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**OUR HISTORY IS THE FUTURE: MNI WICONI AND THE STRUGGLE FOR  
NATIVE LIBERATION**

**BY**

**NICK ESTES**

B.A., History, University of South Dakota, 2008  
M.A., History, University of South Dakota, 2013

DISSERTATION

Submitted in Partial Fulfillment of the  
Requirements for the Degree of  
**Doctor of Philosophy**

**PhD, American Studies**

The University of New Mexico  
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**December, 2017**

## **DEDICATION**

For the Water Protectors, the Black Snake Killaz, the Land Defenders, the Treaty Councils, the Old Ones, the Good People of the Earth. The Fire of the Seventh Generation is lit and it cannot be put out. We are our ancestors from the before and before and the already forthcoming. We are the ones they prayed for.

# **OUR HISTORY IS THE FUTURE: MNI WICONI AND THE STRUGGLE FOR NATIVE LIBERATION**

by

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## **ABSTRACT**

From April 2016 to February 2017, Indigenous women and youth led a historic struggle to halt the construction of the Dakota Access Pipeline from crossing Mni Sose, the Missouri River, and threatening the drinking water of the Standing Rock Indian Reservation and millions downstream. Rallied under the banner Mni Wiconi, a Lakota assertion meaning “water is life,” centuries of history converged during the protests. It was about more than an oil pipeline. It was struggle over the meaning of history, the defense of land and water, and the rights of Indigenous peoples to determine their own future. When land and water are taken or destroyed, the past is lost with them and so too is the possibility of a livable future. In this dissertation, I situate multiple archival sources and oral histories to document two centuries of Indigenous resistance against the trespass of settlers, dams, and oil pipelines across the Mni Sose. I develop an alternative intellectual history of the Oceti Sakowin, the Nation of the Seven Council Fires, the Lakota-, Dakota-, and Nakota-speaking peoples, from the nineteenth century to the present. This story begins with the trespass of Lewis and Clark in 1804 and the arrival of the US on the Missouri. I document the drastic changes brought to the land, the water, and the people during mid-nineteenth century Indian wars and the mid-twentieth century

damming of the Missouri by the Army Corps of Engineers. I also tell the story of Indigenous resistance, Red Power, the rise of Indigenous internationalism, and the creation of the International Indian Treaty Council at Standing Rock in 1974 to bring world attention to these issues. It was at Standing Rock where histories of resistance converged against the Dakota Access Pipeline and gained international appeal. Clearly, Oceti Sakowin history resonates with the international community today. Such resonance, I argue, has broader implications than what could be considered just “Indigenous” issues and has universal appeal, while also remaining firmly grounded in history and place.

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## Chapter 1: The Siege

Our water is our single last property that we have for our people. Water is life. Mni Wiconi... We will do whatever we have to do to stop this pipeline [the Dakota Access Pipeline] ... North Dakota? Miye, ma Dakota. I am Dakota. Dakota means 'friend' and 'ally.' This is Dakota Territory. This is treaty territory. This is where you agreed not to come into my territory. We signed the treaty of peace that you would not come here... We will put our best warriors in the front. We are the vanguard. We are Hunkpapa Lakota. That means the horn of the buffalo. That's who we are. We are protectors of our nation of Oceti Sakowin, the Seven Council Fires. Know who we are. We will put forward our young people, our young lawyers who understand the weasel words of the English language, who know one word can mean seven things. We understand the forked tongue that our grandfathers talked about. We know about talking out both sides of your mouth, smiling with one side of your face. We know all about the tricks of the wasicu [the fat-taker, the capitalist] world. Our young people have mastered it. I have mastered your language. I can speak eloquently in the English language. My grandmother taught me. But I also know the genetic psyche, and I also have the collective memory of the damages that have occurred to my people. I will never submit to any pipeline to go through my homeland. Mitakuye Oyasin.

— Phyllis Young (Dakota), “Sept 30th DAPL Meeting with SRST,” 2014<sup>1</sup>

This story has a beginning but no end. Phyllis Young, a Hunkpapa elder, long-time member of the American Indian Movement, and Standing Rock Sioux Tribe Councilwoman, spoke the above words at a September 30, 2014 Standing Rock Sioux Tribe council meeting with representatives of the Dakota Access Pipeline (DAPL). It was a full year before the pipeline permitting process began. She moved skillfully from the long histories of treaty-making, trespass, and the ongoing betrayal of the Oceti Sakowin. Young, other Standing Rock citizens, and elected leadership made their case clear: DAPL shall not pass: not without Standing Rock's consent, and especially not without the consent of the nations of the Oceti Sakowin, the Lakota, Nakota, and Dakota people.

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<sup>1</sup> Quote from “Sept 30th DAPL Meeting with SRST,” filmed September 2014, YouTube video, 1:08:17, posted by “Standing Rock Sioux Tribe, December 6, 2016, <https://www.youtube.com/watch?v=GifNVgsX77s>.



Indigenous peoples claim the river. More importantly, the river claims them. The Oceti Sakowin call DAPL Zuzeca Sapa, the Black Snake, which came from a prophecy that a monstrous Black Snake would extend across the land threatening all life bringing difficult times that would ultimately unite Indigenous nations. Some of those who came to halt its construction called themselves Black Snake Killaz.

The pipeline trespasses through unceded treaty lands and sacred sites, such as burial grounds, and threatens Indigenous water rights. Like many, Phillis Young also recognized the profound cruelty in appropriating the name of her nation, Dakota, for a pipeline, Dakota Access, that imperils the existence of the very people it takes its name from. A rupture from the Dakota Access could contaminate the clean drinking water of the Dakota nation with heavy crude oil. The pipeline crosses the Missouri River just under a mile north of the Standing Rock Sioux Indian Reservation boundary and within treaty territory.

DAPL representatives seemed unmoved, or possibly annoyed that they had met such strident opposition. Before DAPL representatives were allowed to make their case, Standing Rock Chairman Dave Archambault II calmly reminded them, “Before you get started on the project, we want you to know and understand, we recognize our treaty boundaries [of the] Fort Laramie Treaty of 1851 and 1868... Because of that, we oppose a pipeline. We have a standing resolution that was passed in 2012 that opposes any pipeline within that treaty boundary.”<sup>2</sup> Billionaire CEO Kelcy Warren of Energy Transfer Partners, the owners of DAPL, would later deny this “discussion,” or any “discussion” with Standing Rock, ever took place. Two years after this first consultation with Standing

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<sup>2</sup> Ibid.

Rock, Warren told *The Wallstreet Journal*, “I really wish for the Standing Rock Sioux that they had engaged in discussions way before they did. I don’t think we would have been having this discussion if they did... We could have changed the route. It could have been done, but it’s too late.”<sup>3</sup> Indigenous sovereignty, treaties, and the invariable threat the pipeline posed to the river, a fresh water source for millions not just Indigenous peoples, mattered little to them. Underneath DAPL’s feigned ambivalence about consent simmered outright contempt that would explode into horrific violence. What stood before them were not the last vestiges of a dying race. What stood before them was a nation that had survived genocide, a nation that was valiantly rejecting the second coming of a failed genocide — the ongoing planetary holocaust we call climate change.

Today these words sound like prophecy: “We are protectors of our nation of Oceti Sakowin, the Seven Council Fires. *Know who we are.*” It was a bold refusal to die. Less than two years later a Native-led movement was born under the rallying cry Mni Wiconi — water is life!

History would be made. The Oceti Sakowin would unite to spearhead an historic struggle that drew support from around the world. The struggle at Standing Rock spread across North America and was different from previous movements in important ways. It became about more than Standing Rock, a pipeline, or climate justice. This new movement made critical links between protecting Indigenous peoples and their treaty rights to the protection of the earth and nonhuman relations, such as water. While these concerns may be “new” to some, for Indigenous peoples they are “old” wars that draw

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<sup>3</sup> Quoted in Kris Maher, “Dakota Pipeline’s Builder Says Obstacles Will Disappear Under Donald Trump,” *The Wall Street Journal*, November 16, 2016, <https://www.wsj.com/articles/dakota-pipelines-builder-says-obstacles-will-disappear-under-donald-trump-1479327104>.

deep from traditions of Indigenous resistance. The struggle popularized by the hashtag #NoDAPL was a continuation of the nineteenth century Indian wars. In the same manner, it was a war of self-defense and a people fighting for their lives. From the first defensive battles against the invaders to present-day fights against oil pipelines, the Oceti Sakowin have dreamed of peace and freedom. Above all, they have fought and died to live the dignified life in the lands of their ancestors, a life continually denied to them. This was not a return to a pre-colonial past, however real or imagined, or a parochial struggle. Instead, liberation — for human and nonhuman relations such as the land and water — has been a future-oriented project drawing from histories of resistance and the stubborn refusal to just go away.<sup>4</sup>

On April 1, 2016, as pipeline construction began, Sacred Stone erected the first camp. In the summer of 2016, tens of thousands answered the call and set up camp at the confluence of the Cannon Ball and Missouri rivers on Oceti Sakowin treaty lands now claimed by the US Army Corps of Engineer. Founded by Ihanktonwan and Hunkpapa Standing Rock historian LaDonna Bravebull Allard, Sacred Stone took its name from the Lakota name for the Cannon Ball area, Inyan Wakangapi Oti.<sup>5</sup> The names “Cannon Ball” and “Sacred Stone” describe the spherical stones that were once carved by whirlpools at the confluence of the two rivers. In the 1950s and 1960s, the Corps constructed a series of massive earthen-rolled dams on the main stem of the Missouri River flooding Native lands and forcefully relocating more than a thousand Native families. Bravebull Allard reflects on the history of the water,

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<sup>4</sup> See Kyle Whyte, “Indigenous Climate Studies: Indigenizing Futures, Decolonizing the Anthropocene,” *English Language Notes* 55 no. 1-2 (Fall 2017): 153-62.

<sup>5</sup> “Sacred Stone Camp: About,” *Sacred Stone Camp*, <http://sacredstonecamp.org/about/>.

The [Cannonball] river's true name is Inyan Wakangapi Wakpa, River that Makes the Sacred Stones, and we have named the site of our resistance on my family's land the Sacred Stone Camp. The stones are not created anymore, ever since the U.S. Army Corps of Engineers dredged the mouth of the Cannonball River and flooded the area in the late 1950s as they finished the Oahe dam. They killed a portion of our sacred river. I was a young girl when the floods came and desecrated our burial sites and Sundance grounds. Our people are in that water. This river holds the story of my entire life.<sup>6</sup>

The history of Sacred Stone evokes the essence of the struggle. It was here that water shaped earth, and here that the earth and water were used by state institutions to shape history. Land and water are not only about narrating the past of what *was* or what continues *to be*. Land and water are also about what *should be* — a viable future. When land and water are taken or destroyed, the past is lost with them and so too is the possibility of a livable future. To enact violence against the land and water is to also enact violence against those who depend on it for life — namely, all of us.

Like most Indigenous movements, Indigenous women and youth were the core organizers and leaders.<sup>7</sup> From Sacred Stone, Native youth organizers Jasilyn Charger (Cheyenne River Sioux), Bobbi Jean Three Legs (Standing Rock Sioux), Joseph White Eyes (Cheyenne River Sioux), and many more led relay runs across country and to various reservations to raise awareness about DAPL and to stir Native nations to action. The longest run was a grueling 2,000-mile relay from North Dakota to Washington, D.C.<sup>8</sup>

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<sup>6</sup> Ladonna Bravebull Allard, "Why the Founder of Standing Rock Sioux Camp Can't Forget the Whitestone Massacre," *Yes! Magazine*, September 3, 2016, <http://www.yesmagazine.org/people-power/why-the-founder-of-standing-rock-sioux-camp-cant-forget-the-whitestone-massacre-20160903>.

<sup>7</sup> See Kim Tallbear, "Badass (Indigenous) Women Caretake Relations: #NoDAPL, #IdleNoMore, #BlackLivesMatter," Hot Spots, *Cultural Anthropology* website, December 22, 2016, <https://culanth.org/fieldsights/1019-badass-indigenous-women-caretake-relations-nodapl-idlenomore-blacklivesmatter>; Jaskiran Dhillon, "Indigenous Youth are Building a Climate Justice Movement by Targeting Colonialism," *Truthout*, June 20, 2016, <http://www.truth-out.org/news/item/36482-indigenous-youth-are-building-a-climate-justice-movement-by-targeting-colonialism>.

<sup>8</sup> Jaskiran Dhillon, "'This Fight Has Become My Life and It's Not Over': An Interview with Zaysha Grinnell," Hot Spots, *Cultural Anthropology* website, December 22, 2016, <https://culanth.org/fieldsights/1017-this-fight-has-become-my-life-and-it-s-not-over-an-interview-with-zaysha-grinnell>; Tara Houska, "Native American Youth to Obama: 'Rezpect' Our Water," *Indian Country*

Standing Rock youth leader Tokata Iron Eyes explained the role that youth and women fill, “even if the men aren’t fighting for us and our land, then we as young women have an obligation to fight for ourselves and our people.”<sup>9</sup>

More than 300 Native nations responded to the youth’s media and publicity campaign, and planted their flags in solidarity at Oceti Sakowin Camp, the largest of several camps that also included Sacred Stone Camp, the International Indigenous Youth Council, Red Warrior Camp, Two-Spirit Camp, and various allied Indigenous and non-Indigenous camps. The gathering was one of the largest gatherings of Indigenous nations and allied movements in history. At its peak, the camps swelled with solidarity from all corners of the globe. A steady stream of cars and delegations, delivering supplies and campers, trickled in day and night. Walking from one end of camp to the other, one could hear different Indigenous languages spoken; a rainbow tapestry of banners, flags, and screen-print signs showed the diversity of the campers and the communities and movements they represented; honor songs were sung; stories were shared; delegations from around the world arrived bearing gifts; new relations were made; warm embraces and tears of joy were shed; meals were cooked; food was shared; families were re-united; lives were forever changed; and, most importantly, Indigenous life was being remade. The movement, widely dubbed with the hashtag #NoDAPL, was the catalyst for the resurgence of a twenty-first Indigenous resistance movement.

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*Today*, August 11, 2016, <https://indiancountrymedianetwork.com/news/native-news/native-american-youth-to-obama-rezpect-our-water/>.

<sup>9</sup> Quoted in Jaskiran Dhillon, “Indigenous Youth are Building a Climate Justice Movement by Targeting Colonialism,” *Truthout*, June 20, 2016, <http://www.truth-out.org/op-ed/item/36482-indigenous-youth-are-building-a-climate-justice-movement-by-targeting-colonialism>.

Added to the mix, an intensification of military and police surveillance and mobilization attempted to divide, expel, and ultimately crush the Indigenous-led uprising. Rampant police brutality and harassment, constant surveillance, the arrest of more than 800, the forceful evictions from the land by federal, state, and tribal officials, and the desecration of Indigenous bodies, lands, and cultural patrimony soon defined the militarized response. Yet, in stark contrast to what looked and felt like a warzone with 24-hour floodlights, concrete barricades, and miles of concertina wire, dreams of freedom seemed more real and more possible here than anywhere else and now more so than just a year before. Political possibility abounds in times of war. Whereas one side waged a punitive and acquisitive war to shore up access to Indigenous lands, the other waged a nonviolent war of protection and defense. This is also a war story. #NoDAPL was larger than Standing Rock.

They called themselves Water Protectors, a name that departed from the conventional label of “protester” and spoke to values the new movement put forward. The act of protest means to be *against* something — for example, to be against a pipeline. This was different. Although they opposed DAPL, Water Protectors also stood *for* something — the continuation of life on a planet so thoroughly ravaged by industrial civilization and capitalism. They also vowed to protect the 1851 and 1868 Fort Laramie Treaties, agreements signed between the Oceti Sakowin and the US. The land chosen for the larger Oceti Sakowin camp was, after all, unceded treaty territory — and so, too, were the waters and the rivers protected by those treaties. Such are the stakes for the Lakota and Dakota philosophy, Mitakuye Oyasin, all my relations or we are all related. This isn’t the anthropocentric (or solely a human) *we*, but a *we* that centers maintaining correct and

balanced relationships with the nonhuman world that the human *we* depends on for life. The rallying cry of Mni Wiconi is an affirmation that water is life, or, more accurately, *water is alive*. Hunkpapa historian Josephine Waggoner offers a possible linguistic origin of Mni and Wiconi. She writes,

*wičhóni*, means life. In analyzing the word *mni* (water), *mi* being I and *ni* being life, the two syllables put together means — ‘I live.’ That is what *mni* or water is called. The word and its origin — *wi*, the sun, *čho*, the germ or center, *ni* is life, the understanding of this would be that the sun centered on a germ and gave life to it, so *wi čhó ni* the word came... This word, *wi čhó ni*, is the best explanation or description of the origin of life.<sup>10</sup>

For the Oceti Sakowin, Mni Sose, the Missouri River, is a relative. She is of the Mni Oyate, the Water Nation. She, too, is alive. Nothing owns her. She cannot be sold or alienated like a piece of property. How do you sell a relative? To enact kinship to both the human and nonhuman relations is called Wotakuye, to be a good relative.<sup>11</sup> This requires protecting a relative, Mni Sose, the Mni Oyate, from DAPL’s inevitable contamination. For the Oceti Sakowin, it’s not *if* the pipeline breaks, but *when* it breaks. Time and place are important. Protecting kinship relations secures a future life on the land, for, as many say, the seven generations to come. The death of the water also means death for the Oceti Sakowin and nonhuman relations. This is not an esoteric tradition that plumbs the depths of an ossified, sage-like cultural knowledge. It is an active fight to live, a powerful declaration that Indigenous peoples have the right to defend themselves and their relatives against existential threats such as oil pipelines and the state institutions that protect them. In this way, Water Protectors connect the defense of the earth and

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<sup>10</sup> Italics in original. Josephine Waggoner, *Witness: A Hunkpapa Historian’s Strong-Heart Song of the Lakotas*, edited by Emily Levine (Lincoln: University of Nebraska Press, 2013), 57.

<sup>11</sup> Jaskiran Dhillon and Nick Estes, “Introduction: Standing Rock, #NoDAPL, and Mni Wiconi,” Hot Spots, *Cultural Anthropology* website, December 22, 2016, <https://culanth.org/fieldsights/1007-introduction-standing-rock-nodapl-and-mni-wiconi>.

nonhuman relations (such as water) to the defense of Indigenous peoples and treaty rights.

Spirits were high in the face of the impending backlash that was to follow. In the course of several months, battles raged. One side was armed with spirit. The other side was armed with the full weight of the police state. In the early days, the police met nonviolent actions led by Wocekiye, *honoring relations*, and ceremony with disinterest or disdain. Lakota linguist and scholar Albert White Hat, Sr. notes that Wocekiye was purposely mistranslated to “praying” by Christian missionaries to describe “bowing and kneeling to a supreme power, which is much different from the original meaning of acknowledging or meeting a relative.” There was no equivalent to “praying” in the Lakota language, although the word has taken on that meaning because of Christian influence. Wocekiye, White Hat continues, “means [to] acknowledge or embrace a relative with honor and respect.”<sup>12</sup> What was seen as prayer during the pipeline actions may have indeed prayer, but it was also acknowledgment and honoring of human and nonhuman relations. In this way, Water Protectors attempted to speak to officers’ humanity, shaking hands with them, reminding them they were there to protect the water the officers drank, too, and asking them why they were there in the first place. As the struggle intensified, acts of humanity were met with brutal repression. Police and military shattered any vision of a shared, common humanity, if it had existed in the first place. In the end, it was the military and the police who ultimately denied the humanity of the Water Protectors, who were shot in the face with rubber bullets and bean bag rounds, sprayed with chemical weapons such as CS gas and teargas, and sprayed with water

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<sup>12</sup> Albert White Hat, Sr., *Life’s Journey – Zuya: Oral Teachings from Rosebud*, edited by John Cunningham (Salt Lake City: The University of Utah Press, 2012), 44.



cannons in below freezing temperatures. Police took some Water Protectors' body parts, flesh, and eyesight.

#NoDAPL evolved into something more than an effort to stop a pipeline. An emancipatory Indigenous uprising long in the making was met with pure violence as it had been in previous generations. Put simply, Standing Rock, the Oceti Sakowin, and the millions who depended on the Missouri River would be forced by gunpoint to accept the fatal consequences of a 1,172-mile long, \$3.8 billion pipeline that would transport half a million barrels of heavy crude oil a day under across four states and the Missouri River twice and under Mississippi River once. What began as a local struggle of ordinary Native people to protect their water and land is part of a global movement of frontline Indigenous communities fighting against the fossil fuel industry and the highly militarized police state protecting its profits.<sup>13</sup>

While Water Protectors vowed to stop DAPL, often with frequent marches, rallies, or high-risk, non-violent direct actions such as putting bodies between earthmovers and the earth, they also expressed something deeper. Perhaps it could not be called *just* another protest movement. The contamination of fundamental elements for life make vulnerable those already most precarious — the original caretakers of the land. This place-based struggle stood for stopping the pipeline, and, therefore, it also stood for stopping climate change and the continued sacrifice of Indigenous lands and communities

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<sup>13</sup> Although widely used in movement circles, I borrow the notion of “frontline communities” made vulnerable by catastrophic climate change and the extractivist industry from Naomi Klein, *This Changes Everything: Capitalism vs. The Climate* (New York: Simon & Schuster, 2014).

who continue to bear the major brunt of state and private economic development projects.<sup>14</sup>

#NoDAPL was not the brainchild of big green NGOs. It did not arise from the large UN summits or the closed-door policy meetings that typically characterize mainstream Indigenous and environmental organizing. Like its people, it grew from the earth and was a direct response to the specific material conditions confronting Indigenous life. It sprang into action in an isolated rural environment with minimal resources. It took to the streets in major cities and the dirt backroads of rural geographies. It was alive, sometimes (frustratingly) unpredictable, and in constant motion. In times of intense struggle and crisis, the sharp contradictions between the haves and have-nots bring into clearer focus the values of society and competing visions for justice. The camps also could be considered part of what Naomi Klein terms “Blockadia,” which is not a place, but “a roving transnational conflict zone that is cropping up with increased frequency and intensity wherever projects are attempting to dig and drill, whether for open-pit mines, or gas fracking, or tar sands pipelines.”<sup>15</sup>

In our current epoch of irreversible, catastrophic climate change, it should come as no surprise affirmative slogans such as Mni Wiconi and “water is life” mobilize Indigenous communities to action. DAPL is one part of a complex global supply chain of carbon extraction, consumption, and emission, the principal causes of global warming accelerating the earth’s sixth mass extinction event. This is — *without a doubt* — a human-driven extinction and, more specifically, a system-driven extinction. Global

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<sup>14</sup> For contemporary examples on Indigenous resistance to resource extraction, see Katie Mazer, *Mapping a Many Headed Hydra: The Struggle Over the Dakota Access Pipeline*, Infrastructure Otherwise Report no. 1, October 2017, [http://www.infrastructureotherwise.org/DAPL\\_Report\\_20170921\\_FINAL.pdf](http://www.infrastructureotherwise.org/DAPL_Report_20170921_FINAL.pdf).

<sup>15</sup> *Ibid.*, *Everything*, 294-5.

warming cannot be uncoupled from the continuing legacies of colonialism, imperialism, and capitalism that invariably target Indigenous peoples and their lands. Across the globe, Indigenous peoples number around 370 million, about five percent of the world's population; they compose fifteen percent of the world's poor and one-third of the world's 900 million extremely poor rural people; and they live in some of the world's most resource rich areas and are often subject to corporate and state-led development projects that disproportionately affect their lands, waters, and lives.<sup>16</sup>

The state of Indigenous peoples in the US is different in important ways but nonetheless reflects global processes. Although less than one percent of the US population, Natives are subject to the most extreme forms of state repression that includes poverty, unemployment and underemployment, houselessness, lack of educational opportunities, and lack of access to quality healthcare. In the US, twenty-three percent of Native families live below the poverty line compared to the national average of fifteen percent. Poverty rates vary by location and are often higher in rural locations and smaller cities. In South Dakota, nearly half of Natives families live below the poverty line. In North Dakota, about forty percent live below the poverty line. According to the Bureau of Indian Affairs, more than fifty percent of Natives living in or near federally recognized tribal reservations are unemployed in the states of Alaska, Arizona, California, Maine, Minnesota, Montana, New Mexico, North Dakota, South Dakota and Utah.<sup>17</sup>

Despite popular belief, most Natives in the US don't live in Indian reservations. According to census numbers, nearly four of every five Natives in the US live off-

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<sup>16</sup> See *State of the World's Indigenous Peoples*, 21, [http://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP\\_web.pdf](http://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP_web.pdf).

<sup>17</sup> US Department of the Interior, Office of the Secretary, Office of the Assistant Secretary – Indian Affairs, *2013 American Indian Population and Labor Force Report*, issued January 16, 2014, 10-1.

reservation.<sup>18</sup> The increased migration off-reservation is due to a number of social, political, and economic factors including lack of employment opportunities on-reservation, displacement for state and corporate development projects, removal, termination, and relocation policies, diminishment of reservation land bases, internal social violence, etc. Leaving the reservation, however, provides little relief and security. In contrast to the dominant thinking that Natives live in rural, isolated pockets of poverty and violence, Natives off-reservation, too, face rampant poverty and state violence. For example, in Rapid City, South Dakota — a city located in the cosmological and political center of the Lakota universe, He Sapa, or the Black Hills — Natives (mostly Lakotas) are twelve percent of the urban population. Yet, more than half of the Native population lives below the poverty line at a rate higher than most reservations.<sup>19</sup> Three-fourths of the city's homeless are Native. Natives also make up half the city's jail population and are five times more likely to get arrested and receive traffic citations.<sup>20</sup> These statistics reveal a general pattern of police violence against Natives in the US. According to the *Guardian's* "The Counted," an online database of police killings, 2016 was a deadly year for Natives. Police killed 24 Natives, higher than the previous year and at a rate higher than any group. Almost all the killings were at the hands of non-reservation law

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<sup>18</sup> US Census Bureau, Department of Commerce, *The American Indian and Alaskan Native Population, 2010*, by Tina Norris, Paula L. Vines, and Elizabeth M. Hoeffel, issued January 2012.

<sup>19</sup> US Census Bureau, Department of Commerce, *Poverty Rates for Selected Detailed Race and Hispanic Groups by State and Place: 2007-2011*, by Suzanne Macartney and Kayla Fontenot, issued February 2013.

<sup>20</sup> Pennington County Sheriff's Office, *Annual Report, 2012*, issued 2013; Nick Estes, "Off the Reservation: Lakota Life and Death in Rapid City, South Dakota," *The Funambulist Magazine* No. 5, May-June 2016, <https://thefunambulist.net/history/off-the-reservation-lakota-life-and-death-in-rapid-city-south-dakota-by-nick-estes>; Nick Estes, "Racist City, SD: Life is Violent, and Often Deadly in Rapid City," *Indian Country Today*, September 5, 2014, <https://indiancountrymedianetwork.com/news/politics/racist-city-sd-life-is-violent-and-often-deadly-in-rapid-city/>.

enforcement.<sup>21</sup> Police are the instrument to manage the political, social, and economic crisis that is Indigenous life, especially off-reservation. In this sense, the intense police violence against the #NoDAPL movement at Standing Rock was not aberration, since most if not all arrests of Water Protectors protesting the pipeline were at the hands of non-Native, off-reservation law enforcement agencies.

It was not by accident that the #NoDAPL movement arose during the administration of the US's first Black President, Barack Obama. Promising sweeping Indian policy reforms and renewed "nation-to-nation" relationships, Indigenous communities, like many marginalized communities, overwhelmingly supported the Obama administration. His pledged commitments to Indian Country culminated in his 2014 visit to community of Cannon Ball in the Standing Rock reservation, ground-zero for the #NoDAPL struggle. Only eight sitting presidents have ever visited Indian Country, the last was Bill Clinton. Giving the opening remarks at Cannon Ball's annual Flag Day Powwow, Obama played off the often quoted speech from Hunkpapa Chief and medicine man Tatanka Iyotake, Sitting Bull, who said to US officials during the reservation period, "Let's put our minds together to see what we build for our children." "Let's put our minds together to build more economic opportunity in Indian Country... Let's put our minds together to advance justice — because like every American, you deserve to be safe in your communities and treated equally under the law," Obama told a crowd of thousands of cheering Lakotas and Dakotas. Sioux County, North Dakota, where Cannon Ball is located, is eighty-five percent Native and consistently ranks among

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<sup>21</sup> "The Counted: People Killed by the Police in the US," *The Guardian*, <https://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database#>.

the poorest counties in the US. In 2007 and 2011, Sioux County residents voted for the first Black President in the eightieth percentile. Yet, Native communities, especially Lakota and Dakota nations in South Dakota and North Dakota, faced some of the most challenging years during the Obama administration.

Obama's rhetoric of inclusion, economic opportunities, and renewed commitments to Native communities must be placed in the context of the Great Recession. In 2008, President George W. Bush signed into law the Troubled Assets Relief Program (TARP), which bailed out the big Wall Street banks responsible for the mortgage crisis that crashed the global economy. In 2015, *Forbes* debunked the common conception of a \$700 billion TARP bailout estimating instead a total federal commitment in the coming years of \$16.8 trillion with \$4.6 trillion already paid out.<sup>22</sup> Many of the banks bankrolling DAPL initially received tens of billions of dollars in TARP money, major banks such as Citigroup (\$45 billion), Bank of America (\$45 billion), Wells Fargo (\$25 billion), JPMorgan Chase (\$25 billion), Goldman Sachs (\$10 billion), and Morgan Stanley (\$10 billion). In comparison, Obama committed a meager \$831 billion for economic recovery in the areas of infrastructure, education, health, and renewable energy. This relief program included even smaller funding allocations for already underfunded Native services such as health, education, and general welfare guaranteed under federal trust responsibilities to Native communities as part of treaty obligations and agreements. Obama's 2010 "new energy security plan" incentivized and dramatically increased domestic oil and gas production, opening up previously protected federal lands managed under the Department of Interior (the departmental home of the Bureau of

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<sup>22</sup> Mike Collins, "The Big Bank Bailout," *Forbes*, July 14, 2015, <https://www.forbes.com/sites/mikecollins/2015/07/14/the-big-bank-bailout/#595ce7ad2d83>.

Indian Affairs) for oil and gas exploration and hydraulic fracturing, also known as fracking. While Alaskan Arctic Native communities' faced displacement due to rising sea levels and the softening of permafrost caused by warming temperatures, Obama expanded Arctic offshore oil and gas exploration that was only possible because of permanently retreating polar ice caps. Since 2008, domestic oil production has increased by 70 percent.

The rapid increase of oil pipelines has kept pace of domestic oil production, often imperiling Indigenous and other frontline communities. Since 2010, the equivalent of ten Keystone XL (KXL) size pipelines have been built. Although Obama denied the permit for Phase 4 of KXL, which would have trespassed through Oceti Sakowin treaty territory, he approved the first three phases of the pipeline in accordance with his domestic energy policy. The crude oil for DAPL is fracked in the oil-rich Bakken region in western North Dakota. Since 2008, Bakken oil production has sharply increased, peaking in 2012 and since then steadily plateauing.

The domestic energy boom received tremendous support under the Obama administration and was part of the overall national economic recovery plan. Many viewed Obama's opposition to Phase 4 of the KXL as a recommitment to uphold Indigenous sovereignty. Yet, his administration's decision to deny its permit had less to do with Indigenous sovereignty and more to do with the fact that this leg of KXL transported Canadian-produced oil. Therefore, it fell outside the domestic energy production plan. In contrast, DAPL would only transport domestically-produced oil. Despite massive opposition, Obama refused to oppose its construction. DAPL is part of massive carbon energy infrastructure built to drill the US out of Great Recession, with or without

Indigenous consent. While the US bailed out the banks and created the policy necessary to fast-track oil production, it flatly ignored Indigenous concerns and the quality of Indigenous life hardly improved. Obama’s grandiose “nation-to-nation” rhetoric, placement of key Native leaders in his administration, and regular consultation with Indigenous nations over policy decisions could not halt DAPL or save the water. It was simply too much of a radical departure from business as usual. The sacrifice of Indigenous lands, waters, and lives have always been the salvation for the soul of a settler nation.

The #NoDAPL camps, and the everyday people they represented, aspired for a more genuine form of governance, autonomy, and self-determination. Most understood that protecting the elements most critical for bare survival — such as healthy water, air, and land — also requires the protection and regeneration of a genuinely democratic Indigenous political authority built from the ground-up. Disrupting business as usual entails identifying and studying the systems dispossessing and destroying the land and immiserating its people. Capitalist development and colonial state-making go hand in hand, largely at the expense of Indigenous peoples and the earth. At the heart of the conflict is an interpretation of history and politics. It is impossible to fully appreciate #NoDAPL, its stakes and deeper meanings, without first properly understanding US history. To paraphrase historian Roxanne Dunbar-Ortiz, sympathetic explanations often refer to anti-Indigenous US policies, laws, and actions and the corporate plunder as “racist” or “discriminatory.” Seldom are they described precisely for what they are: imperialism, settler colonialism, and genocide.<sup>23</sup> Racism, genocide, imperialism, and

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<sup>23</sup> Roxanne Dunbar-Ortiz, *An Indigenous Peoples History of the United States* (Boston: Beacon, 2014), 1-2.



settler colonialism, however, are not mutually exclusive. White supremacy is the foundational US ideology. Combined with capitalist development and US state formation, white supremacy was the impetus not only for Indigenous dispossession and genocide but also for Black slavery and global imperialism.

Recognizing settler colonialism offers only a diagnosis of the disease and not its cure. The argument put forward in this dissertation contends that to properly understand #NoDAPL and the practice of Mni Wiconi we must first place the movement in historical context. Traditions of Indigenous resistance must inform how we study history and, in turn, practice politics. Modern Indigenous nations, such as the Oceti Sakowin, are shaped by their resistance to settler colonialism. Modern practices of settler colonialism are, too, shaped by Indigenous resistance. As a result, Indigenous nations carry with them their own knowledges and histories about the land and their relationship with the occupying power that calls itself the United States.

## **The Land**

There are no two sides to the history of the United States and its relationship to people who have lived here for thousands of years. There are no two sides to that story. You have no right to displace people, to steal their resources, and steal their lives... What America has done is criminal. And they're still doing it.

— Elizabeth Cook-Lynn (Dakota), “There Are No Two Sides to This Story,” 2016<sup>24</sup>

Why do Indigenous peoples resist, refuse, and contest US rule? The simple answer is: it's about the land. In US history land is everything. From the perspective of the land, we can think of change occurring not only in terms of the passage of time but

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<sup>24</sup> Quote from Elizabeth Cook-Lynn, “‘There Are No Two Sides to This Story’: An Interview with Elizabeth Cook-Lynn,” interview by Nick Estes, *Wicazo Sa Review* 31(1) (2016): 40.

also as a spatial process. The history of the US is fundamentally driven by territorial expansion, the elimination of Indigenous peoples, and white settlement. From its original 1784 boundaries of the original thirteen colonies, the US rapidly expanded westward from the Atlantic seaboard to the Pacific coast, annexing nearly two billion acres of Indigenous territory in less than a century. The majority of lands acquired were west of the Mississippi River. This was not a benign process. Countless Indigenous societies were decimated, destroyed, and radically transformed. When the first Europeans and Euro-Americans “discovered” and “settled,” they found no “empty spaces.” During their voyages west and up the Missouri River in the early 1800s, for instance, US explorers Meriwether Lewis and William Clark encountered dozens of Indigenous nations and the remnants of French, English, and Spanish colonies. In other words, they entered lands fully inhabited by people.

Despite this historical fact, *terra nullius*, a land without people, was applied wholesale to Indigenous lands, and the rights of European discovery were codified in federal law. In the 1823 Supreme Court decision *Johnson v. M’Intosh*, Chief Justice John Marshall spelled out the US’s rights to Indigenous lands citing the “Doctrine of Discovery.” According to this ruling, Indigenous peoples subject to US law only possessed “occupancy” rights, meaning their lands could be alienated or taken by a discovering European power. The US derived its discovery rights from prior European colonizers, such as the French, English, and Spanish. Marshall’s interpretation derived from a fifteenth century Papal Bull known as the “Doctrine of Christian Discovery” that divided the planet according to Christian and non-Christian nations. Non-Christians possessed little or no legal, political character and were regarded as little more than

“savage” peoples awaiting the gift of European civilization. According to Lenape scholar Steven Newcomb, the US interpreted the Doctrine as describing Indigenous peoples as “politically non-existent, partially or entirely.”<sup>25</sup> Therefore, Indigenous title to the land could not be extinguished where it did not exist. Commenting on the *Johnson* decision, Onondaga international jurist Tonya Gonnella Frichner observes, “The newly formed United States needed to manufacture an American Indian political identity and concept of Indian land that would open the way for the United States in its westward colonial expansion.”<sup>26</sup> Such is the legacy of *terra nullius*, the self-fulfilling prophecy or anticipatory geography that these lands were destined to become the US, a founding myth that became known as Manifest Destiny. But the US did not manifest itself atop lands empty of people and without a history. And it did not come into existence unchallenged.

From its inception, the US enacted policy that justified genocidal wars against Indigenous peoples and criminalized their resistance. Although genocidal violence against Indigenous peoples in the Americas occurred long before the creation of the US, historian Jeffrey Ostler identifies the 1787 Northwest Ordinance as a seemingly “unlikely” but nevertheless “foundational location for genocide in US Indian Policy.”<sup>27</sup> First enacted by the Continental Congress at New York and later reaffirmed in 1789 by the first session of the US Congress, the ordinance is commonly understood as creating the first organized territory north of the Ohio River and in the Great Lakes Region and

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<sup>25</sup> Steven Newcomb, *Pagans in the Promised Land: Decoding the Doctrine of Christian Discovery* (Golden, CO: Fulcrum, 2008), 104.

<sup>26</sup> Tonya Gonnella Frichner, *Preliminary Study on the Impact on Indigenous Peoples of the International Legal Construct Known as the Doctrine of Discovery*, United Nations Economic and Social Council, Permanent Forum on Indigenous Issues, New York, 9<sup>th</sup> Sess., April 19-30, 2010, E/C.19/2010/13, 11.

<sup>27</sup> Jeffrey Ostler, “‘Just and Lawful War’ as Genocidal War in the (United States) Northwest Ordinance and Northwest Territory, 1787-1832,” *Journal of Genocide Research* (2016) 18:1: 3.

opening up the area for settlement. The British Crown previously set aside the region as the Province of Quebec following the conclusion of the French and Indian War. The 1763 Royal Proclamation further forbade Anglo-American settlement west of the Appalachian Mountains. The Northwest Ordinance's provisions created territories that became the states of Ohio, Indiana, Illinois, Michigan, and Wisconsin, granting them "equal footing" with existing states.

Largely ignored, however, is Article 3 of the ordinance, which laid the foundation of US policy towards Indigenous peoples. It reads:

The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, *they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress*; but laws founded in justice and humanity, shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

Essential is the relationship between the declarations of "the utmost good faith" and "just and lawful wars." This was not an abstract idea confined to a specific geography or time, but became a foundational, concrete practice of US Indian policy and westward expansion, revealing the fledgling republic's true motives. US Indian wars were often waged with genocidal intent to facilitate indiscriminate slaughter of Indigenous combatants and noncombatants (such as elders, women, and children) when treaty negotiations broke down and land cessions could not be achieved by "peaceful" means. Wars of extermination often did not achieve their full purpose because of successful Indigenous resistance; and when they did accomplish massacre, it was not an anomaly. As Ostler observes, the Northwest Ordinance "did not call for genocide in the first instance," preferring Indigenous peoples submit to US authority and cede their lands. "Should Indians reject this display of 'utmost good faith', however, US policy legalized

genocidal war against them.”<sup>28</sup> Put simply, the US made criminal and waged war upon those who refused to sell or cede their lands. Labeling Indigenous resistance “criminal” allowed the US to ignore its own criminal behavior. Such is the paradigm of US Indian policy: acquiesce to US rule or suffer the brutal consequences.<sup>29</sup>

Buttressing genocidal violence, or the constant threat of it, was also the specific targeting of Indigenous women’s political authority. US colonization of the Oceti Sakowin best illustrates this process. First came armed white men with flags. On their journey up the Upper Missouri, Lewis and Clark spoke only to Indigenous men to establish diplomatic relations and US supremacy over the fur trade. By this time, the fur trade had enveloped Northern Plains life. The selling and trading of hides at European or US forts along the Missouri River was a completely male-dominated enterprise, undermining Indigenous systems of trading, exchange, and sharing material wealth that emphasized kinship relations rather than a market economy and private ownership. The fur trade was a highly-privatized business privileging men as trappers, hunters, owners, and traders.<sup>30</sup> This should be no surprise, since European and Euro-American explorers and traders came from societies where women held little to no economic or political

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<sup>28</sup> Ibid., 1.

<sup>29</sup> For a further discussion on Indigenous genocide, see Dunbar-Ortiz, *An Indigenous Peoples’ History*, 8-10; Jeffrey Ostler, “Genocide and American Indian History,” *American History: Oxford Research Journals*, March 2015, <http://americanhistory.oxfordre.com/view/10.1093/acrefore/9780199329175.001.0001/acrefore-9780199329175-e-3>; Waziyatawin, *What Does Justice Look Like?: The Struggle for Liberation in Dakota Homeland* (St. Paul: Living Justice Press, 2008), 37-62.

<sup>30</sup> Although the fur trade encompassed Indigenous life, it did not go unchallenged by both Indigenous men and women. For an explanation of the hide trade’s impact on Indigenous gender roles on the Northern Plains, see Alan Klein, “The Political-Economy of Gender: A 19th Century Plains Indian Case Study,” in *The Hidden Half: Studies of Plains Indian Women*, ed. Patricia Albers and Beatrice Medicine (Lanham: University Press of America, 1983), 143-73. For an explanation on the Indigenous women’s changing roles under capitalist modes of production, see Patricia Albers, “Sioux Women in Transition: A Study of Their Changing Status in Domestic and Capitalist Sectors of Production,” in *The Hidden Half: Studies of Plains Indian Women*, ed. Patricia Albers and Beatrice Medicine (Lanham: University Press of America, 1983), 175-234.

authority and were treated (much like their children) as little more than domestic servants.

Second came treaties. Treaty-making became an externally imposed means to recognize Indigenous men's political authority and entirely barred Indigenous women from this specific realm of diplomacy.<sup>31</sup> From 1805 to 1873, the US made 35 treaties and agreements with various political divisions of the Oceti Sakowin — or as they became known in treaty parlance: “the Sioux Nation of Indians.” Not one woman was allowed to “touch-the-pen,” place an “x-mark,” or formally consent to any land cessions, peace agreements, or political relationships with the US.<sup>32</sup>

Third came military occupation. By the time Oceti Sakowin had been forcefully confined to reservations in the 1890s and their lands invaded by white settlers, Indigenous women's political authority had been seriously undermined. The reservation political economy privileged the roles of Indigenous men as reservation police, political leaders, and traders, whereas Indigenous women were confined to the domain of the domestic, the home.<sup>33</sup> Gender divisions were sometimes enforced by military rule. The military-style boarding school system further entrenched these divisions, ripping children from their families and educating young girls and boys on their proper places in a

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<sup>31</sup> The exclusion of Indigenous women from the realm of European diplomacy, treaty-making, and trade was a common imperial practice. See Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples*, 2nd ed. (London: Zed, 2012), 9.

<sup>32</sup> For an explanation and interpretation of Indigenous “assent,” “consent,” and treaty-making, see Scott Richard Lyons, *X-Marks: Native Signatures of Assent* (Minneapolis: University of Minnesota Press, 2010).

<sup>33</sup> See Cathleen D. Cahill, *Federal Fathers & Mothers: A Social History of the United States Indian Service, 1869-1933* (Chapel Hill: University of North Carolina Press, 2011).

“civilized Christian society.” For girls, it was the industry of homemaking. For boys, it was wage labor.<sup>34</sup>

Last came annexation. After it was determined Indigenous peoples had achieved a relative degree of “civilization,” in 1924 they were granted US citizenship. Citizenship was the final, if not symbolic, annexation of Indigenous lands and lives into the US nation-state. In effect, Indigenous women’s political authority had been domesticated, both in terms of within the home and within the settler nation.

The colonial state arrived as an armed white man intent on staying.<sup>35</sup> To gain access to Indigenous lands, white men often used Indigenous men as interlocutors to break communal land practices and undermine Indigenous women’s political authority. Indigenous women are largely absent from these early historical narratives, mostly because the male-dominated universe of hunting, trapping, trade, war, and diplomacy viewed Indigenous men as lawless savages easily manipulated and coopted for political and economic purposes.<sup>36</sup> The strength of Indigenous women’s political authority, however, represented yet another obstacle to unrestricted access to the land. These early practices labored on both the land and Indigenous societies to civilize and conquer them, to make way for capitalist development and colonial state-making. It followed the classic formula of modern colonization: economic penetration (the fur trade), integration into a

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<sup>34</sup> See Sandy Grande, *Red Pedagogy: Native American Social and Political Thought* (Lanham: Roman & Littlefield, 2004), 129-32; Margaret D. Jacobs, *White Mother to a White Race: Settler Colonialism, Maternalism, and the Removal of Indigenous Children in the American West and Australia, 1880-1940* (Lincoln: University of Nebraska Press, 2009).

<sup>35</sup> I draw this observation from Kahnawà:ke Mohawk scholar Audra Simpson’s aptly titled piece “The State is a Man: Theresa Spence, Loretta Saunders and the Gender of Settler Sovereignty,” *Theory & Event* 19(4) (2016).

<sup>36</sup> Indigenous women often participated in activities, such as war-making, traditionally labeled as “male roles” in European societies. See Beatrice Medicine, “‘Warrior Women’: Sex Role Alternatives for Plains Indian Women,” in *The Hidden Half: Studies of Plains Indian Women*, ed. Patricia Albers and Beatrice Medicine (Lanham: University Press of America, 1983), 267-80.

sphere of influence (the creation of trade and military forts), protectorate status and indirect rule (treaty-making), military subjugation (the reservation system), and lastly annexation (political domestication and absorption such as citizenship). The intent had always been to clear the land. Therefore, it should come as no surprise that #NoDAPL was primarily led with Indigenous women.

US history is a history of settler colonialism. Settler colonialism is the specific form of colonialism whereby an imperial power seizes Native territory, eliminates the original people by force, removal, and political liquidation, and resettles the land with a foreign, invading population. Land dispossession is often achieved with violence in order to deter its opposition. Unlike other forms of colonialism where the colonizers rule from afar and sometimes leave, settler colonialism attempts to permanently and completely replace Natives with a settler population. Put simply, settlers come to stay.<sup>37</sup> This is not an even development, a thing of the past, or ever a complete process. In time the *means* change by which the colonial state eliminates Natives to gain access to their territories and resources. Elimination targets not just human life but also the nonhuman (such as the decimation of buffalo and wild game or the destruction of water). The two go hand in hand undermining kinship relations to the nonhuman world. Tactics can range from outright genocide, such as wars of extermination, to accommodation and assimilation, such as enforced absorption into dominant society, or some combination of both. Even if elimination strategies evolve and at different times appear more humane or ethical, “the question of genocide,” writes anthropologist Patrick Wolfe, “is never far from

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<sup>37</sup> This definition of settler colonialism derives from Patrick Wolfe, “Settler Colonialism and the Elimination of the Native,” *Journal of Genocide Research* (2006) 8:4: 387-409.



discussions of settler colonialism.”<sup>38</sup> Indigenous elimination, in all its orientations, is *the* organizing principle of settler society. Unlike the European Holocaust, which had a beginning and an end and targeted humans alone, Indigenous elimination, as a practice and formal policy, has not ended and also entails the wholesale destruction of nonhuman relations. As an ongoing process, Yellowknives Dene scholar Glen Coulthard asserts, elimination’s “*ends* have always remained the same: to shore up continued access to Indigenous peoples’ territories for the purposes of state formation, settlement, and capitalist development.”<sup>39</sup>

While it is almost never appropriate to compare eras, we can trace the history of the police and military violence against Indigenous peoples from the nineteenth century to open lands for settlement to our present moment to allow for the trespass of oil pipelines. The rampant state violence and surveillance against Water Protectors is a continuation of the Indian wars. Natives impede the progress of settler society and therefore they must be moved out of the way or wiped out. It is not coincidence that the law enforcement agency, Morton County Sheriff’s Department, who led the siege against the #NoDAPL camps to protect DAPL construction, descends from the infamous Indian fighter and Seventh Cavalry general George Armstrong Custer. The connections are clear.

Present-day Mandan, North Dakota, a white-dominated border town to Standing Rock and the county seat of Morton County, is seven miles north of Fort Abraham Lincoln where Custer was stationed to secure the passage of the North Pacific Railroad

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<sup>38</sup> Ibid., 387.

<sup>39</sup> Glen Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2013), 125.

across the Missouri River and through Oceti Sakowin territory. The primary function of the fort was to prevent Indians from going off the reservation. Fort Abraham Lincoln took its name from the “Great Emancipator” who also ordered the hanging of 38 Dakota men as punishment for the 1862 US-Dakota War. The survivors of that war, banished from their homelands in Minnesota Territory and hounded by the US military, fled to present-day Standing Rock or north to Canada. As a form of collective punishment for the uprising in Minnesota Territory, in 1863 the military massacred more than 300 fleeing Dakota men, women, and children at Whitestone Hill, more than one hundred miles east of present-day Standing Rock.<sup>40</sup> In the 1870s, from Fort Lincoln Custer led several military expeditions deep into Yellowstone country and He Sapa, the Black Hills, surveying the land for railroads and in search of gold. The expeditions met heavy Indigenous resistance because they violated prior agreements that barred their entry into the Black Hills.<sup>41</sup> The police and military, whether in the past or present-day, serve the interests of capital to remove and expropriate Indigenous peoples from their lands, whether for railroads, gold, or oil. In other words, the police and military are the chief instruments of rule over Indigenous lands and lives; they often arrive as colonial state power in the first instance of conflict to regulate the irreconcilable antagonism of Native-settler. Violence is their primary instrument for social control.

Understanding settler colonialism also requires the study of those who challenge it, those who it seeks to depose and dispose of. From the perspective of the settler project, Indigenous peoples embody the land. To take the land, its people must first be viewed as

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<sup>40</sup> See Paul N. Beck, *Columns of Vengeance: Soldiers, Sioux, and the Punitive Expeditions, 1863-1864* (Norman: University of Oklahoma Press, 2013), 153-73.

<sup>41</sup> See Terry Mort, *Thieves' Road: The Black Hills Betrayal and Custer's Path to Little Bighorn* (Amherst: Prometheus Books, 2015), 155-83.

conquered. “[T]he primary motive for elimination,” writes Wolfe, “is not race (or religion, ethnicity, grade of civilization, etc.) but access to territory. Territoriality is settler colonialism’s specific, irreducible element.”<sup>42</sup> Indigenous peoples are who they are because of where they are: on desired land. Because of where they are, they block, restrict, and thwart capitalist development and colonial expansion. Indigenous peoples are in the way and are made a race when they are targeted for elimination. In this instance, race is an expression of colonialism. Race is externally imposed onto Indigenous societies, not internally derived. Natives are racialized according to their existence on and counterclaims to the land, while other colonized populations were racialized according to their service, albeit often unwilling, to the colonial project. An enslaved African population, for example, brought to Indigenous lands by force, were their bodies valued as property of a white elite for the production of cotton in the South. More importantly, race in the US is made according to its relationship to the land — who works it, who owns it and who does not, who stole it, and who claims it.

Indigenous resistance is premised on a simple fact: people do not hand over their lands, water, lives, histories, or futures without a fight. The assumption that Indigenous-settler struggles are inevitable, the result of a clash of civilizations or cultures, or that atrocities were committed equally by all parties ignores fundamental historical processes. According to this view, history is a series of tragic events where Indigenous peoples are simply on the losing end, either by their own doing or the doing of progress. History is not tragic nor without a culprit. Beginning in the early colonial period prior to the US’s founding and continuing to the colonial present, Indigenous peoples have been subject to

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<sup>42</sup> Wolfe, “Settler Colonialism,” 388.

war, genocide, occupation, removal, rape, torture, legalized and extra-judicial killings, forced assimilation, incarceration, and ongoing criminalization. Violence has always been the means by which the US has asserted itself over to Indigenous lands and lives. The colonial present, whether at Standing Rock or elsewhere, is no different.

### **Mni Wiconi: An Indigenous Paradigm**

I am not afraid; I have relatives.

— Ella Deloria (Dakota), *Waterlily*, 1988<sup>43</sup>

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This dissertation places #NoDAPL and Mni Wiconi into context within the longer histories of Indigenous resistance against the trespass of settlers, dams, and pipelines across the Mni Sose, the Missouri River. This dissertation is not so much a history about things, individuals, or ideas as it is a history about relationships: how the relationship between the Oceti Sakowin and Mni Sose, the Missouri River, and the US as an occupying power has changed and how this change is a product of settler society's relationship with the river, the land, and Indigenous peoples. This approach employs what Seminole historian Susan Miller calls a “global Indigenous paradigm” — *global* because Indigenous history is neither parochial nor a subfield of US history. An Indigenous paradigm's ultimate purpose is “to place Indigenous peoples and communities at the center of historical narratives.”<sup>44</sup> This approach asserts US history cannot be told without Indigenous peoples and neither can the history of planetary enterprises such as

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<sup>43</sup> Ella Deloria, *Waterlily* (Lincoln: University of Nebraska Press, 2009), 20.

<sup>44</sup> Susan A. Miller, “Native Historians Write Back: The Origins of The Indigenous Paradigm in Historiography,” in *Native Historians Write Back: Decolonizing American Indian History*, ed. Susan A. Miller and James Riding In (Lubbock: Texas Tech University Press, 2011), 17.

capitalism and imperialism, processes often benignly called globalization. Indigenous peoples were, and still are, very much part of these processes, too, and cannot be considered just “local cultures.” From this perspective, we can understand Indigenous resistance as a future-oriented politics that centers relations, which has far-reaching implications that extend beyond politics and processes that might be construed as only “Indigenous.” The goal is to establish or re-establish correct relations with the human and nonhuman world for there to be a viable future. For the Oceti Sakowin, the affirmation Mni Wiconi, water is life, relates to the practice of Wotakuye, to be a good relative. Indigenous resistance against the trespass of settlers, pipelines, and dams is to be a good relative to the water, land, and animals most harmed by these incursions. It is also to be a good relative to the human world. “Fundamentally,” Miller writes, “Indigeness is a way of relating.”<sup>45</sup>

This way of relating allows us to think with water. Under US law corporations, such as Energy Transfer Partners, the financial backers of DAPL, are granted personhood, but not Mni Sose, the river, or Mni Oyate, the water. Under the current system, it is not absurd to ask: What does capital want from Indigenous peoples? Or, what does the state want? Those questions have been posed and answered in various ways in the last two centuries with resounding clarity: it wants them to give up their water and land. What is impossible to ask is: What does water want from us, its relatives, the Water Protectors, the Oceti Sakowin? Indigenous modes of relationality — of making kin with the human and nonhuman — are anti-capitalist because they exist outside the logic of capital and the social relations centered on the profit motive. Relationality in this

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<sup>45</sup> Miller, “Native Historians Write Back,” 11.

way is not premised on ownership or commodification; it is premised on reciprocity and protection. “Kinship with all creatures of the earth, sky, and water was a real and active principle,” Lakota writer Luther Standing Bear explains. Kinship granted protection and rights:

The animal had rights — the right of man’s [sic] protection, the right to live, the right to multiply, the right to freedom, and the right to man’s indebtedness — and in recognition of these rights the Lakota never enslaved the animal, and spared all life that was not needed for food and clothing. This concept of life and its relations was humanizing and gave to the Lakota an abiding love. It filled his being with the joy and mystery of living; it gave him reverence for all life; it made a place for all things in the scheme of existence with equal importance to all.<sup>46</sup>

This is not to suggest that Indigenous societies possess an inherent utopic model or solution for irreversible, catastrophic climate change. Nor is it to suggest we can turn back time to “return” to a more egalitarian way of life. In fact, many Indigenous nations do actively participate in highly exploitative forms of resource extraction and capitalist economies as a form of nation-building. These approaches, however, fundamentally depart from the mode of relationality expressed by Mni Wiconi. They are top-down strategies. Indigenous politicians and leaders (often with a strong backing from external state and corporate institutions) generally reproduce capitalist development models, uncritically labeling them as forms of “sovereignty” or “self-determination” and completely ignoring the colonial structure in which tribal governments are *allowed* to exist and operate within. This approach simply reproduces colonial state-making and designates Indigenous nations as minor “partners” with no real power or autonomy beyond their relationship to the US. Although a very old concept, Mni Wiconi takes on a

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<sup>46</sup> Luther Standing Bear, *Land of the Spotted Eagle* (Lincoln: Bison Books, [1933] 2006), 193.

new and potentially revolutionary meaning because it is practiced outside the logic of capital and in lateral (not top-down) relation between human and nonhuman.

At its best moments, #NoDAPL has showed us a future of what could be when everyday Native people take control of their own destinies and lands while also drawing from the past. This is the starting point for this history and its end: liberation. To get to that future place, we first have to know our present moment. To know our present, we must know our past. The stakes are high to openly challenge colonization. To do so creates an uncomfortable space of overwhelming saturation and tension. History, after all, is the past's saturation of our present moment. It cannot be ignored. To bring it up is to bring it into existence as something to be dealt with.

This brings about another relationship to be dealt with in this dissertation, a relationship to a radical Indigenous past that trespasses into the present. What I refer to as traditions of Indigenous resistance differs from how “tradition” is understood as a static, unchanging practice, a view that aligns itself with the idea of authentic, essentialist, or apolitical notions of Indigenous identity. This conservative view often works in favor of the trope of the “vanishing Indian” and reckons with history and the present as some wish it to be, not as it is.<sup>47</sup> Traditions of Indigenous resistance can best be described as what scholar Raymond Williams calls a *selective tradition*.<sup>48</sup> A selective tradition chooses prior experiences and one's ancestors as forbearers (and sometimes as active participants —

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<sup>47</sup> For an explanation and critique of the colonial and anthropological archetype of Indigenous “tradition,” see Joanne Barker, *Native Acts: Law, Recognition, and Cultural Authenticity* (Durham: Duke University Press, 2011), 214-28.

<sup>48</sup> Raymond Williams, *Marxism and Literature* (Oxford: Oxford University Press, 1977), 115. My insights build on Ruth Wilson Gilmore's theory of “infrastructures of feeling” as it relates to the Black Radical Tradition. See Ruth Wilson Gilmore, “Abolition Geography and the Problem of Innocence,” in *Futures of Black Radicalism*, eds. Gaye Theresa Johnson and Alex Lubin (New York: Verso, 2017), 225-40.

hence the American Indian Movement’s popular phrase, “In the spirit of Crazy Horse!”) to inform current resistance movements, while sustaining them as part of a *living* tradition under constant formation. In this sense, traditions of Indigenous resistance are not entirely *new*, nor are they necessarily a checklist of people or concepts. Traditions of Indigenous resistance are an accumulation of ways knowing, experiencing, and practicing relationality to humans and nonhumans, a radical consciousness, deeply embedded in history and place, that expresses the ultimate desire for freedom and liberation. To know and trust one’s history is to not be defeated by it. From these traditions arise Indigenous radicals and Indigenous radicalism. To be radical, means to get at the root of something. To get at the root of settler colonialism — and how to get free from it — we must turn to those who have challenged it. To return to the source, as African revolutionary Amilcar Cabral reminds us, is to always ask what came before it.<sup>49</sup> More importantly, it is to ask what proliferates in its absence.

