery and segregation, of immigrant exclusion and “Indian” extermination. Contemporary whiteness and its rewards have been created and recreated by policies…. There has always been racism in the United States, but it has not always been the same racism. Political and cultural struggles over power have shaped the contours and dimensions of racism differently in different eras. Antiracist mobilizations during the Civil War and civil rights eras meaningfully curtailed the reach and scope of white supremacy, but in each case reactionary forces engineered a renewal of racism, albeit in new forms, during succeeding decades. Racism has changed over time, taking on different forms and serving different social purposes in each time period.149

As Editor for an anthology entitled Haunted by Empire, Ann Laura Stoler also alludes to this spectre of invisibility that shrouds U.S. colonialism in her first article entitled “Tense and Tender Ties.” After defining “to haunt” as “to bear a threatening presence, to invisibly occupy, to take on changing form,” Stoler adds that: “To be haunted is to reckon with such tactile powers and their intangibilities. To be haunted is to know that such forces are no less effective because of disagreement about their appropriate names. …To be haunted is to be frequented by and possessed by a force that not always bares [sic] a proper name.”150 She then explains that the authors within this volume seek to “carve out a common ground of conversation between United States history and postcolonial studies”—a connection that has generated an intense chorus of voices who vehemently maintain that such an attempt is a misapplication of postcolonial theories that simply cannot cross the Atlantic and apply to the United States. However, Stoler maintains that “these fields share more points of comparative reflection than either field has recognized or

148 Ibid., 3.
149 Ibid., 4-5.
allowed.”

I concur. And so does Sunaina Marr Maira who heavily cites Stoler in her book entitled *Missing: Youth, Citizenship, and Empire after 9/11*.

In her section subtitled *The Empire That Dared Not Be Named*, Maira points out how denying the applicability of postcolonial theories to the United States reverses causality wherein the U.S. is seen only as the victim. Such denial strengthens U.S. arguments of exceptionalism. By reinforcing a “rhetoric of freedom and democracy,” the U.S. reifies the myth of a “reluctant superpower” that “continues to this day and obscures the active role the United States plays in asserting its political, economic, and military interests through global interventions.”

As Maira reveals: “Many Americans live not just in ignorance of political reality based on a repression of this knowledge, but in a fictional universe where causality is reversed and the United States is seen only as the victim, not the perpetrator, of terror.” This concept resonates deeply with the message on a T-shirt that I recently bought in Virginia City, Montana that depicts American Indians as “The Original Homeland Security” who have been “Fighting Terrorism since 1492.”

Exposing colonial strategies of increasingly sophisticated camouflage, Maira quotes Michael Rogin to clarify how this myth of the U.S. as a “reluctant superpower” embeds not only “historical amnesia” within “U.S. imperial culture about its past crimes, but a collective repression of this memory supported by an apparatus of secrecy and enabled by a policy of covert actions (Rogin 1993).”

Even though Maira’s book focuses an ethnographic study on post 9/11 Muslim youth, powerful parallels to Indigenous issues and colonial adaptations in response to Indigenous

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151 Stoler, “Tense and Tender Ties,” 1.
resistance strategies emerge. For example, Maira points out how both historical amnesia and repression of empire not only infuse popular culture, but inform what Amy Kaplan and Donald Pease call “the cultures of U.S. Imperialism,” and importantly, how a historical cultural studies approach to U.S. empire demonstrates an ironic, essential symbiosis between collective amnesia and imperial spectacle. Once again, she cites Michael Rogin who suggests that political spectacle is intrinsic to the working of U.S. imperial culture, for it maintains “identification with the state” and “racial domination” as the “processes of erasure and visualizing actually work hand in hand…”\(^{154}\)

In the final pages of his book entitled *Playing Indian*,\(^ {155}\) Yankton Sioux Philip Deloria, draws highly relevant parallels to Maira’s observations to demonstrate how “spectacle” was instituted historically to manipulate American Indians in ways that continue to the present day, emphasizing that “ways in which Americans have used Indianness in creative self-shaping [continue] to be pried apart from questions about inequality, the uneven workings of power, and the social settings in which Indians and non-Indians might actually meet.”\(^ {156}\) As he explains:

> From the beginning, national identity and the nation itself have relied upon such separations. The plotting out and explaining of the United States have for a long time meant celebrating the nation’s rowing power and its occasionally wise, often tragic, sometimes well-intentioned deployment of that power on the continent and around the world. The celebration of national character, on the other hand, has frequently involved the erasure of such exercises of power. This story is a very different one: it is more tightly linked to destiny, to Indians who simply vanish, to the relativity of culture and meaning, to a long-standing license to make oneself over. Americans have often been inclined to keep the narratives of nationhood and American character away from each other. And yet the two stories are inseparable.\(^ {157}\)

\(^{156}\) Deloria, *Playing Indian*, 189-90.
\(^{157}\) Ibid., 190-91.
Deloria reinforces these thoughts with two illustrative portrait photos of Nebraska’s first territorial judge, Edward R. Harden, who was “indispensable in establishing the structures of national and state power.” In the first portrait taken in 1858, he is wearing the customary garb for an influential white man in the 1850s.158 The second portrait actually taken three years earlier in 1855 shows him in “Omaha Costume,” and the caption continues with a bitter irony: “Paired with paradigmatic narrative of American history, however, was a parallel story in which Harden played with his identity by donning the costume of the Omahas, who were dispossessed by Nebraska settlement.”159 It also bears mentioning that Deloria is fully aware that “hobbyism is alive and well today” as he clarifies in an Endnote.160

Finally, I find it important to note that playing Indian originated because white U.S. society believed—with strongly reinforced state sanctions—that “real” Indians as defined by settlers were vanishing. Just as other colonial strategies changed, adapted, and evolved into contemporary forms that were increasingly difficult to discern, so too did hobbyism. Sadly, American Indians find themselves in a disturbing paradox as confronting still another form of appropriation is now at loggerheads with traditional customs that, at one time, would have welcomed strangers into their communities. Likewise, truly empathetic non-Natives find themselves struggling not to cross a fine line between sincere advocacy and superficial mimicry. Ultimately, it bodes ill for the abilities of parties on both sides to form alliances in such an atmosphere of distrust and suspicion.

Various strategies have written U.S. Indigenous peoples out of history as they have been repeatedly conglomerated, stereotyped, dislocated, isolated, and compromised in a non-linear chronology over the past 600 years. But unlike the passive or tragic victims of the settler

158 Ibid., Figure 24, 189
159 Ibid., Figure 25, 190.
160 Ibid., Note 18, 232.
imaginary, Indians refused to lie down and die, or submit, or just simply disappear. They may have been rendered invisible in various ways and on various occasions, but they were—and are—still present. More importantly, they actively engaged, and continue to engage, effective strategies to ensure their continued survival as diverse, discrete cultures who maintain self-determination in the face of an imposing colonial power. But the threat of colonial power as it adapts with endless modifications to normalizing mechanisms and exercises disciplinary power in new and improved variations render many strategies of resistance tragically obsolete.

The Dual Function of Elision in U.S. Tribal Cultures

Although they currently make up less than two percent of the U.S. population, American Indians represent half of the nation's languages and cultures.161 In his 1978 book, The White Man’s Indian, Robert Berkhofer, Jr. reveals that prior to European contact, the Americas were home to over 2,000 cultures and societies who practiced multiple customs and lifestyles, held an enormous variety of values and beliefs, and spoke numerous, mutually unintelligible languages. More importantly, they certainly did not “conceive of themselves as a single people—if they knew about each other at all.”162

In true colonial fashion, Indigenes were categorized from the outset as a single entity and promptly mislabeled as “American Indians” for the convenience of classification. This elision of diverse tribal nations combined with a myopic, colonial view of American Indians as savages that still today encourages non-Natives to patently ignore a rich history of civilizations that predates Euro-American contact by thousands of years. For example, correcting the anthropological findings that Indigenes migrated to North America approximately 15,000 years

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ago, findings of recent molecular anthropologists and archaeologists confirm that Indigenes first populated the western hemisphere closer to 50,000 years ago.

Today, in the face of historical evidence, many scholars still refuse to acknowledge Iroquois contributions to the fundamental philosophical foundations of a fledgling U.S. government in the late 1700s, and as briefly mentioned in Chapter 1, the majority of non-Native members of U.S. society are completely oblivious to the historical existence of “Cahokia,” a remarkable Indigenous city that flourished for 800 years from 600 to 1400 CE.

U.S. colonial settlers’ derogatory caricatures of Indigenes as savages wax especially egregious in the light of one deeply ironic fact: Cahokia’s ancient population surpassed that of any city established by colonial settlers in the United States until the late 18th Century—400 years after Cahokia’s decline. Ranked among the largest cities in the world in the 1200s, archaeological excavation of Cahokia unveiled a complex, sophisticated society with an elaborate urban center that includes evidence of canals and roads extending for miles from its center—engineering advances that preceded similar attempts by colonial settlers by centuries. Ultimately, such colonial mechanisms of elision fed directly into the gross essentialism and reductionist thought that culminated in racialized justifications for all manner of colonial abuse.

In his book entitled Killing the White Man’s Indian, published nearly twenty years later, Fergus Bordewich sums up this colonial attitude with the observation that the “Indian of the Euro-American imagination is as old as the continent’s discovery.”

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165 Fergus M. Bordewich, Killing the White Man’s Indian: Reinventing Native Americans at the End of the Twentieth Century (New York: Doubleday, 1996), 33.
But then duplicity has always maintained a consistent presence in European settler interactions with Indigenous peoples as colonial settlers sought to put down their own roots, literally and figuratively, in a land that was already occupied—despite colonial propaganda that referred to these lands as an “empty frontier.” During the 1620s, when colonial settlers were seriously outnumbered, geographically distanced by an entire ocean from their colonial governing body of Great Britain, and fatally ignorant of how to survive in this strange new landscape, colonial settlers interacted from a position of weakness. But as settler numbers quickly swelled over the next 150 years, colonialists operating on behalf of a fledgling U.S. government in much closer geographical proximity and colonial settlers themselves initiated both federal and local programs to “convert” the “savages” politically, economically, socially, and spiritually: politically to a patriarchal form of government versus the more egalitarian politics of many Indigenous cultures; economically to a concept of individual, private “ownership” versus communal “stewardship” of the land, plants, animals and resources; socially to an emphasis on individual competition and self-interest versus community cooperation and mutual collaboration; and spiritually to settler beliefs grounded in Euro-American Christianity with the latter complicated even further by a baffling array of denominations that constantly bickered among themselves.

Despite fundamental divergences, Christian settlers found commonality in a single-minded aspiration: to replace Indigenous beliefs that endowed all living things, including the land as well as plants and animals, with spiritual entity. In the absence of such reverence, colonial settlers could therefore justify appropriation and “ownership” versus “stewardship.” Further exposing the crucially formative tenet of “territoriality” in settler colonialism, settlers also justified their spurious view of the land and all of its inhabitants, except themselves of
course, as resources for exploitation claiming that, according to Genesis 1:28 from various translations of the Christian Bible, God commanded humans to: “Be fertile and multiply; fill the earth and subdue it. Have dominion over the fish of the sea, the birds of the air, and all the living things that move on the earth.”166 This religious distortion would later justify “dehumanization” of Indigenes and even more egregious strategies that were grounded in racism and cultural genocide.

A transmogrification of religious beliefs within a socio-political agenda that was and remains undergirded by economic interests created an artificial aura around a Euro-American definition of “civilization” within a hierarchy that propelled colonial settlers to the top of the heap. History is rife with examples of hypocritical mantras mouthed by settlers that Indians needed to learn how to be “civilized” by settling down on the land, raising crops or livestock, and wearing the white man’s clothing. And yet, as the story of Wampanoag Chief Metacom who was called King Phillip by settler colonists demonstrates, once Indians adapted so well that they became a competitive threat, colonial settlers swiftly reasserted their true motives and desires to displace and replace. In her essay entitled “King Philip’s Herds,” Professor Virginia DeJohn Anderson reveals subtle details that contributed to the land disputes and religious issues that led to conflict and strife in mid-seventeenth-century New England and culminated in the violence of King Philip’s War.

Superficial oversimplification can lead the unwary into dismissing the violence of King Philip’s War as the inevitable clash of two cultures, thereby ignoring a major contributing factor: “Throughout the 1660s, Philip found himself caught in the middle, trying to defend Indian rights

even as he adapted to the English presence.”  

Even more significant was Philip’s realization about the “limits of English flexibility, indicating that the colonists ultimately valued their livestock more than good relations with his people.”  

It was this pivotal recognition that transformed Philip from an extremely successful livestock keeper into a war leader. So even as subduing or domesticating the wilderness, including its Native inhabitants, became a “cultural imperative” wherein colonists insisted that Indians adopt English ways entirely, several realities emerge to expose the true motives of colonial settlers that are steadfastly grounded in territoriality.

First, colonial authorities refused to recognize the fundamental incompatibility of English and Indian subsistence regimes by permitting “joint use of land,” even though this policy was “doomed to failure, not by Indian unwillingness to comply with English conditions, but by the insurmountable problems that arose from grazing livestock on hunting lands.”  

Deficiencies in the biased colonial legal system favored the colonists in every conceivable way and inevitably led to inequitable interpretations and enforcement of laws that seriously exacerbated tensions.

Secondly, disarticulation of King Philip’s story challenges the erroneous belief that Metacom, and others, “capitulated” to English pressure. But as Anderson points out, those who adopted livestock husbandry demonstrated that their “adaptation was not a step, either intentional or inadvertent, toward acculturation, for they refused to make the complete transformation advocated by Englishmen who linked animal husbandry to the acquisition of civilized ways. The natives’ decision instead fit into a broader pattern of intercultural borrowing that formed an

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168 Ibid., 33.

169 Ibid., 37.

170 Ibid., 38.
important theme in Anglo-Indian relations during the first decades of contact.” Adopting livestock husbandry was only one of many examples of Indigenous intercultural borrowing, and this cultural practice emerges repeatedly throughout U.S. history in a variety of contexts. Later, when berating Indians to adapt to their ways no longer suited their purposes largely because the Indians adapted too well, colonists would flip adaptation into a spurious point of argument to challenge Indian “authenticity” under circumstances that inevitably favored the colonial settler and colonialist land appropriations.

Today, in a reification of this colonial practice, it is not uncommon to find tribal individuals or entire communities who level similar accusations of capitulation at one of their own tribal members to justify labeling him or her as a “red apple,” someone who is “red” on the outside, but “white” on the inside. Such contemporary practices further demonstrate the powerful influences and longevity of settler colonial mechanisms and strategies that remain embedded in the process of U.S. normalization. Additionally, the distortion of an ancient Indigenous cultural practice such as intercultural borrowing reaffirms the evolutive nature of colonial strategies and their inherent mechanisms as colonial settlers constantly seek to adapt to changing circumstances that threaten their prime motive.

The importance of acknowledging and fully understanding the nuances of intercultural borrowing cannot be overstated because they permeate the entire continuum of Anglo-Indian history up to and including the present. These nuances continue to inform debates that emerge over “authenticity” and drive indispensable analysis into U.S. disciplinary processes. These processes not only continue to submerge Indian identities in a variety of ways, but contribute to different contemporary practices defining “eligibility” for membership in tribal nations—

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171 Ibid., 41.
including the deeply controversial use of “blood quanta” that fuels the Cherokee Freedmen controversy.

Metacom’s story reveals another stark, socio-political nuance of colonial strategies in the 1600s. At the same time that colonists demanded acculturation, they made it initially difficult, and ultimately impossible, for Indians to comply—a practice that continued overtly throughout the 1700s, 1800s, and 1900s. Anderson puts it bluntly and clearly: “Competition with the Indians was more than the colonists had bargained for,” and they immediately began to put measures into place that inevitably sabotaged remarkable Native adaptations that had led to thriving success at markets such as the foremost trading center in Boston, Massachusetts. Meanwhile, still another example demonstrates how colonial distortions of intercultural borrowing continue to play out in the present within contemporary applications for federal recognition under the guidelines of the Indian Reorganization Act of 1934.

In *Killing the White Man’s Indian*, Fergus Bordewich explores a derivative thought about intercultural borrowing in his discussion of the North Carolina Lumbee’s struggles for federal recognition. Quoting Linda Oxendine, an anthropologist and Department Head of Native American Studies at Pembroke State College, Bordewich endorses Oxendine’s view of Indigenous intercultural borrowing “as a way to shape an identity that the outer American society can accept [in the face of] a tendency to believe that when Indians adapt they become less Indian.” Continuing in this vein, Oxendine maintains that “adaptation is the essence of being Indian. Before contact, tribes borrowed from each other. After contact, they borrowed from the whites. Tribes were always changing. Total adaptation was not the goal, but people did what was

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172 Ibid., 43.
necessary to make life good for themselves, or what they had to do to survive.”\textsuperscript{173} I venture even further to maintain that this is a human trait, not just an Indigenous one.

\textbf{Indigenous Agency}

Today, many U.S. non-Natives are not fully aware that tribal nations were neither silent nor submissive at any time during colonial attempts to normalize them via the various strategies that emerged and continue to emerge from the exercise of U.S. disciplinary power. Exploring, respecting, and analyzing both historical and contemporary Indigenous responses, actions, and perspectives helps explain why and how the settler colonial’s “Vanishing Indian” refuses to accommodate colonial myths and simply disappear—acknowledging a powerful historical and current record of Indian agency. Nevertheless, equally powerful propaganda continues to promote what I call a Euro-American “superiority complex” in even the most well-intentioned progressives who remain colonial in their outlooks.

In light of that propaganda, it behooves all non-Native scholars to heed the words of Candace Fujikane and Jonathan Okamura who stress a thoughtful insight with a powerful double entendre in their book on \textit{Asian Settler Colonialism:}\textsuperscript{174}

\begin{quote}
If settler scholars and activists seek to support Hawaiians in their political struggles, settlers must stand \textit{behind} natives.

As poet ‘Imaikalani Kalahele writes to non-Hawaiians in his poem “Huli,”
\begin{itemize}
  \item If to help us is your wish then stand behind us
  \item Not to the side
  \item And not in front.
\end{itemize}
\end{quote}

As a concrete presence of settler advocates physically positioned behind Native nationalists merges simultaneously with the abstract concept of support for a position or idea, this deceptively simple observation clarifies a complex moral obligation and professional

\textsuperscript{173} Bordewich, \textit{Killing the White Man’s Indian},” 79.
\textsuperscript{174} Fujikane and Okamura, \textit{Asian Settler Colonialism}, 30.
responsibility for all non-Native scholars and advocates working with Indigenes in the U.S. in any capacity. Acknowledging Indigenous agency is but one aspect of that responsibility.

Indigenous agency consistently manifests in literature, activism, litigation, and collaborations with non-Native scholarly advocates, and global influences can also impact the ways in which the U.S. exercises colonial power and how Indigenous communities organize strategies of resistance. U.S. approval of the U.N. Declaration of the Human Rights of Indigenous Peoples, albeit shamefully belated, certainly illustrates one recent, significant global influence. Nevertheless, as Walter Echo-Hawk clarified in his presentation about his most recent book, *In the Light of Justice*, approval does not automatically translate into acceptance, much less implementation. And, if full, unvarnished accounts of tribal history continue to vanish from the pages of U.S. History books—an academic travesty that only worsens as we travel down the educational ladder from the lofty heights of university Ph.D. programs to the building blocks of K-12 public schooling—such global accomplishments can be effectively disempowered within U.S. geo-political boundaries.

Even if the U.S. Federal government finally gives more than lip service to tribal sovereignty, self-determination, and Indigenous human rights, tribal communities remain fettered in the face of ignorant, often irate, and grossly misinformed opposition from the general public—and the U.S. federal government knows that it can capitalize on this shady fallback position at any time. U.S. history is rife with examples where the federal government ultimately caved to the avarice of the masses—even in the face of historic U.S. Supreme Court decisions in favor of Indigenous position; i.e., President Andrew Jackson’s forced removal of the Cherokees from the state of Georgia in the 1830s which today could conceivably earn him an impeachment for abuse of power. Today, federal officials are judiciously more covert in the manner in which they
exercise disciplinary power while continuing to allow territoriality as the primary driving force of settler colonialism to repeatedly manifest and prevail in a multiplicity of continuously adapting forms while its process of normalizing continues unabated in the shadows.

**Indigenous Resistance**

Resistance consistently percolated within tribal societies. As their strategic political options diminished, pan-Indian movements mobilized in the 1960s, and Indian warriors became Indian lawyers who made great strides in the 1990s. Today, many reservations now serve as protected greenhouses to nurture new plants and seedlings of resistance—even among those who still struggle to loosen the stranglehold of poverty.

As Bordewich notes in *Killing the White Man’s Indian*, by the 1960s, “Indians could no longer be ignored with impunity” as hundreds of “revitalized Indian tribes” insistently demanded redress. Bordewich specifies how: “…Indians were shaping their own destinies largely beyond the control of whites…[by] seeking innovative ways to define the place of tribes in the modern world.” Many counter-effective strategies matured during the 1990s “revolution in Indian country” that Bordewich refers to as an “upheaval of epic proportions that encompassed almost every aspect of Indian life, from the resuscitation of moribund tribal cultures and the resurgence of traditional religions, to the development of aggressive tribal governments determined to remake the entire relationship between Indians and the United States.”

Tribal members in the Shoshone-Bannock Department of Language and Cultural Preservation, for example, demonstrate how Indigenes are reimagining structures of tribal education, revitalizing tribal culture and language, rewriting tribal histories, and facilitating resurgence in traditional religions. Tribes are also developing programs to address social ills such as alcoholism and violence that all too often accompany poverty and degrade traditional social

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175 Ibid., 10-11.
values in addition to collaborating with non-Native scholarly advocates to address repatriation of
tribal remains, restoration of tribal history in educational accounts of U.S. history in public
schools, and inclusion of Indigenous perspectives on significant historical events.\footnote{176}

However, while Bordewich deserves recognition for his contributions, he falls prey to a
common pitfall for non-Native scholars. Caught up in the fervor of writing in the very midst of
this Indian renaissance of the 1990s, Bordewich overlooked a profound history of resistance that
existed well before the 1960s, much less the 1990s. Nor did he “see” how the ever-present, and
ever-prescient colonial mindset would thrust and parry in a deadly fencing game on a national
and international scale. He also underestimated the enduring nature of Native countermeasures,
erroneously predicting, for instance, that “gaming” would “taper off as an important source of
tribal income by the end of the decade, as states continue to legalize more forms of gambling and
the proliferation of competing ventures leads to market saturation.”\footnote{177} While it is true that some
ventures faltered, Bordewich himself suffers from a touch of the colonial superiority complex
when he does not anticipate Indian awareness of the importance of strategic “location” or their
ingenious business practices as they transformed modest facilities into lavish resorts complete
with restaurants, luxurious room accommodations, gift shops, and tourist attractions.

The Coeur d’ Alene Casino in Northern Idaho is just one example of a wildly successful
gaming operation that provides vital funds for a host of tribal commitments—including their
Tribal Land Buy-Back program, social services programs, educational and cultural programs,
and a health clinic. According to Coeur d’ Alene Tribal Historical Preservation Officer (THPO)
Jill Wagner, a distinctive feature of the health clinic merits special recognition: not only does the
Coeur d’ Alene Tribe offer medical and dental services on a sliding fee scale to tribal members,

\footnote{176} Shoshone-Bannock Tribes Official Website, “Language & Cultural Preservation Department,” accessed October
\footnote{177} Bordewich, \textit{Killing the White Man’s Indian}, 339.
but they extend that service to anyone (including non-Natives) living in any county with any portion of a contiguous boundary with the reservation. Even I could access medical or dental care when I was living in Pullman, in a different state no less (Washington), because Whitman County shares a contiguous border with their reservation. With this unique policy, the Coeur d’Alene people exemplify how a sense of well-being for an entire community can override both racial tensions and political borders.\textsuperscript{178}

Even though he faltered somewhat, Bordewich does contribute a sharp insight that critically aligns with a discussion by Indigenous author Taiaake Alfred in his book entitled \textit{Wasáse}. In a steadfast refusal to fall into the trap of over-romanticizing, Bordewich observes that alongside “inspired idealism” evidenced in the way that Indians were shaping their own destinies by seeking innovative ways to define their place in the modern world, reinventing Indian education, rewriting tribal histories, and nurturing a remarkable resurgence of traditional religions, he also found “ethnic chauvinism, a crippling instinct to confuse isolation with independence, and a chronic habit of interpreting present-day reality through the warping lens of the past.”\textsuperscript{179}

On page 31 of \textit{Wasáse}, Mohawk author Taiaake Alfred frames it less harshly, but nevertheless initiates a similar discussion. He first lays the foundation for his argument by pointing out that “[t]here are no more leaders and hardly a place left to go where we can just be native. We are the prophetic Seventh Generation: if we do not find a way out of the crises, we will be consumed by the darkness, and whether it is through self-destruction or assimilation, we will not survive.” He then notes that “large-scale statist solutions like self-government and land claims are not so much lies as they are irrelevant to the root problem,” admonishing that


\textsuperscript{179} Bordewich, \textit{Killing the White Man’s Indian}, 11.
“somewhere along the journey from the past to the future, we forgot that our goal was to reconnect with our lands and to preserve our harmonious cultures and respectful ways of life… we must start to remember one important thing: our communities are made up of people…”

Then he zeros in:

Some people believe in the promise of what they call “traditional government” as the ultimate solution to our problems, as if just getting rid of the imposed corrupt band or tribal governments and resurrecting old laws and structures would solve everything. I used to believe that myself. But there is a problem with this way of thinking too. The traditional governments and laws we hold out as the pure good alternatives to the imposed colonial systems were developed at a time when people were different than we are now; they were people who were confidently rooted in their culture, bodily and spiritually strong, and capable of surviving independently in their natural environments.  

