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Dammed By the State:
Indian Fishing and the Geographies of Settler Colonialism in the Columbia River Basin

A Dissertation submitted in partial satisfaction
of the requirements for the degree of

Doctor of Philosophy

in

Ethnic Studies

by

Lindsey Renee Schneider

June 2016

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This work is humbly dedicated to the people of N'chi-Wána.

ABSTRACT OF THE DISSERTATION

Dammed By the State:
Indian Fishing and the Geographies of Settler Colonialism in the Columbia River Basin

by

Lindsey Renee Schneider

Doctor of Philosophy, Graduate Program in Ethnic Studies
University of California, Riverside, June 2016
Dr. Andrea Smith, Chairperson

Indigenous peoples have been fishing N'chi-Wána for longer than most people can even imagine, and in doing so have formed a relationship of respect and reciprocity with the river and its surrounding land. This project investigates the potential of Indigenous fishing in the Columbia River Basin to challenge the genocidal hegemony of the settler state, and advocates for fishing as a decolonial praxis that can disrupt the logics of recognition and interpellation that rest on a rights-based framework for understanding Indian sovereignty. Ongoing practices of Indian food production affirm not only the existence of Indigenous peoples but also the permanence of indigeneity in ways that pre-exist and supercede the settler state.

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CHAPTER ONE

Introduction: The Big River

"We were contented to let things remain as the Great Spirit Chief made them. They were not; and would change the rivers and mountains if they did not suit them."

-Chief Joseph, 1879

Tom Jefferson's vision would not let him rest,
An empire he saw in the Pacific Northwest.
Sent Lewis and Clark and they did the rest;
Roll on, Columbia, roll on.

Roll on, Columbia, roll on.
Roll on, Columbia, roll on.
Your power is turning our darkness to dawn,
Roll on, Columbia, roll on.

- "Roll On Columbia" by Woodie Guthrie

The 1,214 mile-long Columbia River drains 258,200 acres of the Pacific Northwest.[1] Beginning high in the Canadian Rockies and flowing across the Columbia Plateau, it cuts directly through the Cascade Mountain Range, carving a deep canyon between basalt cliffs before flowing to the ocean. While the river itself is large in scale, what is more impressive is the load it carries. Each year

[1] US Geological Survey, "Water Fact Sheet: Largest Rivers in the United States" (US Department of the Interior, May 1990), https://pubs.usgs.gov/of/1987/ofr87-242/pdf/ofr87242.pdf.

hundreds of thousands of salmon and steelhead make the arduous journey from the icy waters of the Pacific Ocean to the mouth of the Columbia and past a gauntlet of dams and other obstacles to make their way back to the same streambed from which they hatched several years before.

Indigenous peoples have been fishing N'chi-Wána for longer than most people can even imagine, and in doing so have formed a relationship of respect and reciprocity with the river and its surrounding land.[2] Before the genocidal process of colonization reduced the numbers of both fishers and fish, Native peoples harvested almost 42 million pounds of salmon a year from the largest spawning river in the world.[3] For centuries it facilitated trade and transit for Native peoples whose lifeways were based on the bounty the big river offered. Lewis and Clark, and the trappers and traders that followed them, described the Columbia River Basin as a cornucopia, one that the settlers who followed were eager to exploit.

In the last 200 years, that relationship has been deeply affected by the arrival of white settlers, the creation of (and subsequent changes in) Federal Indian Policy, and the imposition of commercial development in the Columbia

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[2] This spelling of the Sahaptin name for "The Big River" is the phonemic orthography for the mid-Columbia Sahaptin dialect, used here because of the geographical focus of this project. Eugene S. Hunn and James Selam and Family, *Nch'i-Wána, "The Big River": Mid-Columbia Indians and Their Land*, Reprint edition (Seattle: University of Washington Press, 1991), xi.

[3] Joseph E. Taylor *Making Salmon: An Environmental History of the Northwest Fisheries Crisis*, Revised ed. edition (Seattle, WA: University of Washington Press, 2001).

River Basin. Perhaps the single biggest change, however, has been the advent of hydroelectric power on the Columbia River. As massive in their physical presence as in their ecological impact, the 14 dams on the mainstem of the river alone represent millions of cubic yards of concrete, steel, and other materials engineered to convert the downstream force of the river's current into electricity. The Columbia's mainstem dams have an annual capacity of more than 25,000 megawatts of electricity. The dams also divert water for irrigation, with July withdrawals (the month during which irrigation needs are at their peak) totaling almost 7% of the river's total flow.[4] The dams have fundamentally changed the nature of the river. Nearly every physical aspect of the Columbia has been affected: its speed, depth, temperature, volume, and seasonality have all changed, consequently so has the quality and quantity of aquatic life it is able to support.

Of all the species affected by the dams, none has been the source of so much public furor as the salmon. The dams have choked off their habitat, impeded their migration and imperiled their young in slack water reservoirs full of predators. Millions of dollars have been spent on salmon recovery through hatchery programs and habitat restoration, but despite these efforts, 13 of the 18 Columbia River runs of salmon and steelhead remain listed under the Endangered

[4] Committee on Water Resources Management, Instream Flows, and Salmon Survival in the Columbia River Basin, "Managing the Columbia River: Instream Flows, Water Withdrawals, and Salmon Survival" (National Research Council of the National Academies, 2004), http://www.ecy.wa.gov/programs/wr/hq/pdf/ColumbiaRiverReport.pdf, 4.

Species Act.[5] The fate of the Northwest's salmon has been the subject of public debate, scientific study, and intense government regulation. It has also, in complex and sometimes problematic ways, been conflated with the fate of Indigenous people, told as a story of insurmountable odds and inevitable disappearance in the face of modern technological "progress". In a region that is increasingly aware of the devastating impacts of global climate change and the social and ecological instability it brings to an economy dependent on timber and agriculture (fire seasons extended in both length and severity, multi-year droughts, reduced snowpack and milder winters that encourage pests such as pine beetles), salmon and Indians are reduced to an always-disappearing symbol of the damage that has been done. This project sets out to disrupt and disprove that narrative of disappearance. Indians are not an endangered species, and this is not a eulogy for salmon culture.

In this introduction, I begin with a discussion of the importance of Native fishing and then give a brief background on the process of settler colonialism in the Columbia River Basin, and explain why Indian fishing threatens the logics upon which the settler state depends. The following section provides an overview of the existing literature on the subject. I conclude with a section on disciplinary

[5] Different "runs" are defined by the NOAA as "evolutionarily significant units" of the population, so while Mid-Columbia spring chinook are sustaining healthy numbers, upper-columbia spring chinook are listed as endangered under the ESA. Both populations belong to the chinook species, but because of their different spawning schedule and locations, they are managed as separate populations. See http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/salmon_and_steelhead_listings/salmon_and_steelhead_listings.html

framework that grounds my work in native Feminist methodologies, and provide of an overview of the following chapters.[6]

Why Indian Fishing Matters

The significance of this research lies in the potential of fishing-as-food to challenge the hegemony of the settler state and in fishing-as-praxis to challenge the logic of recognition and interpellation that rests on a rights-based framework of understanding Indian sovereignty. The challenge posed by Indian food to settler modernity takes place on several fronts. It recalls and asserts the radical relationship to the land based on responsibility and care. In this way, ongoing practices of Indian food production affirm not only the existence of Indigenous peoples but also the permanence of indigeneity in ways that pre-exist and supersede the settler state. Settler society relies on the physical displacement of Native people from those landscapes and their "permanent 'present absence'" to justify that displacement and the genocide that accompanies it.[7] That absence,

[6] I come to this work with the baggage of both an Indigenous person and a settler, who grew up in, on, and near the Columbia River and its tributaries. As a descendent of the Turtle Mountain Band of Chippewa (Ojibwe), my work on Indian fishing is informed by my own people's struggle for fishing rights in the Great Lakes, as well as my family's specific history of displacement that is rooted in U.S. empire-building and Indian relocation policy. I am also descended from Scandinavian settlers who benefitted from the homestead acts discussed in Chapter Two. Ultimately, this work is motivated by a deep respect for the relationship between the river and its people, and a desire to further the ongoing process of inter-tribal collaboration and learning in which Native people have always engaged.

[7] Andrea Smith, *Conquest: Sexual Violence and American Indian Genocide* (South End Press, 2005), 9.

obviously, is incompatible with anything Native people do that suggests their continued presence and active relationship with the land, but especially something as life-affirming as food. Native food signifies Native futures, which threaten both the permanency and legitimacy of the settler state.

Indian fishing, and especially off-reservation fishing, also throws a wrench in both settler conceptions of the spatial divisions between landscapes of production and landscapes of consumption, and the neoliberal project of maintaining boundaries and sorting out who belongs where.[8] When Indians leave the reservation to engage in a form of economic, social, and political production, they defy the settler state's desire to maintain reservations as a physically and ideologically bounded space. The state would prefer to keep reservations as isolated outposts of economic collapse; living museums of a functionally extinct people who would have entirely disappeared were it not for the government's beneficent action in preserving them as a testament to how tragically incompetent Indians are in the new world order of global capitalism.

Furthermore, the process by which Indian fishing takes place troubles the organizational logic of food and family that underwrites capitalism. The catching, processing, sale/trade and consumption of salmon is organized by kinship ties of

[8] Sharma and Wright identify this neoliberal project in their work; however they do so as part of a critique of the use of term "settler" to define everyone who is not identified as indigenous. A more explicit engagement with their work can be found in chapter 4.Nandita Sharma and Cynthia Wright, "Decolonizing Resistance, Challenging Colonial States," *Social Justice* 35, no. 3 (113) (January 1, 2008): 93–111.

family, clan and tribe that defy the normative scheme of gendered, individualized capitalist production and reveal affiliations and attachments outside the logic of heteronormative settler governance.

Given these slippages and contestations in the logic of settler colonialism, this research has the potential to help inform and reshape how we think and talk about Indian sovereignty and decolonization. Native fishing is most often talked about in terms of treaty rights, and it is assumed that the successful enactment of state-recognized treaty rights represents the realization of Indian sovereignty. As Glen Coulthard has pointed out, this politics of recognition actually limits sovereignty to what can exist within the reach of the state, and implicitly depends on the continued existence of a settler state that we should be dismantling.[9] By questioning the assumptions about the nature of land, appropriate "use" of space, organizational models of production, the role of scientific management in natural resources, and the designation of anadromous fish as a natural resource, this research exposes the centrality of settler colonial logic to modern thought and explores what fishing – as a form of food production and not just a legal right – can mean for sovereignty and decolonization projects.

Securing the Fish

It has long been understood that salmon are important to the Indian tribes of the Pacific Northwest. In his landmark decision on treaty fishing rights, Judge

[9] Glen S Coulthard, "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada," *Contemporary Political Theory* 6, no. 4 (November 2007): 437–460, doi:10.1057/palgrave.cpt.9300307.

George Hugo Boldt declared that the salmon were, "not much less necessary to the Indians than the atmosphere they breathed."[10] Throughout the Columbia River basin, salmon and salmon fishing have served important economic, ceremonial, and nutritional purposes before and during colonial occupation. For the people of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakama Indian Nation, fishing serves as a social practice to form and maintain tribal bonds and reaffirm tribal epistemologies, as well as an important source of income (whether from trade, sale, or jobs in commercial fishing industry), and salmon themselves are an incredibly healthy source of food.

The general importance of salmon and steelhead in the Northwest goes back farther than most non-Indian Northwest residents care to remember. Since time immemorial, the peoples of the Northwest have maintained a relationship with the salmon. Long before the invention of the fishwheel or widespread use of cannery technology, salmon was an important trade commodity in the Northwest, and tribes engaged in a variety of practices that could rightly be called natural resource management. Salmon were sustainably harvested with dipnets or set

[10] *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), aff'd, 520 F.2d 676 (9th Cir. 1975).

nets, then preserved and consumed throughout the year or traded with other tribes from all over the Western half of the continent.

As for the salmon themselves, their unique lifecycle is what makes them so important, and yet so susceptible to harm. Salmon and their close cousin the steelhead are anadromous fish who begin their lives in freshwater, migrate to the ocean and then return to their natal stream to spawn. The five species of salmon – Chinook, Sockeye, Coho, Chum, and Pink – and the steelhead begin their lives as fertilized eggs in a shallow gravel nest, or redd, in a streambed. After about three months, they hatch and begin their journey downstream, first as tiny alevin still attached to their yolk sac, then as small fry. They spend one to three years swimming and developing in streams and rivers and then form a group and prepare to enter the ocean as smolt, at which point their bodies change and become adapted to live in saltwater. After 1-8 years spent maturing at sea, adult salmon begin the arduous journey back up the river to the exact same gravel bed where they were spawned. During this time, they do not eat. They use their stored energy to traverse thousands of miles of river that often include waterfalls, strong rapids, and now hydroelectric dams. When they reach the end of their journey the female salmon uses her remaining energy to dig into the gravel, creating a safe space to deposit her eggs, and the male salmon fertilizes them with his milt. Both fish will guard their redd for a week or two and then die. Steelhead, which most tribes did not traditionally distinguish from the salmonid species, have a similar

lifecycle except that after reproducing, they may return to the sea and come back to spawn more than once.

Because the salmon's various life stages are so complex, depend on such a wide variety of habitats, and cover so many miles of territory, they are easily subject to disruption. While the dams are often cited as the biggest culprit in salmon run declines, the conflict between settler industry and salmon runs began long before any hydroelectricity projects were proposed. Early explorers and fur traders, including members of the Lewis and Clark expedition, were astounded by both the number of fish in the rivers as well as the Native peoples' capacity to catch and preserve them in significant quantities.[11] This initial discursive framing of Indian fishing in the settler colonial mind helped set the tone for the next 150 years of policy decisions – the fish were thought to be so numerous that nothing could possibly wipe them out completely. Unfortunately this proved almost immediately false. In the 1840s, the British-owned Hudson Bay Company set out to completely wipe out the beaver population in the Northwest, so as to leave nothing of value behind for the growing United States economy. Beaver dams had served an important function in regulating stream flow and creating spawning habitat for salmon, and with their decimation came what Blumm and Brunberg call, "the first decline due to Euro-American concepts of resource

[11] Taylor, *Making Salmon*, 14-24.

consumption."[12] Ideas about resource consumption – and the changing nature of what "counted" as a resource – would continue to affect salmon populations as the Northwest became increasingly settled.

In the 1850s Isaac Stevens, who had recently been named governor of the newly created Washington Territory, and Oregon settler-turned-diplomat Joel Palmer orchestrated the signing of a number of important treaties. For Stevens in particular, the treaty making process was more about force than negotiation. The Oregon Land Donation Act of 1850 had authorized homesteading in the Northwest without bothering to deal with the pesky fact of Indian possession, and it was imperative that legal title to Indian lands be acquired quickly to prevent conflict between the tribes and the land-hungry influx of settlers. Stevens often had the treaties written out in English before ever meeting with the tribes in question.[13] In 1854, he insisted that the negotiations for the Medicine Creek Treaty with the Nisqually, Puyallup, and Squaxin Island tribes of what is now Washington state be conducted in the limited parlance of the Chinook Jargon, despite the fact that Stevens had a translator fluent in Salish, the actual language the Indians spoke.[14]

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[12] Michael C Blumm and James Brunberg, "Not Much Less Necessary... Than the Atmosphere They Breathed: Salmon, Indian Treaties, and the Supreme Court - A Centennial Remembrance of United States V. Winans and Its Enduring Significance," *Natural Resources Journal* 46 (2006): 498.

[13] Ibid, 504.

[14] Chinook jargon is not a complete language but rather a trade jargon of about 500 words, similar to Pidgin English, that was used to facilitate inter-tribal

Despite the coercive circumstances of their signing, most of the treaties included the short passage that would become instrumental in so many 20th century court cases, that guaranteed the Indians, "the exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with the citizens of the Territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land." Stevens told the Indians gathered at the signing, "these papers secure your fish."[15]

The conflict over resource consumption continued as settlers began moving westward in increasing numbers, and demand for wood products grew. Eventually, the timber industry would assume an influential role in the economy of the Northwest. The effects of the timber industry would prove devastating to the salmon populations. Unsustainable logging practices destroyed spawning habitat by clear-cutting trees along steep hillsides all the way down to the banks of the streams. Winter rains then washed dirt from the hillsides straight into the water, filling gravel beds (which are necessary for spawning) with mud. Without

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commerce. Charles F. Wilkinson, *Messages from Frank's Landing: A Story of Salmon, Treaties, and the Indian Way* (Seattle: University of Washington Press, 2000), 11.

[15] Fay G. Cohen, *Treaties on Trial: The Continuing Controversy over Northwest Indian Fishing Rights* (Seattle: University of Washington Press, 1986), 37–38.

shade, water temperatures in the streams rose beyond what young salmon could survive. Logging operations were often concentrated near waterways to take advantage of the current to float logs downstream, which meant that temporary "splash dams" were constructed to hold back the water until the logs were ready to be flushed downstream on a daily or weekly schedule. Very few had functional fish passages, and even when they did the gushing torrent of water and logs released when the dam gates were opened harmed adult fish and spawning habitat alike. Sawdust from timber mills also choked out spawning habitat, smothering plants and de-oxygenating the water.[16] Livestock grazing caused similar issues with bank erosion and defoliation, as well as pollution from manure. Commercial canneries erected on the lower portion of the river in the latter part of the 19th century took a toll as well. By 1884 there were 37 canneries packing 42 million pounds of salmon a year - about the same amount as the entire Native harvest prior to colonial occupation.[17] Although the in-river commercial fishery has declined since its late 19th century heyday, it (along with offshore commercial fishing) continues to significantly impact salmon runs.[18]

Construction of the dams during the 20th century was devastating to the already-declining runs. Construction began on Rock Island, the first dam to span

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[16] Taylor, *Making Salmon,* 56-57.

[17] Ibid*,* 63.

[18] While they face all of the same environmental impacts as their salmon relatives, steelhead are managed exclusively as a sportfish.

the Columbia, in 1930. Bonneville Dam was finished in 1937. When Grand Coulee, which - at 551 feet high - was declared too tall for fish ladders, was finished in 1941, it cut off more than a thousand miles of habitat and spawning grounds.[19] At the time, the fishery above the dam was determined to be so negligible in value, as it supported "only sport fishing and some food fishing by Indians," that it wasn't worth the money it would take to preserve it. In fact, the cash value of fish that made it to Grand Coulee was estimated at $7,500. For comparison, at today's prices for Native-caught wild salmon in the Columbia region, a similar amount of fish could be worth as much as $5,000,000.[20] By the early 1980s, there were more than 60 dams on the Columbia and its tributaries.[21]

Like Grand Coulee, many of the dams were installed without fish ladders, effectively extinguishing many runs, since salmon need to return to their natal stream to spawn and can't simply move their spawning grounds to another part of the river. Even when dams were retrofitted with "fish friendly" technology for

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[19] Taylor, *Making Salmon,* 175.

[20] B. M. Brennan, "Report of the Preliminary Investigations into the Possible Methods of Preserving the Columbia River Salmon and Steelhead at the Grand Coulee Dam" (United States Bureau of Reclamation, January 1938), http://www.usbr.gov/pn/grandcoulee/history/natural/1938salmon.pdf. Brennan's figures appear in note 3 of the report. Current prices estimated at $20.00/lb, although it should be noted that the market value of wild-caught fish can fluctuate wildly depending on the availability, location, and point of sale (i.e. while one might pay $6-8/lb buying directly from the fisher at the peak of the season, one could expect to pay upwards of $25/lb for the same fish in a store or restaurant).

[21] Bonneville Power Administration, US Bureau of Reclamation, and US Army Corps of Engineers, "The Columbia River System Inside Story," April 2001, https://www.bpa.gov/power/pg/columbia_river_inside_story.pdf.

salmon returning upriver to spawn, the long stretches of the rivers impounded behind dams turned into reservoirs that interfered with smolt making their way out to sea. Young salmon depend on the flow of the river's current to carry them along; when that current is slowed or stopped behind a dam, their bodies undergo the physiological changes that allow them to live in saltwater before they make it to the ocean. Reservoirs also provide prime habitat for (and in many cases, are commercially stocked with) larger fish that prey on young salmon. Some dams have screens designed to sweep smolt through a bypass channel, but many are still crushed by the operation of the turbines. Reservoirs also raise the temperature of the water, harming adult salmon and smolt alike.

While the dams' physical impact on the river cannot be overemphasized, they also represent the ideological consequences of settler colonialism in the Columbia River Basin. The Columbia River of today would be almost unrecognizable to the Native people who felt the first effect of settler occupation, although as this chapter's epigraph shows, some had a prescient understanding of just what kind of change would be wrought over the next centuries. As it flows past dams that power an entire region, gives up water for irrigation projects that feed a nation, hosts a variety of leisure activities from windsurfing to sportfishing, and serves as the border between Oregon and Washington, the Columbia river tells a story of how settler notions of "property" and "progress" have inscribed themselves on the land.

The Problem of Indian Fishing

Indian fishing takes place in the context of the interlocking settler colonial logics of erasure and interpellation, which work through state and federal policy, settler action, and the discursive representation of Indians in the settler imaginary. These legal, societal, and political processes were and are mutually constitutive and reinforcing. The resulting project of settler colonialism has tended to set the terms of what kinds of sovereignty Indians can now claim.

Patrick Wolfe has argued that settler colonialism is predicated on the "logic of elimination," which is not synonymous with (although it is closely related to and often includes) genocide, because "settler colonialism destroys to replace."[22] However, Wolfe goes on to argue, elimination does not mean absolute erasure: "The process of replacement maintains the refractory imprint of the native counter-claim." Settler society is never done erasing the Native; its legitimacy depends upon a constant (re)invocation of the always-disappearing Indian. Andrea Smith (quoting Kate Shanley) has also explained how Native peoples represent a "permanent 'present absence' in the U.S. colonial imagination."[23] Scott Morgensen describes the "settler colonial logic that disappears indigeneity so it can be recalled by modern *non*-Natives as a relationship to Native culture and land that might reconcile them to inheriting

[22] Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8, no. 4 (December 2006): 388, doi:10.1080/14623520601056240.

[23] Smith, *Conquest*, 9.

conquest."[24] In much the same way, the settler state can (and Oregon and Washington definitely have) easily incorporate the significance of salmon into a "Northwest culture" that memorializes a benign Indigenous past and positions white settlers as the "inheritors" of that heritage. The trope of the always, already vanishing Indian helps to naturalize colonialism and casts conquest and dispossession as inevitable. Settlers, then, are able to quell any lingering doubts about the justification of the founding of the U.S. (colonialism had to happen because Indians were disappearing anyway) and position themselves as the rightful "heirs" to the land and its resources.

At the same time, Indian peoples have resisted this logic of erasure by pursuing the exercise of sovereignty through treaty-reserved fishing rights. Demands for fishing rights on ceded land have been met with resistance, by both the settler and the state. Obviously this resistance comes in part from the fact that demands for treaty rights assert the ongoing presence of Indian peoples, and therefore the failure of settler colonialism's genocidal project. Opposition to treaty rights has tended to characterize them as "special rights" that are "given" to a population that should have assimilated (and/or disappeared) long ago. Arguments have been made both for and against treaty rights based on culture: proponents argue that the traditions and rituals around salmon are vital to the survival of Native peoples *as* Native peoples, while others challenge their

[24] Scott Lauria Morgensen, *Spaces Between Us: Queer Settler Colonialism and Indigenous Decolonization* (University Of Minnesota Press, 2011), 2–3. Emphasis in the original.

legitimacy by contesting the idea of "tradition." They argue that since Native people no longer live in traditional dwellings, many do not speak their traditional language, and fishing is no longer done by traditional methods, Native people are no longer culturally distinct from the rest of the population and should not be entitled to cultural rights. Economic arguments have been made both ways as well – some say Indian fishing negatively affects an important commercial industry and others claim that fishing is the only way for Native people to achieve economic self-sufficiency. Based on Lockean notions of private property, wilderness, and spatial ordering or enclosure, treaty fishing rights on ceded land have been legally interpreted by the settler state as akin to property rights. As a result of this rights-based discourse on Indian fishing, Native peoples have been interpellated by the state as stakeholders in the shared resource of salmon and steelhead fisheries. Native sovereignty has thus been "captured" by a politics of recognition; a "successful" battle for Indian fishing rights is not a matter of exercising self-determination or autonomy, but is about approval by the settler state. Glen Coulthard explains that, "the politics of recognition in its contemporary form promises to reproduce the very configurations of colonial power that Indigenous peoples' demand for recognition have historically sought to transcend."[25] When the state upholds treaty fishing rights, as it did in the Boldt decision, it does not mean Indian people have full authority over rivers they have been fishing out of for millennia, or even that they are free to reassert

[25] Coulthard, "Subjects of Empire," 439.

relationships of reciprocity with those rivers; it means the state approves of a certain percentage of the yearly catch being delegated to Indian fishers and that the tribes are approved to have a say (as one voice among many) in how fisheries are managed as a resource.

These interlocking logics of elimination and interpellation have set the terms of the debate over Indian fishing, defining what it has been and circumscribing what it can mean. Yet the praxis of Indian fishing confounds these logics, even as it is subject to them. As a form of food production, Indian fishing is fundamentally about the future. It insists upon the physical and cultural "thrivance" (as opposed to just survivance – salmon is not just something to fill your stomach and keep you from starving) of Indian nations, countering logics of elimination. Indian fishing also affirms an ongoing relationship with the fish, the river, and the land itself; thus exposing the elaborate fictions of "place" and "belonging" inherent in settler colonial discourse. Inasmuch as it is a relationship with the land and with a geographical foodshed, Indian fishing supersedes the existence of the settler state, and thus it also resists the interpellation of Native people by the state as co-managers of a resource. Framed this way, Indian fishing has the potential to inform struggles for Native sovereignty, or what Glen Coulthard has called our "on the ground practices of freedom."[26] It is clear that Indian fishing defies the boundaries and norms established by settler colonialism, and in doing so troubles the logic on which the United States bases its legitimacy

[26] Coulthard, "Subjects of Empire," 456.

as a nation. Research in this area thus has important consequences for anyone concerned with tribal sovereignty and self-determination, but most especially for the Indigenous peoples whose lives have long been invested in a complex and sustained relationship with the salmon.

The Existing Literature

Indian fishing in the Northwest has been surprisingly under-studied in academia, despite its significance for larger struggles over treaty rights and Native sovereignty, its appearance in many important court cases, and its relationship to nearly all of the main economic industries in the area. The vast majority of research that has been done in this area has been in the hard sciences, looking at the biology of salmon populations and watershed management issues from a technical point of view. A small body of work exists that looks at the legal history or cultural aspects of the issue, but much of this work is geared towards the lay reader and lacks theoretical depth and academic rigor. The scholarship that exists in this area tends to be anthropological in nature, focusing on the cultural importance of the salmon to Native communities in the Northwest. In form, most of it aims toward the broad historical survey intended to inform rather than critique. In terms of theoretical interventions, it tends to form a sort of apologetics of settler colonialism (casting settler colonialism as an inevitable, if unfortunate, process), rather than engaging the logics of settler colonialism and interrogating its ongoing operation.

In *Messages from Franks Landing*, legal scholar Charles Wilkinson tells the story of much of the history of Indian fishing in the Northwest, from the perspective of (and largely based on interviews with) Billy Frank, a Nisqually Indian who was at the forefront of the fishing rights struggle in the Puget Sound.[27] Wilkinson starts with Billy's great grandfather and works up through the tribe's efforts to implement the Boldt decision. The text is accompanied by a number of photos, mostly by Hank Adams. Wilkinson (and Frank) bring up a number of key points that are lost in other, more theoretical, accounts of the fishing controversy, such as the fact that, according to the treaty negotiator Isaac Stevens, tribes were allowed to retain their fishing rights specifically because it would absolve the federal government of some the responsibility to make sure they had food. The book also provides extensive firsthand documentation of the violence enacted upon Indian fishers by state officials.

Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup, and Nisqually Indians and *Treaties on Trial: The Continuing Controversy over Northwest Indian Fishing Rights* both originated as reports commissioned by the American Friends Service Committee.[28] *Uncommon Controversy*, which was published in 1970, covers the history of Indian fishing rights in the Puget Sound (with an emphasis on the three tribes named in the title) up through the 1960s. It

[27] Wilkinson, *Messages from Frank's Landing*.

[28] American Friends, *Uncommon Controversy Fishing Rights Of*, First Edition (University Of Washington Press, 1970); Cohen, *Treaties on Trial*.

was initiated in the context of the legal fracas that led to the Boldt decision. *Treaties on Trial*, which was published more as a book than a report, is a follow-up of that includes the immediate lead-up to and aftermath of the Boldt decision. Both volumes include background information on the treaty making process, the cultural importance of salmon, legal precedents that affect the Boldt decision, fish-ins and other organizing activities, and newspaper coverage of the events. Unlike some other histories of Indian fishing and the Boldt decision, *Treaties on Trial* also includes analysis of some of the difficulties of implementing and enforcing the decision. The last three chapters discuss challenges in more recent Indian commercial fishing, including zoning issues that arise because Zone 6 (the stretch of the river designated for Indian fishing) begins at Bonneville and encompasses several major dams, while the non-Indian fisheries in Zone 1-5 are below Bonneville (which means greatly reduced populations of fish available to Indian fishers), as well as tribal/state negotiations over hatcheries and other management practices. Together, they provide one of the best comprehensive histories of the "problem" of Indian fishing, although their ultimate utility is limited by several factors. The intended audience of both of these books – the non-Indian Northwest resident who might be entreated to care about the plight of the Indian – strongly colors how they characterize the histories they present. Also, their focus is on Western Washington tribes whose fishing takes place in rivers that drain into Puget Sound, not the Columbia. While Indian fishing in the Northwest, broadly speaking, does share many legal anchors (the same or similar

treaties, and court decisions that apply to all Indian fisheries), the geographical specificities have been largely overlooked. Indian fishing on the Columbia, for example, is complicated by more than one overlapping jurisdiction; in addition to being the main fishery for several tribes, the Columbia River serves as the boundary line for Oregon and Washington, and its drainage extends to Idaho, Montana, and Canada.

Making Salmon, by Joseph Taylor, provides one of the most thoroughly researched assessments of the pre-colonial Native fishery and is quite useful in its explanation of management practices employed by Native people to maintain and even increase fish populations. Daniel Boxberger's study of Lummi fishing rights, *To Fish in Common,* provides an ethnohistory of the Northwestern Washington tribe as a case study in treaty rights struggles, including legal and economic dimensions of the issue. His work is insightful in its analysis of salmon as a productive resource, but it doesn't explicitly deal with the ways that salmon is a *food* resource, and thus fishing is a matter of harvest and resource production. Like the aforementioned works, its focus is also on the Puget Sound.

Roberta Ulrich's book, *Empty Nets: Indians, Dams, and the Columbia River* bridges the divide between popular history aimed at recruiting the sympathetic settler-subject and more legalistic work.[29] Ulrich's background as a journalist contributes to the descriptive power of her work, which details the issue

[29] Roberta Ulrich, *Empty Nets: Indians, Dams, and the Columbia River* (Corvallis: Oregon State University Press, 1999).

of "in-lieu" fishing sites that were promised to the tribes whose fisheries were drowned when the United States Army Corps of Engineers constructed Bonneville Dam in the 1930's. The process of acquiring in-lieu sites was complicated by the efforts of Oregon and Washington's state fish and wildlife departments to eliminate treaty fishing rights, as well as the general scapegoating of Indian fishing for salmon run declines. She describes the ongoing conflict between the hydroelectric industry and the salmon fishery on the Columbia River, and how the dams have politically, economically, and environmentally restructured the Columbia River's ecology, and in doing so shaped public perception of Indian fishing. The history of the in-lieu sites issue that she offers is thorough, but like most other work in this area, it tends to portray the operation of settler colonialism through hydroelectric development as an inevitable process, and looks to better forms of co-management rather than questioning any of the assumptions about fish and fishing that are inherent in federal and state policies.

Both *The Si'lailo Way: Indians, Salmon, and Law on the Columbia River* and *Death of Celilo Falls* focus on the Columbia River fishery at Celilo Falls that was drowned by The Dalles Dam.[30] Both works chronicle the legal, political, and social aspects of the struggle over fishing rights at Celilo. Although useful for their extensive bibliographies, these works are limited by the theoretical

[30] Katrine Barber, *Death of Celilo Falls* (Seattle, WA: University of Washington Press, 2011); Joseph C. Dupris, Kathleen S. Hill, and William H. Rodgers, *The Si'lailo Way: Indians, Salmon, and Law on the Columbia River* (Durham, NC: Carolina Academic Press, 2006).

framework that they employ, which positions state recognition of treaty fishing rights as the best possible outcome.

