KEVIN BRUYNEEL

THE THIRD SPACE OF SOVEREIGNTY

INDIGENOUS AMERICAS

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The Third Space of Sovereignty

THE POSTCOLONIAL POLITICS OF U.S.–INDIGENOUS RELATIONS

Kevin Bruyneel

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To my parents, Rosie and Al

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A NOTE ON TERMINOLOGY

In his study of the development of Pan-Indianism, Robert Thomas found that in the sixteenth and seventeenth centuries "there was as yet no conception of 'Indians.' "[1] Only after centuries of European-based conquest, colonization, and settlement in North America did terms like *Indian* or *indigenous* gain any meaning at all by setting the collective identity of people such as the Cherokee, Pequot, Mohawk, Chippewa, and hundreds of other tribes and nations into contrast with the emerging Eurocentric settler societies.[2] It was not until the 1700s that "tribal groups in the East were beginning to see themselves as having something in common together as opposed to the Europeans."[3] The point here is that the words *Indian* and *American Indian,* like *Native American, aboriginal,* and *indigenous,* emerged as a product of a co-constitutive relationship with terms such as *colonizers, settler,* and *American.* Out of this morass of interconnected names I lean in a few directions, albeit imperfect ones, for defining and tracing the actors involved in the modern U.S.–indigenous relationship. First and foremost, wherever possible I cite the name of a particular tribe or nation. The terms *tribe* and *nation* can be confusing, but for the purposes of relationships with the United States they are often interchangeable, although I always seek to use the designation preferred by the people under discussion, that which is most prevalently articulated by political leaders, representatives, and so on. In general, I rely most of all on the term *indigenous* to denote individuals and tribes who experienced or are descendents of those who experienced European colonization and settlement over the past five centuries. The lowercase word *indigenous* is the term most commonly used in international forums, such as the United Nations, to denote people who have existed and/or continue to exist under colonial rule. Nevertheless, references to the terms *Indian* (e.g., Indian Gaming Regulatory Act), *American Indian* (e.g., American Indian Movement), and *Native American* (e.g., Native American studies) are used frequently enough among indigenous and nonindigenous political actors

and institutions that I employ them when appropriate. There is no way to stick with one term throughout and maintain a sensible narrative that accurately includes the language of the relevant actors, institutions, laws, and so forth.

On the other side of the relationship, I use the terms *United States* and *America* most frequently, almost interchangeably, for the entire country—governments, institutions, and people. Without question, the term *America* has its problems, seemingly appropriating the name of the entire continent for a single nation. Ironically, this fact points to the term's pertinence, because *America* not only denotes the nation, culture, and people of the United States as articulated in popular and political discourse, but it is also ready evidence of the fact that the nation, culture, and people of the United States have, indeed, come to dominate the continent. To use the name *America* in this way does not legitimate this domination but rather acknowledges it as a product of colonial imposition, an imposition that is contested. As I see it, to completely replace *America* with *United States* is a sort of superficial sleight of hand that does more to displace than to interrogate the impositions of the United States and the efforts of nondominant peoples to resist these impositions. In fact, it is this complicated, co-constitutive political struggle between American impositions and indigenous resistance that this study seeks to uncover and analyze.

INTRODUCTION

POLITICS ON THE BOUNDARIES

SEEING THE BOUNDARIES

Where do indigenous people fit in relation to the American political system—inside, outside, or somewhere in between? How have the historical and modern expressions of colonialism shaped the modern U.S.–indigenous political relationship? What are the differences between indigenous and American political actors in the way they answer these questions? To start to find some answers, take a brief look at a contemporary case, one that gained notoriety for the controversial statements of a former professional wrestler whose sartorial trademark was a fetching feather boa.

In 1999, the U.S. Supreme Court had before it the case of *Minnesota v. Mille Lacs Band.* The Mille Lacs Band, part of the Chippewa nation, wanted the high court to uphold an 1837 treaty that guaranteed their hunting and fishing rights in central Minnesota. According to the treaty, these rights were secured to the Chippewa as part of their compensation for ceding this land to the federal government.[1] Because a treaty is a document codifying an agreement between sovereign governments, the recognition of a tribe's treaty rights is also recognition of the tribe's sovereignty, in some form.

With the Supreme Court decision pending, former professional wrestler Jesse Ventura, by then Minnesota's governor, took the opportunity at the annual National Governors' Association meeting to publicly question the idea that indigenous tribes can claim sovereignty while appealing to the federal government for assistance, stating: "They want to be sovereign, and on the other hand, they don't." To Ventura, the issue was quite simple: "Are you part of the United States or are you a sovereign nation? If you're your own sovereign nation, then take care of yourself, and it shouldn't even fall on us." The Minnesota governor then answered a question about the possibility that the Supreme Court would uphold the Chippewa's rights as set out in the 1837 treaty: "If those rules apply, then

they ought to be back in birch-bark canoes instead of 200-horsepower Yamaha engines with fish finders."[2]

In response, Marge Anderson, chief executive of the Mille Lacs Band, issued a public letter to Ventura in which she asserted that tribal sovereignty was "not the same as self-sufficiency":

> To become totally self-sufficient—and that is our goal—the Mille Lacs Band and other American Indians must overcome centuries of neglect and out-right abuse. Please understand that sovereignty is not a gift from the federal government, and it is not a gift from the state of Minnesota. Sovereignty is the inherent right of every American Indian tribal government. It is a reflection of the indisputable fact that we lived on this land and governed ourselves hundreds of years before Europeans arrived.[3]

Anderson's general point was that tribal sovereignty is much more complicated than a tribe's simple declaration of whether they "are or are not part of the United States."

By a slim 5–4 majority, the Supreme Court affirmed the Mille Lacs Band's treaty rights. The basis for that decision was the fact that subsequent to the 1837 treaty no formal act by the federal government, whether an executive order, another treaty, or the admission of Minnesota to the union, expressly or legally extinguished the Chippewa nation's right to "hunt, fish, and gather" on their ceded lands.[4]

This capsule view of the case shows how complicated is the relationship between the United States (the American people and their many levels of government) and indigenous people (as individuals and as tribes). This relationship comprises many issues, not the least of which are the modern interpretation of century-old treaties; the meaning and terms of the relationship between federal, state, and tribal sovereignty; the historical oppression experienced by indigenous people as it relates to their contemporary political and legal claims; and how indigenous rights and sovereignty are pursued within the American political system. These many issues allow for multiple points of disciplinary intervention. With regard to the case mentioned at the beginning of this chapter, historians might seek an archival investigation of the circumstances surrounding the creation of the 1837 treaty and the subsequent legislative and executive acts of relevance.

Those interested in legal history and constitutional law might analyze the treaty itself and/or the logic and precedents employed in the court's decision. Political theorists could dive into a discussion of the foundations and formulations of the competing notions of sovereignty articulated here. Political scientists concerned with American federalism might well study what this decision means for the status of state sovereignty and intergovernmental relations in the United States. Scholars of American studies would likely interpret Ventura's comments about "birch-bark canoes" as an indicator of the racial and cultural dynamics of this conflict. And scholars who work within the field of Native American studies would find this case of interest for many reasons, including what it may say about the status of tribal sovereignty and treaty rights.

Each of these approaches would shed important light on one or more of the many dimensions of the complex political relationship between the United States and indigenous people. But what seems to be missing is an analytical entry point around which different approaches could converge to speak across disciplinary boundaries. In an effort to find an approach that transcends disciplinary boundaries, I highlight another form of boundaries, those concerning politics and political relationships. Specifically, these are the spatial boundaries around territory and legal and political institutions and the temporal boundaries around the narratives of economic and political development, cultural progress, and modernity. It is through a boundary-focused approach that I find a productive and underused point of intervention for analyzing and understanding U.S.–indigenous relations. By bringing boundaries out of the shadows of political analysis, I bring into clearer light the presence of and struggle over colonial rule in the modern American liberal democratic settler-state. The value of such a focus can be seen by looking again at the Mille Lacs case.

Although Jesse Ventura is known and by some admired for his impolitic and at times offensive statements, his comments about tribal sovereignty and treaties are not sui generis. Rather, they reflect two prevalent American sentiments about indigenous people's political status. The first sentiment is that indigenous tribes and nations claim a form of sovereignty that is unclear because it is not easily located inside or outside the United States. Thus, Ventura sets out a spatial choice ("Are you part of the United States *or* are you a sovereign nation?") that demands that the Mille Lacs Band define its political status in relation to the spatial boundaries of the

American political system. The spatial logic is quite simple: if the tribe is "part of the United States," it is not sovereign, but if it is to be sovereign, it cannot be part of and thus make demands on the United States. The second sentiment is that the treaty-secured rights of indigenous tribes stem from an archaic political time that cannot assume a modern form. Thus, Ventura sets out a temporally defined choice: if members of the Mille Lacs Band are to enjoy their treaty rights to fish, they can do so only in the "birch-bark canoes" used by peoples of a bygone era, not in boats with the "200-horsepower Yamaha engines" used by modern fishermen. This is an invocation of a temporal boundary because it is a declaration that Chippewa sovereignty is not permitted to develop into a modern form and engage in practices commensurate with present-day American political life.

This sort of political discourse represents an effort to constrain tribal sovereignty, treaty rights, indigenous identity, and indigenous political expression through the imposition of the spatial and temporal boundaries of modern American politics. As mentioned, Ventura's views are not as wacky or out of the mainstream as his seemingly independent persona. As I will show in this study, the invocation of spatial and temporal boundaries is a common practice of American political actors and institutions when trying to secure and impose the political rule of American colonial power—"colonial rule" for short—on indigenous people. But these boundary impositions are far from seamless. Rather, they are often rendered contingent or incoherent as a consequence of two factors: indigenous political resistance and the American nation's ambivalence about its relationship with indigenous people. With regard to the first, reconsider Marge Anderson's response to Ventura.

Anderson made an important claim about tribal sovereignty when she stated that "sovereignty was not a gift" from the federal or state government. Her claim begins with a seemingly basic observation: indigenous tribes were self-governing peoples before European contact, and thus they were sovereign before the United States was founded. Therefore, the present limited nature of tribal sovereignty is a consequence of its diminishment at the hands of the American federal government, not a creation of and *gift* from the United States. Within indigenous political and academic circles this is known as the claim that tribes have "inherent sovereignty," because sovereignty is a historically persistent and constitutive feature of the cul-

tural and political identity of indigenous tribes and nations. Anderson's argument for the "inherent right" of the Mille Lacs Band to tribal sovereignty demands that Ventura look beyond the temporal boundaries of the United States to the existence of tribal governments prior to and thus outside of American political history.

But this is not the end of Anderson's argument. She also points to the "centuries of neglect and out-right abuse" experienced by indigenous people at the hands of European colonizers and American settlers. This neglect and abuse have included the distinct narrowing of the spatial boundaries within which her tribe can, in this case, hunt and fish. Anderson was thus arguing that if the Mille Lacs Band is to actually move toward "self-sufficiency," it must be able to express sovereignty beyond narrow, restrictive boundaries. By opposing the treaty rights of the Mille Lacs Band, the state of Minnesota thereby endeavored to impose narrow spatial boundaries on the tribe in a way that would constrain its ability to be and become an independent, self-sufficient entity.

This attention to boundaries shows how Anderson challenged the temporal and spatial impositions of colonialism. She did so by invoking American temporal boundaries, those that her tribe transcends, and American spatial boundaries, those that have diminished but not eliminated the Chippewa nation's sovereignty. In this way, Anderson was telling Ventura that one cannot simply classify indigenous tribes as "part of or not part of the United States"—as inside or outside—because indigenous tribes straddle the temporal and spatial boundaries of American politics, exposing the incoherence of these boundaries as they seek to secure and expand their tribal sovereign expression. Thus, contrary to Ventura's statement, tribes such as the Mille Lacs Band are not saying that "they want to be sovereign, and on the other hand, they don't." They are saying that they have an inherent right to sovereignty but must to some degree struggle to defend and secure it within the very American political system that set indigenous people so far back in the first place. Anderson's words also point to the colonial bind placed on indigenous tribes by American political actors such as Ventura, whereby they tell tribes they should be self-sufficient and then seek to narrowly constrain tribal sovereignty in a way that forestalls their effort to achieve this very self-sufficiency. In all, Anderson's response to Ventura exemplifies the way in which indigenous political actors show through their words and actions that their fight for liberation and

sovereignty is a political struggle that occurs on, across, and against the boundaries of American politics.

Finally, although the Supreme Court's decision upheld the treaty rights of the Mille Lacs Band, the majority opinion penned by Justice Sandra Day O'Connor included a caveat: "We do not mean to suggest that a President, now or in the future, cannot revoke the Chippewa usufructuary rights in accordance with the terms of the 1837 Treaty."[5] While acknowledging the validity and continued legal pertinence of the treaty, the court was here yielding to the idea that the federal government has plenary power—or ultimate authority—over the reach, rights, and very legitimacy of tribal sovereignty. On the whole, indigenous tribes and political actors do not concede the federal government's right to this plenary power, a power that was formally imposed in the late nineteenth and early twentieth centuries. The high court's decision is a legal reflection of a wider American uncertainty, what I refer to as colonial ambivalence, about the scope and location of tribal sovereignty and the status of indigenous political identity in relation to the American political system. On the one hand, the court recognized the rights of the Mille Lacs Band as legitimately emanating from the negotiations and agreement made by the sovereign Chippewa nation in 1837. These rights placed contemporary members of the Mille Lacs Band somewhat outside the jurisdiction of American governance, allowing them to fish and hunt without having to heed the regulatory restrictions that apply to non-Chippewa fishermen and hunters. On the other hand, the court's claim that the federal government has plenary power "to revoke" these treaty rights locates the Chippewa within the boundaries of American political jurisdiction, under its ultimate and seemingly definitive purview. In this way, the Supreme Court, like the American nation generally, went back and forth on the question of whether indigenous tribes "are or are not part of the United States."

By drawing to the surface the role of boundaries in political conflicts like that between the Mille Lacs Band and the state of Minnesota, we see more clearly the critical points of contention in the U.S.–indigenous relationship. These points of contention are the interwoven temporal and spatial claims to sovereignty, identity, and territory, concepts this study seeks to complicate. A boundary-focused analysis can demonstrate the complex and perennially contested way in which American and indigenous political actors map their people's claims to belong and therefore their authority

in time and space. In this way, boundaries serve as a valuable and unique interdisciplinary focal point because they are at the productive center of the conflict between American colonial impositions and indigenous postcolonial resistance.

POLITICS ON THE BOUNDARIES

The claim of *The Third Space of Sovereignty* is that the imposition of American colonial rule and the indigenous struggle against it constitute a conflict over boundaries, a conflict that has defined U.S.–indigenous relations since the time of the American Civil War. The imposition of colonial rule denotes the effort of the United States to narrowly bound indigenous political status in space and time, seeking to limit the ability of indigenous people to define their own identity and develop economically and politically on their own terms. In resistance to this colonial rule, indigenous political actors work across American spatial and temporal boundaries, demanding rights and resources from the liberal democratic settler-state while also challenging the imposition of colonial rule on their lives. This resistance engenders what I call a "third space of sovereignty" that resides neither simply inside nor outside the American political system but rather exists on these very boundaries, exposing both the practices and the contingencies of American colonial rule. This is a supplemental space, inassimilable to the institutions and discourse of the modern liberal democratic settler-state and nation.

I refer to this modern struggle over colonial rule as a postcolonial conflict, and do so for two reasons. First, it historically demarcates and defines the beginning of the modern era in U.S.–indigenous relations. During and especially after the U.S. Civil War, American political actors and institutions laid the groundwork for the precipitous westward expansion of the American nation, which would presumably lead to the inevitable containment of indigenous tribes and people within the boundaries of the United States. A key indication of this latter imperative was the 1871 congressional act that brought a formal end to U.S. treaty making with indigenous tribes. John Wunder refers to this period as marking the end of "Old Colonialism" and the beginning of "New Colonialism," by which he means that the American federal government increasingly viewed tribes as domestic rather than foreign entities and as collections of individuals to be

assimilated rather than as sovereign governments to be recognized.[6] I agree with Wunder that this period marked the dawning of a new era of colonial practices, but I define it as the beginning of "postcolonial time" in order to demarcate the development of an increasingly complex location of indigenous political status—that is, a location across the boundaries—that takes hold in and defines the modern era in U.S.–indigenous relations.

Despite occasional confusion on this matter, *postcolonial* does not mean *after colonialism,* as if colonialism is over. No postcolonial theorist or critic makes such a claim. Rather, *postcolonial* refers to the consistencies, contingencies, and fissures in the practices of colonization and decolonization.[7] In other words, *postcoloniality* denotes the idea that complete socioeconomic, cultural, and political colonization and decolonization do not occur in the purest sense of the terms; that is, the colonizer's impositions, be they cultural, economic, or structural, are never fully exhumed from the colonial context, and the so-called colonized are never fully without agency or independent identity. With this in mind, one can see in the gaps of colonial imposition meaningful expressions of postcolonial resistance. In this book I locate such postcolonial resistance in indigenous challenges to the imposition of U.S. citizenship in 1924, in the indigenous political movement of the 1960s that argued for tribal self-determination rather than civil rights or decolonization, and in the contemporary emergence of politically empowered tribes due, in part, to the success of tribal gaming enterprises. In all, a postcolonial perspective contests the idea that American boundaries are coherent, impermeable colonial impositions on indigenous people while acknowledging and shedding light on the repressive practices and consequences of the persistent American effort to impose colonial rule.

The second reason for my emphasis on postcoloniality is that work in the field of postcolonial criticism is very helpful, and uniquely so, in the effort to uncover and theorize the active cultural and political life occurring in the interstitial, in-between, neither-nor locations that we commonly refer to as boundaries. Most notably, I have derived the political notion of the third space of sovereignty from the work of Homi Bhabha, who defined and seeks out the "third space of enunciation" in his literary and cultural criticism. His "third space" intervention in literary and cultural productions seeks to make "the structure of meaning and reference an ambivalent process," thereby opening up these structures to readings that work

against pressures to homogenize or unify representations and identity.[8] My effort to put forward a third space of sovereignty, not as something I have devised in a vacuum but rather as what I see to be an active feature of U.S.–indigenous relations, similarly aims to resist the idea that boundaries stand as homogenizing or unifying impositions on identity, agency, and sovereignty.

Altogether, then, the notion of politics *on* the boundaries stems from a key postcolonial premise of this study, which is that boundaries are much more than just barriers. They are sites of co-constitutive interaction among groups, governments, nations, and states where competing notions of political time, political space, and political identity shape the U.S.–indigenous relationship. Let me be clear about how I define the last three terms. By "political time" I mean the narratives of struggle, development, and transformation through which a people historically positions itself or is positioned by others as some form of coherent collective identity. By "political space" I mean the lived and envisioned territorial, institutional, and cultural location through which a people situates its past, present, and future as a political identity.[9] And finally, I take "political identity" to mean that which binds a group together both through its relationship to discernible power inequities—whether stronger or weaker groups—and through its collective vision of how to generate, sustain, or expand the group's capacity to determine its future.

A POSTCOLONIAL POLITICAL HISTORY

Along with the overarching questions I posed at the start of the book, I am concerned with finding answers to even more specific questions: How has the United States as a people and a government—as a nation and a state—imposed temporal and spatial boundaries on indigenous people, for what purpose, and with what consequences? What effect does the boundary-straddling of indigenous political status and the American imposition of boundaries have on the form and expression of indigenous tribal sovereignty and political identity and on the meaning of sovereignty generally? And how have indigenous political actors sought to reclaim or re-mark these boundaries, whether in the name of tribal, intertribal, or a general indigenous identity, as a means to furthering their interests?

My approach to these questions combines the analysis of colonialist

discourse familiar to postcolonial critique with the historical approach to the study of politics as practiced in the field of American political development (APD). APD emphasizes the importance of bringing various forms and permutations of historical analysis to the study of American politics, specifically focusing on the development of political institutions, policies, governing regimes, and political culture. I interweave and enrich the postcolonial and APD approaches with insights drawn from the multidisciplinary field of Native American studies, including important work in history and legal studies.[10] Through this interdisciplinary approach I discover how American and indigenous political actors and institutions define and seek to secure sovereignty, citizenship, territory, access to political and legal institutions, and the meaning and expression of political identity.

My interdisciplinary approach to *The Third Space of Sovereignty* makes scholarly contributions in at least four ways. First, by bringing boundaries to the foreground I seek to supplement the important work done in the multidisciplinary field of Native American studies while drawing these concerns into conversation with border theory literature.[11] Second, I introduce the "third space of sovereignty" as a political concept both pertinent and unique, and I demonstrate its historical and contemporary presence and practical value for politics and for expanding how one sees North American political topography. The effort to work through the "third space" concept will also necessarily problematize the concept of sovereignty itself. Third, this is the first study to bring postcolonial theoretical insights to a detailed, research-based political history of U.S.–indigenous political relations. Postcolonial theory is often referred to, in constructive and destructive ways, as a type of literature better known for its obscurantist form than for its content. I do not adhere to this view, but appreciate the value of the constructive efforts to address the issue. Therefore, just as I expect a postcolonial analysis to serve the study of politics, I also expect it to show how to bring postcolonial theory into a more direct social science conversation. Fourth, the field of APD sorely lacks scholarship that analyzes the political relationship between the United States and indigenous people. By building on this field's insights while also providing new perspectives on the political eras of the Civil War, Reconstruction, Progressivism, the civil rights movement, and the contemporary period, *The Third Space of Sovereignty* fills this gap in the APD literature.

Concerning my focus on discourse, I recognize that for some scholars

discourse resides in the ether of political epiphenomena, more reflective than constitutive of political developments. I begin my approach to this study with the opposite point of view, which is that as individuals and communities we have a decidedly mediated relationship with the political world. In other words, our political identities are neither a given fact nor peripheral to politics. Rather, as political theorist George Shulman puts it: "Conceptions of interest and identity are inseparably joined in and through the language people use to make themselves a group; group interest and identity are conceived and enacted through language that creates signifying differences."[12] Through analysis of these mediating processes—discursive relationships through which we construct our relationships with the people and phenomena around us—one can gain a deeper understanding of the struggle political subjects go through in determining who they are and what they should seek to accomplish through politics. In this context, it is helpful to think of language as a practice, in the sense of being both practical and real, especially because we live in and through language as much as any so-called material condition.

In this study, the pertinent "signifying differences" are fought over and defined in relationship to temporal and spatial boundaries that purport to demarcate, bound, and clarify the identity and interests of American and indigenous peoples. To be clear, I do not see discourse as detached from institutions. Rather, discursive practices shape the meaning and impact of institutional and political developments in U.S.–indigenous relations, whether these developments take the form of federal policies, legal decisions, the actions of governmental and nongovernmental political actors, or the contested definitions and practices of sovereignty. In the same way, institutional and political developments also serve to further shape and redefine the identity and interests of the relevant political actors. Therefore, this study's narrative of the modern political history of U.S.–indigenous relations does not place its sole focus on either political discourse or political institutions, but rather views them as co-constituting the context of American and indigenous political struggle.

In the book's first chapter I elaborate on the key conceptual components of this complex U.S.–indigenous political relationship. In particular, I define in greater depth the discursive and institutional sources and meaning of colonial imposition, colonial ambivalence, and postcolonial resistance. In the course of setting down this conceptual framework, I lay

bare the deeper discursive issues at stake in this relationship, especially as it concerns the persistence of colonial rule. I do this with a critical eye on the colonialist consequences of dominant political epistemologies that prioritize dualisms such as inside-outside and modern-traditional for framing how we see and know the political world spatially and temporally. I engage in this discussion in the course of framing the historical, legal, and political context of the political history I narrate, demonstrating the value of an interdisciplinary approach to such an analysis.

Each of the cases that I focus on in chapters 2–6 epitomizes a defining tension of a different stage in the modern history of U.S.–indigenous relations. The political history I develop here should be understood as *a* history, not *the* history of this relationship. Nevertheless, this study's focus on boundaries adds interdisciplinary insight and a unique approach to those studies that place their primary focus on a single concern, such as law, public policy, demography, or culture, to name just a few approaches of some of the finest work in the study of U.S.–indigenous relations.[13]

To begin the political history, chapter 2 looks at how indigenous and American political actors sought to secure and define the future of their respective constituencies in the midst of the American nation's definitive and bloodiest conflict, the Civil War. With the fate of American political boundaries very much up in the air, so were the boundaries of indigenous territory, in particular that of the Indian Territory, within which resided, among others, the Cherokee nation. This chapter examines the roots of the modern expansion of the American settler-state, the shifting terrain of U.S. Indian policy, and the Cherokee nation's effort to remain unified and sovereign. In this way, chapter 2 sets out and analyzes the political developments leading up to and propelling a distinct shift in the legal and political framework of the U.S.–indigenous relationship, which is the specific focus of chapter 3.

With the Civil War over, the American nation directed its energies westward, and in so doing looked to expand its political boundaries and transform its relationship to indigenous tribes and nations. Chapter 3 argues that this effort would mark the beginning of a new era in the U.S.–indigenous relationship, personified by the 1871 congressional rider declaring that from that time forward the federal government would not view indigenous tribes as political entities worthy of being active treaty-making partners. The 1871 decision became more important over time, be-

cause its status as a critical marker in U.S.–indigenous history was in part retroactively constituted through Supreme Court cases in 1886 and 1903 that affirmed the plenary power of the federal government and the allotment policy that broke up tribal land holdings. These decisions and policies played a part in the effort to draw indigenous people further within American political boundaries, revealing the decidedly assimilatory drive of U.S. Indian policy at that time.

An important piece of the turn-of-the-century assimilatory policy of the U.S. government included the effort to turn indigenous people away from their tribal affiliations and toward American citizenship. Chapter 4 focuses on the responses of indigenous people to becoming U.S. citizens, for which I find two main trajectories. Some indigenous people deemed the conferral of U.S. citizenship greatly overdue, while others saw it as a direct colonial imposition, worthy of resistance and refusal. Despite their differences on the issue, the expression of each type of response saw indigenous political actors redefine and negotiate the meaning and location of indigenous political identity as a form of citizenship, at individual and collective levels, on and across American political boundaries.

By the middle of the twentieth century, the boundaries of American racial domination as well as those of colonial rule in the so-called third world were under increasing interrogation, challenge, and redefinition. Many African Americans in the United States were demanding their civil rights, while anticolonial nationalists in settings such as Algeria were demanding and fighting for decolonization. In the midst of these distinct movements for liberation, the indigenous political movement known as Red Power defined a distinct postcolonial path between civil rights and decolonization, placing its focus on securing tribal self-determination. Chapter 5 sheds light on this postcolonial path by placing at the center of analysis the contemporaneous writing of a preeminent Native American studies scholar, the late Vine Deloria Jr. Through this point of intervention, I seek to develop a thick theoretical analysis of the transformations and developments in indigenous politics and political identity during the 1960s, including the claims made by those engaging in direct political actions such as the seizure of Alcatraz Island in 1969 and the Trail of Broken Treaties march to Washington, D.C., in 1972.

In no small part because of the political activism of the 1960s and 1970s, the contemporary era has witnessed a renewal and resurgence of

tribal sovereignty. The expression of tribal sovereignty that has most caught the American public's attention has been the flourishing of tribally owned and operated gaming enterprises, that is, casinos. Only a small percentage of tribes have actually enjoyed great economic success from casinos, but the American response to this success has become a defining tension of contemporary U.S.–indigenous relations. In chapter 6 I demonstrate and analyze how political actors from the center to the margins of American politics—from Arnold Schwarzenegger and the U.S. Supreme Court to virulent antitribal citizens' groups on the far right—increasingly and with measurable success cast the modern expression of tribal sovereignty as a threat to American civil and political life, a threat that exists inside and outside American boundaries.

In all, chapters 2–6 take the reader into both sides of the relationship between the United States and indigenous people, demonstrating the central place of politics on the boundaries in the give and take between American colonial rule and indigenous postcolonial resistance from the 1860s to our time. While this study is concerned with the U.S.–indigenous relationship, it would be a mistake to confine its implications to only these parties and this context. Because we presently reside in what is often referred to as a globalizing world, one where boundaries appear more permeable than ever before and where the prevalent concept of sovereignty is increasingly open to question and reconsideration, the theoretical and practical implications of this analysis may well inform, provoke, and provide helpful analogies to studies of roughly similar tensions in and beyond the North American context.

CHAPTER ONE

THE U.S.–INDIGENOUS RELATIONSHIP: A STRUGGLE OVER COLONIAL RULE

In his 1950 *Discours sur le colonialisme,* Martinique poet and dramatist Aimé Césaire argued that one of the fundamental dilemmas and defining traits of colonial rule is that "it is the colonized man who wants to move forward, and the colonizer who holds things back."[1] Césaire's claim rebutted the colonialist imaginary of a progressive and thus advancing settler society that seeks to civilize or in some way transcend the primitive, static indigenous society. Césaire's image of a colonized people that seeks to move forward as the colonizer seeks to hold them back closely captures what indigenous people have experienced regularly in their relationship to the United States, especially since the late nineteenth century. In framing the modern U.S.–indigenous conflict through a discourse of colonialism, we can begin to see the function of politics on the boundaries for American and indigenous political institutions and actors. For the United States, politics on the boundaries denotes how the American people, institutions, and governments often seek to "hold back" indigenous people by imposing on them the temporal and spatial limitations of colonial rule. For indigenous people, politics on the boundaries is about "moving forward" by transgressing these colonial impositions and challenging colonial rule to gain fuller expression of their agency and autonomy.

But because the political context of concern here is not Césaire's Algeria but rather the modern American settler-state—where liberal democratic norms, institutions, and constitutional governance are consistently, often sincerely, espoused—it is fair to take a moment to consider whether and how the notion of "colonial rule" helps define the U.S.–indigenous relationship. On this issue, Glenn Morris has observed that three main features of colonial rule, derived from studies of the pre–World War II African colonial context, apply just as readily to the modern U.S. settler-state. These are "(1) the domination of the physical space of another by the colonizer, (2) the reformation of the minds of the indigenous peoples

of the dominated space, and (3) the integration of the local indigenous economic histories into the Western perspective."[2] These three components of colonial rule gesture toward the spatial and temporal boundaries that mark the center of the modern conflict between American impositions and indigenous resistance.

The spatial boundaries of concern here are at times quite explicit and obvious, such as those around geopolitical territory, be it of a nation, state, tribe, or city. In other cases, less literal but no less real spatial boundaries demarcate the terms of inclusion and exclusion for economic, cultural, and political institutions; for political communities; and for political and legal jurisdictions. Finally, important temporal boundaries, while often implicit, can be located in economic, cultural, and political narratives that place limitations on the capacity of certain peoples to express meaningful agency and autonomy, especially in the modern context. These narratives place temporal boundaries between an "advancing" people and a "static" people, locating the latter out of time, in what I call *colonial time,* where they are unable to be modern, autonomous agents. This notion of colonial time is an expression of what Johannes Fabian calls "Typological Time," "which is measured, not as time elapsed, nor by reference to points on a (linear) scale, but in terms of socioculturally meaningful events or, more precisely, intervals between such events." Typological narratives produce dualistic distinctions and boundaries, such as that between "preliterate vs. literate, traditional vs. modern, peasant vs. industrial," and these serve as measures of the "quality of states" of dominant and nondominant groups. We can see these at work in the way that the colonizing society defines itself as temporally unbound and therefore capable of individual agency and collective independence in modern political time, while the colonized are seen as temporally constrained—whether referred to as primitive or traditional—and therefore incapable of modern agency and independence.[3] In all, the imposition of these spatial and temporal boundaries mark out the practices of colonial rule, through which the colonizer attempts to "dominate the physical space," "reform the minds," and "absorb the economic" as well as the cultural and political histories of indigenous people.

In this book's political history, ranging from the American Civil War to the early twenty-first century, I locate and analyze the presence of and politics concerning all of these types of boundaries, from those that mark the geopolitical limits of the American settler-state to those that seek to

shackle indigenous identity to an archaic form. In so doing, I map out how American and indigenous political actors engage in a postcolonial struggle over colonial rule through their respective politics on the boundaries. The framework of this struggle is composed of three key dynamics: colonial imposition, colonial ambivalence, and postcolonial resistance. In this chapter I define and elaborate each of them because they set the theoretical groundwork for a more incisive and clear analysis not far down the road. Also, to assist readers, especially those less familiar with U.S.–indigenous politics, I provide some guideposts, including a basic outline of U.S.–indigenous political history and a discussion of some key constitutional, legal, and political concepts that appear throughout the book.

A COMPLICATED RELATIONSHIP

The political relationship between the United States and indigenous people, especially tribes, has always eluded easy definition. In 1831, Chief Justice John Marshall stated that the "condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence." He made this statement in the majority opinion he penned for the Supreme Court's decision in *Cherokee Nation v. State of Georgia.* In dicta, he went on to famously define the political status of indigenous tribes as that of "domestic dependent nations" awkwardly positioned simultaneously inside and outside the American political system.[4] For Marshall, this meant that indigenous tribes were recognized as sovereign governments that did not have the same legal standing as foreign nations, and in fact to him they were more like "wards" of the federal government. The decision in this case and the phrase "domestic dependent nations" remain foundational pillars of U.S. Indian law, but the meaning of this term and its attendant signification of the nature of the U.S.–indigenous relationship have not become much clearer over time. In other words, Marshall's claim that this relationship is "perhaps unlike that of any other two people in existence" remains as true in the early twenty-first century as it was in the early nineteenth century.

There are a number of ways in which scholars have sought to define the peculiar political relationship between the United States and indigenous people. David Wilkins has referred to the "pre- and extraconstitutional

connection tribes have with the federal government."[5] With these words he points to the historical and spatial criteria by which he measures how indigenous tribes have been and should be positioned politically and legally in relation to the United States. For Wilkins, tribes were sovereign entities before the American founding (preconstitutional), and since that time they have articulated a political identity that, while in some way embedded within the U.S. Constitution, primarily resides beyond American legal and political constitutional jurisdiction (extraconstitutional). Wilkins wants American institutions such as the Supreme Court to respect the extraconstitutionality of tribes by rescinding what he sees as the overwhelming reach of federal power over them.

By contrast, at least to a certain degree, political scientists and legal scholars Petra Shattuck and Jill Norgren argue that indigenous people are stuck within a contradictory "two-tiered structure of Federal Indian Law." This means that at "on one level, the higher level, the courts perfected the principle that the relationship of the federal government and Indians was exceptional and, therefore, exempt from ordinary constitutional standards," whereas on a second, lower level, the courts enforced "legal standards of regularity, calculability, and due process consistent with liberal principles of formal legal rationality."[6] These levels are not the literal higher and lower courts of the American judicial system, but rather denote the contrasting ways in which the courts variously view tribes as foreign (higher level) and domestic (lower level) in relation to the sphere of American constitutional governance and protections. For Shattuck and Norgren, this "two-tiered structure" positions indigenous people and tribes partially outside the boundaries of the American liberal constitutional system, to their detriment. To these scholars, this position beyond the boundaries is troubling because it makes indigenous people *too* extraconstitutional to gain the full protection of the courts, and as such they receive only "partial justice."