However, note where the parallel between Bordewich’s observations and Alfred’s admonitions seriously diverges: Alfred is certainly not maintaining in any way that Indigenous peoples should abandon traditional models—quite the contrary. However, he is trying to illuminate the need to initially “regenerate” the people with a “spiritual revolution” because “the first part of self-determination is the self.” In short, if they continue to neglect the people who comprise the building blocks of their societies, they will never be able to support their traditional government models.

In a related discussion, a relevant insight from authors Paul Knox and Sallie Marston emerges out of their discussion of boundaries and frontiers in *Human Geography: Places and Regions in Global Context*. The authors explain how boundaries, once established, “tend to reinforce spatial differentiation … partly because boundaries often restrict contact between people and so foster the development of stereotypes about ‘others.’ This restricted contact, in turn, reinforces the role of boundaries in regulating and controlling conflict and competition

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between territorial groups” punctuating a sad irony when the very enclave that nurtures an Indigenous culture can also be used as a colonial weapon to strangle it by fostering hostility amid the non-Native populace surrounding it.

**Colonial Adaptations & Indigenous Responses**

Foucault’s “evolutive historicity” which I interpret with the oxymoronic phrase “history of the present” is bound up with modes of disciplinary power, and as Foucault explains: “With the new techniques of subjection, these ‘dynamics’ of continuous evolutions tends to replace the ‘dynastics’ of solemn events.” Significantly, Foucault does not refer to evolution as a singular process, but evolutions in the plural—emphasizing as I seek to reiterate that new techniques or mechanisms develop as colonial strategies adjust or evolve multiple times in response to multiple challenges over time. For example, the mechanism of subtle coercion manifested and evolved in specific ways as U.S. colonialists and colonial settlers exercised disciplinary power in the U.S., encountered resistance, and countered with adaptations.

As I stated early on in this project, colonial strategies do not unfold in a strict linear chronology over time, nor do the mechanisms that facilitate them remain static. U.S. colonial policies surged, receded, adapted, and re-emerged in a deadly game of “now you see me, now you don’t” over the past six centuries. Some of the most dramatic recent adaptations began when the 1960s social upheaval that swept the entire nation gave birth to formal pan-Indian activist organizations like the American Indian Movement (AIM). As an accompanying spiritual and cultural reawakening swept through tribal communities with renewed fervor, colonial strategies tainted with the smell of overt racism succumbed out of necessity to the ostensibly more gracious multiculturalism of the 1980s and 1990s; but the racism that continued to shore up both classic

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colonialism and its more euphemistic sibling multiculturalism merely burrowed deeper beneath the surface. Strategies with their full complement of racist DNA intact developed adaptive mechanisms and techniques that began to distract, ignore, or pacify with non-essential or at least “tolerable” colonial concessions until Indigenous people raised awareness about the crucial difference between compromising and being compromised.

Nevertheless, stereotypical distortions had succeeded all too well for over 400 years, and when they are not romanticizing them, non-Native society continues to paint tribal peoples as ethnocentric, anachronistic, intractable, uncooperative, and even unpatriotic. The latter is an especially ironic accusation in light of the role of Navajo Code Talkers during World War II and the multitude of tribal members, both men and women, who have served and continue to serve in all of the U.S. military branches with honor and distinction. Of more specific concern for this project is how colonial strategies subsume the distinct and singular social, political, and legal status of Indigenes which comprises unique differences that separate them from every other marginalized population within U.S. society. As a result, Indigenous contemporary issues which stem directly from their unique status fall victim to colonial reductionist thinking. Complex issues that emerge out of an equally complex history are reduced to nothing more than generic variations on an “ethnic” theme as multicultural rhetoric naturalizes, nationalizes, and homogenizes all peoples of “color” operating within an “inclusive” agenda of colonial making. Once again, colonialists seek to force the “Indian” to submerge or “disappear” as a distinct political entity; this time, however, he or she should meld with all of the “Others” who reside in a U.S. non-Native, predominantly white psyche that eagerly embraces and enthusiastically endorses the “melting pot” fairy tale.
The reductive, but nevertheless persistent, appeal of this fantasy of the United States as a melting pot is far from dead—even in 2015. Politicians still use the phrase in speeches, and in 2012, Bloomberg.com even compiled an interactive graphic from 2010 census data entitled “Measuring the U.S. Melting Pot.” Predictably, six of the top seven “heritages” listed are European (the seventh is Mexican) while Native Americans comprise one of many “Other” heritages—paradoxically reifying in full color the powerful prevalence of the melting pot phantasm and its homogenized Other within the same visual space. The very way that this interactive “melting pot” graphic functions reinforces specific subsumption of U.S. tribes: note that the only way that an Indigenous tribe even “appears” on the graphic is if the user actively moves their mouse over a tiny gray area that then pops up with an identity marker that lists the state, the county, and the tribe. Ironically, Apache County in Arizona is “predominantly Navajo,” and other gray areas simply identify as “predominantly Other Hispanic.” A careful look reveals less than ten Indigenous cultures identified in the continental U.S.—in a nation with 565 federally recognized tribes. More frightening to contemplate is the fact that Bloomberg’s interactive graphic illustrates but one brilliant camouflage of a modern-day mechanism within colonial strategies that continue to render Indigenous people invisible.

Patriarchal, gender-based stereotypes continue to facilitate the strategies of distortion and erasure well into the twentieth and twenty-first centuries even though Indigenous scholars offer brilliant rebuttals from the outset. In her 1975 article, *The Pocahontas Perplex: The Image of Indian Women in American Culture*, Cherokee author Rayna Green traces the development of two visceral stereotypes of Indian women that contradict each other: the “romantic virginal” Indian Princess and her “darker twin” the Squaw. In both instances, Indian women are identified,

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defined, and valued or devalued by their specific relationship to white males; but while both Indian men and women are tied by definition to their relationships with white men, the Indian woman is “especially burdened by the narrowness of that definition.”185 The Indian Princess is cast in the role of savior (i.e., Pocahontas) or guide (i.e., Sacajawea), whereas the Squaw bears the brunt of any sexual liaison that converts the image from positive to negative: “As long as Indian women keep their exotic distance or die (even occasionally for love of Indian men), they are permitted to remain on the positive side of the image.”186 Significantly, “Squaws share in the same vices attributed to Indian men—drunkenness, stupidity, thievery, venality of every kind—and they live in shacks on the edge of town rather than in a woodland paradise;” they are also viciously parodied in songs and jokes.187

Reality in all its rich diversity is once again camouflaged, elided by a romanticized historical fantasy that is increasingly anglicized and still persists to this day. With her diversity elided by either an iconic or vilifying stereotype, the living Indian woman remains invisible as this strict dichotomy erodes complexity—a dichotomy that is so powerful that when “realities intrude on mythos, even Princesses can become Squaws.”188 When forced to confront reality, colonial reversion to denigrating stereotypes ensures that either way, the complex, diverse Native woman disappears—she is subsumed by the illusion. As Green reiterates: “Such claims make it impossible for the Indian woman to be seen as real.”189 Green’s final comment suggests one more way to strip away the colonial cloak of invisibility: “Perhaps if we can explore the meaning

186 Green, “The Pocahontas Perplex,” 710.
187 Ibid., 711.
188 Ibid., 712.
189 Ibid., 713.
of Native American lives outside the boundaries of the [settler colonial] stories, songs, and pictures given us in [their] tradition, we will find a more humane truth." 190

Thirteen years later, in her 1988 article entitled The Tribe Called Wannabee: Playing Indian in America and Europe, Green moves her discussion into another bizarre colonial contradiction: that of both North American and European non-Natives who “wannabee” Indians—or at least they wannabee the Indian they imagine in the romanticized “Noble Savage” stereotype or the fictional character in James Fenimore Cooper’s Pathfinder novels. In this colonial process of absorption, Wannabees first romanticize and then attempt to synthesize “Indianness” in still another colonial effort to once again force Indians into mainstream U.S. society—this time by appropriating their culture. Green first clarifies that:

performance has significant historical roots and embodiments” with many “aspects as part of a cohesive phenomenon which renews itself yearly, [and] takes on new versions and modes of expression, retaining a performance core of versions from the past. This expressive complex of behaviours reiterates itself freely across boundaries of race and class, gender and age group, regional and other affiliative groups, to find its various expressions in a range of media. 191

Unlike many other forms of “reiterating cultural persona [that] have long since been abandoned or fallen into disuses,” playing Indian continues to thrive specifically because it “involves the reenactment of a script so deeply embedded in and apparently necessary to the American persona, that to challenge its continuing reiteration creates a kind of cultural ‘identity crisis.’” 192 Green insists that we must examine all aspects of this performance “in order to comprehend the extraordinary consequences, historical, cultural, psychological, and social, of its continued renewal and survival—upon Americans in general, on those Europeans who cherish it, and upon those Americans most deeply affected by the performance—the people called

190 Ibid., 714.
192 Ibid., 31.
‘Indians.’” Green’s sharp insights led her to make an unequivocal statement with which I heartily agree:

For, I would insist now, the living performance of ‘playing Indian’ by non-Indian peoples depends upon the physical and psychological removal, even the death, of real Indians. In that sense, the performance, purportedly often done out of a stated and implicit love for Indians, is really the obverse of another well-known cultural phenomenon, ‘Indian hating,’ as most often expressed in another, deadly performance genre called ‘genocide.’\footnote{Ibid., 31.}

Green first disarticulates and then complicates both Anderson’s initial idea and Oxendine’s elaboration of “intercultural borrowing” with an Indigenous perspective when she admits that Indians are certainly changed by Europeans, but reveals that “Indians are doing very Indian things with European goods.” In other words, there is a profound difference between acculturation and adaptation; the latter means that Indians are not engaging in a reverse performance. Nevertheless, Green maintains that the only way Indians are allowed to remain visible is through “cultural ‘origin’ stories” such as Pocahontas and Squanto at the first Thanksgiving because these stories reinforce how they “saved whites.”\footnote{Ibid., 33-34.}

In particular, school plays that reenact the first Thanksgiving “underscore the real message that Indians are disappearing.” Similar to the Indian Princess/Indian Squaw dichotomy revealed in her earlier article, another dichotomy makes its way onto the stage as “the eloquent noble Indian is paired with a rude, pidgen-English speaking brother; the former is a \textit{philosophe}, passionate and convincing in his judgments on the human condition, on European perfidy, on treatment of Indians; the other a clown.”\footnote{Ibid., 35.} Once again, there is no opportunity for Indians to exist on any continuum between these two unrealistic extremes—it is an either/or proposition. Subsequently, Indians disappear—even, so it seems, to the point of denying Iroquoian
philosophical and political contributions to U.S. constitutional history as white historians stubbornly ignore their influence in the very formation of a fledgling U.S. governmental structure. As Green points out in an endnote: “mainstream Constitutional scholars and histories have always been hostile to the notion of any genuine, direct influences of the Iroquois or any other Indian philosophies on American thought and policy.” It is only after Indigenous scholars like Vine Deloria, Jr. and others amass a wealth of undeniable documentation that we begin to see any form of official or academic acknowledgement.

Following in the footsteps of both Green and his father, Philip Deloria continues this discussion in his book entitled Playing Indian published in 1998. Deloria notes that “racial crossings have been a part of American life since the seventeenth century,” however, a diverse set of what he calls “hobbyists” turned to the Indian as “America’s original signifier of unique selfhood” at a time when “many Americans were rethinking their understandings of racial diversity and cross-cultural encounter. …Americans of all classes and colors struggled to address the contradictions between the nation’s rhetoric of social equality and its history of race-based oppression.” Wars had certainly brought these contradictions into stark relief as veterans returned—some in coffins, body bags, or wheelchairs—from fighting for a nation that still refused to grant them equality on the home front. As “conjoined issues of race and social opportunity” converged with “authenticity and meaning” in a “widespread reworking of notions of color and culture, Americans began playing with the categories…” As Deloria emphasizes: “This larger context is essential to understanding why non-Indians turned to a new kind of

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196 Ibid., Endnotes, 53.
197 Deloria, Playing Indian, 112.
198 Ibid., 132.
Indianness, one that for the first time, actually seemed to require a significant number of real Indians.”^199

Simultaneous Western thought, especially in Anthropology, could not resist trying to create “new” categories, albeit they centered the idea of “culture” over “race” as the organizing principle in developing the crucial guiding light of “cultural relativism.” What Deloria points out, however, is the grossly misguided assumption that racialist thinking as generated from the idea of biological race just magically disappeared: “If cultural relativism had toppled anything, it was an older idea of culture defined by Social Darwinism and the very specific configuration of race that went along with it.”^200 Deloria continues with his observation that “interlocked crises of race and authenticity were essentially modernist in nature, and [even] if they owed their newfound visibility to a World War II fought in the name of community and freedom, they often blurred back across the decades to the late nineteenth and early twentieth centuries.”^201

As a result, it is now the white dominant culture who decides what is or is not an “authentic” Indian artifact, ritual, or belief and who can claim to be a “real” Indian as everyone from the Boy Scouts to the environmental movement appropriate what they define to be genuine Indianness. The murmuring undercurrent that a culture is vanishing continues its mantra at the same time that the genuine article maintains their struggle to survive within the paradoxical confines of reservations. Deloria makes two observations that contribute to my discussion at this point: 1) because some hobbyists favored the replication of “old” Indian artifacts and costumes, they saw Indians as racially different and temporally separate, consequently, “Indians were objects of desire, but only as they existed outside American society and modernity itself;

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^199 Ibid., 133.
^200 Ibid., 133.
^201 Ibid., 134.
whereas 2) another faction termed “people hobbyists” emphasized blurring cultural boundaries and “constructed interior, us versions of the Indian Other, well inside contemporary America.”

Both factions reflect what Deloria calls a “tension between imagination and social encounter” that traces a long history. Concurrently, attitudes in anthropology that sought to move toward “crossing racial and cultural lines” with Indians had to tread carefully. Deloria cites the example of late nineteenth-century mimetic anthropologist Frank Hamilton Cushing who was severely castigated at the time for his “deep immersion in Zuni society, thereby invoking the racial taboos against “literally becoming Other.” Seventy years later, the emerging role of “participant-observer” within the newer atmosphere of “cultural relativism” supplied the “quintessential example of such cross-cultural boundary hopping” as personified by James Howard, “whose intimate connections with native people echoed those of Cushing” but received a far more positive reception from his peers.

As Deloria points out: “Unlike the unreachably authentic Indians of the early twentieth century, many postwar constructions of ethnic and racial Others emphasized close interior qualities that encouraged white appropriation and self-discovery.” By locating “authenticity in an accessible Indian Other and seeking personal experience and identity,” whites created an enticing palette of “Indianness” with additional meanings—giving “Indian play a slightly different character than other kinds of appropriations. For hobbyists, many of whom inclined more to conservative American tradition than to beat rebellion, crossing into Indianness evoked primal, national truth as much as it did racial exoticism” as these engagements merged “not only with authentic identity, but with racial anxiety.”

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202 Ibid., 135.
203 Ibid., 141.
204 Ibid., 141-42.
Eventually, a racialist perversion of cultural relativism emerged with a vengeance in reaffirmations of Indian difference with the enforcement of “blood quanta” as a “genetic measure of one’s Indianness”—a “tricky concept to negotiate, for it commingled racial essentialism with the behavior that helped define a culture.” U.S. history records repeated instances of attempts to use pseudoscience to endow “race” with a biological component and bolster its validity as something other than what it really is: a sociological construct of colonialists for the purpose of surveilling, identifying, and classifying individuals within the exercise of disciplinary power. As such, blood quanta turns anthropologist Franz Boaz’s concept of cultural relativism wherein we seek to understand other people in terms of their culture into a racialized weapon to “Other” Indigenes and authorize colonialists to define their authenticity using colonial parameters. And when Indian authenticity finds its purchase in social perceptions parading as quantitative, biological science, inevitable conflicts inevitably emerge to challenge its validity.

Deloria asks a probing question that exemplifies the dilemma: “Was a so-called mixed-blood dance champion more or less authentic than a full-blood with less polished skills?” He then complicates the scenario by identifying “culturalist criteria” that rank “relative levels of Indian blood quantum” similar to the time-honored colonial efforts established by the Spanish Castas in the 1600s (see Appendix B). Such rankings in the U.S. ultimately impact perceptions of Indian authenticity. When one of these criteria is place (i.e., the reservation), examining the role of blood quanta as eligibility criteria for tribal membership reveals powerful mechanisms that originate in racialist settler colonial strategies and not only impact both Native and colonial perceptions of authenticity, but dramatically determine who can or cannot benefit from U.S. federal largesse or tribal revenues from other sources.

205 Ibid., 143.
Fergus Bordewich also touches on this prickly, perplexing paradox of “blood quanta” in his analysis of the Lumbee struggle for recognition: “the Euro-American tendency [is] to see Indian tribal identity as something immutable… [whereas Lumbees believe that] true tribal identity may reside less in the buried secrets of seventeenth-century bloodlines than in the very process of cultural change and reinvention that has been the defining experience of their community for more than two centuries…”

Pointing an accusatory finger at how the “tyranny of blood inevitably produces challenges to logic” and “Americans’ dubious preoccupation with the mystique of blood,” Bordewich illustrates how Lumbees “wreak havoc with [the U.S.] custom of treating race as a distinction cast in genetic concrete.” Ultimately, to the their serious detriment in a multitude of ways, blood quanta not only trump hundreds of years of familial association within a tribal community, but they cast aspersions on oral tradition as a legitimate historical source.

Emerging out of an darkly ironic double bind, blood quanta were not initiated by the Indians themselves; they were forcibly imposed on tribal societies by the Dawes Act of 1877 when the U.S. government required a “census” of Tribal Rolls that included a declaration of fractional blood quantities to facilitate “allotments.” Allotment itself was a colonial, political mechanism to facilitate the strategies of assimilation, relocation, and appropriation by forcibly disrupting the “communal property” ideal of tribal societies, dismantling tribal governments, and eliminating reservations.

The Dawes census requirements presented an especially perplexing conundrum for mixed Indians; for example, an individual who was hypothetically ½ Delaware and ½ Creek had to declare one or the other—still another dichotomy that refused to recognize diversity on a social

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206 Bordewich, *Killing the White Man’s Indian*, 79.
207 Ibid., 73, 77.
continuum. More significantly, blood quanta imposed racialized parameters upon societies who did not initially require them. Such actions triggered a multitude of complex, tragic, and deeply troubling ramifications, including the seething animosity between the Cherokee Nation of Oklahoma and the Cherokee Freedmen that simmers in a hotbed of contention to this day—a controversy that I examine at length in Chapter 3.

Deloria closes his book with a final compelling observation about how white Americans have used Indianness in creative self-shaping:

Playing Indian, then, reflects one final paradox. 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. …And so while Indian people have lived out a collection of historical nightmares in the material world, they have also haunted a long night of American dreams.

Citing both Philip Deloria from *Playing Indian* and Richard King from his 1998 book entitled *Colonial Discourses, Collective Memories, and the Exhibition of Native American Cultures and Histories in the Contemporary United States*, author Wendy Kozol points to still another “visual rhetoric” that is contingent on disciplined and regulated alterities in partnership with the “elision of the violent history of genocide that is also the ‘national experience’.”

In her article “Miss Indian America: Regulatory Gazes and the Politics of Affiliation,” Kozol emphasizes that while a “historiographical focus” can offer “important political and analytical power in efforts to understand the cultural forces of colonialism,” it can also—and often does—lead to additional romanticized imagery that reinforces the “ethnographic gaze.”

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210 Kozol, “Miss Indian America,” 66.
Similar to Green’s distinction between assimilation and “adaptation,” Kozol makes a distinction between assimilation and “affiliation,” citing Ella Shohat on page 8 of her book entitled *Talking Visions* to explain that “the concept of affiliation foregrounds the inequalities that structure identities, which shuttle ‘back and forth between concentric circles of affiliation riven by power asymmetries.’” What is actually at stake, according to Kozol, is “how visual struggles over identity negotiated BIA policies of ‘forced inclusion’” as delineated by Annette James-Guerrero. When Kozol then moves into a discussion of “Rethinking Authenticity,” she reiterates Green’s Princess/Squaw dichotomy and reinforces awareness of how, specifically, the female body of the “vanquished” Indian has long been a vehicle for Euro-American colonial projections of desire. However, she then uses some significant verbs to explore how some BIA photographs of “contemporary Indian beauty queens” appear to conform to this historical convention of the Indian princess” within motifs that seem once again to envision Native peoples as “living relics of the past,” and appear to dehistoricize Indian cultures by erasing evidence of daily urban or reservation life.” As Kozol reveals through her analysis of contrasts, “the context of the beauty contest itself refuses such a timeless construction of the ‘living relic’ …, thus unsettling any easy assumptions about the timelessness of these subjects.”

Even while the U.S. colonialist government’s “gaze” insists on “inclusion” in various national mythologies that Indians mark with ambivalence, and while the BIA touts a U.S. “narrative of an ‘inclusive’ nation,” Kozol maintains that these BIA photographs of contemporary Native American beauty queens “provide evidence of the sustaining nature of popular cultural forms to foster negotiations over what it means to be an Indian within the national imagination.” In a vein similar to Aldama’s analysis of Leslie Marmon Silko’s work

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211 Ibid., 70-71.
212 Ibid., 73.
Ceremony, Kozol supports her argument with additional insights from Rachel Buff who argues that 1990s “powwow princesses” actually “incorporated their ideas of tradition with contemporary popular culture,” carving out meaningful identities in modern lives to reconcile “competing forces of commodification with oppositional knowledge.”

Kozol also introduces her concept of “relational mobility” that shifts between poles of identification that are marked out within an “ambivalent site of interactions between femininity, Indianness, and nationalism.” As she puts it: “[Indian] pageants construct an ambivalent space of imitation with a difference that in turn secures an affiliation with a pan-Indian identification.”

Noting significant cultural differences from Miss America pageants, Kozol asks us to “engage with [Indian] beauty pageants as cultural strategies through which Indian communities struggled not only to survive but also to develop coherent identities in modern environments.”

Harking back to the admonitions of Green, Oxendine (as quoted by Bordewich), and Anderson’s concept of intercultural borrowing, Kozol reminds us once again that Indians have adopted and adapted Euro-American cultural practices, “often as a means of subversively keeping traditions alive.”

Kozol’s article certainly implicates still another aspect of the strategy of invisibility as colonialists attempt to downplay the reality that U.S. Indigenous peoples have not assimilated into U.S. society, but she also highlights Indian efforts to effect countermeasures of Indian agency and resistance in subtle ways.

Unfortunately, when reality intrudes on the their fantasy, colonialists quickly recognize the threat and strategies inexorably shift gears, adapting in increasingly sophisticated ways. Occasionally, colonialists even fall back on simpler ideas that have succeeded in the past; i.e. if

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213 Ibid., 75.
214 Ibid., 77.
215 Ibid., 73.
216 Ibid., 73.
colonialists cannot forcibly absorb, assimilate, or remove Indians, they will effectively ignore them: they will increasingly erase them from accounts of U.S. History and fuel a concerted effort to remove them from the conscious awareness of the rest of U.S. society. If any doubt remains that a strategy of erasure continues into the present day, it behooves us to attend to a terse response from Leo Ariwite as Tribal Liaison for the Fort Hall Shoshone-Bannock Tribe’s Department of Language and Culture during a telephone conference interview in the Spring of 2012. When I asked if his people experienced any impacts from modern-day, non-Native tourists who often traveled around and across the Fort Hall reservation in pursuit of “their” colonial settler history of the Oregon Trail, he very promptly and very quietly replied: “No, we are just invisible.”  