There are also some strictly anthropological studies of Northwest Indians that focus on fishing, such as *Indian Fishing: Early Methods on the Northwest Coast* and *Nch'i-Wana, "The Big River": Mid-Columbia Indians and Their Land.*[31] These volumes examine the cultural aspects of fishing and the social and ecological relationship Northwest Indians have had with their environment. Other anthropological works have emphasized the precedents and pitfalls of the legal dimensions of fisheries policy. In "Not Much Less Necessary... Than the Atmosphere They Breathed: Salmon, Indian Treaties, and the Supreme Court," Blumm and Brunberg provide a thorough look at the historical context and legal background of the *US v. Winans* Supreme Court Case.[32] They trace the effect of white settlement on salmon runs through logging and timber processing, over-grazing, and the birth of the canning industry and fish wheels in the mid 1860s, and outline the shifting opinions on Indian rights in court cases leading up to *Winans*. Because it was a test case, specific outcomes from the *Winans* case have had lasting impacts on federal Indian law, including the reserved rights doctrine, which holds that treaty rights were not granted to Indians by the government but

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[31] Hilary Stewart, *Indian Fishing: Early Methods on the Northwest Coast* (University of Washington Press, 2003); Eugene S. Hunn and James Selam, *Nch'i-Wana, "The Big River": Mid-Columbia Indians and Their Land* (University of Washington Press, 1991).

[32] Blumm and Brunberg, "Not Much Less Necessary."

rather rights retained by the tribes; the theory that treaties should be interpreted as the weaker (and mostly non-literate) party would have understood them; and also the recognition of treaty rights on ceded lands as property rights that burden the federal government as well as the state and private citizens. Cronin and Ostergren assess three examples of shared watershed management and evaluate why the tribes involved have (or have not) been "successful" in "Tribal Watershed Management: Culture, Science, Capacity and Collaboration."[33] While their description of co-management practices is helpful, their analytical framework makes quite a few assumptions that seem rather problematic. To start with, they presume that salmon are a "natural resource" in need of management, without unpacking that designation. While they offer some historical background for Indian fishing in the Northwest, it is extremely limited and takes the scarcity of salmon as a given, rather than considering ways in which natural resource development projects (dams, logging, etc) are actually the culprits. Moreover it assumes that all resources are in need of "management" (without any clear explanation of what that is or what paradigms are being taken for granted) and discusses the issue as if management were a new phenomenon for tribal people. In terms of evaluating the efficacy of shared management, the article seems to imply that the number of "major documents" and projects are a better indication of success than the number of fish in the river. It also emphasized the reliance of the

[33] Amanda. Cronin and David. Ostergren, "Tribal Watershed Management: Culture, Science, Capacity and Collaboration," *The American Indian Quarterly* 31, no. 1 (2007): 87–109, doi:10.1353/aiq.2007.0004.

tribes in question (the Confederated Tribes of the Umatilla Indian Reservation and the Jamestown S'Klallum) on non-Indian scientists without addressing why there are not more Indian scientists available, and goes so far as to call the racism against Indians in the Northwest a "past misunderstanding." Their prescriptive solution for continued co-management success is, "collaboration not litigation." While it may be framed this way because of its authors' background in Political Ecology or Anthropology, this article demonstrates the need for scholarship that puts resource management in conversation with the "big picture" of Indian history.

It is perhaps unsurprising that so many of these works fail to deal with salmon specifically as a food source, because scholarly work that theorizes Indian food production is extremely limited and what does exist mostly looks at food as it relates to cultural production. Edmund Searle's article, "Food and the Making of Modern Inuit Identities," for example, discusses the ways in which food serves as a way for Inuit people to "transform their embodied, emotional experience of the lived world into an objectified and public display of cultural differences," as well as make distinctions between who is and isn't Inuit.[34,35] The word

[34] Edmund Searles, "Food and the Making of Modern Inuit Identities," *Food and Foodways* 10, no. 1–2 (January 2002): 57, doi:10.1080/07409710212485.

[35] Nadasdy offers a similar analysis of the function of Indigenous food in his work, however I do not analyze it here because the role of food is not his primary object; rather, he is concerned with land use, traditional ecological knowledge, and the relationship between Indigenous people and the state. Paul Nadasdy, *Hunters and Bureaucrats: Power, Knowledge, and Aboriginal-State Relations in the Southwest Yukon*, New edition (University of Washington Press, 2004).

"colonialism" appears exactly twice in his article, both times referring to "internal colonialism" that anthropologists have identified as happening in Inuit communities because of the "caste-like social relations" that anthropologists have identified between Inuit and Quallunaat (white) people. Searle argues that this social structure emerged, "because of policies of acculturation," and notes that, "Many observers of contemporary politics and society in Nunavut contend that internal colonialism has ended."[36] No mention is made of the *actual structure(s) of colonialism* that created and continues to shape Canada's existence. This is not to say that the interpersonal dynamics of food that Searle studies are not important, but his failure to engage with the overarching structures of settler colonialism that create the conditions he examines – such as the increased contact between Inuit and Quallunaat that necessitates distinction between the two – represent a missed opportunity. In describing the difference between the Inuit and Quallunaat views on the appropriate distribution of food, Searle says that, "whereas the former is a world of continuous sharing and redistribution of wealth, practices that strengthen the ties of interdependence, the latter is a world of continuous accumulation of personal wealth, practices that lead to social stratification and isolation."[37] In essence, he gestures towards the ills of capitalism without addressing its existence.

[36] Searles, "Food and the Making of Modern Inuit Identities," 56–57.

[37] Ibid, 61.

Scholarship within the field of Political Ecology that addresses the social construction of "nature" and "wilderness" is closely related to the research presented here, especially in terms of addressing the role of territorialism and enclosure, but this work often fails to actually address these processes as key features of settler colonialism.[38] It also tends to present Indigenous food production as passively disrupting that process, rather than actively challenging the logic on which it is based.

Indian fishing happens at the intersection of multiple logics (economic, legal, political, social, and geographic) that allow the settler state to operate; yet it has only been analyzed for its cultural significance or legal history. Both of these are important, and the legal histories, especially, provide some basic grounding for my project, but neither framework gets at the way that settler colonialism is not just an historic event or method of land acquisition, but an ongoing process that fundamentally shapes modernity, and thus Indian and settler subjectivity, as well as the land itself. The existing literature on the issue of Indian fishing fails to adequately address the operation of power within settler colonialism, because it

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[38] William Cronon and John Demos, *Changes in the Land: Indians, Colonists, and the Ecology of New England*, Revised edition (New York: Hill and Wang, 2003); Roderick P. Neumann, *Imposing Wilderness: Struggles over Livelihood and Nature Preservation in Africa*, 1st ed. (University of California Press, 2002); Bruce Braun, *The Intemperate Rainforest: Nature, Culture, and Power on Canada's West Coast*, 1st ed. (University Of Minnesota Press, 2002); Karl Jacoby, *Crimes Against Nature: Squatters, Poachers, Thieves, and the Hidden History of American Conservation*, 1st ed. (University of California Press, 2003); David McDermott Hughes, *Whiteness in Zimbabwe: Race, Landscape, and the Problem of Belonging* (Palgrave Macmillan, 2010).

doesn't contend with the ways in which the logics of elimination and interpellation are complicated by how salmon are multiply conceptualized as both food to be harvested and resource to be developed, the social construction of "nature" and the alteration of that "nature" by hydroelectric development, and the overlapping jurisdictions and resulting legal entanglements caused by the anadromous life cycle of salmon and steelhead. The research surveyed above does not simply fail to interrogate the logics of elimination and interpellation, but actually further entrenches their hegemonic operation. When legal histories take the rights-based framework of studying Indian fishing for granted, they circumscribe the potential for what sovereignty can mean by limiting it to state-recognized rights, thus subjecting Native peoples to interpellation by the nation state. Cultural analyses, by limiting Indian fishing to its social significance, deny the imbrication of Native food production and the eliminatory logic of settler colonialism that makes Indian fishing a radical act of anti-colonial resistance.

The cultural function of food is certainly an important aspect of Indian fishing, but it cannot be the only lens (or, I would argue, even the primary lens) through which it is understood. Catching, preparing, and eating salmon all play crucial roles in shaping individual and collective identity for Native peoples in the Northwest, but these practices don't take place in an historical or political vacuum. At best, reducing Indian fishing to its cultural significance simply disregards the ways in which "tradition" is not just about making meaning and forming identity through ongoing practices; it's also a matter of the perpetuation

of those fishing traditions *in the face of settler state policies that sought to wipe them out.* At worst, this reduction can be a deliberate disavowal of the function of the corporate settler state in shaping Indigenous and non-Indigenous modernity.

Culture-based studies of Native food that make use of an archeological approach are equally problematic. Relegating the study of Indigenous food to the past contributes to the construction of Native peoples as a "permanent 'present absence' in the U.S. colonial imagination."[39] By this logic, colonial anxiety over the founding of the U.S. is dispelled by the necessary disappearance of the Native people, while their ongoing "absence" reaffirms and retroactively justifies the conquest and ongoing settler occupation of the U.S.

What the exclusively legal and cultural approaches are missing that would more forcibly prompt a critical engagement with the operation of settler colonialism in North America is a *geographical* lens. If indigeneity is about a radical relationship to the land, and settler colonialism radically altered that relationship by turning land into territory, then any analysis of Indian food must account for the logics of power that shape that relationship, whether its focus is the food that comes from the land or the food eaten by the people who come from the land.

Colonial Knowledge Production

Indian tribes in the Northwest have suffered material damage from the pursuit of academic knowledge in the past. Reservation and allotment policies that

[39] Smith, *Conquest*, 9.

removed Indians from land adjacent to the Columbia river (in order to clear the way for settler commerce and agriculture) have been justified by relying on studies claiming that Native peoples' seasonal migrations to and from their fishing camps meant that Indians didn't rely on fish as a primary food source.[40] As I suggest above, even more recent work, with less explicit investments in the settler state's imperial expansion, have contributed to the colonial subjugation of Native people as the "permanent 'present absence.'"[41]

One of the specific dangers of academic work in and about Indigenous communities identified by Critical Indigenous Studies scholars is the issue of revealing traditional knowledge for non-Native consumption.[42] The dynamic between Indigenous people and the colonial desire for knowledge that Audra Simpson describes is precisely the reason this project does not address the cultural significance of salmon for Indigenous peoples of the Northwest or engage with the anthropological work that has been done on the cultural significance of salmon in any kind of substantive way. Simpson writes that the anthropological

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[40] Ulrich, *Empty Nets*.

[41] Smith, *Conquest*, 9.

[42] *Linda Tuhiwai Smith, Decolonizing Methodologies: Research and Indigenous Peoples (London: Zed Books ; Dunedin, NZ, 1999)*; Devon Abbott Mihesuah and Angela Cavender Wilson, eds., *Indigenizing the Academy: Transforming Scholarship and Empowering Communities* (Bison Books, 2004); Audra Simpson, "On Ethnographic Refusal: Indigeneity, 'Voice' and Colonial Citizenship," *Junctures: The Journal for Thematic Dialogue* no. 9 (December 2007): 67–80; Andrea Smith, *Native Americans and the Christian Right* (Durham: Duke University Press, 2008).

representation of the voice of Indigenous people is based on the "imperatives of Empire and in this, specific technologies of rule that sought to obtain space and resources, to define and know the difference that it constructed in those spaces and to then govern those within."[43] These anthropological "techniques of knowing" were grounded in the colonial desire for knowledge of difference that was coded as "culture."[44]

While Simpson sketches out this framework in order to ask what the representation of "voice" might look like when difference is not the unit of cultural analysis, her construction of the relationship between Indigenous people and anthropological knowledge bears further discussion. If we consider it in light of Denise Da Silva's work on the co-constitutive relationship between the transparent "I" and the affectable other, we can expand Simpson's assessment of the role of Anthropology – and by extension, academic knowledge production at large. Da Silva argues (albeit in far more complex and sophisticated terms) that the modern (self-determining) subject needs the subaltern (outer-determined) subject in order to understand itself as self-determining. Thus race is not an aberration, it is fundamentally constitutive of modernity. So the desire for knowledge of the "difference" (of Indigenous people as the affectable other) is animated by the modern analytics of raciality, and all knowledge production "about" Native people is complicit in these analytics. Because of this dynamic,

[43] Simpson, "On Ethnographic Refusal," 67.

[44] Ibid.

even knowledge production that does not necessarily embrace an explicitly pro-imperial point of view, such as work that focuses on the cultural significance of salmon, can contribute to the perpetuation of settler colonial logics. More practically speaking, proving that salmon were/are important to Indians does nothing to challenge the state's power to articulate Indian subjectivity as always already disappearing.

Anthropological work on the importance of fish also has a tendency to be captured by the rhetoric of "cultural survival," which can also support this impulse to commemorate Indian culture, rather than disrupt the settler state. If the question one sets out to ask is, "do Indians need fish for cultural survival?" then it doesn't matter whether the answer is yes or no. Neither answer will do anything to alter the genocidal logic at play for Indigenous people or the salmon; the settler state can just put up a plaque at the dam site that explains how the people and/or fish disappeared.

Indigenous Methodologies

Indigenous scholars engaging critical theory, literary criticism, and the social sciences have made significant interventions in reframing what "research" is and how knowledge is produced. Perhaps the most significant shift that has come about as a result of this work is the move from knowledge produced (and legitimated by the academy) *about* Native people to knowledge that is produced for and by Native people. This critically important work has paved the way for Indigenous knowledge to serve Indigenous purposes rather than fuel the colonial

desire for knowledge of the Other. Thus it is imperative that this research be understood not as "about" the Native people of the Northwest who are doing the fishing, but instead as an examination of the logics and structures of the settler colonial state that shape and are shaped by Indian fishing as a decolonial praxis. Following the impulse that Andrea Smith identifies in Audra Simpson's work on Mohawk nationalism, my goal with this project is not to write a revisionist history of Indian fishing, but to attempt to sketch out a genealogy of the future.[45] Like Smith, I am not asking "what is" or "what has been" but "what could be?"[46] I am concerned with the past inasmuch as it is part of the future, but my intent is not merely to capture a "more accurate" portrayal of Indian settler relations over the course of the last few centuries in the Northwest.

This project is not an anthropological or historical account of Indian fishing, and does not seek to reveal any heretofore undiscovered "truth" about the meaning of salmon to Native people. Consequently it is not a chronology of loss and devastation that Native people have experienced as a result of settler colonialism. Neither is it merely an indictment of settlers and the ecological havoc they have wrought on the Columbia River Basin, although it should certainly be read as damning of the settler entities that have been the vanguard of Indigenous genocide. Ultimately, what this work sets out to do is probe the connections between geography and discourse, to dismantle the *a priori* givenness of place,

[45] Smith, *Native Americans and the Christian Right*, xxvii.

[46] Ibid, xxii.

and ask how changes to the landscape shape the way we think about the land and vice versa: how shifts in our thinking about the environment result in cataclysmic changes in the land.

While firmly rooted in the emerging field of Indigenous Methodologies, this project also seeks to cultivate a more fruitful cross pollination between Indigenous Studies and the "hard" sciences. Despite the rise of fields like Science Studies and Medical Anthropology, or widely used terms such as "biopolitics," the relationship between academic disciplines in the humanities or "soft" sciences and those in the hard sciences has remained a tenuous one. Indigenous Studies, in particular, has often been relegated to history and anthropology, with contributions to policy only where legal matters are concerned.[47] In the hard sciences and STEM fields, Indigenous Knowledge has primarily been subsumed under the rubric of Traditional Ecological Knowledge (TEK), as a means to incorporate Indigenous concerns without fundamentally altering the framework through which scientific research is undertaken. All too often the "inclusion" of TEK is the result of a non-Native researcher spending a few months collecting a loose aggregation of facts about various plant of animal species utilized by the tribe in question, and offering it as a supplement to the "real" scientific evidence that informs the management decision being made. At best, this results in

[47] Happily, this dynamic is changing (albeit slowly) as scholars like Kim Tallbear produce work that brilliantly integrates Western and Indigenous science with critical theory. See Kim TallBear, *Native American DNA: Tribal Belonging and the False Promise of Genetic Science* (Minneapolis, MN: University Of Minnesota Press, 2013).

validation of Indigenous knowledges through Western science and sometimes the inclusion of Indigenous communities as stakeholders in environmental issues. At worst, this arrangement functions as an insidiously genocidal tool of neoliberal incorporation that serves not only to reify Native peoples as a "permanent 'present absence'"– whose knowledge can add a gloss of inclusiveness, but whose actual presence is disavowed – but also to construct their relationship with the environment as a relic of a remembered American past that is no longer genuinely useful or practical, but worth preserving for its historical significance. In the current context of warming, acidifying, and rising oceans; melting polar ice; receding and pest-infested forests; and increasingly unstable global weather patterns, it seems obvious that drastic changes are in order if we wish to avoid large-scale ecological collapse. The "business-as-usual" model of studying social patterns and politics over here and ecological patterns and biological relationship over there is no longer working. For the Native people of the Pacific Northwest, this means rethinking natural resource management in general, and fisheries management in particular, because decolonization, and indeed, any future at all, will depend on an intimate understanding of this particular place: its ecology, both present and in the past; its social, political, and geological histories; and the multifaceted, dynamic relationships between its residents (human and otherwise) and its resources.

Place-based Knowledge

While there are as many different ways to explain Indigenous knowledge as there are Indigenous peoples, Leroy LittleBear identifies some key features that are common across Indigenous paradigms: all things consisting of energy/spirit (and therefore being animate), all things being in a state of constant flux and in need of continual renewal, the interrelatedness of all things, and the importance of place/space as a referent for knowledge.[48] Vine Deloria, Jr. also notes the primacy of space (rather than time) for Native peoples, so that revelation is understood as a "continuous process of adjustment to the natural surroundings," rather than a universal message, because, "thousands of years of occupancy on their lands taught tribal peoples the sacred landscapes for which they were responsible."[49] Deloria's argument speaks to a key point about the nature of place-based Indigenous Knowledge that is essential to understanding both its nature and function: it is fundamentally based in eco-spatial reality (because it is based on thousands of years' worth of careful environmental observation, assessment, and management) but also contains moral and social imperatives about relationality (how we should interact with place, with other species/objects, and with each other). That these "lessons" are transmitted through myth and/or metaphor makes

[48] Leroy Little Bear, "Naturalizing Indigenous Knowledge," Synthesis Paper (Saskatoon, Sask.: University of Saskatchewan, Aboriginal Education Research Centre, 2009), http://iwiseconference.org/wp-content/uploads/2015/08/NaturalizingIndigenousKnowledge_LeroyLittlebear.pdf.

[49] Vine Deloria Jr., *God Is Red: A Native View of Religion, 30th Anniversary Edition*, Thirtieth Edition, (Golden, Colorado: Fulcrum Publishing, 2003) 61-76.

them no less valuable, nor should it discredit the vast repository of observational data upon which they are based. Because it is based in metaphor, and because it crosses Western epistemological boundaries of "science" and "religion"/morality (i.e. it contains knowledge about *what is* as well as *what should be*), both the importance and technical veracity of Indigenous Knowledge has been dismissed and, all too often, misrepresented in non-Indigenous academic fields. This foreclosure is more than a benign misunderstanding about the nature of oral history, or the difference between "mythology" and "environmental science". The dismissal of Indigenous Knowledge as "just stories" conveniently ignores the ways in which metaphors are essential both for comprehending the meaning of existing theoretical scientific concepts, as well as for making inferences that expand upon accepted theory.[50] In other words, metaphors are necessary both for sharing existing knowledge and for the production of new knowledge. Indigenous scholars have been belaboring this point, perhaps since colonization began, but it bears repeating: the devaluation of Indigenous Knowledge as un-scientific and/or irrelevant because of its epistemological frameworks conveniently operates to reinforce settler colonial ideology of Native peoples as primitive and always in the act of disappearing, effectively erasing millennia of knowledge production

[50] Theodore L. Brown, *Making Truth: Metaphor in Science* (Urbana: University of Illinois Press, 2003); and Yu Liu and Yuet See Monica Owyong, "Metaphor, Multiplicative Meaning and the Semiotic Construction of Scientific Knowledge," *Language Sciences* 33, no. 5 (September 2011): 822–34, doi:10.1016/j.langsci.2011.02.006.

through community-land relationships and paving the way for the settler and their "rational" scientific method.[51]

In keeping with this assertion that Indigenous knowledge is specifically and geographically situated, this project employs a geographical variation of flashpoint methodology. David Kazanjian explains two different meanings of the word that shape its use. The first is based on Walter Benjamin's use of *aufblitz* to describe the fleeting nature of history: "Writing this history does not mean passively recognizing a smooth and fixed sequence of events; rather, it means catching glimpses of those flashes, as if they were individual frames of a film running too slowly to be sutured into a moving image."[52] The second is in the more scientific sense of the moment when a liquid is ignited and bursts into flame. He says that, "'flashpoint' in this sense refers to the process by which someone or something emerges or bursts into action or being, not out of nothing but transformed from one form to another; *and* it refers to the powerful effects of that emergence or transformation."[53] Kazanjian uses this approach to examine how different moments of such emergence and transformation reveal elements of racial formation in the Americas that might otherwise be overlooked.

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[51] I use "their" as a singular pronoun throughout this project, both as an intentional departure from nearly all existing work on the Columbia River, which frames settler colonialism and fishing as exclusively male purview, and also because it's 2016 and gender-neutral language should be common sense by now.

[52] David Kazanjian, *Colonizing Trick: National Culture And Imperial Citizenship In Early America*, 1st ed. (University Of Minnesota Press, 2003), 27.

[53] Ibid. Emphasis in the original.

My use of geographical flashpoints depends more heavily on Kazanjian's second sense of the word. Instead of moments in time that reveal *when* matter changes state, this project looks at geographical sites *where* matter changes state. This approach contests the universalizing logics of Western knowledge production in order to account for the specificity of place, since the processes and formations being studied here did not take shape uniformly across the nation. The flashpoints I examine are three very different kinds of places, all of which represent (in one way or another) a physical change of state: a "natural" stretch of river protected from inundation behind a dam by a complex of nuclear reactors, an economic and social hub of the region that was flooded in the name of "progress," and a dam whose construction site - somewhat ironically - proved to be ideal because it was once the location of a natural barrier that formed when half of a mountain slid into the river. The transformation that each flashpoint represents also reveals unique ways in which settler colonial ideology is mobilized to do different kinds of discursive work, be it the justification of U.S. imperialism, the memorialization of Indigenous existence, or the consolidation of non-human species under a rubric of natural resource management.

Framing the issues this way also frees us up to consider the history of Indian fishing without relying on the linear chronology employed so often by colonial histories that relegate indigeneity to the dim corners of pre-colonial obscurity. Deloria also addresses the link between a linear understanding of time that hinges on the concept of "progress" and the ideological justification for

settler colonialism, arguing that, "The very essence of Western European identity involves the assumption that time proceeds in a linear fashion; further it assumes that at a particular point in the unraveling of this sequence, the peoples of Western Europe became the guardians of the world."[54] Even "decolonial" versions of linear history can suggest that in order to decolonize, we need to "go back" to what fishing looked like before contact, which implies that fishing never changed prior to contact, and therefore that Indians are not capable of technological development.

Ultimately, this project reads place as its primary text, and understands the river itself as an archive of ecological, political and social changes that have taken place in the Columbia River Basin over the last several centuries. Like any archive, it catalogues artifacts that speak to the time and place in which they were produced, reflecting the understanding their architects and authors had about the world around them. To be clear, I am not attempting to stretch a metaphor here, but am instead suggesting that one might understand the river itself to function as a repository of knowledge, containing artifacts (dams, locks, irrigation ditches, floodplains, fishing platforms, boat ramps, muskrat dens, buoys, channel markers, riffles, islands, and the fish themselves, to name a few) organized by season and topography rather than author and date, from which an archivist who knows how to read them might posit theories that attempt to make sense of the past. The thing about the river as an archive, though, is that it is not only an index of the past, it is

[54] Deloria, *God is Red*, 62

inextricably woven into the future of all the beings who call its watershed home. What better way to embark on a genealogy of the future than to make use of a living archive that not only bears witness to the history of the region but, in its constant motion, continually gestures toward tomorrow?

Overview

Each chapter in this project takes up a different location on the river as its geographical flashpoint. The chapters are organized in a downstream fashion, in part because of the logical order of the theoretical interventions each chapter makes, but also because of my own desire to buck the trend of writing about the obstacles facing tribal sovereignty as analogous to the dams and thus casting Indians as the beleaguered and endangered salmon. Native people are not headed upstream to die; I prefer to think of tribal sovereignty as akin to the downstream current, which can be temporarily restrained and re-channeled or interpellated through particular modes of governance, but will always continue to flow toward the ocean. Water, given time, can wear through stone, and I look forward to the day when Indigenous persistence overcomes the temporary concrete structures currently holding back the Columbia's current.

While the Columbia itself begins its course in a lake located in southern British Columbia, our journey starts a little less than halfway from the mouth of the river to the headwaters. The first flashpoint, a section of the river known as the Hanford Reach, is simultaneously defined by the fallout of what *has* happened and what has *not* happened there. Starting at river mile 394, the river makes a

backwards jog away from its generally southward flow, wrapping around a point of land that was first seized from the Yakama and Wanapum peoples in the mid-1800s, and then again in the early 1940s so that the United States could construct a nuclear arsenal that would end World War II.[55] Environmental problems with production, storage and the massive amounts of radioactive waste generated by producing and refining weapons-grade plutonium developed almost immediately, and the land around the Hanford Nuclear Complex continues to suffer from persistent toxic leakage. The Hanford Reach narrowly escaped the fate of so much of the rest of the Columbia in 1981 when the Bureau of Reclamation decided not to build the Ben Franklin dam, which would have flooded the Hanford site and much of the land surrounding it. Now, this section of the river stands as a contradictory monument to modernity: although it suffers from the constant seepage of toxic sludge from the underground tanks at Hanford, it is also the last remaining "wild" (which is to say, undammed), free-flowing stretch of the Columbia. Chapter two uses the concept of "no man's land" as an analytic to understand how the operation of colonial gender ideologies enabled dispossession of Native peoples and continues to shape colonial land management strategies through U.S. property law, which encodes heteropatriarchal gender norms and works to enable capitalist exploitation of the land. In this chapter I argue that decolonization at Hanford and in the Columbia River Basin requires contending

[55] "River miles" are measured from the navigable mouth of the river, and similar to highway mile markers, are used on navigation charts to determine precise locations along the course of the river.

not only with a moving river, migrating resources and drifting toxins released by the Hanford Nuclear facility, but also an explicit engagement with land management paradigms that fundamentally shape how we conceive of land itself.

Two hundred miles downstream from the Hanford Reach is a place whose defining feature is no longer visible and, to many visitors, may not seem like much of a place at all. Celilo Falls, once an economic hub for the entire Northwest region that supported trade networks extending halfway across the country, was flooded in 1957 when the Army Corp of Engineers built The Dalles Dam, seven miles downstream. The adjacent village was the longest continually human-occupied site in North America. Celilo coalesces life, loss, memorialization and ongoing resistance. In chapter three, I use Celilo Falls as a point of inquiry in order to uncover the ideological roots of federal policies aimed at assimilating Native people into a capitalist system as nuclear family units. Forcing Native people to give up traditional food sources and kinship systems in favor of wage labor, sedentary farming, and compulsory heterosexuality were part of the settler colonial project that ultimately sought to free up land and resources for settler profit. From allotment to commodity food programs, federal Indian policy has worked to impose food and family norms of the settler society onto Native communities. This chapter links marriage and treaty rights through their common origin in these heteronormative policies, and positions these struggles in relation to the nation state. I argue that a rights-based framework of seeking

sovereignty through state recognition of marriage and fishing licenses ultimately reinforces the authority and legitimacy of the nation state.

The third and final stop on the journey downriver is a place that would be hard to miss. At river mile 146, more than a million cubic yards of concrete form an impassive barrier that marks the division between the tidal and non-tidal portions of the river, but has also come to serve as a boundary that demarcates - albeit in highly contested ways - where the "management" of non-human beings begins and ends. Bonneville Dam firmly cements the presence of western technology, an aggressive assertion of "progress" and the importance of the demands of capital industry. The second major federal dam to be completed on the mainstem of the river and the closest to the river's mouth, Bonneville is the first physical barrier confronting salmon headed upstream. The dam's structure includes a fish ladder, or series of pools through which fish can climb in order to make it to their upriver spawning grounds. In recent years, large numbers of sea lions and the occasional seal have taken advantage of the way that the fish ladder concentrates migrating fish into a veritable seafood buffet line. Conflict over how to manage a "natural" predator in an unnatural riverscape has called into question the role of humans in altering, managing, and conserving the non-human species who inhabit the Columbia watershed. Chapter Four seeks to de-centralize the human and interrogate the ways in which settler colonialism shapes the land itself by engaging with indigenous epistemologies that take seriously notions of "place," relationship with the land, and the spatially located lifeways of non-

human beings. Public discourse around the ongoing lawsuit filed by the Humane Society against the states of Oregon and Washington and the Columbia River Indian tribes over the "humane" trapping and euthanization of sea lions that endanger salmon populations (which are guaranteed to Indians by treaties upheld in federal courts, and upon which many Indian fishers are dependent for their livelihood) reveals the ossification of shared natural resource management as the dominant rubric for human/"nature" relationships in the Northwest. By deconstructing the hegemonic notions of "nature," the commons, and who they belong to that are encoded in the lawsuit, this chapter demonstrates that the conquest of Native peoples and conquest of the land are co-constitutive, and that processes of settler colonialism must be considered in light of their geographically specific locations. Settler colonialism has so profoundly influenced the relationship between humans and "nature" that any discussion of decolonization that does not address place can only ever be theoretical.

Taken together, these three very different kinds of places - the contradiction, the erasure, and the boundary - offer a unique and critical look at larger understandings of state power, settler colonialism, empire, labor, the division of space into "wilderness," and the use of so-called "natural resources." The flashpoints presented in this project articulate the function of power and subjectivity in relationships between Native peoples, settlers, and the state in ways that are important for understanding where Indian fishing might be headed in the future, and contain important implications for projects of decolonization.

As neoliberal deregulation of capitalist enterprise and resource extraction accelerates the planet towards ecological collapse (not to mention a global food and water crisis), it becomes ever more critical that we denaturalize and disentangle these processes, in order to (re)construct a collective future based on relationships of responsibility to the land and to each other. This project proposes to do so by examining the specificities of how the settler colonial logics of property, production, and heteronormativity have shaped the praxis and regulation of Indian fishing in the Northwest, in an attempt to follow Diane Million's assertion that, "To 'decolonize' means to understand as fully as possible the forms colonialism takes in our own times." [56]

[56] Dian Million, "Felt Theory," *American Quarterly* 60, no. 2 (2008): 267–72, 55.

CHAPTER TWO

No Man's Land: Gendering the politics of place in decolonization

The use of phrase "No Man's Land" to describe a geopolitical space outside the normative operations of the state has been documented as early as the 11th century.[57] Its earliest meaning was twofold; it referred to both the un-plowable acreage at the corner of otherwise productive agricultural fields and to a tract of land outside the North wall of the city of London that was used for executions and (during the Black Plague) burials. For centuries thereafter, it was used to refer to territory that under legal dispute, land that remained unoccupied, or land used as a dumping ground for refuse. During World War I, the meaning of "no man's land" coalesced around the liminal space in between the trenches - what cultural-political geographer Noam Leshem calls, "the ultimate site of physical and corporeal destruction."[58] In addition to this military usage, the Oxford English Dictionary offers two additional definitions for no man's land: an indeterminate or undefined state, and a piece of un-owned land or wasteland.[59]

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[57] The first documented appearance of the phrase is in the Domesday Book, a massive survey English land undertaken in 1086 by King William the Conqueror. Adolphus Ballard, *The Domesday Inquest,* (Methuen & Company: 1906), 35. Henry Hitchings, *The Secret Life of Words: How English Became English (*MacMillan, 2008), 37

[58] Noam Leshem, "What is No-Man's Land?" (presentation, Spatializing Political Thought Workshop, Queens University, Belfast, May 16-18, 2014).

[59] Tellingly, the usage example in the Oxford Dictionary describes an area of welfare tenements as a wasteland, or "no-man's land." "No-man's-land," *Oxford Dictionary of English* (Oxford University Press, 2010).

In more recent years, the phrase has been used by critical theorists to describe a socio-political space, as well as a physical one. In *State of Exception*, Giorgio Agamben describes his titular theory as, "this no-man's land between public law and political fact, and between juridical order and life."[60] For Agamben, no man's land is as much a temporal space as a geographic one - it depends on a moment of political crisis to justify the operation of the sovereign outside the limits of the law. Its defining characteristic is its liminality, as it exists neither inside nor outside the juridical order of the state.

