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No Common Ground: Competing Worldviews at Mato Tipila

Abstract

This project analyzes a legal conflict (*Bear Lodge Multiple Use Assn v Babbitt* 2 F. Supp. 2d 1448) at Mato Tipila, a significant place for the Lakota (Sioux) community and with which they have a historical and longstanding relationship. Commercial and recreational rock-climbing enthusiasts who make use of it and the tourists who arrive in droves each year to visit, call this place Devils Tower. The case centered on whether the government violated the Establishment Clause of the First Amendment by instituting a climbing ban during the month of June to accommodate Lakota ceremonial obligations. In recent historical developments, the conflict has been exclusively, and thus ineffectively, adjudicated through the eurochristian – albeit secularized – discourse of "rights." The cognitional categories used to define rights with respect to both natives and non-natives at this place are rooted in eurochristian culture and are for that reason inadequate to encompass the diversity of commitments at stake. The current state of human rights theory is deeply rooted in categories of possessive individualism and other related concepts that are alien to Lakota understandings of relationship and obligations at Mato Tipila. Using cognitive theory, I investigate the radical alterity that underscores ongoing tensions at this site.

A plan implemented by the National Park Service to promote "shared use" by different communities is inadequate. Framing the court case exclusively in terms of religious rights forces all participants to assimilate and articulate their positions in a constrained way that privileges a dominant way-of-being that is not only antithetical to the concerns of Native communities but has been imposed on Indigenous peoples since the 15th century.

At the heart of the conflict is an incommensurability, demonstrated by clashing perceptions about what this site means and how humans understand their relationship with it. Those with power to decide the outcomes on contested lands misconstrue that reality. Most importantly, I argue that the framework around accommodation and shared use profoundly disrupts Lakota memory and tradition even as it mobilizes the discourse of inclusion.

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No Common Ground: Competing Worldviews at Mato Tipila

A Dissertation

Presented to

the Faculty of the University of Denver and the Iliff School of Theology Joint PhD Program

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of the Requirements for the Degree

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by

Wendy A. Felese

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CHAPTER ONE

PREFACE

Devils Tower National Monument in the Black Hills National Forest of northeast Wyoming has a much older name, but few tourists who pass through the area will learn or remember it. The Lakota¹ name, *Mato Tipila* (Bears Lodge) predates its designation as the first monument and was given long before there was anything called the United States.² It rises above the Belle Fourche River near *Paha Sapa* (the Black

¹ The translation of Lakota means “to make a relative.” Lakota peoples (*Tetonwan*) are part of a larger community called *Oceti Sakowin*, (Seven Council Fires), denoting three language divisions, and three communities relationally tied through history and custom. The Lakota community is further divided into the following subdivisions: Northern Lakota (Húŋkpap̄ha, Sihásapa), Central Lakota (Mnikhówožu, Itázipčho, Oóhenuŋpa), and Southern Lakota (Oglála, Sičhángŋu) - also known as Oglala, Brulé, Minneconjou, Hunkpapa, Sans Arcs, Two Kettles, and Blackfeet. Please see Albert White Hat Sr., *Zuya, Life’s Journey: Oral Teachings from Rosebud* compiled and edited by John Cunningham, (University of Utah Press, 2012).

² This, despite romanticized fables told by National Park Service rangers. The official version of how the butte received its name is supplemented by crude drawings of a gigantic bear clawing furious grooves into the side of the butte. Critical absence of deep meaning that conveys the importance of this place, and the Black Hills more broadly, indicates the incongruence between cultures, and is the focus of my project. I make an effort to recognize “common courtesy” and accuracy in using correct names, as well as being attentive to the colonizing practice of “claiming ownership through renaming.” Akim Reinhardt, ed., *Welcome to the Oglala Nation*, (Nebraska, University of Nebraska Press, 2015), 17.

³ I fully explain my notion of worldview in Chapter One, but follow Mark Freeland’s (Anishinaabe/Ojibwe), definition as ‘an interrelated set of logics that fundamentally orient a culture to space (land), time, the rest of life, and provides a prescription for how to relate to that life. Mark Freeland, *Conceptual Decolonization of Space: Worldview and Language in Anishinaabe Akiing* (unpublished dissertation, 2016).

⁴ This project uses cognitive theory, a field that is quickly expanding and includes many related disciplines, including cognitive and developmental psychology, neuroscience, cognitive anthropology, and even such relatively recent academic fields as gesture studies and cognitive rhetoric. An important aim of cognitive science is to “overcome the mind-body dualism inherent in much of Cartesian scientific and philosophical thinking up to and including first-generation cognitive science, by grounding... aspects of the human mind

Hills), and how *you* know this place depends on *who* you are – including but not limited to specific, familiar thought processes shared and exchanged within your specific culture. One method of exchange is through language; words that saturate thoughts, speech, even dreams, convey perceptions and function as a cipher for your worldview.³

This project is an investigation into a legal battle centered on Mato Tipila/Devils Tower by using the tools of cognitive theory. George Lakoff and Mark Johnson have written extensively on the subject and assert the following: “the mind is inherently embodied, thought is mostly unconscious, and abstract concepts are largely metaphorical.”⁴ Our perceptions, not arbitrary, are grounded in our experience.

Tension between two *irreconcilable* ways-of-being – one emphasizing responsibilities, the other “rights,” highlights opposing perceptions, each rooted in distinct and dissimilar cultures. To accurately present the conflict while recognizing that I am asserting a certain authority based on an inherited legacy of colonization, I will avoid assimilation of Lakota terms, ideologies and histories into the dominant paradigm. Appropriation and misrepresentation of traditional Native values further affixes the “great human sacrifice [that] created the United States and all the Americas: the twin genocides of conquest and slavery.”⁵ This project privileges Native voices – those whose cultural competence authorizes their work. Tink Tinker (Wazhaze/Osage), identifying the radical

in... aspects of the human body.” *From Perception To Meaning: Image Schemas In Cognitive Linguistics*, ed. Beate Hampe in cooperation with Joseph E. Grady (Berlin: Mouton de Gruyter, 2005).

⁴ George Lakoff and Mark Johnson, *Philosophy In The Flesh: The Embodied Mind And Its Challenge To Western Thought*, (Basic Books, 1999), 3.

⁵ Michael Omi and Howard Winant, *Racial Formation in the United States*, 3rd ed., (NY: Routledge), 245.

alterity between Native culture and settler culture, insists “you’re going to have to let different be different.”⁶ To demonstrate the intensity of contrast, I sought and received approval to conduct interviews, granted by the University of Denver Institutional Review Board, on September 6, 2017. Each of the following interviews was conducted between September 2017-August 2018. Each was preceded by an informal discussion about the nature of, and reason for my inquiry, willingness to participate, and any questions or concerns they might have in that regard. After receiving each individual’s verbal consent, I asked them to sign consent forms. The interviews were organized as follows: a Lakota scholar and professor of anthropology at Oglala Lakota College in Kyle, South Dakota (two lengthy interviews, one in September 2017 and the second in August 2018). Each lasted several hours. Both were conversation-style interviews, commencing with a series of questions I had written. The responses were recorded and written in notebooks. A recorded interview with an NPS technical climbing ranger at Devils Tower National Monument was conducted in November 2017. During June of 2018, I conducted another interview with a different technical climbing ranger at Devils Tower National Monument. Each lasted an hour. These interviews were recorded, and both conducted in the Climbing Rangers office at the Monument. Over the course of two days in September 2017, I interviewed (separately) five technical rock climbers at Devils Tower. Two interviews were recorded, three written in a notebook. During May of 2018, I interviewed the Chief

⁶ Tink Tinker, radio interview, *Why? Philosophical Discussions About Everyday Life*, Produced by Prairie Public. To access the interview click on https://exchange.prx.org/series/31920-why-philosophical-discussions-about-everyday-life?order=oldest_first&page=2 and scroll down to the title “Are Indian Tribes Sovereign Nations?” Accessed January 20, 2018.

of Interpretation and Education at Devils Tower National Monument. This interview was recorded. During September 2017, I interviewed five visitors/tourists (separately) at Devils Tower National Monument. These interviews were written in notebooks. In May 2018, I interviewed a father and his son who were visiting Devils Tower National Monument. This interview was recorded. In January 2018, I conducted an interview with a resident of Hulett, Wyoming. This interview was written in a notebook. In January 2018, I interviewed a business owner in Hulett, Wyoming. The interview was documented in a notebook. During August 2018, I encountered a group of climbers who members of a professional climbing association. I obtained written consent from four and interviewed each separately. One was recorded; three were written in notebooks.

My project, an examination of a court case over shared use at Devils Tower, falls under the institutionalized and academic category of Religious Studies. The plaintiffs in the case targeted the Establishment Clause⁷ of the First Amendment of the U.S. Constitution in their complaint; defendants were then obliged to frame their position within the sphere of religious “rights.” However, I will be avoiding certain terms and phrases closely associated with the discipline because they are part of a larger discourse that privileges specific cognitive constructs and are alien to an American Indian worldview. Deeply rooted in Euro-American culture, these terms are used in scholarship, popular literature, churches, theology, and everyday language, but significantly in terms of my project, in the courtrooms and legal venues in which disputes over land play out.

⁷ The clause states that “Congress shall make no law respecting the establishment of a religion or prohibiting the free exercise thereof.” <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/estabinto.htm>.

The first of these terms are “religion” and “religious.” Unless citing the work or words of others, or to demonstrate how they reify dominant concepts, I will not use them. The spiritual, social and political matrix signified by the word “religion” is entirely Western in origin and nature and does not have “any American Indian cultural equivalent.”⁸ Religion is a derivative of the Latin *religio*, meaning “to bind or attach.” I will demonstrate how the very origins of this word connote a distinctly Christian worldview and contribute to the imposition of Christendom.⁹ Most important, to assume there are words that correspond in *any* Indigenous language supports the gross misconception that “Indian languages (and indeed all languages) are merely exotic codes for the normative English expression, where a word in English must have its equivalent in every other language.”¹⁰

Second, the monotheistic notion of a god-on-high, a Judeo-Christian concept, was carried to what is today the Americas by the first European immigrants and imposed through missionization and colonization. In traditional Indigenous language and culture, “god” does not exist as a word or a concept. This reality is obviously complicated by the fact that after centuries of enduring the related projects of missionization and colonization, many Native people self-identify as Christian. My choice to avoid this term

⁸ Tink Tinker, *American Indian Liberation*, (Maryknoll, NY: Orbis Books, 2008), 123.

⁹ Steven T. Newcomb, *Pagans In The Promised Land: Decoding The Doctrine Of Christian Discovery* Golden: Fulcrum, 2008), (ix). Peter d’Errico, in the Foreword, defines Christendom as “[A]n amalgamation of churches and states” – alliances among secular monarchs and ‘priestly authorities; it culminates in the doctrine of divine right of kings and popes.

¹⁰ Tink Tinker, *Wakonda: God, gods, Spirit and Power*, (Unpublished Manuscript, 2012), 3-4. This is covered fully in Chapter Two.

is not to disregard, disrespect or diminish this reality. Recently, there have been attempts to change the language around the concept – many Indigenous spiritual leaders have revitalized the term Spirit(s) to describe “an unknowable energy or force in the world, which defies description or personalization until it becomes knowable manifestations...as the Above and the Below... symbolized as sky and earth, and called upon as Grandfather and Grandmother, he and she.”¹¹

[It] has no inherent or ultimate gender, is knowable only in the reciprocal dualism of male and female. Thus to assume that the simplistic gloss ‘god’ somehow is adequate to translate and classify... in English, immediately falsifies the internal, cultural meaning.¹²

I follow Tinker in his rejection of the term “Creator” since he shows how it is tied to certain cognitive constructs associated with the dominant worldview.¹³ For this reason, the term is problematic and won’t be used unless I am quoting somebody from a Lakota community. The conflation of the term with eurochristian conceptual categories is explored more fully in Chapter Two.

I *will* use the Lakota term *wakan*, despite it being often mistranslated as “sacred.” Albert White Hat (Sicangu Lakota), explains that a more accurate way of understanding *wakan* is the power to give and take life.¹⁴ Chapter Two includes White Hat’s recounting of Lakota stories to explore more fully the use and understanding of

¹¹ Tinker, 5.

¹² Tinker, 6.

¹³ Tink Tinker, ‘Why I Do Not Believe In A Creator’ in *Buffalo Shout, Salmon Cry* (Waterloo: Herald Press, 2013).

¹⁴ Albert White Hat Sr., *Zuya, Life’s Journey: Oral Teachings from Rosebud* compiled and edited by John Cunningham, (University of Utah Press, 2012), 31, 84, 175.

wakan within Lakota culture. For this project, I deliberately eschew “sacred” because its use diminishes the sophisticated understanding of a power that “courses through our own veins... was and is a part of ourselves, even as it defies being seen or description as some sort of reified thing or being...power, spirit energy.”¹⁵

United States National Parks and Monuments are most often established within or on top of traditional Indigenous lands.¹⁶ Forced displacement, and a violent severing of longstanding, historical ties between peoples and their homeland, is not a thing of the past. Invasion and successful westward intrusion into these lands is carried out via the collusive and highly effective enterprise - colonization and missionization.¹⁷ Firsthand accounts of the interface are textually preserved¹⁸ and still evident today on any

¹⁵ Tinker, *Wakonda*, 13.

¹⁶ This correlation has been historically proven but is not the central focus of my project. See, for example, Mark David Spence, *Dispossessing the Wilderness: Indian Removal and the Making of National Parks*, NY: Oxford, 1999).

¹⁷ Following maps of “newly-discovered” territories, first the Jesuits, followed by Protestant clerics, preached “a new gospel of salvation, but also just as energetically imposed a new cultural model for existence on Indian people.” George E. Tinker, *Missionary Conquest: The Gospel and Native American Genocide* (Minneapolis: Augsburg Fortress Press, 1993), 4. Tinker effectively argues that colonization and missionization functioned as interrelated, co-dependent vehicles by which Euroamerican economic and political ideologies and structures were forced on Native peoples. In the chapter titled, “Pierre-Jean De Smet: Manifest Destiny and Economic Exploitation for example, he traces “the collusion between church and state” in a “tract of land and the annual government subsidy of \$800 to run an Indian school”, arranged by the U.S. secretary of war, John Calhoun. Eager clerics took up residence among Native communities, recording meticulous observations of the day-to-day life of particular communities – their written reflections articulate “deliberate... designs to colonize A original people.” Andrea Bear Nichols, “Colonialism and the Struggle for Liberation: The Experience of Maliseet Women, University of New Brunswick Law Journal, Annual, 1994, Vol.43, p.223-239.

¹⁸ A full literary analysis is too lengthy and is not the focus of this project; however, examples include, but are certainly not limited to, *The Jesuit Relations and Allied Documents: Travels and Explorations of the Jesuit Missionaries in North America, 1610-1791*, R.G. Thwaites, ed., (Cleveland: Burrows Brothers, 1896-1901), *The Works of Samuel de Champlain*, (Toronto: The Champlain Society, 1922), Cotton Mather, *Triumphs of the reformed religion in America: The Life and Death of the Renown'd Mr. John Eliot, Who Was the First Preacher of the Gospel to the Indians in America*, second edition, (London, 1691), and

American Indian reservations.¹⁹ Explorers, fur traders, missionaries, soon followed by increasing numbers of settlers staking claims, were backed by ever-stronger and more fortified military contingencies. This is a remarkably effective tool of cultural genocide - the “effective destruction of a people by systematically or systemically (intentionally or unintentionally in order to achieve other goals) destroying, eroding, or undermining the integrity of the culture and system of values that defines a people and gives them life.”²⁰

Tinker identifies four “interrelated vehicles” of cultural genocide:

- Political aspects, including the threat of military or police intervention, in order to subdue a weaker, culturally discrete entity - evident in repeated treaty violations.
- Economic aspects, such as the eradication of the buffalo and the forced reservation system, - genocidal actions taken by a more powerful entity, in this case, the United States.

Junípero Serra, *Diary of Fra Junípero Serra, O.F.M.: Being An Account of His Journey From Loreto to San Diego, March 28-June 30, 1769*, (Providence, The Franciscan Missionaries of Mary, 1936).

¹⁹ At Pine Ridge Indian Reservation in South Dakota, for example, Christian organizations are abundantly over-represented in terms of the population. Red Cloud Indian School, the first Catholic church and resident boarding school, has been in the largest of these – Pine Ridge Village, since 1890. A proliferation of various denominations soon followed the Catholics - Episcopal, Methodist, even a French Taizé community established themselves here and they never left. A church retreat center in Pine Ridge Village hosts “after-school Bible study” for Lakota children, who are often picked up after school or on summer break. They are placed in the church van and taken to the center. Within the last several years, a non-Native owned coffee shop opened in Pine Ridge Village – any economic benefit to the community is tempered by the twice-daily prayer sessions and evangelizing one must endure when stopping by for a latte. Re-member, is a non-profit organization providing summertime service/volunteer opportunities for people from outside the community who wish to help “alleviate the conditions of poverty and substandard housing” at Pine Ridge. Visiting during the summer of 2017, I noticed a “no proselytizing!” sign tacked onto a board in the main bunkhouse, but their motivation and agenda is clear – they are a group of missionaries from what is called the Stanton Reformed Church. Digging outhouses and skirting trailers for elders, no doubt, includes more than a bit of proselytizing. <https://www.stantonrc.org/mis-sions/re-member-on-the-pine-ridge-reservation>. Accessed June 29, 2018.

²⁰ Tinker, *Missionary Conquest*, 6.

- Religious aspects include the outlawing of traditional ceremonies, and the massacres of entire communities (sometimes as retaliation for practicing these ceremonies).
- Finally, the imposition of eurochristian ideals on what a family unit should look like, i.e. ‘displacing the extended kinship system upon which an Indian nation and individuals depend for their identity,’ and the relentless attempts at conversion.²¹

Lakota (and other Native communities) continue to experience alienation from their lands, and for reasons I will explain in the following chapters, I use the term genocide²² to describe this reality. Vine Deloria, Jr (Yanktonai/Sihasapa//Standing Rock Sioux), making an important distinction between historical genocide and the devastating effects associated with ongoing colonization, states that

many Indians speak of this condition as colonialism, but it is considerably more devastating than simple colonialism. It is the final and systematic and perhaps even ruthlessly efficient destruction of Indian society.²³

The persistent, violent seizure of Native lands, the ongoing imposition of religious ideologies, (succinctly summarized by the phrase “kill the Indian, save the

²¹ Tinker, 6-8.

²² United Nations Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide is used in this project as a way of framing certain actions committed with an intent to destroy, ‘in whole or part, a national, ethnical, racial or religious group.’ The United Nations Convention for the Prevention and Punishment of the Crime of Genocide, names the following actions as constitutive:

* Killing members of the group.

* Causing serious bodily and mental harm to members of the group.

* Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

* Imposing measure intended to prevent births within the group.

* Forcibly transferring children of the group to another group.

Related, and equally problematic is the intent to commit cultural genocide.

²³ Vine Deloria and Clifford M Lytle, *The Nations Within: The Past and Future of American Indian Sovereignty* (NY: Pantheon, 1984).

man”),²⁴ constitute genocide -a successful colonization that dominates the physical space of another by the colonizer, reforms the minds of the Indigenous peoples within the dominated space, and integrates the local indigenous economic histories into the Western perspective.²⁵

Glenn Morris (Shawnee) and Taiaiake Alfred (Mohawk), are among those who have argued that “colonization of the mind,” equally violent, is a continuous replication of internalized oppression. The consequence is a “mental state that blocks recognition of the existence or viability of traditional [indigenous] perspectives...[preventing] people from seeing beyond the conditions created by white society to serve its own interests.”²⁶

This observation dovetails with cognitive theory—the conflict at Mato Tipila/Devils Tower (and by extension, all public lands under federal jurisdiction), reflects the

²⁴ This concept developed over time, beginning with General Philip Sheridan, who stated “The only good Indians I ever saw were dead.” “Philip Henry Sheridan,” PBS. http://www.pbs.org/weta/thewest/people/s_z/sheridan.htm. Accessed June 29, 2018. Theodore Roosevelt, during a speech in New York in 1886, declared, “I don’t go so far as to think that the only good Indians are dead ones, but I believe nine out of every 10 are.” “Theodore Roosevelt: ‘The Only Good Indians Are The Dead Ones’.” Indian Country Media Network. June 6, 2017. <https://indiancountrymedicinenetwork.com/history/events/theodore-roosevelt-the-only-good-indians-are-the-dead-indians/>. Accessed June 29, 2018. Commenting on ‘the only good Indian is a dead one’ Captain Richard Henry Pratt, founder of the Carlisle Indian School in Pennsylvania, opined, “In a sense, I agree with that sentiment, but only in this: that all the Indian there is in the race, should be dead. Kill the Indian in him and save the man.” Richard H. Pratt, “The Advantage of Mingling Indians with Whites,” in *Official Proceedings of the Annual Meeting: 1892*, proceedings of the Nineteenth Annual Conference of Charities and Corrections. <https://quod.lib.umich.edu/n/ncosw/ACH8650.1892.001/68?rgn=full+text;view=image;q1=pratt>. Accessed June 29, 2018.

²⁵ V.Y. Mudimbe, *The Invention of Africa: Gnosis, Philosophy and the Order of Knowledge* (Bloomington: Indiana University Press, 1988), 2.

²⁶ Glenn T. Morris, ‘Vine Deloria, Jr., and the Development of a Decolonizing Critique of Indigenous Peoples and International Relations’ in *Native Voices: American Indian Identity and Resistance* (University Press of Kansas, 2003), 125.

persistence of dominant cognitive categories whose imposition erases and destroys Indigenous perceptions of and relationship with, their traditional homelands.

My interest in conflicts over public lands and shared use began on a trip to Yellowstone. A 3,500-square mile “recreation area” that spans across three western states – Wyoming, Montana and Idaho—it is the first US National Park. Its territory consumes the traditional lands of Affiliated Tribes of Colville, Coeur d’Alene peoples, the Umatilla, Nez Perce, Crow communities, Northern Cheyenne, Western Shoshone, and others.²⁷ It was the first to be claimed for official preservation in 1872, but Park literature tells us that, as early as 1808, John Colter was the first “white man” to visit the area.²⁸ Explorers following him “decided that as wonderful a region ought never to fall into private ownership.”²⁹ This conflation of land and property is of particular interest, and the central component of my project, because it reveals an underlying ideological construct that allows two juxtaposing ideas – public land “preservation” and private land ownership – to anchor and limit discussions about land use. What binds these ideals together is the “rights” discourse, which is the way the eurochristian worldview is articulated and imposed on Indigenous ways-of-being. The ideologies are an extension of English philosopher John Locke’s essay “Property,” in *Two Treatises of Government*, in which he states, *[A]s much Land as a Man Tills, Plants, Improves, Cultivates, and can use the*

²⁷ There are twenty-six additional communities listed in the official Park documents. This number grossly misrepresents the numbers of original inhabitants who are not officially recognized by the US government as ‘tribes’, and whose presence predates what we call ‘the Americas’ by thousands of years.

²⁸ <https://yellowstone.net/history/timeline/the-pre-park-years-1795-1871>.

²⁹ Joseph L. Sax, *Mountains Without Handrails: Reflections on the National Parks*, (Ann Arbor: University of Michigan Press, 1980) 5-6.

Product of, so much is his *Property*.³⁰ According to Locke, Natural Law dictates that “every Man has a *Property* in his own *Person*... [that] no Body has any Right to but himself.”³¹ He then asserts that cultivation of the land (labor of the body), yields the *right* to property in that soil.

God gave the World to Men in Common; but since he gave it to them for their benefit, and the greatest Conveniences of Life they were capable to draw from it, it cannot be supposed he meant it should always remain common and uncultivated. He gave it to the use of the Industrious and Rational and *Labour* was to be his Title to it.³²

The measure of Property, Nature has well set, by the Extent of Mens *Labour*, and the *Convenience of Life*.³³

He was then free to conclude that Native peoples in the Americas did not own their lands because they were held in common; indeed, the very notion of human “possession” of the earth’s natural elements is not present in a Native worldview. Thus, for Locke, lands were free for the taking.³⁴

The Locke-derived land-grabbing scheme continues to be upheld by a mythical, yet formidable trifecta of judicial decisions, federal statutes, and legislative

³⁰ John Locke, *Two Treatises of Government*, ed. Peter Laslett, § 32:5-6, (NY: Cambridge, 1988) 290.

³¹ Locke, § 28-29, 287.

³² Locke, § 34, 34-39.

³³ Locke, 291-292.

³⁴ Despite having never come to the Americas, Locke was a Landgrave (meaning he owned more than 40,000 acres in the colonies (specifically, the Carolinas), and contributed to the writing of drafts of their Constitutions. Please see Anthony Hall, *Earth Into Property, Colonization, Decolonization, and Capitalism*, (McGill-Queen’s University Press, 2010).

pronouncements.³⁵ The Supreme Court declared that “the power of the federal government of Indian tribes is plenary.”³⁶

“Plenary” power in this context has come to mean literally unrestricted authority over Indian nations: it is said that Congress can do whatever it pleases with the lands, governments, and cultures of Indian nations, with practically no constitutional restraint.³⁷

These days, the bureaucratic Department of the Interior, overseeing its agencies (the National Park Service, Bureau of Land Management, Fish and Wildlife Service, among others), is the institutionalized representative of the property stakeholder - the U.S. government. A powerful and shared notion that land and its resources are ideally mapped, marked off, bounded, set-aside, and guarded, allowing limited access under specific conditions, comprises a significant part of the dominant worldview that cannot construe land aside from an inclination to divide, segment, delineate, regulate, and *assert ownership* of it. This is examined more fully in the following chapters.

My project, a direct analysis of a conflict playing out at the first United States National Monument (Devils Tower), features the court case that centered on it. Arenas in

³⁵ Following the drafting of the Constitution in 1787, the Supreme Court subsequently ruled in 1870 that an Act of Congress superseded treaty agreements between Indigenous Nations and the United States government. In 1887, the Dawes General Allotment Act was meant to break up communally-held lands through a three-pronged approach of missionization, compulsory education (resident boarding schools), and the offer of citizenship to any Native person willing to cooperate with the scheme. In 1903, the Supreme court decision in *Lone Wolf v Hitchcock* affirmed the Jerome Commission violation of the Medicine Lodge Creek treaty by authorizing allotment of Kiowa/Comanche land without the requirement of receiving the approval of $\frac{3}{4}$'s of adult males, guaranteed by the treaty.

³⁶ Curtis G. Berkey, “United States—Indian Relations: The Constitutional Basis,” *Exiled In The Land Of The Free: Democracy, Indian Nations, and the U.S. Constitution*, (Santa Fe: Clearlight Publishing, 1992), 225.

³⁷ Berkey, 225.

which arbitrations like this one take place, are characterized by a practical political need: “to assert control, to police the empire, to take possession of land... [r]eligion provide(s) whatever poor theory [is] available”³⁸ to justify those needs.

Disputes over this site and other public lands, are litigated in venues constrained by conceptual categories emphasizing “religious rights” and ownership claims. As a result of this discursive limitation, any proposed resolution is invariably inadequate. The language of law, cloaked in secular rhetoric,³⁹ is saturated with ideologies rooted in 15th-century papal edicts, specifically the 1493 discovery doctrine of the papal bull *Inter Caetera*, in which “our beloved son” King Ferdinand and Queen Isabella of Spain are instructed by pope Alexander VI, to ensure, through conquest, that “the natives and inhabitants of the aforesaid islands and lands (people who have no knowledge of our Faith) may be brought to the True Faith and the Christian Religion... and that barbarous nations be overthrown.”⁴⁰ The Treaty of Tordesillas followed shortly after in 1494 – settling a dispute between Portugal and Spain. Alexander drew “a boundary or straight line...drawn north and south, from pole to pole, on the said ocean sea, from the Arctic to the Antarctic pole.”⁴¹ All lands, Alexander insisted, “previously discovered” and to the east, “belong to, and remain in the possession of...the King of Portugal.”⁴²

³⁸ Omi and Winant, *Racial Formation*, 248-9.

³⁹ In later chapters, I explore how the nexus of power in the Christian empire moved from papal authority, to shared power between the Vatican and European monarchs, to the divine right of kings. It is the latter construal that fueled Locke’s treatises.

⁴⁰ C. Jesse, “The Papal Bull Of 1493, Appointing The First Vicar Apostolic In The New World, *Caribbean Quarterly*, Vol. 11, No. 3/4 (September & December 1965), pp. 62-71 (64).

⁴¹ Treaty between Spain and Portugal concluded at Tordesillas; June 7, 1494. Ratification by Spain, July 2, 1494. Ratification by Portugal, September 5, 1494. The Avalon Project. Documents in Law, History, and

And all other lands, both islands and mainlands, found or to be found hereafter, discovered or to be discovered hereafter, which have been discovered or shall be discovered by the said King and Queen of Castile, Aragon, etc., and by their vessels.⁴³

I will show that the development of “rights” discourse, (featured exclusively in this conflict at Mato Tipila, and articulated as *religious*), is an extension of a larger discourse of conquest. Laws that dictate how public lands are used are the manifestation of distinct cognitive categories unique to a eurochristian worldview.⁴⁴

Genocide, in the form of displacement, removal, and forced assimilation of original inhabitants of these lands is ongoing. The reservation system, created as part of the acquisitive, missionizing campaign, stands as the colonizer’s metaphor for “the meeting point between savagery and civilization.”⁴⁵ As a result, my research sites include the Pine Ridge and Rosebud Indian Reservations of South Dakota.⁴⁶ The ideal

Diplomacy, Yale Law School. http://avalon.law.yale.edu/15th_century/mod001.asp. Accessed August 27, 2018.

⁴² Treaty of Tordesillas. <https://doctrineofdiscovery.org/treaty-of-tordesillas/>. Accessed August 2018.

⁴³ Treaty.

⁴⁴ Most legal scholars agree that federal Indian law is predicated on the Marshall Trilogy - three cases (Johnson v. McIntosh, 1823, Cherokee Nation vs. Georgia, 1831, and Worcester v. Georgia, 1832), presided over by Supreme Court Chief Justice John Marshall. While federal Indian law is not the focus of my project, I will demonstrate that Marshall’s decisions relied on the discovery doctrine within Inter Caetera, highlighting the crusading aspirations of papal authorities and european monarchs of the late 15th century.

⁴⁵ Frederick Jackson Turner, ‘The Significance Of The Frontier In American History’, a paper read at the meeting of the American Historical Association in Chicago, 12 July 1893, during the World Columbian Exposition. <https://nationalhumanitiescenter.org/pds/gilded/empire/text1/turner.pdf>, accessed April 2018. Please see Thomas Biolsi, “The Birth of the Reservation: Making the Modern Individual among the Lakota,” *American Ethnologist*, Vol. 22, No. 1 (Feb., 1995), pp. 28-53. Biolsi identifies four internal administrative processes by which the Lakota underwent “subjection” in the creation of the modern individual at Pine Ridge and Rosebud.

⁴⁶ These are the designated reservations of the Oglala and Sicangu Lakota peoples. The location in South Dakota is of central importance for a discussion of the relationship between the People and The Black

“preservation” of land, manifesting in the maintenance of National Parks and Monuments, is part of a larger worldview that stands in direct contrast to a traditional Native one.

Tinker identifies four fundamental, deep structure cultural differences between American Indian people and European-derived cultures. They are “spatiality as opposed to temporality; attachment to particular lands or territory; the priority of community over the individual; and a consistent notion of the interrelatedness of humans and the rest of creation.”⁴⁷ By contrast, Euro-American traditions feature four foundational elements: stewardship (over the earth and other living beings), hierarchical categories (god(s) occupying the highest level), descending categories of cosmological significance (human beings, centrally important, having dominion over other-than-human beings), and a perceived separation between humans and nature articulated by Vine Deloria, Jr. in the sin-salvation-eschatology trajectory.⁴⁸ The third element is what drives a shared reverence for awe-inspiring landscapes as temporal, earthly stand-ins for a lost paradise,

Hills. Mato Tipila, designated as part of The Black Hills National Forest is not within the Hills per se, but we will see that it has important significance in Lakota ceremonies that have been performed there for millennia, and timed to mirror celestial movements. What’s more, the longstanding relationship between Lakota people and specific sites within the Hills, has been drastically altered and distorted through colonizing interactions with the U.S. government. The 1868 Fort Laramie Treaty, affirming Lakota ownership of The Black Hills, was violated in 1876-77, when gold was discovered there. In his dissenting opinion in *United States v Sioux Nation*, 448 U.S. 371, 436, 437 (1980) U.S. Supreme Court Chief Justice Rehnquist denied that the Sioux people were wrongfully dispossessed of the Black Hills, but in 1980, The Indian Claims Commission, acting on the Supreme Court conclusion that the U.S. had acted without honor, awarded the Lakotas \$102 million, a number which has now grown to \$1 billion, including interest. The Lakotas have refused the money and have asserted “The Black Hills are not for sale.” Instead, they are demanding that their land be returned to them.

⁴⁷ Tinker, *American Indian Liberation*, 7.

⁴⁸ Vine Deloria, Jr., *God is Red: A Native View of Religion* (Golden, CO: Fulcrum Publishing, 1992). See especially Chapter 6, “The Concept of History,” p. 98-113.

and as part of hierarchical, basic-level eurochristian conceptualizations. Chapter Two takes on these deep cultural structural differences by comparing stories from each culture.

In Chapter One, I include an explanation for how and why I use the term “worldview.” I follow Mark Freeland (Anishinaabe)’s definition as an “interrelated set of logics that fundamentally orient a culture to space (land), time, the rest of life, and provides a prescription for how to live that life.”⁴⁹ Freeland uses the metaphor of a house to distinguish worldview from ideology.

...worldview provides the foundation, on which...conscious ideologies are built, like the walls and roof of the house. The institutions build walls within the house, sectioning off the house into compartments that the people of the culture can go in and out of. Finally, the people of the culture live in that house and their everyday performances provide the color of the rooms, the flooring on which they step and the décor and furnishings of their culture. This idea of building the culture from the ground up does work metaphorically and helps to understand the relatedness of the worldview to ideology to institution and everyday performances.⁵⁰

My use of the term “eurochristian” follows Tinker. I follow his practice of not capitalizing this referent when used as an adjective to avoid privileging this and other related concepts. The term corresponds with a dominant, colonizing worldview in which the attitudes, privileges, and ideologies of settler culture is violently imposed on American Indian communities. The term is not limited to those people who identify as christian, rather it is meant to encompass a way-of-being in the world that is based on

⁴⁹ Mark Freeland, *Conceptual*, 43.

⁵⁰ Freeland, 52.

specific cognitive models⁵¹ that feature anthropocentric⁵² image schemas. Human-centered-ness founds the eurochristian worldview. It is intrinsic to Western ideologies that promote the interests of individuals over communal interests; rights over responsibilities, and dominion over the natural world.

The dispute at Mato Tipila turns on competing visions of order, meaning, purpose. A serious study of this dispute and others like it over publicly-held lands in the United States must examine how it is that eurochristian terms of reference rooted in notions of radical individualism and “rights” – one point of view, in other words – came to be the only legitimate perspective, at the expense of the other, one equally worthy: Indigenous experience, memory, sense of interconnectedness with all elements of the world – and the language that describes that reality. That is where we will begin the analysis of the problem.

⁵¹ Chapters One and Three demonstrate the usefulness of cognitive science and linguistic theory for my project. The field is complex; for my purposes, I limit my use of it to several important, relevant concepts to demonstrate some underlying reasons for this conflict that have not been addressed in any venue, legal or otherwise.

⁵² Human-centered. Unlike the eurochristian origin story in the biblical book of Genesis, most cultures do not place human beings at the apex or center of creation - rather, many articulate non-hierarchical understandings of existence.

CHAPTER TWO

INTRODUCTION

RECOGNITION

Devils Tower National Monument.⁵³ Bears Lodge.⁵⁴ Mato Tipila.⁵⁵ Ceremony. Climbing. Praying.⁵⁶ Hiking. These are some of the names and activities that are associated with this remarkable topographical formation in the Black Hills National Forest of northeast Wyoming. The intensity of conflicting interests around the meaning and use of this remarkable site is mirrored in the contours of the land itself – a dramatic igneous intrusion that juts 867 feet from base to summit. The butte appears suddenly on the horizon, protruding unexpectedly from amidst the rolling hills around it. Dramatic geological features have earned it the distinction of a world-class rock-climbing site. Its esteem has spread rapidly and in concordance with the explosive growth of the “outdoor”

⁵³Established in 1906 and corresponding with the signing of the “Antiquities Act” by President Theodore Roosevelt, this is the first national monument in the United States Parks system. The Act authorizes (by proclamation) U.S. Presidents to set aside “historical landmarks, historic and prehistoric structures, and other objects of historic and scientific interest that are upon lands owned or controlled by the United States as National Monuments.” <http://www.nps.gov/deto/historyculture/places.htm>. Accessed June 29, 2018.

⁵⁴ English translation of the Lakota name for this place, sometimes spelled “Bear’s Lodge.”

⁵⁵ The Lakota name for this place.

⁵⁶ As I will expand upon in Chapter One, I will avoid this term unless citing the work of others. The word and the concepts associated with it were imposed on American Indian communities through the violence of colonization. I do not mean to suggest that the words “pray” or “prayer” are not spoken in traditional Lakota ceremonies – they are. I follow Tink Tinker and Albert White Hat, who have demonstrated that the word “pray” is a mistranslation and distortion of **Wacekiye**, a Lakota word meaning, “to embrace or welcome a relative.”

industry.⁵⁷ The power of the industry is indicated by the fact that companies like REI and Patagonia⁵⁸ are represented by lobbyists in Washington, D.C. - relationships that generate revenue⁵⁹ and provide a powerful platform for “protection” of public, recreational lands.⁶⁰ The revenue comes mostly from young, urban professionals who spend leisure time in “wilderness” or “nature” – realms that they seem to regard as separate from the everyday lives.⁶¹

My visits there confirm that world-class reputation is intact. Like many other set-aside public lands⁶² in the United States, it is controlled and managed by the United States National Park Service (NPS), under the purview of the United States Department

⁵⁷ Most statistics show an upward trend in the industry since 2000. The greatest growth has been over the last 10-12 years. A recent report by The Outdoor Foundation shows the greatest overall increase in activities like cycling and stand-up paddle canoeing (43%), although most activities, like climbing, trend upward, with the exception of categories like ‘wildlife viewing’ and ‘snowshoeing’ which actually exhibit downward trends. https://outdoorindustry.org/wp-content/uploads/2017/04/2017-Topline-Report_FINAL.pdf (Accessed 1/12/2018).

⁵⁸ Founder Yvon Chouinard is referred to as the “Philosopher King.” An article in the New Yorker touts Chouinard’s distinction between the “industry” and the “outdoors,” the former, he complains is killing the latter. Recently he has challenged the policies of the Trump administration, calling them “evil.” The following article, a biographical account of the founding of Patagonia, includes an ironic photograph and account of Chouinard “teaching” Crow children how to fish. <https://www.newyorker.com/magazine/2016/09/19/patagonias-philosopher-king>. Accessed July 2018.

⁵⁹ Current numbers, assessed at the end of 2017, exceed 887 billion dollars annually. This statistic comes from the Director of Government Affairs at Outdoor Industry Association. The most current information can be found here: <https://outdoorindustry.org/what-we-do/annual-reports/>. Accessed June 2018.

⁶⁰ As recently as April 18, 2018, representatives of leading outdoor industry corporations converged on DC for meetings with Secretary Ryan Zinke of the Department of the Interior.

⁶¹ An acquaintance one related to me (after hearing me describe how I greet people I meet on hiking trails with a smile and a hello), that she “hated” when people tried to speak to or interact with her when she was trying to “enjoy Nature.” The comment underscores the perception that the natural world is perceived as a different realm than what is thought of as the mundane, the everyday.

⁶² Yellowstone was designated the first national park in 1872 via the passage of the Antiquities Act. Its establishment was hastened and made easier by the 1870 Indian Appropriation Act. The National Park System was in place by 1916.

of the Interior. During the fall of 2017, I sat down with one of the technical climbing rangers at the site to ask her why the number of registered recreational, technical, and commercial climbers during the month of June has been steadily increasing. “You don’t realize you need to do that until you see it rise” (meaning, the number of climbers).⁶³ Her response was initially puzzling; by “that,” she was referring to the process by which the National Park Service (NPS) assesses success⁶⁴ of the Final Climbing Management Plan (FCMP), a document implemented at this site in 1995, and one that was meant to facilitate cooperative shared use between Indigenous nations and non-Indigenous constituents with conflicting interests and radically different relationships to this place.

On one level, it appears that the document upholds multiple interests at this site, accommodating today’s outdoor enthusiasts, while also respecting “cultural activities”⁶⁵ of American Indian people who have had a relationship with this place for millennia.⁶⁶ Even so, there is a tension that arises upon asking a few questions, and a just-under-the-surface *strain* between different people I spoke with on the traversing trails that lead to the butte. Any residual resentment about the court battle taking place between 1995-2000

⁶³ From an interview with technical climbing guides and the Chief of Interpretation and Education at Devils Tower during the Fall of 2017.

⁶⁴ Periodic evaluations of the plan were built right into the final version of a plan to limit climbing during the month of June. The claim that “[t]he mandatory closure language is present to show that [the NPS is] seriously committed to protecting a cultural resource and to acknowledge American Indian concerns...” appears in both the Appellate court brief, as well as the opening brief of plaintiffs to the US Supreme Court (page 7).

⁶⁵ In court documents, this term was used by the defendants in place of “religious” activities. There are a few reasons for that strategic choice which will be discussed fully in the following chapters.

⁶⁶ Ronald Goodman, *Lakota Star Knowledge: Studies In Lakota Stellar Theology*, (SD: Sinte Gleska University, 1992).

between commercial climbers and Native communities about the use of this place seems unlikely. Most people who climb there these days seem unaware of it.⁶⁷ So the legal case is settled and yet the controversial plan that was at the center of it, largely ignored. The ineffectiveness of the so-called solution is the focus of my project.

In 1995, the NPS established a voluntary closure for all climbing routes during the month of June. Curtailing rock-climbing activities during this time was, one NPS official claimed, enacted out of respect for the concerns of “Native American tribes ... [who] consider the Tower and the immediate vicinity to be extremely sacred.”⁶⁸ In March of 1996, Mountain States Legal Fund, on behalf of commercial climbers, sued the NPS, claiming that the ban effectively promoted “Indian religion” in violation of the Establishment Clause of the U.S. Constitution.⁶⁹ The judge hearing the case granted in part the allegations of the plaintiffs by ordering the national monument to grant licenses

⁶⁷ Of about fifteen climbers I spoke with during the summer of 2018, only one was aware that there was a ban on climbing during June. None had any knowledge of the reason.

⁶⁸ Deb Holland, *Rapid City Journal*, May 13, 2013.

https://rapidcityjournal.com/news/local/communities/sturgis/voluntary-climbing-ban-at-devils-tower/article_44f9a6b5-f57e-5f70-9395-916ee6b2a0c2.html. The quote is from Reed Robinson, current Superintendent of Devils Tower National Monument. Lakota oral tradition tells of a personage named wicahpi hinhpaya (Fallen Star) who “travels from one Lakota band to another, and everywhere he is recognized, expected, and revered.” In the tradition, Fallen Star saves a brother and sister who are being chased by a hungry bear. Commanding the earth to rise up, Fallen Star saves the children from the bear’s reach; the children are carried back to safety by a bird, and what remains on the sides of the butte are the marks of the bear’s claws. Please also see Ronald Goodman *Lakota Star Knowledge: Studies in Lakota Stellar Theology* (South Dakota: Sinte Gleska University, 1992) 3. As a result of the lawsuit, the NPS ordered an ‘Ethnographic Overview and Assessment of Devils Tower National Monument, Wyoming’ *Cultural Resources Selections, Intermountain* (No. 9, US Dept of the Interior, 1997), restricting their analysis to Eastern Shoshone and Lakota communities. The assessment: “Given the present state of the data collected, accounts of traditional activity are somewhat vague and imprecise and, therefore, in need of improvement. However, it is clear that Native Americans are currently engaging in personal and group ritual activity within Devils Tower National Monument.”

⁶⁹ *Bear Lodge Multiple Use Association v Babbitt*. No. 96-CV-063-D.

to commercial climbers but upholding all other portions of the plan. The ruling stated that by omitting the NPS amendment of the clause that would have prohibited the issuance of commercial climbing permits during June, the voluntary ban functioned as an accommodation of a religious practice, not an establishment.⁷⁰

The legal/political contestation at this place typifies the tension between two irreconcilable worldviews – that which I call eurochristian,⁷¹ and that of American Indian Peoples. The incommensurability is predicated on *difference*, and there can be no resolution based on any attempt to homogenize, dilute, or ignore that difference. My specific concern is the radical alterity that sharply defines these opposing cultures. At the heart of this incommensurability lie two distinct ways of relating to land and community. In recent historical developments, the conflict itself has been exclusively, and thus ineffectively, adjudicated through the eurochristian – albeit secularized - discourse of “rights.” The cognitional categories used to define rights with respect to both Natives and non-Natives at this place are rooted in eurochristian culture and are for that reason inadequate to encompass the diversity of commitments at stake, for two reasons. First, I argue that the current state of human rights theory (despite two fairly recent challenges to the Universal Declaration model⁷² - the first, a movement to gain legal recognition of

⁷⁰ The claim of the plaintiffs was that the NPS was establishing “Indian religion” in violation of the Establishment Clause. Plaintiff Andy Petefish argued that the ban hindered his right to practice religion, claiming that ‘climbing on Devils Tower is a spiritual experience for me’ <http://www.hcn.org/issues/129/4123>. Accessed February 2018.

⁷¹ Chapter One includes a detailed analysis of this term and my use of it. I follow Tinker and avoid capitalizing this referent as part of a postcolonial methodology.

⁷² Chapter Three includes a deeper analysis of the model. Briefly here, I identify the model as comprised of the Universal Declaration of 1948 and the International Human Rights Covenants of 1966.

group rights, in spite of a longstanding tradition of recognizing *only* the individual as having“ effective agency and clear identity”⁷³ to hold rights; and the second, political attempts to extend rights to Mother Earth and other living beings), is constrained by what Tinker identifies as an Up-Down image schema, one that cognitively “functions to structure the social whole around vertical hierarchies of power and authority.”⁷⁴ Featuring hierarchical categories wherein human beings occupy a superior position over other-than-human-beings, the schema is the foundation of a eurochristian worldview, and ground zero for theoretical extrapolations of rights.

Human rights are literally the rights that one has simply because one is a human being. Human rights are *equal* rights: one either is or is not a human being...Human rights are inalienable rights...and they are *universal* rights, in the sense that today we consider all members of the species *Homo sapiens* “human beings” and thus holders of human rights.⁷⁵

When the United Nations Declaration on the Rights of Indigenous Peoples was adopted by the U.N. General Assembly in 2007, there was an indication of broadening conceptualizations of human rights. The declaration recognizes and reaffirms that “indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples.”⁷⁶ Even so, U.N. Special Rapporteur

⁷³ Carole Goldberg, “American Indians and ‘Preferential’ Treatment,” 49 *UCLA Law Review*. 943 (2002), 975.

⁷⁴ Tink Tinker “Why I Do Not Believe In A Creator” in *Buffalo Shout, Salmon Cry: Conversations On Creation, Land Justice, and Life Together*, edited by Steve Heinrichs, (Waterloo, Ontario: Herald Press), 2013), 169.

⁷⁵ Jack Donnelly, *Universal Rights In Theory And Practice*, Third Edition, (Ithaca, NY: Cornell University Press, 2013), 10.

⁷⁶ United Nations Declaration on the Rights of Indigenous Peoples, Resolution Adopted by the General Assembly, 107th plenary meeting, 13 September, 2007. (UN: 2008).

Victoria Tauli-Corpuz (Kankanaey Igorot), in a statement leading up to the 10th anniversary of the adoption of the declaration, expressed grave concern about “unequal power relations between indigenous peoples and corporations and States that contribute[s] to endemic levels of poverty among indigenous peoples. They account for 5 per cent of the world’s population, while representing 15 per cent of those living in poverty.”⁷⁷ Glen Sean Coulthard (Dene/Yellow Knives), notes that “colonial powers will only recognize collective rights of Indigenous peoples insofar that this recognition does not throw into question the background legal, political, and economic framework of the colonial relationship itself.”⁷⁸ Therefore, when former Special Rapporteur S. James Anaya (Purepecha/Apache) cites the “cultural integrity norm” as essential for allowing “indigenous groups to maintain and freely develop their cultural identities in coexistence with other sectors of humanity,”⁷⁹ it is essential that all agree on what that “norm” is.

Carole Goldberg, in a critique of U.S. rights law with regard to American Indian communities, explains, “the idea that rights can only be held by individuals and not by groups draws sustenance from liberal theory that views the individual as prior to the group and therefore as the only holder of morally important rights.”⁸⁰ Jack Donnelly, concurring with the liberalist view, albeit allowing that “group-based suffering is a very real and serious problem,” rejects collective rights, stating “individual rights...are

⁷⁷ Statement by Victoria Tauli Corpuz, Special Rapporteur on the rights of indigenous peoples, given at the 70th session of the General Assembly Third Committee. Item# 70 (a). 20 October 2015. New York.

⁷⁸ Coulthard, *Red Skin*, 41.

⁷⁹ S. James Anaya, *Indigenous Peoples In International Law*, second edition, (NY: Oxford), 131.

⁸⁰ Goldberg, 975.

capable of accommodating the legitimate interests of even oppressed groups.”⁸¹ Goldberg disagrees. Briefly here, I will just say that she draws on the language of Article 1, Section 8, Clause 3 of the U.S. Constitution (The Indian Commerce Clause), as a strategy to combine “the self-determinationist aspect of group rights with a more flexible and historically sensitive understanding of group rights.”⁸² Her meticulous analysis, while compelling, is limited; others equally so.

Taking a different approach, Robert Merges wrestles with “collective creativity,” and offers a novel application of John Locke’s labor theory. He asks, “how do we move beyond the traditional dichotomy of rights/no rights...to craft a new set of entitlements that recognize a middle ground of exclusive (or semi-exclusive) group rights?”⁸³ Laying out what he calls “straightforward principles” of John Locke’s theory of rights, namely the correlation between labor and property, he argues that labor, for Locke, justifies *removal* from the common, where group rights are inherently held. Merges though, envisions “collective property rights,” grounded in mutual acknowledgement between people who labor over a common resource, which then translates into the right of ownership of that resource. Granted, his concern is with intellectual property, particular to today’s technologically data-driven culture. Still, his is a provocative deconstruction of Locke and certainly also warrants more extensive analysis in the final chapter.

⁸¹ Donnelly, 46.

⁸² Goldberg, 989.

⁸³ Robert P. Merges, *Locke For The Masses: Property Rights and the Products of Collective Creativity*, 36 HOFSTRA Law Review. 1179, 1181.

Others challenge the “abstraction and apoliticization” of the human rights movement that has historically “obscured the political character of the norms it seeks to universalize.”⁸⁴ Some, suggesting broader implementations of rights not only for peoples, but for nature, earth, rivers, trees, etc., organize their efforts on *inherent* rights of all living things to “exist, to be respected, to regenerate bio-capacity, to breathe clean air, to be free from contaminants.”⁸⁵ Led largely by representatives of nations in the global South, this movement is analyzed extensively in the final chapter.

The history of rights theory is obviously a vast topic; identifying the many developments and ideological revisions associated with it is beyond the scope of this project. I focus on three areas within the discourse of rights and tie them to the larger analysis of the conflict at Mato Tipila. First, Locke’s “Property,” in *Two Treatises of Government*,⁸⁶ where he theorizes on the origin of rights (specifically, rights to property), and contemporary scholarly engagement with the foundation. Second, an analysis of the “ideological turn” - namely, efforts to extend rights to other-than human beings.⁸⁷ The third is a closely related, contemporary development coinciding with the rise of globalization. This movement at least initially appears to challenge the authority of

⁸⁴ See, for example, Makau Mutua, *Human Rights: A Political and Cultural Critique*, (Philadelphia: University of Pennsylvania Press, 2002), 3.

⁸⁵ Universal Declaration of Rights of Mother Earth World People’s Conference on Climate Change and the Rights of Mother Earth Cochabamba, Bolivia April 22, 2010.

⁸⁶ John Locke: *Two Treatises of Government*, edited by Peter Laslett, (NY: Cambridge University Press, 1960, [1988]).

⁸⁷ This is examined in detail in the last chapter. Examples include the Universal Declaration of Rights of Mother Earth, emerging from the World People’s Conference on Climate Change and the Rights of Mother Earth in Cochabamba, Bolivia during April 2010, and the now-defunct Venezuelan Yasuni ITT Initiative.

nation-states, the dominance of global economic systems, and hierarchically-organized power structures that prop them up. For example, The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the U.N. General Assembly in 2007, was partly generated out of concern that “indigenous peoples have suffered from historical injustices, as a result of...their colonization and dispossession of their lands...thus preventing them from exercising their right to development in accordance with their own needs and interests.”⁸⁸ Article 5 specifically asserts that “indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions.”⁸⁹ For some, this offers an opportunity to “teach people about their rights”⁹⁰ and it appears that many of its proponents find the movement to be revolutionary and empowering for Indigenous communities.