Unit II

Case Studies: Current Impacts of U.S. Colonial Legacies in Contemporary Tribal Issues

Chapter 3
The Dawes Legacy in the Cherokee Freedmen Controversy: Reifying Colonial Mechanisms of Normalization & Subjugation

Chapter 4
Sacred Harvest: Appropriation & Environmental Degradation as Threats to Traditional Land-Use Treaty Rights
CHAPTER 3
The Dawes Legacy in the Cherokee Freedmen Controversy:
Reifying Colonial Mechanisms of Normalization & Subjugation

As a scholarly advocate for tribes within the context of contemporary tribal issues, I tend to lean in favor of U.S. Indian perspectives, so the Cherokee Freedmen controversy provoked an intense internal struggle. However, for those of us who are neither Indian nor Black, the importance of analyzing the Cherokee Freemen controversy lies not in flinging accusations toward either party, but in exploring and acknowledging, as Dr. Circe Sturm explains, “what happens in settler-colonial contexts when the exercise of tribal rights comes into conflict with civil rights.” Both Dr. Sturm and I realized at approximately the same time that the Cherokee Freedmen controversy offers an excellent case study for “exploring intersections of race and sovereignty.” An extension of that interrogation within historical analysis of settler colonial legacies also informs on reasons why U.S. Tribes currently reify the colonial practice of “racialization” with the use of “blood quanta” in eligibility criteria for Tribal membership. Finally, such analysis offers insights on potential ramifications for tribes on a national scale as we recall the imperative for circumspection when the actions of one tribe result in consequences for every tribe in the United States.

In the Freedmen controversy, U.S. colonial contributions that initiate the dispute manifest when two governmental policies that are incontrovertibly and blatantly grounded in racism—the Dawes Act of 1887 and the Oklahoma Jim Crow laws beginning in 1890—converge in the wake of the American Civil War. While the Cherokee Nation and the other four “Civilized Tribes” must ultimately take responsibility for decisions that they are making in the 21st Century, we still need to understand how colonial attitudes fueled the racism of U.S. white society in the 19th and

219 Ibid, 576.
20th Centuries and ultimately perched all tribal nations at the top of a slippery slope in the first place with Allotment in the 1880s. Then we need to examine how racializing continues to surreptitiously reinforce the political and social presence of race in federal Indian policy beginning with the inherent mandate of blood quanta within the Indian Reorganization Act of 1934 and the continuing threat of congressional plenary power that continues into the present day.

Long before the contemporary “Freedmen versus Five Civilized Nations” legal dispute wherein “Black Indians” are leveling charges of racism against the Cherokee, Choctaw, Creek, Chickasaw, and Seminole Tribes, U.S. Indians both initiated racism and felt its sting on the receiving end. In his book entitled *Tribal Secrets: Recovering American Indian Intellectual Traditions*, Robert Warrior references the work of Hazel Hertzberg as he reveals how Native public intellectuals in the Society of American Indians (SAI) in the early 1900s first “distanced themselves from the largest oppressed racial group in the United States. Any coalescing that went on between the groups was done indirectly through white intermediaries who were “friends to both” African-Americans and Natives.” Warrior points out how the “strong, predominantly romantic, support from white organizations concomitantly created a strong anti-African-American ideology” as exemplified by Seneca Arthur C. Parker’s beliefs:

> In espousing a European-immigrant model for Native assimilation, Parker contended that African Americans could not follow the same model because “the African negro was a savage who was cruel to his own race and superstitious in the extreme.” Rather than becoming enlightened through their ability to reason, as Parker would have it for Natives, African-Americans could integrate only because of their “natural servility and imitativeness,” which is “evidence of feeble character and inferiority.”

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By 1918, ten years before the Meriam Report, reform groups allied themselves with white reformers and government agents who opposed the violence and oppression of federal Indian policy; all parties combined to refocus on preserving tribal identities and wiggling out from under U.S. colonial paternalism. After successfully lobbying passage of the 1924 Indian Citizenship Act, the SAI quietly passed away as first the 1926 National Council of American Indians and then the 1944 National Congress of American Indians emerged in its wake.221

By the late 1960s, Indians as activists were learning from leaders like Clyde Warrior who observed: “We have to fight in modern ways for the old ways” as they began battling “on many fronts to create a nationalism that was both visionary and pragmatic.” These new Indian thinkers recognized their debt to “decolonial struggles worldwide, African American nationalism, and the Civil Rights movement,” however, they “carefully sought…to define their own ideology from the specific history and experiences of American Indian people.” 222

Unfortunately, the relationship between nationalism and racism is fraught with danger, and while nationalism does not automatically devolve into racism, a society must walk a fine line to navigate the pitfalls. As George L. Mosse concludes in his 1995 article on racism for the journal *Nations and Nationalism,* “racism was never an indispensable element of nationalism,” [however, when] nationalism [did] ally itself with racism, it made racism operative—for example, within the integral nationalist movements from the end of the nineteenth century onwards.” Even more ominous is Mosse’s observation that: “If nationalism made racism a reality, racism came to dominate nationalism once an alliance between the two movements had been consummated.”223 And more often than not, it was not a question of “if,” but “when.”

222 Ibid., 30.
However, Indians were often on the receiving end of racism stemming from both white and African-American communities as well. Sometimes it took shape overtly in derogatory racial slurs like “savages” or the deliberate use of other vicious slurs and racist stereotypes that rivaled those leveled against African-Americans themselves. Other times, it manifested more subtly such as when equally eloquent Native intellectuals were blithely ignored at the same time that their African-American counterparts were garnering accolades. Quoting Vine Deloria, Warrior notes:

“Every book on modern Indian life [has been] promptly buried by a book on the ‘real’ Indians of yesteryear.” [Deloria] goes on to analogize as to what would have happened if African-Americans had received this same sort of debilitating exclusive fascination from non-African Americans during their freedom struggle in the Civil Rights and Black Power Movements. He has reporters asking Martin Luther King Jr. “about the days on the old plantation,” deciding that he is a “troublemaker,” and concluding “that everything will be all right if the blacks would simply continue to compose spirituals.” …Continuing his African-American analogy, Deloria says, “Anthologies of spirituals become very popular, …sternly inform[ing] us we must come to understand the great contributions made by slaves to our contemporary culture. ‘More than ever,’ one commentary reads, ‘the modern world needs the soothing strain of “Sweet Chariot” to assure us that all is well.’ ” Not only did these cultural dynamics that seem ridiculous in the African-American situation dominate the Native activist movement, Deloria asserts, but “a substantial portion of the public yearned for it to happen.”  

Even during the social revolution of the 1960s and 1970s, American Indians and African-Americans charted their own paths to address issues of civil and human rights—and sometimes, those paths intersected at points of confrontation instead of camaraderie.

In other words, variable degrees of animosity, hostility, and conflict between these two marginalized groups of U.S. society exhibit significant historical longevity—as does the practice of slavery within U.S. Indian tribal cultures. It was common practice both prior to and after European contact for victorious tribal warriors to “enslave” enemy captives after battle. Other times, they resorted to kidnapping during raids. However, while many tribes routinely “enslaved” captives from enemy tribes, it was the European colonial concept of slavery that

224 Warrior, Tribal Secrets, 96.
rendered it inheritable. More importantly, analysis of an individual tribal culture within a specific period of time and space is mandatory to explore the full scope and diversity of what “slavery” meant within those contexts—this analysis focuses specifically on the Cherokee Nation.

Significantly, the practice of owning African-American slaves within the Five Civilized Tribes (Cherokees, Muscogee Creeks, Chickasaws, Choctaws, and Seminoles) in the 1800s was aligned more closely with those practices of the dominant white society in the Southeastern U.S. than the more historically distant practices of Indians on the Pacific Northwestern Coast, the Great Plains, or the Southwestern desert regions.

Even though individuals in all of the Five Civilized Tribes owned African-American slaves, Cherokees have the highest profile—although the Cherokee Nation of Oklahoma (CNO) is quick to claim in *Myths and Facts about Citizenship* on a 2011 website that Cherokee slave-owners were a small minority: “slavery was a grave injustice and a painful chapter in our nation’s history when 2% of Cherokees owned slaves.” However, as statistics are often wont to do, this number elides the actual numbers of original slaves: 2% of 5,000 people is 100 souls.

This particular statistic completely ignores the historical reality that Black slaves suffered and died alongside their owners/masters on the *Trail of Tears* as well. Such oversimplified statistics also ignore the history after emancipation; e.g., how many Cherokee and Black Indian ancestors and their descendants intermingled, intermarried, and rose to prominence both socially and politically within Cherokee society before the deadly one-two punch of the Dawes Act and Jim Crow Laws tore Cherokee society apart. It is equally significant to note that after attempting to diminish the role of slavery within 19th Century Cherokee society, the 21st Century CNO then

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takes special pains to emphasize that “the Cherokee Nation voluntarily freed these slaves in 1863”—a claim that screams for disarticulation.\textsuperscript{226}

First, the Cherokee Nation’s emphasis on the voluntary aspect of this action appears justifiable in light of its timing with Lincoln’s Emancipation Proclamation in 1863, two years prior to the end of the Civil War, and three years before their momentous Treaty of 1866. At the same time, according to an excerpt from “The Principle Chiefs of the Cherokee Nation” by Gaston L. Litton: “From 1800 to 1866, at one time or another, there were no less than six distinct groups of Cherokees, each with its own governmental organization, its chiefs, its council and laws”—and those six distinct groups who sympathized with either “Union” or “Confederate” divisions of the Cherokee Nation in Indian Territory further split with divided loyalties during the Civil War.\textsuperscript{227} It would be reasonable to assume that the “Union” groups’ Tribal Councils issued the Cherokee Emancipation Proclamation as tribal law complete with penalties for violations which leaves one to wonder: Did all divisions of Cherokee groups commit to this law? If not, how could this law have any binding application to or enforcement upon “Confederate” Cherokees who had their own council and laws—especially since they were far more likely to include those Cherokees who owned slaves in the first place. This bifurcation takes on even greater significance later when Jim Crow laws segregate “Black Indians” and Cherokees.

One observation that brooks no debate, however, is that the Five Civilized Nations owned African-American slaves who were forced to accompany them on the Trail of Tears to “Indian Territory” in present-day Oklahoma—a fact, as the Freedmen have pointed out, that is often ignored along with the resulting suffering, illness, and death that Cherokee slaves endured.

\textsuperscript{226} Cherokee Nation, \textit{Myths and Facts About Citizenship}.
alongside their owners.\textsuperscript{228} The current confrontation between the “Freedmen” as they were first identified in the Treaty of 1866 and categorically separated on the Dawes Commission Rolls and the “Five Civilized Nations” profiled most publicly by the Cherokee Nation traces its roots back to this historical reality.

The legal claims and accusations are complex; in the 2011 \textit{Myths and Facts about Citizenship} website, Cherokee strived to deny charges of racism and justify changing their eligibility requirements for tribal citizenship by maintaining that: 1) they do not have a “blood quantum” requirement, 2) they have fully honored their obligations in the Treaty of 1866, 3) they have a “sovereign” right to determine eligibility for citizenship by amending their constitution, and 4) “race has nothing to do with citizenship.”\textsuperscript{229} However, close examination reveals serious issues with these claims, and any ensuing discussions must include a review of significant historical dates and events that led up to the Treaty of 1866—the foundational document that granted all Freedmen and their descendants the same rights as Native Cherokees.

Although Cherokees are only one of five Tribal nations involved in the Freedmen dispute, reviewing their specific history most effectively reveals how the fundamental lines of division developed, illustrates when the two parties began to diverge and why, and clarifies the concrete foundations for the contemporary controversy that remains pending full resolution in 2016 after over twelve years of acrimonious litigation. While official litigation began in 2003, this story begins much earlier. While the general story of Cherokee removal is fairly well known even by non-Natives, significant details about Cherokee society, the illegal “land grab” by the state of Georgia, the U.S. Supreme Court rulings known as the Marshall Trilogy, and specific acts of betrayal by President Andrew Jackson are all too often glossed over. Those details require


\textsuperscript{229} Cherokee Nation, \textit{Myths and Facts About Citizenship}.
closer attention here as a preface to what occurs over the next 150 years after removal until 1983 when the Cherokee Nation first initiated actions to restrict tribal membership with a “blood” requirement based on the Dawes Final Rolls completed in 1907.

Prior to the Indian Removal Act of 1830 that sought to remove all Indians from the Eastern half of the United States with military force, Cherokees in particular were noted for both socio-political attempts to maintain title to their land by first assimilating to white, Christian settler society’s demands and later pursuing legal avenues for redress instead of engaging in warfare. It is imperative to note, however, that these sentiments were neither mandated nor even supported across the board by all Cherokees. Violent divisions between traditionalists and assimilationists played out with dramatic and tragic consequences when the “betrayal” of Treaty Party leaders Mason Ridge, his son John Ridge, and his nephew Elias Boudinot eventually culminated in their 1839 assassinations by Cherokees who held them responsible for the final cession of remaining Cherokee lands over tribal objections—especially since that cession precipitated their forced removal subsequently dubbed the Trail of Tears.

Nevertheless, in the late 1700s and early 1800s, many Cherokees cut their hair, adopted white clothing, converted to Christianity, spoke English, owned farms, and like their white neighbors in Georgia, Alabama, North Carolina, and South Carolina, a small percentage also owned African-American slaves. But simultaneous with their efforts to adapt to the dominant white society’s demands, Cherokees maintained their tribal identity by rejecting any further land cessions as early as 1819 and attempting to establish a Constitution in 1827—an action that immediately engendered the overt hostility of the white inhabitants of Georgia and “led directly to the decade-long removal crisis that overwhelmed the tribe.”\footnote{Roger L. Nichols, \textit{American Indians in U.S. History} (Norman: University of Oklahoma Press, 2003), 107.} In 1828, the state of Georgia passed anti-Cherokee laws that abolished the new government, jailed chiefs who tried to carry
out their duties, and set up the infamous “state lottery” to sell titles to tribal lands. These actions led to the U.S. Supreme Court case Cherokee Nation v. State of Georgia in 1831—later known as the second case in the Marshall Trilogy which refers to three pivotal decisions rendered under Chief Justice John Marshal that initiated the basic foundations of federal Indian law.

That same year Andrew Jackson won the presidency, and with many congressional supporters from the South and the West, he pushed through passage of the Indian Removal Act in 1830. A transcript of his Message to Congress “On Indian Removal” reveals not only the extent of his formidable influence, but reflects an egregious characterization of Indian Removal as a “benevolent” policy and a “continuation of the same progressive change by a milder process,” opening his final paragraph with the outrageous query: “And is it supposed that the wandering savage has a stronger attachment to his home than the settled, civilized Christian?”

These words engender particular ire when we consider that by working farms, wearing the “white man’s” clothing, converting to Christianity, speaking English, and owning slaves, Cherokees assimilated possibly more than any other Tribe—ergo their designation as one of the Five Civilized Tribes.

Even when they sought to challenge the state of Georgia and President Jackson, rather than going to war, they chose to initiate battle in the U.S. Supreme Court. The Cherokee Nation technically “lost” their case in Cherokee Nation v. State of Georgia because the Court denied their request for an injunction against the state of Georgia, determining that unlike a “foreign nation,” Cherokees were a “domestic dependant nation” under the “doctrine of federal trust responsibility.” Therefore, tribal sovereignty, while inherent in that it predated the formation of the United States, was nevertheless “limited” by its function within the boundaries of the U.S.

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With its references to the relationship between tribal nations and the U.S. as that of a “ward to a guardian,” this decision, more than any other, not only exemplifies the paternalistic aspect of settler colonialism, but codifies it—and the demeaning act of infantilizing that accompanies it.

But even though the Cherokee Nation were denied an injunction in 1831, in a sense they “won” their argument albeit through a back door with the ruling in *Worcester v. Georgia* when the Court ruled in favor of Worcester, a missionary who protested when he was indicted for “residing within the limits of the Cherokee nation without a [state] license.”232 Worcester based the crux of his original defense and subsequent appeal on multiple treaties, all of which were duly ratified by the Senate; stating: “by which treaties, the United States of America acknowledge the said Cherokee Nation to be a sovereign nation, authorised [sic] to govern themselves, and all persons who have settled within their territory, free from any right of legislative interference by the several states composing.”233 While the lower court rejected Worcester’s plea, the Supreme Court compared his plea with the “twenty-fifth section of the judicial act” which specifically addresses “treaty issues” and drew several crucial conclusions that also impacted the legal and political position of the Cherokee in juxtaposition to the State of Georgia.

Excerpts from the Court’s lengthy Opinion (sixty-five pages from 534 through 597) offer vital insights for non-Natives concerning Treaty Law and allow us to plumb the extreme depths of injustice perpetrated by Jackson’s Removal Policy. The initial passages reiterate sole jurisdiction in the U.S. federal government, solidifying federal power to forbid state governments

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and their governors to survey or entitle “any lands whatever” that are “reserved to the “said Indians, or any of them.”

The next five sections explain that treaties were initiated at the onset of the Revolutionary War to garner allies, provisions, and unhindered passage across tribal lands; the Court then zeros in on the first Cherokee treaty after the Revolutionary War and dissects it piece by piece. The Court first quotes that: “The third article [of the treaty] acknowledges the Cherokees to be under the protection of the United States of America, and of no other power.” Continuing in this vein with an emphasis on the Doctrine of Exclusivity and its colonial European origins, the Court maintains: “The same stipulation entered into with the United States, is undoubtedly to be construed in the same manner [as European monarchies like England and France]. [The United States] receive the Cherokee nation into their favour and protection. The Cherokees acknowledge themselves to be under the protection of the United States, and of no other power.” At the end of this passage, the Court emphatically declares: “Protection does not imply the destruction of the protected.” The Court then references the Ninth Article of the Cherokee Treaty to support, reinforce, and clarify its perspective on limited tribal sovereignty, clearly maintaining that Indians did not forfeit the right to self-govern:

To construe the expression ‘managing all their affairs,’ into a surrender of self government, would be, we think, a perversion of their necessary meaning, and a departure from the construction which has been uniformly put on them. … The most important of these [affairs], are the cession of their lands, and security against intruders on them.

After examining the Cherokee treaty article by article, the Court moves on to discuss an 1819 Act of Congress that promoted “civilizing” the Indians—a policy long “cherished by the

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235 Ibid., 552.
236 Ibid., 554-5.
Here, the Court initiates a highly relevant discussion about Cherokees specifically that, in turn, impacts all Indian nations across the United States:

This act avowedly contemplates the preservation of the Indian nations as an object[ive] sought by the United States, and proposes to effect this object[ive] by civilizing and converting them from hunters into agriculturists. Though the Cherokees had already made considerable progress in this improvement, it cannot be doubted that the general words of the act comprehend them. Their advance in the "habits and arts of civilization," rather encouraged perseverance in the laudable exertions still farther to meliorate their condition. This act furnishes strong additional evidence of a settled purpose to fix the Indians in their country by giving them security at home.

At this point, the Court’s discussion of tug-of-wars between the newly formed U.S. government in the 1780s and the state of Georgia presage ominous stirrings of violent dissent coalescing over various state rights versus federal rights—tensions that ultimately explode into full-blown Civil War. And as I pointed out earlier in this chapter, the political, social, and economic divides between the Union and the Confederacy retain pointed significance for the Five Civilized Tribes after their removal to Indian Country in what is now Oklahoma.

The following passage of this Opinion illuminates the significance of this case with regards to tribal sovereignty for U.S. Indian nations; i.e., how it is mitigated by an “irresistible power,” the exclusionary status of European colonial powers as “first discoverer,” and legal connotations of terminology within a U.S. settler colonial context:

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, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed: and this was a restriction which those European potentates imposed on themselves, as well as on the Indians. The very term "nation," so generally applied to them, means "a people distinct from others." The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian
nations, and consequently admits their rank among those powers who are capable of making treaties. The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense.\(^{239}\)

Leaving no doubt about the tenet that the U.S. federal government retains sole jurisdiction in all matters concerning tribal nations, and that the Cherokee Nation retains a “limited” sovereignty, but sovereignty nonetheless, the Court unequivocally declares:

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.\(^{240}\)

The Court goes even further to justify its power to rule in this matter with a harsh indictment of Georgia: “If [our] review be correct, and we think it is, the acts of Georgia are repugnant to the constitution, laws, and treaties of the United States.” The Court then clarifies that Georgia interfered forcibly with relations between the U.S. and the Cherokee Nation in direct contradiction to the Doctrine of Exclusivity; i.e., Georgia was in direct hostility with treaties and in equal hostility with acts of congress that regulated and enforced those treaties.\(^{241}\)

As a result, Worcester, a white missionary, won his appeal; but, the real winners were the Cherokee people who rode his coattails to obtain rulings in their favor.

Nevertheless, Andrew Jackson deliberately ignored the Supreme Court ruling in *Worcester* and forged ahead with his uncompromising agenda for Indian Removal. Between the first removal of Choctaws in 1831 and the final removal of Cherokees in 1839, most Choctaws, Chickasaws, Creeks, Seminoles, and finally, Cherokees who comprised the Five Civilized Tribes

\(^{239}\) Ibid., 559-60.

\(^{240}\) Ibid., 561.

\(^{241}\) Ibid., 562.
were removed—the only other option to some Choctaws was to remain on a parcel of land in Mississippi, but the price was Choctaw identity in exchange for citizenship in the U.S. Therefore, most of the Five Civilized Tribes—and their slaves—were rounded up at gunpoint and forced by military escort to step onto the 1200-mile *Trail of Tears*.

Contrary to popular belief, the phrase “Trail of Tears” has Choctaw, not Cherokee, origins. In an interview of a Choctaw mingo (leader) with a reporter from the *Arkansas Gazette*, the mingo, probably either Thomas Harkins or Nitikechi, grimly described the removal as a “trail of tears and death.”\(^{242}\) The Choctaw removal transpired first. After a final land cession of their remaining 10.5 million acres in the Treaty of Dancing Rabbit Creek, the Choctaw were the first Tribe removed in three stages between 1831 and 1833 that took a ghastly toll. Most sources agree that an estimated 2500 (over twice the number of estimated Cherokees) died in three different waves. Most fell along the way from exposure and exhaustion while many in the second wave succumbed to cholera. The Choctaw Nation of Oklahoma reveals the details of these removals on their website:

The First removal began in October of 1831 with 4000 Choctaw being transported on foot and by wagons to the Mississippi then west on steamboats. Due to poor planning and bad weather, however, the river leg of the journey was shortened and the Choctaw were forced to walk much farther than had been planned. Most of the first wave didn’t arrive, tired and ill, in Oklahoma until March 1832. The second wave contained 550 Choctaw and was much more harsh. Due to cost overruns encountered in the first removal, the second wave was required to walk most of the way, was provided with fewer rations and was hit by a cholera outbreak while en route. Having heard about the travails of the first two removal efforts, only about 800 Choctaw showed up for the third and final trek. This final wave went relatively smoothly and concluded the removal effort even though almost 6000 Choctaw remained in Mississippi to take advantage of the promise of land.\(^{243}\)

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Andrew Jackson’s actions as President generated a particularly profound sense of betrayal for Choctaw warriors who, along with Creeks and Chickasaws, had served as his allies, fighting by “Colonel” Jackson’s side in the War of 1812. Ironically that same war dealt mortal blows to Shawnee leader Tecumseh’s efforts to establish an Indian Confederacy. Outraged by the continued loss of land to the U.S., Tecumseh sought to create a pan-tribal confederacy that would have been powerful enough to counter and resist the United States. After amassing as many as 5,000 warriors scattered across the “north,” Tecumseh traveled in 1811 to meet with leaders of the Five Civilized Tribes in hopes of garnering support in the “south,” but faced resistance and rejection. Little more than a decade later, the Choctaw watched in disbelief as their former ally, now President of the United States, forced them at gunpoint onto a 1200-mile trek of illness, misery, and death.