Leshem argues that there are two key forces that work together to produce no man's land - enclosure and abandonment. Although the latter term may imply the absence of action, Lashem describes zones of abandonment as anything but, pointing to political histories of ownership, tenure, and belonging that demonstrate how abandonment is fundamentally a productive force that, "must be constantly monitored, patrolled, and maintained, often by force, because those inhabiting these spaces are not quiescent."[61] Enclosure, likewise, figures prominently in the spatial economy as the calculated withdrawal of sovereign presence, which can radically shape and reshape systems of value.[62] The evacuation of sovereign presence in no man's land, however, does not make it a

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[60] Giorgio Agamben, *State of Exception* (University of Chicago Press, 2008), 1.

[61] Leshem, "What is No Man's Land?".

[62] Ibid. See also "Re-inhabiting No Man's Land," *No Man's Land Project,* http://nmlproject.com/.

place outside the operation of state power. No man's land is a dead zone in the necropolitical sense - the place where the sovereign's power to impose death becomes manifest.[63] As such, no man's land should be understood as an essentially productive space that exposes the function of state power that is beyond the normative limits of juridical order, but completely internal to the day-to-day operation of the state.

What is missing in these and other articulations of critical geography appears, somewhat ironically, sandwiched in the middle of the phrase itself: gender. As a spatial construct defined by particular deployments of power, no *man's* land is intimately related to the issue of property, and therefore tied to systems of race and gender. Building on the work of Native feminist scholars who have argued that heteropatriarchy directly informed the process of colonization through gendered sexual violence and the work of Indigenous political theorists such as Glen Coulthard whose work frames gender as a nexus of power relations that interacts with axes of colonialism and capitalist exploitation, I argue in this chapter that the legal and discursive articulation of gender and property that enabled colonial dispossession continues to inform settler colonial land

[63] Achille Mbembe, "Necropolitics," *Public Culture* 15, no. 1 (December 21, 2003): 11–40, doi:10.1215/08992363-15-1-11.

management paradigms and support the capitalist exploitation of land, water, and resources in the Columbia River Basin.[64]

I begin with a brief explanation of what I mean by "land" and "gender," and why they matter for decolonization. In the next section I provide an overview of the environmental and political history of the Reach and how it exemplifies the problems with Western land management paradigms. This section uses reports published and promulgated by the Nez Perce, Umatilla, Warm Springs, and Yakama tribes during the last several decades to articulate a critique of the way Hanford has been understood, enclosed, and managed. I will then trace those problems back to the articulation of property and gender in US property law, and conclude by returning to the issue of repatriation and decolonization.

Accounting for the "patri" in *repatriation*

My original intent in using "no man's land" as a title was to pull out its gendered implications in order to discuss the connections between gender, property, and settler colonialism and their effect on the land in the Columbia River Basin, but the myriad other applications of this phrase as it relates to Indian land in the United States are worth mentioning as well. In the original sense of the phrase as agriculturally unproductive land, we can consider that the land the government earmarked for reservations was often described as barren and

[64] Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis, MN: University of Minnesota Press, 2014).

unproductive in comparison to tracts set aside for homesteaders.[65] Its other historical use as a referent to a place of execution finds a counterpart in the genocide of Native peoples across both American continents. A cursory search turns up hundreds of active legal disputes over legal title to Indian land, to say nothing of past incidents of theft (sometimes also known as removal, allotment, and "the treaty-making process"). The myth of an unoccupied wilderness that awaited Euro-American industry persists in the cultural imaginary of the United States, and the persistent notion of Native land as unoccupied and therefore underutilized has motivated U.S. policy that legitimized the theft of Native land time and time again, from initial settlement to current conflicts over natural resource development. Furthermore, the United States has continually demonstrated its convenient perception of Indian Country as a dumping ground, whether it be the storage of nuclear wastes, the poisonous by-products of strip mining operations, or the concentration of environmental toxins from global pollution in the Arctic. Many Native scholars and tribal leaders have indicted the United States as a moral wasteland, for its ongoing failure to live up to its treaty

[65] *Report of the Commissioner of Indian Affairs* (U.S. Government Printing Office, 1872), 539. Theda Perdue and Michael D. Green, *North American Indians: A Very Short Introduction* (Oxford University Press, 2010), 92.

obligations, or even to deal with Indian tribes in a just manner by its own standards.[66]

While this may seem a particularly pessimistic view of land and the United States, I point out the various applications of this phrase in order to better understand how they are connected. Taken together, these different ideas about wasteland form a coherent indictment of land ideology in the United States. The idea of land plays a prominent role in U.S. national culture, and the way that the U.S. nation state relates to land is based on certain ideologies and discursive representations of what land is and how it is to be used. While the most widely cited analyses of U.S. hegemonies of land and place tend to focus on Lockean notions of private property based on labor and Christian ideologies of stewardship, I argue that gender and heteropatriarchy play a key role in terms of how land been produced, both within the U.S. cultural imaginary and in practical, ecological terms. Thus a spatial critique of wasteland in the U.S. context is incomplete without a nuanced engagement with gender, property, and settler colonialism.

Native feminist theory has expounded upon the racialized violence of colonization and the ways in which colonial dispossession relies, in particular, on sexual violence against Native women. Scholars like Sarah Deer, Jennifer

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[66] In addition to the works cited in the literature review, see Vine Deloria,Jr, *Custer Died For Your Sins: An Indian Manifesto* (New York: Macmillan Company, 1969); David Eugene Wilkins and K. Tsianina Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (University of Oklahoma Press, 2001).

Denetdale, Mishuana Goeman, Lee Maracle, and Andrea Smith have amply demonstrated that settler colonialism relies on gender ideologies that support the oppression of and violence against Native women. What has yet to be fully explored is the central role that gender ideology and heteropatriarchy have played in terms of dispossession *and* the continued operation of settler colonial institutions that discursively and ecologically shape the land. The operation of colonial gender ideologies didn't just enable and justify violence against Native women alongside dispossession, but in fact enabled dispossession itself and continues to shape colonial land management strategies because U.S. property law encodes gender norms that support heteropatriarchy and work to enable capitalist exploitation of the land.

I should note here that when I discuss gender in this chapter, I am generally referring to the system that produces "men" and "women" as normative categories, not the categories themselves. I am less interested in sorting out the roles and behaviors assigned to men versus those attributed to women, or comparing how the they might look different for Native and Euroamerican peoples, than I am in questioning the system that produces the male/female binary as natural and enshrines it in ideologies that shape so many facets of what it means to exist under U.S. jurisdiction. In other words, this chapter is not concerned with gender in terms of bringing to light previously unstudied areas of Native women's lives by talking about gender and (for instance) labor by highlighting overlooked forms of labor that Native women in the Columbia River

region perform(ed). Such a study might be useful and informative, but does not necessarily contest the system that produced and installed a gender hegemony that supports heteropatriarchy (including ideas about gender roles and labor) and made it so that Native women's labor would be less valued and less well understood than Native men's or white women's labor. Put very simply, I'm here to dismantle gender, not reveal it. I would also clarify at this point that when I say the land is gendered I am not trying to argue that the land has more feminine or masculine qualities, but rather that the process by which Western gender ideology (including the male/female binary and its corollary public/private divide) has been encoded into U.S. law and culture has seriously affected the land, both in the physical or geographical sense, and in discursive terms of how we think, talk about, and relate to land. Following Andrea Smith's turn to the subjectless critique as a way to foreground the logics of settler colonialism, rather than the experience of Native peoples as racialized subjects, I argue that the structure of settler colonialism (and by extension the United States) is rooted in gender ideology through logics of property, labor, and exclusion. Furthermore, I contend that the essentialized categories produced by western gender ideology inform the day-to-day operation of settler colonialism, and in turn that operation continues to reinforce and reshape the categories themselves.[67]

[67] Andrea Smith, "Queer Theory and Native Studies: The Heteronormativity of Settler Colonialism," *GLQ: A Journal of Lesbian and Gay Studies* 16, no. 1–2 (January 1, 2010): 44

The perennial question for critical theorists revolves around what is at stake in their argument. At the risk of sounding obsessed with the etymological origins of colloquialisms, I can't help but point out that the use of the phrase "at stake" comes from the practice of surveying and physically staking out land claims, and land is exactly what is at stake here, in more ways than one. In their brilliant article, "Decolonization is Not a Metaphor," Eve Tuck and K. Wayne Yang argue that there is no synonym for decolonization and that, "decolonizing the Americas means all land is repatriated and all settlers become landless."[68] Decolonization is thus fundamentally incompatible with recuperating settler futures. Their argument makes a critical contribution to Settler Colonial Studies and justice struggles for indigenous peoples, and their contention that decolonization must involve land is a point that needs to be made again and again, as it is far easier and more comfortable to talk about decolonizing minds than the transfer of real property. While Tuck and Yang call for repatriation that is accompanied by "the recognition of how land and relations to land have always already been differently understood and enacted," I contend that without an explicit critique of the heteropatriarchy that infuses U.S. property law, the process of repatriation can devolve into a transfer of control under existing property regimes. Even if land is repatriated to the tribes and passes out of private or government control and into tribal jurisdiction, one can't simply ignore the legacy

[68] Eve Tuck and K. Wayne Yang, "Decolonization Is Not a Metaphor," *Decolonization: Indigeneity, Education & Society* 1, no. 1 (August 9, 2012): 3, 27, http://decolonization.org/index.php/des/article/view/18630.

of more than five hundred years of colonization that have utilized certain ideas about land and property in order to enable dispossession, and the effects of that legacy on tribal governments and Native peoples. By advocating for repatriation without a critical analysis of how gender and the ownership of land have been intertwined throughout the history of the United States, we risk unintentionally reinforcing the gender ideologies that have also legitimated rampant sexual violence against Native women and myriad harms to Native people. In other words, we must account for the "patri" - that is, the inherent and imbricated logics of patriarchy & property - in "repatriation."

In addition to the nature of ownership or relationship(s) to land, the land itself is on the line in a very real way. As will be discussed later in this chapter, Euroamerican property ideologies tend to incentivize accumulation, which is in part why U.S. property law is more concerned with who has rights to extract or harvest resources from the land than with who is responsible for caring for the land. Under such a regime, the land itself suffers.

While examples of how U.S. property law has enabled environmental degradation can be found across the country (and thanks to NAFTA and other international trade agreements, worldwide), this chapter will focus on a particular place in the Columbia River Basin that exemplifies the ecological and juridical

problems inherent in the particular operation of settler colonialism that produces no man's land: the section of river known as the Hanford Reach.[69]

The Hanford Reach

Just south of the Priest Rapids dam, the Columbia river interrupts its generally southward journey with a sharp jog to the north before swinging around and heading west towards the McNary Dam and eventually the Pacific Ocean. Today, this 51-mile stretch of unimpounded river stands out as an anomaly; in a riverscape marked by dams, dredging, and other signs of industry, it is the only free-flowing, non-tidal portion of the Columbia. The 194,000 acres of shrub-steppe surrounding the Hanford Reach, which was designated a national monument in 2000, also stands in marked visual contrast to the surrounding agricultural landscape. It is bordered on the north by the Wahluke Slope and the Saddle Mountains, and on the south by the Rattlesnake Mountains. Because of the land and river's marked difference to the rest of the Columbia River Basin, there is a strong pull, to which many historians and nature writers have succumbed, to describe the Hanford Reach as an artifact - a living memorial to the pre-industrial West, the last vestige of something that was once wild, a window into a pre-colonial past.[70] This discursive move, natural though it may seem, actually hides more than it reveals about the Columbia Basin as a whole.

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[69] Joshua Karliner, "Corporate Power and Ecological Crisis," *Global Dialogue* 1, no. 1 (Summer 1999): 124–38.

[70] US President, Proclamation, "Establishment of the Hanford Reach National Monument, Proclamation 7319," Federal Register 65, no. 249 (June 9, 2000)

The Hanford Reach and its surrounding landscape have been seen in extremely divergent ways since settlers arrived in the Columbia River Basin. First sought after as prime grazing land in the late 1800s, the construction of the Hanford Ditch in 1907 brought irrigation and a spur line of the Northern Pacific Railroad completed in 1913 facilitated transportation to profitable markets back East, all of which made the region appealing to farmers, especially those looking for a fresh start after the stock market collapse in 1929.[71] In 1942, after the United States had entered World War II, the War Department was in search of a site suitable for a plutonium production facility as part of the top-secret Manhattan Project; Hanford proved to be ideal because of its remote location and relative isolation, construction-friendly soil, and mild climate. Two other important features were easy access to large amounts of energy (the high voltage line between Bonneville and Grand Coulee dams runs right through the site) and cold water - thanks to the Columbia River. After touring the area before construction of the Hanford Site, Manhattan Project Director and U.S. Army Corps of Engineer General Leslie Groves described it as, "sagebrush suitable only for driving sheep to and from summer pastures in the mountains."[72] Early that spring,

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37253, http://www.gpo.gov/fdsys/pkg/WCPD-2000-06-12/pdf/WCPD-2000-06-12-Pg1322.pdf

[71] "Hanford Reach National Monument - Modern History," *U.S. Fish & Wildlife Service*, accessed November 8, 2015, http://www.fws.gov/refuge/Hanford_Reach/Cultural_Resources/History.html.

[72] Groves, Leslie, *Now It Can Be Told: The Story of the Manhattan Project* (Da Capo Press, 1983), 73.

the land was acquired through eminent domain and 1,500 residents of the small Washington towns of White Bluffs and Hanford were given 30 days to leave. Many were forced to abandon farms that their families had worked for years, and had no recourse against their eviction. Construction on the B-Reactor began in August and it was completed in September of the following year. On November 6th, 1944 - just two years after U.S. scientists in a University of Chicago lab first proved that a controlled nuclear chain reaction was possible - the B-Reactor produced its first plutonium, which was refined in a separate facility and then shipped to the Los Alamos laboratory in New Mexico in February, 1945.[73] Additional reactors came online that winter and by April, Hanford was sending regular rail shipments of refined plutonium to Los Alamos - including material for the "fat man" atomic bomb that the United States dropped on the Japanese city of Nagasaki on August 9th, 1945. [74]

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[73] Roy E. Gephart, "A Short History of Hanford Waste Generation, Storage" (and Release, Technical Report PNNL-13605, Rev. 4, Pacific Northwest National Laboratory, 2003), 3 http://www.pnl.gov/main/publications/external/technical_reports/pnnl-13605rev3.pdf.

[74] "Hanford Reach National Monument - Modern History," *U.S. Fish & Wildlife Service*, accessed November 8, 2015, http://www.fws.gov/refuge/Hanford_Reach/Cultural_Resources/History.html. The information about Hanford's history as a plutonium production facility contained in this chapter is only a very brief summary of the complex history of nuclear development in the United States, the Manhattan Project, and the issues of ecological restoration of spaces contaminated by nuclear waste. While a full history of the Manhattan Project would certainly be a fruitful topic for consideration in regards to U.S. imperialism and the state of exception, it is outside the scope of this chapter. A more detailed account of this history can be found in a number of excellent publications. See: John M. Findlay and Bruce

After the end of the war, control of Hanford was transferred to the General Electric Company under the oversight of the newly-created Atomic Energy Commission. Expansion at the Hanford Site continued through the middle part of the century, driven by the Cold War arms race to stockpile nuclear weapons. By the early 1960s there were nine nuclear reactors at Hanford, more than 900 support buildings, 5 reprocessing plants, and 177 underground waste storage tanks. Due to growing public concern about the feasibility of nuclear energy development and decreased national demand for nuclear weapons material, all but one of the reactors were shut down before 1971. The N-Reactor - a dual-purpose reactor that provided power to the Washington Public Power Supply System as well as plutonium - continued to operate until 1987, and the last reprocessing plant was shut down in 1990.[75] In 1988, Hanford was divided into four sections that were all added to the National Priorities List of Superfund sites by the EPA.[76] Operations at the site (which is now managed by the Department of Energy) are currently focused on cleanup of the many nuclear and chemical wastes that contaminate the area.

William Hevly, *Atomic Frontier Days: Hanford and the American West* (Seattle, Wa: University of Washington Press, 2011) and Michele Stenehjem Gerber, *On the Home Front: The Cold War Legacy of the Hanford Nuclear Site* (Lincoln, NE: University of Nebraska Press, 2007).

[75] Gephart, "A Short History of Hanford" 2.

[76] US EPA, "Final National Priorities List (NPL) Sites - by Final Listing Date," Data and Tools, accessed November 19, 2015, http://www2.epa.gov/superfund/final-national-priorities-list-npl-sites-final-listing-date.

Nuclear production is not a tidy process. 96,900 metric tons of uranium was processed at Hanford to generate 67 metric tons of plutonium - 65% of the nation's total supply. It is not surprising that such a large operation, including refining and reprocessing facilities, as well as the nuclear reactors themselves, would generate massive amounts of waste in various forms.[77] According to reports commissioned by the U.S. Department of Energy, Hanford produced nearly 2 million cubic meters of high-level tank (liquid) waste between 1944 and the late 1980s. Such a massive amount of waste is nearly inconceivable - if it were placed into standard size 20,000-gallon railroad tanker cars, the resulting train would be 260 miles long.[78] Hanford also contains 710,000 cubic meters of solid waste, most of which is buried in landfills, and another 90,000 and 270,000 metric tons of chemicals have been released into the soil and groundwater below the site. Between 1946 and 1958, some 450,000 to 490,000 cubic meters of tank waste (some of which went untreated) were also intentionally discharged to make room for new waste coming from the reprocessing plants.[79] Since 1953, between 1.5 and 1.7 billion cubic meters of liquids have been discharged into the soil and groundwater at Hanford, partially because initial waste disposal practices included simply dumping liquids at a low spot on the ground. When it became apparent that this was perhaps not the best idea for waste disposal, French drains, wells,

[77] Gephart, "A Short History of Hanford," 5.

[78] Ibid, 6.

[79] Ibid, 9-10.

and open trenches later backfilled with gravel came into use instead. The sheer mass of the liquid waste that was discharged into the ground - the amount is about equal to the volume of water that flows down the Columbia every 5 days - created a downward hydraulic driving force that pushed contaminants further into the soil (and groundwater) and faster than they might otherwise have travelled.[80] The permeability of the soil varies at different locations within the Hanford site, and certain contaminants travel faster through the 400-square kilometer plume of contaminated groundwater than others because of their chemical form and method by which they were released; some reached the Columbia River as soon as 20 years after they were released, while others may take more than a century to arrive.[81]

The cleanup process at Hanford - the most complex and expensive environmental cleanup process in the history of the United States - exemplifies a problem found across the U.S. nuclear complex. None of the Manhattan Project sites were developed with any plan for an endgame; that is, they were never built to *stop* producing nuclear weapons. Similarly, many of the waste storage tanks - designed to hold materials that would remain radioactive and highly toxic for hundreds of years or more - had a lifespan of only 20-50 years.[82] The assumption

[80] Ibid, 8-9.

[81] Ibid.

[82] Ibid 7, 19.

that better technology would inevitably take care of the problem is one that has plagued more than one development project in the Columbia River Basin.

Discourse Matters

How we see a place is always shaped in part by how we have come to understand its history. Cultural geographer Doug Mercer argues that landscapes, "are contested… landscapes have no essential or fixed identity. They are always represented by people and so must necessarily be a social process."[83] To see Hanford as a remnant of what once was "untamed wilderness" is to make certain assumptions about the history of occupation, territorialization, and development in the West, as well as what constitutes a wilderness. When those assumptions are made with enough frequency, they ring loud enough to affect policy that determines how we interact with the land, which in turn shapes how we see it. And yet, the social processes of occupation, etc. also have very real material effects that can and do shape how we see a place. Development at Hanford in the form of nuclear weapons production resulted in highly toxic emissions that have circulated throughout the surrounding landscape. This material reality has shaped the popular discursive formulation of Hanford as "wasteland."[84] There is much more to be said about the issue of seeing and framing landscapes, which will be

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[83] Doug Mercer, "Future-Histories of Hanford: The Material and Semiotic Production of a Landscape," *Cultural Geographies* 9, no. 1 (January 1, 2002): 35–67, doi:10.1191/1474474002eu232oa.

[84] Shannon Cram, "Wild and Scenic Wasteland: Conservation Politics in the Nuclear Wilderness," 2015, http://environmentalhumanities.org/arch/vol7/7.4.pdf.

addressed in a subsequent chapter, but for now the important point is that how we see a place, how we talk about it, and how we interact with it are all mutually constitutive.

Framing any river as a relic of the past ignores the basic nature of rivers: they change. They flood, they erode, they shift, they become dammed (by landslides, volcanic eruptions, beavers, and sometimes also humans), they wash away dams, they dry up, and sometimes disappear. Rivers are an archive of ecological history but they are a living archive, not an artifact. To call the Hanford Reach the "last remaining" section of free-flowing river assigns a permanence to the human-made dams that they do not deserve and forecloses the possibility of their removal and the eventual restoration of a free-flowing Columbia. Furthermore, the notion of the Hanford Reach as vestigial wilderness that escaped development dangerously obscures the reason the area stands separate from the land around it: the Hanford Nuclear Site.

Somewhat ironically, the ecologically devastating forms of nuclear production that happened at Hanford are a key part of why this section of the river is not impounded behind a dam. As early as the 1930s, the Army Corps of Engineers had proposed construction of the Ben Franklin dam just a few miles upstream from Richland, Washington, which would have submerged all but the uppermost portions of the Hanford Reach (and with it, the last major salmon spawning habitat on the mainstem of the Columbia). When the Hanford Nuclear site was constructed in the early 1940s, plans for the dam were put on hold, as one

of the features that made the location suitable for a nuclear production facility was easy access to cold, free flowing water from the Columbia - impounding the river behind a dam would have significantly increased the temperature of the water and interfered with the cooling process in the reactors.[85] In the late 1960's, when the Atomic Energy Commission began loosening restrictions on portions of the river in conjunction with the closure of most of the reactors, pressure to reconsider the Ben Franklin dam increased. Boosters saw the dam as a way to diversify the economy of the Tri-Cities area (Richland, Pasco, and Kennewick) and allow barge traffic as far inland as Wenatchee, Washington. Environmentalists opposed the dam, arguing that it would inundate not only critical salmon spawning grounds, but other important habitat and archeological sites of the Wahluke Slope.[86,87] Citing public opposition to the project as well as concerns about the ecological consequences of flooding the contaminated Hanford site, the Army Corps of Engineers officially abandoned plans for the dam in the early 1980s.[88] In 1992, after being tasked with figuring out how best to manage the Hanford Reach, the National Park Service recommended that this section of the Columbia should

[85] Findlay and Hevly, *Atomic Frontier Days*, 202

[86] Ibid, 249-253

[87] Shapiro and Associates, Inc., "Relationship of the Ben Franklin Dam Alternative to Water and Land Uses, Plans, Policies, and Controls for the Hanford Reach of the Columbia River.," July 1980.

[88] "Corps Capitulates: Ben Franklin Dam Quashed," *Spokane Daily Chronicle*, November 3, 1981.

be named a “Wild and Scenic River” (managed by the U.S. Fish and Wildlife Service) and that the adjoining land be made into a wildlife refuge. Local business interests, disappointed by the loss of a major hydroelectric project, fought hard against what they saw as the interference of the federal government in management of land that should have been made available for agricultural development under local management as soon as production ceased at the Hanford Site - in their minds, the end of production signified that the federal government was done with the land. This idea that active production constitutes the only kind of use that justifies ownership/control is deeply rooted in Western philosophy of land and property, as will be discussed later in this chapter. This contrasts sharply with the perspective of local tribes, who argue that the federal government isn’t done - that is, the government’s responsibility to the land isn’t fulfilled - until it is cleaned up.

In 2000, the Hanford Reach was proclaimed a National Monument under the American Antiquities Act by President Bill Clinton. In 2015, through a joint agreement of the National Park Service and the Department of Energy, certain areas of the Hanford Site became part of the Manhattan Project National Historic Park. Although environmentalists hailed the prevention of the dam and the creation of the National Monument as a victory for conservation, some scholars have posed the question of exactly what is being protected at Hanford. In its decision on the 1992 environmental impact statement, the National Park Service reported that the Hanford Reach was, “the only segment of the Columbia River in

the United States resembling its natural condition."[89] But what is natural about Hanford? The absence of a dam and slackwater reservoir behind it has increased pressure on the Reach to stand in as a symbol of all that was once wild about the Columbia, and yet this stretch of river has arguably been more affected by Western development than any other. Flow regulation at Priest Rapids Dam, which sits at the upper boundary of the Reach, can alter water levels by as much as ten feet in a short period of time.[90] On land, invasive plant species have crowded out the native sagebrush and bunchgrasses, transforming large swaths of the native shrub-steppe to fields of cheatgrass.[91] In the water, invasive aquatic species like the New Zealand mud snail and many varieties of fish (some of which were intentionally introduced), such as smallmouth bass, sunfish, and carp, outcompete or simply crowd out native species and disrupt the food chain.[92]

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[89] Bruce Babbit, "Record of Decision: Hanford Reach of the Columbia River Final Environmental Impact Statement for Comprehensive River Conservation Study" (US Department of the Interior, July 16, 1996), Hanford.gov, http://pdw.hanford.gov/arpir/pdf.cfm?accession=D199091173.

[90] Findlay, *Atomic Frontier Days*, 261.

[91] "Weeds - Hanford Reach - U.S. Fish and Wildlife Service," accessed November 19, 2015, http://www.fws.gov/refuge/Hanford_Reach/Wildlife_Habitat/Weeds.html.

[92] "Fish - Hanford Reach - U.S. Fish and Wildlife Service," accessed November 19, 2015, http://www.fws.gov/refuge/Hanford_Reach/Wildlife_Habitat/Fish.html. "New Zealand Mudsnail (Potamopyrgus Antipodarum.) - Aquatic Invasive Species | Washington Department of Fish & Wildlife," accessed November 19, 2015, http://wdfw.wa.gov/ais/potamopyrgus_antipodarum/. Michael P. Carey et al., "Smallmouth Bass in the Pacific Northwest: A Threat to Native Species; a Benefit for Anglers," *Reviews in Fisheries Science* 19, no. 3 (July 2011): 305–15, doi:10.1080/10641262.2011.598584. Some non-native aquatic species, such as

Radionuclides released into the air, water, and soil contaminate the river as well as everything that lives in it, and will continue to do so for the foreseeable future.[93] The Hanford Reach National Monument is, at best, a simulacrum of an undeveloped, "wild" Columbia River.[94] At worst it is a necropolitical no-man's land; a spatial monument to the U.S. government's power and right to impose death through the use of nuclear weapons, exposure to radioactive materials, and contamination of the land and its resources.

The Hanford Reach, however, supersedes the spatial and ideological boundaries that the Monument would impose. The ecological and chemical

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the New Zealand mudsnail, are recognized as invasive and strict regulations have been imposed to limit their spread. Others were intentionally introduced to improve recreational opportunities for sportfishing, and have existed in the Columbia for so long as to become permanent residents, managed along with native fish populations by the Oregon and Washington Departments of Fish and Wildlife.

[93] Jamie Donatuto and Barbara L. Harper, "Issues in Evaluating Fish Consumption Rates for Native American Tribes," *Risk Analysis* 28, no. 6 (2008): 1497–1506. Although there is some disagreement over the level of contamination to be found in Columbia River salmon, as well as the level of damage caused by this exposure, there is no denying that cancer risks are considerably higher for members of Columbia River tribes whose average fish consumption is much higher than the general public.

[94] My work on this matter is related to Jean Baudrillard's concept of simulacra and the ways in which Hanford is simulacrum of "nature" and/or "wilderness" of the fourth order that has no referent in reality, because "nature" (much like the flavor phenomenon of "pumpkin spice") is entirely constructed. See Eugene Wolters, "Understanding Jean Baudrillard with Pumpkin Spice Lattes," *Critical-Theory*, accessed October 10, 2014, http://www.critical-theory.com/understanding-jean-baudrillard-with-pumpkin-spice-lattes/.

processes at play in this particular landscape have little respect for geopolitical concepts of enclosure. The boundaries demarcating the edges between National Monument land and private property that surrounds it can be seen as a failed attempt at enclosure, for two reasons. The first is that the act of enclosure implies that Hanford, because it is now a monument and historic park, is no longer an "active" nuclear site. Production of weapons-grade plutonium may have ceased when the last reactor was shut down, but the ability of nuclear contamination and waste to move about in the environment, the long half-lives of nuclear by-products, the short sighted waste management schemes that were employed at Hanford, and the tendency of radiation-related health issues to manifest years and sometimes generations after initial exposure all mean that it is still very much an "active" site in terms of radioactivity.[95] It is also very much still active in terms of expenses and personnel: for the last decade, the federal government has spent

[95] The issue of radiation exposure and it's link to health outcomes is, not surprisingly, an extremely controversial issue, and the related "science" is not immune to pressure from national and global entities with a vested interest in the outcome of the research. Additionally, the problem is further complicated by the differing standards and burdens of proof in scientific research and judicial decisions. For more information, see Eric DeJure Wilson, "Hope for Hanford Downwinders: The Ninth Circuit's Ruling in In Re Hanford Nuclear Reservation Litigation," *Oregon Law Review* 82 (2003): 581, Rudi H. Nussbaum, et al., "Community-Based Participatory Health Survey of Hanford, WA, Downwinders: A Model for Citizen Empowerment," *Society & Natural Resources* 17, no. 6 (July 1, 2004): 547–59, doi:10.1080/08941920490452526, and Donna M. Goldstein and Magdalena E. Stawkowski, "James V. Neel and Yuri E. Dubrova: Cold War Debates and the Genetic Effects of Low-Dose Radiation," *Journal of the History of Biology* 48, no. 1 (July 8, 2014): 67–98, doi:10.1007/s10739-014-9385-0.

$690 million each year on the cleanup process, which currently requires more than 8,000 skilled workers alone.[96]

The second reason is the blatant foolhardiness of attempting to impose fixed boundaries on an inherently dynamic and always mutable landscape. Enclosing the physical site of nuclear production does little to contain the spread of radiation throughout the surrounding environment. Radiation doesn't respect the boundaries of the protected area, it moves through the landscape through all kinds of vectors. Radiological Control Technicians at Hanford describe how radiation shows up in, "atomic tumbleweeds that drink contaminated groundwater and then roll away with their toxic burden... radioactive mice and rabbits who spread Cesium-laced droppings... mud dauber wasps that build radioactive nests in the eaves of aging reactor buildings and the ants that construct contaminated colonies in delicate networks underground; the herds of elk that browse irradiated grasses, spindly-legged calves in tow—their muscular bodies so infused with the bomb, they have become living breathing archives of atomic history."[97] The problem with a living, breathing archive, however, is that it won't simply rest on the shelf, catalogued and ready at the historian's convenience. The living "archive" is only superficially contained by the boundaries of the Hanford

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[96] "Hanford Cleanup May Continue a Century after First Bomb," *Spokesman-Review*, November 22, 2015, http://www.spokesman.com/stories/2015/nov/22/hanford-cleanup-may-continue-a-century-after-first/.

[97] Cram, "Wild and Scenic Wasteland, 90.

Monument, and is constantly resisting enclosure through movement and migration, disrupting established spatial conventions, and interacting with other living, breathing archives of settler colonial history. The land itself resists the spatialized boundaries that the settler state would impose.

Land as a cultural resource

In establishing the Monument and National Historic Park, the federal government intended to set apart the undeveloped section of the river as an artifact from which we might learn about the past. But just what lessons are being taught? The official language used in the legislation establishing the Monument and Park vacillates between talk of protecting the area's biodiversity for future study on the one hand, and preserving the Hanford Site's historic structures, "not to celebrate the atomic bomb, but to educate the public about the history and legacy of the Manhattan Project that created it" on the other.[98] Each of the many agencies involved in the management of the Hanford Reach also have a slightly different take on the ultimate purpose being sought. The proclamation establishing the national monument charges the U.S. Fish and Wildlife Service with maintaining the Reach as a "haven for important and increasingly scarce objects of scientific and historic interest."[99] When the national park was established, Department of Energy Secretary Ernest Moniz described it as a

[98] "Frequently Asked Questions - Manhattan Project National Historic Park (US National Park Service)" accessed 3 March, 2016, http://www.nps.gov/mapr/faqs.htm.

[99] US President, "Establishment of the Hanford Reach National Monument."

celebration of, "one of this country's greatest scientific and engineering achievements," while Secretary of the Interior Sally Jewell cautioned that the park should serve as a reminder of, "how discoveries must be handled with great care and how they can have world-changing consequences."[100] The Columbia River tribes involved in the official decision making process at Hanford have a much more consistent set of goals and concerns when it comes to management policy, which reveal a key difference in the ways that settlers and tribes understand land management.