Nevertheless, I argue that conceptual categories that give rise to concepts like “rights,” “ownership” and “property” are incompatible with Indigenous understanding of place and relationship to their lands, thus any ideological fluctuations and innovations within the basic paradigm prove limited in effectiveness, and thus inadequate. Most importantly, the exclusive use of these categories in legal forums perpetuates cultural genocide. Some readers will undoubtedly find this extreme. However, it is my contention that the policy-making decisions and subsequent litigation resulting in the Final Climbing

⁸⁸ http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf. Accessed January 2017.

⁸⁹ United Nations Declaration On The Rights Of Indigenous Peoples, http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf. Accessed July 2018.

⁹⁰ “Natalia Greene: Recognizing The Rights Of Mother Nature” A 2014 film by Chris Beckett and Silver Donald Cameron as part of a larger series called *The Green Interviews*. <https://www.thegreeninterview.com/2014/08/30/natalia-greene/>. Accessed July 2018.

Management Plan (FCMP) - the so-called “solution” for assuring multiple use at Devils Tower National Monument (Mato Tipila) – is a codified example of an ongoing cultural genocide. For the Lakota, Mato Tipila is a place of critical importance because it provides for the “physical, social, and spiritual well-being of the People.”⁹¹ In other words, Mato Tipila defines a people and gives them life.

Ultimately, land...provide[s] the nexus for all Indian social, political, and religious values. Without a basic acceptance, if not understanding of this reality, the Court is less likely to consider Indian... [claims to land] very ‘important.’”⁹²

Furthermore, attempts to acknowledge group rights, or rights and “dignity” for all living things of the world, cannot be freed from dominant conceptual categories. At a most basic level, the theory itself is vexingly characterized by circularity. Conceptions of rights, even when imaginatively broadened, are generated by a hierarchical, cognitive mode of categorization that is uniquely eurochristian. Inherent and inherited presumptions characterize the categorization. When rights theory is applied, its legitimacy is asserted based on those presumptions.

Second, the exclusive use of specific categories in legal forums both creates and sustains the contestation it purports to resolve. Other than the longstanding tradition of recognizing corporations as persons in the US, legal rights are typically adjudicated for individual persons. By contrast, international law is “concerned only with the rights and

⁹¹ Alexandra New Holy, “The Heart of Everything That Is: Paha Sapa, Treaties, and Lakota Identity,” 23 *Oklahoma City University Law Review* 317, 352 (1998) 320.

⁹² David H. Getches, “Beyond Indian Law: The Rehnquist Court’s Pursuit of States’ Rights, Color-Blind Justice and Mainstream Values,” 86 *Minnesota Law Review*, 267, 342-43 (2001).

duties of states.”⁹³ There is a deep contradiction in the way laws are applied⁹⁴ in these disputes that goes unnoticed by those with the authority to decide the outcomes.

The concept of “human rights,” is a slippery slope for IP’s (Indigenous Peoples) as fourth world nations, with governments of their own. In state-centric international law, human rights protection is considered within the purview of state governments; it is their responsibility to protect the rights of individual citizens, not nations.⁹⁵

Despite explicit and strong language recognizing communal rights for Indigenous communities articulated in UNDRIP, not a single nation or international tribunal has enforced the language of the Declaration.⁹⁶ The “Outcome Document” (OD), emerging from the UN high level plenary meeting held September 21-22, 2014, demonstrated that indeed, enforcement is not a priority of UN nation-states. The OD reaffirmed states’ commitment to support the Declaration, with promises to consult and cooperate with Indigenous Peoples and obtain free, prior and informed consent (FPIC) before doing anything affecting their lands and resources. The document also committed states to empower Indigenous Peoples, to improve access to appropriate education, health and economic development and to make the elimination of violence against Indigenous

⁹³ S. James Anaya, *Indigenous Peoples and International Law*, 2nd ed. (NY: Oxford, 2004), 26.

⁹⁴ Ian F. Haney-Lopez, “White By Law,” *Critical Race Theory: The Cutting Edge*, 2nd ed., Richard Delgado and Jean Stefancic, eds., (Temple: 2000), 633.

⁹⁵ Dina Gilio-Whitaker, (Colville Confederated Tribes), <https://intercontinentalcry.org/the-world-conference-on-indigenous-peoples-not-our-conference-26846/> Accessed April 2018.

⁹⁶ Within the last several years, Canada, led by Justin Trudeau, has initiated what is called “politics of recognition,” that purport to take the Declaration seriously. The drawbacks of this approach are covered in Chapter Two.

Peoples, especially against women, a priority.⁹⁷ Tellingly though, Indigenous representatives were *not* part of the final writing stage of the OD. The International Indian Treaty Council issued a statement expressing disappointment that the final OD did not include any reference to the Alta Outcome Document – what was described as a “road map” written by Indigenous representatives worldwide for the World Conference on Indigenous Peoples (WCIP).⁹⁸ The Council expressed “regret that an international oversight mechanism for the observance of Treaties, Agreements and other Constructive Arrangements” was not a priority. Glenn T. Morris (Shawnee), observed, “The meeting proved to be a predictable success for invader-states of the United Nations. It also marked a retreat from the forty years of international struggle towards Indigenous peoples' self-determination that took hold after the 71-day liberation of Wounded Knee in 1973.”⁹⁹ In theory then, UNDRIP exists as the first international document that promoted collective rights and self-government, self-determination, and autonomy for Indigenous Peoples, while emphasizing free, prior, informed consent (FPIC), in terms of any proposed

⁹⁷ <http://indiancountrytodaymedianetwork.com/2014/09/27/world-conference-outcome-document-states-win-157087?page=0%2C1>. Despite a largely White, national fixation with current developments on social media like #metoo and #timesup, the number of missing or murdered Indigenous women and girls is rising at an alarming pace, with little to no notice by the larger public. The reasons for this are complicated but many have identified the rise of ‘man-camps’ in North Dakota as a leading cause, and some Indigenous activists have cited a correlation between rising levels of violence against women along routes of oil pipelines. While there is no system in place to track these numbers, current statistics from MMIW show this number has exceeded 5,100.

⁹⁸ The Alta document outlined official, specific concerns of IP’s attending the WCIP. To read the document in its entirety, please see http://www.un.org/esa/socdev/unpfii/documents/wc/AdoptedAlta_outcomedoc_EN.pdf. Organized by four themes, the document stresses rights of self-determination and free, prior and informed consent of Indigenous communities to any proposed development or other project on their traditional land. For the reaction from the North American Indigenous Peoples Caucus please see <https://intercontinentalcry.org/the-world-conference-on-indigenous-peoples-not-our-conference-26846/>.

⁹⁹ <https://www.indianz.com/News/2014/015363.asp>. Accessed April 2018.

developments on Indigenous lands. In reality though, while it had the potential to benefit Native communities worldwide, nation-states with colonizing histories remain unwilling to implement and enforce it.

TALKING PAST EACH OTHER

In the United States, the NPS, the Bureau of Land Management (BLM), and National Forest Service (USFS) overseen by the U.S. Department of the Interior, manage public lands that often include or are next to Indian reservations. In fact, many public lands (national parks, forest, monuments), are located on top of reservation lands. This spatial correspondence has been examined at length,¹⁰⁰ and though the correspondence has been decisively proven, it's not the focus of this project. However, as a result of this geographical reality, there is a long history of disputes and litigation when government interests collide with those of Native communities.¹⁰¹ Several years ago, for example, the NPS introduced a new regulation (RIN 1024-AD84) that proposed to significantly modify and restrict "the Gathering of Certain Plants and Plant Parts by Federally

¹⁰⁰Some of these sources include: Robert H. Keller & Michael F. Turek, *American Indians and National Parks*, (Tucson: University of Arizona Press, 1998); Mark David Spence, *Dispossessing the Wilderness: Indian Removal and the Making of National Parks*, (Oxford University Press, 1999) Donald L. Fixico, 1986, *Termination and Relocation: Federal Indian Policy, 1945-1960* (University of New Mexico Press, 1986).

¹⁰¹ The Supreme Court cites *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988), No. 86-1013 as legal precedent: "[t]he First Amendment must apply to all citizens alike, and it can give to none of them a veto over public programs that do not prohibit the free exercise of religion. This case established that the "need for privacy by Native Americans cannot justify the government's closure of public lands." In her dissenting opinion, Sandra Day O'Connor states, "Whatever rights the Indians may have to the use of the area, however, those rights do not divest the Government of its right to use what is, after all, its land." <https://www.law.cornell.edu/supremecourt/text/485/439>. Accessed May 2018. From a historical perspective, the Antiquities Act of 1906, and the Allotment Act of 1916 set the stage for the seizure of lands for preservation. Alston Chase's *Playing God in Yellowstone*, (Boston: Atlantic Monthly Press, 1986), is a good source that examines early history of conflict and displacement, as is Joseph Sax, *Mountains Without Handrails: Reflections On The National Parks*, (Ann Arbor: University of Michigan Press, 1980).

Recognized Indian tribes for Traditional Purposes.”¹⁰² The NPS claimed that the modifications were to ensure that the practice could continue, albeit under their supervision and control. The regulation was to modify how, when, where, and by whom these plants may be gathered when they are found within Park boundaries. “Absurd, ignorant, disrespectful.” This captures the reaction of Indigenous elders to the NPS plan.¹⁰³ Their response highlighted several points and drew for support from the Archeological Resource Protection Act;¹⁰⁴ the National Historic Preservation Act (16 U.S.C. 470, Section 110);¹⁰⁵ Executive Order 13007;¹⁰⁶ and, the Native American Graves

¹⁰² <https://www.nps.gov/aboutus/news/release.htm?id=1693>. Accessed April 2018.

¹⁰³“Formal Statement to National Park Service Regarding the Proposed Rule: Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes Regulation Identifier Number (RIN) 1024-AD84.” Citing the “steady violation of Indigenous cultural and human rights, through the forced restriction and regulation of our Indigenous way of life [as] a direct assault on our survival as Indigenous Peoples,” the signors on the response include Chief Arvol Looking Horse (19 Generation Keeper of the Sacred White Buffalo Calf Pipe and Spiritual Leader of the Great Sioux Nation), Bobby C. Billie (Clan Leader and Spiritual Leader Council of the Original Miccosukee Simanolee Nation Aboriginal Peoples), Leland Grass (Dine’ Traditionalist), and Faith Spotted Eagle (Tunkan Inajin W in Brave Heart Society, Grandmother/Headswoman & Ihanktowan Treaty Council, Ihanktowan Dakota from the Oceti Sakowin Council Fires). Citing Recommendation 23 of the Convention on the Elimination of All Forms of Racial Discrimination, which calls upon states to ensure that Indigenous peoples have equal rights in decisions directly relating to their rights and interests, they requested that no action be taken without the proper consultation and the free, prior and informed consent of the Indigenous peoples affected. The signors also invoked Articles 1 and 27 of the International Covenant on Civil and Political Rights, (the right to self-determination), which includes the right to enjoy their own cultural and religious practices, and Articles 1,3,7,8,9,10,11,12,13,15,18,19,20,24,25,26,27,28,29,31,32,37, 38,40 of UNDRIP. http://spiret.org/wp-content/uploads/2015/07/1024-AD84_NPS_ELDERS_FORMAL_STATEMENT.pdf. Accessed December 2017.

¹⁰⁴ PUBLIC LAW 96-95– 93 STAT. 721. OCT. 31, 1979. The purpose of this Act is to secure the protection of archaeological resources and sites which are on public lands and Indian lands.

¹⁰⁵ PUBLIC LAW 89-665; 16 U.S.C. 470. October 15, 1966.

¹⁰⁶ Signed May 24, 1996 by President Clinton, to (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites.

Repatriation Act (NAGPRA), 25 U.S.C. 3002.¹⁰⁷ The elders stated that the needs of Indigenous Peoples were not being respected or addressed by these proposed modifications; also, that the NPS had fail[ed] to meet the requirements of consultation under both domestic and international law. The use of “consultation” was strategic. Consultation, as it is defined in legal discourse, involves face-to-face, open dialogue between the government and any community who might be potentially impacted by a proposed change or modification to the existing structure. Consensus in the context of consultation is a requirement. Choosing this terminology invoked not only the language of treaties but also selectively utilized and drew from more contemporary legal developments.¹⁰⁸ Their response effectively concluded with this: “We have much more to say but this discriminatory process has limited us to responding in black and white with a foreign language that does not allow us to convey the full depth of our concerns.”¹⁰⁹ Therein lies the issue. Laws in place that dictate how public lands are used are the embodied manifestation of distinct cognitive categories unique to a eurochristian worldview. Legal and political institutions are founded by, through, and upon those categories. They dominate in disputes over land and are taken as “givens.” Thus, the concerns of Indigenous communities (Lakotas in this case), are not only never adequately

¹⁰⁷ The Native American Graves Protection and Repatriation Act (NAGPRA) was enacted on November 16, 1990, to address the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to Native American cultural items, including human remains, funerary objects, sacred objects, and objects of cultural patrimony. The Act assigned implementation responsibilities to the Secretary of the Interior.

¹⁰⁸ These include and are not limited to The American Indian Religious Freedom Act (AIRFA), Archaeological Resource Protection Act, and Section 110 of the National Historic Preservation Act.

¹⁰⁹http://spiret.org/wp-content/uploads/2015/07/1024-AD84_NPS_ELDERS_FORMAL_STATEMENT.pdf.

addressed, they are not allowed to be articulated in any meaningful way. The tools of cognitive theory will help us examine more fully the processes by which one way-of-being successfully dominates.

INTRODUCTION TO THEORY AND RIGHTS

Cognitive science tells us that “metaphorical thought is the principal tools that makes insight possible, but also constrains the forms that they can take.”¹¹⁰ George Lakoff and Mark Johnson, in a discussion of spatial-relations concepts for example, identify important concepts they call image schemas.¹¹¹

One of the most important discoveries of cognitive science is that [the] conceptual systems...make use of a relatively small number of basic image schemas...embodied in various ways. Reason is not disembodied, but arises from the nature of our brains, bodies, and bodily experience. This is not just the innocuous and obvious claim that we need a body to reason; rather, it is the striking claim that *the very structure of reason itself comes from the details of our embodiment.*¹¹²

Tinker, describing how cognitive metaphors that we are most comfortable with “are lumped together in sets,”¹¹³ identifies principal cognitive image schemas that structure Native and eurochristian worldviews respectively. They are “collateral egalitarianism” and “Up-Down.” Noting linguistic complexities in any translation, he argues that collateral-egalitarianism is, first and foremost, community-ist. Lateral social

¹¹⁰ Lakoff and Johnson (1999), 7.

¹¹¹ George Lakoff and Mark Johnson, *Philosophy In The Flesh: The Embodied Mind And Its Challenge To Western Thought*, (NY: Basic Books, 1999), 35.

¹¹² Lakoff and Johnson, 4, 35.

¹¹³ Tinker, “AMERICAN INDIANS AND ECOTHEOLOGY: ALTERITY AND WORLDVIEW, *Eco-Lutheranism: Lutheran Perspectives on Ecology*, edited by Karla Bohmbach and Shauna Hannon, (CA: Lutheran University Press, 2013), 4.

constructs are typical of Indigenous social organization, predicated on dualism or complementary opposition, so they are lived out in Lakota ceremony, relationship, and the tasks of the everyday. Some examples of this duality include female/male, dark/light, earth/sky, and so on. Recognizing the basic opposition in the everyday as complementary and gerund, as opposed to fixed and static, teaches Lakota peoples essential realities of their shared existence. Additionally, a central Lakota concept, *mitakuye oyasin*, encompasses the reality of an embodied recognition of cosmic balance, replicated in relationship with other living beings. Translated as “we are all related,”¹¹⁴ it is an important part of a distinctly Lakota philosophy and a fundamental piece of the Lakota worldview.

By contrast, an Up/Down image schema is a feature of an American/eurochristian worldview.¹¹⁵ Hierarchically organized, it features cosmological gradations of importance, beginning with a god-on-high/creator being, animating the world and placing human beings in a primary position (at the top). Positions of descending levels of prominence are occupied by other-than-human beings, including animals, rivers, trees, birds, insects, and so on. It features an emphasis on the individual, and “monolithic images of power and value of the one – which is static, and superior.”¹¹⁶

¹¹⁴ Albert White Hat, *Zuya: Oral Teachings From Rosebud*, compiled and edited by John Cunningham (SD: Sinte Gleska University, 2012), xx, 16-17, 36, 86, 90-91.

¹¹⁵ Lakoff and Johnson also investigate the Up/Down image schema in Chapter 4 of *Metaphors We Live By*, (IL: University of Chicago Press 1980), as well as in the chapter entitled “Primary Metaphor and Subjective Experience,” in *Philosophy In The Flesh: The Embodied Mind And Its Challenge To Western Thought*, (NY: Basic Books, 1999), 45-59.

¹¹⁶ Tinker, “Why I Do Not Believe In A Creator” in *Buffalo Shout, Salmon Cry: Conversations On Creation, Land Justice, and Life Together*, edited by Steve Heinrichs, (Waterloo, Ontario: Herald Press), 172.

It puts some over others and someone always seems to be “in charge.” The Up can be a king or a president but that person is the One, the top of a hierarchy. This order of creation mentality then evolves politically into the valorization of “meritocracy” as a norm.¹¹⁷

In the case at Mato Tipila, the rights of individual citizens were of paramount concern, thus limiting the scope and potential effectiveness for Lakota communities. The Indigenous worldview (embodied in the Lakota way of life), is embedded in culture and lived through a *communally-shared* understanding of the relationship between human beings, other-than-human beings, and places. However, this way-of-being is grossly distorted in the colonizing task of assimilating *all* understandings under a rule-of-law discourse. It is useless to address conflicting interpretations about land and its significance without understanding how conflicts over public lands normalize concepts like individual rights and personal liberties, especially so-called “religious” rights, at the expense of Lakota people’s longstanding, communally-understood obligations/relationships to places of significance. Analyzing the reification of eurochristian values expressed as legally defensible “rights” is critically important because all participants in disputes over land are forced to assimilate their commitments and arguments to the parameters of this worldview.

Proponents of The Universal Declaration of Human Rights present it as “a common standard of achievement for all peoples and all nations,”¹¹⁸ wherein the individual is the agent of primary importance.

¹¹⁷ Tinker, 170.

¹¹⁸ Jack Donnelly, *International Human Rights*, Fourth Edition, (Boulder: Westview, 2013), 23.

Every individual and all social actors are obligated to respect the human right of every human being...human rights are held individually but also apply universally. Logically, the duties to protect, provide, and aid the deprived might also apply universally...international human rights laws allocates those duties...exclusively to states.¹¹⁹

The history and contemporary discourse of rights is grounded in a unique, and surprisingly simplistic assertion -they are “the rights that one has simply because one is *human*.”¹²⁰ Touted as inalienable expressions of human dignity, the fact that rights are understood by some to be universal demonstrates “the imposition of categories of cognition...as though they represent some level of normative universality”¹²¹ predicated on the interests of euroamerican agents of power.

The domination of the globe exercised by European powers for the last several centuries has been assumed by the United States. The U.S. is the spokesperson for the “welfare” of humanity. International speeches have come to resemble lectures and sermons, very much in the savior mode. The human rights movement, and its “ally” the American state, must abandon the pathology of the savior mentality.”¹²²

WHY THE FCMP FAILS

The NPS reported a nearly 80% drop since the plan first went into effect in 1995, and the number of registered climbers was down to 167 from over 1,200 just the

¹¹⁹ Donnelly, 24.

¹²⁰ Donnelly, 4,19.

¹²¹ Tinker, 168.

¹²² Makau Mutua, *Human Rights: A Political and Cultural Critique*, (Philadelphia; University of Pennsylvania Press, 2002), 6.

year before.¹²³ However, it has more than doubled since then. In a recent report by Wyoming Public Radio,¹²⁴ 373 people climbed during June of 2017. Tim Reid, superintendent at Devils Tower National Monument (DTNM) insists that a voluntary ban ‘made sense’ when it was put into place in 1995, but in rating its overall success, he is dubious.

What we have ascertained in the last five years, there’s been a steady incremental increase in the number of climbers in June that’s not connected to just the steady overall increase of visitation at the monument. I think that it’s safe to say that largely, the bulk of June climbing is done by relatively local or regional climbers, who for whatever reasons find it personally acceptable to climb in June.¹²⁵

Again, because it is considered ‘world-class’¹²⁶ by outdoor enthusiasts from all over the world, visitors arrive in droves each summer. Information about the closure is posted in the climbing ranger office, and rangers engage in what they call “outreach”¹²⁷ to educate visitors about the climbing ban. In spite (or unaware) of the voluntary closure

¹²³ Jeffrey R. Hanson and Sally Chirinos, ‘Ethnographic Overview And Assessment of Devils Tower National Monument, Wyoming’ Cultural Resource Selections, No 9, 1997 Intermountain Region, National Parks Service.

¹²⁴ <http://wyomingpublicmedia.org/post/climbers-ignore-native-americans-request-devils-tower> (Accessed December 27, 2017).

¹²⁵ Wyoming Public Radio.

¹²⁶ Interview with representatives from NPS, Summer of 2017. This assessment is corroborated by climbing magazines like *Alpinist*, *Dead Point Mag*, and *Gripped*.

¹²⁷ During my visits here during June, it seems that the awareness of climbers correlates with the particular willingness and enthusiasm of climbing rangers to inform them, on any given day. Even so, the details about the voluntary closure are sparse and usually correlate with the fable-like literature that hangs in the climbing office. The literature is usually accompanied by sketch of a giant bear scraping the sides of the butte as children huddle on top. In other words, the information is sparse and hardly adequate.

being in effect, many choose to climb.¹²⁸ The technical ranger’s assessment is counterintuitive but also stands in contrast to an NPS statement from 1998 as to what a “successful” closure would look like. The ultimate goal, according to the NPS, means

...continuous, significant reduction in the number of climbers on Devils Tower each June in comparison to the number of climbers from the previous June. The voluntary closure will be fully successful when every climber personally chooses not to climb at Devils Tower during June out of respect for Native American cultural values. This is the ultimate goal of the voluntary June closure.¹²⁹

Further, according to the brief, in the event of “unsuccessful” implementation, the NPS would take several actions including a “revision of the climbing management plan (CMP), writing a new definition of ‘success’, instituting additional measures, or converting the June closure to mandatory.”¹³⁰ None of these actions appear to be under consideration although the ranger acknowledged an effort to step up outreach on NPS social media sites, like Facebook and Twitter.¹³¹

The plaintiffs in the case appealed the decision of the lower court, insisting that they were being coerced into respecting Indian religion on public land and had also suffered economic loss due to the closure. Both, according to the plaintiffs and their legal

¹²⁸ Chapter Two includes a timeline and analysis of the lengthy court battle, as recorded in documents and related correspondences between all parties involved.

¹²⁹ Opening Brief In The United States Court Of Appeals For The Tenth Circuit, No. 98-8021, 6.

¹³⁰ Opening Brief, 7.

¹³¹ From a personal interview conducted on September 30, 2017. This is an example from a recent post on Devils Tower National Monument Twitter account: <http://nativeamerica12.online/2017/09/25/the-devils-tower-in-wyoming-is-a-place-of-great-significance-to-american-indians-and-its-the-first-united-states-national-monument/> (Accessed January 5, 2018).

representatives, were “intolerable violations” of the U.S. Constitution.¹³² In an April 1999 ruling, the United States Court of Appeals for the Tenth Circuit upheld the National Park Service's accommodations.¹³³ In March of 2000, the U.S. Supreme Court denied the plaintiffs’ appeal of the Tenth Circuit ruling, thus upholding the appellate court's decision as final and making the Final Climbing Management Plan (FCMP) rule of law.¹³⁴

To look deeply at the reasons for this conflict, it is helpful to examine the terms used and how they become normativized. I make use of cognitive science to expand on the notion that “our ordinary conceptual system, in terms of how we think and act, is fundamentally metaphorical in nature.”¹³⁵ Concepts, organized into image schema categories, are varied in the ways they promote and shape systems of meaning, however, colonization always imposes its own conceptual framework. While discrete linguistic expressions help us identify the ideological nuance and difference between communities, culture is the basis of worldview.

Tinker argues that metaphors of language “do not seem like metaphors at all but rather are words and phrases that speakers of a language simply automatically presume to be reality... embedded in people’s bodily experience of spatial orientation.”¹³⁶ I follow

¹³² The claim was that the NPS was establishing “Indian religion” in violation of the Establishment Clause. Plaintiff Andy Petefish argued that the ban hindered his right to practice religion, claiming that “climbing on Devils Tower is a spiritual experience for me.”

¹³³ *Bear Lodge Multiple Use Association v. Babbitt*, 175 F. 3d 814.

¹³⁴ *Bear Lodge Multiple Use Association v Babbitt*, 529 US 1037.

¹³⁵ Concepts, organized into categories that are called image schemas, are varied in the ways they promote and shape systems of meaning. George Lakoff and Mark Johnson *Metaphors We Live By*. (IL: University of Chicago Press, 1980), 3.

¹³⁶ Tink Tinker, “American Indians and Ecotheology: Alterity and Worldview”, 4.

Tinker and argue that cognitional categories such as radical individualism, natural law, and “rights” are embodied metaphors that arise from the Up-Down image schema. These categories operate as a legally enforceable *reality* in the conflict over Mato Tipila, and disregard lateral social constructs that privilege the interrelatedness between living things of the world.¹³⁷ By describing Indigenous conceptions of, and relationships to land as “ancient expressions of cultural obligation,” he notes that using the terms *religious* or *religion* reifies the conflict over land and sets up Native interests for loss in courts of law. Relationship to the land means that “we are caretakers to the land...we pay attention to the land and the land pays attention to us.”¹³⁸

This project allows me to interrogate the dominant conceptual system...by noting that “all experience is cultural through and through, that we experience our ‘world’ in such a way that our culture is already present in the very experience itself.”¹³⁹ This is important in my examination of the impasse at Mato Tipila – a conflict whose complexity and culturally-specific aspects are shrouded by the American legal processes that intend to resolve it but come nowhere close; the conflict and interactions at this site are grounded in two worldviews at odds, and are articulated via systematic metaphorical concepts that are not only different, but incommensurable. Most eurochristian conceptual categories promote Christendom,¹⁴⁰ an historical ideology that partly gave rise to

¹³⁷ From a conversation with Professor Tinker on 11 October 2013.

¹³⁸ From a conversation with Professor Tinker on 11 October 2013.

¹³⁹ Lakoff and Johnson, 57.

¹⁴⁰ Peter d’Errico, in the Foreword to Steven T. Newcomb, *Pagans In The Promised Land (ix)* defines Christendom as “[A]n amalgamation of churches and states’ – alliances among secular monarchs and

“Manifest Destiny” - interpreted as a divinely-guided task to acquire and settle land in the name of progress and for purposes of establishing “civilized” societies. In contemporary discourse, this metaphor is known as American exceptionalism.

The eurochristian worldview reproduces itself based on a cultural genealogy of chosen-ness, the genesis of which is found in the stories of exile and conquest in the Hebrew bible and expanded upon in the tales of salvation and redemption from the New Testament. I will show that these related phenomena are linked to what Steven T. Newcomb calls a “chosen people/promised land” cognitive model,¹⁴¹ infusing a colonizing worldview that regards awe-inspiring geographical landscapes as simultaneously pristine and holy... a “Paradise Lost” that is both conquerable and ownable. Newcomb, (Shawnee/Lenape), convincingly argues that concepts, language, and image schemas are metaphorically “mapped onto abstract social or intellectual actions”, that operate at a deep cognitive structural level.¹⁴² He argues that since metaphor is one of the ways that human beings organize, then federal law, a conceptual system put into action on public lands, is an invention rooted in a persistent metaphor. Despite a total lack of consistency and precision, federal laws that dictate public land use are deployed to support and sustain the colonization and genocide of Indigenous peoples.

‘priestly authorities; it culminates in the doctrine of divine right of kings and popes.’ I argue that the religious connotations of the term have been successfully hidden through a secularization of language, but at the same time, show that specific conceptual categories related to “rights” and ownership of land were generated via power structures of medieval Europe.

¹⁴¹ Steven T. Newcomb *Pagans in the Promised Land* (Golden: Fulcrum, 2008), 37.

¹⁴² Newcomb, 3-4.

My project critiques the eurochristian-derived legal system that promotes and enforces radical individualism as ideal.¹⁴³ I organize this work into four related components. Chapter One establishes a definition of worldview, distinguishing it from what is a set of shared, culturally unique ideologies, which may change, fluctuate and be transformed over the course of a lifetime. Worldview, formed at a very early age, does not change. The chapter also includes a historical analysis of the invention of “rights” theory, tying it with cognitive models and image schemas unique and foundational to the eurochristian worldview. Chapter Two, an analysis of particular expressions of “the self-identity of whole communities,”¹⁴⁴ investigates if and how elements of these contrasting worldviews are present in cultural stories that are passed down through generations. The conceptual categories, models, and schemas that give rise to embodied metaphor are present and distinct between opposing cultures. Therefore, I examine the processes by which they form and are held collectively within discrete communities.

We need stories rather than treatises, rather than essentialist discourse, problem resolution, or structuralist puzzle solving. Not even some poststructuralist deconstruction that never seems to emerge from the text will finally be able to touch the hearts and minds of whole communities. For theology of this magnitude, we must have stories.¹⁴⁵

¹⁴³ I suggest throughout this project, most explicitly in Chapter Three, that the creation of property rights and the genesis of human rights precede the discursive ‘rights’ conflict at Mato Tipila are predicated on these earlier.

¹⁴⁴ Tinker, *American Indian Liberation: A Theology Of Sovereignty*, (Maryknoll, NY: Orbis Books, 2008), 75.

¹⁴⁵ Tinker, 75.

Culturally-shared stories orient us within our communities and guide our actions. In the most important ways, our stories orient us within the world; they are worldview brought to life.

In the third chapter, I identify a remarkably persistent, but false binary – manufactured to successfully limit how we relate to and understand land. The binary presents two opposing positions: the first, embodied by those who enthusiastically support the creation of shared, public spaces (overseen by the Bureau of Land Management), and one that envisions all people (recreationists, ceremonial practitioners, “Rainbow Family” warriors, hunters) as holding equal “rights” to enjoy multiple, varied activities within set-aside lands. Representatives from the “outdoor industry,” hunting rights groups, and conservationists are among the most vocal. The second position is occupied by the private landowner, possessively asserting his individual rights to his personal property. In the second part of the chapter, I examine several social movements from within the paradigm of rights: the push to recognize group/collective rights, and the bestowing of rights on Nature/Mother Earth/“Pachamama.”¹⁴⁶ I will demonstrate that even though they seem to be distinct, contemporary social movements, they are capitalist-driven enterprises. More importantly, they share a critical limitation – they are constrained by an anthropocentric worldview that precludes Indigenous knowledge. Each promote narratives of inclusivism, collaboration, and “co-management” of natural

¹⁴⁶ Please see “Parks Are People Too” <https://www.outsideonline.com/2102536/parks-are-people-too>. Following what was called “the most revolutionary piece of legislation in the world, the “Te Urewera Act” establishes and preserves “in perpetuity, a legal identity and protected status for Te Urewera for its intrinsic worth, its distinctive natural and cultural values, the integrity of those values, and for its national importance.”

resources with Native peoples, and sometimes even challenge the prerogative of nation-states, yet they overwhelmingly rely on tropes of exceptionalism and fall back on human rights as a fix. These limitations invisibilize Indigenous peoples, appropriate traditional knowledge, and perpetuate genocide.

Radical individualism, a feature of the eurochristian worldview, has its genesis in biblical scripture, but is most pronounced in the Protestant Reformation. Martin Luther and others extolled a personal, one-to-one relationship between god and believer, thus nullifying more communally-based practices, and making relationships between and among the laity and clergy unnecessary. This new theology developed from an intense rejection of consolidated clerical power in the organized church and introduced concepts like a “personal” savior for example, which came to be a central theme of Protestantism. What is most interesting for my purposes is how the theme of a personal relationship between a deity and an individual is disguised within the United States legal system and the theory and practice of universal rights. The system institutes language and statutes that, even when they include language of “collective rights,” are structured by concepts of public use that stress rights of *individuals* to share the space – each individual claim is as legally valid as the next. These laws in place at national parks and monuments are rooted in 17th century English philosophy and predicated on the dominant worldview that cannot conceive of land apart from the ownership of it. What’s more, they are created within a paradigm that imagines land as *divinely granted* to chosen people. These grants then become authoritative and codified as state ownership, and the taking over, possessing, and profiting from Indigenously - held land and resources, acutely enacted at

Mato Tipila, is an example. The laws are extensions and representations of the dominant worldview imposed in places and are in direct opposition to communally-shared constructs of balance and reciprocity. The rights discourse that implements these schemas within colonizing nation-states via prototypes like “freedom” “religious rights,” and “equality,” replicates the conflict at Mato Tipila again and again.

A postcolonial method allows me to examine the conflict around the usage of this place. Ways of being-in-the-world are structured on discrete and particularized processes that help us bodily experience and interpret sensory perceptions in certain physical environments. If we accept that not only our thinking about the world, but actually the meaning-making that emerges, stems from culturally-specific systems of categorization, we can then note how different bodies (physical, social, communal) experience the world *differently*. However, expressions of those experiences are invariably in the language of the colonizer.

Our encounters with the world around us are both shaped by, and constitute, our perception. We experience the world through the body; the body is the existential ground of culture. Yet the conceptualization of “rights” obscures this experience. That reality is the heart of this project. I argue that the Lakota longstanding, historical ties to the Black Hills and Mato Tipila¹⁴⁷ stands in sharp contrast to the possessive individualism of property rights, even when they are vocalized in disputes over public land. Vine Deloria,

¹⁴⁷ Tink Tinker, “Locke: ‘On Property’” in *Beyond The Pale: Reading Ethics from the Margins*, eds. Miguel de la Torre and Stacey Floyd-Thomas. (Louisville: Westminster John Knox Press, 2011), 52.

Jr. for example, has written on this contrast and emphasizes the “spatial framework”¹⁴⁸ that characterizes a Native worldview:

American Indians hold their lands – places – as having the highest possible meaning, and all of their statements are made with this reference point in mind. Immigrants review the movement of their ancestors across the continent as a steady progression of basically good events and experiences, thereby placing history – time – in the best possible light.¹⁴⁹

However, the American legal system, supported by bureaucratic agencies like the NPS, the Bureau of Land Management (BLM), and the United States Forest Service (USFS) operates and promotes its interests through complex cognitional categories like religion, human rights, and “rule of law.” The categories emerge through a complex legalistic framework that is based on eurochristian religious ideologies cloaked in a deceptively secular discourse. When religious and secular time coincide, according to Deloria, interpretation of events is explained within a kind of prophetic timeline.¹⁵⁰ But, as he points out, it becomes more difficult to continue an interpretation of history over long periods of time. Thus, ‘Western religion...seems to have resolved this problem of interpretation by secularizing itself.’¹⁵¹

...history becomes the story of a particular race fulfilling its manifest destiny. The idea of defining religious reality along

¹⁴⁸ Vine Deloria Jr. *God Is Red: A Native View of Religion*, Golden, CO: Fulcrum, 1994), 68.

¹⁴⁹ Deloria, 62.

¹⁵⁰ Deloria, 62-77. He calls this the ‘sin-salvation-eschaton’ timeline, referring to the biblical narratives describing ‘The Fall’ (Adam), redemption (Jesus) and the imminent ‘Last Judgement’ (eschaton) signaling the end of the world.

¹⁵¹ Deloria, 69.

temporal lines, therefore, is to adopt the pretense that the earth simply does not matter, that human affairs alone are important.¹⁵²

At Mato Tipila and other contested places, the “history of a particular race” dominates and is presumed to be reality. I argue that eurochristian conceptual categories, “have been part of the superstructure of Western intellectual life for two thousand years...they need to be replaced by ideas that are not only more accurate, but more humane.”¹⁵³ Indigenous cognitional categories are radically different and may have a corrective influence on the dominant system; more sophisticated understandings of the relationship between human beings, other-than-human beings and places, culturally encode and are inclusive of a broader range of experience that is not only more humane, but promote what Tinker calls “lateral social constructs that are much more egalitarian and predicated on balance and harmony.”¹⁵⁴ These social constructs, forming the basis of Lakota relationality at Mato Tipila and other places of significance, are entirely missed by those with the authority to decide legal outcomes. I argue that the Lakota worldview is more humane and critically important for addressing contemporary concerns at Mato Tipila and other contested sites.

Environmental imbalance is but one result of the dominance of the eurochristian worldview. The discord resulting from this imbalance is palpable in the ongoing conflict at Mato Tipila as well as borderlands between set-aside lands and Indian reservations. On

¹⁵² Deloria, 70.

¹⁵³ George Lakoff, *Women, Fire, and Dangerous Things* (IL: University of Chicago Press, 1987) 9.

¹⁵⁴ Tink Tinker, “Why I Do Not Believe In A Creator” in *Buffalo Shout, Salmon Cry: conversations on Creation, Land Justice, and Life Together* (Waterloo, Ont: Herald Press 2013) 171.

a global level, environmental negotiations and initiatives are being introduced that correspond with an Indigenous solidarity; this collective movement, however, is still framed by categories like rights. Thus, Indigenous knowledge, wisdom, and the life-politics¹⁵⁵ by which they manifest are erased by power-knowledge. Resisting efforts to annihilate traditional lifeways is an everyday reality for Native communities. Since the first colonizers arrived, creative forms of resistance have been necessary tactics of sheer survival. Making this infinitely complicated is the corpus of federal law and the court cases that have created, transformed, rewritten, and eradicated shifting policies towards American Indian communities, especially when those policies are found to not be serving the interests of the dominant.

By the 1870's, the Old Colonialism had run its course. The treaty system was in the way, and so a *New Colonialism* evolved. It was an especially virulent strain, gathering its strength and embellishment from legal argument and pronouncement.¹⁵⁶

The details of the conflict and lengthy legal battles over Mato Tipila are the only unique features of an otherwise predictable script - most characteristics are invariably replicative.¹⁵⁷

¹⁵⁵ Peter Harries-Jones, "The 'Risk Society': Tradition, Ecological Order, and Time-Space Acceleration" in *In The Way of Development: Indigenous Peoples, Life Projects, and Globalization*. Edited by Blaser, Mario, Harvey A. Feit and Glenn McRae. (London: Zed Books, Ltd. 2004) 279-298.

¹⁵⁶ John R. Wunder, *Retained By The People: A History Of American Indians And The Bill Of Rights* (NY: Oxford 1994), 17.

¹⁵⁷ Please see Chapter Three for a more extensive examination of this history of legal decisions, many of which Walter R. Echo-Hawk (Pawnee) calls the 10 Worst Indian Law Cases Ever Decided. Walter Echo-Hawk, *In The Courts Of The Conqueror* (Golden: Fulcrum, 2010).

This conflict, like others that have erupted between opposing communities with different understandings about how land is valued and cared for, played out in legal venues. This approach is wholly inadequate; let's talk about why.

CHAPTER THREE

CHANGES OF AN EXPANDING PEOPLE¹⁵⁸

Unsuccessful implementation of the Final Climbing Management Plan (FCMP) at Devils Tower National Monument should not surprise us. The plan and associated litigation perfectly capture the dominant worldview in action. The terms used in this battle over a public land extolled individual rights (specifically religious rights) at the expense of traditional Lakota values, predicated on communally-shared mutual responsibility. As an inevitable result, the fix fails to adequately address or acknowledge Lakota concerns at Mato Tipila. This should indicate however, that the system is working exactly as it is meant to. The steady increase of climbers during June confirms the dominance of one way-of-being and is a logical result. Take for example, the claim of the plaintiffs in *Bear Lodge Multiple Use Association v. Babbitt*, resting on the First Amendment of the U.S. Constitution. They argued that the NPS was “promoting Indian religion.” This assertion set the terms; defendants were then forced to negotiate within that frame, adopting those terms, proceeding as if they were “givens.” The case then

¹⁵⁸ Frederick Jackson Turner, ‘The Significance Of The Frontier In American History’, a paper read at the meeting of the American Historical Association in Chicago, on July 12, 1893, as part of the World Columbian Exposition. The Exposition was to celebrate the 400th anniversary of Columbus’ arrival in the “New World.” <https://nationalhumanitiescenter.org/pds/gilded/empire/text1/turner.pdf>, accessed April 2018.

unfolded based on whose rights to practice religion were being curtailed.¹⁵⁹ Plaintiffs cited “spiritual satisfaction” they gained from climbing.¹⁶⁰ Others carefully couched their arguments directly in terms of religious rights. Commercial guide Andy Petefish asserted his “personal relationship” with the Tower, declaring, “I’m a Euro-American...I don’t want to understand Indian religion, and I don’t have to.”¹⁶¹

In *Bear Lodge Multiple Use Ass’n v. Babbitt*, the Bear Lodge Multiple Use Association (BLMUA)...[plaintiffs] challenged several provisions of the FCMP. They objected to the voluntary ban on June climbing, the cross-cultural education program, and the placement of signs encouraging visitors to remain on the Tower Trail, alleging that the FCMP promoted religion.¹⁶²

Similarly, The Department of the Interior (overseeing the NPS), along with other defendants, relied on the contention that Devils Tower is a “sacred site,”¹⁶³ also noting that it is listed on the National Register of Historic Places as a “traditional cultural property.”¹⁶⁴ Defendants Romanus Bear Stops, Burdell Blue Arm, Arvol Looking Horse,

¹⁵⁹ The Amendment addresses the rights to free speech and the right to petition the government for “redress of grievances,” but my focus is the Establishment clause: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof...” that has relevance. <https://constitutioncenter.org/interactive-constitution/amendments/amendment>. Accessed May 23, 2018.

¹⁶⁰ Allison M. Dussias, “Cultural Conflicts Regarding Land Use: The Conflict Between Recreational Users at Devil’s Tower and Native American Ceremonial Users,” *Vermont Journal of Environmental Law*, Vol. 2 (2000-2001), 21-22.

¹⁶¹ Dussias, 31.

¹⁶² See *Bear Lodge*, 2F. Supp. 2d.

¹⁶³ Please see National Park Service, Devil Tower NM-Final Climbing Management Plan – Purpose and Need for the Plan. <http://www.nps.gov/planning/deto/detopurp.html>. Also see United States Department of the Interior, National Park Service, “Ethnographic Overview and Assessment of Devils Tower National Monument, Wyoming” (1997), *Natural Resources-Planning, Management, and Conservation*. Paper 4.

¹⁶⁴ Patricia L. Parker & Thomas F. King, “Guidelines for Evaluating and Documenting Traditional Cultural Properties – Introduction,” *1, NAT’L REGISTER Bulletin*, 38 (1990). The terms “traditional” and “cultural” are defined as follows in the National Historic Preservation Act. “Traditional: refers to those beliefs,

and Steven Vance specifically contended that the FCMP “was designed, in part, to eliminate barriers to American Indian’s free practice of religion.”¹⁶⁵

This project however, rests on the claim that the exclusive use of “rights” discourse is not only inadequate, it erodes and undermines the system of values that defines Lakota peoples and gives them life. Therefore, I choose to focus on Lakota peoples’ understanding of their relationship with *Paha Sapa* (The Black Hills) and Mato Tipila. As such, I utilize archival history, oral tradition, and draw from Ronald Goodman’s *Lakota Star Knowledge*, (an archaeo-astronomic study of Lakota stellar theology) to establish that the land within and around *Paha Sapa*, for the Lakota, is “the heart of everything.”¹⁶⁶ Most importantly, I ask Lakota people to describe in their own words how they think about the historical and contemporary relationship between Lakota peoples and Mato Tipila.

This chapter is an analysis of the development and application of “rights” theory and discourse as it is mobilized to assert ownership/property in lands and arbitrate conflicts. Why start there? Because notions about “rights” stand in direct contrast with Lakota understandings of shared obligations and responsibilities to and with *their*

customs, and practices of a living community of people that have been passed down through the generations, usually orally or through practice. “Cultural” refers to “the traditions, beliefs, practices, lifeways, arts, crafts, and social institutions of any community, be it an Indian tribe, a local ethnic group, or the people of the nation as a whole. It should not go unnoticed that these designated places are organized as “properties.”

¹⁶⁵ Bear Lodge Multiple Use Association, et al., vs. Bruce Babbitt, Secretary of the Interior, et al. No. 96-CV-063-D.

¹⁶⁶ Goodman, Ronald, *Lakota Star Knowledge: Studies In Lakota Stellar Theology* (SD: Sinte Gleska University, 1992) 14.

lands.¹⁶⁷ To highlight the absurdity of enduring centuries of regulatory surveillance on their traditional homelands, I discuss three things. The first is the radical difference between a Lakota and a eurochristian worldview. Tinker states, “the difference in worldview can be described as mental images that get articulated in metaphor.”¹⁶⁸

Following Tinker and Mark Freeland, I isolate principle distinctions that characterize the disparate worldviews. Second, I uncover how and why specific and dominant conceptualizations grossly limit how we talk about, think about, and inhabit lands. The imposition of these conceptualizations is a destructive and durable feature of a broader colonizing project because it features a “hidden hand” that shapes conscious thought.¹⁶⁹ Third, I want to demonstrate how a human-centered conceptualization of “rights” precludes, ignores, or misconstrues what is centrally important in a Lakota way-of-life (what Tinker calls “collateral egalitarianism”).¹⁷⁰ The term is meant to describe how American Indians, (in this case Lakota), understand themselves in terms of obligations

¹⁶⁷ Treaty of Fort Laramie of 1868, U.S.-Sioux Indians, April 29, 1868, 15 Stat. 635. Article II set apart land west of the Missouri in present-day South Dakota for the “absolute and undisturbed use and occupation” of the Lakotas. As a revision to an earlier version of 1851, this Article, while drastically reducing “unceded” areas of land, did guarantee the Black Hills and surrounding area would be Lakota lands. Please see Jeffrey Ostler, *The Lakotas and the Black Hills: The Struggle for Sacred Ground*, (NY: Penguin, 2010). Also, <http://www.pbs.org/weta/thewest/resources/archives/four/ftlaram.htm>.

¹⁶⁸ Tinker, in a radio interview called, ‘Are Indian tribes sovereign nations’ *Why? Philosophical Discussions About Everyday Life*, Produced by Prairie Public. Accessed January 20, 2018.

¹⁶⁹ Lakoff and Johnson, 12. What they mean is that we have no direct, conscious awareness of most of what goes on in our minds.

¹⁷⁰ Please see Tink Tinker, “Why I Do Not Believe In A Creator,” in *Buffalo Shout, Salmon Cry: Conversations On Creation, Land Justice, and Life Together*, edited by Steve Heinrichs, (Waterloo, Ontario: Herald Press, 2013), 170-171. Tinker also describes the American Indian worldview that generates lateral social constructs that are more egalitarian and predicated on balance and harmony, noting “the key problem is that the deep structure realities of the two worlds, those of euro-Christianity and American Indians, are inherently opposite to one another.”

and responsibilities to and with not only their lands, but with “the four-legged persons, the flying persons (from birds to butterflies, and even flies)... the living-moving ones (that is, the mountains and rivers; the trees and the rocks; the corn that we plant to sustain our lives; and the fish in the lakes.”¹⁷¹ Clearly, this expansive inclusion of all living beings as “persons” subverts the hierarchical, patriarchal, eurochristian technique of categorization that imagines human persons as centrally important and “on top,” while revealing the Lakota understanding of “relationship to all that lives in the world.”¹⁷² These relational aspects are distinguished by an understanding of reciprocity. Indeed, the Lakota, “view of life is grounded in the knowledge of these responsibilities.”¹⁷³

When Indian people take from the earth we always feel a need to return something of value back to the earth. So, for instance, we might need cedar leaves to use ceremonially, as a medicine; we would use the smoke of the cedar to purify or might use a cedar tea for other medicinal purposes. Yet before we can take these cedar leaves for our use, we would always offer something, perhaps tobacco back to the cedar tree persons as a way of thanking the cedar trees and doing our part to maintain harmony and balance.¹⁷⁴

NO COMMON GROUND

I begin my analysis with a clarification about worldview, returning to Freeland’s definition: an “interrelated set of logics that fundamentally orient a culture to

¹⁷¹ Tink Tinker, “An American Indian Cultural Universe: We Are All Related,” *Moral Ground*, eds Kathleen Dean Moore and Michael P. Nelson, (San Antonio: Trinity University Press, 2010).

¹⁷² Tinker, “Why I Do Not Believe,” 171.

¹⁷³ Vine Deloria, Jr., “Out Of Chaos,” *I Become Part Of It: Sacred Dimensions in Native American Life*, edited by D.M. Dooling and Paul Jordan-Smith, (NY: Parabola, 1989), 259-268.

¹⁷⁴ Tink Tinker (Osage), “American Indians And Eco-Theology: Alterity and Worldview, *Eco-Lutheranism: Lutheran Perspectives on Ecology*, edited by Karla Bohmbach and Shauna Hannon, (Minneapolis: Lutheran University Press, 2013), 69-83.

space (land), time, the rest of life, and provides a prescription for how to live that life.”¹⁷⁵

The eurochristian set of logics is the American set of logics. It is the same whether one identifies as Atheist, Jewish, Christian, Muslim, Zoroastrian, Buddhist, what have you, because of commonly-shared orientations to space and mutually-held prescriptions for how to live life. They are as follows: a duty to oversee and manage things of the world, a perceived separation between humans and “Nature,” a conviction that human beings¹⁷⁶ are the “best and brightest” in all creation, and a shared conceptualization of hierarchical categorization. Humans are way at the top, some animals and other living beings are next (but certainly kudzu, serpents, and amoebas occupy the lowest rungs). These together form a set of logics, orientations, and prescriptions that are common to all who share the eurochristian worldview. Here, orientation is *foundationally* construed via the image schema Tinker calls Up-Down.¹⁷⁷ The foundation is supported by cognitive categories that are culturally reproduced in congruity, though largely unconsciously, and even if people do not share identical ideological precepts. Remember Tinker’s description of four fundamental, deep structure elements of American Indian peoples? They are “spatiality as opposed to temporality; attachment to particular lands or territory; the priority of community over the individual; and a consistent notion of the interrelatedness of humans

¹⁷⁵ Mark Freeland, *Conceptual Decolonization of Space: Worldview and Language in Anishinaabe Akiing* (unpublished dissertation), 50-52.

¹⁷⁶ I do not mean that all human beings are understood as equally “above” or “high up” in the hierarchy. This chapter will investigate how and why some consider themselves superior to others.

¹⁷⁷ Tink Tinker, “Why I Do Not Believe” 168.

and the rest of creation.”¹⁷⁸ Here is my point: an American Jew, in spite of a theological, historical consciousness relative to the Jewish people, is forced to operate in a larger cultural order that privileges a one-directional, staged, sequenced version of “progress” - as is an American Muslim. History, understood as an unfolding evolutionary progression, plays out in a linear timeline, punctuated by temporal events and commonly-held notions about “end times.” An American Christian, like an American Atheist, imagines that human beings are special, gifted with exceptional traits that place them “above” or superior to, other-than-human beings. They share something else too, in terms of evaluating land. Ideally, lands must be categorized, partitioned, and hierarchically classified: usability, ownability, and profitability are principle concerns. Allow me to further clarify: obviously, there are important *ideological* differences between Jews and Atheists, notably in how their belief systems are constructed (i.e., who/what transcendent force governs the cosmos), and certainly Muslims and Christians could point to specific disagreements, (e.g., *tawhid*, (the one-ness of God vs. the divinity of Jesus), Muhammad as the last prophet and so forth. These differences, using Freeland’s metaphor, are the walls and partitions of the house. They are ideological particularities that do not alter or change in any way the foundation (worldview).

As Freeland further notes, ideologies may resonate with but often contradict a structured worldview; they can also change and transform over a lifetime. Worldview however, features a dialectical relationship between our lived environment and the ways we organize our relationship to that environment. Returning to his metaphor of a house,

¹⁷⁸ Tinker, *American Indian Liberation*, 7.

we may select a roof and walls of the house, built on a foundation that is unchanging and permanent. The foundation is “a framework for organizing cultural relationships to space, time, life and a prescription for relating to that life.”¹⁷⁹ The eurochristian worldview - the foundation – historically rooted in Europe, is an American worldview. The metaphor is also helpful since we can imagine ideology as the roof, and social institutions, the walls and partitions. Everyday practices that distinguish one culture from another are the ways we choose to design, enhance, and decorate the structure. Particularities notwithstanding, the foundations are unique and culturally-situated. Once formed, worldview is permanent and unchanging. Fully appreciating these distinctions is especially important; too often, we confuse worldview with ideology.

Given the american narrative and notions of american self-identity, for instance, most american people would presume that eastern european communism was or is a different worldview than american democratic capitalism. This is a fundamentally mistaken use of the term worldview in my estimation. The truth is that both marxism and capitalism are deeply rooted in the same eurochristian worldview even as they express radically different ideologies. **In the United States worldview is a given, the same wherever one lives on the continent – until you step into an American Indian community**¹⁸⁰ [emphasis added].

The eurochristian worldview is *not* a given in a Lakota community. Collateral egalitarianism, a way-of-thinking and being, is intrinsic to the Lakota worldview and is radically different from a hierarchically-organized, humans-at-the-center way-of-thinking. Collateral egalitarianism promotes balance and harmony between and among

¹⁷⁹ Freeland, Conceptual Decolonization of Space: Worldview and Language in Anishinaabe Akiing (unpublished dissertation), 47.