The Cherokee removal transpired last, largely due to their resistance up until 1838 when over 13,000 were rounded up and incarcerated in the military stockades. As many fell ill and died, Chief John Ross persuaded federal authorities to let the tribal government supervise the removal. Between June of 1838 and March of 1839, Cherokees walked or rode the ~1200-mile trek to Oklahoma “Indian Territory” with even the most conservative scholars estimating at least 1,000 fatalities—a tally that does not count those who died in the internment camps prior to departure or those who died after arrival due to effects of the journey. In September 1839 the Cherokee Nation adopted a new Constitution, established Talequah as their new capital, and in 1844, established the bilingual Cherokee Advocate—not only the first newspaper in Indian Territory, but a newspaper that pre-dated any established in settler communities as well. However, this “Golden Age” of prosperity ended in tribal division over loyalties during the Civil War.
After abolishing slavery in 1863, the Cherokees signed the Treaty of 1866 which was ratified July 27, 1866 and proclaimed August 11, 1866. It is within the provisions of Article 9 of this treaty that the story of Cherokee slaves ends, and the story of the “Freedmen” truly begins:

The Cherokee Nation having, voluntarily, in February, eighteen hundred and sixty-three, by an act of the national council, forever abolished slavery, hereby covenant and agree that never hereafter shall either slavery or involuntary servitude exist in their nation otherwise than in the punishment of crime, whereof the party shall have been duly convicted, in accordance with laws applicable to all the members of said tribe alike. They further agree that all freedmen who have been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the country at the commencement of the rebellion, and are now residents therein, or who may return within six months, and their descendants, shall have all the rights of native Cherokees. Provided, That owners of slaves so emancipated in the Cherokee Nation shall never receive any compensation or pay for the slaves so emancipated.244

Also in 1866, Congress passed the first “Civil Rights Act” mainly intended to protect African-Americans in the wake of the Civil War; however, the statute did not protect Native Americans on reservations while the Civil Rights Act of 1875 applied to “all persons within the jurisdiction of the United States.” Intermarriages and active participation of Freedmen in tribal government argued against the presence of irreconcilable tensions between Cherokees and Freedmen until ramifications of the Dawes Act/General Allotment Act of 1887 fully manifested in 1887.

Allotment not only broke up communal ownership of tribal lands, it eliminated tribal governments and rendered both Cherokees and Freedmen vulnerable to state authority—despite the U.S. Supreme Court’s 1832 definitive ruling that tribes are subject only to the jurisdiction of the U.S. federal government. Then, in 1883, the U.S. Supreme Court ruled that the Civil Rights Act of 1875 which had prohibited racial discrimination in theaters, hotels, trains, and other public accommodations was unconstitutional. Paving the way for Jim Crow laws, this ruling rendered the Freedmen helpless against the state of Oklahoma—despite their Native Cherokee rights

granted under the Treaty of 1866. A summary in Figure 3.1 offers a few Jim Crow Laws across several states, reflecting a wide scope and severe penalties including fines, imprisonment, or both for “crimes” classified as felonies.\(^{245}\)

<table>
<thead>
<tr>
<th>Jim Crow Laws in U.S. States</th>
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<tbody>
<tr>
<td>“It shall be unlawful for a negro and white person to play together or in company with each other in any game of cards or dice, dominoes or checkers.” —Birmingham, Alabama, 1930</td>
</tr>
<tr>
<td>“It shall be unlawful for any white prisoner to be handcuffed or otherwise chained or tied to a negro prisoner.” —Arkansas, 1903</td>
</tr>
<tr>
<td>“No colored barber shall serve as a barber to white women or girls.” —Atlanta, Georgia, 1926</td>
</tr>
<tr>
<td>“Marriages are void when one party is a white person and the other is possessed of one-eighth or more negro, Japanese, or Chinese blood.” —Nebraska, 1911</td>
</tr>
<tr>
<td>“Any person...presenting for public acceptance or general information, arguments or suggestions in favor of social equality or of intermarriage between whites and negroes, shall be guilty of a misdemeanor and subject to a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both fine and imprisonment in the discretion of the court.” —Mississippi, 1920</td>
</tr>
<tr>
<td>“Separate free schools shall be established for the education of children of African descent; and it shall be unlawful for any colored child to attend any white school, or any white child to attend a colored school.” —Missouri, 1929</td>
</tr>
<tr>
<td>“Any white woman who shall suffer or permit herself to be got with child by a negro or mulatto...shall be sentenced to the penitentiary for not less than eighteen months.” —Maryland, 1924</td>
</tr>
<tr>
<td>“All railroads carrying passengers in the state (other than street railroads) shall provide equal but separate accommodations for the white and colored races, by providing two or more passenger cars for each passenger train, or by dividing the cars by a partition, so as to secure separate accommodations.” —Tennessee, 1891</td>
</tr>
<tr>
<td>“The Corporate Commission is hereby vested with power to require telephone companies in the State of Oklahoma to maintain separate booths for white and colored patrons when there is a demand for such separate booths.” —Oklahoma, 1915</td>
</tr>
</tbody>
</table>

Figure 3.1

Jim Crow Laws held unique impacts for Black Indians who suddenly found their Indian identity completely subsumed in the “one-drop rule” as it applied to anyone with black ancestry. A collaboration between Phyl Newbeck, freelance writer and author of *Virginia Hasn’t Always Been for Lovers: Interracial Marriage Bands and the Case of Richard and Mildred Loving* (2008), and Brendan Wolfe, Managing Editor of *Encyclopedia Virginia*, a publication of the Virginia Foundation for the Humanities, informs on colonial “definitions” of “white, black, and Indian” and consequential miscegenation laws that forbade intermarriage between whites and Black Indians. Newbeck and Wolfe examine the legal background of *Loving v. Virginia*—the pivotal case wherein the U.S. Supreme Court unanimously struck down Virginia’s miscegenation laws as a violation of the Fourteenth Amendment:

In order to better regulate the interactions between whites and nonwhites, the General Assembly sought to clearly define what made people black, white, and Indian. An 1860 law defined a "mulatto" or a "negro" as any man or woman with one-fourth or more African American ancestry. An 1866 revision used the same percentage, but this time made no distinction between "mulatto" and "negro": all nonwhites were now either "colored" or Indian. In 1910, a "colored" person was defined as having just one-sixteenth or more African American ancestry, while an Indian was anyone with one-fourth or more Indian ancestry.246

Specifically, the 1866 revision states in Chapter 17 of *Acts of the General Assembly of the State of Virginia* (1866): “1. Be it enacted by the general assembly, That every person having one-fourth or more of negro blood, shall be deemed a colored person, and every person, not a colored person, having one-fourth or more of Indian blood, shall be deemed an Indian.”247 The definition in 1910 resulted from Chapter 357 of *Acts and Joint Resolutions (Amending the Constitution) of the General Assembly of the State of Virginia* (1910) which resolved to amend and re-enact section 49 of the Code of Virginia, 1887, stating: “Every person having one-

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sixteenth or more of negro blood shall be deemed a colored person, and every person not a
colored person having one-fourth or more of Indian blood shall be deemed an Indian. In his
examination of the Loving case, Newbeck also reveals the important details that Mildred Delores
Jeter Loving was part African American and part Indian, and that, significantly, she identified
only as Indian later in her life.

Divided into a Confederate Cherokee Nation and a Union Cherokee Nation prior to the
Civil War, a united Cherokee Nation emancipated their slaves in the 1860s. Intermarriage and
political interaction prevailed for nearly four decades until passage of the Dawes Act. As a result,
the Cherokee Nation experienced unprecedented cultural upheavals beginning with racialization
within the Dawes Census Rolls in the early 1900s and the Commission’s first official use of
“blood quanta” to identify eligible Tribal members for purposes of allotment. Jim Crow Laws
further exacerbated divisive tensions for the next 70 years as the state of Oklahoma instituted
legislation and state constitutional amendments between 1890 and 1957. The 1890 statute
initiated the push for segregated schools which was then strengthened with an 1897 statute and a
1907 amendment to the Oklahoma state constitution. The latter ushered in disenfranchisement
while still another statute addressing education in 1908 incorporated penal sanctions against
teachers (including revocation of certificate) for any violations of educational segregation.

Railroads entered the fray in 1908 followed by Jim Crow laws on miscegenation, the prohibition
of any marriage between a person of African descent and anyone of non-African descent. In
Oklahoma, a miscegenation statute in 1921 specifically prohibited marriage between Indians and

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248 Newbeck and Wolfe, internal link, “Chapter 357 of Acts and Joint Resolutions Amending the Constitution of the
General Assembly of the State of Virginia, 1910,” accessed March 25, 2015,
250 Oklahoman, “Jim Crow Laws.”
Negroes—reinforcing the arbitrary notion that Indians were, at least sometimes, considered an acceptable derivative of “white.”

Oklahoma strongly supported separation of the races with their miscegenation laws whose scope could encompass not only intermarriage, but any type of interaction or intercourse; e.g., recall from Figure 3.1 that in Maryland, a white woman could be sentenced to five years in the state penitentiary if impregnated with a child of “negro” or “mulatto” ancestry. Throughout the U.S., miscegenation “crimes” were routinely punishable as a felony with fines up to $500 and/or imprisonment from one to five years in the penitentiary. Virginia’s 1866 definition that defined an Indian as “every person, not a colored person, having one-fourth or more of Indian blood” informed Jim Crow laws in Oklahoma as well. Consequently, a “White Indian” with \( \frac{1}{16} \) of Cherokee blood could choose to remain on the reservation while a “Black Indian” with \( \frac{3}{4} \) Cherokee blood was governed by Jim Crow laws that prevented him or her from living on the reservation, attending school with Indian children, or marrying another Indian. This bitter paradox not only punctuates the highly arbitrary facet of race as a social construct that can waver in the winds of colonial, political, and social agendas, but points out the inherent problems—and dangers—in attempts to use racialized tools like a blood quantum as criteria for cultural identity.

While Oklahoma’s Jim Crow laws opened a divide between Cherokees and Freedmen that could not be bridged for decades, the Allotment Era laid the groundwork for those tensions. The Freedmen story is profoundly complicated by the Dawes Act in 1887 that officially ushered in the Allotment Era, especially in 1893 and 1907 when the Cherokee Commission operating under the authority of Congress instituted colonialist racist policy within Cherokee tribal culture with “blood degree” requirements accompanied by Certification of Degree of Indian Blood (CDIB) cards. In a perverse twist, the Dawes Act or General Allotment Act initially did not
pertain to the Five Civilized Tribes; consequently, on November 1, 1893, Congressman Henry Dawes himself was appointed to a three-member commission. The Dawes Commission, or Cherokee Commission as they were sometimes called, was specifically sent to negotiate agreements with the Five Civilized Tribes.

The Commission’s unsuccessful efforts to convince tribal leaders to end communal land ownership and eliminate tribal governments prompted a frustrated Congress to pass a series of acts between 1894 and 1896 to increase the Dawes Commission’s powers—dramatically changing its character from a diplomatic mission to a judicial tribunal that actually decided who was eligible for tribal membership and what land they received. After the Curtis Act passed in 1898, the Commission processed more than 250,000 enrollment applications and approved over 101,000 whose names were recorded on the “final rolls of the Five Civilized Tribes” until enrollment was closed on March 4, 1904. The final rolls served as a definitive source for eligibility in tribal membership criteria, and in the 1980s, the Cherokee Nation of Oklahoma began a determined campaign to define the Dawes Rolls designated “Cherokee by blood” as the only acceptable criteria for eligibility, thereby initiating the ensuing conflict with Cherokee Freedmen.

The use of blood degrees or blood quanta have a long colonial history that pre-dates their use by the Dawes Commission by 300 years. In the 1600s, Spain instituted their Mestizaje and racial categories known as castas in the colonial Latin American caste system with strict boundaries, binaries, and imagined economic roles in efforts to establish a rigid social hierarchy of wealth and morality as conceived by the settler colonial mindset. Particularly relevant for this project is the use of these castas in the Vice-Royalty of New Spain which geographically extended its northern boundary to the 42nd parallel as determined by an 1819 treaty between
Spain and the United States that encompassed the Great Salt Lake and much of the present-day Southwestern United States, including most of Texas, from 1786 to 1821. In Appendix B of this project I compiled information from the Missouri State University website to construct a Table entitled “Mestizaje and Racial Categories in the Colonial Latin American Caste System,” that lists each *casta* by classification with its corresponding “blood quantum” or racial composition as determined by the colonialists. This table includes variations with specific relevance for this project because they were used in the Vice-Royalty of New Spain which later comprised a major portion of the western half of the present-day U.S.

The purpose of the *castas* emerges within Spain’s efforts to resurrect its rapidly declining class status in Europe as the other colonial powers increasingly viewed Imperial Spain as backward, superstitious, and ill-mannered. Impacting and defining every walk of life, the Spanish *castas* reflect an ordered taxonomy of classes primarily based on “purity of blood” arbitrarily determined as evidenced by physical traits; e.g., *albina* and *torna atrás. Calidad*, one’s entire social body as classified on a “scale” from purest Spaniard at the top to lowliest *casta* at the bottom, encompassed not only purity of blood, but occupation, wealth, honor, integrity, and place of origin. Laws discouraged intermarriage or miscegenation, dictated dress codes and professions, and regulated habits, morality, and lifestyle. The *Calidad of Spanish* projected wealth, nobility, legitimacy, pure bloodlines, and honor in total contrast to the *Calidad of Casta* which labored under the implications of impure blood, illegitimacy, poverty, manual labor, criminality, and immorality.

*Castas* assigned identity to each person based on blood lineage with socially powerful distinctions between not just Spanish and Indigenous peoples, but between Indigenous peoples.

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and persons with African ancestry. Colonial Spain also determined bogus biological distinctions as deriving from castas; e.g. a *mestiza* (Spanish/Indian) could bear a grandchild of “pure” Spanish blood within two generations, but a *mulatta* (Spanish/African) could never bear children with “pure” Spanish lineage. The latter invoked *limpieza de sangre*, or the “cleanliness of blood” which dictated that her African heritage—no matter how distant—contaminated the blood of both her and her children. The legacy of the Spanish *castas* emerges in U.S. colonial efforts in the 1800s to forcibly break up reservations with allotment and “identify” and “classify” Tribal members within the Dawes census rolls with the use of blood quanta.

The Five Civilized Tribes were the final tribal nations subjected to Allotment, and the Dawes Commission completed their final rolls in 1907 with supplements dated from 1907 to 1914. The Dawes Commission used this “blood degree” to determine tribal membership, and rules required individuals with mixed ancestry such as ¼ Cherokee and ¼ Creek to choose one or the other tribe. However, even if Freedmen had mixed-race ancestry, they were not allowed to self-identify; they were automatically placed on the “Freedmen” rolls with no “blood degrees” noted—even though an individual might be ¾ Cherokee and ¼ Freedmen. Journalist James Carselowey reveals still another issue with the Dawes Rolls in his interview with Stella Evelyn Carselowey Crouch, a “three-quarter blood Cherokee Indian” who tells us that her father helped to make the rolls for the Dawes Commission, but died before they were completed.” Crouch’s father had already been enrolled and an allotment assigned, but if an Indian died before the

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allotment was completed, his name was dropped from the rolls and his land allotted to some other eligible Indian. 253

The reasons why the Freedmen were initially enrolled separately is not as clear-cut as it might seem. The Dawes Commission was fully aware that the 1866 Treaty (and similar treaties with the other four nations of the Five Civilized Tribes) granted all Freedmen, regardless of blood degrees, all of the same rights of tribal membership as a Native Cherokee. It is entirely possible that they did not deem it necessary to note a specific blood quantum for an individual Freedmen (a term which includes women and children) since Article 9 of the Treaty of 1866 already legally granted them Cherokee citizenship. In any event, all Cherokee Freedmen were admitted to citizenship and placed on the Rolls as members of the Cherokee Nation. 254

Approximately twenty years later, the 1927 Meriam Report issued a scathing indictment of both assimilation and allotment and heralded the progressive administration of John Collier as Commissioner of Indian Affairs from 1933-1945 under President Franklin Delano Roosevelt. A progressive with a firm belief in cultural pluralism, Collier effected radical changes in Indian policy, and in 1934, President Roosevelt signed the Indian Reorganization Act that would allow Indians to reorganize with tribal governments. However, retrogressive policies of Termination and Relocation promoted by Dillon Myer as Commissioner of Indian Affairs from 1950-1953 further delayed the formation of tribal governments.

As the Director of the War Relocation Authority (WRA)—the civilian, administrative agency for the Japanese internment camps in the U.S. during World War II—Myer enhanced his

proclivities for assimilation with theories of “mass social engineering” that envisioned the internment camps as “planned communities” and “Americanizing projects.” Subsequently, as Commissioner of Indian Affairs in the 1950s, Myer embraced Termination and Relocation in a massive effort to undo Collier’s progressive changes in the preceding two decades and turn back the clock by “breaking up” the communal identity of tribes and dispersing them into general society via urban “relocation centers.” As a result of these U.S. policies in the first half of the 20th Century, the Cherokee Nation had no elections between 1907 when the Dawes Commission eliminated their tribal government and October 2, 1975 when the Tribe could finally reorganize and submit their constitution to the BIA for review and approval. The 1976 Constitution included the initial sections under Article III on Membership.

Because all the Freedmen were listed on the Dawes Rolls, albeit in their own category on the “Freedmen Rolls” with no individual blood quantum requirements, no obvious contradictions arise when we compare Article 9 of the Treaty of 1866 with Article III of the 1976 Cherokee Constitution that establishes the requirements for Membership:

Section 1. All members of the Cherokee Nation must be citizens as proven by reference to the Dawes Commission Rolls, including the Delaware Cherokees of Article II of the Delaware Agreement dated the 8th day of May, 1867, and the Shawnee Cherokees as of Article III of the Shawnee Agreement dated the 9th day of June, 1869, and/or their descendants. However, insights about what transpired eleven years later in 1987 stem from an unlikely source: Cherokee David Cornsilk who is not a Cherokee Freedmen descendant, but sincerely advocates on their behalf. In fact, Cornsilk, who is Managing Editor of the independent newspaper 

Cherokee Observer, one of the founders of the Cherokee National Party, a Cherokee Nationalist,


and a dual member of the United Keetoowah Band of Cherokee Indians, was actually hired by
the Cherokee Nation as a research analyst to perform genealogical research on Cherokee families
seeking registration in the Cherokee Nation of Oklahoma.

In a 2007 response on the African-Native American Genealogy Forum, Cornsilk relates
the following:

In 1987, Principal Chief Wilma Mankiller presented a resolution before the
Cherokee Nation Tribal Council that required “Indian blood” as proven by a
CDIB card. In so doing she took the Freedmen’s expulsion by her predecessor
Ross O. Swimmer one step further. In 1988 the Cherokee Nation was awarded a
$2 million judgement [sic] for land lost to the railroads. Wilma Mankiller, as
Principal Chief, presented a plan for expenditure of the funds which required that
eligibility be based on Cherokee blood as proven with a CDIB card. She proposed
this plan even though she was informed that the Freedmen had vested rights in the
lands of the Cherokee Nation and any funds should be shared with them.257

Cornsilk further reveals that BIA Acting Assistant Secretary Hazel Ebert told Chief
Mankiller that she could only use blood quantum to allocate assets if she found a way to
determine the amount of Freedmen blood applicants descended from the Freedmen roll.
Consequently, the funds were not approved for dispersal until equity for the Freedmen was
provided. Cornsilk levels severe criticisms of Chief Mankiller’s swift reaction:

Mankiller immediately went to work using her political influence in DC to get
Ebert removed. Finally when Ebert was no longer the Acting Asst. Secretary, the
BIA approved the Cherokee plan that excluded the Freedmen. Also in 1988, I
wrote a letter to Wilma Mankiller, then Principal Chief, asking her to investigate
the status of the Freedmen and give an explanation as to why they were being
abused. Her only response to me and six other Cherokees by blood who signed
the letter was to threaten my job. In 1992 Wilma Mankiller, as Principal Chief,
presented a legislative act to the Cherokee Nation tribal council making the rules,
which she had endorsed five years earlier, into law thus completing the unlawful
expulsion of the Freedmen. It was that law which was challenged by Lucy Allen
and found by the Cherokee Nation Supreme Court to be unconstitutional.258

257 David Cornsilk, “Wilma Mankiller has already spoken,” PDF, African-Native American Genealogy Forum,
October 22, 2007, accessed and downloaded December 4, 2011, accessed April 2014 and December 5, 2015,
258 Cornsilk, “Wilma Mankiller.”
In her 1998 article “Blood Politics, Racial Classification, and Cherokee National Identity; The Trials and Tribulations of the Cherokee Freedmen,” Anthropologist Circe Sturm who was also a professor at the University of Oklahoma at that time discusses positions of David Cornsilk and other Cherokees who share the “belief that the freedmen’s claims are historically valid and politically potent in the present.” She notes that “one current tribal council member stated, ‘If we don’t have to keep our treaty, then why should the U.S. government keep theirs. A promise is a promise.’” When Sturm asked Cornsilk why he was interested in the Cherokee Freedmen issue, she noted that Cornsilk, as he clearly stated in his response, was not motivated by any moral imperative—his motivation is primarily political. But, as Sturm also notes, Cornsilk’s realpolitik vision also takes the issue of race into account:

…I think the freedmen are so important[,] to bring them in, because then it’s a nonracial issue. We are a nation and we have become a nation that is big enough and moral enough to realize its responsibilities to the people that it held as slaves. It’s like what Charlie Gourd [a tribal official] said, “Great nations, like great men, keep their word.” …It’s to our advantage to separate ourselves as far as possible from the fact that we are an ethnic and racial group, and just stand behind our identity as a political entity. Then we have strength and power beyond any other ethnic group…. We can’t be sifted out…. We have to be dealt with on that level (taped interview, April 12, 1996).

Cornsilk’s ideas about ethnicity resonate with Winona Stevenson’s in her 1998 Wacazo Sa Review article about how “Ethnic” assimilates “Indigenous” in intellectual neocolonialism:

…experience convinces me that Native Studies does not belong under the rubric of Ethnic Studies, that when Native Studies is housed under Ethnic Studies, there is always the potential for unbalanced power relations to develop between the dominant ethnic majority and Native People. These unbalanced power relations result in the marginalization, silencing, and exploitation of issues unique to Indigenous peoples.

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In turn, these observations from both Cornsilk and Stevenson reinforce my argument that reifying racist policies like blood quantum requirements that were originally established by the U.S. settler colonial government instead of relying on specific tribal customs, archives, and oral history actually impinges on tribal sovereignty and dilutes tribal arguments about rights to self-determination. Circe Sturm expresses similar thoughts when she uses the “Cherokee Freedmen controversy to examine how racial discourse both empowers and diminishes tribal sovereignty” in her 2014 article on race, sovereignty and civil rights.262

As Dr. Sturm reveals, September 2004 signaled a dramatic turning point when Cherokee citizen and lay lawyer David Cornsilk filed a lawsuit in Cherokee courts “on behalf of Lucy Allen, a Cherokee Freedmen descendent (Allen v. Cherokee Nation Tribal Council, et al., JAT-04-09).” Sturm further clarifies:

> The arguments in *Allen* differed slightly…in that they focused on less on the bureaucratic erasure entailed in the Dawes enrollment process and more on the illegality of the amended code according to the Cherokee Nation’s own law. The latter point—that section 12 violated the Cherokee Nation’s own constitution—proved the most decisive factor in changing the opinion of the Cherokee court.263

Justice Stacy L. Leeds of the Cherokee Nation Supreme Court ruled in Allen’s favor and declared the law excluding Freedmen unconstitutional. Sturm includes an excerpt of Leeds’ ruling which states specifically that according to the 1975 Cherokee constitution: “All members of the Cherokee Nation must be *citizens* as proven by reference to the Dawes Commission Rolls…. There is simply no ‘by blood’ requirement in Article III. There is no ambiguity to resolve. The words ‘by blood’ or ‘Cherokee by blood’ do not appear” (JAT-04-09, 13, 3).264

Returning to the sequence of events in the Cherokee Nation after 1987, the 1999 and 2003 Cherokee Constitutions merit closer examination. The 1999 Cherokee Constitution reveals

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262 Sturm, “Race, Sovereignty, and Civil Rights,” 595.
264 Ibid, 579.
that while the term “membership” changed to “citizenship,” Section 1 remained virtually the same with reference to the Dawes Commission Rolls. Even the 2003 Constitution does not seem to reveal serious contradictions. There are, however, confusing and disturbing implications from two different sources: the “History” at the end of the 2003 Constitution and a 2003 “Timeline” entry on the “We Are Cherokee” section of the tribe’s 2011 website. First, the “History” refers to a 2006 ruling that ultimately reversed the Allen ruling—and yet it is a notation at the end of the 2003 Constitution:

…signed by Principal Chief Chadwick Smith on May 24, 2000 (Resolution #31-00); approved by vote of the citizens of the Cherokee Nation on July 26, 2003 and certified by the Cherokee Nation Election Commission on August 7, 2003; ruled effective and ordered implemented by the Cherokee Nation Judicial Appeals Tribunal (now Supreme Court) on June 7, 2006 in Case # JAT-05-04.265

Meanwhile, the “Timeline” addressing the Freedmen controversy revealed a disturbing entry on July 26, 2003:

The Cherokee people approve another Constitution knowing that the 2001 Cherokee Supreme Court, then known as the Judicial Appeals Tribunal, decision said that descendants of original enrollees under the Freedmen and Intermarried Whites categories of the Dawes Rolls would be excluded from citizenship in the 1975 Constitution.266

This action of approving the 2003 Constitution finally initiates the litigation Vann v. Kempthorne case by six Freedmen descendants against the U.S. Department of the Interior in U.S. District Court in Washington, D.C.”267 Since 2011, the Cherokee drastically altered their official website and all sections entitled “Issues/Freedmen Descendants” or “We Are Cherokee” or its

266 Ibid, “We Are Cherokee-Timeline.”
“Timeline” no longer exist; however, I retained a copy of the “We Are Cherokee” document, including its “Timeline” and the July 26, 2003 entry in a file as a PDF in 2011.