The tribes with whom the Department of Energy has committed to consult on activities and cleanup at Hanford are the same ones that signed the 1855 treaties with the U.S. government in Walla Walla, just a short distance from the Hanford Reach. The Confederated Tribes and Bands of the Yakama Nation (Yakama), Nez Perce Tribe, and Confederated Tribes of the Umatilla Indian Reservation (CTUIR) have published an impressive array of reports, commentaries and other documents that address the DOE's consistent failure to fully involve tribes as stakeholders in decision-making processes and carry out its federal trust obligation to tribes. Several common themes emerge from these documents that are articulated with surprising consistency, in comparison to the about-face in management goals found in DOE reports over the same time period. The first is clear connection between the land and the body. In stark contrast to

[100] Cary, Anette. "Hanford's Historic Reactor Officially a National Park." *Tri-City Herald*, November 10, 2015. http://www.tri-cityherald.com/news/local/hanford/article44089200.html.

the official language of "land use scenarios," "acceptable risk limits" and "exposure thresholds," one report by the Nez Perce Tribe explained that what their elders really wanted to know was if they could use the land for traditional plant gathering activities. The standard for "clean enough" was "when you have enough confidence to take yourself and your family and use that land for gathering or recreation." The same report also identifies contamination of human remains as a key concern for cleanup.[101]

The second common theme was the connection between the land and culture. Multiple documents submitted by the tribes involved clearly and repeatedly state that natural resources *are* cultural resources and there is no way to separate them into distinct categories.[102] One CTUIR report explains the relationship between tribe, land and culture as follows:

> Tribes are not just social organizations of people who happen to live close to each other or who happen to have some historical experiences in common. In order to be healthy, the people have to practice certain traditional spiritual and eco-cultural lifeways that depend on a clean and healthy ecology. This is who the Cayuse, Umatilla, and Walla

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[101] Kristie L Baptiste, "Hanford Tribal Stewardship," Final Report (Nez Perce Tribe Department of Natural Resources Environmental Restoration & Waste Management, March 2005), 1, 12-13, http://www.clarku.edu/mtafund/prodlib/nez_perce/Hanford_Tribal_Stewardship.pdf.

[102] Ibid, 5. Stuart Harris, "Interests and Expectations of the Confederated Tribes of the Umatilla Indian Reservation Regarding Hanford and Hanford-Affected Lands," Scoping Report 2 (Department of Science & Engineering, March 31, 2006), 4, http://www.clarku.edu/mtafund/prodlib/confederated_tribes/Hanford_Report.pdf.

> Walla People are, body and soul. But we can only do this on the Reservation or in limited portions of our ceded area because all the rest of our land was taken. Therefore, any further diminution of the land base or resource quality diminishes the Indianness of CTUIR citizens.[103]

The report goes on to explain that conventional risk assessments do not adequately account for all of the "risks" that tribal nations face when resources are contaminated because they do not account for the tribal social, cultural, and economic health, all of which require a "clean and functioning ecosystem."[104] This fusion of concern for the effect of toxins on the bodies of living tribal members, the bodies of ancestors buried at Hanford, and the soil itself - as well as the refusal to separate nature and culture - evinces a very different conception of environmental management than what is generally applied by the DOE at Hanford and across the United States. In the 2008 Hanford Reach National Monument Comprehensive Conservation Plan (CCP), the U.S. Fish and Wildlife Service understands culturally significant places through the logic of "traditional cultural properties" and explains that while the Native American connection to the Hanford Reach is an important part of the landscape's history, such places are difficult to protect because they are "often hard to recognize," and "may look like merely a mountaintop, a lake, or a stretch of river," because their boundaries are not easily defined, and because tribes are often unwilling to share their precise locations. "In simplest terms," the CCP states, "one cannot protect a property if

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[103] Ibid, 6

[104] Ibid, 39-40

one does not know that it is there."[105] The primary strategy identified in the CCP for protection of traditional cultural properties is to continue to attempt to catalog their location and boundaries.[106] This strategy represents a fundamental and persistent misunderstanding of the connection between Columbia River tribes and the land.

The third and final common theme is the importance of stories in understanding the land as it exists today and how it has changed over time. Stories are quoted at length in many of the reports to demonstrate that the relationship between the Columbia River tribes and the Hanford Reach is not only one of corporeal intimacy but of a temporal span so vast as to be nearly incomprehensible to settler epistemologies. When the tribes talk about needing waste storage strategies that take climate change into account, they're not talking about in increase in average global temperature over the last 50 years, they're remembering the last ice age and thinking ahead to that kind of drastic, long term change. Phillip Cash Cash, a historian of the Confederated Tribes of the Umatilla, explains that an important feature of many myths is "geographically distributed myth locales… These topographic embodiments are often the result of a mythic transformation, and their physical presence in the landscape bears witness to the

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[105] Ren Lohoefener, "Hanford Reach National Monument Comprehensive Conservation Plan" (US Fish and Wildlife Service, September 2008), http://w.astro.berkeley.edu/~kalas/ethics/documents/environment/final-ccp-no-maps.pdf

[106] Ibid, 150

changing moral character of the world…"[107] Although Cash Cash is referring strictly to myths, which he distinguishes from historical narratives that refer to the post-mythic human era, I think it is worth considering how the Columbia region - and Hanford in particular - bears witness to the changes that have come about as a result of the "moral character" of the settler state. In fact one of the reports from the Nez Perce tribe states that they hope the story of the Manhattan project will teach a lesson for generations to come.

In a way, Hanford is teaching settlers a hard lesson about relationships with land - the repercussions of nuclear energy and weapons production happen on a much longer time scale than what settlers are accustomed to dealing with, and on a larger geographical scale than settler spatial regulatory units of county, state, and country are equipped to handle. The assumption that technology will always keep pace with unchecked growth in demand (to mitigate waste and facilitate extraction of dwindling resources) is being proven wrong, as evidenced by the numerous challenges to the cleanup process at Hanford.[108] And yet, Hanford continues to figure as a "sacrifice zone" in the words of its critics as well as its proponents, rather than an opportunity to reassess the hegemony of empire and exploitative land ethic that made the Hanford nuclear site possible. Writing

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[107] Jennifer Karson, ed., Wiyáxayxt/Wiyáakaa¿awn/As Days Go by: Our History, Our Land, and Our People - the Cayuse, Umatilla, and Walla Walla (Pendleton, Or: Tamástslikt Cultural Institute, 2006), 10.

[108] Noah D. Lichtenstein, "Hanford Nuclear Waste Site: A Legacy of Risk, Cost, and Inefficiency, The," *Natural Resources Journal* 44 (2004): 809.

more than half a century after overseeing its construction and directing the operations that led to the only combat deployment of nuclear weapons the world has seen thus far, General Leslie Groves argued that, "While it is tragic that forces for destruction that we unleashed are stronger than man's present ability to control them, it is fortunate indeed for humanity that the initiative in this field was gained and kept by the United States."[109] Clearly, the issues at Hanford are not simply the result of ambitious engineers not realizing they had bitten off more than they could chew. Rather, Hanford and the issues that have coalesced there, are part of a larger pattern.

Hanford is emblematic of the literal and figurative toxicity of western land ideology and the myriad problems that arise from settler colonial management practices. It is impossible to divorce the decisions that were made there from the ideas about labor, property, use and management that have been fundamental to conquest, settlement, and ongoing occupation in the Columbia River Basin and beyond. The key to understanding what happened at Hanford - from the extirpation of its original inhabitants, to its lauded role as a key contributor to the Allied victory in World War II, all the way to its federal designation as simultaneous superfund site and national monument - lies in the particular articulations of labor, resources, and heteronuclearity that are embedded in U.S. property law.

[109] Groves, *Now It Can Be Told*, 414.

The Origins of Property Law: Labor and Title

The roots of U.S. property law run deep. The Doctrine of Discovery - the international legal principle that provided justification for European invasion/settlement of what is now the United States - has been traced as far back as the eleventh century. Uncoincidentally, this is about the same time the idea of "no man's land" emerged. Even before that, leaders in the Roman Catholic church had advocated for the idea of global papal jurisdiction, and argued that the sovereignty of non-Christians were superseded by the pope's responsibility for the spiritual health of all humans, and thus even the property rights of "infidels" were dependent on the graces of the Church.[110] A series of papal bulls issued in the fifteenth century to settle a dispute between Spain and Portugal over colonization of the Canary Islands clarified the Doctrine of Discovery, reasoning that European nations had a vested interested in bringing all of humankind to Christianity, and that the right to do so lay with the first European nation (in this case, Portugal) to "discover" the pagan lands. These bulls further codified the doctrine into international law, and in fact were the impetus for Queen Isabella of Spain to sponsor Christopher Columbus' expedition to find a westward passage to the Indies.[111] Legal scholar Robert Miller breaks the Doctrine of Discovery down into ten distinct elements, most of which have to do with preemption, that is, how the

[110] Robert J. Miller, *Native America, Discovered and Conquered: Thomas Jefferson, Lewis & Clark, and Manifest Destiny* (Greenwood Publishing Group, 2006), 12.

[111] Ibid*, 13-14.*

"discovering" nation proves its right to possession over and against other European nations, including the restriction of Native peoples' right to sell their land or conduct trade only with the European government that discovered them. Most pertinent for our discussion of U.S. property law and land management paradigms are the principles of *Indian Title* and *Terra Nullius*, as they were not only critical in justifying initial occupation and conquest by European nations, but also have been fundamental in shaping property law in the United States.

The Doctrine of Discovery maintains that Indian Title is limited to occupation and use - native peoples lost full property rights and title simply by being "discovered" by a European state. In theory, they would continue to hold that right of occupation in perpetuity until they chose to sell (although their buyers would be limited to the discovering state), but I think we all know how that worked out in practice. The principle of *terra nullius* (which actually translates to "no man's land") held that if lands were either unoccupied, or occupied but used in a way that was inconsistent with European legal systems, they were considered vacant and thus available for Discovery claims. This left considerable wiggle room for defining what counted as "proper use," and colonizing states took full advantage of applying the principle of "no man's land" to any form of Native land use that didn't mesh with European or American customs.[112]

[112] Ibid, 4

While the Doctrine of Discovery played a key role in the formation of the United States, it did not become obsolete once the new government was established. Miller's painstaking documentation of the founding father's knowledge and discursive use of Discovery principles demonstrates how the Doctrine was well understood and liberally applied by the founding fathers. In a speech delivered at the 1802 anniversary celebration of Plymouth, John Quincy Adams explains that unlike other nations, Americans can reflect with satisfaction on their origins because they include no "bastard tyrant[s]," and congratulates the town on its "kindness and equity towards the savages." In the same breath, however, he asks,

> What is the right of a huntsman to the forest of a thousand miles over which he has accidentally ranged in quest of prey? Shall the liberal bounties of Providence to the race of man be monopolized by one of ten thousand for whom they were created? Shall the exuberant bosom of the common mother, amply adequate to the nourishment of millions, be claimed exclusively by a few hundreds of her offspring? Shall the lordly savage not only disdain the virtues and enjoyments of civilization himself, but shall he controul (sic) the civilization of a world? Shall he forbid the wilderness to blossom like the rose?"[113]

America's sixth president neatly summarizes the odd contradiction of Christian principles embedded in the Doctrine of Discovery – self congratulatory "kindness" towards the Indians and exclusive and absolute entitlement to Indian lands. From its inception, U.S. property law has been characterized by this façade

[113] Jedidiah Morse et al., *A Compendious History of New England : Designed for Schools and Private Families* (Ulan Press, 2012), 379–380.

of legitimate acquisition. Settlers saw themselves as ordained by "Providence" to do the land a favor by cultivating it for its maximum potential output.

These ideas about land use formally became a central tenet of U.S. property law when the Doctrine of Discovery was codified by the 1823 *Johnson v. M'Intosh* case. In Chief Justice John Marshall's opinion, he wrote that Native people could not have full title to their land because they, "remain in a state of nature, and have never been admitted into the general society of nations...Not only has the practice of all civilized nations been in conformity with this doctrine, but the whole theory of their titles to lands in America, rests upon the hypothesis, that the Indians had no right of soil as sovereign, independent states. Discovery is the foundation of title, in European nations, and this overlooks all proprietary rights in the natives."[114] At stake in Johnson's argument here is nothing less than the validity of the United States' existence on the American continent; U.S. title depends on Discovery, which is contingent upon the diminished property rights of the original inhabitants. Johnson goes on to clarify why exactly being in "a state of nature" makes Native people ineligible for full title to their land. His explanation is worth quoting at length because it so clearly reveals the dependence of exclusive title on a particular form of use:

> The measure of property acquired by occupancy is determined, according to the law of nature, by the extent of men's wants, and their capacity of using it to supply them. It is a violation of the rights of others to exclude them from the use of what we do not want, and they have an occasion for. Upon this principle the North American Indians could have acquired no

[114] Johnson v. M'Intosh, 21 U.S. 543 (1823), 567.

> proprietary interest in the vast tracts of territory which they wandered over; and their right to the lands on which they hunted, could not be considered as superior to that which is acquired to the sea by fishing in it. The use in the one case, as well as the other, is not exclusive. According to every theory of property, the Indians had no individual rights to land; nor had they any collectively, or in their national capacity; for the lands occupied by each tribe were not used by them in such a manner as to prevent their being appropriated by a people of cultivators. All the proprietary rights of civilized nations on this continent are founded on this principle.[115]

The key points that Marshall makes here are first, that title through occupancy is dependent on using the land in a way so as to prevent its use by others, especially for cultivation, and second, that the extent to which land that can be obtained through such occupation is limited only by the desire and ability of the occupier. Put plainly, it's wrong to keep others from claiming something that you're not currently using, but there's nothing wrong with using as much as you possibly can, as long as you are *really* using it.

Johnson v. M'Intosh is best known for its key role in shaping federal Indian law as part of the Marshall Trilogy, but the case also codified ideas about land use and property whose implications reach beyond the limitations of Indian title that Johnson set out to define. In his footnotes to the section cited above, Marshall references John Locke as the authority on the "natural law" that turns occupied land into the property of the occupier. Locke's profound influence on ideas of property employed by the founding fathers and later by U.S. courts is widely acknowledged. Essentially, Locke argues that although God gave the earth

[115] Ibid 569-570

and its creatures for mankind to hold in common, man owns himself and his labor, and therefore whatever is produced when he mixes his labor with nature becomes his property. In other words, every man has an inherent right to the fruits of his labor. When that labor has a spatial dimension, the right of acquisition applies not just to its yield but to the earth itself: "*As much land* as a man tills, plants, improves, cultivates, and can use the product of, so much is his *property*. He by his labor does, as it were, enclose it from the common," (emphasis in the original).[116] Locke includes the stipulation that the appropriation of land through labor is valid only when there is, "enough, and as good left in common for others," and only for "as much as any one (sic) can make use of to any advantage of life before it spoils."[117] These qualifications to Locke's theory were not included in Marshall's argument, perhaps because at the time (just a decade and a half after the Lewis and Clark expedition) the bounty of America seemed endless. It would seem that Marshall suffered from the same lack of foresight as the engineers at Hanford: the inability to conceive of an endgame to the U.S. empire's expansion. Rather than look to the land for guidance on the reasonable boundaries of desire, the United States embraced the assumption that technology would keep

[116] John Locke, *Second Treatise of Government: An Essay Concerning the True Original, Extent and End of Civil Government* (John Wiley & Sons, 2014), 21

[117] Ibid, 18, 20.

pace with unchecked growth in man's desire to appropriate resources and turn them into property.[118]

The Origins of Property Law: Space and Gender

In contrast to the rejection of limitations when it came to quantity, when it comes to *quality* of land being made into property, the words of Marshall, Locke, and others reveal an obsession with boundaries and a spatial dimension that is profoundly gendered, in the form of enclosure. The justification for dispossession and settlement based on divine authority encoded in the Doctrine of Discovery was not just a matter of populating the West, it was about spatially transforming it by imposing a particular narrative of public progress and private domesticity.

Many scholars have attributed the rejection of full Indian title found in the Doctrine of Discovery and later in U.S. property law to culture differences. In her foundational essay, "Whiteness as Property," legal scholar Cheryl Harris argues that it was the interaction between race and property (not just the construction of race alone) that made oppression of Blacks and Indians possible through interrelated systems of slavery and conquest. The essay makes an important and valuable contribution to understanding the relationship between property and race. However, Harris glosses over the logic by which Indian occupation of land was not equated with possession, simply stating that, "Only particular forms of

[118] For Locke, that technology was money. While he did stipulate that it was wrong for man to keep more than what he could actually make use of before it spoils, he points out that men have, "by tacit and voluntary consent found out a way, how a man may possess fairly more land that he himself can use:… by receiving in exchange for the overplus, gold and silver." Ibid*, 31.*

possession - those that were characteristic of white settlement - would be recognized and legitimated. Indian forms of possession were perceived to be too ambiguous and unclear."[119] Harris is not alone in ascribing the failure to recognize Indian occupancy as full possession to cultural differences over use.[120] To say that Europeans and the Indigenous peoples of the Americas simply had different understandings of what it meant to use land and leave it at that, however, misses a key part of how gender (and heteropatriarchy) figure into property law and U.S. paradigms of land management.

At the heart of the definition of "use" employed by Locke, Marshall, and the founding fathers that allowed one to transform land from commons to property is the ordered spatial dimension of labor. Three key features distinguish what counts as labor under this rubric: exclusion, exploitation, and enclosure. Marshall reasoned (as quoted above) that Indians had neither individual nor collective rights to land because they weren't using it in a way that would prevent it from being cultivated by others, and stated further that, "the tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness."[121] Thus Indian labor

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[119] Cheryl I. Harris, "Whiteness as Property," *Harvard Law Review* 106, no. 8 (1993): 1707–91, doi:10.2307/1341787, 1722.

[120] Miller, *Native America, 10*.

[121] *Johnson,* 590

didn't qualify them for the appropriation of their lands as property because it didn't preclude the use of the same land by others, it didn't make use of the land to its fullest extent, and there were no clear, permanent boundaries to define the spatial limits of land being used. The issue of exploitation, naturally, was a critical one for justifying ideologies like Manifest Destiny, which, like the Doctrine of Discovery, embraced the implicit "waste" of anything left under Indian management as *terra nullius*. The connection between wilderness and waste was clear to Locke, who asked, "whether in the wild woods and uncultivated waste of American left to nature, without any improvement, tillage or husbandry, a thousand acres yield the needy and wretched inhabitants as many conveniences of life as ten acres of equally fertile land do in Devonshire where they are well cultivated?"[122] He goes on to explain that the "conveniences" to which he refers are things like bread, wine, and cloth, which are inherently worth more than acorns, water, and skins because they require more labor to produce.

The examples Locke uses might support the misconception that cultivation itself is the crux of this issue. Because it is certainly a labor-intensive endeavor, it is often used as the touchstone for differentiating between the kind of intentional labor that facilitates the appropriation of land as property and the "accidental" labor of fishing and hunting in which Native peoples engaged. Uncritically allowing cultivation to stand in as the marker for the spatial dimension of labor is deeply problematic in a number of ways. Primarily, it ignores the fact that many

[122] Locke, *Second Treatise,* 24

Native peoples (especially those in the Northeast) did practice cultivation as a primary source of food production.[123] It was the way that they practiced it that rendered their labor illegible to the property logic of the settler state; rather than permanent fields bordered by fences, most tribes simply cleared an area for planting, used it for a few seasons, and then abandoned it when the soil became less productive.[124] Furthermore, it is well documented that settlers were fully aware of these cultivation practices and the labor that they required - it was in part the impermanence and lack of enclosure that led them to see this kind of agriculture as "occupancy" rather than full title.[125] The other part was more explicitly about gender: because it was mostly Native women doing most of the labor associated with clearing, planting, and maintaining fields (because this work was more compatible with nursing infants than other forms of labor), women were the ones who were seen as being in possession of the fields/crops. The concept of "possession," of course, mean something very different for Native peoples than how Locke and Marshall understood it, but functionally controlling the agricultural fields meant controlling the majority of the community's food resources, which resulted in a relatively powerful position in society for Native

[123] Miller, *Native America,*92.

[124] Cronon, *Changes in the Land,* 43-44; John T. Cumbler, *Northeast and Midwest United States: An Environmental History* (ABC-CLIO, 2005), 42.

[125] Cronon, *Changes in the Land,* 43-44, 57.

women.[126] This arrangement confounded and confused most early settlers, who saw it as evidence of the "backwardness" of Native peoples (although more than one story exists of white women held "captive" by Indians who later declined to return to their own people, finding the woman's position in her new community far preferable).[127]

The second problem with focusing on cultivation itself (as labor intensive compared to hunting and fishing) rather than its spatial properties erases the multitudinous forms of labor that these alternative modes of production require. Fishing as productive labor will be discussed more thoroughly in the next chapter, but it is important to note here that hunting and fishing, as practiced by most Native peoples in the Americas 1) required intentional resource management strategies, 2) allowed the practitioners to fully utilize those resources, and 3) were incredibly labor intensive.[128] In other words, as modes of food production go, hunting and fishing were neither easy nor "accidental," as John Quincy Adams would put it, nor were they as inefficient as Locke would have us believe.

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[126] Ibid, 56.

[127] Mark Rifkin, *When Did Indians Become Straight?: Kinship, the History of Sexuality, and Native Sovereignty* (Oxford University Press US, 2011); Audra Simpson, "Captivating Eunice: Membership, Colonialism, and Gendered Citizenships of Grief," *Wicazo Sa Review* 24, no. 2 (2009): 105–29.

[128] Ibid. See also: Jared Dahl Aldern and Ron W. Goode, "The Stories Hold Water: Learning and Burning in North Fork Mono Homelands," *Decolonization: Indigeneity, Education & Society* 3, no. 3 (November 25, 2014), http://decolonization.org/index.php/des/article/view/21228 and Taylor, *Making Salmon.*

There is another important reason to focus on the spatial dimension of labor that allows wilderness to become property: the formative, but often unrecognized, role that gender ideology plays in U.S. property law. Given ideas about gender at the time of their writing, it is perhaps unremarkable that Locke, Adams, Marshall, et al, use exclusively male pronouns when referring to both the Euro-American laborer whose efforts result in property, and the "lordly savage" whose work does not. The implications of their terminology, however, go beyond political correctness or inclusivity. The labor that generated property title for settlers in in the United States was fundamentally organized by gender in the form of heteronuclear family units, but those titles were held almost exclusively by white men. Land was worked and improved by the entire family unit, but the patriarch held the title and by law it passed to his heirs upon his death.[129] The heteronuclear organization of property was further reinforced by the fact that married (white) women could not own property separately from their husbands until the middle of the 19th century; their legal personhood was subsumed under their husband's status.[130] While single white women could legally own property, they were limited in their ability to acquire it by the forms of labor available to

[129] Ibid*,* 77-78.

[130] It should not go without notice that when white feminists began organizing to change this law, their argument for women's advancement often depended on linking their diminished legal status to slavery. Dianne Avery and Alfred S. Konefsky, "The Daughters of Job: Property Rights and Women's Lives in Mid-Nineteenth-Century Massachusetts," *Law and History Review* 10, no. 2 (1992): 323–56, doi:10.2307/743764, 336.

them.[131] This legal inscription of a particular social formation based on gender has dictated not just who can own property but how it is accumulated over time.

Mark Rifkin explains that over the course of the 18th century, a sharp increase in New England's population resulted in a shift from an economy dependent on agriculture powered by kin-based labor to a cash economy that emphasized a distinction between (men's) labor that yielded salable goods and (women's) labor whose output was consumed within the home. Consequently, the domestic sphere was produced as a social space, counter to the public domain.[132] This gendered binary between public and private modes of production didn't just organize social space, but geographical space as well. Quite literally, white men's labor was measured out in acres of plowed fields that validated homestead claims, while white women's labor disappeared within the home, and Native labor was rendered illegible entirely.

Labor, Property, and the Settler State

In 1850, five years before Joel Palmer, the Superintendent for Indian Affairs in Oregon, and Isaac Stevens, the Governor of Washington Territory, negotiated treaties to extinguish Native title with the Columbia River Basin tribes and nine years before those treaties were ratified by the U.S. government, Congress passed the Donation Land Claim Act, which allowed white male settlers

[131] Laura Padilla, "Gendered Shades of Property: A Status Check on Gender, Race & Property," *The Journal of Gender, Race and Justice* 5, no. 2 (2002): 361–409.

[132] Rifkin, *When Did Indians Become Straight?,* 109.

and their wives to establish legal title to parcels of land in Oregon Country as long as they cultivated it for four consecutive years. Single white men or "half-breed" Indians could file for half a section (320 acres) and married couples could jointly file for a full 640-acre section.[133] Single women were completely excluded from property ownership through homesteading. The imperative of private property clearly outstripped even the mandates of national and international law regarding land claims, as even the Doctrine of Discovery (codified in *Johnson v. M'Intosh*) required formally extinguishing Indian title before land could be claimed as real property by settlers.[134] While the West was not yet experiencing the agricultural decline that nudged New England towards a cash economy at the beginning of the century, ideas about gendered labor, the public/private divide, and the organization of the settler state through heteropatriarchy were firmly entrenched in the national discourse, as the mechanisms of the act demonstrate.

The Act also worked to codify and naturalize heteronuclearity as the organizing principle of the settler state, by rewarding married settlers with a larger parcel of land to be jointly held, and stipulating that land claimed under the Act was subject to genealogical inheritance. Rifkin describes how discursive representations of the nuclear family as rooted in biology help in, "forging an 'artificial unity' between, among other things, marital heteroromantic pairing, bourgeois homemaking, private property holding and dynamics of inheritance,

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[133] *The Donation Land Claim Act*, 1850.

[134] Miller, *Native America*, 50.

legal determinations of familial relatedness, and a specific gendered division of labor – naturalizing as foundational a distinction among social spheres or domains."[135] This assemblage of ideals is then mobilized by U.S. law. The Donation Land Claim Act and other homesteading acts did exactly that by fusing together ideologies of marriage, inheritance and land ownership, and stipulating modes of production that cleaved to gendered norms.

The United States actually denies the possibility of "no man's land" because all land is "someone's." One could certainly make the case that this metaphorically genders land in the sense of presuming inevitable ownership the way society presumes inevitable marriage and casts unmarried adults, especially women, as deviants. I want to suggest that there is a more literal connection: the nonexistence, and even impossibility, of un-owned land points to the pervasiveness of the public/private divide, which is linked to the gender binary. All land has to belong to and be managed by someone in Western property ideology (and law) for a number of reasons, the primary one being that if a parcel of land didn't belong to anyone, someone would take it (unfairly, we assume, because they wouldn't have to work or pay for it).

In a system that uses heteronuclear reproductive inheritance to incentivize accumulation, even at the expense of the "common good," there's no reason to think someone wouldn't take it. Additionally, even the hypothetical existence of a piece of land that couldn't be owned creates a kind of crisis for U.S. property law.

[135] Rifkin, *When Did Indians Become Straight*, 14.

Who would manage such land? What would determine who could use it, what kinds of uses were allowed, and to what extent? The manifold issues associated with the concept of "the commons" will be addressed in Chapter 3, but it's worth noting here that even the closest thing to a commons that exists in the United States - the "public" land of national parks, national forests, and other "wilderness" areas located predominantly in the West - are in fact owned by the federal and state governments, and are intensively managed with regards to who has rights to use, extraction, and development. In the U.S. political economy, wealth and production are inescapably tied to property law and the rights assigned to it. Even the so-called "virtual economy" requires manufacture of devices to access it, servers that require a physical location and energy supply, and a land-based route for the fiber optic cables that link those servers, many of which happen to be located in the Columbia River Gorge area, because of the ready supply of cheap (read: subsidized) hydroelectric power.[136] Un-ownable land exists outside the settler state, and like the presence of Native peoples, creates a kind of existential anxiety for the settler state, because it challenges the self-aggrandizing mythology of the settler state as inevitable, permanent, and built on liberal principles of individual rights and equality.

[136] Tom Banse, "Virtual Currency Meets Wariness As It Plugs Into Cheap Columbia River Power," *Northwest News Network*, January 29, 2016, http://nwnewsnetwork.org/post/virtual-currency-meets-wariness-it-plugs-cheap-columbia-river-power.

The Donation Land Claim Act was only one of many statutes that etched their legacy on the face of the land. By requiring cultivation in order to prove a claim, the settler state paved the way for 20th century water reclamation projects that would seriously tax the Columbia's ability to sustain life, and suck some of its tributaries dry. In 1909, the State of Oregon allocated so much irrigation water on the Umatilla River that it ceased flowing in the summer months.[137] In 1914, Bureau of Reclamation dams were installed without fish passage facilities that totally wiped out salmon and eel runs on the Umatilla River.[138] Today, tribes struggle to negotiate with agricultural interests to ensure sufficient water will flow through the river to prevent the further decline of salmon runs and to protect fragile aquatic habitat from pesticide and fertilizer runoff.

The act also helped codify the inevitable development of the West under the banner of progress. The mining booms of the mid 1800s, the development of a commercial salmon fishery, and the growth of the timber industry all had major impacts on the region. Bonneville Dam, the first major hydroelectric project on the Columbia River, was completed in 1937. Over the next 35 years, 13 more dams would be constructed on the mainstem of the river. All of these industries and developments had their part in shaping the land and how its inhabitants related to it.

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[137] Karson, *Wiyáxayxt/Wiyáakaa¿awn/As Days Go by,* 167.

[138] Ibid.

Transforming the ethic of ownership

The extent and nature of Indian land ownership in the Columbia Basin has seen drastic changes over the last two centuries. With the 1855 treaties, the Walla Walla, Cayuse, and Nez Perce ceded 6.4 million acres of their homeland.[139] The Warm Springs and Wasco tribes ceded 10 million.[140] Reservation policy not only drastically reduced the tribes' land bases, but also disrupted the seasonal cycle of food production that required travel between summer fishing camps along the river and winter villages. The passage of the General Allotment Act (the topic of the following chapter) in 1887 further reduced tribal landholdings, but also worked to change the nature of Indian land ownership. For the Columbia River tribes, like many others, the imposition of individual allotments was accompanied by heavy losses of land deemed "surplus," crooked land deals and government appropriation during the termination era. The Nez Perce tribe and its members own only 13% of its 750,000-acre reservation, and half of the 172,000-acre Umatilla Reservation is owned by non-Indians.[141] That said, the future is by no

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[139] "Nez Perce Tribe | Nez Perce Indian Reservation," *Columbia River Inter-Tribal Fish Commission*, accessed August 16, 2013, http://www.critfc.org/member_tribes_overview/nez-perce-tribe/.

[140] "Warm Springs Tribe | Warm Springs Reservation," *Columbia River Inter-Tribal Fish Commission*, accessed August 16, 2013, http://www.critfc.org/member_tribes_overview/the-confederated-tribes-of-the-warm-springs-reservation-of-oregon/.

[141] "Nez Perce Tribe | Nez Perce Indian Reservation"; "Umatilla Tribe | Umatilla Indian Reservation, The Walla Walla Tribe," *Columbia River Inter-Tribal Fish Commission*, accessed August 16, 2013,

means bleak. The Umatilla have brought salmon back to their river, and the Umatilla, Nez Perce and Yakama all manage their own innovative and highly successful fishery programs, which supply salmon, steelhead and other species for both tribal and non-tribal fisheries. Given both the devastating loss of tribal lands, as well as the drastic changes to the river that has always played a critical economic and cultural role for these tribes, one must ask if repatriation is an adequate response to the need to restore indigenous relationships to land in the Columbia River Basin.

There is a twofold challenge facing the tribes of the Columbia River, both of which are a result of the gender ideologies built into U.S. property law. The first is that repatriated land is or would be measured out in acres, which is an appropriate unit for organizing heteronuclear units of agricultural production, but not so much for fishing peoples whose means of production depends on a resource that migrates halfway around the globe, and is affected by human activity at every point along the journey. Expanding reservation boundaries by repatriating land is a good thing, but it doesn't uproot a system that primarily values sedentary forms of capitalist production. Secondly, U.S. property law is based on the expectation of exclusive rights over and against any third parties. A rights-based framework for ownership tends to support an ethic of exploitation, whereas an ethic of care requires a framework based on responsibility, thus to

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http://www.critfc.org/member_tribes_overview/the-confederated-tribes-of-the-umatilla-indian-reservation/.

own repatriated land over and against all settlers without dismantling the settler state would not change what ownership means.

Decolonization requires the repatriation of stolen lands. Decolonization also requires Native peoples to deal honestly with the effects of centuries of struggle under colonial property regimes in terms of how we relate to the land and to each other. In much the same way that nuclear production has contaminated the physical landscape of Hanford, U.S. gender ideology has contaminated our relationship with the land. The operations of heteropatriarchy and oppressive gender ideologies have to be dismantled, so that ownership of land does not depend on violent legacies of theft and genocide, and a relationship based on care and responsibility can be restored.