¹⁸⁰ Tinker, 3.

human beings and other-than-human beings; an Up-Down schema is in direct opposition. Albert White Hat confirms that aspects of the Lakota worldview are captured in the concept, phrase, and philosophy - *mitakuye oyasin* - “all my relatives”¹⁸¹ that also informs, shapes, and constructs ideologies and day-to-day interactions within Lakota communities. Vine Deloria, Jr. also describes the importance of relational aspects between Lakota peoples and their lands, in recounting, for example, boyhood trips through South Dakota that he took with his father.

He would point out various features of the landscape and tell me the names and stories associated with them. Regrettably, I can only remember a few of the places today, but indelibly imprinted on my mind was the fact that the Sioux people cherished their lands and treated them as if they were people who shared a common history with humans.¹⁸²

Alexandra Holy Eagle tells us that “for the Lakota, Paha Sapa has always been the center.”¹⁸³ Sebastian C. (Bronco) LeBeau II, (Lakota), also fully understands the unique relationship between his people and places of significance for them. For example, while creating a distinctly Lakota methodology of identifying and typing “traditional cultural property” (TCP) for Lakota peoples, he questions the authority of non-Native “experts” in his field. Understanding land in a different, and distinctly Lakota way, LeBeau connects “traditional *wóksape*—wisdom... about our *wicóahopepi*—customs,

¹⁸¹ Albert White Hat, *Zuya: Life's Journey, Oral Teachings From Rosebud*, compiled and edited by John Cunningham (SD: Sinte Gleska University, 2012)92-93.

¹⁸² Vine Deloria, Jr. *God Is Red: A Native View Of Religion*, (Golden: Fulcrum 1994), 1.

¹⁸³ New Holy, 319.

[that] *ohépi okítan̄iñ* —manifest in special places.”¹⁸⁴ His work is significant for my project, mostly because he distinguishes himself with cultural competency that his colleagues in the field utterly lack. His research disrupts the hegemony of the “academy,” whereby objective, empirically-minded “experts” impose flawed and inaccurate assessments of communities about which they have, at best, a shallow understanding. An example is how Lakota memory is reproduced and history is passed down. LeBeau objects to the presumption that outsiders can identify, *for* Lakota peoples, what the “experts” insist on designating as “sacred” places.

The Lakota philosophy —*wówi yukcañ Lakota kiñ* describes the actionable nature of our TCPs. This *wicálapi* —belief, affirms that when a TCP is viewed by a Lakota it functions as a symbolic trigger causing the individual viewing it to *waciñkiksuya* —to remember all things well, as *ótan̄iñ okíciyak aupi* —tradition manifests itself. Thus evoking powerful *wakíksuyapi* —memories of *wicóahope* —custom and *wōecon̄pi* —practices, things which reinforce one’s own sense and awareness of his or her cultural and ethnic identity¹⁸⁵ [italics added].

Actionable nature, memory, tradition, custom...LeBeau captures the dynamic relationship between his peoples and their lands; ways-of-being that are entirely missed by those not sharing the same worldview. In fact, here we might add one more characteristic of the eurochristian worldview...a never-ending desire to bring “progress” and “enlightenment” to those they perceive to be misguided, lagging behind, or uneducated.

¹⁸⁴ Sebastian C. (Bronco) LeBeau II, *Reconstructing Lakota Ritual in the Landscape: The Identification and Typing System for Traditional Cultural Property Sites*, (Minneapolis: University of Minnesota, 2009).

¹⁸⁵ LeBeau, 1.

Jacqueline Keeler (Diné/Ihanktonwan), writes “for us (Indigenous peoples), all around us, the land is sacred because it reflects a relationship we have made with it. A relationship built on respect.”¹⁸⁶ Kristen Carpenter, writing in defense of Indigenous property, states “it is impossible to protect indigenous peoplehood without also protecting indigenous relationships with tribal lands and the culture that grows out of those lands.”¹⁸⁷

Radical difference in the way land is assessed and related to is critical component of my analysis of the conflict at Mato Tipila. Those with power to create and enforce laws governing public lands in the United States operate out of the same worldview of imperialism that was constructed in medieval Europe – it is a worldview of empire. As part of the “forceful ascent of ‘the West’ to global predominance,”¹⁸⁸ the heirs of empire continue to superimpose “imaginings of how the world works”¹⁸⁹ over traditional Native ones (in this case, Lakota), and see that enforcement through via

¹⁸⁶ From a keynote address given at White Privilege Conference, on April 14, 2017. The title of her talk was “America Is Still a Colony and the Reemergence of Native Nations.” In the opening, she tells the assembled crowd that they are on the land of the Osage Nation, and asks for a moment of silence to acknowledge the Missouri River as a relative.

¹⁸⁷ Kristen A. Carpenter, Sonia K. Katyal, and Angela R. Riley, “In Defense of Property” *Yale Law Journal* Vol. 118, No. 6 (April 2009), 1022-1125 [1061]. The writers identify four attributes of peoplehood that have ensured the survival of Indian tribes during the period of conquest, colonization, and forced assimilation. These include (1) maintaining language, (2) understanding place, (3) keeping particular religious ceremonies alive, and (4) perpetuating a sacred history. Noting my argument that “religious and “sacred” are not only unhelpful but force Native conceptualizations into rigid parameters defined by eurochristian culture, I also disagree that the period of conquest, colonization and forced assimilation has ended. Their argument around Indigenous peoplehood will be examined fully in Chapter Three.

¹⁸⁸ Anthony Hall, *Earth into Property : Colonization, Decolonization, and Capitalism: The Bowl With One Spoon*, Volume 2, (Quebec: McGill Queen’s University Press, 2010), 6.

¹⁸⁹ Tink Tinker, “American Indians And EcoTheology, 3.

another ideological invention of the colonizer - rule-of-law.¹⁹⁰ That invention is codified through violence, dispossession, and bureaucratic techniques. These techniques, being largely unexamined, are presumed to be reality. Glenn Morris, explains “the political landscape [by which] the US views itself as the indispensable power in the world,”¹⁹¹ is supported by judicial proceedings that affirm exceptionalism; legal decisions affecting Indigenous societies feature concepts like the doctrine of discovery, domestic dependent nation status,¹⁹² and the plenary power doctrine. The latter gives Congress and the President “unbridled freedom to make any decision in relation to indigenous peoples,” allowing the Court to “invent, manufacture, and enforce myth as history, and ethnocentric dogma as law.”¹⁹³

The presumption that the United States has...authority over Indian nations is predicated on a taken-for-granted understanding of the United States as a conqueror of American Indian nations and on the corollary viewpoint that Indian nations are “conquered and subdued nations.”¹⁹⁴

¹⁹⁰ Political power, according to English political theorist John Locke lies in “a body of laws...well composed.” In this chapter and the next, a full analysis of Locke’s theory of property identifies a theoretical basis (in law) for his treatise on property.

¹⁹¹ Glenn T. Morris, “Resistance, Politics, Colonization, and the Law” *Native Voice: American Indian Identity & Resistance*, edited by Richard A Grounds, George E. Tinker, and David F. Wilkins, (Lawrence: University Press of Kansas, 2003), 101.

¹⁹² Morris is citing Supreme Court Justice John Marshall’s decision in *Cherokee Nation v Georgia*, 30 U.S. (5 Pet.) 1 (1831). Under consideration was whether Indian tribes could be considered “foreign” nations under Article III of the Constitution, and thus exercise treaty rights as such. Chief Justice Marshall’s decision cited diminished rights of Indians due to being under the political sovereignty of the United States. As a result of the decision, the status of tribes is “domestic dependent nations;” as such, tribes cannot maintain an action in the courts of the United States.

¹⁹³ Morris, 115.

¹⁹⁴ Newcomb, 23.

In this chapter and the next, I uncover how the enforcement of myth as history worked so effectively in this conflict; relatively few, but culturally- specific conceptualizations prop up the fabrication of “rights” to land/property (whether public or private). In cognitive theory terms, the myths are so familiar within dominant culture because they reproduce shared, particular generative cognitive models, embodied metaphors, and discrete, powerful image schemas. Image schemas, components of idealized cognitive models (ICM)s, are culturally unique. However, in this adjudicated conflict limited by “rights” discourse it is clear that powerful image schemas particular to the eurochristian worldview prevailed. Lakota concerns and interests at Mato Tipila were *at best*, grossly romanticized, but, at the end of the day, prohibited, omitted, unrepresented, absent, disregarded. This is because an important Lakota image schema, collateral egalitarianism, is in direct contrast with the Up-Down image schema. As such, it cannot be articulated, cannot be imagined, cannot be allowed in venues where rule-of-law and “rights” function as reality. Precepts of collateral egalitarianism, in other words, cannot not be subsumed into *any* eurochristian conceptual paradigm regarding land, whether the model emphasizes ownership,¹⁹⁵ property, stewardship over,¹⁹⁶ or multiple-use,¹⁹⁷ and *that* is the reason that defendants were compelled to regulate and correlate

¹⁹⁵ Please see Thomas W. Merrill, “Property and The Right to Exclude,” 77 *Nebraska Law Review*. 730 (1998). The right of exclusion, he writes, is the “sine qua non” of property.

¹⁹⁶ Please see Kristen A. Carpenter, Sonia K. Katyal and Angela R. Riley, “In Defense of Property,” *The Yale Law Journal*, Vol. 118, No. 6 (Apr. 2009) 1022-1125.

¹⁹⁷ Multiple or shared use in publicly-held lands is covered extensively in Chapter Three. For an explanation of how it is used in a legal sense, please visit <https://www.blm.gov/about/how-we-manage>. Accessed July 2018.

their positions to fit parameters of the dominant frame. The deep structure of a eurochristian colonizing worldview is distinguished by “a divine right to mentally *apprehend* (“discover”) and physically *apprehend* (seize and take possession of) all lands throughout the world.”¹⁹⁸

Keeping in mind the dual understanding of apprehension, we can now begin to discuss radically different conceptualizations and take note of pronounced incommensurability in orientation to space (land). The discussion reveals profound limitations in how conflicts over public lands in the U.S. have been and continue to be adjudicated. I now turn to that analysis.

UNIVERSAL RIGHT

Equal concern and respect. Dignity. Essential protections. Norms. Entitlements. These words and phrases are used to describe benefits one might accrue by exercising one’s rights. Despite a persistent “best of all possible worlds” tenor, I have found little consensus on what exactly “rights” are supposed to do and mean. Equally difficult is pinpointing some kind of historical moment that gave rise to the concept itself. Micheline Ishay, for example, argues that human rights has a very long history,¹⁹⁹ while Jack Donnelly asserts that the “extensive practice of *universal* human rights is largely an invention of the twentieth-century.”²⁰⁰ Taking a multicultural approach in a critique of the “grand narrative of...human rights hidden in the seemingly neutral and universal

¹⁹⁸ Newcomb, 43.

¹⁹⁹ Micheline Ishay, *The History of Human Rights From Ancient Times To The Globalization Era*, (Berkeley: University of California Press, 2004).

²⁰⁰ Jack Donnelly, *Universal Human Rights In Theory And Practice*, (NY: Cornell, 2013).

language of the corpus,”²⁰¹ Makau Mutua takes aim at Eurocentric theorists who share a “continued reluctance to identify liberal democracy with human rights” rather, they only “delay the reformation, reconstruction, and multiculturalization of rights.”²⁰²

I argue that human rights, and the relentless campaign to universalize them, present a historical continuum in an unbroken chain of Western conceptual and cultural dominance...[A]t the heart of this continuum is a seemingly incurable virus: the impulse to universalize Eurocentric norms and values by repudiating, demonizing, and “othering” that which is different and non-European.²⁰³

What I am comfortable saying is that current regulations in place on public lands in the U.S. are extensions of modern political thought, reflecting the evolution of a discourse predicated on an extraordinarily powerful ideological invention - so-called “natural rights.” On that subject, no political thinker postulated more imaginatively than the English political theorist John Locke. One might effectively argue that it is Locke’s conflation of sovereignty, natural law, labor, and property, profoundly influencing the early patriarchs of the United States (Thomas Jefferson in particular), that provided substantial ideological fodder for not only founding documents of the U.S., but for the corpus of national property law and rights theory as they are known today. I do not mean to suggest that Locke’s vision of natural law mirrored theological proclamations of medieval popes and kings (closely examined in the following pages), nor did he fall in step with his contemporaries who equated natural law with a theologically-based “moral

²⁰¹ Makau Mutua, *Human Rights: A Political And Cultural Critique*, (Philadelphia: University of Pennsylvania Press, 2002), 13.

²⁰² Mutua, 13.

²⁰³ Mutua, 15.

law;” quite the opposite, in one sense, his treatises might be read as a disdainful rejection of any and all authority asserted through “divine right,” whether vested in kings, popes, or a biblically-based right of dominion. Instead, Locke derived his theories of natural law based on a teleological timeline that culminates in the ultimate social expression - civil society. All men are equal, he surmises, having been created into the original condition (the state of nature). Anthony Hall points out this teleological reckoning allows Locke to

assign North American Indians to the infant stage of humanity. He associated this imagined infancy with a state of undisturbed nature before the existence of money and before what he characterized as the improvement of North American lands through the investment of labour by transplanted English farmers.²⁰⁴

While in this original state, Locke claims, “’tis very clear, that God, as King David says, *Psal. CXV.xvj. has given the Earth to the Children of Men*, given it to Mankind in common.²⁰⁵ However, he is at great pains to insist that *reason* (something all men share by virtue of being human), is most *perfectly* expressed by the industrious – those men who perform labor. It is important to see that his ideological argument in support of a “landed man,” a man of property, emanates from the very same set of logics shared by medieval monarchs and papal authorities; it is humorously ironic that Locke so clearly endeavored to distinguish his work from other 17th century European philosophers who devotedly extolled “religiously” derived divine rights based on biblical authority. The virtuous man, for Locke, was he who made the most of what God has granted – through industrious labor, the virtuous may enjoy the world...appropriate “the fruits” that

²⁰⁴ Anthony Hall, *Earth into Property*, 101.

²⁰⁵ John Locke, *Two Treatises*, § 26:7-8,286.

God has divinely granted. What he undoubtedly meant as a more secular version of history remains firmly ensconced within eurochristian parameters. We might even imagine redacting the text, inserting “the righteous shall inherit the land and dwell therein forever,”²⁰⁶ and none would be the wiser.²⁰⁷

Locke’s theory of just appropriation is *the* formidable ideology featuring rights and property - two “estates” by which he constructs his speculative theory. God gave the world to human beings to enjoy, he muses. Thus, anyone has a right to settle in the “vacant places” of the Americas.

Scripture reveals that the world is a gift, given by God to mankind in common. Natural reason teaches that each man has a right to the things which nature affords for his subsistence...these two propositions are derived from biblical exegesis and from natural law.²⁰⁸

Locke opines that rights arise naturally from the duties and obligations on the part of man to God; because humans are products of a divine making, that “natural right” is established. The theological foundation and trajectory of Locke’s thought is important and is discussed more fully in the next chapter – here I want to look closely at the procedural logic Locke uses to invent his theory.

God, who hath given the World to Men in common hath also given them reason to make use of it to the best advantage of Life, and no convenience. The Earth and all that is therein, is given to Men for the Support and Comfort of their being. And though all the Fruits it

²⁰⁶ Proverbs 2:21, *The Jerusalem Bible*, General Editor Alexander Jones, L.S.S., S.T.L., I.C.B. (NY: Doubleday, 1966).

²⁰⁷ Patrick D. Soch, “John Locke and the Abuse and Use of the State of Nature,” (unpublished paper, 2009).

²⁰⁸ James Tully, *A Discourse On Property: John Locke and his adversaries*, (London: Cambridge University Press, 1980), 95.

naturally produces, and Beasts it feeds, belong to Mankind in common as they are produced by the spontaneous hand of Nature; and no body has originally a private Dominion.²⁰⁹

God then gave the things of the world “[F]or the use of Men, [and] there must of necessity be a means to *appropriate* them some way or other before they can be of any use, or at all beneficial to any Man.” The Fruit, or Venison, which nourishes the wild Indian, who knows no Inclosure, and is still a Tenant in common, must be his.²¹⁰

Lands held “in common” is the setting for his first declaration on property. He opines, “every Man has *Property* in his own *Person*. This no Body has any Right to but himself.”²¹¹ Each man has been given the world in common and the resources (he specifies fruit, venison, acorns, and apples), are provided for the sustenance of all. However, he continues, “there must of necessity be a means to *appropriate* them some way or other before they can be of any use, or at all beneficial to any particular Man.”²¹² Equating appropriation with “use” and “benefit,” Locke next promulgates his theory of impropriation.

He that is nourished by the Acorns he pickt up under an Oak, or the Apples he gathered from the Trees in the Wood has certainly appropriated them to himself. No Body can deny but the nourishment is his. I ask then, When did they begin to be his? When he digested? Or when he eat? Or when he boiled? Or when he brought them home? Or when he pickt them up? And ‘tis plain if the first gathering made them not his, nothing else could. That *labour* put a distinction between them in common.²¹³

²⁰⁹ Locke, §26:1-8, 286.

²¹⁰ Locke.

²¹¹ Locke, § 27:2-3.

²¹² Locke, §26:10-12.

²¹³ Locke, §28:1-9.

“Wild Indians,” he surmises, have no *real* rights to property in land - can no longer have any right to it,²¹⁴ for two reasons: labor, (specifically agricultural labor), being a productive use of god-given resources, precludes Indians, whose only mode of subsistence, he construes, is hunting and gathering (i.e., the fruit or venison, and so on).

“*As much Land as a Man Tills, Plants, Improves, Cultivates, and can use the Product of, so much is his Property*²¹⁵- this passage not only foreshadows his concluding flourish, but for all those who did, and continue to profit from his conjectures, it seals the deal; Indians, Locke states, possess only natural rights of the commons. This means their lands are free for the taking! Each man has property in himself, but it is only and *exclusively* individual labor on land, he goes on, that creates an individual’s right *over* material property. Right over property equals ownership, and the right to own land reflects Locke’s longstanding interest in the colonizing projects of America. Hall points out that Locke had a keen interest in the Carolina colonies; “he drafted a proposed constitution for the new jurisdiction, though it was never enacted.”²¹⁶

It is difficult to know exactly where to begin. His craftily constructed but blatantly false assessment of the varied subsistence patterns and practices between and among the many diverse Native communities for one, is a convenient, but preposterous lie. Locke never visited the Americas, and yet was well versed in the writings of those

²¹⁴ Richard Tuck, *The Rights Of War And Peace: Political Thought And The International Order From Grotius To Kant*, (UK: Oxford University Press, 1999), 173-4.

²¹⁵ Locke, §32:4-6.

²¹⁶ Hall, *Earth Into Property : Colonization, Decolonization, and Capitalism*, (McGill Queens University Press, 2010), 89.

who did.²¹⁷ Yet, it is upon a fabrication that he bases his mythical rights to property thesis. It certainly seems to have lent a veneer of legality to those engaged in the first genocidal military invasions of Native communities of New England. However, historian Barbara Alice Mann *corrects* the lie that so perfectly served the interests of colonizers. In a historically precise analysis in *George Washington's War on Native America*, she identifies “primary engines of destruction,” making the irrefutable case that, despite “rights of cultivation” being exercised to deny Natives ownership rights, and either outright steal or pay preposterously low sums of capital to appropriate Native lands, in fact, many communities living in the areas of New York, Pennsylvania, Ohio, among others, cultivated their lands in sophisticated and highly productive ways. In fact, she says, they were expert farmers. What’s more, (and antithetical to patriarchal assumptions rooted in the Up-Down), these agriculturalists were primarily women who owned their plots of land yet worked in cooperation. Mann writes, they “ruled out competition as a cultural value.” When women went to plant, “they did it in clan collectives managed through the women’s arming society Gai’wiu O dännide’oshä, meaning Good Rule, They Assist One Another.”²¹⁸ This was clear as day, despite the widespread myth that Natives were “hunters” who “wasted land” that Europeans could put to better use.²¹⁹ Mann proves

²¹⁷ For a detailed list of Locke’s library of travelogues, books, and documents he used to support his theory on the state of nature, the ignoble savage, etc. please see Morag Barbara Arneil, *All The World was America: John Locke and the American Indian*, University of London, University College London (United Kingdom), ProQuest Dissertations Publishing, 1992. Please also see John Harrison and Peter Laslett, *The Library Of John Locke*, second edition, (London: Oxford University Press, 1971).

²¹⁸ Barbara Alice Mann, *George Washington's War on Native America*, (Lincoln: University of Nebraska Press, 2005), 207.

²¹⁹ Mann, 194, 197, 203-4, 214, 215, 217-27. Mann demonstrates for example, that rather than face the horrific paradox of stealing already well-cultivated lands from settled communities, Washington and his

in this book and another entitled *Iroquoian Women: The Gantowisas*, that even according to Locke's own logic, Native communities certainly had what he proclaimed were rights to property in their lands!

The pretty facts are these: [they]...owned the means or production plus all products; they managed production for abundance; they achieved breath-taking levels of plenty; they conserved the environment in the process; they distributed this bounty equitably to the entire community; and they maintained enough surplus to nurture international alliances.²²⁰

Environmental historian William Cronon concurs, writing that most of the Indigenous people south of Maine consumed a diet that was probably two-thirds vegetables and fruits (primarily maize, beans and squash), whereas only the most northern peoples of New England consumed diets primarily of animal protein supplemented by gathered plants.²²¹ His particular focus is on ecological changes that happened in New England as a result of European invasion, but it is clear that the conjectures and falsehoods upon which Locke bases his argument are both deliberate (again, Locke never travelled to the Americas), and seamlessly consistent with the Euro-Christian set of logics. Imaginatively wrought and conveniently twisted ideologies based on natural law, whether God's law, the right of kings, the triumph of reason, the

generals, Sullivan, Clinton, Brodhead, and Williamson campaigns of 1781 and his soldiers (emboldened by massive amounts of whiskey) chose to burn the fields and towns, and slaughter the Native inhabitants to remove traces of such.

²²⁰ Barbara Alice Mann *Iroquoian Women: The Gantowisas*, (NY: Peter Lang Publishing, 2000 [2004]), 214.

²²¹ William Cronon, *Changes In The Land: Indians, Colonists, and the Ecology of New England*, (Canada: Harper Collins 1983), 12.

heroic “landed man” - all are generated out of the same hierarchically-organized, anthropocentric foundation.

Despite Locke’s lies, Native peoples generally, and Lakota peoples specifically, continue to live in the world, orienting themselves with community in a radically contrasting way. To understand the alterity between worldview is necessarily complex, but to fully appreciate what is at stake in the conflict at Mato Tipila, I stress again that “solutions” promoting, exercising, and upholding “rights” as some universal norm (as codified in the FCMP), are not only thoroughly inadequate, but perpetuate cultural genocide. My aim is to call attention one, to specific conceptual categories shared by what Ernest Lee Tuveson names the people of a “Redeemer Nation,” and two, specific conceptual categories identified by Lakota peoples as historical, collectively-held, and longstanding. In Chapter Two, I look at the *processes* by which radically different cognitive categories and embodied metaphors arise and are perpetuated through distinct communal interactions, storytelling, encounters with other living beings of the world. However, in this chapter I seek to the historical development and codified reproduction of the dominant, eurochristian set of logics.

RIGHTS OF REDEMPTION

An amalgam of power and authority shared by European ecclesiastical and monarchical forces beginning in the fourth century, coincided with the birth of Roman Catholicism. The quixotic alliance intensified in the following centuries, produced and sustained by relatively metaphorical constructs. These have persisted and are present, albeit in a more secularized form, in American law and jurisprudence. Cognitive theorists

tell us metaphorical constructs are embodied mostly unconsciously; eurochristian embodied constructs have been sustained by forceful means yes, but increasingly today, by what Glen Sean Coulthard (Dene/Yellow Knives) calls “colonial recognition politics”- symbolic acts of redress that ultimately “serve the imperatives of...accumulation.”²²² These constructs, I argue, undergird the theory of “rights,” and closely correspond with an imperial mentality - that of “Christian Europeans enforcing their peculiar vision of a universally binding Natural Law.”²²³ Rights of discovery, for example, made up in 15th century Rome, propped up the idea that any land not inhabited by Christians was available to be “discovered” and rightfully claimed so that “the Catholic faith and the Christian religion be exalted and... everywhere increased and spread, that the health of souls be cared for and that barbarous nations be overthrown and brought to the faith itself.”²²⁴

Robert A. Williams Jr. (Lumbee), in an historical account of the development of a coinciding discourse of conquest beginning around the mid-11th century in Europe, helps isolate the connection between “discovery” and “conquest” that became the basis of a millennial charge in a zealous appropriation of “new” lands and people. Even earlier

²²² Please see Glen Sean Coulthard, *Red Skin, White Masks: Rejecting The Colonial Politics of Recognition*, (Minneapolis: University of Minnesota Press, 2014), 155. Coulthard’s work and others is covered more fully in the following chapter.

²²³ Robert A. Williams Jr., *The American Indian in Western Legal Thought*, (NY: Oxford, 1990) 13.

²²⁴ Alexander VI, Pope (1431-1503) - [Demarcation bull, granting Spain possession of lands discovered by Columbus, *Inter Caetera*, of 1493, Valladolid, Spain]. The document, in its entirety, can be accessed at www.vatican.va.

though, after being granted toleration in 313.c.e.,²²⁵ organized groups of Christian evangelizers had begun to lead the charge. In 494, for example, Pope Gelasius acknowledged that of the sources of power in the world, secular and ecclesiastical, the “sacred authority” of the church and its representatives was supreme.²²⁶ As centuries unfolded, his papal brethren steadily intensified efforts to impose their vision of truth on non-Christians. This will to empire, in collusion with European monarchs, coincided with the inventive conceptualization of “natural law – they called it “God’s law” – under which all people, whether believers, pagans, or “irrational infidels,”²²⁷ were to serve. A papal edict from 1179, for example, granted right of title to all territory conquered in the Holy Land to the king of Portugal: “All the regions...where other neighboring Christian princes could not acquire any legal rights, are conceded by us to your Excellency.”²²⁸ By virtue of their own mandate and conquering mentality...popes were posited in legal and political discourse as possessing a universally recognized supreme position.”²²⁹

The pope held unquestioned universal jurisdictional authority on earth over all the Church’s subjects, real and potential. Resistance to that authority constituted resistance to God’s law. The papacy possessed the power to not only punish the deluded pagans but also

²²⁵ This refers to the edict of toleration issued by Emperor Galerius; shortly thereafter, Christianity was declared the official religion of the empire by Theodosius.

²²⁶ “Letter of Pope Gelasius to Emperor Anastasius”, James Harvey Robinson, *Readings in European History*, (Boston: Ginn & Company, 1905), 72-73.

²²⁷ Williams, 5, 14. The idea was conceived as part of his collection and organization of ecclesiastical law.

²²⁸ F.A.F. Von Der Heydte, “Discovery and Annexation in International Law,” 29 *American Journal of International Law*, 448, 451 (1935).

²²⁹ Williams, 16.

to assume the rule over their territories, which rightly belonged to Rome in the first place.²³⁰

In 1209, in order to assert *rightful* claims of discovery to lands outside the boundaries of the Holy Roman Empire (the overarching sphere of authority), and thus legitimate the seizure of them, Innocent II proclaimed that despite all men sharing bonds of natural ties by virtue of their creation, any resistance to conversion and “rejection of the true God and his chosen vicar the pope,” stripped non-Christians of any right to property.²³¹ So while Innocent’s musings confirmed that infidels minimally held natural-law rights, their “radical divergence from European derived norms of conduct signified their need for conquest.”²³²

As the reach of empire extended, a preoccupation with “rights” corresponded with debates about the ontological status of newly-encountered communities of people. Ideologues, straining to classify them within boundaries of European conceptual categories, asked whether they are “men or monkeys...mere brutes or capable of rational thought, and [wondered if] God intended them to be permanent slaves of their European overlords.”²³³ Journal entries from 1492, in which Cristobal Colón describes the Taíno peoples, reflect both this eagerness to classify and will to conquer.

They are the best people of the world and above all the gentlest [December 16]. They are very gentle and without knowledge of

²³⁰ Williams, 41.

²³¹ Williams, 41.

²³² Williams 59.

²³³ David E. Stannard, *America Holocaust: The Conquest OfThe New World*, (NY: Oxford, 1992), 210.

what is evil [November 12]...are gentle and always laughing [December 25].²³⁴

Their agreeable nature and “good *ingenio*,” he assured Queen Isabella of Spain, would facilitate easy conversion to Christianity, especially since “they had no religion.”²³⁵ Conversion, required for the divine fulfillment of natural law, was but one duty of crusading explorers. Asserting “rightful” ownership of the lands they violently seized was more complicated; thus “rights” became a central focus. Their ruminations pivoted on a central premise: God divinely-granted “universal right asserted by popes and Christian princes to enforce Christianity’s vision of ‘civilization’” and dignify and legitimate “the conquest, dispossession, and enslavement of non-Christian peoples.”²³⁶ In 1550, historian for the Spanish Crown, Juan Ginés de Sepúlveda, concurred with the civilizing vision, argued that enslavement is part of “just war” against those “who are as inferior to the Spaniards as children to adults, women to men...as monkeys to men.”²³⁷

It will always be just and in conformity with natural law that such people submit to the rule of more cultured and humane princes' and nations. Thanks to their virtues and the practical wisdom of their laws, the latter can destroy barbarism and educate these [inferior]

²³⁴ Kirkpatrick Sale, *The Conquest of Paradise*, (NY: Alfred A. Knopf, 1990), 99-100.

²³⁵ Sale, 97. In the final chapter, I revisit the use of the term religion and suggest retaining the term in academic scholarship is a potentially powerful strategy. For that argument, I reference the work of David Chidester in *Empire Of Religion: Imperialism & Comparative Religion*, (Chicago: University of Chicago Press, 2014).

²³⁶ Robert A. Williams, *The America Indian in Western Legal Thought: The Discourses of Conquest*, (NY: Oxford, 1990), 15.

²³⁷ Lewis Hanke, *The Spanish Struggle for Justice in the Conquest of America*, (Philadelphia, University of Philadelphia Press, 1949), 120.

people to a more humane and virtuous life... according to **natural law**. . . .²³⁸ [emphasis added].

“These little men -- barbarous, uncivilized, and inhumane...” Sepúlveda protested, “have no private property in their state.”²³⁹ These contrived ideological justifications for dispossessing, enslaving, and killing Native peoples, rooted in the fiction of natural law, did not go entirely unchallenged. Some resisted the premise that Native peoples were, in fact, natural slaves, instead insisting that because all human beings share the common element of reason, they possessed a divine right” to organize their lives by rational means, including natural rights over their lands. Any unity there however, was complicated by an utter lack of agreement as to whether Native peoples were in fact, human (having a soul), and thus holders of said right. Dominican priest Bartolomé de la Casas, having served as an agent of missionization and conversion in Colon’s slavery enterprise on Hispaniola in 1502, later recorded his firsthand account of cruelty never before seen.

The Spaniards cut off the arm of one, the leg or hip of another, and from some their heads at one stroke. Vasco ordered 40 of them to be torn to pieces by dogs...Some Indians they burned alive; they cut off the hands, noses, tongues and other members of some they threw others to the dogs; they cut off the breasts of women.²⁴⁰

²³⁸ Juan Ginés de Sepúlveda, “On the Reasons for the Just War among the Indians,” (1544). http://www.digitalhistory.uh.edu/active_learning/explorations/spain/spain_sepulveda.cfm. Accessed June 2018.

²³⁹ <http://cassian.memphis.edu/history/dunowsky/worldcivdocs/sepulveda.html>. Posted 9/11/14. Accessed July 27, 2018.

²⁴⁰ Oren Lyons, John Mohawk, Vine Deloria, Jr., Laurence Hauptman, Howard Berman, Donald Grinde, Jr., Curtis Berkey, Robert Venables, *Exiled In The Land Of The Free: Democracy, Indian Nations, and the U.S. Constitution*, (Santa Fe: Clear Light Publishers, 1992), 48.

Las Casas was subsequently declared “*doctrinero* of the Indians,”²⁴¹ for the purpose of establishing missionary communities to both protect them from being slaughtered or unjustly enslaved *and* to hasten their conversion. In a debate with Sepúlveda in 1550, he scornfully rejected “just war” (in response to Sepúlveda’s description of Indians’ lack of reason and inability to live under natural law). Instead, Las Casas insisted, they had a rational capacity to apprehend the gospel and were therefore rational beings.²⁴² For Las Casas, conversion of the “harmless Indians...meek as lambs,”²⁴³ was the one and only alternative to enslavement and other atrocities he described in 1552.²⁴⁴ My point in framing their opposing positions, one virulently racist and murderous, the other, benign and compassionate, is to demonstrate the predominance of the Up-Down image schema in both. Sepúlveda clearly embodies it in a genocidal perspective that is consistent with the overarching discourse of conquest that Williams identified. Las Casas, on the other hand, while arguing for a gentler posture, still employs a hierarchical mode of classification. Conversion to the true faith is necessary to save those people with a “lower” and less complete understanding of existence. They agree, in other words, despite the intensity of their convictions, that human beings are to be

²⁴¹ <http://www.lascasas.org/manissues.htm>. Accessed July 2018.

²⁴² Williams includes an account of this debate. For more details on the opposing positions categorized as scholastic and humanist (which is beyond the scope of this project), please see Richard Tuck, *The Rights Of War And Peace: Political Thought And The International Order From Grotius To Kant*, (London: Oxford, 1999).

²⁴³ Williams, 173.

²⁴⁴ Williams, 173.

organized under, and subject to, god's law – both persuaded by a belief that “even those people...not yet subdued have a duty and an obligation to obey.”²⁴⁵

So then, the vicious natural law conceptualization, a powerful, history-shaping concept that promoted empire, is a **first** principle in the development of rights theory, “created and justified by ethnocentric ideas of European and Caucasian superiority over other cultures, religions, and races of the world.”²⁴⁶ I argue that the same racist, xenophobic, genocidal imperial disposition, unique to a eurochristian worldview, saturates federal laws in the U.S that govern the use of public lands, and constrains arbitration of conflicts over land to an inadequate presumption of “rights.”

How might we trace an uninterrupted reproduction of the eurochristian worldview from medieval Europe, to the early American colonies, and on to westward-oriented settlers and claim stakers? Fredrick Jackson Turner, in an address to the American Historical Association at the World's Columbian Exposition of 1893, admitting that “our early history is the study of European germs developing in an American environment,”²⁴⁷ imagined the symbol of the frontier as a marker of a new identity. “From the era of the Puritans' founding of New England... advanced in the name

²⁴⁵ Newcomb, 30.

²⁴⁶ Robert J. Miller, *Native America, Discovered and Conquered: Thomas Jefferson, Lewis & Clark, and Manifest Destiny*, (Westport: Praeger, 2006).

²⁴⁷ Fredrick Jackson Turner, *Significance of the Frontier in American History* (Madison: University of Wisconsin Press, 1894), 3.

of a religious mission...the fulfillment of a God-given Manifest Destiny to transform a savage wilderness into a Christian civilization, a New Jerusalem, a New Israel.”²⁴⁸

As Turner presented it, the westward-moving frontier of Euro-American settlement was the most influential agency in making the United States the site of a very different kind of civilization from the one North America had left behind in Europe. For Turner, the markers and the media of these different civilizations were the people who acquired distinct qualities of personality in responding to the environments distinguishing the New World from the Old.²⁴⁹

Tuveson argues that European colonizers were among the first to imagine American settlements to be the nucleus not only of a holy but of a *millennial* people. This ideology, he says, was founded on two shared conceptualizations of progress. The first imagines “laws of human nature [that] bring about a constant upward movement,” wherein ignorance is dispelled, and a utopian future is revealed. The second, grounded in a conceptual duality - (light replacing darkness, good triumphing over an evil), especially pronounced during “the long night of the Middle Ages.”²⁵⁰ The key to realizing redemptive, holy progress, as John Adams wrote in his 1765 *Dissertation on Canon and Feudal Law*, was found in an “aspiring, noble principle founded in *Rights*, that cannot be repealed or restrained by human laws – *Rights*, derived from the great Legislator of the universe.”²⁵¹

²⁴⁸ Hall, 15.

²⁴⁹ Hall, 48-49.

²⁵⁰ Tuveson, 55.

²⁵¹ Tuveson, 21.

Similarly, Tuveson shows that Congregationalist pastor Joseph Bellamy's theology reflected what Tuveson says is a "deep and persistent trait of the American mind: the belief in Old World corruption and New World innocence."²⁵² This trait, according to Tuveson, developed out of and conveniently coincided with Reformation ideologies and Protestant conceptualizations of "His chosen nation...leading the redemption of the world."²⁵³ Tuveson effectively establishes that European settler colonies conceived their historic destiny through the trope of a redemptive history: God intervening in history through the European chosen people leading their ideological brethren from Old World corruption to New World innocence. In practical political terms, early American statesmen like Adams, translated this redemptive history into the discourse of fundamental individual rights/liberties.

In such a pattern of history it was inevitable that God would have to operate through certain nations. The old conception of a "chosen people," called to fight the battles of the Lord, was revived...now it appeared that God must use peoples, armies, governments, to attain his ends; God had re-entered secular history as a participant.²⁵⁴

The re-entry, if you will, was effectively articulated and developed through the unique language of rights, marked by an individual autonomy characteristic of the Reformation. These exalted ideas, expressed in a unique language, had a distinct religious

²⁵² Tuveson, 21. He is referring to Bellamy's sermon, "The Millennium," in which Bellamy exhorts christian settlers to see themselves as soldiers in a holy army, ushering in a new age (through conquest and conversion), and culminating in the establishment of god's kingdom on earth. Bellamy, settling in Connecticut, made the town of Bethlehema "holy place," and America as an eschatological utopia. Joseph Bellamy, *The Millennium*, ed. David Austin, (Elizabethtown, 1794), 12.

²⁵³ Tuveson, viii.

²⁵⁴ Tuveson, x.

and dualistic foundation which Karl Marx, quoting Bruno Bauer, made clear in 1843.

“The idea of the rights of man” he states, “was...discovered in the Christian world.”²⁵⁵

Bauer had maintained that Jews could not emancipate themselves politically, could not claim the “universal rights of man,” without renouncing Judaism. In Bauer’s view, the Jew has not earned them because the Jew remains separated from this history by his particularism and his faith. Christians simply cannot confer such rights, which emanate from their cultural and religious tradition.²⁵⁶

SEPARATED FROM HISTORY

Individuals, upon whom rights are conferred, became *the* focus in the conflict at Mato Tipila; that is often true in other conflicts over public lands. The focus rests on a key tenet: “Rights...specific social practices... *constitute* individuals as a particular kind of political subject.”²⁵⁷ The reality of that discursive and embodied imposition is devastating for Native communities at a deep-structural level. Native peoples generally, and Lakota peoples certainly, consistently prioritize the needs of the community over the individual.²⁵⁸ As such, the concept of rights being exercised only in the interests of individuals conflicts with interests that are primarily communally (group) based. But Jack Donnelly insists that this particularly Indigenous reality is irrelevant and rejects “most claims for group human rights” based on his contention that they “are profoundly defective...only individual autonomy gives rise, and value, to identities that must be

²⁵⁵ Karl Marx, “On the Jewish Question,” in *The Marx-Engels Reader*, Robert C. Tucker, ed., second edition, (NY: Norton, 1978), 40.

²⁵⁶ A. Belden Fields, *Rethinking Human Rights For The New Millennium* (NY: Palgrave MacMillen, 2003), 31.

²⁵⁷ Donnelly, 16, 17.

²⁵⁸ Tinker, *American Indian Liberation*, 7.

respected by others.”²⁵⁹ He goes further, stating that a recognition of the right of peoples to self-determination as well as their right to cultural heritage, takes care of any “gaps” within the Universal Declaration model.

If a particular identity is valued sufficiently, it will survive, perhaps even thrive. If not, then it will not. And that is the way it should be. [If]...men and women choose to retain their distinctive style of life, their communities are likely to be preserved. If not, the demise of the group will be their decision – a decision that only they have a right to make.²⁶⁰

His insistence on framing his argument in terms of individualistic identity shows the power and force of the Up-Down image schema in the colonizing worldview; it is a way of thinking that grounds the theories, discourses, and applications of rights. I will show that this hegemonic concept of hierarchy first articulated in scriptural text, asserted via the absolute authority of papal Rome, inventively construed by Locke, re-conceptualized in a westward movement of empire, and featured in Protestant aspirations to establish god’s Kingdom on earth, is organized today under the authority of sovereign, territorial states that posit the modern state as the essential institution for upholding natural rights of the individual.

Alexandra New Holy rightly states that thinking about land in terms of rights and property is not analogous with Lakota ways-of-being and thinking. In terms of

²⁵⁹ Donnelly, 52, 53.

²⁶⁰ Donnelly, 54. It is important to note that he sees self-determination being recognized in the context of statehood, not in the sense of the historical and legal status of Indigenous communities as separate and distinct nations.

Lakota identity, she argues, “a key metaphor is the Black Hills.”²⁶¹ She describes the uniqueness of the Lakota-Paha Sapa relationship in terms of three historical periods, each constructed through “interaction with Euro-American legal theory and practice;”²⁶² by doing so, she argues for the exercise of treaty rights (emphasizing Article XII of the 1868 treaty requiring *okāspeyamni* - three-quarters majority rule), as a strategy for demanding the return of the Black Hills to the Lakota, one that emphasizes Lakota values and identify in the exercise of those rights. This identity, she writes, is “often formed in the crucible of actions, centered on the 1868 Treaty of Fort Laramie, and expressed as Lakota.”²⁶³ Insisting on treaty obligations has had, and continues to have, potential to be a powerful negotiating tool in ongoing conflicts over land. In Chapter Three however, I include a discussion as to whether staying within the parameters of rights is ultimately effective.

Anaya, for one, disagrees with her approach, bluntly stating that Indigenous communities should be viewed within a specific context that is not “confined to any tradition of Western political experience.”²⁶⁴ These communities, he goes on, have “operated for hundreds of years outside the fold of classical Western liberalism...[and] maintain traditional organizations that uphold ‘unity among individuals, families, clans

²⁶¹ Alexandra New Holy, “The Heart of Everything That Is: Paha Sapa, Treaties, and Lakota Identity,” 23, *Oklahoma City University Law Review*, 317-352 (1998), 319.

²⁶² New Holy, 319.

²⁶³ New Holy, 336.

²⁶⁴ Kristen A Carpenter, et al. “In Defense of Property,” *The Yale Law Journal*, Vol. 118, No. 6 (Apr. 2009), 1055.

and nations while upholding diverse identities and spheres of autonomy.”²⁶⁵ Yet even as he identifies a “long-standing sui generis set of deviations from [a] self-determination standard” unique to Indigenous peoples, he too falls back on “rights” precepts as a strategy to uphold claims to traditional lands.

Kristen A. Carpenter, Sonia K. Katyal, and Angela R. Riley, in a creative reconceptualization of rights, push rather for themes of “custody, care, and trusteeship...at the heart of cultural stewardship,” in order to officially recognize “sacred obligations...rather than dominion over natural resources of the earth.”²⁶⁶ Their creative positing of cultural stewardship effectively challenges more traditional arguments around property rights, but they remain constrained by the Up-/Down image that precludes recognition of a Native way of understanding relationship with land – a relationality not based on the eurochristian presumption that humans are separated, and “above” other beings of the world and thus, “in charge.”

Each theorist mentioned so far wrestles with, to varying degrees, the idea that Indigenous peoples occupy a unique position within the larger discourse of rights. Most seem to be following the definition of “Indigenous persons” as those who belong through self-identification (group consciousness) and are recognized and accepted by these populations as one of its members (acceptance by the group).²⁶⁷ Ostensibly, this is meant to preserve for these communities power and agency to decide who belongs to them,

²⁶⁵ Carpenter et al. 1055.

²⁶⁶ Carpenter et al. 1068.

²⁶⁷ *Handbook of Indigenous Peoples' Rights*, edited by Corinne Lennox and Damien Short, (NY: Routledge, 2016), 2.

without external interference.²⁶⁸ It is clear however, that at Mato Tipila, the conflict, completely dominated by terms and tropes associated with “rights,” as well as the attempt to systemically erase the Lakota longstanding relationship with Mato Tipila, points to a profound and long-lasting external interference by the U.S. But claiming sovereignty is also problematic for Indigenous communities even though some theorists insist that if asserted, it must be framed differently. Sovereignty is defined as “supreme power,” manifesting in “freedom from external control (autonomy), independent and unlimited by any other power.”²⁶⁹ There have been shifts in how sovereignty is conceptualized - from resting in a divine source, given to popes, transferred to divine rights of kings, and today, most often asserted by the secularized, modern nation-state. But if sovereignty is truly dependent on an ability to self-rule without external interference in culturally appropriate ways, it is a loaded term that obscures the realities of broken treaties, the ongoing theft of unceded lands, and “domestic-dependent” status of Indigenous nations. Even so, as Glenn Morris points out, its use as a political device during the 1970s did help raise overall Indigenous awareness and helped to free “indigenous leadership from the throes of...colonial psychology.”²⁷⁰ Certainly, it has been used in insightful ways by distinguished Native scholars²⁷¹ as a way to free the concept from the 1831 Supreme

²⁶⁸ Carpenter et al 1056-7.

²⁶⁹ <https://www.merriam-webster.com/dictionary/sovereignty>. Accessed July 2018.

²⁷⁰ Glenn Morris, “Vine Deloria, Jr., and the Development of a Decolonizing Critique of Indigenous Peoples and International Relations,” edited by Richard A. Grounds, George E. Tinker, and David E. Wilkins, (Lawrence Kansas: University Press of Kansas, 2003), 131.

²⁷¹ See, for example, Vine Deloria, Jr. *We Talk, You Listen: New Tribes, New Turf*, (NY, Macmillan, 1970) and Walter R. Echo-Hawk (Pawnee), *In The Court of the Conqueror: The 10 Worst Indian Law Cases Ever Decided*, (Golden: Fulcrum, 2010).

Court decision relegating American Indian communities to “domestic dependent nations,”²⁷² a decision that “consolidated the domination of indigenous peoples by a foreign yet sovereign settler state.”²⁷³ Still, Morris and other contemporary scholars like Taiaiake Alfred and Joanne Barker (Lenape), have recognized the limitations of thinking in term of sovereignty, especially as it was articulated in the interest of states.²⁷⁴

Fortunately, in recent years, a critique of the entire notion of the state has emerged, including in the context of the rights of indigenous peoples. In forums such as the Working Group on Indigenous Peoples, indigenous delegates openly question whether the ultimate expression of self-determination for indigenous peoples should be to emulate states.²⁷⁵

Alfred notes that “most discussions of Indigenous sovereignty are founded on a particular and instrumental reading of history that serves to undergird internal colonization,”²⁷⁶ and Barker points out, “if sovereignty has been neither legitimized nor justified it has nevertheless limited the ways we have been able to think.”²⁷⁷

²⁷² *Cherokee Nation v Georgia* 30 U.S. 1 1831. This case was to decide if Cherokees and other Indian tribes were to be regarded as “foreign states” under Article III of the Constitution. Supreme Court Chief Justice John Marshall in an 1831 decision ruled that Indians occupy territory to which the U.S. asserts title. The decision concludes with Marshall comparing the relationship between Indians and the United States “resembles that of a ward to his guardian.” Please see Robert A. Williams Jr. *Like A Loaded Weapon: The Rehnquist Court, Indian Rights, And The Legal History Of Racism In America*, (Minneapolis, University of Minnesota Press 2005), 61.

²⁷³ Taiaiake Alfred “Sovereignty,” *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination* edited by Joanne Barker. (Lincoln: University of Nebraska Press, 2005) 33.

²⁷⁴ Morris, 131.

²⁷⁵ Morris, 131.

²⁷⁶ Alfred, 33.

²⁷⁷ Joanne Barker (Lenape), “For Whom Sovereignty Matters” in *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination* (Lincoln: University of Nebraska, 2005).

Anaya, identifying sovereignty as an inherent part of *nationhood*, argues that it emanates from the people themselves who make up that nation or as “a character of the nation itself.”²⁷⁸ Sovereignty in the sense he uses it means the authority of a culturally diverse people or association of peoples to govern themselves by their own laws and ways free from external subordination. Perhaps this conceptualization has been useful for those who argue that unique identities and cultures of peoples is an inherent and inalienable right of peoples to the qualities customarily associated with nations.²⁷⁹ Unfortunately, Anaya falls back on a recognition of “rights” as the solution, the ideal, the avenue by which “indigenous peoples...have become real participants in an extensive multilateral dialogue.”²⁸⁰ Following Tinker, Morris, Alfred, and Barker, I agree that euroamerican-derived claims of sovereignty are unhelpful for Lakota peoples in conflicts over their lands, specifically, this one at Mato Tipila.

The actual history of our plural existence has been erased by the narrow fictions of a single sovereignty....Canada and the United States have written self-serving histories of discovery, conquest, and settlement that wipe out any reference to the original relations between indigenous peoples and Europeans. This *post facto* claim of European ‘sovereignty’ is limited by two main caveats. The first is factual: the mere documentation of European assertions of hegemonic sovereignty does not necessarily indicate proof of its achievement. The second limitation is etheoretical: the discourse of

²⁷⁸ S. James Anaya, *Indigenous Peoples And International Law* Second Edition, (NY: Oxford, 2004), 13-19.

²⁷⁹ Barker, 2-3.

²⁸⁰ S. James Anaya, “International Law and U.S Trust Responsibility toward Native Americans.” *Native Voices: America Indian Identity Resistance*, (Lawrence: University Press of Kansas, 2013), 165.

sovereignty upon which the current *post facto* justification rests is an exclusively European discourse.²⁸¹

Non-Native contemporary rights theorists seem to base their arguments on specific, ideological presumptions that position rights as “particular specifications of certain minimum preconditions for a life of dignity in the contemporary world.”²⁸² But what is considered a life of dignity? Who decides what counts as such? I will examine their position more fully later in this chapter; however, we can be quite certain that concepts of “dignity” are limited by the parameters of the eurochristian worldview. At the end of the day, those who insist on framing their ideological pronouncements with “rights” as the focus, are all grounded in, and constrained by the Up-Down image schema. What’s more, the invention and implementation of the exclusionary “rights” discourse is also closely informed by the “chosen people-promised land” model. This argument is complex and requires unpacking.

BLACK HILLS, WHITE JUSTICE

Present-day Lakota communities share not only a unique history of violent removal and dispossession of their lands, but an ongoing one.²⁸³ The Black Hills and

²⁸¹ Barker, 3.

²⁸² Donnelly, 132.

²⁸³ Ronald Goodman and John Eddy, using an astronomical formula based on “precession of the equinoxes . . . and calculating the movement of the sun as moving west one degree on the elliptic every 72 years,” convincingly demonstrate that the Lakotas have inhabited the areas around *Paha Sapa* well for at least, if not more than 3,000 years. Violent dispossession began in the early 19th century but intensified during the 1850s with the Fort Laramie Treaty of 1851, the government expedition of 1857 (breaking the terms of the treaty), the Fort Laramie Treaty of 1868, which, while recognizing Lakota “rights” to unceded lands from 1851, dramatically reduced the lands that would be defined as The Great Sioux Nation. In violation of the 1868 treaty, the U.S illegally seized The Black Hills in 1876—7 (imposing a “sell or starve” policy by which rations were withheld to break the will of the Lakotas and force them to give up their claim to the Hills). The Dawes Act of 1887 resulted in further loss of land as did the establishment of

surrounding areas that include Mato Tipila, were illegally seized in violation of the 1868 Fort Laramie Treaty, spurred on in no small part by whites' tales of "Lakota non-occupancy"²⁸⁴ and episodic gold rushes throughout the American West, including the Black Hills. The practical desire for lands in the American West for white settlers made the idea of non-occupancy a useful fiction, but land theft was accomplished by more than the military might of an evangelizing empire, political will, and economic greed. It continues today as an overwhelmingly successful, expansive land grab because at its core, it begins in the mind. The processes by which conceptualizations become embodied are largely unconscious, and because of this, even those who have a shared history of benefitting (settlers), or enduring genocidal effects of it (Lakotas), do not always recognize how it is endlessly reproduced. Today, it is perpetrated in resoundingly successful fashion because disputes over land are only adjudicated in venues that exclusively promote eurochristian norms, using terms associated with "rights" that imply

Badlands National Park in 1939. Please see Ronald Goodman, *Lakota Star Knowledge: Studies in Lakota Stellar Theology*, (SD: Sinte Gleska University, 1992), Appendix B, 46. Also, please see Jeffrey Ostler, *The Lakotas And The Black Hills: The Struggle For Sacred Ground*, (NY: Penguin, 2010).

