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**WHOSE “SHARED HUMANITY”? THE TRIBAL LAW AND ORDER ACT (2010),
BARACK OBAMA, AND THE POLITICS OF MULTICULTURALISM IN
SETTLER COLONIAL STATES**

by

LIZA DRAKE MINNO

**B.A., EUGENE LANG: THE NEW SCHOOL FOR LIBERAL
ARTS, 2006**

THESIS

Submitted in Partial Fulfillment of the
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**WHOSE “SHARED HUMANITY”? THE TRIBAL LAW AND ORDER ACT (2010),
BARACK OBAMA, AND THE POLITICS OF MULTICULTURALISM IN SETTLER
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by

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ABSTRACT

This thesis advances a critical understanding of the ways in which neoliberal multiculturalism works to naturalize settler colonialism in the United States through the queer, feminist, and decolonial use of visual, historical, and legal analysis. The Tribal Law and Order Act (TLOA) of 2010, as well as the White House signing ceremony for the TLOA serve as the main sites for this analysis. The central argument of the thesis is that multiculturalism in the United States facilitates the ongoing naturalization of settler prerogatives and that Barack Obama, through his deployment of affect and analogy, is especially effective at normalizing multicultural settler domination of colonized lands and peoples. Subtending this argument are arguments about how settler colonialism is maintained through the use of sexual violence against Indigenous people and through heteronormativity, which must be continuously-enforced. The thesis, therefore, interrogates the effects of the settler state’s gestures toward Indigenous women and sexual violence in the TLOA and the TLOA signing ceremony. The bulk of the evidence for the thesis comes from secondary historical sources, the genealogy of laws that constitutes Federal Indian Policy in the United States, and original legal analysis of the TLOA and the TLOA Congressional Hearings, as well as original visual and discourse analyses of the TLOA signing ceremony.

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I. Introduction

On July 29, 2010, President Obama signed the Tribal Law and Order Act (TLOA) (or Public Law 111-211) into law. In popular discourse, the TLOA was considered a watershed piece of legislation; discussed as a radical reformation of the federal government's relationship to tribal governments, it was said to mark an unprecedented formal recognition of the sexual violence against Native American women that is understood to be endemic in Indian Country. The TLOA seeks to expand the authority of tribal courts by increasing the maximum sentence they can serve for a single offense from one to three years in prison, and the maximum fine for a single offense from \$5,000 to \$15,000. It claims to clarify the complicated jurisdictional webs that cross over Indian Country making it difficult to prosecute crimes committed there. It also intends to improve and standardize treatment for victims of sexual abuse at all Indian Health Services (IHS) hospitals and clinics.¹ The TLOA was drafted largely in response to a 2007 Amnesty International Report, *The Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA*, which documented the high rates of sexual violence against Native American and Alaska Native women, as well as the lack of legal recourse and the generally poor quality of after-care treatment available to them.² The TLOA signing ceremony took place at the White House, also on July 29, 2010, and featured a testimony of Lakota/White Clay People member, Lisa Marie Iyotte, who described in some detail being raped sixteen years prior, and noted the fact that her rapist was not prosecuted for the crime. This was followed with a speech by President Obama regarding the TLOA's significance.

Many feminists, Native and non-Native, are heralding the passage of the TLOA as a great success,³ noting the horrifying statistic that one in three Native women will be raped *at least once* in her lifetime.⁴ Fifty percent of the rapes against Native American women are

accompanied by additional physical violence; among the non-Native population, thirty percent of rapes are accompanied by additional violence. The vast majority of the perpetrators—eighty-six percent—are non-Native men.⁵ Amnesty International, who interviewed survivors of sexual violence and their families, activists, support workers, service providers and health workers between 2005 and 2006, reports that many of the interviewees understand the ongoing sexual violence of non-Native people against Native people as part of the legacy of atrocities against Native Americans. Indeed rape against Native American women occurs in epidemic proportions and, as I will discuss throughout this paper, the perpetrators are rarely held accountable. Moreover, a lack of understanding of cultural norms by doctors and Sexual Assault Nurse Examiners on reservations and the reality of the systemic abuse of Native peoples by federal employees charged to work in Indian country, among other factors, ensures that rapes in Indian Country go vastly underreported.⁶ There is no question that the high rate of rape against Indigenous women is a grave problem, and that they are not receiving the protections or care that they need. In light of this, the TLOA is, to borrow Gayatri Spivak's phrase, something that one "cannot not"⁷ support if one has any awareness of the systemic nature of the violence and racism of colonialism that has resulted in the current situation that leaves a group so vulnerable to "interpersonal" violence.

In this essay, however, I take a critical approach to what I identify as the settler colonial discourses and impulses evident in the TLOA and its signing ceremony. I employ historical analysis, legal analysis, discourse analysis, visual analysis, and feminist close reading as methods to take up the work of Elizabeth Povinelli and argue that neoliberal multiculturalism and the logic of settler jurisprudence in the U.S facilitate the ongoing justification of settler prerogatives. I further argue that Barack Obama, in this historical context, is especially effective at

normalizing multicultural domination. I suggest that the TLOA signing ceremony makes metonymical the relationship that the settler state has with Indigenous subjects and, by extension, its troubled relationship to its own legitimacy and is, therefore, a grounded occasion in which to witness the establishment of multicultural domination in its gendered, sexualized, and racialized terms. The settler state is conditioned by the logic of what Patrick Wolfe calls the “elimination of the Native,” which is simultaneously a logic of generating new means by which to maintain its own prerogatives to power and stolen land. Wolfe has also called this the logic of destroying to replace.⁸ In that sense, the very continued existence of Indigenous peoples in settler lands is indicative of the failure of the settler state to achieve total control and complete occupation. The way, then, the settler state negotiates its relationship to Indigenous people, whose continued existence is fundamentally antithetical to its own survival, is at the heart of understanding the ways in which settler power functions. This makes it an important site of struggle and analysis.

It is my contention that settler norms of gender and sexuality (based in heteropatriarchy) help to establish the bounds of the properly multicultural settler nation and are, therefore, continuously enforced. The signing ceremony and discourse around the TLOA are also sites in which to observe the processes by which these norms are enforced. I argue that the TLOA is a deeply neoliberal piece of legislation that appropriates the honorable work of anti-violence activists in order to fulfill the “colonial dream” of Indigenous fixity and settler control.⁹ Finally, I examine how Indigenous subjects are being framed through the law and the discourse in congressional debates around the law, as well as the possibilities for acting outside of that frame. I contend that Iyotte’s discursive and material presence in the colonial spaces of the nation and the White House (during the TLOA signing ceremony), if read against the colonial/multicultural

script in which it is placed, works to unsettle the multicultural settler state's forced sense of national unity.

Only by exposing the technologies of settler colonialism in the quotidian and spectacular ways that they function is it possible to challenge that which claims to be self-evident, universally benevolent, settled; the TLOA and its signing ceremony provide a specific and grounded opportunity to do this. This paper opens up a space to think about neoliberal multiculturalism in general and President Obama in particular as tools of settler colonial expansion and its racialized sexual violence, and suggests the need for what David Eng calls a "more robust politics of intersectionality"¹⁰ in the context of settler colonial multicultural domination.

This paper will progress as follows: I will begin by outlining my methodology, which I describe as a methodology of allyship. In section III, I provide an overview of federal laws and Supreme Court decisions between 1817 and 1978 that have led up to the TLOA; the laws and decisions in question have all imposed federal constraints on tribal governments. In order to contextualize the TLOA's centering of violence against Indigenous women, section IV offers an historical reading of sexual violence as a tool of colonization. This leads me to examine the actual accomplishments of the TLOA as compared to its stated aims in section V. Here I also address neoliberalism's reliance on criminalization and the trouble with sovereignty in settler contexts. In sections VI and VII, I turn to the TLOA signing ceremony to take a critical look at how neoliberalism relies on the affect and analogy of multiculturalism to consolidate and naturalize settler colonial hegemonic regimes. I look at what specific role Barack Obama, as an embodied figure of neoliberal multiculturalism, plays in settler colonial expansion, and what specific role Lisa Marie Iyotte plays in the "affective economy"¹¹ of neoliberal multiculturalism

in a settler colonial state. I will end by expressing the urgent need for intersectional politics and approaches to scholarship within a neoliberal multicultural system that works to disable intersectionality in the service of maintaining and justifying its own power.

II. Notes on Methods and Methodology

As described above, my methods are interdisciplinary in that I employ historical analysis, legal analysis, discourse analysis, visual analysis, and feminist close reading. As historical analysis, I overview the history of sexual violence as a tool of colonization in the United States, mainly through secondary sources. The insights of postcolonial feminists, Indigenous feminists, and queer theorists regarding the relationship between gender, sexuality, violence, and state power figure prominently into my understanding of sexual violence and colonization. I also historicize multiculturalism as an effect of neoliberalism that specifically forwards the naturalization of settler colonialism. I will examine the historical shift from “colonial domination” to “multicultural domination,”¹² and position Obama in relation to this shift.

In terms of legal analysis, I examine the genealogy of federal laws that has limited tribal sovereignty and resulted in the current situation where a bill addressing rampant sexual violence against Native women would need to exist. Law, being the “core institution of colonial control,”¹³ is an important site of struggle in which to understand the character of colonial power, and the ways in which it adapts to maintain itself. Furthermore, examining law and the changing nature of legal control over colonial subjects reveals the inherent fragility of the settler state and settler imaginary. The level of control sought by the state over tribal matters evinces an ever-present settler fear of the realization of Indigenous self-determination, and, hence, the need to forcefully and continuously assert settler sovereignty. My questions advance a larger and ongoing critique of the settler colonial logic of jurisprudence as justifying and sustaining settler prerogatives.¹⁴

Throughout the essay I examine the ways that *discourse* interacts with *the material implications of discourse* in the ongoing naturalization of settler systems and logics. I look at

how the multicultural settler state adopts the language of “family support” and a racialized discourse of infantilization about Indigenous people in the U.S to justify legal intrusions into the affairs of putatively sovereign tribal nations. I offer both a visual analysis and a feminist close reading of the signing ceremony as a text. Feminist close reading, as a method, allows me to analyze word choices, silences, body language, and aesthetics in the ceremony. It entails a “[r]adical, active listening...whereby the researcher listens for gaps and silences and considers ‘what meanings might lie beyond explicit speech’...[it] is being attentive to ‘the complexity of human talk,’ the pauses and patterns of speech and emotion that appear in everyday talk, and placing talk into historical and situational context. [It] helps create ‘knowledge that challenges rather than supports ruling regimes.’”¹⁵ This type of analysis is especially important in understanding how power functions in multicultural regimes, which rely heavily on (often staged or manipulated) visuals to convey a narrative of racial progress, gender equality, etc.¹⁶

Methodologically, I am working from a place of critique of the social implications of neoliberalism, in particular, as mentioned, the notion of multiculturalism and its manifestation in the U.S, which, I argue, has largely been a justification for continued race-based inequity and settler colonial expansion. David Eng (2010), Jodi Melamed (2006), Audra Simpson (2007), Aihwa Ong (2006), Martin Mannalansan (2005), Lauren Berlant (1997), and Elizabeth Povinelli (2002) have shaped my understanding of the politics of multiculturalism and the politics of state recognition within neoliberal multicultural regimes. I will elaborate on said politics in section VII. I chose to examine neoliberal multiculturalism through the figure of President Obama, a symbol of the multicultural state, and through the legal and affective *relationship of ruling*¹⁷ that the state has with Indigenous subjects. Obama, as an historical icon of racial progress, prompts an examination of whiteness as an ideology, power, and politics, not simply a racial identity, as

well as an examination of the ways that white supremacist projects are forwarded within states that have official policies against racism. Hence, my use of intersectionality for this project; it is, methodologically and politically, able to break through the myths of colorblindness and equality that neoliberalism claims, and help envision a social order that exists beyond the U.S nation-state.¹⁸