This dissertation explores why the movement to protect the Missouri River marching under the banner of Mni Wiconi has emerged. Settler colonialism is not a new phenomenon; it has existed since the founding of the US — and even before that. How does settler colonialism continue to inform our present moment? And how does this fit into the larger history of the Oceti Sakowin and Mni Sose and opposition to settler trespass? *Our History is the Future: Mni Wiconi and the Struggle for Native Liberation* takes the Oceti Sakowin, its relationship to Mni Sose, and its historic struggle for liberation as a call to take seriously the prior experiences of Indigenous nationhood and political authority that informs present and future political possibilities. The dissertation

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<sup>49</sup> See African Information Service, ed., *Return to the Source: Selected Speeches of Amilcar Cabral* (New York: Monthly Review Press, 1973).



moves through four definitive “episodes”: the *emergence* of the Oceti Sakowin nationalism in relation to the US and the river in the nineteenth century, the nineteenth century *war* of conquest, the *flood* of Lakota and Dakota lands in the mid-twentieth century, and Indigenous *internationalism* that reframed Native politics in the latter half of the twentieth century. The documented history is by no means exhaustive, but instead focuses on these particular cases to make the argument that they inform our present moment and provide an historical roadmap for collective liberation.

Chapter 2 looks at how the Oceti Sakowin had emerged as a nation and had first come to know the US as a predator nation in the nineteenth century. Indigenous-US relations began on the Missouri River in 1803 when the fledgling US “bought” 827 million acres from the French Crown in the Louisiana Purchase and sent a military expedition under the command of Lewis and Clark to claim and map the newly acquired territory. This initial encounter of hostage-taking, trespass, and diplomacy structured Indigenous-US relations on the river and radically transformed the Oceti Sakowin’s relationship to Mni Sose.

Chapter 3 examines nineteenth century Indian wars that raged across the Northern Plains to repel settlers and US encroachment. This chapter looks at how the counterinsurgency tactics informed the “peace” and war policies used against the Oceti Sakowin. These wars, for the Oceti Sakowin, were entirely defensive. The Oceti Sakowin signed peace treaties with the invading settler government. The 1851 and 1868 Fort Laramie treaties provided temporary reprieve and defined the vast 32-million-acre territory of what became the Great Sioux Reservation and outlying, unceded treaty territory, which stretched from the eastern shore of the Missouri River to the Bighorn

Mountains. The rest of the chapter examines the ways in which the Oceti Sakowin resisted and negotiated US colonization.

Chapter 4 examines mid-twentieth century river development schemes that led to new rounds of Indigenous dispossession, in the form of dams and termination legislation. After unseasonal mass flooding, Congress passed the Flood Control Act in 1944 — or what became known as the Pick-Sloan Plan authorizing the Army Corps of Engineers and the Bureau of Reclamation to erect five dams on the main stem of the river. All of which targeted and disproportionately destroyed Native lands and lives. Of the five Pick-Sloan dams, four flooded the lands of seven nations of the Oceti Sakowin: the Santee Sioux Tribe, the Yankton Sioux Tribe, the Sicangu Oyate, the Lower Brule Sioux Tribe, the Crow Creek Sioux Tribe, the Cheyenne River Sioux Tribe, and the Standing Rock Sioux Tribe. Of the 611,642 condemned acres through eminent domain in what was called the “taking area,” these nations lost 309,584 acres of vital bottomlands. Inundation also forced more than a thousand Native families, in patent violation of treaties and without prior consent, to relocate. A third of these reservations populations were removed to marginal reservation lands, and many were forced to leave the reservation entirely. The dams, which promised and delivered wholesale destruction by harnessing the forces of the river, coincided and worked in tandem with the federal policies of termination and relocation. The Oceti Sakowin unified to thwart the state of South Dakota and North Dakota’s attempts to implement termination to essentially overthrow Native governments and assume control over their lands. But the legacies of the dams endure.

Chapter 5 begins when Natives on relocation also began to organize. Groups such as the American Indian Movement (AIM) formed in the urban centers to combat the

wholesale destruction of Native life on- and off-reservation. In 1973, AIM occupied Wounded Knee in the Pine Ridge Indian Reservation, which was a culmination of more than a decade of Red Power organizing.

The occupation was the catalyst for a mass gathering of thousands at Standing Rock in 1974, which resulted in the founding of the International Indian Treaty Council. Chapter 6 traces the history of twentieth century Ojibwe internationalism, and Indigenous internationalism, in general. At Standing Rock, more than 90 Native nations from around the world built the foundations of what would become four decades of work at the United Nations and the basis for the 2007 Declaration on the Rights of Indigenous Peoples. Indeed, the Red Power Movement also provided the catalyst for the contemporary #NoDAPL movement at Standing Rock.

Chapter 7 provides concluding insights on how Mni Wiconi and #NoDAPL practiced an unsettling counter-sovereignty. This final chapter examines the relationship between the past and present struggles and the potential for a broader anti-colonial and anti-capitalist movement that seeks not only to transform Indigenous relations with the US, but also how Indigenous liberation in North America is indelibly connected to the liberation of human and nonhuman relations everywhere.

## Chapter 2: Emergence

In 1803, an incredible burst of stars fell out of the eastern indigo sky; hundreds, maybe thousands blazed spectacularly bright, leaving behind glowing trails. Native star-gazers considered this to be a sign. Something in the universe warned of a great disaster approaching, something that would begin in the east at the Mnisose, the river. It would bring sickness, starvation, and death. To the Lakota, the Mnisose is Grandfather River. This immense artery is the source of life to the northern lands.

— Lydia Whirlwind Soldier (Lakota), “The Renaming of a Nation,” 2006<sup>1</sup>

Water possesses a power and sovereignty that defy human-made borders and political territories. The Missouri Basin is a massive circulatory system of streams, rivers, creeks, and tributaries that empties into its main artery, Mni Sose, the Missouri River. In this system, Mni Sose begins everywhere the water falls from the sky to touch the earth and trickle into one of these waterways. The river is 2,466 miles-long with a drainage basin encompassing a massive 529,000 square miles, a landmass one-sixth the size of the continental US. The Oceti Sakowin and the Indigenous nations it shared territory with, and has sometimes fought, are as much defined by Mni Sose as they are by their own political, cultural, and social relationship to its life-giving waters.

In this world, water is life, and so too is the buffalo nation, the Pte Oyate. Vast buffalo herds once migrated according to the river’s seasonal ebbs and flows, and were followed by the hunting nations of the Northern Plains. At the center of this world is He Sapa, the Black Hills, *the heart of everything that is*. If He Sapa, the Black Hills, is the heart of the earth, then Mni Sose, the Missouri River, is its aorta. It is from this country

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<sup>1</sup> Lydia Whirlwind Soldier, “The Renaming of a Nation,” in *This Stretch of the River: Lakota, Dakota, and Nakota Responses to the Lewis and Clark Expedition and Bicentennial*, edited by Craig Howe and Kim Tallbear (Sioux Falls: Pine Hill Press, 2006), 19.

that the Oceti Sakowin emerged as a nation, a people, and gained its humanity. From the life-giving river also came agents of change who sought to turn its waters into a passage for conquest and a source of profit, and, as “the original highway West” for settlers, the river was turned into a passage of death. Told from the perspective of the Oceti Sakowin, this chapter examines how and why these changes took place and how they were resisted from Lewis and Clark initial trespass to the so-called closing of the Western frontier in 1890. Like their forbearer Christopher Columbus who crossed an ocean in search of a western passage, the US invaders, too, first arrived by water uninvited to Oceti Sakowin territory.

Much has been written about Missouri River history. Yet, few histories have focused on the river’s role in the colonial project. Book titles, such as *Unruly River* and *River of Promise, River of Peril*, or *The Dark Missouri*, and the settler nickname for the Missouri as “Old Misery” for its frequent flooding and property damage, depict the river as a deadly, treacherous, and inhospitable landscape.<sup>2</sup> Early settlers often described the Missouri Basin as an irrational and violent country, which was, by their accounts, also plagued by endless inter-Indigenous warfare. Settlers saw Indigenous peoples as equally irrational and violent, more committed to fighting each other than committed to peace. “This is a delightful country,” wrote British trader Alexander Henry about the Northern Plains in 1800, “and were it not for perpetual wars, the natives might be the happiest people on earth.”<sup>3</sup> According to this view, Indigenous nations of the Northern Plains were

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<sup>2</sup> Robert Kelley Schneiders, *Unruly River: Two Centuries of Change Along the Missouri* (Lawrence: University of Kansas Press, 1999); John E. Thorson, *River of Promise, River of Peril: The Politics of Managing the Missouri* (Lawrence: University of Kansas Press, 1994); Henry C. Hart, *The Dark Missouri* (Madison: University of Wisconsin Press, 1957).

<sup>3</sup> Quoted in John C. Ewers, “Intertribal Warfare as the Precursor of Indian-White Warfare on the Northern Great Plains,” *Western Historical Quarterly* 6, no. 4 (1975): 397.

incapable of achieving peace, happiness, and appreciation for the land's natural beauty. The arrival of European and US explorers, traders, and settlers would bring order and civilization to the land and the river. Indigenous nations were a people without a history that lacked a sensibility to confront the inevitable transformations of their lands and lives. Therefore, because they lacked awareness and could not adequately adapt and make peace amongst themselves, they are partly, if not entirely, to blame for their own demise. From the beginning, Indigenous peoples were a culture of poverty. These are the stories US empire likes to tell itself.

In this fiction “the Sioux” play a major role. They are everything in the history of the West and its mythology — the most hated, the most feared, and the most violent. They are also a noble warrior society who symbolize the violent hyper-masculinity of the frontier; and they represent the standard image of every Indigenous culture as equestrians who lived in tipis, wore headdresses, and aimlessly wandered the land like the wild game they called kin. Nomadic, wandering, and roaming are the words often used to describe these Indigenous nations as unbounded transients who could not truly appreciate the land's “real” value. Such stereotypes, however, are not confined to the realm of popular culture. Prominent US historians, such as Richard White, portray the Sioux as a pillaging band of expansionists who violently expelled their Indigenous neighbors and never crossed west of the Missouri River — with no small irony — until the signing of the Declaration of Independence in 1776.<sup>4</sup> In this sense, US empire can conveniently classify the Sioux as little better than itself: imperialist newcomers. Marking the Sioux as

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<sup>4</sup> Richard White, “The Winning of the West: The Expansion of the Western Sioux in the Eighteenth and Nineteenth Centuries,” *The Journal of American History* 65, no. 3 (1978): 319-43. See also, Gary Clayton Anderson, “Early Dakota Migration and Intertribal War: A Revision,” *Western Historical Quarterly* 11, no. 1 (1980): 17-36.

nomadic, rootless, unsettled, and malicious expansionists makes their removal, genocide, and colonization more palatable. By criminalizing the Sioux, US explorers, soldiers, traders, settlers, and historians attempt to conceal or vindicate the US's own criminal behavior.<sup>5</sup>

The Dakota, Nakota, and Lakota nations never called themselves "Sioux," nor were they "late arrivals," imperialists, or irrational, pillaging, and disorganized marauders aimlessly wandering the plains. Sioux derives from an abbreviation of "Nadouessioux," a French adoption of the Ojibwe word for "Little Snakes" to denote the Ojibwe's enemies to its west in contrast to its foes of the east, the "Nadowe" or "Big Snakes," the Haudenosaunee Confederacy. Among their own, they simply called themselves the Oyate, the Nation or the People, and sometimes the Oyate Luta, the Red Nation. The Oyate practice a tight political and social order based on kinship amongst themselves in direct relation to the land and their nonhuman kin.

The Dakota, Nakota, and Lakota nations derive their names from the Dakota word "Koda," meaning friend or ally. As a political confederacy, they called themselves the Oceti Sakowin Oyate, the Nation of the Seven Council Fires. The oldest Dakota-speaking nation derives names from their immediate geography in the western Great Lakes forests, glacial lakes, and rivers: Mdewakantonwan or Bdewakantonwan, the Sacred Nation that Lives by the Water; the Sissintonwan, the Medicine Nation that Lives by the Water; Wahpontonwan, the Nation that Lives in the Forest; and Wahpekute, the Nation that Shoots Among the Leaves.<sup>6</sup> The Nakota-speaking nation are the caretakers of the middle

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<sup>5</sup> See Heidi Kiiwetinepinesiiik Stark, "Criminal Empire: The Making of the Savage Land," 19 no. 4 (2016).

<sup>6</sup> Gwen Westerman and Bruce White, *Mni Sota Makoce: The Land of the Dakota* (St. Paul: Minnesota Historical Society Press, 2012), 22.

territory that began on the eastern banks of the Missouri River and took their names from their position location within overall political structure, arranged in a large U-shaped camp layout with Nakota-speakers at the end: Ihanktonwan, the Nation that Camps on the End; and Ihanktonwanna, the Nation of the Little Camp on the End. The youngest and largest, the Lakota-speaking nation, acquires its name from the vast expanse of the Northern Plains west of the Missouri River: Tintonwan, the Nation of the Plains. Among the Tintonwans, there are also seven divisions: the Oglala, the Nation that Scatters their Own; the Sicangu, the Nation of the Burnt Thighs (or Brulés); the Hunkpapa, the Nation at the Head of the Circle; the Mniconjou, the Nation that Plants by the Water; Itazipco, the Nation without Bows (or Sans Arc); the Sihasapa, the Blackfoot Nation; and the Oohenupa, the Nation of Two Kettles.<sup>7</sup>

Like most human societies, the origins of the Oceti Sakowin are as diverse as its people and the lands they continue to live with and protect. To name but a few examples, origin histories range from: the emergence from the earth, from the wase, the red clay; emergence from He Sapa; emergence from Bde Wakan, Spirit Lake or Milles Lacs; descent from the Wicahpi Oyate, the Star Nation of the Milky Way; descent from the Pte Oyate, the Buffalo Nation; or westward and southern migrations from the Atlantic seaboard and from Central America.<sup>8</sup> None of these origin stories are more or less true than others. What they have in common, however, is their collective significance in defining a whole of historical experience within a specific geography and the moral

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<sup>7</sup> I have added “Nation” to each of these names because the various divisions, while forming a whole political organization of a single nation, saw themselves also as distinct smaller nations. For a description of the Oceti Sakowin political divisions and the origins of each name, see Waggoner, *Witness*, 39-52.

<sup>8</sup> *Ibid.*, 22-38; Westerman and White, *Mni Sota Makoce*, 24-5.



universe of how one relates to others and the land. Origin stories contradict settler narratives that describe the Oceti Sakowin as “late arrivals” west of the Missouri River, at best, or as expansionists, at worst — who, like their US counterpart, were driven purely by economic motives to control river trade by violently displacing other Indigenous nations. Oral histories and careful Indigenous record-keeping profoundly challenge such myths. Dakota and Lakota winter counts, for instance, meticulously documented Indigenous histories, marking each year or winter by recording a significant event with a pictograph on hide or sometimes paper which was accompanied by an oral recounting of the event. Winter counts recorded family, individual, or larger national histories.<sup>9</sup> Historians, however, have misinterpreted winter counts to wrongly claim the Lakotas crossed the Missouri River and subsequently “discovered” the Black Hills sometime around 1776.<sup>10</sup>

When winter counts are cross-referenced with Lakota oral histories and star knowledge, a much longer connection to the lands west of the Missouri comes into clearer focus. For example, Lakota sky-gazers methodically tracked the sun, moon, and stars and recognized their shifting positions (and sometimes disappearance) over the course of days, weeks, months, seasons, years, and countless generations — since time immemorial. The meticulous tracking of celestial bodies corresponds to earthly territories and seasonal journeys to and from He Sapa and winter and summer camps. Star maps, as they were known, are literal maps that correspond to earth maps, sometimes drawn on

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<sup>9</sup> Lakota winter counts are typically viewed as a nineteenth century innovation and the Lakotas themselves a relatively new social group. The Battiste Good winter count, however, documents Lakota history as early as the tenth century and contends that the Dakota people were a people living in their homelands long before this. See Candace S. Greene and Russell Thornton, eds., *The Year the Stars Fell: Lakota Winter Counts at the Smithsonian* (Lincoln: University of Nebraska Press, 2007), 292-7.

<sup>10</sup> For example, see Elizabeth R. P. Henning, “Western Dakota Winter Counts: An Analysis of the Effects of Westward Migration and Culture Change,” *Plains Anthropologist* 27, no. 95 (1982): 57-65.

hide or paper and recounted by historical memory and oral histories. In one such star map, the arc of the sun across the sky traveled through certain constellations that corresponds with significant sites in the Black Hills. In particular, the sacred site Mato Tipila, Bear's Lodge (what settlers renamed Devil's Tower to demonize Indigenous relationships to the place), corresponds with the sun's passage through the constellation by the same name, marking the summer solstice and the start of the sun dance ceremony. Some sources date this ceremony at this particular site as beginning sometime in 1000 BCE, or possibly earlier.<sup>11</sup> While star maps possess significant ceremonial meaning, they also assert a long-standing relation to He Sapa and its surrounding geography. "What is on earth is in the stars, and what is in the stars is on earth" is the common Lakota assertion when talking about the delineation of ancestral territory of the Wicahpi Oyate, the Star Nation.<sup>12</sup>

The Lakotas were by no means the only Indigenous nation with connections to the Black Hills, nor were such histories exclusive among themselves. Different Indigenous nations incorporated aspects and histories of others often when different peoples combined through alliance, making relatives, or pure survival. Some shared the same origin histories but were different branches of the same people. More than fifty Indigenous nations possessed similar, often overlapping, relationships and claims to the Black Hills. They included the Arikaras, Osages, Shoshones, Assiniboines, Gros Ventres,

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<sup>11</sup> Goodman, *Lakota Star Knowledge*, 12.

<sup>12</sup> Quote from Stanley Looking Horse. Quoted in Ronald Goodman, *Lakota Star Knowledge: Studies in Lakota Stellar Theology* (Mission: Sinte Gleska University, 1992), 15. See also Raymond J. Demallie and Douglas R. Parks, "Tribal Traditions and Records," in *Handbook of North American Indians*, vol. 13: *Plains*, pt. 2, Raymond J. Demallie, ed., William C. Sturtevant, gen. ed., (Washington, D.C.: Smithsonian, 2001), 1070-2.

Pawnees, Mandans, Hidatsas, Kiowas, Poncas, Crows, Omahas, Winnebagos, Cheyennes, Arapahoes, and Blackfeet.<sup>13</sup>

Although the Oceti Sakowin possessed a strong sense of history and grounded political authority in the land, it didn't preclude them from warring with other Indigenous nations. Luther Standing Bear, commenting on Lakota warfare in 1931, admits as much. He notes how the US criminalized the assertion of Indigenous political authority, the right to make war and defend territory. "We kept our lands to ourselves," he writes, "by making all other tribes stay away from us... Therefore, [we] were feared by all other tribes. The white people... began to fear us too, so they called us Sioux."<sup>14</sup> In this instance, the US marked the Oceti Sakowin as criminal and enemy by calling them "Sioux." As Oceti Sakowin scholars and intellectuals have contended for the last two centuries, war, diplomacy, and sovereignty are just a few of the many aspects of grounded Indigenous authority in the land and water. Nonetheless, "Sioux" warfare, diplomacy, and sovereignty have dominated the way settler histories have framed nineteenth century Indigenous life on the Missouri River and in the Northern Plains. This is not because Indigenous nations are inherently militaristic, a common view set forth by many US historians. Rather, the Oceti Sakowin defended their human and nonhuman kin against a land-hungry, violent, and militaristic empire. Recognizing its warlike nature Lakotas call the United States Milahanskan, the nation of the long knives (referring to the sabers soldiers carried), because they had come to know the US best through its military.

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<sup>13</sup> Craig Howe, Lydia Whirlwind Soldier, and Lanniko L. Lee, eds., *He Sapa Woihanble: Black Hills Dream* (St. Paul: Living Justice Press, 2011); N. Scott Momaday, *The Way to Rainy Mountain* (Albuquerque: University of New Mexico Press, 1976); Jeffrey Ostler, *The Lakotas and the Black Hills* (New York: Viking, 2010), 3-27.

<sup>14</sup> Luther Standing Bear, *My Indian Boyhood* (Lincoln: University of Nebraska Press, 2005), 2.

What follows in this chapter and the next chapter is not revisionism of nineteenth century Northern Plains Indigenous history. Evidence introduced here isn't particularly new, nor does it provide a re-interpretation of those events. Instead, what follows is a history of what Indigenous peoples — and specifically the Oceti Sakowin — have always known: the US is a predator nation. Studying US expansion from this standpoint reveals how Indigenous elimination is this settler nation's emergence story. The US creation story is one of land theft and the genocide of Indigenous peoples and their nonhuman kin. This history didn't always require Indigenous consent or labor, or the recognition of Indigenous peoples as equal economic or political partners. But it did require the violent seizure of the land. The taking of the land began with the river.

### **Late Arrivals**

The first Indigenous-US interactions on the Missouri River were military encounters that shaped Indigenous diplomacy, warfare, and dispossession in the centuries to come. In 1803 President Thomas Jefferson finalized the Louisiana Purchase from the French Republic. It was less a “purchase” than it was an annexation of 827 million acres. Louisiana Territory encompassed the entire Missouri River Basin and more than doubled the territory of the fledgling United States. Shortly thereafter, Jefferson sent Meriwether Lewis and William Clark to lead a military expedition up the Missouri River bearing arms, flags, and “gifts” to claim the “new” land and its people. “[B]eing now become sovereigns of this country, without however any diminution of the Indian rights of occupancy,” Jefferson wrote to Lewis, “we are authorised to propose to them in direct terms the institution of commerce with them. [I]t will now be proper you should inform

those whose country you will pass, whom you may meet... that they have surrendered to us all their subjects.”<sup>15</sup> Lewis and Clark were to proclaim the sovereignty of the US over the land and its people for the purposes of bringing them into trade relations. Of all the Indigenous nations he anticipated the explorers meeting, Jefferson mentioned only “the Sioux” by name. “[O]n that nation,” Jefferson ordered Lewis, “we wish most particularly to make a friendly impression, because of their immense power, and because we learn they are very desirous of being on the most friendly terms with us.”<sup>16</sup> It is uncertain how Jefferson obtained his information or whether or not the expedition had any prior knowledge of the Sioux, except for what white traders or other Indigenous nations told them.

The Corps of Discovery, as it became known, met several divisions of the Oceti Sakowin as they traveled upriver. After navigating the Big Bend of the Missouri (present-day Crow Creek and Lower Brule reservations) in late September of 1804, the expedition was intercepted by a camp of Sicangus, a political subdivision of the Lakotas. As per custom, the Lakotas hailed the Corps with a plume of smoke that rose in the northwest signaling the expedition had been spotted. The Lakotas sought council and some form of payment to pass through their territory.<sup>17</sup> Although they accepted council, Lewis and Clark rebuffed the Lakotas’ assertion to determine who shall pass and at what cost, clearly disobeying Jefferson’s instructions “to make a friendly impression.”

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<sup>15</sup> Jefferson to Lewis, January 22, 1804, in *Original Journals of the Lewis and Clark Expedition, 1804-1806*, Vol. 7, ed. Reuben Thwaites (New York: Arno Press, 1969), 292.

<sup>16</sup> *Ibid.*, 293.

<sup>17</sup> The expedition called this band of the Lakotas the “Tetons.” They most likely encountered a subdivision of the Tintonwan (the Tetons), the Sicangu (the Brulés). Today, the Sicangus are split between the Lower Brule Sioux Tribe and the Rosebud Sioux Tribe.

Lewis and Clark believed — or at least behaved as if — they had entered a lawless land and encountered a lawless people.<sup>18</sup> The Lakotas, however, clearly possessed a notion of trespass and subjected the expedition to that charge when Lewis and Clark rejected their authority. After eight days of failing to negotiate their passage without paying a toll, Lewis and Clark resorted to violence. First they threatened genocide. According to John Ordway, an expedition volunteer, Clark told the intransigent Lakota headman, Black Buffalo, and his followers that they were sent by Thomas Jefferson, the US President. If the expedition was not allowed to pass, Clark “or Capt. Lewis could by writing to him have them all destroyed [sic] as it were in a moment.”<sup>19</sup> Obviously surrounded and overwhelmed, the arrogant threats were worthless. So the expedition took hostage on their keelboat the headman, Buffalo Medicine (and possibly others), to prevent the Lakotas from attacking the expedition and to secure their further trespass north. Buffalo Medicine was later released once the expedition was free from Lakota country. Indigenous hostage-taking was common practice. Jefferson previously advised Lewis that “taking influential chiefs” or their children “would give some security to your party.”<sup>20</sup> Reflecting on this encounter, Clark later wrote, the Lakotas

are the vilest miscreants of the savage race, and must ever remain the pirates of the Missouri, until such measures are pursued, by our government, as will make them feel dependence on its will for their supply of merchandise. Unless these people are reduced to order, by coercive measures, I am ready to pronounce that the citizens of the United States can never enjoy but partially the advantages

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<sup>18</sup> My observations are primarily drawn from Craig Howe’s critical interpretation of the expedition’s treatment of the Lakotas, “Lewis and Clark among the Tetons: Smoking Out What Really Happened,” *Wicazo Sa Review* 19(1) (2004): 47-72.

<sup>19</sup> Quoted in “[Ordway],” “September 25, 1804,” *Journals of the Lewis & Clark Expedition*, University of Nebraska – Lincoln, <https://lewisandclarkjournals.unl.edu/item/lc.jrn.1804-09-25#lc.jrn.1804-09-25.03>.

<sup>20</sup> Jefferson’s Instructions to Lewis, *Journals of the Lewis and Clark Expedition*, Vol. 7, 250. For an explanation on the expedition’s hostage-taking, see Howe, “Lewis and Clark.”

which the Missouri presents... [The Sioux] view with contempt the merchants of the Missouri, whom they never fail to plunder, when in their power.<sup>21</sup>

In this instance, Clark labeled the Lakotas criminal to conceal his expedition's own trespass and criminal actions. He also spelled out the course US Indian policy should take, placing himself at the center of the policy he recommended. Jefferson later appointed Clark brigadier general and Indian agent for Louisiana Territory in 1807, and he served as an Indian Affairs agent under the War Department until his death in 1838.

Historians have uncritically taken Lewis and Clark's testimony of that first encounter at face value — that they were waylaid by a band of river pirates straight from the pages of a Robin Crusoe fantasy novel. The Lewis and Clark story makes for a great white national myth and has been widely consumed, repeated, and retold in popular accounts like US historian Stephen Ambrose's 1997 bestselling book *Undaunted Courage: Meriwether Lewis, Thomas Jefferson, and the Opening of the American West* and documentarian Ken Burns' popular 2001 PBS film *Lewis & Clark: The Journey of the Corps of Discovery*.<sup>22</sup>

In retrospect, the Lakotas didn't make much of the encounter. Lewis and Clark came and left, and the Lakotas continued living as they had before these late arrivals. To the US, however, this first interaction held great significance and profoundly shaped their feelings towards a nation they viewed as the criminal "pirates of the Missouri." More importantly, as Oglala historian Craig Howe observes, this initial engagement "gave rise

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<sup>21</sup> Quoted in Meriwether Lewis and William Clark, *The Travels of Capts. Lewis & Clarke* (London: Longman, Hurst, Rees, Andorme, Paternoster, Row, 1806), 171-2.

<sup>22</sup> See Kim Tallbear, "Stephen Ambrose's *Undaunted Courage*: A White Nationalist Account of the Lewis & Clark Expedition," in *This Stretch of the River: Lakota, Dakota, and Nakota Responses to the Lewis and Clark Expedition and Bicentennial*, edited by Craig Howe and Kim Tallbear (Sioux Falls: Pine Hill Press, 2006), 45-57.

to storm clouds of deceit that have in some sense darkened two centuries” of Lakota-US relations.<sup>23</sup>

The Louisiana Purchase was a landmark achievement. For one, it provided the means by which southern plantation capitalists could expand their “cotton kingdom” to new markets. The westward expansion of the plantation system promised the creation of a new social order, one defined by the reproduction of slavery in new territory and the control over trade in the Mississippi Valley for the global export of cotton. Without expansion, the plantation system was doomed to fail.<sup>24</sup> Jefferson envisioned an “Empire of Liberty” for the lands west of the Mississippi. The Empire of Liberty was principally a racial theory of space that required the expansion of Black slavery and the transformation of Indigenous land into private property for advancing a yeoman farming empire. In this way, the expansion of the plantation system coincided with Indigenous dispossession and removal. The mythologized frontiersmen, the arbiters of capital and the advance guard for western expansion, descended on the plains west of the Mississippi to make themselves and their settler nation anew.

Jefferson himself saw the Louisiana Territory as a partial solution to the “Indian Problem” in the East and the West. For example, Section 15 of the 1804 Louisiana Territorial Act afforded that “The President of the United States is hereby authorized to stipulate with any Indian tribes owning lands on the east side of the Mississippi, and residing thereon, for an exchange of lands, the property of the United States, on the west

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<sup>23</sup> Ibid., 55.

<sup>24</sup> See Walter Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom* (Cambridge: Harvard University Press, 2013).



side of the Mississippi, in case the said tribes shall remove and settle thereon.”<sup>25</sup>

Jefferson wanted to further concentrate eastern Indigenous nations into ever-diminishing territories, which forced them to either “incorporate” or “remove beyond the Mississippi” as game, land, and resources were made scarce. The intention was to breakup and ultimately dissolve communal land practices among eastern nations to prepare them for eventual removal. The so-called “Five Civilized Tribes” — the Cherokee, Choctaw, Chickasaw, Muscogee, and Seminole — were removal’s primary targets. Weakening eastern Indigenous nations by circumscribing them and by cutting off their access to resources such as wild game was a way to coerce them into removal west of the Mississippi. Put differently, the annihilation of Indigenous ways of life such as agriculture, hunting, and gathering — its basis of reproduction grounded in the land — would jumpstart removal. Deprived of the ability to eat and reproduce themselves in such a precarious state, as Jefferson put it, would only require the US to “shut our hands to crush them” if Indigenous peoples resisted.<sup>26</sup> The new availability of space in the West provided eastern Indigenous removal “a feasibility it had not possessed before.”<sup>27</sup> This became the dominant strategy to solve the so-called “Indian Problem” — kill the game and Indigenous ways of life to force them either to flee, fight, or assimilate with the primary goal of securing possession of the land.

The criminalization of Indigenous political authority and resistance in the East was a frontline tactic deployed against Indigenous nations of the West. The US targeted

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<sup>25</sup> “An act erecting Louisiana into two territories, and providing for the temporary government thereof,” *United States Statutes at Large*, 80th Cong., sess. 1, Chp. 38, March 26, 1804, 283-9.

<sup>26</sup> President Jefferson to William Henry Harrison, February 17, 1803, in Francis Paul Prucha, ed., *Documents of United States Indian Policy*, 3rd ed., (Lincoln: University of Nebraska Press, 2000), 22.

<sup>27</sup> Bernard W. Sheehan, *Seeds of Extinction: Jeffersonian Philanthropy and the American Indian* (New York: Norton, 1973), 245.

Indigenous nations such as the Oceti Sakowin by enforcing dependence on the emerging US fur trade. The trade complemented outright military endeavors as well as the self-conceived diplomatic missions like Lewis and Clark's expedition, to usurp powerful nations like the Oceti Sakowin of their lands and political standing. To accomplish this feat, it not only required a military defeat but also the extermination of their animal kin and primary food source — the buffalo. Annihilation by starvation proved the most effective tactic in dealing with the Plains nations. Extermination of the Pte Oyate, the Buffalo Nation, equaled the extermination of the Oceti Sakowin and occurred through two successive stages: the fur trade and military-backed massacres. Lewis and Clark were a small part of this grand design, the precursors of this imperial mission. Standing in the way was the Oceti Sakowin of the Upper Missouri.

However, what was for the Lewis and Clark expedition a terrifying encounter with a “new” and defiant Indigenous nation was for Lakotas a fairly routine engagement with a different flavor of whites travelling through their territory bearing flags and guns. It was hardly exceptional, even the criminal behavior by the expedition. According to Clark, even the downriver and more “peaceful” Ihanktonwan “invariably arrested the progress” of all traders traversing the river exacting tolls and demanding more accommodating trade prices.<sup>28</sup> To achieve their diplomatic mission of bringing Indigenous nations into trade relations, Lewis and Clark needed Indigenous peoples more than Indigenous peoples needed them, their flags, or their useless peace medals. An expanding trade empire would only be possible at first with Indigenous peoples and later would require the removal, dispossession, or extermination.

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<sup>28</sup> Lewis and Clark, *The Travels of Capts. Lewis & Clarke*, 171.

## The Arrival of Capital

Lakotas had for decades traded with the French and British by the time the expedition arrived. By the early 1800s, the fur trade had enveloped Northern Plains life. With them, they brought the Bible, the gun, and death. Mdewakantonwan scholar and activist Charles Eastman declared, “The fur-traders, the ‘Black Robe’ priests, the military, and finally the Protestant missionaries, were the men who began the disintegration of the Indian nations and the overthrow of their religion, seventy-five to a hundred years before they were forced to enter upon reservation life.”<sup>29</sup> By the time the US arrived, the Lakotas most likely wanted to maintain a foothold in the river trade and didn’t consent to a claim to the land and waterway by a sovereign they neither recognized nor viewed as superior.<sup>30</sup> But the Lakotas didn’t own the river, they belonged to it. Many centuries spent living in relationship to the land and water reinforced this understanding. By 1804 they also belonged to the river trade, both economically and politically. The river, in this way, became a new source of livelihood and survival. At first the new arrivals of traders were tolerated. Later, some among the Oceti Sakowin felt they had overstayed that welcome.

By asserting control over river trade, the US would ensure economic dominance over Indigenous nations in the Upper Missouri. It would also bring Indigenous peoples into closer relation through dependence on trade. While early settlers and traders heavily relied on Indigenous labor and patronage for trapping and hunting, Indigenous societies

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<sup>29</sup> Charles A. Eastman, *The Soul of the Indian* (Houghton Mifflin: Boston, 1911), 54.

<sup>30</sup> Jeffrey Ostler, *The Plains Sioux and U.S. Colonialism from Lewis and Clark to Wounded Knee* (Cambridge: Cambridge University Press, 2004), 21.

in turn relied on trade goods such as cloth, guns, ammunition, knives, iron cooking utensils, and food items.<sup>31</sup> The fur trade was not so much a trade of furs for Indigenous peoples; it was more the gun and cloth trade, two highly sought after European-made commodities. From the early colonial times through the end of nineteenth century Indian wars, prices for guns, ammunition, and cloth dictated much of the economic relationship between white traders and Indigenous peoples. Indigenous interest in useful commodities such as guns and cloth, however, differed profoundly from the profit motive of white traders. Fixing prices, withholding trade goods and annuities, and introducing alcohol were all means by which traders attempted to assert control over Indigenous patrons. Price fluctuations also fueled sporadic inter-Indigenous trade wars that were often encouraged by rival trading firms or rival European colonizers. The hit-and-run battles, however, were not long, drawn-out military campaigns where victory, surrender, or defeat resulted in a wholesale transfer of political sovereignty or territory. With the introduction of the US factory system of trade houses, US Indian policy from 1806 to 1835 was supposed to curb and control the coercive practices of traders. In other words, early Indian policy in the Upper Missouri was not to regulate Indigenous nations but rather the criminal behavior of whites.<sup>32</sup> The policy had little effect, since the US and traders participated in the same criminal enterprise of trespass and theft.

A US-backed fur trade was slow to grow in the Northern Plains and didn't make significant headway until after the War of 1812. After the defeat of the British, the US tried to assert dominance in the region and over the Indigenous nations by undercutting

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<sup>31</sup> Ibid., 28-9.

<sup>32</sup> William R. Swagerty, "History of the United States Plains Until 1850," in *Handbook of North American Indians*, vol. 13: *Plains*, pt. 1, Raymond J. Demallie, ed., William C. Sturtevant, gen. ed., 261-70.

British and French traders and expelling them from the region. After the Panic of 1819, US trade steadily increased as several companies established trading forts on the Missouri that allowed them to transport more goods and cover a larger geography. By 1827, the American Fur Company monopolized the river trade and maintained supremacy for the next three decades. At first these companies were in the business of trading beaver pelts, meeting demands for the European and US markets. By the 1830s, however, beaver populations had been all but exterminated and their demand decreased.

Indigenous peoples are largely seen as responsible for the decline of furbearing animals in the Northern Plains, but the decline was largely due to several factors linked to the fur industry and the US military. The adoption of horse culture increased the ability of Indigenous peoples to hunt buffalo and greatly changed the landscape of the Northern Plains, but it never compared to the killing efficiency of white trappers and hunters. The “Rocky Mountain system” of beaver trapping, dominant in the early nineteenth century, for example, completely bypassed Indigenous peoples’ political authority. Made up of heavily armed company employees, these units knowingly trespassed into Lakota and Arikara territories fortifying their positions and trade routes as they advanced.<sup>33</sup>

According to Indigenous custom, no one was barred from hunting for subsistence and survival. But restrictions were placed on whites hunting for profit, making these highly-romanticized frontiersmen little more than poachers. As beaver populations declined and demand for their pelts decreased, buffalo robes were quick to fill their place. Yet, like the beaver, when US companies dominated the trade and bypassed Indigenous peoples, the buffalo herds were all but exterminated in the course of two decades, from the 1870s to

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<sup>33</sup> Ibid., 276.

the 1880s. This went hand in hand with military-sponsored extermination campaigns that began in 1865.<sup>34</sup> Taking only the hides, the carcasses were left to rot on the plains. But the white hunters went a step further, because killing off the buffalo only took care of one part of the overall “Indian problem.” They poisoned the carcasses with strychnine to also kill off coyotes, wolves, and other scavengers — and sometimes starving Native people.<sup>35</sup> Estimates place the pre-contact North American buffalo population at 25-30 million. It took settlers nearly a century to exterminate the herds in the East, removing them, much like their human kin, west of the Mississippi River. Annihilating the remaining 10-15 million in the Great Plains took just two decades.<sup>36</sup> Buffalo removal and extermination followed a similar pattern of Indigenous elimination and removal east and west of the Mississippi.<sup>37</sup>

The fur trade marked the first round of enclosures along the Missouri River, which violently undermined Indigenous women’s political authority. Through her family history Sicangu scholar Virginia Driving Hawk Sneve recounts the well-known abuses, not part of the official record, against Lakota women at Fort Platte, which was in operation from 1840 to 1846.<sup>38</sup> The fort’s short history reveals the often violent transformation of Indigenous gender relations during the fur trade. The institution of

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<sup>34</sup> David D. Smits, “The Frontier Army and the Destruction of the Buffalo, 1865-1883,” *The Western Historical Quarterly* 25, no. 3 (1994): 312-38.

<sup>35</sup> Waggoner, *Witness*, 461-2.

<sup>36</sup> For buffalo population estimates and the causes of their destruction, see Andrew C. Isenberg, *The Destruction of the Bison* (Cambridge: Cambridge University Press, 2000); M. Scott Taylor, “Buffalo Hunt: International Trade and the Virtual Extinction of the North American Bison,” *American Economic Review* 101(7) (2011): 3162-95.

<sup>37</sup> See also, Tasha Hubbard, “Buffalo Genocide in Nineteenth-Century North America: ‘Kill, Skin, Sell,’” in *Colonial Genocide in Indigenous North America*, eds. Andrew Woolford, Jeff Benvuto, and Alexander Laban Hinton (Durham: Duke University Press, 2014), 292-305.

<sup>38</sup> Virginia Driving Hawk Sneve, *Completing the Circle* (Lincoln: University of Nebraska Press, 1998), 25; Virginia Driving Hawk Sneve, *Sioux Women: Traditionally Sacred* (Pierre: South Dakota Historical Society Press, 2016), 23-6.

marriage was foundational in changing gender roles. Lakota women who married white traders sometimes found the practice of coverture, the placing of women and children under the protection and control of a patriarch, a harrowing experience. Lakota society was polygamous, didn't adhere to monogamous sexual values, and possessed nothing on par with the puritanical Christian views of sexual conduct or marriage. So the idea of marriage and union as a social contract concentrating all property ownership to a single patriarch was an alien concept. Descending from a society where women owned all the property in the home, losing control of their property, their bodies, and their children, and being placed under the dominion of a white patriarch was a completely foreign experience.<sup>39</sup>

This should come as no surprise. In white society women and children held little or no political authority and were relegated to service in the private sphere of the home. Diplomacy, trade, and war — the public sphere — were the sole privilege of men. Although Indigenous women labored to prepare the buffalo hides for trade, the hunt and sale of those hides was a male-dominated business. Capturing Indigenous woman secured access to her kinship network and increased the political status of the trader. Marriage into Indigenous societies, however, rarely resulted in the same reciprocity of marrying into white society. Only in rare instances did Indigenous men marry white women during the fur trade. Those that did were often the male offspring of an Indigenous-white trade union, granting the traders' boys a level of male privilege and class mobility denied to their kinsfolk. In these unions, boys were usually sent east to receive an education and

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<sup>39</sup> For a comparative study of different historical experiences among Dakota and Ojibwe marriages with white traders and the institution of coverture, see Catherine J. Denial, *Making Marriage: Husbands, Wives, and the American State in Dakota & Ojibwe Country* (St. Paul: Minnesota Historical Society Press, 2013).

were later taken on as partners in the trading business. Whereas girls were often sent back to live with their Indigenous relatives, if they were accepted. Indigenous women were expected to forfeit their bodies, labor, and children to the control of white traders. A single white trader could own or “marry” multiple Indigenous women increasing his access to their relatives or selling them, alienating them like a piece of property. Marriage to Indigenous women guaranteed increased access to trade markets, and therefore increased access to capital. In this sense, the subordination of Indigenous women was lucrative for a trader and increased his social position.<sup>40</sup>

Departing white traders, engagés (low-level laborers), and soldiers would often stop-off at the river forts for a drunken “frolic.” To fulfill their predatory desires, they demanded the sexual services of Indigenous women’s bodies — with or without their consent. Rape and sex work combined with freely flowing alcohol were commonplace at Fort Platte and other military outposts. Access to whiskey, treaty annuities, and trade goods sometimes came with the expectation that Indigenous men should forfeit their daughters’, sisters’, and wives’ bodies to white men, even though Indigenous women’s bodies were not theirs to give, to say the least. Soldiers frequently raped Indigenous women taken prisoner during or after a military engagement. “To celebrate victory,” Driving Hawk recounts, “troopers often rounded up the prettiest girls to be passed around among the officers, leaving the enlisted men with the less attractive, older women.”<sup>41</sup>

Many Indigenous activists today have identified “man camps,” the transient all-men communities of oil and gas workers, as exploiting Indigenous women through

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<sup>40</sup> Driving Hawk Sneve, *Completing the Circle*, 25.

<sup>41</sup> Ibid.



trafficking and sex work.<sup>42</sup> In some ways, trading forts were the first man camps — the vanguards of capital that marked their presence not just by extracting wealth from the land but also through the conquest of Indigenous women’s bodies. Those trade forts, or man camps, later would become the border towns, the white-dominated settlements that ring Indigenous reservations.

Such practices were not exceptional and were well in place by the time the US arrived late to the scene. French-Canadian Toussaint Charbonneau’s life as a trapper and fur trader is worth highlighting simply because he participated in nearly every major enterprise on the Upper Missouri and was a man of ill repute for his treatment of Indigenous women. Charbonneau is most famous for joining Lewis and Clark in November 1804 when the expedition camped among the Mandans at Fort Mandan. He offered up the labor of his “wife,” a Shoshone woman by the name of Sacagawea, and both his and her services as interlocutors and interpreters for Indigenous peoples they would encounter upriver. Although Sacagawea has surpassed Charbonneau in fame for her aid to the expedition, little is known about her other than her services to white men. Captured by Hidatsas at the age of thirteen, Sacagawea was one of many Charbonneau purchased throughout his life.<sup>43</sup> It was common practice for white traders to take Indigenous women as “wives,” earning them the reputation as “squaw men,” a disparaging term not for traders but for Indigenous women. Although she bore him children, Sacagawea was little more than chattel to Charbonneau, a piece of property he sometimes resented.

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<sup>42</sup> See Women’s Earth Alliance and Native Youth Sexual Health Network, *Violence on the Land, Violence on Our Bodies: Building an Indigenous Response to Environmental Violence*, <http://landbodydefense.org/uploads/files/VLVBReportToolkit2016.pdf>.

<sup>43</sup> Thwaites, *Journals of the Lewis and Clark Expedition*, Vol. 2, 282-3.

In August 1805 Clark recorded an incident in his journal which required the expedition's intervention. "I checked our interpreter [Charbonneau]," Clark wrote, "Striking his woman [Sacagawea] at their Dinner."<sup>44</sup> Prior to his employment with Lewis and Clark, Charbonneau had earned a reputation as a rapist and predator of Indigenous women. In May 1795, in the employment of the Montreal-based fur trading firm the North West Company, a major rival to the Hudson's Bay Company, Charbonneau was sent to pick up supplies at a trading post near Lake Manitou. According to the journal of John Macdonnel, a North West Company clerk, an elder Ojibwe woman caught Charbonneau "in the act of committing Rape upon her Daughter." Furious, the woman stabbed Charbonneau with a canoe awl, "a fate he highly deserved for his brutality," wrote Macdonnel.<sup>45</sup> Like Charbonneau, white traders, explorers, soldiers, and settlers believed they possessed the right to freely trespass across Indigenous territory, so, too, did they believe they possessed unrestricted access to Indigenous women's bodies and their children.

Extreme violence against Native women was not random or without reason. Sexual violence and rape are often seen as one-off events. Muscogee jurist Sarah Deer argues that rape "can be employed as a metaphor for the entire concept of colonialism" because it is not just individually experienced but part of an ongoing structure of domination with a beginning but no end.<sup>46</sup> More so than Indigenous men, the subordination of Indigenous women was about realizing profits in the fur trade. In this

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<sup>44</sup> Ibid., 349.

<sup>45</sup> Quoted in F. A. Chardon, *Journal at Fort Clark, 1834-1839*, ed. Annie H. Abel (Pierre: Department of History, 1932), 271n258.

<sup>46</sup> Sarah Deer, *The Beginning and End of Rape: Confronting Sexual Violence in Native America* (Minneapolis: University of Minnesota Press, 2015), xvii.

sense, violence against Native women was productive violence because it undermined their customary political authority and used their bodies to create profit. Unlike their white counterparts, whose bodies were used for sexual reproduction, Indigenous women's bodies increased access to the land and capital by increasing a white traders' access to new markets through her kin. While Indigenous women did produce children for white men, the ultimate goal was not to grow a population in service of the river trade. In fact, Indigenous women were highly disposable yet also needed to enlarge a white traders' political and economic influence, and therefore securing the future of white settlement. Diminishing Indigenous women's political authority produced wealth at the expense of the land and Indigenous nations. Whereas rape and gender violence are seen as a tactics for colonization by decreasing Indigenous women's social and political status, it was also about creating value through the realization of increased profits by accessing the land through their bodies. As Athabaskan scholar Dian Million puts it, "gender violence marks... the evisceration of Indigenous nations."<sup>47</sup> Wrenching them away from their political authority in the land, Indigenous women were seen as a natural source of wealth to be freely appropriated by white men. White traders and trappers appropriated Indigenous women's bodies as much as they had appropriated the wealth of the land by harvesting and selling the skins of animals. The two practices went hand in hand.

### **Pustulis Correptus**

As the first entry of capitalism in the Upper Missouri, the fur trade also brought apocalypse in the form of smallpox. The trade spread through existing Indigenous trade

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<sup>47</sup> Dian Million, *Therapeutic Nations: Healing in an Age of Indigenous Human Rights* (Tucson: University of Arizona Press, 2013), 7.

networks, and with it came European diseases. By the time Lewis and Clark arrived, smallpox had devastated the Missouri River Indigenous peoples several times, most likely being introduced by French and British traders. The advent of steamboats greatly increased the spread of smallpox. In 1824 Congress authorized the Army Corps of Engineers, a construction branch of the military, to regulate the navigation of rivers and harbors. By 1838 Congress assigned the Army Corps to pull snags and clear the river for steamboat traffic coming from Saint Louis. The federal government assumed its authority over navigable waterways under the Constitution's commerce clause, the same clause that also regulated trade with Indigenous nations.<sup>48</sup> Indian affairs, under the supervision of the War Department, was tasked with the creation and management of federally subsidized trading posts to undercut British, Spanish, and French trade and bolster US influence over Indigenous nations.<sup>49</sup> The increase in steamboat traffic intensified the fur trade. The fur trade intensified commerce and therefore US authority over the river. And, as R. G. Robertson points out, the fur trade "was the primary means by which smallpox reached the Indians in the interior."<sup>50</sup> In other words, the spread of smallpox and other diseases coincided with an intensification of colonial invasion tied to the introduction and growth of capitalist trade markets.

Steamships transported treaty annuities, ammunition, Indian agents, traders, and soldiers to Missouri River forts and trading posts. Boats also carried death and the consequences of their passage brought pure horror to Indigenous nations. In the summer

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<sup>48</sup> Schneiders, *Unruly River*, 54-5; Lawson, *Dammed Indians*, 7-8.

<sup>49</sup> S. Lyman Taylor, *A History of Indian Policy*, (Washington, D.C.: United States Department of Interior, Bureau of Indian Affairs, 1973), 42-4; Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press, 1994), 6-7.

<sup>50</sup> R. G. Robertson, *Rotting Face: Smallpox and the American Indian* (Caldwell: Caxton Press, 2001), xi.

of 1837, an American Fur Company steamboat, the *St. Peter's*, traveled from Saint Louis transporting trade goods and Indigenous treaty annuities. The ship was also sent to collect Indigenous-harvested buffalo hides. It also knowingly carried in its human cargo smallpox. As a result, the *St. Peter's* voyage triggered a massive smallpox epidemic among the Upper Missouri Indigenous nations. The outbreak most devastated the Mandan, Hidatsa, and Arikara villages along the river. Engulfed at least twice before, this outbreak decimated these tightly-knit village communities and in some cases killed over ninety percent of their populations. The Lakotas and Dakotas largely escaped the outbreak because of prior inoculation and by avoiding trading posts after learning of the epidemic.<sup>51</sup>

At Fort Clark, where the Mandans lived along the Missouri River, the violence of the disease was beyond appalling. On April 28, 1837, the *St. Peter's* crew observed the first symptoms of smallpox among its human payload. Yet, the steamship pushed forward and arrived at Fort Clark on June 19. Buffalo robes were loaded onto the ship and treaty annuities were unloaded. Smallpox, too, was knowingly unloaded as the infected crew departed that night for a drunken “frolic” among the Mandans. Within twenty-five days of the Mandans showed the first signs of infections. The only ones spared were the elders who had built up an immunity and whose bodies were already scarred from surviving previous outbreaks. Children and adults writhed and stung from intense fevers. Putrid, hideous sores filled with puss corrupted their bodies forever scarring them for life if they survived. At first only several died each day. As days passed, the numbers quickly rose to a dozen and then became impossible to tally. Francis A. Chardon, a fur trader at the fort,

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<sup>51</sup> Clyde D. Dollar, “The High Plains Smallpox Epidemic of 1837-1838,” *Western Historical Quarterly* 8, no. 1 (1977): 23-4; Ostler, *The Plains Sioux*, 31.

stopped counting the dead, “as they die so fast it is impossible.”<sup>52</sup> Mothers and fathers killed their children to save them from suffering. Some committed suicide and friends, relatives, and lovers killed each other. The raging inferno killed so many there was no one to bury the dead and the smell of decaying bodies could be smelled from miles away.<sup>53</sup>

Many have speculated that Indigenous peoples were incapable of understanding infection and the spread of disease. What is clear in Chardon’s journals is that Indigenous peoples correctly identified the source of their affliction — the fur trade and the trading forts — and sought retribution against the traders and the fur trade itself. “We are badly situated,” wrote Chardon, “as we are threatened to be Murdered by the Indians every instant.”<sup>54</sup> The suspicions were well placed, since the threat of smallpox was used to control Indigenous behavior. Indigenous peoples knew traders and explorers sometimes carried smallpox or cowpox with them in vials for inoculations. George Catlin recounts a story he heard among the Pawnees that a trader threatened unleashing smallpox upon them if they didn’t submit to his will — “he would let the small-pox out of a bottle and destroy the whole of them.”<sup>55</sup> When Lewis and Clark wintered with the Mandans in 1804 and 1805, they threatened to spread smallpox among the Dakotas and Lakotas raiding the Mandan villages. “[T]he Sioux had it in contemplation... to murder us in the spring,” Lewis wrote, “but were prevented from making the attack, by our threatening to spread the *small pox*, with all its horrors among them. Knowing that it first originated among the white people, and having heard of inoculation, and the mode of keeping the infection in

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<sup>52</sup> Chardon, *Journal at Fort Clark*, 126.

<sup>53</sup> *Ibid.*, 126-33.

<sup>54</sup> *Ibid.*, 128.

<sup>55</sup> George Catlin, *North American Indians*, vol. 2 (Edinburgh: John Grant, 1926), 29.

phials [vials]..., a bare threat filled them with horror, and was sufficient to deter them from their resolute bloody purpose.”<sup>56</sup> The mere threat of genocidal violence through the spread of disease demonstrates the willingness of explorers and traders to use smallpox for social control. Indigenous nations knew that white traders and explorers possessed the ability to spread smallpox and to stop it. Disease did the work of colonialism and was a weapon that was not oftentimes used deliberately. But when it was used (deliberate or not), it served a murderous purpose. Regardless, the intention of annihilation was there, even it was not always explicit.

Although accurate Indigenous population data does not exist, some studies suggest that Indigenous nations that had more contact with whites had increased exposure to diseases. These nations had positioned themselves as brokers in the fur trade like the Mandans at Fort Clark, often settling near trading forts or allowing trade posts in or near their villages. Diseases were quick to spread in these intimate river communities making the quarantine or flight nearly impossible. Some calculations estimate from 1780 to 1877 Indigenous river nations lost nearly eighty percent of their populations or possibly more, with the Mandans, Caddo, Wichita, and Pawnees experiencing almost ninety percent population losses.<sup>57</sup> Buffalo hunting nations on the Northern Plains from 1780 to 1877 experienced a forty-percent population decline, with the Assiniboine, Atsina, and Comanche experiencing nearly eighty percent population losses.<sup>58</sup> By the time the first population censuses counted Indigenous nations, the Plains nations experienced at least

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<sup>56</sup> Quoted in Lewis and Clark, *The Travels of Capts. Lewis & Clarke*, 27. Although Lewis and Clark brought with them a form of cowpox, it is doubtful the sample they carried survived by the time they reached the Mandan village.

<sup>57</sup> These nations include the Mandans, Caddos, Wichitas, Pawnees, Kansas, Hidatsas, Arikaras, Omahas, Osages, Oto-Missouris, and Poncas.

<sup>58</sup> These nations include the Assiniboines, Atsinas, Comanches, Blackfeets, Kiowas and Kiowa-Apaches, Crows, Siouxs, Cheyennes, and Arapahos.

one major smallpox epidemic in 1778. Smallpox epidemics swept through the region again in 1781 and 1801. The 1837 smallpox outbreak, however, was the most devastating for the Missouri River village nations, nearly wiping out the Mandans and forcing them to join together with the Hidatsas and Arikaras. In 1849 Cholera killed about one-fourth of the Pawnees and many Lakotas. The last major smallpox epidemic in the region occurred in 1871, and killed thousands of Assiniboines and Blackfeet.<sup>59</sup> In each case, the introduction of deadly diseases always coincided with intensified invasion and increased trade traffic.

The introduction of smallpox and European-borne diseases was devastating to Indigenous peoples; it was knowingly spread along trade routes and could have been prevented. While American Fur Company didn't deliberately spread smallpox in 1837, it consciously did and faced little consequences. It placed the realization of profit over Indigenous lives and made it simpler for future white settlement by eliminating Indigenous competition and cutting out intermediaries such as the Mandans, allowing the fur trade to spread and become more concentrated in the hands of white traders.<sup>60</sup>

### **No Middle Ground**

Turning the river into profit required little capital investment in Indigenous lives as long as the trade goods and annuities continued to flow. But it did require the continual extraction of furs. The employment of Indigenous societies as trappers, hunters, and patrons was the first effort at turning the river into a source of wealth.

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<sup>59</sup> James Mooney, *The Aboriginal Population of American North of Mexico* (Washington, D.C.: Government Printing Office, 1928), 12-3.

<sup>60</sup> Robertson, *Rotting Face*, xii.



The Missouri River wasn't a "middle ground" scenario where all parties were equals, even when the British and French dominated trade. A popular convention in US history, the middle ground thesis posits that in some cases, such as the fur trade, Indigenous and white people found common ground through trade where one group was not allowed to assert too much control or influence over the other.<sup>61</sup> Lost in these imaginary and ahistorical situations, however, is the simple fact that early European and US colonization, in all its forms, was fundamentally extractive and imperial.<sup>62</sup> For example, the Lakotas, while welcoming and benefitting from the river trade, didn't intend to usurp, dispossess, and ultimately conquer white settlers; nor did they marry into wealthy white families to acquire their wealth, as white traders frequently married into Indigenous families to increase trade ties and dependency; nor did they set out to eliminate entire Indigenous communities, although that was the intention of the US. The so-called universal law of commerce, that governed most Western societies' colonial relations, never created equal trading partners among Indigenous peoples. If the reciprocity of "free trade" or laissez-faire existed during the early fur trade, then it would have permitted Indigenous peoples to open up Indigenous-dominated markets on foreign soil and to marry into wealthy white family across the Atlantic or in US settlements. That simply never happened. Lakotas did actively compete with other Indigenous nations for control over the river trade, but such conflict never equaled the holocaust brought by disease and the calculated violence of the US military and traders.

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<sup>61</sup> For an example of the now widely circulated "middle ground" thesis, see Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815* (Cambridge: Cambridge University Press, 1991).

<sup>62</sup> Thanks to Tlingit historian Jordan Craddock for challenging the middle ground thesis.

The Oceti Sakowin had good reason to despise the imposition of white traders and US forts. As the fur trade peaked, the Oceti Sakowin east and west of the Missouri began to wage defensive wars to expel the invaders who they rightfully blamed for the disappearing buffalo and other animal kin. Foremost among their grievances was the devastation inflicted by white traders, emigrants traversing the land, and the increasing US military presence. Each was a foreboding sign of white encroachment. Instead of justice, what they got instead was “peace” through war.

### Chapter 3: War

If money comes into the world with a congenital blood-stain on one cheek, capital comes dripping from head to toe, from every pore, with blood and dirt.

—Karl Marx, *Capital, Vol. 1*, 1867<sup>1</sup>

If the lands of the white man are taken, civilization justifies him in resisting the invader. Civilization does more than this; it brands him as coward and a slave if he submits to the wrong... If the savage resists, civilization, with the ten commandments in one hand and the sword in the other, demands his [sic] immediate extermination.

— *Report of the Indian Peace Commissioners*, 1868<sup>2</sup>

Bloody wars of conquest defined the period following the US's assertion of control over the river trade. These were not regular conflicts where two armies fought on equal footing and engaged only combatants. They were asymmetric and irregular wars waged against the entirety of Indigenous society. Indigenous men, women, and children — and their buffalo kin, a major food supply — all became legitimate targets. The goal was not just military defeat but total domination to force the surrender of lands. Although the US never formally declared war on Indigenous peoples or the Oceti Sakowin, Indigenous peoples have well understood how overt militarism coincides with the taking of land. As we shall see, a state of war existed for nearly half a century in the nineteenth century. Its first goal was to exert control of the river. As time went on, it expanded to include the entire Missouri River basin, especially the fertile buffalo hunting grounds in the western Powder River country. Following the Civil War, the Oceti Sakowin's relationship with the Missouri River was increasingly defined by avoidance. The

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<sup>1</sup> Karl Marx, *Capital, Vol. 1* (1867), trans. Ben Fowkes (Penguin: New York, 199), 925-6.