²⁸⁴ Once again, we see the ongoing reproduction of worldview. Locke, for example, opining "In the beginning, all the world was America," casts a vision of open-ness, vast and empty lands that were waiting for sophisticated laborers to use them effectively. This trope fuels eurochristian constructions of, for example, "wilderness." Please see Richard I. Dodge, *The Black Hills*, (NY: James Miller Publishing, 1876). Also, Jesse Brown and A.M. Willard, *The Black Hills Trails: a history of the struggles of the pioneers in winning the Black Hills*, edited by John T. Milek, (SD: Rapid City Journal Company, 1924). Anthropologist Linæ Sundstrom, in "The Sacred Black Hills: An Ethnohistorical Review," *Great Plains Quarterly*, Lincoln, Vol. 17, No. 3/4 (SUMMER/FALL 1997), pp. 185-212, gives an incisive critique of Dodge's claims, for example, that the Lakotas did not inhabit the area. Sundstrom shows, by using Dodge's own words, how he deceptively characterized The Black Hills as uninhabited by Lakota peoples, even as his journal entries recorded evidence to the contrary. Also Jeffrey Ostler's *The Lakotas and the Black Hills: The Struggle for Sacred Ground*, (NY: Penguin, 2010) is a good source.

that one individual's claim is as valid as another.²⁸⁵ The terms are radically antithetical to Lakota understandings. Because the Lakota relationship to land is suppressed, made invisible, dismissed, and dis-allowed, violent colonization and cultural genocide have never ended. We can now investigate how and why.

DISPOSSESSING WILDERNESS

Romantic idealism, an invention of "wilderness" and dominion over land and other living beings, are related, fundamental manifestations of the eurochristian worldview, promoting supremacy over the earth and all living beings. The genesis is found in biblical descriptions featuring the Up-Down image schema and its emplotment of hierarchy, by which it is imagined that human beings are divinely commanded to "be masters of the fish of the sea, the birds of heaven and all living animals on the earth."²⁸⁶ In early records of colonial writings, it is clear however, that Native peoples were understood to be much lower along the spectrum of ascendancy, making their conversion to "a more Decent, and English way of Living,"²⁸⁷ as part of becoming "Primitive Christians,"²⁸⁸ a most pressing task.

²⁸⁵ I mention here, and will expand upon further in Chapter Three, an example of this replication was front-and-center recently in Whitefish, Montana. On October 13th and 14th of 2018, anti-government activists converged for the "New Code of the West" conference. Present at the conference was Elaine Willman, a board member and former chair of the Citizens for Equal Rights Alliance (CERA), whose mission is "to change federal Indian policies that threaten or restrict the individual rights of all citizens living on or near Indian reservations." Please reference Anna V. Smith, "Why Don't Anti-Indian Groups Count As Hate Groups?" Indian Country News letter: a service of *High Country News*, October 13, 2018.

²⁸⁶ 'Genesis I: 26-7, *The New Jerusalem Bible* (NY: Doubleday, 1966).

²⁸⁷ Cotton Mather, *Triumphs of the reformed religion in America: The Life and Death of the Renown'd Mr. John Eliot, Who Was the First Preacher of the Gospel to the Indians in America*, second edition, (London: 1691), 100.

[http://eebo.chadwyck.com/du.idm.oclc.org/search/full_rec?SOURCE=pgimages.cfg&ACTION=ByID&ID=13674420&FILE=&SEARCHSCREEN=param\(SEARCHSCREEN\)&VID=101216&PAGENO=55&ZO](http://eebo.chadwyck.com/du.idm.oclc.org/search/full_rec?SOURCE=pgimages.cfg&ACTION=ByID&ID=13674420&FILE=&SEARCHSCREEN=param(SEARCHSCREEN)&VID=101216&PAGENO=55&ZO)

During the late 19th century, the United States began to enclose certain lands and set them aside for “public use, resource, and recreation.”²⁸⁹ The first, Yosemite, was created during the Civil War.²⁹⁰ Congressional statutes created subsequent set-asides using language like “preservation” and “pleasuring ground.”²⁹¹ The men who chose these lands to be set aside for protection from development and private ownership, shared a set of logics grounded in what Steven T. Newcomb calls a “chosen people/promised land cognitive model.”²⁹² The National Park Service (NPS) was created forty years later to manage, maintain, and when necessary, enforce boundaries.²⁹³ Proposals to preserve scenic places followed a period of romantic idealism – the religious naturalism of Henry David Thoreau and Ralph Waldo Emerson, for example, romanticism in the arts, and

OM=FIT&VIEWPORT=&SEARCHCONFIG=param(SEARCHCONFIG)&DISPLAY=param(DISPLAY)&HIGHLIGHT_KEYWORD=param(HIGHLIGHT_KEYWORD). Digitized in 1977. Accessed July 2018.

²⁸⁸ Mather, 116.

²⁸⁹ Joseph L. Sax, *Mountains Without Handrails: Reflections on the National Parks*, (Ann Arbor: University of Michigan Press, 1980) 5.

²⁹⁰ In the 1860s and leaving from Stockton, CA, one would have to take a 16-hour stagecoach ride to Coulterville, then a 57-mile, 37-hour trek by horse and pack mule into the valley. The arduous nature of the journey added texture to the made-up invention of “wilderness” and pilgrimage or “errand” into it.

²⁹¹ YELLOWSTONE ACT, 1872. AN ACT TO SET APART A CERTAIN TRACT OF LAND LYING NEAR THE HEADWATERS OF THE YELLOWSTONE RIVER AS A PUBLIC PARK, Approved March 1, 1872 (17 Stat. 32).
Act of March 1, 1872, 17 Stat. 32. See Sax, Chapter 24.

²⁹² Steve T. Newcomb, *Pagans In The Promised Land: Decoding the Doctrine of Christian Discovery*, (Golden: Fulcrum, 2008), 51-58, and Mark Freeland, *Conceptual Decolonization of Space: Worldview and Language in Anishinaabe Akiing*, 5.

²⁹³ An example of this can be seen at what is now known as The Badlands National Park in South Dakota. Established in 1939, it was divided into North and South units, with the South Unit being administered by the NPS in cooperation with the Oglala Sioux tribe. During WWII, the US government used the 133,000-acre site land for use as a bombing range. Although returned to the tribe in 1968, “the North Unit of the park has paved roads, marked trails, campgrounds, cabins and other amenities, the South Unit remains nearly inaccessible.” Please see Elizabeth Zach, “In the Badlands, Where Hope for the Nation’s First Tribal Park Has Faded,” *New York Times*, Dec. 14, 2016.

early nostalgia for what was perceived as an end to “the untamed wilderness,” already in submission.²⁹⁴ An atavistic, religiously-grounded longing to return to or regain Paradise, led to a specific but widely-shared conflation: an ideology of preservation that coincided quite well with what Turner described as the “closing of the frontier, declaring that “the unsettled area has been so broken into by isolated bodies of settlement that there can hardly be said to be a frontier line.”²⁹⁵ “Unsettled,” an obvious mischaracterization, supports his hypothesis and perfectly isolates unconscious but powerful cognitive models that align neatly with the eurochristian myth of divine providence guiding them in a redemptive conquest of the “New World.” Atavism also corresponded perfectly with the myth of Manifest Destiny - divine guidance and a commandment “...to establish on earth the moral dignity and salvation of man, the immutable truth and beneficence of God,” and unfolded in the perception that “America has been chosen, and is destined to be the great nation of *futurity*.”²⁹⁶ In 1839, journalist John L. O’Sullivan, enthusiastically evoking “God’s natural and moral law” described “a nation of progress...disconnected in position in regard to any other.”

The expansive future is our arena, and for our history. We are entering on its untrodden space, with the truths of God in our minds, beneficent objects in our hearts, and with a clear conscience unsullied by the past. We are the nation of human progress, and who will, what can, set limits to our onward march? Providence is with us, and no earthly power can. We point to the everlasting truth

²⁹⁴ Sax, 7.

²⁹⁵ Fredrick Jackson Turner, *Significance Of The Frontier in American History*, (Madison: State Historical Society of Wisconsin, 1894).

²⁹⁶ John L. O’Sullivan, “The Great Nation of Futurity,” (1839). *The United States Democratic Review*, Volume 6, Issue 23, pp. 426-430.

on the first page of our national declaration, and we proclaim to the millions of other lands, that "the gates of hell" -- the powers of aristocracy and monarchy -- "shall not prevail against it."²⁹⁷

It is no coincidence that Turner drew from this image of divine destiny in his own speech. According to Anthony Hall, "Frederick Jackson Turner was one of those at the Columbian Exposition who helped point the sense of Manifest Destiny in the United States beyond the Western Hemisphere towards more global fields of frontierism."²⁹⁸

To the extent that he considered the effect of the United States' moving frontier on Indian peoples, he viewed the Aboriginal inhabitants of the United States as part of the primal environment to be absorbed and reconstituted in the process of remaking Old World Europeans into New World Americans.²⁹⁹

These perceptions, articulated clearly, though 60 years apart, by both Turner and O'Sullivan, uncover formidable presumptions upon which the eurochristian worldview dominates; from the 16th century on, every colonizer, having abandoned his own homeland, was also guided by this conflation of an imagined chosen-ness, divine promise, and "new" lands - organized and supported by three shared ideologies. First, a collective rejection of monarchic rule, or "arbitrary and absolutist government"³⁰⁰ second, the rise of an "individualistic theory of resistance" to such,³⁰¹ and the third is captured vividly by Turner's utopian vision of transforming wilderness into "a new product that is

²⁹⁷ O'Sullivan.

²⁹⁸ Hall, *Earth Into Property*, 51.

²⁹⁹ Hall, 51.

³⁰⁰ James Tully, *A Discourse On Property: John Locke and his adversaries*, (Cambridge: Cambridge University Press, 1980), 53.

³⁰¹ Tully, 53.

American.”³⁰² “The wilderness masters the colonist,” he wrote, and while it “finds him a European in dress...[I]t strips off the garments of civilization and arrays him in the hunting shirt and the moccasin.”³⁰³ These images of divine destiny are embodied metaphors entailing the Up-Down image schema. Acquisitive apprehension dovetails nicely with the fabricated “natural law” precepts and not surprisingly, Locke’s inventive rights to property.

Locke shares the...assumption that scripture and reason are complementary. Natural law and the propositions in scripture comprise the two complementary and partially overlapping parts of Divine Law. Scripture, which reveals God’s purposes in making man and the world, can function as a check or affirmation of reason, which discovers natural laws and derivative rights. Genesis I:29 [for Locke] is the point of departure.³⁰⁴

We can now begin to uncover the correlative relationship between natural law, rights to property, the invention of “wilderness,” and set-aside lands. Central thematic elements became extensions of the shared, *rightful* vision on these lands: the idea that America, “in its magnificent domain of space and time...is destined to manifest to mankind the excellence of divine principles.”³⁰⁵ These themes appear again and again, and further a unique tale of exceptionalism. I have found them featured in papal edicts,³⁰⁶

³⁰² Turner, 4.

³⁰³ Turner, 3.

³⁰⁴ Tully, 59-60.

³⁰⁵ John L. O’Sullivan on *Manifest Destiny*, 1839, excerpted from “The Great Nation of Futurity,” *The United States Democratic Review*, Volume 6, Issue 23, pp. 426-430.

³⁰⁶ Please see the papal bull *Inter Caetera*, which instructs European sovereigns to send explorers on a “holy and praiseworthy undertaking...to instruct inhabitants and residents...[on] all islands and mainlands found and to be found...in the Catholic faith and train them.” <http://www.nativeweb.org/pages/legal/indig-inter-caetera.html>.

appearing in medieval art,³⁰⁷ recorded in diaries of early explorers,³⁰⁸ invoked in speeches,³⁰⁹ dominating liturgical sermons,³¹⁰ organizing cartographic documents conceived by settlers,³¹¹ and most certainly are central features in contemporary theory and application of rights.³¹² In the language of cognitive theory, the invention of “rights” in fact, is but one prototypical component of the eurochristian set of logics.

Modern politics...treated political and social relationships as the self-interested constructions of autonomous agents; their individuality was expressed in the language of rights, and the most

³⁰⁷ Please see Kirkpatrick Sale, *The Conquest Of Paradise*, (NY: Knopf, 1990), 45-46. Medieval artists, mirroring the population at large, were obsessed with death themes in the wake of the Great Plague. For example, Albrecht Durer's images on a woodcut entitled *Dance of Death* captures a collective preoccupation with morbidity and the end of the world. Resonating with these themes was Cristóbal Colón, who like others setting sail for the 'New World...' sought a conquest of Paradise, that would "unite the world and give to those strange lands the form of our own...finding not only gold and silver and precious ores...not only foods that would sustain its population for centuries...but the huge continent on which the people of Europe would spread themselves and their culture."

³⁰⁸ Sale includes extensive selections taken from the journals of Colón, like this one from October of 1492, in which the explorer extolls "the best people in the world and above all the gentlest" while highlighting his desire to "free and convert [them] to our Holy Faith." 95, 99.

³⁰⁹ For example, see John Winthrop's speech, "A Model of Christian Charity," delivered aboard the *Arbella*, bound for Salem Harbor, and later, "Reasons to Be Considered, and Objections with Answers," *Winthrop Papers*, (Massachusetts Historical Society, II, 1931) 140-1.

³¹⁰ In one of the most obvious examples of how seamlessly missionary ideals coincided with land theft, Jonathon Edwards, in a speech given at the treaty signing between the Mohawk community and the Massachusetts colony, declared "these honorable gentlemen treat [or come] in the name of King George, but I in the name of Jesus Christ...our task is to proclaim the gospel to you". Please see Rachel Wheeler, "Friends to Your Souls: Jonathan Edwards' Indian Pastorate and the Doctrine of Original Sin," *Church History*, Vol. 72, No. 4 (Dec. 2003), pp. 736-765.

³¹¹ Maps from the early 19th century (e.g. J. Finlayson. "North America." From Carey & Lea's *Historical, Chronological, and Geographical American Atlas* (Philadelphia: H.C. Carey & I. Lea, 1822,) identify land that has already been taken over and named, while depicting lands west of the Mississippi River as vast, uninhabited territory, thus setting the stage for the Homestead Act of 1862. <http://www.philaprintshop.com/amer19.html>. Accessed August 2018.

³¹² "The future must see the broadening of human rights throughout the world. People who have glimpsed freedom will never be content until they have secured it for themselves. In a truest sense, human rights are a fundamental object...in a just society. I pray Almighty God that we may win another victory here for the rights and freedoms of all men." Eleanor Roosevelt, in her speech "The Struggle for Human Rights," delivered September 28, 1948, in Paris, France. <https://www.youtube.com/watch?v=vhgi1mvlhG4>.

characteristic modern regime (though not the only possible one) would be a broadly liberal arrangement, permitting the continued exercise of as extensive a set of individual rights as possible.”³¹³

Lakoff and Johnson argue convincingly that prototype-based reasoning constitutes a large proportion of the actual reasoning that we do. If so, we can surely expect to find pronounced differences in reasoning between those who share a eurochristian worldview and those with the Lakota set of logics. What’s more, if we can demonstrate that prototypical categories are constitutive of worldview in culturally-specific ways, we can further assert that even though conceptual categories are radically different, structural/political/legal/economic institutions imposed by colonization recognize only the hegemonic way of making sense of the world, thus keeping systems in place that destroy, erode, or undermine the integrity of Lakota culture and system of values that defines them and gives them life.

Mato Tipila, set-aside and enclosed for shared, public use, has rules governing it that are similar to many other set-aside lands in the U.S., whether overseen by the Bureau of Land Management (BLM), National Forest Service (USNFS) or the NPS. Many national parks, reserves, monuments, and forests are construed as “sacred spaces,” shrines even.³¹⁴ The colonizing worldview reproduces itself again and again in these places - based on a cultural genealogy of chosen-ness. A divinely-guided “errand into the

³¹³ Tuck, 1.

³¹⁴Mark David Spence, *Dispossessing the Wilderness: Indian Removal and the Making of National Parks*. (NY: Oxford, 1999) 8.

wilderness”³¹⁵ to acquire land, settle land, preserve land, and establish civilized societies in the name of progress, is the American way. The result is an invasive, colonizing gaze that regards awe-inspiring geographical landscapes as simultaneously pristine and holy... as well as conquerable³¹⁶ and own-able. Therein lies a paradox. How is it resolved? In another distinctly American way - the consumption of “Nature.”³¹⁷

I now identify foundational cognitive models and image schemas of the eurochristian worldview to demonstrate that they have persisted through the Reformation, travelled across the ocean, and been violently and uninterruptedly imposed on Native inhabitants here since at least the 15th century. A more extensive analysis is part of the next chapter; here I wish to locate the source of a powerful discourse. Let’s return to Newcomb’s “chosen people-promised land” cognitive model, the origin of which we can locate in The Old Testament. The deity Yahweh selects Abram (eventually renamed Abraham), and gives him divine instructions. As Newcomb points out, because genealogical details confirm that Abram is a direct descendant of the first man, Adam, we can infer that Abram has inherited the covenantal responsibility to subdue the earth, and

³¹⁵ A sermon delivered by Samuel Danforth, pastor of the Church of Christ in Roxbury, New England, and based on Matthew, Chapter 11. “To what purpose did Jerusalem & all Judea, & all the region round about Jordan, leave their several Cities and Habitations, and flock into the Wilderness of Judea?” The theme is to “build the house of God in Jerusalem.” “A Brief Recognition of New England’s Errand into the Wilderness; Made in the Audience of the General Assembly of the Massachusetts Colony, at Boston in N.E. on the 11th of the third Moneth, 1670.” (Cambridge: Printed by S.G. and M.J. 1671).

³¹⁶ See for example, Genesis 15:7.

³¹⁷ I make this a central focus in the final chapter. Here I just mean to suggest that there is a profound cognitive dissonance in the eurochristian conceptualization of lands, evidenced by the conflation between what settlers construed as “uninhabited” lands with lost paradise (and a chance to regain it), and the equally distinctive, imperial, and conquering mentality that is part of the eurochristian way-of-being. Also, the natural world, already perceived as a separate realm that human beings “enter,” is commodified to fit specific cognitive parameters.

exercise dominion over all living things.³¹⁸ His role in the fulfillment of these duties marks him as “chosen.” The deity goes further though, commanding Abram to leave “Ur of the Chaldeans”³¹⁹ and seize the land from “the wadi of Egypt to the Great River Euphrates.”³²⁰ This command reveals the “promise” that Yahweh offers. The people already living in those areas, namely, “the Canaanites... Kenites... Kadmonites... Hittites... Jebusites,”³²¹ Abram and his people are commanded to “destroy.”³²²

The Lord of the Old Testament...is depicted as being divine and as having a desire to extend his rule to the *new* land of Canaan by means of Abram and his followers. This suggests that the Lord had gone out ahead of Abram and he others and “discovered” the land of Canaan before he told Abram about it and directed Abram and his people to conquer and subdue the land the Lord had “promised” them.³²³

This story is centrally important for my argument: it identifies the formulation of a set of logics that persists via a

systematically elaborated legal discourse first successfully deployed during the medieval Crusades to the Holy Land [and one that] unquestioningly asserted that normatively divergent non-Christian peoples could rightfully be conquered and their lands could lawfully be confiscated by Christian Europeans enforcing their peculiar vision of a universally binding natural law.³²⁴

³¹⁸ Genesis, 1:28.

³¹⁹ Genesis, 15:7.

³²⁰ Genesis 15:18.

³²¹ Genesis 15:19.

³²² Numerous textual sources include: Genesis 19, Genesis 28:13-17, Genesis 36:6, Genesis 49:1-27, Exodus, 23:27, Exodus 33.

³²³ Newcomb, 38.

³²⁴ Robert A. Williams, Jr., *The American Indian in Western Legal Thought: The Discourses of Conquest*, (NY: Oxford, 1990), 13.

Lakoff and Johnson observe that all characteristics of the embodied mind are universal. Granted, the embodied mind generates sophisticated conceptual concepts specific to culture, and “meaning has to do with the ways in which we function in the world and make sense of it via bodily and imaginative structures.”³²⁵ It is my contention though, that genocidal colonization has had a distorting effect on these structures – drastically damaging how all people make sense of the world. And the ongoing realities of colonization means that traditional Lakota bodily and imaginative structures have become obscured, even invisibilized.³²⁶ The erosion of treaty-making relationships that set terms for negotiations over land and a formidable legacy of disastrous legal decisions that have stripped Lakotas of title to anything outside reservation boundaries, (notwithstanding lands lost after the Dawes Act of 1887), and are but a few examples of an ongoing colonization. However, I argue that it is the exclusive application of property law rights theory and practice in land conflict that has generated a creative, twisted dimension of it. Let’s turn to an analysis of the process and its effects.

We have already uncovered the virulent conceptualizations that authorize(s) stealing lands. In the shared worldview of the invaders of these lands, a “promised land” had been promised via a divine directive. Therefore, encountering “New Jerusalem,” in the Americas, colonizers (again, understanding themselves as chosen), construe that seizing the land is rightfully (righteously) justified, because the lands of Lakotas peoples and other Native communities were a synecdoche for the biblical “city on a hill.”

³²⁵ Lakoff and Johnson (1999), 78.

³²⁶ The final chapter addresses limitations in using cognitive theory in a postcolonial analysis.

Nowhere is this more blatantly obvious than in English governor John Winthrop's *A Modell of Christian Charity*, written while onboard the *Arabella* bound for these shores.

Beloved, there is now set before us life and death, good and evil, in that we are commanded this day to love the Lord our God, and to love one another, to walk in his ways and to keep his Commandments and his ordinance and his laws, and the articles of our Covenant with Him, that we may live and be multiplied, and that the Lord our God may bless us in the land whither we go to possess it. For we must consider that we shall be as a city upon a hill. The eyes of all people are upon us.³²⁷

His is a vivid description of a chosen people carrying out a divine plan.

Wrought with salvific overtones, Winthrop recites scriptural details of an original covenant and projects it forward in a remarkable and conflated comparison. The details of the covenant are as follows: Human beings are created “in God’s image.”³²⁸ The first man and woman are placed in an idyllic garden (Eden), where every other living thing is placed there for them to use and enjoy. They receive divine instructions to be “be masters of the fish of the sea, the birds of heaven, the cattle, and all the reptiles that crawl upon the earth.”³²⁹ The divine instruction given to the first Hebrew patriarch, Adam, is the very same commandment to the “chosen people” (Christians, the bearers of a new covenant), to possess the “new” world. Interpreted as an ongoing obligation, these descendants of Adam must *always and exclusively* claim what is promised to them.

³²⁷ John Winthrop, “A Modell of Christian Charity.” (The Gilder Lehrman Institute of American History, 2013). Winthrop’s sermon is also published online at: <https://sites.hks.harvard.edu/fs/phall/03.%20winthrop%2C%20Christian%20Cha.pdf>, accessed 4/16/2018.

³²⁸ Genesis I:6.

³²⁹ Genesis I:26-27.

The law of Grace or of the Gospel hath some difference from the former (the law of nature), as in these respects: First, the law of nature was given to Man in the estate of innocence. This of the Gospel in the estate of regeneracy. Secondly, the former propounds one man to another, as the same flesh and image of God. This as a brother in Christ also, and in the communion of the same Spirit, and so teacheth to put a difference between Christians and others.³³⁰

Using tools of cognitive theory, we can discuss the processes by which the Puritan passengers conceived what was going on, below the level of conscious awareness, as they listened to Winthrop.

1. The listeners accessed memories relevant to what was said.
2. They picked out words and gave them meaning appropriate to context.
3. Framed what was said in terms of what was relevant.
4. Performed inferences relative to such.
5. Constructed mental images and filled in gaps where relevant.³³¹

Listening, picking out, framing, performing, and constructing are the tasks of the embodied mind, and the fact that we “go around armed with a host of presuppositions about what is real”³³² confirms how worldview is maintained. Puritans aboard the *Arbella* were among the first to impose their presuppositions on the people and places they encountered, but clearly not the last. Knowing that the mind is embodied, and that reason is inextricably tied to our bodies and the peculiarities of our brains,³³³ I will examine in

³³⁰ Winthrop, “A Model of Christian Charity.”

³³¹ Lakoff and Johnson, *Philosophy*, 11.

³³² Lakoff and Johnson, 9.

³³³ Lakoff and Johnson, 17.

the next chapter how the “imperial mentality”³³⁴ of the eurochristian worldview, replicates itself based on relatively few metaphorical constructions.

I have attempted thus far to show that the deep structural conflict at Mato Tipila emanates from unconscious images and assumptions embedded in the particularity of colonizing societies and what people need to know to participate successfully in them. Lakoff and Johnson tell us that certain assumptions are formed when we interact with the world and gain experience. Experiences are understood through our senses, our understanding of those experiences is shaped by our culture, and it is through the lens of culture that we make our world. However, most people do not critically analyze or understand the processes by which their fundamental perceptions arise. As a result, most do not have any insight into how they might change or alter perceptions and assumptions. Since we can acknowledge that eurochristian perceptions are certainly dominant, we can also clearly see how and why one way-of-being in the world functioned as “reality” in the legal battle over Mato Tipila. Those with the power to decide the outcome presumed that perception *is* reality and could not see that there other, more life-affirming ways of being in the world.

WAKAN: PEOPLE AND PLACE

Ronald Goodman tells us that Lakota Peoples, known as *Oceti Sakowin* (Seven Council Fires), have had a longstanding, historical relationship with Mato Tipila for

³³⁴ Steven T. Newcomb, *Pagans In The Promised Land*, 59.

millennia.³³⁵ Ethnographic and statistical data that refutes more popularly-held theories³³⁶ demonstrates that certain Native populations have inhabited these lands for at least thirteen-thousand years³³⁷ but probably for much longer. Lakota peoples understand themselves in terms of the land; all areas located in and near *Paha Sapa* (The Black Hills) are “the center of the Sioux universe.”³³⁸ The longstanding relationship is historically based on an ancient connection between the movement of the constellations and the movement of the people as they followed the buffalo in their annual journey.³³⁹ Described by Lakota as The Heart Of The Earth,³⁴⁰ the Hills remain central and both oral

³³⁵ Ronald Goodman, *Lakota Star Knowledge: Studies In Lakota Stellar Theology*, (SD: Sinte Gleska University, 1992), Appendix B.

³³⁶ Please see David E. Stannard, *American Holocaust: The Conquest of the New World*, (NY: Oxford, 1992), especially Chapters 1, 2, 3, and 17 wherein he makes the case that hegemonic estimates of both population numbers and length of time Native peoples have inhabited the land of the Americas have been historically (yet effectively) distorted. A good piece that refutes the Bering Strait myth, put forth by Euro-centric scientific theorists can be found here: “The Death of the Bering Strait Theory” published online at <https://indiancountrymedianetwork.com/history/genealogy/the-death-of-the-bering-strait-theory/>. Accessed January 4, 2018). The fictitious land bridge between North America and Asia is a theory that has been debunked in scholarship yet remains an idea that is persistently, widely held. Please also see Michael W. Pedderson, et al. ‘Postglacial viability and colonization in North America’s ice-free corridor’ *Nature*, doi: 10:1038 19085. Also, Peter D. Heintzman, et al. ‘Bison phylogeography constrains dispersal and viability of the Ice Free Corridor in western Canada’ *Proceedings of the National Academy of Sciences*, edited by Francisco J. Ayala, University of California, Irvine, CA, and approved March 16, 2016.

³³⁷ Lakota oral history contradicts scientific conjectures like the Bering Strait theory, but even from a Eurocentric scientific basis it has been largely rejected. Please see the Appendix B in *Lakota Star Knowledge* for a precise calculation as to when Lakota peoples first began to synchronize their movements on the plains with the corresponding movement of the sun and stars. A.L. Kroeber, Carl O. Sauer, for example, contend that the actual first entry date into the hemisphere may have been close to 70,000 b.c.e.

³³⁸ Vine Deloria, Jr., 1999. “If You Think About It You Will See That It Is True” in *Spirit and Reason*. Golden, CO: Fulcrum Publishing. Page 56, and “Reflection and Revelation.” Page 250.

³³⁹ See Chapter Two for analysis and Ronald Goodman *Lakota Star Knowledge* (SD: Sinte Gleska University), 1.

³⁴⁰ Goodman, 14.

and written history links the Lakota and the Black Hills for millennia.³⁴¹ The whole area of Paha Sapa is significant as an originary place; Albert White Hat and others have identified certain places as where the People emerged again after *Maka* (Earth) “shook herself violently.”³⁴² A more detailed analysis of these stories is included in the next chapter.

The particularities and uniqueness of Lakota communities cannot be subsumed under the word Indigenous, however, its use within certain global arenas can be helpful to better understand what’s at stake over the conflict at Mato Tipila. Taiaiake Alfred identifies “culture as the foundation of any indigenous resurgences”³⁴³ and helps us see how imperative it is that traditional Lakota ways of construing relationship and responsibility are autonomously asserted outside of the discursive limitations of eurochristian, juridical, rights-laden venues.

WORLDVIEW AND RIGHTS

Freeland’s academic analyses of worldview is helpful for isolating basic assumptions and images that provide people a more or less accurate (to specific culture) way of thinking about the world. It is also a definition of worldview that is entirely free from eurochristian precepts, notably the Up-Down image schema, and the tendency of

³⁴¹ Goodman, 3.

³⁴² White Hat, *Zuya*, 35. The ‘creation’ of the Lakota peoples is richly detailed and while different versions show remarkable symmetry, I will mostly refer to the White Hat version as told in *Zuya* and as part of his Lakota Teachings and Health class at Sinte Gleska University, published online by the university in 2012. Lakota and Genesis accounts of creation are more fully compared in chapter Two.

³⁴³Taiaiake Alfred, *Wasasé: Indigenous Pathways of Action and Freedom*. University of Toronto Press: 2005), Pg. 56.

elite scholars to identify and evaluate components of a worldview with which they have no deeper connection, nor cultural competency. Lakoff and Johnson define worldview as basic concepts and metaphors bound together in complexes³⁴⁴ and say that the mind is not merely embodied, but embodied in such a way that our conceptual systems draw largely upon the commonalities of our bodies and of the environments we live in. The result is that much of a person's conceptual system is either universal or widespread across languages and cultures...the grounding of our conceptual systems [is] in shared embodiment and bodily experience.³⁴⁵

However, worldview cannot be universalized because it is culturally specific. The neural processes that allow perception and conception may be the same, but the unique nature of the embodied mind is different, across cultures. However, I agree that conceptual systems within discrete cultures are shared, and manifest in what Lakoff and Johnson call embodied realism.³⁴⁶ Relationships to the world are built from these shared perceptions; they are reified through discrete practices and actions that are continuously reproduced. For example, we can conclude that *mitakuye oyasin* is intrinsic to a Lakota worldview.³⁴⁷ It describes relationships and responsibilities between human beings,

³⁴⁴George Lakoff and Mark Johnson, *Philosophy*, 537.

³⁴⁵Lakoff and Johnson, 6.

³⁴⁶ Lakoff and Johnson, *Philosophy*, 6.

³⁴⁷ As discussed, the phrase has an etymological basis that helps us understand. Its complete rooted-ness in Lakota culture is evident in everyday life. It is spoke as a greeting, as a term for parting ways, and extensively in ceremony.

animals, everything that moves,³⁴⁸ and refers to a relationality with, and responsibility to, not only other human beings, but other-than-human beings.

It you think about our concept of Mitakuye Oyasin, which means “we are all related,” it begins to make sense that an animal or bird or plant, as a relative, could help you...there is no mystery in our philosophy. There is no mystery and there are no miracles. Everything we do is reality based. We understand what we are doing, and we understand who we are working with every moment. We are working with our relatives.³⁴⁹

The concept, in which one understands her or himself first and foremost in terms of their relationship with other living, sentient beings, stands in sharp contrast to eurochristian construals of subjective awareness, predicated on the needs of the individual, and wholly dependent upon and inseparable from Up-Down, hierarchical understanding of the world. Distinct sets of logics, a collectively -held worldview, give us insight into why the ways people think and act in the world are often in direct conflict. Colloquialisms, oft-used phrases, and tropes in any society can help us see. The words are important but also how they are strung together in conversation can, at least in part, reveal a collective sense of community. For example, specific expressions in contemporary American politics are dog-whistles³⁵⁰ -- articulating deeply-held and shared notions that reveal a common foundation. They are ciphers that paradoxically disguise and make manifest specific images and models that perpetuate the will to

³⁴⁸ George E. Tinker, “The Stones Shall Cry Out: Consciousness, Rocks, and Indians,” *Wicazo Sa Review*, Vol. 19, Number 2, Fall 2005, 105-125.

³⁴⁹ Albert White Hat, *Zuya*, 36.

³⁵⁰ Certain words, when used together, contain ‘codes’ that give rise to specific meanings to members of targeted groups in today’s political arena. For contemporary examples, please see Ian Haney López, *Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism & Wrecked the Middle Class* (NY: Oxford, 2014).

empire. “Make America great again”³⁵¹ is one such example. Heavily weighted, this reveals an ideology of exceptionalism that is a shared way of thinking, are exclusively embodied through euroamerican radical individualism. By contrast, collateral egalitarianism describes what is at the heart of a Lakota way-of-being, a non-hierarchical understanding of inter-relatedness.³⁵² This embodiment, Lakoff and Johnson tell us, describes how we understand and experience “one kind of thing in terms of another.”³⁵³ This assertion, the heart of a cognitive theory and the embodied mind, is where I begin my analysis in the next chapter.

A key problem in the study of federal Indian law has been the general inability of scholars to dive below the surface of the concepts, categories doctrines and linguistic expressions in the field. Most federal Indian law scholars have tended to explain the general contours of the field in terms of its major legal doctrines: the doctrine of discovery; doctrine of plenary power...and so on. The tools of cognitive theory enable us to plunge below the surface of such doctrinal formulations and plumb the depths of what Lakoff and Johnson have termed the “cognitive unconscious where largely unexamined cognitive infrastructures lie.”³⁵⁴

At Mato Tipila/Devils Tower, the existence of the FCMP upholds only one distinctive way of relating to land. Because of this, the plan encodes ongoing structural

³⁵¹ Recent political events have intensified the power of the ‘great America’ trope and the reasons for this are compelling and complicated and too broad for this project. A recent article examines some of the reasons this phrase has such currency among certain segments of the population. <https://www.theatlantic.com/magazine/archive/2017/04/breaking-faith/517785/>. Accessed June 2018.

³⁵² Tinker and Newcomb have effectively broadened cognitive theory to show that collectively-held images and assumptions are central in the reproduction of shared worldview. Cognitive theory itself has been limited by eurochristian tenets since many theorists have been primarily concerned with the individual mind, and the embedded nature of image schemas and cognitive models.

³⁵³ Lakoff and Johnson, *Metaphors We Live By* (Chicago: University of Chicago Press, 1980), 5.

³⁵⁴ Newcomb, xxvi.

violence. The conflict was exclusively adjudicated under individually-derived rights, specific cognitional categories that defined and limited the parameters of the conflict. The resulting plan favors dominant culture and is an inadequate solution. It's also safe to say that the current state of rights theory also replicates the deeply rooted radical individualism that gave rise to an American colonizing empire – one whose agents carry out its techniques of discipline supported by the mantra “America’s Best Idea.”³⁵⁵

Human rights are based on the principle of respect for the individual. Their fundamental assumption is that each person is a moral and rational being. Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person.³⁵⁶

Rights, featuring a preoccupation and anthropocentric focus on the individual, are alien assertions for traditional Lakota peoples, whose relationship to place is based on communally-shared, longstanding, historical ties to The Black Hills, and surrounding lands. These ties stress responsibilities to places of significance, not individual “rights” to use, manage, and control.³⁵⁷ The language, though, is invoked time and again in disputes of this kind; it was the crux of the plaintiffs’ case but is also brought into use to, somewhat paradoxically, uphold related concepts like “ownership” and, “property.” Modern politics, resting on these notions of individual autonomy, and treating political

³⁵⁵ Ken Burns, *The National Parks: America’s Best Idea*, (PBS Film Distribution: Findaway World, LLC, 2009).

³⁵⁶ Eleanor Roosevelt, United For Human Rights (humanrights.com) Accessed June 4, 2016.

³⁵⁷ An interview with a longtime resident of Hulett, Wyoming was helpful for revealing the eurochristian conception of rights. He referred to himself as ‘Native American’ because he had been born in Wyoming, claiming that having to view the ‘trinkets’ placed around Devils Tower (prayer ties, ceremonial bundles), violated his inherently-derived ‘right’ to enjoy the monument.

and social relationships as the self-interested constructions of autonomous agents, is expressed in the language of rights.³⁵⁸

Despite varied settings (federal district courts, and the federal appeals court of Wyoming), the language used to define this dispute never varied. The original draft of the climbing plan included establishing a voluntary closure for all routes during the month of June, meaning that no commercial climbing permits would be issued. Curtailing rock-climbing activities during this time was “to show that [the NPS is] seriously committed to protecting a cultural resource and to acknowledge American Indian concerns.”³⁵⁹ An ethnographic assessment conducted in the wake of the first trial smacks of assimilative techniques that insistently subvert and then erase traditional Native perceptions.

The term ‘cultural’ should be read ‘religious.’ Culture is understood to mean the traditions beliefs, practices, lifeways, arts, crafts and social institutions of...an Indian Tribe. Regarding use and perception of use, we found that Native Americans perceive Devils Tower primarily as a *religious resource*, as a sacred place or alter [sic] where humans and spiritual worlds are blended and reinforced through ritual. Thus ‘traditional cultural activities’ is a euphemism for the practice of religion.³⁶⁰

The FCMP was meant to be a compromise and possible alternative to more conflict and intensified legal battle³⁶¹ over how this land and more broadly, the sites

³⁵⁸ Richard Tuck, In *The Rights Of War And Peace: Political Thought And The International Order From Grotius To Kant*, (Oxford: 1999), 1.

³⁵⁹ Petition for Writ of Certiorari To The United States Court of Appeals for the Tenth Circuit, Supreme Court, page 6.

³⁶⁰ Jeffrey R. Hanson and David Moore, “Applied Ethnography at Devils Tower National Monument, Wyoming,” *Plains Anthropologist*, 44: 170. 53-60, 1999. Page 8.

³⁶¹ Please see Walter R. Echo-Hawk, *In The Courts Of The Conqueror: The 10 Worst Indian Law Cases Ever Decided* (Boulder: Fulcrum, 2010) for examples. Also, Robert H. Keller and Michal F. Turek, *American Indians & National Parks* (AZ: University of Arizona Press, 1998). A documentary that offers a

within Paha Sapa should be used, valued, and shared. Ostensibly, its implementation at the monument would “improve communication and understanding among the national monument's users groups [which] will lead to a greater respect and tolerance for differing perspectives.”³⁶² However, the steady increase in climbing reflects more than ineffective protocol on the part of the NPS. It shows us that the system is working quite well, upholding the ideal of “natural law” - rights to property. A self-proclaimed historian from Hulett, Wyoming explained to me that he is a “Native American,” because he had been born and raised in Hulett.

Why should the American Indians be allowed to make our national and state monuments their religious sites when the majority of the people who call this great nation our home cannot have the name of God written in our schools or public buildings? Separation of church and state? Shouldn't this be required of our national monuments, parks and historic sites? Also when I see their religious trinket [*sic*] hanging from bushes or trees it aggravates me as it looks like litter. I or many others would be fined for littering. ³⁶³

Like those who share his worldview, he views his claim to this land as at least as, if not more, valid as any Native community's. White folks like him, who live near Mato Tipila, most often express hostility towards American Indians. Tourists, by contrast, are treated to romanticized fables of NPS literature.³⁶⁴ Benign or racist,

fairly accurate account of the importance of this site to Lakota peoples is *In The Light Of Reverence*, Christopher McLeod, Earth Island Institute.

³⁶² https://www.nps.gov/parkhistory/online_books/deto/history/chap10.htm. Accessed May 2018.

³⁶³ My interviews with White cattle ranchers in Hulett, Wyoming and surrounding areas show that racist attitudes are as prevalent as they were in the nineteenth century. The quote is excerpted from a personal interview conducted on January 4, 2018.

³⁶⁴ This is also a subject that will be addressed at length in Chapter Two. During establishment of the first national parks, park officials created a ‘mystique’ of the romantic-savage-in-a-pristine-wilderness motif.

informed or ignorant, my interviews with non-Natives indicate that the conflict, framed by “rights,”³⁶⁵ is far from resolved.

Current statistics confirm that the numbers of climbers continue to rise, after a brief decline following implementation of the FCMP. The statistics include only the recorded numbers of climbers who register in the technical climbing office - most do not. This undermines successful implementation of the voluntary closure described in an opening brief during the United States Court Of Appeals For The Tenth Circuit in 1998.³⁶⁶ On one visit, I saw at least fifteen climbers – some were commercial guides leading the way with bolts, harnesses, and ropes dangling from their belts, while others appeared to be novices, listening intently to the guides’ instructions before cautiously approaching the butte to gain a toehold on the first few pitches. I spoke with a group of technical climbers – part of a larger community (Alpinist), who seek out world-class climbing and share their experiences on blogs. None of them were aware of the reasons behind the voluntary climbing ban although some were aware of its existence. Today, the climbers I speak with rarely know of the ban. One of the conditions for instituting the voluntary ban was that the NPS would educate climbers on the importance of responsible

This leads to much misunderstanding – in the first place, it romanticizes American Indian peoples, and when the scripted performance is not brought to life to the satisfaction of tourists, there is cognitive dissonance, which often leads to resentment and conflict. On the other hand, there are incidences of White tourists reacting negatively to ceremonial objects, i.e., prayer bundles, at the site.

³⁶⁵ See Chapter Two, where I locate the historical origin of rights discourse in Europe during the seventeenth century. Scholasticism and humanism schools of thought provided the foundation for the philosophical treatises on Natural Law and the State of Nature. . .notably with Thomas Hobbes, and of course, Locke.

³⁶⁶ Bear Lodge Multiple Use Association v Babbitt, No 98-8021.

sharing of a public place. This is why the technical climbing ranger's assessment of the need to address the rising numbers of climbers was puzzling and seemed counterintuitive.

The Up-Down image schema is written right into the FCMP, drafted in accordance with the Native Americans Relationship Management Policy of 1987, in which it is stated that "more than merely tolerating native presence in or around parks, it [the NPS] would respect and actively promote tribal culture as a component of the parks themselves."³⁶⁷ In other words the NPS, under the umbrella of the Department of the Interior, is "in charge."

There have been many investigations and analyses of this series of court cases (for countless different motivations, and with different conclusions). Analyzing conflict and structural violence on public lands compels people from all walks of life to weigh in. Scholars³⁶⁸, historians³⁶⁹, journalists,³⁷⁰ environmentalists, film makers,³⁷¹ park

³⁶⁷ Federal Register, September 22, 1987, pp. 35673-78.

³⁶⁸ See for example, E. Freedman, (2007) 'Protecting sacred sites on public land: Religion and alliances in the Mato Tipila- Devils Tower litigation' in *American Indian Quarterly* 31.1 (pp. 1-22). Also, Anna Kramer's 2016 "The Power of The Tower: Contesting History at Bear Lodge/Devils Tower National Monument" <https://pdfs.semanticscholar.org/b612/6241ddb516fe7a373dae7d3e7b371206a87.pdf>. Accessed 1/8/2018. Please also see Lloyd Burton, *Worship and Wilderness, Culture, Religion, and Law in Public Lands Management* (Madison: University of Wisconsin Press, 2002), and Jacob N. Kinnard, 'Public Space or Sacred Place?' in *Places in Motion: The Fluid Identities of Temples, Images, and Pilgrims* (NY: Oxford, 2014), pp 169-186.

³⁶⁹ See, for example, Goodman, and Jeffrey Ostler, *The Lakotas And The Black Hills: The Struggle For Sacred Ground*, (NY: Viking, 2010).

³⁷⁰ For an example, please see Jim Kent in *Lakota Country Times*, 'Respect for Sacred Sites, But Not In Indian Country.' <https://www.lakotacountrytimes.com/articles/respect-for-sacred-sites-but-not-in-indian-country/>. Accessed 8/8/2017. Also CENTER FOR AMERICAN INDIAN RESEARCH AND NATIVE STUDIES (C.A.I.R.N.S) 'Lakota Lands and Identities' <http://listen.sdpb.org/post/dakota-midday-craig-howe-teaches-lakota-lands-and-identities>. Accessed 1/8/2018.

³⁷¹ See, for example, *In the Light of Reverence: Protecting America's Sacred Lands*. (2002). Produced and directed by Christopher McLeod. DVD. Bullfrog Films.

representatives³⁷² - many have offered their analyses of the case from the perspectives of both plaintiffs and defendants, with or without the cultural competency to do so with any great measure of authority.³⁷³ In fact, with few exceptions, many people who have written about the court case are non-Native, including myself. As a non-Native researcher, it is my hope that this project will contribute to a resistance to colonization and the genocidal ideas and practices that have been imposed unabated since the 15th century. This resistance has taken on a new intensity guided by Native scholars, activists, and writers. *They* have the authority and cultural competency to speak on behalf of their own communities; in the process, they are framing the terms for a worldwide movement of decolonization from which Indigenous peoples and their allies might actively participate. The inherited legacy of colonization that I share why my own ancestors and children needs to be critically challenged and decentered. The next chapter exposes the processes by which cultural genocide is perpetuated, both in the mind and on the lands.

Colonizers rely on much more than physical force; that land cannot be related to apart from and otherwise through ownership of it, is critically important for their

³⁷² Jeanne Rogers, *Standing Witness: Devils Tower National Monument, A History* (NPS: 2009). From a stylistic and grammatical perspective, this is a difficult read. It is helpful though, in that it does offer some first-hand accounts of the general state of mind of former superintendents Deb Liggett and Reed Robinson with how to best handle the conflict and hostility to the CMP. https://www.nps.gov/parkhistory/online_books/deto/history/chap10.htm. Also, Also Jeffery Hanson and Sally Chirinos, *Ethnographic Overview And Assessment of Devils Tower National Monument, Wyoming* (US Dept of the Interior 1997).

³⁷³ Cultural competency was best explained to me years ago by Tink Tinker. I asked him how I could begin to learn the Lakota language, thinking that there may have been an immersion class at one of the tribal colleges that he knew of, or maybe a textbook he could recommend! His response to me was this: "As soon as you leave my office, get in your car, drive to Pine Ridge, find a place to live, stay there...don't come back." The point he was making was that in the absence of shared communal ties over long periods of time, sharing language, participation in day-to-day life, experiencing the reciprocity of giving and receiving, and so many other qualities associated with a Lakota ways-of-life, I lacked the competency to speak for or about anybody from this community.

continued success. This system dominates throughout the world and will continue to do so until the powerful cognitive processes that keep it in place are known and understood. That is the purpose of the following chapter.

CHAPTER FOUR

WE OUGHT TO ASK OURSELVES HOW THIS HAPPENS. AND, YES. WHO TELLS THE STORIES?³⁷⁴

This chapter is organized around a central premise of cognitive theory: that “the same neural system engaged in *perception* (in bodily movement), plays a central role in *conception*.”³⁷⁵ As we gain awareness of elements in our environment through physical sensation,³⁷⁶ we acquire the capacity to understand ideas, abstractions, and symbols.”³⁷⁷ This is the embodied mind. Theorists explain the embodied mind by a process they call conflation, meaning, “interactions between domains,”³⁷⁸ wherein interactions start with understanding an idea (subjective experience) in terms of *grasping* an object (sensorimotor experience).³⁷⁹ In infancy, for example, the subjective experience of affection is conflated with the sensory experience of warmth. During the period of conflation, associations build up between subjective and sensory experience, and these associations persist, even after a period of differentiation. Writing that these associations

³⁷⁴ Elizabeth Cook-Lynn, “In the American Imagination, the Land and Its Original Inhabitants: an Indian Viewpoint,” *Wicazo Sa Review*, volume 6, no. 2, Autumn, 1990, page 42-47.

³⁷⁵ Lakoff and Johnson, (1999), 38.

³⁷⁶ <https://www.merriam-webster.com/dictionary/perception>. Accessed July 2018.

³⁷⁷ <https://www.merriam-webster.com/dictionary/conception>. Accessed July 2018.

³⁷⁸ Lakoff and Johnson, *Philosophy In The Flesh*, 46.

³⁷⁹ Lakoff and Johnson, 45.

are “realized neurally in simultaneous activations that result in permanent neural connections,”³⁸⁰ Lakoff and Johnson posit that further activation sequences result in conceptual blending, or *entailments* of the original connection. The mind’s imaginative capacities then let us conceptualize one domain of experience in terms of another, “preserving in the target domain the inferential structure of the source domain.”³⁸¹ That, they write, is how we categorize the things we come to know of our world. According to Lakoff, there is nothing more basic to the embodied mind than the categorization of our thoughts and perceptions, our actions and abstract entities.³⁸² However, he cautions, we should not be under the impression that we categorize things as they are, in other words, that “things come in natural kinds.”³⁸³ Rather, human thought processes, “are largely metaphorical”³⁸⁴ and, I would add, our conceptual systems vary widely across culture.

I am certainly interested in specific disparities in meaning-making – how truths about the way things are, in other words, are rooted in our cultures. What is of profound importance to my project though, is the fact that only one “truth” is institutionally imposed to such an absolute extent, it is often most presumed to be reality. On the other hand, understanding the dynamics of perception and conception offers an opening... to identify, perhaps challenge, even decenter the eurochristian set of interrelated logics

³⁸⁰ Lakoff and Johnson, 46.

³⁸¹ Lakoff and Johnson, 91.

³⁸² George Lakoff, *Women, Fire, and Dangerous Things: What Categories Reveal About The Mind*, (IL: University of Chicago Press, 1987), 6.

³⁸³ Lakoff, 6.

³⁸⁴ George Lakoff and Mark Johnson, *Metaphors We Live By*, (IL: University of Chicago, 1980, 6).

shared by those who invent rules and make laws, those busily engaged in the task of “repairing Paradise,”³⁸⁵ those whose pounding of pitons and bolts into mountains and buttes translates into “religious rights”, those with a passion for the “outdoors,”³⁸⁶ and those who make the rules on public lands. Having learned that our experiences and orientations, fundamentally shaped by culture and language, are constitutive of our experiences of the world, we who share the dominant worldview should be at least startled, possibly unnerved by the fact that our way is not the *only* way. This knowledge may *finally* force us to grasp the integrity and system of values that define Lakota culture. But let’s be real: most likely not. Nevertheless, knowing and understanding that the Lakota way of experiencing the world, passed down through actions in such a way that relatives, responsibility, and balance are central, confirms a simple, intuitive tenet of cognitive theory: things are true when they fit the way things are in the world. In this chapter, I argue that truths of the way things are must more authentically reflect Lakota (and by extension, an Indigenous) system of values.

To open, I review the history and timeline of the legal conflict at Mato Tipila. The plaintiffs in Bear Lodge Multiple Use Association,³⁸⁷ represented by the Mountain States Legal Fund and representing commercial climbers, sued the U.S. National Park

³⁸⁵ This was the long-time motto of the NPS and is a favorite theme used by environmentalists, who see the role of human beings as stewards of the natural world. The trope and accompanying ideological implications are part of the eurochristian worldview, dominated with Up-Down schematic construal’s.

³⁸⁶ Taken from a video clip on the homepage of Outdoor Industry, Inc. in Boulder, Colorado, <https://outdoorindustry.org/>. Accessed, June 2018.

³⁸⁷ A Wyoming based, non-profit corporation, whose members include commercial climbers and others who have business and/or recreational interests at Devils Tower.

Service (NPS) for violating the Establishment Clause of the First Amendment. They specified that the ban on climbing during June, (outlined in a Final Climbing Management Plan [FCMP]),³⁸⁸ the cross-cultural education program,³⁸⁹ and the placement of signs around the Tower encouraging visitors to remain on the Tower Trail,³⁹⁰ were done to promote “Indian religion.” The federal district judge hearing the case ruled that by removing the NPS amendment of the clause that would have prohibited the issuance of commercial climbing permits during June the voluntary ban functioned as an accommodation of a religious practice, not an establishment of such.³⁹¹ After a 1999 appeal,³⁹² the court ruled that the plaintiffs lacked legal standing” for failing to allege any injury in fact caused by the actions of the NPS. The plaintiffs appealed that decision as well, sending the case to the U.S. Supreme Court, which, after declining to hear the case, resulted in the ruling by the appellate court being upheld. However, underlying issues, ongoing tension, cultural conflict, and frankly, intensified racism in and around the

³⁸⁸ The plan, adopted in March of 1995, was the final draft compilation of six draft alternatives. Preparation for its completion included input from a work group comprised of Indigenous representatives, climbing guides and experts, representatives from environmental groups, neighboring community members, county authorities, and NPS staff members. <http://www.nps.gov/planning/deto/detoalt.html>. Accessed May 2016. Plaintiffs also objected to the ban on commercial climbing during June, despite the fact that the NPS had rescinded. Please see *Bear Lodge*, 2 F. Supp. 2d at 1451. The court decided that the ban was moot and did not address it.

³⁸⁹ Plaintiffs testified that the program promoted Native American religion by “proselytizing children who visit the Tower during school outings.” Please see *Bear Lodge*, 2 F. Supp. 2d at 1452.

³⁹⁰ Plaintiffs argued that the placement of signs asking visitors to stay on designated trails was coercive. Visitors, they claim, were forced to support and participate in Native American religions by not being allowed to approach the Tower. Please see *Bear Lodge*, 2 F. Supp. 2d at 1453.

³⁹¹ *Bear Lodge Multiple Use Association v Babbitt* 529 U.S. 1037.

³⁹² *Bear Lodge Multiple Use Association v. Babbitt*, 175 F. 3d 814.

area,³⁹³ in spite of legal “resolution,” persists, because the case and the resulting plan were predicated on and defined by ideas about “rights”- an entailment of eurochristian conceptual categories. These categories ignore or dismiss Lakota understandings of their relationship with Mato Tipila.