The long term ecological issues caused by nuclear weapons production at Hanford have drawn out what was to be a moment of political crisis, and in doing so they have worn thin the facade of liberal democracy, revealing the contours of the settler state's necropolitical power to produce Hanford as a space of death. Because of this, decolonization in the Columbia River Basin is more complex than just, "they took our land, we want it back now." The tribal responses to cleanup at Hanford reveal a fundamentally different way of relating to land; and this relationship is powerful. It stands up to the necropolitical power of the state in a way that property ownership (which the state can override through eminent domain) cannot. Instead, a relationship through which land and body are connected, where nature *is* culture, and where stories continually remind us that

we are constituted as a people by and *through* the land, can inform a praxis of decolonization based on restoring that relationship rather than simply increasing the acreage to which we hold title.

CHAPTER THREE

(Re)producing the Nation: Treaty Rights, Gay Marriage, and the Settler State

The focal point of this chapter would be easy for the casual observer to miss, although it marks a dramatic shift in the landscape around it. Celilo Falls, for many years the cultural and economic hub of the Columbia Basin, was flooded in 1957 when construction on The Dalles Dam was completed and the water behind the dam rose to form Lake Celilo. See Fig. 1 for a map of Celilo in relation to the city of The Dalles. As the river churns past the city of The Dalles and its namesake dam, the hills flanking the water become steeper and the browns and muted gray-green of sagebrush and bunchgrass that dominate the Columbia Plateau abruptly give way to the lush pines and mixed deciduous forest of the west-facing slopes of the Cascade Mountains. The Columbia River Gorge, the part of the river between the mouth of the Deschutes River (20 miles upstream from The Dalles Dam) and the town of Troutdale, Oregon, is the only gap in a chain of volcanoes that stretches from what is now Northern California to the southern part of British Columbia. See Fig. 1 and 2 for a map of Celilo Falls in relation to the city of The Dalles and The Dalles Dam. Today, a small park with a boat launch and a cluster of BIA tract houses surrounding a traditional longhouse are all that mark the site of Celilo Falls, a massive, horseshoe shaped waterfall

where the entire river was squeezed into a chute only 140 feet across (see Fig. 3).[142]

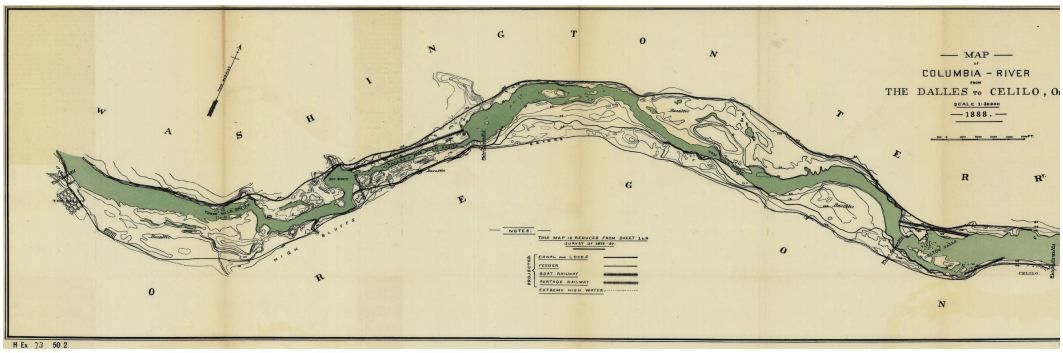

Fig 1: Celilo Falls in relation to The Dalles on the Columbia River. US Army Corps of Engineers, 1888.

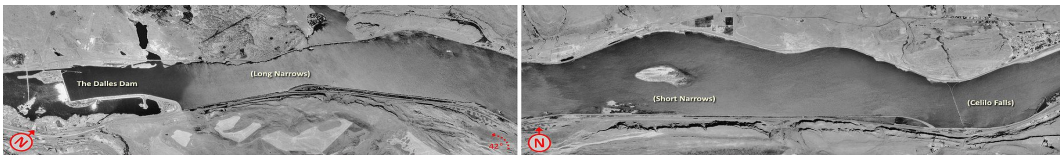

Fig 2: Celilo Falls in relation to The Dalles Dam. US Geological Survey.

The trade networks generated by the extremely productive fishery at Celilo covered half of the North American continent, and the adjacent village was one of the longest continually occupied sites in North America. It was no accident that Celilo became such a contentious site in the conflict between dams and salmon, and between state (hydro)power and Indigenous people. In the last 200 years, Celilo - first as an extant waterfall and later as a specter of Indigenous

[142] Alexander Ross, *Adventures of the First Settlers on the Oregon or Columbia River: Being a Narrative of the Expedition Fitted out by John Jacob Astor, to Establish the "Pacific Fur Company" ; with an Account of Some Indian Tribes on the Coast of the Pacific* (Smith, Elder and Co., 1849), 119.

subjectivity invoked by the state - has become a particularly dense nexus of interrelated axes of political power, affective ties, and discursive signification.

Fig. 3: Lake Celilo in 2010, as seen from Celilo Park. US Army Corps of Engineers, Portland District.

This chapter begins with a brief history of Celilo and the construction of The Dalles Dam. Just over a hundred years passed between the signing of the treaties that were supposed to secure the salmon for Native people of the Pacific Northwest and the flooding of the falls that had been the heart of their fishery. This section uses reports from the U.S. Fish and Wildlife Service and the Army Corps of Engineers to explain how development that took place in the Columbia River Basin during that century affected the Native fishery, and why Celilo

became the crux of the conflict over fishing rights on the Columbia. I then move to a close reading of the Allotment Act, in order to understand its intended role in shaping Indian subjectivity to align with settler notions of heteronormative progress, as well as the process by which industrialization (in concert with heteronuclear social organization) teamed up to codify a particular conception of "nature" in the settler imaginary that continues to inform both federal Indian policy and natural resource management. The next section makes a brief detour from our narrative journey down the Columbia, to the Great Lakes of Wisconsin and Minnesota, in order to get a clearer picture of the national discourse on treaty rights and "natural" resources.

Comparing the "fish wars" of the Great Lakes with those of the Pacific Northwest is helpful in understanding how concurrent struggles for treaty fishing rights played out differently on the other side of the country, because of the relationship between the Columbia River's particular geography and the salmon's unique lifecycle. The following section examines a number of legal decisions that worked to define the nature and extent of treaty rights for Columbia River tribes, and offers a critique of how treaty fishing rights have been disarticulated from place. The subsequent section offers some parallels between treaty fishing rights and more recent articulations of sovereignty as a tribe's right to define marriage and issue marriage licenses independently of the state, and suggests that in both issues, state recognition functions as a form of interpellation based on the representation of "licensed" capitalist (re)production of food and family through

heteronuclear units as legitimate, and of non-licensed production of food and reproduction of family through traditional kinship structures as perverse. This section also develops the concept of fragmentary distortion; a term I use to describe the process by which the colonial erasure forces a portion of a complex indigenous system to stand in for the whole of what was erased, and the increased pressure on what is left causes intragroup contention that the settler state can exploit for its own gain. The final section suggests that decolonization must go beyond struggles for state-recognized rights in order to work towards dismantling the settler state.

The Hub of the Region

Celilo Falls, or *Wy-am*, was the first in a ten-mile long series of rapids on the Columbia River, aptly named "The Narrows," where the river squeezed through a basalt canyon that amplified its force. While Native fishers throughout the region used a variety of fishing methods, including nets, traps, weirs, and spears, the fast running water and pools at Celilo made dipnets and long spears the most effective.[143] Fishers constructed wooden platforms attached to the rocks in order to gain better access to the rapids (see Fig. 4). Tribes from the local region (what is now Oregon, Washington, and Idaho) relied on kinship networks and diplomacy to sort out who fished where and when, and for how long, as well

[143] Ulrich, *Empty Nets*, 117.

as how the catch, which was comparable in size to that of the entire non-Native commercial fishery in its heyday, was distributed.[144]

This section of the river thwarted upriver travel until 1915, when the Army Corps of Engineers built the Celilo Canal, a 14-mile portage that allowed steamboats to circumnavigate the whitewater. Before construction had even begun on any of the major dams, the architects of the Celilo Canal envisioned the Columbia as a bustling aquatic highway of barge traffic headed

Fig. 4: Dipnet fishing at the Cul-De-Sac of Celilo Falls, circa 1957. Army Corps of Engineers.

[144] Taylor, *Making Salmon*, 22, 25.

from Portland, Oregon to Lewiston, Idaho, and back.[145] Environmental pressure from logging and agriculture - the effects of which are discussed in previous chapters - throughout the region had already begun to impact the number of salmon that made it up the Columbia by the turn of the century.[146] Between 1930 and 1955, five major dams were constructed on the main stem of the Columbia, cutting off miles of habitat (especially Grand Coulee, which was built with no fish ladders and effectively closed 40% of the spawning habitat on the Columbia) and flooding fishing sites on both sides of the river, forcing Native fishers to crowd in at remaining sites, such as Celilo.[147] Although Bonneville, the only dam downstream from Celilo, received a lot of blame for its effect on suppressing salmon runs, the other four dams upriver from the falls played just as big a role - inundated habitat and poorly built fish ladders upstream meant fewer adult salmon passing through for fishers at Celilo.

The other major factor affecting salmon runs on the Columbia was the commercial fishery, which went from one cannery packing 272,000 pounds of salmon in 1866 to 37 canneries packing 42 million pounds in 1884.[148] Competition between fishers was fierce, and often broke out along lines of race,

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[145] William Lyman, "Address of Welcome at the Dalles Celilo Canal C..." (The Quarterly of the Oregon Historical Society, June 1, 1915), https://archive.org/stream/jstor-20609998/20609998#page/n3/mode/1up.

[146] Tayler, *Making Salmon*, 55-57

[147] Cohen, *Treaties on Trial*, 45–46.

[148] Taylor, *Making Salmon,* 137.

class, and nationality. Fishers and gillnetters exploited the ambiguous jurisdiction between Oregon and Washington, canners pitted groups of fishers against each other, and state officials leaned hard on hatchery production in order to avoid dealing with the mess of regulating the fishery.[149] The commercial harvest fluctuated from 1885 into the first decade of the twentieth century, peaked at almost 50 million pounds in 1911 and then steadily declined to around half a million pounds just after The Dalles Dam was built.[150] The decline was partly the result of the same pressures that faced Native fishers at the time - declining runs caused by dams and other environmental factors - and partly by unsustainable harvest practices. During peak seasons before the fishery began to decline, commercial fishers routinely brought in more fish than the canneries could process, leaving thousands of pounds of salmon to rot in the sun. Commercial fishers would also sometimes "highgrade" their catch - throwing back smaller fish or less desirable species and replacing them with larger specimens to maximize profit without going over the limit on the number of fish they could take.[151]

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[149] Ibid, 137, 146-150

[150] Courtland Smith, "Salmon Abundance and Diversity in Oregon: Are We Making Progress?" (Oregon State University, 2014), http://oregonstate.edu/instruct/anth/smith/SalmonAbundanceandDiversity_s14002.pdf.

[151] Taylor, Making Salmon, 64.

Fishwheels, one of the most efficient - and indiscriminate - technologies for catching salmon were outlawed in 1935.[152]

All of these factors - declining salmon runs, loss of traditional fishing sites, and competition from non-native fishers - significantly increased pressure on Celilo, as a fishing site but also as a geopolitical and social space. More fishers at Celilo meant an increase in the number of families helping to process and sell the catch. It meant an elevation in political tensions between tribes (some of whom saw other tribes as "guests" at Celilo) and between federally recognized tribes and the "river people" who lived at Celilo year round and had not sought enrollment in a recognized tribe because it would have meant removal to a reservation.[153] Most of the recognized tribes of the Columbia River Basin are actually confederacies made up of smaller bands that were grouped together as part of the reservation process, usually in ways that reflected bureaucratic convenience for the United States rather than social structures of the native people. The Columbia River was actually used as a dividing line between bands to the north, who were designated as part of the Yakama Tribe, and bands to the

[152] Unlike gill nets, dip nets, or hook and line tackle, all of which can be adjusted and used in a way that targets a particular species or size of salmon, fishwheels simply scoop out everything that passes by. US Fish and Wildlife Service, "Summary Report on the Indian Fishery at Celilo Falls and Vicinity on the Columbia River, 1947-1954" (US Army Corps of Engineers, Portland District, 1955), 3.

[153] Katrine Barber, *Death of Celilo Falls* (University of Washington Press, 2011), 156.

south, who became Umatilla.[154] The resulting socio-political upheaval was framed as the squabbling of a backwards people by Army Corps of Engineers and Bureau of Indian Affairs officials - perhaps because the divide and conquer strategy has long been a successful one for those charged with freeing up land and resources for non-native settlement - but I argue that it should be seen instead as the result of intense pressure put on a fragment of what was previously a much larger and more complex system. Celilo was asked to stand in for an entire river that had been flooded, fenced-off, poisoned, and drained by settler colonialism. The fragmentation (and partial erasure) of the Columbia River Basin foodshed, and the resulting strain put on Celilo to act as a stand-in to an increasingly diverse group of Native people created a particularly fraught dynamic, one that the state (through the Army Corps of Engineers) was able to manipulate when it came to construction of The Dalles Dam.

In the middle part of the century, both the Korean War and the Cold War ramped up demands for aluminum and plutonium production, both of which require vast amounts of electricity. In the spring of 1948, the Columbia flooded and completely wiped out Vanport, Oregon. The destruction of a city that was home to 42,000 people also increased public support for dams as a form of flood control.[155] The Dalles Dam was completed in 1957, after only five years of

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[154] Andrew H. Fisher, *Shadow Tribe: The Making of Columbia River Indian Identity* (University of Washington Press, 2010) 37-38.

[155] Despite being one of the most devastating natural disasters in Northwest history (at the time, Vanport was the second largest population center in Oregon),

construction. On March 10th, just six hours after the gates of the newly completed dam were closed, the water rose and Celilo Falls, eight miles upstream, was submerged, along with the village.

The drowning of the falls didn't only affect Native people; the substantial commercial salmon fishery that existed above the dam was also destroyed. The Army Corps of Engineers, however, bought support for the dam from non-Indian fisheries representatives by promising them that the dam would actually improve salmon runs by eliminating Indian fishing, which in 1949, represented 12% of the commercial catch.[156] When Bonneville Dam was constructed in the 1930s, the Corps agreed to provide compensatory "in-lieu" sites for Native fishers, to replace the ones that were submerged behind the dam or otherwise rendered inaccessible by its construction. Unsurprisingly, it was not keen to deliver on this promise once the dam was completed, and tribes are still working to force the Corps to live up to its bargain. With Celilo, however, no such agreement was made. The U.S. Fish and Wildlife Service predicted that construction of The Dalles Dam and McNary Dam (located about 100 miles upstream and completed in 1957) together would eliminate the salmon run altogether, unless extreme measures were

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the Vanport flood has often been left out of popular histories, undoubtedly because Vanport was predominantly made up of hastily-constructed housing built for employees of the Kaiser shipyards during World War II and its population was 40% African American. Jason David Rivera and DeMond Shondell Miller, "Continually Neglected: Situating Natural Disasters in the African American Experience," *Journal of Black Studies* 37, no. 4 (March 2007): 502–22.

[156] Ulrich, *Empty Nets*, 56–57, Richard White, *The Organic Machine: The Remaking of the Columbia River* (Macmillan, 2011), 22.

taken.[157] While the Bureau of Indian Affairs, the National Park Service, and the Fish and Wildlife Service opposed the construction of the dams and staunchly advocated for a delay in construction that would give their respective offices time to study the problem, the final report of the Northwest Coordination Committee to the U.S. Department of the Interior (which also included the Bonneville Power Administration, the Bureau of Reclamation, the Bureau of Land Management, and the U.S. Geological Survey) conceded that, "it appears that the development of the river in the interests of power, navigation, and irrigation is incompatible with the maintenance of the runs of anadromous fish and with maintaining the status quo insofar as the Indian treaties of 1855 are concerned."[158]

Based on the four year study of the Indian fishery conducted by the U.S. Fish and Wildlife Service from 1951-1954, the Army Corps of Engineers estimated the value of the Indian fishery at Celilo to be 23 million dollars.[159] The estimated average yearly size of the Native fishery at Celilo during this period was recorded as almost 2 million pounds, although a fair amount of guesswork was involved and most fishery historians agree that this was a gross

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[157] Pacific Northwest Coordination Committee and US Department of the Interior, "Effect of Columbia and Snake River Dams on Fisheries" (United States: US Department of the Interior, 1947).

[158] Ibid*, 2*

[159] USFWS, "Summary Report on the Indian Fishery at Celilo Falls… 1947-1954"; Fisher, *Shadow Tribe*, 202.

underestimation.[160] While the Native fishery actually improved somewhat in the years before The Dalles Dam was built, due to increased regulation of non-Native commercial fishers, it should be noted that the decision to provide in-lieu sites for Bonneville and monetary compensation for The Dalles Dam worked to the Corp's advantage. The value of the fishing sites flooded by Bonneville in the 1930s would have been much higher before the dam impacted the runs, making compensation for the loss of sites at Cascade Rapids and elsewhere under the Bonneville reservoir far more expensive. By the time the U.S. Fish and Wildlife Service assessed the fishery at Celilo in the early 1950s, Bonneville had already been in place (negatively impacting salmon runs and thus the value of the fishery) for 20 years, thus suppressing the value of the fishery in terms of compensation.

The set value that the Corps assigned to the Native fishery enhanced the government's "divide and conquer strategy"- the federal government played tribes against each other in the negotiations, negotiating with each tribe separately and manipulating the smaller tribes' fears of missing out on their fair share in order to compel them to agree to a settlement quickly. The Warm Springs and Umatilla tribal governments agreed to settlements of roughly $4.5 million each in 1953. The Yakama (the largest of the four tribes with whom the Corps was willing to negotiate) conceded the following year and received $15 million. All three tribes insisted that the Nez Perce shouldn't receive a settlement at all, because of a 1933

[160] Ibid*;* see also "Summary Report on Indian Fishery Census: Celilo Falls and Vicinity 1951" (US Fish and Wildlife Service, March 1952); Cohen, *Treaties on Trial;* Taylor, *Making Salmon*; and Ulrich, *Empty Nets*.

court decision in *US v. Brookfield Fisheries* that upheld the Indians' right to fish at the Downes Channel section of Celilo, but (wrongfully) excluded the Nez Perce Tribe; but the Nez Perce were able to negotiate an agreement for just under $3 million in 1955.[161] All of the tribes except the Warm Springs distributed most of the money in the form of per capita payments, which also caused resentment among Native fishers who saw tribal members who lived on the reservation and had never been to Celilo receive the same amount as they did.[162]

The Corps did refuse to negotiate with the River People, arguing that they were only obligated to deal with federally recognized tribes. As a result, some year round residents - seeing that their homes were about to be flooded either way - chose to pursue enrollment in one of the four recognized tribes. Others were pressured into doing so by tribes seeking to increase their enrollment numbers and thus their share of the compensation settlements.[163] A few were able to secure settlements for about the same amount that individual members of other tribes received, after a series of lawsuits.[164] Still others, such as Tommy Thompson, the leader of the River People who made Celilo their permanent home, refused

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[161] District Court, D. Oregon, *United States v. Brookfield Fisheries*, 24 F. Supp. 712 (1938); Fisher, *Shadow Tribe,* 203; Oregon Historical Society, "Significant Events in the History of Celilo Falls," *Oregon Historical Quarterly* 108, no. 4 (December 2007): 720–23.

[162] Ulrich, *Empty Nets*, 84–87.

[163] Ibid, 204-207

[164] Ibid, 206

compensation altogether. In 1955 Chief Thompson was almost as old as the treaties themselves, and deeply resented the recognized tribes for selling out.[165] The Corp's indifferent attitude towards the un-enrolled Indians who lived at Celilo Village reflected the national attitude toward Native peoples at the time. In 1953, the U.S. congress adopted House Concurrent Resolution 108 and formally embraced "termination" policy, which sought to abrogate the treaties and end the government-to-government relationship between the United States and the tribes slated for termination.[166]

There was some confusion within the Army Corps of Engineers over whether the tribes could be compensated for their rights to fish (the states governments' preferred solution, since it would have eliminated the problem of Indian fishing altogether) or only for the value of the lost fishery sites.[167] It was eventually decided that the rights in and of themselves were not transferrable, but that the Indian fishers could be compensated for the value of the fishing sites that were lost. This is an often-overlooked element of the Celilo negotiations, but later in this chapter I argue that the difference between "site" and "right" in the Celilo

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[165] Ibid*, 207*

[166] For a more complete history of termination policy, see Jessica R. Cattelino, "The Double Bind of American Indian Need-Based Sovereignty," *Cultural Anthropology* 25, no. 2 (May 1, 2010): 235–62, doi:10.1111/j.1548-1360.2010.01058.x and Donald Lee Fixico, *Termination and Relocation: Federal Indian Policy, 1945-1960*, 1st ed. (Albuquerque, NM: University of New Mexico Press, 1986).

[167] Pacific Northwest Coordination Committee, "Effect of Columbia and Snake River Dams on Fisheries; Ulrich, *Empty Nets,* 85.

settlement is actually a critical component of understanding what treaty rights have come to mean and how they function in terms of Indigenous land relationships.

The lack of clear and sustained government support for Indian fishing on the Columbia River seems egregious, especially in light of the billions that have been spend on propping up the non-Native commercial and sport salmon fishing industries through hatcheries, habitat restoration, and bailouts. In fact, it begs the question of why the federal and state governments did not support Indian fishing from the beginning, rather than encouraging them to abandon traditional subsistence methods in favor of farming, since doing so would have freed up even more land for non-Native settlement. At the time the treaties that removed most of the region's Indians to reservations were signed, there was little competition from non-Native commercial fishing, and Indian fishers actually supplied the majority of the fish that white settlers and traders needed.[168] In the next century, just when the states were trying their best to wipe out Indian fishing altogether, the federal government was working to end its obligations toward Indian tribes and encourage Native people to integrate into U.S. society as economically independent laborers.[169]

The reason that the U.S. never supported the idea of a self-sufficient Indian fishery on the Columbia (or anywhere else, for that matter) becomes clear

[168] Cohen, *Treaties on Trial*, 38.

[169] Cattelino, "The Double Bind," 239-240.

when we look at the larger picture of federal Indian policy throughout U.S. history. Indian fishing, like many other forms of indigenous production, is fundamentally troubling to settler society because it suggests a relationship with the land that predates and supersedes a colonial government, thus unsettling the comfortable narrative of Native people as part of a disappeared past, and calling into question the U.S.' notion of its own perpetual existence.

Allotment – A Shift in Subjectivity

While the U.S. government's never-ending quest for access to Indian land and resources has remained a constant, Allotment Era policy represented a major shift in the methodology of its acquisition project. Whereas the reservation system sought to constrain the extent of Indian land claims (under a genocidal presumption of the inevitable extinction of all Indian people), Allotment policy worked to fundamentally reshape the nature of land ownership for Native people, based on the (still genocidal) assumption of eventual assimilation. The Allotment Act, also known as the Dawes Act, was passed in 1887. It divided collectively held reservation lands into individual units or allotments. While the Act certainly furthered the settler colonial project of acquiring Indian land in that it drastically reduced the area of land seen as Indian property in the eyes of U.S. law, the means by which the act redistributed Indian lands and the language describing its purpose also reveal a number of other important functions with far-reaching consequences for conceptions of space, property, and production.

The Allotment Act shared some of the same basic structures of the Oregon Land Donation Act and other homesteading acts discussed in the previous chapter, but they served very different purposes. Both pieces of legislation worked to parcel land into property, and both acts understood labor as "improvements" that substantiated the laborer's claim to the land as property. In the case of the homestead acts, labor was required to "prove" the claim and legally acquire title to the land, and the Allotment Act explicitly stated that that allotments should be assigned, "in such manner as to embrace the improvements of the Indians making the selection."[170] Agriculture was enshrined in both acts as the purpose for which the divided land was to be used, and both used the heteronuclear family unit as the rubric that determined the amount of land awarded as well as the process by which land was distributed after the original owner died.

The various homesteading acts, however, were fundamentally about expanding U.S. empire through the distribution of unclaimed, "open" land, whereas the Allotment Act was intended to break up collectively held land into individual units - not just to assimilate native people into Western modes of

[170] *An Act to Provide for the Allotment of Lands in Severalty to Indians on the Various Reservations (General Allotment Act or Dawes Act*, 1887.

civilization, but to facilitate the erasure of Indigenous modes of being altogether.[171]

The Allotment Act "awarded" heads of households with a quarter of a section (160 acres - *only a fourth* of what married couples received under the Oregon Land Donation Act), single adults and orphan children received half of that, and any other children under eighteen were awarded one sixteenth of a section, so long as they were born before their reservation was ordered to be allotted. Children born after the allotment process received nothing, and any "surplus" land not allotted was sold to the federal government or leased out under the authority of Bureau of Indian Affairs agents.[172] This stipulation alone makes clear the genocidal intent of the allotment process - not only were Native people given title to much less of their own land than the white settlers were awarded in exchange for farming it for five years, but any future Native children (and thus, any Native future at all), were quite literally written out of the picture. Furthermore, the act provided that if there was not sufficient lands within reservation boundaries to allot in the quantities specified, that allotments could be made "pro rata" in accordance with the classes and amounts named in the act - which is to say, if there were too many Indians and not enough acreage, everyone's piece of the pie got smaller.

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[171] As noted in chapter 2, the definition of "unclaimed" proved to be rather flexible, as the Oregon Land Donation Act was passed before the U.S. had even legally extinguished Indian title to the land being distributed by the act.

[172] Ibid.

Once land was allotted, title was not immediately conferred upon the individual. Instead, it was to be held, "in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located," for a period of 25 years, after which the allottee would receive a patent to the land and be free to dispose of it as they saw fit.[173] Furthermore, the act stated that, "every Indian born within the territorial limits of the United States to whom allotments shall have been made,… who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States." It also established a hiring preference for Indians who, "availed themselves of the provisions of this act and become citizens."[174] It's also worth noting that while married couples filing for homesteads under the Donation Land Claim Act each held title to half the claim, married Native women were not even mentioned in the Allotment Act. This omission not only rendered them discursively invisible but legally codified their dependency on the nuclear family unit for legal recognition through the channels of property ownership and citizenship that the Allotment Act established.

[173] The 25-year trust period provision was amended by the 1906 Burke Act, which stated that the secretary of the interior had that authority to issue a patent in fee simple to any allottee he deemed competent to manage their own affairs.

[174] Ibid.

By awarding twice as much land to heads of households – and defining households exclusively as heteronuclear families, the act worked not just to dismantle or eradicate traditional kinship structures, but to replace them with a particular state-sanctioned model of "family" through which resource production and distribution would be organized. While the act did not require a state-licensed marriage for the inheritance of land, it did describe domestic cohabitation in heteronuclear terms.[175] Mark Rifkin has argued the Allotment Act worked to transform Indian subjectivity and affect by "detribalizing" Native peoples: once land was allotted to individual Indian people, it would cease to be under tribal control.[176] He points out that Allotment policy was, "characterized as an effort to shift the objects of native feeling – from clans and communities to nucleated families, from collective territory to private property, from the tribe to the nation-state – so as to create proper, individuated citizens out of primitive masses."[177] By privatizing Indian land, the policy sought to reduce the power of "collective geographies" that had been maintained through traditional kinship structures.[178] In essence, the Allotment Act set the stage for 20th century legislation and court decisions that would further define modes of food and family (re)production deemed appropriate by the settler state.

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[175] Ibid.

[176] Rifkin, *When Did Indians Become Straight?*, 152, 181–2.

[177] Ibid, 182.

[178] Ibid, 181–2.

The Act was also implicated in the creation of "proper" citizens through the imposition of settler-style sedentary farming. As discussed in Chapter Two, many tribes had practiced a variety of forms of agricultural production for thousands of years, based on an intimate understanding of localized ecosystems and natural cycles. I use *production,* specifically, because taking hunting and gathering out of the discursive realm of production devalues and erases the actual work that goes into those types of food production. It makes it seem as if prior to their "salvation" through settler farming methods, Native people just wandered around the forest looking for food until they stumbled upon it, rather than *working* for food by engaging in a complex set of intentional practices aimed at maximizing and maintaining those food sources over time. Additionally, framing hunting and gathering as historically anterior to the inception of "real" food production subjects Indian people to the same regimes of development discourse that Maria Josefina Saldaña-Portillo identifies in her work on revolution and development; putting Indian people on a universalized linear trajectory out of the darkness of "ethnic particularity" and into the rational light of the capitalist day.[179] The narrow definition of farming that was attached to civilization at the time, however, was predicated on what Rifkin calls "bourgeois nuclearity," individual land tenure, and European food crops. Rifkin describes "bourgeois nuclearity" as a kind of normative family unit, fundamentally linked to whiteness

[179] María Josefina Saldaña-Portillo, *The Revolutionary Imagination in the Americas and the Age of Development* (Duke University Press Books, 2003), 6, 28, 31.

and the (re)production of the nation-state.[180] This link between the Allotment Act and production is critical to understanding how the Act set the stage for modern day battles over fishing rights and gay marriage.

Landscapes of Production and Consumption

The Allotment Act was not the only legislation of its day that worked to codify a capitalist model of organizing production in space and time. Where the Allotment Act sought to impose particular methods of production on land previously considered "unproductive," the act that created Yellowstone Park in 1872 worked to "save" land seen as pristine from the encroachment of capitalist development. The legislation that created the park and others like it was part of an "unprecedented outburst of legislation" that used territorialization to delineate appropriate usage of space.[181] Many political ecologists have argued that the idea of "wilderness" – the conceptual impetus for the creation of the national park system – is a cultural construction. Both Gina Crandell and Bruce Braun discuss the European development of the ideology that gave rise to the Conservation Movement, which played a major role in the creation of the early National Parks in America.[182] Where Crandell emphasizes the "pictorialization" of nature or the process by which Western assessments of the beauty of nature rely on the degree

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[180] Rifkin, *When Did Indians Become Straight?*, 33.

[181] Jacoby, *Crimes Against Nature*, 1.

[182] Gina Crandell, *Nature Pictorialized: "The View" in Landscape History* (Johns Hopkins University Press, 1993); Braun, *The Intemperate Rainforest.*

to which it conforms to pastoral European landscape paintings, Braun focuses on the artistic movement of "sublime nature," or nature, "constructed around awe-inspiring vastness and grandeur."[183] According to Roderick Neumann, both pastoral and sublime nature played a role in American wilderness romanticism and the process of territorialization: "'Framing' nature in painting, whether pastoral or sublime, transformed it into picturesque scenery, where the observer is placed safely outside the landscape. Likewise, surveying, bounding, and legally designating a 'wild' space makes it accessible for the pleasure and appreciation of world-weary urbanites."[184] Neumann goes on to argue that the changes to western social and economic structures brought about by the industrial revolution in the 19th century have fundamentally shaped modern ideas about wilderness and nature. Where pastoral scenes were previously seen as "natural," they were transformed into spaces of production when agriculture became a part of industrial capitalism. The human labor imposed on the landscape made it unnatural. At the same time, as the working classes migrated to the cities, an idealized version of nature, untouched by human labor and its attendant effects of change and progress, began to be seen as diametrically opposed to crowded urban spaces. Neumann also notes that, "Parallel to their spatial separation, production and consumption began to occupy distinct temporal spheres of work time (production) and leisure time (consumption)…Leisure became a mass

[183] Neumann, *Imposing Wilderness*, 16.

[184] Ibid, 15–17.

phenomenon…dependent on the existence of picturesque landscapes."[185] Thus the organization of (legitimate) capitalist production was organized in both space and time by the settler state.

Understanding how "nature" came to signify a landscape of leisure, and agriculture simultaneously shifted from signifying the picturesque and pastoral to a landscape of production is crucial, because it allows us to see how discourse around Indian land has created a double shift in ideologies of "appropriate" methods of productivity: as Indians assimilated into the settler capitalist system, Indian food production *should* happen in the developed space of private property, and *should not* happen in the undeveloped "pristine" space that had become "nature" or wilderness. Such spaces were only to be used for recreation, if at all. The legislative act of parceling out land with the intent of putting it to agricultural use reveals a discursive shift from Indian land as the "untamed frontier" to Indian land as a landscape of production – or, more accurately, what *should* be a landscape of efficient capitalist production. It is significant that any land that allottees were not able to occupy and improve, or that was occupied but not "needed" for agricultural production, became available for outside development – landscapes of production necessitated maximum efficiency. Furthermore, by territorializing land intended for productivity as separate from "wilderness", Allotment policy essentially disavowed non-agricultural (non-capitalist) methods of food production such as gathering, hunting, and fishing. Historian Karl Jacoby

[185] Ibid, 21–22.

traces the link between the territorialization of wilderness through the national parks system and the criminalization of acts of production in the 19th century: hunting became poaching and gathering became theft because subsistence and nature were fundamentally incompatible in the capitalist imaginary.[186] The idea of Indian fishing as criminal and, I will suggest, "perverse" became further entrenched in the late 20th century "fish wars" over treaty fishing rights.