<sup>2</sup> *Report of the Indian Peace Commissioners... Report to the President by the Indian Peace Commission*, 40th Cong., 2d sess., House of Representatives, Ex. Doc. No. 97, January 7, 1868, 7.

escalation of the river trade brought unwanted changes such as an increased US presence through the construction of military and trade forts and intensifying the assault on rapidly thinning buffalo herds.

The taking of territory often coincides with attacks on Indigenous economies. Indigenous subsistence hunting, gathering, and agriculture initially provided the means to effectively resist settler encroachment. By destroying subsistence economies, by separating Indigenous producers from the land and attempting to make them dependent on treaty annuities or cash economies, the accumulation process is relaunched (again and again) by waging total war on the whole of Indigenous life. The Oceti Sakowin were not the first to confront US total war. Haudenosaunees, for instance, call every US commander-in-chief “town destroyer.” The title was bestowed on the first US president George Washington, who ordered a bloody, punitive campaign that burned forty Haudenosaunee towns in New York during the Revolutionary War. Haudenosaunee cornfields were also burned to thwart reclaiming the land and impose starvation. To consummate possession by mixing blood and soil, the troops responsible for razing the Haudenosaunee towns were afterwards rewarded with title to Indigenous lands.<sup>3</sup>

In a very real sense, the founding of the US was a declaration of war against Indigenous peoples. But to formally declare war would have been to acknowledge Indigenous peoples’ status among the “civilized” or “Christian” nations. International

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<sup>3</sup> “While colonial leaders were often responsible for dictating policies that supported colonial expansion,” Dakota historian Waziyatawin writes, “civilian populations of settlers had much to gain from helping to implement those policies. For example, scorch and burn was a tactic used in the earliest stages of American colonisation, prompting the Seneca victims of his policy to name George Washington, one of America’s most famous founding fathers, Town Destroyer. Major General John Sullivan’s army carried out Washington’s orders by razing Haudenosaunee orchards and ripening fields of corn and beans. Washington’s troops and their families were later rewarded for their service with title to Indigenous lands.” “Malice Enough in their Hearts and Courage Enough in Ours: Reflections on US Indigenous and Palestinian Experiences under Occupation,” *Settler Colonial Studies* 2, no. 1 (2012): 176.

jurist Antony Anghie maintains that from European contact in the Americas onwards, the normal principles of waging “just war” never applied to Indigenous peoples. But the principles of just war and sovereignty were not imported from Europe. They were invented to deal with the novel “Indian Problem” of the so-called “New World.” The invented rules applied only to those who possessed civilization. The “uncivilized” have been forever excluded. Anti-Indigenous warfare was, consequently, “perpetual” because Indigenous peoples, living in an uncultivated state of nature, would ever remain “the unredeemable Indian.”<sup>4</sup>

Undeclared war, however, never made endless war making against Indigenous peoples any less real. Waging “savage war” simply suspended the rules of “civilized war.” US army historian Andrew Birtle confirms this line of thinking. He reports that the military academy at West Point studies US Indian wars only in its course on the law:

International law as taught at West Point approached the subject of Indian warfare in somewhat the same manner as it did the treatment of guerrillas and actively hostile civilian populations in civilized warfare. On the one hand, it maintained that the laws of war did not apply to aboriginal peoples — just as they did not apply to guerrillas — for the simple reason that “savages” did not abide by those laws. This meant that soldiers were free to employ the harshest measures necessary to subdue them.<sup>5</sup>

In other words, the US Indian wars developed the tactics and strategies that would inform US counterinsurgency operations against any all who could be deemed a threat to its expanding empire — put another way, any and all who can be made “Indian.” As Chickasaw scholar Jodi Byrd argues, “the United States propagates empire not through frontiers but through the production of a paradigmatic Indianness.” Enemies of empire

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<sup>4</sup> Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: University of Cambridge 2007), 27.

<sup>5</sup> Andrew J. Birtle, *U.S. Army Counterinsurgency Operations Doctrine, 1860-1941* (Washington, D.C.: Center for Military History, United States Army, 2009), 27.

who cannot be formally brought into the realm “civilization” are dealt with as “savages,” who possess no rights and can be wantonly destroyed or indefinitely detained. But it is the US who deems who and who is not “savage.” And the definition of “savagery” stems directly from the Indian wars, where the US began to master and refine its counterinsurgency tools and professionalize its military against any and all who could be made “Indian.”

With the increased professionalization of the US military following the Civil War, the lessons gained from fighting irregular and highly mobile Indigenous guerilla armies were passed down informally from generation to generation and most never became written doctrine. As scholar Laleh Khalili argues:

What was learned in the Indian Wars became the necessary, if unwritten, manual for subsequent overseas asymmetric warfare, in the Philippines, the Caribbean, and Latin America. Techniques deployed in the Indian Wars — some in long use before and continually perfected — included theories of collective responsibility, an impulse to “civilize” in order to pacify, the use of native and settler scouts and auxiliaries, the use of reservations as militarily useful spaces for concentrating and monitoring native fighters and civilians, timing battles at night or winter to ensure lack of preparedness among Native Americans, and surprise attacks against villages to undermine socioeconomic bases and independence of Native American communities.<sup>6</sup>

Unlike other forms of war, the defeat or surrender of Indigenous peoples often meant extermination, removal, or the resettling of their lands by an invading settler population, or all three. While everyday settlers didn’t always participate in waging war against Indigenous peoples — but frequently did — they certainly benefitted from Indigenous defeat. Although war could not be made with “savages,” it didn’t preclude the US from taking lands and making war through a policy of “peace” whether through

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<sup>6</sup> Laleh Khalili, *Time in the Shadows: Confinement in Counterinsurgencies* (Stanford: Stanford University Press, 2013), 18.

treaty, confinement to reservations, or the “civilizing” mission. As its primary authority, a sovereign possesses the right to wage war, which the US has done with great frequency, and the right to define the conditions of peace. Indigenous peoples waged wars of self-defense against US invaders and resisted conversion to its civilizing project.

Sovereigns wage wars, more or less, for three reasons: to acquire or conquer lands, resources, or populations; to seek revenge or punish enemies; or for self-defense against an aggressor. Self-defense has been denied as a fundamental right of Indigenous peoples to resist their oppressors making Indigenous resistance an unlawful act. Since Indigenous peoples are not seen as full sovereigns under US or international law, Indigenous resistance to colonialism — even if for self-defense — is criminalized.<sup>7</sup> The criminalization of Indigenous resistance by the US is not an anomaly but part of the global colonial enterprise of European empire-building. The war on the Northern Plains Indigenous nations must be seen in this global context, as an imperialist and expansionist project.

Libraries have been filled with countless volumes written by armchair historians, colonial apologists, and scholars of all stripes — too many to name here — on Northern Plains Indigenous warfare. Very few researchers, however, have actually questioned the premises of waging just wars on part of Indigenous nations against US empire. A question that many historians have entertained — did the Oceti Sakowin have a right to defend itself with armed force? — is not entertained here. The simple truth is: Indigenous nations, like all nations, possess the right to defend themselves. Asking whether or not Indigenous peoples had a right to self-defense makes for bad history and bad politics.

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<sup>7</sup> I draw my definition of sovereignty and the colonial encounter from Anghie, *Imperialism*.

Also, how a people choose to defend themselves, how they choose to survive, or how they choose to resist the onslaught of colonialism cannot be neatly placed into “right” or “wrong” categories. Survival by any means necessary is an act of resistance.

It was through war and self-defense that the Oceti Sakowin made its most historic agreements with the US: the 1851 and 1868 treaties of peace. The promise of peace, however, was as much about continuation of war by other means such as the civilizing mission and the continued criminalization the Indigenous culture of resistance. Endless peace through perpetual war has been US Indian policy from its inception, and that vicious war for peace has not ended — so long as Indigenous political collectivities continue to exist and continue exercise prior counterclaims to the land.

### **The 1851 Peace Treaty**

In 1849 Congress transferred the Bureau of Indian Affairs from the Department of War to the Department of Interior, a newly created federal bureaucracy dedicated to the management of wildlife, public lands, and the conservation of natural resources. Indian affairs have remained there ever since. More importantly, the shift marked a new direction in Indian policy that emphasized “peace,” while explicitly promoting the “civilizing mission.” Prior to a formal peace policy, the US entered into international relations with the various divisions of the Oceti Sakowin by signing “peace and friendship” treaties that placed them exclusively “under the protection of the United States of America, and of no other nation, power, or sovereign.”<sup>8</sup> The first was in 1805

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<sup>8</sup> Many treaties during the early nineteenth century contained this exact language. See Vine Deloria, Jr. and Raymond Demallie, *Documents of American Indian Diplomacy: Treaties, Agreements and Conventions, 1775-1979*, vol. 1 (Norman: University of Oklahoma Press, 1999).



with the Dakotas to build Fort Snelling at the confluence of the Minnesota and Mississippi rivers — the future site where the Dakotas would be imprisoned in a concentration camp for their part, real or imagined, in the 1862 Dakota-US War. Other treaties followed in 1815 and 1825 but never ceded large amounts of territory or drastically diminished Oceti Sakowin political authority.

During the signing the of those treaties the Oceti Sakowin possessed significant military and political power, so it is unlikely they viewed them as acquiescing to a superior sovereign power. This began to change after decades of the fur trade and diseases exacted their toll on the Northern Plains ecology and Indigenous nations. By the time of the peace policy, thousands of Lakotas had already withdrawn west of the Missouri into the Powder River country to avoid the unfolding apocalypse brought on by the river trade. In the east traders had swindled the Dakotas out of land and treaty annuities, reducing them to starving conditions and creating the conditions for an uprising to expel the invaders. The once-numerous buffalo nations that blackened the Missouri River valley had been all but wiped out or chased off. Near the Mississippi in Dakota country, they had been exterminated. The pressures from increasing overland white emigration westward further taxed rapidly diminishing buffalo herds. What followed was not peace, but three decades of military campaigns to crush and punish the Oceti Sakowin who were reduced to bare survival — a nation fighting for their lives.

The trail west to Oregon Territory intruded through Pawnee, Crow, Cheyenne, Lakota, and Arapaho hunting grounds causing cholera, measles, and smallpox outbreaks among the Sicangus, killing 500. The devastating spread of infectious disease always coincided with intensified invasion. To safeguard emigration on the Oregon Trail from

Indigenous retaliation, in 1845 colonel Stephen W. Kearny led 250 dragoons, units that became the mounted cavalry, from Fort Leavenworth in St. Louis up the Platte River. The military expedition was a show of force, a warning that Indigenous peoples had no authority to close the road. As Kearney told them, “the white people traveling upon it must not be disturbed, either in their persons or their property.”<sup>9</sup> It is doubtful the show of force had any effect other than provoking resentment. When settlers brought disease, chased off the game, and trespassed through their territory, Indigenous peoples were punished.<sup>10</sup>

In 1847 Brigham Young led an exodus of Mormons to settle Indigenous lands in Utah. News of the discovery of gold in California in 1849 and later in Montana in 1853 further exacerbated the situation by increasing westward emigration. The lands were flooded with whites: Mormons traveling to Utah, settlers emigrating to Oregon, and miners headed to California goldmines. In 1846 a group of Sicangus and Oglalas demanded payment for the damages increased overland travel inflicted on the land: the depletion of game, the clearing of scarce timber, and the spreading of disease.<sup>11</sup> Instead of compensation, they got escalated military occupation. The US military found it impossible to control the waves of white settlers and mounting Indigenous indignation. The year the peace policy was declared, the US established a fort at the confluence of the North Platte and Laramie rivers to address the problem. Fort Laramie became the site to pursue “peace” by increased military occupation in Powder River country. Strategically

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<sup>9</sup> *Annual Report to the Secretary of War*, 1845, 29th Cong., 1st sess., 1845-46, S. Doc. 1, serial 470, 211.

<sup>10</sup> Ostler, *The Plains Sioux*, 34-5.

<sup>11</sup> Raymond J. Demallie, “The Great Treaty Council at Horse Creek,” in *Nation to Nation: Treaties Between the United States & American Indian Nations*, Suzan Shown Harjo, ed. (Washington, D.C.: National Museum of the American Indian, 2014), 91-4.

positioned at the point where the overland trail trespassed through the territory of the last remaining buffalo large herds, the fort was a symbol of increasing US presence and authority.

The vision for the military outpost came from the Upper Platte Indian agent Thomas Fitzpatrick, a leading advocate of peace by military occupation.<sup>12</sup> As part of his vision for peace, Fitzpatrick hoped to advance US interests by securing a large, inter-Indigenous peace treaty to definitively establish Indigenous territory, guarantee safe passage for overland travelers, and secure land cessions. A mass council of Plains nations was called. In September 1851, tens of thousands from the Arikara, Mandan, Hidatsa, Crow, Gros Ventre, Blackfeet, Assiniboine, Shoshone, Arapaho, Cheyenne, Lakota, and Dakota nations met for three weeks with US treaty commissioners at Horse Creek, thirty-six miles downriver of Fort Laramie. The first Fort Laramie Treaty of 1851 was signed by all parties, ensuring the US's right to build wagon roads and railroads and payment of \$50,000 for fifty years for damages caused by the overland emigrations.<sup>13</sup> Perhaps demonstrating the US's commitment to this "peace" policy, the Senate limited the treaty annuities to ten years with the possibility of a five-year renewal. The amendment was sent back to the Plains nations for approval and then back to the Senate, where it was never ratified. Regardless, the US paid the \$50,000 in annuities for the next fifteen years.<sup>14</sup> The spirit of peace, however, was short lived and the treaty was deeply flawed.

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<sup>12</sup> For an excellent analysis of the role Fort Laramie in the Powder River country and the ensuing Plains wars, see Dunbar-Ortiz, *An Indigenous Peoples' History*, 186-91.

<sup>13</sup> Francis Paul Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press, 1994), 237-40.

<sup>14</sup> Demallie, "The Great Treaty Council," 111.

Six headmen of the Oceti Sakowin signed the treaty, presumably with the understanding that the emigrant depredations would cease and that the US would live up to its commitments to peace. The Oceti Sakowin representatives, however, protested over having to select a single “head chief” to represent them in the treaty negotiations versus the more familiar decentralized political structure that allowed each division to select its own representatives. A single leader or central organization for the entire Oceti Sakowin offended the autonomy each political division possessed. Mato Wayuhi, Conquering Bear, a Sicangu, was arbitrarily chosen as a representative of the 1851 Fort Laramie, but protested his appointment because of his own young age and lack of experience.<sup>15</sup> Selecting “treaty chiefs” to represent entire Indigenous nations was an age-old tactic to exert influence and concentrate leadership. Although in this case it was resisted, the tactic attempted cleaved political factions. Strategies of Indigenous resistance, however, were as uneven and diverse as strategies of settler colonialism. Most Indigenous leaders were committed to diplomacy than armed resistance, though the two sometimes worked in tandem. Managing these divisions was key. Some wanted to give up the Powder River country and remove to reservations to start a new life. “The hostiles,” as the Indian agents called them, wished to end treaty making altogether and keep their lands without reservations and restrictions. Although the two divisions agreed with the premises of the 1851 Treaty, the western divisions demanded that the reservation groups not take any more annuities and remove themselves from the negative influence of the trading forts, where the annuities were distributed.<sup>16</sup>

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<sup>15</sup> Ostler, *The Plains Sioux*, 37-8.

<sup>16</sup> Waggoner, *Witness*, 332-3.

In 1853 Fitzpatrick criticized the outcome of the 1851 Treaty, calling it a temporary fix to coming war. “The [peace] policy must be either an army or an annuity,” he argued. “Either an inducement must be offered to them greater than the gains of plunder, or a force must be at hand able to restrain them and check their depredations. Any compromise between the systems will only be liable to all the miseries of failure.”<sup>17</sup> Failure was in the hands of Indigenous peoples, according to Fitzpatrick, who could only be persuaded to peace by dependency on US annuities or force. Neither was agreeable to the Oceti Sakowin. Annuities meant submission and land cessions, and an increased military presence meant violence. To the Oceti Sakowin, treaty-making became more and more a zero sum game where all roads led to increasing relations with the US and not fostering and maintaining their independence.

Three years after the treaty signing, in August a lame calf belonging to an emigrant Mormon wandered into a camp of near starving Sicangus. Believing the calf was abandoned, it was killed, butchered, and almost immediately consumed. The Mormon owner called for retribution and John L. Grattan, a young West Point graduate stationed at the nearby Fort Laramie, answered. Although Indigenous peoples at first allowed the overland emigrants to travel through and hunt freely within their territories, under US law the killing or theft of a domestic animal, such as a lame calf, was considered a property crime. Private property held more sanctity than the Indigenous treaties or lives. Grattan descended on the camp demanding that Conquering Bear relinquish the guilty party. As the “treaty chief” of the 1851 Treaty committed to maintaining peace, Conquering Bear offered restitution to the Mormon and pled for a

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<sup>17</sup> *Annual Report of the Commissioner of Indian Affairs*, 1853, 33rd Cong., 1st sess., 1853-54, 122.

peaceful resolution. Grattan's men responded to the peace offer by shooting Conquering Bear. The Sicangus descended on Grattan and his soldiers, killing him and all 28 of his men. Six days later, Conquering Bear died from his wounds. With him died the spirit of the 1851 peace treaty. The Sicangus were quick to seek revenge and robbed a mail coach near Fort Laramie making off with a large amount of money and killing three white men.<sup>18</sup>

Tensions were high. While treaty annuities continued to arrive on time, white traders continued to prey on the Lakotas and Dakotas who received their annuities at Missouri River trading posts. In the winter 1853-1854, Sihasapas and Hunkpapas refused treaty annuities and began to wage war on white traders. Traders (and even contemporary historians) have mistakenly called treaty annuities "gifts." Annuities were not gifts but contractual treaty obligations. Although their intended purpose was to guarantee peace, they were often withheld to pay trade "debts" or used to coerce "hostile" groups into submitting a trader's will. White traders were first welcomed because they brought highly-prized commodities such as guns and cloth. The Oceti Sakowin called them Wasichun, or people who possess a mysterious power. That power was access to what seemed like endless goods. After years of living among Indigenous nations, it soon became clear those goods and that power came at a deadly cost. When the traders demanded more and exploited Native patrons, they earned their second name, a play on the first: Wasicu, the fat-taker, the settler, the colonizer, the capitalist. To be called Wasicu was the highest insult. It meant that a person behaved as if they had no relatives. Extremely selfish and individualistic behavior as if having no accountability to others

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<sup>18</sup> Doreen Chaky, *Terrible Justice: Sioux Chiefs and U.S. Soldiers on the Upper Missouri, 1854-1868* (Norman: University of Oklahoma Press, 2012), 32-3.

was essentially death because it was punished by alienation or banishment. When the Oceti Sakowin spoke of the invaders, Wasicu became synonymous with the United States, a nation that behaved as if it had no relatives.<sup>19</sup>

At one time all groups of the Oceti Sakowin eagerly sought trade goods such as guns and cloth. But traders also represented a growing dependence and a permanent nuisance. For this reason, Little Bear, a leader of the Hunkpapa, waged a bitter campaign against the white traders on the Upper Missouri. According to American Fur Company employee Edwin Thompson Denig, in 1853 when the fur company attempted to construct a trade fort in Hunkpapa territory without their consent, Little Bear's Akicitas (soldiers) "cut up the carts, killed the horses, and flogged the traders and sent them home." Little Bear first earned his status as a leader when he killed a despised white trader from the American Fur Company in the trader's own home. As a result, Denig characterized Little Bear as seeking no more than the "destruction of all traders in the country." The Sihasapas and Hunkpapas under Little Bear's command, Denig recounted: "cut off every white man they meet and pillage or destroy all property outside the forts at the Yellowstone. They declare war to the knife with the Government of the United States and all whites in the country, threaten to burn up the forts, make no buffalo robes except what they want for their own use[,] and wish to return to their primitive mode of life."<sup>20</sup> Some Missouri River Lakotas and Dakotas revolted against the fur trade and the profit motive it encouraged by returning to subsistence practices of buffalo hunting, eschewing the drinking of alcohol, boycotting the river trade, and boycotting and actively sabotaging the

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<sup>19</sup> Wasicu is more associated with criminal behavior than it is considered a descriptor for race.

<sup>20</sup> Edwin Thompson Denig, *Five Indian Tribes of the Upper Missouri: Sioux, Arikaras, Assiniboines, Crees, Crows*, John C. Ewers, ed. (Norman: University of Oklahoma Press, 1961), 26-7.

trading forts — the primary source of their affliction. Returning to subsistence buffalo hunting and the refusal to participate in the fur trade allowed Indigenous nations to resist the encroachment of capitalist relations.

Later that year Indian agent Alfred J. Vaughn traveled the Missouri River meeting with various divisions of the Oceti Sakowin to distribute annuities and to gather reports on the recent hostilities against traders. When he arrived at the Sihasapas and Hunkpapas camp, they firmly refused Vaughn's annuities. Among the Ihanktonwannas, the headman Red Leaf cut open all the bags of the Indian agent's provisions and scattered the contents across the prairie. The Akicitas then threw the remaining gunpowder keg in the river, shooting it until it exploded.<sup>21</sup> The more militant divisions among the Oceti Sakowin resented what the trading posts and the treaty annuities symbolized: nonconsensual occupation and an attack on the land. The refusal to participate in the market economy and by seeking its violent eviction puts to rest certain claims that the Oceti Sakowin had become helplessly dependent and devastatingly transformed by the fur trade, thus leading to their inevitable defeat and collapse. However, the strident refusal to become dependent on the occupier's economy was only possible by maintaining access to buffalo herds. Like a good relative, the Pte Oyate provided the means to resist and refuse early stages of invasion. That strength through animal kinship may have prevented dependence on the river trade, but it soon became an exploited weakness when the military targeted the buffalo nations for extermination. An attack on the land and the buffalo was an attack on Indigenous subsistence practices and the ability to resist encroachment.

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<sup>21</sup> Chaky, *Terrible Justice*, 34-5.



The military and traders were quick to claim victimhood after Grattan's defeat and the war on the Missouri River trade.<sup>22</sup> In response the War Department sent 600 soldiers under the command of General William S. Harney up the Platte River. On September 5, 1855, Harney engaged 250 Sicangus camped at Blue Water Creek. The leaders, Tukiha Maza, Iron Shell, and Wakinyan Cikala, Little Thunder, sued for peace, telling Harney their camp was peaceful and mostly women and children. Harney ordered his men to raze the camp, killing 86 — half were women and children. They took 70 women and children as prisoners and held them at Fort Laramie. According to one account, the soldiers seized an infant from her wounded mother and used the child as target practice.<sup>23</sup> At Fort Laramie, the officers picked over the Sicangu women who, according to the testimony of Susan Bettelyoun Bordeaux, “became the property of their captors.” In a letter accompanying Bordeaux's testimony, Hunkpapa historian Josephine Waggoner writes, “there were many war babies born after Harney left Laramie.”<sup>24</sup> That day Harney earned his Lakota name — Woman Killer.<sup>25</sup>

Woman Killer intended to terrorize the Lakotas into submission. Terror had the opposite effect. Out hunting while Harney's men razed, murdered, raped, and tortured Little Thunder's camp, a young man who later earned the name Tasunka Witko, Crazy Horse, returned to find his relatives' mutilated bodies scattered across the prairie. That day Crazy Horse committed his life to fighting the Woman Killer's nation. Also there

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<sup>22</sup> The defeat of Grattan is to this day still referred to as “the Grattan Massacre” by the US military.

<sup>23</sup> Ostler, *The Plains Sioux*, 42.

<sup>24</sup> Quote from Susan Bordeaux Bettelyoun and Josephine Waggoner, *With My Own Eyes: A Lakota Woman Tells Her People's History*, Emily Levine, ed. (Lincoln: University of Nebraska Press, 1998), 64, 155n12.

<sup>25</sup> Joseph Marshall III, *The Journey of Crazy Horse: A Lakota History* (New York: Penguin, 2005), 68.

that day, Crazy Horse's uncle, Sinte Gleska, Spotted Tail, attempted to stop the massacre. Although unarmed and surrounded by soldiers, Spotted Tail grabbed a soldier's knife and killed ten of Woman Killer's men before being taken down by two bullet wounds.<sup>26</sup> Crazy Horse and Spotted Tail came to represent two traditions of Indigenous resistance. One would follow a path of armed struggle and the other the path of diplomacy. Despite these divergences, the two remained good relatives to each other in the trying years to come, a testament to the strong bonds of kinship that held the nation together as their world was taken from them. While Crazy Horse and Spotted Tail were accomplished warriors and leaders, their highest virtue was their commitment to the defense of their human and nonhuman relations. The events of that day forever shaped their resolve for self-defense and survival, which didn't always mean picking up the gun but sometimes it did. For both Crazy Horse and the Spotted Tail, however, at that moment preserving a grounded authority in the land was the theory and the gun was the practice. Both were necessary for the survival of human and nonhuman relations. It was from settler colonialism's nightmarish scenario of fight, flight, or accommodate that Indigenous heroes were made and immortalized — some known and many more unknown. Heroes of Indigenous resistance didn't just make history. History made them.

While in the West the Lakotas confronted the punitive campaigns of the US's peace policy, in the East the Dakotas faced increased settler encroachment. White settlements depleted nearly all the game and the delivery of treaty annuities were slow, never enough, and sometimes never came. Starvation set in. To make matters worse, Minnesota Territory organized in 1849 and began its path toward statehood which would

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<sup>26</sup> Ostler, *The Plains Sioux*, 42; Marshall, *The Journey of Crazy Horse*, 68-9.

mean the expulsion of Indigenous peoples. In 1857 Inkpaduta, a Wahpekute leader, led a retaliatory campaign against white settlers at Spirit Lake and Springfield, after settlers wantonly murdered his brother and forcefully exiled the Wahpekutes from their homelands in 1856. In total the Wahpekutes killed 28 settlers and sustained minimal casualties. Inkpaduta, whose body was badly scarred having survived the 1837 smallpox scourge as a child, became a veteran of many major engagements with the US military and died in exile Canada in the 1880s. The attacks on settlements earned him the reputation as a frontier bogeyman. So hated and feared by whites, his name was never translated into English unlike his more celebrated and well-known contemporaries.<sup>27</sup> Nevertheless, Inkpaduta's legacy is now widely celebrated for having evaded capture and death, never surrendering, and refusing reservation life.

The Wahpekute's attacks were also partly in response to the Treaty of Traverse de Sioux and the Treaty of Mendota. Both of these treaties were signed in 1851 by all four Dakota nations and ceded all Dakota land claims except for a narrow 20-mile strip. There is no doubt that the Dakota leaders were coerced into making such disastrous concessions. To force signatures, treaty commissioners threatened military force and the withholding of rations. White traders got first access to any treaty moneys to pay outstanding debts the Dakotas had allegedly accrued. When the treaties went through the Senate for approval, amendments were attached that left the Dakotas without any legal title to the land essentially making the homeless or trespassers in their own homelands.<sup>28</sup>

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<sup>27</sup> Paul N. Beck, *Columns of Vengeance: Soldiers, Sioux, and the Punitive Expeditions* (Norman: University of Oklahoma, 2013), 11-3. See also, Paul N. Beck, *Inkpaduta: Dakota Leader* (Norman: University of Oklahoma Press, 2008).

<sup>28</sup> Waziyatawin, *What Does Justice Look Like?*, 32-7.

In August 1862, when Taoyateduta, He Loves his Red Nation, also known as Kangi Cistinna, Little Crow, and his warriors began to expel white settlers from their Dakota homelands, most of the Dakota communities were starving, horseless, unarmed, and living on reservations. With the outbreak of the Civil War, treaty annuities arrived late or not at all — and were sometimes intentionally withheld by traders. Andrew Myrick, a notorious white trader responsible for distributing treaty annuities and rations at the Lower Agency, put it bluntly, “So far as I’m concerned, if they are hungry, let them eat grass or dung.” The Dakotas faced the real possibility of starving to death. So they turned on the ones who preached the value of a penny while turning Natives into starving paupers. When the Dakotas came to the Lower Agency, some stories say Myrick was killed while running away and his body was found with grass stuffed in his mouth.<sup>29</sup> It was the criminal acts of the traders and agency officials that led to the uprising. But it would be the legalized killing and punishment of all Dakotas that would make the US’s criminal behavior of intentional starvation and theft appear as “lawful.”

The Dakotas waged deadly battles killing more than 800 white settlers, traders, and soldiers. By late September most Dakotas surrendered, ending the brief 37-day war. The captured Dakotas were not treated as prisoners of war but instead faced a military tribunal created by the Henry Sibley, Minnesota’s first governor and colonel of the state militia. Military officers who had just fought Dakotas were appointed to oversee the trials. By November the military tribunal tried 392 Dakotas for “murder and outrages,” convicting 323 and condemning 303 to death. More than two thousand Dakotas were also imprisoned at Fort Snelling in a large concentration camp, where many died. Whether or

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<sup>29</sup> Quoted in Duane Schultz, *Over the Land I Come: The Great Sioux Uprising of 1862* (New York: St. Martin’s Press, 1992), 28.

not they participated in the war mattered little. All Dakotas became targets for collective punishment. President Lincoln commuted most of the Dakota death sentences, but maintained an iron fist to crush Indigenous resistance not just against the Dakotas but elsewhere, too. In 1864 in the Southwest a similar policy of collective punishment and removal targeted Navajo and Apache resistance resulting in the Hwéeldi, or the Long Walk. The removal, force march, and imprisonment at Bosque Redondo in New Mexico killed more than 2,000 Navajos.<sup>30</sup>

On December 26, 1862, a week before signing the Emancipation Proclamation, Lincoln ordered the hanging of the 38 Dakota men at Maka To, Blue Earth or Mankato, as retribution for the 1862 US-Dakota War. The execution of the Dakota 38 remains the largest mass execution in US history. Minnesota Governor Alexander Ramsey, who helped negotiate the 1851 treaties with the Dakotas, then ordered the extermination or complete banishment of remaining Dakotas from the state. Settlers were encouraged and rewarded to take their own revenge with government-issued \$25 scalp bounties, which later increased to \$200. When the Civil War came to an end, very few confederate officials and soldiers were sent to prison, and only one was hanged for war crimes. After surrender, many confederates went back to holding public office. General Sibley ordered that the Dakotas were to be treated as criminals and not prisoners of war.<sup>31</sup> A war to maintain the institution of slavery that cost half a million lives was profoundly different from the Dakota uprising — and rarely are the stories and aftermaths of the two wars told side-by-side.

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<sup>30</sup> See Jennifer Nez Denetdale, *Reclaiming Diné History: The Legacies of Chief Manuelito and Juanita* (Tucson: University of Arizona Press, 2007).

<sup>31</sup> See Carol Chomsky, “The United States-Dakota War Trials: A Study in Military Injustice,” *Stanford Law Review* 43 (1990): 13-98.

For his part in the uprising, in 1863 Minnesotan settlers murdered Little Crow and collected \$500 for his scalp and decapitated head. Little Crow's scalp, severed head, and the rest of his body were collected and put on public display by the Minnesota Historical Society until 1915, a grim trophy to remind settlers exactly how they "won" the land. Little Crow's remains were only returned to his family in 1971. Nearly a thousand Dakotas fled to Canada and 2,500 remained at large fleeing into Dakota Territory to join their relatives on the Missouri River. In 1863 in Minnesota general John Pope organized "columns of vengeance" to punish and capture fugitive Dakotas.<sup>32</sup> Instead of recognizing their own criminality for outright land theft and state-imposed starvation, the Dakotas would pay with their lives. Facing scalp bounties and the harsh imprisonment of their relatives, surrender usually meant death and was simply not an option. To survive — to resist — meant to flee.

Pope sent two columns, led by brigadier generals Sibley and Alfred Sully, to halt the fleeing Dakotas from crossing the Missouri River and joining their western relatives. The campaign had three goals: crush the fleeing Dakotas, secure the Missouri River for steamboat travel, and eliminate remaining Indigenous opposition to settling eastern Dakota Territory. By 1863, overland travel on the Oregon Trail had greatly subsided. But the 1862 Montana gold rush drew throngs of miners and settlers who traveled overland on the Bozeman Trail, which cut through 1851 Treaty territory, and up the Missouri River via steamship. Sibley's mounted cavalry headed south and traveled north up the eastern shoreline of the Missouri, encountering little opposition. Sully commanded more

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<sup>32</sup> Beck, *Columns of Vengeance*, 45-9.

than two thousand soldiers engaging in minor skirmishes that inflicted minimal casualties, except for one.

On September 3, 1863, Sibley's men attacked 4,000 peaceful Dakotas and Lakotas in a summer camp after a buffalo hunt at Inyan Ska, Whitestone Hill. Standing Rock historian and founder of the Sacred Stone Camp LaDonna Bravebull Allard recounts the events of that day through the oral history of her ancestor Mary Big Moccasin:

It was a time of celebration and ceremony — a time to pray for the coming year, meet relatives, arrange marriages, and make plans for winter camps. Many refugees from the 1862 uprising in Minnesota, mostly women and children, had been taken in as family. Mary's father, Oyate Tawa, was one of the 38 Dah'kotah hanged in Mankato, Minnesota, less than a year earlier, in the largest mass execution in the country's history... As my great-great-grandmother Mary Big Moccasin told the story, the attack came the day after the big hunt, when spirits were high. The sun was setting and everyone was sharing an evening meal when Sully's soldiers surrounded the camp on Whitestone Hill. In the chaos that ensued, people tied their children to their horses and dogs and fled. Mary was 9 years old. As she ran, she was shot in the hip and went down. She laid there until morning, when a soldier found her. As he loaded her into the wagon, she heard her relatives moaning and crying on the battlefield. She was taken to a prisoner of war camp in Crow Creek where she stayed until her release in 1870.<sup>33</sup>

The dogs returned to camp with babies still tied to them. Unable to catch them, the soldiers shot and killed the dogs, and their precious cargo. In all, the soldiers slaughtered more than 300 Lakotas and Dakotas. Most were women and children. Half a million pounds of dried buffalo meat and more than 300 hundred lodges were razed. Thirty-two men and 124 women were taken prisoner and transported to Fort Pierre to be shipped to Crow Creek with the remaining survivors of the US-Dakota War.<sup>34</sup>

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<sup>33</sup> Bravebull Allard, "Why the Founder of Standing Rock Sioux Camp Can't Forget the Whitestone Massacre."

<sup>34</sup> Beck, *Columns of Vengeance*, 166-7.

The massacre had a profound psychological impact on the Dakotas and Lakotas. The scorched-earth campaign against the Dakotas and the “columns of vengeance” intended to deter a military alliance among the Oceti Sakowin. Although the campaign may have deterred some from taking up arms, it encouraged others to risk everything to repel the invaders. The success of armed resistance, however, would not be measured in the annihilation of the US as an enemy nation. Instead, success could be measured in the alliances that formed, the grounded political authority that stayed intact despite the incessant onslaught, and the concessions, though short-lived, won through treaties.

Immediately following the punitive campaigns waged against the Dakotas, in November 1863 Colonel John M. Chivington and his soldiers massacred more than 200 peaceful Cheyennes at Sand Creek in Colorado Territory, taking scalps and severed genitals as souvenirs. Enraged at the growing brutality, the Cheyennes, Lakotas, Arapahos, and some Dakotas formed a political alliance under the leadership of Mahpiya Luta, Red Cloud. The historic alliance vowed to expel the US from the buffalo hunting grounds. It was believed the US had violated the spirit of the 1851 Fort Laramie Treaty with the construction of the Bozeman Trail.<sup>35</sup> The alliance successfully defeated the US military in hit-and-run battles from 1866 to 1868. In December 1866, most famously, Crazy Horse, a rising military leader, drew 100 soldiers under the command of Colonel William J. Fetterman from Fort Kearney into a trap, killing Fetterman and all his men. The fort had been established along the Bozeman Trail to protect white miners heading to

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<sup>35</sup> As Ostler points out, technically, the 1851 Treaty did allow for the construction of roads through Lakota territory. The construction of the Bozeman Trail, however, could be viewed as violating “the spirit of the 1851 agreement, which they [Lakotas, Cheyennes, and Arapahos] believed permitted travel on the North Platte road alone.” Ostler, *The Plains Sioux*, 45.



the Montana goldmines.<sup>36</sup> Facing an undefeatable, highly mobile guerrilla force, in 1868 the US sued for peace once again.

### **The 1868 Peace Treaty**

In the summer of 1868, a mass council was called at Bear Butte to discuss a treaty of peace, and Red Cloud was selected to lead any negotiations with the US. Since 1857 most of the Oceti Sakowin had been gathering annually at Mato Paha, Bear Butte, at the northeast fringes of the Black Hills to discuss the peace treaties and mounting resistance. Some historians and scholars have challenged the idea that the “Sioux Nation” or the Oceti Sakowin ever existed in the first place and whether or not such gatherings took place in the Black Hills prior to US invasion. What is known is that all seven political divisions met at these annual summer councils and sometimes were all represented at some of the most famous battles. It is true the Oceti Sakowin had not gathered the way it had before 1857. The Bear Butte councils, which sometimes included allied nations such as the Arapahos and Cheyennes, concerned concentrated military and diplomatic efforts against a common enemy — US imperialism. Sicangu historian Edward Valandra describes the importance of the 1857 council:

there were decisions made there that affect us today. For example, not to sell the land. The policy was to protect the [Black] Hills, protect our homelands that went way down to the southern Plains, all the way out to Minnesota, all the way out to the Rocky Mountains, and up into southern Canada... They talked about taking the fight to the *wasicu*. If they would have, they would have marched all the way down to Saint Louis and would have wiped out every White settlement. That could have happened. But no, they decided to protect the Black Hills, to protect this relative of ours.<sup>37</sup>

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<sup>36</sup> Marshall, *The Journey of Crazy Horse*, 45-51.

<sup>37</sup> Quoted in *He Sapa Woihanble*, 22-3.

Mass gatherings prior to this certainly did take place, but the Oceti Sakowin more often gathered at Mato Paha and elsewhere for peace not war. Mato Paha was a site for annual ceremonies such as the Wiwang Wacipi, the sun dance. The Oceti Sakowin war councils, however, have drawn more scrutiny and attention than the ceremonial celebrations of life.<sup>38</sup> The 1857 council did mark a significant shift because discussions mostly concerned tactics and strategies for war and diplomacy. More importantly, the dialogue placed emphasis on grounded authority and protection of the earth — not as an abstract thing, but as a relative.

Most political divisions chose to avoid armed resistance altogether and began to slowly accustom themselves to living near the agencies as the buffalo became scarce. These people were pejoratively called the “Loafer Bands” for loafing around the forts.<sup>39</sup> Others who were willing to break policy and sell land, which they were not authorized to do so, were called Maka Utacipi, or the Earth Eaters.<sup>40</sup> Many disapproved of these individuals’ behavior but they were still considered relatives, though pitied for “eating” the land for the annuities and food rations they received for selling it. Political custom dictated that families and larger political divisions were allowed to disagree or not follow a course of action set out by others. If the disagreement was serious, individuals or entire nations were allowed to leave. Just as easily as they could leave, they could also rejoin their relatives. Force or coercion never compelled others to action or to stay.<sup>41</sup> Harmony

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<sup>38</sup> The Oceti Sakowin still re-unites annually for sun dances, powwows, and basketball games. For example, the Lakota Nation Invitational basketball tournament brings tens of thousands of the Oceti Sakowin to He Sapa in December. Although basketball tournaments are celebrations of sorts, tribal councils frequently schedule their meetings at the tournament.

<sup>39</sup> See Marshall, *The Journey of Crazy Horse*, 37.

<sup>40</sup> See Beatrice Medicine, “Oral History” in *The Great Sioux Nation Sitting in Judgement on America, An Oral History of the Sioux Nation & Its Struggle for Sovereignty*, Roxanne Dunbar-Ortiz, ed. (Berkeley: International Indian Treaty Council, 1977), 121-3.

<sup>41</sup> See Ella Deloria, *The Dakota Way of Life* (Rapid City: Mariah Press, 2007), 8-15.

was disturbed when the entire Oceti Sakowin was confined to the reservation because differing factions were confined together and could not depart each other's company. In other instances, "agency chiefs" were selected to represent an entire Indigenous nation breaking down internal democratic processes. Regardless of competing views over the correct approach to US invasion, the war on the Bozeman Trail drew the US to the negotiation table once again.

By 1865, the 1851 Treaty had expired with little consequence having failed to bring about the peace it promised. Another costly military campaign in the Northern Plains was not an option. Most of the US military was stationed in the South to oversee Reconstruction following the conclusion of the Civil War. As an effort to make freed Blacks into citizens, W. E. B. Du Bois called Reconstruction "a splendid failure."<sup>42</sup> Reconstruction offered only a temporary vision of a free society because absolute equality demanded too much of a departure from the status quo for a white supremacist empire. The same could also be said of US treaties made with Indigenous nations at this time. Letting Indigenous peoples live in peace and respecting their political autonomy was too much to ask of a settler state. So why did it make Indigenous treaties in the first place?

Treaties are the central agreements among sovereigns and the primary instruments of international relations. After all, a sovereign nation does not enter into international relations with internal or domestic peoples. Treaty making is a reserved right for foreign nations, a sovereign's expression of legal and political difference; it is also how different nations are brought into relation with one another. So why did the US enter into

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<sup>42</sup> W. E. B. Du Bois, *Black Reconstruction in America, 1860-1880* (New York: Free Press, 1998), 708.

international relations with the Oceti Sakowin when Indigenous nations were considered “domestic dependent nations,” according to an 1831 Supreme Court decision?<sup>43</sup> This is the fundamental paradox of federal Indian law — taking international agreements and attempting to determine their validity in the realm of domestic federal law, or the courts of the colonizers.

Patrick Wolfe argues that “domestic dependent nations” was not so much a legal reconfiguration of Indigenous nations as much as it was a “manifesto” for settler colonialism.<sup>44</sup> The US entered into treaties with Indigenous nations not to recognize their inherent political sovereignty or self-determining authority but to facilitate land cessions and eventual incorporation. To do so it had to reconfigure its own laws to essentially justify what would, in other circumstances, be criminal. The US saw Indigenous autonomy and self-determination as conditional, temporary, and always subordinate to US sovereignty. Indigenous sovereignty could be diminished but never expanded. Even treaties that didn’t cede land established US supremacy. For instance, previous treaties of “peace and friendship” didn’t specifically transfer land, but they did recognize US dominion — or ultimate authority. Under US rule Indigenous nations could transfer their occupancy rights by ceding land to the US, but they could not transfer dominion over territory because it was not theirs to give. Under Discovery rights, the US held the final say over the land but frequently required a formal agreement with Indigenous peoples to take it if it could not be taken by force.

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<sup>43</sup> See Vine Deloria, Jr. and Clifford M. Lytle, *The Nations Within: The Past and Future of American Indian Sovereignty* (Austin: University of Texas Press, 1984), 16-27.

<sup>44</sup> Patrick Wolfe, *Traces of History: Elementary Structures of Race* (New York: Verso, 2016), 160.

The replacement of Indigenous land tenure required not only laws to do so. It also needed a population to carry out and apply a new of permanent land tenure. Put simply, Indigenous dispossession and expropriation required settlers and private property. In contrast to Indigenous occupancy rights, settlers could privately own land in perpetuity. Private ownership or fee simple, under US law, is seen as the highest possible form of ownership, while Indigenous occupancy is seen as a temporary condition. Likewise, Indigenous sovereignty is an inconvenient sovereignty that would eventually be extinguished or too severely weakened to continue. Collective Indigenous ownership and use could be alienated and dissolved for private ownership, but not the other way around. Indigenous peoples could give up their land but they could not acquire more or expand their form of collective ownership. Fundamentally, the two systems of land tenure — collective Indigenous use and private settler ownership — could not overlap. Land, according to this logic, cannot be shared. Put another way, the confinement and removal of Indigenous peoples to reservations was at its core racial segregation. It was believed that settler and Native land tenure were so irreconcilable that separation was the only way to ensure the supremacy of private property over collective ownership. In this sense, Indigenous peoples were the original “Red Scare.” Or as, Lenape scholar Joanne Barker puts it, moving the “Indian” from the realm of the foreign to a “domestic dependent” erases the sovereign and ensures “the racialization of the ‘Indian.’”<sup>45</sup> The “Indian” moves from an external, foreign problem to an internal, domestic “racial” problem. To make the “Indian” a race is to deny Indigenous sovereignty and to make Indigenous peoples into a

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<sup>45</sup> Joanne Barker, “For Whom Sovereignty Matters,” in *Sovereignty Matters: Locations of Contestations and Possibility in Indigenous Struggles for Self-Determination*, Joanne Barker, ed. (Lincoln: University of Nebraska Press, 2005), 17.

domestic population to be managed, excluded, or included within a settler nation. Treaties were indeed international agreements, but their intent was to limit and diminish Indigenous political authority not expand it. For example, the US was removing southeastern Indigenous nations (who it had previous treaties with) while it was making treaties with Plains Indigenous nations as if they were foreign, autonomous powers. Territorial acquisition, if not immediate than eventual, was the primary motive for treaty making not the recognition of Indigenous peoples as equal sovereigns.

It was from this belief of political superiority that the US sued the Oceti Sakowin for peace. As a token of good will, the US abandoned several forts along the Bozeman Trail, leading Red Cloud and his followers to set fire to the deserted buildings. The forts on the Missouri River, however, remained untouched and became the new bases of operations for corralling the Oceti Sakowin closer to the forts as agencies and away from the Powder River country.<sup>46</sup> The 1868 Fort Laramie Treaty established a 32-million-acre “permanent reservation,” which encompassed the entirety of present-day west river South Dakota. To appease those who refused agency life, a vast expanse of hunting grounds was set aside at nearly the same acreage of the permanent reservation making the total territory more than 70 million acres or about the size of the present-day state of Nevada. Article 11 of the treaty, however, stipulated the Lakotas surrendered “all right to occupy permanently the territory outside their reservation as herein defined,” but retained the right to hunt in the Powder River country “so long as the buffalo may range thereon in such numbers to justify the chase.”<sup>47</sup> General William Tecumseh Sherman, a member of

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<sup>46</sup> Ostler, *The Lakotas and the Black Hills*, 62.

<sup>47</sup> For the text of the 1868 Treaty, see Prucha, ed., *Documents of United States Indian Policy*, 109-13.

the peace commission, at first opposed this provision, fearing that sustained resistance through buffalo hunting over a vast region would make it impossible to reign in the militant divisions. Fellow peace commissioners, however, assured him the treaty's clause was "merely temporary," because once the buffalo were vanquished so too would the millions of acres of hunting territory.<sup>48</sup>

In 1903 Red Cloud recalled what Lakotas said to treaty commissioners regarding the hunting lands, "We told them that the country of the buffalo was the country of the Lakotas. We told them that the buffalo must have their country and the Lakotas must have their buffalo."<sup>49</sup> The Lakotas didn't believe the US had the authority to simply "give" them back land that already rightfully belonged to them and their buffalo kin. Red Cloud made clear that the 1868 Treaty was not just an agreement between two human nations, but was also an agreement among the nonhuman ones as well — including, the buffalo nations. That Lakota territory began and ended with the buffalo nations' territory was his interpretation. This understanding was not a "mystical" reading but a simple fact of Lakota life — and, at this time, a fact linked to pure survival.

For example, the most significant figure in Oceti Sakowin history descended from the Pte Oyate. Pte Hincala Ska Win, the White Calf Buffalo Woman, established the basis of not only human customary and ceremonial laws, but also how Lakotas would exist in correct relations to the Pte Oyate and the nonhuman world. This first compact — or treaty — with the nonhuman world is recorded in the Sicangu historian Brown Hat's winter count. His earliest pictograph depicts the White Buffalo Calf Woman as a

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<sup>48</sup> David D. Smits, "The Frontier Army and the Destruction of the Buffalo," *The Western Historical Quarterly* 25, no. 3 (1994): 322-3.

<sup>49</sup> Red Cloud, "I Was Born a Lakota," in *Lakota Belief and Ritual*, Raymond J. Demallie and Elaine A. Jahner, eds., (Lincoln: University of Nebraska Press, 1991), 139.

white buffalo arriving in the center of a camp circle in the first decade of the tenth century. Above the white buffalo is the Calf Pipe, a yucca plant, and a cornstalk. To the right, in English, Brown Hat lists the various animal nations the White Buffalo Calf Woman brought into formal relations with the Oceti Sakowin: elk, deer, antelope, buffalo, beaver, and wolves. According to this history, it was a woman who formalized the first compact — the first treaty — with the buffalo nations and their human relatives.<sup>50</sup> To be a good relative is to honor that original instruction. Lakotas often viewed treaties with the US and other nations as commitments not just to human relations but also nonhuman relations. And such agreements were not the sole domain of men, as was the tradition of white society. Most important, Pte means female buffalo, and the Pte Oyate was alternatively known as “her nation.”<sup>51</sup> When Red Cloud spoke of the buffalo nations, the Pte Oyate, he spoke of their true leaders — the women not the bulls (men) and the original covenant with the White Buffalo Calf Woman. Therefore, the future of the Oceti Sakowin was bound to the future of the Pte Oyate and vice versa.

For its part, the military began to take seriously this vital connection with the buffalo as sustaining continued Indigenous resistance. The frontier army’s operations were as much about securing armed defeat as much as they were also about exterminating Oceti Sakowin kin — the Pte Oyate. But punishing highly mobile Plains nations by defeating them in conventional battles was near impossible. From 1865 to 1883, the frontier army sanctioned the mass slaughter of buffalo to shatter the will to resist by eliminating a primary food supply and a close relative. In one such mission in 1868,

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<sup>50</sup> See Demaillie and Parks, “Tribal Traditions and Records,” 1070-1; Greene, “Battiste Good’s Earlier Entries,” in *The Years the Stars Fell*, 293-4.

<sup>51</sup> Joseph Marshall III, *The Day the World Ended at Little Bighorn: A Lakota History* (New York: Penguin, 2007), 38.



lieutenant colonel Luther P. Bradley sole task in Powder River country was to exterminate buffalo herds as part of a total war campaign. According to Bradley, his troops were “ordered to forks of the Republican [River] to make [a] permanent camp: to kill all the buffalo we find, and drive the Arapahoes and Cheyennes south, and the Sioux north.”<sup>52</sup> Many frontier soldiers never engaged Plains nations in direct battle, but soldiers and hunters often considered the wanton slaughter of buffalo as akin to killing Indians. In 1872 Russia’s Grand Duke Alexie Alexandrovich joined a buffalo hunt near Denver with the frontier army under the command of lieutenant colonel George Armstrong Custer and general Philip Sheridan. As they descended upon a herd, the hunters and soldiers acted as if the buffalo slaughter was also a massacre of Indigenous peoples. A guide, Chalkley M. Beeson, recounted a “battle” where hunters were called “infantry” and the buffalo were called “redskins”: “Custer, who was in charge of the hunting party, stopped and said, ‘Boys, here’s a chance for a great victory over that bunch of redskins [on] the other side of the hill. Major B., you will take charge of the right flank, I will attend to the left. General Sheridan and the infantry will follow direct over the hill. Ready! Charge!’”<sup>53</sup> The hunters slaughtered hundreds that day and perhaps countless more in the days that followed.

The extermination of the buffalo was incredibly effective and efficient. In two decades soldiers and hunters had eradicated the remaining 10-15 million buffalo leaving only several hundred survivors. Taking only the hides and leaving the rest of the animal to rot, the rancid smell of decaying carcasses wafted over the Plains. Hunters often

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<sup>52</sup> Quoted in Smits, “The Frontier Army and the Destruction of the Buffalo,” 323.

<sup>53</sup> Chalkley M. Beeson, “A Royal Buffalo Hunt,” *Transactions of the Kansas State Historical Society* 10 (1908): 577.

poisoned their kill. The strychnine-laced carcasses killed off starved scavengers — such as bears, wolves, or coyotes and sometimes Native peoples — all obstacles for white settlement. Chickasaw scholar Jodi Byrd argues that, as its organizing principle, US empire orients itself against all those who can be made “Indian.”<sup>54</sup> The extermination of the buffalo shows that elimination is not a solely human — or anthropocentric — process but also corresponds with the elimination of nonhumans. The buffalo nations were made — or racialized as — “Indian” and therefore a threat to empire because they sustained the Oceti Sakowin’s resistance. Indian and buffalo were inseparable. The Indian problem was the buffalo problem. Both Indigenous and buffalo nations faced similar extermination processes and were as much connected in death as they were in life. The destruction of one required the destruction of the other. The survival of one depended on the survival of the other. Taking the Northern Plains required the end of both. Put simply, the treaty clause “so long as the buffalo may range” was warrant to kill millions of buffalo. Buffalo killing literally translated into Indian killing and the taking of millions of acres of 1868 Treaty territory — and, therefore, a direct attack on Indigenous sovereignty.

Another contentious aspect of the 1868 Treaty was the granting of the right to construct railroads through Oceti Sakowin territory. By the time the Northern Pacific Railroad began building its line through the Yellowstone Valley connecting Duluth, Minnesota to the Puget Sound, Red Cloud, Spotted Tail, and their followers had accepted the terms of the peace treaty. Most took it to mean that if they refrained from attacking the railroads, stage coaches, and overland emigrants, they would in turn not be attacked if

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<sup>54</sup> Jodi A. Byrd writes, “the United States propagates empire not through frontiers but through the production of a paradigmatic Indianness.” *Transit of Empire: Indigenous Critiques of Colonialism* (Minneapolis: University of Minnesota Press, 2011), xxxv.

they remained within the reservation boundaries. The hunting grounds remained open and so they thought that they could go on living as they always had with little change. But railroads threatened that provisional peace and the provisional space of the hunting grounds. They provoked another fight and hardened the resolve of the remaining militants to stay off the reservations. Tatanka Iyotake, Sitting Bull, a powerful political leader of the Hunkpapas, refused the conditions of peace specifically over the question of rail lines and began making war on the railroad surveyors as they trespassed into Yellowstone territory. The military sent two expeditions of thousands of men in 1871 and 1873 to secure the passage of railroad engineers. But Sitting Bull and his followers harassed the progress of the Northern Pacific halting its construction from crossing the Missouri River at Bismarck. Although Sitting Bull's campaign did prevent construction, the added 1873 economic crisis further imperiled the Northern Pacific's progress westward. Nevertheless, the military now had a sizeable standing army at Fort Rice downriver under the command of Custer, a less well-known veteran officer of the Civil War who history would only be remembered because he was killed by the Lakota, Cheyenne, and Arapaho alliance in 1876 at the Battle of Greasy Grass. Custer and his men were stationed at the northern border of the "Great Sioux Reservation" to prevent the Hunkpapas and Sihasapas from leaving the reservation, waging war on the railroad surveys, and joining their off-reservation relatives in the West.<sup>55</sup>

Soon on- and off-reservation labels became associated with degrees of criminality. Those "off the reservation" were considered outlaws, renegades, hostiles, and criminals who were to be hunted down summarily shot, hanged, or imprisoned. Those

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<sup>55</sup> Terry Mort, *Thieves' Road: The Black Hills Betrayal and Custer's Path to Little Bighorn* (New York: Prometheus, 2015), 67-8.

“on the reservation” were considered “peaceful” and “friendlies” who were not to be disturbed. Either way, soldiers and settlers could hardly distinguish between the two. When it came to collective punishment, all were at fault.

Since 1865, transcontinental railroads began lurching from East to West. With the Panic of 1873, US capitalists and politicians sought a new form of currency and new national project that would pull the nation out of recession. Relief would come in the form of gold, more railroads, and continuous westward expansion — in other words, the taking of more Indigenous land and the making of more war against Indigenous peoples. The discovery of gold in the Black Hills in 1874 triggered a massive push to quickly end the Indian problem on the Northern Plains. From the military’s perspective, reformers had failed to secure peace with the 1868 Treaty. Prior military campaigns in the West and the South were also coming to a close. The wars of conquests against the Apaches, Arapahos, Cheyennes, Comanches, Kiowas, and Modocs from 1869 to 1873 largely ended. Political backing for Radical Reconstruction in the South lost political backing from a growing conservatism in the North. The US began to withdrawing federal troops leaving freed Blacks to fend for themselves against the growing discontent among the white southern elites who were looking to violently re-capture political and economic power. Facing the squeeze of economic recession, labor in the industrial East also began agitating. As historian Richard Slotkin argues, depictions of Black lawlessness in the South, relentless Indigenous criminality in the West, and growing labor militancy in the East provided the moral justification for the seizure of the Black Hills as a way prioritize

national economic development.<sup>56</sup> To contain the “threat” on its Western frontier, in a 1871 Indian appropriations bill the US abolished treaty-making with Indigenous nations. While treaty-making ended, treaties themselves were never abolished. The bill qualified the end of treaty-making by stating that the it didn’t “invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or tribe.”<sup>57</sup> The US viewed its “internal” and “external” threats in similar terms. For its failures to live up to the promises of Indigenous peace policies, Black freedom, and labor rights, a nationalistic military campaign to seize the Black Hills and continue westward expansion would provide a much-needed pressure valve to ease anxieties of social unrest and economic uncertainty. The cards were falling into place. An order to the US military went out to notify all the Lakotas and Dakotas to return to the reservation by January 31, 1876 or face military action. Because it was during winter, both the US military and the Oceti Sakowin largely ignored the impractical command.

When the US deployed its western army in Spring 1876 to put down the resistance once and for all, however, the majority of the Lakotas lived on reservations, were horseless, unarmed, and starving. Regardless of this fact, there remained several groups who refused reservation life. The Lakota, Cheyenne, and Arapaho alliance had evaded army capture for several years but could not effectively stop the deluge of miners trespassing into the Black Hills. Crazy Horse, no longer a military leader at this point, led several small groups into the Black Hills, killing numerous white miners. But the imposition of reservation borders combined with the cutting off of British-Canadian and

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<sup>56</sup> Richard Slotkin, *The Fatal Environment: The Myth of the Frontier in the Age of Industrialization, 1800-1890* (Norman: University of Oklahoma Press, 1985), 358-70. See also, Ostler, *The Plains Sioux*, 59-60.

<sup>57</sup> Prucha, *Documents of United States Indian Policy*, 135.

US traders made ammunition scarce and sustained armed resistance increasingly impossible to carry out.<sup>58</sup> General Sheridan and brigadier general George Crook had decided to stop evicting gold miners to make real what could only be imagined at this point, the taking of the Black Hills, the settlement of treaty lands, and the final surrender of the Ojibwa. Allowing the trespass of settlers and miners was a clear violation of the terms of the 1868 Treaty which forbade whites from entering the permanent reservation encompassing the entirety of the Black Hills. A violation of a treaty, as an international agreement, would have meant conditions revert back to the way they were prior to the treaty. The Ojibwa, at this point, could have suspended their obligations — such as allowing the passage of settlers, roads, or railways, or the cession of certain lands. Instead of curbing the criminal behavior of the white trespassers and living up to their treaty obligations, the army mobilized to enforce the “peace” of the 1868 Treaty and made war against the Cheyennes, Lakotas, and Arapahos who refused to stay on the reservation.