Violent colonization of the lands and peoples of the Americas has continued uninterrupted since the 15th century. Increasingly however, subtler, less obviously coercive tactics are also deployed, to the same end. How are these techniques successfully maintaining colonial interests and encouraging a kind of docile cooperation from colonized populations? Glen Sean Coulthard (Yellow Knives Dene), in a critique of contemporary liberal politics of “recognition,” argues that settler-states no longer need to use force to dispossess Native peoples of their lands. He writes, violence is unnecessary in a system where “power is structured through ownership.”³⁹⁴ Coulthard convincingly demonstrates that liberal states (his focus is Canada, although his theory applies more widely) rely on the productive character of colonial power - in other words, “the ability to produce *forms of life* that make constitutive hierarchies of settler-colonialism seem natural.”³⁹⁵ Power continues to reproduce itself, he continues, in a “more subtle, less

³⁹³ A ranger at Devils Tower recounted to me during an interview in the summer of 2017, how a neighboring resident had removed Native prayer ties early one morning, claiming they were the “work of the devil.” Please see the documentary film *In The Light Of Reverence: Protecting America’s Sacred Lands*, produced and directed by Christopher McLeod, (Earth Island Institute, 2002), to hear firsthand, racist accounts from residents of Hulett, Wyoming, some of whom call the prayer ties “dirty laundry.”

³⁹⁴ Glen Sean Coulthard, *Red Skin, White Masks: Rejecting The Colonial Politics of Recognition*, (Minneapolis: University of Minnesota Press, 2014), 8.

³⁹⁵ Coulthard, 152.

bloody way,”³⁹⁶ in no small part due to acquiescence and cooperation of the colonized. Absolute power, for example, is reproduced with subtlety, during photo ops arranged by Canadian Prime Minister Justin Trudeau’s staff, and including Indigenous representatives, while Trudeau laments, “instead of outright recognizing and affirming Indigenous rights, as we promised we would, Indigenous Peoples were forced to prove, time and time again...that their rights existed, and must be recognized and implemented”³⁹⁷ This is new-and-improved colonization, because the narratives *displace* resentment - the colonizer appears empathetic, the narratives feature feel-good tropes like “co-management,” “cooperation,” and “recognition,” and other discursive sleights-of-hand that convince Indigenous peoples to willingly participate in a system that continues to dominate and dispossess. Coulthard calls this acquiescence “psycho-affective” attachments that colonized populations form with “master-sanctioned forms of delegated recognition.”³⁹⁸ These insights are hugely significant in this analysis as well. Native defendants in the case over Mato Tipila articulated their concerns in the language of “rights,” specifically, their right to practice “religion” (a word that is entirely Western in origin and does not have any American Indian equivalent)³⁹⁹ at “sacred” (a word that diminishes more sophisticated Lakota relationship to, and understandings of, their lands)

³⁹⁶ Coulthard borrows this quote from Frantz Fanon, *The Wretched Of The Earth*, (Boston: Grove Press, 2005), 27.

³⁹⁷ CBC News, “Trudeau promises new legal framework for Indigenous people,” February 14, 2018. <https://www.cbc.ca/news/politics/trudeau-speech-indigenous-rights-1.4534679>. Accessed February 2018.

³⁹⁸ Coulthard, 152.

³⁹⁹ Tinker, *American Indian Liberation*, (Maryknoll, NY: Orbis Books, 2008), 123.

sites. This conformity, according to Coulthard, is how colonial power produces and reproduces itself.

What's more, public lands, managed and controlled by bureaucratic agencies like the NPS, are properties of the United States. Articulating claims for use at these properties must follow the institutionalized script – “I have a right...” “You are infringing on my rights...” and so on. People asserting rights, demanding that their rights be recognized, etc., are embodying metaphorical constructs generated by a hierarchical cognitive category related to the eurochistian worldview. In cognitive theory terms, asserting rights is an embodied metaphor of the Up-Down idealized image schema. That schema, in so small way, is at the heart of John Locke's labor theory of appropriation, which in turn, is an entailment of a conceptual invention - “natural law,” also grounded in the same hierarchical schema. These permanent neural connections, if you will, are the result of interactions between domains. These connections have become codified and are so embedded in dominant culture that those of us sharing the dominant worldview cannot **fully** understand or appreciate the radical alternatives to this way-of-being, present in the longstanding, historical relationship and obligations between Lakota peoples and their lands.

The Lakota image schema, collateral egalitarianism, does not coincide in any way, shape, or form with the Up-Down. Lakoff and Johnson inform us that concepts are “created as a way the brain and body are structured and the way they function in interpersonal relations and in the physical world.”⁴⁰⁰ Interpersonal relations, in a Lakota

⁴⁰⁰ Lakoff and Johnson *Philosophy*, 37.

sense, mean *all* persons, or as Tinker puts it, the two-leggeds, four-leggeds, winged ones, living-moving people etc. We need to more fully understand that the way we reason about the world is dependent on one, the way our brains and bodies are structured, and two, how specific, different image schemas are reproduced and collectively held within distinct cultures in an infinite number of ways. One way might be recognizable in storytelling. If we can identify thematic elements of collateral egalitarianism appearing in Lakota stories and thematic elements of Up-Down model in eurochristian stories, we might better understand how language, culture, and formative experiences both are constitute of, and derivative of our worldview.

Cognitive theorists are willing to go so far as to tell us that body-based perceptions are a universal human characteristic. It is intriguing to think of this characteristic as applying to other-than-humans as well, but that is a topic for another project. For my purposes here, I want to better understand and clarify how our minds and bodies perceive, conceive, and inform our experience in the world – in fact, construct our world. At the same time, I investigate how people’s ways of experiencing the world are often at odds. Because of that, I argue that given the systemic formidability and dominance of eurochristian conceptual categories in general, “resolution” at Mato Tipila is neither desirable, (because a true legal resolution would too heavily privilege eurochristian interests), nor possible, (because the very forum for seeking resolution is already based on a one-sided structure of eurochristian categories). The FCMP, in place at Devils Tower, merely presents “optics, created by grand gestures of recognition,”⁴⁰¹

⁴⁰¹ Coulthard, 155.

(i.e. accommodating Lakota “religion”). Meanwhile, we know that the number of climbers continues to increase with little or no reaction from the NPS. It’s all a show, in other words. There are two things genuinely true about the FCMP: the document, meant to “recognize” Lakota identity, omits the Lakota historical position,⁴⁰² and second, describes the conflict in terms of individual concerns, which is useless and antithetical to Lakota concerns. The violation of the 1868 Fort Laramie treaty, for example, and outright theft of Mato Tipila, the Black Hills, and other unceded territories, as well as the refusal of Lakota peoples to accept any monetary compensation⁴⁰³ for the theft, are fundamentally important issues that undergird and inform the ongoing conflict at Mato Tipila. However, those with power to decide legal outcomes in contested places are ignorant of the history, or even if aware of it, choose to omit it because it does not fit within the parameters of their rule-of-law paradigm, thus making it inadmissible and ultimately irrelevant for their purposes.

What then, is the point of identifying radical alterity if it does nothing to promote “reconciliation” “recognition” or “resolution?” Here is why it is important: the

⁴⁰² The suppression of actual history is a common strategy used in legal venues to control the narrative. See for example, the sentencing of Red Fawn Fallis, activist and Water Protector at Standing Rock. The court dis-allowed any testimony about the 1851 and 1868 Fort Laramie treaties – the reasons why the Standing Rock community was protesting the Dakota Access Pipeline. <https://www.westword.com/news/red-fawn-fallis-sentenced-glenn-morris-reflects-on-her-case-and-lessons-of-standing-rock-10564454>. Accessed August 2018. <https://earthfirstjournal.org/newswire/2018/07/16/red-fawn-fallis-sentenced-to-57-months-in-prison/>. Accessed September 2018.

⁴⁰³ The Fifth Amendment of the U.S. Constitution requires that the power of eminent domain be mitigated by “just compensation” for those whose property is taken. In 1946, the Indian Claims Commission was formed, in part, to abrogate treaty responsibilities and reduce provisions therein to contract law. The Bradley bill, introduced in 1985, was an attempt to force the government to pay the Lakota peoples for having taken the land and violated the treaty. The Supreme Court upheld the Commission’s award of \$102 million; the amount continues to gain interest. Some estimates today place the amount, with interest, at over \$1 billion. To date, the Lakotas have refused to accept monetary compensation for Paha Sapa (The Black Hills).

Up-Down image schema,⁴⁰⁴ codified through a unique and exclusive rights discourse, and written right into official documents like the FCMP, regenerates and perpetually memorializes the “unrestrained voice of the Self”⁴⁰⁵ in subliminal but incalculably devastating ways.... and at the expense of Lakota communities. Coulthard is right. He describes the politics of recognition as “configurations of colonialist, racist, patriarchal state power that Indigenous peoples...have historically sought to transcend.”⁴⁰⁶ Any Indigenous struggle, he claims, must therefore be place-based, by “modalities of Indigenous land-connected practices and longstanding experiential knowledge that inform and structure our ethical engagements with the world and our relationship with human and nonhuman others over time.”⁴⁰⁷ Calling these modalities “grounded normativity,” he suggests that Indigenous resurgence be

primarily inspired by and oriented around *the question of land* – a struggle not only *for* land in the material sense, but also deeply *informed* by what the land *as system of reciprocal relations and obligations* can teach us about living our lives in relation to one another.⁴⁰⁸

⁴⁰⁴ Lakota peoples are “backwards” and “bad” because they are “down” in the hierarchy - they are obstacles to progress, in the way of development. Because they are perceived as lower, they are expected to “abandon their own beliefs, preferably immediately...and embrace those of Europe as luminously and self-evidently true.

⁴⁰⁵ Cook-Lynn, 62.

⁴⁰⁶ Coulthard, 3.

⁴⁰⁷ Coulthard, 13.

⁴⁰⁸ Coulthard, 13.

Settler culture has benefitted by imposing basic level conceptual categories in at least three ways: “brutal military conquest, the conquest of conversion,”⁴⁰⁹ and an overlay of eurochristian categories over Native ones.⁴¹⁰ Coulthard precisely identifies the last as corresponding with today’s liberal policies of cooperation, stating “its reproduction instead rests on the ability to entice Indigenous peoples to *identify*, either implicitly or explicitly, with the profoundly *asymmetrical* and *nonreciprocal* forms of recognition either imposed on or granted...by the settler state and society.”⁴¹¹

Another way that eurochristian categories are overlaid over Native ones is the fact that Lakota primary categories tend to be organized spatially, not temporally. Both Tinker and Deloria have written at length about the contrast between a *spatial* worldview of American Indian communities and a *temporal*, eurochristian worldview, with Deloria noting that

the vast majority of Indian tribal religions have a...center at a particular place, be it a river, a mountain, a plateau valley or other natural feature. This center enables the people to look out along the four dimensions and locate their lands to relate all historical events within the confines of this particular land, and to **accept responsibility** for it. Regardless of what happens to the people, the...lands remain as permanent fixtures in their cultural... understanding⁴¹² [emphasis added].

⁴⁰⁹ George E. Tinker, *Missionary Conquest: The Gospel and Native America Cultural Genocide*, (Minneapolis: Fortress Press, 1993), viii.

⁴¹⁰ Tink Tinker, ‘Why I Do Not Believe In A Creator; in *Buffalo Shout, Salmon Cry* (Waterloo: Herald Press, 2013).

⁴¹¹ Coulthard, *Red Skin*, 25.

⁴¹² Deloria, (1994), 67.

Tinker, identifying a contrast between what he calls “primary categories of existence in one culture or the other around which all other categories are arranged,”⁴¹³ observes that while neither culture is completely dominated by one or the other, amer-european categories tend to make temporality central,

with a seven-day cycle requiring the repetition of a ceremonial event (mass or liturgies of worship) ...the cycle itself being a relatively arbitrary, human designation. In amer-european (and European) philosophical and theological history, it is most common to see intellectual reflections on the meaning of time. Hence progress, history, development, evolution, and process become key notions that invade all academic discourse in the west.⁴¹⁴

Organizing life temporally was a central feature of this case; defendants had to agree to select June as the time for the ban on climbing even though *where* something of significance takes place is generally more important than *when*.⁴¹⁵ Being forced to confine their concerns to a 30-day period correlative with “rights” and “religious” categories fails to give credence to Lakota understandings of existence. Mato Tipila is a relative, and certainly not exclusively in June. In the middle of winter, early spring, or late fall, these areas in and around The Black Hills have been, and continue to be, as Alexandra New Holy, Ronald Goodman, Albert White Hat and others remind us, the heart of everything for Lakota peoples.

⁴¹³ Tinker, George E “Tink”, *American Indian Liberation: A Theology of Sovereignty*, (NY: Orbis, 2008), 71.

⁴¹⁴ Tinker, 71.

⁴¹⁵ I say “generally,” because Goodman’s description of the ceremonies taking place in the Black Hills are timed to correspond with celestial events, although the importance of the place (as mirroring what is happening in the star world is paramount).

It is critical to acknowledge radical difference without trying to mitigate, soften, or resolve it. As mentioned in previous chapters, Tinker writes that we must let different *be* different. To understand difference with any kind of authenticity requires us to be uncomfortable and stay that way. We have to avoid trying to analogize into same-ness. With that in mind, I now begin the analysis.

THE LAND AND ITS ORIGINAL INHABITANTS

“The literature of a people almost always reflects their spiritual, political, and social goals. One of the important functions of literature...is, of course, to persuade a sense of order.”⁴¹⁶ Elizabeth Cook-Lynn (Dakota) insists that Indian peoples must be the ones to tell their own stories – the ordering of the world can only be articulated by people with the cultural competency, memory, and wisdom to do so. At the same time, she notes that “examination of the dichotomy between the stories that Indian America tells and the stories that White America tells is crucial.”⁴¹⁷

Robert A. Williams, Jr. also describes “the usefulness of stories in helping us to make connections.”⁴¹⁸

Storytelling...has become an important part of the methodology used by scholars...to analyze the legal relations between different groups in our multicultural society...[and] Richard Delgado, a

⁴¹⁶ Elizabeth Cook-Lynn, “In the American Imagination, the Land and Its Original Inhabitants: an Indian Viewpoint,” *Wicazo Sa Review*, volume 6, no. 2, Autumn, 1990, 44.

⁴¹⁷ Cook-Lynn, *Why I Can't Read Wallace Stenger And Other Essays*, (Madison, University of Wisconsin Press, 1996), 64.

⁴¹⁸ Robert A. Williams, Jr., *Linking Arms Together: American Indian Treaty Visions Of Law And Peace: 1600-1800*, (NY: Routledge, 1999), 84.

leading critical race theorist, explains how stories connect us to the experience of others.⁴¹⁹

Tinker also tells us “we must have stories” to better understand “the self-identity of whole communities.”⁴²⁰ I examine the dichotomy between Indian and White America⁴²¹ through the stories each tell themselves about themselves. I want to point out very different expressions of communal values that come to life in shared ways, even as they express quite different values and understandings. To use terms from cognitive theory, I identify distinct idealized cognitive models that give rise to culturally discrete, embodied metaphors, that are then expressed in disparate image schemas. Specifically, how Lakota ways of being and thinking have been passed down from one generation to the next, and are embodied in relationship with lands, specifically, Mato Tipila. I also identify the eurochristian Up-Down image schema, present in stories unique to eurochristian culture, but also in laws, rules, plans, and agreements foundationally based in those stories. The idealized cognitive models of both cultures, to return to Freeland’s definition of worldview, provide “prescriptions as to how to live life.”⁴²² Looking at them comparatively, I avoid the intellectual inference that things must agree or be the same⁴²³ – trying to make what is radically different somehow familiar and like something

⁴¹⁹ Williams, 84.

⁴²⁰ Tinker, *American Indian Liberation: A Theology of Sovereignty* (Maryknoll, NY: Orbis Books, 2008), 75.

⁴²¹ An explanation for my use of the term “White” and the social construction of race is developed more fully in the conclusion of Chapter Three.

⁴²² Mark Freeland, *Conceptual Decolonization*, 5.

⁴²³ Tink Tinker, “A Preface To War and War Ceremonies: Defense and the Mitigation of Violence,” February 24, 2012, unpublished manuscript.

we already know, because “such acts of misrepresentation lay the foundation for cultural genocide... at such a systemic level...it may be largely subliminal.”⁴²⁴ Tinker describes a colonizing tendency to make difference somehow correlative not only “simplistic” but a violent act that voids the voice and power of Indigenous peoples⁴²⁵ because it suppresses and/or ignores autonomous, unique expression and experiences of existence.

Sebastian (Bronco) LeBeau, II (Lakota), also cautions that while a comparative methodology has some merit, its use can “attempt to establish a normative base for contextualizing [that] results in two things. It binds the conversation to a model [already] established...and restricts our ability to express in our own conversations.”⁴²⁶

I follow two guidelines then: the first, acknowledging that my eurochristian worldview and cultural competency allows me to conduct a literary critique from that perspective – as an “insider.” I review Lakota stories through voices of Lakota peoples, those with the competency to do so. Second, since “what the colonizer sees seems inevitably to be interpreted in terms of what the colonizer already knows from his or her own european context,”⁴²⁷ I identify how specific constructs have remained dominant and are successfully imposed as reality. LeBeau, developing a distinct Lakota methodology for identifying places of traditional cultural significance for his own community,

⁴²⁴ Tinker, *Missionary Conquest*, 14,5.

⁴²⁵ A Preface to Tink Tinker’s essay, “War and War Ceremonies: Defense and the Mitigation of Violence,” February 14, 2012, unpublished manuscript.

⁴²⁶ Sebastian C. (Bronco) LeBeau II, “Reconstructing Lakota Ritual in the Landscape: The Identification and Typing System for Traditional Cultural Property Sites,” (Minneapolis: University of Minnesota, 2009), 18.

⁴²⁷ Tinker, Preface.

describes this imposition firsthand. A specifically-Lakota wisdom tends to be misunderstood, diminished, or ignored by “professional Euro-American cultural resource practitioners, the so-called disciplinary experts [who] dominate the field of historic preservation.”⁴²⁸

My goal was to demonstrate that the Lakota are the most qualified people to locate, identify, interpret, evaluate, and document... [S]ince they are responsible for making a place culturally significant, they are also the ones who are best capable of communicating cross-culturally the actual cultural significance.⁴²⁹

The meaningfulness of the underlying ideas for terms like traditional cultural property...practices...beliefs of a living community..., significance...traditional significance...ceremonial activities... rules of practice...sacred site...religious significance, and ceremonial use are established by non-Lakotas and are meant to be applied to what others think is a Lakota equivalent for them. I felt there was an assumption that these terms and their meaningfulness would be the same among the Lakota as they are among non-Indians. This view presupposes that the Lakota see things in the same manner as non-Indians do and I knew that wasn't true.⁴³⁰

I choose to analyze stories and storytelling to better understand “the cultural rootedness of all knowledge systems.”⁴³¹ I begin with Lakota stories, shared by Albert White Hat and Duane Hollow Horn Bear (Lakota), published in text and online through

⁴²⁸ LeBeau II, 14.

⁴²⁹ LeBeau, 14.

⁴³⁰ LeBeau, 25.

⁴³¹ Tinker, “The Stones Shall Cry Out: Consciousness, Rocks and Indians’ *Wicazo Sa Review*, Volume 19, Number 2, Fall 2004, 105-125 (125).

Sinte Gleska University.⁴³² White Hat explains that the Lakota oral tradition is also a way of hearing the same story again but told a little differently, with the effect that the core of the stories “connect and teach us something.”⁴³³ I also draw from *Lakota Star Knowledge*, archival and historical documents, and include the reflections of Lakota people. I heed Cook-Lynn’s insistence that the narrative voice in Indigenous historical memory be Indigenous.

WHEN WE SPEAK LAKOTA THERE IS A DIFFERENT WAY OF THINKING⁴³⁴

We say that Wakan Tanka created the Heart of Everything That Is to show us that we have a special relationship with our first and real mother, the earth, and that there are responsibilities tied to this relationship. Wakan Tanka placed the stars in a manner so what is in the heavens is on earth, what is on earth is in the heavens, in the same way (Charlotte Black Elk).⁴³⁵

White Hat tells us that wakan is a central Lakota concept. As discussed in earlier chapters, it is a term that has been misunderstood, (mostly through gross mistranslation and analogizing) as “sacred” or “holy.” White Hat breaks down the term etymologically: kan, he says, is the cumulative power to give life and to take life. Kan is imbued with both good and bad potentialities. All living beings contain elements of this power and are related to each other in a non-hierarchical way. Wa indicates a subject. Wa

⁴³² Sinte Gleska University Human Relations: A Multi-Cultural Perspective class with guest instructor Duane Hollow Horn Bear. <https://www.youtube.com/watch?v=NRtrJHyQoQ4&t=99s>. Published March 10, 2012.

⁴³³ White Hat, *Zuya*, 95.

⁴³⁴ Albert White Hat, *Lakota Documentaries*. <https://www.youtube.com/watch?v=VvPa2rRjq2Y&t=30s>, published by Sinte Gleska University, May 2013, accessed June 2016.

⁴³⁵ Goodman, “Appendix D” in *Lakota Star Knowledge: Studies In Lakota Stellar Theology* SD: Sinte Gleska University, 1992) 50.

and Kan together means that the living things of creation contain the power to create and destroy.⁴³⁶ The following is what White Hat calls the Lakota origin story.

The origin story begins in darkness. ‘In the beginning’ was Inyan. And Inyan was in total darkness. And Inyan was soft. And Inyan was Wakan.⁴³⁷ Wanting to create life, Inyan constricted and began to drain blue blood, which created a disk around itself called Maka. Half of the disk was land and half was water; so the first life was *Maka* (earth) and *Mni* (water). Everything was blue, like the color of Inyan’s blood, but Inyan, Maka and Mni gradually separated the blue from the rest of creation and it became *Mahpita To* (the blue sky). The original name for this separation translates as ‘I am different,’ or *Miye Matokeca*.⁴³⁸

Next, Inyan created *Anpe Wi* (sun), to make daytime (*anpetu wi*), and *Hanwe wi* (*Hanhepi Wi*) – the moon and the nighttime. Then came *Tate* (the wind). As each new creation came into being, there was another one created in the universe. Like everything that Inyan brought forth, it came in twos, because for all living things, in the world, there is a counterpart. For every being on earth, there is an identical other in the universe. Whatever you are doing on earth, the other you is doing that in the universe. Occasionally, that other one will send some energy down to you, and whatever you are doing at the time will get a little boost.⁴³⁹

I interpret this as White Hat demonstrating that there is balanced correlation between the two worlds – a correlation he says, is also found between earthly beings. For the earth, there is sky. For the night, there is day. For female, male. There are other important details. As each new creation is given breath/life, they are not temporal, sequential events, nor are they hierarchically-organized. The process is an egalitarian

⁴³⁶ White Hat discusses this extensively in *Zuya*, but also in his classes at Sinte Gleska University, published online. <https://www.youtube.com/watch?v=6-wM3XYIQ4c>. Accessed April 2018. Albert White Hat, “Our Origin Story” in *Zuya: Oral Teachings From Rosebud* (University of Utah Press, 2012) 31. “Our word for stone is Inyan...In English when we talk about a rock, pebble, or stone, it describes a lifeless object, so that’s what it becomes...to us it’s a living relative.”

⁴³⁸ White Hat, 31.

⁴³⁹ White Hat, 33.

emergence, balanced, and full of reciprocal gestures. We can thematically detect the image schema “collateral egalitarianism.” Balance is a primary theme. When Maka becomes cold, Inyan creates the sun; when she becomes too warm, the moon takes life. Maka, in turn, offers herself as the place for all life to live and grow. Correspondingly, what is brought to life on earth also comes into being in the star world, and correspondence is an important principle. A being is only complete when it is paired with its naturally reciprocating half, and the world, in its entirety, consists of parallel, equal powers functioning in a balanced way.

By contrast, as we will see, temporal events (e.g. creation, end of the world) dominate eurochristian understandings, in which a god on high - part of the “a euro-colonial hierarchic imaginary,”⁴⁴⁰ is in charge. This hierarchy is more than a theological imposition. It functions in a larger way as a technique of discipline because, as discussed in the previous chapter, it fundamentally shaped the social, legal, and political institutions of this settler state. In the U.S juridical system, as we have seen, any party asserting a claim of some kind is forced to comply and regulate their argument and behavior in terms of hierarchy. In an obvious way, for example, the embodied metaphor of the Up-Down image schema is evident in the ritualized requirement to stand when a judge enters a courtroom and sit when instructed. But I’m getting ahead of myself: here, I want to uncover the principles of categorization that are specific to euroamerican culture and worldview. I now look for evidence of the Up-Down image schema in biblical stories. The following is excerpted from the Jerusalem Bible.

⁴⁴⁰ Tinker, *Why I Do Not Believe*, 69.

In the beginning God created heaven and earth. Now the earth was a formless void, there was darkness over the deep, with a divine wind sweeping over the waters. God said, 'Let there be light,' and there was light. God saw that light was good, and God divided light from darkness.⁴⁴¹

There is a force that differentiates earth and water by using a superior, inaccessible power to put them in motion with each other. In the narrative that follows, we see a staged, sequential timeline depicting the living things that populate this world, including birds, fish, animals, and vegetation. The highlight of the sequence is the creation of the first man (Adam), the prototype of humanity. He is placed “in charge” of naming the things of the world. For this task, he is given a suitable helpmate.⁴⁴² The human creations are hierarchically ordered – first male, then female. The two inhabit a paradise and are instructed to enjoy everything, save one: they are to avoid the tree placed in the middle of the garden whose fruit contains a secret. In a dialogue between Eve and a serpent (that which crawls and glides - “low” in an Up-Down hierarchy)⁴⁴³ the serpent hints at the knowledge of good and evil. This is the first reference to an oppositional, dichotomous force (evil) that seems to have preceded creation itself. Eve eats the fruit anyway (woman as transgressor/under/beneath), shares it with Adam, (woman as seductress/lower), – and “the eyes of both of them were opened.”⁴⁴⁴ Their disobedience of ultimate authority (creator being), they are expelled. Three things stand out: The first,

⁴⁴¹ Genesis I: 1-4.

⁴⁴² Genesis II, 2:21.

⁴⁴³ Genesis II, 3:1.

⁴⁴⁴ Genesis II, 3:7.

dualism between “good” and “evil,” and a radical disobedience that comes to be known as “original sin,” equated with evil. The second, an existential schism between the creator and his creations. The third is a combination of misogyny and anthropocentrism – in an Up-Down hierarchical schema, female is “lower” than male, humans are “higher” than serpents, etc. Lakoff and Johnson explain the Up-Down image schema as follows.

Being moral is being Up(right); Being Immoral is being (Down) Low. Doing evil is therefore moving from a position of uprightness to a position of immorality (being low). Hence, Doing Evil Is Falling (Down). The most famous example, of course, is the Fall from Grace.⁴⁴⁵

In later chapters, events unfold featuring this super-personality/creator being clearly in charge. Episodic events, organized by hierarchy and a descending order of importance feature males occupying the position just below the creator...woman next, animals follow, and so on. Balance and equilibrium are disrupted by a cosmic blunder – humans are cast out, leading to isolation and estrangement from creation (the world). The third is a paradoxical idea that characterizes this opening myth: namely, an alienation that is now part of the human condition – humans are at the mercy of a now inhospitable, dangerous world and ontologically separate from other living things. I will show later in the chapter that this paradoxical condition is thematically present in the writings of the first European evangelizers.

The world into which humans are thrown is no longer beautiful. It is “accursed,”⁴⁴⁶[and] the creator-god “exacted the penalty for its fault and the land had to

⁴⁴⁵ Lakoff and Johnson, *Philosophy*, 299.

⁴⁴⁶ Genesis 3:17.

vomit out its inhabitants.”⁴⁴⁷ Their debased condition introduces an existential quandary. Humans, understood as hierarchically superior to, and in charge of all other living beings, are nevertheless alienated from all the living beings of the world. Cast out, they face an inhospitable world, and yet, the original instructions given to them are not rescinded. Despite this estrangement, they are nevertheless still instructed to subdue, use, tame,⁴⁴⁸ “fill the earth and subdue it...have dominion over the fish of the sea and the birds of the sky and all the living creatures that move on earth.”⁴⁴⁹ In the following tales, we will see that the descendants of the people who first received the divine instructions, are obliged to carry them out. They are given the name Israelites, they construe themselves as “chosen.”⁴⁵⁰

THE CHOSEN PEOPLE/PROMISED LAND COGNITIVE MODEL

Dualism is a prevalent embodied metaphor of the Up-Down image. Israelites are commanded (chosen) by a god-on-high to inhabit a place (where people already live who are considered “lower” in the cosmic hierarchy). Here we see the cognitive model that Newcomb calls chosen people/promised land emerge. As the stories progress, land is

⁴⁴⁷ Leviticus 18:25.

⁴⁴⁸ It should not surprise us, although it is ironic that President Trump recently invoked the concept “tame” to describe the colonization of this continent. <http://www.newsweek.com/donald-trump-tame-continent-america-945121>. Accessed July 2018.

⁴⁴⁹ Genesis 1:28.

⁴⁵⁰ Israel, in Hebrew, means “to wrestle with god;” a biblical passage depicts Jacob in an actual physical match with a supernatural being. Jacob describes the encounter as having “seen God face to face,” and he subsequently is given the name Israel.

either good/promised, (best/highest/Israel (city on a hill),⁴⁵¹ or bad/evil (lowest/Canaan/Sodom/Gomorrah). The Israelites are commanded to forcibly seize the land promised to them – “Yahweh enlarged...[the] territory as promised...and annihilated...the nations,” commanding the chosen ones to “destroy completely all the places where the nations you dispossess have served their gods.”⁴⁵² They are also instructed to lay siege to any who resist.⁴⁵³

WE ARE WHAT WE IMAGINE.⁴⁵⁴

Elements and themes of each culture’s stories isolate important features, but also confirm that “metaphor is the principal tool that [both] makes...insight possible and constrains the forms.”⁴⁵⁵ We can now investigate how these principles of the embodied mind are relevant to our examination of both the battle at Mato Tipila and the plan that was generated to manage and regulate its shared-use. Small metaphorical “pieces” fit into larger wholes in human neural systems in ways that can help us identify underlying conceptual categories. When the basic level conceptual categories are at odds, we see that

⁴⁵¹ Jerusalem, the “city on a shining hill,” became the center of identity for Israelites during the reign of King David. This identity is also captured in a passage from Matthew 5:14, “You are the light of the world. A city built on a hill-top cannot be hidden.” A “shining city on a hill” is also present in Puritan sermons (recounted in the following pages), and in contemporary American political addresses, e.g., Ronald Reagan’s Acceptance Speech at the Republican National Convention in Dallas, Texas, on August 23, 1984. “We raised a banner of bold colors--no pale pastels. We proclaimed a dream of an America that would be a Shining City on a Hill.” In 2006, then-Senator Barack Obama used the reference in a commencement address at Boston’s University of Massachusetts: “I see students that have come here from over 100 different countries, believing like those first settlers that they too could find a home in this City on a Hill—that they too could find success in this unlikeliest of places.”

⁴⁵² Deuteronomy, 12:2, 29-31.

⁴⁵³ Deuteronomy, 12:2.

⁴⁵⁴ Williams, *The American Indian*, 87.

⁴⁵⁵ Lakoff and Johnson, *Philosophy*, 7.

manifesting in many ways, but notably conflict between communities, and specifically for this project, over land. The image schemas collateral egalitarianism and Up-Down, arise from neural structures that help us perform inferential or imaginative tasks relative to a category, and also “allow us to evaluate category members relative to some conceptual standard.”⁴⁵⁶ Lakota conceptual standards having to do with interrelatedness do not generally feature hierarchical categorization. As such, Lakota conceptual standards that lead to inferences about the related-ness of all living beings of the earth,⁴⁵⁷ do not influence conflict- resolution decision making processes and/or policies, because they simply cannot be translated into the legal discursive frame that is predicated on eurochristian interests.

The absence of hierarchical categorization is also relevant; humans are not “above” or superior to other living things. Indeed, as Tinker relates, they are often understood as the youngest and most naïve of all living beings in the world, needing help and assistance from relatives. Relatives, for Lakotas, include the land and the other-than-human beings who inhabit, in this case, Mato Tipila and the Black Hills.⁴⁵⁸ In other words, the standard in the Lakota set of logics includes a widely-held, embodied orientation in the world where the reciprocal and shared responsibilities and obligations

⁴⁵⁶ Lakoff and Johnson, (1999), 19, 316-317.

⁴⁵⁷ White Hat, (2012), 32,33.

⁴⁵⁸ <https://www.youtube.com/watch?v=MhbXk63wMTI&t=410s> . Published September 4, 2013 by the WoLakota Project, a collaboration between the South Dakota Department of Education and Technology and Innovation in Education (TIE).

towards and between all persons is central.⁴⁵⁹ The model or standard is based on complementary opposition, which Lakota oral historian Charlotte Black Elk explains is a Lakota paradigm, stressing balance; what happens above, so below. This aspect of collateral egalitarianism helps us understand how centrally important Mato Tipila and Paha Sapa are for Lakota peoples. A way of understanding this correspondence is this symbol.

The symbol for earth is a triangle, pointed up. The symbol for the stars is an inverted triangle. It can also be depicted as cones or vortexes. When earth sites and stars are combined, the symbol is called *kapemni*, which means twisting,⁴⁶⁰ or mirroring.

The symbolic imagery helps us more fully understand complementary opposition, a primary conceptual category in Lakota thought and being. According to Black Elk and Goodman, mirroring confirms for the people that earth is one half of a pair – the other half is the star world. At the height of summer, Goodman writes, Lakota people gather at Mato Tipila⁴⁶¹ in a replication of the movement of the sun through a circle of stars known as *Cangleska*, (Sacred Hoop); the constellation corresponding with Mato Tipila is also included within this circle. This history is textually preserved on two tanned hides, known as earth map and star map. The two maps are the same because

⁴⁵⁹ Please see ‘The Stones Shall Cry Out: Consciousness, Rocks, and Indians’ *Wicazo Sa Review* Volume 19, No 2, Fall 2004. 105-125. During a classroom discussion, Tinker reminded us that rocks are also living beings that move – just more slowly.

⁴⁶⁰ Goodman, 16.

⁴⁶¹ Goodman, 1,2.

“what’s on earth is in the stars, and what’s in the stars is on the earth.”⁴⁶² When spring is giving way to summer, the time when all life is renewed, important ceremonies take place at Mato Tipila. This place and others, for Lakota communities, have what Vine Deloria, Jr. calls “the highest possible meaning,”⁴⁶³ because they are places where important encounters take place. Hollow Horn Bear tells us that many of these encounters involve a Lakota personage called Fallen Star.⁴⁶⁴ The following are compilations of his stories.

1). Once there were two Lakota women who were gazing up at the night sky. Seeing two bright stars, they fell in love with the celestial beings and wanted to marry them. Shortly after, two handsome men approached them saying “We heard you!” These two men were from the Star World and carried the young Lakota women with them to become their wives. The women were given everything they desired, yet they were told to not pick the wild turnips that grew in this world. One of the women wistfully remembered the taste of the turnip and could not resist - she pulled one out – roots and all. This opened a hole in the Star World through which she could see her home and family far below. Overcome with homesickness, she braided the turnip roots as a ladder and began descending back to the earth. The rope broke, and she crashed to earth. She did not survive the fall, but the baby she carried did. This baby was then taken in and raised by a meadowlark. The baby’s name is Fallen Star. Eventually, the meadowlark became old and brought him to the Lakota People. Everywhere Fallen Star went among the people he was revered and respected.

2). One day, a boy and a girl were out playing when a giant bear caught sight of them and began chasing them. Terrified, they ran as fast as they could away from the hungry bear. Fallen Star saw them running and instructed them to go to an area where the earth was upraised. He then commanded the earth to rise up and the children were lifted safely out of the reach of the bear’s claws. In his rage

⁴⁶² Goodman, 1.

⁴⁶³ Vine Deloria, *God Is Red: A Native View Of Religion*, (Golden: Fulcrum, 1994), 62.

⁴⁶⁴ There are variations in the accounts of these encounters within Lakota culture.

and desperation at being unable to reach them, the bear clawed deep grooves into the sides of Mato Tipila. Today, the marks of the bear continue to be visual reminders of this important teaching; the Lakota people who visit this place today are connected to their living relatives, their ancestors in the Star World, and the earth, all through the shared remembering of this story.

3). In another story of Fallen Star, he saves the people from a red eagle who swoops down and steals and kills little girls. Fallen Star shoots the eagles and places the spirits of the little girls in the sky. The constellation is called *Wicinca Sakowin* in Lakota, (meaning seven little girls), or the Pleiades.

These stories can be understood on several levels. In a practical way, they highlight the critical importance of having unrestricted and unhindered access to these places to fulfill these obligations. On another level, they highlight conceptual categories that give rise to a specific way-of-being in the world (based on an understanding of interrelatedness), that provides prescriptions for how to live life. It is important to note that Fallen Star is quite unlike the eurochristian deity in several ways. Certainly, there is power associated with this entity (e.g., commanding the mountain to rise, protecting the people, placing the little girls in the constellation *Wicinca Sakowin*). Nevertheless, we understand this power as confirming interrelatedness among all living things, while clearly demonstrating that human beings are in need of guidance and help from other-than-human beings. As mentioned in Chapter One, Tinker writes that human beings are often perceived as the least intelligent Tinker writes, “everyone, from every infant to every so-called chief, has her or his place in the circle which has no head-of-the-line, top or bottom. Everyone is of equal importance.”⁴⁶⁵

⁴⁶⁵ Tinker, “American Indians And Ecotheology,” 7.

While our collateral/egalitarian image schema requires a full understanding of and respect for the interrelationship of all life in the world around us, it also summons a second image schema that pairs with the collateral/egalitarian. Namely, interrelationship with and respect for all of life and all persons (human and other-than-human equally) also give rise to the sense of balance with all life in the world.⁴⁶⁶

The ceremonial journey to the Hills, the correlation between stars and earth, the reciprocity and relationship between all living beings, in cognitive terminology, are embodied in metaphor. More importantly, it is critical that these prescriptions for how to live life are continue to be practiced, shared, and passed down for the continued survival and resistance of Lakota peoples. For example, Arvol Looking Horse (Cheyenne River Lakota), spiritual leader and defendant in *Bears Lodge v Babbit*, describing how Lakota peoples feel when seeing and hearing climbers on Mato Tipila (as they stake bolts into the rock sides), puts it succinctly and bluntly, “It is like they pounded something into our bodies.”⁴⁶⁷

By conflating the body of the butte with the body of the people, he is trying to move past the limits of language to describe and articulate the expansiveness of the Lakota worldview. Tinker explains that Indian peoples respect the consciousness of all living beings as “of equal and even higher stature than our own human consciousness.”⁴⁶⁸

There is consciousness and intelligence in rocks and humans, trees and buffaloes. Perhaps, this is where eurowestern scientific research should focus - on the consciousness of rocks or plants. At

⁴⁶⁶ Tinker, 7.

⁴⁶⁷ From a press release distributed by Indian Law Resource Center, “Victory For Indian Religion Freedom Court Rules Accommodations At Devils Tower Are Constitutional,” April 3, 1998.

⁴⁶⁸ Tinker, “Consciousness,” 125.

least, Indian people would be confident that once the consciousness of rocks is understood, the mystery of human consciousness will be a relatively simple matter to unlock...This is to argue for a shift in understanding that will allow us to see the cultural rootedness of all knowledge systems...finally grasping that even "sense" itself (including the sense that science is absolutely objective) is culturally shaped.⁴⁶⁹

The relationship between Lakota peoples, Paha Sapa, and Mato Tipila is affirmed through shared memory, history, stories, and experience. White Hat recounts that

at first, when all of creation was new, all relatives worked together and existed in a good way. As time passed, they began to abuse each other and the earth, their mother. Maka sent warnings but they were not heeded. Eventually, Maka called her children inside and “shook herself in a cleansing way.”⁴⁷⁰

The people who survived the recreation emerged in a place called Wind Cave, in The Black Hills. The place of the return, Black Elk states, is not arbitrary. Journalist Jacqueline Keeler (Diné/Ihanktonwan) describes testimony given by Black Elk, to the Senate Select Committee on Indian Affairs on July 6, 1986. Black Elk’s use of storytelling was meant to effectively counter continuous attempts to eliminate Lakota land claims to the Black Hills. Keeler notes that “the traditional Lakota folk story, the *ohunkaka*, is particularly suited for use in the political restructuring of the Lakota future, as it has embedded in it the symbology of culturally-specific features”⁴⁷¹ According to

⁴⁶⁹Tinker, 125.

⁴⁷⁰ White Hat, Duane Hollow Horn Bear, <https://www.youtube.com/watch?v=MhbXk63wMTI>. Accessed December 2015.

⁴⁷¹ Jacqueline Keeler, “The Black Hills and Stone Boy: A New Interpretation, tiospayenow.blogspot.com. October 12, 2013. Accessed April 20, 2018.

Keeler, Black Elk reaffirms the Lakota's ancient connection with Paha Sapa by demonstrating "traditional Ikce (Lakota) philosophical principles and theological concepts...[that Lakota peoples] have used for thousands of generations, that are still appropriate, particularly for the Black Hills."⁴⁷²

[Her] testimony...accomplishes a number of things: 1) It establishes the antiquity of the Lakota claims and use of the land; 2) shows the relationship between the religious practices of the Lakota to particular locations within the Black Hills; 3) organizes the culture – specific features (oral history, myth, astronomy, and linguistical knowledge) of the Lakota in a European definitional fashion; and 4) then transposes this into a traditional Lakota teaching story, the *ohunkaka* for the non-Lakota.⁴⁷³

Fulfilling ancient obligations, for Lakota peoples, continues today. Black Elk states that an annual journey begins at the center of Paha Sapa – *Pe'Sla* (Peace At A Bare Spot), and each ceremony is performed for the continuation of life.⁴⁷⁴ Knowledge of the stars, and close observation of the sun moving through different celestial bodies helps the people perform corresponding ceremonies on earth.⁴⁷⁵ The earthly place is Paha Sapa; the ceremonies are performed at specific sites, corresponding to celestial movements and representatives from Oceti Sakowin travel to perform these ceremonies By doing so,

⁴⁷² Keeler.

⁴⁷³ Keeler.

⁴⁷⁴ Jeffrey R. Hanson and Sally Chirinos, "Ethnographic Overview". Black Elk's testimony was submitted during this study. Her testimony based on oral history and ethnoastronomy before), describes the Black Hills as "a home base" for the Lakota, and Mato Tipila as "the place of renewal." See also <https://www.nps.gov/wica/learn/historyculture/upload/-11C-13-Chapter-Thirteen-Sacred-Ground-Chronology-and-Contr.pdf>. Accessed June 2017.

⁴⁷⁵ Lakota star knowledge is sophisticated and complex, and I am not competent to discuss in its complexity. *note to Tink and Richard: I am transcribing interviews with Lakota people re Paha Sapa and the correspondence between earth and stars and will add in the last chapter. For a more complete and detailed description of the correspondence between Paha Sapa, Mato Tipila, ceremony, and a guiding Lakota cosmological principle based on *ohokicilapi* (respect), please read Goodman's *Lakota Star Knowledge*.

Goodman affirms, they are “mirroring” the movements of the constellations on the ecliptic. In the previous chapter, I noted that the Lakota worldview is characterized by reciprocity and balance. The “mirroring” is based on a balance that is central – as above, so below.

Details in these contrasting stories from two different cultures are the building materials by which the worldview is constructed. The walls and roof, the “decorative” details within the house can vary; the foundation though, remains constant. I now turn to a deeper inquiry into how and why these different neural patterns are reproduced within specific, quite different cultures. Lakoff and Johnson help us understand the process by which cognitive models form in the brain, writing that

[c]omplex metaphors are formed from primary ones through conventional conceptual blending. In the process, long-term connections are learned that coactivate a number of primary metaphorical mappings.⁴⁷⁶

Conceptual categories form the bases of these distinct worldviews – one based on responsibility and the other on rights. In eurochristian stories for example, places where divine interventions and events take place are regularly hills or mountains, e.g. Sinai,⁴⁷⁷ Moriah,⁴⁷⁸ Nebo,⁴⁷⁹ Carmel,⁴⁸⁰ Mount of Beatitudes/Mount of Olives,⁴⁸¹

⁴⁷⁶ Lakoff and Johnson, *Philosophy*, 49.

⁴⁷⁷ Exodus 19, where Moses receives a revelation.

⁴⁷⁸ Genesis 22.

⁴⁷⁹ Deuteronomy 34, where Moses dies before entering the promised land.

⁴⁸⁰ 1 Kings 18. Where Elijah challenges other prophets of the Israelites.

⁴⁸¹ Matthew 5, 6, 7. Luke 6.

Golgotha.⁴⁸² This is important because we know in an Up-Down image schema “up” means “better.” In this context, “special,” “sacred,” and “holy” are entailments of “up/better.”. Important revelations are characteristically received by an individual, a messenger/prophet/, even if and when the revelation itself effects communities, nations, etc. The vision-recipient who delivers a message is always and invariably one man. The encounters are usually described as individualistic and personal.

Quite similar conceptual categories figured prominently in plaintiffs’ testimony in the court and are also shared by people who climb Devils Tower today. All consistently emphasize the *individual* nature of their experience of climbing, the ascension with personal religious revelations. Commercial guide Frank Sanders notes that climbing every day is a “sacred experience for me.”⁴⁸³ Sanders owns and operates Devils Tower Lodge, a bed and breakfast in nearby Hulett, Wyoming, where his guests can “use the power of Devils Tower to revitalize their Soul.”⁴⁸⁴ Most climbers that I speak with these days echo Sanders’ sentiments, describing their enthusiasm when they reach the summit. One climbing guide describes “the rush” he feels when climbing, especially upon reaching the summit.⁴⁸⁵ Another young man states “I find climbing to be a spiritual experience,” also wanting to make clear that he does not consider himself

⁴⁸²John 19: 16-18. The site of the crucifixion.

⁴⁸³ Personal interview, December 2017.

⁴⁸⁴ www.devilstowerlodge.com. Accessed June 11, 2018.

⁴⁸⁵ From an interview in Hulett, Wyoming on February 17, 2018.

“religious.”⁴⁸⁶ Lakoff and Johnson call this conflation, in other words, how *the same neural system engaged in perception, plays a role in conception*. The climbers and guides share identical conceptual categories that conflate *feelings* about “nature” and “spirituality,”⁴⁸⁷ with the physical sensation of climbing (especially to the top). What they all also share are similar categorizations of mind as representing in some “inner” realm the objects existing in the “external” world.⁴⁸⁸ This same conflation is evident in “America’s Best Idea,” describing the creation of United States National Parks as “The Protector of unmarred majestic beauty” and the NPS as “Guardians of the Nation’s Spirit.”⁴⁸⁹ There is something else shared by all with this belief system as well – a commitment to and a belief in the idea of having “rights” to their experiences, and the individual as the holder of these “paramount moral rights.”⁴⁹⁰ In the last chapter, I demonstrated that during the 15th century in Europe, papal authorities and other clerical officials, acting in unison with Christian monarchs, invented fictitious rights of discovery generated by what they called natural law, predicated on “immense confidence in [their]

⁴⁸⁶ From an interview at Devils Tower, conducted on September 30, 2017.

⁴⁸⁷ For example, the Campion Center of Ignatian Spirituality is a Jesuit ministry that emerged out of a “desire to invite people to experience the presence that is God in Nature” <http://www.ecojesuit.com/campion-centre-of-ignatian-spirituality-2018-program-on-being-with-god-in-nature/11172/>. This was formed in response to Pope Francis’ invitation to “reunite with God in the earth, “Laudato Si” Encyclical Letter, 2015. W2.vatican.va. There is now something called “eco-Dharma” – Buddhists working together for a sustainable environment, and Islamic cleric Zaid Shakir reminds Muslims of the importance of “our lives being integrated into the natural world” in.

⁴⁸⁸ Lakoff and Johnson, *Philosophy*, 391.

⁴⁸⁹ TITLE 16--NATIONAL PARKS, MILITARY PARKS, MONUMENTS, AND SEASHORES SUBCHAPTER I--NATIONAL PARK SERVICE. Organic *MAKE YOUR DEEN GREEN: MUSLIMS AND THEIR RESPONSIBILITY TO THE ENVIRONMENT*. <https://muslimmatters.org/2011/01/14/make-your-deen-green-muslims-and-their-responsibility-to-the-environment/> Act of 1916, (39 Stat. F35).

⁴⁹⁰ Jack Donnelly *International Human Rights*, Fourth Edition (Boulder, Westview Pres, 2013), 20.

own centrality.”⁴⁹¹ That centrality, I argue, is the embodiment of the Up-Down image schema. We can see the embodiment of the schema in the adamant testimony of the plaintiffs, as they each stress their individual “right” to climb Devils Tower, and their individual “right” to be free of what they named “religious proselytizing” on the part of the NPS.

Lakoff and Johnson help us better understand embodied metaphor with what they call the Source-Path-Goal Schema, or “Life Is A Purposeful Journey” metaphor, in which concepts like *toward*, *away*, *through*, and *along* are important. I discuss that more fully both at the conclusion of this chapter and the beginning of the next. The Source-Path-Goal schema helps us detect how worldview is reproduced, largely unconsciously. The schema is also useful for uncovering the deep structure of John Locke’s treatises on property and rights, foundational principles for today’s settlers. Locke describes how “one Man comes by a Power over another...for Reparation and Restraint...[and] for transgressing the Law of Nature.”⁴⁹² Exercising “rights” in an americo-juridical context is an embodied metaphor and entailment of the Law of Nature that, as I have argued, is a principle piece of the dominant worldview. When worldviews collide, radical difference is categorized as “transgression.” For the plaintiffs, their representatives, even the NPS, other climbers and tourists, and neighboring residents, this difference is categorized as going against the so-called laws of nature. Legal venues, and the system in which they

⁴⁹¹ Stephen Greenblatt, *Marvelous Possessions: The Wonder Of The New World*, (University of Chicago Press, 1991), 9.

⁴⁹² John Locke, *Two Treatises*, 272.

exist, are based on unconscious foundational hierarchical image schemas and the will to empire that emanates directly from the invention of natural law.

DIFFERENCE, NOT DIVERSITY

Chapter one included an inquiry into how the fictive “natural law” became codified in a developing rights discourse. Today, entailments of the metaphor appear as “truths” that dominate courtrooms where conflicts over land are adjudicated. Because the entailment process is largely unconscious, we may think of the embodiment as non-purposeful, even accidental. Not so. Eurochristian embodied entailments, coupled with colonization, have had historically hideous and genocidal effects - as when “a mighty pulverizing engine to break up the tribal mass” successfully gives U.S. presidents the authority to survey and divide tribally-held lands into individual parcels.⁴⁹³ These presumptions still dominate when Energy Transfer’s Dakota Access pipeline, a 1, 134 mile long ‘black snake’⁴⁹⁴ winds through three U.S. states, serving as a conduit for 500,000 barrels of fracked (and highly volatile) oil from the Bakken shale deposits in North Dakota to refineries in Illinois.⁴⁹⁵ It passes underneath the Missouri River less than one mile upstream of the mouth of the Cannon Ball River, and twelve river miles upstream from the Sisasapa/Hunkpapa (Standing Rock Sioux) reservation’s drinking

⁴⁹³ Theodore Roosevelt, *Addresses and Presidential Messages of Theodore Roosevelt, 1902-1904*, (NY: Knickerbocker Press, 1904), 336. He offered this as a description of the success of the 1887 Dawes Act.

⁴⁹⁴ In an interview in *The Guardian* published 18 August 2016, Iyuskin American Horse (Sicangu/Oglala Lakota) says that his elders told the people that if the black zuzeca sape (black snake) “comes across their land, the world will end.” American Horse gives this as one of the reasons he travelled to Cannonball, North Dakota, to make a stand with other water protectors against the construction of the pipeline, which he interprets as the black snake his elders warned of. <https://www.theguardian.com/us-news/2016/aug/18/north-dakota-pipeline-activists-bakken-oil-fields>. Accessed August 2018.