Indian law scholar Charles Wilkinson articulates yet another formulation, because he sees the early history of U.S.–indigenous relations, especially around treaty relations, as having created an American "promise of a measured separatism" for indigenous tribes: "This separatism is measured, rather than absolute, because it contemplates supervision and support by the United States." Ideally, to Wilkinson, this measured separatism would eventually develop to the point that tribes would be able to "withdraw

from the [American] judicial system and train their energies on fulfilling their historic task of creating workable islands of Indianness within the larger society."[7] His view is that of tribes existing somewhat within the American federal purview while aiming, as he thinks they should be aiming, to become like political "islands" that exist beyond the scope of the judicial system of the United States.

These scholars are among the most cited and significant in the multidisciplinary literature concerned with U.S.–indigenous political relations, as is the Marshall Court in *Cherokee Nation v. Georgia,* which stands as one of a number of fundamental cases in U.S.–indigenous political history. Phrases such as "domestic dependent nations," "extraconstitutionality," "two-tiered structure of Federal Indian Law," and "measured separatism" are different ways to grasp the "is and the ought" of U.S.–indigenous relations. In so doing, however, they may stoke more confusion than consistent understanding about this admittedly very complicated political relationship. On the other hand, there is also a discernible consistency among these phrases and the works in which they appear with regard to the deeper dilemma they seek to address. While the authors of each offer distinct formulations, these justifiably esteemed scholars and a prominent jurist basically agree on one major point: indigenous tribes and their citizens are neither fully foreign nor seamlessly assimilated into the American political system. The dilemma this creates for scholars of U.S.–indigenous politics is that it leads them to attempt to somehow resolve this awkward positioning, to move in one direction or the other—toward either a more internal or a more external location for indigenous people and tribes—so that the boundary will no longer vex indigenous political identity, expression, and objectives.

Some scholars view American boundaries with concern about how they mark out the exclusion of indigenous people from a liberal democratic space within which their claims could gain a just hearing, or at least a more just hearing than is presently the case. By contrast, others see these boundaries as representing the American effort to forcibly include indigenous people within a dominating and restrictive colonial sphere, so they advocate more of an external positioning. To be clear, these scholars would generally agree that the American political system is not singularly defined by either liberal democracy or colonialism, but rather that elements of both comprise the foundation and form of the American settler-state.

The challenge, however, is to analyze U.S.–indigenous relations while acknowledging that liberal democratic and colonial impulses are not always contradictory, but often quite compatible in the effort to impose, secure, and legitimate the boundaries of the American political system.

I agree that the boundaries imposed on indigenous people cause deep problems for and place constraints on indigenous politics in relation to the United States. But I question whether the answer to this dilemma is to move toward a firmer sense of indigenous location either inside or outside the boundaries, with the hope that this would somehow mute the role of the boundary as a marker of either liberal democratic exclusion or colonial domination. Instead, I look to supplement the aforementioned formulations with a postcolonial perspective that can help bring the boundaries of colonial rule out of the shadows by shedding light on and also refusing, as a start, the binaristic reading of the U.S.–indigenous relationship in which indigenous people are seen as either inside or outside the United States. In other words, the central dilemma for indigenous politics in the United States is not really about issues of exclusion or inclusion, because these terms serve to reify the very boundaries of colonial rule that need to be questioned. Rather, the focal point of analysis should be on how U.S.–indigenous politics, at its core, is a battle between an American effort to solidify inherently contingent boundaries and an indigenous effort to work on and across these boundaries, drawing on and exposing their contingency to gain the fullest possible expression of political identity, agency, and autonomy. By first illustrating the influence of binaries on how we see the political world, and in particular on how we come to understand the terms and dynamics of U.S.–indigenous relations, we can subsequently see with a clearer eye the American effort to impose and maintain the spatial and temporal boundaries of colonial rule in a modern liberal democratic settler-state context.

AMERICAN COLONIAL IMPOSITIONS

When I speak of colonial impositions, specifically American colonial impositions, I am referring to the efforts of the citizens, institutions, and governments of the United States to restrain indigenous people and tribes who are seeking to maintain and secure their cultural, economic, and political practices over time. In this effort, American political actors often

seek to justify the coherence of repressive spatial boundaries by invoking temporal boundaries, characterizing indigenous people as too far behind the times to be active agents within the territorial, legal, and/or political space of modern life. Such impositions presuppose a worldview built around a binaristic epistemology, a way of knowing the world through dualisms. In liberal democratic settler-state contexts such as that of the United States, this critical and often hidden force of colonial rule equates to that which Bill Ashcroft calls the "imperial binary."

By this Ashcroft means the dualistic distinctions that explicitly or implicitly serve to mark out hierarchies between groups; these distinctions include the temporal ones noted earlier as well as those concerning spatial and self-other relationships. Clear examples of these dualisms are progressive-backward (temporal), inside-outside (space), and independent-dependent (self-other). These distinctions are so easily invoked, often without much thought, that they have helped make "Eurocentric control of space" seem almost natural, because the impulse to see our world through such dualities draws on "the most profound principles of Western epistemology: its passion for boundaries, its cultural and imaginative habits of enclosure." If we look at the deeper function of binaries, we see that they feed the habit of "enclosure" in order to make sense of a contingent world. In this way, boundary impositions "are crucial because they explicitly defer to the 'will to truth' which dominates Western discourse." This is accomplished by dividing the world into bounded entities that can be easily known and measured against one another.[8] Of course, wherever human societies flourish, boundaries exist in some form. But trouble arises when the boundaries that gain highest political standing impose colonial rule(s) on how people map political space and how they locate themselves and others in political time. In this regard, no manifestation of the imperial binary is more familiar to indigenous people than the centuries-old dualism of civilization-savagery.

In his seminal text *Savagism and Civilization,* Roy Harvey Pearce sets out how this dualism shapes the Eurocentric colonialist view of the relationship between indigenous and nonindigenous people. For Americans, in particular, "the Indian was the remnant of a savage past away from which civilized men had to struggle and grow. To study him was to study the past. To civilize him was to triumph over the past. To kill him was to kill the past. . . . The history of American civilization would thus be conceived

of as three-dimensional, progressing from past to present, from east to west, from lower to higher."[9] First and foremost, America's claim to North American space involved conquering indigenous nations and appropriating much of their land. But that was not all, because the very identity of and meaning implied in the name *America* as the national identity of the United States was in no small part constituted through this nation's real and imagined relationship with indigenous people. Specifically, the formation and maintenance of the American nation and its claim to sovereignty over both political space and political time involves the construction and reiteration of a collective identity that can envision and enact the domination of another group in material, cultural, and political terms. Such a dominant group forms the boundaries of its own internal identification by, in great part, establishing what the group is *not* via the construction of a "constitutive outside" that represents the other half of couplings such as self-other, citizen-alien, sovereign subject(s)–dominated object(s), and civilized-savage.[10] In this effort, a defining national narrative imposes the temporal boundaries of colonial rule that frame settler-state sovereignty as legitimate and indigenous people's sovereignty as illegitimate, because the former is progressive and civil and the latter is archaic and savage. As Pearce states, this narrative is "three-dimensional," tracing out a seemingly inevitable historical, spatial, and moral movement toward American independence and indigenous disempowerment.

Inherent within the "civilized-savage" construction are the dualisms that comprise the imperial binary: "progressive and backward," "inside and outside," and "independent and dependent." Each one serves to impose colonial rule on what defines the people, the power, the space, and the time of legitimate sovereignty. Sovereign people are progressive, not backward. Their power is that of independent control over space rather than dependence on others. Their political space is marked by clear and firm boundaries defining inside and outside. Their place in political time involves a progressive movement toward ever more civil and rational forms of governance. The invocation of dualisms such as these has vexed the politics of indigenous people in North America for centuries, because they legitimate the colonial rule of the liberal democratic settler-state by imposing Western ways of knowing as the standards by which indigenous people's claims are understood and judged. In the legal realm, Robert Williams sees this dualism at work in the "jurispathic power of the long-

established tradition of stereotyping Indians as uncivilized, lawless savages throughout the nineteenth-century Supreme Court's Indian rights decisions."[11] These decisions, including *Cherokee Nation v. Georgia* and others later in the century that I discuss in chapter 3, further imposed and affirmed American colonial rule, what Williams calls the "racial dictatorship of the United States over Indian tribes."[12]

The binaristic logic undergirding the legal and political imposition of U.S. colonial boundaries also points to what is at stake for the United States in its relationship with indigenous people, something that goes hand in hand with dominating, appropriating, and exploiting indigenous social and political existence. At their core, indigenous political identity and political claims raise a fundamental challenge to the American nation's sense of belonging in North American space and time. This challenge was clearly articulated by Chief Luther Standing Bear of the Oglala Sioux nation in 1933: "The white man does not understand the Indian for the reason that he does not understand America. He is too far removed from its formative processes. The roots of the tree of his life have not yet grasped the rock and soil. . . . The man from Europe is still a foreigner and an alien. And he still hates the man who questioned his path across the continent."[13] Here Standing Bear points to the fundamental incoherence of the narrative of political life in and of the United States, an incoherence that forestalls the American nation from gaining a sense of true belonging in North America. In contrast, indigenous people, though tormented for centuries, can call forth a historical coherence that positions them as the inassimilable presence refusing to legitimate American political authority over North American space. Through the imagery of Americans as "foreigners" in this land, Standing Bear defies the notion that American boundaries mark the political community to which indigenous people must assimilate or from which they must exit.

To counteract this challenge, American colonial impositions continually seek to reaffirm a sense of national belonging for the settler-society so as to, among other things, forestall discussion of the political implications of the fact that indigenous people assert a deeper temporal and spatial sense of belonging. My study focuses more on the struggle over these temporal and spatial boundaries than on the deeper epistemological and ontological implications of the imperial binary inherent in this struggle. However, there are two important reasons to always keep these

deeper issues in mind. First, they unmask a fundamental uncertainty driving America's colonial ambivalence about its political relationship with indigenous people. This uncertainty is about belonging, authority, and thus sovereignty. Second, it underscores the inherent challenge posed by indigenous postcolonial resistance that refuses to define indigenous political identity, actions, and objectives in accord with such binaries, but instead seeks to articulate and fight for what I call a nonbinaristic mapping of political time and space. To elucidate both of these issues, I next take a look at colonial ambivalence, then postcolonial resistance.

AMERICAN COLONIAL AMBIVALENCE

American colonial ambivalence refers to the inconsistencies in the application of colonial rule, and it is a product of both institutional and cultural dynamics. The most recognizable consequences of colonial ambivalence are the persistent shifts in U.S. Indian policy, reflecting what Thomas Biolsi has referred to as the "tension between *uniqueness* and *uniformity*" in federal Indian law, whereby an "imaginary Indian policy pendulum" swings between eras that emphasize recognition of tribal governments (uniqueness) and eras that emphasize the assimilation of indigenous individuals (uniformity).[14] This ambivalence in policymaking is colonial because it stems from the privileged position of the United States, from which it can unilaterally shift the terms of its relationship to indigenous people. But colonial ambivalence is also a form of American uncertainty, which indigenous political actors can provoke and exploit to their own ends.

In terms of its institutional sources, colonial ambivalence stems in no small part from the fact that the American state is not a single unitary actor. Rather, it is a complex set of interests and institutions that are often at odds, or at the very least not on the same political page.[15] What this means is that because the United States does not always speak in one voice about its relationship to indigenous people, there are not only shifting policy eras but also a political dynamic in which different components of the American state, at both the federal and state levels, occasionally conflict over the direction of U.S. policy or the preferred outcome of a particular conflict. To expose this ambivalence does not preclude asserting that a particular U.S. policy, decision, or action exemplifies the aims of

the United States, because at any point in time one or more policies, decisions, or actions do end up dictating the direction in U.S. Indian policy.

As to its historical roots, the institutional dynamics of American colonial ambivalence did not just arise with the emergence of the modern American liberal democratic settler-state. In fact, this institutional ambivalence is woven into America's political and legal foundation in the U.S. Constitution. Article 1, section 8, clause 3—the Commerce Clause—mandates that Congress shall have the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." In taking a closer look at this clause, it is clear that "foreign Nations" refers to recognized sovereign states beyond American political boundaries, and "several States" refers to the subnational state governments that compose the United States. That leaves the matter of how to locate the political status of "Indian Tribes" as determined by the American founders: should they be outside U.S. political boundaries, like a "foreign Nation," or inside, like one of the "several States"? The answer is that neither location sufficiently reveals the political status of indigenous tribes and nations in the American political setting. In demarcating one dimension of the powers of the U.S. Congress, the Commerce Clause helps map out the political boundaries of the United States while perpetuating uncertainty about the location of indigenous tribes. These boundaries encircle the "several States," framing the domestic realm of U.S. sovereignty, while also positioning the American nation on the international map alongside fellow "foreign Nations." American political boundaries are thus clarified, except of course as they pertain to "Indian Tribes." Therefore, it is no accident that centuries later the question "Are you part of the United States, or are you your own sovereign nation?" can still be posed to indigenous people, because it is a loaded question, rife with the presumptive discourse of American colonial ambivalence, a discourse that when posed in this way serves to reinforce the imposition of colonial rule. Like the constitutional clause from which it derives, this either-or binaristic provocation is a trap for indigenous political actors because it positions the United States as the unchallengeable arbiter of indigenous claims. To be clear, the specific forms and expressions of colonial ambivalence were not locked in at the founding of America, but have developed over the span of U.S. political history. What does persist, however, is the larger U.S. colonialist impulse

to "hold back" indigenous people through policies that can appear at some times to be progressive and at other times regressive.

Looking at the issue differently, noted American politics scholar Rogers Smith might well see what I call colonial ambivalence more as a consequence of the historical expressions of the multiple American traditions of liberalism, republicanism, and ascriptivism: "The overall pattern will be one of fluctuation between more consensual and egalitarian and more ascriptive and inegalitarian arrangements, with the long term trends being products of contingent politics more than inexorable cultural necessities."[16] From this perspective, for example, the conferral of U.S. citizenship on indigenous people during the Progressive era is a struggle between the effort of American liberals to "improve" indigenous status and that of American acriptivists to "reaffirm" white racial dominance, and the resulting "second-class citizen(ship)" is a consequence of this contingent back-and-forth movement between these traditions rather than a product of American necessity.[17] However, I would suggest that if instead of multiple traditions one sees a *colonialist tradition* prevailing in U.S.–indigenous relations, this result is entirely consistent with the history of U.S. policy. Through the lens of an American colonialist tradition, the reconceptualization of American boundaries—of who is in and who is out—persistently serves to both contain and fracture indigenous sovereignty and political identity, whether through liberal, republican, or ascriptively inspired measures. The precise terms of U.S. Indian policy may well be contingent, but the overall colonialist drive persists, even when expressed ambivalently, and to this day it continues to place indigenous people and their sovereignty in a "second-class" status, as this study will show.

My approach to dealing with ambivalent political developments is thus less like Smith's and more akin to Amy Kaplan's argument about the logic of American empire-building, in which inherent "anxieties and ambivalences" serve in the "creation of ambiguous spaces that were not quite foreign nor domestic" to the United States.[18] Kaplan's "logic of empire" and my approach focus on a number of similar concerns—the construction of domestic and foreign spaces, the role of boundaries, and so on—but from different vantage points, and they arrive at slightly different conclusions. In looking at how "the meaning and reach of the nation itself is both questioned and redefined through the outward reach of empire," Kaplan sees the creation of an ambiguous space on the boundaries as a result of

the America nation's effort to deal with the tensions and symmetries between its imperial ambitions and its republican self-image.[19] According to Kaplan, America's sense of belonging and status in the world as it imagines it very much drove the nation's "anxieties and ambivalences" related to empire-building, most notably at the turn of the twentieth century. While I agree with her assessment as it concerns these imperial ventures, I focus on both American and indigenous conceptions of political identity and sovereignty—and the active relationship between these peoples and governments—and in so doing I locate an ambivalent space on the boundaries created and re-created through the contest of political meanings and practices articulated by all parties to the modern U.S.–indigenous relationship. Rather than the concern being its status in the world generally, I see America's sense of belonging in its own immediate political space, its domestic realm, as driving much of American colonial ambivalence in relation to indigenous people, especially in the modern era, from the Civil War onward. The ambiguous boundary imposed by the United States places a colonial bind on indigenous political choices, trapping indigenous people and tribes in a place neither here nor there. For indigenous politics, however, this same boundary has become the site of the expression of a third space of sovereignty through postcolonial resistance. Therefore, colonial ambivalence is both a product of colonial rule and an opening for postcolonial resistance. There are also complicated cultural dynamics at work in American colonial ambivalence.

Culturally, colonial ambivalence refers to the American nation's "love-hate" relationship with indigenous people. Philip J. Deloria best describes this dynamic in *Playing Indian,* where he traces the "simultaneous desire and repulsion" that Americans have for indigenous people mythologized as both authentically independent and dangerously savage.[20] Deloria argues that the founding and revitalization of American national identity and political culture occurred through indigenous culture in two distinct, historically situated forms. During the founding era and up through the nineteenth century, indigenous identity was a symbol of both rebellion and rooted independence, which helped shape the early form of American political identity. The figure of the Indian "situated within American societal boundaries" represented the rebellious and independent qualities appropriated by Americans. This is the image of the "noble Indian." This imagery was framed in a binary relationship with the "savage Indian":

the "aggressive, exterior Indian Others who justified the acquisition of Indian land." Then, with the dawn of industrialization and urbanization in the late nineteenth and early twentieth centuries in the United States, indigenous identity provided Americans a means of maintaining authenticity as a people of this land. As socioeconomic transformations brought the pressures of modernity to Americans, they drew sustenance from the "noble" figure of the Indian now outside the boundaries, representing "authenticity and natural purity." The other half of this dualism is the "savage" figure inside the boundaries: "Coded as drinking, tramping, and laziness, Americanized Indians were powerful examples of the corrosive evil of modern society."[21] To be clear, this split image is an insight not into indigenous political life, but rather into the political life of America. As a 1997 *New York Times* article put it: "[Indigenous people] have been symbols and backdrops on which America projected its values and prejudices."[22] However, in both expressing power against and drawing power from indigenous people, American political culture reveals its colonial ambivalence about the terms and meaning of the U.S.–indigenous relationship. Like the institutional dynamics of colonial ambivalence, the cultural dynamics are often articulated for the sake of securing colonial rule, whether this involves proclamations of love for indigenous "independence" and "authenticity" or hatred for the "incivility" and "archaic" forms of indigenous political life.

The institutional and cultural dynamics of American colonial ambivalence help to explain the vacillating movement in U.S. Indian policy, from assimilation to separation and back again. In the figure, I offer a general overview of the main political eras in U.S. Indian policy history, from the ratification of the U.S. Constitution up to our time. This is not meant to be a detailed and comprehensive rendering of this policy history, but rather one that offers the reader a basic sense of the shape and development of U.S. Indian policy over time.[23] Beneath the heading for each era, I note whether this policy era aimed to assimilate indigenous individuals or recognize indigenous political communities. This basic overview shows how the U.S. federal government has moved back and forth between envisioning indigenous people as fully part of the United States and seeing indigenous political communities as in some way external to the American political community. From the time of the U.S. founding to not long after the Civil War, treaty-making between the U.S. federal government

and indigenous governments was the norm in U.S.–indigenous relations. Treaty-making was a consistently legitimate and active process for establishing some form of a government-to-government relationship between tribes and the federal government. From 1789 to 1871, the U.S. Senate ratified over 370 of the 800 treaties negotiated by the executive branch of the government.[24] The purpose of many of these treaties was to facilitate the removal of indigenous tribes from their territories, especially tribes that resided east of the Mississippi River, which generally coincided with the western boundary of the United States at the time. Therefore, these treaties inherently recognized the sovereignty of indigenous tribes—at least to the extent that they could agree to a treaty—while also serving as the vehicle for placing many of these tribes beyond the extant political boundaries of the United States.

One such "removal" treaty was the 1835 Treaty of New Echota between the United States and the Cherokee Nation, the circumstances and consequences of which serve as the background to the internal Cherokee politics that form a key component of the next chapter and the starting point of this book's political history. This treaty promised that once the Cherokee surrendered their lands, removed westward, and established themselves in the Indian Territory, they would be considered functionally beyond American boundaries, able to carry on as a sovereign people substantially free from American interference and trespass on their lives.[25] Thus, despite Justice Marshall's 1831 reference to the Cherokee nation as a "domestic dependent nation," the actual trajectory of U.S. Indian policy during that era was focused less on domesticating indigenous people within U.S. political boundaries and more on appropriating their lands and extracting them beyond these boundaries. In other words, removal was the order of the day in the first century of the United States, when the American nation was being built through what Andy Doolen calls the "historical trinity of U.S. imperialism—war, slavery, and territorial expansion."[26] Indigenous people suffered the consequences of two of these, imperial war and territorial expansion, and some tribes, such as the Cherokee, practiced and profited from the third element, slavery.

The Treaty of New Echota was actually agreed to by the Cherokee nation's minority faction, commonly referred to as the "mixed-blood" faction. This designation has nothing to do with actual blood quantum ratios, but rather served to distinguish the minority from the dominant

1789–1871	**Treaty and Removal Era**
	U.S. policy:
	• Recognizing tribes and nations
	• Policy of removal through treaties
1887–1934	**Allotment and Citizenship Era**
	U.S. policy:
	• Breaking up communal landholdings
	• Assimilating indigenous people
1934–Present	**Indian New Deal Era**
	U.S. policy:
	• Recognizing tribes
1945–1975	**Termination and Relocation Era**
	U.S. policy:
	• Ending tribal recognition
	• Assimilating indigenous people
1968–Present	**Civil Rights Era**
	U.S. policy:
	• Assimilating indigenous people
1975–Present	**Self-Determination Era**
	U.S. policy:
	• Recognizing tribal sovereignty

Eras of U.S. Indian policy

Cherokee majority, who often went by the name "full bloods" and were led by National Chief John Ross.[27] Ross and his majority faction refused to remove in accord with the treaty signed by the minority faction. By 1838–39, the "full-blood" Cherokee were eventually forced to remove, lead-

ing to the tragic consequences famously captured in the image of the "Trail of Tears," which refers to the march that led to the death of at least four thousand of the sixteen thousand Cherokee "marchers." This intense conflict between the "full-blood" and "mixed-blood" Cherokee persisted from the 1820s all the way through and beyond the Civil War era. Also, as mentioned, Cherokee citizens, like those from the other four "civilized" tribes (the Chickasaw, Seminole, Choctaw, and Creek), owned African slaves up to the Civil War. On the whole, it was the minority "mixed bloods" that composed the majority of slave owners in the nation, which was just one of the reasons that they sided with the Confederacy rather than the Union during the U.S. Civil War. Through the Civil War, John Ross remained the majority faction's leader, while the minority faction was led by Stand Watie, a political descendent of the men who signed the 1835 treaty. After the war, these two factions competed with each other to be the first to come to treaty terms with the U.S. government. They engaged in this political struggle around the same time that American federal officials were developing policies and practices premised on a belief in the inevitable domestication of indigenous people within the expanding boundaries of the United States. Thus, the struggles of the Cherokee nation over post–Civil War treaty terms occurred during the waning years of the treaty era in U.S.–indigenous relations.

I argue that the formal end of the treaty era in 1871 has come to be seen as marking the start of the modern period in U.S.–indigenous relations. During the late nineteenth century, American colonial rule moved forward apace, fostered by the federal government's dual, seemingly contradictory, roles in relation to indigenous people. The first of these roles is that of conqueror, which in the parlance of liberal democratic governance has taken on the legal language of federal "plenary power" over indigenous people. This power, in fact, applies to many groups ambiguously located vis-à-vis the American polity and is an underappreciated but very persistent feature of American state power. In his legal history of the concept, T. Alexander Aleinikoff observes that "plenary power doctrines endow Congress with unfettered authority to deal with 'others' by crafting policies of assimilation, partial inclusion, or exclusion as deemed necessary."[28] As I discuss in chapter 3, in their late nineteenth- and early twentieth-century decisions, the Supreme Court constructed legal sanctions for congressional and executive plenary power over indigenous people and tribes specifically.

The second U.S. role emanates from what is known as the "trust doctrine," which is not constitutionally based but is the politicolegal understanding that the federal government has a "unique legal and moral duty . . . to assist Indian tribes in the protection of their land, resources, and cultural heritage."[29] That the U.S. federal government claims both "ultimate" power over and a trust obligation toward "Indian tribes"—a role as both conqueror and guardian of indigenous people—reveals an institutional expression of colonial ambivalence through which the American liberal democratic state imposes the boundaries of its colonial rule over indigenous people. This is an expression of colonial rule because plenary power and trusteeship can serve, singularly or in tandem, to justify almost any U.S. Indian policy.

In the half century after 1871, the policy eras shifted according to whether assimilation or separation was ascendant as the policy ideal. But as my outline showed, by the middle of the twentieth century the policy eras began to overlap, without a clean break from one era to the next. This overlap was a consequence, in great part, of what Paul Pierson calls the "layering" of institutional development, where "reformers lacking the capacities to overturn existing institutional arrangements may try to nurture new ones, in the hope that over time they will be able to assume more and more prominence."[30] This layering is particularly relevant to U.S. Indian policy development, because it is a reflection of the institutional and cultural forces of colonial ambivalence.

Thus far, in drawing out the institutional and cultural dynamics of American colonial ambivalence I have sought to show how this important feature of U.S.–indigenous relations quite often serves to impose colonial rule on indigenous people. However, this accounts only for how the United States benefits from its ambivalence toward indigenous people. But the notion of ambivalence is also key for discussing the struggle over colonial rule from the perspective of those experiencing and resisting colonial imposition. As theorist Bill Ashcroft explains, "ambivalence is not merely the sign of the failure of colonial discourse to make the colonial subject conform, it is the sign of the agency of the colonized."[31] A postcolonial perspective reads this political agency as that which seeks to express a supplementary, inassimilable form of resistance to colonial imposition rather than as a form of resistance that replicates the "Are you inside or are you

outside" logic of the imperial binary. This is what I call indigenous postcolonial resistance.

INDIGENOUS POSTCOLONIAL RESISTANCE

The demographic decline and resurgence of the indigenous population in the American context is evidence of the interrelated historical expressions of colonial imposition, colonial ambivalence, and postcolonial resistance. At the time of European contact, the population of indigenous people within the area that would become the United States is estimated to have been upward of five million people. The population then rapidly declined due to colonial violence, wars, deprivation, and disease, reaching its nadir of about 248,000 in 1890. Over the twentieth century these numbers greatly increased, especially after the 1960s, because more people started to self-identify as "Indians." According to the 2000 census, almost 2.5 million people claim some form of an indigenous identity.[32] These figures mark both genocidal decline at the hands of colonial imposition and a stunning demographic resurgence due to both indigenous resistance (which, among other things, helped bring an active indigenous identity into wider public view) and colonial ambivalence (with more Americans publicly claiming an indigenous ancestry).

The confluence of imposition, ambivalence, and resistance in this deeply historical, cultural, and political relationship leads Philip Deloria to suggest that "while Indian people have lived out a collection of historical nightmares in the material world, they have also haunted a long night of American dreams."[33] I take this as meaning that the persistent material, symbolic, and political presence of indigenous people inherently points to the practices of colonial rule embedded in the form and function of American liberal democracy. This perpetual "haunting" is what I refer to as postcolonial resistance, because it challenges colonial impositions by drawing out and exposing not just the contradictions but, even more important, the compatibilities in the relationship between colonial rule and liberal democratic governance in the United States. In other words, postcolonial resistance is a decidedly anticolonial politics focused on expressing collective autonomy in the face of state domination rather than a liberal politics concerned with gaining rights and equality within the dominant settler-state.

In settler-states such as the United States, indigenous political expression inherently challenges the boundaries that demarcate American claims to belonging, authority, and historical preeminence. As one postcolonial critic put it, "The geographic boundaries of the state, and the legal and political structures that are the legacy of colonialism, exist in a continual state of contestation by indigenous ethnic and fourth-world groups."[34] I argue that this contestation is not only about state-sanctioned geographic boundaries, which, although very important and oppressive, are also the most apparent and thus slightly less insidious form of boundaries imposed on indigenous people. Rather, the active effort to impose boundaries around economic, legal, and political institutions; jurisdictional authority over territory; and narratives of belonging in time more odiously serve the colonialist aims of delegitimating, constraining, and/or assimilating indigenous political expression. In resistance, indigenous postcolonial politics seeks to resignify settler-state boundaries as the domain of subaltern, anticolonial activity rather than as the sites of connection and separation between seamlessly bounded states, peoples, structures, and histories.

A postcolonial politics on the boundaries generates its power by moving back and forth across the institutional and discursive boundaries of settler-states. This is done by challenging colonial impositions and provoking colonial ambivalence to open up discursive and institutional space in the settler-society's political system through which claims for indigenous liberation can be expressed and gain a clearer hearing. Political theorist James Tully, who has written extensively on this subject, recognizes the important role of politics on the boundaries, without naming it as such, when he refers to how "indigenous peoples resist colonization in two distinct ways": "First, they struggle against the structure of domination as a whole and for the sake of their freedom as peoples. Second, they struggle within the structure of domination vis-à-vis techniques of government by exercising their freedom of thought and action with the aim of modifying the system in the short term and transforming it from within in the long term."[35] The aim of this back-and-forth politics on the boundaries, working against the system as a whole and also working within the system, is the cultivation of a viable nonbinaristic mapping of political space and time. By this I mean that this mapping overlaps settler-state boundaries, of both the spatial and temporal sort, to resist and reconsider how a people can know and articulate belonging, authority, and their overall relation-

ship to the space and time of North American political life. In this way, indigenous postcolonial resistance re-visions American boundaries as active locations for the expression of forms of sovereignty and political identity that do not conform to the seemingly unambiguous binary choices set out by the liberal democratic settler-state.

The nonbinaristic political mapping articulated through this refusal of the imperial binary is an expression of what I am calling the third space of sovereignty. The third space is a location inassimilable to the liberal democratic settler-state, and as such it problematizes the boundaries of colonial rule but does not seek to capture or erase these boundaries. Rather, the third space of sovereignty represents what Bhabha would call a "supplementary strategy" that "does not turn contradiction into dialectical process. It interrogates its object by initially withholding its objective."[36] Because it is not a product of a dialectical engagement or effort to synthesize competing visions of sovereignty, the third space is not the same notion as that of the "third way," which most recently gained notoriety as a direct, and in many senses dialectical, policy vision articulated successfully by Bill Clinton in the United States and by Tony Blair in Great Britain. Instead, a third space vision is a supplementary strategy, because it refuses to conform to the binaries and boundaries that frame dualistic choices for indigenous politics, such as assimilation-secession, inside-outside, modernity-traditionalism, and so on, and in so doing refuses to be divided by settler-state boundaries. It does so by means of a politics on the boundaries that expresses and constitutes a more profound sense of indigenous political life than colonial rule and settler-state boundaries would permit.

The indigenous political effort to construct and maintain the coherence of community is premised on straddling and thus re-marking the boundaries that purport to secure the coherence of American community. This does not mean that indigenous political actors can deny the real power inequity between their communities and the American nation. Rather, the lesson here is that in generating political claims indigenous people do not simply adhere to the options set out by the American political framework. By refusing the imperial binary through a politics on the boundaries, indigenous people give their political identity, agency, and autonomy fuller expression, one that is less constrained by colonial impositions. It is in this way that indigenous politics serves to "haunt" America's dream of having an unambivalently legitimate and even righteous claim to belonging and

authority in the political space and political time of North America and, for that matter, in the world as a whole. In different ways, chapters 4–6 of this book trace this haunting.

Up to this point, I have offered examples of this imperative of resistance in the words of Standing Bear in the 1930s and Marge Anderson in the 1990s. It was similarly present in indigenous politics of the 1960s, when Vine Deloria Jr. witnessed a growing interrogation and refusal of the colonial impositions and presumptions of the American settler-state. To him, this was particularly true with regard to the issue of sovereignty: "The United States never had original sovereignty over the Indian people, merely the right to extinguish land. Where, argue Indian people when questioned, did sovereignty come from?"[37] Starting from this criticism of the premises on which the American liberal democratic settler-state claimed its sovereignty, Deloria saw indigenous tribes making claims that neither wholly rejected American political boundaries nor were simply assimilated within them. In framing how indigenous people express their claims, Deloria articulated his version of a postcolonial supplementary strategy:

> In effect the tribes are pressing for complete independence from federal domination while retaining the maximum federal protection of the land base and services. With that goal, tribes shift back and forth to take advantage of every opportunity. The strategy has been to hit at every weak point that would yield more power to the tribe in the basic search for independence, and to surrender certain powers where it was possible to give them up without losing any momentum in the basic movement.[38]

Here we see Deloria, one of the most prolific and well-regarded indigenous political thinkers of the last three decades, granting that an inherent part of indigenous politics is this give and take across the boundaries that define the political options of "complete independence" from and "federal protection" within American political boundaries. In other words, indigenous politics cannot be assimilated within the boundaries of the American political system, and thus neither can the meaning and practice of indigenous sovereignty, which is in a continual process of construction in defiance of colonial impositions.

To the colonizer's eyes, such supplementary third space articulations

read as a refusal by indigenous political actors to give a straight answer to the question "What do you want?" However, from the perspective of indigenous people, the third space is an effort to provide a straightforward claim about what it means for a people to seek and express control of their lives, free from colonial domination. Robert Yazzie, chief justice of the Navajo nation, addresses this issue: "There is a lot of talk about sovereignty, and the talk has become very stale. It is mostly about whether the United States or Canada will 'allow' Indigenous peoples to control their own lands, lives, and destinies. 'Sovereignty' is nothing more than the ability of a group of people to make their own decisions and control their own lives."[39] Looking ahead to the prevalence of the notion of sovereignty in this study, I extend Yazzie's definition of sovereignty to define it as "the ability of a group of people to make their own decisions and control their own lives in relation to the space where they reside and/or that they envision as their own." According to this definition, sovereignty expresses the relationship between people, power, and space over time. However, the "very stale talk about sovereignty" to which Yazzie refers—talk that is often found in mainstream political science as reflective of the biases of the dominant political culture—presumes that when one refers to sovereignty one really means *state* sovereignty. The concept of state sovereignty exists in a mutually constitutive relationship with the international state system. In tandem, this conceptual system reflects and imposes a hegemonic way of seeing and knowing the political world, and this is a world where marginalized groups such as indigenous people are presumptively unwelcome, where they seem mute politically when it comes to claims about people, power, and space.