On June 25, 1876, Custer and Brigadier General Marcus Reno led a group of 650 men against a camp of thousands of Lakotas, Cheyennes, and Arapahos. Among them were Sitting Bull, Pizi (or Gall), Inkpuduta, Crazy Horse, Pretty Nose, Left Hand, Two Moons, Wooden Leg, and many more from the heroic armed resisters of the Cheyennes, Arapahos, Dakotas, and Lakotas. Custer led the first assault, which was supposed to be a surprise attack meant to quickly overwhelm the large camp. Custer’s men were quickly halted and forced to retreat uphill. Despite popular myths, Custer and his men never mounted a brave last stand but were instead taken down as they ran away from the

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<sup>58</sup> Marshall, *The Journey of Crazy Horse*, 201-2.

Indigenous warrior men and warrior women. For his courage, Custer was promoted to the rank of general after his death.

Hunkpapa warrior woman Moving Robe Woman who fought against cavalrymen later remembered that historic day. A young woman at the time, Moving Robe Woman was harvesting tinpsila, or prairie turnips, when the cavalry stormed the camp. After hearing her brother was killed in the initial attack, she recalled, “I ran to a nearby thicket and got my black horse. I painted my face with crimson and braided my black hair. I was mourning. I was a woman, but I was not afraid.”<sup>59</sup> Indigenous warrior women among Plains nations were common. In fact, according to Northern Cheyenne histories, Buffalo Calf Trail Woman is credited for knocking Custer from his horse before he was killed.<sup>60</sup> Indigenous women also knew what defeat meant — if they were not killed, their bodies would be forced over to the desires of their captors. They fought back not because they wanted to, but because they had to.

The defeat of Custer’s Seventh Calvary and the killing of 268 of his men was a major victory. According to Moving Robe Woman, however, not everyone saw it that way. None, she recalled, “staged a victory dance that night. They were mourning for their own dead.”<sup>61</sup> About four dozen were killed during the fight. From the start of the battle to the end, Moving Robe Woman was in mourning for her brother and relatives. Many popular accounts of the Battle of Greasy Grass and histories of the West over-romanticize the battles of what became known as “the Great Sioux Wars.” Extreme violence and

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<sup>59</sup> Quoted in “Moving Robe Woman Interview,” *Lakota Recollections of the Custer Fight*, Richard G. Hardorff, ed. (Lincoln: University of Nebraska Press, 1997), 93.

<sup>60</sup> See Martin J. Kidston, “Northern Cheyenne Break a Vow of Silence,” *Helena Independent Record*, June 28, 2005, [http://helenair.com/news/state-and-regional/article\\_fc44c96-cfb6-56f4-9c57-062e944350ce.html](http://helenair.com/news/state-and-regional/article_fc44c96-cfb6-56f4-9c57-062e944350ce.html).

<sup>61</sup> “Moving Robe Woman Interview,” 96.

wanton slaughter is nothing to callously celebrate, as Moving Robe Woman reminds us. Each victory against the invaders resulted in immeasurable casualties, if not at that moment then later. Armed resistance was a calculated risk that was not carelessly undertaken — it was not fatalistic. Like Moving Robe Woman’s account of Greasy Grass, from the beginning of the first battles to their violent conclusions the Oceti Sakowin was in constant mourning over the theft of their lives, their world, and so many countless relatives. The profound courage of valiant armed resistance protected the dignified life of one’s ancestors not only at that moment but also for the ancestors already forthcoming. Armed Indigenous resistance has always been a future-oriented and life-oriented project that deserves the utmost honor and celebration. It is because of armed struggle that all has never been forever lost or stolen. It is because of this fearless struggle that we remember.

### **Anti-colonialism and the Ghost Dance Prophecy**

The whole world is coming.  
A Nation is coming,  
A Nation is coming.  
The Eagle has brought the message to the Nation...  
Over the whole earth they are coming.  
The Buffalo are coming,  
The Buffalo are coming.

— *Maka Sitomaniya Olowan*, a Lakota Ghost Dance Song, 1890<sup>62</sup>

After Greasy Grass, the military sought retribution. Unable to sustain long, drawn-out resistance, the Plains alliance dispersed and Sitting Bull and his followers, including Inkpaduta, fled to Canada. Three years after the 1868 Treaty, Congress

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<sup>62</sup> Quoted in James Mooney, *The Ghost-Dance Religion and Wounded Knee* (New York: Dover, 1973), 1072. The translation is my own.



abolished treaty making with Indigenous nations. In May 1877, Crazy Horse surrendered himself and his followers at the Red Cloud agency near Fort Robinson in Nebraska. There he was imprisoned by the reservation authorities. On September 5, 1877, Crazy Horse was led to Fort Robinson to be formally arrested on the charge he was planning an uprising. While attempting to flee, one of the guards stabbed Crazy Horse in the back with a bayonet. The military assassinated Crazy Horse at the age of thirty-seven. In 1881 Sitting Bull finally surrendered himself and his followers, and was taken to Fort Yates on the Missouri River at present-day Standing Rock. Organized armed struggle against the US military had mostly ceased, but the spirit of Indigenous resistance had not. The prisoner of war camps, or reservations, became ground-zero for the US's renewed assault and the battleground shifted. Christian missionaries, boarding schools, and military discipline and punishment came to the reservations as the vanguards of white civilization.

The design and development of the carceral reservation world was well under way by the time Cheyennes, Lakotas, and Arapahos had made Custer and his Seventh Cavalry famous by killing them. In 1876 Indian commissioner John Q. Smith envisioned US Indian policy as having three central goals: the concentration of remaining Indigenous peoples onto fewer reservations, the allotment of remaining lands, and the expansion of US laws and courts over reservations.<sup>63</sup> Although the number of reservations didn't decline, allotment combined with the increased reach of US laws over Indigenous peoples were effective at disintegrating political and social structures and carving up the remaining communally held lands. The fur trade may have introduced the capitalist

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<sup>63</sup> Prucha, *Documents of United States Indian Policy*, 146.

market, but it never truly made the Oceti Sakowin individualistic in their way of life. Communal land practices and social customs prevailed as they had before, even under the long shadow cast by US colonialism. Military campaigns and genocidal massacres had not accomplished their absolute purpose — complete extermination or crushing the will to resist. Removal and confinement to reservations were taken as opportunities for final conquest.

First came the assertion of US law. In 1881 an ongoing dispute between Spotted Tail and Kangi Sunka, Crow Dog, on the Rosebud reservation led to Crow Dog murdering Spotted Tail, a reservation leader and “agency chief.” After the murder, Crow Dog made amends with Spotted Tail’s surviving family, paying restitution for the slain relative according to customary law. Internal harmony was quickly and effectively restored. Dissatisfied with the ability of Oceti Sakowin political authority to resolve their own internal disputes, federal and territorial officials demanded Crow Dog’s arrest and prosecution. With little legal authority to do so, the case wound up at the supreme court where it was ruled federal courts had no jurisdiction on reservation lands. As a result, Congress passed the 1885 Major Crimes Act that authorized federal jurisdiction over major crimes committed in Indian Country — such as murder, larceny, rape arson, and burglary. Congress used Crow Dog’s case as opportunity to extend plenary power — or complete or absolute power — over Indigenous nations to further erode and define the parameters of Indigenous sovereignty by asserting criminal jurisdiction.<sup>64</sup>

The creation of the modern day reservation system had a significant impact not just on Indigenous societies but also on settler society. What were once military and

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<sup>64</sup> See Sidney L. Harring, *Crow Dog’s Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century* (Cambridge: University of Cambridge Press, 1994).

trading forts either grew into white settlements or reservation agency towns. A new spatial arrangement of apartheid formed between them, mediated by the militarized function of both. The confinement of Native people to diminishing reservation lands made it simpler for settlers to assume ownership over “unused” land. Among the most highly-prized possessions were the gold-rich Black Hills. To secure title to the land, Congress passed the 1877 Black Hills Act which stole the Black Hills from the Ojibwe and opened it to white settlement. A clause of the 1868 Treaty stipulated that any future land cessions, including the Black Hills, must “be signed by three-fourths of all the adult male” members. In a clear case of fraud and theft, the US was only able to attain ten percent of the needed signatures to legally cede the Black Hills.<sup>65</sup>

Agency towns, which were often at military forts or near them, were established to control and surveil the movements and the behaviors of Indigenous peoples on- and off-reservation. Reservations became sites of social engineering to break communal organization and enforce colonial rule through social control. In 1878, to administer law and order the first reservation police forces were formed, drawing from Indigenous ranks to enforce a new social order dictated by the federal agents and church officials. In 1883 the Bureau of Indian Affairs created the court of Indian offenses to compel “civilization.” Punishable offenses included sun dancing, ceremonial dancing, customary giveaways, owning guns or weapons, owning ponies, men wearing long hair, polygamy, large feasts not organized by the church, Indigenous funerary rites, leaving the reservation, and

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<sup>65</sup> Ostler, *Lakotas and the Black Hills*, 101. For a detailed account of the efforts to address the theft of the Black Hills, see Mario Gonzalez and Elizabeth Cook-Lynn, *The Politics of Hallowed Ground: Wounded Knee and the Struggle for Indian Sovereignty* (Urbana: University of Illinois Press, 1998); Edward Lazarus, *Black Hills/White Justice: The Sioux Nation versus the United States, 1775 to the Present* (Lincoln: University of Nebraska Press, 1999).

honoring ceremonies. A violation brought starvation or imprisonment. These “offenses,” also known as “the civilization regulations,” were enforced until their repeal in 1935.<sup>66</sup> Coercive force, through an armed body of the state, such as the police and the courts, to control behavior was relatively unknown to the Oceti Sakowin. “No Lakota chief,” writes Luther Standing Bear, “ever dreamed of using the power of a judge in court, or a policeman on a street corner, for it was not a tenet of his society that one individual should account to another for his conduct.”<sup>67</sup>

For the defiant political leadership, their children were taken from them and sent to far-off boarding schools where many died. Although leaders such as Red Cloud and Spotting Tail voluntarily sent their children to boarding schools, they protested the military-like discipline and corporal punishment. The system, however, was as much about taking the children hostage to use them as leverage to coerce the behavior of reservation leadership. Richard Pratt, a former Indian fighter who marched under Custer against the Oceti Sakowin, was the main architect for the modern off-reservation boarding school system. The idea first came to him when in charge of Indigenous prisoners of war at Fort Marion in Florida. Assigned to oversee the confinement of Kiowa, Comanche, and Cheyenne inmates, Pratt experimented with assimilation through education. To his military mind, the Indian war would no longer be waged on the battlefield but in the classroom. Pratt’s vision won him the backing of Indian reformers and in 1879 he founded the Carlisle boarding school in Pennsylvania.

The success of the Fort Marion experiment, however, could only be reproduced in similar prison-like and militarized conditions. It was impossible to “recruit” and “retain”

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<sup>66</sup> Suzanne Shown Harjo, “Introduction,” in *Nation to Nation*, 4-6.

<sup>67</sup> Standing Bear, *Land of the Spotted Eagle*, 132.

students without the use of force. Complete removal from their parents, it was believed, was the only way to prevent relapse back to Indigenous ways. Taken and then returned to their communities, the children were sometimes alienated by their parents and relatives because they could not speak their languages or had no bonds to their kin. At Carlisle, Indigenous students were subjected to a highly regimented routine. Although founded on military principles of discipline and order, the boarding schools didn't train Indigenous students to fight. It taught them docility, compliance, and submission — the necessary ingredients for indoctrinating US patriotism and citizenship. “The Indians are destined to become absorbed into the national life,” one Indian commissioner advised in an 1889 memo entitled “Inculcation of Patriotism in Indian Schools,” “not as Indians, but as Americans.”<sup>68</sup>

To many the US flag, which flew above the soldiers as they killed, raped, and pillaged Indigenous peoples and lands, was a hated symbol of growing US authority. It was one of the first means used to signify US supremacy at reservation headquarters. When soldiers attempted to build the first flagpole to fly the “Stars and Stripes” at the Red Cloud agency in 1874, outraged Oglalas took hatchets and chopped it down. The troopers rebuilt the flagpole and proceeded to take a census of the reservation agency — wielding two highly symbolic instruments of growing colonial rule: a flag and a census.<sup>69</sup> With armed struggle mostly abandoned, Indigenous resistance changed from tactics of armed struggle to a strategy of challenging the reservation system by continuing to refuse to sell land or cooperate with reservation officials.

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<sup>68</sup> Prucha, *Documents of United States Indian Policy*, 179. See also, Frederick E. Hoxie, *The Campaign to Assimilate the Indians, 1880-1920* (Lincoln: University of Nebraska Press, 1984).

<sup>69</sup> Ostler, *The Plains Sioux*, 54-5.

Coming out of a five-year recession, from 1878 to 1887 the desire for cheap or “free” Indigenous land in Dakota Territory infected white settlers like a fever. The decade was known as the “Great Dakota Boom,” and the white population in the region nearly doubled. Pressure increased to open more of the remaining 1868 Treaty lands. In 1887 Congress passed the Dawes Severalty Act, signaling a new assault on Lakota and Dakota lands. Dawes sought to disintegrate collective Native identities and communal land practices by allotting private plots to Native families and opening millions of acres of “excess” land for white settlement. The Plains nations began organizing against the Dawes Bill as soon as they learned of its dire consequences, and the Lakotas and Dakotas came to a consensus that they would unconditionally refuse to sell the land or to accept the terms of allotment. Achieving mass consensus and the consent of all divisions of the western Lakotas and Dakotas — under the ever watchful eye of agency and church officials and in conditions where most were half-starved — was a significant feat of political mobilization and discipline. In 1888 Pratt led a commission to convince the Lakotas to accept the terms of the Dawes Bill. While the US had not followed 1868 Treaty protocol for the Black Hills Act, this time the Pratt Commission, as it was known, attempted to obtain the three-fourths male consent required to fractionate remaining reservation lands and open up millions of acres for eventual settlement.

In one instance the Pratt Commission came to the Standing Rock reservation. All the commissioners needed were either votes of “yes” or “no” to accept allotment or not. Twenty-two million acres remained of the 1868 Treaty lands. If half were sold, the US would sell land at \$.50 an acre which would create a permanent fund of \$1 million. Earning a five percent interest per year, half would go towards education and agriculture,

the other half would be payed to those who accepted allotments. Under the leadership of Hunkpapa John Grass, the entire Standing Rock reservation held council to discuss the conditions of the Dawes Bill. In all night meetings, the Standing Rock council calculated the total distribution of money which would amount to an insulting payment of \$1 per year to each individual on the reservations. Grass had signed the 1876 Black Hills Act, which ceded the Black Hills, having not understood the terms. For him, the Dawes Bill was most likely an another elaborate scheme to swindle lands. For not addressing past wrongs or ongoing depredations, Grass led Standing Rock's opposition against allotment. In a speech refusing to sign any paper — the red for “no” and the black for “yes” — Grass said: “The whole nation here that are located on this reservation have come to the conclusion that we will not sign that black paper. We say also that we will not sign the red paper. You know exactly how many there are of us. I do not see what further evidence you would want. Here is the whole nation, and we say: ‘We decline.’”<sup>70</sup> The Pratt Commission, unable to acquire minimal consent to even vote on the Dawes Bill at Standing Rock, went to remaining reservations and faced similar, unified refusal. An utter failure, a mere 120 signed.

The initial defeat of the Dawes Bill was a momentary victory. In 1889 general George Crook, a veteran Indian fighter who coaxed Crazy Horse to surrender, led another commission to secure “consent.” This time Crook lied about the bill saying it would alleviate restrictions on dancing and generally improve reservation life without affecting prior treaty agreements. When lies didn't work, threats of violence and the outright taking

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<sup>70</sup> *Letter from the Secretary of the Interior Transmitting... In response to Senate resolution of December 13, 1888, report relative to opening part of the Sioux Reservation, 50th Cong., 2d sess., Senate, Ex. Doc. No. 17, December 17, 1888, 79.*

of the land with or without Indigenous consent at first pressured many to sign. When met with resistance, the Indian agent at Rosebud warned the opposition that their refusal to sign would jeopardize not just their standing with the US but also their entire legacy: “after you are dead and gone, and somebody reads... the names of the people who signed this treaty, I think you will want your names to be read out.”<sup>71</sup> At Pine Ridge Agency, when Oglalas under the leadership of Red Cloud refused to sign, an Indian agent “read the riot act” to Red Cloud and his followers to criminalize those who refused to sign away land.<sup>72</sup> Oglala leader Wasicu Tasunka, American Horse, had signed but regretted his decision later when beef rations were drastically cut further imperiling an already famished people. The commissioners previously stated the bill would not affect rations or annuities. Cutting rations combined with a whole host of other grievances that went unaddressed, according to American Horse, was like “cutting our heads off.”<sup>73</sup> Among the unfulfilled promises included the poor quality of annuity goods such as clothing and farming equipment and continued unexplained deaths of children at off-reservation boarding schools such as Carlisle.

Indeed, the new reservation political order had attempted to sever the heads of the Oceti Sakowin by taking children, usurping land, killing the buffalo nations, and diminishing political authority. With the necessary signatures to enforce allotment, the “permanent reservation” guaranteed under the 1868 Treaty was now open for white settlement. Crook’s commission left the western divisions of the Oceti Sakowin deeply

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<sup>71</sup> *Message from the President of the United States... Transmitting Reports relative to the proposed division of the great Sioux Reservation, and recommending certain legislation*, 51st Cong., 1st sess., Senate, Ex. Doc. No. 51, February 10, 1890, 67. Herein Crook report.

<sup>72</sup> Quoted in Ostler, *The Plains Sioux*, 236.

<sup>73</sup> Crook report, 222.



divided and in disarray after it destroyed the unified effort to resist the sale and further dissolution of remaining reservation lands. Now the Black Hills were taken and nine million acres of land were opened for white settlement. What became known as the 1889 Sioux Agreement created the six modern reservation boundaries for the Pine Ridge, Rosebud, Cheyenne River, Standing Rock, Lower Brule, and Crow Creek reservations.

During the late 1880s — disarmed, hungry, horseless, confined to concentration camps, their land broken up and taken, the buffalo nearly exterminated, and their children stolen from them — a new political movement spread like prairie fire across the West promising Indigenous rebirth. Dead relatives and the buffalo nations, it was prophesied, would once again walk the earth. Wovoka, a Paiute holy man, had a vision that assured the restoration of Indigenous peoples to their rightful place in a world taken from them. The Ghost Dance prophecy envisioned the end of the present world by wiping the earth of settlers and the return of human and nonhuman relations vanquished by colonialism. It was foretold, at some unspecified time in the near future, a cataclysmic event — such as an earthquake or whirlwind — would wipe the US off the surface of the earth. Once the land was cleansed, life afterwards would be disease- and colonialism-free and correct relations among human and nonhuman worlds would be restored. Dakota anthropologist Ella Deloria recorded the following description of the Ghost Dance from the viewpoint of an unnamed Lakota man, who participated in the dance at the Pine Ridge agency as a young runaway from boarding school:

The rumor got about: “The dead are to return. The buffalo are to return. The Dakota people will get back their own way of life. The white people will soon go away, and that will mean happier times for us once more!” That part about the dead returning was what appealed to me...

Soon fifty of us, little boys about eight to ten, started out across country over hills and valleys, running all night... There on Porcupine Creek thousands of

Dakota people were in camp, all hurrying about very purposefully... A woman quickly spied us and came weeping toward us. "These also shall take part," she was saying of us. So a man called out, "You runaway boys, come here." They stripped our ugly clothes from us and sent us inside [a purification lodge]. When we were well purified, they sent us out the other end and placed sacred shirts on us... Everyone wore one magpie and one eagle feather in his hair, but in our case there was nothing to tie them to. The school had promptly ruined us by shaving off our long hair till our scalps showed lighter than our faces!

The people, wearing the sacred shirts and feathers, now formed a ring... All walked cautiously and in awe, feeling their dead were close at hand... The leaders beat time and sang as the people danced going round to the left in a sidewise step. They danced without rest, on and on, and they got out of breath but still they kept going as long as possible. Occasionally someone thoroughly exhausted and dizzy fell unconscious into the center and lay there "dead"... After a while, many lay about in that condition. They were now "dead" and seeing their dear ones. As each one came to, she, or he, slowly sat up and looked about, bewildered, and then began wailing inconsolably...

The visions varied at the start, but they ended the same way, like a chorus describing a great encampment of all the Dakotas who had ever died, where the buffalo came eagerly to feed them, and there was no sorrow but only joy, where relatives thronged out with happy laughter to greet the newcomer. That was the best of all!

Waking up to the drab and wretched present after such a glowing vision, it was little wonder that they walked as if their poor hearts would break in two with disillusionment. But at least they had seen!... They preferred that to rest or food or sleep. And so I suppose the authorities did think they were crazy — but they weren't. They were only terribly unhappy.<sup>74</sup>

In contrast to the "wretched present," the visions were not escapist but rather part of a growing anticolonial theory and movement. Participants were transported to a forthcoming world where the old ways and dead relatives lived. It was a utopian dream that briefly suspended the nightmare of the "wretched present" by folding the remembered experience of a pre-colonial freedom into an anti-colonial future freedom. Upon awakening, dancers were forced to relive the horrors of their current reality. Above all, like all good revolutionary theory, the visions enabled the Lakotas to experience and imagine something different, to understand that life need not always be this way.

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<sup>74</sup> Quoted in Ella Deloria, *Speaking of Indians* (Lincoln: University of Nebraska Press, 1998), 81-3.

Annihilation of the present reality was the required act necessary to realize the possibility of a past and future freedom. The Ghost Dance provided not only a criticism of the “wretched present,” but also the necessary theory and vision to be struggled for — total liberation. The true aspiration of the Ghost Dance anticipated nothing less than the utter destruction of the colonial relation with the US. But it was not a cultural revitalization movement, since the Ghost Dance was not internally-derived from Oceti Sakowin culture. Cultural revitalization also fails to account for the Ghost Dance’s oppositional spirit. Lakota Ghost Dancers, historian Jeffrey Ostler observes, “hoped to see the present world destroyed and a new one come into being.”<sup>75</sup> In this sense, the Ghost Dance, although certainly religious in nature, was not a new religion because it didn’t preach moral, social, or spiritual redemption or salvation — but rather the unequivocal obliteration of this world and its replacement. The Ghost Dance arose from the brutal reservation system and sought its final departure. Indigenous life could not be remade inside reservations or within a colonial system but only through the complete destruction of both.

The Ghost Dance’s revolutionary premises are often downplayed or misconstrued. The most widely used text on the movement, *The Ghost-Dance Religion and Wounded Knee*, written in 1896 by armchair ethnographer James Mooney, for instance, distorted the meaning of the Ghost Dance. Pandering to the sympathies of a US public in an attempt to make the Ghost Dance more palatable, Mooney used cultural relativism to justify its existence. In his mind the movement had largely embraced elements of Christianity and resembled modern Judeo-Christian religions because Ghost Dancers

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<sup>75</sup> Ostler, *The Plains Sioux*, 262.

followed a Christ-like messianic figure, Wovoka. Mooney also claimed Lakota Ghost Dancers didn't properly adhere to Wovoka's message of nonviolence and pacifism. The Lakotas, according to Mooney, warped Wovoka's message of pacifism into a "hostile expression," confirming the US military's later characterization of the Lakota Ghost Dancers as "militants."<sup>76</sup> But Wovoka taught peace not perpetual harmony with white settlers, since his prophecy began with their end. Wovoka's plea for peace was also not a submission to Christian morality or pacifism but was instead pragmatic: under present conditions armed Indigenous resistance was futile. The Ghost Dance's mass appeal had less in common with Christianity and more in common with previous prophet-inspired pan-Indigenous movements. They include the 1760s Lenni Lenape prophet Neolin and his Odawa follower Pontiac who fought British military occupation in the Great Lakes region, the 1800s Shawnee prophet Tenskwatawa and his brother Tecumseh who fought US occupation of the Ohio River Valley, the 1860s Wanapum prophet Smohalla and his follower Nez Perce leader Chief Joseph, and the 1870s Pauite prophet Wodziwob, Wovoka's predecessor and the first practitioner of the Ghost Dance.<sup>77</sup> Each of these successive prophets built upon the messages and doctrines of the others by calling for pan-Indigenous resistance — sometimes through armed struggle — to reject colonial occupation. Each was an accumulation of historical experience united by a common desire for Indigenous liberation.

The question of whether or not the Lakotas adhered to the Ghost Dance's alleged pacifism or nonviolent doctrine ignores central issues. Such questions, often devised by colonizers, divide people fighting for survival into two different camps of "legitimate"

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<sup>76</sup> Mooney, *The Ghost-Dance Religion*, 777.

<sup>77</sup> Ostler, *The Plains Sioux*, 250.

nonviolent pacifists and “illegitimate” violent militants. The divisions cater more to the feelings of settler society than they accurately portray the lived experiences of real Indigenous peoples. The categories of “good Indians” versus “bad Indians” purposefully create criminal elements within Indigenous nations and movements to obscure or hide US colonialism’s own criminal enterprise. The Ghost Dance never intended to appeal to the moral sensibilities of US colonizers, nor did its followers seek its recognition as a “legitimate” religion equivalent to Christianity. It was the criminalization of all things defying the civilizing mission, not just the dancers themselves, that led the military to conclude that the dance was a “hostile expression.” Beyond this, dancing, specifically, and practicing Indigenous lifeways, in general, were still criminal acts punishable by imprisonment or the withholding rations. To reservation officials, it didn’t matter if the dancers were militant or nonviolent — they were criminals regardless because they were dancing. Therefore, Ghost Dancing was inherently an oppositional, political act.

Nearly a third of all Lakotas — about 4,000 – 5,000 — and many Dakotas participated in the Ghost Dance, demonstrating its mass influence. As a resistance movement, its tactics included: complete withdrawal from reservation life, opposition to reservation authorities, the refusal to send children to school, the creation of resistance camps in remote areas far removed the influence of the agency, the pilfering of annuity distribution centers, the refusal to work, the destruction of agricultural equipment, the refusal to speak English, the refusal to attend church, the refusal to attend agency and council meetings, the refusal to be counted in censuses, the refusal to live on assigned allotments, the refusal to obey “agency chiefs,” the refusal to cut one’s hair, the refusal to quit dancing, the refusal to wear white clothing and attire, the refusal to use metal tools,

and sometimes the pilfering of white settlers' cattle and crops. In short, it posed a serious challenge to the colonial order of things. At first Indian police were sent to the suppress the dances, because they were illegal, but were met by armed guards willing to defend the dancers. As a result of the strident refusal to quit dancing, some Indian police simply resigned because they refused to kill their relatives or imprison them.<sup>78</sup>

The widespread appeal of the Ghost Dance as an anti-colonial movement was in large part due to its main primary promoters and interlocutors — boarding school-educated Indigenous students. Two of its primary Lakota visionaries, Mato Wanahtake, Kicking Bear, and Tatanka Ptecela, Short Bull, used trains and writing to diffuse the message of the Ghost to the Oceti Sakowin. Boarding school students who could read and write, often in both English and Lakota, transcribed Kicking Bear's and Short Bull's reports after they traveled by train to meet with Wovoka in Nevada. Ghost Dance prophecies, prayers, and songs were also transcribed and mailed to the various reservations where boarding school students would read them aloud to fellow Ghost Dancers. The Ghost Dance would not have been so widespread had it not been for the boarding school-educated, admits Mooney, "who conducted the sacred correspondence for their friends at the different agencies, acted as interpreters for the delegates to the messiah, and in various ways assumed the leadership and conduct of the dance." Letters conveying Ghost Dance songs and doctrines poured into Oceti Sakowin reservations from Indigenous nations in Utah, Wyoming, Montana, and Oklahoma.<sup>79</sup>

When Ghost Dancing began among the Lakotas, it was reported as troubling and unrelenting. The largest deployment of the military since the Civil War arrived on the

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<sup>78</sup> Ibid., 277-8.

<sup>79</sup> Mooney, *The Ghost-Dance Religion*, 819-20.

Northern Plains to crush the movement. National Guard units from the surrounding states were brought in as back up for the federal troops. The first target was Sitting Bull, the last powerful leader who had never signed a treaty and still resisted the imposition of reservation life. James McLaughlin, the Standing Rock agent, feared Sitting Bull and his Ghost Dancers would leave the reservation. On December 15, 1890, under heavy surveillance for his part in spreading the Ghost Dance, Indian police attempted to arrest Sitting Bull. Roused from bed early that morning, Indian police dragged Sitting Bull from his log cabin and shot him in the head. A brief firefight ensued, and Sitting Bull's followers killed six Indian police and the Indian police killed seven of his followers. Following Sitting Bull's assassination, military arrest warrants were issued for other Ghost Dance leaders such as Mniconjou leader Hehaka Gleska, Spotted Elk. To diminish his standing among his own people by mocking Spotted Elk, soldiers derisively called him Si Tanka, or Big Foot, because he wore US government-issued shoes that were too small for his feet. Fearing further reprisals, Sitting Bull's followers joined with Spotted Elk's people at the Cheyenne River reservation. The Ghost Dancers then fled to turn themselves in at Red Cloud's agency in Pine Ridge where they were detained at Wounded Knee Creek and surrounded by soldiers. The Seventh Cavalry, Custer's old regiment, took command of the camp and began to demand the group turnover all weapons and surrender. Tipi-by-tipi raids were conducted. Anything that could be construed as a weapon, such as hatchets and knives, was confiscated.

On the morning of December 29, 1890, Spotted Elk and all the camp leaders were called to council with soldiers to turn in the last remaining guns. Hotchkiss guns were strategically placed on the hillsides and trained at the mostly unarmed, starving, and

surrendering Ghost Dancers. A scuffle broke out and a shot was fired. The Seventh Cavalry massacred 270-300 Lakotas that day including Spotted Elk. More than two-thirds among the slain were women and children. The Ghost Dancers were not passive victims, however, and fought back against the soldiers and inflicting casualties. There is no doubt had Spotted Elk's followers not defended themselves the way they did more would have been killed and others would not have been able to escape. In the course of several hours, the Cavalry chased down and killed the fleeing Lakotas. When the soldiers administered the killing blows, often by point blank execution, they were heard muttering, "Remember Custer."<sup>80</sup>

The military still refers to the massacre of half-starved and surrendering people as a battle against armed Indigenous militants. Congress awarded twenty medals of honor to the soldiers involved in the massacre. In retaliation for the unprovoked slaughter, many sought revenge. The story of a young Sicangu Carlisle boarding school graduate who returned to the reservation and joined the Ghost Dance movement is significant in this regard. Tasunka, or Plenty Horses, was stripped of his language and culture at a crucial moment in his childhood and returned to his family and community with nothing to offer. "I found that the education I had received," Plenty Horses recalled, "was of no benefit to me. There was no chance to get employment, nothing for me to do whereby I could earn my board and clothes, no opportunity to learn more and remain with the whites. It disheartened me and I went back to live as I had before going to school."<sup>81</sup> His experience was not exceptional. The civilization experiment failed. Growing his hair long and

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<sup>80</sup> Ostler, *The Plains Sioux*, 351.

<sup>81</sup> Quoted in Robert M. Utley, "The Ordeal of Plenty Horses," *American Heritage* 26:1 (1974), <http://www.americanheritage.com/content/ordeal-plenty-horses>.



donning pre-boarding school Lakota clothing, Plenty Horses joined armed resisters in the aftermath of the Wounded Knee massacre. Lieutenant Edward Casey went to meet with the resistance camp that had holed up in the Badlands. Angry at what he had experienced in boarding school, the starving conditions he returned to on the reservation, and witnessing his people killed with impunity at Wounded Knee, Plenty Horses positioned himself behind Casey as he approached and shot him in the back of the head. Army officials charged Plenty Horses with murder, but he was later acquitted. Had he been guilty of murder then so too were the soldiers who massacred his people at Wounded Knee, the court reasoned. At trial, the court concluded that a state of war existed, although not formally declared, so Plenty Horses was not at fault and neither were the soldiers involved in the Wounded Knee massacre, thus suspending the criminal act of genocidal murder.<sup>82</sup>

### **Beyond Historical Trauma**

An undeclared endless war had created the conditions necessary for the massacre at Wounded Knee. It was the justification for nearly a half a century of an oscillation between US peace making and war making. War and peace often worked seamlessly together making them nearly indistinguishable but nonetheless vital to the colonial project. The war, however, had no clearly defined battlefield or a beginning or an end, and was waged against the entirety of Indigenous life. Frederick Jackson Turner famously declared 1890 as the final closing of the frontier. Others have called it the inauguration of the so-called “American Century.” The historic landmark is indelibly

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<sup>82</sup> See Dunbar-Ortiz, *An Indigenous Peoples' History*, 156-7.

marred by its genocidal origins at Wounded Knee. Yet, the Indian wars never stopped. And dreams of freedom prophesied in the Ghost Dance have never been entirely crushed.

Wounded Knee was indeed pure horror. But reading the nineteenth century experience through trauma — many have called it “historical trauma” — easily slips into the thinking of Indigenous peoples solely as victims and objects of violence rather than as historical actors. First, the adjective “historical” suggests a past trauma, an exceptional trauma, a fundamental departure of the past from the present. There was no departure but rather a continuation of colonial processes. Elimination tactics have changed from outright massacre to other means, but elimination remains the active organizing principle of settler colonialism. The long duration of trauma remains simply because colonialism has not ended, gone away, or been overthrown. One cannot simply “heal” individually from these experiences, especially if they live in a world still structured by Indigenous elimination. For instance, Wounded Knee was not a stand-alone event, but rather a cumulative event that condensed key elements of longer historical processes. Surely, Wounded Knee came to inform other events that followed, but the colonial structure remained and continued to wound, kill, and destroy.

Lastly, what sustained Indigenous peoples during this horrific time was the recent memory of freedom, the visions enacting it, and the daring conspiracies to recapture it. The Ghost Dance, for example, was not a monolithic movement but an accumulation of prior anticolonial experiences, sentiments, and struggles. The Lakota Ghost Dance adopted essential features of previous traditions of Indigenous resistance, while creating new tactics and visions to address the present reality, and, consequently, projected Indigenous liberation into the future. Trauma played a major role, but framing one’s

historical and contemporary experience solely through the lens of injury narrows our understanding of Indigenous history and liberation. If we reduce Indigenous peoples as being perpetually wounded, we cannot possibly understand how they created kinship and constantly recreated and kept intact families, communities, and governance structures as fugitives and prisoners of a settler state and as conspirators against empire; how they loved, cried, laughed, imagined, dreamed, and defended themselves; how they remain, to this day, the first sovereigns of this land who still possess the oldest political authority. If we read history solely through the lens of trauma, if traditions of Indigenous resistance are our roadmap towards liberation, focusing solely on trauma narrows that vision of freedom; and it prematurely aborts its realization as a future possibility.

## Chapter Four: The Flood

Even today advocates of an innocent U.S. history say to protesting Indians, “You still exist, don’t you? You still have land, don’t you?” The suggestion is that if there were crimes committed, they were just the unfortunate incidents of economic development of a country... [T]he concept of *ecocide*, the intentional destruction of the physical environment needed to sustain human health and life in a given geographical region, has now been accepted in the international arena as part of the analysis of the term *genocide*... This policy of deliberate destruction of the environment and resources and the continuing theft of Indian lands, which is, unlike the physical destruction endured by the people, well documented and available to researchers, could well become a persuasive feature in the definition of historical genocide as it concerns native people.

—Elizabeth Cook-Lynn, *Anti-Indianism in Modern America*, 2001<sup>1</sup>

It is the wish of our people that no more land be taken from us. With us, the point is simple. When our land is gone, our way of life is gone, our tribes are destroyed. The bottom lands the Corps of Engineers want to take are the very best on the reservations. They are our heart lands. They can never be replaced. No similar lands are for sale. We depend on land for our livelihood, it furnishes us our income. To take our land is to take our homes and income, and a part of our history and heritage.

— J. W. “Jiggs” Thompson, Chairman of the Lower Brule Sioux Tribe, 1959<sup>2</sup>

Dramatic scenes of violence and heroic resistance of the nineteenth century capture the popular imagination, freezing Natives in the past and making them unreal in the present. The problem is also true for twentieth century Indigenous life, which has been until recently relatively understudied and underappreciated. In this century, spectacular armed struggle would not come again until the 1970s. Between the Wounded Knees (the massacre in 1890 and the armed takeover in 1973), the struggle for land, life, and self-determination, however, relentlessly continued. Although largely ignored, the

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<sup>1</sup> Elizabeth Cook-Lynn, *Anti-Indianism in Modern America* (Urbana: University of Illinois Press, 2001), 194-5.

<sup>2</sup> “Joe Thompson Statements before the Subcommittee of the Committee on Public Works,” February 16, 1959, M. Q. Sharpe Papers, Box 184, Chilson Collection, University of South Dakota, Vermillion, South Dakota.

interlude between these two violent confrontations was by no means peaceful. Lack of attention to this period is less a testament to the absence of Indigenous sovereignty struggles. Settler society's selective memory has more to do with its obsession with war. Unlike dominant society which frequently chooses to ignore Indigenous peoples, Indigenous peoples cannot and did not disengage from settler society. In fact, they continued to vigorously confront it at all turns as they do today. Much was at stake and much was lost during this time. Increasingly, the US used its powers of eminent domain to seize Indigenous lands for large public works projects. For the Oceti Sakowin along the Missouri, it was the construction large multipurpose, earthen-rolled dams for flood control, reclamation, and irrigation. The massive flood control and irrigation projects would make otherwise desert grasslands bloom, promoters promised. The Pick-Sloan plan, as it became known, intersected with the so-called termination movement, which sought to liquidate federally recognized Indigenous nations. Termination, in the words of Edward Valandra, "made legal the overthrow of Native governments, the stealing of their lands, and the extermination of Native Peoples and cultures."<sup>3</sup> In other words, it was not simply regime change but the entire abolition of Indigenous self-government. In their own ways, river development and termination promised to solve the Indian problem, often working in tandem. During this era, treaty-breaking was done by statute rather than by brute force.

In the Missouri River Basin, the Pick-Sloan Plan, a joint water development project designed by the Army Corps of Engineers and the Bureau of Reclamation in 1944, destroyed more Indigenous lands than any other public works project in US history

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<sup>3</sup> Edward C. Valandra, *Not Without Our Consent: Lakota Resistance to Termination, 1950-59* (Urbana: University of Illinois Press, 2010), 48.

affecting twenty-three different reservation communities. The project, writes Standing Rock activist and scholar Vine Deloria, Jr., “was without a doubt, the single most destructive act ever perpetrated on any tribe by the United States.”<sup>4</sup> The project targeted Oceti Sakowin lands, flooding over 202,000 acres of the Standing Rock, Cheyenne River, Lower Brule, Crow Creek, and Yankton reservations. A third of the populations of each were removed to marginal lands or were forced to leave the reservation entirely. In total, the US took 550 square miles of Indigenous lands, an area half the size of Rhode Island. D’Arcy McNickle, a Flathead scholar and Indian affairs employee at the time, offered this bleak assessment of eminent domain as a devastatingly effective legal instrument for dispossession:

The earlier procedure for quieting Indian title was the treaty process: when Indian lands became desirable for settlement or for public purposes, a treaty, or a revised treaty, was negotiated. The Indians always yielded, but at least a show of respect for tribal sovereignty was maintained. Under the new procedure [of eminent domain], the Indian tribe was put in the category of private land owner, against whom the state could proceed; compensation in money was made the equivalent of ethnic and cultural identity. The process, in time, can only lead to the extinction of the Indian people as a separate and identifiable thread in American Life.<sup>5</sup>

The difference between private and reservation lands, however, was that white farmers whose lands were condemned could easily reproduce their businesses and lifestyles elsewhere. For Indigenous peoples, their livelihoods were not reproducible elsewhere simply because that elsewhere didn’t exist. Once taken or destroyed, the favorable river environment could not be replaced.

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<sup>4</sup> Vine Deloria, Jr., introduction to *Dammed Indians Revisited: The Continuing History of the Pick-Sloan Plan and the Missouri River Sioux*, by Michael L. Lawson (Pierre: South Dakota State Historical Society Press, 2009), xv.

<sup>5</sup> D’Arcy McNickle, “Introduction” in *Dams and Other Disasters: A Century of the Army Corps of Engineers in Civil Works*, Arthur E. Morgan (Boston: P. Sargent, 1971).

In the nineteenth century the US military was the primary vehicle for conquest and expropriation by Indigenous massacre and imprisonment and the extermination of the buffalo. In the twentieth century a civilian branch of the military, the Army Corps of Engineers, would pick up where its predecessors left off. They would not need guns. Pick-Sloan dams annihilated entire ways of life by attacking the very means of survival: land and water. Many communities found refuge along the river and continued to live with the land. Not a shot was fired, but Indigenous livelihoods were mowed down by paper bills and flood waters. The Army Corps weaponized water to disrupt, remove, and destroy Indigenous peoples' ability to reproduce themselves along the life-giving shorelines of the Missouri River. Water was life, and then water became death.

The dams were a cruel reward for those returning from service in the Second World War. In every war from the first world war to the present, Indigenous peoples have served and volunteered in high rates. The US military has purposely distorted Indigenous warrior culture for its own ends, often enlisting Indigenous names and motifs such as the "Lakota Helicopter" or the "Tomahawk Cruise Missile" for imperialist endeavors. Natives have served not so much as "national minorities" but often as separate, sovereign nations. During World War I, the Haudenosaunee Confederacy, for example, independently declared war on Germany in 1917, choosing to send their soldiers to fight for their own nation. They did the same during World War II, independently declaring war on the Axis Powers. Native military service had more to do with maintaining Indigenous sovereignty in the beginning. Natives enlisted in the US military during the First World War, fighting alongside an empire in which they were not citizens. Although widely resisted, American Indian citizenship would not be granted until 1924.

The Oceti Sakowin held similar views towards military service and maintained an understanding with the US that military service was for the protection of their own homelands. They understood their service would not require deployment overseas against enemies named by US empire that didn't directly threaten Indigenous livelihoods. "There was an agreement between the [US] Government and the Indian people," Lakota holy man Fools Crow explained in 1978 about Lakotas' volunteerism during World War I, "that they will only fight within their own country, in defense. They send him overseas which is contrary to the agreement that was made. It is something unusual for an Indian to fight in a foreign country... [W]hen they come back they are not the same boys. They drink. They destroy themselves."<sup>6</sup> When thousands returned home after the Second World War, the enemy threatening their homelands was the very military they fought for. The war was at home not overseas. For the Oceti Sakowin, the dams ruined more lives and caused more destruction than the world wars. A country that demanded Natives sacrifice their lives in war now demanded the sacrifice of their best lands and their governments.

It was not so much about the amount of the land taken and destroyed as it was about the worth of that land. Taken lands were irreplaceable. Nothing existed where Native peoples could recreate their lifestyle by moving to a similar environment. The choice to live near the Missouri River and its tributaries was practical. Abundant game, wild fruits and vegetables, and drinkable water provided for human and nonhuman needs. Since the reservation cattle boom in the early twentieth century, river bottomlands also provided livestock shelter and prime ranchlands for the small-scale cattle enterprises. It

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<sup>6</sup> Quoted in U.S. Commission on Civil Rights, *Hearing Before the United States on Civil Rights: American Indian Issues in the State of South Dakota*, Rapid City, South Dakota, July 27, 28, 1978, 13.



was a mixed economy that was only possible with subsistence hunting, gathering, and small-scale agriculture, since the small reservation cattle enterprises could not provide year-round employment and did not benefit everyone. Virtually all reservation timber was concentrated along shore lands, and provided the necessary materials for home construction, shelter, and heating and cooking fuel. What could not be produced by the selling of livestock was replaced with the harvesting of wild game, fruits, and vegetables that flourished in the river valley. Others less fortunate avoided starvation in winter months when employment was scarce through total dependence on “the free goods of nature.” What little farming existed was subsistence and completely relied on the abundance of the arable soil found almost entirely to the river valleys.

Indigenous peoples were close to nature, but not in the way most people like to imagine about Indigenous peoples as a part of nature. The relationship to the land and the river was not mystical or purely “spiritual.” Water was life in a concrete way. It was a matter of life and death. It was material. It put food on the table. It provided safety, security, community, shelter, homes, warmth, care, and livelihoods. It guaranteed the survival and reproduction of Indigenous societies in a very real way. Nearly all of this along with the history of the land was stolen and exterminated. Policy-makers, the Army Corps, and the BIA well understood this sober reality. But it didn’t matter to them. Indigenous life was seen as technical and logistical problem, like the river, that could be managed, controlled, tamed, and rationally dealt with through industrial technology and scientific administration.

Continued communal land practices and subsistence economies demonstrated the failure of assimilation programs: complete dependency had not been accomplished by the

Indian Bureau. In fact, the opposite could be said. Settlers had become dependent on reservation economies and Indian land policy. The failure had to do with introduced land practices that emphasized individualism and private land ownership. Many individual families refused to become farmers and abandoned their allotments. Others tried farming and failed. Very few prospered from reservation economies. All those that did benefit either worked for the Indian Bureau or were white farmers who leased Indigenous lands for pennies on the dollar or had purchased Indigenous land, taking it out of trust status and putting it into private ownership. On some Lakota and Dakota reservations, whites had gained ownership of 80 percent of the allotments. The result was a “checkerboard” of ownership between land held in trust by tribal members and land held in fee patents by whites. Combined with an heirship system that fractionated allotted reservation lands that sometimes resulted in thousands of individuals owning a single plot of land, individual land tenure eroded reservations lands and made it impossible to consolidate Indigenous landholdings.<sup>7</sup> In more ways than one, white farmers and ranchers had become dependent on reservation economies by leasing and buying cheap Indigenous land — a dependency that continues relatively to the same degree nearly a century later.

Indigenous removal and territorial dispossession are often placed safely in the distant past. The Pick-Sloan dams demonstrate the near-present and ongoing legacy of Indigenous removal, land dispossession, and expropriation. Nineteenth century wars of extermination hardly ended in the twentieth century. Only the tactics changed. Indigenous elimination took new shape in the form of large-scale infrastructure projects, such as massive earthen-rolled dams. The entry points for early US colonization began at

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<sup>7</sup> Lawson, *Dammed Indians*, 30.

the Missouri River with the advent of the fur trade. It expanded into full-scale wars and eventual Indigenous confinement to reservations to make white settlement easier. To achieve ongoing accumulation of Indigenous lands and resources required relaunching strategies that targeted Indigenous political authority and subsistence economies. As it had in the nineteenth century, the Oceti Sakowin's authority resided in its continued ability to sustain and reproduce itself upon the land. Indigenous life and political authority once again grounded itself in the land and water. The erosion of this mostly subsistence way of life severely weakened Indigenous peoples' ability to successfully resist further encroachment. Once Indigenous life flourished in the buffalo hunt, it now flourished in the fertile river bottomlands through hunting, gathering, cattle ranching, and small-scale agriculture.

These land-based practices were what Yellowknives Dene scholar Glen Coulthard describes as a "grounded normativity," a "place-based foundation of Indigenous decolonial thought and practice" that is necessary to understand how Indigenous peoples not only respond to dispossession, but also attend to the necessity of maintaining ethical relationships between human and nonhuman worlds.<sup>8</sup> Coulthard calls this a "mode of life" that re-centers relationships to land as a form of Indigenous "culture." According to this view, Indigenous culture is "the interconnected social totality of [a] distinct *mode of life* encompassing the economic, political, spiritual, and social" that is crucial for appreciating how land or nature's value is fundamentally altered through the forceful and coercive transition from subsistence economies to capitalist economies.<sup>9</sup> The Pick-Sloan

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<sup>8</sup> Coulthard, *Red Skin, White Masks*, 13.

<sup>9</sup> *Ibid.*, 65-66.

Plan destroyed the very root of the Oceti Sakowin's grounded normativity, the very foundation of their sovereignty and political autonomy — Mni Sose, the Missouri River.

Before reservations, nearness to the Missouri determined degrees of interaction with, and the negative influence of, settlers, traders, Indian agents, and soldiers at the river forts. The farther west Indigenous peoples lived away from the Missouri, the greater degree of autonomy and self-determination they exercised and the easier it was to resist and escape the catastrophic effects of invasion. Now confined to reservations and with many town sites (former military and trade forts) concentrated on the Missouri's shores, proximity to the river increased the ability of Indigenous societies to recreate life and survive in its bounty. A century before the river had become a source of death because it carried devastating agents of change, and it once again, for more than half a century, became a source of life and the basis to successfully contest white settlement. The dams deracinated — violently uprooted — Indigenous peoples from the river lands. Breaking dependence on the land became the necessary step to secure the taking of the river, much like how exterminating the buffalo was required to crush protracted, armed Indigenous resistance. Once killing nonhumans, such as the buffalo, meant killing Indigenous peoples. Now destroying a river, its shorelines, and the nonhuman life it cradled meant destroying Indigenous peoples — and the perpetrators were the same cast of characters, the US and its military.

The common understanding of the Pick-Sloan project was that it was triggered by massive flooding in 1943 and imposed from above by powerful tyrannical government

agencies such as the Army Corps.<sup>10</sup> Floods certainly quickened the resolve to pass water development legislation through Congress. But the origins for these large-scale infrastructure projects were more unassuming and were well in the works decades before 1943. At the grassroots level, white community organizations in the Missouri River corridor agitated for river development and so too did states and federal agencies. Consensus centered on the damming of the river for flood control, hydroelectricity, and irrigation.<sup>11</sup> The catastrophic impact on Indigenous communities was an afterthought — if it was considered at all.

The framework of settler colonialism is necessary for understanding water politics. Land plus water are the fundamental elements of agrarian life, the distinct character of plains settlement in the Missouri Basin. In this formula, water development for irrigation is necessary for settler life. If we take the axiom Patrick Wolfe spells out for settler colonialism — “Land is life — or, at least land is necessary for life,” it could equally be said, “water is life” and “water is necessary for life.”<sup>12</sup> Territory is settler colonialism’s primary component. Territory is the spatial expression of sovereignty, which not only includes the control of land and its population but also water, such as rivers and aquifers. The power of a sovereign derives from the capacity to control a specific geography and its population. Likewise, the control of water is an expression of sovereignty. From this perspective, agriculture as a mode of production personifies settler colonialism: it’s sedentary and mostly permanent; it reproduces itself; it always needs

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<sup>10</sup> For example, see Peter Carrels, *Uphill against Water: The Great Dakota Water War* (Lincoln: University of Nebraska Press, 1999); Donald Worster, *Rivers of Empire: Water, Aridity, and the Growth of the American West* (New York: Oxford University Press, 1985).

<sup>11</sup> For example, see Lawson, *Dammed Indians*; Thurston, *River of Promise, River of Peril*; Schneiders, *Unruly River*.

<sup>12</sup> Wolfe, “Settler Colonialism and the Elimination of the Native,” 387.

more land and water; as it expands, it eats away at Indigenous territory destroying fauna and flora, thereby curbing or annihilating Indigenous subsistence economies' ability to reproduce themselves over time. This is not to say Indigenous peoples were not pastoralists, farmers, or ranchers. By the time the Pick-Sloan Plan was proposed, Missouri River Indigenous nations had developed successful cattle ranching enterprises and small scale agricultural projects. With this strong economic base grounded in the land, which was not solely based on the profit motive but rather reflected communal practices, Indigenous nations could effectively resist and challenge the further diminishment of their reservation lands. Such economies were only possible because of their proximity to the river. Like a good relative, Mni Sose, the Missouri River, took care of its relatives and provided for them the means to contest attempts to remove communities and take lands. The Pick-Sloan Plan, however, had not selected prime Indigenous lands to hand them over to white farmers and ranchers. The value of Indigenous lands and lives was their inherent disposability. Indigenous land was needed — mostly, to be wasted, to put water on top of it. The massive reservoirs that trapped water behind the dams would be used for recreation and irrigation projects for the benefit of settlers.

Severely weakened by the attack on the material and economic base of Indigenous authority, paper legislation from Congress attacked its political structure. After World War II, the US sought to reverse previous policies of the 1934 Indian Reorganization Act (IRA) through federal termination. The IRA did three important things. First, it formally overturned the catastrophic allotment policy, ending near half a century of the alienation of tens of millions of acres of reservation land by returning surplus lands. Second, it

ended the draconian prohibition on dancing, improved Indigenous freedom of religion and speech, created a relatively more reasonable reservation criminal justice system, and provided moneys for land reacquisition and economic development. Lastly, it imposed Western style governance through a BIA model constitution. The last point was the most contentious. While Indigenous peoples desired increased political autonomy, they didn't want to replace existing governance that was based on consensus and kinship. It was also feared the competitive Western-style electoral system could also further intensify political factionalism. It could create another class of reservation elites whose allegiance lay not with community councils but with an external authority, the US, and whose political power was kept in check by the BIA and the Department of Interior. As part of the New Deal to pull the US out of the Depression, Vine Deloria, Jr., commented, "While the rest of America suffered from the temporary deprivation of its luxuries, Indian people had a period of prosperity." Cattle programs prospered. Temporary employment was available through Civilian Conservation Corps. Through New Deal programs, including the IRA, the Oceti Sakowin, Deloria observes, "had climbed from absolute deprivation to mere poverty, and this was the best time the reservation had."<sup>13</sup>

Despite the IRA's grand intentions by its primary architect, commissioner of Indian affairs John Collier, it didn't address outstanding treaty and land claims. But its design was not to increase national independence or Indigenous sovereignty. The IRA came out the New Deal era. Rather than narrow the focus of its design as part of US national history, however, Collier saw it as part of a global design of colonial administration. He described Indigenous peoples as the US "oldest 'colonial' problem"

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<sup>13</sup> Vine Deloria, Jr., "This Country Was a Lot Better Off When the Indians Were Running It," *New York Times*, March 8, 1970.

and saw the IRA as applying “indirect administration” to manage that problem, not as external to US empire but as internal to it. Collier drew inspiration Lord Lugord’s model for British colonial administration, which was designed to work against fostering national independence among the colonized by forever suspending it. In 1947 Collier compared the US’s colonial administration of Indigenous peoples as similar to its imperial annexation and colonial management of the Philippines, Puerto Rico, Hawaii, Alaska, the Pacific Islands, the Panama Canal, and the Virgin Islands.<sup>14</sup> National independence for colonized peoples was never the goal for US imperial endeavors, so why would Indigenous peoples be any different? This was an era when European colonial authorities were experimenting with indirect and delegated governance to quell the colonial world’s clamoring for national independence and self-determination. Indigenous peoples were no exception. The IRA was a New Deal program, but it was also part of global processes. Too often do we regard Indian policy as domestic policy. Typically, Indigenous history is viewed as a subfield of US history. This approach fails to take seriously Natives as colonized peoples and part of a global order. It naturalizes a colonization process whereby Indian affairs were removed from the realm of international relations — from treaty-making and diplomacy — and relegated to domestic, territorial rule, a process we should be critically analyzing and challenging rather than reproducing.

With all its flaws, the IRA enshrined certain principles of self-government for Indigenous peoples and provided them with a formally recognized government structure. Although not all reservations accepted the IRA model constitutions, those that did possessed a distinct advantage in negotiating with the US over the taking of lands for the

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<sup>14</sup> John Collier, *America’s Colonial Record* (London: Victor Gollancz, 1947), 31.



Pick-Sloan Plan. For example, the Standing Rock, Cheyenne River, Lower Brule, and Crow Creek reservations created IRA tribal councils. The Yankton reservation adopted the IRA but never formally adopted a model constitution or tribal council. For the construction of Fort Randall Dam, the Army Corps condemned 2,851 acres of Yankton lands. With no formal council or government, the Yankton reservation could not muster a unified response. The Army Corps completely bypassed the required consent of the Yankton reservation and its trustee, the secretary of the interior, and proceeded to seize Native property by right of eminent domain. Yankton reservation members had little to no recourse. In the end, while IRA governments were deeply flawed, without them the Oceti Sakowin would not have been able to negotiate damages and ultimately resist termination.

### **Not Without Consent**

By 1910 the state of South Dakota, barely two decades old, was at the forefront of the movement to develop the Upper Missouri. Other states such as Montana and North Dakota had their own plans, but none compared to the scale and organization of South Dakota. Early attempts had failed to garner federal support especially from the US Army Corps of Engineers who had final say over any river improvement projects. In 1924 the state designated Big Bend, the largest ox bow bend on the Missouri, as a potential site for the construction of a hydroelectric plant. A large multipurpose dam, according to this plan, promised cheap electricity and irrigation for the exclusive benefit of the nearby white-dominated border towns of Pierre, Winner, Chamberlain, White River, Mitchell, Huron, Redfield, and Murdo. Ignored were the very people most impacted: the Lower

Brule and Crow Creek reservations. Although the dam would be constructed on their lands and directly affected their water rights, both Indigenous nations were not consulted and were entirely disregarded during the initial planning of the project. South Dakota's river development projects failed to gain the necessary federal support, so the Upper Missouri Valley Development Association formed in the spring of 1933 to further states' interests in river development at the same site, among others.<sup>15</sup> Its most zealous promoter and de facto leader was M. Q. Sharpe, who soon became South Dakota governor and would later be appointed the Lower Brule and Crow Creek attorneys to represent them during the Pick-Sloan negotiations for taking lands and Indigenous removal.

The Big Bend site was just miles south from where the Lakotas first discovered the Lewis and Clark expedition in 1804 attempting to trespass through their territory unnoticed. So too did South Dakota politicians and boosters promoting river development attempt to bypass the scrutiny of the Oceti Sakowin. Like the expedition, the plan was soon discovered. On May 16, 1937, Lower Brule Tribal Chairman Ruben Estes wrote to South Dakotan Republican Congressman Francis Case showing support for a hydroelectric plant at Big Bend that could potentially provide "labor and relief" and electricity to the Lower Brule town site. Estes also expressed profound concern at being excluded from the development of Lower Brule lands and water without their input. "[W]e can do our own business under the leadership of the Tribal Council," Estes reminded Case. Estes invoked the new powers Lower Brule was willing to exercise under the IRA, challenging the legality of a state-initiated project on tribal lands without their consent. Ultimately, Estes questioned if the state or the federal government had the right

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<sup>15</sup> Robert Kelley Schneiders, *Unruly River: Two Centuries of Change Along the Missouri* (Lawrence: University of Kansas Press, 1999), 148, 154-7.

to develop water within reservation boundaries “without the consent of the people” of Lower Brule and Crow Creek, or perhaps any Indigenous nation living on the river.<sup>16</sup>

By 1935 the Lower Brule Sioux Tribe adopted the IRA, becoming the first tribe to do so from the Oceti Sakowin and the second in the US.<sup>17</sup> The urgency of embracing reorganization was not an acquiescence to a superior mode of governance to overtake prior forms of political organization, which until then had largely been organized in councils based on kinship. Instead, the Lower Brule implemented the IRA for pragmatic reasons: to counter attempts by state and federal agencies to lay claim to and develop the Missouri River that would disproportionately affect their lands.<sup>18</sup> Without an IRA council, the Lower Brule had little power to halt river development, to apply for federal loans, or to employ legal counsel to defend its lands. In the first instance, the Lower Brule did not support the development of the river without their consent. But they did support plans in which they could determine what that development would like and to what extent it would provide much needed relief and employment during the Great Depression.

On June 1, 1937, Case responded to Estes agreeing that the Big Bend site “is right there in your reservation and you are entitled to first consideration.”<sup>19</sup> Lower Brule followed suit, passing a resolution seeking federal loans from the Bureau of Indian Affairs (BIA) to develop a small-scale hydro-plant. While the tribe had planned a smaller project for the immediate benefit of their community, Case had bigger ideas, in which the

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<sup>16</sup> Ruben Estes to Francis Case, May 16, 1937, folder 157, Francis Case Papers, Special Collections, Dakota Wesleyan University, Mitchell, South Dakota. Ruben Estes is the great-grandfather of the author.