⁴⁹⁵ [http://www.enbridge.com/map#map:projects,search=dakota access pipeline](http://www.enbridge.com/map#map:projects,search=dakota%20access%20pipeline). Accessed July 2016.

water intake on the Missouri River at Fort Yates. These presumptions still dominate when treaties are ignored, and lands are stolen. Certainly, they dominate when Lakota peoples are restricted in terms of how and when they are allowed access to their own traditional homelands. Cognitive theory has been useful for helping us isolate key conceptual categories, deeply embedded in the eurochristian social imaginary, that are imposed as normative and taken to be truth. Contemporary Native scholars have argued that developments in federal Indian law are chapters in the epic conquest of these lands.⁴⁹⁶ Keeler, in a lecture titled “The Real Costs of the Bakken on Native Communities” offers an interesting argument about the conquest and colonization of lands of the Americas. She argues that the U.S. is *still* a colony, acting in the colonial interest of Great Britain, stating that “if you want to predict what the country will do, think to yourself ‘what would a colony do?’” The first colonies, she states, really started out as corporate entities. Today, that tradition continues, with corporations like TransCanada and Energy Transfer (owners of Keystone Excel and Dakota Access pipelines, respectively) exercising powers normally reserved for the government (like eminent domain). According to Keeler, colonial actions include, but are not limited to the following: invasion of others’ homelands, extracting the wealth as quickly as possible, and sending the wealth back to

⁴⁹⁶ See for example, Newcomb, *Pagans In The Promised Land*, George ‘Tink’ Tinker, *Missionary Conquest, American Indian Liberation*, Vine Deloria Jr. *God Is Red, Red Earth, White Lies, Custer Died For Your Sins*, Glenn T Morris in *Native Voices, American Indian Identity and Resistance*, Robert A. Williams, Jr. *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford, 1990), David E. Stannard, *American Holocaust: The Conquest of the New World* (NY: Oxford, 1992), Ward Churchill, *Kill The Indian, Save The Man* (Sa Francisco, City Lights, 2004), Stephen Greenblatt, *Marvelous Possessions: The Wonder of the New World*.

their ruling class – the 1%.⁴⁹⁷ John Locke’s political theory strongly supported England’s colonial, economic interest in the lands and peoples of the Americas: in a chapter titled “John Locke on Property,” Tinker revisits Locke’s investment in the Carolina Constitution and the ease with which his idea of “private property” propped up new colonial projects. Having become a live-in political consultant/financial advisor to politician Anthony Ashley Cooper (“lord Shaftesbury), in the late 1660s, mutual benefits accrued for both. Cooper (one of the wealthiest men of England), got a business manager, personal physician, and live-in scholar; for Locke it meant becoming secretary to the Lords Proprietors of the Carolina Corporation, followed by secretary of the Board of Trade and Plantations, and as such, receiving a Cooper’s “principal economic venture in the colonial enterprise.”⁴⁹⁸

The Carolina territories, or plantations, were to be ruled by a feudal aristocracy in order to generate the greatest wealth for the investors in England.

[I]n 1671 the “lords proprietors” of the Carolina Corporation elevated Locke himself to the status of nobility in the Carolina territory with the title of landgrave. This position of colonial nobility by regulation in the Carolina Constitutions, which were drafted by Locke a few years earlier, was accompanied with a grant of 48,000 acres of Indian land. With a minority share in the Carolina Province also came a seat in the colonial legislature of the carolina territory.⁴⁹⁹

⁴⁹⁷ “The Real Costs of the Bakken on Native Communities,” an excerpt from a fuller lecture, accessed here: <https://www.youtube.com/watch?v=VOI91n4c1Pg&feature=youtu.be>. The podcast interview can be accessed at <https://shadowproof.com/2017/02/12/us-still-colony-dakota-access-pipeline-keeler/>. Accessed August 2018.

⁴⁹⁸ Tinker, “John Locke on Property,” 49-59, (54).

⁴⁹⁹ Tinker, 55.

These damning insights are important in a larger context, as well. Colonization and religious conversion, being top priorities for early explorers acting on behalf of monarchs in the successful invasion and extraction of wealth. The monarchs in turn, were instructed by papal authorities to fulfill specific divinely-revealed directives. The *Requerimiento*, for example, (a document written on behalf of Spanish conquerors, and addressed to Native peoples who were “destined” to be subdued - new Canaanites, if you will), “asserted ultimate dominion to be themselves,”⁵⁰⁰ and gave Native peoples a choice: accept christian monarchs as kings of the lands or refuse to accept. Refusal was not certainly no option. Newcomb describes what Native communities could expect, should the decline the “many privileges...exemptions...and benefits.”⁵⁰¹

We shall powerfully enter into your country and shall make war against you in all ways and manners that we can and shall subject you to the yoke and obedience of the Church and of their Highnesses; we shall take you and your wives and your children and shall make slaves of them.⁵⁰²

Encomienda was created as a policy of fixed tribute whereby daily wages of the people enslaved by Columbus and his men were immediately transferred back to the Crown to hasten the amassing of “fortunes from a transplanted feudal system [and] nourished by Indian slaves.”⁵⁰³ This policy was implemented by the pope’s 1493 bequest

⁵⁰⁰ Part of Supreme Court Chief Justice John Marshall’s decision in *Johnson v Mc’Intosh*, 21 U.S. (8 Wheat.) 543 (1823), at 577. Newcomb shows that the decisions reached in the Marshall Trilogy rely heavily on idealized cognitive metaphors like the Conqueror and Chosen People–Promised Land that are taken directly from biblical sources.

⁵⁰¹ Newcomb, *Pagans*, 35.

⁵⁰² Newcomb, 35.

⁵⁰³ Robert A. Williams, Jr. *The American Indian in Western Legal Thought: The Discourses Of Conquest*, (NY: Oxford, 1990), 83.

of title, mandating that Indians be christianized and “civilized” by the Spanish Crown. Forcibly denying the Indians their freedom and appropriating their labor aided the Spanish crown in their “civilizing,” colonizing tasks.

Upon the arrival of the so-called “discoverers” they justified their deeds by saying that they came to civilize us. I wonder, what did they mean by ‘civilization’? In our understanding and experience, civilization means the dispossession of our lands, the demise of our culture, and the attempt to make White people out of us. As you can see, from the beginning our relations with the Whites have been based on mistaken ideas and lack of knowledge of Indigenous peoples’ realities.⁵⁰⁴

The European nations that joined the colonizing enterprise claimed “rights” to take the lands and enslave the people (whom they did not regard as human beings, in most cases); as discussed “rights” developed out of a powerful cognitive model – “chosen people-promised land.” That image continues to dominate eurochristian land-use laws that privilege “rights” and so frames a discourse that is used exclusively, and at the expense of, Indigenous ways.

DISCUSSION

How can understanding cognitive processes identify what is at stake in these battles and get at the underlying causes of unresolved conflicts? What has been established so far? Mental operations and structures are involved in language, meaning, perception, conceptual systems, and reason. Mental operations may be similar cross-culturally, but meaning, perception, and conception are radically different and often

⁵⁰⁴ Bruno Barras, “Life Projects: Development Our Way,” *In The Way Of Development: Indigenous Peoples, Life Projects, and Globalizations*, edited by Mario Blaser, Harvey A. Feit, & Glenn McRae, (London: Zed Books, 2004), 47.

incompatible between different communities – this is horrifically intensified due to historical and ongoing cultural genocide. Our actions in the world are generated by and rooted in our culture; in other words, “every experience takes place within a vast background of cultural presuppositions.”⁵⁰⁵ The presuppositions are continuously reproduced and our experience of things “depends crucially on our bodies.”⁵⁰⁶ Newcomb shows that beginning in 4th century Europe, widely-shared cognitive models became indistinguishable from the overwhelming imposition of empire. During The Crusades, popes gave themselves supreme authority under what they called the Petrine mandate.⁵⁰⁷ As part of the mandate they specified that “infidels ought to be compelled by the secular arm and war be declared...directing Christian princes to lead armies of conquest.”⁵⁰⁸ Entailments of the divine directive continued in the colonization of this land, embodied in conquest and conversion. Newcomb’s solid argument proves that three Supreme Court decisions from the 19th century (known as the Marshall Trilogy), are completely dependent on and supported by passages from Genesis about how “the Lord (*dominus*) granted...the right to subdue and exercise dominion.”⁵⁰⁹ My argument, while closely related, has been to emphasize that the invention of rights and the associated discourse

⁵⁰⁵ Lakoff and Johnson, *Metaphors We Live By*, (Chicago: University of Chicago Press, 1980) 57.

⁵⁰⁶ Lakoff and Johnson (1980, 1999).

⁵⁰⁷ Robert A. Williams, Jr. *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford, 1990), 13.

⁵⁰⁸ Williams, 14.

⁵⁰⁹ Newcomb, *Pagans In The Promised Land*, 39.

emanate from the same conceptual categories that contributed heavily to the invention of federal Indian law.

Returning to cognitive theory, a conceptual metaphor is formed when what is called a target domain is conceptualized in terms of a source domain, such as when love or life is conceptualized in terms of a journey, thus creating the conceptual metaphors Love is a journey and life is a journey. Let's apply that in the context of ongoing colonization: Native lands of the North America (target domain) are understood in terms of the promised land in the Old Testament narrative (source domain); the result is two conceptual metaphors: (1) Native lands are the promised land (promised by God to the United States), and (2) The American People (read White, euroamerican people) are the Chosen People (chosen by God to take over Native lands of North America). The Canaanites (pagans or heathens) in the Old Testament narrative are a source domain concept carried over to the target domain concept of America Indians, thus resulting in the conceptual metaphor America Indians Are The Canaanites Or Pagans In The Promised Land.⁵¹⁰

MATO TIPILA (TARGET DOMAIN)

The plaintiffs in the case over contesting interests at Mato Tipila asserted violation of the Establishment Clause. The assertion and their claim comprise an embodied entailment of the chosen-people/promised-land image schema and was the heart of their argument. Mato Tipila (target domain) understood in terms of promised land (source domain), result in the conceptual metaphor that Lakota lands are promised

⁵¹⁰ Newcomb, xxii-xxiii.

lands, and White settlers are chosen to possess them. These biblically-based metaphors are secularized under the U.S. Bill of Rights, and The Establishment Clause, which includes the *right* to free exercise of religion without government establishment of such. The plaintiffs claimed that rights were being violated because the NPS “coerced would-be climbers to support and engage in a religious observance with which they do not agree.”⁵¹¹ Since I have demonstrated the link between contemporary human rights and 17th century England, (most certainly to Locke), then land as “property”— whether public or private – is a conflation arising from a historical equating of ownership and rights.⁵¹² By extension (entailments always replicate and reproduce), the government (in this case, the Department of the Interior and the NPS), as the administrators of public lands, has the “right” to determine how and when they are accessed and used. Because Devils Tower is set-aside for shared-use, those whose use is in conflict stress their own individual claims to it. We can now see that the ideological source of the plaintiffs’ claims (rights) is biblically-based! The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, is conceptualized based on a categorization of humanity’s ontological superiority: “Human rights...arise from humanity. The underlying purpose of human rights is to allow human being to pursue their own vision of the good life.”⁵¹³ The place of superiority that human beings claim in this eurocentric and anthropocentric vision, is a consistent biblical theme.

⁵¹¹ Bear Lodge Multiple Use Association, v. Bruce Babbitt, No. 98-8021, Opening Brief of Plaintiffs.

⁵¹² Locke, *Two Treatises*.

⁵¹³ Jack Donnelly, *International Human Rights*, 21,46.

Defendants Romanus Bear Stops and Arvol Looking Horse, in order to articulate their concerns in this setting, had to make use of conceptual categories intrinsic to the eurochristian worldview, choosing terms like “rights,” “sacred land,” “pray” and “religion.” It certainly appears that their strategy was a necessary one, since we understand that legal systems in the U.S. frame conflicts over land exclusively in these terms. Religious “rights” at Mato Tipila are entailments of the “chosen people/promised land” model that cognitively props up a conception of land as own-able, as property. Therefore, assuming the colonizer’s terminology seemed the only viable option. However, ownership held in the “public good” for right of access, countered by their historic claims to usage of the site resulted in a profound impasse that we now know is inadequately resolved in courts of law. The nature of the conflict between rock climbers and Lakota communities is obscured when confined to “rights” to practice “religion.” Lakota usage comes into conflict with current recreational usage...accessible to (especially) recreational users, and yet they are confronted with Lakota claims to Mato Tipila. Trying to resolve the conflict means falling into the trap of using religious language, which resulted in recreational users claiming their own religious prerogatives, i.e., climbing is a spiritual experience, etc.

Tinker describes mistranslations like this that occur when it is assumed that a word or concept in one language necessarily has a corresponding term in another. Metaphors of language “do not seem like metaphors at all but rather are words and phrases that speakers of a language simply automatically presume to be reality...

embedded in people's bodily experience of spatial orientation."⁵¹⁴ This is especially true in a colonizing context: concepts are categorized in terms of language and experience, the process is largely unconscious and thus, the frames of reference are limited by *one* way of seeing and being.

"Rights," even including the third generation of collective rights, which are not really legal rights, but are either political or social principles without any legal force,⁵¹⁵ strictly limit how land is perceived and used. This discourse helps formulate and dictate laws that uphold private ownership on the one hand, and public-use places on the other. The categories ultimately conceive of land as commodity. They promote rights of individuals, even in a collective sense, whether in issues of private property or the right to public use; they are radically antithetical to Lakota relationships to land, they neither address or resolve underlying reasons for conflict, and for these reasons and more, they perpetuate cultural genocide. Colonial expansionism, predicated on ideas of private property and the myth of "uncultivated" lands, ironically resulted in the creation of set-aside lands, because the perceived need for these places coincided with settler's concerns about rapid depletion of natural resources, and the disappearance of so-called "wild places." The atavistic nostalgia for "wilderness," like other aspects of embodied mind, derives from a metaphorical thought process historically embedded in the biblical tales

⁵¹⁴ Tink Tinker, "American Indians and Ecotheology, 4.

⁵¹⁵ Ralph G. Steinhardt, Paul L. Hoggman, Christopher N. Camponovo. 2009, MN: Thomson/Reuters, International Human Rights Lawyering: Cases and Materials, 2009, MN: Thomson/Reuters, p 14. The evolution of human rights theory has been expanded to include a third-generation of rights: Collective Rights. "These rights are still human rights; the effective exercise of collective rights is a precondition to the exercise of other rights, political or economic or both".

described above. Characteristics of the eurochristian embodied mind have become “normalized” under rule-of-law discourse and other inventive conceptual categories created in Europe and transplanted here through the twinned colonizing/missionizing process.

Ralph G. Steinhardt states “the idea that human beings have rights simply by virtue of being human is in some ways an ancient idea, although the notion that it has a *legal* dimension...is of considerably more recent vintage since for most of human history, one states’ treatment of its own citizens was its own business.⁵¹⁶ His statement underscores a radical bias, though not uncommonly held. State systems are a modern development; prior to contact with European invaders, Native communities had their own autonomous systems of governance. But human rights are upheld by the apparatus of the state; as a result, court cases about land use are saturated with terms and concepts related to the rights of the state versus the rights of the individual. The codification of these conceptions as law, even when they include language of collective rights are structured by concepts of public use that stress rights of individuals to share the space – each individual claim is as legally valid as the next. Laws in place at national parks and monuments are predicated on the dominant worldview that cannot conceive of land apart from the possession of it. Ownership is based on rights, and rights are conceived as god-given aspects of natural law. Land is divinely granted to chosen people. These grants then become authoritative and codified as state ownership, and the taking over, possessing, and profiting from Indigenously held land and resources, acutely enacted at set-asides, is

⁵¹⁶Steinhardt et al., 2.

an example. The discourse that implements these schemas within colonizing nation-states via conceptual categories including “freedom” and “religious rights” reifies the status quo and reproduces the dominant worldview.

I take seriously (as the title suggests) that there is *no* common ground. Rather, we should accept an ultimate incommensurability, foundationally present in worldview. In worldviews that are so radically distinct from one another as euro-western cultures are from American Indian cultures, the list of words and phrases that cannot be easily translated tends to be quite large – even after five centuries of colonialization and conquest of one over the other.⁵¹⁷ Even before language however, the way we understand the world is predicated on and preceded by, our experience/perception of it. We construct our world starting with direct experience and perception; and “the prime candidates for concepts that are understood directly are the simple spatial concepts.”⁵¹⁸ The mind forms structures that allow us to mentally characterize our categories and reason about them. Both the categories and the reasoning are culturally specific; *how* and *what* we think generates from, and is shaped by, who we think of as relatives. The mind, “an embodied process formed in interaction with the physical and social world,”⁵¹⁹ means that how we think is a process dependent on our embodied interactions in the world. Perceptions and conceptions are conflated and translated into image schemas; these are part of the structure and operation of human imagination and actions. The conflict at Mato Tipila

⁵¹⁷ Tink Tinker, “Preface” A Note on Language and Translation, unpublished manuscript.

⁵¹⁸ Lakoff and Johnson, *Metaphors*, 56.

⁵¹⁹ Steven L. Winter, *A Clearing In The Forest*, (IL: Univ. of Chicago Press, 2001), xii.

then, can only be understood on a deeper level by acknowledging and really allowing for quite specific and radically disparate orientations.

We know that discursive constraints on how Bears Lodge Multiple Use Assn vs. Babbitt was adjudicated are a result of a powerful image schema - Up-Down. Thought patterns are *re*generated and maintained through experiences and ongoing interactions. Eurochristian histories and narratives replicate exceptionalism and also include falsehoods that “have dominated characterizations of the Americas’ native people for centuries.”⁵²⁰ For colonizers, The Black Hills are undoubtedly a material symbol of the romance of western expansion. Throughout the West, many sites have been preserved and set aside to promote an idealized narrative of the “Wild West” and the heroic White settler frontier. These components of worldview are shared, they are derivative of common, base level conceptual categories.

Just think of how and why Devils Tower got its name. According to NPS literature, it is the result of a mistranslation of ‘Bad Gods Tower’ – a designation reported to Richard Irving Dodge during an 1875 illegal expedition into the Black Hills.⁵²¹ In *The Black Hills*, Dodge reports that the “Indians call this shaft The Bad God’s Tower, a name

⁵²⁰ David E. Stannard, *American Holocaust: The Conquest Of The New World*, (NY: Oxford, 1992) 11.

⁵²¹ The excursion was in violation of Article II of the Second Treaty of Fort Laramie in 1868 (United States, *Statutes at Large*, 15 Stat. 635 (1868)). Designated for the ‘absolute and undisturbed use and occupation of the Indians named herein.’ the Black Hills were included in the reservation territory ‘commencing on the East bank of the Missouri River, where the 46th parallel of north latitude crosses the same thence along low water mark down said east bank to a point...where the northern line of the state of Nebraska strikes the river, then west across said river and along the northern line of Nebraska to the 104th degree of longitude...thence north on said meridian to a point where the 46th parallel of north latitude intercepts the same.’ As to the designation, Neil Evernden, in *The Social Creation of Nature*. (Johns Hopkins University, 1992), makes the case that many geographical areas were given diabolical place names as indicative of more than European settlers’ attempts to equate American Indian cultures with ‘evil,’ but also indicate a bifurcation between human beings and the natural world.

adopted, with proper modification, by our surveyors.”⁵²² Why the diabolical connotation? It reflects several things – the perceived binary at the root of European philosophical procedures (a perceived separation between mind and body, a separation between human beings and opposition between “good” and “evil”). It also uncovers an ontological *abjection* at the deepest level. The name is initially misleading, but it perfectly captures a paradox – a collective, atavistic longing to return to Eden – to something idyllic and pure, while *at the same time*, unconsciously adopting the entailment of estrangement from the world itself. The abjective conceptualization follows a complex metaphorical mapping – Lakoff and Johnson identify as the “A Purposeful Life Is A Journey” metaphor, a mapping that I argue is an all-important one in the Euro-Christian set of logics.

It is important to bear in mind that conceptual metaphors go beyond the conceptual; they have consequences for material culture. And yet...this complex metaphor does not have an experiential grounding of its own...there are cultures around the world in which this metaphor does not exist.⁵²³

Extending the metaphorical model, we might say that having purpose in life gives you “goals to reach,” forces you to map out a way to accomplish those goals and allows you then to think about what might be standing in the way of achieving those goals. My analysis of stories from the Hebrew Bible shows the Euro-Christian metaphorical mapping as follows:

Humans are separate from the natural world (as a result of expulsion from the original homeland and the transgressions of the prototypical human - Adam).

⁵²² Richard Irving Dodge, *The Black Hills* (New York: James Miller, 1876), 95.

⁵²³ Lakoff and Johnson, *Philosophy*, 63.

Humans are on a historical trajectory in which ideal prototypes (Eden, New World) will be restored and/or reclaimed.

“Chosen” humans are instructed to inhabit lands (understood as inert, own-able, awe-inspiring and “promised,” that also must be saved, preserved, and conserved). The land is also a stand-in for the original prototypical place - Eden - (Israel, the lands of this continent, etc).

“Un-chosen” peoples (Canaanites, Indigenous peoples of the Americas) are obstacles in the way of achieving the goals.

The people standing in the way must be conquered or annihilated.

Soteriological components of the eurochristian worldview emanate from imagining those ideal forms of creation (linked to salvation) that are dimly replicated in some earthly places. Again, paradise, the prototype⁵²⁴ (an idealized category) is the “up” of the image schema.⁵²⁵ In the eurochristian worldview, Eden/Paradise/the Garden - a paradisiacal homeland first described in the opening chapters of Genesis, functions cognitively as prototype. The model informs eurochristian construals of place/land. Expulsion from it signals a shared conflation – loss of, and alienation from home/land, fused with a profound, shared, embodied existential alienation from the natural world. Resolution, (salvation), is construed as a returning to (re-gaining) it. The prototypes, models and image schema function as shared neural patterns that “optimize, and extend categories radially, adding extensions to the central category structures [already

⁵²⁴ Lakoff and Johnson, *Philosophy*, 19.

⁵²⁵ Lakoff & Johnson, *Metaphors*, 119.

present].”⁵²⁶ Entailments arose as the first invading explorers, encountering what they described as the “New World,” immediately began to categorize who they encountered and what they experienced. This entailment process though, was complicated, because the missionizing colonizers were arriving in unfamiliar territories – some recognized that there were abundant and thriving communities in varied geographical areas, others, moving steadily west, saw only “wilderness,” and “unopened, virginal lands.”⁵²⁷ In either case, the presence of communities with sophisticated domestic political systems and formal networks of international alliances⁵²⁸ did not coincide with the specific, idealized standard. The profundity of dissonance, coupled with the abjective loss of paradise and homeland, meant these unfamiliar lands and resources were thus perceived as “stand-ins,” through the entailment process of embodied metaphor. To capture, enclose, possess, and (for some) to preserve, all as a means of taking rightful ownership, meant to eradicate, remove, and displace people whose presence was incompatible with the cognitive categorization.

The prototype is replicated in other eurochristian textual sources. John Muir, in his “glacial gospel” muses that glaciation only “increased the glory of God’s creation,” sparking in people “an abiding awe of nature...that by studying and exploring...people could be transformed. They could be born again.”⁵²⁹ In a dramatic speech, we can

⁵²⁶ Lakoff and Johnson, *Philosophy*, 500.

⁵²⁷ David E. Stannard, *American Holocaust: The Conquest of the New World*, (NY: Oxford, 1992), 13.

⁵²⁸ Stannard, 27.

⁵²⁹ John Muir, *Letters From Alaska*, edited by Robert Engberg and Bruce Merrell (Madison: University of Wisconsin Press, 1993), xxv.

identify the biblical origin of the Up-Down image schema. Muir, arguing that only federal protection, (an entity “in charge”), could preserve the great spaces of the West from his “personal demon” (development). He laments that “through all the wonderful, eventful centuries...God has cared for these trees and saved them from drought, disease, avalanches, and a thousand straining, leveling tempests and floods; but he cannot save them from fools.”⁵³⁰

Shared tenets of the eurochristian worldview, we can now see, are the building materials for a way-of-being in the world that is distinctly associated with a colonizing culture, an imperial, destiny-driven habitus, an anthropocentric orientation, and an acquisitive domination. The worldview reproduces itself through metaphorical entailments...one following another and another. Ironically, these tenets are replicated in the narratives of environmental conservation and preservation, and not surprisingly, are enshrined in rights theory.

Human beings have rights simply because they are human.

Being human cannot be renounced, lot, or forfeited.

Even the unjustly wealthy have a right to their property.

Rights have a *prima facie* priority – rights claims “trump” other types of claims.

Rights provide a moral standard...or legitimacy.⁵³¹

⁵³⁰ Time Magazine, “Father Of Our National Parks,” *America’s National Parks: Celebrating Our Land and Heritage*, on display until 8/10/18. Excerpt taken from Muir’s 1871 book, *A Thousand-Miles Walk to The Gulf*, ed. William Frederic Badè, (Boston And New York: Houghton Mifflin Company The Riverside Press Cambridge, 1916).

⁵³¹ Jack Donnelly, *International Human Rights*, 20-21.

TUNKASILA

American people tend to be mono-lingual. And as a result, many Americans hold relatively simplistic and naïve notions about language and tend to think of languages as codes for one another. Thus, any word or any phrase in one language, according to this reasoning, can necessarily be translated into some word or phrase in any other language once we know the code...There are a great many [other] words that defy easy translation or understanding in the English speaking world or in the world of American Indians.⁵³²

Looking Horse referred to “Tunkasila Wakan Tanka” to offer what the court presumably took as an analogous term for the eurochristian god, or “holy.” Other co-defendants, also submitted formal affidavits in which they articulated their concerns, within the dominant frame.

I am submitting this affidavit to speak about the importance of being able to worship without interference from climbers at “Devils Tower.” Mato Tipila is pure. It is a sacred site without which our people cannot preserve our traditional culture and spirituality.”⁵³³

Bear Stops went on to try to describe the intrusive experience of being approached by climbers when “seeking visions at Mato Tipila by fasting and praying” and how the “climbers’ presence, and the noise and serious distractions they cause, interfere with our traditional religious and cultural ceremonies.”⁵³⁴ Looking Horse also added that these places “must be protected...the isolation and quiet must be

⁵³² Tink Tinker, “Preface: A Note on Language and Translation, unpublished manuscript.

⁵³³ United States District Court For The District Of Wyoming, Affidavit of Romanus Bear Stops, Bear Lodge Multiple Use Association *et al.*, v Bruce Babbit, *et al* Civ. NO. 96-CV-063-D.

⁵³⁴ The defendants changed ‘religious’ to ‘cultural’ activities during the appeal.

preserved...[for] praying to Tunkasila Wakan Tanka.”⁵³⁵ He then described the effect that the intrusions have on the entire community.

It affects us psychologically and spiritually when non-Indian climbers see us and come near us when we have ceremonies and pray. When people climb on this sacred butte and hammer metal objects into it, the butte is defiled and our worship is intruded upon. **It is like they pounded something into our bodies.**⁵³⁶

These are more than just different perceptions and alternative ways by which the Lakotas give place-names. They reveal a sophisticated knowledge that has been part of Lakota cosmology, according to Goodman, for *at least* three thousand years. The most basic etymological analysis demonstrates the incompatibility with concepts of the euro-west and yet it is the defense strategy to litigate within these conceptual linguistic terms. Tunkasila is “one who has been from the beginning until now and is related to me and held dear.”⁵³⁷ Tinker points out that in the Osage language, for example, the concept of *Wakonda* has no correlation with the euro-western, anthropomorphized male sky god/supreme being. Likewise, the Latin and Old English roots of sacred and holy are descriptive of experiences that do not correspond in any Indian community and culture. The strategy adopted by Indigenous peoples who are pulled into legal struggles over their traditional lands is difficult to avoid but limited in effectiveness. However, I think Looking Horse’s descriptive language is an attempt to speak to the important Lakota concept – *relationality*. Looking Horse accomplishes two things at once: he, by necessity,

⁵³⁵ United States District Court For The District Of Wyoming, Affidavit of Arvol Looking Horse, Bear Lodge Multiple Use Association *et al.*, v Bruce Babbit, *et al* Civ. NO. 96-CV-063-D.

⁵³⁶ Affidavit.

⁵³⁷ Affidavit.

acknowledged the binary of eurochristian thought (always present in legal discourse), by making a distinction between the body of the land and the body of the people (“it is like...), but at the same time, demonstrating that there is no distinction, no binary, in a Lakota sense. This is through an implied reference to “all my relatives” as central to the Lakota worldview. Still, by describing Indigenous conceptions of, and relationships to land as “ancient expressions of cultural obligation,” Tinker notes that using the terms “religious” or “religion” reifies the conflict over land and sets up native interests for loss in courts of law. Relationship to the land means that “we are caretakers to the land...we pay attention to the land and the land pays attention to us.”⁵³⁸ This reciprocity, a critical component of Lakota conceptual schemas, stands in contrast to eurochristian image schemas. Finally, the statement reveals the embodied nature of perception.

At the end of the day, the NPS, the plaintiffs, and others involved in the case and the drafting of the FCMP, can only conceive of this conflict in terms of whether individual rights are being violated. As the final ruling from the appeals court and the FCMP indicates, this is how they decided what was at stake in the case. They are only able to articulate their concerns through anthropocentric image schemas from hierarchical conceptual categories. Lakota concerns are simply not addressed because of “linguistic complexities...and the imposition of categories of cognition...as though they represent some normative universality.”⁵³⁹

⁵³⁸ From a conversation with Professor Tinker on 11 October 2013.

⁵³⁹ Tinker, “Why I Do Not Believe”.

Those in positions of power to arbitrate this and other conflicts over land impose exclusive use of the language of dominant society and thus not only fail to address traditional Lakota ways of thinking and being in the world, but also showed a lack of awareness that there *are* different ways of thinking. This ethnocentric bias is part of the larger phenomenon of colonization. Even using cognitive theory to describe this reality has certain limitations. The theory (conceived within the parameters of a eurochristian worldview), does not take into account the effects that centuries of invasion and colonization have had on Indigenous cultures and the discrete conceptual structures of particular communities, namely the Lakota. It is also limited by several eurochristian assumptions. The first is that an autonomous capacity of reason is what makes us essentially human and distinguishes us from all other animals. Another is that the detailed structures of our brains have been shaped by evolution, a theory that in and of itself speaks to the eurochristian patriarchal, staged, sequential paradigm. So even as theorists seek to challenge philosophical constraints, their theories are grounded in a paradigm that promote unilineal progression, (myth of progress), and a way of understanding events and history as temporal.

The imposition of the eurochristian paradigms present in worldview perpetuate cultural genocide. At Pine Ridge Indian Reservation, life expectancy is the second lowest in the Western hemisphere. There is an 80 to 90 percent unemployment rate with a median individual income of \$4,000 a year. More than 80 percent of residents suffer from alcoholism. A quarter of children are born with fetal alcohol syndrome or similar conditions. The tuberculosis and diabetes rates are eight times the national averages,

while the cervical cancer rate is five times more than the US average.⁵⁴⁰ The rates of teen suicides⁵⁴¹ and the numbers of missing and murdered Lakota women⁵⁴² continues to rise.

GROUNDED NORMATIVITY

Still, contemporary issues surrounding land, communities, and the law, analyzed through the lens of cognitive theory, can give us extraordinary insights into how we come to know the world *differently*, and call into question what Lakoff and Johnson have called the Folk Theory Of The Natural Order.⁵⁴³ Because “metaphor is centrally a matter of thought,”⁵⁴⁴ we can identify how certain models based on mapping a natural order of domination are transposed onto a moral order.⁵⁴⁵ These days, another U.S. national monument is more notorious because of extensive media coverage and political unrest around public spaces; I cover this fully in chapter three. Bears Ears National Monument has been in the news since on December 4, 2017, President Donald Trump signed two proclamations with the intent of shrinking the area by over half of its current acreage. Lawsuits⁵⁴⁶ brought by the Bears Ears Inter-tribal coalition and outdoor

⁵⁴⁰ <http://www.aljazeera.com/indepth/features/2016/10/life-pine-ridge-native-american-reservation-161031113119935.html>. Accessed July 2018.

⁵⁴¹ <http://projects.aljazeera.com/2016/02/pine-ridge-teen-suicide/>. Accessed July 2018.

⁵⁴² <https://www.lakotalaw.org/news/2017-12-05/notinvisible>. Accessed June 2018.

⁵⁴³ Lakoff and Johnson, *Philosophy*, 303.

⁵⁴⁴ Lakoff and Johnson, 123.

⁵⁴⁵ Lakoff and Johnson, 303.

⁵⁴⁶ The Bears Ears Inter-Tribal Coalition—consisting of the Hopi, Navajo Nation, Southern Ute, Ute Mountain and Zuni Nations—were among the first to file their suit hours after the president's announcement.

companies like REI and Patagonia underscore what's at stake in the fight over public lands. Conflicting interests of American Indian nations and non-Native environmental constituents becomes muted when there *appears* to be a common enemy. However, the history of White environmentalists, preservationists, and conservationists working with Indigenous communities as allies to protect land from development and other predations shows that this relationship is a double-edged sword.⁵⁴⁷ The alliances between Indigenous communities (Bears Ears Inter-Tribal Coalition of representatives from Hopi, Navajo, Ute Mountain, Zuni, Pueblo, and Ute communities) Native American Rights Fund, and outdoor enthusiasts⁵⁴⁸ seem promising and yet they are ultimately compromised by the exclusive use of "rights" discourse at the expense of communally-centric ways of respecting and understanding land. They remain stuck within the parameters set by the eurochristian worldview. That drawback is the topic of the next chapter.

Specific models of this worldview continue to generate and perpetuate a shared belief of euroamerican moral superiority and supersession, resulting in ongoing genocide of Native Peoples. This, in no small part, is the result of a cognitive conflation of exceptionalism and conquest. In a most obvious way, as in most encounters between people with significantly different ways-of-being, the potential for misunderstanding is immense. However Native communities and the lands they have called home for

⁵⁴⁷ As an example please see <https://indiancountrymedianetwork.com/culture/social-issues/yupik-teen-hunter-receives-death-threats/>. https://www.huffingtonpost.ca/2016/11/19/angry-inuk-film_n_12527482.html. Accessed January 2018. These are two relatively recent examples. For others please see Jim Igoe 'Global indigenes and spaceship earth: Convergence, Space, and Re-entry Friction, *Globalizations*, 01, December 2005, Volume 2 (3), 377-390.

⁵⁴⁸ These include Patagonia, Chaco Sandals, Leonard DiCaprio Foundation, Conservation Alliance, among others.

millennia have been stolen through procedures that normalize specific metaphorical concepts and make invisible Lakota concepts.⁵⁴⁹ The reproductive processes may be better understood when we actually begin to understand central principles of the embodied mind.

This chapter has shown how conceptual structures (how we think) arises from our sensorimotor experiences (our bodies and embodied experience). Spatial orientations arise from the fact that “we have bodies of the sort we have and that they function as they do in our physical environment.”⁵⁵⁰ These orientations are rooted in our specific communities/cultures. Human beings perceive the world around us at a most basic level, formed by collections of embodied,⁵⁵¹ orientational metaphors⁵⁵² that generate specific conceptual structures. Those structures give rise to actions. These actions arise from largely unconscious processes that nevertheless, have real and often devastating consequences. Thought being largely metaphorical, we can see that power generates and functions via a social imaginary. Images and schemas of the dominant metanarrative give rise to structural violence, such that the cognitive patterns from which the images arise and are constituted, are obscured. The system of communication that organizes giving and sending of information is systemically dominated by an ethos of radical

⁵⁴⁹ Stannard argues that the destruction of Indians of the Americas was, far and away, the most massive act of genocide in the history of the world. David Stannard, *American Holocaust*, (NY: Oxford, 1992), x.

⁵⁵⁰ Lakoff and Johnson *Metaphors*, 14.

⁵⁵¹ By the mid – to late 1970’s, a second generation of cognitive scientists challenged certain tenets associated with ‘cognitivism,’ in light of new evidence showing ‘a strong dependence of concepts and reason upon the body.’ Lakoff and Johnson, *Philosophy*, 77.

⁵⁵² Lakoff & Johnson, *Metaphors*, 6.

individualism and an internalized presumption that human beings are cosmologically separate and superior to all else that lives.

This hegemony of identity and authority emerges when Lakota claims are not assessed and addressed on equal grounds in places of significance. Challenging this requires adopting strategies in a counteractive manner. If hegemonic tactics are never totalizing, then perhaps understanding more fully about these cognitive processes, the relationship between perception and conception, and the embodied mind, evident in symbols, practices, codes, *may* successfully resist the reproduction of the dominant paradigm. That is the topic of the final chapter.

CHAPTER FIVE

A Christian Ministry in the National Parks (ACMNP) is a special Christian movement extending the ministry of Christ to the millions of people who live, work, and vacation in our National Parks, Forests, and Service Areas. Participants are paid for their work by the Park companies. Supervision is provided by a local Park ministry committee in each area, supplemented by nearby pastors and the National staff.⁵⁵³

The interests of the colonizer are invariably upheld in legal battles over land. That means that interests and commitments of Lakota and other Indigenous communities with regard to their traditional homelands remain grossly distorted, ignored, devalued, and invisibilized throughout entire litigious processes. This is not surprising since the American judicial system is always reinvented and legitimated by racist laws that authorize unending appropriation and colonization of lands and peoples. Each particular case and any subsequent plans for “resolution” reflect a perpetual, systemic recreation of Euro-Christian embodied metaphors; courtrooms are exactly the right environment for ensuring that the Euro-Christian worldview remains dominant. That much seems obvious – the Up-down image schema is pervasive (i.e. secular black-robess⁵⁵⁴ “in charge,” sitting *above* litigants and spectators; the obligatory standing and sitting, the taking oaths and

⁵⁵³ Bear Lodge Multiple Use Association, *et al.*, Plaintiffs, v. Bruce Babbitt, *et al.*, and Cheyenne River Sioux Tribe, *et al.*, Defendant-Intervenors. Defendant-Intervenors’ Brief on The Merits. Civ. No. 96-CV-063-D, 7. Defense exhibits J1, J4, J8, and J9. “A Christian Ministry in the National Parks” general information forms and applications.

⁵⁵⁴ Tinker, in *Missionary Conquest*, 91, writes that “Indian people more often than not . . . responded to” Jesuits, other Catholic and occasionally Episcopal priests not as people, “but to his black robe of office.”

swearing on bibles). However, there is something else outside of courtrooms that effectively fosters favorable conditions for White settlers to assert and defend claims to land. Here's how it works: an interrelated network of mediated, social institutions – (judicial, political, educational, ideological, and so on) has successfully duped White America into believing that a new civil war is brewing. The battle sites, it is imagined, are on public lands.

This final chapter is organized into four parts. The first includes an analysis of how and why certain “religious” accommodations have been allowed on public lands, given the fact that most judges tend to adhere strictly to Constitutional law, and in the case at Devils Tower, the Establishment Clause. This part of my analysis is supported by evidentiary material and official documents from the court case.⁵⁵⁵

In the second section, I uncover a cognitive process, unique to a Euro-Christian way-of-being that persuasively invents a false binary. The conceptual fabrication relies on constructing what appear to be static, opposing political interests that are then imagined to be representative of radically different agendas and commitments. The embodied metaphor effectuates a massive distraction within White culture, (thus making it impossible to appreciate or even recognize Indigenous ways of relating to land) *and* is culturally embedded to such an extent, it successfully reifies “givens” of the dominant worldview – thus cognitively reproducing and normativizing what Tinker identifies as *possessive individualism*. Possessive individualism is the heart of John Locke's fictive

⁵⁵⁵ Bear Lodge Multiple Use Association v. Babbitt, 175 F. 3d 814.

theory of property that “describes Indians as non-owners of their lands.”⁵⁵⁶ That fiction serves as the basis of rights discourse – one that limits and defines parameters in legal battles over lands. These limitations have also allowed for continual racist, coercive control of Native peoples, while normalizing ongoing theft of Native lands.⁵⁵⁷ Possessive individualism, a hallmark of the colonizing worldview, is the antithesis of a Lakota (Indigenous) way-of-being. Clearly, enforced compliance with “givens” that exclusively privilege concepts like “rights” and “property” has damaged Lakota communities in incalculable ways. One is by surveilling and regulating the relationship to and with Mato Tipila – a relationship characterized by ancient obligations and responsibilities, passed down and shared communally within Lakota culture. Enforced compliance with the norms of the legal system also created the illusion that the impotent FCMP at Devils Tower was a realistic solution. Enforced compliance with eurochristian values means that park rangers and so-called interpreters at Devils Tower are the *only* ones authorized to convey Lakota concerns at Mato Tipila; they create facades of inclusivity and offer repetitive recitations of simplistic, romanticized fables. In truth, not a single guide or ranger is culturally competent to speak with authority about the longstanding, historical ties between Lakota peoples and Mato Tipila.⁵⁵⁸ So really, the measures taken to foster “resolution” are meaningless.

⁵⁵⁶Tinker, “John Locke: On Property,” *Beyond The Pale: Reading Ethics from the Margins*, Stacey M. Floyd Thomas, Miguel A. De La Torre, editors, (Louisville: Westminster John Knox Press, 2011), 56.

⁵⁵⁷ Tinker, 50.

⁵⁵⁸ Nancy Stimson is the interpretive director and spokeswoman for the NPS. She is from a Native community but is not Lakota. During the interview, she did express a measure of regret that she is the *only* Native person working in a position of authority at the national monument.

The third section includes a discussion and evaluation of a recent ideological shift within rights theory that resulted in two political movements meant to challenge long-held and dominant tenets of the discourse...namely that rights are exclusively conferred upon individuals – individual human beings, that is. One, generated and mostly concentrated in the ‘global South,’ recognizes rights and legal standing for other-than-human beings; at the 2011 World People’s Conference on Climate Change, for example, the Universal Declaration of Rights of Mother Earth was adopted.⁵⁵⁹ In 2008, Ecuador voted to grant inalienable rights to nature, codifying them in a new constitution.⁵⁶⁰ The other focuses on recognition of a set of rights for Indigenous Peoples that upholds and supports collectively-held interests in traditional homelands. Unfortunately, both movements are limited in effectiveness; they remain predicated on the rights principles, including the idea that sovereignty that “resides essentially in the nation.”⁵⁶¹ As such, states are exclusive vehicles through which rights are conferred upon individuals. International bodies, comprised of nation-states, can then proclaim “common standards of achievement” that promote “human dignity and brotherhood among nations.”⁵⁶² Members of the United Nations general assembly serve as monitors and judges and can impose

⁵⁵⁹ Held in 2010 in Cochabamba, Bolivia, the Declaration was adopted the next year. <https://therightsofnature.org/wp-content/uploads/pdfs/FINAL-UNIVERSAL-DECLARATION-OF-THE-RIGHTS-OF-MOTHER-EARTH-APRIL-22-2010.pdf>. Accessed April 2017.

⁵⁶⁰ Constitution of the Republic of Ecuador, National Assembly, Legislative and Oversight Committee, Published in the Official Register October 20, 2008. <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>. Accessed March 3, 2018.

⁵⁶¹ Article 3, *Declaration of the Rights of Man and Citizen*, Approved by the National Assembly of France, August 26, 1789.

⁵⁶² Archibald Stuart, *Putting Human Rights To Work: Policy Actions in the Struggle for Social Justice*, (NY: Gordian Knot Books, 2012), 225.

sanctions for violations, or bestow prizes for outstanding achievement on “member States, specialized agencies and non-governmental organizations.”⁵⁶³ Again, both of these developments are inhibited because they fall back on rights as a “fix,” and since rights theories and discourse cannot be separated from eurochristian conceptual categories, both only go so far in terms of recognizing Indigenous commitments and interests. Unfortunately, they have also had the effect of amplifying the ethnocentrism of eurochristian privilege that allows for unchecked domination, colonization, and eradication of Indigenous ways of life. Members of the general assembly and certainly of the more exclusive security council are the power-brokers of international politics. The U.N World Conference of Indigenous People (WCIP) concluded with a final draft of an Outcome Document that did not address treaty obligations with regard to any proposed development on Indigenous lands. The UN delegates and representatives are at the top and “in charge” – what Deloria describes as “guardians of the world.” I do not mean to forward the simplistic thesis that Indigenous peoples do not have conceptions of “rights.” The Alta Outcome document, a precursor to the final Outcome draft, insisted that rights of self-determination, for example, be included. What differentiates Indigenous conceptions from eurochristian conceptions is a radical, possessive individualism that creates and shapes the ways they are to be recognized and exercised.

Rights do exist in native peoples’ societies, laws, and often resolve a number of related issues. At no time...were individual rights asserted against other individuals or the tribe itself. Any final

⁵⁶³ <https://www.ohchr.org/EN/NewsEvents/Pages/2018HumanRightsPrize.aspx>. Accessed August 22, 2018.

solution was aimed at restoring balance, bringing harmony, and, and making restitution.⁵⁶⁴

PART ONE: IMPERMISSIBLE ENTANGLEMENT

Steven L. Winter⁵⁶⁵ informs us that “rules both compose and are composed by cognitive metaphors...as such, they are elastic to purpose.”⁵⁶⁶ I confirmed his observation during discussions with technical climbing rangers and the Chief of Interpretation and Education at Devils Tower national monument during June of 2018. When pressed, rangers halfheartedly acknowledged rapidly escalating numbers of climbers at Devils Tower during June and yet, to date, there has been no consistent or meaningful follow-through for addressing “elements of an unsuccessful voluntary closure” (a clause the NPS insisted be included in the FCMP). Frankly, some are indifferent. One ranger, returning to our conversation after an animated exchange with a young couple (who had dropped by the office hear about which climbing route to the top was most difficult and rewarding), simply shrugged, “that plan was put in place over twenty years ago – we can’t control everything.”⁵⁶⁷

During the appeals process plaintiffs in the court case, objecting to *any* curtailment of climbing activities at Devils Tower National Monument claimed “irreparable injury” partly because the climbing ban interfered with their business interests but also, they insisted, “their climbing privileges... [had been] constrained...due

⁵⁶⁴ Wunder, “*Retained By The People*,” 6-7.

⁵⁶⁵ Winter, *A Clearing*. Winter uses cognitive theory in his interpretation of constitutional law and says that law is but one consequence of more pervasive cultural processes of meaning-making.

⁵⁶⁶ Winter, 190.

⁵⁶⁷ From an interview in June 2017.

to [their] religious faith.”⁵⁶⁸ Targeting the FCMP, official signage asking visitors to stay on designated trails, and cultural and interpretive programs meant to educate visitors about “the religious beliefs of some Native Americans”⁵⁶⁹ the plaintiffs accused the NPS of coercing visitors to respect Indian religion while inhibiting the climbers’ own rights to religious expression.⁵⁷⁰ In response, the defense argued that “the Establishment Clause permits accommodations of religion, even where they may not be required by The Free Exercise Clause,⁵⁷¹ reminding the court that “at national parks, national monuments, and national historic sites throughout the country, the Park Service conducts interpretive programs and furnishes interpretive materials to inform interested visitors.”⁵⁷²

I want to show that the elasticity of rules that Winter refers to effectively maintains dominant interests in shared, public spaces. Later in the chapter, I turn to several recent skirmishes over land to highlight tensions between those who support federal land policy and those who are vehemently opposed. A detailed narrative of several explosive events is included to demonstrate that, in spite of intense and often violent *ideological* disagreement, *every single* event and circumstance (including the

⁵⁶⁸ Todd S. Welch, William Perry Pendley, Mountain States Legal Foundation, First Amended Complaint, Bears Lodge Multiple Use Association v. Babbitt, Civil Action No: 96-CV-063-D. “Their” refers to the plaintiffs.

⁵⁶⁹ Complaint, 24.

⁵⁷⁰ One claimed Devils Tower is “my church,” another “climbing is my religion.”

⁵⁷¹ Bear Lodge Multiple Use Association, *et al.*, Plaintiffs, v. Bruce Babbitt, *et al.*, and Cheyenne River Sioux Tribe, *et al.*, Defendant-Intervenors. Defendant-Intervenors’ Brief On The Merits. Civ. No. 96-CV-063-D, 7.

⁵⁷² Bear Lodge v Babbitt, 34.

court case involving Mato Tipila) has the same irrefutable cause and effect, seamlessly replicated via the eurochristian set of logics.

Winter writes that “[r]ules...represent legal categorizations of experience that a community (or its lawmakers) adopts for a reason.”⁵⁷³ These legal categorizations of experience limit how conflicts over land are adjudicated. For example, in a brief submitted to the federal district court of Wyoming, attorneys for the defense noted that the “Supreme Court has, on numerous occasions, upheld, required, or commended accommodations of religion.”⁵⁷⁴ This reminder was meant to counter the plaintiffs’ argument that allowing Lakota peoples to “use the monument for religious ceremonies”⁵⁷⁵ granted “ownership” of the site to American Indians. The defense argued that the supreme court has historically supported religious expressions and gatherings on public lands, noting that⁵⁷⁶

⁵⁷³ Winter, 187.

⁵⁷⁴ Legal precedent for their argument: *Lemon v Kurtzman* 403 U.S. 602 (1971), in which the Supreme court established the three-pronged test to avoid violating the Establishment clause – (a secular legislative purpose, principal or primary effect must be one that neither promotes nor inhibits religion and must not foster “excessive government entanglement with religion.”) *Lynch v Donnelly*, 465 U.S. (1984), in which the Court ruled that a nativity scene in a shopping district of Pawtucket, Rhode Island did not violate the establishment clause because its secular purpose depicted the historical origins of the christmas holiday. *Board of Education of Kiryas Joel v Grumet*, 512 U.S. 687 (1994), in which majority opinion ruled it unconstitutional for a school district to match boundaries of a religious community. However, Justice Antonin Scalia’s dissent noted that the boundaries of the district for this community - Satmar Hasidic Jews - aided them as a *culture* not a *religion*. *Lyng v Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988), that “the Government’s rights to the use of its own land...need not and should not discourage it from accommodating religious practices...engaged in by...Indian[s]. *Bear Lodge, Defendant-Intervenors’ Brief on the Merits*, 7-11.

⁵⁷⁵ *Bear Lodge, Brief*, 20.

⁵⁷⁶ *O’Hair v Andrus*, 613 F. 2d 931 (1979), where the court rejected an Establishment Clause challenge to the NPS granting a permit to Pope John Paul II to conduct mass on the mall next to the Washington monument. *United States v Means*, 492 U.S. 910 (1989), where the court allowed the United church of Christ to operate a 12-acre camp in a national forest.

[c]ontrary to the impression the Plaintiffs try to make in this case, the Park Service routinely makes accommodations for religious practices and sacred shrines, usually Christian, in federal parks around the country.⁵⁷⁷

Their argument proceeded summarily: the climbing plan, they wrote, is reasonable to accommodate “religious practices” of Indians, and necessary, because of the “unique legal status of Indian tribes under federal law and...[the] history of treaties and the assumption of a ‘guardian-ward status...’ which precludes the degree of separation of church and state ordinarily required by the First Amendment...to guarantee the basic rights of Indian tribes.”⁵⁷⁸ As noted in previous chapters, this strategy (which necessarily must invoke racist judicial precedent and define Lakota interests in terms of “religion”) must have seemed the only option since all parties in the litigation were clearly obliged to conform to and comply with normative judicial customs and rules. Winter’s observation about the elasticity of these rules is correct though: the following examples outline, *whose* expressions are accommodated on public lands.

1). A sign at the entrance of Arlington National Cemetery alerts visitors that they are about to enter “Our Nation’s Most Sacred Shrine,” and reminds them to conduct themselves with “respect and dignity,” keeping in mind that they are on “hallowed ground.”⁵⁷⁹

⁵⁷⁷ Bear Lodge, Brief, 21.

⁵⁷⁸ Bear Lodge, Brief, 24. Here, counsel reference the American Indian Religious Freedom Act 42 U.S.C. (1978), 25, 26.

⁵⁷⁹ Exhibit A 1. Photograph of the sign at the entrance.

Visitors to Arlington should know that the cemetery is a shrine, not a place for recreation, picnics, or child's play. Thank you for respecting the feelings of those attending a burial.⁵⁸⁰

2). Park Service brochures and information guides at two national parks contain astonishing accounts of institutionalized, codified genocide. At Tumacacori National Historic Park in Arizona, a traditional catholic "high mass" was conducted in April 1997 to commemorate the founding of the mission San Cayetano de Tumacacori by Jesuit Eusebio Kino.⁵⁸¹ Rituals included "the Padre forgiving the sins of those assembled, glorifying the Lord, consecrating the bread and wine to 'make it holy,'"⁵⁸² and concluding with *ite missa est* - a benediction to "go forth and continue God's work."⁵⁸³ Inside the mission structure, an inscription on a plaque reads: "In a climate of exploitation, [Jesuits and Franciscan friars] were often the only ones who had Indians' interests at heart." A timeline included in a Park brochure, depicts the missionization and colonization of the peoples of Pimeria Alta from 1572 to 1853 (when the site became part of the U.S.). Described as a "frontier church," the inside walls of the mission feature "paintings of the apostles, carvings depicting stations of the cross, and symbols of the virgin Mary."⁵⁸⁴ The NPS recommends (this is a remarkable example of the banality that disguises murderous campaigns of conquest) that visitors "tour the mission church,

⁵⁸⁰ Exhibit A6. From park service literature: text and design provided by Parks and History Association, Washington, D.C. 1996.

⁵⁸¹ Exhibit B1. NPS literature.

⁵⁸² Exhibit B3. NPS literature

⁵⁸³ Exhibit B3. NPS literature.

⁵⁸⁴ Exhibit B6. NPS literature.

cemetery and outlying structures and grounds in a *peaceful and quiet atmosphere reminiscent of the period in which they were established*”[emphasis added].⁵⁸⁵

3). San Antonio Missions National Historic Park (established in 1978),⁵⁸⁶ and Mission San Juan are both in Texas, and both hold christmas pageants each year to depict an “age-old conflict between good and evil.”⁵⁸⁷ These pageants were first created by Franciscan missionaries to teach “the local Coahuiltecan Indians the tenets of Christianity.” The “essence of the mission,” NPS literature tells us, “was discipline: religious, social, and moral...and though some Coahuiltecans fled the missions, many accepted the dogmas of Catholicism.”⁵⁸⁸

In 1978 the United States Congress pledged Federal support by establishing the San Antonio Missions National Historic Park. By formal agreement the Archdiocese of San Antonio and the National Park Service encourage visitor enjoyment of these sites while ensuring that there is no interference with the traditional services at the four active parishes.⁵⁸⁹

Please be considerate: The historic structures are fragile resources. Help us preserve them for future generations. Remember also that *these are places of worship. Parish priests and parishioners deserve your respect; please do not disturb their services*”⁵⁹⁰ [emphasis added].