As Rob Walker notes, within a world dominated by the logic of the international state system there is a "presumption that sovereignty, state, power, legitimacy and supreme authority can be treated more or less as synonyms."[40] This apparent fixity in the prevailing meaning of sovereignty, then, inhibits our capacity to "conceive other possibilities, other forms of political identity and community, other histories, other futures,"[41] such as those of indigenous people and their claims for sovereignty.[42] Because of this hegemonic logic, what J. Marshall Beier calls the "hegemonologue,"[43] indigenous tribes and nations cannot neatly map their political claims and objectives within the political topography of the international state system. Therefore, I seek to demonstrate that a major way in which

indigenous political claims refuse this imposed political topography is through the expression of a third space of sovereignty. As I explore this form of postcolonial politics, and the back-and-forth between American and indigenous claims generally, one persistent thread will be the construction and reconstruction of the meaning and function of sovereignty in political relations.

While the precise meaning and even the existence of indigenous sovereignty seems to be a consistent subject of colonialist skepticism, my study implicitly lays bare the uncertainty of all claims to sovereignty, be they state or nonstate. As Roxanne Lynne Doty notes, the scope and depth of the power of sovereignty as conceived and as practiced is never so complete as many—most notably those supportive of institutional, statist power—might wish or imagine, because "the social construction of sovereignty is always in process, and is a never completed project whose successful production never can be counted on totally."[44] In other words, sovereignty is a social construct meant to convey certainty regarding the inevitably contingent relationship between the aforementioned variables of people, power, and space over time. This means that, at base, the politics of sovereignty is the means by which a perpetual effort is made to construct a resolution to this paradoxical relationship between certainty and contingency. For indigenous tribes and nations, this insight means that while no form of sovereignty is a priori inapplicable or inappropriate, neither should any particular construct become the sole, primary, or most esteemed form of sovereignty defining political visions and objectives. The productive work of sovereignty politics involves the continual construction of the people, the power, the space, and the time of collective autonomy, and this deeper theoretical drive pertains as much to dominant-colonial as it does to nondominant-colonized collectivities. Thus, attentiveness to Doty's insight that "the social construction of sovereignty is always in process" should encourage political actors and observers alike to maintain a healthy skepticism about forms of sovereignty that appear naturalized or concretized, as just the way things are.

CONCLUSION

At bottom, this study's approach stipulates that one cannot properly evaluate U.S.–indigenous politics without calling into question the idea that

boundaries create or perpetuate monological identities that deny the multiplicity and contingency of political identity, agency, and autonomy. In assessing both sides of the U.S.–indigenous political relationship—a relationship defined by the confluence of colonial imposition, colonial ambivalence, and postcolonial resistance—this book refuses the notion that boundaries merely contain or prohibit. On this basis I introduce the notion of the third space to acknowledge the colonial imposition of boundaries on indigenous political subjects while also showing how this location on the boundaries is also the site of practices that challenge colonial rule. I do not posit a third space as an unqualified or unproblematic ideal, but rather set it out as an option for defining and seeing expressions of citizenship and sovereignty that are not confined by dominant political boundaries, that refuse the imposition of such boundaries. In this way, rather than representing a dividing line imposed on indigenous nations and tribes, the boundaries of dominant settler-states can be seen as the vortex around which an active political struggle persists. Given this focus on boundaries, a good place to begin this book's political history is with the American Civil War, a bloody and definitive conflict that fractured and threatened the boundaries of at least two nations, that of America and that of the Cherokee.

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CHAPTER TWO

RESISTING AMERICAN DOMESTICATION: THE U.S. CIVIL WAR AND THE CHEROKEE STRUGGLE TO BE "STILL, A NATION"

In an article on Native American sovereignty, Steven McSloy argues that the time from the passage of U.S. federal Indian crime legislation in the 1880s to the American state's repression of indigenous political activism in the 1960s and 1970s indicated that "in less than a century, Native peoples were transformed in the eyes of the United States from foreign soldiers to domestic traitors."[1] While McSloy's time frame is valid, if a little late in starting, one does not need almost a century of time to trace this shift in the U.S.–indigenous political relationship. During the Civil War and the post–Civil War period, the issue of whether indigenous political communities should be seen as foreign or domestic to the United States was a pressing question, and the American government's actions, argument, and policies offered a clear answer to this question. During this period the American settler-state sought to domesticate indigenous people.

If, as political historian Richard Bensel argues, the Civil War "represents the true foundational moment in American political development," the Civil War and post–Civil War period should also be seen as a refoundational moment in U.S.–indigenous relations, and thus as a pivotal time for indigenous people's politics.[2] During this time, American political actors sought to articulate westward the energies of the reunified nation and state with an eye to domesticating indigenous political identity and territory as U.S. boundaries expanded. In response, indigenous nations such as the Cherokee sought to secure their identity and autonomy as an independent people via the post–Civil War treaty-making process with the federal government. This effort to resist domestication to the American polity compelled Cherokee leaders to battle among themselves over how to secure their people's status and sovereignty in postwar treaty negotiations. The political actions and experiences of the Cherokee nation

during this period do not represent the experiences of all indigenous tribes and nations, but they do illustrate and portend the changing terms of U.S.–indigenous relations during the late nineteenth century. While my assessment of the direction and effect of U.S. policies draws from material concerned with indigenous people generally, the fate of the Indian Territory and the Cherokee nation are the focal points, because this region and nation exemplified the complicated boundary politics confronting indigenous people at this time. In the American proposals, debates, and policies over the future of the Indian Territory and in the negotiations and final terms of the 1866 U.S.–Cherokee treaty, one can find evidence of both the emerging shift in U.S. Indian policy and the effort of indigenous political leaders to carve out their nations' autonomy by constructing an embryonic third space of sovereignty. Overall, this period witnessed the repositioning of indigenous people into more of a domestic concern than a foreign one, more inside than outside American political boundaries.

In this chapter I trace the immediate precursors to this important shift in U.S.–indigenous relations and analyze its impact on indigenous people's politics through two connected political developments: (1) the change in American state-building policies and U.S. Indian policies during and after the Civil War, which marked the dawning of the modern American effort to impose colonial rule on indigenous people, and (2) the efforts of Cherokee political leaders to resist this colonial imposition by seeking to secure their nation's sovereignty in the emergent third space across and against the boundaries of the American polity. I begin this analysis by setting out the context and circumstances of the political dilemma facing the Cherokee nation and the rest of the Five Civilized Tribes during the Civil War.

ON THE BOUNDARIES OF A DIVIDED AMERICA

The Indian Territory

The geographic location of the Indian Territory roughly equates to that of present-day Oklahoma. The U.S. federal government first set out the territory as a western region to which tribes removed from the eastern United States could be relocated. It eventually took its most distinctive form during the 1830s removal era when the Five Civilized Tribes were compelled to agree to new treaties, one of which was the 1835 Treaty of New Echota, in

which they surrendered their southeastern land in exchange for land in the Indian Territory. It is important to understand that the Indian Territory was not a formal U.S. territory. It was often referred to as *the* Indian Territory, a signal that it was not legally incorporated into or formally governed by the United States. Nevertheless, the Indian Territory was, in fact, created by the American government to facilitate Indian removal, and its security was guaranteed through treaty agreements. For example, one of the terms of the Treaty of New Echota was that "the United States agrees to protect the Cherokee nation from domestic strife and foreign enemies."[3] Like the indigenous political communities who occupied it, the political status and boundaries of the Indian Territory were "frequently ambiguous and periodically altered." The Indian Territory had no "territorial government" or "federally appointed territorial governor. The only governments were those of the resident tribes."[4] The predominant indigenous governments of the Indian Territory were those of the Cherokee, Choctaw, Chickasaw, Creek, and Seminole nations. Each nation had its discrete, bounded, and sizable district. The boundaries were governed by the nations themselves, not the U.S. government, and thus they had a unique, uncertain relationship to the American polity. Geographically, the Indian Territory was an indigenous occupied and governed region directly south of the Kansas Territory, west of Missouri and Arkansas, and north and east of Texas.

Therefore, on the eve of the Civil War, the Indian Territory was a rather remarkable, contingent boundary between the warring states themselves and between these states as a whole and a portion of the western frontier. No indigenous group better represented this contingent boundary position than did the Cherokee nation, with its location in the "northeastern corner of present-day Oklahoma." In fact, Cherokee territory also included the 800,000-acre Cherokee Neutral Lands located in southeastern Kansas and Cherokee Strip of more than thirteen million acres, which was a long, thin strip of land situated like an informal boundary between Kansas and the Indian Territory. The Cherokee territory also included the Cherokee Outlet directly west of its northeastern domain—west of 96° longitude—"consisting of about 7 million acres." Cherokee territory amounted to "roughly 10,000 square miles, but the Cherokees were allowed to settle only on the area in the northeast, which constituted roughly 4,000 square miles."[5] Before and during the U.S. Civil War, then, Cherokee territory

was a significant domain that literally spanned the geographic boundaries of U.S. territory. This material reality only further underscored the Cherokee nation's need to carefully negotiate its political status as it teetered on the boundaries of a divided American polity. Given these circumstances, it is not hard to see how the Indian Territory, and especially that of the Cherokee nation, could be strategically relevant to and implicated within the American Civil War.

Indeed, the Indian Territory was abruptly and immediately drawn into the Civil War theater. On February 18, 1861, Jefferson Davis was inaugurated as provisional president of the Confederate States of America (C.S.A.). Two weeks later, on the same day Abraham Lincoln was inaugurated, the "Confederate Congress adopted a resolution granting Jefferson Davis authority to negotiate with the tribes of Indian Territory."[6] Then, in early May 1861, Davis appointed a "special commissioner" for the purpose of negotiating with tribes west of the Arkansas boundary.[7] On May 17, Confederate forces annexed the Indian Territory as a C.S.A. military district. The federal government, in response, withdrew its forces and abandoned all federal military posts in the Indian Territory by May 18.[8] The suddenness and seeming ease of the Southern takeover of the Indian Territory was a product of the fact that the territory was as ambivalently bound to the United States as were indigenous tribes and indigenous people themselves.

Given that article VI of the U.S. Constitution states that "all Treaties made . . . under the authority of the United States, shall be the supreme law of the land," one might presume that the federal government's obligations to the Cherokee nation in the Treaty of New Echota would be an unambiguous, constitutionally guaranteed commitment. However, it is fair to say that when Abraham Lincoln warned in his first inaugural address of the consequences of the "destruction of our national fabric," he did not weave indigenous people into this vision. Rather, Lincoln would have deemed indigenous nations like the Cherokee more as "aliens [who] make treaties" than "friends [who] make laws."[9] Nevertheless, the Indian Territory could not be solely or simply defined as a foreign or alien state. In fact, whether and to what degree indigenous tribes were to be deemed "alien" (foreign interest) or "friend" (domestic concern) was an important question addressed by American officials during and after the Civil War.

The Cherokee Nation during the U.S. Civil War

On the same day the Confederacy annexed the Indian Territory, Cherokee National Chief John Ross issued a proclamation reminding the Cherokee of their "obligations arising under their Treaties with the United States and urging them to the faithful observance of said Treaties." He urged his fellow Cherokee citizens to "cultivate harmony amongst themselves and observe in good faith strict neutrality between the States threatening civil war."[10] To Ross, it was important that the Cherokee "avoid the performance of any act or the adoption of any policy calculated to destroy, or endanger their Territorial or civil rights. By honest adherence to this course they can give no just cause for aggression or invasion, nor any pretext for making their Country the scene of military operations, and will be in a situation to claim and retain all their rights in the final adjustment that will take place between the Several States."[11] Even though Union abandonment of the Indian Territory violated the U.S. government's promises in the Treaty of New Echota, Ross still viewed the Cherokee nation's political choices as defined by its relationship to the American polity as a whole, not in sections. For Ross, this was a moment to be cautious and conscious of the political history experienced by indigenous tribes in their relationship with the dominant American nation.

Nevertheless, with the Indian Territory drawn into the Civil War struggle, Confederate representatives and those Cherokee under Stand Watie who were sympathetic to the Confederate cause increasingly pressured Ross to abandon neutrality. Eventually he did relent, although the Cherokee nation was the last of the five tribes to agree to a treaty with the Confederacy.[12] On October 7, 1861, Ross signed "A Treaty of Friendship and Alliance" with the Confederacy.[13] However, Ross's initial instinct to stay neutral was redeemed less than a year later, when the Confederacy's treaty promises proved as weak as were those made by the U.S. federal government. In June 1862, the Union army aggressively and with little resistance from the Confederate army moved in to retake the Indian Territory. This turn of events decisively exposed the Cherokee nation's sectional fault lines between John Ross's "Northern (full-blood) Cherokee" and Stand Watie's "Southern (mixed-blood) Cherokee."

After the federal forces retook the Indian Territory, John Ross abandoned the territory for the east coast of the United States, while Stand

Watie stayed to fight for the Confederacy. Ross's departure and Watie's persistence made manifest the division within the Cherokee nation. This division was soon mapped onto the lines of the American contest between North and South. Along with their chief, the armed and civilian supporters of John Ross abandoned the Confederacy. Some 2,200 Ross-allied Cherokee troops made themselves available to the Union army as part of the more than 10,000 Cherokee citizens who switched their allegiance to the Union. By contrast, there were about 6,500 to 7,000 Confederate Cherokee supporters, 1,500 of whom were Stand Watie's troops. An 1864 report by the U.S. Department of the Interior found that, by 1863, "the balance of the [Cherokee] nation [were] loyal" to the Union cause.[14] Upon relocating east, John Ross immediately set about explaining the Cherokee nation's recent plight to federal officials and arguing the case for the maintenance of his nation's treaty rights and sovereignty.

In mid-September 1862, Ross made his first major plea to the U.S. administration directly to President Lincoln.[15] In light of both the long-term and the more recent history of the treaty-based relationship between his nation and the U.S. nation, Ross's main claim was that "what the Cherokee People now desire is ample military protection, for life and property; and a recognition by the Government of the obligations of existing treaties."[16] Ross sought to convince the U.S. government to return to the basic principles of the 1835 U.S.–Cherokee relationship. In stark contrast to Ross, Stand Watie remained steadfast in the Civil War fight and in so doing rose up through the ranks of the Confederate military, eventually becoming a brigadier general. It is no exaggeration to say that he fought for the Confederate cause to the very end; on June 23, 1865, when Watie and his "battalion of Cherokees, Creeks, Seminoles, and Osages" surrendered, he earned the distinction of being "the last Confederate general to lay down his arms."[17] In their own ways, both Ross and Watie were acting as leaders of Cherokee national constituencies allied with but not domestic to the American polity, be it a unified or a divided America. By the war's end, the status and location of the Indian Territory and the Cherokee nation in relation to the U.S. political system remained very uncertain, straddling the boundaries of a reconstructing America seeking to direct its energies westward. Before looking at the postwar years, we can see the westward trajectory of American national and state development in the policies pursued by the federal government in the early years of the Civil War.

The Thirty-seventh Congress: Foreshadowing the Shift

Civil War historian James McPherson has referred to the Thirty-seventh Congress (1861–63) as having done "more than any other in history to change the course of national life."[18] Among the notable acts that earned it this reputation were the Homestead Act and the Pacific Railway Act of 1862.[19] With regard to the Homestead Act, it is not difficult to see the relevance for indigenous political life of a new state policy offering 160-acre lots out of the public domain to adults willing and able to cultivate the land and establish homes there. While indigenous territorial holdings were not part of the public domain, and thus not legally available for homesteading at that time, the thrust and implications of this act certainly mark divergent paths for the respective futures of indigenous and American political life after the Civil War. Even more to the point, the Pacific Railway Act, which established the Union Pacific Railroad Company, directly jeopardized indigenous territorial holdings, stating that "the United States shall extinguish as rapidly as may be the Indian titles to all lands falling under the operation of this act."[20] It did not take a wild stretch of the imagination to realize that "lands falling under the operation of this act" could quickly include territory held by nations and tribes in the Indian Territory. These two defining acts of the Thirty-seventh Congress stand as early examples of how American political and economic development in the Civil War era necessarily implicated the fate of indigenous nations and tribes.

Even if Cherokee leaders could imagine that these two major acts did not and would not concern them, the terms of another bill passed by the Thirty-seventh Congress could not so easily escape their attention. In an appropriations bill for administering federal Indian policy, the Congress inserted a clause proclaiming that those tribes and nations who had committed acts "in actual hostility to the United States" through their alliances with the Confederacy had, by so doing, forfeited their previous treaty relationship with the U.S. government.[21] According to this measure, the Cherokee nation could no longer call on its 1835 treaty with the United States, even though Ross would try to do so as we saw in his plea to President Lincoln. The defunct status of the 1835 treaty symbolized the dawning of a new era in U.S.–indigenous relations. The long removal or treaty era in which the U.S. federal government had sought to place tribes such as the Cherokee beyond American boundaries so as to appropriate

their land in the east was now giving way to the post–Civil War era in which the American nation was poised to expand, in part by means of the domestication of indigenous people, tribes, and territory.

Through the Homestead Act, the Pacific Railway Act, and the July 1862 clause regarding Confederate-allied tribes, the Thirty-seventh Congress laid the groundwork for recasting the U.S.–indigenous relationship in the post–Civil War era. It would be a relationship based on the expansion of American boundaries, the diminishment of U.S.–indigenous nation-to-nation treaty ties, and thus the slow move toward domesticating indigenous people within the American political domain. To this end, the federal government's policies and pronouncements during the final months of the Civil War and the war's immediate aftermath reveal an American effort to pursue two main objectives with regard to indigenous people: (1) to formally organize the Indian Territory, which, to this point, had marked a contingent boundary of the westward-looking American nation, and (2) to reconsider the overall political status and location of indigenous nations and tribes in relation to the American political system. I center my analysis of these objectives on the work of one man, James Harlan, who began 1865 as a senator leading the debate on the future of U.S. Indian policy and by the spring of that year became secretary of the interior, charged with administering U.S. Indian policy.

TOWARD A NEW DIRECTION IN U.S.–INDIGENOUS RELATIONS

Organizing the Boundary

James Harlan was a Republican senator from Iowa from 1856 to 1865 and from 1867 to 1873 and served as secretary of the interior from April 1865 to August 1866. Throughout 1865 Harlan was consistently involved in shaping and advancing legislation and then administering policies concerning the postwar status and fate of indigenous nations and tribes, especially those of the Indian Territory. Harlan was something of a "political entrepreneur," to use Adam Sheingate's definition of political actors who are able to craft new policy directions within American political institutions, because with regard to U.S. Indian policy he used his position in the Senate and the executive branch to "frame issues, define problems, and influence agendas" and to "consolidate innovations into lasting change."[22] I begin

by analyzing Harlan's work in the Senate and connect it to his work as secretary of the interior.

In February 1865, as a member of the Senate Indian Affairs Committee, Harlan helped write and propose Senate Bill S 459, which sought to "provide for the consolidation of the Indian tribes, and to establish civil government in the Indian Territory."[23] Although S 459 passed the Senate but went no further legislatively, it is important to analyze this bill for two reasons. First, the debate it provoked, which included the input of John Ross, articulated what "consolidation of the Indian tribes" through organization of the Indian Territory would mean for indigenous political status on the boundaries of the American polity. Second, the bill became a key, explicit component of Harlan's framework for his administration of Indian policy as secretary of the interior. Thus, even though the bill did not become law, it gives us insight into the development and direction of U.S. policy toward indigenous people after the Civil War. It also shows that American federal officials were generally aware of the implications of this new direction in U.S. Indian policy.

The crux of S 459 is set out in the first substantive paragraph of the motion by which it was introduced for consideration by the Senate:

> It proposes to create and establish within the territory of the United States, bounded as follows, to wit: on the north by the southern boundary of the State of Kansas, on the west by the eastern boundary of the Territory of New Mexico and the State of Texas, on the south by the northern boundary of the State of Texas, and on the east by the western boundary of the States of Arkansas and Missouri, a temporary government by the name of Indian Territory, but this government is not to be permitted to interfere with or to affect in any way the rights of any Indian tribe at peace with the United States residing and being in the Territory, secured by treaty between the United States and such Indians, without the consent of the tribe or tribes, or to affect the authority of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the United States to make if this act had not taken effect; and nothing in this act contained is to be construed to inhibit the Government of the United

> States from dividing the Territory, or changing its boundaries, in such a manner and at such a time as Congress shall deem convenient and proper, or from attaching any portion of it to any other State or Territory of the United States, after the Indian title shall have been extinguished, with the consent of the Indians residing in the Territory.[24]

What this amounted to was an effort to turn the region known as *the* Indian Territory into an official territory of the United States, and thus simply Indian Territory. This territory would have a civil government with a governor, legislature, and court system roughly similar to those of a state of the Union. Indigenous adult males in the territory would be eligible to vote for their legislative representatives, as well as a "Delegate to the House of Representatives of the United States," while presumably still maintaining their tribal citizenship.[25] However, the territory's civil government as a whole, including all its elected and appointed officials and its laws, would be subject to the review and purview of the U.S. federal government. In other words, while the terms of this bill allowed indigenous nations and tribes of the Indian Territory to maintain their status as distinct political communities, they would do so within the boundaries of the American political system. Thus, the bill was an effort to impose the boundaries of American colonial rule on indigenous political life.

As the quoted passage makes clear, the first order of business was to clearly and firmly demarcate the boundaries of this newly organized Indian Territory. The demarcation of formal boundaries signaled the federal government's effort to organize those that these boundaries would contain—the ostensibly unruly indigenous nations and tribes of the region. The sentiment underlying this effort helps explain the urgency with which Senator James Henry Lane of Kansas, a state since only 1861, argued for the passage of S 459: "The bill now before the Senate is of more importance to my constituents than any bill which will come before this body. We have now no protection from the South, this disorganized Territory of eighty-four thousand square miles lies on our border, subjecting us to raids."[26] One of Lane's concerns was the fate of the so-called Kansas refugees, some ten thousand indigenous people from the Five Civilized Tribes, as well as other tribes such as the Sauk and Fox, Osage, and Quapaw, all of whom had fled to Kansas to escape Confederate dominance. Because the refugees

had accumulated during the worst of the winter weather, "neither the state nor federal officials in Kansas had sufficient supplies, blankets, tents, or food to give them." Many of these refugees "died of sickness and exposure during th[at] winter."[27] This situation tried the patience of Kansans, who called for action by their local federal agents. A week after Lane made his statement, as debate on S 459 continued, Lane's tone changed from urgent to, as he admits, anxious: "My anxiety for the passage of this bill this session grows out of the fact that this Territory, which is utterly disorganized, bounds upon our State, and our State feels deep interest in the passage of the bill and the organization of the Territory immediately."[28] On top of the issue of the indigenous refugees, the concern that seemed to provoke Lane's urgency was the apparent indigenous violence ("raids") against Kansans. However, the way he defined this threat and his solution to it can also be read as reflecting a deeper anxiety about the status of the political boundaries of Kansas specifically and the American nation in general.

For Lane, the "utterly disorganized" Indian Territory was a threat to the boundaries of Kansas, and thus by extension to those of the United States as well. In his words, the people of the Indian Territory do not simply sit outside the state's southern boundary, but rather they "lie on our border" and "bound upon our State." These two images, the first of indigenous people overlapping (lying on) the state's boundaries and the second of them springing aggressively toward (bounding upon) the Kansas citizenry, place Lane's concerns within the wider colonial discourse in which the "unsettled" standing of indigenous people raises questions and invites answers that will be productive—productive of an emergent post–Civil War U.S. state sovereignty—in terms of the U.S. effort to impose and clarify the political boundaries of its modern settler-state. Moreover, Lane's language of "disorganization" was a polite, seemingly value-free way to refer to indigenous nations and tribes as less civilized than the American nation and to demand that the federal government work to further construct the civilized standing of America through the demarcation and surveillance of its post–Civil War boundaries.

To be clear, the aim of Lane, Harlan, and the rest of this bill's supporters was not to firm up the boundary *between* the United States and indigenous polities in order to ward off the seeming threat of "savage disorganization." Rather, it was to place U.S. boundaries *around* these indigenous nations and tribes so as to eliminate the complicated political

situation in which indigenous communities straddled the boundary distinguishing the American domestic realm from that which was foreign to it. If passage of this bill could render these indigenous nations and tribes no longer foreign to the American polity, they could no longer carry out the "raids" to which Lane's constituents had apparently been subjected. They could not do so because raids, by definition, are attacks from the outside, and thus any such actions would henceforth be crimes subject to domestic penalty; they would be domestic concerns. Thus, to many American political actors of this era, such as Senators Lane and Harlan, the imposition of clearly defined U.S. boundaries around Indian Territory was a way to absorb and erase the foreignness of indigenous political status by domesticating indigenous political life. It was also a way to further construct American sovereignty and deconstruct that of indigenous tribes. This interpretation is not simply a matter of historical retrospect and 20/20 hindsight, but was in fact apparent to those who opposed the bill at the time.

Before and during the Senate debate, John Ross wrote directly to the Senate and the House of Representatives expressing his people's "earnest protest against the passage of the bill, as a violation of the most important provisions of our treaties."[29] Ross requested that "those *stipulations* of our *several Treaties* which are applicable to our present *circumstances,* be patiently *reviewed* and *enforced.*" He referred to clauses from a few of the U.S.–Cherokee treaties agreed to since 1785, including the following from the 1835 treaty: "*The United States hereby covenant* and agree that the *lands ceded to the Cherokee Nation* in the foregoing article shall *in no future time,* without their consent, *be included in the territorial limits or jurisdiction of any State or Territory.*"[30] His point was that the Cherokee Nation was already an *organized,* self-governing nation that maintained its sovereignty, and it neither wanted nor required inclusion in the "territorial limits or jurisdiction" of the United States. According to the terms of the bill, such a change required the consent of the Cherokee, as Harlan confirmed: "The bill itself provides in express terms that it shall not operate in any way on any Indian tribe until that Indian tribe shall first give its consent by express treaty stipulation."[31] Here Harlan acknowledged that no major change in the U.S.–indigenous relationship and U.S. Indian policy, especially concerning self-governing tribes and nations, could claim legitimacy without new treaty terms. Thus, the premise that the U.S.–indigenous relationship was based on treaty relations still had some purchase with American elected

officials at the time, even while the policies pursued by these officials seemed to be seeking to undermine this very nation-to-nation premise. In other words, the modern shift in U.S.–indigenous relations had yet to be made formally, but the harbingers of this shift can be discerned in the debate over S 459. Ross's protest and arguments were echoed by sympathetic senators who raised serious questions about the issue of indigenous consent and the future of indigenous nations and tribes as autonomous polities. In their resistance to this bill, these senators exemplified the institutional and cultural dynamics of American colonial ambivalence.

Among the most vocal senators arguing and eventually voting against Harlan's bill was Lafayette Foster of Connecticut, who made a distinct effort to connect the issue of the consent of indigenous tribes to their shifting status in relation to the American political system. Referring to the idea of indigenous consent as "a mere farce" in the wake of the Civil War and in light of America's expansionist desires, Foster pointed to the boundary politics and colonial implications of this bill and to its implications for the standing of indigenous tribes as autonomous polities: "How would it be if we had a treaty like this with any foreign Power that has sufficient strength to avenge an insult of this sort? If we had made this treaty with such a nation, and then undertook to extend jurisdiction over it, provided we could get their consent after we had thus exerted our authority and created a Territory, what would be the result?" He went on to say that, of course, if such a policy was directed against, say, France, it would mean "war, certainly and speedily." While Foster knew full well that the Cherokee and French nations were not perfect equivalents, he was making the analogy to underscore a prevailing principle that the U.S. government was threatening to violate with this bill. Namely, to that point in the U.S.–indigenous relationship, indigenous tribes had been dealt with more as independent nations than as domestic concerns. However, here Congress proposed to envelop these independent nations through a colonial imposition that superseded the treaty-defined standing and autonomy of indigenous tribes. To the Connecticut senator, this affront to indigenous autonomy was particularly galling with regard to the Cherokee nation, which had "sent two regiments into [the Union] Army, a greater number of men in proportion to the number of fighting men belonging to the tribe than has gone from any State in this Union"[32] Foster thus sought to make clear to his colleagues that they were facilitating an important

shift in U.S.–indigenous relations, what amounted to a decidedly modern colonialist shift, moving indigenous nations and tribes away from a footing that was more like that of a foreign nation as independent peoples toward a decidedly domestic location and status as internal, subservient bodies.

This emerging shift in U.S. Indian policy involved displacing indigenous sovereignty from any standing beyond American boundaries by domesticating it within those boundaries, and on this issue Foster's colleague Jacob Howard of Michigan spoke most directly: "This bill proposes a complete revolution in the principles which lie at the bottom of our Indian policy."[33] This language of "revolution" was strong but defensible, because a fundamental change in the U.S.–indigenous relationship was afoot. Howard substantiated the weight of this change by referring to the Constitution's Commerce Clause:

> And the principle of the tribal independence of the Indian nations is consecrated by a clause in the Constitution of the United States which declares that Congress shall have power to regulate commerce with foreign nations, among the several States, and with the Indian tribes—a plain recognition of the nationality, if you please, of each one of those Indian tribes; a nationality which is as distinct and independent of us as is the nationality of any foreign country. . . . Now, sir, what does this bill propose? It proposes to institute over the Indian tribes, or certain of them, a government established by the authority of Congress, enforced within certain geographical limits by the power of Congress, and enforced over the Indians individually and over their tribes as tribes. I deny that Congress have any power to exercise political authority over the Indian tribes as such.[34]

Here Howard provided his unambiguous reading of the Commerce Clause, then used it as the basis from which to critique the modern colonial direction of U.S. Indian policy. For him, the matter was simple: since America's founding the United States had dealt with indigenous nations and tribes as "distinct and independent of us," thus requiring hundreds of treaties to establish and reestablish the terms and boundaries of myriad U.S.–indigenous political relationships. Treaty-making thus stood as the basis upon which indigenous political agency and status in relation to

the American political system was framed, recognized, and fought over. Because states do not make government-to-government treaties with their own citizens or internal minorities, indigenous tribes must have been understood by the American polity to be, in some meaningful way, beyond the boundaries of the United States. And yet, as Howard, Foster, and other dissenting senators looked on, Senator Harlan and his colleagues proposed to change almost a century of Indian policy by placing the tribes of the Indian Territory within the "geographical limits" and under the "political authority" of the United States.[35] In so doing, they also foreshadowed the end of both treaty-making and the nation-to-nation premise of U.S.–indigenous relations.[36]

The importance of S 459 and the debate over it is that they demonstrated the development of a new model for U.S. Indian policy, one that would prove a critical turning point in the U.S.–indigenous political relationship. In a direct debate with Harlan, Howard articulated his sense of this forthcoming shift: "We treat [the Indian nations] as independent nations; we have recognized them as such a thousand times; what right have we . . . to subject them to a jurisdiction that emanates exclusively from us? It is a novelty, Mr. President."[37] The "novelty" here was the end of the American spatial framework in which indigenous nations and tribes were seen as significantly outside U.S. boundaries, more like "foreign nations" than the "Several states," affirmed and iterated through a political relationship built around treaty-making. This shift represented an effort to impose modern colonial rule over indigenous people.

To Senator Howard's observations Senator Foster added a second "novelty" when he challenged Harlan's claim that the real purpose of the bill was "to protect these Indians from utter annihilation—not to establish a government there for white men."[38] To this Foster responded, "If the intention and object of the organization of a territorial government on the part of the United States is to prevent our people from going into such a Territory and settling upon it, it certainly is a novel idea in a territorial bill."[39] Here Foster was implicitly pointing out how the imposition of colonial rule was being defended in liberal democratic terms through the idea that indigenous political life was to be bounded and domesticated in order to protect the rights of indigenous people. In fact, as Foster sought to point out, this bill showed how the imposition of colonial rule and the legitimacy of the liberal democratic settler-state are quite compatible, each

serving the interest of the other, rather than representing contradictory political impulses or "multiple traditions" and their contingent political encounters and products. In moving next to look at Harlan's role as secretary of the interior after the Civil War, we see that Senator Howard was right when he said a "novel" U.S. Indian policy was on the horizon, and that Senator Howard's sarcasm was apt, because there would be little one could call "novel" about America's vision for the land and people of the Indian Territory.

The "Advancing Tide"

When he became head of the Department of the Interior in April 1865, James Harlan was given the administrative opportunity to execute the U.S. Indian policy design he had proposed in the Senate. Although the seeds of much of Harlan's policy vision would not visibly sprout until the postwar treaties with the former Confederacy-allied tribes and in subsequent U.S. policies, especially the end of treaty-making in 1871, here we gain worthwhile insight into the concerns driving this policy shift as defined by Harlan, the most senior member of the federal government responsible for Indian affairs. For historian Annie Abel, author of a trilogy on Native Americans and the Civil War, Secretary Harlan's instructions to his commissioners of Indian affairs carry a historical importance that "can scarcely admit of exaggeration; for they were to prove, in the sequel, to have been the groundwork of the whole reconstruction policy of the United States government towards the tribes of the Indian Territory."[40] As demonstrated in the Civil War era policies produced by the Thirty-seventh Congress in 1862 and the Senate debate on the organization of the Indian Territory in 1865, this "groundwork" was being laid prior to Harlan's move to the Department of the Interior. Therefore, his instructions as secretary of the interior represent a continuation of the process of reconstructing U.S. Indian policy and constructing American state sovereignty through colonial imposition.

In his August 1865 general instructions to the Board of Commissioners of Indian Affairs, whose job it was to negotiate the post–Civil War treaties, Harlan laid out the principles for the reconstruction of U.S. Indian policy. With specific regard to the indigenous nations who made treaties with the Confederacy, Harlan followed the provision of the July 1862 law

that "the benefit of the provisions of a former treaty may be justly forfeited." He also offered an additional stipulation: "Disloyal Indians are not, by their own bad faith, released from the obligation to perform their treaty stipulation, if insisted on by the United States."[41] This requirement could prevail only because of the ambiguous position of indigenous nations and tribes in relation to the United States. To recall the words of Senator Foster, if the Cherokee Nation was seen by the United States to be as foreign as France, such a policy could well be a provocation to war. However, with the Cherokee nation somewhat inside and somewhat outside the American polity, the U.S. Congress could rescind the American nation's treaty obligations while simultaneously demanding Cherokee adherence to the agreement, as if the Cherokee people were contractually bound to an agreement formed within the American domestic arena. A look at the main points of Harlan's instructions further reveals this shift in the U.S. government's view of indigenous communities, away from seeing them as more distinctly external political entities with which international agreements must be made and toward seeing them more as domestic political entities that can be dictated to by the American settler-state. In this trajectory one can locate the effort to impose modern colonial rule on indigenous people.