<sup>17</sup> *Chamberlain Register*, Chamberlain, South Dakota, 7 November 1935; Ernst Schusky, *The Forgotten Sioux: An Ethnohistory of the Lower Brule Reservation* (Chicago: Nelson Hall, 1975), 191.

<sup>18</sup> Schneiders, 158-60.

<sup>19</sup> Case to Estes, June 1, 1937, Case Papers.

Indigenous communities were not considered or were minor players. Case claimed that the Big Bend site “could mean much to national defense, to Indian rehabilitation and to the general welfare of central South Dakota.”<sup>20</sup> From 1937 to 1940 the Lower Brule requested approval for developing the site, but the BIA and the Army Corps both denied the requests for different, but important, reasons. The Secretary of the Interior Harold Ickes favored the plan as a BIA- and Interior-led project to increase the department’s influence and control in the region and over river management.<sup>21</sup> The Army Corps, however, rejected both the BIA and Lower Brule proposals, basing their decision on a “cost-to-benefit” analysis and the simple fact that they didn’t want to relinquish any authority to tribes or the federal government.<sup>22</sup> On the surface, it may have seemed like bureaucratic conflict or a lack of political will. What South Dakota, the Army Corps, and BIA agreed on, however, was that river development would happen with or without Indigenous consent — and such negligence would have dire consequences.

Lower Brule’s initial opposition to arbitrary state and federal interference with their water rights was not historically exceptional. In the 1908 *Winters* decision, the Supreme Court ruled in favor of the Fort Belknap Tribe’s claim to water rights over a white farmer’s effort to control and alter the flow of the Milk River, a tributary to the Missouri River in Montana. The Court ruled that even if Fort Belknap had given up claims to former lands in exchange for lands that were arid and without irrigation — which “was adequate for the habits and wants of a nomadic uncivilized people” — that those lands were inconsistent with the federal government’s desire to have Natives

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<sup>20</sup> Case to John Herrick, June 12, 1940, Case Papers.

<sup>21</sup> Case to J. W. Jackson, July 12, 1940, Case Papers.

<sup>22</sup> Schneiders, 159; Lawson, 7.

“change those habits and become a pastoral and civilized people.”<sup>23</sup> According to this view, Indigenous peoples retained quantifiable water rights if and only when the water was used in accordance with the civilizing mission of the federal government. The decision would become known as the Winters Doctrine. The doctrine holds that however diminished current reservation boundaries may be, tribes retain senior, reserved rights to water flowing through the originally defined boundaries established by treaty, statute, or executive order.<sup>24</sup>

Neither the Lower Brule or any Indigenous nation challenging river development ever invoked the Winters Doctrine. Nevertheless, they still possessed the power to do so. The doctrine’s intended application, however, illustrates limitations to Indigenous water rights under settler law. The Court employed the language of civilization to determine the extent of Indigenous water rights by privileging usage. The more an Indigenous community used the water for “civilized” means, such as agriculture, the more rights they retained; the less they used the less they retained. In this sense, Indigenous water rights are to an extent about quantifying degrees of “civilization.” Had the doctrine been invoked, the Lower Brule would have had to prove that use of the water would be towards “civilized” ends, such electricity or irrigation — which it did. Altering or disrupting the flow of the river by state or federal agency for any reason without the consent of the tribes, such as the construction of dams, violates the spirit of the Winters Doctrine.

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<sup>23</sup> *Winters v. U.S.*, 207 U.S., 564, 576.

<sup>24</sup> See Willima H. Veeder, “Winters Doctrine Rights: Keystone of National Programs for Western Land and Water Conservation and Utilization,” *Montana Law Review* 19 (1965): 149-72.

For Dakotas and Lakotas, water rights are defined by treaty. For example, Article 2 of 1868 Fort Laramie Treaty delineated the eastern boundary of “Sioux territory” as beginning at the “low-water mark” of the east bank of the Missouri River. In contrast, the IRA constitutions for the Cheyenne River, Standing Rock, and Lower Brule reservations delineated reservation boundaries according to the 1889 Sioux Agreement. The Agreement divided west river tribes into five distinct reservations (Pine Ridge, Rosebud, Cheyenne River, Lower Brule, and Standing Rock) and defined the eastern boundary of the three reservations bordering the river (Standing Rock, Cheyenne River, and Lower Brule) as beginning at “the center of the main channel of the Missouri River.” Regardless of the 1889 Agreement’s diminishment of reservation lands, all these reservations and the Oceti Sakowin still possess powers under the Winters Doctrine to the Missouri River according to the original 1868 Treaty boundaries as long the use of that water is used in a “civilized” manner.

The Winters rights are effective on the date reservations are created by federal authority and are considered unquantifiable or, according to the court decision, “uncircumscribed,” to allow for the perpetual benefit and use for a permanent Indigenous homeland. According to Diné scholar Melanie K. Yazzie in her analysis of 2012 Navajo-Hopi Little Colorado water settlement, subsequent Supreme Court decisions have described this “uncircumscribed” quality to mean a “minimal need” required by the reservation. In other words, Indigenous nations are only entitled to water they can use for “civilized” purposes. Those purposes are quantified — or, put another way, Indigenous sovereignty is quantified according to water usage and degrees of “civilized” usage. Anything falling outside these qualifications is considered surplus, unused, or wasted.

The rest can be quantified and siphoned away to meet the need on non-Native interests, primarily for private enterprises. After each party quantifies their needs, water that flows through reservation or treaty lands is then, by no small feat of the imagination, not entirely “owned” by Indigenous nations. The result is that Indigenous nations can only use a restricted amount — in some instances, a fraction of a percentage — of the water flowing through their territory.

Settler agricultural interests in water, because they are so great and insatiable, always outweigh the bare survival of Indigenous peoples. Pick-Sloan’s massive irrigation projects, for instance, quite literally meant snatching the food from the mouths of Indigenous peoples. Indigenous sovereignty is not an abstract thing. It could literally be felt through the hunger in one’s stomach, as was the case for the Oceti Sakowin who had their most productive lands taken. In this scenario Indigenous sovereignty can be calculated according to water rights, and, according to Yazzie, face “unlimited limitations” in federal courts.<sup>25</sup> That is, settler law has never expanded the material basis of Indigenous sovereignty — land and water; it can only erode Indigenous sovereignty and place upon it endless restrictions. When it comes to water rights and the Winters Doctrine, it is not just the legal character of “Indians” that is defined, “settlers,” too, with or without their input, become legal subjects with invested interests in the taking of Indigenous water. Put differently, in cases where Indigenous peoples possess water rights according to federal statute, executive order, or treaty, settler communities are dependent on the diminishment of those rights to fulfill their needs with or without Indigenous

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<sup>25</sup> Melanie K. Yazzie, “Unlimited Limitations: The Navajos’ Winters Rights Deemed Worthless in the 2012 Navajo–Hopi Little Colorado River Settlement,” *Wicazo Sa Review* 28, no. 1 (2013): 26-37.

consent. Indigenous water rights are calculated according to settler needs first and foremost.

Most likely fearing the diminishment of their water rights and sovereignty, to date no reservation affected by the Pick-Sloan Plan has invoked the Winters Doctrine, but nevertheless they still retain the right to do so and senior reserved water rights according to treaty.<sup>26</sup> The 1944 Flood Control Act, which authorized the Pick-Sloan Plan, authorized the Army Corps to construct dams — not to expunge Indigenous jurisdiction, treaty rights, or water rights. In less than precise language, Section 4 of the Act opened the river for “public use” and “recreational purposes.” It didn’t strip Crow Creek, Lower Brule, Standing Rock, Cheyenne River, Yankton, Fort Berthold, or any Indigenous nation, for that matter, of their political authority over their river. Regardless, the Army Corps condemned reservation lands under eminent domain and Congress awarded compensation to the affected reservations. Neither the Flood Control Act — which took the land — nor the congressional acts addressing damages — which rewarded compensation for taking the land — explicitly extinguished Indigenous jurisdiction; and neither authorized or provided any compensation for the Army Corps’ taking the Missouri River itself. Compensation was only provided for taking the land and not the water. Since then, the Oceti Sakowin has contended the Missouri River and its shoreline were never legally ceded and, according to statute, they are right. The Army Corps’ altering the flow of the river by damming it directly violates the Winters Doctrine and the

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<sup>26</sup> For a discussion on the limits and failures of the law to protect both Indigenous water rights and ecological moral values, see Lloyd Burton, *American Indian Water Rights and the Limits of the Law* (Lawrence: University of Kansas Press, 1991).



1868 Fort Laramie Treaty.<sup>27</sup> Regardless of treaty rights and sheer legality, the Army Corps proceeded anyway.

The construction of the Fort Peck Dam on the Missouri River in Montana in 1933 also set certain precedents for how the Army Corps would ignore Indigenous communities, treaties, and water rights. After destructive floods in 1927, the Army Corps conducted an exhaustive four-year hydrological study on the Missouri River. The findings were published in what was called the 308 Report, which became the go-to manual for all future developments in the basin including the 1944 Pick-Sloan Plan. The report also designated Fort Peck (not to be confused with the Fort Peck Indian reservation) as the best site for a massive reservoir. The project fell in line with New Deal labor relief and massive public work projects, and President Franklin D. Roosevelt quickly authorized the Fort Peck Dam under the 1933 National Industrial Recovery Act. The Army Corps built what was at the time of its construction the largest dam on earth and provided much needed employment for about 10,000 workers. Regional histories celebrate the dam as an historic engineering masterpiece, and it is considered instrumental in pulling Montana and the region out of the depression. The successes of the Fort Peck Dam secured Army Corps control in planning and constructing future massive multipurpose dams on the main stem of the Missouri and, according to historian Michael Lawson, “greatly expanded its powers and functions beyond its constitutional limits.”<sup>28</sup>

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<sup>27</sup> See Jeffery Ostler and Nick Estes, “‘The Supreme Law of the Land’: Standing Rock and the Dakota Access Pipeline,” *Indian Country Today*, January 16, 2017, <https://indiancountrymedianetwork.com/news/opinions/supreme-law-land-standing-rock-dakota-access-pipeline/>.

<sup>28</sup> Lawson, *Dammed Indians*, 9.

While the dam's history is well-publicized and well-remembered as an economic boon and engineering marvel, missing from these popular accounts is the largely untold and undocumented history of the removal of 350 Nakota, Dakota, and Assiniboine families on the Fort Peck Indian Reservation and the flooding of previous Indian Affairs irrigation projects to benefit Native farmers.<sup>29</sup> The Fort Peck project paved the way for the 1944 Pick-Sloan Plan and Flood Control Act, and a similar process would repeat itself: postwar employment and river development projects would come primarily at the sacrifice of Indigenous lives and lands.

The undercurrents of the Pick-Sloan Plan originated from the US's centralization of federal power to imagine and enact theories of space through land policy. The practice began as early as the 1785 Land Ordinance and continued on into the nineteenth and early twentieth centuries as federal authorities worked to know, map, reorganize, and manage land as territory. Water management was vital to these policies. Westward expansion and the taking of Indigenous lands confronted the problem of creating irrigation systems to make possible settler life in arid environments. After removing Indigenous peoples, the first task was to induce colonization. Federal policies such as the 1862 Homestead Act encouraged agricultural settlement on arid western lands unsuited for settler farming techniques developed in the East. Pushed by the railroad lobby to spur settlement and therefore the need for railroads to transport agricultural goods, the 1877 Desert Land Act amended the Homestead Act and provided federal money for western irrigation projects. The Northern Pacific Railroad, for example, also opened colonization offices in Germany, Sweden, Denmark, Norway, and England to entice European

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<sup>29</sup> Thurston, *River of Promise*, 82.

immigrants with cheap transportation and land deals to settle the Northern Plains and, therefore, to create a demand for railroad transportation.<sup>30</sup> Conservation policy, influenced by President Theodore Roosevelt at the turn of the century, led to the creation of the Bureau of Reclamation in 1902 to provide for the irrigation of arid lands in the West. Land policy was the legal justification for the sometimes unwilling shock troops of colonization — white settlers. Settlement and settlers literally made “legal” and operational contemporary water law that depends so heavily on the theft of Indigenous water.

“Public land” for “public good” was a highly subsidized federal endeavor for private enterprise, racial exclusion, and Indigenous elimination. One and half million white families gained title to 246 million acres of Indigenous lands — an area nearly the size of California and Texas combined — under the Homestead Act with the added value of federally subsidized irrigation. A quarter of adults alive today in the US are direct descendants of those who profited from the Homestead Act’s legacy of exclusive, racialized property ownership and economic mobility, a legacy that categorically excluded Black, Indigenous, and other non-white peoples.<sup>31</sup> Access to indigenous water was crucial to securing the ownership of Indigenous lands and generating wealth from these lands over generations. A single land policy has had a profound lasting political and economic legacy. It informs present disparities that boil down to a single axiom: land is wealth and water is wealth. The Pick-Sloan Plan is part and parcel of this massive settler colonial agricultural machine that greases its gears with water. Today, agriculture in the

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<sup>30</sup> See James B. Hedges, *The Mississippi Valley Historical Review* 13, no. 3 (1926): 311-42.

<sup>31</sup> Thomas M. Shapiro, *The Hidden Cost of Being African American: How Wealth Perpetuates Inequality* (Oxford: Oxford University Press, 2005), 190.

western US accounts for three-quarters of all water usage.<sup>32</sup> Water is settler colonialism's lifeblood, blood that has to be continually excised from Indigenous peoples.

To meet incessant demands for irrigation, the Pick-Sloan Plan was made to appear as inevitable. But it was not a dream manifested in a dusty federal office-building in Washington, D.C. to be handed down to unwitting agricultural communities. States, local governments, the Army Corps, and other federal agencies all pushed for Missouri River development in various ways, in spite of the consequences for Indigenous communities. Although most of the power was concentrated in federal authorities by 1944, "grassroots" organizations continued to play a significant role. By 1941, the Upper Missouri River Valley Development Authority dissolved. In its place formed the Missouri River States Committee, an organization of governors from Missouri Basin states. Rather telling, the first states to enthusiastically join the committee (South Dakota, North Dakota, Montana, Wyoming, and Nebraska) encompassed thirteen Indian reservations whose lands immediately either included or bordered the Missouri River (the Omaha, Winnebago, Santee, Rosebud, Ponca, Yankton, Rosebud, Lower Brule, Crow Creek, Cheyenne River, Standing Rock, Fort Berthold, and Fort Peck reservations). Later, Missouri, Kansas, and Iowa would join the committee. Representation ranged from federal, state, and municipal agencies and officials to businesses and community organizations. The channelization of the river benefited mostly downriver states. Upriver states would bear the heaviest burden by taking on the majority of the dams and reservoirs. Since most of the land flooded was Indigenous, this was a "burden" South Dakota and North Dakota politicians were willing to assume. In 1951 during an appraisal hearing, Standing Rock Chairwoman Josephine

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<sup>32</sup> Char Miller, "Welcome to the Era of Scarcity" in *Water In the 21<sup>st</sup>-Century West: A High Country Reader*, ed. Char Miller (Corvallis: Oregon State University Press, 2009), 303.

Kelly challenged this aspect of the Pick-Sloan Plan and especially the Oahe Dam's taking of Standing Rock lands. Someone asked why the dams were not built in the lower basin states, who benefitted the most from flood control. Kelly responded bluntly in front of Army Corps and federal authorities, "Because there are no Indians down in that country."<sup>33</sup>

At no time did the state committee solicit the attendance or input of a single Indigenous representative from the affected reservations. The committee would work closely with the Bureau of Reclamation and the Army Corps, in the words of its chair M. Q. Sharpe, "for the general development [of the Missouri River] for the multiple purposes of flood control, power development, irrigation, navigation, soil conservation, [and] wild-life and recreational development." In other words, "the Missouri River States Committee had really become the general over-all supervising, coordinating, steering and representative committee for the development of the Missouri River basin on a valley-wide, over-all plan, representing all the sovereign states of the basin in their sovereign status and in a semi-official way."<sup>34</sup> States' interests didn't just lay in river development. They also proposed the total liquidation of Indigenous political authority as well.

### **The Destroyer of Nations**

In anticipation for the need of postwar employment and coming at the heels of massive flooding, in 1944 the Bureau of Reclamation and the Army Corps, with the input and guidance of the Missouri River states, consolidated their interests into a unified river

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<sup>33</sup> Quoted in Lawson, *Dammed Indians*, 102.

<sup>34</sup> M. Q. Sharpe, "History of the Missouri River States Committee," no date, M. Q. Sharpe papers, folder 2, box 151, Richardson Collection, University of South Dakota, Vermillion, South Dakota.

basin program that became known as the Pick-Sloan Plan. The plan called for the construction of five earthen rolled dams that would create massive reservoirs on the river's main stem. In South Dakota and North Dakota the dams flooded 611,642 acres of land. Just over a half of this land — 309,584 acres in all — belonged to the Yankton, Lower Brule, Crow Creek, Cheyenne River, Standing Rock, Rosebud, Santee, and Fort Berthold reservations. The Oahe Dam flooded Cheyenne River and Standing Rock. The Fort Randall Dam flooded the Yankton and Rosebud reservations. The Fort Randall and Big Bend dams flooded both the Lower Brule and Crow Creek reservations. The Garrison Dam flooded Fort Berthold. The Gavin's Point Dam flooded the Santee reservation. As a result, more than 900 Native families, one-third of the overall populations, from these five reservations alone were forced to relocate. Entire communities were forever submerged. Seventy-five percent of wildlife and plants and 90 percent of all commercial timber on these reservations lands were destroyed.<sup>35</sup> By design the Pick-Sloan Plan was the destroyer of nations.

The Garrison Dam inundated the Fort Berthold reservation, composed of the Mandan, Hidatsa, and Arikara nations, taking 152,360 acres of their land. Thirty percent of the community populations from Lower Brule, Crow Creek, Cheyenne River, and Standing Rock would be removed. Although less lands were taken by the Garrison Dam than compared to the Oahe Dam, Fort Berthold lost a quarter of its entire land base including its agency at Elbowoods. Because of its smaller size and the greater concentration of its population in the river valley, approximately eighty percent of its people (325 families) were removed and 94 percent of its agricultural lands were

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<sup>35</sup> John Ferrell, "Developing the Missouri: South Dakota and the Pick-Sloan Plan," *South Dakota History* 19 (1989); 309-315; Lawson, *Dammed Indians*, 41-3.

destroyed.<sup>36</sup> No care was exercised to minimize the damage to Indigenous lands. To protect the white border town of Williston, North Dakota from losing its land, however, the Army Corps modified the Garrison Dam. The dam was also built safely upriver so as not to flood Bismarck, the white-dominated border town and state capital of North Dakota. The reservoir that sits atop Fort Berthold lands was named Lake Sakakawea after the Shoshone woman captured and sold by the Hidatsas and who gained notoriety for her services to the Lewis and Clark expedition and US empire.<sup>37</sup>

Although the Army Corps proclaimed before Congress that they would negotiate with the affected reservations, they seemed to have forgotten ever making such a statement and forwent tribal consultation almost entirely throughout the construction of the dams and assessment of damages.<sup>38</sup> White landowners were dealt with on an individual, case-by-case basis, and Missouri River tribes were dealt with as separate reservations. In contrast to white landowners, the entire tribe received compensation and not the individual tribal members whose allotments were directly flooded or condemned. The creation of separate reservations severely weakened a sense of national unity for the Oceti Sakowin. Once individuals identified according their as political affiliation, such as Hunkpapa or Sicangu. Now they identified according their reservation, for example, Standing Rock or Rosebud. Allotment emphasized individualism. It first assaulted the tightly-knit family units made up of direct kin and extended relations called the Tiospaye. Tiospayes were the fundamental political unit of Oceti Sakowin governance, where each

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<sup>36</sup> U.S. Department of Interior, Bureau of Indian Affairs, *Damage to Five Reservations from Three Missouri River Reservoirs in North and South Dakota* (Billings: Missouri River Investigation Project, 1954), 22a.

<sup>37</sup> Lawson, *Dammed Indians*, 52-3.

<sup>38</sup> *Ibid.*, 40-1.

family collectively selected its own representatives for general councils. Preferring to live according to the social and political customs of Tiospayes, individual landownership broke up these units by separating families and isolating them on different plots of land in distant parts of the reservation. Because of the way it negotiated with the separate reservations and didn't deal with individual allottees, Pick-Sloan further fomented disunity among the different reservations and between individual tribal members and their tribal governments.

Indigenous nations were, however, awarded more money per acre than their white neighbors. The higher monetary values were not due to political sympathies for the disproportionate taking of Indigenous land. Congressional sympathies leaned instead toward termination. In 1954 South Dakota Congressman E. Y. Berry stated, during a debate on the Cheyenne River settlement, that giving more money to tribes would put them in a better position to “throw off the shackles of Federal supervision.”<sup>39</sup> The initial negotiations for taken lands and relocation resulted in a \$34 million award to Lower Brule, Cheyenne River, Crow Creek, Yankton, and Standing Rock. But that money, as evidenced by Berry's statements, came with strings attached — they would have to give up their political authority; and his eliminationist agenda were not entirely novel or out-of-step with the thinking of the day.

Indigenous communities were well aware of the Pick-Sloan dams but had little idea where they would be built and how much it would affect them. Some communities were flooded twice and experienced two dislocations, such as Crow Creek and Lower Brule. First came Fort Randall which began flooding Lower Brule and Crow Creek in

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<sup>39</sup> E. Y. Berry, “Statements Before Congress,” *Congressional Record*, 83rd Congress, 2nd Session, 1954, 13160.



1954. As early damages were still being calculated, on November 2, 1949, BIA Superintendent Frell M. Owl wrote to the Lower Brule and Crow Creek Tribal Councils advising them, perhaps for the first time, of the inevitable inundation of their lands. The two tribes no doubt knew about Pick-Sloan, but none fathomed the catastrophe it would bring. Owl told them Congress conferred to the Army Corps all the lands “required” for the Big Bend and Fort Randall dams. Emphasizing Lower Brule and Crow Creek had no say in the matter, Owl wrote, the proposed to take their lands “is submitted to you not as a document that you should adopt but it, more or less, points out the events to come in the future.”<sup>40</sup> Owl later conveyed the convoluted negotiations process. The Army Corps would condemn the land and negotiate directly with Crow Creek and Lower Brule legal counsel. The BIA would then submit its approval and estimation of damages (which were always much lower than tribal estimates). Lastly, Congress held final approval over all the negotiations and would pass legislation awarding monetary compensation.<sup>41</sup> This lengthy back-and-forth process resulted in the tribes negotiating with three different entities — the Army Corps, the BIA, and Congress, often causing such a backlog in hearings and proceedings that tribes received their relocation money only after their lands were flooded.

In 1946 the BIA sponsored a two-year fact-finding mission, known as the Missouri River Basin Investigation (MRBI) project, to estimate damages to Missouri River tribes and estimate monetary awards for relocation, taken lands, and “intangible damages.” While simply tasked with land and resource appraisal, the BIA went a step

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<sup>40</sup> Frell M. Owl to Crow Creek and Lower Brule Tribal Councils, November 2, 1949, Sharpe papers.

<sup>41</sup> Ibid.

further. Like their congressional counterparts, they saw “opportunity” in removal, relocation, and rehabilitation. In its opening pages, the investigation spelled out its broader schemes for the Pick-Sloan plan:

The Indian Bureau is attempting to see the Indian and to see him whole, a member of a changing society derived from primitive status, which is slowly but steadily merging with the total population. Resource development is viewed from the standpoint of enlarging the Indians’ opportunities for economic and social growth towards self-dependence, absorption into the body politic, and release from governmental guardianship and supervision... The dislocations caused by enforced removals and the readjustments which must be applied to the reservation economics and Indian social structure are part of the *total* story.<sup>42</sup>

Resource development meant river development. River development for Indigenous peoples meant mass flooding and forced displacement. Forced removal hastened elimination by destroying the very thing holding Indigenous peoples back and to which they would be unable to return: the reservation and the land. BIA investigators reasoned, resource development should be embraced no matter the costs.

Our Indian agencies are growths descended from the frontier. Over the years they have accumulated the barnacles of outmoded habits of thought and custom, as well as physical plants established to service self-contained and ingrowing rural communities. Indian life on the reservation has inevitably been channeled toward the essentially undemocratic controls of the ‘Agency,’ rather than outwards to the surrounding society with which the Indian people should become associated in the long sweep of cultural amalgamation. Even when considered in terms of integration of Indian life after the pattern of their cultural heritage, the Indian agency has exerted its influence more to create cultural malaise than cultural integration... The objective might take the course of transferring most of the Federal Government’s services to the States.<sup>43</sup>

Put plainly, the dams would speedup termination and relocation. Indigenous culture was seen as a “self-contained and ingrowing” culture of poverty that could only be saved, once again, through benevolent state intervention and the civilizing project. Although

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<sup>42</sup> Emphasis added. U.S. Department of the Interior, Bureau of Indian Affairs, Missouri River Basin Investigation, *The Indian and the Pick-Sloan Plan*, Billings, Montana, 4-5.

<sup>43</sup> *Ibid.*, 9.

Indigenous nations had achieved a relative degree of autonomy under IRA governments, termination justified itself by extending the gift of democracy through the programmatic liquidation of Indigenous political authority and federal trust responsibilities. In other words, Indigenous peoples could only attain democracy once they were destroyed as nations.

Since federally-imposed “self-determination” was a failed project, the only hope to fulfill its democratic promises was the complete annihilation of Indigenous autonomy altogether. The “wiping out” of the agencies, the MRBI concluded, was a “rare opportunity” that “may lead to significant discoveries which will have wide application to the conduct of Indian affairs in the United States.”<sup>44</sup> In other words, it was an experiment in democracy. In 1949 the bills authorizing negotiations for the settlement for the Oahe Dam bluntly acknowledged that people below the dam would benefit greatly while Indigenous peoples would not benefit at all. “[I]t takes the very heart out of these Indians,” one congressman said speaking candidly about the legislation, “when you take reservation land, you destroy not only the land that is taken, but you destroy the community life, [the] religious and civil life of the people. You destroy nations, as a matter of fact.”<sup>45</sup>

The political and governmental heart of these nations were their agency headquarters. Hospitals, health clinics, schools, and administrative offices were all located in agency towns, the very things necessary to continue on as a sovereign nation.

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<sup>44</sup> Ibid., 9-10.

<sup>45</sup> U.S. Congress, House, Committee on Public Lands, Hearing on H. R. 5372, *A Bill to Authorize the Negotiation, Approval, and Ratification of Separate Settlement Contracts with the Sioux Indians of Cheyenne River Reservation in South Dakota and of Standing Rock Reservation in South Dakota and North Dakota for Indian Lands and Rights Acquired by the United States for the Oahe Dam and Reservoir, Missouri River Development, and for Other Purposes* (Unpublished hearing), 81<sup>st</sup> Cong., 1<sup>st</sup> sess., July 13, 1949, 5, 6.

The Oahe Dam entirely inundated Cheyenne Agency, Cheyenne River's headquarters and largest community. The agency had to re-establish sixty miles inland at the isolated prairie town of Eagle Butte. More than 180 families, about thirty percent of the population, were forced to leave their homes. Fort Yates, the Standing Rock agency, remained above the Oahe Dam flood waters but the land below it, where most of the community's population lived, was flooded. As a result, Fort Yates was made into an island that had to be connected by a bridge and 170 families were forced to relocate, twenty-five percent of the reservation population. The Fort Randall Dam dislocated 84 families from Crow Creek, 35 families from Lower Brule, and 20 families from Yankton. At Crow Creek, the Fort Randall Dam flooded Fort Thompson, the agency headquarters for Lower Brule and Crow Creek and the largest community. The combined agency headquarters were relocated to Pierre, the small capital city of South Dakota some sixty miles north of both reservations. Indian health services were relocated to Chamberlain, a notoriously racist, white-dominated border town twenty miles to the south.<sup>46</sup>

Of the five dams, the Oahe Dam, according historian Michael Lawson, "destroyed more Indian land than any single public works project in the United States."<sup>47</sup> It destroyed 160,889 acres of Standing Rock and Cheyenne River: 104,420 acres of Cheyenne River lands and 55,994 acres of Standing Rock lands. Nearly all the Cheyenne River lands taken were grazing lands and 75 percent and 60 percent of Native ranchers at Cheyenne River and Standing Rock, respectively, were impacted. The most expensive and largest of the Pick-Sloan dams, the Oahe project cost \$346 million, is 245 feet high, and generates 595,000 kilowatts of hydropower. Oahe reservoir is as deep as Lake Erie and longer

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<sup>46</sup> Lawson, *Dammed Indians*, 46-9.

<sup>47</sup> *Ibid.*, 47.

than Lake Ontario that stretches 250 miles from South Dakota capital of Pierre to the North Dakota capital of Bismarck, storing 23.5 million acre-feet of water. The second largest Fort Randall that rose 245 feet high destroyed 21,497 acres of Indigenous land. Crow Creek lost 9,418 acres of land and had 84 families removed. Lower Brule lost 7,997 acres and had 35 families removed. Yankton lost 2,851 acres and had 20 families removed. Rosebud lost 1,231 acres of land. The Fort Randall generates 320,000 kilowatts of hydropower, is 160 feet high, and cost \$200 million. The reservoir it created, Lake Francis Case, was named after the South Dakota congressman who was an early river development advocate and is 107 miles long with a storage capacity of 5.7 million acre feet. In an incredibly stupid and cruel engineering calculation, the Big Bend Dam, the third largest dam, flooded and dislocated Crow Creek and Lower Brule lands where communities had been already relocated from the previous Fort Randall flooding. Both reservations would have to relocate twice. At 94 feet high and putting out 468,000 kilowatts of power, the Big Bend Dam was built directly on the now-inundated Fort Thompson town site and directly on Crow Creek and Lower Brule lands, flooding 20,478 acres of each and destroying the Lower Brule agency headquarters. Lower Brule lost 14,299 acres and had 62 families, more than half its population, removed. Half the remaining Lower Brule farms not destroyed by the Fort Randall project were destroyed by Big Bend. Crow Creek lost 6,179 acres and had 27 families removed. The reservoir behind Big Bend, Lake Sharpe, was named after the appointed Lower Brule and Crow Creek attorney M. Q. Sharpe who represented the two tribes during the Pick-Sloan negotiations. For his lifelong commitment not to Indigenous peoples, but to the taking of their lands by flooding it, Sharpe is immortalized by the water that sits atop Lower Brule

and Crow Creek lands. The smallest and southern-most dam, Gavin's Point, took 593 acres of Santee lands. Gavin's Point created Lewis and Clark Lake, named for the two US explorers, who famously branded the Oceti Sakowin as "the vilest miscreants of the savage race."

### **Who Will Mourn the Murder of a Mouse?**

Much like how the Army Corps viewed the Missouri River as a technical problem to be managed and administered, the MRBI reduced Indigenous relocation and the trauma it inflicted to a set of technical questions and problems to be sorted out by the administration of federal and state services. By all accounts most of the Indigenous river communities, as the MRBI put it, still depended on the "free goods of Nature" — such as hunting, trapping, and gathering — in the lush bottomlands where many Lakotas and Dakotas historically camped before forced relocation and containment to reservations. Acutely aware of this relationship — which was viewed as preventing full assimilation into the market economy — the BIA argued that the flooding of the bottomlands "will force [Indians] into seeking cash income to make up for the substantial portion of income now represented in their use of natural resources of their present environment."<sup>48</sup> Income — what is normally viewed as earned from wage labor — calculated not just cash income but also what was harvested from the land for consumption and not for profit. The added benefit, as far as the BIA was concerned, was that valuation of "intangible" and "tangible" resources forced many to begin thinking in terms of the cash economy, rather than relying on non-market values of what was otherwise "free" and, if properly

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<sup>48</sup> *The Indian and the Pick-Sloan Plan*, 9.

managed, naturally replenishing. “Substitutes for native products destroyed by the reservoirs,” the MRBI reasoned in cold bureaucratic language, “will be commercial products acquired through cash payments. This change will greatly increase the importance of cash in the Indian’s economy and force substantial change in his way of life.”<sup>49</sup>

In 1958 during congressional hearings on the Oahe Dam, Standing Rock member Louis Thief explained the material impact of “intangible damages” that had no monetary equivalent. He compared the taking of these intangibles to the delayed explosion of an atomic bomb exploding gradually over time and space rather than a split second, a process that could be started but not stopped and that would forever ruin the land. The bomb would kill the “little things” that had no market value, such as the mouse — to whom many Indigenous peoples facing starving conditions on the reservations owed their lives. According to Thief, the true devastation could only be measured over generations:

Intangible means that you cannot hardly put your finger on it. In an Indian way, it is better expressed to say without a body. It is a spirit. You cannot catch a hold of it. It is difficult...

This intangible, the way I look at it, is the A bomb in the whole question. It is the energy that is locked up and when it is released, it will explode and hurt us. What I wanted to mention in that intangible question that I know by experience, and I have seen it, that where families were saved from starvation by little things that I am going to mention.

For instance, one of the funniest things that Army Engineers heard, and MRBI, was this. We included in this intangible injuries — and you could call it direct, too — the mouse. I know what you are going to say. They said how could a mouse be of any benefit to you. All right. We will show you... There was one family last year that I have seen and know — he has heart trouble, and cannot work, but he has nine kids — there was one time he didn’t have nothing to eat and no relief. He was not old enough to get on the old age. So he walks into the woods. There is quite a trick in finding them. I don’t know what they call them. It

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<sup>49</sup> *Damage to Five Reservations*, 71.

is just like a lima bean, ground beans... Mouse beans. He dug up some of this, enough to tide him over two weeks and saves his family from starving.<sup>50</sup>

Thief's testimony is insightful for several reasons. First, the comparison to atomic weapons detonation evokes the idea of Missouri Indigenous communities as "sacrifice zones," similar to the Shoshone and Paiute lands that were taken for nuclear testing at the Nevada Test Site. With no small irony, the US Department of Energy created a 1,360 square mile "reservation" where 928 nuclear bombs were detonated, making it the most nuclear bombed area in the world. Whereas the Nevada Test Site sought to release the energy contained in atoms, Pick-Sloan sought to release the energy contained in the movement of water and to convert it into hydropower. To accomplish this engineering feat, it had to destroy the power possessed in the little things such as the lives of mice. It had to destroy the future realization of that life energy that sustained Indigenous lives, that kept families from starving to death. In this sense, the dams reached into the future to take human and nonhuman life and literally drowned its potential reproduction.

Calculations for damages were calculations for the amount of life taken — both in its present form and future possibility. The Army Corps condemned and destroyed land and killed wildlife and plant life. It was not just about taking land but also about taking nonhuman relations, destroying the past, and stifling the possibility of a livable future. Missouri River Indigenous nations were forced to surrender not just their best lands. They also were forced to surrender their nonhuman kin who had kept them alive, such as the mouse. Such relations were not abstract, but had a real material impact. Their loss could be felt through the pangs of hunger and that wanton murder of one's relatives.

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<sup>50</sup> U.S. Congress, House, Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, *Compensation to Indians of the Standing Rock Sioux Reservation* (Unpublished hearing), 85<sup>th</sup> Cong., 2<sup>nd</sup> sess., 1958, 239-40.



For the Lower Brule reservation, the history of land loss had real, material consequences to their daily lives and dependence upon the land. On 23 June 1955, Lower Brule Tribal Council Member Richard LaRoche, Jr. spoke in frustration before Congress on what he believed was a lowball MRBI appraisal of the 7,997 acres targeted for the Fort Randall Dam inundation. LaRoche asserted the BIA's MRBI reports

overlooked many of the true and important elements of the values of this kind of land. We doubt if any group of strangers to this land, even though they may have some skill as appraisers[,] could come on to it and find all of the real values of it and appraise them accurately. We who have lived with it and owned some of it and worked it all of our lives, we think, are better able to tell you its true value.<sup>51</sup>

Forced to place a monetary value on the land, LaRoche and Thief portrayed profoundly different knowledges of value that existed outside the market value of the land. These relations could be called a grounded normativity or a subsistence economy that *lived with the land* rather than *off the land*, in an extractive sense. As LaRoche stated, BIA and federal officials wielded the power of the river to violently tear the Indigenous peoples away from this way of life. It also forced them to calculate their loss, through the tally of “tangible” and “intangible” commodities. Intangibles included wild game, timber, plums, and berries — that had no intrinsic market value and which facilitated noncapitalist ways of living. BIA estimates categorized these “little things” as “sense-perceptible losses” that held “subjective or psychological values.”<sup>52</sup> The result of the destruction of these resources, which often sustained profoundly different knowledges and ways of living with the land, was incalculable. While “intangibles” were sensory losses and held psychological value — like the land's beauty and aesthetic — they could also be felt

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<sup>51</sup> Lower Brule Sioux Tribe, Congressional Hearings, 1955, on Missouri River Damages, Statement of Richard LaRoche, Jr., before House Committee on H. R. 3544 (S. 953), 23 June 1955, Sharpe Papers, Box 184.

<sup>52</sup> *Damage to Five Reservations*, 16.

through hunger. After all, a source of food was being destroyed not just an “immaterial” thing. Upon reflection of these procedures, LaRoche lamented that the monetization of land for its “intangible” value “was something new to everyone... We were losing our land, and our economy and way of life were being interrupted.”<sup>53</sup>

Added to the “intangible” list of losses were things like mice beans, wild plums, chokecherries, buffalo berries, wild game, plant medicines, and a bountiful timber supply for fire, shelter, and home construction. To account for these losses and to force thinking in terms of market value, or in terms of commodities that had commensurable value in a cash economy, the BIA estimated that “The value of wild products is the estimated value at the grocery of food to replace the loss of wild products.”<sup>54</sup> Many of the “wild products” lost were not only for sustenance, but also played central roles in seasonal ceremonial practices. One such practice involving women’s coming of age required the use of buffalo berries, which would never again grow on Lower Brule land again after inundation, thus ending the ceremonial practice. LaRoche expressed outrage at having to explain this and place a monetary value on the loss of ceremonial rites: “Well, the white man, he never cared about these things; he didn’t even know what it was.”<sup>55</sup>

In a 1958 congressional hearing on the Oahe relocation and rehabilitation program for Standing Rock, Josephine Kelly, no longer the Chairwoman, expressed disgust at the way the US and the Army Corps ran roughshod over treaties, treaties the US came to Indigenous peoples to make, and the sacrifices Indigenous peoples had already made. “[W]hen the United States go into war our boys do not have to be asked,”

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<sup>53</sup> George Estes and Richard Loder, *Kul Wicasa Oyate* (Lower Brule: Lower Brule Sioux Tribe, 1971), 69.

<sup>54</sup> *Damage to Five Reservations*, 13.

<sup>55</sup> Estes and Loder, 70.

she said, “They go right in. They fight for their country where they were born and raised and so forth. They are good soldiers. But even some of those [soldiers] are condemned. Their mothers are condemned and so forth. It is a disgrace.” Frustrated congressmen in a patronizing tone told her that the settlement would provide agricultural and community development loans. “We don’t want loans,” Kelly shot back. “We are not loaning the [Army Corps] the river bed or buying up all that land in loans. They are taking it away from us... It is just like our Black Hills that our grandfathers signed [away]. They signed only for gold.” “[I]t would be like Santa Claus coming,” one congressman responded infantilizing her as if the US was presenting them with gifts on Christmas morning, “other than we are trying prepare especially the young people on this reservation so that they can be in a position, through education and other means, to move into the economy of your section of the nation. They should take their rightful place. Do you understand that?” “I realize that,” Kelly said. She reminded the congressmen that wasicus had exploited Lakota “generosity” as a sign of weakness and cut down his condescending attitude: “We have been Santa Clauses, too, the Sioux Indians. We gave up our Black Hills and gave up our land... and now we are down to bedrock, just like a bunch of beggars, and that is really sad.” Kelly went on describe the treaty relationship between the US and the Oceti Sakowin. “Those treaties are still valid today,” she repeated questioning the power to take lands and relocate people without their consent, “They say they were thrown in the wastebasket, but just the same we were here first and maybe we’ll be here last.”<sup>56</sup>

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<sup>56</sup> Quote from U.S. Congress, House, Subcommittee on Indian Affairs, Committee on Interior and Insular Affairs, *Compensation to Indians of the Standing Rock Sioux Reservation* (Unpublished hearing), 85<sup>th</sup> Cong., 2<sup>nd</sup> sess., 1958, 239-40.

Regardless of the deferred promises of upholding treaties, the dams broke the treaties once again by flooding entire communities forcing them to relocate. Human and animal life, BIA officials harshly explained, would “have to re-establish on the open upland plains where a less hospitable and more rigorous climate prevails, or [would] have to leave the reservation.”<sup>57</sup> And compensating land loss at “fair market value” was next to impossible, since the increased need for hospitable lands increased real estate prices and market competition for prime ranchland.<sup>58</sup> As a result, many families had to subsist on a monetary compensation that arrived only after their homes were flooded, “with the result that they run the real risk of ending up penniless and homeless.”<sup>59</sup> And many did. Michael Lawson describes an all-too-familiar scene that unfolded at Standing Rock that was also experienced by the Lower Brule and Crow Creek reservations:

In January 1960, when the Corps of Engineers finally delivered the settlement funds to Standing Rock, it also served the tribe with an immediate eviction order. In the midst of a fierce Dakota winter, with temperatures falling as low as thirty degrees below zero, tribal families who lived within the Oahe reservoir taking area were forced to gather all their possessions and to leave their land. Because the federal government had not yet made funds available for either the construction of new homes or the relocation of old dwellings, these people were crowded into cold and cheerless trailer houses, which they had to maintain at their own expense until permanent housing could be prepared.<sup>60</sup>

### **Termination and Its Discontents**

Amid all the losses in the 1950s, there were incredible victories for the Oceti Sakowin in the 1950s and 1960s over the state of South Dakota’s attempt to assume jurisdiction over Lakota and Dakota reservation lands effectively defeating termination

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<sup>57</sup> *Damage to Five Reservations*, 8.

<sup>58</sup> *Ibid.*, 11.

<sup>59</sup> *The Indian and the Pick-Sloan Plan*, 7.

<sup>60</sup> Lawson, *Dammed Indians*, 182.

dead in its tracks. Although the dams promised to hasten the death of Indigenous nations, they failed to actually accomplish this task. The roots of failure descended from the very nature of the Pick-Sloan Plan to outsource the management of Indigenous life to states and surrounding white communities. More importantly, the incredible mobilization of the Oceti Sakowin to unite and defeat termination legislation, not once but twice, during the ongoing assault on their lands from the Army Corps dams is a testament to the political wherewithal the severely weakened tribes still possessed.

During early Pick-Sloan negotiations, most of the legal and political “advocates” for the Oceti Sakowin were also ardent terminationists and Pick-Sloan supporters during the initial negotiations: South Dakota congressmen Karl Mundt, E. Y. Berry, and Francis Case; the Lower Brule and Crow Creek legal counsel M. Q. Sharpe; and the Commissioner of Indian Affairs Dillon Myer. The dams, which promised and delivered wholesale destruction, coincided and worked in tandem with the federal policies of termination and relocation. In 1953, Congress passed House Concurrent Resolution 108 (HCR 108) that inaugurated termination policy, and called for the immediate termination or ended federal recognition of the Flathead, Klamath, Menominee, Potawatomi, and Turtle Mountain Chippewa tribes. That same year, Congress passed Public Law 280 (PL 280) that authorized states to assume criminal and civil jurisdiction over Native lands. The Bureau of Indian Affairs supported these programs and carried out the Indian Relocation Act of 1956 that relocated thousands from the reservation to far-off urban centers. HCR 108, PL 280, relocation, and the Pick-Sloan dams did not just promote assimilation — they enforced genocide and elimination.<sup>61</sup>

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<sup>61</sup> For a history of the termination and relocation, see Donald L. Fixico, *Termination and Relocation: Federal Indian Policy, 1945-1960* (Albuquerque: University of New Mexico Press, 1990).

But South Dakota and federal leadership began experimenting with relocation and termination prior, as soon as the prospects of mass forced Indigenous removal provided the opportunity to entertain such ideas. One such experiment impacted on the consolidated agencies of Crow Creek and Lower Brule and the relocation caused by Fort Randall Dam flooding. The failure of Indian relocation and termination, in this instance, revealed a fatal flaw for termination policies in South Dakota and the overall “Indian Problem” of settler colonialism: white settlers want Indigenous lands but they don’t want Indigenous peoples. Settlers could no longer just advocate outright extermination but they certainly could not tolerate integration.

If Lower Brule’s situation had not been bleak enough, an enthusiastic Pick-Sloan advocate and terminationist represented them in the negotiations process. In June 1951, the consolidated agencies Lower Brule and Crow Creek appointed M. Q. Sharpe as their legal counsel. Three factors determined Sharpe’s selection: 1) his law practice was located near the reservation; 2) he had political connections in Congress and within federal agencies; and 3) he was the most affordable lawyer and came as a packaged deal for the two consolidated agencies. The final reason was the most important. Indian Commissioner Dillon Myer refused to allow Crow Creek hire separate legal counsel when they selected Lakota attorney Ramon Roubideaux.<sup>62</sup> The failure to select a legal counsel for both reservations delayed negotiations, and Myer intervened and made the decision for them.<sup>63</sup> Impending flooding would force both the reservations to relocate their agency headquarters from Lower Brule to a set yet to be determined.

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<sup>62</sup> Minutes from “Joint Meeting of the Lower Brule and Crow Creek Tribal Councils,” June 22, 1951, Sharpe Papers, box 184.

<sup>63</sup> Alice H. Jandreau to Sharpe, November 17, 1951, Sharpe Papers, box 184.

According to Congressmen Berry and Myer, leaders of the white-dominated border town of Chamberlain appealed to them as a potential site for relocation for the agency headquarters. The off-reservation location would fulfill a dual purpose of providing a model for termination as well as beginning the process of Indigenous relocation into surrounding white communities. Myer wrote to Berry on August 31 agreeing that forced relocation would hasten the termination process:

We realize that if the agency is moved to Chamberlain it may result in some inconvenience to individual Indians, but we feel strongly that the long range results from such a move would far outstrip any temporary inconveniences. If the agency were moved, there is the possibility that many of the Indians who now take all their problems, great and small, to the agency superintendent might through necessity have to start taking care of some of them for themselves. It seems to us that the completion of Fort Randall Dam is going to become the starting point from which we can either lead the Indians toward more and more assimilation and integration, or allow them to retrogress to the narrow and inbred way of life which has been... customary of reservation living.<sup>64</sup>

The very prospect of charging the local municipal government of Chamberlain with the burden of incorporating Natives into the community met a more virulent reaction from local leadership. Because Chamberlain was the county seat of Brule County, the county commissioners adopted a resolution to thwart an effort by the BIA and Congress to force the members of Lower Brule and Crow Creek into integration at the public schools and into the community at large:

[The Brule County Commissioners] hereby expresses its firm belief that if such [agency] offices are moved within Brule County that as a result of such move Brule County would necessarily be forced to provide the necessaries of life for a considerable number of reservation members moving into the county, and this would place an intolerable financial burden on Brule County, South Dakota.<sup>65</sup>

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<sup>64</sup> Dillon S. Myer to E. Y. Berry, August 31, 1951, E. Y. Berry Papers, Black Hills State University, Spearfish, South Dakota.

<sup>65</sup> Brule County Commissioners Motion, December 5, 1951, Berry Papers.

In a more threatening letter to congressmen Case and Berry, Mayor of the City of Chamberlain Hershel V. Melcher echoed the sentiment of the Brule County Commissioners with threats of vigilante violence that echoed southern segregationist responses to integration.<sup>66</sup> On March 30, 1954, Melcher wrote:

Lately the Indian Offices at Fort Thompson, S.D. say they want to move into Chamberlain, S.D., [and it] seems they want to come whether we like it or not. Some of the boys in the Community Club seem to favor it but the people in town are most all against it. If they come in here, it will be necessary to declare open season on Indians and Government Agents, we do not feel that we are entitled to this kind of abuse from the government and we do not intend to take it peacefully... The people of Brule County do not feel we should be saddled with a relief load for Indians, that is the job of the Federal Government, and we do not intend to let an Indian light around here at all. We do not want to live with them, we don't want them in our schools... [W]e advise you that if it come in [sic], we will then do everything we can to get rid of it and to make them wish they were not here. We do not intend to even be gentlemen about it, this is an unjust imposition on us any way you look at it.<sup>67</sup>

Following the advice of Congressman Berry to adopt a resolution voicing the opposition to the proposed move to Chamberlain, the city commissioners adopted a resolution that stated:

we are opposed to the moving of the Indian Offices from Ft. Thompson, S.D., to the City of Chamberlain, S.D., for all the above reasons and for the further reasons that [it] creates an extra police problem as to drunks and petty larceny. That we therefore strongly oppose any such move to the City of Chamberlain.<sup>68</sup>

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<sup>66</sup> Edward C. Valandra, *Not Without Our Consent: Lakota Resistance to Termination, 1950-59* (Chicago: University of Illinois Press, 2006), 79.

<sup>67</sup> Hershel V. Melcher to Berry and Case, 30 March 1954, Berry Papers.

<sup>68</sup> Chamberlain City Commission Resolution, April 7, 1954, E. Y. Berry Papers. Mayor Hershel V. Melcher, Commissioner C. L. McDonald, Commissioner Frank C. Knippling, Commissioner Willard Wristen, Commissioner Gerrit Brink, and Commissioner Edward C. Martin (then Democrat Candidate for Governor of South Dakota) were signatories on this resolution. *Chamberlain Register*, 7 April 1954. Originally, the Chamberlain City Commission adopted a similar resolution opposing relocating the tribal agencies as early as January 1952 but received no official response to their opposition until spring 1954. *Chamberlain Register*, January 31, 1952.



On April 14, 1954, impatiently awaiting a response from Case, Melcher again wrote the South Dakota congressmen to express the urgency the white community felt in light of the prospect of having to put up with a Native population they utterly despised:

we have no intention of making an Indian comfortable around here, especially an official. We have a few dollar diplomats that have been making a lot of noise and trying to get everyone they possibly could to write you people in Washington that they wanted the Indians in here but the fact is that 90% of the people are strongly opposed to it and will get much more so if this thing come in [sic]. Anybody who rents them any property will have to change his address and I would not want the insurance on his building. We do not feel that this town should be ruined by a mess like this and we do not intend to take this lying down irregardless [sic] of what some official in Washington may think.<sup>69</sup>

Crow Creek and Lower Brule expressed dissent and dissatisfaction with the proposed relocation of agency services to Chamberlain as early as August 27, 1951. In a letter pleading with Berry to deal with Myer's arbitration on the matter of Crow Creek selecting proper legal counsel for the Fort Randall negotiations, Tribal Chairman Herbert Wounded Knee wrote to Berry expressing concern over the proposed relocation to Chamberlain and the failure of the BIA to allow the tribe to properly select legal counsel. The tribe adopted a resolution that Commissioner Myer refrain from further obstructing the tribe's request for legal counsel and to open negotiations with Congress and the Corps of Engineers. Finally, Crow Creek proposed that

The people of [the] City of Chamberlain are affected with racial prejudice against Indians. THEREFORE BE IT RESOLVED that the Crow Creek Tribal Council urges the Commissioner of Indian Affairs [Dillon S. Myer] to instruct all his subordinates to take no steps and to make no recommendations looking toward the removal of the Crow Creek Agency to Chamberlain or any other place.<sup>70</sup>

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<sup>69</sup> Melcher to Berry and Case, April 14, 1954, Berry Papers.

<sup>70</sup> Herbert Wounded Knee to E. Y. Berry, Crow Creek Sioux Tribe, "Resolution Opposing Moving the Agency" and draft of "Resolution Urging Prompt Opening of Negotiations with the Crow Creek Tribe," August 27, 1951, Berry Papers.

Myer's refusal to halt the proposed relocation to Chamberlain, to allow the tribe to select its own legal counsel, and to open immediate negotiations for Fort Randall claims indicated his response to the resolution. Inaction to effectively resolve the relocation of the agencies to the mostly white-dominated community of Chamberlain spoke to the larger failure of termination in general: white settlers wanted Indigenous land, but they didn't want Indigenous peoples. This was also an experiment and a precursor to how federal agencies adopted a hands-off approach when dealing with tribes once their land bases were destroyed. It was a tactic of neglect. The BIA and Congress would recommend a policy or course of action and then stand back and watch as the cards fell leaving already hard-pressed Indigenous communities threatened with the loss of their lands to fight for themselves against powerful federal bureaucracies and violently hostile white settlers. Ultimately, the Pick-Sloan Plan created an opportunity for both Congress and the BIA to experiment with forced relocation with the intention that Natives would assimilate into white communities and thus become self-sufficient and relinquish themselves from federal wardship. The experiment failed and led to the abandonment of the plan altogether. But termination remained on the table.

In 1957 the South Dakota legislature introduced a bill to assume criminal jurisdiction over Dakota and Lakota lands. It was no accident the push to extinguish Indigenous jurisdiction coincided with the catastrophe brought on by flooding. Despite having cards stacked against them, possessing no power at the state level, and having their land bases destroyed, the Oceti Sakowin fought back. The majority of the Lakotas and Dakotas whose lands were circumscribed by the state resoundingly rejected state

jurisdiction in 1958 reservation-wide referenda.<sup>71</sup> The victory was short-lived. In 1963 South Dakota again introduced legislation to attempt to overthrow tribal governments under the auspices of PL 280. PL 280 did not immediately require Indigenous consent but mandated that states had to assume all the financial burdens of taking over authority of Indigenous lands and lives. Within weeks the Oceti Sakowin formed United Sioux Tribes (UST) and collected more than 20,000 signatures to put the legislation up for a statewide referendum. In 1964 the UST mobilized both Native and non-Native communities with a savvy media and publicity campaign appealing to the “fairness” of state jurisdiction, which had been imposed without consent. Although having never participated in large numbers in state politics because of South Dakota’s historic anti-Indian hostilities, nearly 90 percent of Natives in South Dakota turned out to vote. The referendum won in a landslide victory with nearly 80 percent voting for it and therefore against termination.<sup>72</sup> As shown above, while South Dakota was deeply anti-Indian, many wanted Indigenous lands but not Indigenous people. The financial “burden” of termination and state jurisdiction was too much to bear. But the victory killed the state’s terminationist agenda dead in its tracks and demonstrated the resiliency of the Oceti Sakowin to defend its sovereignty even after surviving the destruction of their nations after the Pick-Sloan Plan.

### **More than Cultures**

The legacy of the Pick-Sloan dams endures. While many witnessed and survived the initial ecocide, the intentional destruction of the Indigenous river nations’

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<sup>71</sup> Valandra, *Not Without Our Consent*, 221-30.

<sup>72</sup> Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (New York: Norton, 2005), 123-5.

environment that sustained their life and health, the long-term impacts are harder to ascertain. While the termination era came and went, the dams have not. They remain the permanent, disruptive infrastructure on the riverscape. Rob Nixon argues that environmental devastation, much like climate change, is harder to understand as it unfolds over a long duration. Violence is often viewed as immediate, explosive, and spectacular. Nixon calls for understanding environmental degradation as “slow violence,” “a violence that is neither spectacular nor instantaneous, but rather incremental and accretive, its calamitous repercussions playing out across a range of temporal scales.”<sup>73</sup> For example, had the Army Corps proposed the Pick-Sloan Plan as a typical military campaign that waged war on Indigenous peoples the way the US military had in the nineteenth century, it would have fallen under conventional definitions of violence and could be viewed as a military or imperialist invasion. In one sense, the dams they justify their existence in the absence of control over the “wild” Missouri River. Likewise, amidst the chaos the Pick-Sloan created among Indigenous governments, the perceived absence of social and political stability justified state intervention and attempts to overthrow tribal governments.

For the Missouri River Lakota and Dakota communities, a life source, a relative, Mni Sose, who embodies the assertion Mni Wiconi, water is life, was transformed into a taker of life. Her life-giving waters were transformed into life-taking waters. Her veins swelled, engulfing her relatives. In social theory, agents of capital often take human form, exacting their will and consciousness through the harnessing of nature as a productive force. The capitalist, as Marx poignantly reminds us, becomes “capital personified” when

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<sup>73</sup> Rob Nixon, *Slow Violence and Environmentalism of the Poor* (Cambridge: Harvard University Press, 2013), 2.

“his actions are a mere function of capital — endowed as capital is, in his person, with consciousness and will.”<sup>74</sup> If the settler as agent of change is settler colonialism personified, then what do we make of infrastructure such as irrigation, reservoirs, dams, and pipelines that are, too, endowed with a will to dispossess and eliminate Indigenous peoples and lifeways? When they became the means by which to not only dispossess but also to terminate and relocate, they, too, became endowed with a consciousness, will, and intent. The water becomes weaponized, a tool for ongoing colonial dispossession. The dams personify settler colonialism. Poured concrete and rolled rock and dirt were endowed with the will to disrupt, flood, dispossess, remove, and ultimately eliminate Native society to be replaced by settler society.

The tendency is to think that Indigenous peoples’ culture was being taken from them by the dams, which indeed it was. But Indigenous peoples are more than cultures, they are sovereign nations. Thinking purely in terms of culture as a form of historical agency tends to neglect the concrete reality of Indigenous life. People need to eat. They need shelter, warmth, safety, and care. Without these basic necessities Indigenous nations cannot exercise the right to reproduce themselves and live as they choose. Cultural revitalization, while doing important work, doesn’t bring back the lands taken by Pick-Sloan dams, nor does it translate into providing food and the material things necessary for nations to reproduce themselves and to live. Cultural revitalization or cultural resurgence defines Indigenous existence according to deficit — what it lacks (culture) and not what it possesses (land and political sovereignty). While indeed there were, and still remain, cultural and spiritual connections to Mni Sose, there was also a connection to the river

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<sup>74</sup> Marx, *Capital*, Vol. 1, 739.

based purely on material survival that prevented people from starving or freezing to death. Those basic necessities are paramount — the foundations of political autonomy — and cannot be separated from Indigenous culture.

While Nixon's framework of "slow violence" as a steady accretion — a gradual buildup — of violences through environmental contamination is useful for understanding the lasting impact of the Pick-Sloan Plan, there is also another kind of accretion that is not always spectacular nor instantaneous but nevertheless makes the endgame of elimination an impossibility: traditions of Indigenous resistance. This accretion is a radical consciousness and political practice, deeply embedded in history and place, and cannot be simply overturned by colonial fiat or by submerging it under water. It cannot be killed. This accretion is centuries old and carries the memories past, present, and already forthcoming struggles against the state, capital, and large-scale infrastructure projects. It pushes back not only against the spatial order of settler authority but also its self-possessed notions of permanence as an enduring feature of the land and river. And it demands freedom and justice

## Chapter Five: Red Power

Red Power will win. We are no longer fighting for physical survival. We are fighting for ideological survival. Our ideas will overcome your ideas. We are going to cut the country's whole value system to shreds... We Indians will show this country how to act human. Someday this country will revise its constitution, its laws, in terms of being human beings, instead of property. If Red Power is to be a power in this country it is because it is ideological.

—Vine Deloria, Jr., 1968<sup>1</sup>

They can't stop the wind and they can't stop the rain. They can't stop the earthquake and the volcano and the tornado. They can't stop power.