These major objectives of the Allotment Act – individual land tenure, heteronuclearity, and settler-style sedentary farming – have become so interwoven and entrenched in the settler colonial subconscious that parsing out their individual implications is nearly impossible. The imposition of capitalist agricultural production did not just dictate the "where" and "what" of Indian food production, but also the "how." In other words, it was not only imperative that Indians should start growing wheat like white settlers, but also that they plant, grow, gather, and eat it *as heteronuclear family units*. It was not only the type of food that was being regulated, it was also how it was produced and by whom. From beginning to end, the entire process of food production was to be governed by the organizational system of the heteronuclear family. This shift in social organization has been analyzed in terms of its role in assimilation and cultural genocide, but less has been said about what imposition of heteronuclear families meant for Native peoples' ceremonial and practical relationships with the land. Prior to the Act, traditional kinship structures were intimately involved in how,

[186] Jacoby, *Crimes Against Nature*.

where, and what kind of food was produced.[187] The gendered system of land tenure embedded in Allotment policy reorganized labor and also worked to erase the significance of women's work. Shifting from kinship to bourgeois nuclearity as an organizing principle initiated the discursive split between the public and private spheres, so that only men's labor in the public sphere was acknowledged as legitimate production. Thus the act fundamentally shaped the relationship between food and family, and ultimately changed what each of those concepts meant for Indian people and restructured their societies in the process.

The "Nature" of the Great Lakes Conflict

While the conflict over Indian fishing in the northwest has a specific history that is closely related to the region's geography and local development, it has not happened in total isolation. In particular, fish-ins and other protests that took place in the 70s and 80s on the Columbia were linked to similar events in the Puget Sound of Northwest Washington and in the Great Lakes. Together, they became known as the "fish wars", and although the fish species and fishing methods varied (in the Great Lakes the battle was over walleye, a freshwater fish related to perch), the heated public response was based on related ideologies. In all these places, the issue of treaty fishing rights has served as a testing ground of sorts for the legal limits of Native sovereignty, but it has also painted a discursive picture of the contested meaning of "food" and "family" for Native people living

[187] Tressa Lynn Berman, *Circle of Goods: Women, Work, and Welfare in a Reservation Community* (SUNY Press, 2003), 35.

in a settler colonial context. Fishing rights issues have often been linked to Allotment-era policies, but I want to suggest that the nature of both public and governmental responses to demands for treaty fishing rights reveal that the conflict actually runs deeper than just the number of fish Indians catch, or even the legitimacy of claims on ceded land.

In the Great Lakes, the clash is absent a key player: hydroelectricity. Where the Columbia is a both a "natural" space of wilderness conservation and also an intensively managed space of production, the waters in question in the Eastern "fish wars" were seen as spaces of consumption alone, intended for recreation and leisure. Rhetoric used by anti-Indian groups and even public officials in the Great Lakes area in the 1980s demonstrates that the most common objection was not to the validity of the treaties themselves, but to the fishing methods that the Indians used. The crux of the issue was actually about the act of production in space that had become designated "wilderness," and the "perverse" nature of non-heteronuclear, non-capitalist use of resources.

Non-Native settlers were most upset because Indians were going out in groups and spearing large numbers of fish at a time, supposedly violating state fish and game regulations that non-Indians were obligated to follow. In interviews with the New York Times Dean Crist, the leader of Stop Treaty Abuse–Wisconsin, one of the biggest and most violently anti-Indian groups, said, "I can't fish out of season – I can't go out and take thousands of walleye at one time" and "The Indians are raping the resources…It's a blatant attempt at economic

terrorism. They're going out of their way to fish off the reservation."[188] In another interview he said, "There's no sport to spearfishing. It's like shoveling up potatoes."[189] The town chairman of Boulder Junction, Wisconsin told the New York Times, "We see the walleye as a resource to attract tourists. The Indians see it as a commodity, something to be taken for food," essentially collapsing the distinction between commodity and subsistence production.[190]

Clearly, more is at stake than the legal interpretation of treaty rights on ceded land or the economic value of Walleye in the Great Lakes. Crist's remarks about the "sportsmanship" of Indian fishing reveal more than just a personal bias: at the heart of this issue is the question of "legitimate" methods of food production and resource distribution. Indians did not appear to pay for their right to fish (unlike non-Indian fishers who had to purchase a state license), nor did they appear to work for their fish (because spearing fish is supposedly "easy") and even beyond that, Indians fished in large groups, defying the normative scheme of capitalist production and revealing affiliations and attachments outside settler

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[188] Dirk Johnson, "Indian Fishing Dispute Upsets North Woods' Quiet," *New York Times*, April 24, 1988, http://www.nytimes.com/1988/04/24/us/indian-fishing-dispute-upsets-north-woods-quiet.html?scp=23&sq=walleye+indian&st=nyt; William E. Schmidt, "Wisconsin Spring: New Fishing Season, Old Strife," *New*, May 21, 1991, http://www.nytimes.com/1990/04/08/us/wisconsin-spring-new-fishing-season-old-strife.html?src=pm.

[189] Don Terry, "Indian Treaty Accord in Wisconsin," *New*, May 21, 1991, http://www.nytimes.com/1991/05/21/us/indian-treaty-accord-in-wisconsin.html?pagewanted=2&src=pm.

[190] Schmidt, "Wisconsin Spring."

heteronuclearity. For Crist and others, Indian spearfishing was a problem because it appeared to be unregulated by the state and did not conform to a bourgeois model of food production and passive consumption of "nature" organized through the heteronuclear family. Crist's comments about Native people "raping the resources" pointedly attack Indian fishing as a form of undisciplined consumption, without regard for wise use of a resource to sustain it over time. Furthermore, the designation of spearfishing (and other forms of Indian food production, for Crist's comment is by no means the only one of its kind) as "rape" demonstrates the discursive representation of non-capitalist Indian production as perverse and obscene – a violation of the sanctity of capitalism. This designation also alludes to the connection between legitimate methods of (food) production and (family) reproduction in the settler state.

Furthermore, the characterization of Indian fishing as "economic terrorism" indicates the shift in of ideologies of land tenure. To Crist and others like him, the Indian fishing is economic terrorism partly because it is the intrusion of commodity production into space designated as "wilderness" and partly because it is seen as a threat to the tourism and leisure industries of places like Northern Wisconsin. An act that was once indicative of the "primitive" nature of Indian food production is thus seen as quite the opposite. Aside from being racist nonsense, Crist's comment is also problematic in that it belies the *actual terrorism* visited on Native people by settlers throughout U.S. history. It's no surprise that threats of sexual violence, such as signs, slogans, and verbal taunts

that declared "Save two walleye, spear a pregnant squaw," and, "We won't kill your women if you don't kill our walleye," figured prominently in the anti-Indian protests.[191]

The Boulder Junction chairman's comments about seeing the walleye as a food commodity versus a draw for tourists reveal another dimension of the conflict: the colonial roots of class privilege. Neumann and Jacoby both trace the historical linkages between the emergence of class divisions and "The Hunt" as a leisure or sports activity.[192] As land was divided into spaces of supposedly undeveloped wilderness and developed spaces of capitalist production, activities such as hunting and fishing for sport became the purview of the dominant elite as a leisure activity, while subsistence hunting by Indians and working-class settlers became criminalized as poaching. Indian fishing, especially when it is a form of commodity production and not just subsistence, is fundamentally threatening to the settler state because it destabilizes the boundaries between work and play upon which the logic of capitalism rests.

Another often-cited objection to Indian fishing, particularly in the Great Lakes, was the use of "non-traditional" methods to catch fish, such as the use of electric lamps to stun fish, making them easier to spear. Although the 1983 Voigt

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[191] Larry Nesper, *The Walleye War: The Struggle for Ojibwe Spearfishing and Treaty Rights* (U of Nebraska Press, 2002), 215; Michael O'Brien, *Exxon and The Crandon Mine Controversy* (Badger Books Inc., 2008), 74; Anton Treuer, *Ojibwe in Minnesota* (Minnesota Historical Society, 2010), 50.

[192] Jacoby, *Crimes Against Nature*, 58–60; Neumann, *Imposing Wilderness*, 34–37.

Decision in Wisconsin had upheld off-reservation treaty rights and specifically protected the use of modern and traditional methods, many non-Indians objected on the grounds that treaties guaranteed only culturally specific rights – when Indian people assimilated into the dominant culture, they no longer "needed" treaty rights and thus treaties should have been abrogated.[193] This type of logic creates a discursive trap for Indian people: either reject economic development as a whole and remain in a "primitive" state of ethnic particularity, or transcend out of it into a fully modern, developed, assimilated, capitalist individual.[194] Scott Richard Lyons problematizes this fundamentalist notion of "traditional," arguing instead that the Ojibwe culture of the spearfishers should be understood not as "stable content or rules but rather as pragmatic processes geared towards the production of more life."[195] Lyons' reformulation of culture and tradition disrupts the trajectory of capitalist development and speaks to the ways in which Indian (re)production – cultural and otherwise – threatens the logic of the settler state.

Clashes on the Columbia

The differences between struggles over treaty fishing rights in the Great Lakes and on the Columbia run deeper than just the body of water and species of

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[193] Rick Whaley and Walter Bresette, *Walleye Warriors: An Effective Alliance Against Racism and for the Earth* (New Society Publishers, 1994), 13–33.

[194] Saldaña-Portillo, *The Revolutionary Imagination in the Americas and the Age of Development*, 7, 65–66; Scott Richard Lyons, *X-Marks: Native Signatures of Assent* (U of Minnesota Press, 2010), 9.

[195] Lyons, *X-Marks*, 93.

fish. The contentions raised by settlers in the Great Lakes were based in large part on where Indian fishing was happening - in a space that was supposed to be about settler consumption of nature, not the production of Indian food. The boundary between nature and industry on the Columbia, however, has always been a little muddier than that.

For many reasons, the Columbia River defies the static boundaries - both the geopolitical and imagined kind - of undeveloped "nature" on one side and developed spaces of production on the other that settlers attempted to apply in the Great Lakes. Until it was flooded, Celilo was a place of movement: water moving from snowpack in the Canadian Rockies down the Gorge to the Pacific Ocean, adult salmon moving upstream while their young migrate downriver, Native people moving through the seasonal rounds to and from the falls to fish and process the catch, and preserved salmon moving from drying racks at Celilo through trade networks that covered the Western half of the continent. It was also a place of affective movement, as the place where tribes came together to fish. The kinship structures that dictated who fished where and when at the falls were a major part of this relational movement, but it was also where alliances were made and affirmed, where conflicts caused ruptures in the social fabric of the community, and it was one of the places where youth took part in activities that marked their transition into adulthood.[196] Although the sluggish water of the reservoir may not immediately arrest the visitor with the noise and power of

[196] White, *The Organic Machine,* 22.

moving water that the falls once did, the dam has not halted all of the ecological processes that make this place a site of transition and movement.

Even after colonial processes of settlement and industrialization drastically altered the landscape through agriculture, hydroelectric dams, logging and other activities, the Columbia has continued to challenge tidy divisions of "nature" and "industry." The dams that generate massive amounts of hydroelectricity, facilitate barge traffic, and provide water for agriculture are also touted by the states of Oregon and Washington for the recreational opportunities that they provide for windsurfers, boaters of all types, and even sportfishers. In one of the more confusing paradoxes created by the dams, state legislators have even argued against lowering the water level in the reservoirs (which would increase the river's flow rate, lower its temperature, and thus aid salmon populations) because it would negatively impact the flocks of migratory birds that have taken advantage of the relatively calm water behind the dams.[197] While the issue of competing species taking advantage of human-made structures is addressed in full in the following chapter, it's worth pointing out here that nature's own adaptability can also confound the logic of "wilderness" and development as discrete spaces.

Although the conflict over treaty fishing rights was certainly heated and sometimes violent in the Northwest, just as it was in the Great Lakes, there was a notable absence of the kind of pointed, public attacks on Indian subjectivity that

[197] Oregon State Legislature, House Committee on Rural Communities, Land Use, and Water. *House Joint Memorial 15 Public Hearing*, April 16. 2014.

made their way into the national discourse around the latter conflict. Media coverage in the Northwest also tended to focus on the Washington tribes and the Puget Sound fishery more so than the Columbia. There are three primary reasons for this. The first is that the Columbia conflict often happened away from major population centers; even on today's well-paved I-84 freeway, Celilo is a two hour drive from Portland, the nearest major city. The Puget Sound fish-ins, on the other hand, often happened less than a mile from Interstate 5. Franks Landing, the site of several major fish-ins, is just 20 miles south of Tacoma and 10 miles north of Olympia, the state capitol. The reservations of Northwest Washington are also closer to the population centers lining the I-5 corridor, and rallies and protests by groups on both sides of the issue took place in Tacoma, Puyallup, Olympia and Seattle.[198]

The second major reason is the existence of the non-Native commercial salmon fishery on the Columbia. The conflict in the Great Lakes broke down along neater lines, with Native spearfishers on one side and promoters of tourism and sportsfishing on the other, with the state arbiting between them. On the Columbia, however, there was an ever-shifting web of temporary alliances between commercial fishers, who wanted to maintain the runs as their source of profit and saw the Native commercial fishery as direct competition that benefitted from special privileges; the sportfishers, who tended to see all commercial fishing

[198] Cohen, *Treaties on Trial*.

as a threat to species that should be conserved for enjoyment of state residents and tourists through recreational fishing alone; the Army Corps of Engineers, agricultural interests and other economic entities that saw the salmon as an obstacle to profitable development of the Columbia - one that must, if necessary, be sacrificed in the interest of progress; and the state governments of Washington and Oregon, who saw treaty rights as a threat to state power and Native fishing in general as evidence of the federal government's failure to assimilate Native people into "civilized" modern life.

The states' eagerness to argue this position in court resulted in a string of U.S. Supreme Court cases that explicitly addressed nearly all of the objections leveled against Indian fishing throughout the 20th century. In 1905, *United States v. Winans* came about because brothers Audubon and Linnaens Winans purchased land adjacent to Celilo and erected a fishwheel. They reportedly used threats, intimidation, and even assault to prevent Native fishers from accessing their traditional fishing site, a portion of the falls known as Tumwater.[199] It took nine years for the case to reach the Supreme Court, and when it did, respondents argued that the state of Washington, when it entered the union as a state, had acquired the absolute right to grant title to land within its borders, including the shoreline of the Columbia and the site in question at Celilo. They also contended that the white property owners (who, in addition to preventing Yakama fishers from accessing their fishing site, had a license from the state for a fishwheel at the

[199] Blumm and Brunberg, "Not Much Less Necessary," 524.

site, that they operated in such a way as to preclude the Native fishers from being able to catch anything at the site even if they could access it) had more of a right to the fish because their technology was superior. Thus their supplanting the Yakama fishers was, "as legitimate as the substitution of the modern combined harvester for the ancient sickle and flail."[200] The court decided in favor of the Yakama fishers, arguing that the treaty should be understood as a grant of rights *from* the Indians, not a grant of rights *to* them, and thus future ownership of land on which they had reserved the right to fish, whether it was the state or private citizens, was provided for by the treaty. The case established that treaty fishing rights were not, in fact, special privileges, and that they superseded rights to use of the fishery that were held by the average non-Native citizen. It also specified that the relative technological advances of non-Native fishing equipment did not grant priority to non-Native fishers.

The issue of technology did not go away after the *Winans* decision. Indian fishing methods at Celilo have been the subject of debate since white settlers first came to the region. Early visitors, including Lewis and Clark, were impressed with the effectiveness of Native fishing techniques and overall environmental management.[201] As settlers began populating the region and recognized the value of a commercial salmon industry, however, dipnets and spears were critiqued as

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[200] Thomas E. Tyner, *Landmark Indian Law Cases* (Buffalo, N.Y: Fred B Rothman & Co, 2003), 137.

[201] Taylor, *Making Salmon*, 14.

symbols of primitiveness that indicated how far Indians were from civilization. The attitudes of the public and of state regulators towards fishing methods put Native fishers in a catch-22. When Indians switched to methods seen as modern, such as gill nets, non-Native fishers in the Northwest, like those in the Great Lakes, complained that treaty fishing rights should only apply to traditional methods. The distinction between "traditional" and "modern" methods on the Columbia was complicated beyond the issues of fundamentalism that Lyons discusses by the massive changes that the dams had wrought on the river. Native fishers had always used a variety of different fishing methods, based on the type of water they were fishing. Where dipnets and spears had been highly effective in the whitewater at Celilo Falls and other rapids, the sluggish movement of water behind the dams made large nets placed in the water to ensnare fish swimming upstream far more effective. Ultimately, the distinction between methods was meaningless, because the public opposition was motivated less by specific methods than by any possibility of efficient Native fishing. Controversy also raged in and out of the court over whether or not the states had the right to impose licensing programs on Indian fishers, the fees from which sustained the states' Fish and Wildlife Departments. When federal courts told Oregon and Washington that they could only restrict Indian fishing for the sake of conservation, state officials chose to interpret "conservation" as the conserving of fish for non-native fisheries.[202]

[202] Ibid, 69.

In 1915, as the commercial fishery struggled and it became apparent that the Columbia's salmon runs were in trouble, the state of Washington passed a law that required anyone using equipment other than a hook and line to pay for a state license, and made it illegal to use gaff hooks, spears, or snares (gear used mostly by Native fishers) within a mile downstream of any dam.[203] There was a narrow exemption for Indians fishing for subsistence off the reservation without a state license, but only if they were fishing within five miles of reservation boundaries.[204] Celilo is about twenty five miles from the nearest reservation, and in fact the only place where the Columbia comes within five miles of a reservation boundary is where it runs along the edge of the Colville reservation in northern Washington (which, conveniently, is mostly above Grand Coulee Dam). In *State v. Towessnute*, the Washington State Supreme Court ruled that Indians *were* subject to state laws when it came to fishing regulation, because the treaties had reserved only the "easement" right defined in *Winans* to access their traditional fishing site, not the right to complete freedom from state fishing regulations.[205] In *Tulee v. Washington*, a case initiated by Yakama tribal member Sampson Tulee's arrest for fishing with a dipnet at Celilo without a license, the U.S. Supreme Court split the difference. Technically, the court ruled in Sampson

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[203] Cohen, *Treaties on Trial*, 56–57.

[204] Fronda Woods, "Who's in Charge of Fishing?," *Oregon Historical Quarterly* 106, no. 3 (2005), 417

[205] Ibid, 418

Tulee's favor, reasoning that states did not have the right to impose licensing fees on Native fishers, since the point of charging for fishing licenses was to fund the state government and public institutions and the state could find alternative, if less convenient, ways to fund fishery conservation programs.[206] It also noted in the decision, however, that states *did* have the right to regulate off-reservation Indian fishing for the purpose of conservation. This was the opening states had been waiting for, and they immediately pounced on the opportunity to restrict Indian fishing on both sides of the river.[207]

The states were perhaps a little too eager in their regulatory zeal as they restricted equipment and fishing hours in some places, and closed others altogether. In 1958 the state of Oregon closed a number of tributaries running out of the Blue Mountains in the eastern part of the state, purportedly to protect the spring chinook run during spawning. A group of Umatilla tribal members were arrested for fishing during the closure, and in *Maison v. Umatilla*, the 9th Circuit Court of Appeals ruled that, "regulation, to be necessary, must be "indispensable" to the effectiveness of a state conservation program" and therefore states needed to actually prove that regulation was necessary before imposing on Indian fishing - conservation as an intention alone wasn't enough.[208]

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[206] Tulee v. Washington, 315 U.S. 681 (1942).

[207] Woods, 420

[208] United States Court of Appeals Ninth Circuit, Maison v. Confederated Tribes of the Umatilla Indian Reservation, 314 F.2d 169 (1963)

In addition to concerns about the number of fish Native fishers took and the methods used to take them, challenges were raised as to the nature of the Indian fishery altogether, and whether it was ever supposed to be for more than subsistence. Indian fishing hovered at around 5% of the total catch for the Columbia River during the 1950s and (if ocean fishing were included, it would have been even less), at the same time that other tribal industries were obliterated by Termination policy.[209] And yet, a number of cases sought to constrain the Native fishery on economic terms. In the 1951 *Seufert Bros. v. Hoptowit* decision, Oregon courts ruled that Yakama tribal member Ray Hoptowit could not exercise the easement rights to cross private land protected in *Winans* in order act as a commercial fish buyer, only to fish. The court quoted the transcript to the 1855 treaty negotiations at length, arriving at the conclusion that, "the parties had in mind a right to fish, no more, no less," and that there was a "vast difference between 'fishing' and 'purchasing fish'."[210] One has to wonder, though, if there really was such a difference for Columbia River fishers. Given the importance and geographic distribution of trade networks based on salmon caught in the Columbia and its tributaries, and the economic role that salmon played in Native communities before and during colonization, I argue if the treaties are to be interpreted as the Indians would have understood it, as the court said they should

[209] Taylor, *Making Salmon, 242*

[210] Supreme Court of Oregon, Seufert Bros. Company v. Hoptowit, et al, 193 Or. 317 (1951).

in *Winans,* then "to fish" should be understood in a manner far more expansive than the isolated act of plucking a salmon from the river.

Native people of the Columbia River Basin have always understood fishing as more than just a method of subsistence or means of economic production. The 1995 Wy-Kan-Ush-Mi Wa-Kish-Wit ("Spirit of the Salmon") plan published by the Columbia River Inter-Tribal Fish Commission clearly articulates that ontological relationship that the tribes have with the salmon and the place to which they return: "Salmon and the rivers they use are part of our sense of place. The Creator put us here where the salmon return. We are obliged to remain and to protect this place...Without salmon returning to our rivers and streams, we would cease to be Indian people."[211]

It would be a mistake to assume that the construction of the dams and the development of the Columbia River Basin for hydroelectricity, navigation and irrigation were inevitable. The language around the "unstoppable" march of progress is precisely what enabled the agencies involved in the planning of The Dalles Dam to forge ahead, even as they acknowledged that the falls were irreplaceable and that the dam project was incompatible with honoring the treaties.[212] One of the more important tasks of Settler Colonial Studies as a field

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[211] Columbia River Inter-Tribal Fish Commission, "The Importance of Salmon to the Tribes - Spirit of the Salmon Plan," *Wy-Kan-Ush-Mi Wa-Kish-Wit*, 1995, http://plan.critfc.org/vol1/tribal-restoration-plan/cultural-context/the-importance-of-salmon-to-the-tribes/.

[212] "Effect of Columbia and Snake River Dams on Fisheries", 6.

is to interrupt and deconstruct this narrative of inevitability and progress that surrounds the settler state and its institutions. When the Army Corps of Engineers drowned Celilo Falls, they had several choices, as documented in the minutes from the Pacific Northwest Coordination Committee Meetings. They could have abandoned plans for The Dalles Dam altogether, as the National Park Service suggested, and focused instead on developing hydropower in other areas of the Columbia River Basin, which would have had less of an impact on salmon runs. Some members of the committee even suggested that it might be worth holding out for the potential of the nuclear power project that was then being developed at Hanford.[213] There was also the option of delaying construction, in order to give the Fish and Wildlife Service and Bureau of Indian Affairs more time to study the issue and propose a solution that would minimize damage to the salmon runs and provide for alternative means of sustainable employment for tribal members. One committee member, perhaps jokingly, suggested that the problem of Indian treaty rights would be best solved by simply timing the construction of the dams in such a way that, when it came time to flood Celilo, there would be no more salmon running past the falls.[214] Given the national political climate and attitude towards tribal sovereignty at the time, it seems likely that they could have sought federal support in abrogating the treaties altogether under the power of HCR 108 and

[213] Warner W. Gardner, "Memorandum on Departmental Policy and Procedure in Connection with Columbia River Dams and Salmon" (US Department of the Interior, March 19, 1947).

[214] "Effect of Columbia and Snake River Dams on Fisheries."

termination policy, thus permanently dissolving any Native fishing rights and clearing the path for any future development as well. In the same year that the Yakama signed the Celilo settlement, Public Law 588, also known as the Western Oregon Termination Act, slated 60-some tribes in the western part of the state for termination. Historian Stephen Beckham has noted that termination policy took place in a context of McCarthyist fear around communism, and thus any kind of collectivism was seen as an anticapitalist threat to the state.[215] Surely the Native fishery at Celilo, linked as it was to affective ties of tribal belonging and kinship regulations - even contested ones - would have evoked this kind of collectivism in the settler consciousness.

Part of the reason that treaty fishing rights for Columbia tribes were not abrogated - and it's unquestionably a good thing that they weren't - is that fishing was seen as a viable economic alternative for Indians who had "failed" to assimilate into capitalist modes of sedentary production through the Allotment Act.[216] Somewhat ironically, because of its persistent challenges to Native fishing, the existence of the non-Native commercial fishing industry may have actually helped Native fishing to be perceived this way - as a legitimate means of economic production rather than failure to adapt to agricultural production. The Pacific Northwest Coordination Committee certainly saw it that way, stating that

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[215] As quoted in David Beck, *Seeking Recognition: The Termination and Restoration of the Coos, Lower Umpqua, and Siuslaw Indians, 1855-1984* (Lincoln: University of Nebraska Press, 2009), 156.

[216] Fisher, 150;

there was, "no difference in principle between flooding out a white man's factory and an Indian's fishery."[217] In the Bureau of Indian Affair's attachment to the official committee report, Commissioner of Indian Affairs William Brophy described the fishery in terms of its capitalized economic value, the "man years of remunerative employment," and its role in the national food supply.[218]

This strictly economic conception of the Native fishery raises the question of why the state continually worked so hard to regulate and contest how, where, and why Indian people were fishing under the dispensation of treaty-reserved rights. In the next section, I take on another area in which the state has sought to regulate the means of production of Native life and argue that the state's recognition of treaty rights - as they have been interpreted on the Columbia, especially - can actually limit the potential of Indigenous Sovereignty

Licensed to Wed

While tribal laws regarding gay marriage that were passed prior to the Supreme Court's ruling that made gay marriage legal throughout the United States may seem only distantly, if at all, related to treaty fishing rights, I suggest that articulations of marriage are not just about who can marry whom, but also

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[217] Warner W. Gardner, "Memorandum on Departmental Policy and Procedure in Connection with Columbia River Dams and Salmon" (US Department of the Interior, March 19, 1947).

[218] "Effect of Columbia and Snake River Dams on Fisheries", attachment 2, page 1.

about legitimate and appropriate ways of organizing the distribution of resources and (re)producing the nation. Before the 2015 ruling in *Obergefell v. Hodges,* the Cherokee, Chickasaw, Muscogee Creek, and the Navajo Nations all passed acts prohibiting gay marriage, while the Colville, Coquille, Suquamish, and a handful of other tribes voted to allow it. Many arguments have been made both for and against the existence or "traditionality" of third, fourth, or even simply non-Western genders and same-sex partnerships in traditional kinship systems and Indian societal frameworks. What interests me is less the question of whether or not gay marriage is traditional, and more so the process by which tradition is invoked as a defense of either position. Still more important yet is the link between legislating marriage and circumscribing Indian sovereignty within the confines of a politics of recognition by the settler nation-state. Jennifer Denetdale has argued that the "rhetoric of tradition" has specifically been, "deployed in different ways and with the aim of legitimizing and validating contemporary attitudes and practices," such as militarism and heteropatriarchy, and specifically the banning of gay marriage within the Diné nation.[219] Lyons has made similar arguments and has articulated a need to de-stabilize and de-essentialize the concept of tradition as a result.[220] Calling for a gendered analysis that would expose, "how women are simultaneously invoked as cultural symbols… and

[219] Jennifer Denetdale, "Securing Navajo National Boundaries: War, Patriotism, Tradition, and the Diné Marriage Act of 2005," *Wicazo Sa Review* 24, no. 2 (2009): 144, doi:10.1353/wic.0.0034.

[220] Lyons, *X-Marks*.

denied access to scarce resources," Denetdale describes the passage of the Diné Marriage Act as a wartime response that reinscribed Western values and thus privileged masculinity.[221] In other words, in outlawing gay marriage, the Diné and Cherokee tribal governments did not make an uncomplicated stand for Indian sovereignty, but further entrenched themselves in the logic of the settler state.[222] The same process of fragmentary distortion that was at work at Celilo can be seen playing out in how the Diné and other tribes have handled the issue of gay marriage and two spirit identity: what was once a broad and complex system of social identities and erotic, affective and community relationships has been reduced - thanks to the genocidal cultural erasure institutionalized through Allotment policy, boarding schools, and other assimilative programs - to a distorted fragment.[223] The fragment is "deployed," as Denetdale puts it, to justify the position of various factions within tribal communities, and the disagreement is then utilized by the state as a means to justify the constraint of tribal sovereignty,

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[221] Denetdale, "Securing Navajo National Boundaries," 136, 142.

[222] I focus on the Cherokee & Navajo decisions in the chapter because - as relatively large tribes - their stance received far more attention in the national media than that of the other tribes who made rulings on the issue.

[223] While a complete examination of Two Spirit identity, queer Indigenous affect, and traditional conceptions of gender and sexuality is outside the scope of this chapter, the work of Chris Finley, Quo-Li Driskill has heavily informed my thinking on this topic. See Qwo-Li Driskill, *Queer Indigenous Studies: Critical Interventions in Theory, Politics, and Literature* (Tucson: University of Arizona Press, 2011).

usually through legal instruments that impose a neoliberal rubric of individual rights.

Rifkin has identified the ways in which the "bribe of straightness" encourages Native peoples to disidentify with the elements of tradition the settler culture deems "perverse."[224] At the level of legal discourse, we can see this happening with the Diné and Cherokee nations. Their "right" to ban gay marriage, whether or not it is traditional, is defended with claims of sovereignty. This type of sovereignty, however, is the type of sovereignty that Taiaiake Alfred has identified as limiting because of its, "accommodation of indigenous peoples within a 'legitimate' framework of settler state governance."[225] In other words, Native nations are trading the disavowal of gay marriage in exchange for recognition by the nation state.

The connection between treaty fishing rights and gay marriage can be confusing, because in the case of fishing rights the exercise of sovereignty generally means the *defense* of something traditional, and with gay marriage the exercise of sovereignty results in the *banning* of something many see as traditional. Of course "traditionalism" can be argued both ways in each instance (spearing fish might be traditional, but dragging gill nets behind motorboats or using electric headlights to stun them is perhaps less so, or maybe one could say

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[224] Rifkin, *When Did Indians Become Straight?*, 149.

[225] Taiaiake Alfred, "Sovereignty," in *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination,* ed. Joanne Barker (Lincoln: University of Nebraska Press, 2005), 34-35.

that Indians have "traditionally" used the best technology available at the time) but the justification for each from the perspective of the tribes involved is always about "protecting" something that is supposedly "traditional."

Ultimately what connects the two issues is that they are about *seeking government approval through state licensure*, whether it is a fishing license to feed one's family or a marriage license to create a family. Both issues position the state as the appropriate body to mete out those rights, and therefore to order schemes of production and organize the distribution of resources through the heteronuclear family structure. Thus the "sovereignty" native peoples seek in each instance is not really self-determination or autonomy; it is approval by the state through a politics of recognition. Glen Coulthard explains that, "the politics of recognition in its contemporary form promises to reproduce the very configurations of colonial power that Indigenous peoples' demand for recognition have historically sought to transcend," and although he is referring specifically to a Canadian context, his insights are useful here.[226] Treaty fishing rights seek to transcend a colonially-imposed scarcity of resources and property law configuration, but they do so *through the settler state's power*. Under a politics of recognition, a "successful" battle for treaty rights does not mean Indian people have full authority over lakes and rivers they have been fishing out of for millennia, it means the state approves of a certain percentage of the yearly catch

[226] Coulthard, "Subjects of Empire."

being delegated to Indian fishers.[227] Likewise, if the Cherokee or Diné laws prohibiting gay marriage stand, it doesn't mean Cherokee or Diné people are free to determine for themselves what constitutes a family, how kinship should be structured or how procreation should be organized. What it means is that the Cherokee and Diné governments have implemented and enforced a narrow definition of what is fundamentally a settler institution, and the nation state has sanctioned their right to do so. In both cases, the definition of "sovereignty" is limited to what can exist within the reach of the state, and looks to state-sanctioned rights as the ultimate goal.

Defined this way, sovereignty actually legitimizes the settler nation-state and reifies the state's role as appropriate distributor of resources. With marriage and fishing rights, this happens on a direct level, as the state approves and issues licenses, and on an indirect level, because of the ways resource distribution is and has been organized through the heteronuclear family, such as taxes, commodity food distribution, and land allotments. Many scholars and activists have critiqued the gay marriage movement for seeking a "shortcut" to the privileges the modern state offers married couples (health insurance, automatic co-guardianship of children, automatic medical power of attorney, etc) rather than asking why the nuclear family - gay or straight - needs to be the unit through which such benefits

[227] Even if, by some miracle, Indians were given full control over waterways, the logic of that control would still rest on Western theory of property rights and the settler logic of territorialization – it would not mean that the all inhabitants of the land were living in right relationship to it or to the people who were given the original instruction for that land.

are organized.[228] The redistribution of resources through the "bourgeois family" serves to entrench and validate the racialized and gendered colonial logic of capitalist production, thereby legitimizing the existence and power of the settler state.