At this point, recall that Article 9 of the Treaty of 1866 specifically states that all Freedmen and their descendants who were “in the country [Indian country] at the commencement of the rebellion [the Civil War], and are now residents within, or may return within six months [after the war]” shall have all the rights of Native Cherokees. It is no legal stretch to maintain that this Treaty mandates Cherokee citizenship for all Freedmen who are listed on the Dawes Final Rolls—as well as their descendants—regardless of whether they also have an “Indian” ancestor on the rolls. Indeed, the Dawes Final Rolls themselves specifically reference the Act of the 59th Congress approved on April 26, 1906 that reaffirms intent in Section 3 of Chapter 1876:

The roll of Cherokee freedmen shall include only such persons of African descent, either free colored or the slaves of Cherokee citizens and their descendants, who were actual personal bona fide residents of the Cherokee Nation August eleventh, eighteen hundred and sixty-six, or who actually returned and established such residence in the Cherokee Nation on or before February eleventh, eighteen hundred and sixty-seven; but this provision shall not prevent the enrollment of any person who has heretofore made application to the Commission to the Five Civilized Tribes or its successor and has been adjudged entitled to enrollment by the Secretary of the Interior.

We now begin to comprehend the monumental significance of fractional blood degrees as listed in the Dawes Final Rolls with designations “Cherokees by Blood,” “Cherokees by Blood-Minor Children,” and “Delaware Cherokees” and the corresponding lack thereof in Final Rolls with

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268 “Treaty with the Cherokee, 1866,” Article 9.
designations “Cherokee by Intermarriage,” “Cherokee Freedmen,” and “Cherokee Freedmen—Minor Children.”

Furthermore, Section 4 of Chapter 1876 in the aforementioned Act of Congress stipulates:

That no name shall be transferred from the approved freedmen, or any other approved rolls of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes, respectively, to the roll of citizens by blood, unless the records in charge of the Commissioner to the Five Civilized Tribes show that application for enrollment as a citizen by blood was made within the time prescribed by law by or for the party seeking the transfer, and said records shall be conclusive evidence as to the fact of such application, unless it be shown by documentary evidence that the Commission to the Five Civilized Tribes actually received such application within the time prescribed by law.

Thus, although scholars can call into question the Cherokee claim that they have fully honored the treaty, the colonialist U.S. government certainly muddied the waters even further with Acts of Congress that were passed in 1906, forty years after the Treaty of 1866.

However, from an Indigenous perspective, there are even more compelling reasons for tribal nations, including the Cherokee Nation, to view violation of the 1866 treaty by any party as a harbinger of grave extenuating consequences. As Francis Paul Prucha demonstrates with the landmark decision of *Lone Wolf v. Hitchcock* in his comprehensive text on Indian law, the court rejected the arguments of the Indians’ attorneys by asserting the “plenary authority of Congress over Indian relations and its power to pass laws abrogating treaty stipulations.”

Recall my early observation that all tribal nations exercise extreme caution before entering litigation because every judicial decision—favorable or unfavorable to an individual tribe—has serious

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271 “Chapter 1876,” § 4.

ramifications for every other tribe in the United States. The remarkable and relatively recent headway in litigation that favors Indian perspectives (e.g., AIRFA, NAGPRA) as well as ongoing lawsuits that are restoring lands (i.e., the Coeur d’Alene Tribe’s recovery of the lower third of Lake Coeur d’Alene) or traditional fishing rights (i.e., *Nisqually v. the State of Washington*) are fundamentally grounded in revisiting Indian treaty rights that have been violated by the U.S. federal government or one of its state governments. If the Cherokee can violate the terms of a treaty with impunity, it sets a nasty precedent that could come back to bite them and every other Indian nation by resurrecting the regressive “plenary power” of Congress.

David E. Wilkins and K. Tsianina offer an outstanding overview of plenary power in their text *Uneven Ground; American Indian Sovereignty and Federal Law*. At the end of an exhaustive treatment of the Doctrine of Plenary Power in Chapter 3, the authors summarize how plenary power has been applied by the U.S. legislative branches and the federal courts to tribes and individual Indians in three ways: 1) as exclusive power, 2) as pre-emptive power, and 3) as unlimited/absolute power. Wilkins and Tsianina effectively argue that the first two senses of plenary power are valid and appropriate, but the third sense of plenary power as absolute is absolutely invalid. 273 Unfortunately, the U.S. government wielded plenary power as unlimited or absolute on more than one occasion in the past, and while the U.S. government may be less likely to wield this “invalid” sense of plenary power in the present, it is not totally out of the realm of possibility. Threats of sanctions against the Cherokees in the past seven years intimate just how quickly this third sense of plenary power can re-materialize.

Finally, it is important to note that although it was rescinded on 6/15/2007 nearly a full year after its enactment on 6/19/2006, *Resolution No. 63-06* proposed an Amendment to Article

III, Section 1 of the Cherokee Nation Constitution of 1975 and Article IV, Section 1 of the Cherokee Constitution of 1999 that would substitute language in both of these sections: “citizens of the Cherokee Nation shall be only those originally enrolled on, or descendants of those enrolled on the Final Rolls of the Cherokee Nation, commonly referred to as the Dawes Rolls, for those listed as Cherokees by blood... [emphasis added].” Resolution 63-06 serves as an excellent segue into discussion of the Cherokee Nation’s claim that they do not have a “blood quantum” requirement—which is true per se—but only if we define the term as requiring a minimum quantum such as 1/8 or 1/16. This patently transparent parsing of words leaves no doubt that even if they do not have a specific, quantitative blood “quantum” requirement, they most certainly have a “blood” requirement, and that blood requirement is specific to the Cherokee as a race defined by the U.S. federal colonial government. Indeed, since the Dawes Rolls contain fractional ratios, Cherokees actually retain a blood quantum by proxy even if it does not dictate a minimum degree.

Equally troubling, even though Resolution 63-06 was rescinded in 2007, the Cherokee Nation website and constitutions still clearly stated: “To be eligible for Cherokee Nation citizenship, individuals must provide documents connecting them to an enrolled lineal ancestor who is listed on the Dawes Roll with a blood degree.” The multiple fatal flaws of that requirement are easily recognized. First, as I stated earlier, with the Treaty of 1866 as a legal precedence that entitles all Freedmen and their descendants to full Native Cherokee rights, the Dawes Commission may not have felt it necessary to designate a Cherokee blood degree for an individual on the Freedmen rolls—even when one actually existed. Secondly, even though the Dawes Commission definitively distinguished discrete categories for the Cherokees and the

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Freedmen, their actual recordation was often sloppy, inaccurate, or even altered after the fact; sometimes a census-taker would arbitrarily decide that someone was or was not Freedmen based on physical characteristics—ignoring the facts. Third, while “mixed” individuals who were Indian and White were listed on the “Indian” rolls noting a specific blood degree, “mixed” individuals who were Indian and Black were automatically placed on the Freedmen rolls with no notations of blood degree.275

Thus, any type of “blood” requirement reveals itself to be a racist strategy that is further complicated by the Cherokee Nation’s refusal to accept any other documentation in place of the Dawes Rolls. The Cherokees respond to charges from other quarters that it is unfair to rely on the Dawes Rolls to prove Indian ancestry by claiming: “The Dawes Rolls are not perfect, but they are the best, most authoritative historical document we have to determine who our Indian ancestors were, going back 100 years.”276 However, Creek Freedmen Descendant Grant Perryman, contests this claim by offering one of many stories about the astounding inaccuracies in the Dawes Rolls that are further illuminated by other authoritative historical legal documents:

My great x 3 grandmother, Melinda Cow Tom married John Jefferson who served … in the Mvskoke [Muscogee] Creek Government in the House of Warriors. John Jefferson was placed on the “Freedmen” Roll. His parents were listed as Jeff Randle and Betsey Randall. His full brother, Manuel Jefferson, was placed on the Dawes “Blood” Roll as ¼ Mvskoke and his parents were listed as Jeff George and Betsey George. Their full brother, Silas Jefferson, was placed on the Dawes “Blood” Roll and was listed as ½ Mvskoke and his parents were Jeff McNac and Betsey McNac. Silas Jefferson was also known as Hotulko Mikko, roll #3694, cc#1141, and was a member of the House of Kings & 2nd Chief. … I have a copy of Silas Jefferson’s Death and Heirship papers which lists [sic] John Jefferson as his full brother and even includes his “Freedmen” Roll number which eliminates any doubt. Their mother Betsey was of Tvskigi Tvwlv and of the Wind Clan. She was the daughter of Samuel McNac (Totkes Hajou).…”277

275 NARA, Final Rolls.
276 Cherokee Nation Official Website 2011, Myths and Facts About Citizenship.
Birth and death certificates and school records are equally reliable, sometimes even more so, and even newspapers can be revelatory. It is arbitrary, careless, and profoundly disturbing that anyone would ignore all other sources of historical documentation—including Native archives and oral traditions. These omissions are especially puzzling when we observe how quickly Cherokees rebuilt their communities after the Trail of Tears, including the first newspaper in Indian territory in 1844 that predated any established by colonial settlers and an “educational system of 144 elementary schools and two higher education institutions, the Cherokee Male and Female Seminaries, [that] rivaled, if not surpassed all other schools [including those of whites] in the region.”

While the Freedmen and their children were still slaves for another twenty years after removal, there is substantial evidence that after Cherokee emancipation in 1863, the two groups peacefully integrated and co-existed for decades with Freedmen intermarrying and serving on Tribal Councils in positions of political leadership. Circe Sturm devotes a full page to specific examples offered by Cherokee Freedmen in their response to the Cherokee Nation’s highly racialized discourse that distorts Cherokee tribal history. By pointing to the “ways in which Freedmen participated in the civic and social life of the Cherokee Nation, even as it seemed to grow increasingly hostile to their inclusion,” Freedmen expose erasure of Cherokee Freedmen leaders who had served on the Cherokee National Council; i.e., “Joseph Brown in 1875, Frank Vann in 1887, Jerry Alberty in 1889, Stick Ross in 1893, and both Ned Irons and Samuel Stidham in 1895 (Vann 2006a).” They also described:

how they continued to reside within the Cherokee Nation proper...how they continued to participate in the newly reformed Cherokee national government in the early 1970s, even though few benefits were then available to citizens with less than one-quarter of Cherokee blood…. other forms of civic engagement....

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279 Sturm, “Race, Sovereignty, and Civil Rights,” 584.
Resisting ...hegemonic thinking [while they] continued to identify themselves in more complex ways...by continuing to speak Cherokee and holding Cherokee-language church services in primarily Cherokee Freedmen congregations...[and] attend[ing] Cherokee language classes alongside other Cherokee citizens. Others joined the Cherokee Historical Society, taught at local Indian schools, and worked for the Bureau of Indian Affairs (BIA), while still others worked at the local Indian Hospital as nurses and orderlies. Another group of Freedmen helped build the Cherokee community building in South Coffeyville, and until about forty years ago, when its fire was extinguished, Freedmen even had their own ceremonial ground in Nowata County (Vann 2006b). All these examples served as a direct counter to [Chief Chad Smith’s] claim that Freedmen had disappeared from Cherokee civic life in the past century.280

But the Cherokee Nation did not stop at distortion and erasure as individual tribal members embellished their rhetoric with inflammatory racial stereotypes that equated blackness with economic opportunism, welfare, and aggression. Darren Buzzard, a Cherokee Nation employee, even raised “the specter of black Indian miscegenation as a threat to Cherokee women’s virtue—a sentiment that seemed to come straight from the Jim Crow south.” Sturm further observes that Buzzard’s “fear of miscegenation evokes not only a concern about interracial sex but also, by extension, about the potential for black Indian offspring to compromise the racial integrity of the Cherokee Nation.”281 Thus we come full circle from the institution of Spanish colonial castas in the 1600s to the U.S. scientific racism of eugenics in the early 20th century to the present as many Cherokees “confl ate ancestry with race, partially because of their awareness that the broader public racializes their status as an indigenous nation.”282—still another legacy of settler colonialism. As their arguments and justifications begin to crumble in the face of Freedmen resistance further buttressed by public outcry, Congressional sanctions, and BIA intervention, the Cherokee Nation changes tactics and plays the ultimate trump card: sovereignty.

280 Ibid, 584-85.
281 Ibid, 583.
282 Sturm, “Race, Sovereignty, and Civil Rights,” 583.
The mantra of sovereignty is repeatedly invoked by the Cherokee Nation like a sacred chant. Unfortunately, the validity of arguments grounded in sovereignty alone are challenged by U.S. Indian Law which categorically defines U.S. tribes as “domestic dependent nations” with “limited sovereignty” that, to date, cannot fully wiggle out from under the imperial thumb of Congress and its ultimate threat of plenary power. Scholar Peter d’Errico further clarifies the unique status of American Indian Tribal Nations in his 1997 inaugural lecture entitled *American Indian Sovereignty: Now You See It, Now You Don’t* for the American Indian Civics Project at Humboldt State University. He first informs us that over 300 million truly Indigenous “peoples” on earth today are living on lands which they have “inhabited since time immemorial [and in] every instance, indigenous communities are legally circumscribed by one or more nation-states, within territorial boundaries drawn by government geography.” After clarifying that the term “peoples” in international law implies rights of self-determination, he notes how the U.S. aggressively challenged that applicability to Indigenous peoples by arguing that “collective self-determination exists only through [nation-]states, and that indigenous people are groups of individuals with shared cultural, linguistic, and social features, but without any internal coherence as *peoples.*”

However, as d’Errico astutely points out, that argument is in direct and irrefutable conflict with the U.S. claim that it “deals with indigenous peoples on a government-to-government basis” and represents a classic example of “now you see it, now you don’t” political machinations. Echoes of this argument reverberate in the political and intellectual debate that rages over whether Puerto Ricans should seek “independent” status while the people in the street

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are fully aware that “independence” is a sham as grimly illustrated by the inescapable economic realities for Haiti and the Dominican Republic.

The reality in the U.S. is that tribal nations do not have the same equivalent sovereignty of a foreign nation-state like Canada, or Mexico, or France. The fundamental reason why the Cherokee “lost” their 1831 U.S. Supreme Court case *Cherokee Nation v. Georgia* is because the Court ruled that they were not a “foreign” nation even after patently acknowledging that the Cherokee argument “to prove the character of the Cherokees as a state, as a distinct political society, separated from others, capable of managing its own affairs and governing itself, has in the opinion of the majority of the judges, been completely successful.” Once the Court ruled that they were not a foreign state but were “more correctly …denominated [as] domestic dependent nations…[wherein their] relation to the United States resembles that of a ward to his guardian,” the Court then ruled that the Cherokees could not “maintain an action in the courts of the United States.” Specifically, the Court states:

> If it be true that the Cherokee nation have rights, this is not the tribunal in which those rights are to be asserted. If it be true that wrongs have been inflicted, and that still greater are to be apprehended, this is not the tribunal which can redress the past or prevent the future. The motion for an injunction is denied.⁴²⁸⁵

So technically, the Cherokee did not actually “lose” their initial case on its legal merits; after re-determining their political/legal status, the Court judicially maneuvered them out of jurisdiction.

However, the Court revisits the Cherokee case indirectly with its ruling in *Worcester v. Georgia* in 1832 by expanding on the initial determination of political/legal status for Indians, including the pivotal ruling that Tribes are entirely beyond any state authority and subject only to

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the jurisdiction of the U.S. federal government that still holds sway today. However, this still does not translate to full sovereignty; tribes continue to operate under “limited sovereignty” which, as d’Errico points out in his lecture, is “not really sovereignty at all, but dependence.”

Furthermore, that dependence is camouflaged by the euphemistic term “trust responsibility” that elides the patronizing paternalism girding the true nature of the relationship between the U.S. federal government and any single tribal government. For example, federally recognized tribal governments established under the Indian Reorganization Act of 1934 could not “legally” enact constitutions or any amendments without first obtaining Secretarial approval from the Bureau of Indian Affairs within the Department of the Interior. Just as it does in the commonwealths such as Puerto Rico, Congress always has the last—and final—word.

This reality is further reinforced with d’Errico’s example of the case of United States v. Blackfeet Tribe (1973) wherein the federal court’s position is unequivocal:

No doubt the Indian tribes were at one time sovereign and even now the tribes are sometimes described as being sovereign. The blunt fact, however, is that an Indian tribe is sovereign to the extent that the United States permits it to be sovereign—neither more nor less. [364 F.Supp. 192] …It follows that any tribal ordinance permitting or purporting to permit what Congress forbids is void. … It is beyond the power of the tribe to in any way regulate, limit, or restrict a federal law officer in the performance of his duties, and the tribe having no such power the tribal court can have none.

So even though such overt displays of plenary power are frowned upon today, Congress or any U.S. federal court can supersede any ruling by a tribal court, and the U.S. Constitution always trumps a Tribal constitution—especially one that does not have BIA approval. That means the

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286 d’Errico, lecture, American Indian Sovereignty.
287 Ibid.
Freedmen litigation could ultimately end up in the U.S. Supreme Court with either a positive or negative result for tribes that will impact nationwide.

In his 2000 article entitled *Sovereignty: A Brief History in the Context of U.S. Indian Law*, Peter d’Errico cites the 1997 case of *Idaho v. Coeur d'Alene Tribe*, No. 94-1474, which hinted at a significant shift in U.S. posture when the Supreme Court held that "Indian tribes ... should be accorded the same status as foreign sovereigns, against whom States enjoy Eleventh Amendment immunity." He then points out the startling contrast of this modern position to the foundational decision in *Cherokee Nation v. Georgia*, 5 Pet. 1 (1831) that the Cherokee Nation was not sovereign as a "foreign nation." The U.S. Court of Appeals ruling in the initial case for the Freedmen Cherokee, *Vann, et al v. Kemphthorne, et al*, also demonstrated a reluctance to “intervene” and/or trespass on Tribal Court jurisdictions.

Nevertheless, Cherokees struggled in their decade-long effort to remove the requirement for prior BIA review and approval of all Tribal constitutions and their amendments before they can be considered valid—and they finally succeeded on August 9, 2007, or so it appeared initially. As a Cherokee Nation news release states: “In a letter dated August 9, the BIA’s top official, Carl Artman, cited a June 23 vote of the Cherokee people and agreed that federal approval of amendments to the Cherokee Nation Constitution would no longer be necessary.” The movements by the BIA in 2007 sounded promising until September 9, 2011 when Assistant Secretary for Indian Affairs (AS-IA) Larry Echo Hawk sent a letter to Acting Principal Chief Joe Crittenden and Cherokee Nation officials.

Echo Hawk opened that letter with the following warning:

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We have followed the news of the upcoming election for Principal Chief with interest and growing concern. I write to advise you that the Department of the Interior (Department) has serious concerns about the legality of the Cherokee Nation’s actions with the respect to the Cherokee Freedmen, as well as the planned September 24, 2011, election.290

Echo Hawk then advises that the Department of the Interior (DOI) disagrees with the August 22, 2011 decision of the Supreme Court of the Cherokee Nation in which the Court vacated and reversed the earlier decision of the Cherokee District Court and removed the “temporary injunction that maintained the citizenship of the Freedmen.” Specifically, Echo Hawk posits that the DOI disagrees with the Court’s observations regarding the meaning of the Treaty of 1866—which ultimately becomes the crux of the Cherokee Nation v. Raymond Nash case that remains in limbo, currently pending a decision from U.S. District Judge Thomas Hogan on that very issue since May 5, 2014. Indeed, Judge Hogan’s two-year delay with no explanation to either party remains quite perplexing—especially in light of his statement at the May 5, 2014 hearing that he “would deliver a published opinion in the near future instead of ruling from the bench.”291

But all of these daunting admonitions pale in the light of Echo Hawk’s clarification regarding the BIA’s continuing powers of oversight: “Although on August 8, 2007, AS-IA Artman approved a June 23, 2007, amendment to the 1976 [Cherokee] Constitution that removes the requirement for Secretarial approval of amendments, that decision is not retroactive.” After clarifying that the Bureau of Indian Affairs still has not approved the Tribe’s 1999 Constitution, or the amendment that led to its implementation, Echo Hawk maintains:


Thus, the decision of the Cherokee Nation Supreme Court appears to be premised on the misunderstanding that both the unapproved Constitution adopted in 2003, and the March 3, 2007, amendment that would make Freedmen ineligible for citizenship, are valid. The Department has never approved these amendments to the Cherokee Constitution as required by the Cherokee Constitution itself. Furthermore, we understand that in 2010 the nation adopted new election procedures which will govern the upcoming election for Principal Chief. Those procedures were never submitted to nor approved by, the Secretary of the Interior or any designation Department of the Interior official as required by the Principal Chiefs Act, (Pub.L.91-495,84 Stat.1091). We are concerned that the recent decision form the Cherokee Nation Supreme Court together with 2010 election procedures that have not been approved…will be the basis for denying Cherokee Freedmen citizenship and the right to vote in the upcoming election.292

Echo Hawk closes his letter by first urging the Cherokees to “consider carefully the Nation’s next steps” followed by a stern warning that the DOI “will not recognize any action taken by the Nation that is inconsistent with these principles and does not accord its Freedmen members full rights of citizenship.”293 There is little doubt that Echo Hawk’s 2011 letter from the BIA takes on a gravity with truly ominous dimensions—not just for the Cherokees, but for all tribal nations in the U.S., and his closing remark punctuates an emphasis that consistently returns to Cherokee obligations set forth in the Treaty of 1866: “We stand ready to work with you to explore ways to honor and implement the Treaty.”294

Shortly after Echo Hawk’ letter, the U.S. Department of Housing and Urban Development suspended $33 million of funding to the tribe. While substantial, this sanction represented a fraction of what the Cherokee Nation would have lost if African American Congresswoman Diane Watson succeeded in 2007 with House Bill HR 2824 wherein she proposed severing relations with the Cherokee Nation until they restored full tribal citizenship to the Freedmen. As Circe Sturm reveals:

293 Ibid., 3.
294 Ibid., 3.
If approved, the bill would have also prevented the Cherokee Nation from receiving federal funding, amounting to nearly 75% of its $300 million annual budget, and would have suspended the tribe’s authority to conduct gaming, one of the few sources of revenue that might have offset its federal losses (Hales 2007). If Watson and the Congressional Black Caucus wanted to send a clear message to the Cherokee Nation about its treatment of the Freedmen, they succeeded.295

Such a palpable threat also “created an atmosphere of grave concern among Cherokee citizens and other American Indians around the country (Barbery 2013).”

Nevertheless, it took another four years of public condemnation on a national stage, Echo Hawk’s 2011 warning letter from the BIA, and HUD’s subsequent punitive actions before the Cherokee Nation finally acknowledged the dire nature of their situation. In a 2011 newspaper article responding to Echo Hawk’s letter, Will Chavez, a Senior Reporter for the tribal newspaper, The Cherokee Phoenix, quoted the “drastic consequences” outlined by Tribal Council Attorney Todd Hembree if the BIA decided to push the issue—not the least of which was invalidating all business and legislation conducted since the constitution was amended in that hotly contested 2007 special election ruled “valid and legal” by the Cherokee Nation Supreme Court on August 22, 2011.296 Certainly U.S. colonial challenges to any tribal claim to full sovereignty are re-emerging; in the Cherokee Freedmen controversy, those challenges specifically pivot on divergent interpretations of a treaty that was written 150 years ago.