Harlan instructed his commissioners to "enter into a convention with the various nations, tribes, and bands, with whom you may negotiate, for permanent peace and amity with the United States and with each other." Here the language sounds more like a standard diplomatic dictum after an international conflict than like an approach for dealing with domestic groups. But as Harlan went on to define the terms of these "conventions," or treaties, it is clear that the nations and tribes of the Indian Territory were being brought into the American political system. He instructed that these nations and tribes "should agree to the organization of civil governments, containing guarantees for the rights of person and property . . . for the due enforcement of local laws and usages . . . if consistent with the laws and Constitution of the United States." Using the U.S. Constitution as a legal limit for lawmaking by indigenous civil governments was not unusual in U.S.–indigenous treaties, but it was the next instruction that gave a clearer indication of the American effort to domesticate indigenous political life: "A common central government should be established, with jurisdiction and authority coextensive with said territory, and limited to

general purposes."[42] This "common central government" would consolidate indigenous national and tribal governments of "said territory" under its political purview. If the commissioners were uncertain about Harlan's objectives here, he referred them to an "accompanying copy of Senate bill No. 459."[43] While S 459 had never gone further legislatively than the U.S. Senate, Harlan included the unaltered bill in the instructions, clearly emphasizing the U.S. policy objective of bounding, organizing, and consolidating the Indian Territory and the resident indigenous tribes within American political boundaries.

In his instructions regarding the internal organization of indigenous political communities of the Indian Territory, Harlan made one understandable and nonnegotiable demand, that "the institution of slavery, which has existed among several of the tribes, should be forthwith abolished." The Cherokee Nation, on Ross's orders, had already met this demand through its own emancipation proclamation in 1863. Beyond abolition, Harlan also instructed that freedmen be incorporated "into the tribes on an equal footing in all respects with the original members."[44] Liberated blacks were not the only group that the U.S. government sought to incorporate into the nations and tribes of the Indian Territory. Indigenous refugees such as those in Kansas were also expected to return to the territory and be given land and, if they so desired, status in one of the established indigenous nations. To this end, Harlan instructed the commissioners to "ascertain the population of each nation and tribe within the Indian Territory, and insist upon a cession by it of all lands not needed for its uses, to be appropriated as the home for other Indians."[45] The precise terms of the incorporation of freedmen and indigenous refugees into established indigenous tribes and nations would be a matter worked out in treaty negotiations. Still, Harlan's instruction that indigenous tribes and nations be compelled to cede any land that was seemingly "not needed" conveyed its own ominous foreshadowing.

First of all, the fact that the American government was seeking to appropriate indigenous national territory indicated that the United States saw this land as increasingly under its domain and decreasingly the claim of a sovereign indigenous people. Second, the standard of *need* by which this appropriation was to be determined was based on the ideal of individual ownership of land, which was consonant with the private property framework of liberal democratic constitutional governance but not with

the prevalent norm in indigenous communities whereby territory was held communally by the nation or tribe. Again, one can locate here the effort to impose colonial rule through the expression and implementation of liberal democratic norms, an effort that served to define and institute the reach of the modern American liberal democratic settler-state. This liberal individualistic need-based logic would be used two decades later in the General Allotment Act, which set the framework for expressly dividing up indigenous communal landholdings, as will be discussed in chapter 3. Still, in the mid-1860s Harlan promised that this land appropriation by the federal government was for the sake of indigenous refugees only, and to this end his administrators were to insert a "clause" in any new treaty "prohibiting any white person, except officers, agents and employees of the government, from going to or settling in said territory."[46] Nevertheless, both the language and the implications of this land appropriation policy offered further proof of the effort to contain indigenous nations and tribes within American political boundaries through the imposition of colonial rule.

While Harlan instructed his commissioners to promise indigenous political leaders that the United States did not intend to allow white Americans to overrun indigenous territory, the secretary was also frank about his view that the American nation's expansionary drive was ultimately unstoppable: "The advancing tide of immigration is rapidly spreading over the country, and the government has not the power or inclination to check it. Our hills and valleys are filling up with an adventurous and rapidly increasing people, that will encroach upon and occupy the ancient abodes of the red man. Such seems to be an inevitable law of population and settlement on this continent."[47] Although it is true that the American government had little "inclination" to prevent nonindigenous people from seizing indigenous land, the secretary's words were suspect in at least two regards. First of all, Harlan offered an image of a passive federal government overwhelmed by an ineluctably burgeoning American nation. But, as we saw in the cases of the Homestead and Railway Acts of 1862, the federal government facilitated this very development, and thus to a significant degree had a hand in the construction of American state sovereignty in terms of both administrative functions and spatial reach. Second, the image of the doomed "red man" trapped in "ancient abodes" draws on the imagery of "savagery" versus "civilization," a component of the imperial binary discussed in chapter 1 that persistently haunts indigenous politics

by discursively positioning indigenous societies as unable to keep pace with the colonizing society and existing beyond the boundaries of the political time of modern America.

It is important to see that the federal government's objective here was to secure and clearly construct and map out American state sovereignty. In this vein, Richard Bensel has asserted that after the Civil War the "Union victory thus created the American state by conferring upon it the fundamental attributes of territorial and governmental sovereignty."[48] With the South's claim to sovereignty defeated, the only proximate assertions of "territorial and governmental sovereignty" left for the United States to contend with were the ones present since well before the nation's founding, those of indigenous nations and tribes. Therefore, what the American state sought to do in the waning years and the aftermath of the Civil War was to draw ever more circumscribed boundaries around indigenous territories to simultaneously draw and funnel white Americans westward. The American state would not restrain the social energy and "advancing tide" of the nation but would rather foster it, guide it, and grow along with it. In so doing, the settler-state that emerged reunified after ending formal slavery in the name of the liberal principle of individual rights sought to grow and expand through the imposition of colonial rule on indigenous people. The construction of American state sovereignty can thus be read as occurring in part through the effort to deconstruct, domesticate, and ultimately destroy indigenous sovereignty.

Jill Norgren captures the key objectives of the American nation and state at this time: "Expansionist nationalism defined American diplomacy during this period. Manifest destiny, temporarily slowed by the Civil War, was again unleashed." This meant that "after 1865, U.S. Indian policy followed several basic principles":

> First, the continued acquisition of Native American territory became a priority, along with the consolidation of more Indian nations within the "Indian Territory"; second, permissive tolerance of white intruders on Indian territory characterized American policy, as it had in the preremoval era; and third, the United States committed itself to assimilation legislation, the goal of which was to force denationalization on Native Americans and end communal land holding.[49]

So far, this chapter's analysis has sought to show how the development of the general policy approach to which Norgren refers can be evidenced in the words and actions of Senator and Secretary Harlan during and just after the Civil War. After the war, Harlan delegated the important task of negotiating a new U.S. treaty with the Cherokee nation to Commissioner of Indian Affairs Dennis Cooley.

THE CHEROKEE: A NATION, STILL, IN THE THIRD SPACE

In his 1866 annual report, Commissioner Cooley detailed the status of the federal government's post–Civil War Indian policy. At that time, treaty-making was a major agenda item for Indian Affairs, and in that regard the commissioner reported: "The year 1866 will be memorable as one in which a large number of very important treaties have been ratified by the government and gone into effect."[50] During that year the U.S. federal government came to treaty agreements with all of the major indigenous nations of the Indian Territory. Although a treaty with the Cherokee nation was agreed to on July 19, 1866, and ratified August 11, 1866, Cooley noted that "more difficulty was experienced in arriving at the consummation of a treaty with the Cherokees than with any of the other tribes or nations of the Indian country."[51]

The central difficulty impeding U.S.–Cherokee treaty negotiations was the intense divide between Stand Watie's Southern Cherokee minority faction, which sought a political and geographical division of the nation, and John Ross's Northern Cherokee majority faction, which insisted on maintaining Cherokee national unity. With the boundaries of American political life closing around them, Ross and his Northern Cherokee colleagues began to articulate a politics on the boundaries to secure Cherokee autonomy in the "third space" between domestic and foreign status. For their part, Watie and his supporters had their reasons for wanting to secede from the Cherokee union. The most direct and consistent injury they cited was that the Cherokee National Council, dominated by the majority Northern Cherokee, had passed a law confiscating the land owned by Southern Cherokees on the premise that the Southern faction had been disloyal to the Cherokee nation by staying with the Confederacy after Ross had turned the nation's allegiance back to the Union.[52] Watie's strategy for liberating his constituents from Northern domination was to persuade

the Board of Indian Commissioners to negotiate the new U.S.–Cherokee treaty with him rather than with Ross. Because Watie did not represent a majority of Cherokee citizens, the only realistic way he could get the commissioners to negotiate with him was to give the federal government whatever it wanted. What we observe in analyzing this internal Cherokee struggle are both the practices and limits of American colonial imposition; the federal government still had to negotiate with—that is, gain some degree of consent from—Cherokee representatives to gain territorial and political concessions that could be deemed defensibly legitimate according to liberal democratic norms.

Commissioner Cooley saw that by late 1865 Watie and his colleagues were "ready to meet all the views of the government . . . asking for its protection from the confiscation laws which had excluded them from their homes; looking to a separation of interests from the remainder of the tribes."[53] In March 1866, Watie did not hesitate to play to the federal government's self-interest for the sake of Southern Cherokee interests. He requested that the U.S. government provide him with maps that demarcated the Indian Territory according to internal districts, which would include the "precise latitude and longitude of the northern Cherokee boundary." According to Watie, obtaining these maps was of the "greatest importance to us in the cessions of land contemplated to be made, and the grants of land for Railroads, which we tribes desire to make."[54] Watie's message to the federal government was clear: in exchange for granting the Southern Cherokee their own political district, he would cut a land deal beneficial to the American state and the railway industries.[55]

In May 1866, Commissioner Cooley presented to the Northern Cherokee the terms by which he would make a treaty deal with them, the details of which are found in the Northern Cherokees' reply to the commissioner. In their reply of May 12, the Northern Cherokee leaders[56] first observed that along with the "nine several propositions submitted to us by you" was included the "statement that unless we acceded substantially to all of them you would decline to make a treaty with our people." Despite this pressure, the Ross faction representatives informed Cooley that "some of these propositions are such as to debar us from assenting to them."[57] The Northern Cherokee had no serious issues with five of the nine propositions. The most relevant of these points of agreement were "the general amnesty, restoration of confiscated property, civil rights, and

political privileges to disloyal [Southern] Cherokees"; "the sale of the eight hundred thousand acres of *neutral lands* in Kansas"; and "liberal provision for our freedman in lands and school funds."[58] In total, these points of agreement promised changes within the Cherokee polity to promote equality, and also ceded lands that extended beyond the formal boundaries of Cherokee territory into what was by this time the state of Kansas. By contrast, the four points of disagreement directly concerned the integrity and sovereignty of the Cherokee nation.

The reply of the Northern Cherokee to the commissioner stated verbatim the four propositions with which they could not abide:

> 1st: "Right of way to railroads east and west, north and south, *with liberal grants of lands.*"
>
> 2d. "A Territorial Government not inconsistent with Senate Bill No. 459, 38th Congress."
>
> 3d. "Purchase of the territory west of ninety-five and a half degrees, *included in patent of seven millions of acres,* at a fair price."
>
> 4th. "A promise that the Cherokees (Northern) have a country north of the Arkansas and on the east part of the Cherokee country."[59]

The Northern Cherokee leaders specified their objections on each point. On the first point, the Cherokee were willing to grant to the railroads—the "highway of commerce," as they put it—a right of way for "free passage through" their territory. However, they stated that with more liberal grants "a tide of white population, would set upon us, which would begin by settlement on these railroad lands."[60] Similarly, on the third point the Northern Cherokee were willing to concede land west of "the ninety-seventh degree, W. longitude," but Commissioner Cooley sought to draw that line one and a half degrees eastward. The Northern Cherokee representatives not only resisted these terms for the sake of the nation's territorial integrity, but also turned the challenge back to the Commissioner: "You will be satisfied with nothing but an absolute cession, or seizure, of three-fourths of our land—not being willing to take the half we have offered on your own terms. . . . We are compelled therefore to leave the result to the sense of justice of the President and the Congress."[61]

With these words, the Northern Cherokee leaders played on the fact that Cooley represented just one component of the federal government, and not the most powerful one at that; they would look elsewhere in the American political system for more cooperative and amenable institutions and actors. In this way, these Cherokee political actors sought to take advantage of the institutional dynamics of colonial ambivalence, which reflected the fact that the American state was not a unitary actor with a single voice. This political strategy involved working within the settler-state system to gain leverage and the greatest possible territorial holdings beyond the immediate purview of that system. This was an approach that sought treaty-negotiated autonomy for the Cherokee nation on the boundaries of the American political system, in the emergent third space.

In the post–Civil War setting, indigenous nations and tribes, especially those of the Indian Territory, were clearly being brought increasingly under the American political umbrella, but that fact did not deprive these nations and tribes of the agency to challenge the imposition of such boundaries as best as they could. The fact that they were engaged in the treaty-making process further emboldened their sense of maintaining and expressing political agency as a sovereign people. The treaty-making process represented a form of political engagement the very premise of which recognized the validity of indigenous tribes as agents that remained, in some way, sovereign entities capable of formalizing nation-to-nation agreements with the United States. This effort of the Northern Cherokee to express and further constitute their nation's political agency as a sovereign entity was evident in the way they crafted their objections to Harlan's proposal for a territorial government in the Indian Territory.

If nothing else, Secretary Harlan could rest assured that his Indian Affairs commissioners were following instructions, because his peripatetic S 459 continued its travels from the Senate floor to the Department of the Interior to Tahlequah, the capitol of the Cherokee Nation. Yet as far as it had traveled, the Northern Cherokee wanted no part of it:

> Our people fear that the establishment of a territorial government as proposed in Mr. Harlan's bill—placing us, as it will, to a great extent, under the rule of white men in the enactment and administration of local laws, will lead to the opening of the country to white immigration and settlement, the disruption of the nation,

> and the extinction of a large group of people. If Congress cannot rightfully enact that bill against the will of the people, we submit that its provisions should be made known to them, and their assent had through the National Legislature.

In lieu of the Harlan proposal, the Northern Cherokee had already agreed to a "*Territorial Council,* composed of representatives of the several tribes in the Indian Territory, with powers of legislation on inter-tribal affairs, and with such powers as the several tribes may grant, subject to the approval of the President; and also the establishment of United States courts in our country."[62] Note the careful distinction here between a "territorial government" and a "territorial council." Both a territorial government and a territorial council would exist, in some way, within the ultimate purview of the American state. The distinction between them had to do with how indigenous communities would experience the presence of the American state in their day-to-day lives.

To the Northern Cherokee, a territorial government as envisioned by Harlan would basically amount to the "rule of white men" over the "local laws of indigenous nations and tribes." These Cherokee leaders did not have to know about Harlan's reference to the "advancing tide" to understand that the secretary's effort to consolidate the governance of the tribes and nations of the Indian Territory would serve to foster, not forestall, "white immigration and settlement" in indigenous territory. By contrast, a territorial council would focus on "inter-tribal" rather than intratribal affairs. This would mean that each indigenous nation and tribe would have autonomy in determining and administering local laws, and that they would use the territorial council to address those agreed-upon matters of concern to more than one indigenous community. While a council certainly would not be an impenetrable wall against white settlement, it would assert and secure a form of sovereignty for indigenous communities that could help forestall the "disruption" of their nations by American national expansion. By stating that they would agree to a territorial council, the Northern Cherokee delegation conceded that their nation was becoming positioned politically further within American jurisdictional boundaries. Nevertheless, the political strategy here was to find a workable relationship with the American political system so as to garner the greatest possible autonomy outside, or at least at a meaningful distance from,

that same system. Again, then, we find the politics-on-the-boundaries approach to indigenous claim-making, with even more evidence of it in Northern Cherokee objections to the idea of dividing their nation.

The Northern Cherokee delegation's immediate response to the commissioner's lengthy proposal to divide the Cherokee nation's territory and government was the following: "You are aware that the Cherokees have for many years maintained a regular government as a civilized nation—a 'domestic dependent Nation,' it is true—but still, a Nation."[63] A carefully balanced discursive strategy was being articulated here. These indigenous leaders drew on Justice Marshall's famous phrase to acknowledge that the Cherokee nation's political status was in part defined and secured by the American political system. Still, as I explained in chapter 1, the imposition of domestic dependent nation status had occurred at a time when the American federal government sought primarily to remove and exile indigenous communities rather than domesticate them within the boundaries of the American political system. During the post–Civil War era, however, the political activities and proposals of American state actors threatened to make "dependent Nations" such as the Cherokee truly domestic to the American polity. Although the proposal for division did not explicitly threaten domestication—Harlan's S 459 was more pointed in that regard—it did so implicitly by undermining Cherokee political identity as "still, a Nation." With the forces of expansion crowding them during this vital period of American political development, these Cherokee political actors conceded that their nation was in many ways "dependent" on the United States, but they held firm to the idea that Cherokee national sovereignty and its "regular government" could not be seamlessly contained within and divided by the American state.

In opposing the division of their nation, the Northern Cherokee delegation asserted a form of national identity and political sovereignty meaningfully distinct from and thus not simply contained by the American nation: "The loyal Cherokees, who comprise three-fourths of the people, and who sent three thousand soldiers to fight for the integrity of the Federal Union and of the Cherokee Nation, will never consent, now that the Union has been preserved, that *their* Nation—older than the Federal Union—shall be by Union men dismembered."[64] The assertion that the Cherokee nation was "older than the Federal Union" points to another

boundary that the Cherokee people crossed, the temporal boundary marking the founding of the United States. The discursive purpose of this assertion was to demonstrate another way in which the Cherokee nation could not be contained within and by the American nation and state, in this case along the lines of temporal containment. Although this point may seem obvious and uncontroversial, it served to bolster the general argument that the Cherokee nation could not be seamlessly bound within the American political system generally. That the Cherokee were "still, a Nation," undivided by American political time, mutually supported their basic claim that the Cherokee were "still, a Nation," not to be divided or dissipated through the colonial imposition of American political space. This point mattered a great deal at the time, because the proposals and actions of the leading voices in the American state, specifically represented in the designs of Secretary Harlan and Commissioner Cooley, gave the clear colonial impression that the distinct political status of indigenous nations and tribes was to be subsumed within the expansionist narrative and expanding boundaries of the United States.

For the Northern Cherokee political leaders, the claim that their nation maintained a political status somewhat like that of a foreign nation in relation to the American nation deserved special consideration in the wake of the Civil War, when their soldiers had fought for "the integrity of the Federal Union and the Cherokee Nation." Their argument for the persistence of the Cherokee nation's distinct status, on but not within the boundaries of the American polity, was important for its own sake, but was also necessary to highlight the analogy between the Civil War threat to the unity of the American nation and the post–Civil War threat to the unity of the Cherokee nation. This analogy was critical to the effort to resist Southern Cherokee secession, and the Northern Cherokee leaders made the comparison explicitly: "The party leaders of the South made a similar and equally equitable demand of the American people: but neither persuasion, nor threat, or force, nor even fear of outside interference, could compel the people to submit to national dismemberment." Still, the Northern Cherokee delegation understood that the commissioner of Indian Affairs was likely not receptive to their argument, and thus they concluded their response by again asserting: "We are forced to appeal . . . to a President and a Congress . . . who will not be eager, but slow, to disrupt a dependent

nation, proud of its history and civilization, and its sacrifices in defence of itself and the Union."[65] It may be a coincidence that these Cherokee leaders concluded their lengthy reply by referring to the Cherokee as a "dependent nation" rather than by the more familiar "domestic dependent nation." However, I am inclined to think it was no accident, or at least one can productively read a politically pertinent claim conveyed by this notable absence, which is consistent with the effort to resist the domestication that the forces of American national and state expansion were imposing on indigenous tribes and nations in the post–Civil War era. To assert that their nation was dependent on but not domestic to the United States was a way for the Cherokee political leaders to articulate that their nation's sovereignty was still active on the boundaries of the American political system. This was their effort to resist the imposition of American colonial rule on their political identity, agency, and autonomy.

The day after submitting their reply to Commissioner Cooley, the Northern Cherokee followed through on their threat to plead their case elsewhere, and they did so directly to President Andrew Johnson. In a letter signed by John Ross, the Cherokee chief informed Johnson that the "Commissioner sends us an ultimatum, as the basis of a treaty, which would destroy our nation." Ross offered that the Northern Cherokee would "concede whatever is necessary and just" so that a treaty could be "made on the basis of maintaining the integrity of the Cherokee nation." The "necessary and just" concessions were precisely those set out in the reply to Commissioner Cooley, a copy of which Ross included in the letter to Johnson, informing him that these were "the concessions we have offered, & the reasons we can not comply with his demands."[66] Ross's move to bypass Secretary Harlan and Commissioner Cooley by appealing directly to President Johnson proved successful, but not immediately.

Cooley, with the support of Harlan, preferred to consummate a treaty with the more amenable faction of the Southern Cherokee nation, because "it was sympathetic with his proposals for a territorial government and his encouragement of railroad development in the Indian Territory."[67] Concerning the issue of "territorial government" that so vexed and concerned the Northern Cherokee, Southern Cherokee representatives wrote directly to Cooley, stating that they did not "indulge in such fearful forebodings" about Senate Bill 459. To the contrary, the Southern Cherokee

view was that "the grand scheme of the Secretary of the Interior, who is the author of the bill, may, by reasonable modifications and amendments, become acceptable to every lover of his people, and serve to accomplish the humane wishes of the government, which we know to be the enlightenment and elevation of our race." It does not really matter if the Southern Cherokee were sincere in their stated charitable view of the intentions of the American government and the implications of Harlan's design. What matters is that in exchange for the division they so desperately sought, the Southern Cherokee were prepared to agree to both the consolidation of indigenous tribes under a territorial government and the organization of the Indian Territory, even if it meant their domestication within the American political system. This desperation is evident in the urgent Southern Cherokee appeal that their nation be "sundered by territorial boundaries. . . . Give us an equitable division of the territory and national funds according to our number. 'Humanity' demands it! Justice and mercy require it!"[68]

The desperation of the Southern Cherokee for division was matched by the intransigence of the Northern Cherokee against it, a stance that at one point seemed to have proved fatal to the Ross faction's efforts. In early June 1866, Southern Cherokee Secretary J. W. Washbourne reported that the "Ross delegation has been dismissed by the Commissioner because they would not agree to a division."[69] By mid-June, Cooley reported to President Johnson that he had "concluded and signed, on the 13th instant, articles of agreement with the delegates of the southern Cherokees, providing for their separate existence and the division of the national existence."[70] In this treaty deal, the Southern Cherokee delegation agreed to give the "railroad corporations all the rights-of-way they wanted . . . [amounting to millions of acres]," to sell to the federal government the "Cherokee Strip, the Cherokee Neutral lands for $500,000 [without interest], and the Cherokee Outlet," to "give their former slaves civil and political rights," and to be part of a "territorial government based on a confederation of all tribes and supervised by white officials appointed by the secretary of the interior."[71] Cooley submitted the treaty to Johnson, but the president never sent it to the Senate for ratification.

As stated earlier, the final treaty between the United States and the Cherokee Nation was not agreed to until July 19, over a month after

Cooley had obtained an agreement with the Southern Cherokee. During the intervening period, specifically in late June, John Ross sent a letter to President Johnson, stating

> that all those who came from the South now in Canadian district, together with the Loyal Citizens of the Nation have *unitedly* Protested against a separation of the Nation. And it has been agreed upon that all Southern Cherokees shall have the right to come up to the Country and occupy there Places at once, and as there are a great many who have left valuable improvements scattered over the Country, and they all desire to come in and occupy them at once, and to enjoy equal privileges. It is known that those who may refuse to return to the Nation will be very few. It is anticipated that peace and *harmony* will once more prevail in the Country.[72]

In this letter, the last of his life, Ross minimized the level of Southern Cherokee support for division, and in so doing placed emphasis on only two words, *"unitedly"* and *"harmony."* There is no scholarly consensus as to what exactly stopped President Johnson from submitting the Southern Cherokee treaty to the Senate, compelling Cooley to negotiate a treaty with the Northern Cherokee. William McLoughlin, noted historian of the Cherokee nation, has suggested that this may have been a "gambit" to get the Northern Cherokee to "negotiate on Cooley's terms" or that Johnson did "not want to risk a fight over it in the Senate."[73] Given the heated dissent in the Senate in response to Harlan's bill, the latter argument seems quite plausible, a reflection of institutional tensions that often serve to shape policy. Still, in light of John Ross's persistent communication with Johnson, ending with this last letter, one might explain why Johnson did not submit the Southern Cherokee treaty by considering the roles of both indigenous political resistance and American colonial ambivalence in U.S.–indigenous relations.

Like Andrew Johnson, John Ross gave primacy to maintaining his nation's constitutional unity. During the Civil War, Johnson bucked his fellow Tennesseeans in the name of the inviolability of the U.S. Constitution. After the Civil War, Ross pursued a firm objective of securing Cherokee unity and autonomy on the boundaries of the American political system. For President Johnson, the Cherokee nation's post–Civil War factional

disagreement and secessionist threat must have seemed familiar in light of the conflict out of which his own nation had just emerged, bloody but intact. Thus it is not that difficult to understand why Johnson, a man who had said, "There's no such thing as reconstruction. These States have not gone out of the Union. Therefore reconstruction is unnecessary," might have been sympathetic to the argument made by Ross and his Northern Cherokee colleagues that reconstruction by way of division of the Cherokee nation was unnecessary.[74]

The influence of Northern Cherokee actions on Johnson's decision making in this regard can be the subject of future debate. Still, a look at the ratified U.S.–Cherokee treaty shows that the Northern Cherokee delegation did manage to influence the negotiation process in a way that helped their nation secure its unity, maintain a level of sovereignty on the boundaries, and preserve as much as it could of its territorial holdings. This treaty was not a great one for the Cherokee, but its best features both reflect and were a consequence of the politics-on-the-boundaries approach that sought to secure the Cherokee nation's autonomy in the third space, neither fully foreign nor domestic. At the same time, this treaty also served to impose modern American colonial rule through a new model of U.S. Indian policy that, among other things, further drew indigenous tribes and nations within American political boundaries, although not completely.

THE TREATY OF 1866: THE CHEROKEE NATION IN THE THIRD SPACE

Due to the persistent internal conflicts among the Cherokee as well as the nation's slaveholding history, the U.S. Treaty with the Cherokee of 1866 first defined the terms of the relationship among those who would reside within the boundaries of the Cherokee nation.[75] The treaty promised "amnesty" for Cherokee actions committed against other Cherokee during the war (article 2), repealed the "confiscation laws of the Cherokee Nation" (article 3), secured a district for Southern Cherokees where they would "control all their local affairs . . . not inconsistent with the constitution of the Cherokee Nation or the laws of the United States" (article 5), and asserted that former Cherokee slaves as well as freedman "who were in the country at the commencement of the rebellion, and are now residents therein, or who may return within six months, and their descendents, shall have all the rights of native Cherokees" (article 9). On top of all this,

the treaty mapped out and constructed the post–Civil War sovereignty of the Cherokee nation in articles that addressed the issues of land title and cession as well as legal and political jurisdiction.

Land

Immediate pressure for access to Cherokee territory had come from railroad corporations. In recognition of this fact, the Cherokee nation granted "a right of way not exceeding two hundred feet wide" through Cherokee territory. In excess of this particular grant, the treaty permitted that "only two hundred additional feet shall be taken, and only for such length as may be absolutely necessary" (article 11). This clause of the treaty further carried out the vision of the Pacific Railway Act of 1862 while also revealing the material benefit that accrued to the Cherokee nation from the political approach taken by the Ross delegation. As noted, the Southern Cherokee leaders were willing to make "liberal" land grants of a million acres, but here the Northern Cherokee delegation successfully limited grants; they were to be made only when "absolutely necessary" and to "two hundred additional feet" beyond that required for the right of way. This was a qualified victory for the Cherokee nation. The railways could go into their territory, but they would do so under terms set by the Cherokee nation instead of those preferred by the U.S. government and the railroad corporate benefactors; "railway officials complained that the treaty was not generous enough."[76] Nevertheless, American expansion remained the dominant force of this time.

The specific lands that the U.S. federal government sought were the Cherokee Neutral Lands, the Cherokee Strip, and the Cherokee Outlet. In this matter, too, the Cherokee leaders gained another qualified victory-defeat. The Cherokee delegation agreed to cede in trust for sale both the Cherokee Neutral Lands and the Cherokee Strip, both of which tracts were by this time situated in the state of Kansas (article 17).[77] The more complicated treaty provisions concerned the Cherokee Outlet, a stretch of land west of 96° longitude, "fifty-fives mile wide, which the Cherokees did not inhabit."[78] Again, recall that the Southern Cherokee delegation had been willing to sell the outlet to the U.S. government outright. As a consequence of the Northern Cherokee efforts, by contrast, the Cherokee Outlet was to remain part of the domain of the Cherokee nation, which would

"retain the right of possession of and jurisdiction over all said country west of 96 [degrees] longitude until thus sold and occupied, after which their jurisdiction and right of possession is to terminate forever as to each of said districts thus sold and occupied" (article 16). The Northern Cherokee had sought to draw the line at 97° longitude, the Indian Commissioner had proposed 95.5°, and they settled at 96°. At that time, the only people who were permitted to purchase and occupy land in the Cherokee Outlet beyond 96° longitude were the "friendly Indians," those with "tribal organizations . . . tribal laws, customs, and usages" (article 15).[79] The majority of these people were Civil War refugees who would be resettled by the U.S. government once the "friendly tribe" and the Cherokee agreed to a purchase price for a "quantity not exceeding one hundred and sixty acres for each member[,] . . . the land conveyed in fee-simple to each . . . to be held in common or by their members in severalty as the United States may decide" (article 16).

While the treaty maintained the Cherokee Outlet within the boundaries of Cherokee territory and permitted only indigenous people to purchase and occupy it, the language and implication of these treaty clauses foreshadowed U.S. Indian policies on the horizon. In stating that the outlet was part of the Cherokee nation "until thus sold and occupied," and that the U.S. government "may decide" that the "friendly Indians" shall have their land conveyed "in severalty," in other words individually, article 16 framed this part of the Cherokee territory as a liminal land in waiting. The Cherokee Outlet was, at that time, Cherokee territory, but the language of the treaty indicated that this land was in a transitional phase, waiting until it could be passed from Cherokee to non-Cherokee indigenous possession, and then sold from an indigenous private propertyholder to a nonindigenous American private propertyholder. The article facilitated and promised the very allotment in severalty of indigenous communal land that would eventually become general U.S. Indian policy with the 1887 General Allotment Act. This promise was repeated in another clause, where the U.S. government offered to pay the expense of having "the country reserved for the Cherokees to be surveyed and allotted" on the request of the Cherokee national council (article 20).

The allotment policy would not become U.S. law for another two decades, and even then it would not immediately include the territory of the Five Civilized Tribes, but here we witness how its implementation

was already promised, and in some cases practiced in a less direct manner via the post–Civil War treaty-making process. In other words, this treaty foreshadowed the future effort to more directly impose American colonial rule. So while the Northern Cherokee delegation did succeed in holding onto a significant portion of territory and warding off, or providing a narrower pathway for, American national expansion, the impending threat of allotment represented the creeping movement toward the domestication of more indigenous territory within American boundaries. The U.S. effort to subdue or subsume foreign elements in its midst was also evident in the treaty provisions that addressed the complicated jurisdictional role of the American federal government in its relationship to the still unconsolidated nations and tribes of the Indian Territory.

Jurisdiction

The complicated new terms for the respective legal and political jurisdictions of the United States and the Cherokee nation as well as the other nations and tribes of the Indian Territory reflected the presence of multiple overlapping expressions of and claims to sovereignty. With regard to legal jurisdiction, the Cherokee nation agreed that "courts may be established by the United States in said Territory." However, the same clause also provided that "the judicial tribunals of the nation shall be allowed to retain exclusive jurisdiction in all civil and criminal cases arising within their country in which members of the nation, by nativity or adoption, should be the only parties" (article 13). As in the previously cited clauses having to do with railway grants and land cessions, the Cherokee nation ceded some ground to the expansion of American colonial rule—this time in the form of U.S. judicial purview over those cases involving non-Cherokee parties—but maintained the nation's sovereignty over cases involving only its own citizens. In this light, the proposed U.S. court seemed somewhat like an international court, hearing cases involving either parties from two or more different nations, say a Cherokee and an American, or two or more parties located in foreign territory, say two Americans in the Indian Territory.

Nevertheless, the fact that the Cherokee and other indigenous tribes agreed to permit a federal court in the Indian Territory, even in this restricted form, represented an important shift toward moving indigenous

people further within the American political system. From this point up to the end of the nineteenth century, the U.S. government continued to move toward gaining full judicial control and purview over the Indian Territory.[80] Because an American federal court in a new territory required a forceful state presence to back it up, the federal government gained the right to establish "military posts or stations in the Cherokee Nation . . . for the protection of the citizens of the United States and the Cherokees and other citizens of the Indian country" (article 27). This intrusion of a federal court and military posts into the Indian Territory drew the region's indigenous people further within the formal American realm in another imposition of the boundaries of American colonial rule.

Regarding political jurisdiction, the treaty codified the Cherokee nation's consent to the formation of a "general council, consisting of delegates elected by each nation or tribe lawfully residing within Indian Territory, [which] may be annually convened in said Territory." A subsequent provision set out the scope of this council: "to legislate upon matters pertaining to the intercourse and relations of the Indian tribes and colonies of freedman resident in said Territory . . . the administration of justice between members of different tribes of said Territory and persons other than Indians and members of said tribes and nations; and the common defense and safety of the nations of said Territory." This council was to be "presided over by such person as may be designated by the Secretary of the Interior" (article 12). This agreement to organize some form of consolidated indigenous governance in the Indian Territory drew the Cherokee nation and other tribes a little further within U.S. political boundaries, somewhat more like domestic entities organized en masse under the umbrella of the American political system and presided over by a U.S. civil administrator. The fact that this council was to meet but once a year and that its sphere of concern was relations external to and among the tribes of the Indian Territory, including their common defense, meant that the Cherokee nation maintained relevant sovereignty over its internal laws and governance. The "general council" agreed to here was more like the "territorial council" proposed by the Northern Cherokee than the "territorial government" pursued by James Harlan. Still, as with the implantation of the federal court, the agreement to permit a general council represented a concrete political shift toward consolidating and domesticating indigenous political and territorial concerns within U.S. boundaries.

The final area of jurisdiction I want to discuss concerned the issue of taxation, which five years later became the basis for an important Supreme Court decision. The treaty states that "every Cherokee and freed person resident in the Cherokee Nation shall have the right to sell any products of his farm [and] . . . any merchandise or manufactured products . . . without restraint, paying any tax thereon which is now or may be levied by the United States on the quantity sold outside of the Indian Territory" (article 10). This made the Indian Territory a tax-free zone beyond the boundaries and thus the purview of American legislators and administrators seeking to generate government revenue. This clause denoted an important way in which the Indian Territory and its residing indigenous nations and tribes held, for the moment, a meaningful, materially beneficial footing beyond American boundaries, in the third space, still foreign to U.S. taxation law.