I am working from a queer feminist methodological standpoint. Broadly, this signifies an investment in understanding how dominant power functions and in creating knowledge that works to disrupt hierarchical power including (and especially) the settler state. It also denotes a commitment to analyzing the violence inherent in processes of normalization and naturalization. In so doing, the goal is to reveal fractures in dominant, taken-for-granted structures of oppression and open up possibilities for oppositional agency and organizing for alternative, egalitarian lifeways. I advance the critical questions in this essay as part of a body of feminist and queer scholarship that questions how, and to what ends, state projects—expansion, colonization, imperialism, occupation, militarization, privatization, etc.—are justified through marshalling a “woman-as-victim” narrative, or a narrative of “sexual exceptionalism” (Spivak, Moreton-Robinson, Mohanty, L. Smith, Butler, Puar, Butler, Alexander, Ong, et al.). Specifically, I look at what kind of *affective* labor Indigenous women perform for the settler colonial imaginary of the U.S nation-state. As much postcolonial queer and/or feminist scholarship reveals, processes of fixing norms of gender and sexuality are central to the “success” of settler colonial regimes. My personal conception of a queer feminist methodological standpoint is intimately linked with my commitment to antiracist allyship, or building a politics of alliance. Therefore, I term my overarching methodology a “methodology of allyship.” Developing a methodology of allyship is something that I have begun in the context of this thesis project as a way to address (personally

and academically) the problematic history of non-Indigenous scholars in general, and non-Indigenous feminist scholars in particular, writing about issues of material consequence—like funding, healthcare, and jurisdiction— to Indigenous peoples. Mohanty (2003) points out that the legacy of non-Indigenous feminist research “on” Indigenous peoples is a legacy of scholars comparing Indigenous people and practices to “modern” practices and developments, like liberalism. This brand of research is generally undergirded by an assumption of the self-evident truth and universal applicability of liberal values, and the norms of whiteness, including the notion of the *individual* as the primary social actor. It works to justify liberal (settler) state intervention by concluding that Indigenous peoples and practices are illiberal, frozen in the past—too tied to kinship, tradition, land, etc. to function as members of the nation. Linda Tuhiwai Smith (Maori) and Aileen Moreton-Robinson (Geonpul) both write extensively about the ways in which Western research, including feminist research, on Indigenous peoples has advanced white supremacy by invisibilizing the whiteness of the researcher and therefore normalizing whiteness as the unspoken epistemological standpoint. The liberal feminist practice of focusing exclusively on gender oppression furthers the effect of dehistoricizing the multiple and intersecting oppressions that shape Indigenous lives.¹⁹

My political commitments to ending white supremacy and being a white, antiracist, feminist ally to Indigenous struggles for self-determination, land, and decolonization determine my approach to my thesis topic. An ethic of allyship should stand in stark contrast to shame-based politics, a confession of white/settler guilt, or a quest for absolution from it. Paraphrasing Dakota activist Scott DeMuth, allyship means turning guilt into grief and anger, privilege into accountability, half-hearted apologies into action, complacency into resistance.²⁰ It should work to de-center the privileged subject, while recognizing the strategic political potential to work

towards social justice from the privileged subject's position. It is, to paraphrase Helen Caldwat, radical self-awareness and a strategic use of that awareness to further projects of decolonization that imagine and build a society beyond the confines of the heteropatriachal, colonial nation-state.²¹ The work of Richa Nagar, Waziyatawin, Linda Tuhiwai Smith, and Omi Osun Joni L. Jones has figured prominently into my articulation of allyship as methodology. However, a great deal of my education on allyship has come as a result of my activist work in a collective, Black Mesa Indigenous Support (BMIS),²² which is a group that works in solidarity with a community of Diné people who are resisting forced relocation by the federal government from their ancestral homeland in Black Mesa/Big Mountain, Dinétah (Arizona)—an extremely remote and rural area of the Navajo reservation.²³ I am often told by members of the resistance community, that since I speak the language of the privileged, know how privileged people think, and have more access to powerful institutions, it is my role, if I want to build a politics of alliance, to be in those powerful places, with those privileged people, speaking a dominant language about the oppression that they are, perhaps unwittingly, perpetuating in their daily lives. This is a task that far exceeds the scope of this project. However, the aim of my thesis project—exposing the insidious ways that the settler state perpetuates its violent form of power and control, while claiming to address and transform it—aligns with the goal of building a politics of alliance.²⁴

Therefore, developing and using a methodology of allyship is, for me, a way to amplify the lived truth that political action is theory-generating and that theory and research are inherently political. It is intended as a tool to help co-create cultures of dissent²⁵ that deal directly with the materiality of conflict, privilege and domination within a setting that tries to abstract, discipline, and manage those materialities. It is, finally, a way to create antiracist space

that is different than the official antiracist²⁶ stance of neoliberal states. It is intended to make whiteness (and its correlate power and privilege) marked, political, and hopefully useful in struggles for justice, as opposed to unmarked, falsely apolitical and therefore harmful and violent.

III. Gradual but Significant Erosion²⁷

While the entire history of federal Indian Policy is characterized by the violence of colonialism, in this section I will briefly examine the genealogy of laws that has restricted the power of tribal governments to effectively deal with crimes that occur on their own lands. The TLOA is a piece of legislation that, as mentioned, claims to address the overly complicated jurisdictional relationship between tribal, state, and federal governments. As I discuss in section V, the TLOA does not help sort out the jurisdictional mess; no one law could. The driving logic behind settler jurisprudence, evidenced in the discourse around and effect of the laws, is to further the project of the elimination of the Native by forcing assimilation to the dominant settler legal system. Therefore laws, as part of an institution of colonial control, will necessarily maintain settler power. An examination of these laws below reveals, as anthropologist Audra Simpson (Mohawk) puts it, that “[t]he cornerstones of democratic governance—consent, citizenship, rule by representation—are...precarious at best when the experiences of Indigenous peoples are brought to bear on democracy’s own promises and tenants.”²⁸ These laws and decisions were put into effect between 1817 and 1978; they demonstrate the U.S.’s commitment to maintaining its own settler sovereignty by limiting the ability of tribes to be self-determining bodies. Understanding them helps to contextualize how such a high number of rapes and incidents of sexual violence against Native people can go unprosecuted.

The Federal Enclaves Act of 1817 was the first piece of legislation that afforded the federal government jurisdiction over crimes committed by non-tribal members on “Indian land.” It did not, however, cede the federal government power over crimes between Native Americans. It was followed by the Major Crimes Act of 1885, perhaps the most significant piece of federal

legislation related to jurisdiction, as it gave the federal government power to prosecute Native American tribal members for fourteen “major crimes,” or felonies, regardless of whether the defendant was a tribal member or not. “Under the present version of the Major Crimes Act, the specific crimes are ‘murder, manslaughter, kidnapping, maiming, a felony under Chapter 109A [governing sexual abuse], incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, ... an assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and a felony under section 661 of this title [relating to theft].’”²⁹ With the MCA, tribes technically retain concurrent jurisdiction (with the federal government) over major crimes, yet they are limited in sentences that they can impose for those crimes. Legal scholar, sovereignty activist, and member of INCITE! Women of Color Against Violence, Sarah Deer (Muscogee), notes that tribes will often wait for a federal or state prosecutor before issuing an official response.³⁰ Most often, tribal crimes are low on federal or state priority lists. This has resulted in a situation where cases of rape and assault are, in the words of one former BIA police officer, “triaged,”³¹ on the basis of whether or not police judge on-the-spot that the case will be taken up by a federal or state prosecutor.³²

Oftentimes, the federal government fails to ever prosecute crimes committed on reservations.³³ This has caused reservations to be known as places where crimes can be committed by non-Natives with near impunity. Since there are no records kept on tribal offenses that the federal government declines to prosecute,³⁴ it is impossible to say exactly how many, although all anecdotal evidence indicates that the federal government declines or fails to prosecute the majority of the crimes presented to it by tribal governments.³⁵ It is especially important to understand that this situation of “lawlessness” on reservations was *constructed* by a process of the federal government limiting the power of tribal courts and failing to intercede on

behalf of tribes. The popular characterization of “reservation lawlessness” taps into blatantly racist federal policies of Indian removal and land theft that were justified through proclamations of Indigenous people’s inherent “deviance,” “criminality,” or “savagery.”³⁶ This underpinning logic is further evidenced in some of the reactions to the TLOA’s passing. In response to the TLOA, for example, Secretary of the Interior, Ken Salazar, said, “By providing greater law enforcement resources for Indian Country, this measure will help combat violence and lawlessness.”³⁷ This statement and ones like it (there are many) are both reflective and constitutive of a dominant understanding of tribal peoples in the U.S.

The Public Law 280 (PL 280) of 1953 gave individual states the option to assume jurisdiction over crimes in tribal communities. Alaska (with certain exceptions), Arizona, California, Florida, Idaho, Iowa, Minnesota (except the Red Lake Reservation), Montana, Nebraska, Nevada, North Dakota, Oregon (except the Warm Springs Reservation), Utah, Washington, and Wisconsin assumed partial or total jurisdiction of reservations under PL 280.³⁸ Significantly, PL 280 was part of a larger federal “termination policy,” which was in effect from the late 1940s into the 1960s. The goal of the policy was to open up federal access to tribal lands by eliminating federal recognition of tribal nations. Deer, for one, claims that the other goal of the policy was to force Native assimilation into the mainstream Euro-American culture.³⁹ Under this policy, the federal government terminated its recognition of the sovereignty of 100 Indigenous nations.⁴⁰ Many legal analysts have noted that under PL 280, states are largely reluctant to respond to crimes in Indian country, furthering the situation sparked by the MCA where many reservations are sought out by non-Natives as places to commit serious crimes without being prosecuted.⁴¹ This presents an obvious safety issue for those reservation communities under PL 280, as they are left entirely vulnerable to predators and without legal

recourse.⁴² PL 280 was unilaterally imposed by the federal government on tribes without the consent of the tribes. The outcry by tribes led to a “consent amendment,” but this was not implemented until 1968. Further, the amendment was not retroactive, meaning tribes that had the misfortune of being in states where PL 280 was in place, could not rescind the state’s control. PL 280 is generally considered by Native legal theorists to be a blatant attempt to mitigate tribal sovereignty and self-determination; Native legal scholar, Luana Ross (Confederated Salish and Kootenai Tribes), calls it “one of the most bold and discriminating actions against Natives in the legal and juridical system.” She adds, unequivocally, “PL 280 denies Native nations the right to govern themselves.”⁴³

In 1968, during the era of nationalist liberation movements in the U.S and the passage of a great deal of affirmative action legislation, Congress passed the Indian Civil Rights Act (ICRA), largely in response to Native American activism and the Red Power movement.⁴⁴ However, instead of meaningfully responding to the demands of these activists—which roundly consisted of self-determination, land return, and reparations—the ICRA subjected tribal justice systems to the U.S Constitutional Bill of Rights.⁴⁵ It also limited the maximum sentence that a tribal court could impose for an offense to one year imprisonment and the maximum fine they could charge to \$5,000, even for crimes such as rape or murder.⁴⁶ This further proved the federal government’s paternalistic stance toward tribal communities and their abilities to self-govern, and gave the impression that tribal justice systems were ineffectual in dealing with serious crimes, regardless of the fact that “tribal nations had full jurisdiction (legal authority) over all crimes and disputes prior to intrusion by European and American legal systems.”⁴⁷

The last piece of federal law I will mention for these purposes is the 1978 U.S Supreme Court decision in the *Oliphant v. Suquamish Indian Tribe* case. The case law states that “Indian

tribes,” in “*submitting to the overriding sovereignty of the United States...* give up their power to try non-Indian citizens of the United States except in a manner acceptable to Congress” (italics mine). *Oliphant* constitutes a deep intrusion into matters that should be ostensibly protected by tribal sovereignty.⁴⁸ The *Oliphant* decision has a significant relevance to the TLOA, which I address in more detail in section V.

IV. Sexual Violence as a Tool of Colonization

Today, in the vast majority of cases of rape involving Native American women (eighty-six percent), the assailants are non-Native men.⁴⁹ As Quince Hopkins and Mary Koss astutely note, “To the extent that these crimes are perpetrated by white men against Native women, gender domination alone, patriarchy alone, or class alone cannot explain this variance.”⁵⁰ Indeed, history and an understanding of colonial power provide us the context for the widespread practice of rape against Native American women. Through even a cursory look at the history of colonization, one sees that sexual violence was always part and parcel of settlement.⁵¹ Deer traces “this variance” to Columbus’ arrival, stating, “[It] not only represents the destruction of indigenous cultures, but also the beginning of rape of Native American women by European men.”⁵² Rape continues throughout the history of the Americas as a colonizing tool. Sarah Winnemucca (Paiute) wrote in *Life Among the Paiutes* in 1883: “My people have been so unhappy for a long time they wish now to disincrease [sic], instead of multiply. The mothers are afraid to have more children, for fear they shall have daughters, who are not safe even in their mother’s presence,”⁵³ a clear reference to gendered violence inflicted by colonizers and the culture of fear it creates, especially for women. Further, in reference to the colonization of the Southwest, Ned Blackhawk writes, “The serial rape of captive Indian women became ritualized public spectacles at northern trade fairs, bringing the diverse male participants in New Mexico’s political economy together for the violent dehumanization of Indian women.”⁵⁴ Settler projects always include and are, arguably, premised on sexual violence. Racialized sexual violence compromises cultural, community, and individual dignity, and fosters a dominant culture that normalizes non-consensual relations (relations of sex, power, etc.), blurring the lines of state

violence and so-called personal violence. In other words, federally authorized settler expansion policies that described lands occupied by Indigenous peoples as empty, invadable, and available for “settlement”, rhetorically render Indigenous lives *non-lives*, and therefore themselves invadable.⁵⁵ Federal settlement and forced assimilation policies worked to legitimate a culture of rape against Indigenous peoples that is clearly alive and well today.