Ironically, one insight about the Cherokee sovereignty claim is that the Freedmen are not actually challenging the Cherokee Nation’s right to determine eligibility for citizenship. Some Freedmen are not even arguing against a minimum Cherokee “blood requirement” even though the Treaty of 1866 entitles them to do so. Rather, the Freedmen’s quarrels are with the requirement that restricts acceptable eligibility criteria to the inherently flawed and grossly

295 Sturm, “Race, Sovereignty, and Civil Rights,” 587.
inaccurate Dawes Rolls as the *only* acceptable documentation. This restriction seems especially egregious and hypocritical when more accurate and equally legitimate documentation (including Cherokee tribal archives) offers undeniable evidence that some Cherokee Freedmen have greater degrees of Cherokee blood than other segments of the tribal population.

Turning now to the Cherokee Nation’s bold statement that “race has nothing to do with citizenship” within the context of the preceding discussions, I defer to Circe Sturm who explains:

> Herein lies the paradox of tribal sovereignty in the contemporary context: it is a form of political independence conditioned by interdependency, one in which rhetorical purity comingles with messy realpolitik. Tribal sovereignty, then, is so highly influenced by broader social and political forces that it cannot be innocent of racial dynamics, no matter what its most rigid defenders might suggest.\(^{297}\)

First, while it is true that “nationality” is not exactly the same thing as “race,” it is naïve to think that race and citizenship are completely unrelated—especially in a dominant U.S. society that still functions on tenets of settler colonialism. It is possible that we could reword the statement to say that “race *should not* have anything to do with citizenship,” but social and political realities—especially in the United States—do not permit that utopian luxury. Secondly, we would be remiss to ignore David Roediger’s shrewd insight in *How Race Survived U.S. History* that “race was made in a transnational race-making world” and is profoundly implicated in U.S. national history.\(^{298}\) Indeed, by the early 1800s, a “white supremacist world” of race and terror emerged that would prove “most difficult to dismantle.”\(^{299}\)

Today’s U.S. tribal nations are forced to find some way to “identify” themselves as “Indians” with a particular tribal identity because the larger socio-political framework demands it—a framework that is still immersed in a “racism” that stems from what Albert Memmi calls a

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\(^{297}\) Sturm, “Race, Sovereignty, and Civil Rights,” 592.


\(^{299}\) Ibid., 29.
“modern biological concept of race.” Memmi explains that racism is so difficult to define, especially when the concept of a “pure” race is applied to humans, because it is ambiguous. It is not a scientific theory, biological or otherwise, it is “a collection of incoherent opinions that serve to justify attitudes and actions that are motivated by fear,” and its purposes are self-reassurance and self-affirmation that are always gained at a cost or detriment to “others.”

With its visual and audio “We Are Cherokee” campaign, the Cherokee Nation attempts to present an image of inclusion that is not racist. But if race truly had nothing to do with citizenship, then significance would be centered on a documented history of ancestry within Cherokee society, not a documented blood degree that is garnered from the Dawes Rolls. This argument is further compromised by the fact that the Dawes census rolls remain rife with errors as constructed by a commission that deliberately employed the colonialist racist mechanism of blood quantum requirements in U.S. colonialist efforts to racially classify all Indians in the U.S. between 1887 and 1907 and further advance colonial strategies of appropriation of Indigenous lands and resources, forced assimilation of Indigenous peoples, and ultimately, the very elimination of all Indigenous reservations and tribal governments.

A final twist of dark irony presents in the justifiable claim among all Indian nations that their “oral history” carries as much validity and deserves as much respect as any Euro-American “written” history. And yet the Cherokees threaten to further impugn their own tribal traditions by ignoring oral histories that could document membership of Freedmen ancestors in Cherokee society. Tribes do not have to accept the inheritance of white racist strategies, and rejecting them says a lot more about sovereignty than falling in line with a pseudo-sovereignty that does nothing more than reassure with platitudes until a specific tribal nation rocks the boat. Professor and

scholar George Lipsitz offers some insights on exactly how to challenge the U.S. colonialist “possessive investment in whiteness” that continues to reify racist legacies—particularly within the context of U.S. Tribal Nations.

In the Introduction to his book *The Possessive Investment in Whiteness*, George Lipsitz argues that “white Americans are encouraged to invest in whiteness, to remain true to an identity that provides them with resources, power, and opportunity.” But, as Lipsitz also points out, we have a choice: “We do not choose our color, but we do choose our commitments. We do not choose our parents, but we do choose our politics. Yet we do not make these decision in a vacuum; they occur within a social structure that gives value to whiteness and offers rewards for racism.”302 Especially for the Cherokee, the pseudo-scientific, biological, blood quantum requirement that was forced upon them during allotment opened cracks that ripped through the reservation like an earthquake while the aftershocks of Jim Crow laws turned cracks into ever-widening canyons of social and political division.

But that’s not to say that the Cherokee Nation should get a free ride on the blameless train, and certainly in 2011, they have more choice than they did in 1900. Perhaps if we examine the myriad of ways that we arrived at this painful impasse—including those nearly invisible, dark paths that are more difficult to trace through shadows and hidden recesses in U.S. colonial history—we can explore some alternative directions. For with the absence of each son and each daughter who could have so abundantly enriched their community, Cherokees are diminished—as a community, as a people, and as a nation. Even if the issue does ultimately reside with the U.S. Supreme Court, that is no real solution because ethics, morality, and respect cannot be legally dictated; meanwhile the anger and bitterness will remain simmering beneath the surface

to poison relationships—and both Black Cherokees and Cherokees will continue to suffer a variety of consequences and loss.

At the end of the day, when the dust has settled on all the legal briefs, all the politicos and lawyers have gone home, and all the angry words and vitriolic accusations fade into a grim silence, I am left to ponder the anguish of the people—Cherokee and Black Cherokee alike. There are many whose greatest loss is not a “cash value” of any kind, but their heritage, their identity, their community. Grant Perryman, a Mvskoke (Muscogee) Creek Freedmen descendant is one of those individuals who feels that anguish and expresses his feelings in poignant words that give us a snapshot of the real issues at stake for both sides. Portions of Perryman’s story repeated in Figure 3.2 on the next page offer a far more relevant and legitimate voice than mine to bring this difficult and painful chapter to a close.
A Grandson’s Poignant Anguish

Grant Perryman

I was born in California in 1959 and currently live in the Bay Area. Growing up in the 60’s in a predominantly African American neighborhood, I was teased by my friends for not looking “Black” enough. I attended predominantly European American schools and was shunned for being different. I can recount numerous occasions when strangers would come up to me and say, “What are you?” My parents did their best in teaching me to hold my head high but it didn’t answer my primary question of Who am I? When my paternal grandmother came to visit she would spend the entire day in the kitchen cooking and baking from scratch. I would volunteer to be her assistant and probably got in her way more than help but she would never say so. During these culinary moments, I would repeatedly ask her to tell me the stories about our family. I never grew tired of them even when I could repeat every word myself.

My grandmother’s words gave me power.
Grandmother’s stories gave me strength.
Grandmother’s wisdom gave me character.
Grandmother answered the question of who I am.

In 1979 the Mvskoke Creek Nation changed their constitution and only allowed descendants of those found on the Dawes Blood Rolls to enroll as citizens. My ancestors were at one time full fledged Mvskoke Creek Citizens and were listed on several rolls predating the Dawes Roll. They were interpreters, government officials, preachers, teachers, ranchers, farmers, judges and ordinary men and women. They spoke Mvskoke Opvnakvn. They dressed as Mvskoke. They ate Mvskoke food and followed Mvskoke traditions. They were Vmestvlke.

Brother has kicked out brother. Racism has replaced tradition. Injustice has wiped out justice. Immorality has won over morality. Our ancient stories spoke of our sacred duty to be in balance with the world around us. Today the Nene Mvskoke has been distorted by our leaders. They have brought chaos and betrayal. We have been abandoned and nullified. All we want is our rightful citizenship back. It's time for the United States Congress to intervene on behalf of the people whose citizenship has been illegally stripped [sic] away. Human rights are not revocable. It's time that our federal tax dollars stop supporting the racist regimes of the current administrations. This is taxation without representation. It has been said let the sovereign rights of the Indian national courts handle the situation. I respectfully ask, are [a] tribal court’s decision[s] higher than Congressional treaties? Jim Crow has reared its ugly head and it must be stopped. It's time for Congress to acknowledge, honor, defend and uphold the laws of the land.

Our Mvskoke elders once believed that the totkv-etkv (sacred fire) became polluted with the sins of the people. The Posketv ceremony extinguished the old corrupt fire and a new purify fire was lit in the ceremony square. The Green Corn celebration was a sacred time of forgiveness, thanksgiving, purification and renewal. It’s time for the old flame of racism to die and the new fire of harmony to begin. It’s time to for us to become the unified, strong, powerful, mighty nation that we once were. The question remains: are we people of a polluted corrupt fire or one people of a purified fire?

Nettv heren ocvvs.
Mvto. 303

Figure 3.2

303 Perryman, “Grant Perryman’s Personal Story.”
Cultural Resources Management (CRM) is a field within which individuals must navigate with consummate skill between multiple disciplines, stakeholders, and socio-political issues that integrate within multiple contexts. As diplomats, CRM professionals must maintain an equitable balance between the interests and needs of all parties who have a “stake” in a CRM project including local communities, academicians across many disciplines, governmental entities, and the broader general public. WSU Emeritus Professor William Lipe emphasizes this essential skill in his 1996 article entitled *In Defense of Digging*: “If the research doesn’t get done, or if it gets done and we don’t learn anything from it, or if only scholars learn from it and the public is shut out, then preservation will have been in vain because its goals [were] not achieved.”

CRM professionals are also team leaders who must cultivate reciprocal relationships within cooperatives of specialists who excel at communicating and educating in the public arena as “interpreters” by various means including journalists, book authors, film producers, curators, museum directors, and avocational groups as well as academics from other disciplines such as Public History, Culture and Race Studies, Biology, Geology, Ecology, and Environmental Studies. CRM areas of expertise also embrace scientists whose intellectual knowledge must be sufficient to perform specific duties such as sampling, analyzing, recording the archaeological record, and staying abreast of the latest developments in both theory and application while balancing their role as humanists who must exhibit an equivalent expertise and sensitivity when addressing specific cultural conflicts that issue out of intersections between diverse communities.

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Additionally, even though they are restricted from acting in a legal capacity as attorneys, CRM professionals require grounding in federal, state, and local laws. The scope of that legal knowledge must encompass all governmental levels in order to ascertain which political entity has jurisdiction at any given moment and why. That scope also includes an awareness of any and all requirements that could seriously impact a CRM professional’s ability to protect non-renewable resources, and in turn, what recourse is available that could inform negotiations throughout all stages from initial planning to mitigation of project development or program implementation.

Finally, all of the diverse knowledge that informs these skills and enables CRM professionals to effectively wear so many different hats is further complicated whenever interactions involve Indigenous peoples—which they often do in some capacity. An in-depth understanding of “Indian” law offers an additional tool to comprehend contemporary issues with implications for Indigenous nations on a national scale.

One such contemporary issue unfolds in challenges for the Yakama Nation to preserve the Sawtooth Berry Fields of Gifford Pinchot National Forest. Whereas, archaeological records reveal origins that trace back 5,000 to 7,000 years to prehistoric Yakama traditions of nurturing and harvesting the Sawtooth Berry Fields, legal grounding in Indian law on traditional land-use treaty rights offers additional insights that support CRM efforts to formally register the Sawtooth Berry Fields as a specific Traditional Cultural Property under the National Historic Preservation Act.

Unfortunately, United States history is one of wildly fluctuating American Indian federal policies that continue to churn out an overwhelming multitude of accompanying laws in tandem. Nevertheless, Dr. Orlan Svingen, a Professor who teaches American Indian History at
Washington State University underscores the necessity of understanding the numerous, complex laws and regulations that adhere to all relationships with tribal nations in order to stay abreast of the inexorable advance of legal machinery on the cultural landscape. Indeed, the very term “cultural landscape” attaches with multiple meanings as we define and use it in a myriad of contexts that are simultaneously concrete and abstract, pragmatic and idealistic:

- physically with precise surveyed geographical boundaries such as latitude, longitude, township, range, and section;
- spiritually as symbolic of sacred beliefs expressed in traditional ceremonies and rituals that are protected by both the U.S. Constitution and the American Indian Religious Freedom Act;
- politically as an integral component of tribal interpretations of sovereignty;
- legally as defined by federal legislation such as eligibility criteria for Traditional Cultural Properties under the National Historic Preservation Act;
- historically as a site of significant historical events or activities in the recent or prehistoric past that inform on-going practices today; and
- academically as a source of knowledge that enhances intellectual insights and continues to inform a multitude of disciplines in the hard sciences, the soft sciences, and the humanities.

The importance of understanding legalities is further emphasized with a glance at the USDA Farm Service Agency’s Programmatic Environmental Assessment (PEA) for the 2005 Yakama Nation Conservation Reserve Enhancement Program (CREP) which cites no less than fifteen federal Acts and five Executive Orders as “Relevant Laws, Regulations, and Other Documents” in this single document alone. As the PEA explains on page vii in B1-B6:

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Svingen, Conversations, Washington State University, Pullman, Washington, Fall Semester 2011.
…CREP agreements are…partnerships between USDA, State and/or Tribal
governments, other Federal and State agencies, environmental groups, wildlife
groups, and other non-government organizations. … The two primary objectives
of CREP are to:

- Coordinate Federal and non-Federal resources to address specific
  conservation objectives of a State or Tribal Government and the nation in
  a cost-effective manner.
- Improve water quality, erosion control, and wildlife habitat related to
  agricultural use in specific geographic areas.

CRP and CREP are administered by FSA in cooperation with the Natural
Resource Conservation Service (NRCS) [who] provides technical assistance such
as developing conservation plans and assisting with site specific environmental
evaluations (EE).306

Although the 2005 Yakama Nation CREP was aimed more specifically at wildlife and fish
habitats, it remains relevant to the 2009 restoration efforts of the Sawtooth Berry Fields. More
specific to our discussion of a traditional gathering ground, Karen Jarratt-Ziemski, one of the
contributing authors of Sacred Lands and Gathering Grounds, reminds us that understanding
public policy surrounding sacred sites and traditional gathering grounds which are most often
one and the same encompasses two primary arenas: 1) the legal or legislative arena, and 2) the
arena of public opinion and education.307 The latter reinforces an imperative that runs the length

of this project: beginning with K-12 and extending into colleges and universities, educators must more effectively inform the general public about Indigenous rights and tribal history if we ever hope to enlighten and advance public opinion to any significant degree.

In the legal arena, first and foremost is Treaty Law. Understanding the concept of “trust responsibility” also known as the Modern Trust Doctrine is paramount—especially within the context of the 1930s U.S. Supreme Court rulings commonly referred to as The Marshall Trilogy. As I explained in more detail in Chapter 3, with its ruling in Cherokee Nation v. Georgia, the Court drew a subtle distinction between the sovereignty of “foreign nations” and the “limited” sovereignty reserved for all tribal governments in the U.S as “domestic, dependent nations” in a “ward/guardian relationship.” The Court’s ruling in Worcester v. Georgia in 1832 was an attempt to “expand” on the initial determination of political/legal status for Indians and included the key ruling that tribes were entirely beyond any state authority and subject only to the jurisdiction of the U.S. federal government—a status that remains intact to the present day.

The principle of Indian title, as first expanded by the U.S. Supreme Court in Johnson and Graham’s Lessee v. McIntosh in 1823, combined with the “treaty relationship” to firmly establish that tribal nations are under the protection of the of the U.S. federal government, and more importantly, that the federal government has a fiduciary duty to protect their interests—all of which combine to define and explain trust responsibility. Even the 1997/2007 Amended Memorandum of Understanding (MOU) between the Yakama Nation and the USDA Forest Service of Gifford Pinchot National Forest spells it out in the Statement of Mutual Interest and
Benefits under Section IV: “The Forest Service as a Federal land management agency has a trust responsibility to the Yakama Nation.”

Equally important are the Canons of Construction—rules for interpreting treaties with tribal nations that Federal Courts have developed over the years. The three primary and most widely recognized are explained in Unit I of the Sacred Lands PDF as follows:

- Treaties should be interpreted as Native Americans would have understood them.
- Ambiguous expressions must be interpreted in favor of Native Americans.
- The whole treaty should be liberally construed in favor of Native Americans.

While the courts do not always apply the canons; most recently, they have recognized and supported Indian treaty rights claims in many cases, including recent fishing and gathering rights cases.

Finally, the landmark 1905 U.S. Supreme Court ruling in United States v. Winans has “become the cornerstone” for Indian rights to gather forest products on public lands. Even though the case specifically addresses an issue of “fishing” rights, the ruling applies equally to “gathering” rights within the Sawtooth Berry Fields in the Mt. Adams Ranger District of Gifford Pinchot National Park. Ironically, it was the Yakama Nation who sued to enforce their treaty rights when Winans and other non-Natives interfered with their off-reservation fishing rights by barring them from crossing over non-Indian land to access their “usual and accustomed places.”

The Yakamas prevailed because the Supreme Court ruled that Article III of the Yakama Nation Treaty of 1855 (ratified and proclaimed in 1859) guaranteed that the Yakamas reserved the “exclusive right of taking fish…at all usual accustomed places… together with the

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310 Ibid, 15.
privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."\textsuperscript{312} Justice McKenna included the premier interpretation that established the Reserved Rights Doctrine when he rendered the Court’s Opinion:

In other words, the treaty was not a grant of rights to the Indians, but a grant of rights from them — a reservation of those not granted. And the form of the instrument and its language was adapted to that purpose. Reservations were not of particular parcels of land, and could not be expressed in deeds as dealings between private individuals. The reservations were in large areas of territory and the negotiations were with the tribe. They reserved rights, however, to every individual Indian, as though named therein. They imposed a servitude upon every piece of land as though described therein. There was an exclusive right of fishing reserved within certain boundaries. There was a right outside of those boundaries reserved "in common with citizens of the Territory." As a mere right, it was not exclusive in the Indians. Citizens might share it, but the Indians were secured in its enjoyment by a special provision of means for its exercise.\textsuperscript{313}

Besides ruling that the defendants could not bar “access” to usual and accustomed places, the Court made an equally important ruling that they could not construct or use a device that “gives them exclusive possession of the fishing places, as it is admitted a fish wheel does,”\textsuperscript{314} a finding that has particular present-day relevance with the use of illegal huckleberry rakes by non-Native commercial pickers in the Sawtooth Berry Fields. Rakes are specifically prohibited not only because they allow pickers to strip the berry fields very quickly, but because they indiscriminately harvest green berries alongside ripe ones, damage the bushes which require five years to recover, and contribute to the decline of both berry acreage and future annual harvest quantities.

Abuse from commercial pickers has become an increasingly serious issue—especially when viewed in tandem with expert estimates that reveal how forest encroachment resulting from fire suppression policies that included Forest Service prohibitions on traditional Native

\textsuperscript{312} Yakama Nation Official Website, \textit{Yakama Nation Treaty of 1855}, signed June 9, 1855, ratified March 8, 1859, proclaimed April 18, 1859, accessed April 2014 and December 7, 2015, \url{www.yakamanation-nsn.gov/treaty.php}.

\textsuperscript{313} \textit{United States v. Winans}, 198 U.S. 371 (1905).

\textsuperscript{314} Ibid.
controlled burns since 1905 has created serious “overstory” growth. The deadly result of this combination one-two punch: berry fields that once covered an estimated 15,000 acres in 1800 and 6,000-8,000 in 1932 are now reduced to a mere 1500 acres with less than 200 acres remaining as open berry fields in 2011.315 Most importantly, only about 30% of ~3500 acres remain that were originally set aside to honor the 1935 Handshake Agreement between the Yakama Nation and the U.S. Forest Service.

In her 2003 article for *Fire Management Today*, U.S. Forest Service Archaeologist for the Mt. Adams Ranger District in Gifford Pinchot National Forest, Cheryl Mack presents evidence from historical journals, archival Forest Reserve reports, and Native oral history supporting the argument that American Indians deliberately “set fires under very specific conditions in order to manage huckleberries.”316 Mack’s close examination of 1904 and 1905 Forest Reserve reports for the Mt. Rainier Forest Reserve reveal that out of 32 fires, 16 were reported as caused by American Indians. More significant is their location: “All 16 of these fires were in the southeastern portion of the reserve, an area known from ethnohistorical sources to have been used for huckleberry collection.” In addition, all 16 fires “occurred between August 4 and September 22 (mostly in mid-September)” which directly coincides with seasonal harvest times.317

Mack also stresses that the location of the small fires is “intriguing, particularly when placed on an 1899 map [indicating that most] of these fires occurred in areas that were either very lightly timbered or already classified as ‘burns,’ ” More importantly: “They cluster in the

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same general area and occur in the same area in consecutive years.” As Native History Professor Orlan Svingen is fond of reminding students in field school when we are looking for “evidence” of Indian activity: “Mother Nature hates a straight line”—meaning that “naturally occurring” events present random patterns versus the ordered signs of deliberate, human intervention. Burn patterns that consistently occur in the same general area at closely the same time, in consecutive years no less, weighs heavily in favor of deliberate human action. The largest 1904 fire that burned 5,760 acres in the Indian Heaven area was located entirely within what were considered berry fields at the time—which we call the Sawtooth Berry Fields today. Mack concludes that these fires “could certainly be described as maintenance fires” based on 1) a pattern of repeated fires set in areas with very light tree cover either within or adjacent to existing larger burns coupled with the fact that 2) they were set at a “time of year when either rain or snow could be counted on to extinguish them within a month’s time.”

In his 1997 article for Western Historical Quarterly, Andrew Fisher points out that forest encroachment threatens the very survival of the berry fields and “promises to generate more user conflicts...[and even though] clearcuts and wildfires have opened other areas to huckleberry growth, “the “Indians’ traditional patches have shrunk by approximately one hundred acres a year” since the 1920s. Fisher also cited Forest Service Biologist Don Minore’s dire estimate in 1979 that if forest encroachment continued at its present rate, the region’s berry fields would “completely disappear in less than forty years [by 2019].” With a 90% decline in acreage as of 2011, Minore’s prediction seems well on its way to materializing. Since Fisher’s 1997 article,

318 Ibid., 22.
the U.S. Forest Service responded to the Yakama Nation’s unwavering commitment to
huckleberry enhancement and restoration with fire and conducted the first controlled burn of the
berry fields in 106 years on September 23, 2011.323

Federal legislation including the Indian Civil Rights Act of 1968 (often called the Indian
Bill of Rights), the American Indian Religious Freedom Act (AIRFA) of 1978, and more
recently, the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 have
all strengthened avenues of legal recourse for tribes; for the purposes of this paper, the National
Historic Preservation Act (NHPA) with its section on Traditional Cultural Properties (TCPs) is
most relevant. It is important to note, however, that on page three of the National Register
Bulletin on Guidelines for Evaluating and Documenting Traditional Cultural Properties, the
National Park Service (NPS) emphasizes that this bulletin is “also responsive to the American
Indian Religious Freedom Act (AIRFA) of 1978, which requires the National Park Service, like
other agencies, to evaluate its policies and procedures with the aim of protecting the religious
freedoms of Native Americans (Pub. L. 95341 2).”324 This integral tie between the NHPA/TCPs
and AIRFA takes on particular relevance when we recount the words of Yakama Elder Hazel
Smiscon Miller from 1979: “Huckleberry is very sacred to Indians. [We] have communion with
God with the huckleberry like white man uses wine.”325

Although earlier documentation dates Yakama use of the site back 5,000 years, the story
of the Sawtooth Berry Fields actually begins 7,000 years ago as now retired USDA Forest
Service Archaeologist Cheryl Mack informs us in the section on “Summary of Native American

Events, September 22, 2011, accessed November 2011, April 2014, and November 2015,
324 Patricia L. Parker and Thomas F. King., PDF, National Register Bulletin (NRB): Guidelines for Evaluating and
Use” in her 2009 *Environmental Assessment (EA)* for the *Sawtooth Huckleberry Restoration*:

Human use of the project area spans the last 7000 years, the known period of use of the Forest. The ethnographic pattern for the project area is one of warm season use. The collection and processing of huckleberries was the primary focus of activities, along with opportunistic use of game animals and fish. Within the project boundary, huckleberries were intensively utilized, both as an over-winter staple and as an item of trade. It is likely that Indians utilized fire as a tool to "manage" and maintain huckleberry fields, in order to enhance their productivity.\(^{326}\)

In their 2002 article entitled “*Vaccinium Processing in the Washington Cascades*” for the *Journal of Ethnobiology*, Cheryl Mack and Rick McClure, another USDA Forest Service Archaeologist, cite other researchers who conclude that “the shift from a generalized foraging adaptation to a more logistically organized system, with seasonally occupied sites” in the Northwest began ca. 5000 to 3000 years B.P., some time in the Mid-Holocene.\(^{327}\)

Especially important for the objectives of this project, Mack and McClure stressed that establishing the “time depth” of intensive huckleberry collection and processing was important because it informed the debate about whether this activity could serve as an early indicator of equestrianism. Because their results indicated that bulk processing of huckleberries pre-dated the introduction of the horse in the area, Mack and McClure reveal how the intensive processing of huckleberries may “represent one [important] component of the regional trend in resource intensification.”\(^{328}\) This is just one of several findings that profoundly strengthens the eligibility of the Sawtooth Huckleberry Fields for inclusion in the National Register as a Traditional Cultural Property (TCP).