— John Trudell (Dakota), "We Are Power," 1980

Visions for Indigenous freedom coalesced into the Red Power movement in the 1960s. For the Oceti Sakowin, the American Indian Movement (AIM) became the militant vanguard for the 1868 Fort Laramie Treaty and Indigenous nationhood in the 1970s. Policies of termination, relocation, and the damming and flooding of the Missouri River had torn thousands of Indigenous peoples from rural reservations and scattered them in far-off urban centers. For many there was a direct link between Pick-Sloan plan, which took reservation lands in the 1950s and 1960s and relocation policies. "I grew up on along the Missouri River," Madonna Thunder Hawk told *Indian Country Today*. The Oahe Dam flooded her home and community on the Cheyenne River reservation. "I've never been able to take my children and grandchildren to where I grew up. That was probably one of the major events that put me on the road to activism."<sup>2</sup> She later joined AIM after the 1969 Alcatraz takeover. "It was like a bomb that dropped, and we were

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<sup>1</sup> Quoted in Stan Steiner, *The New Indians* (Harper & Row: New York, 1968), ix-x.

<sup>2</sup> Quoted in Sarah Sunshine Manning, "The Power of Oceti Sakowin Women," *Indian Country Today*, August 30, 2017, <https://indiancountrymedianetwork.com/history/traditional-societies/power-oceti-sakowin-women/>.

scattered like shrapnel,” Lakota and Ho-Chunk AIM activist Lakota Harden recalls.<sup>3</sup> The fragmented shrapnel that was Native life was scattered to places like Minneapolis, Chicago, San Francisco, Cleveland, Los Angeles, Denver, and other major cities.

Originally envisioned to disintegrate Native communities by removing them from the land and integrating them into mainstream society by isolating them in cities, relocation had the opposite effect. Indians didn’t simply stop being Indians once they left the reservation. Relocation, for all its malicious intent, helped birth a new movement that arose from both poverty-stricken urban ghettos and rural reservations. Natives on relocation found each other in the cities and at universities and formed pan-Indigenous organizations, such as the National Indian Youth Council, United Native Americans, AIM, and many more. Their concerns, however, didn’t fundamentally differ from the concerns of their reservation-based relatives. They merged their experiences from rural and urban into one that was explicitly anticolonial. It was a force of nature. A radical political consciousness emerged and took the world by storm. It looked at the federal system as a colonial structure and not the solution. And unlike youthful generational protests of its day, Red Power looked to older generations, the traditional reservation leadership, for guidance, the elders who had rejected federal administration and kept alive the “old ways.”

In less than a decade, AIM went from a neighborhood patrol to stop police violence against Natives on relocation in the streets of Minneapolis, where it was founded

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<sup>3</sup> Quoted in Elizabeth A. Castle, Madonna Thunder Hawk, Marcella Gilbert, Lakota Harden et al, “‘Keeping One Foot in the Community’: Intergenerational Indigenous Women’s Activism from the Local to the Global (and Back Again),” *The American Indian Quarterly* 27, no. 2 (2003): 847.



in 1968, to the United Nations. How they wound up at the UN and the historical context of Red Power is important to understand this trajectory.

### **The Indian Revolution**

Powerful pan-Indigenous organizations such as the National Congress of American Indians (NCAI) preceded Red Power by nearly two decades. While it had led the fight against and successfully defeated termination legislation in the 1950s, NCAI was ambivalent about the future of Native sovereignty and was heavily wedded to formal IRA governments and incremental reforms within the federal system. Like its predecessors, many of NCAI's solutions pandered to the rampant anticommunism and flag-waiving patriotism at the time. It was the height of the Cold War. To curb Soviet influence in the Third World, where colonial regimes were being violently overturned, the US expanded its covert counterinsurgency campaigns in Latin America, the Middle East, and South East Asia. The justification was an increasing ideological and economic struggle between Soviet communism and Third World decolonization, on one side, and North Atlantic imperialism and capitalism, on the other. Humanitarian aid became empire's bargaining chip and a way to win hearts and minds both at home and abroad. NCAI leaders understood this and appealed to the domestic contests over the meaning of freedom and democracy. Black Americans had also pointed to the disparities in civil rights and racial injustice in the US. In 1951 NCAI co-founder D'Arcy McNickle called for "a domestic Point 4 Program for our Indian reservations." McNickle drew parallels with President Harry Truman's Point IV program for international aid in the world's

poorest countries in an effort to forestall the spread of communism.<sup>4</sup> Furthermore, McNickle understood that Natives shared “the world experience of other native peoples subjected to colonial domination.”<sup>5</sup>

NCAI was asking: how could the US defend its claims to a moral superiority when Native people were not free and remained in an impoverished state excluded from the wealth and bounty the new global superpower? For this reason, Daniel Cobb writes, “The assertion of a global indigenous identity stands among the most potentially transformative aspects of the struggle for tribal sovereignty during the Cold War era (1945-1991).”<sup>6</sup> The geopolitical realignment of the world created a sense of uncertainty and urgency. New nation-states emerged carving up old empires. The old imperial globe had been carved up among European superpowers. Only further division was possible as colonized people clamored for independence. Native people were no different. The fast growing decolonization movement inspired Indigenous activists in the US. The horizon of struggle began to eclipse the limited promise of the nation-state. For Natives, the colonial state itself could not be relied upon to correct its mistakes. More radical steps had to be taken. The Indigenous movement during the Cold War began to identify less with domestic policy solutions and began to imagine itself as part of a larger political community of colonized peoples.

As more Native youth followed NCAI leadership, the more they became disenchanted with its limited vision for change. As part of President Lyndon Johnson’s

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<sup>4</sup> Quoted in Daniel M. Cobb, *Native Activism in Cold War America: The Struggle for Sovereignty* (Lawrence: University of Kansas Press, 2008), 8.

<sup>5</sup> McNickle, *They Came Here First*, 284.

<sup>6</sup> Daniel M. Cobb, “Asserting a Global Indigenous Identity: Native Activism Before and After the Cold War,” in *Native Diasporas: Indigenous Identities and Settler Colonialism in the Americas*, eds. Gregory D. Smithers and Brooke N. Newman (Lincoln: University of Nebraska Press, 2014), 443.

“war on poverty,” NCAI’s efforts had garnered funding from new Office of Economic Opportunity for rural and community development known as CAP (Community Action Programs). Once Johnson’s priorities switched from the war on poverty to the war in Vietnam, organizations like the National Indian Youth Council (NIYC) adopted more militant tactics. Founded in Gallup, New Mexico in 1961 after the fallout of an NCAI conference in Chicago, NIYC initially gained traction by supporting the “fish-ins,” a drawn out struggle for Pacific Northwest Native treaty rights where many were beat and some killed by white vigilantes and state officials.<sup>7</sup> This new generation of activists — such as Hank Adams, Clyde Warrior, Shirley Hill Witt, Janet McCloud, and many others — pioneered a new era of Indigenous protest that called itself Red Power. It deployed confrontational tactics that included sit-ins, occupations, and direct action while also working within existing channels of power.

Above all, as Vine Deloria suggested, Red Power was at its core ideological. More so than others of his generation, Deloria best read the pulse of Indian Country. His wit and relentless advocacy made him the most prolific and iconic intellectual of the Oceti Sakowin and twentieth century Indigenous thinker. His 1969 classic *Custer Died for Your Sins: An Indian Manifesto* set aflame a generation of young Indigenous activists. Deloria’s calls for a renewal of Native politics and culture spoke truth to everyday Native experiences. *Custer*’s main arguments still ring true today. Indigenous peoples are political by default. They continue to exist as nations when they are supposed to have disappeared, and they have to not only fight for bare survival but also for accurate representation. They are the inconvenient truth that the US was founded on genocide and

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<sup>7</sup> For more on the history of NIYC, see Bradley G. Shreve, *Red Power Rising: The National Indian Youth Council and the Origins of Native Activism* (Norman: University of Oklahoma Press, 2011).

the continuing theft of a continent. Deloria understood this. He also came from a prominent family of scholars and activists — his aunt Ella Deloria was a prominent anthropologist who studied under Franz Boas; his father Vine Deloria, Sr. was a well-known reservation-based Episcopal priest; and his son Philip Deloria is a preeminent Native historian.<sup>8</sup> This pedigree combined with the tumultuous years — in which, according to him, “the Indian revolution was well underway” — placed Deloria at the forefront as the intellectual lightning rod for the burgeoning movement.<sup>9</sup>

Deloria’s potent Red Power ideology — spelled out in his numerous writings — was fundamentally at odds with US and Western values and economic and political systems. This new ideology sought to reclaim tribalism, not as a thing of the past but a modern political identity that existed both within and beyond the borders of the US. In the recent past, an Indigenous collective national identity had been targeted by assimilation and allotment policies and was seen as preventing individuals from achieving “civilization.” The destruction of tribalism meant the eradication of nationhood, which worked in tandem with land theft. In a 1964 Senate hearing on termination legislation, Deloria, then the executive director of NCAI, charted a new path forward. “We suggest that tribes are not vestiges of a past, but laboratories of the future,” he stated. For him, the difference between “civil rights” and Indigenous rights was that settlers “came over as individuals” and earned citizenship by converting Indigenous lands into private property. This individualism wasn’t just fundamentally at odds with

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<sup>8</sup> For an overview of Vine Deloria’s career and life, see Frederick E. Hoxie, *This Indian Country: American Indian Activists and the Place They Made* (Penguin: New York, 2012), 337-92. For a family history of the Delorias, see Vine Deloria, Jr., *Singing for a Spirit: A Portrait of the Dakota Sioux* (Santa Fe: Clearlight, 1999).

<sup>9</sup> Deloria, “This Country Was a Lot Better Off When the Indians Were Running It.”

Indigenous societies. Settlers were incorporated into the constitution as individuals, not as groups. However, Indigenous peoples had been brought into the US constitutional framework as separate nations through treaties. “[W]e were here as independent nations,” he proclaimed, “and treaties were made with us, and we each have traditions.” Pan-Indigenous organizations such as NCAI and NIYC unified Indigenous nations not in sameness but in difference, with “independent relations to each other” as “a kind of miniature United Nations.”<sup>10</sup> He envisioned Indigenous international relations to exist not only among themselves or the US, but also with others.

Deloria was especially taken by Stokely Carmichael’s (Kwame Ture) version of Black Power. For Deloria, Black Power and Red Power weren’t just repudiations of “the exploitation of land, people, and life itself” by capitalism, colonialism, and racism; they were affirmations of peoplehood. “Peoplehood is impossible without cultural independence,” Deloria argued, “which in turn is impossible without a land base.”<sup>11</sup> Peoplehood was a departure the “civil rights” that called for equality under the law. Deloria’s calls for peoplehood, an understanding of unique tribal or national status, was a step towards national self-determination — Black and Indigenous peoples taking charge of their own lives and destinies and overturning the colonial order.

Deloria saw the 1960s and 1970s as “the third ideological American revolution.” According to his thinking, major racial groups — Blacks, Mexicans, and Native nations — had been brought under the US constitutional framework not as individuals but as entire groups of people and nations. The 1848 Treaty of Guadalupe-Hidalgo ended the

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<sup>10</sup> Vine Deloria, Jr., “We Were Here as Independent Nations,” in *Say We Are Nations*, 134, 137.

<sup>11</sup> Vine Deloria, Jr., *Custer Died for Your Sins: An Indian Manifesto* (Norman: University of Oklahoma Press, 1988), 180.

US-Mexican war and annexed Mexican territory and citizens. The end of the Civil War in 1865 made freed Black slaves citizens. And the 1871 abolition of Indigenous treaty making made Native nations an internal “problem” to be dealt with.<sup>12</sup> In each instance, each group had no say about citizenship and how they would be incorporated. It was thrust upon them, often without consent. The revolutionary potential of these groups had to do with the inability to seamlessly “absorb” them into mainstream political and social life as individuals. Also, the indiscriminate lumping together of oppressed peoples into one based solely on their economic status as poor people — as a universal category — failed to account for how race and colonialism intersected with class, and reproduced the “melting pot” theory of the US as a “nation of immigrants.” Except there were those who had not migrated from anywhere (Native nations and Mexicans) and those who had come in chains (Black slaves). These groups could hardly be called “immigrant.” Even if economic inequality could be levelled, it would still be atop stolen Indigenous land.

Indigenous concerns were socioeconomic. But the false promise of “equality” had also been guaranteed under termination. For Natives, “civil rights” frequently meant assimilation, and the language of “civil rights” had been the justification for termination. Unlike others, Native concerns dealt specifically with the colonial relation, that many saw enshrined in the 1871 abolition of treaty making. Prior to this the US had confirmed more than 370 times through more than 370 ratified Indigenous treaties that Indigenous peoples were in fact distinct, self-governing nations in control of their own territories. In total, the US negotiated more than 500 treaties and agreements with Indigenous nations. As a result of treaty-making, numerous other agreements, and the reservation system, more than 500

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<sup>12</sup> Vine Deloria, Jr., *We Talk, You Listen: New Tribes, New Turf* (Lincoln: Bison, 2007), 145-7.

federally-recognized tribes still existed to a large degree as autonomous political entities. “The real issue for Indians — tribal existence within the homeland reservation — seemed to have been completely be ignored,” Deloria observed criticizing Martin Luther King, Jr.’s 1968 Poor People’s Campaign, which had not garnered significant Native support.<sup>13</sup> “[F]or the majority of Indians,” he contended, “their struggle was one of historical significance, not of temporary domestic discontent. Many Indians remained fully intent on raising their claims of national independence on the world scene.”<sup>14</sup> Deloria’s tribalism thus had become an anticolonial nationalism that aligned itself with other oppressed and colonized peoples by attacking the root — colonialism — rather than the symptom — poverty. If Natives truly were nations, then they should act like nations, make their own relations, and determine their own futures.

A fellow traveler, the fiery Ponca prophet and NIYC president Clyde Warrior, best explained this assertion in a 1967 speech before a presidential poverty committee on poverty. For him, what held back Native freedom were the very systems in place to secure it:

We are not free. We do not make choices. Our choices are made for us; we are the poor. For those of us who live on reservations these choices and decisions are made by federal administrators, bureaucrats, and their “yes men,” euphemistically called tribal governments. Those of us who live in non-reservation areas have our lives controlled by white power elites. They are called social workers, “cops,” school teachers, churches, etc., and now OEO [Office of Economic Opportunity] employees.<sup>15</sup>

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<sup>13</sup> Deloria, *Custer Died for Your Sins*, 183.

<sup>14</sup> Vine Deloria, Jr., *Behind the Trail of Broken Treaties: An Indian Declaration of Independence* (Austin: University of Texas Press, 1985), 3.

<sup>15</sup> Clyde Warrior, “We Are Not Free,” in *Red Power: The American Indians’ Fight for Freedom*, 2<sup>nd</sup> ed., eds. Alvin M. Josephy, Jr., Joane Nabel, and Troy Johnson (Lincoln: University of Nebraska Press, 1999), 17.

In his speech, Warrior contested the bureaucratic practices of the BIA, tribal governments, and state institutions as part of the same colonial structure. Throwing money at the “Indian Problem” wouldn’t make it go away, especially when congress determined the amount of money (which was never enough) and unelected bureaucrats determined how and where it was spent. “The solution to Indian poverty is not ‘government programs.’” According to Warrior, the solution could only be self-determination: “let poor people decide for once, what is best for themselves.”<sup>16</sup> Centuries of paternalism dictated everyday Native life. It was engrained in the very institutions and way of thinking meant to lift them out of poverty; it was an ideological force with real power that had to be reckoned with.

Ideology doesn’t just exist in the minds of people. It is a historical force. Dominant ideologies are built into the fabric of society and are reinforced by institutions such as schools, the police, government bureaucracies, etc., that sustain, mask, or justify racism, sexism, colonialism, capitalism, and inequality. Historically marginalized and radical ideologies also grow from and respond to lived realities of poverty and oppression. When properly developed, they can become a social force for change. Likewise, Red Power was not just an abstract theory or an intellectual exercise. It was a practice, a movement of everyday Native people taking charge of their lives and their communities. It was a Red Power revolution. Education, paternalism, police violence and incarceration, and the false promise of citizenship had to be challenged, if not entirely undone. Furthermore, Red Power built upon centuries-old traditions of Indigenous resistance and sprang into action in rural reservation geographies and urban centers.

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<sup>16</sup> Ibid., 21.



## A Red Dawn

The flame of Indigenous resistance had been lit and it could not be put out. In the following years, Red Power galvanized around attention-grabbing occupations and protests. While these actions often overshadow their origins, specifically in the 1960s and with NIYC, they also point towards a significant shift. The 1969 occupation of Alcatraz island, an abandoned federal prison, by Natives in the San Francisco Bay was the spark, and growing Native discontent was the kindling. Previously, in 1964, a group of Lakotas — Russel Means, Hank Means, Belva Cottier, Richard McKenzie, and others — attempted unsuccessfully to reclaim the island as federal surplus property when the prison shut down. Five years later, another group organized by LaNada Means (War Jack), a Shoshone-Bannock student who organized the Third World strike at the University of California Berkeley, and Mohawk activist Richard Oakes, who was later murdered in 1972 by a white man, led a nineteen-month occupation of the island.<sup>17</sup> Calling themselves Indians of All Tribes, Alcatraz symbolized and practiced a pan-Indigenous unity that had been “long dreamed by our people.” They saw themselves as a “new” but “old” movement that wasn’t beholden to government funding, but to the people. It arose from everyday Natives on relocation and in reservation communities. “New concepts based upon old ideas demand that new leaders emerge,” their manifesto read. “Our children will know Freedom and Justice.”<sup>18</sup> The reclamation of the island and the plans to turn it into

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<sup>17</sup> See LaNada Boyer, “Reflections of Alcatraz,” in *American Indian Activism: Alcatraz to the Longest Walk*, eds. Troy Johnson, Joane Nagel, and Duane Champagne (Urbana: University of Illinois Press, 1997), 88-103.

<sup>18</sup> Indians of All Nations, “Our Children will know Freedom and Justice,” in *Say We Are Nations*, 158-9.

an “All Indian University” was, to be sure, a major historical event and turning point. Although they never achieved their goals and were evicted by police under orders by the Nixon administration, they had galvanized the movement away from just seeking reform within the halls power and turned power into the hands of poor, working class Native people.

The formation of United Native Americans in the San Francisco Bay and the American Indian Movement in Minneapolis made the occupation possible. In 1968 AIM was founded in Minneapolis by Ojibwes — Dennis Banks, Clyde Bellecourt, Vernon Bellecourt, Patricia Bellanger, George Mitchell, and others — as a community patrol, partly inspired by the Black Panther Party for Self Defense founded two years earlier in Oakland. Like the Black Panthers, the original focus was on community empowerment and service programs, such as creating survival schools to educate urban Native youth. But AIM also confronted the institutions of the state, such as the police and education systems. At the time, police would sweep Indian bars making mass arrests and profiling poor, urban Natives, of whom many were on relocation. Through successful organizing and AIM community patrols, which often involved violent confrontations with police that ended in the arrests of AIM members, the practice nearly halted. Even in its early days, AIM was more than a protest movement. It founded survival schools in Minneapolis and in Pine Ridge, as alternative schools for youth who had faced discrimination in public schools. Survival schools, in contrast, taught Native history and culture. By the 1970s there were about sixteen AIM survival schools in urban centers and reservation communities. The founders of these schools were women, like Mniconjou activist Madonna Thunder Hawk and Patricia Bellanger. AIM also provided legal advocacy for

parents and children against state welfare programs that incarcerated Native youth or separated them from their families and placed them in the custody of white families, a practice that continues, to a large degree, to this day.<sup>19</sup>

As has been true in every revolutionary movement, women's roles in AIM are nearly forgotten, with men taking center stage as leaders. The feminist slogan — “women hold up *more* than half the sky” — was equally true for AIM and has been for Indigenous movements, in general. When the FBI began targeting AIM men, AIM women filled the vacuum and kept the movement going. Much like in the past, Indigenous women were not seen as leaders by the media or by state institutions. Such a misconception has been repeated in many histories of Red Power — and even by the activists themselves. Yet the invisibility provided freedom and security in ways not granted to male leadership. “The women of AIM then realized that we could just about do anything under the eyes of the feds and press because we were invisible,” Madonna Thunder Hawk recalls.<sup>20</sup> “The stability of our people has always been with the women, regardless of what disease has come along, whether it has been religion, or federal Indian policy,” she explains.<sup>21</sup>

Nevertheless, Indigenous women participated and filled leadership roles in all major AIM actions, takeovers, and campaigns. As mentioned in previous chapters, nothing in the traditions of the Oceti Sakowin suggest they were patriarchal. Colonialism and capitalism largely overturned historical gender relations, favoring men as heads of

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<sup>19</sup> See Julie L. Davis, *Survival Schools: The American Indian Movement and Community Education in the Twin Cities* (Minneapolis: University of Minnesota Press, 2013), 88-91; Brenda J. Child, *Holding Our World Together: Ojibwe Women and the Survival of Community* (New York: Viking, 2012), 156, 160; Elizabeth A. Castle, “‘The Original Gangster’: The Life and Times of Red Power Activist Madonna Thunder Hawk,” in *The Hidden 1970s: Histories of Radicalism*, 272-5.

<sup>20</sup> Madonna Thunder Hawk, “Native Organizing Before the Non-Profit Industrial Complex,” in *The Revolution Will Not Be Funded: Beyond the Non-Profit Industrial Complex*, ed. INCITE! Women of Color Against Violence (Cambridge: South End, 2007), 101.

<sup>21</sup> Quoted in Manning, “The Power of Oceti Sakowin Women.”

households and relegating women out of sight into the realm of the domestic sphere. To be sure, patriarchal masculinity and sexism were rampant in AIM. But such behavior was more a symptom of a patriarchal and sexist society than it was an invention of Red Power. As has been shown, women of the Oceti Sakowin have long held leadership positions, whether as warriors or political leaders, or both.

While it built community programs, AIM became known more for its high-publicity protests. After Alcatraz, AIM grew rapidly. By 1973, there were seventy-nine chapters, with eight chapters in Canada.<sup>22</sup> When the movement swept through Oceti Sakowin country, it adopted a specifically nationalist character focusing on the 1868 Fort Laramie Treaty. In 1970, AIM, United Native Americans, and Lakota activists from South Dakota occupied Mount Rushmore in the Black Hills to bring attention to the 1868 Treaty and the fact that the land upon which the monument had been built was stolen. Activists pointed out that the monument itself was a form of vandalism — not “a shrine of democracy” but “a shrine of hypocrisy.” Each president — Washington, Jefferson, Lincoln, and Roosevelt — had participated in Indigenous genocide and land theft. The Haudenosaunee Confederacy called Washington “Town Destroyer” for his role in the extirpation of their villages. Jefferson had advanced Indigenous removal policies and began the expansion of US empire west of the Mississippi. Lincoln had ordered the hanging of thirty-eight Dakota patriots after the 1862 US-Dakota War and oversaw the 1864 Long Walk for Navajos in the Southwest. Roosevelt had “nationalized” millions of acres of Indigenous lands for national parks. While symbolic, there was a growing militancy to the tactics of takeover and occupation. Across the US, BIA headquarters

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<sup>22</sup> Dennis Banks with Richard Erdoes, *Ojibwa Warrior: Dennis Banks and the Rise of the American Indian Movement* (Norman: University of Oklahoma Press, 2004), 64.

became the targets for protest. Among the many concerns was the failure to uphold treaties. Critics viewed treaty claims as mere rhetoric.

As the war in Vietnam intensified, by 1972 a full-throated treaty movement had crystallized. Eight Native organizations — AIM, NIYC, the National Indian Brotherhood of Canada, among others — led a coast-to-coast caravan of thousands of Natives to Washington, DC, gathering participants at each city and reservation along the way, and occupied the BIA headquarters from November 3-9. The occupation and the negative media it attracted overshadowed the real issues of the caravan. The Trail of Broken Treaties, as it was known, intended to disrupt the presidential election by drawing attention to unfulfilled treaty rights. Organizers drafted a document, primarily authored by Hank Adams, called the “Twenty Points.” The first point demanded, “Restoration of Constitutional Treaty-making Authority: This would force federal recognition of each Indian nation’s sovereignty.”<sup>23</sup> The most salient points proposed the restoration and enforcement of treaty-making. Although the federal officials promised to look into the demands, their response was hardly adequate and led to no action. A genius document, in 1977 the Twenty Points was presented at the United Nations forming the basis of the 2007 UN Declaration on the Rights of Indigenous Peoples.<sup>24</sup>

## **Border Towns**

A long time ago there was an Indian medicine man, Drinks Water, a Lakota, who foretold in a vision that the four-leggeds were going back into the earth. And he said in the future all over the universe there shall be a spider's web woven all around the Sioux and then when it shall happen you shall live in gray houses, but that will not be the way of your life and religion and so when this happens, alongside of those gray houses you shall starve to death. He said: “You people

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<sup>23</sup> See Josephy, Nagel, and Johnson, eds., *Red Power*, 44-7.

<sup>24</sup> Dunbar-Ortiz, *An Indigenous Peoples' History*, 185.

have made me regret, so I will go back to mother earth,” and shortly afterward he died. The people believed in this forecast of Drinks Water. What he said we are now into. The Long Knives [Americans] have woven the gray blanket over us and we are now prisoners of war.

—Black Elk, Lakota Holy Man, 1932<sup>25</sup>

After the Trail of Broken Treaties, AIM regrouped and continued working on urban Native rights, or what Paul Chaat Smith and Robert Warrior call its “border town campaign.”<sup>26</sup> In February 1972, a brutally harsh winter month, four white men — Melvin and Leslie Hare, Bernard Ludder, and Robert Bayless — kidnapped fifty-one-year-old Oglala man Raymond Yellow Thunder, stripped him naked, beat him, forced him to dance as “drunk Indian” for the entertainment of whites in a dance hall, and left him to die in Gordon, Nebraska. The town is on the southern border of the Pine Ridge reservation. In common vernacular, the white-dominated settlements — cities and towns — that ring Indian reservations are called “border towns.” In border towns, persistent patterns of anti-Indian exploitation, discrimination, violence, and criminalization define everyday Native life. Gordon was such a place. AIM was called to investigate the death by Yellow Thunder’s family, who were worried that the authorities would chalk it up to “just another dead Indian,” an all-too-frequent sentiment for dead Natives off-the-reservation. Because of AIM’s advocacy, Leslie and Melvin Hare were charged with manslaughter and sentenced to prison. Yellow Thunder was immortalized in the “Raymond Yellow Thunder Song” that became the AIM anthem — or alternatively

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<sup>25</sup> Raymond J. Demallie, ed., *The Sixth Grandfather: Black Elk’s Teachings Given to John G. Neihardt* (Lincoln: University of Nebraska Press, 1985), 290.

<sup>26</sup> Paul Chaat Smith and Robert Allen Warrior, *Like a Hurricane: The Indian Movement from Alcatraz to Wounded Knee* (New York: The New Press, 1996), 171-93.

known as “the AIM Song.”<sup>27</sup> The successful campaign earned AIM the respect of the Oglala elders and traditionalists in Pine Ridge, who called upon AIM in 1973 again to take a stand at Wounded Knee.

Despite the horrific nature of the crime, career anti-AIM critic and journalist Stew Magnuson has cast doubt on Yellow Thunder’s murder. He goes as far to title his 2008 book *The Death of Raymond Yellow Thunder* and purposefully questions calling what even an all-white jury had decided was unequivocally a “murder.” Like the generations of journalists before him, Magnuson peddles a myth of white settlers and friendly Indians as victims “criminal, “militant,” and “hostile” “Sioux warriors.” The scenario is familiar: the “good Indians” versus “bad Indians.” AIM was the bad Indians. His narrative has less to do with the historical and brutal reality of colonialism than it does with an obsession with the bravado of AIM men. In the book’s opening pages, Magnuson describes a 1999 protest against alcohol sales in White Clay, a notorious of border town. Less than a mile south of the reservation border with a population of about a dozen, White Clay liquor stores sell millions of cans of beer a year entirely to residents of Pine Ridge where alcohol is banned. A frequent site of protest to this day, countless Native lives have been consumed and destroyed, in a clear profiteering of death and suffering, by White Clay and border towns like it. “Everyone feared the young men,” he describes the protestors as they descended on White Clay.<sup>28</sup> The description is evocative of a common trope of settlers being surrounded by lawless Natives. By casting the settlers as victims — in this case, a handful or white liquor store owners — colonialism looks like self-defense. The

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<sup>27</sup> Ibid., 112-26.

<sup>28</sup> Stew Magnuson, *The Death of Raymond Yellow Thunder: And Other True Stories from the Nebraska-Pine Ridge Border Town* 4.

description also invokes the fearsome image of AIM warriors descending on racist border towns, like they did in Gordon and elsewhere in the 1970s.

Despite its racial undertones, Magnuson's "angry Indians" stereotype is useful for understanding what AIM was trying to accomplish and how they became criminalized for it. These were Natives "off the reservation." "Off the reservation" is an American English idiom. The Oxford English Dictionary defines the phrase as meaning "to deviate from what is expected or customary."<sup>29</sup> The expression is also current in military and political spheres to describe someone who defies orders, who is unpredictable and therefore ungovernable. Those who "go off the reservation" are rogues or mavericks in military jargon — the ones who "cross the wire" of military bases (called "reservations") or enter hostile territory (called "Indian Country").<sup>30</sup> For Natives to "go off the reservation" refers to those who historically refused reservation life or refused to respect its borders, where they could be contained and managed. Those willfully crossing borders were considered renegades, outlaws, or hostiles, and were usually hunted down and summarily shot, hanged, or imprisoned. It is no coincidence the phrase arose from the language of the nineteenth century Indian wars and the murderous consequences inflicted upon those who refused reservation life. In this way, "off the reservation" is a question of territory and sovereignty, and a political practice. To evoke Kahnawà:ke Mohawk scholar Audra Simpson, Native trespass into the domain of what is considered "settled" territory calls into question the legitimacy of settlement — that indeed it is anything but settled.<sup>31</sup> In

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<sup>29</sup> Quote from "reservation, n.," *OED Online*, September 2016, *Oxford University Press*: <http://www.oed.com.libproxy.unm.edu/view/Entry/163498?rskey=mU7xUw&result=1>.

<sup>30</sup> See Winona LaDuke and Sean Aaron Cruz, *The Militarization of Indian Country* (East Lansing: Makwa Enewed, 2013); Dunbar-Ortiz, *An Indigenous Peoples' History*, 133-61.

<sup>31</sup> Audra Simpson, "Settlement's Secret," *Cultural Anthropology* 26, no. 2 (2011): 205-17.



other words, Natives off the reservation are the unfinished business of settler colonialism, the ones who refused to disappear, refused to sell their lands, and refused to quit being Indians.

In Rapid City, South Dakota such dynamics were well in place and became a target for AIM's border town campaign. The city occupies the moral and political universe of the Oceti Sakowin, He Sapa, the Black Hills, and, like Gordon and White Clay, is within the territory of the 1868 Fort Laramie Treaty. As they had for generations, most Natives in Rapid City lived in squalor in shanty towns near Rapid Creek, the downtown area next to the railroad district, or in Sioux Addition, the "Indian Ghetto" (or "Red Ghetto") outside city limits and built upon remaining trust lands of the Rapid City Indian School, an off-reservation boarding that closed its doors in the 1930s.<sup>32</sup> The "Indian Problem" had returned in the form of "urban Indians" who left the reservation.

To curb and control off-reservation migration into white towns, in 1939 South Dakota passed a series of "warning out" laws that required "transient" populations to fill out and sign "certificates of non-residence" that excluded them from poor relief, public welfare, voting, and establishing permanent residency. In Rapid City, Pennington County, and South Dakota more broadly, warning out laws specifically targeted off-reservation Natives, barring them from legally residing within certain communities or receiving basic housing, social, welfare, educational, and medical services. Ramon Roubideaux, a Sicangu attorney from the Rosebud reservation, described the practice at a 1962 civil rights hearing: "in Rapid City they follow that program religiously. They serve

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<sup>32</sup> Smith and Warrior, *Like a Hurricane*, 179; James E. Emery Interview by Stephen R. Ward, July 11, 1972, SDOHP 0527, Transcript, South Dakota Oral History Project. South Dakota Oral History Center, University of South Dakota, Vermillion, South Dakota, 11.

transient Indians... a nonresident notice. This is what they call it. In other words, by service of this notice on the individual, you prevent him [sic] from acquiring, as the statute says, a *legal settlement*.”<sup>33</sup> Often county social service and health officials issued nonresident certificates when Natives applied for services, or they were simply denied receiving services altogether. The labeling of Natives off-reservation as “transient” did important work. It made normal the practice of settling — home ownership, citizenship, paying taxes, employment, etc. — as a prerequisite for personhood versus the lifestyle of a “nomadic” or “transient” Indian. Questions of personhood and citizenship came to a head in 1972. It began with a flood.

On June 9, fifteen inches of torrential rain clogged the Canyon Lake dam, which burst early the next morning sending a wall of water down Rapid Creek. In a matter of hours, the flood swept away more than 1,300 homes, 5,000 automobiles, and 238 lives. Hardest hit were the poor, poor Natives and poor whites, who lived near the creek in mobile homes and dilapidated structures. Although Natives made up five percent of Rapid City’s population, they accounted for fourteen percent of those who perished in the flood, and a significant number of those displaced. The city received \$160 million for disaster relief and urban renewal programs.<sup>34</sup> The relief money, however, was allocated along racial and class lines. While all flood victims were equally entitled to relief, Mayor Don Bartlett, a liberal Democrat, observed, “that doesn’t mean that we just divvied up the money equally all around. The Indian who lost a shack and few sticks of furniture didn’t get as much as somebody who lost a \$40,000 house with 25 years of accumulated

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<sup>33</sup> Emphasis added. Quote from US Congress, *Constitutional Rights of the American Indian*, 603

<sup>34</sup> US Congress, Senate, Committee on Public Works, *To Investigate the Adequacy and Effectiveness of Federal Disaster Relief Legislation, Part 2*. 93rd Cong., 1st sess., March 30 and 31, 1973, 291, 297.

possessions.”<sup>35</sup> More relief was dispensed to white, middle-class homeowners and business-owners. Discrimination didn’t end there. Many Natives fled to live with relatives elsewhere including the reservation making them ineligible for relief. For those who stayed, temporary shelter was offered but was segregated.<sup>36</sup>

While white residents re-sheltered within city gymnasiums and churches, hundreds of Natives were concentrated at “Camp Rapid” at the National Guard base on land originally belonging to the Rapid City Indian School. The camp housed Natives in militarized conditions that were intensely policed and kept under constant surveillance, in what amounted to little more than open-air concentration camp. Lakota housing activist Edgar Lonehill described conditions in the camp:

the segregating of HUD [Housing and Urban Development] trailers, we believe, was partly done out of prejudice against the stereotype (drunken, troublemaking) Indian. It was done, we think, so that it would be easier for the white police and HUD to ‘keep an eye on us.’ Further proof of this is offered by the fact that the Indian trailer courts are floodlighted at night.<sup>37</sup>

Relief was slow, uneven, and often used to collectively punish the Native community. Camp Rapid was supposed to be temporary. Months passed before all the Native families were given homes, although many white families had already been rehoused. HUD homes were made available at Sioux Addition for Native families — which became the federal housing project Lakota Homes — outside city limits. Yet, community harassment and policing intensified because now Natives were cordoned off into a designated neighborhood — a permanent fix to the city’s perpetual Indian Problem. It

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<sup>35</sup> Quoted in Calvin Kentfield, “A Letter from Rapid City,” *New York Times*, April 15, 1973.

<sup>36</sup> US Congress, *Federal Disaster Relief Legislation*, 452.

<sup>37</sup> Quote from *ibid.*

was no longer a matter of leaving the reservation but rather leaving the “Red Ghetto” that made the Indian suspect.<sup>38</sup>

The flood accomplished what could not be done previously. It gave the city a clean slate. The built environment that kept everyone in their place was destroyed. City officials viewed the flood as a social equalizer that leveled not only homes but also race and class divisions. Yet, the flood led to a post-disaster structural racism. It removed (and killed) the undesirable, poor, and Native people concentrated in the city center, literally forcing them out of town to make way for the business community’s “Urban Renewal” program to rebuild the destroyed downtown area. The practice aligned with federal housing policies and community development programs targeting low-income families and disenfranchised communities. Housing activists have often called this gentrification. The process is often backed by wealthy business interests, to remove poor, racialized urban communities to make way for middle-class and wealthier neighborhoods and businesses that raise real estate values. High rent and housing prices make it nearly impossible for poor communities to return or inhabit these “renewed” neighborhoods. Typically, such practices are seen as taking place in larger cities, most famously the Lower East Side in New York City in the 1970s. Gentrification doesn’t just mimic colonial processes — it is colonialism. And it doesn’t just happen in cities. Settler colonialism, whether in border towns or in rural or urban geographies, is gentrification. Gentrification is the history of US expansion that entails the removal, dispossession, and elimination of Indigenous peoples to make way for a settler population. In Rapid City is thrice stolen land — the first is the illegal seizure of the Black Hills; the second is the

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<sup>38</sup> Ibid., 455.

theft of remaining Indian trust lands from the Rapid City Indian School; and the third is the taking of Native and poor communities by the flood and the subsequent housing policies. But the colonial parallels don't end there.

A 1974 article in HUD's serial publication *The Challenge* promoted "urban homesteading" inspired by the 1862 Homestead Act that gave rural acreage to farmers for free under the condition they migrate to it and improve it. "Just as nineteenth century homesteaders required government aid to hack out an existence as they helped to develop the West," the article reasoned, "people who are willing to undertake a difficult and rugged experience in the urban wilderness require aid designed to make the communities around them viable." In other words, urban homesteading sought to revitalize and repurpose land and housing "not worth maintaining because disease, crime, and lack of public services have made it too depressing and dangerous for anyone to live in."<sup>39</sup> Former slums and abandoned neighborhoods would be made anew. It was a civilizing effort. Rapid City utilized this program to deal with its own "urban wilderness," the savage Indians who refused to go away and who brought down property values because they embodied the disease and crime of what Lonehill identified as the criminal "drunken, troublemaking Indian." Nevertheless, the city rebuilt itself and became a HUD success story. Meanwhile, Native resentment fostered against enforced gentrification and further segregation. The fundamental challenge that the city sat atop stolen land was never addressed and was only exacerbated by the influx of federal housing programs meant to "improve" Native lives by granting community self-determination and autonomy through federally subsidized housing.

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<sup>39</sup> Mary F. Berry, "Homesteading: New Prescription for Urban Ills," *The Challenge* (January 1974), 2.

While federal housing policies further re-entrenched Native-settler boundaries within border towns such as Rapid City, vigilantes, police, and everyday settlers upheld the order of things to defend (often with violence) against the hyperbolic threat of Native invasion. The figure of the “drunk Indian” became a specific target. The murderous practice of “Indian busting” — the targeting of intoxicated Native men for beating, torture, and homicide — was a weekend pastime and sport for white settlers in border towns. In January 1973 after Wesley Bad Heart Bull was stabbed to death by a white man in Buffalo Gap near Custer, South Dakota, 200 AIM members descended on Custer to demand murder charges be brought against the accused. After not being allowed access to the courthouse where Bad Heart Bull’s murderer was being arraigned for manslaughter, a violent confrontation with police ensued. Several police cars were set ablaze. Dozens were arrested.

The Custer fight spilled over into Rapid City’s bar district, where Natives faced violent discrimination from both white vigilantes and the police. The figure of the “drunk Indian” is seared into the minds of the popular settler imaginary. Although being “drunk” or “Indian,” or both, were not definitively illegal, constructing Natives off the reservation as drunk, militant, and violent is an historic political art of policing. Native presence in border towns, therefore, is always conflated with criminality and lawlessness. In 1973, a white Rapid City police officer explained: “I don’t think any of us go out on purpose to arrest Innuns [sic] for being drunk, but chances are an Innun’s on the street by himself, he’ll be arrested, because chances are he’s got no place to go. A drunken white man’ll have a home... Of course that makes our record for arresting Innuns look pretty high.”<sup>40</sup>

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<sup>40</sup> Quoted in Kentfield.

To counter this, AIM called for actions in Rapid City bars and saloons — where Natives had been victimized by vigilantes and the police — to “keep the people stirred up” and to remind settler presence was conditional on Natives *allowing them* to be there: “You are here because we allow you to be here.”<sup>41</sup> Mayor Bartlett described AIM’s campaign as creating “a sense of uncertainty and fear.”<sup>42</sup> On February 6, 1973, just weeks before the armed takeover of Wounded Knee, AIM stormed a Racial Conciliation Committee hearing, a commission created partly to resolve ongoing discrimination in housing and employment that was exacerbated by the flood and to improve “race relations.” About 200 Natives packed the meeting. “They weren’t committed civil rights people,” Bartlett described the crowd.<sup>43</sup> AIM leadership struck fear into the hearts of the officials as they gave fiery speeches calling for revolt if their demands for equal housing, more Native police officers, and the hiring of Native city attorney were not met. AIM leader Dennis Banks stated, they were there “to declare war on every town in the Black Hills” if demands were not met. The committee agreed to host a series of meetings to discuss the demands — some were carried but most were not.<sup>44</sup>

In response, Bartlett reminded the Native community that if they participated in “uncivil” disobedience and didn’t follow to the liberal doctrine of level-headed, rational dialogue, he would respond with violence. He stated, “if [AIM] wanted Rapid City to be as famous as Selma, Alabama I could take care of that in about 15 minutes.”<sup>45</sup> AIM didn’t relent. Neither did Rapid City. For several nights AIM members took the streets

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<sup>41</sup> Ibid.

<sup>42</sup> Don V. Bartlett, Interview by E. Hausle, July 30, 1973, SDOHP 0952, Transcript, South Dakota Oral History Project, South Dakota Oral History Center, University of South Dakota, Vermillion, South Dakota, 11.

<sup>43</sup> Ibid., 13.

<sup>44</sup> Ibid., 14.

<sup>45</sup> Ibid., 11.

after their demand to close the bars for 30 days while the negotiated with city officials was not met. Street fights broke out. Riot cops were deployed and hundreds were beaten, arrested, and driven out of town. Bartlett even directly participated in strong-arming AIM members from local motels and out of the downtown area.<sup>46</sup> White elites were on high alert, their tenuous claims to the land were made clear.

AIM's border town campaign remained incomplete, but not over. The same month AIM took Rapid City by storm, they also occupied Wounded Knee which further emboldened the movement within and beyond the US. The outcome of Wounded Knee and the rise of AIM's internationalism through the International Indian Treaty Council, which formed in 1974, paved the way for Indigenous internationalism at the UN and laid the groundwork for the 2007 Declaration on the Rights of Indigenous Peoples.

In 1980, AIM returned to the Black Hills and Rapid City. This time, however, Women of All Red Nations, an AIM contingent of women leadership, formed the Black Hills Alliance (BHA), a coalition of white ranchers and Native activists to halt uranium and coal mining in the Black Hills. Eleven thousand people from around the world gathered and successfully halted mining operations. After the Alliance dissipated, AIM formed a short-lived encampment, named Yellow Thunder Camp (YTC) after the Raymond Yellow Thunder, on the outskirts of Rapid City. The goal was to begin to reclaim the Black Hills region under the 1868 Fort Laramie Treaty. Unlike the previous border town campaign, BHA and YTC garnered local white support under the umbrella of environmentalism and treaty rights. For example, a union of Black Hills gold miners supported both campaigns, citing the inviolability of Lakota treaty rights and a concern

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<sup>46</sup> Ibid., 16-9.



for corporate energy development that jeopardized “the health and welfare of working people.”<sup>47</sup>

AIM had successfully generated anti-colonial sentiment in both Native and non-Native people, solidifying alliances with white working people and farmers who were historic enemies of Lakotas. The alliance proved vital because it demonstrated that working class settlers and Natives had a common struggle against corporate exploitation, and that centering Native land rights and sovereignty would protect lands both required for continued existence. It was the recognition that dispossession was the primary mode for exploitation in Rapid City and the Black Hills and that the liberation for both Native and settler required upholding, at bare minimum, the 1868 Fort Laramie Treaty. In this way, when poor settlers abandoned anti-Indian racism and aligned with the interests of Natives, new anti-colonial solidarity and liberatory possibilities arose, albeit temporary. This era of anti-colonial uprisings in Rapid City successfully evicted corporate polluters and the dynamics of border town life for Natives improved, if even for a short while. Even one of AIM’s main detractors, Mayor Bartlett, conceded “quietly behind the scenes there is an effort being made without headlines” to improve the lives of Natives in Rapid City in the wake of the uprisings.<sup>48</sup>

### **The First Way of War**

In February 1973, the Oglala Sioux Civil Rights Commission (OSCRC), a grassroots organization, along with a group of traditional headmen called upon AIM to

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<sup>47</sup> See Black Hills Alliance, *The Keystone for Survival*; Miners for Safety, Yellow Thunder Camp Press Release, April 17, 1981, Roger A. Finzel Papers, Center for Southwest Research, University of New Mexico, Box 2, Folder 19.

<sup>48</sup> Bartlett, 20.

take stand. Richard “Dick” Wilson, the elected tribal councilman of Pine Ridge, had become increasingly authoritarian, terrorizing political opponents with his paramilitary GOON squad (which stood for Guardians of the Oglala Nation). In particular, the grassroots people opposed the Indian Reorganization Act government and called for the restoration of the treaty councils and customary leadership. At this time, ceremonies such as the sun dance had still been nearly criminalized and were practiced underground. People wanted a return of the “old ways,” the return to treaty relations with the US, and the end to the rampant violence on the reservation. They saw the successful publicity AIM got as potentially useful for inspiring a political and cultural revitalization of the Oceti Sakowin. More importantly, they needed their own self-defense against the GOONS and Dick Wilson regime who were backed by federal marshals.

On February 27, in a late-night meeting in Calico, a small village in Pine Ridge, the OSCRC and a council of customary chiefs — Red Cloud, Iron Cloud, Fools Crow, Bad Cob, and Kills Enemy — met with AIM and deliberated what was to be done. But it was the elder women who proved decisive. While the men discussed, Oglala elders Gladys Bissonette and Ellen Moves Camp spoke, pleading AIM warriors to take a stand. The two recalled how those who protested Wilson were mostly elders and women. Moves Camp asked, “Where are our men? Where are our defenders?”<sup>49</sup> The impassioned plea worked, and Fools Crow asked Russell Means, an Oglala leader of AIM, to take his warriors to the hamlet of Wounded Knee, the site of the 1890 massacre at the hands of the vengeful Seventh Cavalry. Instead of dying, however, AIM would make a stand for

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<sup>49</sup> Quoted in Warrior and Smith, *Like a Hurricane*, 198.

the life and liberation of all Indigenous peoples. The message was heard around the world.

While the media trailed AIM and the Red Power movement from one action to another, the FBI also followed. Informants infiltrated the organization and a smear campaign began. In 1956 the FBI began its Counter Intelligence Program (COINTELPRO) to infiltrate, disrupt, and destroy the Communist Party. By the 1960s and 1970s, COINTELPRO targeted civil rights leaders, student antiwar movements, the Black Panther Party, and the Black Freedom Movement, in general. In an internal 1967 memo titled “Counter Intelligence Program Black Nationalist-Hate Groups,” its stated goal was to “expose, disrupt, misdirect, discredit, or otherwise neutralize” targeted groups and “their leadership, spokesman, membership, and supporters, and to count the propensity for violence and civil disorder.”<sup>50</sup> After reports were leaked to the press about COINTELPRO, it was officially terminated in 1971. It was later revealed, however, that the FBI had infiltrated AIM and began its own COINTELPRO operation to discredit and neutralize the organization and its leadership.

The 71-day takeover of Wounded Knee revealed to AIM and the world the lengths to which the US was willing to go to crush the Indigenous movement. Armed mainly with shotguns and hunting rifles, AIM faced off with the paramilitary GOON squad and federal marshals armed with fully automatic weapons and armored personnel carriers. Fire fights broke out daily. On AIM’s side, Frank Clearwater and Lawrence “Buddy” Lamont were killed by law enforcement. Despite the heavy-handed police tactics, AIM, OSCRC, and the Oglala traditional leadership declared the Independent

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<sup>50</sup> Excerpted in Brian Glick, *War at Home: Covert Action Against U.S. Activists and What We Can Do About It* (Boston: South End Press, 1989), 77.

Oglala Nation under the authority of the 1868 Fort Laramie Treaty and the need to end the colonial relationship between the US and the Oceti Sakowin and Indigenous peoples.

There was a critical link, however, between the war waged against the anticolonial uprising in Vietnam and the one waged against social movements in the US. Both were counterrevolutionary campaigns to crush decolonization and revolutionary movements, but they have often been read separately; or they have been read in such way to say the war in Vietnam and the US counterinsurgency operations around the world “brought the war home.” While the parallels do exist, as has been shown, US counterinsurgency traces its origins to the Indian wars of the nineteenth century and earlier. Coincidentally, the five-year anniversary of the My Lai massacre occurred during the 1973 Wounded Knee takeover. The similarities were hard to miss between Wounded Knee 1890 and the US Army’s wanton slaughter of hundreds of Vietnamese villagers. Military historian John Grenier defines what he calls “the first way of war” as being frontier violence: “From both military necessity and hands-on experience, successive generations of Americans, both soldiers and civilians, made the killing of Indian men, women, and children a defining element of their first military tradition and thereby part of a shared identity.”<sup>51</sup> What D’Arcy McNickle called in 1949 “the Indian war that never ends” — the forever conflict between Natives and imperial dispossessors — clearly had global implications.<sup>52</sup> In the 1960s and 1970s the war was not necessarily “brought home” but had always been “home” in occupied Indigenous lands. As the original enemies of empire, the US mobilized against all those who could be made “Indian,” whether it was

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<sup>51</sup> John Grenier, *The First Way of War: American War Making on the Frontier, 1607-1814* (Cambridge: University of Cambridge Press, 2005), 12.

<sup>52</sup> See D’Arcy McNickle, *They Came Here First*.

the Viet Cong in Vietnam or Black Power and Red Power activists in the US. The tactics descended from the “irregular wars” waged against Indigenous combatants and noncombatants. For instance, vigilante murders of and rampant police violence against Indigenous peoples in border towns are simply continuations of this military tradition of frontier homicide. Colonial states do not always have to kill Indigenous peoples, when everyday settlers can do that for them. In past actions, AIM connected the everyday policing, surveillance, and criminalization of Indigenous peoples in border towns to the broader anticolonial struggle and treaty rights. The takeover Wounded Knee was a continuation of that struggle, not a deviation from it.

In the aftermath of Wounded Knee 1973, the FBI and Dick Wilson waged a dirty war against its opponents in Pine Ridge in what became known as the “reign of terror.” Dozens were murdered. Hundreds were imprisoned. On June 26, 1975, ninety-nine years after Custer was defeated at the Battle of Greasy Grass, two unmarked FBI cars pulled into the Jumping Bull ranch. The two FBI agents entered the property over a reported theft of a pair of cowboy boots. AIM had set up camp on the property to protect the Jumping Bulls, an elderly couple, from GOON and FBI harassment. They had also constructed a culture camp for youth. A firefright broke out and agents Ronald A. Williams and Jack R. Coler were killed. In the ensuing firefright with FBI and BIA officers, Joseph Stuntz Killright, a young Native man, was killed by sniper fire. A massive manhunt ensued. AIM leader Leonard Peltier was later charged and sentenced to two life sentences for the murder of the FBI agents. Federal prosecutors and agents manufactured evidence, hid proof of innocence, presented false testimony, ignored court orders, and lied the jury about Peltier’s involvement in the murders. Since his

incarceration, former FBI agents and federal prosecutors (including the head of the prosecution team that convicted him) and numerous civil rights and human rights leaders and organizations have found faults on the FBI's handling of Peltier's case and called for his clemency. Twice has Peltier's case come close to presidential pardon or clemency. In both cases, the FBI lead a smear campaign against AIM and Peltier, showing that the Indian war continues unabated. Most recently, President Obama denied Peltier's clemency application during the Standing Rock efforts to halt Dakota Access Pipeline, after issuing the more executive clemencies than the past thirteen administrations. His administration could not let go of either its commitments to the oil and gas industry and the continued imprisonment of an innocent Indigenous freedom fighter. So it refused to halt the construction of a toxic pipeline and refused to end ongoing injustice against Peltier, and all Indigenous peoples subject to the carceral regime.

The aftermath of Wounded Knee and the immense amount of life lost because of it has led to sense that AIM was to blame for murderous crackdown and the increased deprivations of Indigenous communities. While Red Power attracted a heavy response from the state, historian Jordan Camp notes that "those focusing on the criminalization of street protests rarely connect it to the everyday and routine policing, surveillance, and criminalization of the racialized poor."<sup>53</sup> In other words, the misrepresentation of the social protests against mass incarceration and the police state fails to recognize the struggles from below that attempted to undo it. AIM's border town campaign best illustrates this because it directly challenged pervasive police and vigilante violence while also connecting to larger patterns of colonialism.

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<sup>53</sup> Jordan T. Camp, *Incarcerating the Crisis: Freedom Struggles and the Rise of the Neoliberal State* (Berkeley: University of California Press, 2016), 7.

Pervasive anti-AIM sentiment continues to exist, especially in places like South Dakota where state politicians such as William Janklow have made political careers out of arresting and demonizing Indigenous activists. The sentiment coincides with a stronger sense of anti-Indianism and massive economic and political restructuring under neoliberalism. Neoliberalism is the process of extreme polarization of wealth that happens when states defund and gut public education, transportation, healthcare, and public sector employment. Most of these services, which are in other parts of the world considered fundamental human rights, are then privatized or abandoned altogether. The state's role in the process, however, is not reduced, but rather increased. One defining characteristic in the US has been the expansion of the military and prison. For example, the prison population increased from about 200,000 in the late 1960s to the 2.4 million in the 2000s, with a current population of 6.9 million adults either in jail or prison, or on probation or parole. Prison populations are majority non-white and almost entirely made up of poor. In South Dakota, incarceration rates are among the highest in the nation. With an overall decrease in crime in the last two decades, South Dakota's imprisonment rate is ten times higher than the national average, growing over 500 percent since 1977 to 2012. Native inmates make up over thirty percent of the total population while only constituting about nine percent of the state's population.<sup>54</sup> The rise of incarceration directly correlates with increased Native political activity in the 1970s. Mass incarceration is the new elimination — by removing Natives from the land and imprisoning them — and a tool for political repression. The solution for the “Indian Problem” came not in upholding of

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<sup>54</sup> South Dakota Criminal Justice Initiative Work Group, *South Dakota Criminal Justice Initiative: Final Report 2012* (Pierre: State of South Dakota, 2012).

treaty rights — such access to healthcare, employment, education, and social welfare — but in the form police and prisons.

For the US, it has been more realistic to increase incarceration and law enforcement budgets than it has been to uphold the basic tenets of treaties — international agreements — made with Indigenous nations. Despite the violent backlash, AIM and Red Power turned its sights elsewhere, to the United Nations, to let the world judge the US for its criminal behavior. But the legacy of AIM remains incomplete and underappreciated to this day. In 1981 Nisqually activist Janet McCloud (Yet-Si-Blue) cautioned against writing off the accomplishments of AIM for the next generation of activists while also acknowledging the organization's shortcomings:

The American Indian Movement is unique, for it is nationally organized and internationally known. AIM's brave and daring effort to uplift the lives of their people, to challenge a powerfully hostile enemy, and to promote a better social order for all Indian people, inspired not only their own people, but the oppressed and downtrodden of the world. AIM became heroes for the North Vietnamese, the IRA [Irish Republican Army] of Northern Ireland, the peasants of Southern France, the aboriginal peoples of Australia and Africa. The greatest beneficiaries of the American Indian Movement are the tribal council leaders who are always quick to seize opportunities created by the Movement, and to claim unwarranted credit for the positive social changes won for Indian people.

The tribal leaders and others who denounce AIM justify their actions by pointing out the human weaknesses of individual AIM people, with never a glance at their own. Individuals, unfortunately, do have weaknesses, but the sovereignty and survival of Indian nations does not rest upon the shoulders of any one man or woman, no matter how strong. Our future as a distinct people in control of our destiny rests on the strength of our collective unity and common purpose. Indian people can disagree 'till doomsday about which defensive strategy is best, or whether we should even resist. If we continue to disagree on politics, policy, philosophy, and enter into destructive personality clashes, we will all lose. Our enemies never rest. They are ever unified around the purpose of achieving our total destruction.

Indian people with dedication and expertise are generally considered threats by despotic tribal officials. If they do not silently walk the sacred "program guidelines," they soon find themselves standing in the long unemployment lines. The potentially strong social service programs are constipated by bureaucratic "white" tape from Washington, D.C....



The beneficiaries of the young warriors of the Movement live in new homes, drive new cars, live longer, have better health, are better educated, have well-paid jobs, etc., while the real warriors lie unrecognized in their graves or in prison cells... Neither AIM nor any other organized resistance movement of Indian people begrudges any benefit their people receive; they rejoice at all improvements, this is what they fight for...

It is time that Indian people, those who have received most from the American Indian Movement, took some time to count their blessings, to give credit where credit is due. Don't forget the warriors, we may never see their like again.<sup>55</sup>

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<sup>55</sup> Quoted in *Oyate Wicaho* January 1981, Finzel Papers, Box 4.

## Chapter Six: Internationalism

The United States of America has continually violated the independent Native Peoples of this continent by Executive Action, Legislative fiat[,] and Judicial decision. By its actions the U.S. has denied all Native people their International Treaty rights, Treaty lands[,] and basic human rights of freedom and sovereignty... Sovereign people of varying cultures have the absolute right to live in harmony with Mother Earth so long as they do not infringe upon this same right of other peoples. The denial of this right to any sovereign people, such as the Native American Indian Nations, must be challenged by truth and action. World concern must focus on all colonial governments to the end that sovereign people everywhere shall live as they choose, in peace with dignity and freedom. The International Indian Treaty Conference hereby adopts this Declaration of Continuing Independence of the Sovereign Native American Indian Nations. In the course of these human events, we call upon the people of the world to support this struggle for our sovereign rights and our treaty rights. We pledge our assistance to all other sovereign people who seek their own independence... We recognize that there is only one color of Mankind in the world who are not represented in the United Nations; that is the indigenous Redman of the Western Hemisphere. We recognize this lack of representation in the United Nation comes from the genocidal policy of the colonial power of the United States.

— First International Indian Treaty Council, “Declaration of Continuing Independence,” Standing Rock, 1974<sup>1</sup>

As we came with this Pipe [as a symbol of peace], also we come with the Treaty, the 1868 [Fort Laramie] Treaty. That Treaty is bloody. It was made over a hundred years ago. It was our elders who told us that this was a good Treaty. But somebody spilled blood on this Treaty. And they said, “You are going before the world with your Pipe, and you will offer it to the world, the world community, and if they accept, then together we can help to clean this Treaty.”

—Larry Red Shirt, Lakota Treaty Council, Palais de Nations, Geneva, Switzerland, 1977<sup>2</sup>

Too often are the North American Indigenous experiences viewed separately from global histories of European colonialism. The long history of Indigenous anticolonial

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<sup>1</sup> First International Indian Treaty Council, “Declaration of Continuing Independence,” Finzel Papers, Box 2, folder 21.

<sup>2</sup> Larry Red Shirt, “Concluding Ceremony September 23,” International Indian Treaty Council, *The Geneva Conference: International NGO Conference on Discrimination Against Indigenous Peoples*, Palais des Nations, Geneva, Switzerland, September 20-23, 1977, 32.

struggle against invasion from initial contact onwards profoundly challenges this view. Yet, many still resist a simple truth: Native nations remain under US tutelage in an unambiguous colonial relationship. From nineteenth century wars of extermination to the mass relocation and flooding of lands by Pick-Sloan dams in the twentieth century, the evidence is clear. For more than a century a foreign occupying power has attempted to gut the political and cultural life of the Oceti Sakowin and other Indigenous nations to seize land. It has imposed alien government and policies over Native lives, lands, and destinies in which they have had little or no say.