The normalization of rape as a correlate to settlement implicates the U.S as *a nation* in consenting to the use of sexual violence as a nation-building tool; it is not a matter of aberrantly violent individuals. Mark Rifkin characterizes “the seizure of territory, and extension of non-Native jurisdiction over it—as rape.”⁵⁶ Federally-run residential schools,⁵⁷ church-run mission schools, forced sterilization of Native women, and the widely-documented practices of the violence against and forced assimilation of Native people with genders and sexualities characterized by settlers as non-normative are all pivotal technologies of settler power and they all fall within the rubric of sexual violence.⁵⁸ As many authors have noted, sexual violence was a way to establish the sexual hierarchy of heteronormativity, which, through its intimate manifestations, worked to naturalize other oppressive hierarchies.⁵⁹ Now, the culture of rape based in sexual hierarchy is so normalized as to be invisible in the story of the U.S’s process of national formation.⁶⁰ Sexual violence against Native women—as a way to limit the growth of Indigenous society, break down matriarchies, disable spiritual leaders, and accomplish what Césaire calls the “thingification” of the colonized by the colonizer.⁶¹ As Andrea Smith (Cherokee) notes, “...it has been through sexual violence and through the imposition of European gender relations on Native communities that Europeans were able to colonize native peoples.”⁶² Smith’s rendering of this process hinges on marking Native people “by their sexual perversity”⁶³ in order to fix their status as *outside of* the colonial nation space. Since a sense of

national norms, boundaries, and values was established through the characterizing of Native sexualities as queer, perverse, or other to the nation-state, Native people's testimonies of sexual violence, or sexual perversity have become their entry point into the space of the nation.

The current status of Native women as part of what Lauren Berlant calls a "permanent sexual underclass"—that is, a class of people whose sexuality and personhood is considered inherently violable as a part of the normal functioning of the nation—represents the power of nation building and the forced sovereignty of the settler state. The fact that racialized sexual violence is as rampant as it is proves the degree to which heteropatriarchy's binaries and relations of dominance—settler ideals—have been normalized. Therefore, issues of sovereignty and issues of sexual justice are inextricably enmeshed. An understanding of the centrality of sexual violence to the establishment and maintenance of the settler sovereignty is key to understanding the significance of the TLOA, and specifically how the TLOA was presented, especially bearing in mind Simpson's reminder that in settler states, sovereignty is never fixed; Indigenous and settler sovereignties are always in contest. Much of the discourse around the TLOA focused on addressing sexual violence against Native people. This, were it true, would require addressing the fundamentally violent and illegitimate origins of the U.S. As I will argue in the next sections, the TLOA avoids addressing the issue of sexual violence against Native people in any meaningful way. In so doing, the settler state avoids dealing with its own fundamental illegitimacy.

V. “A Real Difference in People’s Lives”⁶⁴: What Does the TLOA Accomplish?

As noted previously, I consider the TLOA to be a neoliberal piece of legislation and one that does little to rectify the problem of unclear jurisdiction between federal, state, and tribal governments or to significantly “empower” tribal governments. Contemporary Indigenous feminists have forged a new space in the discussion around self-determination. Many argue that there is no possibility for sovereignty, or self-determination, for Indigenous peoples in settler states without sexual justice and that there will be no sexual justice without Indigenous self-determination.⁶⁵ In that the TLOA neither accounts for the role of the settler state in violence against Native women, nor provides meaningfully increased power to tribes, it also fails to address the problem of sexual violence against Native women. However, as per the discussion above on the genealogy of federal laws regarding tribes, as well as of the genocidal logic that undergirds settler jurisprudence, it is no great surprise that a piece of federal legislation is not the salvific force it promises to be. Perhaps the more pressing question at hand is: why does a system upheld and maintained by the forced elimination of Indigenous peoples bother to appear to be a salvific force for Indigenous people to begin with?

Obama, in his speech at the TLOA signing ceremony, said, “All of you come at this from different angles, but you’re united in support of this bill because you believe, like I do...that when one in three Native American women will be raped in their lifetimes, that is an assault on our national conscience; it is an affront to our shared humanity; it is something that we cannot allow to continue.” This focus on confronting the problem of sexual violence against Native American women works to obscure the reality that the TLOA *does not*: 1) provide *any funding* to *any tribal agency*—including hospitals and clinics—to improve services for victims of rape and sexual abuse, 2) overturn the 1978 *Oliphant* decision that prohibits tribes from prosecuting a

non-Native person, despite the fact that over eighty-six percent of the perpetrators of sexually violent crimes against Native women are non-Native,⁶⁶ nor 3) even focus on sexual violence; the vast majority of bill is devoted to increasing federal access to tribal databases and stabilizing a federal law enforcement presence on reservations.⁶⁷

One of the other most publicized and widely-lauded aims of the TLOA, besides the aim of combating sexual violence, is to improve coordination between the federal, state, and the 565 federally recognized tribal governments in the U.S.⁶⁸ Proponents of the TLOA suggest that it will address these complicated jurisdictional rules that prevent crimes from being punished with speed and efficacy.⁶⁹ In reality, though, the TLOA raises more questions about who has jurisdiction over crimes committed in Indian Country than it offers answers. The TLOA allows for the possibility that jurisdiction be concurrent among tribal, state, and federal jurisdictions. This potentially puts a Native defendant in a situation where they are beholden to three separate sovereigns.⁷⁰ Further, while the TLOA gives slightly more prosecutorial power to tribal courts, the crimes covered in the Major Crimes Act will continue to be prosecuted federally (or at the state level in PL 280 states).⁷¹ The TLOA also reserves ultimate prosecutorial power for the federal government and empowers the local United States Attorney (federal) to determine the law enforcement needs of a tribe.⁷² Proponents of the TLOA further claim that it “strengthens law enforcement in Indian Country by authorizing the appointment of Special Assistant US Attorneys to prosecute crimes in tribal communities in federal court; providing tribal courts tougher sentencing powers; and allowing some tribal police officers to enforce federal laws on Indian lands.”⁷³ However, again, the TLOA does not allocate *any additional funds* to any tribal agencies to make this happen.⁷⁴ Because of the lack of funding associated with it, participating in the TLOA, could easily place a large financial burden on tribes.⁷⁵

If the TLOA is *not* a bill that puts any teeth to its claim to combat endemic rape and sexual violence on reservations, and if it *does not* enact its other stated major goal of clarifying jurisdictional “mazes” for tribal nations, what then does it actually *do*? The most prominent effect of the TLOA will be to criminalize members of tribal nations and to send more Native Americans to federal prisons. As the editors of *Native Sun News* pointed out after the TLOA was passed, people living on reservations experience unemployment at the highest rates in the country. Most of the jobs that are available on reservations are federal jobs—“Indian Health Service, Bureau of Indian Education, Bureau of Indian Affairs and USDA Housing and Urban Development. Most of the other jobs that are available are either with the tribe or one of their 638 contract programs which are federally funded and Indian casinos.” These jobs all have stringent hiring guidelines, including criminal background checks, attached to them. The authors further point out that government-subsidized housing on reservations is available only to those who pass the same federal criminal background checks. They conclude that the problems of unemployment and homelessness on reservations can largely be attributed to the requirements associated with federal jobs and housing. They suggest that the TLOA will increase criminalization on reservations and, therefore, write, “Tribal leaders must take a close look at the inevitable onslaught of problems associated with criminalizing more of our people, as it will further complicate the already high unemployment rates, homelessness as well as the host of other illegal activities taking place in Indian country.”⁷⁶

The TLOA initiates a pilot program with the (federal) Bureau of Prisons (BOP) that allows tribal inmates charged with two-year or longer sentences for violent crimes to serve their sentences in federal prisons *at no cost to the tribe*. This creates an obvious monetary incentive for tribal courts to criminalize and pursue longer sentences for defendants, as it will prove

cheaper to do so than to keep the inmate in tribal jails. This aspect of the TLOA—teaming tribal courts up with federal prisons—is a blatant exercise of colonial violence, and proof of the settler state’s dependency on the Prison Industrial Complex for its continued survival. Similar to federally-run residential Indian Schools, which removed Indigenous children from their communities, left a legacy of cultural and linguistic dissolution and forced assimilation, and consolidated a racialized class of hyperexploited workers by providing training only for domestic work or manual labor,⁷⁷ this partnership with the BOP will isolate inmates from their land, family, language, and culture, as most reservations are “several hundred miles if not more than a thousand miles”⁷⁸ from the closest federal prison with room. Currently, federal prisons nationally are already experiencing overcrowding, and are functioning thirty-seven percent above capacity. The abuses that occur in federal/private prisons are well documented. Significantly, during the congressional hearings for the TLOA the Department of Justice (DOJ) expressed opposition to Section 304 (a), the TLOA’s BOP pilot program, citing the great distance between many reservations and federal prisons, the issue of overcrowding and, perhaps most importantly, the fact that federal prisons are designated for inmates who have committed federal crimes.⁷⁹ The partnership between tribes and the BOP would potentially create a situation where (tribal) persons convicted of petty crimes are housed next to (non-tribal) persons convicted of major, federal crimes. The DOJ suggested instead that tribal prisons be improved and that tribal criminals not be sent to federal prisons, a suggestion that clearly went unheeded.⁸⁰

Furthermore, many federal prisons are now run by private prison corporations that can extract labor from prisoners without regulation or oversight, hallmarks of neoliberalism. As of 2010, nine percent of U.S federal prisoners (about 90,000 prisoners) were housed in private prisons, up from six percent in 2000.⁸¹ As state and federal governments trim their budgets in

the face of recession, the trend towards private prisons will only grow, as private prisons are perceived to save money for governments.⁸² Furthermore, as Jodi Melamed points out, one of the means by which neoliberal restructuring such as privatization becomes widely accepted is through a multicultural language of humanitarianism⁸³—in this case, the U.S reaching out to tribal communities and “allowing” them to house prisoners in federal jails. This framing obscures the inherent violence, force, and lack of consent⁸⁴ in the implementation of these policies.

The TLOA will also increase recruitment efforts for Bureau of Indian Affairs (BIA), which is a federal agency, as well as Tribal Police and will expand the power of federal organs like the Drug Enforcement Agency, Special Assistant U.S Attorneys and the Special Law Enforcement Commission to act on reservations.⁸⁵ It will establish an office within the BIA called the “Office of Justice Services” that is tasked with “collecting, analyzing, and reporting data regarding Indian country crimes on an annual basis,” which it will then release to the Department of Justice.⁸⁶ In addition to reporting to the Department of Justice on an annual basis, the TLOA requires that tribes report detailed data to Congressional committees. The list of what tribes must report to Congress is three pages long and includes reports on the minutia of how tribal funds are spent as well as detailed information on tribal employees and the training they receive.⁸⁷ This, rather than “empowering tribes” will, I contend, fold tribal affairs most integrally into the federal body. Perhaps most stingingly, “nothing in this Act confers on an Indian tribe criminal jurisdiction over non-Indians.”⁸⁸ This means that, as noted, the TLOA does not overturn the 1978 *Oliphant* decision, and still allows reservations to be known as places where non-Natives can commit crimes with minimal penalty.