The taxation provision as well as the more complicated provisions discussed earlier demonstrate that the terms of the U.S.–Cherokee Treaty of 1866 were not simply dictated by the American federal government. Cherokee leaders refined their own political approach in the face of U.S. demands, and by so doing were able to play a meaningful role in creating this treaty. The terms of the treaty were also a product of American colonial ambivalence about the precise relationship of the United States to the Cherokee nation, which was evident, for example, in President Johnson's refusal to submit to the Senate the treaty that the Indian commissioner had negotiated with the Southern Cherokee. The strategy employed by the Northern Cherokee worked across the boundaries of the American political system to secure for the Cherokee the greatest possible political freedom from colonial rule. By pursuing this approach, Cherokee political actors such as John Ross were able to keep the integrity and autonomy of their nation intact, if diminished, at least somewhat beyond the boundaries of the American political system.

CONCLUSION

The political approach to securing Cherokee sovereignty pursued by the Northern Cherokee leaders was successful in important ways, resulting in "an adequate treaty that maintained tribal unity and enabled the Cherokee nation to retain its autonomy for forty more years."[81] Until 1898, the

Cherokee and the other four "civilized" tribes were exempt from the land allotment policy to which other indigenous tribes and nations had been subject since the passage of the General Allotment (or Dawes) Act in 1887.[82] The 1898 Curtis Act, however, ended this exemption by authorizing the survey and allotment of their landholdings under the supervision of the Dawes Commission. The Curtis Act also declared that the "laws of the various tribes or nations of Indians shall not be enforced at law or in equity by the courts of the United States in the Indian Territory."[83] This dictated the further domestication of Cherokee legal jurisdiction within the American political and legal system. Less than a decade later, in 1907, what was left of the Indian Territory became part of the new state of Oklahoma.[84] The politics of the Cherokee nation from 1866 to 1907 are not the focus of this study, however. Rather, the aim of this chapter has been to show how during and after the Civil War the American nation and state sought to impose boundaries on the Indian Territory and, in particular, one indigenous nation, the politically divided Cherokee, as an example of how the general U.S.–indigenous relationship was being redefined at this time. In response, Cherokee leaders sought to secure their nation's autonomy on the shifting, uncertain terrain of the post–Civil War American boundaries. Their effort to do so was made during the waning years of the era when a tribe's political relationship with the United States could still be reshaped through government-to-government treaty negotiations.

Vine Deloria Jr. and Clifford Lytle have referred to the post–Civil War period as a critical bellwether of the future of indigenous sovereignty on the trembling ground of a reunified, expanding American nation. For them, "the first real indication that self-government would be a national policy of the federal government came in the punitive treaties forced upon the Five Civilized Tribes following the Civil War." For Deloria Jr. and Lytle, self-government "implies a recognition by the superior political power that some measure of local decision making is necessary but that this process must be monitored carefully so that its products are compatible with the goals and policies of the larger political power."[85] By this definition, *self-government* means political status as a collective subunit under the purview of and the parameters set out by the American political system, under the terms of colonial rule, with much less autonomy than one of the several states. What the 1866 U.S.–Cherokee Treaty concretely signified was the U.S. government's effort to move indigenous nations and tribes off of any

strong foreign footing from which they could express sovereignty and toward domestication within the American political system. In other words, with the ratification of this treaty the Cherokee nation were placed further within American boundaries. This was a turning point for the Cherokee nation, provoking their effort to fight for autonomy in the third space, the ramifications of which would play themselves out over the next forty years or so. Furthermore, the Cherokee's experiences foreshadowed the shift that was about to occur in U.S. Indian policy more generally, a shift prefigured and fostered by political developments of the 1860s.

CHAPTER THREE

1871 AND THE TURN TO POSTCOLONIAL TIME IN U.S.–INDIGENOUS RELATIONS

From the Civil War to the early twentieth century, the relationship between the United States and indigenous people went through a decisive change that re-marked the status and location of indigenous tribes and nations in their relationship to the American political system. During this period the boundaries defining American sovereignty were solidified as they expanded, drawing indigenous communities further within U.S. boundaries without fully integrating them. With the emergence of an emboldened American settler-state and nation after the Civil War, the effort to impose modern colonial rule over indigenous nations and tribes began to move at a precipitous pace. The decision of Congress in 1871 to bring an end to the formal treaty-making process reflected this American imperative, and over the following decades it would take on increasing importance through American federal actions and decisions that constructed this year as a critical turning point in U.S.–indigenous relations. Indigenous people seemed destined from that time forward to reside temporally and politically in a position of "neither assimilation nor otherness."[1] The year 1871 thus also came to represent the beginning of a postcolonial challenge for indigenous politics. The challenge would be to reclaim this "neither-nor" location as a third space of sovereignty to express indigenous political identity, agency, and autonomy in resistance to the impositions of American colonial rule.

Although other important U.S. Indian policies and decisions were conveyed and implemented up through the end of the nineteenth century and the beginning of the twentieth century, I argue that the legislative act of 1871 that brought a formal end to treaty-making marked the turning point toward the modern era in U.S.–indigenous relations. Many of the political actors involved in this decision viewed it at the time as a fundamental change in U.S.–indigenous relations. Just as important, significant Supreme Court decisions in 1886 and 1903 looked back to the 1871 act and deployed it as a basis for justifying findings that decidedly undermined the

status of tribal sovereignty. In so doing, these decisions—and, as I point out later in the study, other political actions and claims by indigenous and American political actors throughout the twentieth century—retroactively constructed 1871 as the year when the footing of indigenous nations and tribes as similar to foreign nations was decisively, although not completely, displaced in favor of their increased domestication within the American political system. According to this construction, prior to 1871 it was treaty-making that formed the key framework for U.S.–indigenous political relations between the federal government and indigenous governments, as we saw with regard to the Cherokee nation's post–Civil War situation. The end of this framework in 1871 elevated the federal government, and especially Congress, into a position of having "plenary power" over indigenous tribes. As a consequence, to the federal government the tribes became much more like U.S. domestic concerns subject to American legislation than like foreign entities worthy of new international treaty negotiations and agreements. In expressly political and legal terms, the events of 1871 also represent the success of the efforts of American political actors like James Harlan to shift the ground of U.S.–indigenous relations. In this regard, I deem 1871 to represent the moment when the renewed American nation and state expressly made its colonial impression by imposing boundaries to restrict and subsume the spatial, historical, and political life of indigenous nations and tribes.

This freshly marked colonial boundary was set down not through a self-standing piece of legislation, but rather through a rider to a congressional act passed in March 1871. This rider's successful passage was the product of many years of effort to change the framework of the U.S.–indigenous political relationship. In this chapter I first trace the lead-up to this move toward ending treaty-making, looking at arguments from the American executive branch as well as concerns articulated by indigenous political actors. I then analyze debate over the rider itself, with a distinct focus on how U.S. senators and congressmen interpreted its meaning for the present and future status of U.S.–indigenous relations and for American national and state development. After considering the contemporaneous legislative debate on the rider, I look at how future court decisions, decisions ranging from two months to more than thirty years after the rider's passage, implicitly or explicitly evoked the events of 1871 in a manner that retroactively imagined this year as the modern turning point in

U.S.–indigenous relations. In all, this chapter demonstrates that the congressional decision to end treaty-making in 1871 and its subsequent constructions in Supreme Court decisions amounted to a generally successful U.S. effort to impose the boundaries of American colonial rule on indigenous people. In so doing, it propelled indigenous politics into a fight for autonomy in postcolonial time and space.

AMERICA'S COLONIAL IMPRESSION ON U.S.–INDIGENOUS RELATIONS

The idea of ending the U.S. policy of making treaties with indigenous nations and tribes had been the subject of serious discussion and debate during the post–Civil War years. In 1868, members of the House of Representatives argued that the executive branch and the Senate had inappropriately used their constitutional powers to negotiate and ratify treaties to facilitate huge land transfers from indigenous people "into the hands of railway companies and private parties to the detriment of the interests of the people."[2] The House members' argument was that the sale and distribution of indigenous territory should be seen as a matter of U.S. domestic policy, but that it continued to be framed as a U.S. foreign policy issue and was thus subject to the "advice and consent" of the Senate alone. In the post–Civil War context, the federal legislators making this argument viewed the domestication of indigenous people and their territory as a fait accompli. In other words, they understood the imposition of American colonial rule to be complete and without question, and therefore they felt that U.S.–indigenous relations should also be subject to the purview of the House of Representatives. This 1868 power struggle between the House and the Senate furthered the movement toward the consolidation of the boundaries of the American polity around indigenous nations and tribes, which were seen as less and less worthy of treatment as meaningfully independent political entities. A year later, the U.S. Indian commissioner directly supported and elaborated this view of the political status of indigenous communities in the post–Civil War era.

In 1869, the Indian commissioner was Ely S. Parker, himself a Seneca Indian who "was well educated in the white world in which he finally chose to live" and had worked in the executive branch for a number of years.[3] In his 1869 Annual Report, Commissioner Parker argued that as a consequence of the U.S. Indian policy and practice of treaty-making,

indigenous nations and tribes "have become falsely impressed with the notion of national independence. It is time that this idea should be dispelled." In place of this "false impression," Parker articulated the American government's *colonial impression* that indigenous nations and tribes are "not sovereign nations, capable of making treaties, as none of them have an organized government of such inherent strength as would secure a faithful obedience of its people in the observance of compacts of this character." Given the history of organized governance among the Five Civilized Tribes, such as the Cherokee nation, the argument that "none" of the indigenous nations or tribes could govern themselves was inaccurate, to say the least. However, such a sweeping statement exemplified the American imperative to domesticate indigenous political life by refusing the idea that indigenous political status could exist in any way beyond the boundaries of the United States or that indigenous nations could be seen as defensibly sovereign entities. Parker was clear about what this meant for the immediate direction of U.S. Indian policy:

> As civilization advances and [indigenous people's] possessions of land are required for settlement, such legislation should be granted to them as a wise, liberal, and just government ought to extend to subjects holding their dependent relation. In regard to treaties now in force, justice and humanity require that they be promptly and faithfully executed, so that the Indians may have no cause of complaint, or reason to violate their obligations by acts of violence and robbery.[4]

The Indian commissioner articulated a post–Civil War U.S. Indian policy approach that would impose, in Homi Bhabha's postcolonial terms, "the disciplinary and temporal orders of Progress, Rule, Rationality, and the State" onto the political life of indigenous communities and citizens, with paradoxical consequences.[5] Here we see the way in which the imposition of American colonial rule was constitutive of the scope and sovereignty of the American liberal democratic settler-state.

As discussed in the previous chapter regarding Harlan's notion of the "advancing tide," the claim that the American nation's development represents the "advance" of "civilization" is the most historically consistent temporal order impressed on indigenous people, that noted by the name

progress. This is a temporal order because it discursively places the colonizer and the colonized at perpetually irreconcilable ends of political time. On its own, the colonial discourse of progress, along with its component civilized-savage dualism, was familiar within U.S.–indigenous relations well before the Civil War period, from as far back as the founding through the removal era. However, in the post–Civil War period the discourse of "advancing civilization" was directly linked to the implementation of wide-ranging and fundamental territorial and political expansions, especially that of the modern American state. Whereas up to this time "possessions of land . . . required for settlement" were regularly acquired via treaties, Commissioner Parker's assessment here was that indigenous tribes no longer had the capacity to rule, and thus they should no longer be deemed valid sovereign treaty partners for the United States. In place of the apparent misrule of indigenous polities, Parker would substitute the rationality of America's "wise, liberal, and just government." The institutionalization of the disciplinary orders of rule and rationality over indigenous people would occur through the development of the new American state, which was emerging at this time, in part by extending its political purview over indigenous "subjects holding their dependent relation" to it. This process of redefining the relationship between the United States and indigenous tribes served to construct the power and purview of modern American state sovereignty, securing its status by undermining the modern legitimacy of indigenous sovereignty.

An extended look into Parker's argument shows that the linked articulation of progress, rule, rationality, and the state led to the formal creation of a paradoxical status for many indigenous tribes. In explaining why existing U.S.–indigenous treaties should be "promptly and faithfully executed," Parker's reasoning was indicative of the tensions of the emerging postcolonial context, because he paired the emancipatory norms of "justice and humanity" with a concern for preventing indigenous people from "violating their obligations by acts of violence and robbery." The postcolonial paradox resonant here was in the idea that although indigenous tribes were becoming increasingly bound by and within the rationality and rule of the new American state, they were deemed neither sufficiently rational nor self-ruled to be able to respond to this changing situation with anything but "violence and robbery." Instead, as Parker proposed and the U.S. Congress eventually codified, the political status of indigenous

individuals and collectivities would be cast into a sea of uncertainty while the U.S. policy of domesticating indigenous territory and political life continued apace.

The image of indigenous tribes set adrift politically due to the policy developments of this period echoed the sentiment of Lewis Downing, the Cherokee nation's principal chief in 1870. In a letter to the Board of Indian Commissioners, Downing objected to the federal government's push for the creation of a consolidated territorial government in the Indian Territory, which for him signaled the shift in U.S. Indian policy from a treaty-based framework to a domestic policy framework:

> We are told it would make no difference how we are secured and protected, so it is effected; and that it can be done as effectually by legislation as by treaty. But to us it appears that when once cut loose from our treaty moorings, we will roll and tumble upon the tempestuous ocean of American politics and congressional legislation, and shipwreck will be our inevitable destination. We now have our moorings—we have the protection of this powerful Government to look to—its pledges to rely upon; need we apologize for thinking that the Government of Washington and the Adamses is still generous and honorable?[6]

For Chief Downing, there was a clear difference between a U.S.–indigenous relationship based on federal legislation and one based on treaties. In both cases, the Cherokee nation would be dependent on the much more powerful American government. However, his concern was that the Cherokee nation would be domesticated to, not dependent on, the American political system. In other words, he did not want to see the Cherokee nation move from an international to an intranational relationship with the American polity.

To work with Downing's metaphor, up to this time indigenous nations and tribes had been, inarguably, often soaked and pounded by the "tempestuous ocean of American politics," but at least their treaty-based relationship with the United States allowed these indigenous polities to keep one foot planted on the firmer ground of the foreign shoreline. This ground symbolized their claim to some form of national independence

recognized through international treaties with the United States. Chief Downing, however, thought that the shift away from the treaty framework would set indigenous political life adrift within the boundaries of the American political system—indigenous people would lack any clear political status—with the "inevitable" result that the Cherokee nation would "shipwreck" and break apart.

In light of Downing's recognition of what was occurring with U.S. Indian policy at that time, recall Aimé Césaire's words: "It is the colonized man who wants to move forward, and the colonizer who holds things back." In this vein, Chief Downing was telling the Indian commissioners that his people did not want to be held back, and that subordination to the American political system was not going to allow them to move forward. The inclusion of his indigenous nation within American political space would not, could not, equate to its being included within American political time. The American temporal order of progress could not include an equal place for indigenous political identity because the latter represented to the federal government and the American nation the binary opposites to progress, civilization, rule, rationality, and the state. The discursive, legal, and institutional construction of modern American state sovereignty required the discursive, legal, and institutional deconstruction of tribal sovereignty as a status able to convey legitimate authority in the modern era. In other words, when Parker wrote that "civilization advances and their possessions of land are required for settlement," he did not need to clarify which people represented civilization and that indigenous people could not be included in such advances.

As Chief Downing could surmise, it was the "holding back" of indigenous political identity that mutually constituted the progress, rule, and rationality of the modern American liberal democratic settler-state. However, therein also resided the contingencies of colonial rule out of which emerged the indigenous political struggle for a distinct status in postcolonial time and space. Specifically, the post–Civil War colonialist objective was less that of assimilation than that of the domestication and subordination of indigenous political life—the setting of boundaries around its development—so as to further construct and embolden the sovereign political life of the newly reunified American settler-state and nation. This involved the direct imposition of the temporal boundaries

of colonial rule, an imposition perfectly encapsulated in the final legal wording of the congressional text that brought a formal end to the treaty-making era.

THE END OF TREATY-MAKING: THE MARK OF A NEW ERA

Passed on March 3, 1871, an appropriations bill for the civil administration of Indian affairs included a rider stating "That hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty: *Provided further,* That nothing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or tribe. . . ."[7] Here we have the formal end of the treaty-making framework for U.S.–indigenous relations. The rider is constructed in a way that amounts to, among other things, an American colonial imposition on the political status of indigenous tribes because it seeks to place them in a position of greater temporal uncertainty. To see this imposition, take careful note of the language used. On the one hand, the rider stated that from that point indigenous tribes and nations would not be deemed independent political entities, worthy of international treaty relations. On the other hand, it also affirmed that those treaties already agreed to would be respected by the U.S. federal government, and thus that it would respect, at least in theory, the independence of those tribes and nations pursuant to those treaties.[8] In other words, the treaty-defined national independence of nations such as the Cherokee was recognized by the federal government, but it was temporally located as a pre-1871 status. This status was, one could say, "grandfathered" into the new era, but not in a way that acknowledged it as a political status that would develop in modern political time and space. In the debate leading up to the vote on this appropriations bill, we see that many federal legislators were aware that the passage of this rider had the potential for having a significant impact on U.S.–indigenous relations.

Two days prior to the passage of the treaty rider, Senator John Stockton (Democrat of New Jersey) concisely articulated the central image driving much of the congressional debate when he said regarding indigenous groups: "The question is, are they foreign nations?" This question framed

the way a number of legislators sought to determine whether the federal government should any longer view indigenous tribes and nations as independent political entities worthy of treaty relations. This question is co-constitutive because one can determine what is foreign only by simultaneously defining the boundaries of the domestic. For Stockton, the answer to his own question was an unambiguous "No"; from this time forward, the tribes would not be considered foreign nations because he saw Congress declaring that "hereafter the Indians within our borders, within our limits, shall not be treated as foreigners."[9] Yet others, such as Senator Eugene Casserly (Democrat of California), struggled to articulate the way in which "the Indians were not wholly independent, but to a certain extent independent." Specifically, he said, "the Indians are not a part of the people of the United States; still less are they a portion of the citizens of the United States. I speak now of course of the Indians as tribes. . . . The tribes here are something different from foreign nations or from the States, more independent than the States, less independent than foreign nations."[10] The formulations of both Stockton and Casserly were premised on considering whether, where, and how indigenous tribes and nations fit within the boundaries of the United States and/or the American national community. Their disagreement also concerned the power and purview of the modern American state, finding different answers to the question about the degree to which the United States could claim that the tribes existed so wholly within and under its purview that they had lost all or most of their claims to sovereignty. For Stockton, the political and geographical domain of the United States had subsumed indigenous people into America's domestic realm, and this closed the question; they were no longer "foreigners." For Casserly, by contrast, indigenous tribes were not really integrated into American political society, and thus the question was still open.

In contrast to both Stockton's support and Casserly's ambivalence, Senator Garret Davis (Unionist of Kentucky) expressed strong opposition to the rider. Davis's argument for maintaining the status of indigenous tribes as political entities worthy of treaty relations was based primarily on their internal governing capacities, regardless of where they resided in relation to American borders and limits. In particular, he pointed to the Five Civilized Tribes of the Indian Territory, which included, of course, the Cherokee nation: "Do we not know that there are about eighty thousand

Indians in the southwest part of the United States, who are civilized . . . where they have their own government, their own constitution, their own languages, their own alphabet, their own literature, and where they are making rapid progress in human development?"[11] Davis's concern was not with the question of the foreign versus domestic political location of tribes vis-à-vis the United States. He was not assessing the political status of indigenous tribes and nations in terms of what it said about the post–Civil War boundaries of the American settler-state's domestic realm and about the status of U.S. sovereignty. Rather, he was concerned with what this rider forewarned about the future of U.S.–indigenous relations. He made this clear when he asked one pro-rider senator whether indigenous tribes and nations "of the southwestern portion of the United States are not a proper and competent power with which the United States may negotiate a treaty?"[12] Appropriately, Davis posed this question to the former secretary of the interior and once again Iowa senator James Harlan.

Davis's pointed query was prompted by Harlan's statement that "nations of Indians that might have been so recognized years ago may now be well regarded as having deteriorated to such an extent as to justify the adoption of this declaration on the part of Congress." It was in response to this claim about the apparent "deterioration" of some indigenous tribes and nations that Davis sought an explanation as to how a "proper and competent Indian power" such as the Cherokee fit into Harlan's vision for the future of U.S.–indigenous relations. In response to Davis, Harlan stated:

> I think that some of those tribes are as powerful now as many tribes with whom we have *heretofore* made treaties; but the effect of this proposition of the conference committee is to declare on the part of Congress that *hereafter* we will not recognize Indian tribes residing within the limits of the United States as nations in that sense which will justify the negotiation of treaties with them *hereafter;* but that nothing in this act shall be so construed as to invalidate any treaty *heretofore* made with them.[13]

The first thing to note about this statement is that Harlan undermined his earlier assertion that this shift in U.S. Indian policy was somehow a product of the deterioration of indigenous political communities as legitimate

treaty partners. He conceded that tribes and nations such as the Cherokee were independent—"powerful"—enough to be treaty partners with the United States, as they had been to that time. Thus, this new policy was not about the actual political development of the varied and diverse tribes and nations. Instead, it was about how indigenous political development was imagined and constructed in relation to the "progress" of American political development. As such, this policy was more about the construction of U.S. sovereignty and the location of the post–Civil War American nation in political time and space than about what was really occurring with the diverse and myriad indigenous tribes.

The second thing to note about Harlan's statement is his persistent reference to a clear temporal divide between the time before and the time after the adoption of the treaty rider by Congress. Twice he mentioned the status of indigenous tribes "heretofore," and twice he mentioned their status "hereafter." Regardless of whether an indigenous tribe was "powerful" enough to be independent, Harlan declared that "hereafter" the federal government would not recognize them "within the limits of the United States as nations" worthy of treaty relations. Harlan's statement and the treaty rider itself served in the cause of constructing this period as the dawn of a new era in American political development and U.S.–indigenous relations. The 1871 rider thus did not reflect the changing times in U.S.–indigenous relations, but rather, both at the time of its passage and in subsequent decades, represented the discursive, legal, and institutional *imposition* of a time change. This colonial imposition demarcated that there would be no modern political time for indigenous tribes and nations, and this action co-constitutively reaffirmed the modern development and the expanding "limits" of the power and purview—the sovereignty—of the American nation and state "hereafter."

While it may seem a stretch to view the 1871 rider as generating both an immediate and a retroactive imposition of the temporal and spatial boundaries of modern American colonial rule, consider that the Senate was in fact presented with an alternative, more common way to think about the effect of time on U.S.–indigenous relations. Senator Casserly, who had struggled with the question of the uncertain political status of indigenous tribes and nations and finally opposed the rider's passage, argued: "We should let time solve it. Time will solve it if we have patience, either by the disappearance of these dwindling races or by their own

voluntary acceptance of the relations of citizenship."[14] This is a familiar claim about the effect of time on so-called savage peoples in the face of emergent civilized societies, inevitably causing the former to succumb to the latter. However, those in favor of bringing the treaty era to an end had no patience for letting time have its own way with the pace and form of U.S.–indigenous relations. They had a modern settler-state to build, state sovereignty to construct and secure, and a nation to expand, and treaty relations stood in the way of the imposition of the colonial rule that would facilitate this state and national development.

Turning to the debate on the rider in the House of Representatives, we can read the arguments of the legislators as advocating the temporal imposition of American colonial rule so as to serve the cause of expanding America spatial boundaries. Representative Aaron Sargent (Republican of California) spoke of the general "hostility" of the House to the "right and expediency of making treaties with our own subjects, on our own soil, and completely subject to our control."[15] For this legislator, there was no question at all about whether indigenous tribes were foreign. He read them as American subjects occupying American, not indigenous, soil, to which the Congress could gain easier access with the end of treaty-making. Similarly, Representative William Lawrence (Republican of Ohio) stated that he was "gratified to find that the Senate at last has abandoned all claim of right to make Indian treaties." For him this meant that "hereafter the land policy of Congress cannot be broken up and destroyed by Indian treaties. Henceforth the homestead policy is to become the fixed policy of Congress."[16] Here we see evidence of a foreshadowing of the impact that the 1862 Homestead Act would have on indigenous people. The 1871 rider's implicit declaration of an end to indigenous political development co-constitutively opened wider the avenues for American political development through national expansion.

Representative William Armstrong (Republican of Pennsylvania) believed that the effect of this new policy on U.S.–indigenous relations would be "that in the future our dealings with them will be as mere domestic communities, with whom we may contract, but only with the approval of Congress. They will be contracts, not treaties."[17] Of course, one legislator's declaring that this rider turned indigenous tribes and nations into "mere domestic communities" did not make it so. I do think that Armstrong's point was prescient as to the impact that the 1871 rider would eventu-

ally come to have as a colonial imposition on indigenous tribes. However, there are reasonable differences of opinion about the weight one should give to the rider's historical import for U.S.–indigenous relations.

Francis Paul Prucha correctly points out that after 1871 the federal government used "treaty substitutes":

> By means of bilateral agreements, negotiated with the tribes in the manner of treaties but ratified or confirmed by both houses of Congress; by unilateral statutes, which on occasion required formal consent of the tribes; and by executive orders, which became the dominant means of establishing and modifying the Indian reservations (once done by treaty), the federal government carried on its dealings with tribes to the end of the nineteenth century and well into the twentieth.[18]

One could argue, then, that the post-1871 practice of U.S.–indigenous "bilateral agreements" as well as those "unilateral statutes" that "required formal consent of the tribes" served the same purpose as formal treaties, and therefore the 1871 rider was not that historically and politically significant. Addressing the same concern in their study of U.S.–indigenous political documents, Vine Deloria Jr. and Raymond DeMallie consider a couple of ways to interpret the meaning of the rider: "The appropriations rider in 1871 might therefore be regarded as only a minor and temporary conflict between the Senate and the House of Representatives, because treaty language continued to be used when dealing with the Indians. But the rider can also be appropriately viewed as the culminating step in what had been a long and often contentious argument over the feasibility of making treaties with Indian tribes."[19] In these passages, the arguments in favor of downplaying the importance of the 1871 rider are premised on an emphasis on continuity.

According to these claims, "treaty substitutes" and "treaty language" were adequate to make sure that the post-1871 "agreements" continued to carry the same weight as formal treaties for indigenous tribes and for U.S.–indigenous relations generally. However, these arguments do not address the ramifications of these "substitutes" for indigenous political status—especially that of tribal sovereignty—which I argue should be the core of our concern. Instead, they focus on the continuous existence

of some sort of practice of agreement-making involving the U.S. federal government and indigenous tribes, but do not take into account the place that the 1871 rider has come to hold in American imaginings of the development of U.S.–indigenous political history. After formally ending treaty-making in 1871, the rider eventually came to carry significant weight as American federal officials sought to define the modern status of U.S.–indigenous relations and therefore the status of tribal sovereignty by retroactively constructing the meaning of past developments in U.S. Indian policy. In this regard, the importance of the 1871 treaty rider for the shifting legal, institutional, and discursive terms of U.S.–indigenous relations would take some time to be seen; the rider gained greater significance when constructed as a critical turning point in U.S.–indigenous relations. We can see this discursive and institutional process at work in Supreme Court decisions handed down from mere months to many decades after the rider's passage.

To start, consider the Supreme Court's 1871 decision in *Cherokee Tobacco,* where the question at hand was about which legal document took precedence as the "supreme law of the land," a U.S.–indigenous treaty or U.S. federal legislation. The treaty clause at issue was article 10 of the 1866 U.S.–Cherokee treaty discussed in chapter 2. Recall that this clause guaranteed that Cherokee citizens could transport and sell their products "without restraint" in the Indian Territory, and therefore they were required to pay federal taxes only on goods transported and sold outside the Indian Territory. The federal legislation at issue was the 1868 Internal Revenue Act, which imposed taxes on, among other items, tobacco "produced anywhere within the exterior boundaries of the United States, whether the same shall be within a collection district or not." Ironically, given their strong opposition to any treaty negotiated by John Ross and his colleagues, it was actually Southern Cherokee leaders E. C. Boudinot and Stand Watie who asserted their treaty-secured right to pay no taxes to the U.S. federal government on goods sold within the Indian Territory. In May 1871, the Supreme Court ruled that the 1868 Act "must prevail over the 10th article of the treaty with the Cherokee nation," justifying their decision by the rule that a "treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty."[20]

David Wilkins has referred to *Cherokee Tobacco* as a key case that revised thinking on the issue of "whether tribes, as preexisting and extra-

constitutional entities, may be *included* or *excluded* under the scope of the general laws enacted by Congress." The result of this case, according to Wilkins, was a new "so-called inclusion theory," whereby "general congressional acts do apply to tribes unless Congress explicitly *excluded* them."[21] This meant that tribes were presumed to be included within federal laws unless Congress explicitly stated otherwise. This judicial determination advanced the construction of American federal plenary power over indigenous people and concomitantly diminished the legal sanctity and value of U.S.–indigenous treaty-based relationships. In truth, this decision had far wider implications than those of concern to the particulars of the case.

On its own, *Cherokee Tobacco* placed U.S. law and U.S.–indigenous treaties on an equivalent spatial plane of political import, with the legal preference given to that which was most recently enacted. But this equanimity was a mirage due to the fact that the decision in this case was handed down only two months after Congress had passed the rider. Thus, the first consequence of the formal end of treaty-making could be traced beyond its express legislative purpose because no future U.S.–indigenous agreement would ever attain the status of a treaty, and thus could never attain the legal standing necessary to supersede extant federal law in accord with the standard set out in *Cherokee Tobacco.* Therefore, what seemed to be a decision that placed the sovereign actions of the United States and indigenous tribes within the same realm of political time actually constructed a fresh temporal boundary across tribal sovereignty, undermining its status in modern U.S.–indigenous relations by "holding it back." While the rider's relevance was implicit in *Cherokee Tobacco*—in other words, the wider ramifications of the decision stemmed from a working through of the logic of the standards it set out—two important court cases further down the road, one fifteen and the other more than thirty years later, directly invoked Congress's 1871 act in a way that further imagined and constituted it as a critical marking point in U.S.–indigenous relations. The two cases were *United States v. Kagama* (1886) and *Lone Wolf v. Hitchcock* (1903), which together retroactively constructed 1871 as the moment when the political boundaries of the relationship between indigenous people and the United States had shifted. By drawing out the logic of the arguments in these two cases, I will show how the 1871 rider was imagined as having domesticated indigenous political life in a way that brought the U.S.–indigenous relationship into what I call postcolonial time, signifying

the beginning of the struggle over the terms of modern American colonial rule. I look at each case in turn.

KAGAMA AND *LONE WOLF:* A NEW DEPARTURE INTO POSTCOLONIAL TIME

United States v. Kagama concerned the constitutionality of the Major Crimes Act of 1885, which made it a federal offense for an indigenous person to commit any of seven crimes, such as rape and murder, against another indigenous person on a tribe's reservation.[22] By definition, this act removed these offenses from the jurisdiction of the tribes themselves, placing tribal citizens further within the jurisdictional boundaries of the federal government. Kagama's attorneys argued that Congress did not have the constitutional right to legislate on criminal matters regarding indigenous-on-indigenous offenses committed on tribal reservations, so this federal law violated a tribe's right to sovereignty in these matters. The court, in a decision written by Justice Samuel Miller, granted that the political relation between indigenous tribes and the United States has "always been an anomalous one and of a complex character." Specifically, "[The tribes] were, and always have been, regarded as having a semi-independent position when they preserved their tribal relations; not as States, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people, with the power of regulating their internal and social relations and thus far not brought under the laws of the Union or of the State within whose limits they resided." In this manner, Justice Miller constructed a narrative conveying the court's understanding of indigenous tribes and nations as somewhat dependent on the U.S. federal government while still maintaining a meaningful level of independence in their internal affairs; and Miller continued that "in this spirit the United States has conducted its relations to them from its organization to this time." However, in the opinion's next sentence Miller's narrative took a sharp turn, and so did a sense of the "spirit" of U.S.–indigenous relations, as he set out the court's reasoning about the constitutionality of the Major Crimes Act: "But, after an experience of a hundred years of the treaty-making system of government, Congress has determined upon a new departure—to govern them by acts of Congress. This is seen in the act of March 3, 1871." At this point, Miller cites the full text of the 1871 rider.[23]

In *Kagama* the court constructed the 1871 rider as a turning point in U.S.–indigenous relations, the moment when Congress extended its power over indigenous tribes and nations in a manner that co-constitutively generated the legal and political image of indigenous people as decreasingly able to self-govern. As Petra Shattuck and Jill Norgren note, Miller's opinion declared that "with the end of the treaty-making era (1871), Congress had gained plenary power over Indian tribes."[24] The plenary power doctrine denoted, in this case, the ultimate power of Congress over indigenous people's affairs.[25] The rise of congressional power in this way served to draw indigenous tribes and nations further within the domestic realm of the American political system, further constructing the expanding purview of American sovereignty as it hailed the decline of indigenous sovereignty. The compatibility between the colonialist and liberal democratic principles of this decision were clear in the opinion's closing passages, where Miller asserted that Congress's extended powers are not only legitimate, but just and humane: "The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary for their protection, as well as to the safety of those among whom they dwell."[26] The message of this case was twofold: (1) the boundaries of the United States were ineluctably expanding and solidifying as the American nation and state rapidly modernized, and (2) indigenous tribes and nations were not only "weak" and "diminished" but, even worse, incapable of meeting the challenges of self-government necessary to survive in the face of all that was seemingly becoming modern around them. This dynamic of claiming to both dominate political space and protect indigenous tribes exemplified the imposition of colonial rule for the sake of the development of the modern American settler-state, justified according to liberal principles. The American state imposed colonial rule in the name of saving indigenous people from their own weakness and backwardness, that is, savagery. According to the Supreme Court's 1886 decision, the historical touchstone for this shift in the U.S.–indigenous relationship was Congress's action in 1871.

In 1903, the congressional treaty-making rider of 1871 again became a key constituent of a very important Indian law case, this time in a Supreme Court decision so injurious to the political status of indigenous tribes that it has been referred to as "the Indians' Dred Scott decision."[27] The case was *Lone Wolf v. Hitchcock,* in which the court's decision further diminished

the political status of indigenous tribes by affirming Congress's power to abrogate treaty provisions and placing congressional plenary power beyond the purview of judicial review. This case firmly placed indigenous tribes in a struggle for status in postcolonial time and space because, according to the court's logic, from that time forward indigenous tribes had neither the foreign nor the domestic status to exert meaningful political agency in American politics.