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\(^{328}\) Mack and McClure, “*Vaccinium Processing.*” 57.
Meanwhile, Mack and McClure continue with ethnographic research that “has established a link between huckleberry processing sites and another site type which is directly dateable through tree-ring counting.” When the Indians removed bark from cedar trees to make baskets, it left a distinctive characteristic scar. By documenting 6,000 peeled cedar trees, Mack and McClure note how “dates from these cedars corroborate dates of occupation of nearby ethnographically-documented sites.” Overall, the Mack and McClure article establishes how the berry fields are valuable on multiple levels as a source for archaeological/ethnographic insights: “Aside from providing insight into one resource procurement activity, research into the age of these features has important bearing on our understanding of changing land use patterns in the late prehistoric period.” Finally, it is significant that Mack and McClure acknowledge Yakama Elders whose oral historical accounts from personal experience in the 1920s and 1930s provided invaluable information about the berry camps as well as descriptions of the drying process.

As is evident from these archaeological findings and oral histories, the berry fields easily fulfill Criterion A wherein the word "our" in this criterion may "refer to the group to which the property may have traditional cultural significance,” the word "history" may “include traditional oral history as well as recorded history,” and the word “events” can “include specific moments in history of a series of events reflecting a broad pattern or theme” such as “ongoing participation in an area’s history…”

Criterion A also includes association with significant traditional events:

[E]vents recounted in the traditions of Native American groups may have occurred in a time before the creation of the world as we know it, or at least before the creation of people. It would be fruitless to try to demonstrate, using the techniques of history and science, that a given location did or did not objectively

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329 Ibid., 55.
330 Ibid., 57.
exist in a time whose own existence cannot be demonstrated scientifically. Such a demonstration is unnecessary for purposes of eligibility determination; as long as the tradition itself is rooted in the history of the group, and associates the property with traditional events, the association can be accepted.\textsuperscript{331}

Additionally, \textit{Criterion B} further specifies that the word ‘our’ can be interpreted “with reference to the people who are thought to regard the property as traditionally important” while the word “persons” can “refer both to persons whose tangible, human existence in the past can be inferred on the basis of historical, ethnographic, or other research, and to ‘persons’ such as gods and demigods who feature in the traditions of a group.”\textsuperscript{332}

The berry fields make a significant contribution to the broad patterns of “our history” in a frameworks of reference for both the Yakama Nation and the United States. By no means an all inclusive list, a few contributions are easily recognized: the treaty submission of Yakama lands, formation of the National Forest, and subsequent, traditional land-use treaty rights that impact the berry fields and surrounding archaeological sites; the development of the USDA Forest Service, and specifically, the Forest Service’s unique relationship with the Yakama Nation; the desperation of 1930s, Depression-Era non-Native pickers that initially drove them onto the Native berry fields; the more recent 2005-2010 berry picking conflicts that encompass issues with other ethnic groups such as Laotians or Cambodians who often speak very little English and travel hundreds of miles from out-of-state; and finally, the controlled burning debate that raged for over a century.

The eligibility of the berry fields under \textit{Criterion B} also emerges when we listen to Yakama Elders relate their oral history about how sacred the huckleberry is to Yakamas, and we examine the Yakama Huckleberry Legend—a creation story that explains why the Yakamas


\textsuperscript{332} Parker and King, \textit{NRB Guidelines}, 13.
“respect everything that has life, be it plant, animal, or human, because they are all part of the Creator.”

Finally, the berry fields unquestionably satisfy eligibility requirements in *Criterion D* on two counts: as graphically demonstrated in the 2002 article by Mack and McClure, the berry fields are yielding, and have potential to further yield, important information for both prehistory and history via ethnographic, archaeological, and sociological studies as well as the combined oral history of the fourteen distinct confederated tribes that now comprise the Yakama Nation.

Demonstrating how the Sawtooth Berry Fields amply satisfy the eligibility requirements as a TCP in the National Register requires an examination of 7,000 years of Yakama history. However, I first revisit more recent history from the 1930s to explore why the Yakama Nation may want to take an additional step toward requesting that the U.S. government return the berry acreage to the Yakama Nation. The historically unprecedented *Handshake Agreement of 1932* between the Yakama Nation and the USDA Forest Rangers of Columbia National Forest (officially renamed Gifford Pinchot National Forest in 1949) and the 1932 event that sparked such unusual action on the part of the U.S. federal government serves as my starting point.

A 1932 front-page article of *The Sunday Oregonian* described how thousands of “jobless whites” during the 1930s Depression “flocked” to the slopes of Mt. Adams, set up encampments and stripped the huckleberry fields, sparking a loud protest from the Yakamas (see Figure 4.1 on the next page).

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GREAT ARMY OF JOBLESS WHITES INVADE OLD HUCKLEBERRY SANCTUARY OF RED MEN

Thousands flock to the slopes of Mount Adams; growing invasion brings protest from Indians and the new police officials.

Figure 4.1

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Despite its mild tone of criticism towards the invading settlers, language that includes terms such as “red men” and “squaw” along with images within the banner, body, and captions as demonstrated in Figure 4.1 on the next page reflect persistent colonial settler attitudes of territoriality in 1932 that continue to this day: all land and resources in the U.S. are fair game to “rip, rape and run” as Shoshone-Bannock Chairman Small so aptly phrased it (see my Introduction). The commercial harvest of huckleberries exhibits a contemporary epitome of this settler colonial philosophy as commercial pickers rip the berries off the bushes with illegal huckleberry rakes, rape the fields by completely denuding them of both green and ripe berries, and then run away—leaving the Yakamas and the Forest Service Rangers to clean up their garbage and deal with the damage and devastation that they leave behind. That devastation reflects most profoundly in the steadily diminishing harvests from year to year.

Historically, as Andrew Fisher reveals, the Yakama Indians made their annual pilgrimage to the Cascade Mountains to harvest huckleberries and other traditional foods in the culmination of their seasonal rounds for 5,000 years. Additionally, the wiunumi or “berry month” has always held special significance for socializing and trading with different bands/tribes as well as giving thanks and practicing sacred rituals. Today, as they did in 1932, the Yakamas still cherish this annual activity: “Besides spiritual sustenance, berrying provides a welcome break from routine, a supplemental source of income, and a strong link to tribal traditions.” However, prior to the Handshake Agreement, the U.S. federal government in general and the U.S. Forest Service in particular had often maintained a “bleak record of bureaucratic indifference or even antagonism toward Native American cultural and religious concerns.”

Fisher stresses what a “striking case of accommodation” this Agreement was. In a rare consideration for “Indian subsistence practices and the concept of sacred geography,” the U.S. federal government reached an agreement that included provisions for the Yakama Nation to continue their traditional practices of berry picking in the Cascade Mountains.

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Forest Service Rangers set aside almost 3,000 acres of the public domain for exclusive Yakama Tribal use and thereby guaranteed “continued access to some of the most productive huckleberry fields in the world and a measure of privacy in which to carry on their traditions.” The map in Figure 4.2, provided by Forest Service Archaeologist Rick McClure and reprinted with permission, shows the “Shaded Area Reserved For Indians.”

With this gesture of good faith that was not even formally committed to paper until 1990, the U.S. Forest Service afforded Yakamas “a degree of protection that was unknown on other national forests.” Initially documented only by an official photograph of the historic handshake between U.S. Forest Supervisor J.R. Bruckhart and Yakama Chief William Yallup,

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337 Ibid., 188.
Sr. as seen in Figure 4.3, the *Handshake Agreement* addressed the violation of treaty rights as set forth in Article 3 of the *Yakama Treaty of 1855* which I discussed earlier.

1932 Handshake Agreement  
U.S. Forest Supervisor J.R. Bruckhart & Yakama Chief William Yallup, Sr.  

![Handshake Agreement Photograph](image)

Figure 4.3

The Yakama Nation has maintained this enduring relationship for over eighty years, building on the original *Handshake Agreement* with a *Memorandum of Understanding* (MOU) in 1997 that was subsequently amended in 2007. Yakama Tribal Anthropologist David Powell provided an electronic copy of the Yakama Memorandum of Understanding for my research in this project.

To more fully understand what motivated Bruckhart and the Columbia National Forest Rangers to be so atypically “accommodating” would require additional research into the archives of the Forest Service that goes beyond the scope of this project at this time. However, to assume that they were aware of the momentous 1905 U.S. Supreme Court ruling that favored the Yakamas is unquestionable. More significantly though, the Handshake Agreement occurred right

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smack in the middle between two other momentous events in the history of U.S. Indian Law and federal public policy that could shed some light: publication of the U.S. government-funded *Meriam Report* in 1928 and the *Indian Reorganization Act* signed by President Franklin Delano Roosevelt in 1934. As revealed earlier in this project, *The Meriam Report* was a scathing indictment of allotment and acculturation as represented by the Dawes Act of 1877 and the off-reservation boarding schools respectively. The former, as the first thrust of a devastating program of cultural genocide and assimilation, not only attempted to break up “communal” ownership of tribal lands but tried to eliminate tribal governments. The latter followed up on this initiative by forcibly removing Indian children for as long as ten years to military-style “educational” institutions that were usually hundreds of miles away from the reservations.

The concept of Indian boarding schools was initiated by then Lieutenant Richard Henry Pratt, Founder and Superintendent of the “flagship” Carlisle School in November 1879, who sought to expand an experiment he began as “prison warden” over 72 Indian warriors at Fort Marion in St. Augustine, Florida. Pratt’s oft-expressed motto of “Kill the Indian, Save the Man” applied equally to boys and girls with military precision as he turned former military barracks in Pennsylvania into dormitories, clothed the children in cast-off military uniforms, and marched them to and from their classes. Promoted to Captain in February 1883, Pratt was such a successful “one-man advertisement” for the Indian boarding schools that the U.S. government built an additional 114 boarding schools by 1885.341

In 1934, President Franklin Delano Roosevelt signed the *Indian Reorganization Act* which reinstated the rights of Indians to establish themselves as tribes or nations with corresponding tribal governments. Also working in the Indians’ favor at the time was John Collier, the Commissioner of Indian Affairs from 1933 to 1945, who paid careful attention to the

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findings of the Meriam Report, supported cultural pluralism, and strove to “reform” Indian policy. But even the progressive Collier fell prey to the paternalistic attitudes of colonialists—most notably with the wholesale slaughter of sheep during the “Navajo Livestock Reduction” in the 1930s which earned him the everlasting hatred of the Navajo people—especially the women. Nevertheless, he had some notable accomplishments, and Kenneth Philp offers an excellent summary in the Abstract for his book, pointing out how Collier challenged assimilation and stood at the forefront of progressive policies to preserve tribal “institutions,” albeit he necessarily garnered support with the colonial justification that “there was much that [Indians] could teach modern man in an industrialized society.” Collier was a strong advocate of Native rights, who:

…crusaded to help the Pueblo defeat the Bursum Bill, …founded the American Indian Defense Association [and] defended Indian religious dances and tribal self government, helped prevent the confiscation of oil and water power sites on the Navajo and Flathead reservations, and pushed for a Senate investigation of the Indian Bureau. As Commissioner of Indian Affairs under Roosevelt, [his] Indian “New Deal” … reforms included protection of Indian religious freedom, inclusion of Indians in public relief programs, codification of Indian laws, land conservation programs, and protection of tribal land holdings. He encouraged a sense of personal dignity and self respect among Indians and his goal of cultural independence for American Indians is felt today in the movements attending the growth of Indian nationalism.342

Unfortunately, the Commissioners who took office after Collier included Dillon Myer whose retrogressive policies of Termination and Relocation from 1950-1953 further delayed the restructuring of tribal governments. Earlier, as the Director of the War Relocation Authority (WRA)—the civilian, administrative agency for the Japanese internment camps in the U.S. during World War II—Myer enhanced his proclivities for assimilation with theories of “mass social engineering” that envisioned the camps as “planned communities” and “Americanizing

As Commissioner of Indian Affairs in the 1950s, he was dedicated to a massive effort to undo Collier’s progressive changes in the preceding two decades.

The *Handshake Agreement* occurred in that fragile, but crucial timeframe between the devastation of allotment in the first three decades of the 20th Century and Myer’s aggressive relocation policies in the 1950s. It is conceivable that the Columbia Forest Rangers were influenced by John Collier’s progressive policies—especially since they reinforced the 1905 Supreme Court landmark decision that specifically addressed the treaty rights issue with none other than the Yakama Nation. More recently strengthened by the 1997/2007 MOU and Mack’s 2009 EA, the Yakamas have sustained a strong collaborative relationship with the Forest Service Rangers and Forest Archaeologists for the past 80 years. The Sawtooth Berry Fields specifically demonstrate importance not only as a traditional gathering ground; they also served as the historical site for a series of councils held between the Forest Service and Indian representatives in the 1920s and 1930s, and several sensitive archeological sites exist in close proximity as well.

Despite joint efforts, however, the total acreage for the berry fields has shrunk to a mere 1500 acres since 1932—falling prey to encroachment by both Mother Nature and humans. In the absence of controlled burning for over 106 years, forest encroachment results in “overstory growth” that shades the huckleberry plants and encourages reversion to forest. Encroachment from non-Native commercial pickers includes trespassing onto Native fields, using prohibited berry rakes that damage plants, using vehicles to block access to the fields, masquerading as private pickers, and leaving massive piles of refuse behind when they vacate their encampments. Excerpts from Tan Vinh’s 2005 *Seattle Times* article exemplify these issues.

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After noting that Cambodian and Laotian pickers from as far away as California arrived weeks before the opening day for commercial pickers, Vinh described the “caravans of migrant workers from Eastern Washington” who descended on the fields even before the “women and children from the Yakama Nation showed up.” He notes that a “stellar huckleberry crop” in 2004 “created an unexpected surge in pickers” prompting the Forest Service to issue ~500 commercial-picking permits in the summer of 2004—five times more than the previous year. And, as Vinh quotes Forest Service officials, “that represented only a fraction of the pickers.”

Obviously commercial pickers without permits transgress with impunity—often under the guise of “recreational” pickers. Their aggressive behavior extended to “block[ing] a public trail with pickups to prevent others from harvesting the site,” and Yakama members stated that men now often escort Native women and children because “pickers are so territorial and competitive.”

What prompts commercial pickers to covet the huckleberry in particular are the astounding retail prices that huckleberries and their related products can command; related products can include syrups, jams, candies, ice creams and wine just to mention a few. Vinh points out that huckleberries are now used “in more than 100 products, from pies and teas to candles and shampoos.” As Vinh also notes, commercial pickers earn about $18 per gallon or $3 a pound from wholesalers; more significantly, the fruit sells in retail stores for two to four times as much between $36 to $56 per gallon.

The following excerpt from Vinh's article demonstrates an even more disturbing aspect that began with behavior in the 2004 season: “Pickers cleared the fields so fast [that] the

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347 Ibid., 3.
348 Ibid., 1.
349 Ibid., 3.
Yakamas said they barely collected enough berries for their religious ceremonies. Commercial pickers also strayed onto fields designated for Native Americans.\textsuperscript{350} Hoping to avoid a repeat performance in 2005, “the Forest Service vowed to play a more hands-on role in regulating pickers and preserving the traditional Indian berry fields.” As Vinh explains:

The Forest Service announced … Aug. 15 [for commercial permits] to give tribal members first crack at the crop[—]the latest starting date ever. But as the past few weeks have shown, few pickers are willing to wait when demand is so high and the berries so few. Grey Meyer, whose family owns Trout Lake Grocery on state Highway 141 said he relies on huckleberry sales to make up for slow winters. “I would lose thousands of dollars every week” by waiting until mid-August, said Meyer, who buys buckets of berries from pickers and sells them to casinos, restaurants and other grocery stores. \textsuperscript{351}

The fact that the Sawtooth Berry Fields are considered by some as “the country’s premier huckleberry site” and that 2005 crop was smaller than normal compounded the problem. But besides the aggressive behavior of commercial pickers, Vinh’s article spotlights other serious issues involving “rules” and their enforcement:

…The Forest Service estimates that more than 137,000 pounds of huckleberries were picked commercially in this area in the last fiscal year. …Now the fields no longer hold enough berries even for the Yakamas. …Tribal members also complain that commercial pickers sometimes use rakes and mechanical devices to clear bushes that take years to grow back. Only hand picking is allowed.\textsuperscript{352}

The problem with using illegal rakes and mechanical devices cannot be overemphasized for two essential reasons: 1) when huckleberry bushes are damaged or cleared by rakes and mechanical devices, they require years to grow back, and 2) rakes and mechanical devices harvest indiscriminately, pulling green berries alongside ripe berries and stripping the bushes totally bare prematurely. Additionally, unlike Indigenous pickers who historically harvested by hand picking on a weekly basis over a month as the berries progressively ripened, commercial

\textsuperscript{350} Ibid., 2.
\textsuperscript{351} Ibid., 2.
\textsuperscript{352} Ibid., 2.
pickers pick as much as they can in one frantic effort—often in a single day.

Unfortunately, enforcing rules was extremely difficult. Many commercial pickers who traveled over 1,000 miles were already en route or had arrived before learning about the later commercial harvest date and refused to wait, claiming that they could not afford the delay. Other communication issues arise because many out-of-state commercial pickers do not speak English and/or they are unable or simply refuse to stay abreast of changing laws or regulations in the state of Washington. In 2011, the Forest Service even hired a bilingual Ranger, but they remain woefully understaffed. Meanwhile, the Yakama Nation has an abundance of willing individuals, but lacks the authority to deploy them.

Despite vigorous joint efforts by both the U.S. Forest Service and the Yakama Nation, the Sawtooth Berry Fields and the fragile archaeological sites around them continue to be threatened. Fortunately, U.S. Forest Service Archaeologist Rick McClure has already listed several areas as “TCPs” with a “confidential” designation in the Forest Service Database as well as on the Register with the Washington State Department of Archaeology & Historic Preservation (DAHP). However, even though the Sawtooth Berry Fields are deemed eligible for the National Register, there was no formal registration completed as of 2014. Additionally, the berry fields are not specifically listed as a separate TCP, but as a “cultural landscape” within another TCP that also includes archaeological sites.353

I am suggesting that the fourteen Confederated Tribes and Bands of the Yakama Nation (Palouse, Pisquose, Yakama, Wenatchapam, Klinquit, Oche Chotes, Kow way saye ee, Sk’inn-pah, Kah-miltpah, Klickitat, Wish ham, See ap Cat, Liay was, and Shyiks) may want to seek specific, official, TCP status on the National Register (NHPA) for all of the Sawtooth Berry

353 McClure, telephone interview, March 2014.
Fields. But I believe that the Yakama Nation could go a step further and ask the U.S. government to redraw the boundary for the Yakama Nation reservation to encompass the entirety of the Sawtooth Berry Fields, and possibly, highly sensitive archaeological sites in close proximity. What may seem like a drastic and unrealistic request actually has a precedent—in the Yakama Nation no less.

In 1908, President Theodore Roosevelt “extended the boundary of the [Mount Rainier Forest Reserve established by President Grover Cleveland in 1897] to include a tract of some 21,000 acres, then mistakenly thought to be public land.” An additional portion of that land tract was designated the “Mount Adams Wild Area” in 1942. In 1966, after the Indian Claims Commission found that this tract was originally intended for inclusion in the Yakama reservation, the Yakama Nation sought “Executive action for return of its land.” And they succeeded. In 1972, President Richard Nixon issued an Executive Order to “modify” a portion of the eastern boundary of the Gifford Pinchot National Forest to redress restore the land to the Yakama Nation.

Citing these precedents of 1908, 1942, and 1972, I propose that the U.S. federal government should once again extend the boundary of the Yakama Nation to include the 15,000 acres that the Sawtooth Berry Fields originally encompassed and any additional acreage that includes archaeological sites revealed as sensitive cultural landscapes. In Figure 4.4 on the next page, I delineate sixteen (16) justifications for seeking an Executive Order to restore the Sawtooth Berry Fields to the Yakama Nation.

Justifications for An Executive Order

1. Both parties can continue to nurture the decades-long relationship of collaboration between the Yakama Nation and the Mt. Adams District of the USDA Forest Service;
2. Both parties can continue to pursue all collaborative efforts instituted to date and explore all options to resolve issues concerning the berry fields;
3. Both parties can continue or establish any specific educational outreach programs to raise awareness of the general public to the serious threat facing the berry fields;
4. It would provide protection of the Berry Fields as a sacred site, an archaeological site, and a gathering site for traditional subsistence foods;
5. It would enable the Yakamas to return to their tribal tradition of harvesting the berries in stages allowing the berries to ripen instead of harvesting the entire field in a single visit;
6. It would guarantee that the Yakama Nation could collect and process enough berries for their sacred, traditional ceremonies and personal use;
7. It would grant the Yakamas a greater measure of privacy to practice their sacred ceremonies where non-Natives may only participate by invitation;
8. It would provide federal recognition that endows official authority to the Yakama Nation whenever they are required to negotiate with the non-Native public;
9. It would provide an additional layer of protection with more avenues to redress issues in federal courts as a last resort when all other efforts fail;
10. It would specifically empower the Yakama Nation to more fully participate in proposing and implementing measures to protect, patrol, maintain, enhance, and restore the berry fields;
11. It could open up potential employment opportunities for Yakamas to perform those duties necessary to protect and restore the berry fields;
12. It could eliminate decades of abuse by non-Native, commercial pickers by restricting all huckleberry harvesting to those with Native permits granted by the Yakama Nation;
13. It would not prevent the Yakama Nation from giving permission to a non-Native picker who is harvesting strictly for personal, recreational use;
14. It would still provide the non-Native public access to harvested berries through purchases from the Yakama Nation;
15. It would open up another avenue for self-sustaining economic independence and serve as one way to redress U.S. policies of forced removal and arbitrary, imposed reservation boundaries that, by default, eliminated tribal livelihoods, and
16. It could set a precedent and serve as a template for similar pro-active efforts outside of the Mt. Adams Ranger District or Gifford Pinchot National Forest.

Figure 4.4

For eighty years, the Forest Service and the Yakama Nation have collaborated in a variety of ways in collaborative attempts to address the many problems that they confront at the beginning of harvest season. Tribal members distribute informative brochures in an effort to educate the non-Native public and the commercial pickers, but many of the commercial pickers
do not speak English, or their English is very poor. In 2008, Washington passed State law
SHB1038/RCW 76.48 in response to a coordinated effort by Yakama Tribal Archaeologist
David Powell, the Yakama Nation, and the U.S. Forest Service. Again, communicating these
changes to people who live in California, do not access the internet, do not speak English, or
simply choose to be deliberately obtuse, presents ongoing problems that are exacerbated by
continuous fluctuating waves of individuals and groups that vary from year to year.

According to U.S. Forest Service Archaeologist Rick McClure, internal agency changes
granted permission for the Forest Service to retain commercial permit receipts to fund hiring two
additional people, including one who speaks Laotian, to patrol the area during harvest season.355
However, sanitation is quickly turning into a major issue as many commercial pickers travel in
campers and RVs over 1,000 miles, arrive early to find a premium camping spot, and can remain
up to 14 days (or longer if they purchase the more expensive seasonal permit) during harvest
season which begins the second Monday in August.356 But once the berry fields are laid bare,
often within a day or two of official opening day, they quickly pack up their huckleberries and
beat a hasty retreat—leaving all their garbage behind for the Forest Service or the Yakamas to
clean up.357

Temporarily restricting harvest to Native individuals or tribes may seem drastic, but if we
allow the berry fields to continue in their precipitous decline, they will disappear entirely. Even
though, we may face an initial outcry from the general public, many protests stem from a
genuine lack of awareness about how truly dire the ecological threat remains. Persistent efforts to
educate the public will eventually reap its own harvest of understanding. Meanwhile, those who

355 McClure, telephone interview, March 2014.
356 USDA Forest Service, Special Forest Products Commercial Use Product Summary, accessed April 14, 2016,
357 Ibid.
maintain a sincere interest in restoring the berry fields recognize how this ecological process will require patient ministrations throughout the year while exercising substantial restraint during harvest seasons for many years in order to return the berry fields to their former health.