The historian Philip Deloria characterizes the structures of reservations, Indian agents, and the historical practices of state surveillance in these spaces as a form of societal expectation that still shapes social relations, as a historically generated ‘colonial dream’ in which ‘fixity, control,

visibility, productivity, and, most importantly, docility' were realized. This dream was one of indigenous pacification, containment, and demobilization. In order to be actualized in the present, this dream requires that indigenous economic activities be watched, that there be a state-police presence in their community, and that Indians be passive in the face of this surveillance, regulation, scrutiny, and possible intervention.⁸⁹

Considering the above quote by Simpson, and the discussion of the bill above, the TLOA is a tool that will help realize this “colonial dream” through increasing surveillance and control of tribal communities and establishing a permanent state police presence there. The TLOA does not fundamentally disrupt the pattern of federal laws in the U.S that limit the power of tribes to self-govern.⁹⁰ As mentioned, many feminist groups—mainstream and radical (those with a critique of the nation-state)—viewed the passing of the TLOA as a great success, although some have voiced reservations. Deer, who helped to research and draft the 2007 Amnesty International report that served as a basis for the TLOA, noted, less than a month after the TLOA was passed, “I’m always concerned about ‘law and order’ language. It certainly doesn’t protect or help white women, so it’s not going to help Native women. We have to make sure that the systems we set up are Native women-centered. I wish the bill had language overturning the destructive 1978 *Oliphant* decision, which concluded that tribal courts do not have jurisdiction over non-Indians. It’s not acceptable to have a non-Native person to come into the tribe and not be held accountable by the tribe.” Additionally, Morgane Richardson, founder of the feminist of color Weblog, “Refuse the Silence,” responded to the TLOA, saying: “To allow and advocate for more encroaching of the police institution onto Native land is both oppressive as well as counter-active. With the police history of discriminating, being violent against and criminalizing communities of color can we really trust the police institution to so-called ‘protect’ Native women?”⁹¹ This raises the issue of the limits of material “aid” and improved legal “power” within a larger *colonial* context that discursively positions Indigenous peoples as childish recipients of the state’s paternalistic aid, and the larger *settler* context that, as discussed, works to

destroy Indigenous people and peoplehood.⁹² These positions are both fixed and troubled in moments such as the signing ceremony, as I will discuss below.

VI. Embraced by the State: The TLOA Signing Ceremony

Considering that I am a non-Native person who, through white privilege and settler privilege, is in a position to benefit from and be in complicity with the settler colonial project, I aim to tread cautiously through the analysis of the signing ceremony and acknowledge the vast complexity of the situation in which Lisa Marie Iyotte and President Obama acted. Since the historical (and present) practice of white people representing Indigenous people in scholarship is defined by providing justifications for the material violence of land theft, forced assimilation, and the colonial expansion of white supremacy,⁹³ “representing” Iyotte is not my goal. Neither is my goal to deny the need for IHS hospitals and clinics to expand their capacity to care for victims of sexual violence. I understand that this is a real need that has been expressed by tribes and anti-violence activists, and I fully support that need being met. My aim is, finally, not to, in any way, discount the bravery with which Iyotte has been credited for sharing her intimate and painful story in such a public way, to dismiss her experience, nor to suggest that she is a proponent of settler colonialism. My intention is to examine and theorize the signing ceremony—the physicality and rhetoric of it—and to address some of the questions it raises regarding the cost at which tribal communities in the U.S receive services. It is with this frame that I analyze Lisa Marie Iyotte’s testimony at the signing ceremony and theorize the work it performs.

I argue that through the use of spectacle,⁹⁴ the ceremony reinforces the narrative of U.S dominance over Indigenous peoples through an exceptionalist language (spoken and visual) of multiculturalism. It specifically works to reorient attention away from the “law and order” and criminalizing aspects of the TLOA (which, as discussed, are far and away the most prominent

aspects) and towards a narrative of the U.S nation-state as the ally of Indigenous women in general and of Indigenous women rape victims in particular.⁹⁵ In the same moment, Obama is also performing imperial feminism by acting as the protector against an implied Indigenous male figure. It is, therefore, a grounded occasion in which to observe the power that multicultural discourses have to invisibilize and naturalize settler colonialism. It also provides an opportunity to address the question I raised in the previous section, that of why the settler state bothers to appear to be a salvific force in the lives of its Indigenous subjects, when it is sustained only through the elimination of Indigenous peoples. Obama's presentation at the TLOA signing ceremony is when the bill entered the public sphere; this is the space in which certain aspects of the bill could be highlighted, others disguised, and where it could be shaped to fit a certain narrative that the settler state chooses to tell about its relationship to Indigenous people. While it is clear that Iyotte's testimony at the ceremony can serve a specific purpose for advancing the state's narrative of progress about itself, I propose that Iyotte's presence and testimony within the literally and discursively colonial spaces of the signing ceremony rupture and expose certain characteristics of settler power and therefore demand a more complex and alternative reading.

During the ceremony, Iyotte wore the dress of a Sicangu Lakota traditional dancer⁹⁶ and Obama wore a business suit. After Iyotte and Obama spoke, the ceremony concluded with Obama signing the actual bill into law, surrounded by several people of various ethnicities, and flanked by two Native Americans in traditional Plains regalia, including towering halo warbonnets. Iyotte opened the TLOA signing ceremony with a personal testimony in which she described her own violent rape that occurred sixteen years prior. As Iyotte stood at the podium, she had trouble beginning her speech; clearly emotional, her voice was shaking and she was breathing deeply. Before she could start speaking, President Obama came from the side of the

stage and hugged her and encouraged her to speak, a gesture to which the audience gave a standing ovation. President Obama stood behind Iyotte for the remainder of her speech and put his hand on her shoulder, rubbing it whenever her voice shook or she cried, and comforted her verbally.



Photos by Mark Wilson/ Getty Images North America



“He told me that I could do this. That he’d stand by me. It helped tremendously, having him there. He really wanted me to say what I needed to say,” Iyotte said of Obama’s encouragement.⁹⁷ During her five minute speech in which she recounted the rape, including the fact that her children witnessed it, she noted the lack of adequate aftercare she received at an Indian Health Services (IHS) hospital—she wasn’t administered a rape kit until the morning after, rendering it potentially ineffective. She never explicitly implicated the U.S in the violence done to her, but did notably begin her speech by saying, “*if the Tribal Law and Order Act had been in place 16 years ago, my story would be very different.*” I will return to this point.

Iyotte left a career as a banker to work in the federal Office of Violence Against Women; since 2008 she has worked as an education specialist in the Sicagnu Lakota Sexual Assault Coalition in Mission, South Dakota,⁹⁸ and she also now serves as the Coordinator of the Native

Women's Society of the Great Plains, a regional coalition of Native anti-domestic and sexual violence organizations. However, Iyotte was not asked to speak on behalf of her work as an advocate and community organizer; she was asked to share her story of victimization, not only at the signing ceremony, but in numerous interviews that took place around the signing of the TLOA. Asking Iyotte to re-experience a traumatic, sexually violent incident by describing it to strangers, rhetorically and visually reinscribes her as a rape victim. It is, I contend, pornographic, in that it provides corporeal knowledge of her to those in positions of impunity and great power—that is, to people who are not accountable to her in any meaningful way.⁹⁹ As I suggested earlier, Iyotte's entry into the national public sphere (the White House, national media outlets, etc.), occurs via her experience of sexual violence. Although she has worked in the field of sexual and domestic violence prevention for many years, her victimization is what makes her legible to the nation. In a 2010 interview on National Public Radio, immediately succeeding the TLOA signing ceremony, Iyotte was asked to recount the incident of her rape. In response to host Michel Martin's asking about it, Iyotte provided an even more detailed and graphic account of the rape than she did at the White House. Afterwards, Martin said to her, "Well, thank you again. I apologize for making you live through it again. I apologize for that."¹⁰⁰ By apologizing, yet doing it anyway, Martin makes it seem as though she had no other choice but to ask Iyotte to describe being raped, despite Martin's awareness of what emotional impact it might have on Iyotte, because her acceptance into dominant national spaces depended on her presenting as the victim. This association of Indigeneity with victimhood works to dehistoricize and naturalize current power relations as permanent social "facts."

The confessional mode that Iyotte is asked to take up aids the diversionary nature of the signing ceremony. By individualizing and personalizing her grief, the ceremony can obscure the

systemic and multiscalar nature of the colonial violence that has resulted in the situation wherein sexual violence against Indigenous women is rampant. Simpson notes, "...a public display of emotion, marked by grief and pathos, removes the subject from the conditions of the production of grief: 'reservation captivity', collective loss, surviving war—griefs that are structural and individual."¹⁰¹ Indeed, Deer (2005) observed, through her work with Indigenous survivors of sexual violence today, that many have extreme difficulty in separating the assault on their own physical body from the broader assaults to their land and communities. Therefore, placing Iyotte in a setting (a spectacle) in which she must position herself as a lone victim through her graphic description of being raped, positions the state (embodied here by Obama) as the lone savior, or arbiter of justice for her, the one who can literally embrace her and wipe away her tears. According to Mohanty "this [individualizing] approach equates the positions of dominant and subordinate groups, erasing all power hierarchies and inequities."¹⁰² Orienting the focus towards personal healing and reconciliation undermines the "necessity of broad-based political organization and action,"¹⁰³ or, as Eng says, "disables a politics of intersectionality."¹⁰⁴ The TLOA signing ceremony has the effect of domesticating race, culture, and gender (Iyotte's) and de-historicizing the struggles of Indigenous peoples against colonization through the focus on Iyotte's personal narrative and the staged relational familiarity between her and Obama. Their strangely intimate interaction provides a false sense of manageability¹⁰⁵ and resolution to the issue of sexual violence.

Following Iyotte's testimony, Obama gave a speech about the benefits of the TLOA. As touched on, Obama's comments at the signing ceremony centered on preventing further violence against Native American women as well as tribal "empowerment," progress, obligation,¹⁰⁶ and national values. His remarks on the TLOA specifically¹⁰⁷ do not reflect the actual nature of what

the TLOA accomplishes, which, I contend, is a reinscription of settler sovereignty and consolidation of settler dominance over tribes. Obama said:

So ultimately, it's not just the federal government's relationship with tribal governments that compels us to act, it's not just our obligations under treaty and under law, but it's also our values as a nation that are at stake...

...these are significant measures that will empower tribal nations and make a real difference in people's lives. Because as I said during our tribal conference, I have no interest in just paying lip service to the problems we face. I know that too often, this community has heard grand promises from Washington that turned out to be little more than empty words. And I pledged to you then that if you gave me a chance, this time it would be different. I told you I was committed to moving forward and forging a new and better future together in every aspect of our government-to-government relationship.

The legal and treaty obligations that Obama references are most likely the obligations articulated in *Cherokee Nation v. Georgia* (1871), *Oliphant* (1978) and other aspects of federal Indian policy that charge the federal government with care of tribal nations as “domestic dependents”. Indeed, one of Congress’ findings, as outlined in the TLOA, is that “the United States has distinct legal, treaty, and trust obligations to provide for the public safety of Indian country.”¹⁰⁸ These obligations function as technologies whereby the U.S government can ironically “represent Native lands and peoples as occupying an ‘anomalous’ position,”¹⁰⁹ despite the fact the Native governments and polities pre-date the existence of the U.S nation-state. In the first paragraph of the quote above, Obama conflates geopolitics—“the federal government’s relationship to tribal governments”—with national values. This serves to mask the reality that the federal government’s relationship to tribal governments is unlike its relationship or its dealings with any other foreign government. It is a relationship of ruling wherein the colonial state is always dominant.¹¹⁰ The aforementioned Supreme Court decisions that remain in effect “validate [the U.S’s] extension of theoretically unlimited political authority over [Native populations and lands], rendering them external to the normal functioning of the law but yet *internal to the space of the nation*” (italics mine), as Mark Rifkin puts it.¹¹¹ Obama’s quote

above encapsulates this purposefully obscure (outside of law, inside of nation) relationship of rule. He at once mentions “government-to-government relations” and the “obligation” to care for tribal nations. While these polarities are rationally and legally irreconcilable, they constitute the basis of settler rule.¹¹²

Furthermore, while the language of empowerment that Obama takes up is often associated with progressive social movements, here it serves to obscure the reality that the U.S.’s justification of superintendence over Native lands and peoples relies on the rhetoric of infantilization.¹¹³ It depends on casting tribal governments—the same governments that Obama claims to enter into government-to-government dealings with—as children in need of the settler state’s protection.¹¹⁴ The language of empowerment here has nothing to do with mutuality, and has everything to do with an attempt to tautologically reaffirm the federal government’s paternal, material power and tribal nations’ lack of power as *biopolitical* facts—“pre-political or apolitical conditions to which U.S institutions respond,”¹¹⁵ as Rifkin puts it—instead of effects of the violence of constructed *geopolitical* borders.