⁵⁸⁵ Exhibit B9. NPS literature.

⁵⁸⁶ Exhibit C15.

⁵⁸⁷ Exhibit C2. News Release from the DOI on 10/31/95, and from an article in the Floresville Chronicle Journal (dated 11-9-95), collected by the defense on 3/17/97.

⁵⁸⁸ Exhibit C9. NPS literature.

⁵⁸⁹ Exhibit C11. NPS literature.

⁵⁹⁰ Exhibit C13. NPS literature.

4). Literature at the Salinas Pueblo Missions National Monument of Texas tells visitors that “Franciscans regarded the pueblo religion as idolatry and told the Indians that their salvation depended on their willingness to undergo religious instruction.”⁵⁹¹

5). Park literature at Hopewell Furnace National Historic Site describes it as a fine example of a rural American 19th century iron plantation. Every December, the “Iron Plantation Christmas pageant” is performed.⁵⁹² “Traditional music and refreshments...[are] provided at Bethesda Church by *park volunteers*,”⁵⁹³ and staff members “recreate Hopewell Christmas of the 1830s.”⁵⁹⁴

6). Special use permits were granted from 1941-1989 to Bethesda Church, now owned by the NPS, for the “continuous and free use of the building for worship.”⁵⁹⁵ In a local newspaper describing how the NPS preserves the religious history of the structure, the writer declares that “the church...is available for weddings, community meetings...or a traditional place of worship.”⁵⁹⁶

7). An agreement between Alaskan regional office supervisors of the NPS and the Russian Orthodox Church (The Sitka Agreement), guaranteed that items having

⁵⁹¹ Exhibit D18. NPS literature.

⁵⁹² Exhibit E3. Hopewell Furnace Home Page.

⁵⁹³ Exhibit E18. NPS literature.

⁵⁹⁴ Exhibit E21. NPS literature.

⁵⁹⁵ Exhibit E5. A letter from the United States DOI to Mr. Ernest S. Lloyd re: Hopewell Village National Historic Site, dated August 5, 1941.

⁵⁹⁶ Exhibit E15. An article appearing in the Reading Eagle/Reading Times on Saturday April 2, 1994.

“special religious significance to the Church...shall be on permanent loan to the Park Service for use in its interpretation of the...beliefs of the Church.”⁵⁹⁷

There were many more exhibits presented. One brochure included instructions for observing visiting hours at the Martin Luther King Jr. National Historic Site at Ebenezer Baptist church in Georgia (owned by the NPS); a specific clause noted periodic closures of the sanctuary for special religious services.⁵⁹⁸ Religious accommodations are made at Yellowstone National Park for Roman Catholic and Latter Day Saints church services,⁵⁹⁹ and the Church of Christ and Baptist Church (among others) at Yosemite National Park.⁶⁰⁰ Devils Tower national monument and Mount Rushmore national monument are both located in the Black Hills National Forest. Rules between them are quite different. At Devils Tower, climbing is privileged and exalted. By contrast, rangers at Mount Rushmore instituted a “See Something? Say Something” policy, instructing visitors to call 911 if they see something “suspicious...” – as in, a recreational enthusiast with harnesses, bolts, pitons, etc.⁶⁰¹ Recreating at Mount Rushmore carries a \$1,000 fine.⁶⁰²

⁵⁹⁷ Exhibit F2. Agreement memorandum from the Alaska Regional Office of the NPS (signed March 5, 1976) to the Very Reverend Joseph P. Kreta, Orthodox Church in America (signed February 29, 1972).

⁵⁹⁸ Exhibit G1. NPS literature.

⁵⁹⁹ Exhibit H1. 1996 Summer Schedule at Yellowstone National Park.

⁶⁰⁰ Exhibit I8 and I9.

⁶⁰¹ <https://www.nps.gov/moru/planyourvisit/safety.htm>. Accessed August 27, 2018.

⁶⁰² <https://abcnews4.com/news/offbeat/michigan-teen-fined-1000-for-climbing-mount-rushmore>. Accessed August 27, 2018.

The most startling example of the elasticity of rules is the following: The Christian ministry in the National Parks (TCMNP) is an organization that “offers opportunities for service in 65 different locations to extend the ministry of Christ...and to provide services of worship.”⁶⁰³ Rules, Winter writes, are rarely as “rule-like” as normally supposed.⁶⁰⁴

Each member of the staff has a full-time job with either a park company or the National Park Service. Each member of the staff has a “ministry” commitment in addition to his/her “work” which involves formal and informal ministry. The informal ministry, on the job...allows significant witness to take place.⁶⁰⁵

Of the 65 national parks served by the ministry, the majority are located on top of or just next to the homelands of Native communities.⁶⁰⁶ In many cases, park boundaries even overlap or intrude onto reservation lands.⁶⁰⁷ The point about rules, according to Winter, is that “cognitive categories are flexible and functional rather than formal...set[ting] down *guidelines* from which a judge proceeds toward a decision.”⁶⁰⁸ Judicial decisions systemically recreate dominant conceptual metaphors entailing “autonomous subjectivity – the idea of individual human consciousness as a

⁶⁰³ Exhibit 1.

⁶⁰⁴ Winter, 189.

⁶⁰⁵ Exhibit J5.

⁶⁰⁶ Exhibits J 11-13. Examples include but are not limited to Grand Canyon, Mesa Verde, Arapaho National Forest, Blackfeet Indian Reservation, Theodore Roosevelt National Park, and Devils Tower.

⁶⁰⁷ During the 1920s, surveyors for the NPS extended the southern boundary of Mesa Verde National Park into Southern Ute land. The mistake went unnoticed for decades until tribal historians noticed. But one example, this tiny, highly contested spot is known as Soda Point.

⁶⁰⁸ Winter, 189.

self-directing agent and the source of values;”⁶⁰⁹ legally-enforceable rules in public lands invariably reflect eurochristian theological, philosophical, ideological individualistic fictions, exclusively articulated in the language of rights.

Conflicts over use of and accommodations on public lands are consistent in one predictable way: they are depicted as one-side-versus-the-other disputes that make use of symbols, metaphors, and terminology of White culture to suggest the existence of a deep and widening political chasm. These rifts have been facilely portrayed as “left” versus “right.” Debates saturate social media, pit neighbor against neighbor, inundate blogs and news reports, and feature “identity politics.”⁶¹⁰ Those on one side of the ideological chasm are enthusiastic supporters of federal public land policies⁶¹¹ - places set-aside “to conserve scenery, natural and historic objects, and wildlife...[and]to leave them unimpaired for the enjoyment of future generations.”⁶¹² Theodore Roosevelt was the first president, for example, to give himself the authority to designate national monuments; his

⁶⁰⁹ Steven L. Winter: “Political Freedom, The Free Market, and Consumerism,” *Netherlands Journal of Legal Philosophy*, Boomjuridischtijdschriften. <https://www.bjutijdschriften.nl/>. Accessed July 10, 2018.

⁶¹⁰ Some examples include the “Idahoans for Public Lands” and Bundy Ranch Facebook pages, an @OurPublicLands handle on Twitter, and The Blog: Privatizing America’s Public Lands. Social media has an amplifying effect on the intensity of these debates; often, people weighing in have the cover of anonymity which both protects their identity but also turns up the heat in terms of vitriol and sometimes, threats. Perusing comments for example, that followed Representative Jason Chaffetz’s (R-UT) Instagram posts about privatizing public lands, is good example. <https://www.instagram.com/jasoninthehouse/?hl=en>. Accessed April 2018.

⁶¹¹ For my purposes, I locate the origin of these policies in 1876 with the creation of the first national park, although the practice of unauthorized seizure of Indigenous lands in the Americas has been ongoing since the 15th century.

⁶¹² The Organic Act of 1916, signed by Woodrow Wilson and allowing for the creation of the NPS.

first act was to establish Devils Tower.⁶¹³ In fierce ideological opposition are the defenders of private property, favoring minimal government interference in most civic matters. Generally united in their antipathy for the land-trust program of the federal government – (one that gives the BLM legislative control of 55 million surface acres of land), they are usually outspoken, vociferous champions of “freedom” and the rights of the individual. The way these interests are articulated and embodied preclude any possibility for communally-shared Native interests to be expressed, much less upheld.

Vine Deloria Jr. describes the effectiveness of this false binary: “Liberals,” he writes, “appear to have more sympathy for humanity, while conservatives worship corporate freedom and self-help doctrines underscoring individual responsibility.”⁶¹⁴ All of this is a clever fabrication, but the illusion functions impeccably well to *ensure* that conditions are favorable for an uninterrupted land-grab, whether for public or private use. The basic philosophical differences between liberals and conservatives are not fundamental, because “both find in the idea of history a thesis by which they can validate their ideas [and] the very essence of Western European identity involves the assumption that history proceeds in a linear fashion; further it assumes that at a particular point...the peoples of Western Europe became the guardians of the world.”⁶¹⁵

⁶¹³ Legislative procedures for designating national monuments were expedited in 1906 with the passage of the Antiquities Act of 1906. 16 USC 431-433, authorizes the president, with sole discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the government.

⁶¹⁴ Vine Deloria, Jr., *God Is Red*, 62.

⁶¹⁵ Deloria, 62, 63.

This false binary has been intensified in the wake of Donald Trump's recent proclamation 9681, (a reversal of the Antiquities Act) to shrink the acreage of Bears Ears and Grand Staircase-Escalante national monuments by 85% and 50% respectively.⁶¹⁶ In a lawsuit filed days after the proclamation, Native American Rights Fund (NARF) attorneys argued that Trump's action is a violation of the separation of powers enshrined in the U.S. Constitution. No president has ever revoked and replaced a national monument they asserted, because it is not legal to do so.⁶¹⁷ NARF represents three communities from The Inter-Tribal coalition (a consortium of Native representatives from the Hopi, Navajo, Ute Mountain, Ute, Pueblo of Zuni, and Uintah and Ouray communities). The coalition is also part of a larger group opposing Trump's actions in courts: the group includes Utah Diné Bikéyah (UDB), a Native-led, nonprofit organization "working to promote healing of people and the earth through conservation of cultural lands,"⁶¹⁸ The Wilderness Society, the Natural Resources Defense Council, the Sierra Club, and seven other groups, including outdoor recreation retailers. Alliances like these, as noted earlier, are politically expedient so long as there is a perceived enemy on the other side. The "enemy," aligned and on board with the administration's desire to

⁶¹⁶ Juliet Eilperin, "Trump Administration officials dismissed benefits of national monuments," *The Washington Post*, July 23, 2018. A consortium of Native communities including, calling themselves the inter-tribal coalition, are among many others who have filed lawsuits against the action taken by the administration. <http://www.chicagotribune.com/news/nationworld/science/ct-trump-zinke-national-monuments-20180723-story.html>. Accessed August 2018.

⁶¹⁷ Case 1:17 – cv-02590, in the United States District Court, District of Columbia, Complaint for Injunctive and Declaratory Relief. 3.

⁶¹⁸ <http://utahdinebikeyah.org/>. Accessed August 18, 2018.

“usher in a bright new future of wonder and wealth,”⁶¹⁹ include representatives from fossil fuel companies, loggers, cattle ranchers, uranium miners, county commissioners, and private landowners. Not surprisingly, when each side’s concerns are articulated, the principle topic is *rights*.

Regardless of specific details, the conceptual fabrication constructs static, opposing political interests that are imagined to be representative of radically different agendas and commitments. The metaphor is effective in two ways: it creates a massive distraction in popular culture while functioning to reify “givens” of the dominant worldview. The reification cognitively reproduces and normativizes what Tinker identifies as *possessive* individualism.

Possessive individualism is the heart of John Locke’s fictive theory of rights over property that “describes Indians as non-owners of their lands.”⁶²⁰ That lie served as the basis of rights discourse – one that limits and defines parameters for all individuals and communities engaged in legal battles over lands. These limitations have also allowed for continual racist, coercive control of Native peoples, while normalizing ongoing theft of Native lands.⁶²¹ Possessive individualism, one of the hallmarks of the colonizer, is the antithesis of a Lakota (Indigenous) way-of-being. Clearly, enforced compliance with “givens” that exclusively privilege concepts like “rights” and “property” has damaged

⁶¹⁹ Julie Turkewitz, “Trump Slashes Size of Bears Ears and Grand Staircase Monuments,” New York Times, December 4, 2017. <https://www.nytimes.com/2017/12/04/us/trump-bears-ears.html>. Accessed January 5, 2018.

⁶²⁰ Tinker, “John Locke: On Property,” 56.

⁶²¹ Tinker, 50.

Lakota communities in incalculable ways. One is by surveilling and regulating Lakota peoples' relationship to and with Mato Tipila – a relationship characterized by ancient obligations and responsibilities that are passed down and shared communally within Lakota culture. Enforced compliance with the norms of the legal system also created the illusion that the impotently implemented FCMP was a realistic resolution, which it is clearly not. Enforced compliance with eurochristian values allows for the repetitive recitation of romanticized fables that are meant to include a Native perspective at Mato Tipila and create the façade of inclusion. In actuality, not a single guide or ranger is culturally competent to meaningfully convey Lakota memory and relationship with Mato Tipila.⁶²² So really, the measures taken to foster “resolution” are useless, at best.

PART TWO: PEDDLING DILEMMAS

Honor Keeler, Assistant Director of UDB, describes how in 2009, an archaeological raid was conducted near Indigenous lands that resulted in 40,000 cultural objects being stolen. This grand theft was a motivation for Barack Obama later establishing Bears Ears in 2016. Keeler described the raid as a “violation of our human rights as indigenous peoples.”⁶²³ Trump’s reversal, she noted, did not include the free, prior, and informed consent of tribal nations and Indigenous peoples, a requirement documented in Article 32 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Keeler and the UDB recommended that the “UN Special Rapporteur

⁶²² Nancy Stimson, interpretive director and spokeswoman for the NPS is not from a Lakota community or any other Native community with longstanding, historical ties with Mato Tipila.

⁶²³ Honor Keeler, Statement to the United Nations: “Looting & Grave-Robbing at Bears Ears National Monument- Ongoing Human Rights Violations,” Agenda Item#4, April 19, 2018.

direct the United States to respond to these human rights violations, and to formally adopt the U.N. Declaration on the Rights of Indigenous Peoples into law.”⁶²⁴ NARF agreed, citing “inalienable, fundamental human rights that all share.”⁶²⁵

Energy Fuels Resources, on the other hand, citing their own legal precedent,⁶²⁶ vowed to protect their corporate “rights’ to mine hard minerals on these lands, including gold and silver.⁶²⁷ In a similar vein, Utah councilman and small business owner Joe Lyman argued that “property rights [that] exist in the area must be upheld.”⁶²⁸ An official letter signed by senators Orrin Hatch, Jason Chaffetz, Michael S. Lee, and congressman Rob Bishop, delivered to Obama just days before the designation, described collective dismay that such a move would infringe on the “rights...of Federally-recognized Indian tribes in the area.”⁶²⁹

⁶²⁴ Keeler, Statement.

⁶²⁵ <https://www.narf.org/cases/protecting-bears-ears-national-monument-bears-ears/>. Accessed July 10, 2018.

⁶²⁶ H. R. No. 1016. A federal law passed in 1872 and largely in response to 1849s California gold rush, permits anyone paying an annual fee of \$212 to the federal government to “stake a few corner posts in the ground” and begin mining on public lands. <https://archives.utah.gov/research/guides/mining-claims.htm>. Accessed August 3, 2018.

⁶²⁷ Mark Chalmers, COO, Energy Fuels Resources, Inc., in a letter dated May 25, 2017, asks the DOI to intervene at Bears Ears and address the BLMs study of potential impacts on the newly-designated boundaries of Bears Ears National Monument.

⁶²⁸ Joe Lyman, “Why Oppose The Bears Ears National Monument?” posted in ... & *The West Blog*, November 15, 2016.

⁶²⁹ Hatch has fought hard against federal land policy since at least the 1970s; this history is discussed fully in this chapter. His duplicitous concern for Native land use disguises the possessive individualism behind his own economic motivation. Hatch has long been seeking to open Utah’s Red Rock Wilderness to commercial development, mining, and forestry and to give protection to only 1.8 million acres of the 22 million acres overseen by the BLM. “The Orrin Hatch Land Grab,” *The New York Times*, 1996. <https://www.nytimes.com/1996/03/19/opinion/the-orrin-hatch-land-grab.html>. Accessed August 17, 2018.

As we see, people on opposite sides of the monument debate organized their positions based on rights – whether it was to have them recognized or to demanding that they not be violated. That is at the heart of the problem. Traditional Indigenous understandings of relationality - evident between human beings, other-than-human beings, and places, are not based on *rights*, rather, on ongoing obligations and responsibilities that are mutually respected and reciprocal. Albert White Hat, by way of example, writes that Lakota peoples learn from a very young age, respect for the relatives all around them.

Respect is instilled through the use of relative terms, and when that system...is in place, then it's not difficult to understand that the sun and the moon are relatives. The wind is a relative because its part of creation. That tree is a relative. The water. Everything around you.⁶³⁰

He goes on to describe the significance of Mato Tipila (Devils Tower) for Lakota peoples in much the same way. It is the place where one fall, a Cheyenne relative, returning home after having spent the summer with the Lakota, approached Devils Tower and “noticed an opening on the east side.”⁶³¹ Walking inside, he found a bundle of arrows and a pipe. Picking up the arrows, he walked on and he eventually he emerged from an opening on the west side. When he returned the following spring, Lakota relatives told him “a woman had brought a gift...coming as a normal woman, not to awe people.”⁶³²

⁶³⁰ Albert White Hat, *Zuya, Life's Journey: Oral Teachings from Rosebud*, (SD: Sinte Gleska University, 2012), 89.

⁶³¹ White Hat, 97.

⁶³² White Hat, 97.

[W]hen the woman turned to leave the camp, she changed four times into Wamakaskan, which means “a living being of the earth.” He didn’t say a buffalo. He said Wamakaskan. It could have been a horse, an elk, a deer, or a buffalo. He didn’t specify, just that the woman had brought the pipe and, on her departure, turned into Wamakaskan.⁶³³

That pipe, White Hat writes, when it was shown to the Cheyenne man, was the same one he had seen in Devils Tower. By linking place, peoples, gifts, and ceremony White Hat demonstrates that understanding of kinship is rooted in balance and reciprocity. By contrast, thinking about human relationships to land in terms of rights, is entirely antithetical.

Of course, conflicts playing out on and over lands of the Americas have a long, violent history obviously commencing in the 15th century; these days, more obvious violence and coercion is often disguised. Contemporary disagreements go beyond the fact that a uranium miner calculates land value in a way that is quite different than say, a botanist, or that hunters’ interests don’t always align with those “saving” the vanishing key deer. There is a deeper source of tension, most dramatically voiced by those who oppose the policy of “public trust” in the first place. For example, Steven Hanke, free-market capitalist and senior economic advisor to Ronald Reagan, wrote in 1982 that all public lands should be privatized. “Private property rights make the individual property owner solely responsible for the consequences of his decisions,” he opined, and ownership is the only incentive to use property in a productive and efficient manner. Hanke fretted that public ownership of lands, by contrast, left no individual at the top, in

⁶³³ White Hat, 98.

charge, and thus ultimately responsible for decisions. That reality results in an unproductive and inefficient use of resources; private property, he wrote, “is always more productive than public property.”⁶³⁴

The policy of setting aside of certain lands in the U.S. has given rise to intensifying debates characterized in simplistic political terminology that creates an *illusion*. The debates over land and property in White culture embody one thing quite effectively – systemic recreation, regeneration and imposition of specific cognitive metaphorical constructs unique to the colonizer’s worldview. These ideological disagreements, deceptively framed around simplistic differences, conceal a more portentous agenda that we see in the FCMP “resolution” at Devils Tower and that continues to dominate at Mato Tipila and other traditional Native homelands. During the conflict and its aftermath, Lakota peoples were forced into normative compliance with rules-of-law that govern public lands. The rules uphold possessive individualism, deceptively disguised by evoking rights tropes through which only individual interests are recognized. Radical individualism is at the core of the dominant worldview and guides the ongoing agenda of the colonizer. Lakota interests are disallowed and/or ignored, and since defendants were forced to conform to the rigid and narrow parameters of the colonizer’s system, cultural genocide continues unabated.⁶³⁵

⁶³⁴ Steven H. Hanke, “Privatize Those Lands! A Message To Sagebrush Rebels,” in *Reason: Free Minds and Free Markets*, March 1982. <http://reason.com/tags/donald-trump>. Accessed September 2018.

⁶³⁵ Tinker, *American Indian Liberation*, 6. As mentioned in earlier chapters, Tinker defines cultural genocide as “systematically or systemically destroys, erodes, and undermines the integrity of Lakota culture and system of values that defines them and gives them life.”

Quite obviously, the word “shared” in “shared use” has a variety of implications depending on who you ask. Public trust, a principle behind the 1946 creation of the Bureau of Land Management (BLM), held that set-aside lands are understood to be held by the federal government on behalf of all American citizens. Some areas are periodically off-limits (eco-zones for protection of endangered species, for example), others accessible only at specific times and under certain conditions (Yellowstone National Park is “open” for visitors only from May 18th to November 4th).⁶³⁶ Other parcels are selected for recreation purposes - camping, hiking, bicycling, climbing, fishing, horseback riding, and hunting, to name a few; there are restrictive entailments attached. Snowmobiling is allowed throughout the San Isabel National Forest, but at Gunnison National Forest, a visitor needs to know which trails accommodate motorized vehicles – not all do.⁶³⁷ Each individual claim to use these lands is purportedly as valid as any other providing all comply with regulations. However, the court case over Mato Tipila and the failure of the FCMP to follow through on its goal to curtail climbing during June tells us without doubt, that collective, communal interests of Lakota peoples cannot and will not be adequately addressed under the terminology “shared-use.”

Framing conflicts exclusively in terms of individual rights - property rights, religious rights, what have you, is utterly incompatible with and entirely inadequate for understanding and respecting longstanding historical ties that Lakota peoples have with

⁶³⁶ <https://www.nps.gov/yell/planyourvisit/hours.htm>. Accessed August 14, 2018.

⁶³⁷ Krista Langlois, “*National forests to decide where snowmobiles are welcome*,” High Country News, February 2, 2015. <https://www.hcn.org/articles/snowmobiles-forest-service-backcountry>. Accessed August 14, 2015.

Mato Tipila, and more broadly, Paha Sapa. However, in the absence of a more sophisticated understanding of how ongoing colonization is mobilized through dominant conceptual categories that are consistently recreated and universally imposed, then authentic recognition and respect for Native ways-of-being in conflicts over land is impossible. We are generally ignorant of the cognitive processes of the embodied mind; we have dimwitted understandings about how different people think about, move, and act in the world in culturally distinct ways. Of course, this is partly due to the fact that “our conceptual system is not something we are normally aware of.”⁶³⁸ However, because major findings of cognitive science are “inconsistent with central parts of Western philosophy” it is critical that we “abandon some of its deepest philosophical assumptions.”⁶³⁹ Here’s the issue: eurochristian construals of land are rooted in individualistic assessments of self-benefit. Conceptual categorizations of a hiker in a national forest seeking solitude and individualized “spiritual satisfaction” as she “encounters Nature,” are exactly identical to the conceptual categories of an owner of private property who then marks, guards, and surveils his personal boundaries, with an authorized agency to use lethal force, if need be, against anyone who crosses the line.⁶⁴⁰ That is because the deepest philosophical assumptions of Western philosophy (the eurochristian interrelated set of logics, in other words), are founded on radical

⁶³⁸ Lakoff and Johnson, *Metaphors*, 3.

⁶³⁹ Lakoff and Johnson, *Philosophy*, 3.

⁶⁴⁰ The so-called Castle Doctrine, and “Make My Day,” “Stand Your Ground,” “Shoot First” are among the laws meant to support self-defense and property protection. <https://www.propublica.org/article/the-23-states-that-have-sweeping-self-defense-laws-just-like-floridas>. Accessed August 20, 2018.

individualism and a perceived binary between human beings and the rest of the living world.

That grossly limited way of thinking and being precludes the possibility of understanding that an Indigenous way is more life-affirming. However, remaining ignorant of that, willfully or not, is more than unfortunate or alarmingly short-sighted. It is genocidal. Eradicating institutionalized racism and calling out apathetic indifference to historic and ongoing colonization of Indian peoples, lands, and other-than-human beings, requires more than empty gestures. It means that those of us who continue to benefit from the privileges of dominance must encounter and address difference in a radical way: these encounters must begin on contested lands. They must be preceded by awareness and acknowledgment that the lands upon which we live, work, make our homes, recreate, raise our children, etc. are stolen. Radical encounters with difference require us to understand that the position of power the United States occupies in the world is due to unrelenting expansion, colonization, appropriation and exploitation. Blatant disregard for upholding treaties and an increasing encroachment of Whites onto Native lands, intensified by indifference to a directly associated severe impoverishment of Native communities, is genocide. As Tinker has observed,

[t]he real underlying problem is that American Indian poverty is and always has been a necessary condition for american wealth and well-being – both politically and economically. We are, as it were, a “national sacrifice” population that must be kept in veiled suppression in order to continue the validation of U.S. occupancy claims to the north american land mass.⁶⁴¹

⁶⁴¹ Tinker, *American Indian Liberation*, 155-156.

We must authentically recognize these realities. That requires much more than just jumping in and back out of the discomfiting, confusing, and disorienting space of radical difference. We, of the colonizing culture, have to remain in that space, moving beyond any consideration of Other-ness that begins and ends with radical, individual subjectivity, and avoid meaningless tropes like “recognition” and “reconciliation.” Without significant and meaningful return of occupied lands, without acknowledgement of the complicit ways we benefit from being part of White culture, we are engaging in nothing other than empty gestures. Lakoff and Johnson tell us that “all experience is cultural through and through, such that we experience our ‘world’ in such a way that our culture is already present in the very experience itself.”⁶⁴² It follows then, that a complete and more sophisticated understanding of the embodied mind (by which we collectively conceptualize, orient, and rely on cultural prescriptions for how to live life), may finally push us to dismantle and discard deeply-embedded assumptions that we unquestioningly accept as “givens” and compel us to begin our own decolonization of our minds and the lands we occupy.

“This goes a lot further than a pond.”⁶⁴³

During the mid-1970s in the U.S., the first of three “Sagebrush Rebellions” broke out across several Western states, mostly concentrated in Nevada, Utah, Wyoming,

⁶⁴² Lakoff and Johnson, *Metaphors*, 57.

⁶⁴³ Wyoming welder Andy Johnson, in response to new regulations regarding “wetlands” imposed by the Environmental Protection Agency under the Clean Water Act. Johnson was threatened with a \$75,000 per day fine for failing to receive permission from the Army Corps of Engineers to stock a pond on his property with brook and brown trout, ducks, and geese. <https://imprimis.hillsdale.edu/sagebrush-rebellion-redivivus/>. Accessed May 3, 2018.

Alaska, Oregon and Arizona.⁶⁴⁴ Organized by loggers, ranchers, and miners, the rebellion signaled coordinated opposition to the passage of three environmental laws (The Wilderness Act of 1964, Federal Land Policy and Management Act (FLPMA) of 1976,⁶⁴⁵ and the Endangered Species Act of 1973). Protestors expressed outrage over “federal colonialism,” citing government heavy-handedness. What generated the most rancor was the passage of the FLPMA, an “organic act”⁶⁴⁶ resulting in a radical policy shift at the Bureau of Land Management (BLM).⁶⁴⁷ The support for maximum extractive practices on public lands had veered sharply and suddenly to reflect environmental concerns; the priority of the BLM became, in other words, “preservation.” The sagebrush rebels declared that the passage of the Act had “locked in the ‘absentee landlord’ relationship Washington had with much of the West.”⁶⁴⁸ Uranium miner Cal Black threatened BLM officials, declaring, “I’ll blow up bridges, ruins and vehicles. We’re going to start a revolution.”⁶⁴⁹

⁶⁴⁴ It could be argued that opposition to set-asides first coincided with the founding of Yellowstone National Park and Devils Tower National Monument in the early part of the 20th century, but to the degree that it was a coordinated and organized effort, the decade of the 1970s marks the beginning.

⁶⁴⁵ Public Law 94-579. 1976.

⁶⁴⁶ <https://www.blm.gov/or/regulations/files/FLPMA.pdf>. Accessed July 2, 2018.

⁶⁴⁷ As mentioned, the bureau was created in 1946 when the Department of the Interior merged two older agencies, the 1880-established General Land Office and the Grazing Service, created in 1934 to manage grazing on public lands. The BLM now manages about 264 million acres of land in the U.S.--the lands "left over" after homesteaders, timber companies, land developers, states, the Forest Service, Park Service, and other private parties and agencies took the lands they wanted. <http://www.ti.org/blmintro.html>. Accessed January 5, 2017.

⁶⁴⁸ Jonathon Thompson, “The first Sagebrush Rebellion: what sparked it and how it ended,” *High Country News*, January 14, 2016. <https://www.hcn.org/articles/a-look-back-at-the-first-sagebrush-rebellion>. Accessed July 15, 2018.

⁶⁴⁹ Thompson.

Federal politicians weighed in, forming the League for the Advancement of States' Equal Rights (LASER). One of these was republican senator Orrin Hatch of Utah, who introduced a bill to give state land commissioners power to take over 600 million acres of public lands nationwide.⁶⁵⁰ This first rebellion eventually sputtered out. One reason was the election of Ronald Reagan and his appointment of property rights advocate James Watt as Secretary of the Department of The Interior (DOI). Before serving in that post from 1981-1983, Watts had been president of the Denver-based Mountain States Legal Foundation (the firm representing commercial climbers in the conflict at Devils Tower). Addressing those in the Sagebrush Rebellion, secretary Watts pledged to “incorporate more local say into federal land management.”⁶⁵¹ A second reason for its demise was that realities of legal precedent set in. A 1911 U.S. Supreme Court decision in *Light v. U.S.*⁶⁵² meant that Hatch's bill was unlikely to be codified as law. Finally, Payments in Lieu of Taxes program (PILT) had recently been implemented. Under the program, the federal government paid counties to make up for any revenue not

⁶⁵⁰ Thompson.

⁶⁵¹ Thompson.

⁶⁵² 220 U.S. 523 (31 S.Ct. 485, 55 L.Ed. 570). The case centered on public lands encompassed by the Holy Cross Forest Reserve and the cattle/property rights of Fred Light, whose 500-head cattle herd had been found frequently wandering into this federally-protected land due to better grazing and water accessibility. Earlier statutes organized under the Department of Agriculture (TITLE 16 - CONSERVATION CHAPTER 2 - NATIONAL FORESTS SUBCHAPTER I - ESTABLISHMENT AND ADMINISTRATION. 26 Stat. at L. 1103, chap. 561, U. S. Comp. Stat. 1901, p. 1537; 30 Stat. at L. 35, chap. 2, U. S. Comp. Stat. 1901, p. 1540; act of Congress February 1, 1905 33 Stat. at L. 628, chap. 288, U. S. Comp. Stat. Supp. 1909, p. 577; 7 Fed. Stat. Anno. 310, 312; and Fed. Stat. Anno. Supp. 1909,) had provided that a “few head of cattle of prospectors, campers, and not more than ten belonging to a settler residing near the forest, might be admitted without permit; but, saving these exceptions, the general rule was that 'all persons must secure permits before grazing any stock in a national forest.’“ <https://www.law.cornell.edu/uscode/>. Accessed August 12, 2018.

collected on public lands. This money would go away if the states took over their public lands; financial considerations seem to have outweighed the complaints.

Small pockets of resistance persisted. During the summer of 1990, a second phase emerged in tiny Catron County, New Mexico. The site quickly became a central organizational locale for growing numbers of agitated landowners and cattle ranchers. One of the leaders of the “Sons-of-Sagebrush” was cattle rancher Richard Manning. Backed by Wyoming attorney Karen Budd-Falen and Karl Hess, a Las Cruces-based planning consultant, Manning argued that federal grazing permits on public lands “confer a constitutionally-protected property right”⁶⁵³ and he fought back vigorously when the federal government proposed limiting how many head of his cattle would be permitted to graze on public lands.⁶⁵⁴ Due to their combined efforts, local county commissioners began drafting emergency ordinances that were designed to limit the power of the federal government;⁶⁵⁵ over the next six months, counties in Montana, Wyoming, California, New Mexico, Utah, and Nebraska followed suit. Like the earlier phase, activists targeted the Wilderness Act and the Endangered Species Act,⁶⁵⁶ but this time they also took aim at Wild and Scenic Rivers Act,⁶⁵⁷ the Clean Water Act,⁶⁵⁸ and the National Forest

⁶⁵³ Florence Williams, “Sagebrush Rebellion II: Some rural counties seek to influence federal land use,” *High Country News*, February 24, 1992, Vol 24, No. 3, pg. 1.

⁶⁵⁴ Along with reductions in cattle, the government also intended to cut timber sales.

⁶⁵⁵ Williams, 10.

⁶⁵⁶ The passage of this 1973 Act in particular, was cited as presenting an opportunity for the government to infringe on private property holders’ rights, in the event that protection of an endangered species warranted government interference.

⁶⁵⁷Public Law 90-542; 16 U.S.C. 1271.

Management Act.⁶⁵⁹ Their goal was to ensure that local governments could exercise power to approve any actions undertaken by the federal government within their counties. They grounded legal arguments on rights to property (asserting that cattle grazing permits were “intangible property” of the permittee). Budd-Falen, having spent three years with the DOI before obtaining a law degree from the University of Wyoming, also served as an attorney for the Mountain States Legal Foundation. She crafted a legal argument against the federal government that pivoted on a “custom-and-culture” approach, insisting that families who had ranched on specific lands for generations had earned *special* rights to one, maximize their herds (meaning using more public lands for grazing), and two, use the land *in any way* that was conducive to profitability. Hess, advancing the concerted push for more local control, declared that “county commissioners can protect...rights a lot better than the federal government can,”⁶⁶⁰ and noted that it would be preferable if *all* federal lands reverted to private ownership. The skirmish with the government was not settled in their favor. However, the core group remained defiantly optimistic in the face of “the tyranny of overzealous

⁶⁵⁸ Public Law 33 U.S.C. § 1251. Originally passed as The Federal Water Pollution Control Act of 1948, it was amended in 1972 to include giving the Environmental Protection Agency authority to implement pollution control programs such as setting wastewater standards for industry, maintaining existing requirements to set water quality standards, making it unlawful for any person to discharge pollutants from a point source into navigable waters without permit, and funding the construction of sewage treatment plants under a government grants program.

⁶⁵⁹ National Forest Management Act of 1976, (16 U.S.C. 1600).

⁶⁶⁰ Williams, 10.

bureaucracies,”⁶⁶¹ and gained support which eventually led to the 1973 founding of Pacific Legal Foundation, headquartered in Sacramento, California.⁶⁶²

A third upheaval of the Sagebrush Rebellion was marked by violence and armed militias. An explosive intensity just after the 2008 election of Barack Obama characterized this unique phase although the core motivational element remained constant—intense vitriol aimed at BLM officials and resistance to “big government that was too intrusive on individuals' freedom.”⁶⁶³ The rebellion culminated in an armed occupation of the Malheur Wildlife Refuge during January of 2016, an event triggered by several related things. The first was the designation of the Grand Staircase-Escalante National Monument in Utah in 1996.⁶⁶⁴ Proclamation 6920 allowed then-President Bill Clinton to set aside a place “where one can see how nature shapes human endeavors in the American West.”⁶⁶⁵

God's handiwork is everywhere in the natural beauty of the Escalante Canyons and in the Kaiparowits Plateau, in the rock formations that show layer by layer the billions of years of geology, in the fossil record of dinosaurs and other prehistoric life, in the remains of ancient civilizations like the Anasazi Indians. In

⁶⁶¹ Ray Ring, “Rebels With A Lost Cause,” *High Country News*, December 10, 2007. <https://www.hcn.org/issues/360/17399>. Accessed June 2018.

⁶⁶² Ring, “Rebels,” Mountain States Legal Foundation is “a non-profit firm, some of its biggest financial support comes from contributions made by billionaires like Joseph Coors (a Colorado beer baron), Richard Mellon Scaife (a Pittsburgh heir to the Mellon banking, oil and aluminum empire), and John Simon Fluor” (a California mining, nuclear and oil baron).

⁶⁶³ A quote from James Watt, appearing in “Rebels With A Lost Cause.”

⁶⁶⁴ Clinton used executive privilege under the 1906 Antiquities Act to circumvent and counteract any state and local resistance. The Antiquities Act was established in 1906 to allow Theodore Roosevelt to declare Devils Tower the first national monument.

⁶⁶⁵ Proclamation 6920—Establishment of the Grand Staircase-Escalante National Monument September 18, 1996. <https://www.gpo.gov/fdsys/pkg/WCPD-1996-09-23/pdf>. Accessed August 1, 2018.

protecting it, we live up to our obligation to preserve our natural heritage.⁶⁶⁶

Following the proclamation, Clinton officially signed over 1.7 million acres in southern Utah for protection under federal law. Residents from Kanab, Utah in Kane County were particularly incensed by the authoritative rapidity guaranteed by his use of The Antiquities Act and what they described as a gross violation of their individual rights. One reason for their directed fury was that Andalex, a Dutch-owned coal company, poised to “tap into the mother lode of coal” under the Kaiparowits Plateau, had promised to provide the town with hundreds of jobs for locals and billions of dollars in local and state revenue.⁶⁶⁷ Many local folks did not take kindly to what they said was the administration’s “outrageous, arrogant approach to public policy.”⁶⁶⁸ An event unfolding two years prior confirmed that long-simmering tensions had reached a boil. In 2014, a standoff between the BLM and supporters of Nevada rancher Cliven Bundy played out in Clark county, Nevada. Bundy, citing “ancestral rights” to have his cattle graze on BLM lands boasted that

my forefathers have been up and down the Virgin Valley here ever since 1877. All these rights that I claim have been created through pre-emptive rights and beneficial use of the forage and the water and the access and range improvements.⁶⁶⁹

⁶⁶⁶ Proclamation 6920.

⁶⁶⁷ Paul Larmer, “A Bold Stroke: Clinton takes a 1.7 million-acre stand in Utah,” *High Country News*, September 30, 1996. <https://www.hcn.org/issues/90/2795>. Accessed August 12, 2018.

⁶⁶⁸ Larmer.

⁶⁶⁹ Jacqueline Keeler, “On Cliven Bundy’s ‘Ancestral Rights: If the Nevada rancher is forced to pay taxes or grazing fees, he should pay them to the Shoshone,” *The Nation*, April 29, 2014. <https://www.thenation.com/article/cliven-bundys-ancestral-rights/>. Accessed May 2018.

Bundy and his sons had been refusing to pay federal grazing fees for decades, citing the “sovereignty” of the state of Nevada. The Bundys claimed that the federal government had no jurisdiction over the county lands where they had raised cattle since 1951, and while the disputed site had been set aside under the Endangered Species Act in efforts to protect the desert tortoise of Nevada, the Bundys did not intend to comply with more strict regulations and surveillance. Due to this designation, hundreds of thousands of acres of previously graze-able land had been revoked; Bundy’s livestock grazing permit was eliminated and the BLM was preparing to round up his cattle with the assistance of local law enforcement. However, after facing off with a group of armed Bundy supporters near the ranch, the BLM backed down. In the aftermath of the standoff, Cliven Bundy was indicted on several criminal charges. He was acquitted of all of them in January of 2018.

His sons kept up the fight. They, along with 15-20 supporters calling themselves the Citizens for Constitutional Freedom, led the occupation of Malheur to express support and solidarity with the Dwight Hammond family, who had been at odds with wildlife management officials for decades. Hammond and family members had ignited fires that burned 139 acres of public land⁶⁷⁰ and in 2012, Hammond and his son were sentenced on charges of arson.⁶⁷¹ A document signed, “We the People - United Individuals of these States United” described violations of the Hammond’s rights, and was delivered to Oregon governor Kate Brown, the sheriff, two county commissioners, a district attorney,

⁶⁷⁰ According to testimony, they set the fires as “control burns” to come up against a wildfire that was threatening to burn the winter pastures on their land.

⁶⁷¹ Each received a sentence of five years in federal prison.

and a justice of the peace, days before the Bundy takeover.⁶⁷² The occupiers insisted that the county of Harney and state of Oregon had failed to protect the Hammond's constitutional rights.⁶⁷³ Residents of Grant County, Oregon, just to the north of Malheur, appeared mostly sympathetic to occupiers; a local newspaper even called the protestors “heroes” and “patriots.”⁶⁷⁴ By contrast, residents of Harney county, the site of High Desert Partnership (a conservation group behind the establishment of Malheur), were more cooperation-minded and certainly more compliant with federal policies. During the 4th week, standoff spokesperson LaVoy Finicum was shot and killed by Oregon State police. The fallout, distinguished by disagreements over rights and individual liberty, pitted state and federal authorities against each other in a battle for jurisdiction. This tug-of-war is consistently featured in the ideological rift, the fabricated binary. The standoff ended soon after with federal indictments of Ammon Bundy and 15 other militants. The indictments listed conspiracy, using threats and intimidation to maintain the occupation, and coercion. All charges were dismissed in 2016. However, the ideologically-based tug-of-war between state and federal jurisdiction over public lands continues to be featured.

The narrative of the three stages of the Sagebrush Rebellion and the fact that every single charge against agitators was either dismissed or pardoned⁶⁷⁵ confirms that,

⁶⁷² A copy of the letter can be found here: <https://www.naturalnews.com/files/NOTICE-Redress-of-Grievance-Harney-County.pdf>. Accessed August 13, 2018.

⁶⁷³ <https://www.naturalnews.com/files/NOTICE-Redress-of-Grievance-Harney-County.pdf>.

⁶⁷⁴ Rylan Boggs, “Patriotic Disputes,” *Blue Mountain Eagle*, October 18, 2016.

⁶⁷⁵ In July of 2018, president Trump pardoned Dwight Hammond and his son. <https://www.npr.org/2018/07/10/627653866/president-trump-pardons-ranchers-dwight-and-steven-hammond-over-arson>. Accessed August 14, 2018.

despite disagreement, “rule-of-law,” an important feature of the eurochristian worldview, is consistently recreated and upheld, whether the turmoil is over individual property and ownership, or individual use and recreation. When similar conflicts flare up, the most pressing questions revolve around rights...whose individual rights are most often upheld? Why? How do skirmishes between state and federal authorities over jurisdiction otherwise camouflage the perpetual regeneration of the colonizer’s interests? To what extent can states exercise powers of sovereignty and agency to make decisions about federal public lands that lie within their borders? These questions elicit rancor in White American culture. We see that in the present-day controversy over Bears Ears National Monument⁶⁷⁶ and Grand Staircase-Escalante, both of which are within the borders of the state of Utah; the ill-feeling is still present between climbers, park rangers, and is most often directed at Lakota visitors and/or ceremonial practitioners at Mato Tipila.

Indignation and resentment are at an all-time-high within American culture these days, corresponding with a brand new and virulent reinvention of White-ness. This recreation of racial superiority is expressed through collective outrage about what is perceived to be a loss of status and power for Whites in America. Not surprisingly, focused antipathy and violent action is directed at people of color. It is important to understand this latest creation of White-ness as part of a long history of racial formation,

⁶⁷⁶ Senator Mike Lee introduced a legislative bill he calls Protecting Utah’s Rural Economy Act (PURE) that would require congressional and state legislature approval for any future National Monument designations in Utah, for example.

or “processes of classification...reflective of social structures, cultural meanings and practices, and broader power relations,”⁶⁷⁷ whereby

definitions of specific categories are framed and contested from “above” and “below.” The social identities of marginalized and subordinate groups...are both imposed from above by dominant social groups and/or state institutions, and constituted from below by these groups themselves as expressions of self-identification and resistance to dominant forms of categorization.⁶⁷⁸

A resurgence of White supremacy from within the larger system of hierarchical categorization is distinguished more and more by high levels of coordination between resentful individuals, now assembling into large, disgruntled coalitions known as the “alt-right.” Their actions are increasingly systematic and often articulated by shared tropes like “they’re taking our jobs” and “border security.” The tropes obscure a stark racialization just underneath - the exercise of power “requires...distinctions.”⁶⁷⁹ They are resentful of people they deem non-White. They are convinced that their superior position in the social hierarchy is under attack; more and more often, they are joining forces, inspired by people like the Bundy family and their “rights” protest against the BLM and the Malheur National Wildlife Refuge officials. Even Andy Petefish’s sneering rejection of “Indian religion” and his right-to-climb sloganeering may have appeared to be anomalous, but his protest is rooted in the same type of resentment. William Pendley’s startling reference to “true religion” in a homiletic appearing in the plaintiffs’ opening brief hardly obscures his privileged indignation. Protesting the voluntary climbing ban as

⁶⁷⁷ Omi and Winant, 106.

⁶⁷⁸ Omi and Winant, 106.

⁶⁷⁹ Omi and Winant, 114.

a Constitutional violation, Pendley informed the court that “for Jews and Christians, treating Devils Tower as “sacred” or as an “alter” (sic)...violates... religion.”⁶⁸⁰ “True” religion, for Pendley and others like him who are busily engaged in reasserting their superiority, is part of a White way of life, one that is “better” “above,” and “superior.” The point I am making is that the eurochristian worldview is also upheld by a well-established, uniquely American practice of racial categorization and social stratification; these days, the position of supremacy in the social hierarchy is being reasserted in new ways.

In the case over Mato Tipila, White male climbers, with the backing of a major legal fund, framed their argument in terms of individual victimization from within a majoritarian social location upheld by the government policy of accommodation. This has become an increasingly effective tactic in the reinvention of Whiteness, one propelled by a current populist political climate and the ability of social media to draw otherwise disgruntled, but largely isolated individuals into strong coalitions united under a common cause. Clearly, the hierarchical position at the top of the Up-Down image schema has always depended on a perpetual (re)construction of White-ness; Tinker writes that the construction and formation was already evident as early as the 17th century in England, where “color *did* matter...[as] the enslavement of african peoples was being separated from the indentured-service status of Europeans.”⁶⁸¹

⁶⁸⁰ Opening Brief of Plaintiffs, *Bear Lodge Multiple Use Association v Babbitt*, in *The United States Court Of Appeals For The Tenth Circuit*, No. 98-8021, 12.

⁶⁸¹ Tinker, *John Locke on Property*, 57.

I am not making the simplistic claim however, that those who share the eurochristian set of logics also share superficial, biological characteristics; rather, that sociopolitical techniques for distinguishing between people (based on surface-level physical characteristics), then assigning racial status and group identity (think Ellis Island), have been “practical tool[s] in the organization of human hierarchy.”⁶⁸² Race is a fundamental principle of American social organization; as a category, it has been replicated and reified in churches, courtrooms, residential boarding schools and elsewhere, but rapidly intensified due to “massive European immigration around the turn of the 20th century.”⁶⁸³ This formation of race and ongoing (re)construction of White-ness correspond, even as Omi admits, “race continually morphs...there’s a continuing instability to the very concept itself.”⁶⁸⁴ As a conceptual category though, it certainly has staying power, because it is neurally activated and arises via basic-level categorization (which is our primary mode of distinguishing between things). Distinctions become institutionally embedded, so accepted as “the way things are” that those who benefit and those who clearly do not, rarely realize alternatives. Race continues to be a hot-button topic: while codified distinctions are understood as common sense, “the confounding problem of race is that few people seem to know what race is.”⁶⁸⁵

⁶⁸² Omi and Winant, 22.

⁶⁸³ Michael Omi and Howard Winant, *Racial Formation in the United States*, third edition, (NY: Routledge).

⁶⁸⁴ Brown University, “Racial Formation in the United States: Conversation with Michael Omi and Howard Winant, July 7, 2015. <https://www.youtube.com/watch?v=ID2dGcbo1KA>. Accessed November 2018.

⁶⁸⁵ Ian F. Haney-Lopez, “The Social Construction of Race,” *Critical Race Theory*, second edition, eds. Richard Delgado & Jean Stefancic, (Philadelphia: Temple University, 2000), 165.

However, as Deloria points out, for American Indians, understanding the field of relationships between different social groups is complex, especially since “race relations...[are]...defined...in terms of the white-black relationship.”⁶⁸⁶ Racial formation in the United States, he writes, means that Indians have been most often classified as “Others,” or worse, part of a mythic pan-Indian community. In *Bear Lodge v Babbitt* for example, Lakota ceremonial practices are subsumed under the catch-all “Indian religion,” as though all the discrete ceremonial practices, relationships, and histories of particular people in specific places can be summed up in these two words. The issue is that trying to organize and categorize Native people as ethnic or racial minorities, whether it is an assimilative project of the state, a tactic of left-leaning liberals or right-wing conservatives, or even if other minorities are attempting to do so, is damaging. In every case, it undermines the political reality of Native peoples as communities.

Merely bringing Indians into the discussion is no answer at all. It will probably be done in the same contemptuous manner in which Indians and youth – both children in American mythology – have traditionally been treated. Adults, blacks, whites, and bureaucrats contemptuously announce that “we haven’t heard from the Indian youth yet.

The entire vocabulary and organizational hierarchy must be dissolved in favor of new organizations at the local level. New languages with special technical content should be developed by local groups to fit their needs. Bureaucrats must either understand the new vocabulary or perish.⁶⁸⁷

Deloria predicted that categories like ethnicity were replacing concepts of race, noting that “we are now watching the dissolution of the very concept of white as...ethnic

⁶⁸⁶ Vine Deloria, *We Talk, You Listen*, (NY: Macmillan, 1970), 87.

⁶⁸⁷ Deloria, *We Talk*, 94, 98-99.

groups assert their respective identities.”⁶⁸⁸ Even in 1970, it would have been hard to imagine just how adaptable White supremacy is. As a category, it reconstructs and transmogrifies, especially in volatile social circumstances, and is always “up”/the highest, the penultimate position in the Up-Down hierarchy.

In their preface to the latest edition of *Racial Formation in the United States*, Omi and Winant optimistically note that “legally sanctioned forms of racial discrimination...have receded.”⁶⁸⁹ This edition came out before January 20, 2017, so obviously, they also could not have anticipated the incivility and virulence with which White-ness has again been reinvented. In the “public square,” (increasingly, the globalized realm of the internet), we are often riveted to our screens, transfixed as observers, others, however, take part in resistant action in the real world. Some, who have self-identified or been classified as “White” are now experiencing real violence of racialized encounters.⁶⁹⁰ We virtually witness these encounters as they unfold in real-time, mostly through events and images captured on iPhone cameras, then virally spread through social media platforms. Each day it seems, we observe confrontations instigated and quickly intensified by resentment-filled citizens, targeting people they perceive as non-White and somehow threatening.⁶⁹¹ These are the “new” Whites; they are

⁶⁸⁸ Deloria, 91.

⁶⁸⁹ Omi and Winant, vii.

⁶⁹⁰ Non-Native Water Protectors at Standing Rock, for example, also endured canine attacks, fire hoses, rubber bullets, and pepper spray from local, state, and federal authorities.

⁶⁹¹ For example, please see Cleve R. Wootson Jr., “She was ‘white and hot’ in a racist video. Now she’s viral and unemployed,” *The Washington Post*, October 29, 2018. https://www.washingtonpost.com/nation/2018/10/29/she-was-white-hot-racist-video-now-shes-viral-unemployed/?utm_term=.e7dfbfaa3087. Accessed November, 2018.

rearticulating “ideological themes already present in...[their] consciousness such that these elements obtain new meaning or coherence.”⁶⁹²

These themes correlate with a construction of White-ness that intensified during the 19th century, when ever-increasing numbers of *new* Europeans began to arrive on these shores, and it became necessary for those who had already grabbed land, power, and prestige, to *classify* these newcomers as “whites of a different color.” Assigning separate statuses distinguished the newcomers from African slaves, but also enabled them to partake in systematized land-theft and claim-staking on Native lands, because they had now been placed in the hierarchy – higher and more “civilized” than “savages,” and further along on the timeline of progress than living vestiges of “primitive humanity.” Once classified, status is passed down to the next generation and is upheld in legal decisions, in executive proclamations, in legislative decisions, police encounters, and in popular culture. White-ness is the dominant, embodied, conceptual category.

Stunning levels of hatred and a hair-trigger impulse towards violence aside, today’s political “alt-right,” (new Whites), have three characteristics in common: collective resentment about a perceived loss of power and privilege associated with racial status, a frenzied response to dog-whistle politics, and what political science professor George Hawley has zeroed in on, economic disadvantage.⁶⁹³ Basically, new-Whites are now racializing what has historically been a class issue – collectively asserting that “race

⁶⁹² Omi and Winant, 165.