Furthermore, as Alfred has noted, this state-sanctioned version of sovereignty limits our sense of what options are open to us. Instead of looking for new and alternative means of resource distribution through Lyons' "production of more life" or Coulthard's "on the ground practices of freedom," the struggle for licensed treaty rights and marriage simply seek to either acquire more resources from the state in the public sphere or consolidate and reinforce the state's version of how resources should be distributed in the private sphere.[229] As Winona Laduke would put it, it's asking for a bigger piece of the pie, instead of a whole new pie altogether, or perhaps acknowledging, as Chrystos would, that there is no pie in the first place.[230]

This line of argument has serious implications in terms of how sovereignty is defined, as well as how we organize around it. Gay marriage and treaty rights have both been sites of coalition between Indian and non-Indian activists, when

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[228] Michael Warner, "Normal and Normaller: Beyond Gay Marriage," *GLQ: A Journal of Lesbian and Gay Studies* 5, no. 2 (January 1, 1999): 119–71, doi:10.1215/10642684-5-2-119.

[229] Lyons, *X-Marks*, 93; Coulthard, "Subjects of Empire," 456.

[230] Qwo-Li Driskill, "Doubleweaving Two Spirit Critiques: Building Alliances Between Native and Queer Studies," *GLQ: A Journal of Lesbian and Gay Studies* 16, no. 1–2 (January 1, 2010): 78, doi: 10.1215/10642684-2009-013 .

settlers themselves realize that their heteropatriarchal capitalist system is not working for them. Unfortunately, the potential for work in coalition tends to go hand in hand with the potential for cooptation. We can see how this has played out in terms of the environmental movement: white people working with Indian people on fishing rights see treaty rights not as a step towards political autonomy for Indian people, but as a tool for protecting the environment. Native identities are romanticized and idealized as being part of, or at least in harmony with, nature, rather than being engaged in long-term projects of *production* of food and other commodities by maintaining and extracting resources. This essentialized version of Indian identity then becomes available for appropriation by non-Indians who imagine themselves as having some sort of intuitive or primordial connection to nature.

Over the last several decades, this has happened in the environmental movement with the "ecological Indian" and Sierra Club-types who use this idea to promote their campaigns without actually engaging with Indian people on real terms. There is a very real danger that the "two spirit Indian" in queer communities, will go the way of the "ecological Indian" in the environmental movement.[231] When they are used as cultural trope by non-native settlers to deal with problems (heteropatriarchy and environmental destruction) caused by their own settler culture, the "ecological Indian" and the "two spirit Indian" erase the

[231] Braun describes this phenomenon as it occurred in British Columbia in the 1990s in great detail: Braun, *The Intemperate Rainforest*.

reality of actual Indian people, two spirited and otherwise. The ways in which their lives are affected by environmental racism and the infiltration of heteropatriarchy into tribal governments are obscured. Scott Lauria Morgensen further notes that this process of identification with Indian histories by non-Indian queers can elide the connections non-Indian queers have to settler colonialism and the, "terrors of sexual colonization visited on Indian peoples." He argues that, "At its extreme, non-Native queer longing for Native histories of sexuality or gender can seem to invite alliance when it performs a racial or national "passing" that appropriates Native culture in order to indigenize non-Native queers."[232] I argue that non-Indian sportsfishers see themselves as the rightful "heirs" to former Indian territories now designated as wilderness, and the violent backlash to treaty fishing rights is at least in part a reaction to the disruption of that settler imaginary.

Disarticulation and Decolonizing Sovereignty

Another major problem with seeking sovereignty through the power of state recognition is the state's investment in severing the link between geographically situated Indigenous epistemologies/identities and the landscape that is now part of the settler state. Indian fishing not only reasserts Indigenous land relationships, it cultivates and strengthens the affective ties of tribal and community belonging. In the Wy-Kan-Ush-Mi Wa-Kish-Wit Plan, the Columbia River Inter-Tribal Fish Commission clearly identifies the generative functions of

[232] Morgensen, "Settler Homonationalism."

salmon and fishing for Native people: "Because our tribal populations are growing (returning to pre-1855 levels), the needs for salmon are more important than ever. The annual return of the salmon allows the transfer of traditional values from generation to generation."[233] As the literal "production of more life," in that fish is food that sustains future generations of Indigenous bodies, Indian fishing fundamentally contests the genocidal logic of the settler state.

The actual drowning of Celilo Falls was undoubtedly a devastating blow to tribal sovereignty, but the way in which the state compensated tribes for loss of the falls was just as disastrous. The federal government's interpretation of treaty fishing rights as a right to procure subsistence and engage in economic production - reflected in the narrow interpretation of "to fish" found in the *Seufert Bros. v. Hoptowit* decision - and the choice to compensate tribes for the flooded fishing site but not purchasing their fishing rights *dis-articulated treaty rights from place*. In essence, the government separated the reserved right "to fish" from the right to fish, "in all the usual and accustomed places." Regardless of whether or not the legitimacy of the settlements signed by the tribes for their drowned fishery at Celilo can be called into question because they were coercive (which, given the relative political power of the tribes in relation to the Army Corps of Engineers during the Termination era, they almost certainly were), they should be seen as a precisely targeted attack on tribal sovereignty in that they neatly severed the link between *fishing* as the act of taking fish and *fishery* as the place where fish are

[233] CRITFC, "Spirit of the Salmon Plan."

taken.[234] Even if the ontological relationship that Columbia River tribes have with salmon were to be overlooked, as it has repeatedly been by the settler state, the biological lifecycle of anadromous fish is inescapable: salmon, like Native people, have a particular relationship to place that no legal instrument can alter.[235] A salmon who was spawned in the Columbia will return to the Columbia, and can't be caught in the Puget Sound, or the Rogue River, or anywhere else. The disarticulation of "right" and "site" must be understood as the circumscription of the power of treaty-reserved rights to assert and protect Indigenous relationships to place.

Indigenous lifeways - including both how we produce our food and reproduce our people - depend on the land. In the end, we have to ask how much good the state recognition of treaty rights can do, when the settler state has the power to reshape the land with imagined and physical boundaries, poison it with nuclear run-off, drain the rivers for irrigation, and flood its sacred places under reservoirs. Framing state-sanctioned rights as the ultimate goal of sovereignty

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[234] This description of power as it was wielded during the settlement process may read as absolute and flatly oppressive, but it is important to understand that this was a low point for tribal governments - today tribal governments and the CRITFC wield a considerable amount of political power in the Columbia River Basin, thanks in large part to strategic choices made by these entities in the intervening decades.

[235] This should by no means be taken as a criticism of the compromises that tribal governments and Native fishers have had to make; I firmly believe that tribes, especially through the Columbia River Inter-Tribal Fish Commission, have made the best of many complicated and coercive situations they have faced since the inception of settler colonialism in the Pacific Northwest. There is no right or wrong way to respond to a genocidal institution, there is only survival.

movements – be they tribal members' rights to fish off the reservation or the tribal government's rights to regulate the institution of marriage – reinforces the legitimacy of the settler state and does nothing to interrogate the state's power to drastically recreate the landscape. Furthermore, allowing treaty hunting or fishing rights and two-spirit justice to exist as separate issues elides the state's role in imposing settler notions such as "marriage" and "fishing licenses" while leaving the underlying authority of the nation state intact. Linking these struggles in terms of their shared basis in federal Indian policy creates a space to rethink the meaning of "sovereignty." A state that imposes settler heteronuclearity on Native peoples as a primary method of resource distribution is not a state we want setting the terms of what sovereignty can mean for us. We have to conceive of sovereignty in terms of decolonization and "self-recognition," rather than a politics of recognition by the nation state.[236]

Theorizing and actively working towards Indigenous sovereignty provides the space to move beyond the false dualism of reformist work within the state's parameters and a rejection of the state's authority that ignores the extent of the state's power to infiltrate everyday life and to drastically alter the landscape upon which we depend. Instead, it can help us toward the kind of decolonial future where dismantling the state and unpacking its genocidal *raison d'être* go hand in hand.

[236] Coulthard, "Subjects of Empire," 456.

CHAPTER FOUR

There's Something in the Water: Salmon, Sea Lions, and Settler Colonialism

Roughly 60 river miles downstream from Celilo and 145 river miles from the mouth of the Columbia lies Bonneville Dam. As the first obstacle faced by returning salmon headed upstream, Bonneville marks the division between the free-flowing, tidal portion of the Columbia and the highly regulated chain of slackwater reservoirs and the dams that control them.[237] This chapter takes the dam itself as a flashpoint, one that has precipitated a conflict that touches the core of how we understand the Columbia River. Chapter two looked at the role of settler colonialism in imposing heteropatriarchy and producing wasteland, while chapter three investigated the state's power to constrain the utility of treaty rights as a vehicle for tribal sovereignty. In this chapter, I examine one final site of conflict on the river, one that engages questions of place and belonging as well as "nature" and resource management paradigms. In the water, the conflict is between salmon and sea lions, but the real contenders in this fracas are settler colonialism and the geography of the Columbia Basin.

[237] Even 145 miles upstream, ocean tides have an impact on water levels below the dam, thus this portion of the river is not typically included in the "free-flowing" designation. I use the term here, however, to denote the difference between the part of the river where water level and flow is primarily (although not totally) regulated by the reservoir system, and the part where natural processes are primarily (although not totally) responsible for the river's movement

Recent debates within settler colonial studies have taken up the dialectic between Native and settler, examining and contesting the relationship between them, as well as the boundaries of the categories themselves. What these debates have failed to account for, however, is settler colonialism's geographically specific manifestations and its effect on nonhuman entities and species. The study of settler colonialism has tended to consider land in the abstract, treating it as generic and equivalent without regard for *place*. My use of the word *place* (as opposed to *land*, which I argue can be too generic) is intended to indicate a specific physical location. I don't intend it to suggest a limitation in size or to connote local (as opposed to global - a dialectic that often hides the ways in which the two are mutually constitutive); rather, I mean it in the fluid sense of geographical logic that does not depend on the scale or boundary of the settler state. For instance, rather than talk about the sea lion issue as located in Oregon and/or Washington, I frame it as a problem of the Columbia River drainage. In essence, it is a matter of talking about *this* place*,* as it really exists, instead of *a* place as it exists in the abstract.

This kind of abstraction has not only limited our understanding of settler colonialism's various manifestations by hiding them in geographical diversity, but has also produced decolonial projects and broadly conceived "solutions" to the complexity of the settler/Native/migrant divide (such as the global commons) that

are unable to make the jump from the theoretical to the practical.[238] Furthermore, although it has been widely documented by Indigenous activists, little theoretical work has been done on the ways in which specific manifestations of settler colonialism not only cause profound ecological disruptions, but in fact discursively and ecologically shape the land itself. By examining the ongoing conflict over salmon and sea lions at Bonneville Dam on the Columbia River in the Pacific Northwest, this chapter seeks to decentralize the human and interrogate the ways in which settler colonialism shapes the land itself by engaging with Indigenous epistemologies that take seriously notions of place, relationship with the land, and the spatially located lifeways of nonhuman beings.

I begin by providing a brief overview of the sea lion problem, including the legal and ecological background. Next I turn to the ideological roots of the conflict, which lie in capitalist divisions of space manifested through the creation of the National Parks System and the various iterations of the Allotment Act. I then look closely at the discursive framing of the current conflict and break down the assumptions revealed therein about place, belonging, and resource management. To conclude, I contrast the notion of the global commons with Indigenous models of human/place relationships, and consider the implications of moving beyond androcentrism for natural resource management paradigms.

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[238] The distinction(s) in this paper between theoretical and practical, or abstract and actual, should not be confused with the difference between the global and the local. "Global" processes that I reference here are quite actual, and many times "local" problems are framed (and solutions are posed) in the abstract.

Pinnipeds and the Politics of Place

It is difficult to describe the sheer enormity of Bonneville dam. Towering two hundred feet above the bedrock of the river and constructed from more than a million cubic yards of concrete, the size of the dam alone is enough to astound the observer. Perhaps the only thing more striking than the dam itself is the landscape around it, which could also be described as "sheer" and "enormous." This part of the Columbia stays a vivid, deep green year round, unlike the rolling hills flanking the river upstream, which change from pale spring green to deep summer gold to weathered brown in the winter. The topography is arresting; the mountains on both sides of the river are steep and jagged, with deep canyons and bare basalt faces that remind one of the cataclysmic geological events it took to shape this part of the continent.[239]

Bonneville Dam was originally constructed between 1933 and 1938, as part of the Federal New Deal Program, designed to create jobs and stimulate the economy during the Great Depression. The dam cost $88.4 million to build, and was the second major dam constructed on the mainstem of the river. Bonneville consists of three major components, and like The Dalles Dam, its design makes use of the islands that surround the dam site. As with The Dalles Dam, the islands are what made the dam site a productive fishing ground for Native people, making it that much more destructive when the dam was built. The navigation lock, which

[239] The University of Washington's Burke Museum provides a fascinating account of the geologic history of the Northwest region. See http://www.burkemuseum.org/geo_history_wa/Cascade%20Episode.htm.

allows barges and other large vessels to move up and down the river, sits between the Oregon shore and Robins Island. The first powerhouse (of two), lies between Robins Island and Bradford Island. The powerhouse is the part of the dam that houses the turbines and other components for hydroelectric power generation. Figure 5 shows the exterior of Powerhouse One, and Figure 6 shows the turbine generators from inside of the powerhouse. The spillway (Fig. 7), which connects Bradford and Cascades Island, allows any water that does not pass through the turbines to flow downstream. Spillway gates are the mechanism through which the dam operators can control the level of the reservoir behind the dam by allowing more or less water to pass downstream. The second powerhouse, which was constructed between 1974 and 1981 after regional power demands outstripped the capacity of the original powerhouse, is situated between Cascades Island and the Washington bank of the river.[240]

There are two fish ladders installed at Bonneville, one at the north end of the spillway on Cascades Island (Figure 8), and one on the north end of the first powerhouse on Bradford Island (Figure 9). Fish ladders consist of a series of pools arranged like steps, with fast-flowing water spilled down through them to

[240] US Army Corps of Engineers. "Bonneville Lock and Dam Fact Sheet," 2013. http://www.nwp.usace.army.mil/Portals/24/docs/locations/bonneville/Bonneville_FS.pdf.

Fig. 5: Downstream Face of Powerhouse One (from Bradford Island). National Parks Service.

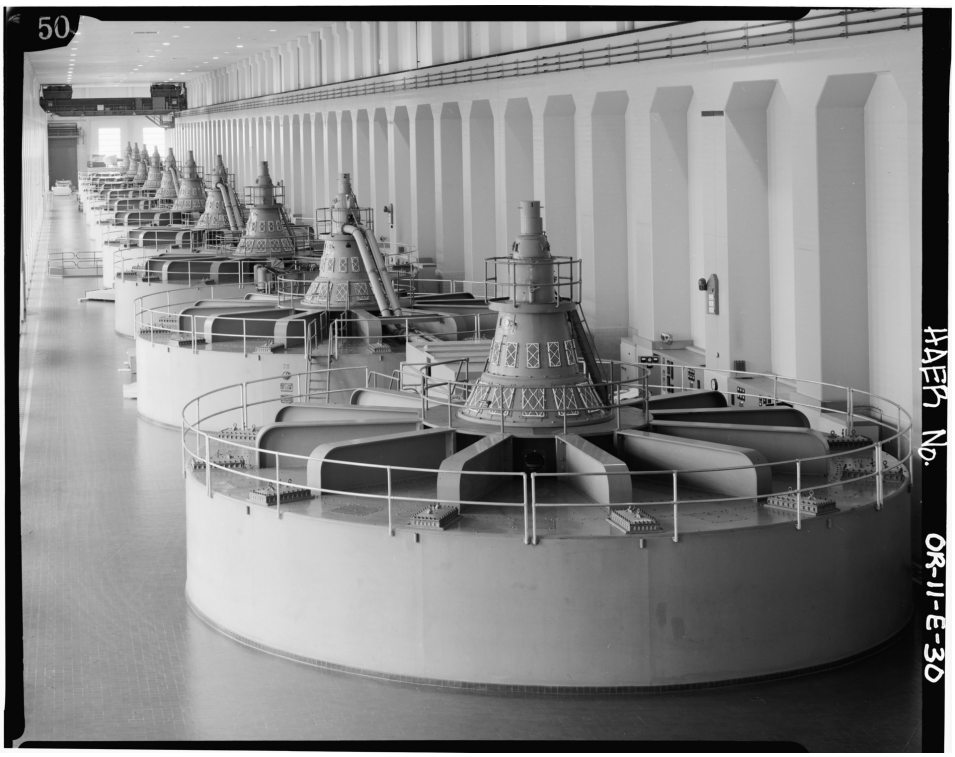

Fig. 6: Interior View Of Powerhouse One. National Parks Service.

mimic the river's current. Migrating fish such as salmon, steelhead, and lamprey are able to bypass the dam by working their way up the ladder, jumping from pool to pool. In theory, the pool mimics the way they would have flopped and

Fig. 7: Downstream Face of the Spillway (from Cascades Island, looking south). National Parks Service.

jumped up the rapids in a free-flowing river, but there is a fair amount of skepticism in the fisheries biology community about how well they actually work.[241] Something as simple as the difference in temperature between the pools

[241] See J. Jed Brown et al., "Fish and Hydropower on the U.S. Atlantic Coast: Failed Fisheries Policies from Half-Way Technologies," *Conservation Letters* 6,

at the top and bottom of the ladder can cause fish to turn around and head back out of the ladder, delaying their upriver migration.[242] Since adult salmon do not eat once they return to fresh water, every delay taxes their energy reserves and reduces their chance of making it back upriver to spawn.

Fig. 8: Bonneville Dam, Cascades Island Fish Ladder. National Parks Service.

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no. 4 (July 1, 2013): 280–86, doi:10.1111/conl.12000.; and John Williams, "Mitigating the Effects of High-Head Dams on the Columbia River, USA: Experience from the Trenches," *Hydrobiologia* 609, no. 1 (July 15, 2008): 241–51, doi:10.1007/s10750-008-9411-3.

[242] Christopher C. Caudill et al., "Indirect Effects of Impoundment on Migrating Fish: Temperature Gradients in Fish Ladders Slow Dam Passage by Adult Chinook Salmon and Steelhead," *PLOS ONE* 8, no. 12 (December 31, 2013): e85586, doi:10.1371/journal.pone.0085586.

Fig. 9: Bonneville Dam, Bradford Island Fish Ladder. National Parks Service.

Over the course of the last decade, a different species has started utilizing the fish ladders as well. California sea lions - one of the many natural predators that adult salmon face at sea and in coastal waterways - have significantly increased their predation on salmon and chinook in the vicinity of the dam. The fish ladder creates a traffic jam of sorts for the migrating fish, which often spend hours or even days at the base of the dam searching for the entrance to the fish ladder so that they can move upstream.[243] A growing population of California sea

[243] Fidelia Andy, "Sea Lions Vs. Salmon: Restore Balance and Common Sense," *Seattle Times*, February 15, 2008, http://seattletimes.nwsource.com/html/opinion/2004183016_sealions15.html.

lions has taken advantage of this veritable seafood buffet by camping out just below the dam and feasting on the fish. In 2002, 30 California sea lions were spotted by observers at the dam consuming 1,010 salmon within a quarter mile of the fish ladder. By 2010, that number had risen to 89 sea lions seen consuming 6,081 salmon - and these numbers account only for pinnipeds actually seen taking salmon near the dam.[244] There were an average of 86 California sea lions at the dam between 2002 and 2007, and based on their bioenergetic needs a group that size would consume an estimated 17,458 salmon and steelhead each year.[245] For perspective, during March through May of 2010 (the months when sea lions are at the dam) just 2,297 wild steelhead passed through the counter in the Bonneville fish ladder.[246] According to state and tribal fishery managers, sea lion predation has severely impacted the chances of survival for certain salmon runs.[247]

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[244] Oregon Department of Fish and Wildlife, "Key Points - Removing California Sea Lions on the Lower Columbia River," April 2013, http://www.dfw.state.or.us/fish/SeaLion/docs/2013_04_SEA_LIONS_Points_odfw.pdf.

[245] 9th Circuit Court of Appeals, *Humane Soc'y of the U.S. v. Locke*, 626 F.3d 1040 (2010).

[246] Wild or "unclipped" fish can be differentiated from salmon that originated in a hatchery by the presence of an adipose fin. This anterior fin is clipped in hatchery fish before they are released, so that wild fish of threatened stocks can be identified and released by fishers. Fish count data retrieved from Army Corps of Engineers, "Fish Counts and Reports (Fish Data)" Accessed May 30, 2016. http://www.nwp.usace.army.mil/Missions/Environment/Fish/Counts.aspx.

[247] Ibid; Scott Learn, "Who Takes More Wild Salmon on the Columbia River, Sea Lions or Fishermen?," *The Oregonian*, May 14, 2012, http://www.oregonlive.com/environment/index.ssf/2012/05/who_takes_more_wild_salmon_on.html.

While not endangered as a species, sea lions are protected as individuals under the National Marine Mammal Protection Act (NMMPA), which prohibits harassing, tampering with, or killing all marine mammals, including cetaceans (whales and dolphins), pinnipeds (seals and sea lions), sea otters, and polar bears in any U.S. waters, as well as the sale or importation of marine mammal parts.[248] The act was updated in in 1994 to allow for Alaska Natives to take marine mammals for subsistence activities and allow for, "intentional lethal taking of individually identifiable pinnipeds which are having a significant negative impact on the decline or recovery of salmonid fishery stocks."[249]

In 2006, Oregon, Washington, and Idaho applied for permits to haze and remove sea lions under section 120 of the MMPA. The National Marine Fisheries Service (NMFS)—a division of the National Oceanic and Atmospheric Administration (NOAA), the agency responsible for implementing the MMPA—appointed a task force to evaluate the applications. 17 of the 18 task force members agreed that the sea lions were having a significant impact on threatened salmon runs and that the states' plan for removal was justified. The Humane Society was the only dissenting voice.[250] Beginning in 2008, the NMFS authorized state fish and wildlife officials in the Northwest to begin a program of hazing sea lions by firing seal bombs, cracker shells, and rubber buckshot at them

[248] 6 U.S.C. § 1389 (2006)

[249] Ibid.

[250] *Humane Society of the U.S. v. Locke.*

from chase vessels. Oregon and Washington were also authorized to remove up to eighty-five animals identified as "repeat offenders" each year. In order to qualify for removal, sea lions must have been observed in the area below the dam on at least five separate days, and must have been observed eating salmon at least once between January 1st and May 31st. They also had to have been sighted in the area *after* being subjected to "active non-lethal deterrence." [251] Wildlife managers use individual sea lions' characteristics and markings as well as freeze brands to identify animals. Officials generally attempt to place the trapped sea lions with zoos or aquariums, but if no placement is found, they euthanize them. Between 2008 and 2013, 43 sea lions were euthanized and 11 were removed and placed in zoos or aquariums.[252] 15 animals were trapped and euthanized in 2014, and in 2015, 40 animals were euthanized, 2 were sent to zoos, and 3 were accidentally killed when a trap malfunctioned.[253] Defenders of the sea lions, including the Humane Society, have argued that hazing and trapping are cruel and ineffective, and have challenged the NMFS's rationale for allowing the states to do so in court. The Humane Society's position is that sea lions are responsible for taking a smaller percentage of fish than state-regulated fisheries and that the state's

[251] Ibid.

[252] ODFW, "Key Points."

[253] Oregon Department of Fish and Wildlife, " California Sea Lion Management," accessed May 30, 2016, http://www.dfw.state.or.us/fish/sealion/.

"unwarranted persecution" of sea lions obscures the role of dams, habitat destruction, and commercial fishing in reducing salmon populations.[254]

The Humane Society's legal challenge to Oregon and Washington's right to kill sea lions at Bonneville Dam is absent nearly any reference to Indians, treaty rights, or tribal fisheries. At first glance one might assume that this is because the conflict is simply between the sea lions and the salmon, or even between sea lions and the state. However, when we consider the grounds on which the Humane Society argues for the supposed "right" of the sea lions to eat salmon—they are a "natural" predator, they take fewer fish than fishermen, they have a right to feed themselves—it becomes clear that the legal entanglements over who eats what out of the Columbia River are far more complex than bureaucrats versus pinnipeds. This issue clearly demonstrates the place-specific effects of settler colonialism in the geographic and ecological sense, not only for how land has come to be understood in the Northwest, but also for ideologies inflecting concepts of nature, resources, and property rights.

In the context of the scholarly conversations about settler colonialism and the Native/settler binary or dialectic, too little attention has been paid to the specificity of place and particular ways in which settler colonialism shapes the lives and deaths of the plants and animals of that place—and can even shape the

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[254] Michael Markarian, "Saving Salmon: Sea Lions Aren't the Enemy," *The Oregonian*, October 19, 2011, http://www.oregonlive.com/opinion/index.ssf/2011/10/saving_salmon_sea_lions_arent.html.

place itself. I argue that the root of both issues is the assumption arising from European views of property, or land, as generic: in other words, the tendency to treat one acre of forest as equivalent to any other acre of forest when it comes to organizing and managing space. To be clear, I am not referring here to specific management plans employed by state agencies - obviously the Everglades are managed differently than Glacier Bay National Park in Alaska, and the Columbia River is managed differently than the Potomac. Rather, I am critiquing the management *paradigms* that reflect Western epistemologies and scientific imperatives, which enable laws like the Marine Mammal Protection Act that apply across the board to manatees in the Everglades, whales in Glacier Bay, and sea lions in the Columbia.

At the same time, geography (which I take to mean both the topography and ecology of a given place) has played a critical but unrecognized role in shaping historic processes of settler colonialism and its present manifestations, as well as precipitating conflicts such as the one over sea lions on the Columbia River. The dam structure only exists where it does because of the geography of the Columbia River Gorge and the hydrology of a river that drops more than 2,500 feet between its source and the ocean, and at the same time, the dam and others like it are responsible for many of the industries that have drastically altered the landscape around the river. The existing frameworks for understanding settler colonialism and the de-colonial "solutions" that ignore geographic and ecological specificity are limited in their effectiveness. Treating

land as a theoretical entity (rather than an extant, ecologically unique, actual *place*), limits the discussion to theoretical application. Decolonization praxis, therefore, has to take seriously the notion of place and cannot treat land as an abstract.

The Science of Salmon and the Sea Lion Lawsuit

The present iteration of the centuries-old conflict between the theoretical logic of property and the stubborn reality of place began when sea lions were observed eating salmon at the base of Bonneville Dam in the spring of 2002. Shortly after Oregon, Washington, and Idaho obtained NMFS approval to begin removing sea lions, the Humane Society, the Wild Fish Conservancy, and private citizens filed suit to block the authorization. After six sea lions were trapped and sent to Sea World, a federal appeals court blocked the killing for that year, but allowed trapping and branding (to identify individual sea lions seen hanging out at the dam repeatedly) to continue. In 2009, the court ended the ban; four sea lions were transferred to permanent captivity and ten were euthanized. After fourteen sea lions were euthanized in early 2010, the Ninth Circuit Court of Appeals in San Francisco halted the plan again, but only because the NMFS had failed to provide adequate justification for the plan to manage the sea lion population, not because the plan was an invalid application of section 120.[255] In 2011, Washington and Oregon submitted a new application to the NMFS to kill eighty-five sea lions each year, and the Humane Society, the Wild Fish Conservancy, and two private

[255] *Humane Society of the U.S. v. Locke.*

citizens filed suit again. The NMFS informed the states it was revoking its authorization again (in response to the lawsuit), but said that it would consider a new application from the states in the future.[256] In March of 2012, the NMFS reauthorized the sea lion program through June of 2016 for up to 92 animals per year, under the same conditions of repeated observations of identifiable individuals.[257] Once again, the Human Society, et al, filed suit, but U.S. District Court Judge Michael Simon dismissed the case. The Humane Society took the case to the 9th Circuit Court of Appeals, who ruled in favor of the NMFS.[258]

Although the Humane Society often cites a number of reasons why the sea lion program is problematic, the basis of its lawsuits and appeals is the claim that the NMFS's "significant impact" argument is invalid because sea lions eat an estimated 4 percent (at most) of the salmon run but fishermen are allowed to take up to 17 percent.[259] Proponents of the sea lion removal (including tribal and state

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[256] "Government Gives Sea Lions at Bonneville Dam a Reprieve from Lethal Removal," *The Oregonian*, July 26, 2011, http://www.oregonlive.com/environment/index.ssf/2011/07/government_gives_sea_lions_at.html.

[257] Barry Thom, "Letter Authorizing State Plans for Sea Lion Removal," March 28, 2013, http://www.westcoast.fisheries.noaa.gov/publications/protected_species/marine_mammals/pinnipeds/sea_lion_removals/sec_120_resp_to_states_2013_pinniped_ltr.pdf.

[258] 9th Circuit Court of Appeals, *Humane Society of the US v. Penny Pritziker,* No. 13-35195

[259] The Humane Society of the United States, "Bonneville Dam Sea Lions Under Siege," September 13, 2011,

representatives) point out that the overall sea lion population is at an historic high, and has actually exploded in recent years.[260] According to Washington Department of Fish and Wildlife (WDFW) biologists, it is now at "carrying capacity," or the highest amount the environment can sustain.[261] From 2002, when the sea lions were first observed at the dam, to 2009, there has been a 382 percent increase in the number of salmon being eaten by sea lions.[262] They also point out that the sea lions take advantage of the artificial structure of the dam - Figure 10 shows sea lions "hauling out" to rest on the concrete near one of Bonneville's powerhouses. According to former chairwoman of the Columbia River Inter-Tribal Fish Commission (CRITFC) and vice chairwoman of the Yakama Nation's Fish and Wildlife Committee, Fidelia Andy, "Sea lions patrol the entrance to, and even inside, the Bonneville fish ladder, thereby eliminating any normative predator-prey relationship."[263] Beginning in 2005, WDFW, Oregon Department of Fish and Wildlife (ODFW), and CRITFC implemented a nonlethal hazing program intended to chase sea lions away from the dam using seal bombs

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http://www.humanesociety.org/issues/fisheries/timelines/bonneville_dam_sea_lions_under_siege.html.

[260] "Sea Lion Fact Sheet," Columbia River Inter-Tribal Fish Commission, Winter 2009, http://www.critfc.org/sealion/factsheet.pdf.

[261] Washington Department of Fish and Wildlife, "Questions and Answers: Sea Lion Predation on Columbia River Salmon and Steelhead," *Columbia River Sea Lion Management*, accessed November 27, 2011, http://wdfw.wa.gov/conservation/sealions/questions.html.

[262] "Sea Lion Fact Sheet."

[263] Andy, "Sea Lions Vs. Salmon: Restore Balance and Common Sense."

(underwater firecrackers or sound cannons) and rubber buckshot, with limited success.[264] Sea lions are quite adaptive - they quickly swim out of range of rubber bullets without leaving the dam, and when hazers use underwater sound bombs that function much like dog whistles, the sea lions simply swim with their head above water.[265] Even the animals who are pushed downstream by hazing efforts tend to pop right back up at the dam as soon as the hazing boat leaves the area. Because they can swim 100 miles in a day, relocation efforts have also proven unsuccessful.[266] Figure 11 shows a picture of an ODFW live trap, used to catch and brand sea lions, or remove them if they meet the criteria.

Because of the unique (and often misunderstood) nature of the salmon lifecycle, however, the statistics involved in the issue can be confusing. Not all salmon passing through the fish ladder are the same. Different runs or subpopulations of salmon migrate up the river to spawn at different times of year. Since the sea lions are also on a breeding schedule, they tend to show up for just a few months in the spring. So while the sea lions may be consuming around 4 percent of the total number of salmon each year, their impact on spring runs is

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[264] Washington Department of Fish and Wildlife, "Questions and Answers: Sea Lion Predation on Columbia River Salmon and Steelhead."

[265] Craig Welch, "Northwest Sea Lions Teach Humans the Folly of Fighting Mother Nature," *The Seattle Times*, September 7, 2008, http://www.seattletimes.com/pacific-nw-magazine/northwest-sea-lions-teach-humans-the-folly-of-fighting-mother-nature/.

[266] Washington Department of Fish and Wildlife, "Questions and Answers: Sea Lion Predation on Columbia River Salmon and Steelhead."

Fig. 10: Sea lions hauling out at Bonneville Dam near Powerhouse 2. ODFW.