This dynamic is reflected and consolidated, but did not, of course, originate in the signing ceremony; it is part of the colonial script and is evident in the public discourse around the TLOA as well. Former director of the BIA and current Office of Justice Services Deputy Director, Patrick Ragsdale, served as a witness in the Congressional hearing for the TLOA. During the hearing, in a discussion on youth suicide on reservations, he said, for example, “...my sense in being on the streets in some of these [tribal] communities where lawlessness has been too prevalent is that with respect to young people, they are starving for adult attention. When some of our young officers go down on the streets of some of these communities, kids swarm them because they are not looking for so much from a law enforcement guy who is passing out

stickers and DARE badges and things of that nature. I mean, they are starving for human attention.”¹¹⁶ Ragsdale’s statement is problematic for many reasons, not the least of which is the gross generalization that he makes about the lack of attention children on reservations receive from “humans” and what this implies. The statement also casts the federal government again as a (literally) paternal and comforting presence in the lives of tribal people. This, beyond obscuring history, works to naturalize the settler state and its presence in Indigenous lives through the rhetoric of infantilization and heteropatriarchal family support.

Iyotte’s testimony about her rape, combined with the content of Obama’s speech at the signing ceremony and the physicality of their interaction, works to visually “confirm” tribal people’s *dependency* on the settler state; it stages the state as a benevolent, familial caretaker of its wards or children, tribal peoples. Nowhere in the TLOA or in the congressional debates around it is there any qualifying statement saying that the vast majority of reservation violence is perpetuated by non-Indigenous people. The settler state capitalizes off of this omission by intimating that indistinct reservation communities are the perpetrators of violent sexual crimes, further solidifying the discursive link between Indigeneity and sexual perversity. The discourse around the bill, the sentiments expressed in the congressional hearing, and the signing ceremony itself focus on contrasting Indigenous deviance and perversity (through metaphors of unhealthy intimate relationships) with the settler state’s benevolence and normalcy. Settler colonial power, like any other dominant and oppressive system of power, must work to make itself appear natural, superior and moral. It can only do so in relation to what it makes appear unnatural, lesser, and immoral.¹¹⁷ Therefore, maintaining the discursive association between Indigeneity and perversity is intimately tied to maintaining settler power. This proves Elizabeth Povinelli’s contention that (neo)liberal power is transmitted through “intimate acts.”¹¹⁸ In this case, the

“intimate acts” are acts of sexual violence against Native American women—these are perversions of healthy sexuality that the settler state can putatively correct. This is, of course, obscuring: the historical and ongoing reality that the settler state is the perpetrator and beneficiary of sexual violence against Native American women is morphed into a spectacular reversal of roles wherein the settler state is the ally of Native women. This highlights the insidious nature of what Povinelli calls multicultural domination, what Jodi Melamed calls neoliberal multiculturalism, what David Eng calls “the myth of multiculturalism with equality” and what the editors of *Queer Indigenous Studies* call “settler multiculturalism.”¹¹⁹ It appropriates everything, including the language of antiracism, progressive social movements, and the politics of alliance.

Simpson argues that discourses of multiculturalism serve as a “handmaiden” to the process of fixing Indigenous peoples as “subjects of sympathy or pity”, a mode of subjectivity lacking in political agency, by “encouraging those forms of cultural difference that do not offend the sensibilities, the ‘good feelings’ that liberal sympathy incites around the difference of aboriginality, an aboriginality that has been conceived through time as a problem (re. ‘The Indian Problem’).”¹²⁰ This is, as discussed, one possible (and most probable) effect of the TLOA signing ceremony—positioning Iyotte as someone without political agency. Since spectacles traffic in symbols, the overall effect is, of course, to represent Native women in general as subjects without political agency. While, from a critical stance, it is easy to read Iyotte as simply a pawn in the neoliberal multicultural spectacle, I ask that we turn to the line that she chose to open her testimony with for a starting place of an alternative reading. She said, “*If the Tribal Law and Order Act had been in place 16 years ago, my story would be very different.*” Iyotte’s choice to open with that line—which condemns the U.S by placing blame for her rape on past

U.S. failure and neglect and highlighting the impossibility of the hypothetical, “*if*”—creates a rupture in the hegemonic narrative that the ceremony advances by pointing to the genocidal impulse of the U.S settler colonial state. The statement can be (and is) easily folded in the self-congratulatory nature of Obama’s subsequent speech. However, it also, “open[s] possibilities for resignifying the terms of violation against their violating aims,”¹²¹ by begging an examination of *why in fact such a law wasn’t in place 16 years ago*. Even while operating within the logic of the spectacle, in which her role as the grateful victim is compulsory, Iyotte is able to disrupt the alluded to notion that her (abstract and pathologically violent reservation) community did not care or wasn’t skilled enough to treat her, and point instead to the fact that the federal government not only limited the ability of tribes to prosecute sex offenders, but also provided grossly few resources to IHS hospitals and clinics. This disruption—if one is reading for it—highlights the “disjunction between the ideal image of the [liberal democratic] state as a postimperial [sic] exemplar of Western humanism ...and the actual brutality of its laissez-faire stance toward its own internal colonial subjects.”¹²² Her testimony, and the reality of what it represents, unsettles the exceptionalist narrative of benevolence by foregrounding historical state violence and how it conditions ongoing interpersonal violence.¹²³ This works to rewrite the colonial script that presents Indigenous people as inherently perverse and deviant as a way to define itself as benevolent and normal. Instead she, her testimony, and her current choice of work (as an organizer against violence) reflect the state’s own violence back on itself, fundamentally undercutting the celebratory nature of the signing ceremony that could easily be read as closing an unseemly chapter in America’s history,¹²⁴ similar to the way that Obama can be read as a symbol of the state’s progress out of an era of racialized segregation.

The signing ceremony is one occasion in which to witness the maneuvers of settler power maintaining itself, and it fits within a broader context of *spectacle*¹²⁵ that is crafted intentionally to achieve a specific end within the U.S settler imaginary. This occurs through an affective visual economy, as addressed above, as well as through the deployment of analogy that depoliticizes racial, class, sexual, gender, and cultural difference; this will be addressed more robustly in the next section.

VII. Whose Shared Humanity?: Obama's Exceptionalism and Settler Colonial Expansion

I understand multiculturalism—or “post-race”, “post-identity”, “colorblind” politics— in the U.S as a technology of neoliberal and therefore settler colonial expansion. By claiming that race (and gender, sexuality, class, and culture) are apolitical and do not figure in to the distribution of power and resources in the world, neoliberal economic policies, which clearly follow routes established through colonial violence, can appear natural and neutral. Success, within this context, can appear to be merit-based, and a lack of resources or power can be blamed on individual failure. This narrative is always coupled with a narrative of progress and liberal exceptionalism. The undergirding justification for the supposed benefits of such a system are born of the notion of liberal individualism, which purports a universal “liberation” from the restrictive and illiberal ties of genealogy, tribe, culture in order that people may progress to the “liberated” place of individual ownership, individual responsibility, unrestricted participation in the market, and self-sufficiency.

This balances precariously on consistently enforced depoliticization of things inherently political—race, class, gender, or sexuality—to disavow the notion of systemic oppression and violence that hegemonic state power demands and to make the capitalist market appear to be a natural extension of social life. The effect of this brand of politics, beyond consolidating and normalizing the power of whiteness, is to cohere a national identity (for the U.S) that enables imperial projects and settler colonial expansion. Lauren Berlant (1997) argues that the impulses behind multiculturalism, or the denial of racial difference, are deeply genocidal in that they subsume various non-white histories and lived experiences of exploitation under the norms of whiteness, adding up to a “quasi-amnesia” in the service of a “unified” national identity.

Multiculturalism (in its neoliberal form) is, Berlant says, “a continued, but masked, hegemony of whiteness.”¹²⁶

Barack Obama plays a complicated role in the story of settler colonialism. Obama emerged as a public figure in the historical context of neoliberal multiculturalism in which, for many Americans, he embodies, as a “singular figure of racial unity,”¹²⁷ a capstone to the “racial” era of the United States. Metzler (2010) argues that Obama is one in a genealogy of *symbols*—a genealogy that includes the civil rights movement, the March on Washington and the Million Man March. Each symbol promises true racial equality, a significant shift in the way the U.S negotiates race, but has ultimately no effect on the structural racism on which the state is predicated and, in fact, serves the state by advancing a narrative of U.S exceptionalism and progress.¹²⁸ Being in a position of great power, Obama has some access to the commodity of whiteness withheld from people of color,¹²⁹ yet remains embedded in a capitalist system “that imagines black peoples as permanent property of the state.”¹³⁰ In this particular context, and considering his specific role in the national imaginary, he is able to forward settler colonial logic in a unique way.

A close reading of his speech at the signing ceremony, and a brief look at two other speeches, reveals much about Obama’s own complex positionality, and how he, unexpectedly perhaps to some, becomes an ideal vessel through which to forward settler colonial exceptionalism. Here I demonstrate the ways in which Obama’s use of analogy in his speech serves several functions: it allows him to solidify his own sense of “Americanness,” which has been consistently contested during his career as a public official; it allows him to forward the neoliberal progress narrative of U.S exceptionalism; and it allows him to perform the U.S settler colonial work of active forgetting by disabling an intersectional analysis. My analysis here takes

up the work of Moustafa Bayoumi, who demonstrates how African Americans in positions of state power have been presented in popular culture productions as a “softer” face of U.S imperial power in relation to powerful white Americans. According to Bayoumi, African American characters are able to forward the U.S imperial project in a way that is ironically acceptable to and empathetic of the victims of U.S imperialism.¹³¹

David Eng (2010) argues that neoliberal multiculturalism—which, I suggest, reinforces present-day settler colonial naturalization—is itself naturalized through a continuous denial of difference and an insistence on similarities, which requires the problematic use of analogy across lines of class, race, gender and sexuality. Therefore, instead of understanding how these categories are effects of power that work in multiple and intersecting ways to oppress people and groups, analogy dissolves power dynamics inherent within the categories and “disables a politics of intersectionality.”¹³² As indicated in the previous section, Obama addressed the TLOA itself in only about half of his speech at the signing ceremony. In the other half, he addressed *himself*. He did so in the exceptionalist terms of progress and through the use of analogy:

So we’re moving forward, and we’re making progress. And as we celebrate today, I’m reminded of a visit I made a couple of years ago to the Crow Nation out in Montana. While I was there, I was adopted into the Nation by a wonderful couple—Hartford and Mary Black Eagle—so I’m Barack Black Eagle. (*Laughter.*) But I was also—I was also given a Crow name that means “One Who Helps People Throughout the Land.” And it’s a name that I view not as an honor that I deserve, but as a responsibility that I must work to fulfill.

And looking back, I can’t help but think that only in America could a guy like me named Barack Obama—adoptive son of the Crow Nation—go on to become President. (*Laughter and applause.*) That was improbable when it happened two years ago—(*laughter*)—but it would have been inconceivable a generation or two before that. And I think the same could be said of this legislation.