The most logical choice of individuals for this task remains the Native people who have nurtured these sacred fields for thousands of years until U.S. colonial policies combined with commercial exploitation to nearly destroy them. Yakamas are fully aware of the ongoing dire condition of the Sawtooth Berry Fields and the inherent threat to their traditional land-use treaty rights that entitle them to continue to gather berries on this cultural landscape. My earlier proposal to return the acreage to the Yakama Nation is but one suggestion; it is essential to respectfully consider what the Yakama people themselves desire. To that end, I offer my research and findings in this chapter to the Yakama Nation to use in whatever capacity they may deem appropriate.
CONCLUSION

In a tiny enclave called Ignacio, Colorado nestled in the verdant San Juan Valley which is nourished by no less than seven rivers, the Southern Ute people quietly go about business as possibly the richest tribal nation in the United States. Most outsiders cannot determine exactly how much the Southern Ute Tribe is worth from a close-mouthed business council, and frankly, it is none of our business. However, the Southern Ute Tribe openly and proudly maintains three major websites: 1) the main official website for the Southern Ute Reservation, a website for their “Growth Fund,” and a website devoted to their Southern Ute Cultural Center & Museum. The new museum is a stunning architectural masterpiece with a steel rendering of a tipi rising from the center, but its full beauty is revealed inside. Two hours of browsing in 2013 left me aching for more and a return visit is at the top of my agenda. And while they may be prudently cautious about details, justifiable pride abounds over a Growth Fund created in 2000 that “oversees a significant portfolio of companies and investments in energy, real estate, construction, and private equity.” Notably, in “just fifteen years” the Southern Ute Growth Fund now maintains operations and assets that are “spread out over fourteen states and the Gulf of Mexico.”

The Southern Ute Mission Statement reveals a remarkable synthesis of traditional values and “intercultural borrowing” from settler colonial capitalism:

Our mission is to provide economic prosperity for the Southern Ute Indian Tribe by managing the Tribe’s businesses effectively, building new businesses prudently, and investing its money wisely. We provide analysis and advice to the Tribal Council on the Tribe’s businesses and financial affairs, and we provide the day to day executive management of the Tribe’s business enterprises.

In their own words: “The Southern Ute Indian Tribe is unique among Native American Indian Tribes. The Tribe aggressively developed its extraordinary natural resource base during the

359 Southern Ute, “Growth Fund: About Us.”
1980s and 1990s. Tribal Council adopted an official Financial Plan in 1999 that separated its core government from its business enterprises and related investment activities. But lest some suspect that the Southern Utes have merely succumbed to the age-old settler colonial strategy of assimilation, think again.

Their flagship company, Red Willow Production Company, established in 1992 is not structured like all other U.S. corporations—it is wholly owned by the Southern Ute Tribe. As Jonathan Thompson explains in his 2010 article entitled “The Ute Paradox,” this “small Colorado tribe takes control of its energy resources and becomes a billion dollar corporation … The Southern Utes overcame poverty and oppression to become a wealthy and powerful tribe with nationwide energy holdings.” Red Willow now competes in bids for off-shore drilling rights in the Gulf of Mexico against as many as eighty-five oil companies including international energy giants like BP—and sometimes they win the bid. But as Thompson reiterates: “Red Willow Offshore is not your average international oil company. It is the wholly owned subsidiary of a small American Indian nation—the Southern Ute Tribe in southwestern Colorado.”

With an eye on long-term financial survival in a settler colonial environment mandated by capitalism, Southern Utes patiently built their financial base over the past four decades. Notably, as Thompson further demonstrates, their accomplishments merit distinction both inside and out of tribal culture not only for their stunning fiscal success, but for their uniquely successful synthesis with tribal values and a specific cultural relationship with the land:

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360 Southern Ute, “Growth Fund: History.”
They didn’t strike it rich on casino gambling. Instead, the Southern Utes built their empire slowly, over decades, primarily by taking control of the vast coalbed, methane, and natural gas deposits that lie under their land. They’ve achieved cultural, environmental, and economic self-determination through energy self-determination—a feat rarely accomplished, whether by Indians or non-Indians.

Furthermore, according to their website, Southern Utes also purchased Red Cedar Gathering Company in 1994 to solve the following problem:

Red Willow was originally formed to buy back natural gas leases and to upgrade the performance of gas wells on the Reservation. Red Willow could not convince local gathering companies to increase their capacity to transport the Tribe’s new volumes of gas to the interstate pipelines. To solve this problem, the Tribe partnered with the Stephens Group in 1994, and purchased Red Cedar to gather, process and transport natural gas from the Reservation.

Then to ensure longevity in the face of “finite resources,” the Southern Utes diversified into real estate and “green” ventures such as Southern Ute Alternative Energy “to manage investments in alternative and renewable energy.” They also diversified outside the energy sector by establishing the “ Tierra Group for residential and commercial construction, the GF Properties Group to manage the Tribe’s commercial properties and apartments in Colorado and four nearby states, GF Development Group to develop master-planned, mixed use projects, and GF Private Equity Group to invest in private equity funds and businesses.”

Another nuance to the Southern Ute success story is that their Growth Fund “selects and manages its investments with the help of an outstanding investment research and finance team” that includes non-tribal advisors. And significantly, Thompson maintains that the Southern Ute Tribe’s influence “reaches to Washington D.C., affecting federal energy policy.”

Reviewing Southern Ute history, Thompson explores the events that led up to formation of the common

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362 This comment does not imply a criticism of Tribal casinos in any way. Indeed, the Southern Ute Tribe recently built a small casino that supplements a remarkably diversified financial portfolio.

363 Thompson, 2.


366 Thompson, 2.
result of a “checkerboard” reservation 75 miles long x 15 miles wide upon which “whites still own roughly half the land [as a direct settler colonial benefit of allotment], bordered on the south by New Mexico and on the west by the Ute Mountain Ute Reservation where those who refused allotments ultimately settled.” In 1896 when the Southern Utes began to fight back, a series of lawsuits “eventually brought multimillion-dollar judgments in the tribe’s favor and stronger rights to water, land, and hunting grounds.” Citing Richard Young in *The Ute Indians of Colorado in the 20th Century*, Thompson emphasizes how Utes became more confident in their ability to “maneuver among the various echelons of the vast and powerful federal government” and that the “Southern Utes were by far the most assertive.” Then, in the 1960s: “Energy became the battlefield.”

Thompson also affirms the Southern Ute propensity for non-Tribal collaboration in his discussion of the role of Durango Attorney Sam Maynes. The Tribe hired Maynes in 1968 as general counsel at approximately the same time that they elected Leonard Burch as Chairman of the Business Council, a position that serves as the modern-day equivalent of “Chief” in many tribal nations. Maynes and the newly elected Burch “became an indomitable team, demonstrating another distinctive Southern Ute trait—the ability to forge effective alliances with non-Indians.”

Southern Utes demonstrate another distinctive feature of tribal culture: they have not always forged alliances or collaborated strictly to serve the sole benefit of the Southern Ute Tribe or to increase their already staggering wealth. Prior to its celebratory opening in 2006, the Southern Ute Tribe donated land for construction of the new Mercy Regional Medical Center in nearby Durango—demonstrating a caring concern for community that transcends socio-political

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367 Thompson, 2.
368 Thompson, 3.
boundaries or barriers established by a colonial settler mindset. But Southern Utes did not stop there.

According to an article by M.B. Owens on the Hammes Company website, “utilizing their land development company,” the Southern Utes had “purchased a large tract of land off their reservation just outside of Durango to develop an extensive planned community.” The Southern Utes also own the innovative development company Three Springs which was backed by the impressive financial resources of the Southern Ute Tribe. Naturally Southern Utes wanted nearby healthcare services as a benefit to their people, but they also recognized the benefit for the entire community. With only a month to make a proposal, Three Springs presented ideas that ultimately resulted in a donation of 35 acres accompanied by a purchase of 25 acres with the purchase price itself going toward development cost of infrastructure such as water, sewer, roads and power—all of which Three Springs would develop up to the hospital property line. Three Springs would also construct the road access to the hospital, including a required intersection to connect the ~700-acre development to the highway.

Still another component of the Southern Ute proposal resulted in a stunning collaboration between Three Springs in partnership with the city of Durango and the county of La Plata with an additional donation of 80 acres of park area and a bike trail for a planned development:

Overall, the Three Springs development would include residential and light commercial following the new urbanism theme of higher density coupled with more pedestrian access…. The development itself would have 2,300 dwelling units, a couple of schools, a regional park, and two villages with commercial cores. “Not only would it provide a tremendous job base, it would be the biggest project we have ever had in Durango,” [according to Greg Hoch, Director of Planning and Development for the city of Durango.]

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370 Owens, “Miracle Hospital.”
Of course, a bureaucratic requirement for annexation that required multiple public hearings and meetings could have buried the whole deal under the grinding wheel of bureaucracy; and environmental issues demanded attention as the Army Corp of Engineers required “mitigation” of the wetlands disturbed by the development.

But all the parties involved persevered, and possibly in one of the most remarkable efforts of collaboration in any context, the Southern Ute Tribe d/b/a Three Springs developers, the hospital, and Hammes Company as consultant to healthcare providers made an extra effort to hold monthly meetings and inform/educate “the community, including city officials, county officials, neighborhood leaders, activists, and others.” As a result, annexation only took about six months, and initial opposition from many individuals and groups evaporated. In fact, the community “contributed $11.5 million of its own money to the Mercy Health Foundation to help pay for many items and programs needed by the hospital….”

Explaining why it was dubbed the “Miracle Hospital,” Owens reveals:

When project planners attempt to work with city, county, state agencies and federal agencies, along with a unique entity such as an Indian tribe, the results are normally less than stellar. If you add dozens of public and private organizations and thousands of residents into the mix, the results could be even worse. But in Durango, Colorado, cooperation, desire and ingenuity, and maybe a miracle or two, led to the building of a much-needed 215,000 SF hospital, an adjoining medical office building and a new planned community generating economic development for the region.

When all was said and done, Durango ended up with a brand new 80-bed hospital and connected medical office building, plus a stunning planned community with connecting intersection, roads, sewers and other services. The hospital provides a high-paying employer and the development acts to spur economic development for the area with a tremendous job base. And to provide even more benefits to the community, the hospital turned around and donated land to Southwest Mental Health to develop a new psychiatric center and land to Mercy Housing to build 66 low-cost housing units.

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371 Ibid.
372 Ibid.
373 Ibid.
The Southern Utes represent a remarkable contemporary example of how a tribal nation can challenge continuing U.S. settler colonialism with stunning success in 1) synthesizing traditional values within a contemporary capitalist business model, 2) maintaining their tribal identity and cultural values, 3) strengthening their self-determination and economic independence in what some scholars are exploring as a concept dubbed “practical sovereignty,” 4) diversifying to maintain their economic independence and sustain continued growth, and 5) diversifying to acknowledge “finite resources” and explore “alternative and renewable energy.”

But the Southern Utes are not the only ones who offer up relevant wisdom on resisting settler colonialism in the U.S. Further contributions from Pawnee Walter Echo-Hawk offer fertile fields to harvest in the future for ideas on specific decolonization of Indigenous peoples in the United States.

An attorney, former Tribal Judge, author, activist, and law professor who has accumulated nearly sixty years of wisdom in his distinguished career, Echo-Hawk’s ideas, arguments, and rationales offer additional thoughts on ways to “decolonize” Indigenous peoples in the U.S. where present-day settler colonialism continues to thrive in both federal colonialis policy and local colonial attitudes—despite contemporary accomplishments such as the U.N. Declaration on Indigenous human rights. He has worked to protect the legal, political, property, cultural, and human rights of tribes and Native peoples for decades, offering major speeches in South Africa, Turkey, Egypt, Qatar, Philippines, Fiji, Canada, and throughout the United States. In September 2014, The Foley Institute and WSU Native American Programs sponsored two presentations by Mr. Echo-Hawk. His public lecture “The Need for an American Land Ethic” 374

on September 17, 2014 and his book tour lecture “In the Light of Justice” which I attended on September 18, 2014 were filmed and are both available online. Those presentations, as well as two of his books In the Light of Justice and In the Courts of the Conqueror merit close academic inquiry in the future.

**Why change is needed—for Natives and non-Natives alike.**

Colonialism, settler or otherwise, does not invade out of mere curiosity. European imperial monarchies sought everything from land, water, minerals, seaports, and mountain passes to our planet’s most valuable resource: people. The United States was no different. The colonialist federal government or its colonial citizens imported humans from around the globe or exploited its own vulnerable populations to build its railroads with buckets of Chinese blood, irrigate its agricultural industry with Mexican sweat, and lubricate the machinery of its cotton mills with tears from women and child labor. But attempts to colonize tribal nations as the United States westward expansion descended on their homelands like a plague of locust, illustrate the most consistent, relentless, unrivaled exercise of U.S. disciplinary power as colonial settlers; when military might failed to subdue or eliminate, federal and state governments sought to subjugate and normalize Indigenes within their territorial boundaries in order to force assimilation into mainstream U.S. society.

Every individual, without exception, with whom I discuss my research and this project, give responses that signal why these changes are so important. Teenagers and young adults inevitably ask why they did not learn any of “this” history or current knowledge about Indians in

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high school or college. More importantly, they express a sincere desire to know more. One current high school student in Colorado said she learned some broad strokes about tribal history in her U.S. History class, but after talking to me felt that she had learned very little. Others are not only intrigued, but startled to learn about tribal sovereignty, or dual citizenship, or treaty rights. My eighty-three-year-old mother once asked why it was important that she realize that the “Firewater Myth” is just that—a myth. Before our conversation, she never realized or understood its correlations with racism or denigrating stereotypes. Other adults, like an elderly woman living on fee-simple land within the Coeur d’Alene Reservation, struggle to understand the unique status of tribal people in order to form positive, cooperative relationships with their Indigenous neighbors instead of simply branding them as “drunken casino Indians” who endanger non-Natives on the highways. Ranchers and farmers express anger and frustration because they are unaware of the true nature of “treaty rights” and maintain uninformed opinions of individuals in neighboring tribes as “Indians on the dole” or “U.S. citizens who receive special privileges without paying taxes.”

If, as stated in the Announcement of Support for the rights of Indigenous people, the United States is sincere in its desire to serve as a “positive model” for the rest of the world, its leaders need to do more than simply acknowledge that “we cannot erase the scourges or broken promises of our past.”378 They need to teach that past. Leaders must acknowledge the colonial legacies that stem from that past and continue to flourish in the present. Both education and acknowledgment require a concerted effort to raise conscious awareness in the minds of the non-Native public—beginning at the elementary level in our public schools and continuing up the educational ladder into colleges and universities. Otherwise, all these pretty words remain the

platitudes that they have always been, and U.S. Indigenous peoples continue to be relegated out of sight and/or out of mind, fighting to emerge from the shadows, but far too often remaining invisible.

Tribal peoples in the U.S. have seen dramatic changes in response to not just decades, but centuries, of Indian activism in an incredibly broad variety of forums. Legal accomplishments in both changes in Indian law and lawsuits for redress or compensation present with a long history, and educators, Native scholars and non-Native scholarly advocates labor tirelessly on platforms across the nation—sometimes contributing to hallmark events or landmark legislation. And yet, Indians remain an exotic mystery to a large majority of U.S. society unless an individual encounters a specific opportunity to interact with them—and all too often those opportunities spring from conflict.

Projects like this one demonstrate the mutual benefits that can result from collaboration, especially when we acknowledge the difference between sincere collaboration and superficial “accommodation”—another contemporary colonial strategy. More open communication can arise out of teaching inclusive history and sometimes, just taking the time and patience to share knowledge about tribal nations in general and nearby communities in particular with non-Native members of U.S. society often reveals individuals and groups of people who exhibit far more depth in their inquiries than just a colonial attitude that views Indians as anachronistic curiosities or exotic entertainment. Indigenes become not only visible, but fully presented in all their contemporary diversity with a rich history that extends millennia into a past that molecular anthropology can now demonstrate began over 50,000 years ago. From such recognition and full acknowledgement by non-Native settlers emerges comprehension, understanding, compassion, respect, cooperation and collaboration.
As I and other scholars have acknowledged, a settler colonial nation-state can never be fully decolonized by the complete physical withdrawal of colonialist government and non-Indigenous colonial settlers—a logistical impossibility by definition. However, colonial attitudes and practices that took root with British colonists in 1620, toddled through the next 100 years of nation-state formation, began a dangerous maturation in the 1700s, burst into full maturity in the 1800s, and steadily evolved into the present certainly can be withdrawn, deleted, or, at the very least, mitigated. This project demonstrates some specific attitudes and observations that contribute possibilities for resolution of only two major contemporary issues that continue to trace their roots to dark legacies from settler colonialism and continue to impact tribal nations across the breadth and depth of the United States. Hopefully it can serve as a template for further efforts in the same vein.
APPENDICES
CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5433

Chapter 198, Laws of 2015

64th Legislature
2015 Regular Session

K-12 EDUCATION--TRIBAL EDUCATION

EFFECTIVE DATE: 7/24/2015

Passed by the Senate March 11, 2015
Yeas 42  Nays 7

BRAD OWEN
President of the Senate

Passed by the House April 15, 2015
Yeas 76  Nays 22

FRANK CHOPP
Speaker of the House of Representatives
Approved May 8, 2015 9:36 AM

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is SUBSTITUTE SENATE BILL 5433 as passed by Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN
Secretary

JAY INSLEE
Governor of the State of Washington

AN ACT Relating to teaching Washington's tribal history, culture, and government in the common schools; amending RCW 28A.320.170; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. The legislature recognizes the need to reaffirm the state's commitment to educating the citizens of our state, particularly the youth who are our future leaders, about tribal history, culture, treaty rights, contemporary tribal and state government institutions and relations and the contribution of Indian nations to the state of Washington. The legislature recognizes that this goal has yet to be achieved in most of our state's schools and districts. As a result, Indian students may not find the school curriculum, especially Washington state history curriculum, relevant to their lives or experiences. In addition, many students may remain uninformed about the experiences, contributions, and perspectives of their tribal neighbors, fellow citizens, and classmates. The legislature finds that more widespread use of the Since Time Immemorial curriculum developed by the office of the superintendent of public instruction and available free of charge to schools would contribute greatly towards helping improve school's history curriculum and improve the experiences Indian students have in our schools.
schools. Accordingly, the legislature finds that merely encouraging education regarding Washington's tribal history, culture, and government is not sufficient, and hereby declares its intent that such education be mandatory in Washington's common schools.

Sec. 2. RCW 28A.320.170 and 2005 c 205 s 4 are each amended to read as follows:

(1) [(Each)(a) Beginning the effective date of this section, when a school district board of directors [(is encouraged to)] reviews or adopts its social studies curriculum, it shall incorporate curricula about the history, culture, and government of the nearest federally recognized Indian tribe or tribes, so that students learn about the unique heritage and experience of their closest neighbors. [(School districts near Washington's borders are encouraged to include federally recognized Indian tribes whose traditional lands and territories included parts of Washington, but who now reside in Oregon, Idaho, and British Columbia. School districts and tribes are encouraged to work together to develop such curricula.)]

(b) School districts shall meet the requirements of this section by using curriculum developed and made available free of charge by the office of the superintendent of public instruction and may modify that curriculum in order to incorporate elements that have a regionally specific focus or to incorporate the curriculum into existing curricular materials.

(2) As they conduct regularly scheduled reviews and revisions of their social studies and history curricula, school districts [(are encouraged to)] shall collaborate with any federally recognized Indian tribe within their district, and with neighboring Indian tribes, to incorporate expanded and improved curricular materials about Indian tribes, and to create programs of classroom and community cultural exchanges.

(3) School districts [(are encouraged to)] shall collaborate with the office of the superintendent of public instruction on curricular areas regarding tribal government and history that are statewide in nature, such as the concept of tribal sovereignty and the history of federal policy towards federally recognized Indian tribes. The program of Indian education within the office of the superintendent of public instruction [(is encouraged to)] shall help local school districts identify federally recognized Indian tribes whose
reservations are in whole or in part within the boundaries of the
district and/or those that are nearest to the school district.

Passed by the Senate March 11, 2015.
Passed by the House April 15, 2015.
Approved by the Governor May 8, 2015.
Filed in Office of Secretary of State May 8, 2015.
MESTIZAJE AND RACIAL CATEGORIES
IN THE COLONIAL LATIN AMERICAN CASTE SYSTEM
CASTAS IN SPANISH GENEALOGICAL RECORDS

<table>
<thead>
<tr>
<th>CLASSIFICATION</th>
<th>RACIAL COMPOSITION</th>
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<tr>
<td>Albarazado</td>
<td>Cambujo and Mulato</td>
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<tr>
<td>Albino</td>
<td>Spanish and Morisco</td>
</tr>
<tr>
<td>Allí te estás</td>
<td>Chamizo and Mestizo</td>
</tr>
<tr>
<td>Barcino</td>
<td>Albarazado and Mulato</td>
</tr>
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<td>Barnocino</td>
<td>Albarazado and Mestizo</td>
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<tr>
<td>Calpamulato</td>
<td>Zambaigo and Lobo</td>
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<tr>
<td>Cambujo</td>
<td>Indian (¼) and Negro* (¼)</td>
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<td>Cambur</td>
<td>Negro (½), Spanish (¼), and Indian (¼)</td>
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<td>Spanish/Indian</td>
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<td>Coyote and Indian</td>
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<td>Chino</td>
<td>In Peru: Mulato and Indian</td>
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<tr>
<td>Cholo</td>
<td>In Peru: Mestizo and Indian</td>
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<td>Cimarrón</td>
<td>Mexico/Guatemala: ½ Negro/ ¼ Spanish/ ¼ Indian</td>
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<tr>
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<td>Spanish (¼), Indian (3/8), and Negro (1/8)</td>
</tr>
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<td>Cuarteado</td>
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<td>Cuarterón de Chino</td>
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<td>Cuarterón de Mulato</td>
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<td>Cuatrero</td>
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<td>Spanish</td>
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<td>Español Criollo</td>
<td>Colonial-born Spaniard</td>
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<td>Indio</td>
<td>Indian</td>
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<td>Lobo and Salta atrás</td>
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<td>No te entiende</td>
<td>Tente en el aire and Mulato</td>
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</table>

Compiled by this author in 2013 with information from discontinued Clio educational website at Missouri State University entitled “Mestizaje and Racial Categories in the Colonial Latin American Caste System” as originally posted by Professor John F. Chuchiak. Note that Dr. Chuchiak retained the use of the term “Negro” to accurately reflect is use in the historical source records.
| No me toques | Mixture of Spanish, Indian, and Negro |
| Ochavado | Spanish (7/8) and Negro (1/8) |
| Pardo | Indian (½), Spanish (¼), and Negro (¼) |
| Prieto | Negro (7/8) and Spanish (1/8) |
| Quartarón | See Cuarterón |
| Quinterón | In Peru: Spanish and Quinterón |
| Requinterón | In Peru: Spanish and Quinterón |
| Salta atrás | Spanish and Albino |
| Tente en el aire | Calpamulato and Cambujo |
| Torna atrás | No te entiende and Indian |
| Tresalvo | Spanish (¼) and Negro (¼) |
| Zambaigo | Spanish and Chino |
| Zambo | Peru: Negro/Mulato. Venezuela: Indian (½) / Negro |
| Zambo de Indio | In Peru: Negro (½) and Indian (½) |

<table>
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<td>2. Criollos</td>
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<td>5. Slaves</td>
<td>5. Slaves</td>
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<tr>
<td>6. Indians (if not caciques, etc.)</td>
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**New Spain**

| Spaniard | + | Indian | = | Mestizo |
| Spanish woman | + | Mestizo | = | Castizo |
| Castizo woman | + | Spaniard | = | Spaniard |
| Spanish woman | + | Negro | = | Mulatto |
| Mulatto woman | + | Spaniard | = | Morisco |
| Morisco woman | + | Spaniard | = | Albino |
| Albino woman | + | Spaniard | = | torna atrás |
| Torna atrás woman | + | Indian | = | Lobo |
| Indian woman | + | Lobo | = | Zambaigo |
| Indian woman | + | Zambaigo | = | Cambujo |
| Mulatto woman | + | Cambujo | = | Albarazado |
| Mulatto woman | + | Albarazado | = | Barcino |
| Mulatto woman | + | Barcino | = | Coyote |
| Coyote woman | + | Indian | = | Chamiso |
| Chamiso woman | + | Mestizo | = | coyote mestizo |
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