The origins of *Lone Wolf* reside in the 1867 Treaty of Medicine Lodge, ratified by the Senate in 1868, through which the Kiowa and Comanche tribes agreed to establish reservation boundaries and make land cessions.[28] In a concurrent treaty, the Apache tribe joined the Kiowa and Comanche to form a three-million-acre confederated tribal (KCA, or Kiowa-Comanche-Apache) reservation.[29] Article 6 of the 1867 treaty set out that if "the head of a family, shall desire to commence farming, he shall have the privilege to select . . . a tract of land within said reservation, not exceeding three hundred and twenty acres in extent, which tract . . . should cease to be held in common." As to the future status of the reservation land held in common, article 12 established very specific parameters: "No treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force as against the said Indians, unless executed and signed by at least three fourths of all the adult male Indians occupying the same."[30]

In 1892, a quarter of a century after ratification of the Treaty of Medicine Lodge, U.S. Indian commissioners and members of the KCA confederation came to an agreement—by this time, of course, not a formal treaty—that "provided for a surrender to the United States of the rights of the tribes in the reservation, for allotments out of such lands to the Indians in severalty, the fee simple title to be conveyed to the allottees or their heirs after the expiration of twenty-five years; and the payment or setting apart for the benefits of the tribes of two million dollars as the consideration for the surplus of land over and above the allotments which might be made to the Indians."[31] The terms of this agreement were a product of their time, which was the period from 1887 to 1934 when the federal government explicitly sought to break up communal landholdings and turn tribal citizens into individual private property holders. The era began formally with the General Allotment Act of 1887 (GAA), which authorized the president to "allot the lands" of reservations to indigenous people "lo-

cated thereon," thereby freeing up the surplus land for claim and purchase by nonindigenous Americans.[32] Agreements and executive orders based on the GAA framework broke up tribal communal property and transferred it by sale and homesteading to nonindigenous Americans to such an extent that the total indigenous territory decreased from 138 million acres in 1887 to about 48 million acres by 1934, when the allotment policy was brought to an official end.[33] Two and half million of those acres were up for grabs as a consequence of the 1892 KCA–U.S. agreement. However, leaders from the Kiowa, Comanche, and Apache tribes protested that the agreement was illegitimate because it did not meet the requirements of article 12 of the 1867 treaty.[34]

It took six years for the 1892 agreement to be voted on by Congress, but only the House of Representatives ratified it in 1898. The Senate demurred at that time due to pressure from the KCA tribes and the Indian Rights Association, an organization of white Americans concerned for the fate of indigenous people, which supported the KCA's claim that the 1892 agreement was fraudulent because it was not approved by three-quarters of the tribes' adult males. The Senate passed a resolution requesting that Secretary of the Interior Ethan A. Hitchcock investigate this specific complaint. The secretary of the interior reported the results to Congress in 1899, and he concluded that whether one counted the legal age of adulthood as eighteen or twenty-one, "in either event, less than three fourths of the male adults appear to have signed."[35] Despite this fact, the House was able to get the agreement ratified two years later by attaching it as a rider to Senate Bill S 255, *Agreement with Indians of Fort Hall Reservation,* which was passed at the end of the legislative session, in June 1900. The constitutionality of this bill, which ratified the 1892 KCA–U.S. agreement that the secretary of the interior conceded did not meet the standards of tribal consent set out in article 12 of the 1867 Treaty of Medicine Lodge, was the issue to be decided by the U.S. Supreme Court in *Lone Wolf v. Hitchcock.*

The text of the Court's decision in *Lone Wolf* cites verbatim the secretary of the interior's finding that three-quarters of male tribal citizens did not consent to the agreement. However, this fact did not compel the court to side with the KCA claimants. To the contrary, the question of the status of article 12 of the 1867 treaty served as the foundation for the court's unanimous opinion, penned by Justice Edward White, which affirmed the constitutionality of the 1900 bill and thus the validity of the

1892 agreement. The argument of the confederated KCA tribes, Justice White wrote, was that the 1867 treaty vested them

> with an interest in the lands held in common with the reservation, which interest could not be divested by Congress in any other mode than that specified in the said twelfth article, and that as a result of the said stipulation the interest in the common lands fell within the protection of the Fifth Amendment to the Constitution of the United States, and such interest—indirectly at least—came under the control of the judicial branch of the government. We are unable to yield our assent to this view.[36]

As this passage attests, there were three possible bases for overturning the 1900 Indian affairs bill. First, because the genesis of the 1900 rider was the 1867 treaty, Congress did not have the right to unilaterally abrogate or modify specific provisions of a treaty deal and expect compliance from the KCA confederated tribes. Second, the conscious violation in the 1900 bill of the 1867 treaty requirement of tribal consent represented an abuse of the Fifth Amendment right of Kiowa, Comanche, and Apache tribal citizens to due process when faced with the loss of their property at the hands of the federal government. And third, the ultimate determination of both these issues resided with the Supreme Court, not the Congress. In elaborating the reasons for not "assenting to this view" in the *Lone Wolf* decision, the court decisively expanded congressional plenary power to such a degree as to put tribes and tribal citizens in a seemingly impossible political bind, an imposed colonial bind.

White's opinion then set aside the contemporary status of treaties, specifically the treaty provision of tribal consent: "To uphold the claim would be to adjudge that the indirect operation of the treaty was to materially limit and qualify the controlling authority of Congress in respect to the care and protection of the Indians, and to deprive Congress, in a possible emergency, when the necessity might be urgent for a partition and disposal of the tribal lands, of the power to act, if the assent of the Indians could not be obtained."[37] Note the political implications of this passage: here U.S.–indigenous treaties are framed as reflecting a nation-to-nation political relationship consigned to the past in American political time, a past that threatens to bind the contemporary sovereignty of the American

federal government. In other words, as remnants of an earlier temporal form of the U.S.–indigenous relationship, treaties could not be allowed to "limit and qualify" Congress in "respect to the care and protection of the Indians" in their present state of dependency and political deterioration.

Thus, only thirty-six years after the creation of the 1867 treaty between the federal government and the KCA confederation, in which the tribes negotiated very specific terms for bounding, allocating, and the possible future allotment of their reserved land, the document no longer represented an indigenous expression of sovereign political agency worthy of respect in the modern world of early twentieth-century politics. This decision constructed tribal sovereignty as an expression of political agency that had run out of time and was thus no longer able to make and secure promises to and from the U.S. government. Rather, the court thought that the treaty represented an archaic moment in U.S.–indigenous relations, and that to adhere to the tempo of that moment, out of modern political time, would cost indigenous individuals and communities who could no longer fend for themselves politically in the present moment (for instance, by not having the political capacity to "assent" to the "partition and disposal of their tribal lands"). The court's logic here was purposely circular: the archaic status of U.S.–indigenous treaties in relation to congressional power demonstrated the political decline and dependency of indigenous tribes, and the political decline and dependency of indigenous tribes proved that U.S.–indigenous treaties represented an archaic time in U.S.–indigenous relations. Thus, when set against the will of Congress, the 1867 treaty provisions had no pertinent legal standing by the early twentieth century; they were stuck in colonial time. According to this colonial argument, indigenous people have neither the agency nor the authority to be independent political actors in the modern time and space of American politics.

Justice White would not have agreed that his opinion referenced any change in the political time of U.S.–indigenous relations. Rather, he believed that "plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning." But to prove this point White did not turn to the American nation's founding documents; rather, he looked to the formal end of treaty-making: "Until the year 1871 the policy was pursued of dealing with the Indian tribes by means of treaties, and, of course, a moral obligation rested upon Congress to act in good

faith in performing the stipulations entered into on its behalf. But, as with treaties made with foreign nations, the legislative power might pass laws in conflict with treaties made with the Indians."[38] Given this latter point, which White supported by citing a number of cases, including *Cherokee Tobacco,* one might conclude that the court assessed the case as if it were any other treaty with a foreign nation, and therefore the reference to the end of treaty-making in 1871 had little relevance. However, as the opinion continued it was clear that the 1871 rider was read by the court as a moment when treaties with indigenous tribes had come to represent the terms of an archaic political relationship between what it constructed as incommensurably unequal collective entities, with one becoming more domesticated in the realm of the other via the imposition of colonial rule. The judicial elevation and codification of federal plenary power in this way thereby further served to construct the purview of U.S. sovereignty, necessarily and simultaneously undermining the status of tribal sovereignty.

In the opinion's next paragraph, White argued that when "treaties were entered into between the United States and a tribe of Indians, it was never doubted that the power to abrogate [treaty provisions] existed in Congress, and that in a contingency such power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith towards the Indians." As in the previous paragraph, White did not support this claim of unquestioned, transhistorical congressional power with evidence from the founding era, or even from the treaty-making era from 1789 to 1871. Rather, he cited *United States v. Kagama,* and from the 1886 case he quoted the passage that mentions the "new departure" in U.S.–indigenous relations that Congress began in 1871, including the full text of the rider.[39] By referring to the 1871 rider for a second time, White affirmed that according to his reading the power to abrogate treaty provisions had actually been in doubt up to that point in time. To this end, the court's unanimous decision in *Lone Wolf* served to judicially construct and codify the power of Congress to abrogate, amend, and modify treaties so as to control, among other things, the future of tribal landholdings without having to gain consent from or even consult with the tribe. By looking to the *Kagama* decision to support his opinion, White implicitly conceded that the effort to settle the question of plenary power was a very recent phenomenon, one that he was in the process of writing into American law.

Moreover, by not only referencing *Kagama* but also quoting the section of it that he did, White further contributed to the notion that this absolute power of Congress was traceable not from the time when "treaties were entered into between the United States and a tribe of Indians," but rather from the time when Congress decided that treaties would no longer be entered into between the United States and a "tribe of Indians."

Lone Wolf thus contributed significantly to the retroactive construction of both the time stamp and the terms of the "new departure" in U.S.–indigenous relations that we saw occurring with the decision in *United States v. Kagama.* As Blue Clark concludes in his study of this case, "*Lone Wolf* climaxed a century of accumulating opinions on the Indian's place within the national legal structure as well as within American society," and it "remains today the crowning statement of federal supervisory control over colonial dependents' lives and property."[40] By providing what turned out to be a foundation for this new U.S. Indian policy era, the congressional rider of 1871 proved critical to the arguments of the court in *Lone Wolf* and its supporting precedent in *Kagama.* The importance of this congressional act for both of these cases demonstrates that the use of "treaty substitutes" and "treaty language" after 1871 does not adequately replicate the formal treaty-making process available up to that time. The formal end of treaty-making mattered, and still matters, in the historical development of U.S.–indigenous relations, even if its ramifications and weight took a few decades to constitute and manifest as American federal officials further developed the legal and political narrative of American colonial rule. In fact, it was the status of the 1867 treaty and not the status of the 1892 agreement that was really at issue in *Lone Wolf,* demonstrating that the court did not see the 1867 and 1892 documents as having the same relevance for assessing the political and legal status of indigenous tribes. That status was as entities predominantly, but not wholly, domestic to the American political system—"a race once powerful, now weak"—in words White drew from *Kagama.* This domestication was not complete, because for all that *Lone Wolf* affirmed about the expansion of Congressional powers, placing tribes and their property increasingly within the American domestic purview, the court also deemed this power "a political one, not subject to be controlled by the judicial department."[41] In other words, by referring to Congress's plenary power as "political" the Supreme Court

placed this power beyond its institutional purview, as if, as far as the Court was concerned, U.S.–indigenous relations resided in the same domain as U.S. relations with an unambiguously foreign nation.

As Shattuck and Norgren assert, *Lone Wolf* not only judicially constructed and affirmed Congress's power to "abrogate treaties and control (lease, sell, or allot) tribal property," but, just as important, exempted this "nearly absolute congressional power from judicial review at the very time when the original constitutional justification for juridical abstention—the foreign policy character of federal Indian policy—had been explicitly abandoned." This "original constitutional justification" stemmed from an interpretation of the Commerce Clause as declaring that tribes were more like foreign nations than the domestically located "several States." By the time of the *Lone Wolf* decision, this vision of the U.S.–indigenous relationship was understood by the court to have come to a formal halt in 1871. The result of all this for indigenous tribes was that they were left with, in the words of Shattuck and Norgren, "neither external nor domestic remedies against congressional abuses of the treaty power."[42] They were not "external" enough as sovereign nations to compel compliance or renegotiation of treaty terms, and they were not "domestic" enough as citizens to have rights guaranteed under the U.S. Constitution, such as the right to due process.[43] In the end, this meant that *Lone Wolf* positioned indigenous tribal sovereignty and citizenship just enough within the sphere of the American political system to deny indigenous people the power of political agency as either foreign or domestic political actors. This paradoxical status drew its legal and political strength from the court's reading of the colonial imposition made by the 1871 treaty rider, from which it determined that since 1871 indigenous people's political life had been neither fully assimilated to nor excluded from the American polity, neither fully colonized nor fully decolonized.

On top of its immediate relevance for U.S.–indigenous relations, the *Lone Wolf* decision resonated with the wider U.S. political and judicial context of the time. During the era in which the court consolidated the "neither-nor" status that further imposed American colonial rule on indigenous people in *Lone Wolf,* it also "weighed in on the question of the constitutional status of the territories" that were acquired by America through its turn-of-the century imperial ventures. In its most basic sense, the issue placed before the court was whether the " 'Constitution followed

the flag' " in territories such as Puerto Rico, Guam, and the Philippines that the United States gained from Spain at the end of the Spanish-American War in 1898.[44] This overarching question and its various permutations were addressed in a number of early twentieth-century cases that came to be known as the Insular Cases.[45] One of the earliest of these cases, *Downes v. Bidwell* (1901), addressed the status of the territory of Puerto Rico, specifically whether the territory was domestic or foreign to the United States with regard to the taxation of goods imported to the United States (i.e., were Puerto Rican exports subject to U.S. duties as foreign goods or free from such duties as domestic goods?). By a slim majority, the court found that duties on goods from Puerto Rico were legal. In the key assenting opinion in *Downes,* the same Justice Edward White who had written the majority opinion in *Lone Wolf* defined the political status and location of Puerto Rico as roughly similar to those of indigenous tribes in relation to the United States: "The result of what has been said is that whilst in an international sense Puerto Rico was not a foreign country, since it was subject to the sovereignty of and was owned by the United States, it was foreign to the United States in a domestic sense, because the island had not been incorporated into the United States, but was merely appurtenant thereto as a possession."[46] We see here that White constructed Puerto Rico "on the boundaries" in somewhat but not exactly the same way as he and his colleagues had indigenous tribes in the *Lone Wolf* decision. The key phrase in the *Downes* decision that defines what I deem the imperial boundary location is that which refers to Puerto Rico as "foreign to the United States in a domestic sense." This construction of the status of this newly acquired American territory represents the flip side, the imperial side, of the construction of the status of indigenous tribes after 1871. The force of American domestication increasingly framed the tribes as subject to colonial rule or, to reverse the *Downes* phrasing, "domestic to the United States in a foreign sense." I shall expand on what I mean by this distinction between the work of imperial and colonial impositions.

In her excellent analysis of the construction and ambivalences of American empire, Amy Kaplan notes that the *Downes* case came before the Supreme Court as the "United States shifted from continental expansion to overseas empire, from absorbing new territories into the domestic space of the nation to acquiring foreign colonies and protectorates abroad."[47] In other words, the American political imperative at issue here

was the nation's effort to expand its reach clearly beyond what it deemed its domestic boundaries, including acquiring territories that had been unquestionably foreign to the United States only years earlier, such as those under the sovereignty of Spain. Unlike the legislative acts and judicial decisions regarding indigenous tribes, the Insular Cases did not concern the consolidation of American domestic space through colonial imposition. The consolidation of the American domestic purview is a colonial concern, whereas the negotiation of the status of U.S. constitutional standards where the American flag has been planted abroad, near and far, is an imperial concern. Thus, for Puerto Rico the *Downes* decision imposed an imperial bind by constructing the territory as "foreign to the U.S.," as an "unincorporated territory" whose goods could be taxed as if it were a foreign state, but "domestic" to the degree that it ultimately existed under U.S. sovereignty, unable to, say, pursue its own independent trade policy. By subtle contrast, for indigenous tribes U.S. decisions such as *Kagama* and *Lone Wolf* and legislative acts such as proclaiming the end of treaty-making imposed a colonial bind by defining them as domestic to the United States in a foreign sense, thereby locating them within the reaches of American political boundaries as increasingly domestic entities while also defining them as primitive entities, stuck in colonial time, and thus in that important sense foreign culturally and politically to modern America.

To be sure, there are as many similarities as there are differences between the imperial and colonial binds. For example, as Kaplan notes, the *Downes* decision created a "hybrid liminal space that is neither fully outside the United States nor comfortably part of it,"[48] which resonates as a possible site of a third space of sovereignty. Nevertheless, it is important to appreciate the unique and much longer-standing political challenges faced by indigenous tribes that took this particular form in the late nineteenth and early twentieth centuries. These challenges were not a consequence of American imperial ventures and the effort to deal with American ambivalence about its role in the world, all of which placed territories such as Puerto Rico in a liminal imperial space on the boundaries, foreign to the United States in a domestic sense. Rather, they were a result of the modern American effort to consolidate the U.S. domestic space through colonial imposition, boundary construction, the undermining of longstanding coexistent sovereign entities, and the expression of American ambivalence about its national belonging in space and time, all of which placed tribes

in a liminal colonial space on the boundaries, domestic to the United States in a foreign sense, one might say.

In this regard, the decisions in *Kagama* and *Lone Wolf* asserted that the United States would no longer deem indigenous nations and tribes more like foreign nations than domestic entities with regard to the terms, status, and future of U.S.–indigenous relations. The tribes would be foreign temporally, out of time with modern American political development, but not spatially, in which sense they were deemed to be increasingly and politically domesticated. For the authors of these two opinions, the time when one could imagine the U.S.–indigenous political relationship as an international relationship had culminated in 1871. This is the position that Deloria and Demaille offered as their second way to understand the treaty rider's importance. In this regard, the colonial imposition made by the 1871 act and constructed in subsequent Supreme Court decisions must be understood in both temporal and spatial terms.

The legislative end of treaty-making in 1871 and its iteration and construction in the judicial decisions of 1885 and 1903 amounted to an effort to temporally undermine and shackle the political identity and sovereignty of indigenous tribes, setting down a historical boundary beyond which they would not be allowed to evolve politically on their own. From that time forward, in the American political narrative, indigenous political independence would seemingly be anchored to a pre-1871 notion of indigenous political life, "held back" as Césaire might say, by an American colonizer unwilling to allow for the idea and manifestation of tribal sovereignty's becoming modern. This pre-1871 anchor is what I call "colonial time," which I contrast with the struggle of indigenous people to resist colonial rule and express their identity, agency, and autonomy in postcolonial time. In spatial terms, the acts and decisions from 1871 through the early twentieth century brought indigenous political identity further within the boundaries of American political life, where it was now much more domestic than foreign, although this domestication was and remains incomplete. Indigenous tribes and citizens were brought just far enough within the American domestic realm to undermine their political agency during the very period when the United States was engaging in a massive and generally successful effort to break up tribal landholdings and transfer the land to nonindigenous Americans.

The cause of this critical nineteenth-century shift in U.S.–indigenous

relations does not reside solely, of course, in the political and legal interpretations of one rider to an 1871 appropriations bill. Rather, as I have sought to trace out in this chapter and the one preceding it, there were political events and developments leading up to this moment that gave shape to this new era in U.S.–indigenous relations. Subsequent Supreme Court decisions further constructed 1871 as the symbolic and practical point marking this shift. By the early twentieth century, this shift vaulted indigenous politics into a fight for postcolonial time and space, which meant there was a need to redefine the position on the boundaries away from being a political bind and toward being the site for the articulation of a resistant indigenous political identity, agency, and autonomy in and for a third space of sovereignty. The challenge facing indigenous politics from this time onward is nicely captured by Vine Deloria Jr. and David Wilkins, who note the profound meaning and long-term impact of the 1871 act:

> After the disclaimer of treaty making in 1871, any previous constitutional protections for Indians were no longer recognized. . . . Indians were made subject to the powers of Congress as subjects of the country but had no right and no standing to contest their change in status. . . . Indian tribes are still recognized as sovereigns by the United States, but they are deprived of the one power all sovereigns must have in order to function effectively—the power to say "no" to other sovereigns.[49]

Here Deloria and Wilkins articulate the connection between the formal end of treaty-making and the creation of an "in-between" political status for indigenous tribes and nations as domestic to the United States in a foreign sense.

This new era in U.S.–indigenous relations placed indigenous people in the postcolonial time and space of being what Bhabha might refer to as "almost the same, but not quite" fully colonized, domestic entities within the American political system. To the American liberal democratic settler-state, indigenous tribes are "both 'incomplete' and 'virtual' " political actors in the American temporal and spatial political realm, as a people neither fully colonized nor fully excluded.[50] Therefore, when Deloria

and Wilkins refer to the partial domestication of indigenous political communities—seemingly sovereign but not sovereign enough to say "No" to the U.S. federal government—they contribute to the retroactive construction, iteration, and affirmation of the 1871 act as a major American colonial imposition upon indigenous political status and agency and as the point marking the modern turn in U.S.–indigenous relations.

CONCLUSION

The shift of political status of indigenous people across the boundaries of American politics, from being more like foreign nations to becoming more like domestic entities, gained vital impetus and momentum during the Civil War and post–Civil War years, leading to the express policy change of 1871. The legislative act of 1871 subsequently proved a key basis of two critical Supreme Court decisions in the late nineteenth and early twentieth centuries, both of which sought to bind the political agency and status of indigenous tribes and nations. Just as the 1871 act was important for securing the decisions in these cases, the cases were important for constituting 1871 as a critical moment in the history of U.S.–indigenous relations. From the Civil War years to the early twentieth century, the boundaries of the American political system were imposed across indigenous political identity, temporally and spatially, in order to undermine and shackle indigenous political life. In this way, the imposition of colonial rule served to constitute and secure the modern American liberal democratic settler-state. Just as this colonial imposition sought to prevent indigenous political life from becoming and being seen as modern, it necessarily propelled indigenous political actors into the postcolonial challenge of seeking to redefine the political meaning of their "on-the-boundaries" relationship to the American political system. This era thus led to the development of a political struggle in postcolonial time and space, because it compelled indigenous political actors to try to counter America's colonial imposition by redefining their in-between status, seemingly one of stasis and futility, into an active third space in which they defined their own paths as political agents of the modern world. In contrast to the politics on the boundaries pursued and expressed by the Cherokee nation right after the Civil War, the third space politics of indigenous

people in postcolonial time and space would not be able to use the treaty-making process to define political identity, express political agency, and secure political autonomy.

In all, the end of the treaty-making process in U.S. Indian policy posed a challenge to the future political status of indigenous tribes and nations because it fostered a more determined American effort to break up tribal collectivities and assimilate indigenous individuals into the American polity. With regard to assimilation, groups referring to themselves as the Friends of the Indian, in particular the Indian Rights Association, argued for the "elevation" of indigenous individuals to the status of U.S. citizens.[51] During an 1892 speech in Boston to the Society for Promoting Good Citizenship, Herbert Welsh, secretary of the Indian Rights Association, asked: "How shall the Indian be made a citizen?"[52] During these years, the answers to this question ran pretty much along the lines articulated by another "friend" of the Indian, Merrill E. Gates, in 1896: "The deadening sway of tribal custom must be interfered with. The sad uniformity of savage tribal life must be broken up! Individuality must be cultivated."[53] No single policy did as much to materially "interfere" with "tribal life" than did the allotment policy that began in 1887.

In 1901, President Theodore Roosevelt referred to allotment as "a mighty pulverizing engine to break up the tribal mass," confirming, should anyone have ever doubted it, that this policy was a brutal tool of American colonial imposition on indigenous people. By opening the way for nonindigenous people to purchase property within the boundaries of historic tribal territory, the allotment policy had more to do with the creation of what are now referred to as "checkerboarded" reservations than did any other U.S. policy. By the early twenty-first century, with indigenous tribes and nonindigenous people owning intermittent and neighboring patches of property within reservation boundaries, tribal territories have come to look like checkerboards. Checkerboarding is an enduring colonial imposition that to our day continues to undercut the reach of tribal sovereign jurisdiction over historic reservations, a matter I discuss in chapter 6.

Another effect of the allotment policy, as noted by Roosevelt, was that "some sixty thousand Indians have already become citizens of the United States."[54] Specifically, the GAA set out a process whereby after the "allottee" had established "competency" as a private property holder and a member of American society, the federal government's role as a trustee

ended, "the land became taxable and the allottee became a citizen."[55] But what such citizenship actually meant for the political status of indigenous people in the U.S. context would not be settled through the allotment process of citizen-making. Rather, as I examine next, the prospect and actual imposition of U.S. citizenship provoked indigenous people to define for themselves the meaning of indigenous political identity against and across the boundaries of American politics.

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CHAPTER FOUR

INDIGENOUS POLITICS AND THE "GIFT" OF U.S. CITIZENSHIP IN THE EARLY TWENTIETH CENTURY

One of the many questions indigenous people faced in the first decades of the twentieth century concerned their individual political status in relation to the American political system: were all indigenous people, henceforth, to be citizens of their tribes, citizens of the United States, or dual citizens? Or, to paraphrase Deloria and Wilkins, would some indigenous people in the U.S. context find a way to say "No" to the American colonial imposition of citizenship, and in its place offer their own postcolonial position? These questions became more pressing in the years leading up to and beyond the day that U.S. citizenship was legislatively conferred on indigenous people. On June 2, 1924, President Calvin Coolidge signed into law the Indian Citizenship Act (ICA), which unilaterally made U.S. citizens of all indigenous people living in the United States. At that time, there were around 300,000 indigenous people in the country, and about 125,000 were made citizens by the new law. The rest were already U.S. citizens.

Usually, people who have been excluded from American political life see the codification of their citizenship status as an unambiguously positive political development. In the case of indigenous people and U.S. citizenship, one cannot find such clear and certain evidence. All indigenous people certainly did not look at U.S. citizenship in the same light, and very few saw it as unambiguously positive. In a more abstract sense, this is understandable because the acquisition of citizenship and its attendant benefits also imposes constraints and obligations. This chapter demonstrates that the indigenous people who engaged the debate over U.S. citizenship sought, in different ways, to redefine the boundary location of indigenous political identity, neither fully inside nor fully outside the political, legal, and cultural boundaries of the United States. These efforts

to define alternative meanings to and forms of citizenship produced both reformist and radical calls for what I deem to be a third space of citizenship and sovereignty that challenged, in different ways, the boundaries of American political life.

This chapter begins with a brief look into the meaning and context of the ICA itself. The unique status of indigenous people was embedded in the key language of the ICA, which was composed by American reformers and legislators as a product of American colonial ambivalence about what it meant for indigenous people to be included within the U.S. polity. Because indigenous people were not generally quiescent on the matter of U.S. citizenship, this ambivalent form of colonial imposition exposed the permeable boundaries in the American state's purview over the political identity of those in its midst. These openings became postcolonial sites through which indigenous political agents sought to redefine what citizenship did and should mean for indigenous people, whether as American citizens, tribal citizens, or some combination of the two. This tension points to this chapter's direct concern, which is how indigenous people of this era viewed the prospect of becoming and being U.S. citizens.

I have found that two distinct and direct indigenous responses to the prospect of U.S. citizenship prevailed at this time: (1) support for it as a just measure to secure the longstanding political identity of indigenous people in America and (2) outright rejection of it in the name of tribal sovereignty and citizenship. The first response was the reformist position, which sought integration within the boundaries of American political space but resisted assimilation to the boundaries and narrative of American political time. The second response was the radical position, which expressly challenged the boundaries of American political space and time in the name of what amounted to a third space of sovereignty and nonbinaristic mapping of North American political space. Both the reformist and radical responses, in their own ways, exposed the postcolonial possibilities open to indigenous political actors when contesting colonial impositions on indigenous political agency, identity, and autonomy.

No single indigenous viewpoint of the early twentieth century better and more consistently personified the slippages of American colonial rule than did that of Tuscarora Chief Clinton Rickard, who articulated a political identity that explicitly stood for defying and crossing the boundaries of settler-states such as the United States and Canada. Although Rickard

stands as the best historical representative of the "reject U.S. citizenship" position, I argue that his perspective also defined the way in which indigenous politics on the boundaries in pursuit of a third space of sovereignty and citizenship was generally expressed during this time. This politics, in the dying words of Chief Rickard's friend Cayuga Chief Deskaheh, sought to "'fight for the line,' meaning the border."[1] The notion of "fighting for the line" signified the claims and efforts of those U.S.–based indigenous political actors, be they integrationists or sovereigntists, who argued that indigenous political identity could not be fully defined or contained by the United States. The American effort on behalf of colonial containment was expressed not only in the ICA, but also in the Johnson-Reed Act of 1924, which restricted immigration to the United States, and in so doing raised the ire of indigenous people such as Chief Rickard. I turn first to the ICA itself and the political context from which it emerged.

THE INDIAN CITIZENSHIP ACT OF 1924

The Indian Citizenship Act states the following: "That all non-citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: *Provided,* That the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property."[2] The first thing to note here is that the ICA conferred U.S. citizenship on indigenous people unilaterally. Specifically, this unilateral action meant that, unlike in the case of earlier federal laws, such as the 1919 act that offered citizenship to indigenous men who had fought for the United States in World War I,[3] indigenous people did not have to apply for citizenship after the 1924 law.[4] More important, by first conferring U.S. citizenship on indigenous people en masse and then in the next sentence securing indigenous rights to tribal property, the ICA codified what amounted to a form of dual citizenship for indigenous people who maintained enrollment, and thus citizenship, in a tribe. Because property is held communally by tribes, indigenous individuals had to be citizens of a tribe to have any right to tribal property. In stating that U.S. citizenship does not "affect the right of any Indian to tribal or other property," the ICA thus necessarily secured indigenous claims to tribal citizenship in the very same act that conferred U.S. citizenship.

Within the language of this American federal law, then, we locate colonial ambivalence as a key element of this U.S. Indian policy development. This was so, most particularly, with regard to the dual citizenship implication of the ICA, which confirmed that indigenous people could be legally recognized citizens of two polities, that of their tribe and that of the United States. While dual citizenship was implicitly codified through the careful phrasing of the ICA, it was not the explicit objective of those most responsible for its passage.

As developed through the House and Senate Committees on Indian Affairs in the Sixty-eighth Congress, the Indian Citizenship Bill acquired its precise language as a consequence of being shaped by two political groups: Progressive legislators and Friends of the Indian activists. In the 1920s, the Progressive movement and political party were in decline, but individual Progressive legislators still maintained some power, particularly through their roles on congressional committees.[5] Three Progressive senators were members of the Senate Indian Affairs Committee,[6] and "the majority of Senators who worked for reform of Indian policy in the 1920s were Progressives."[7] With regard to their work on the ICA, historian Gary Stein argues that the "Progressives forged an act to strike a blow at big bureaucracy the way earlier Progressive legislation had struck at big business."[8] The unilateral conferral of U.S. citizenship was supposed to reduce the corruption and inefficiency of the Department of the Interior and the Bureau of Indian Affairs (BIA) by in one stroke removing citizenship regulations from their purview and empowering indigenous people through citizenship. For these legislators, as Stein claims, the ICA was not "a piece of social legislation; instead, it was regulatory in nature."[9] That these legislators were likely motivated by regulatory rather than social concerns indicates that the direct concerns and demands of indigenous people were not the forces compelling Progressives to act on this matter.

By the early twentieth century, Friends of the Indian organizations and concerned government officials arrived at the view that a more ambivalent form of American citizenship was a better goal for indigenous people. There were two main arguments compelling a drift away from the goal of conferring full, unambivalent citizenship: (1) indigenous people were not "civilizing" rapidly enough to be competent full citizens, and (2) nonindigenous Americans were taking advantage of indigenous people via the allotment process to gain easy and cheap title to tribal land. These conclu-

sions led American reformers to advocate increased federal guardianship: the "idea that the government had an obligation to supervise and protect native citizens."[10] U.S. guardianship did not mean the end of the exploitation of indigenous people—as the suffering caused by the allotment policy was proving too well—but this policy effort was still a clear expression of American ambivalence, as expressed in the reformers' uncertainty about whether and how indigenous people could become fellow citizens. The idea that federal guardianship was a necessary component of citizenship was promoted by the Indian Rights Association, which pushed for the ICA clause regarding "tribal rights and property." In its annual report, the Indian Rights Association pointed out that the Supreme Court had decided that "guardianship was not incompatible with citizenship."[11] Overall, as historian Frederick Hoxie put it, "skepticism concerning the Indians' ability to adapt to American society had produced a new category of partial citizenship."[12] In constructing such a "partial citizenship," the ICA codified the status of indigenous people as simultaneously citizens and wards of the United States.

Not long after passage of the ICA, an editorial from the *Survey* magazine referred to such a "citizen-ward" status as "baffling" and "anomalous."[13] This response was understandable, because the ICA created and confirmed a form of U.S. citizenship for indigenous people that neither denied their citizenship in tribes nor fully incorporated them into the American polity. It affirmed dual citizenship status as well as citizen-ward status. Taken alone or together, the dual citizenship and citizen-ward interpretations of the ICA show that from the U.S. perspective indigenous people were neither fully inside nor fully outside the American polity. Instead, they were "domestic to the United States in a foreign sense," to recall the phrasing from the previous chapter. This was a result of both American colonial imposition on indigenous political status and colonial ambivalence regarding the scope and extent of this status. To trace this policy history from the U.S. perspective nevertheless begs the question of what indigenous people thought of U.S. citizenship. As noted, I find two such views in evidence, which I rephrase as "We are the first American citizens" and "Our citizenship is in our own nations." The first view challenged American political time so as to define a more multicultural variant of indigenous political identity in the United States. The second view aimed its energy directly at American political space so as to mark a form of indigenous political

identity that refused the colonial impositions of American, and for that matter Canadian, citizenship. Both strategies represent forms of indigenous politics on the boundaries that sought to shape and express indigenous political identity, agency, and autonomy in the third space.

"WE ARE THE FIRST AMERICAN CITIZENS"

In 1915, Seneca Arthur C. Parker, an anthropologist, asked a couple of pointed questions regarding the status of indigenous people in the U.S. context: "Who is the Indian? What is he in the eyes of the law? The legal status of the Indian has never been defined. He is not an alien, he is not a foreigner, he is not a citizen."[14] Parker here pointed to and challenged the lack of input that indigenous people have regarding their in-between political status in relation to the American polity. He posed these questions in an editorial for the *Quarterly Journal,* the periodical produced by the Society of American Indians (SAI), an organization that Parker and a "small group" of other indigenous people had formed in 1911.[15] The SAI sought reforms in U.S. policy that would help to address and resolve questions such as those posed by Parker about the status of indigenous people in the American political system. The men and women who composed the SAI were professionals educated in American colleges, and "for the most part lived their lives in a non-Indian world." The overall goal of their organization was indigenous "integration into the larger society accompanied by the preservation of a more or less abstract native identity and pride," and the SAI had in mind "specifically an Indian identity they wished to preserve."[16] Although the SAI and their sympathizers represent the most notable pro–U.S. citizenship and pro-integration indigenous viewpoint of this era, their ideal relationship between indigenous and American political identity did not involve the simple assimilation of the former into the latter. Rather, the more active indigenous voices representing this viewpoint advocated a form of political integration into the U.S. polity that carefully challenged the temporal boundaries of American politics.