Here, Obama acknowledges in a limited sense a history fraught with racism and inequality, but in the same breath, by using himself as embodied evidence, promises that those aberrations have been corrected and the nation is now at the place in history to be able to afford everyone equal opportunity under the law. Melani McAlister, in her analysis of television shows and

movies where African American characters are in positions of U.S state power, understands this kind of gesture doubly as “inoculation” and “proof of exemplary righteousness.” The inoculation is the acknowledgement of inequality that “protects from further critiques of the state,” and the “proof of exemplary righteousness” occurs when the “African American characters forgive America for its sins.”¹³³ Here, Obama performs that double move. He rhetorically morphs an expression of the fundamentally racist nature of the U.S nation state—“that was improbable when it happened two years ago...but it would have been inconceivable a generation or two before that”—into a comment on its exceptionalism. The statement “...only in America could a guy like me named Barack Obama—adoptive son of the Crow nation—go on to become President,” is meant to bestow Indigeneity (“adoptive son of the Crow nation”) on Obama, whose own ambiguous ethnic identity has provoked much epistemic violence during his campaign and term.¹³⁴ Considering, too, the widespread contention over Obama’s alleged non-Americanness in the “birther” scandal during his presidential campaign and into his term as president, Obama’s speech at the signing ceremony is, in part, an attempt to claim Indigeneity as “one of many reference points that root [him] in an American identity.”¹³⁵

Indeed, the “question” of his ethnicity aroused an Orientalist rage in public discourse. Much of the violence has been centered in racially and religiously charged analyses of his name, *Barack Hussein Obama*: the first two names are Arabic;¹³⁶ Hussein “sounds Muslim” and is associated with Sadaam Hussein; and Obama sounds like “Osama” (Osama bin Laden), Americans’ national scapegoat for the terrorist attacks on 9/11 and the symbol of all of the Orientalized pathology against which the U.S defines its own national character.¹³⁷ There is, too, the issue of the obvious falsity in Obama’s statement if we consider that a name like *Barack Obama* is relatively common in many Arabic-speaking countries around the world and,

therefore, it would *not* be “only in America” that someone with that name could “go on” to be president. Again, in a twist of logic, Obama shifts the anti-Arab and anti-Muslim sentiments that predominate in U.S public discourse into a narrative of progressive inclusion. It is, of course, all of these “little” falsities that add up to what David Kazanjian calls the “colonizing trick”—the myth that the U.S’s claims to abstract egalitarianism and universal freedom are not based on racial hierarchies, genocide, and a racialized class of exploitable labor.¹³⁸

Philip Deloria asserts that “playing Indian” by those in power bespeaks a “characteristically American kind of domination in which the exercise of power [is] hidden, denied, qualified or mourned.”¹³⁹ This aptly describes Obama’s choice to play Indian in the historical context of neoliberal multiculturalism, wherein the contents of the so-called “melting pot” have, apparently, melted so thoroughly as to occlude realities of race-based oppression. Essentially, the way that Obama attempts through this speech to make himself “like a Native,” or at least attempts to gain some affective proximity via his own position as a racial minority, flattens any of the complex ways that, within the political economy of colonialism, power is constituted through interrelated yet distinct forms of oppression and processes of normalization. Furthermore, Obama makes a dangerous move comparing the “unthinkability” of his own presidency to a struggle to end sexual violence. Rhetorically merging all oppression through a colorblind politics is evidence of a genocidal logic that disavows the way that sexual violence works specifically as a tool of colonization, and as a tool that disproportionately and differentially affects women.

In a similar use of analogy, during the Tribal Nations Conference at the White House in December of 2010, just five months after the TLOA signing ceremony, Obama said, “Few have been more marginalized and ignored by Washington for as long as Native Americans, our first Americans. You were told your lands, your religion, your cultures, your languages were not

yours to keep. I know what it means to feel ignored and forgotten, and what it means to struggle.”¹⁴⁰ The use of analogy to forward a colorblind politics is decidedly neoliberal. It is a practice of cashing in on the social currency of the social difference—that exist in neoliberal multicultural societies— “without social consequences.”¹⁴¹ The process of depoliticizing difference is, as mentioned, a hallmark of neoliberal multiculturalism. It domesticates difference in the service of hegemonic state power. The gesture of sympathy for Indigenous struggles here instead of promising any change has McAlister’s “proof of exemplary righteousness” effect. Its inclusionary tone, associating Indigenous people with the state via Obama, solidifies the foundations of the nation by appearing to absolve not just any sin, but what Sandy Grande refers to as the “original sin: the genocide of American Indians.”¹⁴² Furthermore, considering his predecessor, Obama is in a unique position to “play Indian” in an attempt to appear as a benevolent new face of the U.S nation-state. It is difficult to imagine George W. Bush with his cowboy hats, guns, drawl, and his commitment to notions of Western expansionism convincingly “playing Indian” to a crowd of Native politicians and community activists (as was the audience at the TLOA signing ceremony).¹⁴³ Because Obama has been pitted, in popular liberal culture, as the kind and gentle foil to Bush’s belligerency, and because he has come to symbolize the capstone to an era of racism in the U.S, he turns no heads when he claims membership in the Crow nation, or equates his struggles in becoming president with struggling against the effects of mass, systemic, colonial sexual violence.

In his speech at the TLOA signing ceremony, Obama also asserts that the alarmingly high rate of rapes visited upon Native American women is “an assault on our national conscience” and “an affront to our shared humanity.” While activist and artist Sara Marie Ortiz (Acoma Pueblo) has similarly said, “An injustice against Native women is an injustice against humanity,”

the sentiment demands rigorous examination when expressed by the president of a settler colonial state. This statement begs the questions: to whom exactly is Obama referring when he says *Native American women*? And who is included in Obama's vision of *our shared humanity*?

First, I suggest that Obama is referring to the "Pocahontas trope" of the Native American woman, as identified by Joanne Barker, when he says "Native American women."¹⁴⁴ Barker asserts that Pocahontas' story—her "alleged defiance of her father, her choice to save [John] Smith, her attention to Smith and the other colonists' survival, her marriage and conversion, her Christian renaming, and her move to England"—persists in the U.S American consciousness as an idealization of the Indigenous woman. This ideal Indigenous woman acts as "everybody's great-great-grandmother," who, being "stripped of any vestiges of her own political agenda and her own cultural affiliation and identity...is made to speak to America as heroine and ancestor." This story functions as a useful metonym for the settler colonial state's preferred relationship to Native American women; it has "utility within U.S nationalism's mythic structures particularly in (re)enacting the inferiority of Pocahontas' culture and the dominion of Smith's in what was to be America."¹⁴⁵ Through this trope, Native American women can become icons of U.S nationalism by symbolizing an acceptance of colonialism, similar to the way that McAlister's "proof of exemplary righteousness" functions. The ideas represented by the Pocahontas trope are the most probable referent in Obama's statement, as it does not follow, logically, that he could consider the rape of *actual* Indigenous women an assault or affront when the state that he has vowed to serve, in fact, created the condition of possibility for the culture of rape. In this colonial gesture to women, actual Native American women are emptied, forged into hollow symbols through which dominant members of the settler state can evolve or progress.

Secondly, as to Obama's appeal to "our shared humanity," it must be asked, as Fanon and Césaire remind us, what could possibly be meant by *humanity* (not to mention *shared* humanity) in a colonial context conditioned by mass dehumanization and genocide? Fanon asserted that definitions of humanity, and therefore humanism, within colonial regimes depend on a continuously enforced notion of racial and cultural inferiority of non-white peoples in order to constitute the idea of the right (read: white) human. Povinelli terms this "*colonial domination*," as understood by postcolonial scholars like Fanon and the school of Subaltern Studies, and notes that it required the colonized subject to identify with the dominant colonizing power as a legitimate power, or be subject to state violence. What Povinelli calls "*multicultural domination*," on the other hand, marks the contemporary historical moment and is, I argue, the lubricant for continued settler colonial domination. Multicultural domination works by "inspiring subaltern and minority subjects to identify with the impossible object of an authentic self-identity."¹⁴⁶ The demand to perform authentic self-identity, beyond being impossible, also reinscribes the power of whiteness by invisibilizing it as a norm while making minority and subaltern subjects marked subjects. While Obama himself is not considered white, I am referring more to the logics of whiteness and white supremacy here; one need not "be white" to act within these logics.¹⁴⁷ The urge towards the termination of the colonial subject remains, yet the relation of rule has shifted to one that presents benevolence, one that kills with kindness and claims of a common humanity.

It is worth noting that the first time during his office that Obama used the multiculturally evocative phrase, "our common humanity," (similar to "our shared humanity" in the TLOA signing ceremony speech) was in his inaugural address. There, Obama said, "And because we have tasted the bitter swill of civil war and segregation and emerged from that dark chapter

stronger and more united, we cannot help but believe that the old hatreds shall someday pass; that *the lines of tribe shall soon dissolve*; that as the world grows smaller, *our common humanity* shall reveal itself; and that America must play its role in ushering in a new era of peace”¹⁴⁸ (italics mine). In his articulation of his vision of progress and peace, Obama’s specific mention of “lines of tribe” *dissolving* exemplifies the liberal need to define the universal good (the liberal) *against* what it considers illiberal: tribes, genealogical, kinship structures, tradition, and the restrictions they pose to true individualism.¹⁴⁹ While it is couched in the language of commonality and inclusive plurality, it evinces the same genocidal impulse of destroying to replace, as identified by Wolfe. Additionally, McAlister reminds us that while the anxieties expressed in popular discourse about Obama being Muslim are certainly expressions of white racial anxieties, they are also white anxieties about modernity, gender, and “theological rigidity,” which are perceived to be antithetical to liberalism. Hence, in Obama’s inaugural address, his mention of lines of tribes dissolving serves two functions. He is simultaneously performing settler logics by condemning the illiberality of tribal structures, and distancing himself from the “lines of tribes” that are associated with conflict in the “Muslim world.” Both maneuvers are *whitening* maneuvers.

Herein lies the crux of why I consider the ceremony such a productive moment to further the understanding of settler colonial power: Obama, being non-white, enacts whiteness and invests in whiteness as property, considering his state-granted power and being a recipient of the benefits of continued settler occupation over the Indigenous lands and peoples of the Americas. He complicates the oppressor/oppressed binary that is traditionally understood in terms of color—as Haunani-Kay Trask puts it, “...white over Black, white over brown, white over red, white over yellow.”¹⁵⁰ In so doing, he proves that the mode of settler colonial domination is in

no way fixed, but is entirely mutable, adapting to fit predominant discourses of any given era—
in this case, neoliberal multiculturalism.

VIII. Conclusion

Luana Ross notes that genocide has never been against the law in the U.S. Ross makes this point in her scholarship to prove the limits and purpose of laws in a settler colonial state and to encourage people to think about decolonization and self-determination in ways that go beyond federal recognition or legal rights. Ross' radical conclusion is that the settler state will never be reformed and must instead be dismantled for decolonization and Indigenous self-determination to be possible.

In a strange and easily overlooked moment during the Congressional hearing on the TLOA, Anthony J. Brandenburg, Chief Judge of the Intertribal Court of Southern California, made this unscripted comment to his fellow witnesses and the members of the Committee on Indian Affairs:

Just for a moment, think of every atrocity that has ever been committed in Indian Country, whether it is the taking of land, whether it is genocide, whether it is the taking of children, whether it is the taking of natural resources—every wrong that has ever been committed in Indian Country has somehow been approved by the Congress, by courts, or by law enforcement.¹⁵¹

Brandenburg made this statement as part of a larger point he was aiming to get across: that there is a great need for the federal government to build trust in Indian Country if it is going to be able to properly enforce the law there. Brandenburg and Ross, while making strikingly similar statements, make them to entirely different ends: Brandenburg to reinforce the legal foundations of the settler state, and Ross to shake them.

Throughout this essay there have been several examples of neoliberal multiculturalism's ability to appropriate for its own ends. Obama's own ability, through the use of affect and analogy, to appear as an antiracist ally, an ally to Indigenous people, and an ally to women while retaining a proximity to whiteness that allows for the strengthening of white supremacy and an

expansion of settler colonial projects in the U.S and abroad is remarkable. Perhaps the most shocking example of appropriation is the TLOA itself. Activists, like Sarah Deer, who have committed their life to the decolonial work of ending sexual violence against Indigenous people, worked strategically on the TLOA¹⁵² to have the state return full prosecutorial power to tribal courts, including power over non-Natives, so that tribes could effectively criminalize sexual violence. Instead, the TLOA will criminalize Native communities and fold them into the federal apparatus of control. Yet the TLOA is still widely understood to be helping Native women by responding to demands for safe communities and an end to the “free zones” that are reservations in the U.S.

While American Studies scholars¹⁵³ have turned a critical eye to Obama’s ability to forward neoliberal and imperial projects, we must bear in mind that the U.S remains a settler colonial state with settler colonial ambitions and ask, therefore, how the “softness” of multicultural domination works to further invisibilize the settler colonial present. We must ask, in our scholarship, our organizing, and our politics: how does neoliberalism’s ability to erode a “politics of collectivity through the reformulation of race and difference in individualistic terms”¹⁵⁴ also delimit the potential for building a decolonial politics of alliance?¹⁵⁵

The power within neoliberal multiculturalism’s affective economy to appropriate radical activism, subsume non-white experiences into the norms of the white nation, individualize inherently collective and political realities, and obscure power and history demonstrates the need for what Povinelli calls “mobile analyses.”¹⁵⁶ Mobile analyses of a shape-shifting power will bring us to sites such as the TLOA signing ceremony where, in subtle and seemingly benevolent ways, multicultural domination is solidified and the settler colonial imaginary reinforced. They demand that we are robustly intersectional in recognition of the multiple intersections of a

hegemonic power. The mobility that Povinelli speaks of asks us to be witnesses to manifestations of genocidal power that continuously denies its own existence, wherever they may be. Finally, it challenges us to articulate and live out true antiracist and decolonial politics that center the theories and insights of those who experience state violence in order to highlight the fragility of the multicultural settler state's claim to these terms. In so doing, we can highlight and take advantage of the fragility of the multicultural settler state itself.