Fig. 11: Sea lion Trap. ODFW

significantly higher. If a run is wiped out, it is gone forever—which is exactly what happened to the Spring Chinook run on Lake Washington: sea lions hanging out at the fish ladder on Ballard Locks effectively wiped out the population.[267]

Both the proponents of the sea lion program and the opposition tend to frame the issue as one of species management. Neither side contests the need for regulatory action to achieve an ecological balance; rather, it's the kind of regulation and how to implement it that is being contested. Unfortunately, the failure to question the underlying assumption that the solution lies in government regulation aimed at achieving a "natural" balance of species on a river that has been utterly transformed in the last 500 years disguises the role of settler colonialism in both the transformation of the geography and the shaping of the ideologies of "nature" that are at work in the sea lion conflict.

Capitalism and the Territorialization of the West

The failure of settler colonial scholarship to contend seriously with the specific geographies of place and its tendency towards an androcentric understanding of land can be traced to the enclosure movement, and the cultural construction of "nature" as a fixed, unaltered space. Settler colonial society has implemented this belief through laws governing the distribution of property and people, such as the Homestead Act discussed in chapter two and the Allotment Act analyzed in chapter three. Both of these pieces of legislation sought to turn the "open" space of the frontier into ordered and bounded spaces of capitalist

[267] Ibid.

production, managed through the nuclear family. Ultimately, the Allotment Act reduced the number of acres recognized by the settler state as legally belonging to Indian people; thus it is commonly argued that the main function of the Allotment Act was to acquire Indian land for White settlement.[268] The way land was distributed, however, did not take into account how different parcels of land would require different methods of farming, how some land might only be marginally arable, or how the process of allotment overrode preexisting relationships that Indigenous people had with the land. Allotted land was simply assigned to blanket categories of rangeland for grazing or arable land for farming.[269] It is also worth noting that Indigenous means of production (hunting, fishing, gathering) that took place in the "wilderness" were not the only forms of labor disavowed by the process of territorialization. The work associated with spaces of production was exclusively male; women's labor, which took place in the private sphere of the home, was made invisible in the discursive representation of space as either "wild" or developed. Thus I use the term androcentric, rather than anthrocentric in this chapter, as it is the ways in which bodies coded as male interact with space that tends to inform its designation.[270]

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[268] See the work of Angie Debo, Vine Deloria Jr., M. Annette Jaimes, Wilcomb E. Washburn or Charles F. Wilkinson.

[269] Dawes Act.

[270] This is not to say, of course, that the women all stayed home while men did the work of "taming the west"—in reality, women have played a major role in the work of settler colonialism, both in and outside the home. The point is that the discursive representation of the work that transforms a place from wilderness into

The Allotment Act (and the homesteading acts that worked on similar principles) played an important function in discursively shaping non-wilderness land. This process of enclosure and zoning across the United States paved the way for the treatment of land as 'functionally equivalent' to be adopted into the common sense of settler property logic. The legislation that created national parks and the Wilderness Act of 1964, meanwhile, codified space that was to be seen as "natural" and managed in a way that would maintain the illusion of the absence of human interference. And it is indeed an illusion; many scholars have documented the extent of intensive ecological management practices undertaken by Indigenous peoples prior to non-Native settlement.[271]

The discursive and legislative representation of these spaces as "untrammeled by man" is not only false but intrinsically tied to the settler state's genocidal narrative of Indigenous disappearance and inevitable settler progress.[272] As discussed in previous chapters, the idea of an untouched wilderness erases the existence of Indian people and their geographically particular relationships with the land. It also fixes the pre-colonial landscape at a particular moment in time, as

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civilization focuses on labor traditionally performed by men. For more on gender and colonialism, see Anne McClintock, *Imperial Leather: Race, Gender, and Sexuality in the Colonial Contest*, 1st ed. (Routledge, 1995).

[271] See Cronin, *Changes in the Land;* Matthew Wildcat et al., eds., "Indigenous Land-Based Education," special issue, *Decolonization: Indigeneity, Education and Society* 3, no. 3 (2014).

[272] *Wilderness Act,* 16 U.S.C. 1131-1136.

if nothing at all happened on this continent before white settlers showed up to develop some places and preserve others. This pervasive notion of a static environment free from human influence tends to support current management paradigms that work to recreate and/or maintain that fixity, rather than responding and adapting to long term processes and cycles of ecological change.

The separation of land into spaces of production and consumption, or private allotments and wilderness, is based entirely on whether or not humans (and in particular, men) have interacted with it. This androcentric division of space not only assumes a false chronology of human interaction with land in the West (i.e., that it began with Lewis and Clark), but also elides the effects and implications of settler colonialism for nonhuman species and natural entities, such as rivers, lakes, rocks and other minerals, air and weather, and the soil.

Framing Time and Space on a Changing River

Many of the arguments in opposition to sea lion euthanasia reference the Lewis and Clark expedition, framing it as the inaugural event of human/land interaction in the Pacific Northwest. The Humane Society's discursive framing of the issue, in particular, sets the terms for the debate by erasing Indigenous peoples from the land and omitting their knowledge of or interaction with it. The main website for its campaign begins, "From the time that Lewis and Clark documented seals, sea lions, and otters in the Columbia River between Oregon and Washington until the 1972 passage of the Marine Mammal Protection Act

made it illegal to kill them, humans have taken aim at sea lions."[273] Citing Lewis and Clark as providing the (first) evidence of sea lions swimming upriver to the present location of Bonneville Dam (mis)represents the relationship between humans and sea lions as beginning with the "discovery" of the Northwest—it assumes that nothing of ecological significance happened prior to the advent of settler colonialism. The implications of this line of argument run a little deeper than the usual problem of erasing Indigenous presence prior to colonization. This discursive framing obscures the Indigenous knowledge of local ecology and ongoing relationships with animals (and not just the ones that have been legally inscribed as significant to Native people, like salmon). And let us not forget that a major objective of the Lewis and Clark expedition was to survey and map the West. As a tool of enclosure and territorialization, mapping played (and plays) a crucial role in establishing dominion.[274]

The sea lion issue also illustrates the ways in which a place can shape the way that settler colonialism unfolds just as much as the ongoing process of settler colonialism can shape a place. The organizations attempting to challenge the sea lion program often demonstrate a discursive reliance on Lewis and Clark's

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[273] The Humane Society of the United States, "Bonneville Dam Sea Lions Under Siege."

[274] For more on mapping and Indigeneity, see: Mishuana Goeman, "(Re)Mapping Indigenous Presence on the Land in Native Women's Literature," *American Quarterly* 60, no. 2 (2008): 295–302, doi:10.1353/aq.0.0011; Mishuana R. Goeman, "Notes Toward a Native Feminism's Spatial Practice," *Wicazo Sa Review* 24, no. 2 (2009): 169–87, doi:10.1353/wic.0.0040.

observation of sea lions upriver to establish the animals' rights as "natural" predators in that area.[275] If sea lions were there when the Columbia was "first" discovered, the argument goes, they should naturally still be there now. This assertion of the historical presence (and therefore "natural" legitimacy) of sea lions is based on an assumed separation between nature or wilderness (the landscape of consumption) and industry or civilization (the landscape of production). More than just an attempt to recreate the river as it was before, such an argument assumes that the Columbia River is or should be a place where ecology operates without human interference. The spatial separation of production and consumption, however, is simply not a reality on the Columbia River, where nature and industry have been imbricated since long before Lewis and Clark.

The river has served as an important center for commerce for the tribes of the Northwest and those who traded with them for thousands of years.[276] The fur trade began to pick up in the Columbia Basin at the beginning of the nineteenth century, and the young and ambitious U.S. government took full advantage of this

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[275] Paul Watson, "The Damn Hunger Games on the Columbia River," *Sea Shepherd Commentary and Editorials*, May 31, 2012, http://www.seashepherd.org/commentary-and-editorials/2012/05/31/the-damn-hunger-games-on-the-columbia-river-541; "Ruling Goes against Sea Lions; Humane Society Plans Appeal," *The Oregonian - OregonLive.com*, accessed August 31, 2012, http://www.oregonlive.com/news/index.ssf/2009/01/ruling_goes_against_sea_lions.html; The Humane Society of the United States, "Bonneville Dam Sea Lions Under Siege."

[276] Joseph C. Dupris, Kathleen S. Hill, and William H. Rodgers, *The Si'lailo Way: Indians, Salmon, and Law on the Columbia River* (Carolina Academic Press, 2006); Hunn and Selam, *Nch'i-Wana*; Ulrich, *Empty Nets*.

in order to strengthen its claims to the region under the doctrine of discovery.[277] When the beaver became scarce by the middle of the century due to over-trapping, they took with them the beaver dams that provided important salmon and steelhead habitat. In the late 1800s, settlers discovered salmon as a harvestable resource, and fish wheels and canneries sprung up along the Columbia, further reducing fish populations. Around the same time, the channel between Portland and the mouth of the river was dredged, and jetties were built to extend the channel into the ocean, facilitating the passage of commercial ships. In 1896, Cascade Locks and Canal was constructed, allowing steamboats to bypass the Cascade rapids and travel upriver to the city of The Dalles. More locks and dams were constructed in the early 1900s, transforming a fast-moving white-water river into a series of tame reservoirs that made Lewiston, Idaho, 465 river miles inland, into a seaport. Many of the dams on the Columbia support water reclamation projects for agriculture, which results in both farming runoff and cargo traffic in the river. The colonization of the Columbia Basin drastically altered the ecological reality of the river, and at the same time, the river itself made that development possible. It simply does not make any sense to talk about the separation of nature and industry or to try to replicate the precolonial condition of just one species, aspect, or section of the river, when the river itself is a highly contested amalgam of ecological processes, Indigenous lifeways, and settler "development."

[277] Miller, *Native America, Discovered and Conquered*, 129, 145.

The statistics that the Humane Society has used to demonstrate that sea lions do not consume a significant portion of the salmon runs confuse the issue, and were actually ruled irrelevant in court because they came from the Army Corps of Engineers and the Bonneville Power Administration, rather than the NMFS.[278] The first problem with the Humane Society's numbers is that they are based on a yearly total of fish that lumps all of the runs together. This distorts the issue because, as mentioned above, sea lions tend to occupy the area around the dam for just a few months in the spring due to their own migratory breeding schedule. Thus their impact on spring runs - which includes the Upper Columbia River spring-run Chinook, the Snake River spring/summer-run Chinook, the Snake River Basin steelhead, the Middle Columbia River steelhead, and the Lower Columbia River steelhead, all of which are listed under the Endangered Species Act (ESA) - is much higher than their effect on the yearly total. The second issue is that their numbers do not distinguish between wild and hatchery fish. Hatchery fish are salmon that are hatched and raised in captivity (usually a tribal, state, or federal facility) and released into the river as smolt. Sportsfishing, as well as non-Native commercial and tribal fisheries on the Columbia are heavily regulated and almost exclusively limited to hatchery fish or runs of wild fish that are not endangered, in order to preserve threatened runs. Although they may descend from and even share a close genetic connection with wild fish, hatchery

[278] US District Court of Oregon, *Humane Society of the United States v. Bryson*, et al, 924 F.Supp.2d 1228 (2013).

runs are distinct from wild populations. Sea lions, however, do not discriminate between hatchery and wild fish. Thus the Humane Society's estimate of 4 percent of salmon eaten by sea lions versus the 17 percent taken by fishermen is not a legitimate comparison because they are not catching the same fish.

The existence of so many hatchery fish also it makes it hard to justify the "natural" right of sea lions to eat them; it makes about as much sense as arguing that we should keep supplying coyotes with sheep or defending the "natural" right of Yellowstone's bears to have access to the park's garbage. Some hatchery programs are focused on reestablishing endangered runs of salmon and steelhead, but most exist primarily to supplement the number of fish available to commercial and sports fishers.[279] Unlike wild fish, hatchery fish generally do not spawn in the river. Instead, they swim back into the hatchery itself through an intake chute, where their eggs and milt are harvested and artificially propagated, with a much higher percentage of survival than a nest in the wild.[280] Much like fish ladders, the efficacy of hatcheries as a long term solution to maintaining salmon runs is debatable and many even claim that the presence of so many hatchery fish actually damages wild runs.[281] In essence, the sea lions preying on fish at

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[279] Washington Department of Fish & Wildlife, "Salmon Hatcheries Overview," accessed May 30, 2016, http://wdfw.wa.gov/hatcheries/overview.html.

[280] Jeffrey J. Hard et al., "Pacific Salmon and Artificial Propagation Under the Endangered Species Act," NOAA Technical Memorandum (Seattle, WA: National Marine Fisheries Service, October 1992), https://www.nwfsc.noaa.gov/publications/scipubs/techmemos/tm2/tm2.html.

[281] Ibid.

Bonneville are benefitting from a handout that is intended for human fishers. When the existence of prey is a direct result of human intervention, the predator loses credibility in claiming it as a natural food source.

Managing a Roaming Resource

Another problem that arises with establishing a natural relationship between sea lions and salmon is the clash between salmon ecology and geopolitical borders of the nation-state. The offshore commercial fishery, which is regulated by a number of international agreements between the United States and Canada, is responsible for the vast majority of salmon that ends up in grocery stores and restaurants. Between the mouth of the Columbia and McNary Dam, at river mile 292, the river is divided into 6 commercial zones. Zones One through Five, which are all between Buoy Ten near the jetty at Astoria, OR and Beacon Rock, are designated for "Non-Treaty Commercial" fishing. The tribal fishery includes all of Zone 6, which runs from just below Bonneville Dam up to McNary Dam. The percentages of salmon taken by sea lions used by the Humane Society are based on the number of returning salmon that make it to the adult stage, evade both the ocean commercial fishery and the in-river non-Native commercial boats, and find their way upriver to Bonneville, not the total number of salmon in existence.

The groups working to end the sea lion program often fail to mention that the sea lions have the greatest impact on the tribal fisheries, as the other commercial fisheries are all downstream of the dam. In some ways it is surprising that the Indian tribes and the Humane Society find themselves on opposite sides

of this issue. According to the Humane Society, the problems facing salmon—besides overfishing—include dams, loss of spawning habitat, and problematic hatchery programs that compete with wild fish.[282] The Columbia River Inter-Tribal Fish Commission addresses all these same issues.[283] Given that its stance on these other issues is so similar, it seems as if the Humane Society would be in a much stronger legal position if it had worked with the tribes to oppose the sea lion program together. As a co-manager with a vested interest and legal property right in the Columbia River salmon, the tribes' support would add considerable weight to their campaign.

The problem is not that the tribes simply do not care about the sea lions or that they only see them as a threat to their economic well-being. It's a matter of the logic that determines the relationship between humans and sea lions. For the Humane Society and its supporters, the rationale behind sea lion protection is conservation. They object to the program on the grounds that sea lions are protected under the Marine Mammal Protection Act and that they don't "deserve" to be killed when there are other, more significant threats to salmon runs. Few would argue with the assertion that dams are a much bigger obstacle to salmon than the sea lions, but not everyone feels the same moral outrage at the prospect of sea lions being killed.

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[282] The Humane Society of the United States, "Bonneville Dam Sea Lions Under Siege."

[283] "CRITFC Website," *What Is CRITFC?*, 2011, http://www.critfc.org/text/work.html.

The protection of sea lions based on the Marine Mammal Protection Act is tricky, because, unlike most other species protected by conservation laws, sea lions are not endangered and in some places are on the verge of being overpopulated.[284] Their protection under the MMPA is dependent on their inherent value as a marine mammal, over and above other interests. The MMPA is rooted in conservation ideology: absolute preservation of an animal's inherent right to exist as a species. The tribes, by contrast, talk about the need to respect the integrity of a species, rather than protect or conserve it. The emphasis is on responsibility to live in balance with other species, instead of assuming the implicit need for human intervention.[285] In the Wy-Kan-Ush-Mi Wa-Kish-Wit Plan quoted in the previous chapter, the Columbia River Inter-Tribal Fish Commission explains principles of tribal fishery management as based on, "systems thinking. It is a discipline for seeing wholes, recognizing patterns and interrelationships, and learning how to structure human actions accordingly."[286] The history of environmental management by tribes in the Northwest and elsewhere lends evidence to the value of this holistic approach to our interactions with nature. Environmental historian Joseph Taylor uses scientific and ethnographic data to demonstrate the sophistication and efficacy of Native fishing

[284] Washington Department of Fish and Wildlife, "Questions and Answers: Sea Lion Predation on Columbia River Salmon and Steelhead."

[285] Andy, "Sea Lions Vs. Salmon: Restore Balance and Common Sense."

[286] CRITFC, "Spirit of the Salmon Plan."

techniques, calling them "frighteningly efficient." Yet he points out that "Indians in fact possessed the ability to catch many more salmon than they actually did"—so many, in fact, that he compares the harvests to those of the non-Native commercial fisheries at their peak.[287] Taylor argues that the reason Native people have been able to utilize salmon runs so heavily without diminishing them (in contrast to settler management practices) is partly the spatial distribution of Indian fishing throughout the entire river basin and partly the nature of salmon reproduction. When a large run creates a superabundance of adult salmon, the violent competition for spawning beds results in more adults dying before they are able to spawn and more fertilized eggs being destroyed; thus thinning a run can actually increase productivity. While the idea that human use can contribute to environmental well-being and resource abundance seems nonsensical under the settler paradigm, Blackburn and Anderson come to the same conclusion about environmental management in California: "Important features of major ecosystems had developed as a result of human intervention, and many habitats were deliberately maintained by, and essentially dependent upon, ongoing human activities of various kinds. . . . When that intervention ceased, a process of environmental change began that led to a gradual decline in the number, range, and diversity of many of the native species and habitat types that once flourished

[287] Taylor, *Making Salmon*, 20.

here."[288] Thus it seems that neither ideologies of conservation nor those of exploitation can offer the balance and abundance that Native strategies have produced. I argue that conservation is more closely related to exploitation than most people would like to think. Both are ways of relating to land based on settler norms of androcentrism and generic equivalency. Exploitation or conservation, whether it is of resources or species, assumes that humans play the pivotal role in determining whether land will be as close to "pristine" as possible or as efficiently utilized as possible, when in fact neither is a feasible reality, and the idea that they can be spatially separated is a myth.

Androcentrism and the Theoretical Commons.

Conservation groups are not the only ones that depend on an androcentric understanding of land. Scholarship dealing with settler colonialism has tended to take for granted the discursive construction of land as a generic space that is determined by the nature and extent of human interaction with it, both in terms of how settler colonialism is understood and what "solutions" or processes of decolonization are proposed. Some scholars have critiqued the nationalist component of Indigenous sovereignty movements and espoused the idea of the global commons as a solution to the ambiguity between "settlers" and "migrants"

[288] Kat Anderson and Thomas C. Blackburn, eds., *Before the Wilderness: Environmental Management by Native Californians* (Malki-Ballena Press, 1993), 18–19.

as categories.[289] I argue that the commons disavows its own roots in the same androcentric ideologies that accompanied and enabled settler colonialism to operate, and that it only makes sense as the solution to an overly generic account of settler colonialism that denies the differences between its geographical variants. Sharma and Wright (quoting Linebaugh) describe the commons as a system that "'vests all property in the community'" and is "'embedded in a particular ecology.'"[290] The idea of the ecologically specific commons, however, is more difficult to implement in an actual *place.* Although Sharma and Wright argue that we need to understand colonialism as the "theft of the commons," one could argue that the treaties signed between the U.S. government and the Indians of the Columbia Basin in the mid-nineteenth century are worded as if they were actually supposed to implement the commons (although obviously the practice of "commoning" has not played out as well as one might have hoped).[291]

Despite the coercive circumstances of their signing, most of the treaties included the short passage that would become instrumental in so many twentieth-century court cases, which guaranteed the Indians "the exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right

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[289] Sharma and Wright, "Decolonizing Resistance, Challenging Colonial States," 93–111.

[290] Ibid, 131.

[291] Ibid, 133.

of taking fish at all usual and accustomed places, in common with the citizens of the Territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land." Isaac Stevens, the delegate in charge of negotiating the treaties, told the Indians gathered at the signing, "these papers secure your fish."[292]

While Indian fishing rights have long been contested in the Columbia Basin, the 1974 Boldt decision (*United States v. Washington)* held that because the tribes signed treaties saying they had the right to fish "in common with" settlers, Indians had the rights to take 50 percent of the harvestable number of fish each year. It also mandated that tribes be included as stakeholders in fishery management decisions.[293] As a partner in co-management with the state, tribal fishery management organizations (CRITFC in particular) have participated in the sea lion hazing and removal programs.

Unsurprisingly, the sea lion supporters' belief in the inviolability of the MMPA does not extend to treaties. Despite the fact that the treaty tribes—unlike the sea lions or the sports fishermen—retain legally guaranteed rights to take salmon from the Columbia River, no mention of Indian treaty fishing rights is made in the Humane Society's framing of the issue. Given the tribes' strong support of and engagement in the sea lion program, it seems odd that the Humane

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[292] Cohen, *Treaties on Trial,* 37–38.

[293] *United States v. Washington*, 520 F.2d 676, 682 (9th Cir. 1975).

Society would leave them completely out of their campaign against it. The absence of specific references to Indian fishing (other than as one of the groups contributing to the 17 percent of fish taken by fishermen) in the platform against the sea lion program, however, says a lot about how Indian fishing figures in public discourse. While both Indian and sports fishing are regulated by the state, Indian fishing is limited and contingent: a reserved right based on a property claim that is rendered permanently suspect by the existence of the United States. Sports fishing, while not technically a right in and of itself, is still based on an assumed right to access "the commons" as a citizen of the nation-state. Also complicating the function of the fishing commons in the Northwest is the fact that the "particular ecology" of this place includes the challenge of a roaming resource that traverses half the globe. As the sea lion issue shows, abstract management based on moral ideals—whether the ideal is that resources are shared or that they are exploited—does not always play out as tidily as one might imagine.

The argument for the commons that Sharma and Wright espouse also breaks down when one considers the way in which they frame Indigeneity, sovereignty, and decolonization. Although they acknowledge a variety of definitions for what constitutes "the native" across the globe, they fail to integrate the implications of the radical differences between those definitions into their argument that autochthonous discourses are inherently antagonistic and oppositional to claims made by any other negatively racialized group (migrants, in particular). Instead they characterize all forms of autochthonous claims as

ahistorical, neoracist grabs for exclusive rights enforced by the nation-state that push racialized migrants to the periphery of concern. This kind of gross generalization is exactly the problem with ignoring the place-specific realities of settler colonialism. Sharma and Wright's argument that autochthony's "attempts to contain contestation are based on allegations that any demand for rights and/or resources by 'non-Natives,' including a radical rethinking of how rights and resources are thought of and distributed, is tantamount to a disregard for, and even colonization of, the *autotochthones*," is a blatant mischaracterization of Indigenous sovereignty movements and ignores the fact that many Indigenous sovereignty projects *are already a radical call for restructuring the distribution of resources*.[294] If one only looks at the last fifty years or so, Native people in the United States and Canada could certainly be construed as a particularly litigious group who continuously demand exclusive, racially based rights to resources at the expense of everyone else. However, arguing that autochthonous claims (as a form of "neoracist argument" bent on "othering" non-Natives) are antithetical to the commons makes little sense, especially in a place where Indigenous people are the only ones who have historically managed to practice commoning in a way that actually enhanced the environment.[295] Native people do not rely on the settler state to negotiate their access to common resources because they want to; all too

[294] Sharma and Wright, "Decolonizing Resistance, Challenging Colonial States," 99.

[295] Ibid, 135.

often they simply have no other option. As Andrea Smith argues, "In order to fight encroachments on their lands, Indigenous peoples are forced to argue in courts that it is 'their' land. What they cannot question within this system is the presumed relationship between peoples and land."[296] If they could, there is no doubt that the tribes of the Columbia Basin (and probably most Indigenous peoples throughout the world) would define that relationship as one of reciprocity, responsibility, and care. As Yakama tribal member and former director of CRITFC Ted Strong puts it, "The sacred salmon runs are in decline. It is the moral duty, therefore, of the Indian people of the Columbia River to see them restored. We have to take care of them so that they can take care of us."[297] Despite major ecological and political changes that have taken place in and along the river, Native people continue to enact a relationship with the river based on responsibility. Benjamin Colombi explains how the Nimiipuu (Nez Perce) have adapted to colonial change and continue to promote tribal values through fisheries and water management by using their treaty rights to forge a multiparty agreement between several state agencies and non-Native water users that resulted in a flow increase for the Snake River (a tributary of the Columbia) that promoted salmon

[296] Andrea Smith, "Against the Law: Indigenous Feminism and the Nation-State," *Affinities: A Journal of Radical Theory, Culture, and Action* 5, no. 1 (2011): 61–62, http://dev.affinitiesjournal.org/index.php/affinities/article/view/73.

[297] Columbia River Inter Tribal Fish Commission, *Spirit of the Salmon.*

migration and improved salmon habitat.[298] As one of CRITFC's member tribes, the Nimiipuu also participated in drafting the salmon restoration and management plan, Wy-kan-ush-mi Wa-kish-wit (Spirit of the Salmon), which states that, "salmon and the rivers they use are part of our sense of place; the Creator put us here where the salmon return; we are obliged to remain and protect this place."[299] The Umatilla (another CRITFC member tribe) have a similar plan in place to sustain "first foods," and thereby Umatilla culture, that is based on "people's reciprocal responsibility to respectfully use and take care of the foods. . . . [e]ven though the means to pursue, acquire, process, and prepare First Foods have changed dramatically following Euro-American settlement."[300] What all of these plans, policies, and compacts have in common, besides their documented success in restoring salmon runs, is that they are based on geographical specificities of the Columbia River and the ecological knowledge that comes from a longstanding relationship based on respect for and responsibility to the land, not on abstract generalities or management principles limited to a binary between conservation and exploitation.

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[298] Benedict J. Colombi, "Salmon and the Adaptive Capacity of Nimiipuu (Nez Perce) Culture to Cope with Change," *American Indian Quarterly* 36, no. 1 (Winter 2012): 90.

[299] Ibid, 91.

[300] Krista L. Jones et al., "Umatilla River Vision," October 1, 2008, 1–2, http://www.umatilla.nsn.us/DNRUmatillaRiverVision.pdf.

While I have critiqued the concept, I do not mean to suggest that the idea of the commons would never work anywhere, but rather that because the form of settler colonialism that has taken place in the Columbia River Basin is different than the settler colonialism that has happened in any other *place*, decolonization in this place will need to look different, too. Indigenous people and geographical places worldwide have been ravaged by global processes of colonialism. Rather than smothering the extant reality of diverse postcolonial situations, we need to think about how we can collectivize geographically disparate problems. Decolonization on the Columbia might require breaching the dams, it might require shooting some sea lions, and it will certainly require better ways to share resources, but most important is that the humans in the region find a way to live as a species *in that region*, with respect for the integrity of all other species who call it home.

CONCLUSION

Dreaming Beyond Dams

While working on this project, I drove along the section of the Columbia River described in the previous pages - from the Tri-Cities in Washington, past Celilo Park and The Dalles Dam, to Bonneville Dam and back again - upwards of thirty times. It takes about three hours to get from Richland, Washington, at the downstream end of the Reach, to Bonneville dam by car. I made the trip in the middle of August, when the heat in the Tri-Cities challenged my car's air conditioning and the cool green of the Columbia Gorge was a sweet relief. I drove it dead of winter, when snow frosted the tops of Table Mountain and the other peaks near Bonneville, and storms rolling across the plateau obliterated my view of the landscape around me. In the spring, sunshine on the rolling green hills that surrounded the upriver half of the journey would quickly turn into foreboding clouds and pouring rain right around Hood River, and the wind that threatened to fling my car right off the freeway would make the river look like a white-capped ocean.

I say these things, not to legitimate myself as a researcher who really put in her hours in the field, but rather to point out that in all those miles, not once did I see a sign indicating that I was on Indian land. In fact if a person didn't know to crane their neck and look for the fishing platforms dotting the islands below The Dalles Dam, or didn't recognize the shape of the cedar longhouse as they whipped

past Celilo Village, it might never occur to them to think of the Columbia as Native space at all. Settler colonialism in the Columbia River Basin has been aggressive and thorough. It has utterly transformed the river itself and landscape around it. It has also deeply affected the ways in which Indigenous people relate to the land, to the river, and to the other species that call this place home.

The preceding chapters have perhaps not offered much in the way of hope for the restoration of the Columbia and its salmon. The long-term effects of radioactive material leaching from storage tanks at Hanford will continue to be a problem for centuries to come. The falls at Celilo could be restored, but it would take more than lowering the water in the reservoir to restore the fishery there. And it would take years or more to reinstitute balance between humans, sea lions, and salmon at the Bonneville fish ladders. The Columbia River Inter-Tribal Fish Commission has worked hard to negotiate with the state to mitigate the impact of the dams, push back against settler impositions of management paradigms based exclusively on western science, and represent the interests of tribal communities. And yet, as long as the mainstem dams continue to impound the Columbia, the restoration of Indigenous land relationships in the Columbia Basin remains hampered by the state's power to alter the landscape.

I want to take one last, quick detour to another river on the Olympic Peninsula in Washington State. In 1927, the Lower Glines Canyon Dam was built on the Elwah River to produce hydropower. Glines Canyon and the Elwah River

dam just downstream blocked 90% of the salmon habitat on the Elwah river.[301] The dams not only blocked fish from moving upriver, but, like all dams, prevented sediment and other material from moving downstream. The dams were built despite objections by the Lower Elwha Klallam Tribe, who fought for decades after their construction to get them removed.[302] In 1992, when the expense of operating and maintaining the dams started to outweigh their benefit, Congress passed legislation that allowed the government to purchase the dams and begin the process of removing them.[303] Just three days after the dam was blasted out, the majority of the silt accumulated behind the dam had washed away and Elwah chinook were cruising past the former dam site.[304] The entire process of the dam removals has astounded engineers and scientists alike, most of whom thought it would take much longer for the river's ecosystem to begin reestablishing itself.[305]

The dams on the mainstem of the Columbia are both bigger and more integrated into the region's patterns of energy production and consumption than

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[301] "Elwha: Roaring back to Life," *The Seattle Times*, accessed May 31, 2016, http://projects.seattletimes.com/2016/elwha/.

[302] Alexandra Witze, "Let The River Run," *Science News*, January 10, 2015, http://ida.lib.uidaho.edu:3450/chc/detail?sid=acd7c728-9274-4e77-a6c9-40eb03f7c029%40sessionmgr4004&vid=0&hid=4106&bdata=JnNpdGU9Y2hjLWxpdmU%3d#AN=100149443&db=cmh.

[303] Ibid.

[304] "Elwah: Roaring back to Life."

[305] Ibid.

those on the Elwah. By providing a relatively cheap source of hydroelectricity, they have encouraged the development of a regional economy whose energy demands are drastically out of step with what is sustainable in the long run. Because in the long run, Columbia dams will eventually reach the end of their lifespan.[306]

When they do, it is imperative that part of the decision about how to move forward includes a radical rethinking of our consumption of energy as a resource. The future of salmon, as well as the environmental health of our planet, is simply incompatible with the continued use of energy and other natural resources at our present rate.[307] If we have learned nothing else from Hanford, it's clear that "better," more efficient technology can't solve the problem of resource consumption that is out of step with our ecological reality. The only group of people who actually demonstrated an ability to live in the Columbia River Basin without harming it - although not necessarily without changing it - are the Indigenous people who have always understood N'chi-Wána as part of their home.

In the Wy-Kan-Ush-Mi Wa-Kish-Wit Plan, the Columbia River Inter-Tribal Fish Commission wrote that, "if the reader can reconcile the truths of the

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[306] Norm Ritchie, "Aging Infrastructure and Scarce Dollars Means Tough Decisions for the Northwest," *Bellingham Herald*, December 7, 2014, http://www.bellinghamherald.com/opinion/article22262571.html.

[307] Fred Pearce, *With Speed and Violence: Why Scientists Fear Tipping Points in Climate Change* (Boston: Beacon Press, 2007).

past with the dreams for tomorrow, then today's work can be found." The last 165 years of struggle for access to the land and resources that were guaranteed to them by the treaties has been an important fight. But treaty rights cannot be the whole of our dreams for tomorrow as Indigenous people. Decolonization has to be about more than state-recognized fishing rights, access to traditional plants we can't use because they've been poisoned by nuclear waste, or permission from the federal government to shoot nuisance sea lions. The collective "freedom dreams" of Indigenous people should not be a vision of reconciling ourselves to the settler state's inevitable existence, but rather one that is rooted in our own epistemologies, informed by a praxis of relational existence in harmony with the land, and most importantly, one where the salmon and the people who depend on them can thrive. [308]

[308] Robin D. G. Kelley, *Freedom Dreams: The Black Radical Imagination* (Beacon Press, 2002).

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