One of these voices was that of Charles Eastman, a Santee Sioux and founding member of the SAI, who in the early twentieth century "had been considered by many early reformers to be a testament to acculturation."[17] Eastman, a doctor who graduated from Boston College in 1889 and then joined the BIA as an agency physician, sought to integrate into

American society. He had observed up close the horrible treatment indigenous people experienced at the hands of the U.S. government. Most notably, Eastman was the first doctor to reach the field at Wounded Knee after the 1890 Ghost Dance massacre of some three hundred Sioux by the U.S. military.[18] Experiences such as this one led Eastman to adopt a strong stance in favor of a policy that called for incorporating indigenous people into American society, which would include the eventual elimination of the BIA and the gradual preparation of indigenous people for U.S. citizenship.

In 1915, Eastman wrote an article titled "The Indian as Citizen" for the popular magazine *Lippincott's.* In it he observed that the forces of civilization seemed to be winning over—or wearing down—indigenous people: "After due protest and resistance, [the American Indian] has accepted the situation; and having accepted it, he is found to be easily governed by civilized law and usages."[19] Eastman went on to applaud the "citizen Indian" who "learns and masters . . . the politics of his county and state," and cited with approval "a scheme of progressive advance toward full citizenship . . . 1. Tribal ward; 2. Alloted ward; 3. Citizen ward; 4. Full Citizen." While he strongly advocated the benefits of citizenship, Eastman did not believe that American society should seek to eliminate indigenous culture or force tribes and their citizens to be citizens against their will:

> We think each race should be allowed to retain its own religion and racial codes as far as is compatible with the public good, and should enter the body politic of its own free will, and not under compulsion. This has not been the case with the native American. Everything he stood for was labeled "heathen," "savage," and the devil's own; and he was forced to accept modern civilization *in toto* against his original views and wishes.[20]

Here Eastman was mapping out a complicated relationship between, on the one hand, an indigenous political identity that was being transformed—in his terms, "civilized"—through contact with American political culture and, on the other hand, the imperative of defending the autonomy of indigenous people as they gradually integrated into the American polity, ultimately as "Full Citizens." To him, this mapping could not be seamless.

While Eastman did want indigenous people to become legal U.S. citizens, he wanted them to be neither forced into this status nor compelled to accept the prevailing American political culture "*in toto* against [their] original views and wishes." Here Eastman redefined the boundary location of indigenous political identity along cultural lines, with "native American" cultural influences—what I take him to mean when he refers to "religious and racial codes"—maintaining some distance from the "modern civilization" of American political culture. This was not an overtly radical position to take, as is evident from the fact that he qualified his argument for a form of cultural pluralism by stating that it should only go "as far as is compatible with the public good." Eastman was focused on cultural issues rather than expressly material or political concerns. This emphasis on cultural over material concerns was again evident four years later in a commentary he wrote for the SAI's newly renamed *American Indian Magazine,* where Eastman concluded his "Indian's plea for freedom" by stating: "We do not ask for territorial grant or separate government. We ask only to enjoy with Europe's sons the full privileges of American citizenship."[21] Overall, Eastman's words reveal that even those indigenous voices arguing passionately for U.S. citizenship called forth and challenged the cultural basis upon which meaningful, and perennially exclusive, participation in the American polity had been built.[22] To offer a more thorough sense of what this "cultural challenge" entailed, I turn to another founding member of the SAI, whose words had a slightly sharper tone than did those of Eastman.

Yavapai Carlos Montezuma was one of the most politically outspoken indigenous people of the Progressive era. He held such strong views that he often found himself at odds with his own colleagues in the SAI—and eventually broke from the organization and began to publish his own newsletter, *Wassaja*—because he felt they were not seriously committed to one of his primary political objectives, the abolishment of the BIA.[23] Montezuma was more radical than Eastman. He saw the BIA as the critical roadblock "keep[ing] us from our rights." He made this statement in 1917 in *Wassaja* in the course of writing a scathing critique of the American policy of drafting indigenous men to fight for the United States in World War I, despite the fact that many of these men were not U.S. citizens. Montezuma thought the BIA was to blame for this injustice because it "tells the country that we are competent to be soldiers, but are not compe-

tent to be citizens."[24] While he was a more direct critic of federal institutions than his SAI colleagues, he was like them in seeing the importance of American citizenship for indigenous people.

Montezuma's solution to the problem of the drafting of indigenous men into military service was not to demand that they be exempted from the draft. Rather, he used this problem as the rationale for making an even louder case for the full and legal recognition of U.S. citizenship for indigenous people. I use the term *recognition* intentionally, because Montezuma argued that the issue of the military draft further revealed that indigenous people had been active and competent citizens in this land for centuries: "We Indians are ready to defend the country of our forefathers as we have been doing these five hundred years against all odds, but what are we now? We are nothing but wards; we are not citizens and we are without a country in this wide world." To his question "What are we now?" Montezuma responded that the indigenous person is "THE FIRST AMERICAN CITIZEN. Why not? He was here before Columbus, he was here before Washington, he was here before Lincoln." In this sense, citizenship was not something that must be conferred or granted but was rather a "just title" that must be "bestow[ed]" before any demands, such as military service, could be made by the U.S. government. This "bestowal" was the just way to treat indigenous people, whom he called the "true Americans."[25] Montezuma's argument, then, pointed to another form of politics on the boundaries, that is, the transgression of the temporal boundary that defined and narrated the American nation's political identity.

Writing in the late nineteenth century, French political theorist Ernest Renan argued that "forgetting, I would go so far as to say historical error, is a crucial factor in the creation of a nation."[26] Specifically, Renan meant forgetting the moments of constitutive violence that found a nation as a specific and usually situated political identity. Indeed, Montezuma marked such moments by referring to the time "before Columbus," and thus to the violence of European conquest, and to that "before Washington," and thus to the violence of the American founding. However, while he certainly would not have wanted Americans to forget the violence that helped constitute their nation, Montezuma's concern seemed to focus more on the forms of forgetting regarding what Homi Bhabha calls "the nation's narrative."[27] By asserting that indigenous people are not only the true Americans but also the first American *citizens,* Montezuma sought to

challenge the narrative of political identity in and of America. Specifically, his argument challenged both how the American nation narrated its location in political time and how it defined which groups of people were presumed to be part of this narrative. In short, he was criticizing America for all that it was forgetting about the indigenous people in its midst.

When Montezuma stated that indigenous men were willing to fight under the U.S. flag in World War I to "defend the country of our forefathers," just as they had done for "five hundred years," he articulated a narrative of indigenous political identity as a form of *American* citizenship that went back at least half a millennium and had continued actively to the present. In this way, he traced out an "indigenous-American" political identity that transcended the historical boundaries of a "Euro-American" political identity. Montezuma did this by revealing what Bhabha calls a tension between "the people as an *a priori* historical presence, a pedagogical object, and the people constructed in the performance of narrative, its enunciatory 'present' marked in the repetition and pulsation of the national sign."[28] Translated to Montezuma's argument, this means, first of all, that indigenous people, as the "first American citizens," were not, nor did they seek to be, part of the presumed historical "Euro-American" identity in this land. However, while "indigenous-American" political history challenged the boundaries of "Euro-American" political history—neither fully inside nor outside its boundaries—these "first American citizens" did want to be part of the contemporary performance of the American "national sign." According to Montezuma's argument, then, indigenous people did not want to be seamlessly incorporated into American political time, but they did want to continue to perform their role in the present narrative of American political identity and citizenship, most notably by fighting in the war, as long as this citizenship was duly and legally recognized. In this sense, indigenous political actors like Eastman and Montezuma wanted indigenous political identity incorporated into the production and protection of modern American political space, but not the U.S. narrative of American political time.

In the course of his passionate arguments, Montezuma, like Eastman, did not present a radical challenge to the U.S. nation and state, other than demanding the abolishment of the BIA. Rather, both men argued that the participation of indigenous citizens among the people constructed in the contemporary performance of American political identity and national

sovereignty could not involve simple assimilation or integration within preexisting and unwavering cultural or historical boundaries. The sort of third space of citizenship they were seeking involved a nonbinaristic mapping of at least two temporally overlapping forms of American political identity, constructed through indigenous- and Euro-centered narratives of political time. Reading the claims of Eastman and Montezuma as articulations of a temporally driven expression of a third space of citizenship captures how these men sought to argue simultaneously for U.S. citizenship and for the persistence of a culturally distinct indigenous identity. This was a form of a postcolonial argument that resisted the binaristic political imaginaries of colonial rule, although not radically so.

Right after World War I, Yankton Sioux Zitkala Sa (aka Gertrude Bonin), secretary of the SAI and editor of *American Indian Magazine,* echoed the third space of citizenship argument in an editorial addressing what indigenous people wanted in return for their participation in and support of the U.S. war effort: "The Red man asks for a simple thing—citizenship in the land that was once his own—America. . . . There never was a time more opportune than now for America to enfranchise the Red man!"[29] The two forms of America here, the one to which indigenous people claimed a long historical and cultural relationship and the one to which they were seeking political access, were, respectively, the "pedagogical historical object" and the "performative enunciatory present" noted earlier. The rhetorical strategy used here involved proclaiming that the very American narrative that made indigenous people distinct, the one that articulated their deeper historical relationship to this land than could be claimed by those included in the settler-state project, was also the basis on which many indigenous people sought political access to and legal inclusion in the dominant American polity. In other words, the claim for a political identity drawn out of an indigenous narrative of political time underscored the demand for a distinct form of inclusion within the political space of the dominant American political system. This form of political argument prevailed not only in the years leading up to the passage of the ICA, but also in subsequent years as indigenous political actors and organizations sought to compel the federal government to secure for indigenous people the rights and privileges of citizenship promised in the 1924 act.

To this end, in 1926 Zitkala Sa and her husband, Yankton Sioux Raymond Bonin, formed the National Council of American Indians (NCAI),

a "pan-Indian group" with local chapters "on numerous reservations."[30] As president of the NCAI, Sa went directly to the legislative halls of the federal government to press for the enforcement of indigenous people's newly codified citizenship rights. In 1926, the NCAI petitioned the U.S. Congress with a statement that included the following: "The council has but one purpose, the organization of a constructive effort to better the Red Race and make its members better citizens of the United States. These objects it cannot attain unless the Indians are accorded the rights essential to racial self-respect and a spirit of loyalty to the United States."[31] I take the pairing of the notions of "racial self-respect" and "loyalty to the United States" as further evidence of the efforts of mainstream indigenous political actors to continue to argue for a form of meaningful U.S. citizenship that did not remove from indigenous people their distinctive cultural and political identity. That this argument was articulated after the passage of the ICA, and thus after legal citizenship status had been secured, indicates that this rhetorical strategy was aimed at carefully defining and manifesting a form of substantive political participation for indigenous people in the United States that did not require the surrender of a substantial foothold within indigenous communities. Frederick Hoxie has referred to this as the effort to define a "middle position between [the] two extremes" of, on the one hand, abandoning tribal communities for the sake of the "trappings of American civilization" and, on the other hand, completely embracing tribal communities without regard to the complicated, interwoven political, cultural, and economic context of North America.[32] I refer to this as an expression of the third space generated out of the indigenous political struggle for identity and agency in postcolonial time amid the American liberal democratic settler-state.

Thus, even though members of the SAI and the NCAI were fairly well acculturated to Euro-American ways, they sought to find a way to define and argue for a form of political status for indigenous people that involved being an active part of, but not fully contained within, the dominant American polity. That said, these political actors did not articulate a radical challenge to American colonial rule. Their resistance was more implicit, based on temporal disjunctures; individuals like Parker and Eastman leaned heavily toward a more integrationist position. By contrast, the passage of the ICA as well as the Johnson-Reed Act in 1924 provoked other indigenous political actors to articulate a form of third space

of sovereignty in postcolonial time *and* space that expressly challenged the colonial boundaries of the American settler-state and nation.

"OUR CITIZENSHIP IS IN OUR OWN NATIONS"

In July 1924, a little over a month after the passage of the Indian Citizenship Act, the Chippewa Indians of Minnesota held their annual general council meeting at Cass Lake, Minnesota. In his opening address to a council composed of over seventy delegates representing ten reservations, Benjamin Caswell, president of the Chippewa Indians Inc., stated: "A law has been passed making the Indians full citizens of the United States and of the States wherein they reside and it will not be for very much longer that we will gather together in this fashion. Therefore the time has come for the Chippewa Indians 'to make hay while the sun shines.' "[33] This was a telling statement representing the fact that some indigenous political leaders foresaw the effect that the ICA could have on their tribal communities and political claims. As discussed earlier, the precise legal language of the ICA promised to grant U.S. citizenship without threatening tribal property rights. Still, this legal assurance, about which Caswell likely knew,[34] did not dissuade him from seeing the conferral of U.S. citizenship as a significant step on the path toward the dissolution of indigenous communities as meaningful political entities in the U.S. context. Thus, when he said the Chippewa would not long "gather together in this fashion," Caswell was not speaking of gatherings of a cultural or social sort. Rather, he was referring to expressly political meetings such as the one at which he was speaking, where delegates from the various reservations sought to form collective Chippewa policy and claims to present to the U.S. federal government. The persistent focus of indigenous tribal claims was and remains the autonomy they seek to secure with regard to their territory, culture, and socioeconomic lives. Thus, while Caswell still saw the "sun shining" on the Chippewa's political efforts, he worried that the ICA forecast that the sun would soon set on sovereignty for those tribes that did not consolidate their status.

While some tribes, like the Chippewa, sought to adjust to a citizenship status they believed a fait accompli, and still other tribes pretty much ignored the ICA because their people were already U.S. citizens and they had more pressing concerns,[35] a number of the loudest indigenous voices

on this matter were those that questioned and challenged what they saw as the transparent colonial imposition of U.S. citizenship on their political identities. This more radical viewpoint was evident in July 1924, when the *Los Angeles Examiner* printed an article by Wyandotte Jane Zane Gordon, which she began by warning, "It is not a matter of definite certainty that the Indian will accept the proffered benevolence or burden—whichever it may be—for the Indian must decide if 'the Greeks have come bearing gifts.' "[36] Zane Gordon made it quite clear that as far as she was concerned, U.S. citizenship was no "gift."

Developing what amounted to a postcolonial discursive strategy, Zane Gordon marked the boundary of political time crossed by the "Indian," who "prior to . . . the government of the white man . . . was here in undisturbed proprietorship of the entire landed estate of America, with his organized municipal governments, his social institutions, his well-defined property laws." She then critiqued the ICA's violation of a basic political principle: "No government organized . . . can incorporate into its citizenship anybody or bodies without the[ir] formal consent." The importance of the latter point stemmed from a basic political fact: "The Indians are organized in the form of 'nations,' and [they have] treaties with [other] nations as such. Congress cannot embrace them into the citizenship of the Union by a simple act." Here Zane Gordon set out a legal, historical, and political argument against citizenship based on the premise that "the diplomatic status of the Indian is established" as a citizen of his or her indigenous nation.[37] As discussed in the previous chapter, the 1871 rider that brought an end to treaty-making also guaranteed that previously ratified treaties would maintain their legal standing. Zane Gordon was thus demanding that indigenous political status not be restricted in its expression and development by the colonial imposition of American legislation, be it that of 1871 for indigenous tribes or that of 1924 for indigenous individuals.

Compare the words of Zane Gordon to those of Carlos Montezuma, whose argument amounted to the claim that indigenous political identity could stand as a distinct "historical pedagogical object" while also taking part in performing the contemporary construction of American political space. Zane Gordon's argument, by contrast, took the position that indigenous political identity was and should remain distinct, both as a pedagogical object and as performed in its "enunciatory present." In other words,

indigenous citizens and tribes should mark their own locations in political time and political space, even if this meant challenging the temporal and spatial boundaries of the American nation and state. This argument was directed not only at a general American readership, but also toward indigenous people themselves.

Given that Zane Gordon's article appeared in a newspaper in a major American city, her larger audience was obviously a nonindigenous American readership, to which she sought to make the case for the historical, legal, and spatial distinctiveness of an indigenous political identity that could not be consumed by the United States through unilateral legislation. That said, twice in the article she employed the phrase "if the Indian accepted citizenship." The obvious implication here was that Zane Gordon did not see the ICA, a unilateral colonial imposition by the U.S. federal government, as a fait accompli. Instead she believed that, whether asked for their consent or not, it was the political obligation of indigenous people to make their own decision about whether they would accept the "gift" of U.S. citizenship. Should they do so, she warned that "both the men and women of the tribes will prove the ready victim of political intrigue."[38] By turning the question of U.S. citizenship around in this manner, Zane Gordon encouraged indigenous people to express and further constitute their distinct political identity and tribal independence by refusing U.S. citizenship.

THE POSTCOLONIAL MAPPING OF NORTH AMERICAN POLITICAL SPACE

During the 1920s, no group of indigenous people more vocally and consistently refused U.S. citizenship than did the tribes and citizens of the Iroquois nations: the Mohawk, Seneca, Onondaga, Oneida, Cayuga, and Tuscarora. A year before the passage of the ICA, officials from the Department of the Interior visited and sought the views of the Iroquois—or the "New York Indians"—on various matters. In a report submitted for the year ending June 30, 1924, the following was conveyed:

> During July and August of 1923, Commissioner Moorhead made a survey of the conditions among the Iroquoian Tribes of New York. . . . At the time of his visits the question of citizenship for

> Indians was a subject they were discussing. He found that the great majority were opposed to the proposal to make all New York Indians citizens of the United States at one time. Since then, however, the enactment of the Snyder Indian citizenship bill, June 2, 1924, has made all American Indians citizens without affecting their tribal relations or property.[39]

Here we have evidence not only that the U.S. government was aware of the Iroquois views of U.S. citizenship well before June 1924, but also that it deemed the concerns of the Iroquois to have been addressed with the addition to the ICA of the clause concerning rights to tribal property. However, the dual citizenship conferred by the ICA was not what the Iroquois desired, either. Only a few weeks after the ICA's passage, the political leaders of the Iroquois nations "promptly sent letters to the president and Congress of the United States respectfully declining United States citizenship, rejecting dual citizenship, and stating that the act was written and passed without their knowledge or consent."[40] Chief Clinton Rickard was the most prominent Iroquois leader to mobilize resistance to this colonial imposition of U.S. citizenship.

Rickard was born in 1882, raised on the Tuscarora Reservation in western New York, and at the turn of the century "enlisted in the U.S. Army and fought for the U.S. government." His U.S. military service is interesting not only in light of the World War I debate regarding the drafting of indigenous people, but also because it underscores the fact that, while he retained strong "anti-assimilation, anti-citizenship, and pro-tribal sovereignty" views throughout his life, Rickard also "moved easily in the white world and even became a leader and educator of whites."[41] Therefore, it is fair to say that Rickard lived across the *cultural* boundaries of American society. While forms of border-crossing of a cultural and historical nature may have been sufficient to allow Charles Eastman and Carlos Montezuma to express their political identities, Rickard found that the full expression of his political identity required the crossing of the expressly geographical boundaries of the United States. Rickard's border-crossing politics began to crystallize in response to the formation and passage of the ICA.

In *Fighting Tuscarora,* his autobiography, written in the early 1970s, Rickard described how the Iroquois viewed the ICA after it passed, "despite our strong opposition":

> By our ancient treaties, we expected the protection of the government. The white man had obtained most of our land and we felt he was obliged to provide something in return, which was protection of the land we had left, but we did not want to be absorbed and assimilated into his society. United States citizenship was just another way of absorbing us and destroying our customs and our government. . . . We feared citizenship would also put our treaty status in jeopardy and bring taxes upon our land. How can a citizen have a treaty with his own government. . . . This was a violation of our sovereignty. Our citizenship was in our own nations.[42]

In consideration of the fact that in this passage he was looking back fifty years, it is important to keep in mind that the language of sovereignty Rickard articulated here reflects the more entrenched and prevalent concept developed in indigenous political discourse through the 1960s and 1970s—a development I trace in the next chapter—than that which had existed in the early twentieth century. Still, his actions in the 1920s and his words then and later all indicate a clear effort to fight for Iroquois political autonomy, located at a distance from U.S. sovereignty. In particular, Rickard's foremost message was that the Iroquois people did not want U.S. citizenship in any form, whether it was dual citizenship or citizenward status, because it amounted to political integration at the expense of "citizenship in our own nations." Rickard saw political integration, even if it involved an ambivalent form of American citizenship, as leading to cultural assimilation within America society and the loss of the Iroquois nations' government-to-government relationship with the United States. When Rickard asserted that the imposition of U.S. citizenship placed "tribal status in jeopardy," he meant that the primacy of government-to-government relations would be usurped as the U.S. federal government placed greater emphasis on dealing with individual indigenous (U.S.) citizens. Rickard was thus witnessing another of the negative consequences for indigenous polities of the formal end of the treaty-making era, and he sought to resist it by drawing out the tensions inherent within America's colonial impositions on indigenous people. Specifically, Rickard asserted the fundamental importance of sovereignty for the Iroquois nations, and he did so in a manner that acknowledged the complexities of their colonized political context.

In the previously quoted passage, Rickard twice referred to the "expectation" that the U.S. government would "protect" the land of the Iroquois nations. This expectation of protection had evolved from the treaties that, for Rickard, secured the status of the Iroquois nations as distinct governments. By asserting the fundamental importance of Iroquois sovereignty while also demanding that the American state protect Iroquois land, Rickard generated a politics-on-the-boundaries argument. He resisted the colonial imposition of citizenship while also acknowledging the circumstances and opportunities within the American political system to advance the cause of indigenous rights and sovereignty. Furthermore, while Rickard saw the passage of the ICA in June 1924 as another way that America sought to gain "greater control" over indigenous people at the expense of their political identity and "independence," he was also encouraged by the fact that "there was no great rush among my people to go out and vote in white man's elections."[43] In other words, while U.S. citizenship was an unwanted and disdained political status for many Iroquois, it was a status whose practical effects one could resist in the short term. However, with the passage and implementation of the Immigration (Johnson-Reed) Act of 1924, the imposition of U.S. citizenship had an undeniable impact on indigenous political identity because it explicitly imposed colonial geopolitical boundaries on indigenous tribes and their citizens.

Signed just a week before the ICA, the Johnson-Reed Act imposed significant quotas on immigration to the United States. While the most notable aspects of this law were restrictions on the immigration of Eastern and Southern Europeans to the United States,[44] Rickard observed in his autobiography that one clause of the legislation, "Section 13 (c), asserted that 'No alien ineligible to citizenship shall be admitted to the United States.'" This provision meant that "only people of the white and black races were therefore permitted into the United States. Orientals and North American Indians coming into the United States from Canada were excluded." The ramifications of this clause were not evident until "the middle of June 1925, [when] the Immigration Service began to apply the act to our North American Indian people who were coming into the United States from Canada."[45] Rickard's concern at the time arose from the realization that both the ICA and the Johnson-Reed Act legally and institutionally provoked an explicit conflict over the definition and exercise of political space in North America. Rickard thought this conflict generally implicated all

North American indigenous people, particularly affected the day-to-day lives of citizens of the Iroquois Confederacy, and specifically brought great suffering to his ally and friend Cayuga Chief Deskaheh.

The combination of the ICA and Johnson-Reed Acts amounted to an effort by the U.S. government to firm up the boundaries of the American settler-state, and they resulted in a policy according to which all indigenous people residing within these boundaries were deemed citizen-components of this ostensibly solidified American political space. In other words, these acts were an attempt to further construct and secure the purview of U.S. state sovereignty. While the 1924 ICA act on its own may have allowed indigenous people to articulate an ambivalent form of citizenship that could transcend American political culture and history, the ICA and the Johnson-Reed Act combined closed off this option, and this closure was expressly spatial. As a consequence of these acts, all indigenous people residing within the declared boundaries of the United States were legally distinguished and separated from other indigenous people in North America, no longer seemingly both foreign and domestic as individuals and tribes. The expression of their individual political identities was now contained within, domesticated to, and thus in an important sense redefined by the United States, or at least that seemed to be the implication of these acts. This may not have immediately mattered to indigenous people who resided at a distance from the geographic boundaries of the United States, but it directly affected how the Iroquois Nations and their citizens expressed their individual and collective political identities.

The territory of the Six Nations of the Iroquois Confederacy spans the boundary between Canada and the United States, with the largest parts of the territory lying within the state of New York and the provinces of Ontario and Quebec.[46] Article 3 of the 1794 Treaty of Amity, Commerce, and Navigation (Jay Treaty) between the United States and Great Britain guaranteed to "the Indians dwelling on either side of the boundary line, freely to pass and repass by land, inland navigation, into the respective territories of the two parties on the Continent of America."[47] As Eileen M. Luna-Firebaugh notes, these rights were "eroded due to the War of 1812," and for this reason article 9 of the 1814 Treaty of Peace and Amity (Treaty of Ghent) was written to "restore to such tribes and nations, respectively, all the possessions, rights and privileges which they may have enjoyed or been entitled to . . . previous to such hostilities."[48] In these two ratified

treaties we locate the embryonic U.S. government's legal recognition that indigenous people's political space was neither constrained nor defined by the boundaries of settler-states such as the United States and Canada, at that time British North America. But Rickard believed that the Johnson-Reed Act not only "deprived [indigenous people] of our treaty rights" but also threatened the deep historical, cultural, and political relationship among the Iroquois:

> Now since the coming of the Europeans, a border has been set up separating Canadians and Americans, but we never believed that it was meant to separate Indians. This was our country, our continent, long before the first European set foot on it. Our Six Nations people live on both sides of this border. We are intermarried and have relatives and friends on both sides. We go back and forth to each other's ceremonies and festivals. Our people are one. It is an injustice to separate families and impose restrictions upon us, the original North Americans, who were once a free people and wish to remain free.[49]

Like Carlos Montezuma before him, Chief Rickard invoked the historical priority of indigenous political identity in this land. However, where Montezuma referred to indigenous people as the "first American citizens," Rickard concerned himself with the freedom of "the original North Americans." The difference in the way these two men defined the historically rooted political identity of indigenous people was not minor, because it pointed to the larger distinction regarding what political identity and status in the third space meant to them.

For Montezuma, a third space of citizenship meant being an American citizen in the U.S. polity as a continuation of, not at the expense of, his people's indigenous citizenship and cultural roots in this land. Chief Rickard expressed no ambivalence about attaining the status of a legal citizen of the United States; he absolutely did not want it. In stating that indigenous people are the original *North* Americans, Rickard offered the image of an indigenous relationship between political space and time that historically preceded but did not thereby delegitimate the forms of political space later set down by settler-states. He granted that the U.S.–Canada boundary existed as a legitimate marker of political space, but *only* for

Canadian and American citizens. He also acknowledged that his people "live on both sides" and "move back and forth" across the settler-state boundary. Therefore, it was not the U.S.–Canada boundary per se that bothered Rickard; the problem had to do with how and to whom the boundary was practically applied. This distinction revealed that his vision of indigenous political space was one that overlapped the political spaces of the United States and Canada in a nonbinaristic way, as a postcolonial, inassimilable supplement to the colonial impositions of these settler-states. Rickard was pointing to an active nonbinaristic mapping of political life in North America that would reflect his people's practice and experience. In the spirit of nonconformity to the logic of the imperial binary, Rickard tolerated overlapping political spaces as long as settler-state boundaries were not imposed in a way that limited the ability of indigenous people to express their political identities, specifically to move and travel as they wished. But he protested vehemently when the boundaries of the United States were imposed on and thereby threatened the movement of indigenous peoples. This boundary imposition became evident to Rickard as he observed the fate of his friend Chief Deskaheh, which would compel the "Fighting Tuscarora" to organize political actions that placed settler-state boundaries at the center of indigenous political struggle.

During the early 1920s, Chief Deskaheh was the official speaker and international spokesman for the Grand River Council of the Six Nations residing within Canada.[50] In 1925, while Deskaheh was in Rochester, New York, he became so ill that a doctor refused to let him leave the house where he was staying. Not long afterward, while living at Chief Rickard's home, Deskaheh was informed that the medicine men from the Grand River Council and even members of his own family "were prohibited from coming over [the U.S.–Canada border] to visit him." They were prohibited entry by the U.S. government through its implementation of the Johnson-Reed Act. Rickard describes Deskaheh's reaction to this news: "Up to this point . . . he had been in good spirits. . . . Now he got up from the table without finishing his meal, went in and lay down on his bed. He never got up again. Several days later, he took chills. . . . Nothing, not even the white doctor, could save him. He died at 6:30 p.m., June 27, 1925."[51] It was then, just before he died, that Deskaheh told Rickard to "fight for the line."

Although this dramatic exchange between the two chiefs symbolized

the emerging focus of Rickard's political concerns and activities, what compelled him to form an organization to address the border-crossing issue were the trips he frequently made to the U.S.–Canada boundary to persuade border officials to let indigenous people into the United States. On December 1, 1926, Rickard formed the Indian Defense League of America (IDLA) "to guarantee unrestricted passage on the continent of North America for Indian people."[52] In its effort to guarantee indigenous rights to cross the U.S.–Canada boundary, the IDLA practiced a politics-on-the-boundaries approach by working within the American political system to gain further freedom for indigenous people across and beyond the boundaries of that very system. They did this by appealing to the judicial and legislative branches of the U.S. federal government.

The resulting judicial case concerned Caughnawaga Mohawk Paul Diabo, an ironworker who had been traveling from Canada to work in eastern American cities since 1912. In 1925, Diabo was arrested for illegal entry to the United States. In 1927, his fight against this arrest and for his rights to travel to the United States ended up before District Court Judge Oliver Dickinson. The IDLA had supported and raised funds for Diabo's case all along the way, and in this instance Rickard "wrote to the judge before he rendered his decision and sent him copies of treaties and other documents relating to Indian border-crossing rights."[53] The judge ruled in Diabo's favor, stating the following: "The turning point of the cause is thus to be sought in the answer to the question of whether the Indians are included among the members of alien nations whose admission to our country is controlled by and regulated by the existing immigration laws. The answer, it seems to us, is a negative one. From the Indian viewpoint, he crosses no boundary line. For him this does not exist."[54] This ruling held up through the appeals process, which affirmed "that the right of free passage in traditional indigenous homelands is an inherent aboriginal right, even where an international border has been created subsequently."[55] Here the court recognized the relationship between political time and political space and ruled that indigenous people's presence on the continent prior to colonial imposition secured them an inassimilable political identity in relation to contemporary American political space. Thus, in an example of the institutional dynamics of American colonial ambivalence, the judge in this case acknowledged the active and nonthreatening possibilities for a nonbinaristic understanding of the U.S.–indigenous relationship. The

court thus defined indigenous people of North America as neither simply members of "alien nations" nor seamless citizens of the United States or Canada. This decision was an affirmation of a form of third space of citizenship and sovereignty for indigenous people. The decision also emboldened the IDLA's efforts within the U.S. Congress to amend the laws that were limiting indigenous people's freedom of movement across settler-state boundaries.

From the founding of the IDLA, Rickard and his colleagues persistently lobbied Congress to amend the Johnson-Reed Act to recognize the border-crossing rights of indigenous people. This lobbying focused on a bill that Rickard had "picked out" as the best, which was the one written by Senator William King, a Utah Democrat, stating: " 'That the Immigration Act of 1924 shall not be construed to apply to the right of American Indians born in Canada to cross the borders of the United States.' "[56] Beginning in the fall of 1927, Rickard and the IDLA pushed for passage of this bill on the "border question" by sending out over five hundred letters to congressman and senators.[57] This lobbying effort paid off on April 2, 1928, when President Coolidge signed into law Senator King's version of the bill amending the 1924 immigration act to guarantee that its border regulations did not apply to indigenous people.[58] To celebrate this legislative victory, the IDLA organized a parade on July 14, 1928, that crossed "the bridge from Niagara Falls, Ontario to Niagara Falls, New York."[59] To Rickard, this border-crossing celebration did not signal the end of the postcolonial boundary politics of indigenous people, but rather pointed to the need to continue the struggle against the colonial imposition of the North American settler-states.

To this day, the "fight for the line" is personified and enacted by an annual parade across the bridge at Niagara Falls every July 14. To contemporary IDLA members, "This event symbolizes the continuous assertion of our sovereignty as Indian Nations within the recently formed United States and Canadian Nations. The IDLA continues to assist the Haudenosaunee [Six Nations of the Iroquois] from 'getting their horns caught in the wire,' and forces the issue of free passage for all North American Indians."[60] The explicit and literal practice of boundary-crossing represents the political position of those indigenous people who do not accept the notion that the presence of settler-states and nations deprives them of their rights of citizenship in their own nations.

While Charles Eastman, Carlos Montezuma, Zitkala Sa, and their colleagues of the SAI were primarily concerned with securing indigenous culture and history across the boundaries of American political time, Jane Zane Gordon and Clinton Rickard saw indigenous national citizenship as fundamental to the survival and growth of indigenous people's political and cultural life in North America. In challenging the purview of American and Canadian boundaries while also working within the U.S. judicial and legislative processes to further manifest this resistance, Rickard and his contemporaries sought, as James Tully would put it, to "resist the colonial system as a whole" by means of "exercising their freedom *of* maneuver within the system."[61] Through this postcolonial politics-on-the-boundaries strategy, these political actors refused to open the "gift" of U.S. citizenship.

CONCLUSION

The American liberal democratic settler-state has always been ambivalent about whether and how indigenous people should be included in the American polity. This ambivalence was apparent in the legislative language of the 1924 Indian Citizenship Act. The ICA expressed the American settler-state's dual orientation by simultaneously drawing indigenous people into the American polity through the conferral of citizenship and then, in the next sentence, placing many of these same people at least somewhat outside by affirming their rights to citizenship in their own tribes. Despite decades of efforts to eliminate indigenous existence by literally killing off or culturally wiping out indigenous tribes and their citizens, the ICA example shows that the American federal government of this time had to face the reality that it could neither fully exclude nor fully include indigenous people.