END NOTES

Introduction

¹ National Congress of American Indians (NCAI). “The Tribal Law and Order Act Background”.

² It was introduced in 2009 by then Senate Chairman on Indian Affairs, Byron Dorgan (D-North Dakota), as S. 797 (and to the House as H.R. 1924), Eid 2010, 35

³ See, for examples: <http://msmagazine.com/blog/blog/2010/08/03/the-woman-behind-the-tribal-law-and-order-act/>; http://radicalprofeminist.blogspot.com/2010/07/passage-of-landmark-legislation.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+ARadicalProfeminist+%28A+Radical+Profeminist%29; <http://womenslawreports.blogspot.com/2010/07/obama-signs-new-tribal-law-and-order.html>

⁴ Deer 2005, 456

⁵ Amnesty 2007, 4

⁶ “...in Indian Country, rape survivors bear additional burdens. They must report their crimes to federal law enforcement authorities, whom long and hard experience has told them to distrust. Cultural sensitivity is often nonexistent. Often, the law enforcement officers, investigators, prosecutors and health examiners are white men, and for many Native women cultural traditions may militate against talking to them about such intimate matters. So when you read that one in three Native women will be raped at least once in her lifetime, you can be assured that those numbers are underreported at even greater rates than in the general population,” (Ajijaakwe 2010).

⁷ Spivak “Interview” 1995, 28

⁸ Wolfe 2006

⁹ Deloria 2004, 27

¹⁰ Eng 2010, 33

¹¹ Puar 2007, 184

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¹² Povinelli 2002, 6

¹³ Kauanui 2008, 6

¹⁴ This phrasing is credited to Alyosha Goldstein.

¹⁵ Hesse-Biber and Piatelli 2006, 149-150

¹⁶ See Puar 2007, 184 for a related discussion of “affective economy”.

¹⁷ Mohanty 2003, 56

¹⁸ See Povinelli's 1998, 580 discussion of "mobile analyses" in the face of multicultural justification.

¹⁹ Smith 1999 and Moreton-Robinson 2000, 2004

²⁰ *Unsettling Ourselves* 2009

²¹ Nagar/Geiger 2007, 2

²² www.blackmesais.org

²³ Since 1974 the federal government has relocated over 14,000 Diné people from Black Mesa to make way for a large scale, ever-expanding coal mining operation. This constitutes the largest relocation of Indigenous people in the U.S since the Trail of Tears in 1883, and it is ongoing today.

²⁴ Simpson in "Settlement's Secret" (2010) calls for scholars to produce material that positions readers as "witnesses to the painful and spectacular life of U.S (and Canadian) settler colonialism." For Simpson, centering on the lives of Indigenous people within settler colonial system is a strategic way to prove the fragility of settler colonialism—pointing to the fact that it has not achieved its ultimate goal of eradicating Indigenous peoples so as to claim full access to their land, knowledge and culture. Bearing witness is also an integral part of allyship. It entails foregoing the privilege(s) that allow a person to *not see* the pain or oppression wreaked by a system in which they participate. In this sense, scholarship can function as a tool in building a politics of alliance.

²⁵ This is part of an overall vision for the academy that I hold—a vision articulated mostly by Indigenous scholars and scholars of color—as a place that produces knowledge that is grounded in goals of social justice, Indigenous self-determination and decolonization. Realizing this vision entails first recognizing the politics of knowledge production based on the specific social-political-historical context in which the academy is situated. Mohanty (2003) forcefully argues that the contemporary iteration of the academy in the U.S is the liberal academy in which race, culture and difference are "managed" through the liberal practice of individualization aided by discourses of cultural pluralism, or culture de-politicized. She suggests that in the face of this reality, scholars need be creating "public cultures of dissent"—spaces of debate within the academy that re-invigorate the inherently political nature of race, gender, sexuality, and cultural difference in the U.S, instead of "accommodate" said difference. The epistemological standpoints of which these cultures of dissent should consist, she posits, are those that "are grounded in the interests of people and that recognize the materiality of conflict, of privilege, and of domination." Centering the interests and the materiality of conflict of Indigenous peoples in the U.S, a liberal settler state, is a way to expose the untruth of the universality that liberalism claims for itself, because you are inevitably confronted with the bodies that liberalism leaves behind.

²⁶ See Melamed 2006, 20

Gradual But Significant Erosion

²⁷ This section heading is modified from a Sarah Deer quote that says, "...the ability of tribal governments to prosecute criminals has been gradually but significantly eroded over the last 100 years." ("Expanding" 2003).

²⁸ Simpson 2011, 209

²⁹ Cushner and Sands 2010

³⁰ Deer 2006, 35

³¹ See Sullivan 2007

³² Further, at the Congressional hearing regarding the TLOA, U.S Attorney General, Thomas Perrelli, said: "...U.S Attorneys are refusing to work in Indian Country or choosing to let cases go that they think they can make in court, simply because they haven't been told to focus on it or there aren't sufficient resources," (26).

³³ Deer 2003, 2005, 2006

³⁴ The TLOA (Section 102) requires the federal government to keep track of Tribal cases it declines to prosecute.

³⁵ Amnesty 2007, 9

³⁶ The Wikipedia entry titled "Reservation Poverty" states, unequivocally, "Native American [sic] are disconcertingly prone to crime, alcoholism, and suicide." For a full discussion of this see Luana Ross' *Inventing the Savage* (1998).

³⁷ McKie 2010

³⁸ Cushner and Sands 2010

³⁹ Deer 2006, 35

⁴⁰ Ross 1998, 23, 24

⁴¹ From NPR interview, "New Legislation" (<http://www.npr.org/templates/story/story.php?storyId=128953556>):

MARTIN: And forgive me, is the working assumption that one of the reasons that non-Indians go onto the reservation is that they know that they're lightly patrolled? That they feel that they'll get away with it? Is that the working theory about why this happens?

Mr. BULL: That is the working theory. I think that the idea is that if there's free reign out there on the reservation, a sense of lawlessness, if you will, that someone who wants to commit these crimes would find a reservation a very ideal place to commit those crimes.

⁴² In the winter of 1999, someone ran an ad in a South Dakota newspaper meant to look like an official hunting season announcement. The ad gave "rules and regulations" for "Indian Hunting season", saying "The 1999 Big Game hunting season in the state of South Dakota has been canceled due to shortages of Deer, Turkey, Elk and Antelope. However, this does not mean there will be no hunting. In the place of the big game animals this year we will have open season on the Sioux Reservations. This will entail the hunting of Americans Worthless Siounis Pyutus, commonly known as 'Worthless Red Bastards,' 'Dog Eaters,' 'Gut Eaters', 'Prairie Ni--ers' and 'F--- Indians.' This year from 1999-2000 will be an open season, as the f--- indians must be thinned out every two to three years." This is one very gross example of the impunity that is understood to apply to those seeking to commit violent crimes against Native Americans.

⁴³ Ross 1998, 24, 25

⁴⁴ See Dunbar-Ortiz "How Indigenous People Wound Up at the UN" In *The Hidden 1970s: Histories of Radicalism* (2010)

⁴⁵ “...state multicultural discourses, apparatuses, and imaginaries defuse struggles for liberation waged against the modern liberal state and recuperate these struggles as moments in which the future of nation and its core institutions and values are ensured rather than shaken,” (Povinelli 1998, 579).

⁴⁶ This aspect was changed with the TLOA; in section 304 it states that tribes can now sentence three years in prison and \$15,000 fines.

⁴⁷ Deer 2006, 36

⁴⁸ Mark Rifkin argues that exertions of settler state power, as in the *Oliphant* decision, and the legal limbo they create, “allows the U.S government to validate its extension of theoretically unlimited authority over [tribes], rendering them external to the normal functioning of the law but yet internal to the space of the nation,” (Rifkin 2009, 98).

Sexual Violence as a Tool of Colonization

⁴⁹ Amnesty 2007, 4

⁵⁰ Hopkins and Koss 2005, 704

⁵¹ From Goldstein “Nation” 2008: “Cultural critic Michael Warner argues that the placid rhetoric of settlement casts the history of British American colonies as a narrative free of violent conquest. As Warner observes, ‘Settling is intransitive, or, if it has an object, the object is merely the land’.”

⁵² Deer 2005, 458

⁵³ Winnemucca Hopkins *Life Among the Piutes: Their Wrongs and Claims*(University of Nevada Press 1994)

⁵⁴ Blackhawk 2006, 77

⁵⁵ For a full discussion see Smith *Conquest* 2005

⁵⁶ Rifkin 2011, 185

⁵⁷ See Deer “Native Women” 2011

⁵⁸ See Smith *Conquest* 2005, Alfred “Colonialism” 2009, 49, and Morgensen “Settler Homonationalism” 2010

⁵⁹ See Smith “Queer Theory and Native Studies” 2010; Driskill “Doubleweaving Two-Spirit Critiques” 2010. *GLQ* 16:1-2, 2010

⁶⁰ I recognize that most all violences that constitute nation building are necessarily rendered invisible.

⁶¹ It points to the facts that the site of sexual violence and colonial violence is not always discreet events, but is, what Michael Warner calls “a wide field of normalization”. If we conceive of the U.S as a settler colonial state, we see gender and sexual violence as a colonizing practice that is alive and well today, evidenced in the above mentioned examples.

⁶² Smith 2005, 139

⁶³ Ibid., 10

A Real Difference in People's Lives

⁶⁴ At the TLOA signing ceremony, Obama said of the act, "These are significant measures that will empower tribal nations and make a real difference in people's lives." (<http://www.whitehouse.gov/photos-and-video/video/signing-tribal-law-and-order-act#transcript>)

⁶⁵ Thinking outside of the frame of sovereignty, I agree with those who suggest that decolonization itself is impossible without transforming the settler colonial systems of heteropatriarchy that structure indigenous lives.

⁶⁶ Cushner and Sands 2010

⁶⁷ As Andrea Smith readily notes, increased criminalization has never led to decreased sexual violence.

⁶⁸ "Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the U.S.A."; The jurisdictional situation has also been described as a "hodgepodge" by Brian Bull. See NPR interview, "New Legislation" (<http://www.npr.org/templates/story/story.php?storyId=128953556>)

⁶⁹ Eid 2010, 35

⁷⁰ Cushner and Sands (2010) also ask: "what exactly does 'consultation' and 'consent' mean in this context, and what implications does 'consent' have for the separation of powers doctrine? Is an Indian tribe's 'request' a one-way jurisdictional ratchet? When can a tribe, if choosing to extend jurisdiction to the federal government, rescind that decision?"

⁷¹ *ibid*

⁷² Pisarello 2010, 1525 and Tribal Law and Order Act Section 13, 9

⁷³ DOI "Press Release" 2010

⁷⁴ The TLOA does authorize a competitive grant program, the Indian Alcohol and Substance Abuse Program (IASAP) that will award monies to tribal governments for drug and alcohol prevention initiatives. See: <http://www.ojp.usdoj.gov/BJA/grant/indian.html>

⁷⁵ Cushner and Sands 2010

⁷⁶ *www.nswkly.com*, July 2010

⁷⁷ See The Boarding School Healing Project Report, "Indigenous People and Boarding Schools": <http://www.boardingschoolhealingproject.org/files/bshpreport.pdf>

⁷⁸ This comment is from the DOJ's testimony in *Examining S. 797*, pg. 13

⁷⁹ The DOJ's comment is found in *Examining S. 797*, pg. 13

⁸⁰Currently, the approximately 26,000 Native Americans in U.S prisons have been incarcerated at a rate 38 percent higher than the general population and, despite the fact that Native Americans (officially) make about 2% of the U.S population, they already constitute 1.6% of the federal prison population. This is an obvious and gross overrepresentation—one that continues the colonial process of Indigenous containment—and one that will surely grow with the TLOA’s incentives to criminalize. This points to the overall importance of conceiving of the Prison Industrial Complex in the U.S, like sexual violence, as a tool that is serving its designated purpose: to maintain settler colonialism, to manifest the myth of the “disappearing native”. It is, unequivocally, not an aberrantly unjust aspect of a generally just system. This also further proves that neoliberalism in general and multicultural neoliberalism in particular serve as lubricants for ongoing settler colonial expansion. Under neoliberal economic policies prison privatization began in the early 1980s and gained a great deal of momentum by the mid-1990s. As of 2010, 9% of U.S prisoners (about 90,000 prisoners) are housed in private prisons, up from 6% in 2000. (Smith “Incarceration” 2008). Prison abolitionist, Angela Davis, asserts, “Prisons, as employed by the Euro-American system, operate to keep Native Americans in a colonial situation,” (Davis 2003, 73).