To accomplish this feat, Indigenous peoples not only had to be physically removed from their homelands, have their economies and livelihoods destroyed, and have their lands taken. They also had to be denied independent nationhood, made into “domestic dependent nations,” and placed squarely under the sole authority of the US. These are textbook definitions of imperialism. Today, with little thought, many still refer to Natives as domestic “minority populations,” a “race,” or an “ethnicity.” Because the US labels those who it imposes foreign domination upon a minority, it begs the question: what purpose does it serve to make Indigenous peoples a minority in their own lands other than to legitimize conquest? Indigenous peoples are the original nations of this land. Yet in the course of less than a century the “Indian problem” went from a foreign policy “problem” to a domestic policy “problem.” We should be questioning and challenging — not reproducing — the means by which the “Indian problem” was and continues to be removed from the international realm and placed squarely under the sole authority of a non-Indigenous, colonizing state. Such practices didn’t end in the nineteenth century, and neither did the struggle for Native liberation.

In the hot summer of 1974, a humble but historic gathering took place in Standing Rock along the banks of the Missouri River. Five thousand people from more than 97 different Indigenous nations met from June 8-16, 1974. By the end of that week, the International Indian Treaty Council was formed. The Treaty Council became the international arm of the American Indian Movement (AIM) to gain international recognition for Indigenous peoples of the Western Hemisphere at the United Nations. It achieved consultative status with the Economic and Social Council in 1977, and used this platform to advance Indigenous peoples' rights under international law.

At its first meeting, the Treaty Council spelled out its strategy as one that placed Indigenous nationhood and treaty rights as fundamental aspects of their collective political identities. Its founding document, the "Declaration of Continuing Independence," stated: "We condemn the United States of America for its gross violation of the 1868 Fort Laramie Treaty in militarily surrounding, killing, and starving the citizens of the Independent Oglala Nation into exile." It urged "conscionable nations to join us in charging and prosecuting the United States of America for its genocidal practices against the sovereign Native Nations; most recently illustrated by Wounded Knee 1973 and the continued refusal to sign the United Nations 1948 Treaty on Genocide."<sup>3</sup> After the 71-day siege on Wounded Knee in 1973, AIM leadership had been arrested and tied up in courts. Then came the brutal repression under the infamous FBI Counterintelligence Program (COINTELPRO) that nearly destroyed Indigenous, Black, and revolutionary movements in the US. The strategic turn to international human rights

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<sup>3</sup> First International Indian Treaty Council, "Declaration of Continuing Independence."

law largely saved the movement from utter collapse in this moment of intense state repression.<sup>4</sup>

But it was not the first instance of the affirmation of what historian Daniel Cobb calls a “global Indigenous identity.”<sup>5</sup> The historical context of the Treaty Council matters, as well as the long tradition of Indigenous internationalism it belonged to. Twentieth century pan-Indigenous movements were a result of more than a decade of Red Power organizing that began in the early 1960s, nearly a decade before the creation of AIM. Before that, in the 1950s Flathead scholar and writer D’Arcy McNickle and the National Congress of American Indians had explored a similar intellectual and political terrain of internationalism. And before that, the Society of American Indians advocated for seat at the table during the 1919 Paris peace talks and representation at the League of Nations. In each instance, while different in important ways, the question was posed: if Indigenous peoples are nations, why are they not afforded the right to self-determination?

Self-determination for oppressed nations has become ubiquitous expression in progressive and left circles. It often is used to apply to other parts of the world and not North America. Woodrow Wilson and V. I. Lenin represent two strands of this thinking in dealing with the colonial question during World War I, the focus of the first section of this chapter.<sup>6</sup> Wilson argued for self-determination with a limited sets of rights without

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<sup>4</sup> For a history of AIM’s internationalism, see Roxanne Dunbar-Ortiz, “How Indigenous Peoples Wound up at the United Nations,” in *The Hidden 1970s: Histories of Radicalism*, ed. Dan Berger (New Brunswick: Rutgers, 2010), 115-34; for a history on the COINTEL program, see Ward Churchill and Jim Vander Wall, *Agents of Repression: The FBI’s Secret Wars Against the Black Panther Party and the American Indian Movement* (Boston: South End, 1990).

<sup>5</sup> See Daniel M. Cobb, “Asserting a Global Indigenous Identity: Native Activism Before and After the Cold War,” in *Native Diasporas: Indigenous Identities and Settler Colonialism in the Americas*, eds. Gregory D. Smithers and Brooke N. Newman (Lincoln: University of Nebraska Press, 2014), 443-72.

<sup>6</sup> See V.I. Lenin, *National Liberation, Socialism and Imperialism: Selected Writings by V.I. Lenin* (New York: International Publishers, 1968); Erez Manela, *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism* (New York: Oxford University Press, 2007)

radically upsetting the colonial order. Lenin argued for full self-determination and independence from colonial rule as part of a global communist revolution, an aspiration that was widely received by many in Third World decolonization movements. While each held their own merits for various strands of US left and progressive politics, the full emancipation of Indigenous nations from foreign occupation has never been a major priority in leftist circles. If anything it continues to be an afterthought if it is ever considered at all. Rather than trying to understand and undo settler colonialism as the fundamental relation of US power structures, decolonization is seen as a tack-on struggle among many other struggles rather than *the struggle*. Part of the problem is pure American exceptionalism: the US is no longer or has never been colonial, the thinking (or forgetting) goes. But it begs the question, when did the US stop occupying Indigenous lands? Twentieth century Indigenous movements began to see the limitations of wanting to build a utopic society atop stolen lands. They began to see themselves as having more in common with other colonized peoples within and beyond the US. Change within the current system bent on your elimination also provided little relief.

The Treaty Council advocated Indigenous nationhood as part of this global anticolonial movement. After decades of land loss, bare survival, attempts to work with federal programs, filing court cases, defeating termination legislation, and facing mass relocation, an assertion of Oceti Sakowin sovereignty went from ambition to prescription. Few avenues remained other than pursuing treaty rights. Treaties made with the US were proof of nationhood. But what legal institution would uphold this position if the US refused to? If the goal was to reverse the unjust occupation of an entire continent, the advancement of Indigenous rights through the very legal and political systems that

justified that occupation in the first place proved limited in some cases and hopeless in others. To survive, AIM and the Treaty Council had to look elsewhere to make their case beyond the confines of the most powerful political construct in world history: the nation-state. Their primary goal was the recognition of Indigenous peoples among the family of nations at the UN. Other Indigenous groups seeking international recognition looked to the North Atlantic states for allies, the traditional European imperial powers. In contrast, the Treaty Council looked to the Global South, to the darker nations, where decolonization bloomed. How they got there is important to this story.

The Treaty Council's internationalism wasn't particularly new. It simply built upon what was already a vibrant political tradition. Prior to European contact Indigenous nations had entered into relations with each other for alliance, kinship, war, peace, or trade. As shown in previous chapters, agreements were not solely between human nations but also included nonhuman nations as well, such as the buffalo and the land. Treaties — even ones not made with the US or other European powers — were and are the basis of international diplomacy and the very evidence of Indigenous nationhood prior to and existing alongside the US. After all, one does not enter into treaties with domestic or “internal” populations. The very basis of sovereignty is the power to negotiate relationships between those who are seen as different — between other sovereigns and nations. Two central concepts — “sovereignty” and “nation” — possess different meanings for Indigenous peoples that are not always equal to their European counterparts. And they don't always mean what we think they mean. After all, ideas don't drop from the skies. The Red Power movement of the 1960s and its predecessors popularized the language of sovereignty, nationhood, and self-determination through

struggle and reinforced the multiple types of agreements that existed prior to US colonization. We have these brave warriors and revolutionaries to thank for the commonplace status these ideas hold in contemporary Indigenous vocabulary.

These words, however, were not anathema to Indigenous peoples prior to the Red Power movement. But what do they mean? And where did they come from? While doing important defensive work, on face value these concepts only partially reflect traditions of Indigenous resistance. Struggles over their meaning were and are not benign. Nor are they hollow or without history. By placing Indigenous nationhood in historical context, a more robust understanding of sovereignty emerges. In most cases, sovereignty is linked to bare survival — life and death struggles. Countless Indigenous peoples across North America and the world have fought, died, and struggled to reclaim, restore, and redefine these powerful ideas. The goal has been to take their proper place in the family of nations.

From the beginning the Treaty Council set upon redefining and reclaiming Indigenous peoples as part of the global project for emancipation. It was a drastic shift in strategy from the more spectacular armed struggle to one of steady work towards international recognition through solidarity with other colonized peoples and nations. But had it not been for armed struggle, there would have been no Treaty Council. Had there been no Treaty Council, it is doubtful there would have been the 2007 UN Declaration on the Rights of Indigenous Peoples, the hallmark achievement of the more than four decades of international and UN work. But this story has deeper origins dating back to more modest and untold beginnings.



In this chapter, I explore the origins of Indigenous internationalism in the twentieth century, studying what led to the formation of the Treaty Council and the important political project it embarked upon making alliances with the Third World movements and colonized peoples the world over. First, I trace the roots of Indigenous internationalism in the work of Society of American Indians and its work with the 1868 Fort Laramie Treaty.

### **The Roots of Internationalism**

Indigenous internationalism didn't form in a vacuum, and the Treaty Council's assertion of a global Indigenous identity wasn't particularly "new." The Treaty Council was simply the "next" generation — another iteration of traditions of Indigenous resistance building on past experiences. It was part of a centuries-long tradition of constructing and reconstructing the aspirations of nationhood, and imagining and reimagining its meaning and possibilities. It should be no surprise, although it is to many, that Indigenous peoples were nations prior to the European arrival who didn't need the company nor the recognition of Europeans to engage in international politics.

Prior to and during colonization, Indigenous nations had self-organized into deliberate confederacies, alliances, and governments. The Nation of the Seven Council Fires, or the Oceti Sakowin, for instance, is a confederacy of seven different nations of Lakota-, Dakota-, and Nakota-speaking peoples in the Northern Plains and Western Great Lakes. Yet they are hardly unique. In North America the Creek Confederacy in the Southeast, the Haudenosaunee Confederacy of Six Nations in the Northeast, the Council of Three Fires made up of Ojibwes, Odawas, and Potawatomis in the Great Lakes region,

the United Indian Nations in the Ohio River Valley under the Shawnee leadership of Tecumseh, the All Indian Pueblo Council of the Southwest, the Iron Confederacy of the Northern Plains, and many more political confederacies flourished prior to, alongside, and in spite of settler states.<sup>7</sup> The international character of historic and contemporary Indigenous political identity, however, didn't just emerge from a primordial past. During the colonial period, it arose from conditions not of its own making and was born in struggle and resistance. More radical Indigenous internationalists frequently viewed themselves not just in relation to the US but also in relation to other colonized peoples and territories within and beyond the US.

Modern Oyeti Sakowin internationalism, for instance, traces its origins to the early twentieth century, an unlikely but rich place to begin this history. The Red Power movement of the 1960s was not the first to use the language of anti-colonialism, nationalism, and self-determination. Often the early 1900s are generally viewed as a low point for Indigenous activism and resistance. An estimated pre-colonial population of tens of millions Indigenous peoples in North America alone had been reduced to about 300,000, the survivors of centuries of genocidal policies, disease, warfare, removal, imprisonment to reservations, and elimination by other means. For Flathead historian D'Arcy McNickle writing in 1949, two processes contributed greatly to the decimation of Indigenous nations: the institution of private property (and therefore private wealth and political power) and the destruction of Indigenous governance that land held in common. Indigenous nations in the time possessed little of either: property and political power. Indigenous territory had been drastically diminished, and the reservation system had

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<sup>7</sup> See Cobb, "Asserting a Global Indigenous Identity."

overthrown customary governments. If Indigenous peoples once constituted the tree of the Americas whose roots deeply entwined in the land, it was “the growth from the severed stump,” McNickle argued, that was the pivotal challenge of the twentieth century.<sup>8</sup> Physical extermination and the repression of Indigenous political power verified genocidal intent but had not accomplished its purpose. And despite otherwise stated pluralistic claims of inclusion, McNickle concluded that the US simply “can not tolerate a nation within a nation.”<sup>9</sup> If Natives were to be assimilated, they would be assimilated as individuals and not as nations. In the popular imaginary, Natives disappeared into the wilderness of history, were never truly nations, and had been overpowered by a superior civilization. If they were nations, they were eclipsed and replaced by the *real* nation — the US. Notwithstanding such erasure, vibrant Indigenous political traditions persisted. But to the untrained eye, nothing was awry. From the severed stump began to regrow the tree of resistance that would bloom revolt decades later.

From this era two Dakota activists and intellectuals stand out as forbearers to current Indigenous internationalism but by no means the only ones. The first was Ohiyesa, or Charles Eastman, a Mdewakantonwan medical doctor born and raised in buffalo hide tipi in his Dakota homelands. At age four Eastman and his family fled to Canada after the Dakotas were violently expelled from Minnesota Territory during the 1862 US-Dakota War. He later attended a Christian mission school, graduated from Dartmouth College in 1887, and graduated from Boston University with a medical degree. Dr. Eastman was among the first Natives to practice European medicine as a

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<sup>8</sup> D’Arcy McNickle, *They Came Here First: The Epic of the American Indian* (New York: Lippincott, 1949), 275.

<sup>9</sup> *Ibid.*, 284.

licensed physician and became a BIA physician who treated Lakota casualties of the 1890 Wounded Knee Massacre in Pine Ridge.<sup>10</sup>

The second prominent activist was Zitkala-Ša, née Gertrude Simmons, an Ihanktonwan writer, musician, and activist born the same year as the Battle of Greasy Grass along the Missouri River in the Yankton reservation. As a child Quaker missionaries plucked Zitkala-Ša from the reservation and sent her to a Christian mission school in Indiana. A product of government- and church-run boarding schools, Zitkala-Ša became an instructor at Carlisle and also one of its staunchest critics. Her biting wit and strident Indigenous nationalism launched her literary career and lifelong commitment to restore her nation to its proper place in history. More so than her peers, including Eastman, Zitkala-Ša advocated Indigenous cultural renewal and a radical form of political self-determination, which made her, according to one biographer, “a forerunner of Red Power.”<sup>11</sup> Both were, however, unique products of their time: boarding school-educated but firmly rooted in Indigenous history, culture, and politics.

Eastman and Zitkala-Ša joined the formally educated Natives known as “Red Progressives,” the generation of the intellectuals and professionals who founded the Society of American Indians (SAI) in 1911. Eastman was a founding member of SAI. Zitkala-Ša later joined to serve as its secretary and editor of the SAI’s quarterly newsletter, the *American Indian Magazine*. Although short-lived (officially disbanding in 1923), SAI became the first entirely American Indian-led, national professional

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<sup>10</sup> See David Martinez, *Dakota Philosopher: Charles Eastman and American Indian Thought* (St. Paul: Minnesota Historical Society Press, 2009); Raymond Wilson, *Ohiyesa: Charles Eastman, Santee Sioux* (Urbana: University of Illinois Press, 1983).

<sup>11</sup> Tadeusz Lewandowski, *Red Bird, Red Power: The Life and Legacy of Zitkala-Ša* (Norman: University of Oklahoma Press, 2016), 16.

organization and an ideological precursor to the National Congress of American Indians founded in 1944. Like its Progressive Era contemporaries, such as the Black-led NAACP founded two years earlier, SAI addressed what were viewed as domestic race relations between Indigenous peoples and dominant US society. As such, Red Progressives believed increased access to education and further incorporation into US society were essential for viable future. To their minds, this didn't disavow the possibility of a distinct Indigenous nationhood. In fact, access to education was an aspect of many Indigenous treaties.

The understanding of how to get free, however, differed among fellow race progressives. Foremost among SAI's goals was the abolition of the Indian Bureau, the end of allotment, the upholding of treaty rights, and the granting of US citizenship to Indigenous peoples. Each was contingent upon the other to foster the renewal of Indigenous life and self-determination. The fulfilment of treaty obligations and US citizenship didn't — and still don't — neatly fit within Black-white racial binaries. Often overlooked are histories and contemporary realities of settler colonialism. To underscore the difference, at the first SAI meeting Winnebago activist Arthur Hensley drew from the example of Oceti Sakowin treaty rights: “[The Sioux] wanted to know why the negroes have no bureau at Washington, while the Indians have [one]. Is it because the Indian has land and the negro has none, and they do not care what becomes of him?” Central to Indigenous freedom has always been the question of land — not just social equality. But the Oceti Sakowin, Hensley continued, “say they never had any agreement, nor did they

understand that they were to be wards of anyone, nor have they ever been conquered.”<sup>12</sup>

The solution to this problem, he argued, required protected citizenship since the Indian Bureau had failed at guardianship, and since guardianship was neither desired nor welcomed in the first place.

Calls for citizenship and formal equality under the law could be viewed as assimilationist — and in many cases they were. Some Indigenous nations, such as the Haudenosaunee Confederacy, by contrast, asserted their sovereignty by flatly rejecting settler citizenship in the US and in Canada. For others citizenship was not about complete surrender to the nation-state. At its first annual meeting in 1912, SAI framed the “Indian problem” this way:

Not only has the Indian been abruptly torn from his [sic] natural environment but he has been thrust into a false environment inconsistent with the modern conceptions of enlightened conditions. He is thus doubly wronged... held in the grip of false conditions, neither able nor caring to assume his former condition nor able to adjust himself to the normal conditions of modern society. He is neither citizen nor a foreigner... One great law makes him a citizen and another denies him the privilege of exercising the rights of such. Thrust upon a reservation he is told that he is a nation and that the reservation is his country. Contracts made with his “nation” are dignified with the title of “treaty,” yet he is unable to exercise the rights of a nation or to enforce the provisions of the treaty.<sup>13</sup>

During the conference SAI members weighed in on treaties as both problem and possibility: yes, under US law they possessed treaty rights as nations, but the status of those rights were determined by an external power that often curtailed Indigenous nationhood. Eastman scoffed at the absurdity of going from “an independent foreign nation” to that of a “domestic dependent nation.” He preferred as a more accurate

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<sup>12</sup> Quoted in Society of American Indians, *Report of the Executive Council on the Proceedings of the First Annual Conference of the Society of American Indians* (Washington, D.C.: Society of American Indians, 1912), 150.

<sup>13</sup> *Ibid.*, 11.

description, a “perpetual inhabitant with diminutive rights,” citing Chief Justice John Marshall’s ruling in the 1823 *Johnson v. M’Intosh* decision.<sup>14</sup>

Since the 1887 Dawes Act, US citizenship could only be achieved by *individual* Natives if they privatized and, therefore, diminished *collective* treaty lands. Once individual Natives proved “competence” through land stewardship and agriculture, they were eligible for citizenship. Even then it was never a guarantee. Citizenship was a form of elimination because it required individuals to relinquish collective rights, property, and identity to become private landowners and citizens. As “perpetual inhabitants,” they were not considered permanent members of nations in control of their own territory and destinies. “After negotiating treaties as an equal,” Eastman commented, “[the Indian] was strangely born again a child — incompetent, irresponsible, and unable to think for himself.”<sup>15</sup> Thomas Sloan, an Omaha lawyer, argued that Indigenous treaties, like all treaties, “were made with the solemnity of international law.” But “within the judgement of *civilized* government,” such as the US, “*civilized* nations made treaties with the Indians as a matter of expediency” and not with the sincerity of equal partnership.<sup>16</sup> Despite this unequal position of ward to guardian, Eastman replied, “We must try the highest obligation of all civilized nations; treaties; the highest obligation; the international law.”<sup>17</sup>

The failure of the US to uphold basic moral principles and the humanity of Indigenous peoples was not lost on Eastman. “I have discovered after thirty-five years in civilization,” he stated, “that there is no Christian civilization.” For Eastman, a Christian

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<sup>14</sup> Charles A. Eastman, *The Indian To-Day: The Past and Future of the First American* (Doubleday: New York, 1915), 101.

<sup>15</sup> Charles A. Eastman, “Justice for the Sioux,” *American Indian Magazine* 7:2 (Summer 1919): 79.

<sup>16</sup> Emphasis added. Society of American Indians, *Proceedings of the First Annual Conference of the Society of American Indians*, 112.

<sup>17</sup> *Ibid.*, 148.

himself, Christianity possessed a universal morality. On the other hand, Western civilization was about industrial progress that trampled Indigenous peoples and other marginalized people underfoot. This led him to conclude that morality and the aspirations of Western civilization were “irreconcilable.”<sup>18</sup> “When I reduce civilization to its lowest terms,” Eastman wrote, “it becomes a system of life based on trade. The dollar is the measure of value and *might* still spells *right*; otherwise, why war?” Unlike many of his contemporaries who often made a living by performing in “Indian pageants” for white audiences, Eastman sternly declared his “chief objective” as a public intellectual and advocate was “not to entertain.” His mission “was a campaign of education on the Indian and his true place in American history.” The “barbarous and atrocious” characterizations of Natives as backwards cultures when compared to the “commercialism of the white man” had led to a “deep demoralization” of both Natives and whites.<sup>19</sup> Thus, Eastman’s mission was one of moral and spiritual redemption of both white and Indigenous societies. To his mind, the sins of a settler nation could only be redeemed when Indigenous peoples once again took their proper place in history and society. For this occur, it had to be done on Indigenous peoples’ own terms.

This didn’t stop SAI from working within US racial politics, or what were dubiously called “race relations.” Eastman had befriended Black intellectual and activist W. E. B. Du Bois. There is no doubt Du Bois’ had an impact on Eastman and the early direction of SAI, of which Du Bois was the only non-Native voting member.<sup>20</sup> In 1911

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<sup>18</sup> Ibid., 148-9.

<sup>19</sup> Charles A. Eastman, *From the Deep Woods of Civilization* (Dover: New York, 2003 [1916]), 105, 109.

<sup>20</sup> Society of American Indians, *Proceedings of the First Annual Conference of the Society of American Indians*,



Eastman published *The Soul of the Indian*, adopting a similar title to Du Bois' 1903 book *The Souls of Black Folk*. While different in scope, each book shared a similar commitment to creating a racial imaginary in which the souls of a white nation and those who it excluded were at stake. "Between me and the other world there is ever an unasked question," Du Bois famously wrote in *The Souls of Black Folk*, "How does it feel to be a problem?" The question cut to the bone of Black experience in the US under Jim Crow, as something defined as a problem to be dealt with. This definition of the "Negro problem" was a problem for Du Bois because it was set apart from what actually constituted racism — the legacies of slavery, institutions of segregation, lynching, and racial terror. His diagnosis of the "Negro problem" was one that led to Blacks developing a "double consciousness," "two souls, two thoughts, two unreconciled strivings" — one "American" and the other "Negro." This racial imaginary extended beyond the US. Du Bois famously declared, "The problem of the twentieth century is the problem of the color-line — the relation of the darker to the lighter races of men in Asia and Africa, in America and the islands of the sea."<sup>21</sup>

Du Bois looked to the South for a history of the color line. In his narrative he navigates the "Black Belt" by train where he invites fellow travelers to witness US history from the vantage of a segregated "Jim Crow Car." The train cuts through the "ancient land of the Cherokees — that brave Indian nation which strove so long for its fatherland, until Fate and the United States Government drove them beyond the Mississippi." He goes on to condense the history of the Black Belt by referencing in passing Hernando de Soto, the Georgia slave trade, the Creek Confederacy, the Haitian

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<sup>21</sup> W. E. B. Du Bois, *The Souls of Black Folks: Essays and Sketches* (McClurg: Chicago, 1903), 1, 3, 13.

Revolution, and Cherokee presence and removal. According to Du Bois' account of southeastern Indigenous resistance, "the war-cry was hushed and the Indians glided back into the west."<sup>22</sup> While perceptive of race in the binary, Du Bois could not make sense of the vexed history of settler colonialism nor the continued existence of Indigenous nations in the South and elsewhere.

The eclipsing of Native presence by making them a past or an "ancient" culture is a popular convention in history and contemporary politics. To counter this, in *The Soul of an Indian*, Eastman embraced "the human, not the ethnological standpoint." He dismissed ethnographies written by "strangers" that reduced complex Indigenous social systems to a "matter of curiosity." The salvage ethnography of the day held, similar to Du Bois' description, that Indigenous peoples were the last vestiges of a dying race far removed from their homelands and far removed from the modern world. During this time, anthropologists flooded Indian reservations intent on preserving this "ancient" people believed to always be on the brink of extinction. Knowledge of this vanishing race had to be extracted through their stories and by digging up their remains, in what amounted to little more than grave robbing under the guise of "archeology." In contrast, Eastman aimed "not to pile up more bones, but to clothe them with flesh and blood." Put simply, Indigenous peoples were humans with rights. Eastman desired to engage the world on terms of cultural integrity and self-determination. He compared Native religion with Christianity and emphasized the fallacy of Europe's impulse to civilize, which was merely the "lust for money, power[,] and conquest so characteristic of the Anglo-Saxon race." Under the moral authority "of their God," the US made treaties with Indigenous

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<sup>22</sup> Ibid., 112-4, 123.

nations that “were promptly and shamelessly broken.” Indigenous history could not be simply grafted on Black-white racial dynamics. It missed what Eastman characterized as “not only the anger, but contempt” for earlier crimes and ongoing colonialism.<sup>23</sup>

Such erasure, however, is not Du Bois’ alone and still persists today. White supremacy, capitalism, and settler colonialism are not exclusive projects but, rather, work together. In other words, Black history and Indigenous history cannot be told apart from each other. For example, after the Civil War the US deployed federal troops to the South to oversee Reconstruction. Once support for Black enfranchisement waned, the US army didn’t just disappear into thin air. It moved West to crush Indigenous resistance. Indian wars of the west set to take and secure land and resources and pull the nation out of a recession. The end of Reconstruction, which brought sweeping reforms, such as public education that benefited both poor white and Black southerners, coincided with the abolition of the treaty making with Indigenous peoples in 1871 and a concerted military effort to secure the western frontier. While education of recently freed slaves and poor people in general was a significant achievement, militarized boarding schools were used to destroy Indigenous families and, according to colonel Richard Pratt, the founder of Carlisle Indian School, to “kill the Indian, save the man.”<sup>24</sup>

The US military, in this sense, was used to secure freedoms for some while destroying the freedoms and existence of others. Federal troops were deployed to reign in and crush Oceti Sakowin resistance and to secure US possession of the Black Hills, where gold was discovered. In 1876 the Oceti Sakowin, with the Cheyennes and

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<sup>23</sup> Eastman, *The Soul of the Indian*, xii, 22-3.

<sup>24</sup> See David Wallace Adams, *Education for Extinction: American Indians and the Boarding School Experience, 1875-1928* (Lawrence: University of Kansas Press, 1995).

Arapahos, famously defeated the Seventh Cavalry, under the command of Custer, at the Battle of Greasy Grass, the same year Reconstruction officially ended. In this sense, the US went from crushing a domestic rebellion of elite slave-owning secessionists, to providing the necessary force for Southern Reconstruction, to invading Indigenous lands in the West to expand its empire. Despite popular myth, the 1898 Spanish-American War was neither the first nor the last US imperial endeavor. The entire premise of the US was founded upon the foreign invasion, occupation, and control of Indigenous lands. In this way, settler colonialism is imperialism. Du Bois and his Red Progressive comrades such as Eastman, however, lacked this insight.

As race progressives, Eastman and Du Bois didn't confine their activism to just US audiences. The same year SAI formed in 1911, Eastman was chosen to represent American Indians at the Universal Races Congress in London July 26-29. Unlike other colonized peoples from other continents, he was the only Indigenous person invited from the Western Hemisphere. According to conference proceedings, the gathering proposed to address "the problem of the contact of European with other developed types of civilization." Most discussion, however, focused on East-West binaries. When colonization and imperialism were mentioned, it happened everywhere other than North America. The goal of the meeting was to foster understanding among nations and races across the world under the banner of cultural pluralism. Elite Western intellectuals, such as anthropologist Franz Boas, dominated the conference. They argued racial difference was due to external factors not biology or racial inferiority. Difficult questions of history and politics were almost ignored altogether. "The object of the Congress," the organizers advised, "will be to discuss, in the light of science and modern conscience, the general

relations subsisting between the peoples of the West and those of the East, between so-called white and so-called coloured peoples, with a view to encouraging between them a fuller understanding, the most friendly feelings, and a heartier co-operation.” The debates pursued were ethical and barred any presentations of “a political character” or any “particular scheme for reforms.”<sup>25</sup>

In London, Eastman presented during the same session as Du Bois. In his talk, Eastman attempted to establish a racial identity for Natives as a way to be counted among the minorities of the world. But he was quick to note the “pauperising effect” of the reservation system as a “miserable prison existence.” The world could ignore the imprisonment of Indigenous peoples while praising their culture, making them “like that of a wild animal confined in a zoological garden.”<sup>26</sup> His solution to the “Indian problem” was not a return to the past. Only US citizenship and the abolition of the Indian Bureau prevented the fulfilment of treaty rights. Citizenship and equality, however, didn’t mean sameness. Echoing the views of his SAI compatriots, Indigenous identity could be both “American” and distinctly “Indian.” But that was as far as Eastman ever went. His was a spiritual awakening, a reconciliation of the Native identity with the modern world. Eastman admitted that he was an advocate “in this new line of defense of the native American, not so much of his rights in the land as of his character and religion.”<sup>27</sup>

Eastman’s global appeals, however, didn’t stop there and others such as Zitkala-Ša had more robust and confrontational approaches. When the US entered the First World

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<sup>25</sup> Gustav Spiller, ed., *Papers on Inter-Racial Problems, Communicated to the First Universal Races Congress Held at the University of London, July 26-29* (The World’s Peace Foundation: Boston, 1911), xiii-ix.

<sup>26</sup> *Ibid.*, 374.

<sup>27</sup> Eastman, *From the Deep Woods of Civilization*, 106.

War in 1917, SAI began adopting more and more the language of nationalism, internationalism, and anticolonialism. Natives volunteered for military service at rates far surpassing any other group, while most were not considered US citizens. An astounding 25 percent of all adult Native men served in some capacity compared to 15 percent of the US population. Most were drawn from the ranks of off-reservation boarding schools, where pupils had been indoctrinated with military discipline and US patriotism.<sup>28</sup> Because of military service, SAI believed, wrongly, that the US would live up to its democratic commitments to Indigenous peoples and help them attain a world forum alongside other colonized peoples. In SAI's quarterly publication, *American Indian Magazine*, Zitkala-Ša wrote, "The sunbursts of democratic ideals cannot bring new hope and courage to the small peoples of the earth without reaching the remotest corners within America's own bounds... As America has declared democracy abroad, so must we consistently practice it at home." The ultimate goal was nothing short of Native people attaining "their rightful position among the peoples of the world."<sup>29</sup>

For many in SAI, it was a turning point in the political direction of the organization. War also meant the draft. How could a country conscript those not considered citizens? Apache medical doctor Carlos Montezuma, a former SAI member who left the organization as his politics became more radical, argued a Native draft was morally "wrong." Intensely suspicious of the Indian Office and the federal government, Montezuma became a strident opponent of forced conscription. "The Indian Office keeps us Indians from our rights," Montezuma wrote in 1917, the year the Selective Service Act

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<sup>28</sup> John W. Lerner, "Society of American Indians," in *Native America in the Twentieth Century*, edited by Mary B. Davis (New York: Garland, 1994), 604.

<sup>29</sup> Zitkala-Ša, "Editorial Comment," *American Indian Magazine* 7, no. 3 (July-September 1918), 114.

was passed, “It tells the country that we are competent soldiers, but are not competent citizens... We are nothing but wards; we are not citizens and we are without a country in this world... The wards are called upon to protect their Protectors!”<sup>30</sup> His fiery rhetoric and activism attracted the attention of the US Bureau of Investigation (which later became the FBI). That same year the Espionage Act made antiwar activity a criminal offense punishable by a prison sentence, while the 1918 Sedition Act did the same for those using “disloyal, profane, scurrilous, or abusive language” toward US institutions such as the Indian Bureau and national symbols such as the flag. Thousands of draft resisters were either deported or imprisoned. Most famously, six-time socialist presidential candidate Eugen V. Debs was charged in the summer of 1918 and swiftly sentenced to prison. Perhaps fearing reprisals against its own members, SAI adopted a nationalist approach to the war. One member went as far as to denounce the 1917 Green Corn Rebellion in Oklahoma, which was a Native-led armed uprising of poor whites, Blacks, Seminoles, and Muscogee Creeks against the Selective Service Act.<sup>31</sup>

In spite of its best efforts, however, the *American Indian Magazine* under the leadership of Zitkala-Ša came under fire for subversive content. After US entry into the war and during the same month of the October 1917 Bolshevik ascension to power during the Russian Revolution, Zitkala-Ša’s opening editorial read, “BREAK THE SHACKLES NOW, MAKE US FREE.” The special issue, called “The Sioux Number,” detailed the horror the Oceti Sakowin endured during the brutal military campaigns after the 1862 US-Dakota War, at the 1890 Wounded Knee Massacre, and the legacy of the US’s

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<sup>30</sup> Quoted in Frederick E. Hoxie, ed., *Talking Back to Civilization: Indian Voices from the Progressive Era* (Boston: Bedford/St. Martin’s, 2001), 126.

<sup>31</sup> “Editorial Comment,” *American Indian Magazine* 6, no. 1 (January-March 1918): 19-20. See also Roxanne Dunbar-Ortiz, *Red Dirt: Growing* (Norman: University of Oklahoma Press, 1997), 14-9.

broken promises contained in the 1868 Fort Laramie Treaty. The editors of the controversial issue also called for the abolition of the Indian Bureau, the creation of a comprehensive program that allowed individual Indigenous nations to opt for or against US citizenship, and the upholding of treaty rights, especially the validity of the 1868 Treaty. Once these bold demands were met could the US retain moral authority in the world — or so they believed.<sup>32</sup>

Criticism also targeted US military aggression. A sarcastic play on the patriotic anthem “My Country ‘Tis of Thee,” Zitkala-Ša penned a rebuke of US nationalism in her poem “The Red Man’s America.” She changed the verse “Land where my fathers died/ Land of the pilgrims’ pride/ From ev’ry mountainside/ Let freedom ring!” to “Land where OUR fathers died/ Whose offspring are denied/ The Franchise given wide/ Hark, while I sing.”<sup>33</sup> In another poem, “A Sioux Woman’s Love for Her Grandchild,” she depicted the courage of grandmother who refuses to leave her grandchild behind as they are overrun by US soldiers, noting the courage of the Oyeti Sakowin and tyranny of the military.<sup>34</sup> Other contributors joined her in condemning militarism. “Why proclaim the sacredness of a treaty, or cry ‘Shame!’ to the German invasion of Belgium?” Eastman asked, attacking the hypocrisy of US military intervention in Europe.

In 1868 the United States Government guaranteed all of the Black Hills and the Big Horn region to the Sioux. It was agreed that no white man should enter it without the Indians’ consent. It was the only buffalo country left to them; upon it depended their very subsistence! What happened? Gold was discovered in these mountains only two years after the treaty was signed, and gold seekers invaded

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<sup>32</sup> Editorial, “Break the Shackles Now, Make Us Free,” *American Indian Magazine* 5, no. 4 (October-December 1917): 213-21.

<sup>33</sup> Zitkala-Ša, “Red Man’s America,” *American Indian Magazine* 5, no. 1 (Winter 1917): 64.

<sup>34</sup> Zitkala-Ša, “Red Man’s America,” *American Indian Magazine* 5, no. 4 (October-December 1917): 230.



the country and took it by force. Did the press defend the Indians' rights? Did any of our Senators indulge in oratorical sentiment in their behalf? Not they.<sup>35</sup>

To soften what could be read as sedition, Oglala SAI member Chauncey Yellow Robe qualified the strident criticism: "The Sioux are not picketing the White House in a heckling campaign... Their finest men are picketing on the war front in France and asking the world court if the defender of liberty is not entitled to its privileges."<sup>36</sup>

Efforts to soften the rhetoric failed. Brutal honesty unnerved policymakers and allies with "unmixed horror," and the danger of government suppression was real. Critics accused the *American Indian Magazine* editor Zitkala-Ša of becoming the "rankest Bolshevickist" who had descended into "Apacheism," a derogatory term for criminal gangs. "If we were severe," Zitkala-Ša reminded critics, "the faults we saw were still more severe."<sup>37</sup> She clarified her position in a 1919 editorial titled "The Black Hills Council." She argued that if "[the Sioux] were good enough to fight and die for world democracy," then they were "worthy of full American citizenship and the protection of the law under our constitution."<sup>38</sup> The eagerness of Congress to send non-citizens to war but to ignore their legitimate grievances over treaty rights infuriated Zitkala-Ša. While they sent their sons overseas to fight and die, Oceti Sakowin treaty council leaders — all respected elders — went before Congress to plead their case; they drafted bills that would allow them to take the Black Hills claim to court and hire their own legal counsel. "One after another these bills failed passage by Congress," she recalled, "while access to the

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<sup>35</sup> Charles A. Eastman, "The Sioux of Yesterday and To-Day," *American Indian Magazine* 5, no. 4 (October-December 1917): 234

<sup>36</sup> Chauncey Yellow Robe, "The Fighting Sioux," *American Indian Magazine* 5, no. 4 (October-December 1917): 227.

<sup>37</sup> Editorial, "Editorial Sanctum: The Sioux Number of Our Magazine," *American Indian Magazine* 6:1 (Winter 1918): 41.

<sup>38</sup> Zitkala-Ša, "Editorial Comment," *American Indian Magazine* 7:1 (Spring 1919), 6

Court of Claims to all other Americans was comparatively easy, types of men like the I.W.W. [the Industrial Workers of the World] and the Bolsheveki [were] not excepted.”<sup>39</sup> Clearly referencing the attacks on SAI and its magazine, Zitkala-Ša spoke a simple truth: even the anarchists, socialists, communists, and draft resisters, all considered enemies of the state, had their day in court and some protections under the law. Any talk of Indigenous treaties, stolen land, genocide, the Black Hills, and citizenship, however, was rejected as treasonous or simply ignored. Those issues could not even be entertained in a court room because the US refused to recognize its own criminal behavior — and it refused to recognize the Oceti Sakowin as neither citizens nor their own nation. “Small wonder that Immortal Justice must be blindfolded upon her marble pedestal lest her tranquility be marred by the Red Man’s dilemma!” Zitkala-Ša exclaimed in frustration.<sup>40</sup> But SAI offered other possibilities beyond the US, as the promise of a new political order arose at the conclusion of the Great War.

World wars are transformative events. Not only do they end lives but also established orders — institutions, ideas, and norms. The First World War decimated millions of lives and caused untold devastation. It also threw the stability of international relations into crisis. In its wake, a world hoped for, and anticipated, a postwar future to be entirely different from the past. Natives in the US were not different. The war and the rise of President Woodrow Wilson’s internationalism provided a new avenue for Native activism. In particular, Wilson’s Fourteen Points gave meaning to US involvement in the war. He argued the sacrifice of US lives and resources and the creation of an international body would prevent another world war. Among his principle visions were the right of

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<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

national self-determination and the adjustment of colonial regimes. His position ran against the strong isolationism of the US, and in the end Congress rejected membership to the League of Nations.<sup>41</sup>

As peace approached, SAI members such as Eastman, Zitkala-Ša, and Montezuma were undeterred by Congress' stubbornness and seized upon Wilson's principles to defend Native rights. In 1919, Zitkala-Ša optimistically exclaimed: "The eyes of the world are upon the Peace Conference sitting in Paris. Under the new sun an epoch is being staged. Little peoples are to be granted the right of self-determination! Small nations and remnants of nations are to sit beside their great allies at the Peace Table." She declared support for the various US delegations, such as one led by Du Bois.<sup>42</sup> Montezuma was more critical. He wrote in a 1918 piece, provocatively titled "Another Kaiser in America":

If there will be a Peace Conference of all the nations after the war, the Society of American Indians should delegate a representative from the Indian race. Why? Because we Indians are nations. We Indians have never received justice from the hands of the United States. We have been relegated to the outside realm of humanity. There is no picture as black as the history of our race. You may speak about abuses and mistreatment received by the Belgians, Bohemians, Poles, Serbians and other nations of the old country, their griefs and wild kings are no comparison to the treatment of the Indians at the hands of the American Government. Five hundred years have rolled by and the Indians are not free yet. Five hundred years since the invasion of the pale faced race on the domain of the Indians and they do not enjoy the rights of human beings. This righteous war is a mockery to the Indian race, if we are not allowed at the Peace Conference.<sup>43</sup>

"[T]he world's after-council must establish a new international relationship," Eastman further pleaded echoing Zitkala-Ša's concern. "And this new order must begin at home."

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<sup>41</sup> Cobb, "Asserting a Global Indigenous Identity," 448.

<sup>42</sup> Zitkala-Ša, "Editorial Comment," *American Indian Magazine* 6:4 (Winter 1919): 161.

<sup>43</sup> Carlos Montezuma, "Another Kaiser in America," in *Say We Are Nations: Documents of Politics and Protest in Indigenous America Since 1887*, ed. Daniel M. Cobb (Chapel Hill: University of North Carolina Press, 2015), 34-5.

The scourge of wardship was an explicit colonial condition and thoroughly undemocratic. It stunted the renewal of Indigenous autonomy and was counter to the Wilson's principles of self-determination. "The Indian Bureau, instead of being the servant of the people and of the Indians in accordance with treaty stipulations, has grown into a petty autocracy," Eastman continued. "The whole system reminds of the story of Two-Face in the Sioux legend. He stole a child to feed on his tender substance, sucking his blood while still living, and if any one protested or aroused by the baby's screams, attempted a rescue, he would pat it tenderly and pretend to caress it." A vampiric Indian Bureau, if not stopped, would continue to wither away Indigenous life and land. But Eastman cautioned, "We do not ask for territorial grant or separate government. We ask only to enjoy with Europe's sons the full privileges of American citizenship."<sup>44</sup>

Despite their best efforts, Eastman, Zitkala-Ša, and SAI could not break the mold that cast them. Conservative factions within prevented SAI from petitioning President Wilson to attend the peace conference. Non-Native supporters viewed SAI as novelty and not a serious political organization. Slowly, the organization descended into obscurity and officially disbanded in 1923, a year before the 1924 Indian Citizenship Act, which unilaterally imposed citizenship upon all individual Indigenous peoples without consent. The criticism leveled at the Indian Bureau did, however, result in a sweeping investigation and report of its practices. The publication of the 1928 *The Problem of Indian Administration*, also known as the Merriam Report, was a massive indictment of federal Indian policies of assimilation and allotment. As an intentional or unintentional outcome, the report found, Natives lived in destitution, poverty, and misery and highly

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<sup>44</sup> Charles A. Eastman, "The Indian's Plea for Freedom," *American Indian Magazine* 6:4 (Winter 1919): 163-5.

deficient education and health services. In spite of the far-reaching criticism, the Indian Bureau remained but became the focus of a massive reform under the Indian New Deal, which ended allotment and some bans on Native cultural and religious ceremonies. SAI's ideas, especially those of Zitkala-Ša of cultural and political renewal, were taken up by John Collier, who is often credited with envisioning the 1934 Indian Reorganization Act. Many elements of the IRA clearly drew inspiration from SAI, but none of its members received credit. Indigenous women, such as Zitkala-Ša, though a serious community organizer and strident nationalist, have largely been forgotten for their contributions and daring visions.

Angered by Collier's dismissal of her work and activism and concerned that the IRA didn't go far enough, Zitkala-Ša organized her nation, the Yankton reservation, to oppose the IRA. Although Yankton accepted the IRA, they never adopted an IRA constitution. Instead, Zitkala-Ša organized a council of Ihanktonwan traditionals and drafted a different constitution, with a broader vision of sovereignty that granted voting rights to off-reservation members, self-appointed tribal officials, and allowed the tribal council full veto power over any federal decisions over tribal lands, jurisdiction, and members. Effectively, the constitution virtually eliminated any influence of BIA and federal government interference over internal tribal affairs. Of course, Collier and the Secretary of Interior opposed the new constitution, which left the Yankton reservation without a formally recognized council, a decision that had dire consequences when the Army Corps flooded their lands in the 1950s.<sup>45</sup> Even by today's standards, Zitkala-Ša's visions for Indigenous nationhood and sovereignty are radical and beyond the

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<sup>45</sup> Tadeusz, *Red Bird, Red Power*, 182-3.

imagination and will of most tribal governments. In spite of her monumental contributions to traditions of Indigenous resistance, she died exhausted, poor, and unrecognized. Her death certificate ingloriously read: “Gertrude Bonnin from South Dakota — Housewife.”<sup>46</sup>

In the end, SAI never accomplished its major goals. What the organization revealed, however, was an uninterrupted continuation of previous notions of Indigenous nationhood and sovereignty. Within the larger scope of anticolonial movements at the time, at best SAI’s internationalism was aspirational because it could not imagine itself apart from the nation-state. On one hand, SAI’s nationalistic rhetoric was strategic given the intense climate of surveillance and repression and the general ignorance of Indigenous issues. On the other, it descended into blind patriotism. The political visions of Zitkala-Ša and Eastman were nevertheless far-reaching. Treaty rights, human rights, and governance continue to be central challenges facing Indigenous nations; and central to each of these issues was failure of the US to live up its agreements in the 1868 Fort Laramie Treaty and the international treaty relation. This captures what Kevin Bruyneel calls the “third space of sovereignty.”<sup>47</sup> Through court rulings and acts of Congress, the US had transformed Indigenous people from “outside” nations to “inside” nations and domestic populations. Indigenous activists such as Zitkala-Ša and Eastman used the space in-between of inside and outside the US to assert political autonomy. They envisioned an Indigenous sovereignty that existed alongside US state sovereignty but could at the same time refuse US colonial rule because of a prior, and therefore superior, form of

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<sup>46</sup> Quoted in *Ibid.*, 187.

<sup>47</sup> See Kevin Bruyneel, *The Third Space of Sovereignty: Postcolonial Politics of U.S.-Indigenous Relations* (Minneapolis: University of Minnesota Press, 2007).

governance and authority. Those bold visions, however, would not come to fruition for the Oceti Sakowin in the international arena until the 1970s, with the creation of the International Indian Treaty Council.

### **The First Treaty Meeting**

While the SAI didn't accomplish the immediate goal of attending the 1919 Paris peace talks and gaining recognition at the League of Nations, the legacy of internationalism continued. In 1923, Haudenosaunee hereditary chief Deskaheh (Levi General) took his nation's grievances against the US and Canadian governments to the League. Although unsuccessful, the Treaty Council picked up where Deskaheh and SAI left off. They, too, attempted to transcend the colonial bureaucracy and assert treaty rights to a wider world. After Wounded Knee 1973, AIM transposed the frontlines of struggle from armed barracks, to the US courts, and finally to the international arena. AIM's commitment to a long-term human rights and Indigenous rights campaign is what saved the movement from utter collapse after severe political and police repression.

In the aftermath of Wounded Knee 1973, many tribal governments wanted nothing to do with the American Indian Movement. They could hardly go anywhere without attracting negative attention. Nevertheless, the Standing Rock tribal council unanimously passed a resolution inviting AIM to the reservation to form a treaty council to take the treaty issue to the World Court and the United Nations Committee on Colonialism. In clear language, Standing Rock spelled out its intentions: "the Great Sioux Nation does not want money damages and is determined to enforce the Treaty of 1868 for

all Sioux people.”<sup>48</sup> The treaty meeting also had the blessing of the Oglala Treaty Council, the same group traditional elders who invited AIM to Wounded Knee. The Oglala Treaty Council demanded “total recognition of the treaty — nothing less” and the remuneration of all lands and resources that had been taken either by the Pick-Sloan flooding or goldmining in the Black Hills. Acts on behalf of the US subsequent the 1868 Treaty, the council determined, “did not diminish our inherent right to govern ourselves as a sovereign nation. It is also our position that all actions taken by the US government on the 1868 treaty has been illegal and contrary to the practices of international law and the usual relationship between sovereign nations.”<sup>49</sup> Furthermore, attendees also pushed for the US to sign and ratify the 1948 Genocide Convention, so the In spite of its prior hostility towards IRA governments, AIM now had the backing of the traditionalists, the grassroots people, and now the Standing Rock tribal council.

The pairing of forces was truly historic, yet the June 1974 treaty meeting hardly attracted any media attention. The lack of publicity, however, made the gathering no less important for its five thousand attendees who represented ninety-eight different Indigenous nations. To mark the historic occasion, Hunkpapa elder Evelyn Gabe, a direct descendent of John Grass, the Hunkpapa chief who led the successful resistance against allotment in 1887, welcomed AIM and thanked them for coming to Standing Rock. “We have agreed to make a stand in unity with the most valid treaties, one of which is the 1868 treaty,” she told the crowd in attendance. “We know it is valid and that we are a nation... We need the support of all nations.”<sup>50</sup> As a result of Standing Rock’s support,

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<sup>48</sup> Standing Rock Council Resolution, March 26, 1974, Finzel Papers, Box 2, Folder 21.

<sup>49</sup> Oglala Treaty Council Resolution, March 1974, Finzel Papers, Box 2, Folder 21.

<sup>50</sup> International Workgroup on Treaties, June 13, 1974, Finzel Papers, Box 2, Folder 21.



the 1868 Treaty became the tip of the spear for the UN work. With this reminder of why they had come, the first questions posed were: how was Indigenous law to be judged by a court of non-Indigenous peers? Who were peers to Indigenous knowledge-keepers, the law-makers, and the elders?

It was decided only other Indigenous peoples could determine their peers, and that other colonized peoples could be their peers as well as any nation willing to recognize them since the US wouldn't. To get the UN to work for them, Jimmie Durham, who was later appointed executive director of the Treaty Council, suggested following the lead of African revolutionary Amilcar Cabral who he had befriended in Geneva. To get his message across to the UN and to the European world, Cabral had "to make speeches and use 'white' ideals and pretentions."<sup>51</sup> Those white ideals and pretentions included speaking in the language of sovereignty, culture, and nationhood. Pressed by their legal counsel that they would need "concrete evidence of sovereignty" at the UN, Santee AIM member John Trudell responded, "The treaties are our evidence."<sup>52</sup>

For Russell Means, Indigenous treaties and culture were only stepping stones to a larger goal. Recognition, whether cultural or political, was pointless if it didn't entail the destruction of the colonial system itself and, above all, the restoration of treaty lands. Although Means never knew Amilcar Cabral, they shared a similar vision of decolonization. Throughout the Treaty Council documents, meeting notes, and newsletters, Cabral's thoughts and visions of anticolonial struggle were occasionally

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<sup>51</sup> International Workgroup on Treaties, June 10, 1974, Finzel Papers, Box 2, Folder 21. At this time, Jimmie Durham claimed to be "Cherokee," but Cherokee Nation enrollment officers and officials have recently discredited his claims. See Guest Editorial, "Dear Suspecting Public, Jimmie Durham is a Trickster," *Indian Country Today*, June 26, 2017, <https://indiancountrymedianetwork.com/news/opinions/dear-unsuspecting-public-jimmie-durham-trickster/>.

<sup>52</sup> International Workgroup on Treaties, June 10, 1974.

cited. Cabral, who founded the Marxist revolutionary party, the African Party for the Independence of Guinea and Cape Verde (or PAIGC), proposed colonized Africans “return to the source.” That source was a distinct African culture that was preserved primarily by those most oppressed by Portuguese colonialism, the villagers and the tribal people not the urban elites. The source of their power was in their culture of resistance, which had held at bay complete domination by a foreign culture. Revolution didn’t mean becoming a European society or a European-style state. According to Cabral, it meant becoming a society that reflected the culture and the values of the people most marginalized. For Guinea-Bissau, these were the people who lived in the forests, the tribal peoples, who were the majority of the population. Yet more than cultural resistance was at stake. Because of harsh repression such as assimilation, native cultures became petrified and static and were not allowed to continue to develop. Often times in this process, culture takes on conservative and reactionary character. A return to the source pulls that culture out of the past, out of the museums, out of the pageants, out of the colonizer’s history books, and brings it to the present, makes it an active element for revolution, and imagines what it will look like in the future free from colonial rule. Cabral’s vision was a daring vision of freedom that wasn’t prescriptive or top-down. It looked to Indigenous cultures as an example of horizontalism — free of arbitrary hierarchy and full of self-rule. It reflected the conditions of the colonized, and demonstrated that within native cultures are potential tools for making revolution. But Cabral cautioned, however, “the ‘return to the source’ is of no historical importance unless it brings not only real involvement in the struggle for independence, but also complete and absolute identification with the hopes of the mass of people, who contest

not only foreign culture but also foreign domination as a whole.”<sup>53</sup> These ideas resonated with Means, Durham, the Treaty Council, and many in the Third World.

On the last day of the Standing Rock Treaty Council meeting, Russel Means took the microphone. Throughout the day, he had been reading various communiqués from the Irish Republican Army, the Organization of African Unity, and several Arab nations in support of the Standing Rock gathering. There was some tension about the direction the Treaty Council would take. Most of AIM’s leadership was still tied up in the courts, so how would the organization fight for recognition at the UN? Most importantly, people who had no experience with international law or human rights were in charge of their destinies but had no clue about the UN processes. The path ahead was daunting and uncertain. The tenor of the meetings was serious and sober. There was clearly a departure from the past one-off actions. Human rights work was going to be long and arduous. Taking in the uncertainty that saturated the conference, Means stated that the Treaty Council must look to all potential allies, “the United Nations, the Organization of American States, the Organization of African Unity, the Arab countries, the communist bloc and whatever is necessary for us to get our treaties in court and would give the world forums a chance to hear us.” That was not all, he continued:

we must realize what we are into. What we are into is revolution, turning that cycle of life always back. It is the sacred hoop that we are talking about. In that revolution that we are trying to perpetuate, and in every revolution in the history of the (and we do have to look at the history of the world, because we are members of that international community) — in the history of the world, the successful struggles for independence and the struggles which are still going on for independence all involve land, all involve land — whether it’s in Africa or Asia or Southeast Asia or the [Mediterranean], or in the Middle East, or in Ireland and the United States or Canada or South America or Central America, or Micronesia or Puerto Rico. Wherever you go that there’s a struggle for

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<sup>53</sup> Amilcar Cabral, *Return to the Source: Selected Speeches of Amilcar Cabral*, ed. Africa Information Service (New York: Monthly Review Press, 1973), 63.

independence, it always involves land. This of course is our issue. Our ancestor have died for their belief, and our belief, in the sacred Mother Earth and their right to be respected and to [be] taken care of, and their right and the right of all ourselves to live in peace... When you look at the struggles for independence of peoples across this world, it has not taken a year, it has not taken a couple of years. It has taken dona [many] years. For their independence sometimes it has taken centuries for people to reach their independence and regain their land... We know that we cannot militarily defeat, nor do we even want to engage, the United States of America ever again... [Our ancestors] could not enlist the aid of other countries. They could not even enlist the aid of other people inside the United States of America... If we are going to struggle for our land, it can't be just with words, just with paper. It has to be with our lives.<sup>54</sup>

The outcome of the conference was the “Declaration of Continuing Independence,” which was framed by Phyllis Young. The Declaration charged: 1) the US’s violation of Indigenous treaties; 2) the “inviolable international relationship” between Native Nations and the US; 3) the restoration of treaty land; 4) the eschewing of violence, except in self defense; 5) the rejection of all legislative and executive acts since 1871; and 6) the entering into international diplomatic relations with the US and colonial states through UN recognition and membership. Above all, the 1974 Declaration cited violations arising from the failure of the US and other colonial states to adhere to international human rights standards, which had not yet been adequately extended to Indigenous peoples, and to the Convention on the Prevention and Crime of Genocide.

While these were bold statements, AIM leadership was still hamstrung by the courts. Hundreds of cases still had to be resolved. The traditional leadership suggested near the conclusion of the treaty meeting at Standing Rock that the cases be resolved before moving on with the international work. There was more, however. Not only should these cases be resolved, AIM should try one last time to get the federal courts to recognize Oceti Sakowin sovereignty.

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<sup>54</sup> International Treaty Council Meeting, June 14, 1974, Finzel Papers, Box 2, Folder 21.

## **The Treaty Hearing**

With its high-risk, attention-grabbing protests such as the siege at Wounded Knee in 1973, AIM had won the court of public opinion or at least held its attention. But the movement soon found itself and its aspirations for freedom on trial in the courts of the conquerors, a situation that immobilized an organization sustained by constant action. By the end of the 1973 in the aftermath of the 71-day armed takeover at Wounded Knee, most of AIM leadership was tied up in federal and state courts for months, and even years. For example, the case against Dennis Banks and Russell Means in the Wounded Knee leadership trials was one of the longest criminal trials in US history. After a nine-month trial, federal judge Fred Nichols threw out all charges against Means and Banks on the grounds of government misconduct. After the tanks rolled away from Wounded Knee, a team of volunteer lawyers rolled in forming the Wounded Knee Defense/Offense Committee led by attorney Ken Tilsen to represent to the hundred-plus AIM members. Five defendants initially cooperated with federal prosecutors agreeing to plead guilty in exchange for the dismissal of the other hundred-plus cases. The Justice Department would have none of it, and the trials continued on for nearly two years. The US lawyers came down heavy. For their efforts only two of the five AIM members who offered the plea deal served any jail time. Because of a committed legal defense and the weak nature of the charges, most of the other cases were thrown out.<sup>55</sup>

In one more well-known case, some sixty-five AIM defendants argued that the US lacked criminal jurisdiction in Oceti Sakowin territory protected under the 1868 Fort

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<sup>55</sup> See John William Sayer, *Ghost Dancing the Law: The Wounded Knee Trials* (Cambridge: Harvard University Press, 1997).

Laramie Treaty. Because they were charged with alleged criminal acts in the Pine Ridge Reservation and were within the 1868 Treaty boundaries, they moved for dismissal. The Lakota patriots and their allies who made their stand at Wounded Knee had also asserted sovereignty based on the 1868 Treaty. “I went to Wounded Knee only because of that Treaty,” declared AIM leader Russell Means. “The first night we were in there, we [sent] out a copy of the 1868 Sioux Treaty to the FBI and said that was why we were at Wounded Knee... People have died for that Treaty — before, after[,] and today.”<sup>56</sup>

The hearing became known as the “Sioux Treaty Hearing.” Vine Deloria, Jr., along with lead defense attorney John Thorne, engineered the treaty defense. Deloria cited the accuracy of oral tradition as the basis for the Oceti Sakowin’s understanding of treaties. When compared to US records of treaty proceedings and the very treaties themselves, Indigenous oral histories were just as accurate and provided a point of view often overlooked. After all, treaties are agreements between two or more parties, even though the US has monopolized their interpretation and has purposefully distorted their meaning. Deloria summarized the defense’s position:

you can’t imply that the Sioux[,] in signing any treaty, ever thought that they were submitting to a process whereby they would someday be in a federal court with endless appeals leading up the United States Supreme Court. Insofar as the United States has never legally and specifically changed this understanding with *the consent* and understanding of the Sioux, and insofar as the United States cannot point to a specific treaty proceeding hearing, or other form of consent in which the Indians understand that they will now be involved in the United States Court system, we cannot say that the United States has ever legally taken jurisdiction over the Sioux Nation of Indians.<sup>57</sup>

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<sup>56</sup> Russell Means’ testimony, in *The Great Sioux Nation*, 45.

<sup>57</sup> Emphasis added. Vine Deloria, Jr., “The United States Has No Jurisdiction in Sioux Territory,” in *The Great Sioux Nation*, 146.