⁶⁹³ Jeanna Smialek, “The Other Thing White Nationalists Have In Common,” *Bloomberg*, August 9, 2018, updated August 11, 2018. <https://www.bloomberg.com/news/articles/2018-08-09/alt-right-views-in-u-s-spring-from-common-source-economic-woes>. Accessed November, 2018.

is very important to their identity,” and further, that “it is important that whites work together to change laws that are unfair to whites.”⁶⁹⁴

A frequent target for their wrath is how the government creates and manages public lands. As such, a land-transfer movement is now underway, developed on an idea that was articulated in the platform of the Republican party national convention in 2016: “Congress shall immediately pass universal legislation providing for a timely and orderly mechanism requiring the federal government to convey certain federally controlled public lands to states.” This agenda also echoed a similar declaration from the 2012 convention, that “the enduring truth is that people best protect what they own.”⁶⁹⁵ That kind of rhetoric of course, incenses those who are committed to conservation, preservation, recreation, and protection of public lands. One of these is sportsman Randy Newberg, “the voice of the public-land hunter in America.” Newberg is frank in his assessment, declaring “federal lands...we all own them.”⁶⁹⁶ Exerting rights of ownership is a key strategy, he surmises, for resisting land-transfers designed to liquidate federal lands via sale. Newberg advises us to educate ourselves about land boards, which were originally established to hold lands in trust that Western states received at statehood. States hold those lands in trust and manage them for a return. Some states did so by leasing mineral, grazing, and timber rights, others opted to sell their lands off, and some chose to restrict

⁶⁹⁴ Smialek, <https://www.bloomberg.com/news/articles/2018-08-09/alt-right-views-in-u-s-spring-from-common-source-economic-woes>.

⁶⁹⁵ <https://www.hcn.org/articles/2016-gop-platform-pushes-federal-land-transfers>. Accessed July 25, 2018.

⁶⁹⁶ <https://news.orvis.com/fly-fishing/fight-keep-public-lands-public-5-questions-randy-newberg>. Accessed August 13, 2018.

or prohibit any outdoor activities on these lands. Using Colorado as an example, Newberg outlines his opposition to the sale of public land.

You cannot hunt, fish, shoot, hike, camp, or in any other way use State Trust Land, unless you are the holder of the land lease. Imagine then, taking 23 million acres of BLM and Forest Service lands in Colorado and handing them over to the Colorado State Land Board. In that one stroke of a pen, Americans would lose hunting, fishing, shooting, camping, hiking, (insert recreation activity here) rights on 23 million acres, whereas they currently enjoy those activities, mostly without restriction, in Colorado.⁶⁹⁷

Americans stand to lose a huge part of what makes America so special. To lose that part of your culture is a loss too great to explain.⁶⁹⁸

Wes Siler agrees, stating that federally-held public lands are critical to the economies of Western states. As he sees it, state management dictates profit first, while federal management prioritizes long-term health.⁶⁹⁹ Siler believes taking control of public lands would infringe on states' rights because they would then be vulnerable to a complicated array of federal laws dictating land use. Shane Patrick Mahoney touts the public trust doctrine as an ideal way to ensure that "rights over wildlife property" are upheld.⁷⁰⁰ Scientific research conducted on public lands is the only legitimate basis for conservation management and policy he insists; land and wildlife in public spaces are

⁶⁹⁷ <https://news.orvis.com/fly-fishing/fight-keep-public-lands-public-5-questions-randy-newberg>.

⁶⁹⁸ <https://news.orvis.com/fly-fishing/fight-keep-public-lands-public-5-questions-randy-newberg>.

⁶⁹⁹ Wes Siler, "Indefinitely Wild: Public Lands Belong In Federal Hands," *Outside Magazine*, October 25, 2016.

⁷⁰⁰ Shane Patrick Mahoney, "Recreational Hunting and Sustainable Wildlife Use in North America," *Recreational Hunting, Conservation, and Rural Livelihoods*, edited by B. Dixon, J Hutton, and W.M. Adams, (NJ: Blackwell, 2009), 270.

property of people and only responsible conservation allocates this property to ensure its continued use.

John B., government lobbyist/strategist and executive for the Colorado outdoor recreation industry, shares the sentiments of Siler and Newberg. Noting “iconic landscapes, cultural significance, and recreational assets,” of set-aside lands, he battles to ensure that lands held in federal trust remain intact. Management of public lands is ideally upheld through legislation, he says, because that “brings all stakeholders to the table,”⁷⁰¹ and says that Colorado realizes enormous benefit from responsibly using its public lands. He cites the following statistics from a document called “Keep Colorado Wild:” the outdoor recreation economy statewide contributes \$28 billion in consumer spending, 229,000 jobs generating \$9.7 billion in salaries and wages across the state, and \$2 billion in state and local tax revenue.⁷⁰² Selling federal public land to the highest bidder would be economic suicide, he claims, and would also irrevocably damage what he describes as a treasured aspect of our shared America heritage – preservation of wilderness.

Wilderness is solitude. Wilderness means to seek wild America. It is land preserved for the land itself. There’s an allowance made for human interactivity around that land, but the point of wilderness is to leave the land and the water untrammled by human impact. It’s designated for human activity on land in its most natural state. It’s left to develop and grow as it would be in a purely pristine, natural

⁷⁰¹ Personal interview conducted on August 3, 2018.

⁷⁰² Press release “Keep Colorado Wild: Jared Polis for Colorado,” 1-2.

state. These places are so much a part of our American heritage. Wilderness is the land as it is, with no human manipulation.⁷⁰³

I asked what he meant by bringing all stakeholders to the table. Stakeholders are people “working their lands,” he replied, or responsibly conserving resources.

Stakeholders, he added, include “tribes.” Historically, he stated, the recreation industry had paid “little, if any” attention to tribal interests, but he now envisions his organization’s involvement as pivotal to changing that history. *Let’s Move!* In Indian Country, a project spearheaded by Michelle Obama on behalf of the DOI and other agencies, is one way he hopes to see a new coalescence of recreation and tribal interests, especially in the wake of the Trump administration’s “direct attack” on both tribes and the recreation economy.⁷⁰⁴

At the heart of these ideologies we can identify the unconscious replication of the Up-Down image schema. John’s description of stakeholders as people “working the land,” for example, reflects Locke’s treatises. Nevertheless, Sagebrush Rebels, the Hammonds, the Bundys, land-transfer proponents and other so-called “right-wingers” are in diametric opposition to people like John B., Randy Newberg, Shane Mahoney, and others, often characterized as “the left.” There are occasions when someone who shares the eurochristian worldview manages to creatively trouble or disrupt some of its most persistent cognitive concepts. For example, 1978’s lyrical composition “Enough About

⁷⁰³ Statement made by a policy executive at one of the largest recreational retailing organizations in the country, referencing Congressional power to designate some places wilderness areas.

⁷⁰⁴ Notes from August 3, 2018 interview.

Human Rights”⁷⁰⁵ featured New York City busker Moondog chanting one rhetorical question after another. What about snail rights? he demanded. Seal rights, he wanted to know...moose rights...what about plant rights? Slug rights?⁷⁰⁶ Peculiarities of man and art aside, his piece challenged the anthropocentric bias and hierarchical mode of categorization; as we know, the conceptualization of rights is an entailment of those constructs. Moondog was not the first to do so.

In the same way, although thirty years prior, Aldo Leopold, U.S. Forest Service Manager and conservationist, argued for rights of animals, plants, trees, soil, and other living beings.⁷⁰⁷ All living beings have the *right* to exist and thrive, he insisted; man’s responsible stewardship over the natural world is the only way to express them. He imagined an “ethic dealing with man’s relation to land, and to the animals and plants which grow upon it.”⁷⁰⁸ Leopold described a tension between profit-driven, greedy private landowners, and a tendency in “American conservation to relegate to government all the jobs that landowners fail to perform.”⁷⁰⁹ Any relationship humans have with land, he contended, is based on individual concerns of profitability. The antidote is to create ethical obligations on the part of the private landowner,⁷¹⁰ and teach an ecological

⁷⁰⁵ Louis Hardin, from the album *H’art Songs*, (KopfRecords, 1978).

⁷⁰⁶ https://www.youtube.com/watch?v=-dLPs w3i_ P8. Accessed June 2018.

⁷⁰⁷ Aldo Leopold, “The Land Ethic,” *A Sand County Almanac: And Sketches Here And There*, (London: Oxford University Press, 1949), 201-226.

⁷⁰⁸ Leopold, 203.

⁷⁰⁹ Leopold, 213.

⁷¹⁰ Leopold, 214.

conscience to future generations.⁷¹¹ Land, he wrote, is a biotic mechanism; lines of dependency for food, what he called food chains, constantly undergo transformation. The chain “soil-oak-deer-Indian,” he explained, was eventually converted to “soil-corn-cow-farmer”⁷¹² through a natural evolutionary process resulting in a more diverse and elaborate biota. However, diversification had accelerated too rapidly so food chains became shorter rather than longer. A land ethic then, involves a sophisticated understanding of the effects of man-made changes and the law of diminishing returns. Leopold rarely invoked the term “rights” – maybe just once or twice.

The land relation is still strictly economic, entailing privileges but not obligations. A land ethic of course, cannot prevent the alteration, management, and “use” of these resources, but it does affirm their right to continued existence.⁷¹³

Since the publication though, generations of conservationists extend his theories. Twenty-five years after the publication of *A Sand County Almanac*, law professor Christopher D. Stone argued for recognition of rights for animals, trees, rivers, and other living beings. The environment, he wrote, should be brought into human “society as a rights holder”⁷¹⁴ since the human-land relation is still strictly economic, one entailing privileges but not obligations.⁷¹⁵

⁷¹¹ Leopold, 221.

⁷¹² Leopold, 215.

⁷¹³ Leopold, 203, 204.

⁷¹⁴ Christopher C. Stone, *Should Trees Have Standing? Toward Legal Rights For Natural Objects*, (Los Altos, CA: Southern California Law Review and William Kauffman Inc, 1974).

⁷¹⁵ Stone, xi.

Stone wants legal “standing” for securing rights for the environment, and writes “it is not inevitable, nor is it wise, that natural objects should have no rights to seek redress on their behalf.”⁷¹⁶

We should have a system in which, when a friend of a natural object perceives it to be endangered, he can apply to a court for the creation of a guardianship. Of course, to urge a court that an endangered river is “a person” under this provision will call for lawyers as bold and imaginative as those who convinced the Supreme Court that a railroad corporation was a “person” under the fourteenth amendment. The potential “friends” that such a statutory scheme will require will hardly be lacking.⁷¹⁷

Conferring rights on the environment is an ethical argument, he writes; and offers a “radical new conception of man’s relationship to the rest of nature.”⁷¹⁸ Leopold and Stone successfully break out of the paradigm that conceptualizes time and history as a linear, evolutionary progression. Their objectives center on responsible stewardship practices that they understand are human obligations, based on hierarchical categorizations of existence. Nevertheless, stewardship is a concept that contradicts the Lakota model of interrelatedness.

Now we are as one, earth, sky, all living things and the *ikce wicasa* – the human beings. We are one big family...the Sioux people started the custom of ending all important ceremonies with the words *mitakuye oyasin* – all my relatives – plants, animals, humans all one big universal family.⁷¹⁹

⁷¹⁶ Stone, 17.

⁷¹⁷ Stone, 17-19.

⁷¹⁸ Stone, 48.

⁷¹⁹ John Fire/Lame Deer and Richard Erdoes, *Lame Deer, Seeker of Visions*, (NY: Simon and Schuster, 1972), 253.

PART THREE: THE WHITE MAN'S SPIRIT LAND IS NOWHERE.⁷²⁰

Now is a good place to pause and remind ourselves of tenets of a eurochristian “interrelated set of logics that fundamentally orient a culture to space (land), time, the rest of life, and provides a prescription for how to live that life.”⁷²¹ First, the anthropocentric orientation and hierarchical categorization: John B. romanticized “untrammled” Eden-like places, pristine and pure, but also believes that human beings must “responsibly work the land.” This work translates into vigilant stewardship practices on commonly-owned lands (articulated via “protection,” “preservation,” “conservation”). This duty-to-manage evokes the hierarchical understanding as well as suggests separation between people and nature (land), that does not make sense for Lakota peoples. Albert White Hat confirms that *mitakuye oyasin* (all my relatives), more than an oft-used phrase in Lakota culture – is so central that “our philosophy and way of life are based upon it.”⁷²²

In fact, there is no word in the Lakota language for nature as it is understood in the Euro-American, post-Enlightenment sense— as a passive, impersonal, abstract domain of objects subject to autonomous, mechanistic laws that is antithetical to culture or society.⁷²³

Christopher Stone describes human beings as guardians of natural objects. In a similar way, free market capitalist John H. Miller, encourages human beings to gain a

⁷²⁰ Good Seat, in James R. Walker, *Lakota Belief and Ritual*, edited by Raymond J. DeMallie and Elaine A. Jahner, (Lincoln: University of Nebraska Press, 1991), 72.

⁷²¹ Freeland, *Conceptual Decolonization of Space*.

⁷²² Albert White Hat, *Zuya, Life's Journey: Oral Teachings from Rosebud*, (Salt Lake City: University of Utah Press, 2012), xx.

⁷²³ David C. Posthumus, “All My Relatives: Exploring Nineteenth-Century Lakota Ontology and Belief,” *Ethnohistory*, Vol. 64, Iss. 3. Durham, NC: 2017, 379-400 [382].

heightened awareness of “components” of the environment. This awareness is essential for their preservation and protection.

the word environment itself means “that which surrounds.” This very definition postulates the existence of a center around which the environment exists. *That center is the human being*, the only creature in this world who, is not only capable of being conscious of itself and of its surrounding, but is gifted with intelligence to explore, the sagacity to utilize, and is ultimately responsible for its choices and the consequences of those choices. The praiseworthy heightened awareness of the present generation for all components of the environment, and the consequent efforts at preserving and protecting them, rather than weakening the central position of the human being, accentuate its role and responsibilities⁷²⁴ [emphasis added].

All construe human beings as occupiers of the highest level of cosmological hierarchy by which they control and make decisions about land and other living beings (for Miller, the hierarchy is even more stratified – those owning the most private property have stewardship obligations to the poor majority as well). Nevertheless, the differences are merely ideological and mostly having to do with the role of the state in overseeing the stewardship model.

Stakeholders in Energy Fuels Resources, demanding that their rights to mine for uranium be upheld in legal venues, are as resolute as Randy Newberg is about his rights to hunt elk on public lands. Ideological commitments and interests notwithstanding, they share a belief that human beings are separate and apart from the natural world: regardless of one’s vested interest in the rituals of ownership and property that dictate land use, the

⁷²⁴ *Curing World Poverty: The New Role of Property*, John H. Miller, Michael D. Greaney, and Dawn K. Brohawn, eds. (Saint Louis: Social Justice Review, 1994), 4.

natural world is there to be beneficially used, owned, and segmented - human beings decide what that looks like.

We might contrast these interests with *mitakuye oyasin*, a philosophy that describes the Lakota relationship with lands, a prioritizing of communal interests over individual interests, respecting all persons, whether two-legged, four-legged, winged ones, trees, mountains, etc., and notions of the interrelatedness between humans and the rest of the natural world, not characterized by ontological separation.

We come from the blood of Inyan...we are related to all creation. The concept comes directly from our origin story. We don't worship a higher power. There is not a Supreme Being above us. The spirit(s) that come into our ceremonies, it's the same as if you came to visit me. The focus is always on *Mitakuye Oyasin*, "all my relatives."⁷²⁵

Tinker writes how seamlessly the notion that a god-on-high orchestrated a plan by which chosen people inherited divinely-granted rights to land, (a dominant theme in the rise of Christendom), was carried over into Locke's treatises, imagined by puritans and other newly-arriving colonizers as guiding their progression towards "salvation" and progressive usurpation of Native homelands and enshrined as doctrinal truth in the American legal system. These notions have created and upheld rules-of-law with regard to land ever since.

According to Locke, God wanted English folk to take over the vacant "waste" lands of North America. Yet they were not vacant at all. They were actually widely inhabited but by Locke's judgement they were inhabited by peoples who had failed to develop the land adequately. So God wanted English agriculturalists, who were invested in a money economy that allowed for a much greater

⁷²⁵ White Hat, 87, 89, 90.

accumulation of wealth, and who could use their God-given superior culture to generate new wealth by stealing Indian land (that is, for legitimate, legally justifiable, and under some divine command based on moral rationale to take someone else's land by conquest) remove those people from the land and repopulate the land with Englishmen.⁷²⁶

God is apparently still weighing in. Cliven Bundy and Bill Clinton look to a god-on-high (hierarchical categorization) to promote their ideological visions – Bundy's "god-given right"⁷²⁷ to graze his cattle, and Clinton's romanticized vision of "God's handiwork in the natural beauty" of the Grand Staircase-Escalante national monument both reflect the interrelated set of logics organized by Up-Down image schemas and the "chosen-ness" of exceptionalism. This obviously stands in stark contrast with a Lakota interrelated set of logics.

The Oglala Indians believe that there are spirits belonging to places, things, animals, birds, insects, and reptiles. There is no recognized Great Spirit. When a...medicine man wants to have the aid of the spirits he calls on them.⁷²⁸

Leopold, describing diversification in food chains, relied on an evolutionary (temporal) timeline and worried that progress could be inhibited in the absence of an ethic. The chain "soil-oak-deer-Indian," for example, converted to "soil-corn-cow-farmer;"⁷²⁹ desirable and natural, equaling progressive development. Nevertheless, he

⁷²⁶ Tinker, "John Locke: On Property," 50.

⁷²⁷ Edwin Lyngar, "FoxNews' demented poster boy: Why angry rancher Cliven Bundy is no patriot," *Salon*, April 27, 2014. https://www.salon.com/2014/04/17/fox_news_demented_poster_boy_why_angry_rancher_cliven_bundy_is_no_patriot/. Accessed August 29, 2018.

⁷²⁸ "Spirits. Thomas Tyon, (AMNH), James R. Walker, *Lakota Belief and Ritual*, edited by Raymond J. DeMallie and Elaine A. Jahner, (Lincoln: University of Nebraska Press, 1980 (1991), 119.

⁷²⁹ Leopold, 215.

expressed grave concern that not all biotas are equal in their capacity to “sustain violent conversion.”⁷³⁰ Ones less touched “by civilization” (we can rightly assume he meant “biotas” of Indians) are especially vulnerable. Compare that sentiment with a statement from the home page of Pacific Legal Foundation: “A society cannot flourish and individuals cannot *advance their private interests* without individual rights to create and productively use property.”⁷³¹ Granted, Leopold did not frame advancement in individualistic terms but does share the teleological concept of time and forward progress. Hanke’s prescription for how to “live a better life” reifies a hierarchical conceptualization -, “dollarizing,” will “reverse high misery indexes in the world.”⁷³² These correlations are not always obvious, but each ideological commitment is grounded in unilineal, sequenced paradigms intrinsic to the very same interrelated set of logics - anthropocentric, hierarchic, exceptionalist. And fictitious.

Recently, debates about rights have become increasingly distinguished by pluralistic approaches that seek to challenge the “abstraction and apoliticization” of the human rights movement that has historically “obscured the political character of the norms it seeks to universalize.”⁷³³ 1979’s United Nations “Convention On The

⁷³⁰ Leopold, 218.

⁷³¹ <https://pacificlegal.org/>. Accessed August 29, 2018.

⁷³² Helena Ball, “Venezuela: There’s only one way to fix the world’s most miserable country: The PanAm Post speaks with renowned economist Steve Hanke about the solution to the country’s hyperinflation,” *PanAm Post, News and Analysis in the Americas*, March 4, 2018. <https://panampost.com/helena-ball/2018/03/04/venezuela-only-one-way-fix-worlds-most-miserable-country-hyperinflation/?cn-reloaded=1>. Accessed August 19, 2018.

⁷³³ See, for example, Makau Mutua, *Human Rights: A Political and Cultural Critique*, (Philadelphia: University of Pennsylvania Press, 2002), 3.

Elimination of all Forms of Discrimination Against Women,” was called to recognize that women are uniquely imperiled in an increasingly globalized world. As a result, women’s rights were affirmed as human rights⁷³⁴ in 1995. Addressing intersections of marginalization, for example, Shaheen Sardar Ali takes on ideologues opposed to rights of women vis-à-vis Islamic law.⁷³⁵ And U.N. special rapporteur S. James Anaya has raised issues of self-determination and jurisdiction over lands and natural resources on behalf of Indigenous communities in the U.S. Referring to the 2007 adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as “a milestone in the re-empowerment of the world’s aboriginal groups”⁷³⁶ he envisions its implementation as a guarantee against continued genocide or ethnocide, and a vehicle by which *rights of Indigenous peoples are understood as collective, not individual*.⁷³⁷

These are attempts to advance, broaden, and reimagine rights. At the same time, there are those who resist and argue to preserve, virtually unchanged, the foundations of the discourse. These theorists are preoccupied with the universality of human rights, the vehicles by which rights should be implemented and upheld, and whether or not states should be compelled to have an international human rights policy. These are fundamental “givens” that remain, to a large degree, unchallenged. As Mutua points out, “[t]he adoption in 1948 by the United Nations of the Universal Declaration of Human Rights –

⁷³⁴<http://www.un.org/en/sections/issues-depth/women/>. Accessed June 15, 2018.

⁷³⁵ Shaheen Sardar Ali, *Gender and Human Rights In Islam and International Law: Unequal Before Man?* (Boston: Kluwer Law International, 2000).

⁷³⁶ Anaya, *Indigenous People*.

⁷³⁷ <http://www.jurist.org/forum/2007/10/un-declaration-on-rights-of-indigenous.php>.

the foundational document of the human right movement – sought to give universal legitimacy to a doctrine that is fundamentally Eurocentric in its construction.”

Sanctimonious to a fault, the Universal Declaration underscored its arrogance by proclaiming itself the ‘common standard of achievement for all peoples and nations.’ The fact that half a century later human rights have become a central norm of global civilization does not vindicate their universality. It is rather a telling testament to the conceptual, cultural, economic, military, and philosophical domination of the European West over non-European peoples and traditions.⁷³⁸

“Traditionalists” from within rights theory typically resist efforts to recognize group rights for example, and certainly oppose conferring rights on other-than-humans, most often falling back on hegemonic first principles:

Human rights are literally the rights that one has simply by being human.

Homo sapiens are thus the holders of human rights.

Human rights are not abstract values...rather, they have been thought of as moral rights of the highest order.

Human rights are needed, not for life, but for a life of dignity, a life worthy of a human being.⁷³⁹

As I have argued in previous chapters, these principles of rights rest on few specific conceptual categories that are unique to the eurochristian interrelated set of logics. I also argue that insisting on say, rights – whether for rivers, trees, deer, soil, horses, possums and so on, does not successfully break out of that constraining paradigm.

That is true when armed militias take over public lands, cattle ranchers defy the BIA,

⁷³⁸ Mutua, 154.

⁷³⁹ Donnelly, *Universal Human Right*, 10-15.

activists from EarthFirst! place spikes in trees to seriously wound loggers. In spite of passionate disagreement about tactics, goals, motives, as well as interesting diversity in terms of ideological commitment – (hunters on public lands, for example, probably don't spend a lot of time with members of the Sierra Club, climbers at Devils Tower seem generally unconcerned with preserving raptor habitats) - even so, their unique interests are entailments of common embodied metaphors...not altogether different, and striking manifestations of the eurochristian worldview. In other words, the Up-Down image schema, the privilege of chosen-ness, the hierarchy of existence, all of that prevails. The eurochristian worldview remains dominant.

Let's return to Moondog for a moment, and his litany of questions. Is he asking how "louse rights" for example, should stack up against "bear rights?" The absurdity of suggesting such stratifications is a ploy; it's the repetitive "what about...what about...what about" that belies his real question and offers a deeper challenge to listeners, suggested by the first word of the title - "enough." Human rights discourse is, of course, grounded in anthropocentric rhetoric that upholds and creates hegemonic conceptual categories that seem beyond reproach, so ultimately un-challengeable. Most theorists tend to assert a crystallized, but widely unexamined aphorism – "human dignity" – understood as "the special moral worth and status had by a human being."⁷⁴⁰ Described as hopelessly vague,⁷⁴¹ vacuous,⁷⁴² a fuzzy concept,⁷⁴³ the fact that so many

⁷⁴⁰ Donnelly, 129.

⁷⁴¹ Donnelly, 130.

⁷⁴² Mirko Bargaric and Allan James, 2006, "The Vacuous Concept Of Dignity" *Journal of Human Rights* 5 (2):257-70.

continue to assert it as a normative concept, shaped by the body of...human rights law,”⁷⁴⁴ confirms that we cannot, “get beyond’ our categories.”⁷⁴⁵ But even as I write this, I am compelled to more closely examine a recent movement taking place on a global scale that specifically argues for broader implementation of rights for peoples, the earth, rivers, trees, etc. Guided by the conviction that there are *inherent* rights of all living things to “exist, to be respected, to regenerate bio-capacity, to breathe clean air, to be free from contaminants,”⁷⁴⁶ etc., these activists implore us to think outside the box. Given accelerative environmental degradation, they say, we must confer rights on all living beings. I argue however, that this creative endeavor to broaden how we think about “dignity” and “rights,” demonstrates that cognitive parameters have yet to be challenged. Despite collective resistance to development, extractive practices, and profit-driven land schemes, the new discourse keeps structures in place that sustain cultural genocide of Indigenous peoples.

PART FOUR: PACHAMAMA MEANS “THE TRUTH”

Natalia Greene, president of Ecuador’s national coordinating body for environmental organizations, was determined to enshrine “Rights of Nature” in a final draft of Ecuador’s rewritten Constitution. Her efforts paid off in 2008. Articles 71 and 72 affirm that Mother Earth has “the right to exist, persist, maintain and regenerate its vital

⁷⁴³ Ruth Macklin, “Cloning and Public Policy,” *A Companion to Genetics*, edited by J. Burley and J. Harris (Oxford: Blackwell, 2002).

⁷⁴⁴ Donnelly, 132.

⁷⁴⁵ Lakoff and Johnson, 19.

⁷⁴⁶ Universal Declaration of Rights of Mother Earth World People’s Conference on Climate Change and the Rights of Mother Earth Cochabamba, Bolivia April 22, 2010.

cycles, structure, functions and its processes in evolution.”⁷⁴⁷ Greene explained that her involvement with Fundación Pachamama (sister organization of The Pachamama Alliance, a San Francisco based NGO founded in 1977),⁷⁴⁸ compelled her to try to legally protect the biodiversity of the rainforests, as well as the Achuar, the Indigenous community living in their ancestral homeland that spans two million acres in southeastern Ecuador.⁷⁴⁹ Crude oil reserves – an estimated 4.7 billion barrels, the third largest in South America – lie deep under the earth in Achuar territory and are targeted by foreign companies hell-bent on extraction, compelling Greene and others to form the Yasuni ITT Initiative as a way of keeping the oil underground.⁷⁵⁰

Then-President Rafael Correa initially supported rewriting the Constitution to encourage “plurinationalism” and to promote “richer democracy.”⁷⁵¹ Enthusiastically describing his vision of “the coexistence of several different nationalities within a larger

⁷⁴⁷ Constitution Of The Republic Of Ecuador, National Assembly, Legislative and Oversight Committee. Published in the Official Register, October 20, 2008. A specific document outlining the Articles can be found here: <https://therightsofnature.org/wp-content/uploads/pdfs/Rights-for-Nature-Articles-in-Ecuadors-Constitution.pdf>.

⁷⁴⁸ The alliance is a San Francisco-based NGO formed in 1977. Their mission, to protect the cultural and territorial rights of the Achuar, they see as best realized by funding and operating limited tours in the Achuar homelands.

⁷⁴⁹ Andy Isaacson, *New York Times*, October 13, 2010. <https://www.nytimes.com/2010/10/17/travel/17Ecuador.html>. Accessed June 14, 2018.

⁷⁵⁰ “Natalia Greene: Recognizing The Rights Of Mother Nature” A 2014 film by Chris Beckett and Silver Donald Cameron as part of a larger series called *The Green Interviews*.

⁷⁵¹ Pascal Lupien, “The incorporation of indigenous concepts of plurinationality into the new constitutions of Ecuador and Bolivia,” *Democratization*, Vol 18, 2011, Issue 3.

state, where different peoples, cultures and worldviews exist and are recognized,”⁷⁵² he signed the Constitution into law on October 20, 2008.

The declaration that Nature is the “subject of rights, not an object”⁷⁵³ of such, was the first time the concept had been articulated in any official capacity, but almost immediately, it became a lightning rod for a larger transnational movement, culminating in the People’s Conference On Climate Change, held in Cochabamba, Bolivia and the signing of the Universal Declaration On The Rights Of Mother Earth. Pedro Solon, formerly Bolivia’s Ambassador to the United Nations, coined *Buen Vivir*,⁷⁵⁴ to describe the “moral authority” guiding the plurinationalist movement. Both the Conference and the Declaration, organized in collaboration between Ecuador, Bolivia, and other South America nation-states, challenged the political agenda of the WCIP.

Nevertheless, Lakoff and Johnson remind us, “we acquire our system of primary metaphors automatically and unconsciously by functioning in the most ordinary ways in the everyday world from our earliest years. We have no choice in this.”⁷⁵⁵ “Accommodation,” “shared use,” “sustainable development,” “outdoor recreation,” are all ciphers for an interrelated set of logics. This way-of-being, unconsciously yet ceaselessly replicated, profoundly disrupts Lakota memory and tradition, even as it

⁷⁵² From an interview conducted by Kinnto Ludas on May 5, 2008, “ECUADOR: New Constitution Addresses Demand For Plurinational State,” ipsnews.net. <http://www.ipsnews.net/2008/05/ecuador-new-constitution-addresses-demand-for-lsquo plurinationalrs quo-state/>. Accessed June 14, 2018.

⁷⁵³ Natalia Greene, 2014.

⁷⁵⁴ “Pablo Solon: buen vivir, the economy and the rights of nature,” 2014. *The Green Interviews*. Solon describes the phrase as “living in harmony with nature, in community.”

⁷⁵⁵ Lakoff and Johnson, (1999), 47.

mobilizes the discourse of inclusion. Relatively few, simple conceptual metaphors upon which the eurochristian worldview is based, belie its formidability.

In the absence of an authentic critique of primary metaphors, imposed in a way that assures the dominance of the eurochristian worldview, any political activism in the name of rights, no matter how imaginative, creative, and revolutionary, does little more than reify its related components. By so doing, it contributes to the reproduction of genocide against Indigenous peoples and excludes any hope for an authentic reorientation.

EMBODIED MIND

For Lakota peoples, to posit ontological distinctions between human beings and the natural world would be absurd; personhood is extended to all living things, and central to that is “the conviction of the transparency and mutability of all things.”⁷⁵⁶ James R. Walker, during his time as agency physician at Pine Ridge from 1896 until 1914, studied with several *wicasa wakan* (Walker described them as “holy” men) – including George Sword, Little Wound, and American Horse. What he learned was recorded in hundreds of pages of notes, interviews, and essays, also included the writings of his interpreter, Thomas Tyon. Much of what he recorded centers on Lakota understandings of *wakan* and *mitakuye oyasin*: each describe important philosophical concepts that are radically different from eurochristian construals.

A *wakan* man is one who is wise. It is one who knows the spirits. It is one who has power with the spirits. It is one who communicates

⁷⁵⁶ Arthur Amiotte, “Our Other Selves,” *I Become A Part Of It*, eds. D.M. Dooling and Paul Jordan-Smith (NY: Parabola, 1989), 163.

with the spirits. A *wakan* man knows things that the people do not know. He can talk with animals and with trees and with stones.⁷⁵⁷

David C. Posthumus describes *wakan* as a “basic underlying principle” of Lakota life,⁷⁵⁸ and yet the essence of *wakan* is its incomprehensibility such that “no man can understand it.”⁷⁵⁹ *Wakan* is articulated in terms of kinship between human beings and other living beings.

The gradations of reality which the Oglala (Lakota) attribute to the components of this world represent a type of thinking, an attitude of mind, which is very different from that of the non-Indian. There is fluidity and transparency to their apperceptions of the phenomenal world which permits no absolute line to be drawn, for example, between the worlds of animals, men, or spirits.

To the non-Indian, the...world structure, modes of classification, and associative processes often appear incomprehensible; but the world of the Lakota is neither unstructured nor chaotic, for underlying the fluidity of appearances there is the binding thread of the *wakan* concept.⁷⁶⁰

Deloria writes, “American Indians, understanding that the universe consisted of living entities, saw that every entity had a personality and could exercise a measure of free will and choice. Consequently, Indian people carefully observed phenomena in order to determine what relationships existed between and among the various ‘peoples’ of the world.”⁷⁶¹

⁷⁵⁷ Little Wound, “Wakan,” in James R. Walker, *Lakota Belief and Ritual*, edited by Raymond J. DeMallie and Elaine A. Jahner, (Lincoln: University of Nebraska Press, 1980 [1991]), 69.

⁷⁵⁸ David C. Posthumus, “All My Relatives: Exploring Nineteenth-Century Lakota Ontology and Belief,” Vol. 64, Iss. 3. Durham, NC: *Ethnohistory*, 2017, 379-400 (383).

⁷⁵⁹ George Sword, “Nagipi (Spirits)”, in Walker, 98.

⁷⁶⁰ Joseph Epes Brown, “The Bison And The Moth,” *I Become Part Of It*, 181, 182.

⁷⁶¹ Vine Deloria Jr., *Spirit & Reason: The Vine Deloria, Jr. Reader*, Barbara Deloria, Kristen Foehner, and Samuel Scinta, eds. (Golden, CO: Fulcrum Publishing, 1999), 52-53.

White Hat explains that historical accounts of the colonizer culture have largely been taken as true and accurate because they are written down in books;⁷⁶² he teaches that that the Lakota language, just like most languages, “was not originally a written language.”⁷⁶³ Many truths for Lakota people were and continue to be shared and passed down through collective understandings of interrelationship, including with their lands. Paha Sapa and the places therein, is the heart of everything.

In sharp contrast, the colonizer favors *usability*...economic value, extractive potential, recreational assets, and so on. Recently, a site within Paha Sapa (The Black Hills) called Pe’ Sla (peace at a bare spot), was targeted by Mineral Mountain Resources as a potential site for gold mining.⁷⁶⁴ Granting a permit would authorize just the most recent violation of the Fort Laramie Treaty. Here is how the sleight of hand was accomplished: in 1876, Joseph Reynolds staked an illegal claim one year before the U.S. seized this land and surrounding areas. The land was passed down to his descendants, who managed to retain ownership even after the establishment of the Black Hills National Forest in 1894. Reynolds Prairie (Pe’ Sla), when owned by this family, generated over 80,000 tax dollars for the state of South Dakota. Not surprisingly, the state of South Dakota provided the permits to Mineral Mountain Resources.⁷⁶⁵

⁷⁶² Albert White Hat, *Reading and Writing the Lakota Language: Lakota Iyapi un Wowapi naha Yawapi*, edited by Jael Kampfe, (Salt Lake City: University of Utah Press, 1999), 3.

⁷⁶³ Ibid.

⁷⁶⁴ Jim Kent, www.lakotacountrytimes.com. Accessed 2/15/2018.

⁷⁶⁵ ACT OF MAY 10, 1872-(MINING LAW OF 1872). 1 [As Amended Through P.L. 103–66, Enacted August 10, 1993].

CHAPTER SIX

CONCLUSION

RACE, REVERSAL, AND REORIENTATION

The climbing management plan put in place at Devils Tower National Monument to resolve conflict over shared use, is inadequate. The plan does not reflect a deep understanding of the importance Mato Tipila continues to have for Lakota communities. Lakota representatives must have unhindered access to Mato Tipila at certain times of the year, for example, to fulfill reciprocal, ceremonial obligations on behalf of the entire community. That imperative is not addressed satisfactorily, nor does the plan contain a single historical reference to the Fort Laramie Treaty of 1868. The “highest law of the land,” guaranteeing access to unceded territories in and around the Black Hills, and the ancient obligations between peoples and place, (what Tinker describes as “paying attention to the land, as the land pays attention to us”) are misconstrued. The plan is meant to address specific Indigenous concerns during the month of June but falls under the larger mission of broad inclusivity and access for all *individual* visitors. This is evident, for example, in the NPS’s latest ALL IN!⁷⁶⁶ slogan.

My argument is organized around three findings of cognitive theory: the mind is inherently embodied, thought is mostly unconscious, and abstract concepts are largely

⁷⁶⁶ An NPS task force formed in 2015 to recommend “effective, organizational approaches” for improving accessibility for all visitors to any and all national parks and monuments, at all times.

metaphorical. I identified modes of basic-level categorization and specific image schemas (collateral-egalitarianism and up-down), foundational components of disparate worldviews. Culturally situated, they are incompatible at a deep structural level. We have uncovered not only *how* we conceptualize, but why our concepts “fit so well with the way we function in the world.”⁷⁶⁷ We make sense of our surroundings primarily through our spatial orientation, then categorize and make distinctions between things. These are the processes of the embodied mind, structured by relatively few basic-level⁷⁶⁸ categories that coincide with language and community, and vary considerably between cultures. I am convinced that gaining a clearer understanding of how we think is critical when we investigate cultural alterity. While specific primary metaphors may be universally acquired, colonization imposes its own framework. As a result, basic-level categories fit so well with the way we function in the world because those categories, unconsciously replicated, are monotonously recreated within every social institution in the U.S. The terms used to frame this legal case limited its scope: rights, establishment, accommodation, use, and *religion*. The discursive parameters confirm the dominance of worldview because the terms themselves emanate from eurochristian conceptual categories. As a result, Lakota relational understandings of land and community are not only excluded, they do not even rise to a meaningful level of consciousness for those limited by the dominant way-of-being. Not surprisingly, those who share the dominant worldview are the people most often in positions of authority to decide outcomes on

⁷⁶⁷ Lakoff and Johnson, *Philosophy*, 43.

⁷⁶⁸ Basic-level category is the highest level at which a single mental image can represent an entire category. This is the highest level at which most knowledge is organized.

contested lands; these are the people asserting personal, “god-given rights,” and the ones imagining themselves to be responsible stewards over all the things of the earth. The Up-Down schema is dominant in this worldview, and because those “with only one perspective on the world...(are) ignorant of things that are hidden from that perspective,”⁷⁶⁹ they miss the relational, egalitarian-based orientation.

Authority is maintained on public lands via specific regulations meant to coincide with certain conditions in particular places. In truth, they are arbitrary. Rock climbing, for example, totally prohibited at Mount Rushmore National Monument, is monitored in flexible, negotiable, test-able ways at Devils Tower. Negotiations recorded in early drafts of the climbing plan were closely scrutinized and hotly debated. Park officials, attorneys for the plaintiffs, and commercial climbers squabbled over details. Undisturbed in all the clamor though, was the intractable conceptual model perfectly articulated in Locke’s treatise on property. Reason, both a component and condition of a divine, originary gift, confers rights to acquire resources upon all human beings. Reason is demonstrated most ideally by those (chosen) people who use resources in industrious ways. Doing so confers rights of ownership to some, and not to others; exercising those rights, for Locke, culminates in a truly civil society. The activities of labor - planting, harvesting, accumulating - *naturally* authorize appropriation, enclosure, rights to property of (promised) lands. These days, usability and industriousness include ranching, mining, fracking, drilling, and much more.

⁷⁶⁹ Lakoff and Johnson, 239.

During an interview about gubernatorial candidate Jared Polis' "Keep Colorado Wild" program, recreation industry executive John B. confirmed a finding of cognitive science: our categories, concepts, and experiences are inseparable. John is an effective advocate for public lands and envisions leading the charge to bring "tribes" into land negotiations at the highest level. All stakeholders need to be heard, he insists. Those who "work their land" have a stake; his inclusive vision includes ranchers, miners, hunters, botanists, preservationists (he assesses tribes under this category), and his ideological brethren as well - recreation industrialists, whose political interests seem to be currently aligned with several Native communities.

Formidable models are unconsciously recreated through a process called neural binding. Conceptual frames are our "scripts" - (use, labor, profitability), that are then structured by semantic fields, or groups of related words that describe roles - (stakeholder, conservationist, recreationist). The chosen people-promised land cognitive model has been recreated since at least the time of the first Crusades in the 11th century. Today, the force of it is observable in primary manifestations that exemplify shared cultural ideals... possessive individualism, rights, property, and of course, profits derived from working the land.

During October of 2018 for example, the "New Code of the West" gathering in Whitefish, Montana brought together people who share and have extended the cultural ideals and activism of people like Petefish, the Sagebrush Rebels, Karen Budd-Falen, the Bundys, and more. Many of those attending are allied with Citizens for Equal Rights Alliance (CERA), whose mission is "to change federal Indian policies that threaten or

restrict the individual rights of all citizens living on or near Indian reservations.”⁷⁷⁰ The group denounces the validity of historical treaties made with Indian nations, pushes for states’ rights and the diminishment of Indigenous sovereignty, and they share an embedded animosity and hostility towards American Indians. These then, are also the new-Whites, organizing themselves under the larger political banner of White nationalism.

[P]ervasive negative narratives can cement stereotypes of Native Americans...people who live near or work in Indian Country, especially areas of great poverty, hold bias. That’s how anti-American Indian groups are able to resonate: by melding concepts like private property rights and anti-federal sentiments with their own anti-Indigenous ideology.⁷⁷¹

It is obvious that we are living in deeply troubled times. I am convinced that given this reality, intellectuals, scholars, artists, writers, and more, have responsibilities and obligations. We all must consider reorienting, in terms of how we perceive and conceive of the world we share. By this, I do not only mean those of us who have chosen this field as students and teachers and thinkers and writers, but for all of us who, as historian of religions Charles H. Long would say, are discerning the significance of our place in the world. In arguing for authentic reorientation, I suggest a counterintuitive idea, one that goes back full circle, back to the opening of my analysis. I deliberately chose to avoid using words like “religion” and “religious,” because these words, among others, have functioned not only as ciphers for the eurochristian worldview, but have

⁷⁷⁰ Anna V. Smith, “Why don’t anti-Indian groups count as hate groups?” *Indian Country Newsletter*, a service of *High Country News*, October 8, 2018. https://www.hcn.org/articles/tribal-affairs-why-dont-anti-indian-groups-count-as-hate-groups?utm_source=wc1&utm_medium=email. Accessed October 13, 2018.

⁷⁷¹ Smith.

limited the parameters by which we can articulate opposing interests in conflicts over land. The exclusive use of these terms in arbitrations like this one, also entailing concepts like “rights” and “property,” guarantees the imposition and dominance of one way-of-being and distorts or obfuscates Indigenous memory. We must acknowledge the genocidal history that coincides with the imposition of organized religion(s), while remaining aware of the seamless replication of dominant metaphors in both language and law. We must also own up to a weighty responsibility as academics: we need to ethically name what it is that we do and subvert the role we play in performing the tasks of empire. I draw from David Chidester, Charles H. Long, and Glen Sean Coulthard to describe how we might first recognize, and then subvert the systemic predominance of the Up-Down image schema within not only our academic institutions, but in our larger communities. We continue to refer to our field as “religious studies” in spite of its appalling history as a discipline – our predecessors propped up agents of empire but also mangled, distorted, and misinterpreted just about everything unfamiliar that they encountered. As researchers, we often continue to do so. After all, the acknowledged founder of our field, Freidrich Max Müller, invented the “science of religion;” as an enthusiastic comparativist, he found the phrase “classify and conquer” particularly useful. Accounts of missionaries he found uniquely advantageous for his classificatory endeavors, mostly because they furnished him with personal accounts of practices and rituals among communities of people they had invaded. Given the loathsome history and the unfortunate fact that we still have not extracted ourselves from the terminology and fields

of our theological origins, it is critical that we identify how knowledge about “religion” is produced, authenticated, and circulated.

Defining “religion” as a negotiation about “what it means to be a human person in a human place,”⁷⁷² Chidester exposes connections between violent conquest and the production, authentication, and circulation of knowledge about religion, in colonized places.

The initial comparative maneuver under intercultural conditions was most often denial, the assertion that people had been found who lacked any religion. Ironically, therefore, the historical origin of the academic discipline of comparative religion can be traced back to the European discoveries of the absence of religion.⁷⁷³

Within early imperial discourse that gave rise to religious studies, denying religion served the purposes of conquest. However, in Indigenous critical studies, denying religion as a category is an epistemological move – because the term is an inappropriate category for describing Indigenous ways of life.

Even so, Chidester, while acknowledging those in our field who propose abandoning the term “religion” altogether as “inherently incoherent, burdened with historical associations, and theologically loaded,”⁷⁷⁴ nevertheless advises us to (strategically) *retain* it. Specifically, he notes, within the comparative endeavor. His argument is compelling. He identifies triple (imperial, colonial, indigenous) mediations

⁷⁷² David Chidester, *Authentic Fakes: Religion and American Popular Culture*, (Berkeley: University of California Press, 2005), ix.

⁷⁷³ David Chidester, *Savage Systems: Colonialism and Comparative Religion in Southern Africa*, (VA: University Press of Virginia, 1996), 11.

⁷⁷⁴ Chidester, *Empire*, 12.

(negotiations and interactions) that authorized elite theorists (like Müller) to use raw religious material from “colonized peripheries to mediate between contemporary savages and the primitive ancestors of humanity.”⁷⁷⁵ Chidester writes that historically, theories of religion arose in a global field of production, authentication, and circulation. However, specific locales in colonizing contexts were crucial for the actors, establishing a direction or flow through which data could then be converted to knowledge. The locales were occupied by

imperial theorists, surrounded by texts, in the quiet of their studies; colonial agents on the noisy frontlines of intercultural contacts, encounters, and exchanges; and indigenous people struggling under colonial dispossession, displacement, containment and exploitation – but also exploring new terms of engagement that included the term *religion*.

Authentication and circulation of knowledge is always entangled with power, he writes, and describes a mode of intellectual production whereby ethnographic data, “contained in the reports of travelers, missionaries, and colonial administrators, were extracted, exported, and transformed...into theory production.”⁷⁷⁶ In the Indigenous mediation, Chidester describes a negotiation between ancestral practices and the imposition of the colonizer’s religion. In the colonial mediation, “middlemen” on the colonized peripheries, e.g., colonial agents, missionaries, or local scholars, reported on the negotiation, then extracted data and documented their perceptions of Indigenous practice. Their accounts were then transferred to the centers of empire, where theorists (the imperial mediation) inscribed these reports into a growing corpus of writings that

⁷⁷⁵ Chidester, 5.

⁷⁷⁶ Chidester, 64.

contributed to the “science” of religion. They imperialists were the “academic experts...on language, myth, and religion.”⁷⁷⁷ This direction of the flow of production and circulation, remains largely unchallenged in our field, and must be reversed.

In the practice of imperial comparative religion, this centralized accumulation of thought, this concentration of ways of thinking about others, was, by unspoken definition, as a matter of implicit principle, incomparable, a kind of knowledge that could be matched nowhere else...relations between center and periphery...were asymmetrical relations of power.”⁷⁷⁸

Chidester demonstrates that the production of knowledge in the imperial space has been primarily produced through *quotation* – via a circular fashion that feeds back on itself and reinforces imperialist dominance. This circularity is still vexingly present in our field today. Even so, Chidester argues for opening a field of strategic possibilities that makes room for a *different* kind of study of religion. To reverse the historical flow whereby Indigenous voices and experiences serve as raw material for the reproduction of racism and ethnocentrism, we need to retain the terms “religion” and “religious,” mostly, he writes, because we are “stuck with them as a result of a colonial, imperial, and now global legacy.”⁷⁷⁹ Quoting theorists quoting themselves is the strategic opening: it is destabilizing, and suggests alternative ways of generating knowledge. By paying attention to triple mediations, it is possible to not only recover, but for Indigenous peoples specifically, *reclaim* what has been erased by the flow from periphery to center, and also “engage the challenge of combining critical reflection on our past...with creative

⁷⁷⁷ Chidester, 61.

⁷⁷⁸ Chidester, 87.

⁷⁷⁹ Chidester, 312.

possibilities for working through enduring categories in the study of religion to produce new knowledge.”⁷⁸⁰

This is an ethical imperative for scholars. To reverse the direction by which knowledge is produced, authenticated, and circulated calls for anticolonialist methodologies and praxis at every level, and within every social institution. Praxes must be localized and remain organized around issues of land. Anticolonialism within our minds means privileging *only* the cultural competency of Native peoples as they articulate from their own perspectives and in their own voices; they alone can speak of, produce, and circulate knowledge about themselves, and only if they wish to do so. LeBeau’s critique and rejection of the academic practice of identifying Lakota traditional cultural properties by outsiders is a perfect example of reversing the flow of production, authentication, and circulation of Indigenous knowledge. This reorientation comes from Indigenous scholarship. LeBeau, a Lakota scholar, adds a powerful voice to join those of Cook-Lynne, Freeland, Tinker, Morris, Deloria, Williams, Alfred, Newcomb, Barker, and so many others, who articulate effectively from two locations. Resisting colonizing tactics within academia, LeBeau’s work is authorized by the shared memory, history, and knowledge of Lakota lands. This makes his assessments, in contrast to those of his non-Native colleagues, the truly knowledgeable assessments. When he *quotes* these so-called experts, he is engaging in the tactic that Chidester suggests, certainly made more powerful from his unique position as an Indigenous scholar. Anticolonialism certainly requires us to more thoroughly investigate how our conceptual system functions, and also

⁷⁸⁰ Chidester, 312.

to examine the processes of neural categorization that allow us to “mentally characterize our categories and reason about them.”⁷⁸¹ Understanding *how* we think is as important as what we do with what we think. Comprehending more and more about the embodied mind will help us understand more clearly why power, conquest, and violence are carried out effectively with the imposition of religion.

Coulthard’s insistence on grounded normativity is critical within our field as well, because it centers decolonization - of minds, bodies, and lands. Granted, Coulthard is a political science professor; he focuses primarily on the self-determination efforts of Indigenous people of Canada. Still, he offers a challenge to those of us in religious studies to think critically and act ethically within our discipline. In a discussion about land and community, he describes “[p]lace...as a way of knowing, or experiencing and relating to the world and with each other.”⁷⁸² That is how he introduces grounded normativity, a place-based ethics and a frame of reference that is critical for challenging “capitalist imperialism.”⁷⁸³ Coulthard’s description of place also echoes Long’s *Significations*, wherein he tells us that religion is simply (and profoundly) “orientation.”⁷⁸⁴ Orienting is how we come to terms with our place in the world, and with all other living beings. That description has stayed with me through the years of graduate school and I believe it brings this project full-circle.

⁷⁸¹ Lakoff and Johnson, *Philosophy*, 19.

⁷⁸² Coulthard, *Red Skin*, 61.

⁷⁸³ Coulthard, 60.

⁷⁸⁴ Charles H. Long, *Significations: Signs, Symbols, and Images in the Interpretation of Religion*, (Philadelphia: Fortress Press, 1986).

Following Chidester, Coulthard, and Long, I propose grounded normativity as the ethical and just method in the study of religions. Struggle is at the core of grounded normativity, and Coulthard rightly predicts that “the cold rationality of market principles will remain on state and the resource exploitation industry’s agenda.”⁷⁸⁵ I agree, and argue that the same rationality guides private landowners, public land officials and recreation industry promoters. So then, our ethical and just reorienting requires more than a radical shift in theory and practice. It means non-Natives must also understand how to live our lives in relation to one another “and our surroundings in a respectful, non-dominating, and non-exploitative way.”⁷⁸⁶ To contribute to anticolonialism from a non-Indigenous position, means recognition of Indigenous peoples’ collective anger and *ressentiment*,⁷⁸⁷ the purging of the so-called “inferiority complex” of the colonized subject,⁷⁸⁸ which

can help prompt the very forms of self-affirmative praxis that generate rehabilitated Indigenous subjectivities and decolonized forms of life in ways that the combined politics of recognition and reconciliation has so far proven itself incapable of doing.

Grounded normativity is the antithesis of acquisitive accumulation and greed, and honors relational ties between peoples and places. It allows us to reorient in important ways. Struggles and conflicts that arise over lands must start from a place-based foundation that gives us ways to re-think, then *replace* terms like “rights” and

⁷⁸⁵ Coulthard, 13.

⁷⁸⁶ Coulthard, 60.

⁷⁸⁷ I follow Coulthard in using “ressentiment” to represent a coming-to-consciousness of the colonized.

⁷⁸⁸ Coulthard, 114.

“property” with “relationship,” and “obligation.” As a theory and a method in our field, grounded normativity makes room for a resurgent “politics of recognition that seeks to practice decolonial, gender-emancipatory, and economically non-exploitative alternative structures...grounded on the best of Indigenous legal and political traditions.”⁷⁸⁹ Will these embodied praxes dismantle eurochristian frameworks or disrupt their dominance? Maybe not in our lifetimes. Their use, however, as justice-seeking alternatives to the constraining, limiting imposition of long-held and destructive conceptual metaphors that are mobilized in embodied encounters and abstract undertakings, can direct us to practice responsible scholarship as students and teachers, as thinkers, writers, and relatives. As Coulthard writes, “this sort of conceptual revisionism is *required*”⁷⁹⁰ and is the only way forward, for us human beings and all the relatives around us.

Ignorance of the cognitive processes by which a worldview that posits cultural genocide as “progress” is constantly recreated via formidable metaphors, is key to its imposition and dominance. Therefore, apprehending how every social institution, wherein “rights” over “property” and “ownership” – are *religiously* promoted, and *sacred* notions of possessive individualism and appropriative self-interest are worshipped and honored is critical. This system dominates throughout the world and will continue to do so until the powerful cognitive processes that keep it in place are known and understood. That is what I hope I have contributed to with this project.

⁷⁸⁹ Coulthard, 179.

⁷⁹⁰ Coulthard, 108.

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APPENDIX

JUDICIAL DOCUMENTS

- United States District Court For The District Of Wyoming, Affidavit of Romanus Bear Stops, Bear Lodge Multiple Use Association *et al.*, v Bruce Babbitt, *et al* Civ. NO. 96-CV-063-D.
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