⁸¹ The largest private prison corporation, The Corrections Corporation of America (CCA), for example, boasts on its Website, “All three federal agencies – the Federal Bureau of Prisons, Immigration and Customs Enforcement and the U.S. Marshals Service – nearly half of all states and numerous county agencies partner with CCA.”

⁸² The truth of this perception is debatable. See: http://voices.washingtonpost.com/ezra-klein/2010/08/are_private_prisons_worth_the.html

⁸³ See Melamed 2006

⁸⁴ I am choosing to use the concept of consent as opposed to democracy to highlight the lack of meaningful participation by marginalized peoples in democratic societies as well as to draw out the connection between settler governance and rape.

⁸⁵ NCAI 2010

⁸⁶ Tribal Law and Order Act Section 101, 14

⁸⁷ Ibid., 15-18

⁸⁸ Tribal Law and Order Act, section 6

⁸⁹ Simpson 2008, 195

⁹⁰ <http://msmagazine.com/blog/blog/2010/08/03/the-woman-behind-the-tribal-law-and-order-act/>

⁹¹ See: <http://www.refusethesilence.com/2010/08/the-tribal-law-and-order-act/>

⁹² The mainstream (or *whitestream*, to use Sandy Grande’s phrase) anti-violence movement has also proved to be a chance for the state to increase the reach of the Prison Industrial Complex. Ellen Pence notes that the Violence Against Women Act (VAWA), which is perhaps the most well-known piece of federal legislation aimed at protecting women from violence, “focused more on increased efficiency, arrests, and convictions than on critiquing the impact of institutional responses on the safety, autonomy, and integrity of battered women,” and, furthermore, “Pence pointed out that much of the federal money raised under the [VAWA] was funneled through prosecutors and the police, who sought to manage advocates working with women,” (Patacek 2010, 13). Andrea Smith further notes

that the passage of the VAWA made it so “antiviolence centers have been able to receive a considerable amount of funding from the state, to the point where most agencies have become dependent on the state for their continued existence. Consequently, their strategies tend to be state friendly: hire more police, give longer sentences to rapists, pass mandatory arrest laws, etc. But there is an inherent contradiction in relying upon the state to solve those problems it is responsible for creating,” (Smith 2010, 357).

Embraced by the State

⁹³ See Moreton-Robinson 2004, 76; Linda Smith 1999

⁹⁴ Simpson, writes about the use of spectacle in settler societies, “Spectacles do all sorts of political work in every society, but are especially useful in settler societies because they continue to redirect emotions, histories, and possibilities away from the means of societal and historical production—Indigenous dispossession, disenfranchisement, and containment,” (Simpson 2011, 207).

⁹⁵ A look at President Obama’s official apology resolution to Native Americans is a helpful foil to the spectacle of the TLOA signing ceremony and offers some insight into the purpose of spectacle. Signed on December 19, 2009, Obama’s national apology to Native Americans—to “acknowledge a long history of official depredations and ill-conceived policies by the federal government regarding Indian tribes”—was passed in Congress, quietly, “largely without public notice,” (See Simpson 2011). By way of comparison, the signing ceremony for the TLOA was highly publicized, took place at the White House, was aired nationally on television and radio, and has been a mainstay feature—including updates on the one year anniversary of the signing—on the White House’s website devoted to Native American issues. The *apology* if made in earnest, spotlights the violence of history, and presumes that there will be accountability taken on the part of the wrongdoer—who, in this case, is the “federal government”, according to Obama. An (earnest) apology is not diversionary, it orients listeners squarely towards the fault of the apologizer and, unlike a spectacle, cannot be easily manipulated to create an affective. Because of this, I argue, Obama’s 2009 apology was intentionally underpromoted, while the spectacle of the 2010 TLOA signing ceremony was highly promoted because it was a useful tool for the state to consolidate a (reorienting) narrative of benevolence regarding its relationship to its Indigenous subjects. Of course, I know that there are apologies that are publicized to be diversions, that are spectacles. I know that the two categories are not mutually exclusive. See Cornthassel 2008. Deer (2006) points out that a real apology to Native Americans must be coupled with a return of power, livable land and full sovereignty to them for it to have any teeth.

⁹⁶ Garrigan, 2010

⁹⁷ *ibid*

⁹⁸ *ibid*

⁹⁹ I am working with Karen Sánchez-Eppler’s characterization of white America’s interest in testimonies of oppressed peoples, such as slave narratives, as occupying a space somewhere in between empathy and pornography. The use of the term pornography here is not meant to express any sex negativity on my part, but intended to describe a specific kind of power relation that defined by privilege, distance, and a lack of accountability.

¹⁰⁰ Martin “New Legislation” 2010: <http://www.npr.org/templates/story/story.php?storyId=128953556>

¹⁰¹ Simpson 2008a, 378

¹⁰² Mohanty 2003, 209

¹⁰³ *ibid*

¹⁰⁴ Eng 2010, 41

¹⁰⁵ Similarly, in the Congressional hearings for the TLOA Associate U.S Attorney General, Thomas Perrelli, said: “[W]e recognize that we are only going to succeed if everyone in the Federal family, as well as with our Tribal partners and State and local governments works together.” This gives the sense that “solving” the issue of sexual violence against Native peoples is simply a matter of “working together”, again, in a strangely intimate way. This obfuscates the complexities of historical and ongoing settler violence and obscures the inherently violently sexualized nature of power in settler states, making it seem, instead, familial, accessible, and benevolent.

¹⁰⁶ For a full discussion of the notion of “obligation” in settler states, see Povinelli 2002, 8-9.

¹⁰⁷ Some of his speech is focused on the TLOA specifically and some is focused on his own positionality. The latter I discuss in section VII.

¹⁰⁸ Tribal Law and Order Act 2010

¹⁰⁹ Rifkin 2009, 98

¹¹⁰ “Whatever the particular situation, Indigenous people’s basic relationship to the state is as members of nations in a colonial relationship with a dominating external power,” (Alfred 2009, 50).

¹¹¹ Rifkin 2009, 98

¹¹² In “Indigenizing Agamben,” Rifkin points out that Supreme Court Justice, Clarence Thomas observed “that there is a contradiction at the heart of U.S Indian Policy.” In the 2004 *U.S. v. Lara* decision, Thomas said, “In my view, the tribes either are or are not separate sovereigns, and our federal Indian law cases untenably hold both positions simultaneously...The federal government cannot simultaneously claim power to regulate virtually every aspect of the tribes through ordinary domestic legislation and also maintain that the tribes possess anything resembling ‘sovereignty’,” (Rifkin 2009, 107).

¹¹³ *ibid*

¹¹⁴ Rifkin 2009, 99

¹¹⁵ Rifkin 2009, 101

¹¹⁶ Ragsdale’s comment is found in *Examining S. 797*, pg. 31

¹¹⁷ Jasbir Puar’s concept of *homonationalism*—which is the imperial nation-state’s use of a rhetoric of sexual modernity that casts said imperial nation-state power as tolerant or progressive at the expense of casting a racialized “other” as perverse or backwards in order to further stabilize the affective boundaries of the nation through sexuality—is an aptly analogous descriptor for what is happening through the presentation of the TLOA at the signing ceremony.

¹¹⁸ See Povinelli 2006

¹¹⁹ Melamed 2006, Povinelli 2002, Eng 2010, Diskill, et al. 2011

¹²⁰ Simpson 2008a, 379

¹²¹ Butler 1993, 124

¹²² Povinelli 2002, 22

¹²³ In another example of Fanon's "peaceful violence", a February 2004 report by the United States Civil Rights Commission reveals that the Federal government was spending more on health care, per capita, in federal prisons than it was for healthcare on reservations. See:
<http://www.law.umaryland.edu/marshall/usccr/documents/nativeamericanhealthcaredis.pdf>

¹²⁴ Obama himself described that unseemly chapter as the history of "official depredations and ill-conceived policies by the federal government regarding Indian tribes" during his 2009 Official Apology Resolution to Native Americans.

¹²⁵ This raises the history of the U.S.'s use of "cultural" ceremonies to interpellate Indigenous people into the colonial state project. In 1916, Secretary of the Interior, Franklin Lane, developed "citizenship ceremonies" in which, "Indians were to solemnly step out of a teepee and shoot an arrow across an assembly, to signify that they were leaving their way of life behind for the responsibilities of U.S citizenship...With hands on plow, Indians were handed a purse by the presiding official to remind them to save what they earned that they might fulfill their new responsibilities...To conclude, the presiding official pinned a badge decorated with an American eagle and the national colors on the recipient to remind the Indian to act in a way that would honor the flag and the privileges of U.S citizenship," (Barker 2002, 322-23). I assert that the July 29, 2010 signing ceremony at the White House fell within the tradition of ceremonies that work to discursively fix Indigenous people as loyal subjects without agency, and fold them further into colonial networks of power.

¹²⁶ Berlant 1997, 207

Whose Shared Humanity?

¹²⁷ Eng 2010, xi

¹²⁸ Obama is the first "black" president of a capitalist nation-state built through the labor of black African slaves and the violent dispossession and forced assimilation of Indigenous peoples, and maintained, to a significant degree, through the slave economy of the Prison Industrial Complex (which disproportionately impacts black people) and through the ongoing control over and dispossession of Indigenous people. It is, further, a nation that consistently denies its own present of anti-black racism and its "shameful legacy" of slavery, that "peculiar institution" (Metzler 2010, 396).

¹²⁹ Harris 1993

¹³⁰ Smith 2010, 2

¹³¹ Bayoumi 2010

¹³² Eng 2010, 41

¹³³ McAlister 2010, 225

¹³⁴ This also does the “forgetting” work of multiculturalism; it suggests that Obama can be unproblematically adopted into the Crow Nation, ostensibly based on his status as a racial minority, erasing the complex history between Blacks and Natives in the U.S in relation to white settlers.

¹³⁵ Green 1988, 30

¹³⁶ See McAlister 2010, 224

¹³⁷ See Puar 2007 and Driscoll 2011.

¹³⁸ Kazanjian 2003, see Introduction

¹³⁹ Deloria 1998, 187

¹⁴⁰ <http://www.whitehouse.gov/the-press-office/2010/12/16/remarks-president-white-house-tribal-nations-conference>

¹⁴¹ Povinelli 2002, 16

¹⁴² Grande 2004, 31

¹⁴³ Although, it was pointed out to me that Bush delivered speeches to Latin@ crowds in Spanish, gestures that were mostly received as “sincere” acts of good faith, despite his actual policies that have had a legacy of repression for many Latin@s in the U.S. See, for example, “Bush Gets Bravos for Speech in Spanish”, *Miami Herald*, May 6, 2001.

¹⁴⁴ See also Green, Rayna. “The Pocahontas Perplex: The Image of Indian Women in American Culture.” In *Unequal Sisters: A Multicultural Reader in U.S Women’s History*. Ellen Carol Dubois and Vicki L. Ruiz, eds. New York: Routledge, 1990, 15-21.

¹⁴⁵ Barker 2002, 316-17

¹⁴⁶ Povinelli 2002, 6

¹⁴⁷ See Smith 2006, Harris 1993

¹⁴⁸ <http://www.whitehouse.gov/video/President-Barack-Obamas-Inaugural-Address-January-20-2009#transcript>

¹⁴⁹ For a full discussion of this see *The Empire of Love* (2006) by Elizabeth A. Povinelli.

¹⁵⁰ Trask 2006, 82

Conclusion

¹⁵¹ Brandenburg’s comment is found in *Examining S.* 797, pg. 66

¹⁵² Sarah Deer and others—Waziwatawin, Andrea Smith—have commented on the fact that legal reform work is a strategic move, one that can meet the present material needs of people. But, ultimately, it is work that they carry out with a longer vision of decolonization by building networks of support that will help end dependence on the settler state and its legal system.

¹⁵³ Eng, McAlister, Berlant, Driscoll, et al.

¹⁵⁴ Mohanty 2003, 214

¹⁵⁵ See also Rifkin 2011, 239

¹⁵⁶ Povinelli 1998, 580

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