For the defense, the 1868 Treaty was undeniable evidence of Oceti Sakowin sovereignty and nationhood, not only because Natives said so but also because the US itself said so. Nothing could be more clear than Article 6 of the US Constitution, which unequivocally states, “all Treaties made, or which shall be made, under the Authority of the United States, shall be *the supreme Law of the Land*.”<sup>58</sup> If the US had abrogated its responsibility or changed the terms of the Treaty, Deloria reasoned, it had done so without the consent of the Oceti Sakowin which was beyond the original intent of the agreement. Treaty signing was also not an acquiescence to a superior sovereign. The US has interpreted it that way despite the mountain of evidence to the contrary. The treaty defense was a bold and controversial claim with little chance of success.

Questions of Indigenous survival were of pressing concern during the thirteen-day hearing. In December 1974 in a Lincoln, Nebraska courthouse, federal Judge Warren Urbom listened attentively to the testimony from Lakota and Dakota elders, scholars, and activists. The hearing was unique and historic. The defense’s witness list included forty-nine “expert witnesses” that included historians, anthropologists, activists, and Indigenous elders and traditionalists. The list was the who’s who of not just AIM but of the Indigenous movement and its organic and new intellectuals, including: Leonard Crow Dog, Vine Deloria, Jr., Roxanne Dunbar-Ortiz, Russell Means, Dennis Banks, Edith Bull Bear, Beatrice Medicine, Irma Bear Stops, Severt Young Bear, Alex Chasing Hawk, Evelyn Gabe, Francis He Crow, Gladys Bissonette, Robert Yellow Bird, Frank Kills Enemy, Ted Means, Nellie Red Owl, Faith Traversie, Matthew King, and many more. Breaking with tradition, if they chose so each witness swore to the truth over the Canupa,

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<sup>58</sup> Emphasis added.

a Lakota ceremonial pipe, rather than the Bible. Because the hearing didn't require a jury, Lakota and Dakota elders and traditionalists filled the empty jury box. For the first time in the US court of law, as Roxanne Dunbar-Ortiz contends, "it was the Great Sioux Nation sitting in judgment on America, not the reverse."<sup>59</sup> The issues presented — treaty rights, sovereignty, colonialism, and genocide — were matters of survival for all Indigenous peoples, not just the Oceti Sakowin.

While a sympathetic US public expressed concern for the abuse of Native peoples and the heroic patriots of Wounded Knee 1873, they tended to — and, to a large extent, still do — view Indigenous issues as just another civil rights movement. But the hearing tested simple questions of civil rights. The testimony threw into question the very legitimacy of the US's control of the continent. Framed this way the assertion of sovereignty positioned the Oceti Sakowin and, by default, all Indigenous peoples as aligned with other colonized and formerly colonized peoples the world over unjustly subjected to US and European colonialism, by proclaiming with humble truth a prior existing and separate Indigenous nationhood.

The treaty hearing was a longshot. Everyone knew it. In the end Judge Urbom ruled against the defendants' dismissal. The Oceti Sakowin, Urbom decided, "were once fully sovereign people. They are not now and have not been for a long time. Whether they ever will be again is dependent upon actions of the Congress and the President of the United States and not of the courts."<sup>60</sup> While not the desired outcome, the hearing forced Urbom to confront the inherent conservative nature of his profession, especially when it came to Indigenous peoples. US law, and the entire western legal tradition for that matter,

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<sup>59</sup> Dunbar-Ortiz, *The Great Sioux Nation*, 13.

<sup>60</sup> Judge Warren Urbom, "Excerpts from the Decision," in *The Great Sioux Nation*, 197.



is conservative and not in the binary political sense of liberal-conservative. Western court law is conservative because, in the absence of “good” legislation, it frequently draws from crude and archaic expressions of its own past to determine “justice” in the present, and therefore setting precedent for future cases. Only congressional or executive action can redirect the course of law away from its inherent conservatism, an avenue that has provided little relief for Indigenous peoples. Otherwise, as is the case for major Indian court decisions, a “bad” decision becomes doctrine. By following its own legal traditions, the arc of the Western moral universe never bends toward Indigenous justice. At best, it ignores it. At worst, it attempts to annihilate it.

To justify conquest, enslavement, and genocide, under European law, Indigenous peoples, and their dark brethren, have been categorically excluded from the realm of humanity, a principle that has been so little challenged.<sup>61</sup> For example, in his ruling *Urbom* questioned, but reaffirmed, the basis of federal Indian law as defined by Chief Justice John Marshall in the early nineteenth century, when the US was a fledgling nation. *Urbom* argued, “every lower federal court is bound” by Marshall’s assertion in the 1823 *Johnson v. McIntosh* decision. In that decision Marshall held that under US law Indigenous nations cannot be considered fully sovereign. Prior to European contact, Marshall wrote and *Urbom* cited, Indigenous peoples were “fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness.”<sup>62</sup> According to Marshall, Indigenous nations were not “civilized” and therefore not fully sovereign.

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<sup>61</sup> See Robert A. Williams, Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford University Press, 1990).

<sup>62</sup> *Urbom*, “Excerpts from the Decision,” in *The Great Sioux Nation*, 198.

And had they been left alone, they would not have achieved “civilization.” Such logic virtually mandates settler colonialism to “civilize” otherwise “fierce savages” and their “wilderness” landscape. Every court is expected to uphold this view, even if it has never been factually true, and even if in our present moment or sometime in the future the world no longer views this as historical truth. Thus, Urbom’s view was not exceptional or unsurprising to the defense. He merely kept with tradition.

All was not lost, however. The defense viewed the decision as a partial, if not a significant, victory. While he dismissed the main jurisdiction claim, Urbom agreed the 1868 Treaty was proof of an international relationship between the Oceti Sakowin and the US, a relationship no US court had the authority to resolve. “[R]elations with American Indians,” he opined, “are rooted in international relations (and would pointedly be so governed if the defendants’ position were adopted), including the laws of conquest and of treaties developed over centuries, not by courts, but by executive heads of nations through negotiations.”<sup>63</sup> To the casual observer, this may not seem important. But it was. It is why AIM members risked their lives at Wounded Knee taking up arms against the US government. It is why North America’s poorest people faced off with the greatest military power the world had ever known. In his fiery closing statement, defense attorney John Thorne compared the Oceti Sakowin’s aspiration for international recognition, as they often compared themselves, to other oppressed nations:

We have the Palestine Liberation Organization appearing before the United Nations, saying, they have right to exist. And we have Ireland where we are told it’s a battle between the Catholics and the Protestants, but that isn’t what the fight is all about... We look at South Africa with the apartheid policy it has, and we still do business there... We look here in the United States and we see organizations like the American Indian Movement and the Black Panther Party, La Raza, and the United Farm Workers. They talk about oppression, and they talk

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<sup>63</sup> Ibid.

about a better life. They move and they act. In response, we build bigger and better prisons, appoint more and more judges, more police officers, and make more arrests... I want you [Judge Urbom] to be bound by moral law.

Urbom interrupted, “Whence comes my authority? I’m serious. Whence comes my authority?” “To do what?” Thorne asked. “To do anything. I am a judge. Where did I get my authority? Whence cometh it?” Urbom shot back. “Exactly the same place that the [1868] Treaty between the United States and the Sioux Nation gained its status as a solemn agreement,” Thorne reminded the court.<sup>64</sup> But morality and legality don’t often meet in the court of law. “Feeling what was wrong does not describe what is right,” Urbom reasoned lamenting the *past* not the *ongoing* colonial reality. “Anguish about yesterday does not alone make wise answers for tomorrow.”<sup>65</sup> It was as if the Indigenous elders who had for two weeks stood before the judge sharing the stories of their lived colonial reality walked out of a history book. Nevertheless, the defendants had gotten what they came for: admission that Indigenous treaties were rooted in international law. The next step was to take the struggle to the world.

### **Likely Alliances**

Indigenous nationhood is often misunderstood as an exclusive project, the sole aspiration of just Indigenous peoples, or confined within narrow definitions of the nation-state. This is similar to how the “Indian Problem” is treated as solely an *Indian* problem. According to International Indian Treaty Council that first met at the Standing Rock Indian Reservation in 1974 and drafted the “Declaration of Continuing Independence,”

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<sup>64</sup> John Thorne, “Excerpts from the Defense Summary Argument,” in *The Great Sioux Nation*, 194.

<sup>65</sup> Urbom, “Excerpts from the Decision,” in *The Great Sioux Nation*, 197.

the problem was not Indigenous peoples. The problem was, and always has been, imperialism. The aspiration for nationhood defined within this global context gave rise to a new iteration of Indigenous internationalism that openly identified itself with the colonized world. What made it different from other Red Power movements was that it didn't align its visions of freedom with the nation-state as the horizon of struggle. It looked to the Global South, to the darker nations. The Treaty Council made common cause with Third World movements within and beyond the US to gain recognition for Indigenous peoples at the United Nation. By contrast, in response to more than a decade Red Power protests in the 1960s, in the 1970s President Nixon authorized Indian self-determination as domestic policy, ending termination and the granting of more powers to tribal councils to manage their own affairs and to increase "nation-to-nation" relations. The Treaty Council had bigger dreams.

In its early days the Treaty Council's faced several obstacles. The first was the lack of media publicity in the US. While they maintained strong connections with grassroots communities, its base, and some tribal councils, the broader public was largely unaware of their historic work. Second, according to its "Declaration," the Treaty Council was a national liberation organization that desired full representation at the UN. The Indigenous nations the Treaty Council represented, however, were not considered or recognized as independent sovereign states by the world community, a prerequisite for entry into the UN. Yet it filed for Non-Governmental Organization (NGO) status first with the UN Economic and Social Council, and gained consultative status in 1977. To some this seemed like a contradiction, the channeling of energy into an NGO, an

arguably non-revolutionary and non-sovereign entity.<sup>66</sup> A 1977 Treaty Council communiqué titled, “Decolonization, Liberation and the International Community,” explained the NGO strategy: “Decolonization, or a better term, liberation, is a slow, painstaking process. What the colonialists accomplished over the past four centuries cannot be overcome easily.”<sup>67</sup>

International recognition faced two problems on this front. First, the US simply could not tolerate Indigenous rights, let alone sovereign Indigenous nations, and it did everything in its power to thwart the Treaty Council’s efforts. Second, the very internal mechanisms of the UN prevented a full delivery of Indigenous sovereignty on par with states. Only by winning over world opinion and gaining important allies could international recognition be won. The formal process of decolonization, outlined in UN decolonization charters, didn’t account for nor recognize Indigenous peoples as potential nations. Typically, colonized nations gained their independence through combined means: armed struggle and international work. After Wounded Knee, AIM had largely eschewed violence and chose instead to work solely within the realm of international legal frameworks. At first those frameworks proved inadequate. Allies had to be sought and maintained.

Immediately following the 1974 Treaty Council meeting, two offices were set up — one in San Francisco and one across the street from the UN in New York City. The slow process of gaining international recognition began. A Treaty Council delegation

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<sup>66</sup> See Alyosha Goldstein, “Thresholds of Opposition: Liberty, Liberation, and the Horizon of Incrimination,” in *Poverty in Common: The Politics of Communal Action During the American Century* (Durham: Duke University Press, 2012), 199-243.

<sup>67</sup> International Indian Treaty Council, “Decolonization, Liberation and the International Community,” *Treaty Council News* (December 1977), 3, Finzel Papers, Box 4.

attended the First International Congress on the Independence for Puerto Rico in Havana, Cuba, at the invitation of the Cuban government. There the Treaty Council was recognized with 76 other nations and 14 liberation movements from around the world. Close collaboration with Third World independence movements and socialist countries began. Soon Treaty Council delegations visited countries socialist countries in the Eastern Bloc and countries of the Global South in North Africa, South America, and the Middle East to garner support. At their second gathering in the Yankton reservation in June 1976, the Treaty Council drafted a “Red Paper” condemning the US for ongoing practices of genocide and imperialist intervention across the globe. International delegations were directed to make friendly relations with other countries and to ask them to recognize the 1868 Fort Laramie.<sup>68</sup>

The delegations were well-received by their hosts, especially in the Soviet Union and Eastern Bloc countries, who were eager to not only support Indigenous causes but to also point out the hypocrisy of US “humanitarian” intervention throughout the world while it denied freedom to its own people. During a 1977 visit to the Soviet Union, Kazakhstan, Mongolia, and West Germany, Treaty Council representatives — Allene Goddard, Bill Means, Greg Zephier, and Bill Wapepah — met with Iraqi, Algerian, and Namibian delegations. Wapepah summed up the meetings, “I think because we got to know our brothers from the south better on these tours, we understand more than before that we are one people.”<sup>69</sup> Another youth delegation by Sherry Means, the fifteen-year-old daughter of Russell Means, compared her experiences to those of the US, “these

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<sup>68</sup> International Indian Treaty Council, “Red Paper,” Finzel Papers, Box 2, Folder 21.

<sup>69</sup> “Indian Delegation Visits Soviet Union,” *Treaty Council News* (November 1977), 3, Finzel Papers, Box 4.

countries believe strongly in human rights.”<sup>70</sup> During the tours, many of the delegations the Treaty Council encountered were simply shocked that Indians had survived the US genocide. Many had a better grasp on US history than most US citizens. More importantly, where Indigenous peoples found a hostile audience in North America about their issues, they found a welcoming audience abroad, especially with other colonized peoples.

The delegations were frequent but not superficial. The relationships were lasting. For example, in 1979 when the Iranian Revolution broke out, revolutionary students took hostage fifty-two US diplomats and citizens at the US embassy. The hostages were held for 444 days. Nearly forgotten, however, is the Treaty Council’s role in helping to peacefully end the situation and the mail exchange program they ran for the hostages. In his autobiography, Russell Means recounts the situation,

Because of our [1977] Geneva conference and our friendly ties to the Palestine Liberation Organization, AIM had some credibility in that part of the world. Like the PLO, we are vitally interested in the regaining of our country and sovereignty. John Thomas, known as John T., a witty, lovable guy who gets along with everybody, served as our roving ambassador, visiting Lebanon, Iran, and Egypt. When the Revolutionary Guards took as hostages everyone in the U.S. embassy in Tehran, we sent John T. there to see what he could do. We didn’t trust the phones — I’m sure the CIA and the Iranians listened to every call — so he flew back to New York to confer with Bill [Means] and me. “They’ll allow the hostages to send letters and packages home through us,” he said. “But we must deliver each one ourselves — we can’t just drop them in a mailbox.”<sup>71</sup>

For their efforts Bill Means, John Thomas, and the Treaty Council received a formal “thank you” from the UN Secretary-General for the mail exchange that helped “the

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<sup>70</sup> Sherry Means, “These Countries Believe Strongly in Human Rights,” *Treaty Council News* (November 1977), 4.

<sup>71</sup> Russell Means with Marvin J. Wolf, *Where White Men Fear to Tread: The Autobiography of Russell Means* (New York: St. Martin’s, 1995), 399.

negotiation of a peaceful settlement.”<sup>72</sup> The Treaty Council’s central role in the mail exchange didn’t receive any publicity in the US.

By this time the Treaty Council regularly visited and held council with various national liberation organizations, frequently sending delegations abroad. Likewise, delegations were often guests of Indigenous nations in the US. Palestinian and Indigenous solidarity was particularly strong and visible. Both Palestinians and American Indians were unrecognized nations, stateless peoples, fighting settler colonial regimes. At nearly every major Treaty Council event there were Palestinians. But it wasn’t just political meetings that Palestinians attended. Elizabeth Cook-Lynn recalls attending powwows in the 1970s and 1980s where Palestinians would sometimes run military drills alongside AIM leaders throughout the day. “Groups of thirty, forty, fifty Palestinians with their guns, with their uniforms, came after the prayers in the morning, after and before the grand entry, and when people could go to breakfast and getting organized, the Palestinians were out on that tarmac doing military maneuvers,” she recalls. “They were invited there by our tribes. There was not much discussion of it anywhere. It didn’t appear in the newspapers... AIM didn’t even talk about it.”<sup>73</sup>

While American Indians sometimes referred themselves as the Palestinians of North America, who were invaded and being replaced by foreign occupying power, not all Palestinians saw themselves as American Indians. To some, American Indians were a *fait accompli* — a lesson to Palestinians that they could end up stateless, unrecognized, in exile, or permanently placed on reservations if they did not resist invasion. In the 1980s

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<sup>72</sup> “Final Notes on the Treaty Council’s Participation in the Hostage Mail Exchange,” *Oyate Wicaho* (February-March 1981), 7, Finzel Papers, Box 4.

<sup>73</sup> Quote from Elizabeth Cook-Lynn, “‘There Are No Two Sides to This Story,’” 42.



Yasser Arafat, the chairman of the Palestine Liberation Organization, was asked how he felt about the comparison of Palestinians to American Indians. He answered, “this is one part of our struggle — to ensure that we do not suffer the same fate of the American Indians at the hands of the Yankees.”<sup>74</sup> The tension was not so much that Indigenous struggles were beneath Palestinians. Palestine and Turtle Island (what most Native people call North America) have different historical contexts and different stages of settler colonialism. From 1516 to 1918, Palestine was part of the Ottoman Empire. In 1920 it was placed under British authority as part of the League of Nations mandate system that allowed primarily European states to administer overseas territory. In 1948 Israel became a “Jewish homeland.” The expulsion of more than 700,000 Palestinians (around 85 percent of the Arab population) from their homes became known as the Nakba, the “catastrophe.” Israel soon attacked surrounding Arab states, leading to three major wars in 1956, 1967, and 1973, which led to Israel occupying eastern Jerusalem, the West Bank, the Gaza Strip, and the Golan Heights. In other words, Palestinians were still engaged in direct combat with Israeli settlers at this time, much in the same way the Ojibwe had been repelling settler invasion a century earlier. Nevertheless, each occupation was about the land, and today there are around 6 million Palestinian refugees who do not have the right of return to their homelands.

Palestine, with a landmass the size of New Jersey, a territory smaller than some Indian reservations, was like a microcosm of nineteenth century settler colonialism in North America. So, in many ways Arafat was correct: Indigenous peoples of North America were the evidence of the advance stages of settler colonialism, making up less

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<sup>74</sup> Yasser Arafat, “A Discussion with Yasser Arafat,” *Journal of Palestine Studies* 11, no. 2 (1982): 14.

than one percent of the total population and possessing less than three percent of their original land. Yet Palestinians had something American Indians didn't have in the nineteenth century. They had access to the UN, an international body founded in 1945 partly to end colonialism where they could attempt to change world opinion. Indigenous peoples didn't have an international institution to bring their grievances at the height of physical elimination and removal. They couldn't even enlist the aid of the citizens of the US, who were benefitting and actively participating their elimination.

This close affinity of the Indigenous movement with the Palestine has not always been seamless among Indigenous activists. A common trope used to explain the existence of Indigenous peoples in the Americas, since the Bible made no mention of them, was that they were a lost tribe of Israel. Many Indigenous peoples, having been indoctrinated into Christianity, accepted as a matter of biblical doctrine the legitimacy of the state of Israel as a "Jewish homeland" much in the same manner the US has commonly called itself a "Christian nation." Vine Deloria, Jr., stands out during this time as promoting this view of Zionism, an ideology on par with Manifest Destiny that believed in the re-establishment and the protection of a Jewish nation, Israel. Deloria, a powerhouse of American Indian studies and law, wrote a book in 1974 called *Behind the Trail of Broken Treaties*, where he predicted the rise of the international Indigenous movement. His basic argument is that full Indigenous sovereignty and autonomy wouldn't radically threaten the political and territorial sovereignty of the US. Deloria cites Israel and Zionism as the prime example for the "dramatic vindication of the validity of traditional, historical claims to specific territory as the sovereign heritage of a particular people. Israel's victory is a great tribute to the strength of a culture and the tenacity of a people in pursuit of a

homeland.” Moreover, he writes, “If the U.S. is capable of recognizing Jewish rights to sovereign land in Israel, it must be capable of acknowledging a similar right for American Indians in the U.S.”<sup>75</sup> The opposite was true, however. Palestinian American scholar Steven Salaita argues that the Israeli Zionist project was not so much a departure from the US project of Manifest Destiny than an extension of it. Both were different versions of what he calls a “holy land in transit,” using biblical references to map the “old world” Europe onto the “new world” of Turtle Island and Palestine, erasing the histories and presence of native peoples.<sup>76</sup>

Israel may have been seemingly sympathetic to Indigenous causes, but, like the US at this time, it had sided with the white supremacist South African apartheid regime when the rest of the world morally condemned it. Israel had also adopted similar US settler colonial tactics to expel, remove, contain, and ultimately eliminate Palestinians. More importantly, the US has politically, economically, and culturally backed the Israeli occupation of Palestine, effectively making the colonization project an extension of US domestic and foreign policy and intervention in the Middle East. To confront Israeli settler colonialism is to confront US settler colonialism, and vice versa. This is not because activists say so, but because these two colonial states have tied their destinies to each other, making them part and parcel to a similar settler project. Treaty Council activists and those in the Palestinian movement knew the full realization of American Indian and Palestinian self-determination in the US threatens the legitimacy of

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<sup>75</sup> Vine Deloria, Jr., *Behind the Trail of Broken Treaties: An Indian Declaration of Independence* (Austin: University of Texas Press, 2000), 183, 185.

<sup>76</sup> See Steven Salaita, *The Holy Land in Transit: Colonialism and the Quest for Canaan* (Syracuse: Syracuse University Press, 2006).

occupation and the theft of lands in Turtle Island and in Palestine. Therefore, each struggle was bound to the other.

This view wasn't unique to American Indians, but also other colonized peoples. Historian Alex Lubin calls, this imagining of interlinked struggles as “geographies of liberation,” such as the Black Panther Party's concept of intercommunalism. Intercommunalism, much like Indigenous internationalism, directed struggle away from seeking equality within the nation-state to one that embraced anti-imperialism and decolonization. Furthermore, as exiles, whether African Americans or American Indians in the US or Palestinians in Palestine or as refugees abroad, Lubin argues, these disparate struggles reimagined a world not as it was, according class, race, national, and colonial hierarchies, but as it ought to be — free from oppressive institutions across different geographies or wherever they may arise.<sup>77</sup> In its publication *Oyate Wicaho*, or Voice of the People, Dakota AIM often published interviews, short stories, poetry, and reports from Palestinians resisting Israeli occupation, and even referred to Palestinians as “relatives.” Indigenous internationalism, as Means spelled out in his 1974 speech at the first Treaty Council meeting, was bound to the struggles of those fighting for the emancipation of their lands. Indigenous relationality, in this way, was a form of internationalism that moved beyond the framework of the nation-state and wasn't just about relationships with nonhumans and other Indigenous peoples. Above all, it was about relationships with other colonized peoples fighting for the land, the earth. It was also the alliance with the Global South and national liberation organizations — each in their own way relatives to the Indigenous cause — such as those in Northern Ireland, the

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<sup>77</sup> Alex Lubin, *Geographies of Liberation: The Making of the Afro-Arab Political Imaginary* (Chapel Hill: University of North Carolina Press, 2014), 7-9.

Middle East, and South Africa, that proved the most useful to the Treaty Council. When the world turned its back on AIM after Wounded Knee, the world's colonized reached out and helped launch Indigenous peoples' rights to the international level. We should remember these likely alliances for all their successes and flaws. Although historic, the US and western media, in general, largely ignored them.

In fact, one of the major challenges the Treaty Council faced at home, besides the FBI's ongoing dirty war, was the media blackout. Even sympathetic journalists, such as Jack Anderson, who had covered the rise of AIM, by this point had denounced AIM specifically for its international work. On the September 17, 1976 broadcast of *ABC's Good Morning America*, told his audience:

[A]s a friend to the American Indian Movement it's my unpleasant duty report on some unpublished documents and sworn testimony that's reached my office. These documents contain proof that leaders of the American Indian Movement have been in touch with world terrorists. They've had dealings with the Palestine Liberation Organization, the Irish Republican Army, the Cuban Communists[,] and various other Trotskyites, militants[,] and crazies.<sup>78</sup>

His description of AIM's new international direction wasn't exactly off-the-mark, but it did point to the limits of tolerance liberal pundits were willing to grant "their Indians." By this point, AIM itself had been treated and labeled as a "terrorist" organization. The very notion that the Treaty Council met with Third World and socialist regimes offended even some of their Indigenous and non-Indigenous allies, especially in the UN work. Pragmatically and ideologically, the alliance made sense. The Treaty Council's politics aligned geographically south and politically to the left with the majority of the world, whereas others looked to ally themselves with the North Atlantic powers, the "old

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<sup>78</sup> Jack Anderson, Transcript of the "Jack Anderson Report," *ABC Good Morning America*, September 17, 1976, Finzel Papers, Box 1, Folder 14.

empires,” where a minority ruled the world. Part of this criticism also centered on funding. The Treaty Council depended mostly on donations from church groups and had eschewed any funding from any government. The goal was the Treaty Council would only be beholden to the grassroots people and not its financial backers, whether a private donor or a government. The independence from these institutions allowed Indigenous peoples to decide for themselves who they were and what they wanted to be. The Treaty Council faced another yet another challenge: there were no working appropriate definitions of Indigenous peoples under international law.

Until then, the UN categorized Indigenous peoples as internal “populations.” At the urging of Indigenous activists, “indigenous peoples” was included as a category in the UN Decade to Combat Racism, Racial Discrimination, and Apartheid which began in 1974. While also including Indigenous peoples, the Decade also called South African apartheid and Israeli Zionism as forms of racism.<sup>79</sup> US presidents from Jimmy Carter to George W. Bush boycotted the UN programs on racism, most likely over the questions of apartheid South Africa and Palestine. This boycott extended to the two UN decades to combat racism and apartheid from 1974-1993. Nevertheless, the connections between the South African anti-apartheid movement, Palestinian rights, and Indigenous rights cannot be ignored or dismissed. Without this solidarity, Indigenous peoples would not have made such historic gains such as international recognition.

The crucial event, however, was the 1977 International Non-Governmental Organizations Conference on Indians of the Americas at the UN headquarters in Geneva, Switzerland September 20-23. The Treaty Council initiated the conference and the NGO

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<sup>79</sup> Dunbar-Ortiz, “How Indigenous Peoples Wound Up at the United Nations,” 123, 132n14. As part of the 1993 Oslo Accords, Zionism was unclassified as a form of racism.

Sub-Committee on Racism, Racial Discrimination, Apartheid, and Colonialism organized it. At the invitation of the Treaty Council, more than one hundred Indigenous representatives from across the hemisphere attended. Indigenous delegates came from Argentina, Bolivia, Canada, Chile, Costa Rica, Guatemala, Ecuador, Mexico, Panama, Paraguay, Peru, Surinam, Venezuela, and the US. In addition to these countries, in attendance were representatives from Australia, Columbia, Cuba, Czechoslovakia, Denmark, France, the German Democratic Republic, Hungary, Iraq, Italy, Israel, Jamaica, Mauritania, Morocco, Mongolia, the Netherlands, Norway, Syria, and Yemen. Notable NGOs, professional bodies, associations, and international organizations included Amnesty International, the World Alliance of YMCAs, the International Organization of Journalists, the Union of Arab Jurists, the International Council of Women, the Muslim World League, the National Indian Brotherhood, the Palestine Liberation Organization, and many more.<sup>80</sup>

The conference was a monumental achievement and was covered widely by the international press — unsurprisingly, the US press boycotted the entire affair. Geneva and the UN had not seen anything like it before, and probably ever since. To start the conference, en masse the Indigenous delegations marched to through Geneva. Russell Means describes the historic scene:

We started [marching] from across town, our elders leading the way — Phillip [Deere] carrying the pipe, Leon and Audrey Shenandoah from the Six Nations, David Monogye, a Hopi who had seen more than one hundred winters, and several elders from South and Central America. Right behind them came the drum. We sang the AIM song. As they always did, Indian people flocked to it, filled with pride and spirituality, infused with courage and the feeling of sovereignty, 120 marchers representing the aspirations of a hundred million oppressed but resolute souls... UN security people opened the double doors, and

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<sup>80</sup> See International Indian Treaty Council, *The Geneva Conference: International NGO Conference on Discrimination Against Indigenous Peoples*.

we marched up the stairs with the drum, singing all the way to a second-floor conference room where world leaders have met for more than a century.

Having achieved consultative status, the Treaty Council had brought Indigenous peoples to the UN as it promised. In all-night sessions, the Indigenous leaders hammered out a collective document, called the “Draft Declaration of Principles for the Defense of the Indigenous Nations and Peoples of the Western Hemisphere.” It contained thirteen principles, explicit statements on Indigenous rights worth quoting in their entirety:

1. *Recognition of Indigenous Nations*: Indigenous people shall be accorded recognition as nations, and proper subjects of international law, provided the people concerned desire to be recognized as a nation and meet the fundamental requirement of nationhood, namely: (a) having a permanent population; (b) having a defined territory; (c) having a government; (d) having the ability to enter into relations with other states.
2. *Subjects of International Law*: Indigenous groups not meeting the requirements of nationhood are hereby declared to be subjects of international law and are entitled to the protection of this Declaration, provided they are identifiable groups having bonds of language, heritage, tradition, or common identity.
3. *Guarantee of Rights*: No indigenous nation or group shall be deemed to have fewer rights or lesser status for the sole reason that the nation or group has not entered into recorded treaties or agreements with any state.
4. *Accordance of Independence*: Indigenous nations or groups shall be accorded such a degree of independence as they may desire in accordance with international law.
5. *Treaties and Agreements*: Treaties and other agreements entered into by indigenous nations or groups with other states, whether denominated as treaties or otherwise, shall be recognized and applied in the same manner and according to the same international laws and principles as the treaties and agreements entered into by other states.
6. *Abrogation of Treaties and Other Rights*: Treaties and agreements made with indigenous nations or groups shall not be subject to unilateral abrogation. In no event may the municipal laws of any state serve as a defense to the failure to adhere to and perform the terms of treaties and agreements made with indigenous nations or groups. Nor shall any state refuse to recognize and adhere to treaties or other agreements due to changed circumstances where the change in circumstance has been substantially caused by the state asserting that such change has occurred.
7. *Jurisdiction*: No state shall assert or claim to exercise any right of jurisdiction over any indigenous nation or group or the territory of such indigenous nation or group unless pursuant to a valid treaty or other agreement freely made with



the lawful representatives of the indigenous nation or group concerned. All actions on the part of any state which derogate from the indigenous nations' or groups' right to exercise self-determination shall be the proper concern of existing international bodies.

8. *Claims to Territory*: No state shall claim or retain, by right of discovery or otherwise, the territories of an indigenous nation or group, except such lands as may have been lawfully acquired by valid treaty or other cessation freely made.
9. *Settlement of Disputes*: All states in the Western Hemisphere shall establish through negotiations or other appropriate means a procedure for the binding settlement of disputes, claims, or other matters relating to indigenous nations or groups. Such procedures shall be mutually acceptable to the parties, fundamentally fair, and consistent with international law. All procedures presently in existence which do not have the endorsement of the indigenous nations or groups concerned, shall be ended, and new procedures shall be instituted consistent with this Declaration.
10. *National and Cultural Integrity*: It shall be unlawful for any state to take or permit any action or course of conduct with respect to an indigenous nation or group or otherwise threaten the national or cultural integrity of such nation or group, including, but not limited to, the imposition and support of illegitimate governments and the introduction of non-indigenous religions to indigenous peoples by non-indigenous missionaries.
11. *Environmental Protection*: It shall be unlawful for any state to make or permit any action or course of conduct with respect to the territories of an indigenous nation or group which will directly or indirectly result in the destruction or deterioration of an indigenous nation or group through the effects of pollution of earth, air, water, or which in any way depletes, displaces or destroys any natural resource or other resources under the dominion of, or vital to the livelihood of an indigenous nation or group.
12. *Indigenous Membership*: No state, through legislation, regulation, or other means, shall take actions that interfere with the sovereign power of an indigenous nation or group to determine its own membership.
13. *Conclusion*: All the rights and obligations declared herein shall be in addition to all rights and obligations existing under international law.<sup>81</sup>

The points raised in the Draft Declaration built upon the Twenty Points of the 1972 Trail of Broken Treaties. The Indigenous movement came full circle once again. Roxanne Dunbar-Ortiz argues that the Draft Declaration may be “the fundamental political document of the international Indigenous movement.”<sup>82</sup> But it wouldn't be until

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<sup>81</sup> International Indian Treaty Council, *The Geneva Conference: International NGO Conference on Discrimination Against Indigenous Peoples*, 25-6.

<sup>82</sup> Dunbar-Ortiz, “How Indigenous Peoples Wound Up at the United Nations,” 126.

exactly four decades later in 2007 that the UN adopted the Declaration on the Rights of Indigenous Peoples. Four member states of the UN assembly voted against the 2007 Declaration — all of them Anglo-settler states, the US, Canada, New Zealand, and Australia, with Israel abstaining.<sup>83</sup>

### **A Sorry State**

At the heart of the twentieth century international Indigenous movement — from the Society of American Indians to the Treaty Council — was the 1868 Fort Laramie Treaty. It was the working document in 1977 and for many studies. In 1987, as a mandate by the UN human rights framework, Cuban special rapporteur Miguel Alfonso Martinez led a ten-year investigation into the status of the treaties and agreements. He concluded, colonial powers such as the US, by virtue of treaties such as the 1868 Treaty, have unjustly claimed authority over Indigenous nations and lands. Martinez calls this the “domestication” process, whereby Indigenous nations were “removed from the sphere of international law and placed squarely under the exclusive competence and internal jurisdiction” settler states.<sup>84</sup> In spite of continued US aggression towards Indigenous nations, Martinez argues that treaty rights have ongoing effective status under both domestic and international law. Some legal decisions have even come down on the side of the Oceti Sakowin.

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<sup>83</sup> All of these nations have since reversed their opposition by qualifying their decisions to uphold the Declaration as simply a non-binding declaration.

<sup>84</sup> United Nations Commission on Human Rights, *Study on Treaties, Agreements and Other Constructive Arrangements Bet ween States and Indigenous Populations*, final report by Miguel Alfonso Martinez, Special Rapporteur, Working Group on Indigenous Peoples (July 1997), 24.

In 1980, the US Supreme Court confirmed the Oceti Sakowin's claim that the Black Hills had indeed been stolen. "A more ripe and rank case of dishonorable dealing will never, in all probability, be found in our history," the court opined.<sup>85</sup> As a result, the court awarded a \$106 million settlement to which the Oceti Sakowin nearly unanimously responded: "The Black Hills are not for sale!" In the spirit of Standing Rock and the Treaty Council's original 1974 contention, a monetary settlement is out of the question. A full restoration of the illegally taken lands is the only just solution, many Indigenous peoples argue. The question of restoration gets to the heart of the matter and reveals deep-seated prejudices still levied at Indigenous peoples in their own homelands. It's not about reparations, apologies, or reconciliation. Yet, many cannot imagine the return of lands or, for that matter, future peaceful coexistence of more than 500 distinct Indigenous nations. While many will agree that colonialism is bad, they cannot imagine a future without it.

For example, in a 1999 civil rights commission hearing in Rapid City, South Dakota, renowned Lakota environmentalist Charmaine White Face testified:

In 1980, when the U.S. Supreme Court verified what the Lakota people have been saying for more than a century, that the 1868 Treaty was violated, many non-Indian people of [South Dakota] became afraid of losing their homes, businesses, and livelihoods. Are they remembering the fashion in which many of their ancestors forced the loss of the homes and livelihoods of Lakota people and think the same will happen to them, or are they afraid that the federal government will turn on them also as it has turned on Lakota people?<sup>86</sup>

Implied in White Face's testimony is an implicit admission from non-Natives that indeed this land was stolen by force and coercion. This also implies a limit to Native justice.

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<sup>85</sup> *United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980).

<sup>86</sup> Quote from US Commission on Civil Rights, South Dakota Advisory Committee, *Native Americans and the Administration of Justice in South Dakota*, Transcript of a Community Forum Held December 6, 1999, 86-7.

There can be an admission of wrongdoing, but there can never be a reordering of the world or the redistribution of material wealth such as land back to its rightful owners. It is believed that somehow Indigenous peoples will do to settlers what they did to them. But the opposite is true. The examples of the Black Hills Alliance in the previous chapter demonstrates that when Indigenous and poor settlers organize around treaty rights, they can beat multinational energy corporations and take control of their lives. The same happened during the 2013 protests to stop the Keystone XL pipeline and the efforts at Standing Rock to defeat the Dakota Access pipeline. Although both projects are still on the table, they have been significantly thwarted by a diversity of forces from environmentalist groups, to farmers and ranchers, to labor unions, etc. — what Zoltán Grossman calls “unlikely alliances.”<sup>87</sup>

Walter Echo-Hawk sees contemporary Native Nations as “simply coasting under the Indian Self-Determination Policy initiated by President Nixon in 1970” and that they have inadequately addressed “indigenous conditions, problems, or rights in over thirty-five years.”<sup>88</sup> Although this may be the case, the much lauded accomplishment of the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is testament to Indigenous internationalism’s commitment to seeking self-determination beyond nation-state solutions. Even though the US, Canada, New Zealand, and Australia voted against UNDRIP’s passage, all three states have reversed their decisions. In fact, many of these countries did so because of the “non-binding” aspect of UN declarations. More troubling, however, was what accompanied the US’s 2010 decision to reverse its

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<sup>87</sup> Zoltan Grossman, *Unlikely Alliances: Native Nations and White Communities Join to Defend Rural Lands* (Seattle: University of Washington Press, 2017).

<sup>88</sup> Walter Echo-Hawk, *In the Light of Justice: The Rise Human Rights in Native American and the UN Declaration on the Rights of Indigenous Peoples* (Golden, CO: Fulcrum, 2013), 16.

vote against UNDRIP — an official apology resolution as part of the 2010 Defense Appropriations Bill.

In 2009, Congress approved the largest and most expansive defense appropriations bill in world history. Defense expenditures totaled \$683.7 billion for fiscal year 2010. This exorbitant sum has served as a benchmark that continues to justify the US-led “war on terror,” which extends covert military actions abroad and increased national security and surveillance programs. As part of the larger 2010 National Defense Authorization Act, Public Law 111-118 also created the 2010 Department of Defense Appropriations Act. Buried deeply within this 161 page tome, Sec . 8113(a) quietly announced an official “Apology to Native Peoples of the United States.”<sup>89</sup>

Uncharacteristic of previous “official apologies,” no separate bill committed sole attention nor pomp and circumstance to its official “deep regret” or “apology” to Native people. Instead, President Obama signed into law what remains “the world’s quietest apology.”<sup>90</sup> More importantly, the Apology stipulated that “Nothing in this section (1) authorizes or supports any claim against the United States; or (2) serves as a settlement of any claim against the United States.”<sup>91</sup> Within the same bill, the US committed hundreds of billions of dollars to expanding its military operations across the globe while committing nothing but a non-binding apology to the very people who had been that military’s first victims. Billions of dollars could be spent policing the world, but nothing would go towards upholding the original treaties, the original promises, made with North America’s first nations.

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<sup>89</sup> Department of Defense Appropriations Act of 2010, Title VIII, Sec. 8113, 45-47.

<sup>90</sup> Echo-Hawk, 276.

<sup>91</sup> Department of Defense Appropriations Act of 2010, 45-46.

In a 2012 report, *The Situation of Indigenous Peoples in the United States of America*, UN special rapporteur on Indigenous People, James Anaya, discusses the general lack of awareness about the 2010 Apology resolution. Moreover, Anaya examines the lack of concrete action on outstanding Indigenous land claims and devastating social realities — such as poverty, domestic and family violence, violence against Indigenous women, unemployment, youth suicide, lack of access to appropriate education, lack of adequate healthcare, etc. Chief among the Oceti Sakowin’s claims, and other Indigenous nations, however, still remains the Black Hills claim and the 1868 Fort Laramie Treaty as the “emblematic” and “visible reminder of their loss.”<sup>92</sup> But the continued theft and unlawful occupation of Indigenous land is not just a US problem, it’s a global problem.

The taking of Indigenous lands and the subduing of Indigenous nations is not separate from global imperialism but rather essential to it. The all-too-common reading of Indigenous history as a branch of US history fundamentally ignores this process. US history is a branch that grows from the tree of Indigenous history, not the other way around. US history is the covetous branch that thinks it’s the tree. To say otherwise is to make it appear as if US settler colonialism and the genocide and the conquest of Indigenous peoples was inevitable, if not necessary, to eventually incorporate them and their prior histories and political formations within the nation-state. This approach takes the US nation-state as given, as if it has always existed with its current borders and notions of belonging throughout time. Ignored are the processes by which the US rapidly

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<sup>92</sup> United Nations Human Rights Council, *The Situation of Indigenous Peoples in the United States of America*, submitted by S. James Anaya, Special Rapporteur, United Nations General Assembly, 21st Session, No. A/HRC/21/47/Add. 1 (August, 2012). 11.

expanded its territory from its fledgling thirteen colonies hugging the eastern seaboard to the violent annexation of nearly two billion acres of Indigenous territory and hundreds of Indigenous nations in less than a century.

Quietly, and often behind the scenes, the international Indigenous movement plots along today. Past generations have thoroughly exposed the limitations of state-centered solutions. Not only has the US failed to live up to original agreements with the original peoples, it has used the resources and wealth it has stolen from the land to carry out endless war-making across the world. The Indian wars have never truly ended. The Treaty Council saw its sacred duty as ending imperialism abroad by ending it at home. Therefore, anti-imperialism has become a signature characteristic of traditions of Indigenous resistance.

## Chapter Seven: Liberation

This is the epitome of Indian Country — what it’s like to be here. We’re in a modern day Indian War.

— Allison Renvill (Dakota) 2017<sup>1</sup>

Carloads trickled into the #NoDAPL camps to celebrate the Thanksgiving weekend in late November 2016, during the annual US holiday that commemorates a fictional feast between settlers and Natives. The camps swelled beyond ten thousand, marking a highpoint. Because of weather conditions, many of the caravans were stranded in backwater places like Wyoming and missed the large feasts, what was billed as an “anti-Thanksgiving.”

The harsh freeze of snow and ice reflected conditions in the camps. Things were at a standstill, and law enforcement, encircling the camp, was in a holding pattern. Because of the violent police crackdown on protests such as the infamous October 27 raid on 1851 Treaty Camp a month earlier, a hiatus was placed on direct actions. The competing visions of resistance — whether to continue direct actions or await legal recourse — incited tensions and cleaved divisions within the leadership of the #NoDAPL movement. TigerSwan, a private security contractor hired by the Dakota Access Pipeline (DAPL) to assist North Dakota law enforcement, exploited the divisions and fueled the growing sense of paranoia and suspicion that festers when people are under militarized occupation. The security company led a blitzkrieg media campaign planting rumors and false reports on social media about the Water Protectors, comparing them to jihadist

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<sup>1</sup> Quoted in Alleen Brown, Will Parrish, Alice Speri, “The Battle of Treaty Camp,” October 27, 2017, <https://theintercept.com/2017/10/27/law-enforcement-descended-on-standing-rock-a-year-ago-and-changed-the-dapl-fight-forever/>



insurgents, and infiltrating the camps to discredit individuals and organizations, tactics eerily reminiscent of the COINTELPRO programs of previous generations. In documents released by *The Intercept*, TigerSwan characterized the #NoDAPL movement as “an ideologically driven insurgency with a strong religious component.”<sup>2</sup> Now completely contained by miles of concertina wire, road blocks, heavily armed private security and law enforcement, and 24-hour aerial surveillance, prospects of physically halting the pipeline construction seemed grim as DAPL awaited the final easement to begin drilling under the Missouri River.

The day after Thanksgiving, a warm sun melted the snow, and the roads opened up. In Bismarck, North Dakota, holiday shoppers flooded the Kirkwood Mall for Black Friday, an annual consumer holiday. Bismarck police guarded the mall’s entrances, clad in full tactical gear and carrying AR-15s. They were dressed for war. The mostly white shoppers seemed at ease, eager to cash-in on holiday discounts and even more eager to forget their sense of ease came at the expense of Indigenous peoples. At the protest of white citizens in 2014, DAPL was rerouted from its original course upriver from Bismarck over fears of water contamination. The downriver Standing Rock Sioux Tribe would have deal with the consequences white North Dakotans knew were real and refused to face.<sup>3</sup> That Black Friday, hundreds of militarized police, spanning the length of nearly seventy miles between the camps and Bismarck, were on high alert to protect the

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<sup>2</sup> Allen Brown, Will Parrish, and Alice Speri, “Leaked Documents Reveal Counterterrorism Tactics used at Standing Rock to ‘Defeat Pipeline Insurgencies,” *The Intercept*, May 27, 2017, <https://theintercept.com/2017/05/27/leaked-documents-reveal-security-firms-counterterrorism-tactics-at-standing-rock-to-defeat-pipeline-insurgencies/>.

<sup>3</sup> U.S. Army Corps of Engineers, ‘Frequently Asked Questions DAPL’, *U.S. Army Corps of Engineers*, Omaha District, <http://www.nwo.usace.army.mil/Media/Fact-Sheets/Fact-Sheet-Article-View/Article/749823/frequently-asked-questions-dapl/>; David Archambault II, ‘Taking a Stand at Standing Rock’, *The New York Times*, August 24, 2016, <http://www.nytimes.com/2016/08/25/opinion/taking-a-stand-at-standing-rock.html>.

sanctity of Bismarck and the pipeline that trespassed through unceded Oceti Sakowin treaty territory. Hundreds of Water Protectors planned a rogue action, a prayer circle in the middle of the mall, to disrupt the shopping holiday and to bring attention to the yet incomplete pipeline construction. It seemed like a desperate act. In disguise and under heavy surveillance, they slipped past the roadside security checkpoints and infiltrated the mall. At this point, more than six hundred had already been arrested in protest-related actions; many were arrested multiple times; and some faced serious felony charges. The dangers were real.

Water Protectors, disguised in “normal” attire, different from the signature camp gear of Carhartt overalls and hoodies, bandanas, and a patchwork of camouflage shirts, pants, and jackets, began filtering through the entrances avoiding proximity to the armed guards. While their dress disguised their identities, police began arresting anyone who “smelled like campfire.” Surrounded by white families, the cops couldn’t barrage Water Protectors with their chemical irritants, the familiar tear gas and pepper spray. Prayer songs drowned out the screams and cries of white women and children who looked confused: should they be scared of the Water Protectors or the police? Cops violently tackled, beat, and arrested more than fifty Water Protectors, dragging one woman by her hair and tackling a man on crutches. Insults and calls to “go back to the reservation!” were hurled by white men who joined the police in holding and beating anyone who smelled like campfire. When not in camp, the smell of campfire was a dead giveaway of one’s political orientation and was cause to profile, harass, and refuse service to those “off the reservation.”

While horrific and indicative of the levels of violence and discrimination imposed on Water Protectors, the smell of campfire was also one of familiarity, comfort, and revolution. Each morning, a low cloud of blue smoke hovered above the hundreds of tipis and tents. It was a protective barrier that demarcated the liberated treaty territory on land claimed by the Army Corps of Engineers, after it was seized to be flooded by the Pick-Sloan Dams in the 1950s and 1960s. The stories and the prophetic visions of a better world that were told around campfires during the twilight hours mixed with the smoke saturating layers of clothes, skin, and hair. It takes many washes to remove the smell of history that permeates every crevasse of clothing and body part. Mixed in with the smoke are also layers of teargas and pepper spray, the choking chemicals of warfare literally designed to arrest the sense of smell and breath. A single chemical attack dulls the sense of smell for days, sometimes weeks. It has a disorienting effect that can build up over time if not properly treated or washed out.

In the aftermath the October 27 raid on the 1851 Treaty Camp, another smell permeated the camps. Police and private security heaped the camp's remnants — ceremonial items, such as eagle feathers, pipes, medicine bundles, and staffs, and cutup tents, sleeping bags, clothing, and tipis — into a large pile that was dumped near the entrance of Oceti Sakowin Camp. The pile reeked a nauseating urine smell that wafted over the camp. Cops and private security pissed on the items before returning them.

One night, after it was decided to ceremonially burn the urine-soaked remnants, an Ihanktonwan elder gathered young Water Protectors around a fire. She was dressed in the regalia she wore the day police raided the treaty camp. Hundreds of copper pennies

hung by red ribbons from her dark blue trade cloth dress. She told the story of her ancestors who were killed during the 1862 US-Dakota War. Evicted from their homelands, they fled to present-day Standing Rock, crossing the Missouri River not too far from the location of Oceti Sakowin Camp after US cavalymen surrounded and massacred Dakotas and Lakotas in buffalo hunt camp at Whitestone Hill on September 3, 1863 one-hundred and fifty years earlier to the date that DAPL private security used to attack dogs on unarmed Water Protectors at a pipeline construction site. The day after Christmas in 1862, soldiers gathered up 38 Dakota men and boys imprisoned at Fort Snelling in Mankato, Minnesota. Their medicine bundles were confiscated, heaped in a large pile, and burned as they sang their death songs and were led to the gallows to hang for the crime of defending their nation and homelands. The same week President Abraham Lincoln signed the Emancipation Proclamation freeing Black slaves, he signed the death sentences of the 38 Dakota patriots. The copper pennies hanging from the elder's regalia had holes drilled into Lincoln's ears with red ribbon threaded through. "He didn't listen," she said of the Great Emancipator, "so we opened his ears." After the 1876 Battle of Greasy Grass, Lakota women used awls to carve holes in Custer's ears so he would hear better in the afterlife. This time it was President Barack Obama, North Dakota Governor Jack Dalrymple, and Morton County sheriff Kyle Kirchmeier who refused to listen. As singers began a prayer song, the elder reminded the younger ones that the tears flowing from their eyes were their "ancestors speaking through them," and that they were not tears of trauma but of liberation. "We survived genocide after genocide," she reminded them. Then she danced, and the pennies swayed with the flicks of fire and

smoke billowing upwards. Behind her stood armed police half-a-mile away on a hill in front of bright floodlights blaring down on the camp. History was hardly the past.

On December 5, 2016, after months of bitter struggle, the Army Corps stood down, denying the easement needed by the DAPL to drill under Lake Oahe on the Missouri River. With the denial of the easement, the Army Corps committed to conducting a full environmental impact study. The news was hailed as a significant victory. Yet, with a Trump presidency just over a month away, final victory appeared fleeting. As expected, President Trump signed executive orders fast-tracking the review and approval of both the Dakota Access and Keystone XL pipelines. Breaking its original commitment to conduct an environmental impact study, the Army Corps granted the easement, which prompted Dakota Access to finalize and begin transporting oil within months of the decision. Despite the setbacks, Water protectors focused on other actions such as bank divestments from fossil fuel companies like Dakota Access and Energy Transfer Partners while others vowed to remain in the camps, ignoring calls by the Standing Rock Tribal Council to leave after the December 5 decision. The Standing Rock Council, meanwhile, continued its battle in court and in Washington, D.C., to little or no avail. Political winds have shifted far to the right. As the harsh winter set in, bitter divisions between the camps and the Standing Rock Council and a growing sense of hopelessness intensified. At the end of February 2017, law enforcement evicted the remaining Water Protectors at the Oceti Sakowin and Sacred Stone camps.

Beyond the Dakota Access Pipeline, a growing international movement has intensified to continue fighting the growing network of pipelines across North America. Each flashpoint of struggle indicates a growing anti-colonial resistance led by Indigenous

peoples against settler colonialism and extractive capitalism. The broad array of current and proposed pipeline infrastructure sprawls across the continent like a giant spider web. When one pipeline is defeated, such as the Keystone XL, it can be revived or another rises to take its place. In one sense the pipelines appear like the many-headed hydra in Greek and Roman mythology. Geographer Katie Mazer, invoking the work of radical historians Marcus Rediker and Peter Linebaugh, argues that it is not so much pipelines that are hydra-like — chop off one head and another takes its place; but rather, the globalizing networks of pipeline infrastructure connects disparate communities of the exploited and dispossessed. The growing geography of fossil fuel infrastructure expands and unites in common cause a “seemingly mutable mass variously dispossessed peoples” nearly impossible to defeat.<sup>4</sup> Mazer also argues that, like all oil pipelines, DAPL is not an isolated, issue-based struggle. Each pipeline exists in relation to other pipelines, whether or not they are defeated or built. DAPL is a transnational project, refracting back the transnational and international realities of Indigenous resistance. Pipelines not only ship oil to a global market and cross settler state boundaries, but they trespass through Indigenous territory and in opposition to Indigenous assertions of sovereignty that exist prior to and alongside US and Canada, a sovereignty that exceeds settler sovereignty.<sup>5</sup>

Evidence of the hydra-effect can be seen in the vast array of solidarity networks that supported the #NoDAPL struggle. Black Lives Matter, Palestinian justice organizations, religious groups, military veterans, and many more from other social locations and movements galvanized support for the Indigenous-led resistance movement beyond the physical geography of the Standing Rock Indian Reservation. From the camps

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<sup>4</sup> Mazer, *Mapping a Many Headed Hydra*, 6.

<sup>5</sup> Ibid.

sprang to life the flame of Indigenous resistance that fanned out across the continent. But solidarity isn't a fleeting moment that springs up only in moments of crises and dissipates in the interlude. As was shown throughout this dissertation, the steady accretion of traditions of Indigenous resistance accumulated over centuries, not mere moments. Those traditions drew upon other allied struggles such as in the case of the International Indian Treaty Council and Indigenous internationalist movements of the twentieth century. As much as the settler colonialism built its own physical infrastructure (such as trade routes, railroads, dams, and oil pipelines), the infrastructure of a collective cohesion of ideas and practices have formed around the techniques of Indigenous resistance.

### **Mni Wiconi**

#NoDAPL could be called an Indigenous sovereignty movement; but Indigenous sovereignty is typically understood as the so-called “nation-to-nation” relationship with the occupying power of the United States. This state centric framework of Indigenous sovereignty has colonized the whole space of Indigenous liberation. It has limited the field of maneuver and thinking within the colonial, Westphalian state model.

If the western frontier of US expansion closed in 1890 as Frederick Jackson Turner proscribed, the nineteenth century Indian Wars fought and won, Indian citizenship imposed in 1924, a formal apology issued in 2010, the Era of tribal Self-Determination inaugurated by Nixon in 1970, the “settlement” of past wrongs under the recent Cobell lawsuit, and increase of “nation-to-nation” rhetoric and policies under Obama and the key placement of Indigenous leaders within his administration, why would we need to create

new movement? More importantly, why would need to create a new movement if Indigenous life improved in the Obama Era?

We can look to the important political work of a movement marching under the banner of “Black Lives Matter” and why it arose under the Obama administration. Obviously, anti-Black police violence didn’t profoundly increase under Obama’s presidency, but nor did it dramatically decrease. But the movement gestured toward the limits of racial inclusion under the rule of liberalism and capitalism. The 2015 Baltimore police murder of Freddie Gray best illustrates the movement’s primary contention and challenge. Freddie Gray was murdered by Black police officers; a Black District Attorney, a Black Mayor, and a Black President could not save Black Lives. Put simply, the current political system, no matter who’s in charge, cannot save Black Lives.<sup>6</sup> The same could be said of Indigenous peoples and the planet. Obama’s 2010 “new energy security plan,” which has now been maximized and increased und Trump, incentivized and dramatically increased domestic oil and gas production, opening up previously protected federal lands managed under the Department of Interior. The oil boom demonstrates the current system’s inability to save Indigenous live and lands — it’s too much of a departure of business as usual.

The continuing legacy of the Pick-Sloan dams thwart the possibility of liveable future for the Oceti Sakowin and the millions of people who depend the Missouri River for life. The dams personify settler colonialism. Poured concrete and rolled rock and dirt were endowed with the will to disrupt, flood, dispossess, remove, and ultimately eliminate Native society to be replaced by settler society. The Dakota Access Pipeline

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<sup>6</sup> See Keeanga-Yamahtta Taylor, *From #BlackLivesMatter to Black Liberation* (Chicago: Haymarket, 2016).



mirrored this process. The full force of the settler state carried out the will of Energy Transfer Partners, the multibillion dollar corporation building the \$3.7 billion pipeline that would tunnel under the Missouri River twice, the Mississippi River once, and cross four states (South Dakota, North Dakota, Iowa, and Illinois). Attack dogs, handcuffs, flex cuffs, stress positions, fists, feet, assault rifles, arrest warrants, rural county jails, felonies, misdemeanors, private property, body armor, armed drones, private security, teargas, mace, armored Humvees, the intentional defilement of gravesites, the North Dakota National Guard, the North Dakota State Patrol, Border Patrol riot shields, billy clubs, concrete barricades, airplanes, Blackhawk helicopters, Caterpillar earthmovers, and media censorship and harassment all are instruments deployed to uphold and carry out the will of Energy Transfer Partners and its financial investors to secure the trespass of the DAPL through Oceti Sakowin treaty territory. When viewed this way, we can begin to understand that Water Protectors draw from the history of past Water Protectors who fought to protect the life of their relative, Mni Sose. While corporations take on legal personhood, Water Protectors personify water and enact kinship to the water, and the river. If the water, a relative, is not protected and the river is not free, its people will not be free. The stubborn persistence of Indigenous life, however, will be a constant reminder that the water and its people still refuse death.

Mni Wiconi, as much as it reaches into the past, is a future-oriented project. It forces some to confront their own unbelonging to the land and the river. How does settler society — which possesses no fundamental ethical relationship to the land or its original people — begin to imagine a future premised on justice? There is no simple an answer to that question. What we can begin to imagine, however, is Indigenous futures, futures that

were under construction at the #NoDAPL camps, where Indigenous peoples do not merely survive, but thrive. #NoDAPL offered a brief vision of what a future premised on Indigenous just would look like. With all its faults, there is something to be learned from the treaty camps at the confluence of the Missouri and Cannon Ball rivers. Free food, free education, free health care, free legal aid, a strong sense of community, community security, etc. — while not perfect — were guaranteed to all. Most reservation communities in the US don't have access to these services, and most poor communities don't have access to these services. Yet, in the absence of empire with the governing structures in the camps, people came together to help each other, to care for one another. A radical form of relationality was the law.

Perhaps the answers lie within kinship relations — between each other and the lands we both inhabit. Dakota scholar Kim Tallbear asks us think beyond Indigenous sovereignty towards some kind of just kinship or radical relationality. She writes,

while the language of sovereignty does important defensive work for us it is a partial reflection of indigenous peoples' relations with non-indigenous people and with each other. The language of kinship may also be a partial and productive tool to help us forge alternatives to the settler-colonial state. Making kin is to make people into familiars in order to relate. This seems fundamentally different from negotiating relations between those who are seen as different — between 'sovereigns' or 'nations' — especially when one of those nations is a militarized and white supremacist empire.<sup>7</sup>

How can we begin to imagine a just and peaceful future if the structures that destroy our lands continue to carry out the will of that militarized and white supremacist empire? Settler society has a failed kinship with Mni Sose, and perhaps water, the planet,

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<sup>7</sup> Kim Tallbear, "The US-Dakota War and Failed Settler Kinship," *Anthropology News*, November 2016, <http://sfaa.net/news/index.php/2016/nov-2016/announcements-other-associations/us-dakota-war-and-failed-settler-kinship-anthropology-news/>.

and the nonhuman world in general. Settler colonialism must be undone if there is to be a livable future, not just in Turtle Island but for the entire world.

Past revolutionary struggles have sought to emancipate labor from the rule of capital. In our current moment of catastrophic and irreversible climate change, we must begin to ask not what capital or liberal settler states want from us. We already know what they want. They want inclusion and the sustainability of the status quo. Water protectors ask us to consider, what does water want from us? In this sense, Mni Wiconi — water is life — exists not only outside the logic of capital, it also exists outside the logic of liberalism. With this in mind, we are challenged not just to imagine, but to demand the emancipation of earth from capital — for Indigenous Nations and our human and nonhuman relations to live.

Hecetu welo!

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