During the early twentieth century, the political views of indigenous people on the matter of U.S. citizenship ran the range from the cultural pluralism of Eastman and Montezuma to the indigenous nationalism of Zane Gordon and Rickard. Nevertheless, in seeking to resist the American federal government's efforts to impose upon indigenous political identity, political actors as different as Eastman and Rickard emphasized, in their own ways, a "third space" political status that reflected both the unique location of indigenous people in North America and the fissures in American

colonial rule and settler-state authority. For indigenous political actors, the fight for postcolonial time and space involved the articulation of a third space of citizenship and sovereignty that represented the vision of a specifically indigenous political life in resistance to the dominant norms and institutions of the American settler-state and nation. Given the diversity of indigenous political perspectives, the exact meaning of this third space can and did assume more than one form. Eastman and the SAI sought to retain a strong connection to indigenous cultural and social norms while aiming to secure the political and institutional benefits of inclusion in U.S. political society. Rickard and the IDLA thought it necessary to participate in the U.S. political system in order to constitute a form of independent indigenous national existence that aimed to be as free as possible from the colonial domination of North American settler-states. In both cases, the third space was the site for maintaining and further manifesting the fullest possible expressions of indigenous political life in this land. I would go so far as to say that every effort of an indigenous political actor to assert that his or her people's history, culture, or space is not seamlessly mapped within, say, American or Canadian history, culture, or space can be read as a postcolonial refusal of the colonial rule of the modern liberal democratic settler-state. This kind of politics took an even more public form in the mid-twentieth century when, in the midst of the civil rights movement in the United States and the struggles for decolonization in the so-called third world, indigenous politics in the U.S. context constructed and made claims for the unique location and status of indigenous political identity and autonomy in modern political space and political time. This is a development I look at next.

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CHAPTER FIVE

BETWEEN CIVIL RIGHTS AND DECOLONIZATION: THE CLAIM FOR POSTCOLONIAL NATIONHOOD

During the politically vibrant decade of the 1960s and into the early 1970s, boundary politics continued to define U.S.–indigenous relations. By that time, indigenous political actors faced the tension of having to construct and express their politics betwixt and between a civil rights framework predominant in the United States and the nationalist decolonization framework common to many post–World War II third world struggles. The dominant trend in indigenous politics at that time saw indigenous people carving out a path that redefined the terms of their politics in ways that served to reshape U.S.–indigenous relations from that time forward. I illustrate and define these changing terms by centering this chapter's analysis on Vine Deloria Jr.'s first book, *Custer Died for Your Sins: An Indian Manifesto,* published in 1969. *Custer* is a heretofore underexamined postcolonial intervention into the emergent political discourses of that time. To understand Deloria's argument is to grasp the practices, critiques, and visions of indigenous politics that were prevalent then. Deloria offers all this in *Custer* by reflecting, defining, and prescribing the unique path taken by indigenous people's politics in the midst of the more dominant American and global discourses of, respectively, civil rights and decolonization. This path, on which Deloria sheds light and which indigenous political argument and activity carved out, fostered the construction of tribal sovereignty and self-determination as the defining terms of a third space of sovereignty amid the modern American liberal democratic settler-state.

Deloria believes "the modern era of Indian emergence" that occurred in the 1960s was fostered through "an increasing awareness of tribalism sweeping the Indian power structure."[1] In the political effort toward a "retribalizing of the people," he argued that "nationalism must be the ally of future policies."[2] The language of nationalism could give anyone

pause, but in this context Deloria framed an assertive vision of indigenous political identity that sought to traverse the boundaries of American political time and space. This was not about achieving nation-state status to secure indigenous sovereignty. Instead, it was about articulating a vision of equality for indigenous people premised on their distinct place in the political time and the political space of North America. The emergence of these arguments for self-determination and tribal sovereignty was an expression of what I call postcolonial nationhood. The claim for postcolonial nationhood adhered fully to neither a civil rights framework for defining equality nor a third world decolonization framework for defining anticolonial sovereignty. Instead, it located itself across the boundaries and through the gaps of colonial imposition, in the third space, where indigenous political life fights to claim its modern status on its own terms.

Before discussing *Custer,* I take the time to set out the circumstances that led to the emergence of new forms of indigenous political articulation and activity during the 1960s. During that decade's early years, there emerged vibrant debates among indigenous people over the meaning of indigenous political identity and the practices and goals of indigenous politics. These debates were, in no small part, among the unintended consequences of American colonial ambivalence. I then look to *Custer* in three sequential stages to analyze the deeper undercurrents, meanings, and prospects of indigenous politics of that period. First, I show how Deloria defined the temporal and spatial constraints that American colonial rule placed on indigenous political life and how he constructed a politics on the boundaries to counter these constraints. Second, I define postcolonial nationhood and flesh out its relationship to indigenous politics by placing Deloria's discussion of tribal nationalism into conversation with the ideas of anticolonial nationalist Frantz Fanon. Third, I show how Deloria carefully framed the indigenous politics of the 1960s as constructing its terms, practices, and ideals through a Red Power movement that conveyed an expressive postcolonial nationalism distinct from the politics of the civil rights movement, black nationalism, and third world movements for decolonization.

In all, the political path between the discourse of civil rights and that of decolonization was a postcolonial one that sought, in Deloria's terms, to "recolonize" a temporal and spatial location for indigenous political life. For tangible proof of this postcolonial path, I close the chapter by analyz-

ing the document stating the claim to Alcatraz Island made by the Indians of All Tribes, who occupied the island from 1969 to 1971, and the *Twenty-Point Position Paper* produced by the American Indian movement during the 1972 Trail of Broken Treaties caravan and occupation of the BIA offices in Washington, D.C. These two documents articulate a vision of a third space of sovereignty for the temporal and spatial location of indigenous political identity and autonomy in the modern context. In so doing, they posed a direct challenge to the imposition of American colonial rule on the political space and time of U.S.–indigenous relations.

THE UNINTENDED CONSEQUENCES OF COLONIAL AMBIVALENCE

The year 1934 seemed to mark a turn toward liberal reform in the U.S. federal government's relationship to indigenous people. In this shift from the individualizing policy agenda of the allotment era, indigenous people got their New Deal at the same time that much of nonindigenous America received its own.[3] The so-called Indian New Deal set out to recognize and foster the presence and role of tribes as political, socioeconomic, and cultural communities on reservations throughout the nation. This policy shift occurred through the Indian Reorganization Act of 1934 (IRA),[4] which set out, among other things, to support tribal reservation economies through development programs, including financial and lending services. In the political realm, the IRA promoted, fostered, and in certain ways imposed tribal constitutions and the acceptance of the IRA, through which the American federal government recognized and provided funds to tribal governments.[5] This period of liberal reform resonates to this day in the form of IRA tribal constitutions that became the framing governance documents of almost 100 of the more than 560 tribal governments recognized by the federal government.[6] However, this new policy was interrupted for a time when Congress passed legislation in 1953 that set out the framework for "terminating" the recognition of tribes and facilitating the relocation of tribal citizens from reservations to city centers.[7] The tension between the overlapping policy regimes of Indian reorganization and termination, the former promoting indigenous political community and the latter seeking to break up indigenous communities, is a product and reflection of American colonial ambivalence about indigenous people's political status.

Through its termination policy, the U.S. government sought to end

its federal trustee relationship with tribes, dissipate indigenous communities, and compel indigenous individuals to become fully assimilated as American citizens.[8] This would involve, among other things, moving tribal reservation land from trust status to private ownership and phasing out special services to and the tax-free status of tribes and their citizens. Like the policy goals of the seemingly abandoned allotment era, those of the termination era represented a direct legislative effort to force indigenous people firmly and unambiguously inside the boundaries of the American polity. Stephen Cornell deems the termination policy "a return to the past. It abruptly abandoned the bilateralism—such as it was—of the IRA."[9] The American federal government's inability to maintain one policy framework was and remains a product of its colonial privilege, but it also reveals the gaps and fissures through which indigenous political actors can and do effectively express postcolonial resistance. This dynamic was evident when the antitribal termination agenda unintentionally fostered the emergence of a newly defined and empowered expression of indigenous political identity.

As part of the termination policy, the federal government provided the resources, however meager, to relocate indigenous people from the reservations to urban environments. As many as 160,000 tribal citizens went to cities such as Denver, Los Angeles, Salt Lake City, Cleveland, Oakland, and Chicago between 1952 and 1961, though by some estimates more than a third eventually returned to the reservation.[10] In those urban locations, field relocation offices were set up, ostensibly to help with "transportation, placement, and subsistence."[11] Although this process was supposed to facilitate the assimilation of indigenous people into American political and socioeconomic life, for many it offered the opportunity to reach beyond the boundaries of their tribal identities and connect with people from other tribes. In due course, in places such as the San Francisco Bay Area, a "variety of intertribal organizations" began to spring up.[12] By 1964, the indigenous population in the Bay Area ranged from at least 20,000 to as many as 40,000, a significant upturn from previous decades.[13] The intertribal organizations frequented by this new urban population were not initially or directly political. Still, relocation did affect indigenous people's politics. As Cornell puts it, "Urbanization did not bring politics into Indian lives; it brought Indians into new politics."[14] In the course of developing and articulating this new politics, indigenous people began to

argue and fight for an end to the very termination policies that had compelled many of them to move to the cities in the first place.

Formally, the termination era lasted from 1953 until the early 1970s, when U.S. policy officially changed its emphasis from termination to self-determination. An early expression of the political movement that helped foster this important policy change occurred in Chicago in 1961 when tribal leaders and citizens convened to address the status and future of indigenous people's political and social condition in the United States. The American Indian Chicago Conference (AICC) stands as a point marking the beginning of a symbolic shift in indigenous political discourse, a shift that would echo through the 1960s and early 1970s. After spending a week discussing the diverse and myriad issues of concern to indigenous tribes in the United States, the AICC agreed on a Declaration of Indian Purpose. First among the declaration's notable proposals was a call for the federal government to "abandon the so-called termination policy."[15] Furthermore, in the course of articulating an indigenous response to American policy, the AICC sought to articulate a modern definition of indigenous political objectives and political identity.

Nancy Oestreich Lurie, who attended and assisted in organizing the conference, goes so far as to suggest that the "AICC was responsible for helping introduce 'tribal sovereignty' into the general Indian-English lexicon far beyond the little coterie that embraced it in 1961."[16] Although indigenous tribes have expressed, argued for, and fought for their inherent sovereignty as independent cultural and political entities for centuries, the specific language of tribal sovereignty became an active, mutually recognizable part of U.S.–indigenous relations only through the politics of the 1960s and 1970s. As Lurie notes, the phrase "tribal sovereignty" was used only once in the 1961 declaration. However, the tone with which the participants of the AICC both framed the indigenous political relationship to the American polity and expressed their more specific claims revealed the development of a nuanced understanding of the modern meaning and practice of the sovereignty of indigenous tribes and nations. The declaration affirmed "the desire on the part of Indians to participate in developing their own programs with help and guidance as needed and requested, from a local decentralized technical and administrative staff, preferably located conveniently to the people it serves." This form of sovereignty equated to local self-determination of internal institutions amid, and with

the support of, the American state. This notion of tribal sovereignty did not radically reject the liberal democratic principles of the contemporary American settler-state and nation, as was evident in the declaration's opening creed: "We believe in the future of a greater America, an America which we were first to love, where life, liberty, and the pursuit of happiness will be a reality."[17]

This formulation echoed the "We are the first American citizens" discursive strategy articulated by the likes of Arthur Parker and Charles Eastman when making their claims for U.S. citizenship. It located indigenous people's political time as preceding that of the United States—"an America which we were first to love"—to frame a claim translatable to the American polity: "life, liberty, and the pursuit of happiness." However, the objective articulated here was not integration into the U.S. political system, but rather a very distinct form of equality in North American political space, one based on the self-determining capacities of indigenous communities. The conclusion of the AICC's declaration makes this spatial claim clear: "With [the North American] continent gone, except for the few poor parcels they still retain, the basis of life is precariously held, but [indigenous people] mean to hold the scraps and parcels as earnestly as any small nation or ethnic group was ever determined to hold to identity and to survival."[18] Appearing here to echo the discourse of decolonization articulated very loudly on other continents at the time, the AICC framed indigenous political struggles as more like those of small nations and ethnic groups around the world than like the struggle being pursued by the people engaged in the civil rights movement in the United States. In truth, the AICC declaration foreshadowed the tension that indigenous political actors would wrestle with in the coming years—the tension between defining their political objectives according to a rights-equality framework and defining them according to a nationalist-decolonization framework.

The federal policy of termination did not subdue and minimize the expression of indigenous political identity and autonomy in the American context, as was its intention. Instead, it provoked and expanded the interests and efforts of indigenous people to engage those very matters. This unintended consequence of colonial ambivalence led to a vibrant debate among indigenous people throughout the 1960s and beyond, opening up more paths for postcolonial resistance. In this debate, indigenous youth were the most vocal, arguing early on that indigenous political identity

and objectives had to be defined through a nationalist language. They saw the development and articulation of an expressly political *new Indianness* as the proper path for securing and advancing the cause of tribal sovereignty in the modern context.

FIGHTING TO BECOME MODERN: A NEW INDIANNESS AS POSTCOLONIAL RESISTANCE

Among the attendees of the AICC in 1961 were students from various tribes, including Clyde Warrior of the Ponca tribe, Mel Thom of the Paiute tribe, and Herbert Blatchford of the Navajo nation. Indigenous youth like these three were frustrated with the reluctance of older indigenous leaders to take more assertive political stands. Thus, during the formation of the AICC's final Declaration of Purpose, noted earlier, it was the younger indigenous citizens who argued for a stronger claim to sovereignty. As Mel Thom saw it, "The Statement of Purpose the conference passed had mostly what we wrote."[19] Tired of the more conservative approach of their older brethren, these younger indigenous citizens formed their own political organization.

In the summer of 1961, many of the students from the Chicago conference met in Gallup, New Mexico, where they created the National Indian Youth Council (NIYC). Warrior, Thom, and Blatchford became the major political voices of the organization, helping to develop the NIYC's founding Constitution and Statement of Purpose.[20] The preamble to the NIYC's constitution set out the organization's immediate objectives, and in so doing began to provide clearer definition to an emergent new indigenous politics:

> Now therefore be it resolved, that the National Indian Youth Council endeavors to carry forward the policy of making their inherent sovereign rights known to all people, opposing termination of federal responsibility at all levels, seeking full participation and consent on jurisdiction matters involving Indians, and staunchly supporting the exercise of those basic rights guaranteed American Indians by the statutes of the United States of America.[21]

This set of demands comprised the components for securing the political life of indigenous collectivities in a settler-state context: sovereignty as

an "inherent" indigenous right, not a bestowal from the federal government; the end of the termination policy; indigenous self-determination within their "jurisdictions"; and the fulfillment of U.S. federal obligations, whether secured by treaties or by congressional law.

The NIYC also took on the task of reframing the modern relationship between indigenous political identity and the dominant American polity. For the NIYC's Statement of Purpose, Thom wrote: "We believe in a future with high principles derived from our ancestors [and] we further believe in a strong place in American society being held by Indian blood." These words call forth the principles that defined indigenous political life before American political time and assert an unconstructed indigenous political agency—one "held by Indian blood"—in contemporary American political space. Here we locate the rough roots of an emergent new indigenous political identity, clinging to an essentialist definition of identity in search of a firm basis for an assertive and meaningful political agency in the modern American context. At this point in the early 1960s, such careful political claims rather than more radical actions or statements generally reflected the limits of indigenous political expression. The closing passage of the Statement of Purpose revealed the conscious concern with such limitations: "Our Council does not intend to draw lines with elaborate rules nor do we intend to propose any radical movements. We consider rules based on Indian thinking as being sufficient."[22] Such hesitancy, however, would ebb as NIYC leaders like Warrior and Thom became more engaged and concerned with the relationship between Indian thinking, Indian political identity, and the politics necessary to promote and manifest indigenous interests. This politics would eventually take a more nationalist bent. Such a turn, however, would take a little time; it was not until around 1964 that the more vocal young indigenous leaders gave more explicit expression to their political identity and objectives.

At the May 1964 American Indian Capital Conference on Poverty in Washington, D.C., Thom spoke before Congress about whether and how indigenous people could be included in the economic opportunity programs of President Lyndon Johnson's War on Poverty. This was a delicate issue, because this program was designed for the general American population, and thus the simple inclusion of indigenous people on an individual basis could be read as an assimilatory development. At the same time,

indigenous tribes needed economic assistance from the government. This was the colonial political bind long familiar to indigenous political actors, yet newly framed amid the turbulent politics and federal government activity of the 1960s. In addressing this issue, Thom articulated a politics-on-the-boundaries approach he thought indigenous people should use to assert their political agency and autonomy: demanding that the U.S. government fulfill its legal obligations and political agreements while asserting that the struggle for tribal sovereignty must remain the priority:

> Let it be heard from Indian youth today that we do not want to be freed from our special relationship with the Federal Government. We only want our relationship between Indian Tribes and the Government to be one of good working relationship. . . . For any program or policy to work we must be involved at the grassroots level. The responsibility to make decisions for ourselves must be placed in Indian hands. . . . Indian tribes need greater political power to act. This country respects power and is based on the power system. If Indian communities and Indian tribes do not have political power we will never be able to hang on to what we have now.[23]

The repeated emphasis on the word *power* exemplifies the emergence of a decidedly more aggressive indigenous politics that sought to stake out and seize a third space of sovereignty for the expression of indigenous tribal self-determination. This third space of sovereignty drew on the "special relationship" of indigenous people with the federal government, garnering rights and resources in order to secure greater self-determination away from American purview. In fact, Congress did approve the inclusion of tribes in the Economic Opportunity Act by granting them power as community action agencies (CAAs). These "CAAs then contracted with a variety of federal departments for federal funding. . . . Many Indians understood it as an opportunity to control program development, implementation, and administration."[24] George Pierre Castille notes that, while the "Community Action programs solved few problems; certainly they never succeeded in eliminating poverty," they put indigenous people in charge, and they "made many mistakes, but they made them on their own,

which was a new experience for them."[25] Thus, the CAAs served to foster indigenous political identity, leadership, and a sense of autonomy, upon which the political movements of the time would build. But a balance still had to be maintained between U.S.–defined programs, no matter how well intended, and indigenous-defined claims and objectives. Therefore, more direct political action and an expressly political form of indigenous identity emerged as the claims for tribal sovereignty continued to develop.

Among the more prominent indigenous political actions of the mid-1960s were the so-called fish-ins, which gained their greatest notoriety from 1964 to 1966. These fishing protests had been going on since the mid-1950s, but came to be called "fish-ins" to signify a politics of civil disobedience similar to the sit-ins of the civil rights movement.[26] In contrast to the sit-ins, the fish-ins did not seek rights in accord with liberal constitutionalism but rather defended treaty-guaranteed fishing rights, especially in the Pacific Northwest, that were systematically violated by American citizens and state governments. They drew wide public attention to the unique political location and concerns of indigenous tribes. Although by 1966 the fish-ins began to diminish in number, they marked the arrival of a new Indian politics that was mobilizing indigenous people and fostering American public awareness.[27] Along with the publicity and politicizing benefits drawn from such activity, these actions also drew attention to the more radical voices of the NIYC, in particular that of Clyde Warrior.

An indication of the postcolonial drive of the new indigenous politics of the 1960s was the intense focus on the meaning of indigenous political identity in the midst of the colonial impositions of the American settler-state and nation. Warrior provocatively addressed this issue in a 1964 piece titled "Which One Are You? Five Types of Young Indians," which was published in the NIYC newsletter, *ABC: Americans before Columbus.* After three years with the NIYC, Warrior came to a stark diagnosis: "Among American Indian youth today there exists a rather pathetic scene." This "pathetic scene," he charged, was that of Indian youth who had turned into certain "types" of Indians through their involvement in "various institutions of learning throughout American society."[28] Here Warrior pointed out a colonial imposition on indigenous political life—the colonization of the indigenous mind—and demanded postcolonial resistance to it. He believed there were five types of indigenous identity, only one of which held out any hope for a new indigenous politics:

> *Type A*—SLOB OR HOOD. This is the individual who receives his definition of self from the dominant society.
>
> *Type B*—JOKER. This type has defined himself that to be an Indian is a joke. . . . He proceeds to act as such.
>
> *Type C*—REDSKIN "WHITE-NOSER" OR THE SELL-OUT. This type has accepted or sold out to the dominant society.
>
> *Type D*—ULTRA-PSEUDO-INDIAN. This type is proud that he is Indian, but for some reason does not know how one acts. Therefore he takes his cues from non-Indian sources. . . . Hence, we have a proud, phony Indian.
>
> *Type E*—ANGRY NATIONALIST. Although abstract and ideological, this type is generally closer to true Indianness than the other types, and he resents the others for being ashamed of their own kind.[29]

This typology, while crude, moves beyond essentialist notions of Indianness that saw it as in the "blood." Instead, Warrior measures an indigenous person's Indianness according to how he or she responds to the impositions of colonial rule. In other words, he defines it as an expressly political identity.

Warrior believed that a truly indigenous political identity cannot be built on the colonial impositions of the American settler-state. Instead, it must be developed and reveal itself through political commitments and actions that traverse the temporal and spatial boundaries of these impositions. For Warrior, the fact that colonial rule shaped the way many indigenous people viewed themselves underscored the urgent need for a political renewal of indigenous identity by means of postcolonial resistance. To accomplish this goal of inspiring indigenous people to be "angry nationalists" rather than "slobs or hoods," Warrior's advice of 1964 was direct and distinct from that which had been expressed only three years earlier in the NIYC's founding statement of purpose. Whereas in 1961 the NIYC had asserted that it did "not intend to draw lines with elaborate rules nor do we intend to propose any radical movements," three years later Warrior declared: "The National Indian Youth Council must introduce to this sick room of stench and anonymity some fresh air of new Indianness. A fresh air of new honesty, and integrity, a fresh air of new Indian idealism, a

fresh air of a new Greater Indian America. How about it? Let's raise some hell!"[30] While expressive political action was being taken during and on the heels of this statement in the form of the fish-ins, the long-term shape and impact of a redefined postcolonial Indianness would take a few more years to develop politically. It was not lost on Warrior that the development of a new Indianness and a new Indian idealism would require not only radical, "hell-raising" action, but also what amounted to a third space redefinition of indigenous people's political role in the midst of the American settler-state.

In the same piece in which he castigated and mocked the various "types" of Indians and emphatically called for a more radical politics, Warrior also expressed the need for a more thorough and subtle effort to articulate the relationship between indigenous cultural premises, political identity, and political objectives in the modern era: "It appears that what is needed is genuine contemporary creative thinking, democratic leadership to set guidelines, cues and goals for the average Indian. The guidelines and cues have to be based on true Indian philosophy geared to modern times. This will not come about without nationalistic pride in one's self and one's own kind."[31] Warrior's focus here is on crafting a discursive framework built on indigenous perspectives that can define what becoming and being modern means for indigenous political life. Such a framework would serve to define the location of indigenous political agency and objectives across the temporal and spatial boundaries imposed by the American settler-state and nation. For Warrior, the connection between "true Indian philosophy" and "nationalistic pride" was critical to this effort, because they were vital components of an assertive indigenous political identity. In light of the challenges of the modern era, he was looking for indigenous leaders to develop and articulate "genuine, contemporary creative thinking" on the condition and direction of indigenous politics. To this task stepped up Vine Deloria Jr., who filled the role of what Frantz Fanon might have called "an awakener of the people; hence comes a fighting literature, a revolutionary literature, and a national literature."[32]

VINE DELORIA JR.: NEW INDIAN NATIONALISM AS A POSTCOLONIAL PROVOCATION

Vine Deloria Jr. (1933–2005) was a Standing Rock Sioux, a lawyer, and a professor of history and Native American studies. His recent death marked

the passing of the most recognized and influential political and intellectual voice to have spoken and written about indigenous people's perspectives in the United States. He wrote important books on such subjects as the history of treaty relations, the paradoxes of American justice and law, and the meaning and role of Indian spirituality in North American political culture.[33] The impact of Deloria's political and intellectual presence in the general American political discourse began to really be felt, in terms of both the substance of his work and its general reception, with the 1969 publication of *Custer.* He was thirty-five years old when he wrote this book. Prior to its publication, Deloria was executive director of the NCAI from 1964 to 1967. As such, he offered in *Custer* analysis and views that were products of his tangible experience in indigenous politics throughout the 1960s:

> I make no claim that this book represents what *all* Indian people are *really* thinking. Or that Indian people should follow the ideas presented in this book. But many things I have written have been logical extensions of things I have heard other Indian people say. I have tried to cull out of my experiences in Indian Affairs the various spheres of influence which appear to manipulate Indian people. I have taken extreme positions in regard to them because too often Indian people are so polite that they refuse to insult anyone by bringing up the fact that he is giving them a hard time.[34]

Custer was Deloria's theoretical and political intervention into the discourse of American public life and the direction of indigenous politics. Specifically, he sought "to give some idea to white people of the unspoken but often felt antagonisms I have detected in Indian people toward them, and the reasons for such antagonism."[35] Deloria also wanted to "raise some issues for younger Indians which they have not been raising for themselves." He sought to synthesize, reconsider, and even endorse certain indigenous views of the past decade, such as those from young leaders like Warrior. The book found both nonindigenous and indigenous audiences. For example, just before *Custer*'s publication, in August 1969 the book's first and fourth chapters were excerpted in *Playboy* magazine. And, more important for an increasingly politicized indigenous population, *Custer* quickly became "required reading among Indian student radicals."[36] Thus, Deloria's *Custer* did not exist on the margins of either American or indigenous public life.

In terms of his message to the American public, Deloria condemned the way indigenous identity had been represented in predominantly white America, especially in popular culture and anthropology. Both these fields sought and in some instances still seek to ostensibly redeem a place for the Indian in American life by preserving the figure of the Indian in the American past through what Deloria calls the myth of "tribes dwell[ing] in their primitive splendor."[37] This is the dynamic I discussed in chapter 3, whereby indigenous tribes are stuck in a pre-1871 American temporality, in colonial time, out of which indigenous sovereignty and political identity are seemingly not allowed to develop. Here Deloria's critique was not directed at the effort to advance the knowledge of history for itself, but rather at how that knowledge is often disconnected from any sense of its meaning for contemporary political and social concerns. In other words, "Who really gives a damn if the Oglalas were a great warrior band of the Sioux? That won't help solve the problems of today."[38] This statement was not only directed at the dominant political culture, but was also to be taken to heart by indigenous people themselves.

Deloria framed the history of indigenous and American politics as important to the degree that one can appreciate the connection between events in political time and the effort of indigenous people to secure and maintain sovereign location in modern political space. Thus, the book's title, *Custer Died for Your Sins: An Indian Manifesto,* pairs the famous indigenous military success over U.S. forces with the need for a new way of thinking and acting with regard to indigenous politics of the present. A fundamental problem with achieving this objective was the way in which indigenous political identity and objectives fit—or, more precisely, did not fit—within the frameworks of U.S. civil rights politics and global decolonization politics. To this end, Deloria began the book by highlighting the bind that torments indigenous people in their effort to define and express their political identity, agency, and autonomy in modern political life. Recognition of this bind provoked him to generate a postcolonial response.

DELORIA'S POLITICS ON THE BOUNDARIES

In the opening paragraphs of *Custer,* Deloria defined the dilemma that people of all indigenous tribes face when articulating who they are in

modern American society: "The more we try to be ourselves the more we are forced to defend what we have never been." He elaborates the political implications of this bind:

> To be an Indian in modern American society is in a very real sense to be unreal and ahistorical. . . . It is this unreal feeling that has been welling up inside us and threatens to make this decade the most decisive in history for Indian people. In so many ways, Indian people are re-examining themselves in an effort to redefine a new social structure for their people. Tribes are reordering their priorities to account for the obvious discrepancies between their goals and the goals whites have defined for them.[39]

The unreality and ahistoricity of indigenous political life in the United States have been defining facts of U.S.–indigenous relations since at least the Civil War, with indigenous politics seemingly confined to stagnatation in colonial time. Thus, Deloria thought the reexamination of indigenous politics during the 1960s had to challenge the American nation's temporal and spatial impositions on indigenous people, those that seek to deprive them of a "real" sense of agency in the modern context. This priority is evident in *Custer*'s first words.

Two images strike the reader when beginning *Custer.* The first sentence of the book is "Indians are like the weather," and the third paragraph begins "Our foremost plight is our transparency."[40] "Indians are like the weather" is a metaphor for the way American people see Indians. Americans pose as experts on Indians, as they do on the weather, while simultaneously disavowing the capacity to create and maintain consistent, substantive policies to ameliorate the problems Indians face (just as they disavow their capacity to ameliorate the problems caused by the weather). In other words, Americans speak and act as if they have understood and are concerned for indigenous problems (just as they are concerned about the weather), and they may even complain about the fate of these problems, but ultimately they are unable to do anything about them. As a consequence, the history of American public policy regarding indigenous people reveals a persistent colonial ambivalence.

While "Indians are like the weather" captured part of the ambivalence of American colonial perceptions of indigenous people, the "plight of

transparency" referenced a perpetual problem indigenous political actors face when trying to gain a good-faith hearing of their claims and interests. Specifically, the problem rests with how the political needs of indigenous people are interpreted or concocted in a way that is assimilated too easily, transparently, to an American political and cultural framework for constructing the subject positions comprising U.S.–indigenous relations. Americans see the Indians they want to see and believe they have created, politically pliant and inextricably anchored to a past that has no active role in the modern era: "The American public feels more comfortable with the mythical Indians of stereotype who were always THERE."[41] By "THERE" Deloria means temporally located in the past, in colonial time, and spatially located out of sight and mind, on reserved parcels of land held in trust by the American state. Deloria's immediate reference to the oppressiveness of this colonial construct indicated that the postcolonial political project for indigenous people would be to upset this mythical image and traverse the temporal boundaries from which they resonate: "Indians have started to become livid when they realize the contagious trap the mythology of white America has caught them in."[42] In response, in the 1960s indigenous people began to more aggressively assert that their political identity belongs HERE, in the modern era, expressing their political agency against and over the temporal and spatial boundaries that American colonial rule sought to inscribe on them.

To achieve this postcolonial objective, indigenous people had to maintain a balance between making claims for specific rights and resources from the American government and asserting a strong collective claim for self-determination away from the American purview. This need for balance was a consequence of the fact that "Indians are placed in the most inconsistent position for determining their own policy." This inconsistency was a product of their temporal and spatial displacement at the hands of colonial rule. As a consequence, when indigenous people "attempt to articulate what they are doing so that the white society can understand them, unity dissolves into chaos and the movement, along with the ideas supporting it, collapses."[43] To counter this colonial imposition, Deloria set out a political approach built on using for their own political ends the boundary position unique to indigenous people: "Although important, consolidation of power is secondary to the comprehensive examination of goals and techniques. Indians must first understand the position they

occupy in urban and national affairs. Then they must become aware of the weak points where leverage and power can be combined to provide a means of pivoting the power structure that confronts them. Only then can they apply their power to the situation and contemplate significant results."[44] Here Deloria argued that indigenous people's banding together en masse would ultimately prove fruitless if the political identity and goals they articulated were not highly attuned to the reality of their location in relation to the American polity, with its attendant political advantages and disadvantages. Indigenous people would be able to build on the advantages while minimizing the disadvantages only when they grasped the truth of this boundary location and then redefined it into a third space of sovereignty that antagonistically resisted and supplemented the dominant settler-state's impositions. Framing the boundary relationship between indigenous and American societies in this way demanded a different set of objectives for U.S. Indian policy.

Deloria ended the first chapter of *Custer,* on the "real and the unreal," with two suggestions as to how U.S. federal policymakers could limit the scope of American political authority over indigenous life. First of all, "With a change in Congressional policy away from termination toward support of tribal self-sufficiency, it is conceivable that Indian tribes will be able to become economically independent of the federal government in the next generation."[45] Here he supported policies like those embodied in the Economic Opportunity Act, which would help move the Indian affairs agenda from termination toward self-determination.[46] To achieve this goal of tribal economic independence from the U.S. government, he thought, "We need a new policy by Congress acknowledging our right to live in peace, free from arbitrary harassment. We need the public at large to drop the myths in which it has clothed us for so long. We need fewer and fewer "experts" on Indians. What we need is a cultural leave-us-alone agreement, in spirit and fact."[47] These two quotations are provocative in their own ways, suggesting in the first case that the economic security of tribes could be on the horizon should Congress cooperate, and in the second case that indigenous people will achieve a sense of economic security only when American political culture loses its sense of identificatory interest in, and even its claim to, indigenous people. These quotations represent a postcolonial effort by Deloria to shatter the discursive basis of the colonial impositions of American political culture, but his statement still begs an

important question: What does it mean to be "left alone"—economically and culturally—in the midst of the American settler-state?

For Deloria, this meant supporting what Warrior called the "angry nationalists." To do so, however, required reflecting on how these nationalists could articulate their political identity as a claim about the past, present, and future of indigenous political life while simultaneously making sure their claims were translatable to the American polity. To this end, Deloria focused on the idea of nationhood as one that invoked the government-to-government U.S.–indigenous relationship while affirming the need to renew indigenous collective identity and agency through resistance to American colonial rule. The invocation of nationhood pointed to the boundaries and historical violence of American colonial rule, against which Indian "nationalists always have the option of resorting to violence and demonstrations." Though this option was there, Deloria gave greater priority to the role of Indian nationalism as a politicizing influence on tribal identities. Through such a renewed political commitment, "Indian tribes riding the crest of tribal and nationalistic waves will be able to accomplish many great things previously thought impossible by Indian and non-Indian alike. . . . They will be able to exert a definite influence on social developments"[48] The emergence of this sort of "new Indianness" indicated that the political events occurring around the world and in America were bringing into clearer light the postcolonial nature of indigenous people's political circumstances. In that light, Deloria argued that the key to the future of indigenous politics was a continual renewal of the meaning of tribalism through an infusion of the political spirit of what amounted to postcolonial nationalism.

POSTCOLONIAL NATIONALISM: NOT THE SAME AS ANTICOLONIALISM

I interpret Deloria's consistent emphasis on the relationship between tribalism and nationalism as his way of locating the source and resource for a renewed indigenous political identity that can fight its way through the long storm of colonial imposition. In his various references to tribal nationalism and modern tribalism Deloria endorsed and elaborated a unique form of nationalism emergent in indigenous politics, what I call postcolonial nationalism. Building on the notion of postcoloniality as what Jan Nederveen Pieterse and Bikhu Parekh refer to as an "open-ended

field of discursive practices characterized by boundary and border crossings,"[49] I define the postcolonial nationalism witnessed and articulated by Deloria—which he called "tribal nationalism"—as a modern political identity that sought to defy and challenge containment by American boundaries, refusing spatialization as either inside or outside, urban or rural. Postcolonial nationalism is thus, to use Homi Bhabha's phrase, "almost the same, but not quite" like the idea of a national identity forged in anticolonial struggle. On this very point, in Deloria's frequent references to this renewed and political form of tribalism he often looked beyond American boundaries to help define and frame what indigenous politics is about within the American context.

In the post–World War II anticolonial struggles in so-called third world contexts, Deloria witnessed "tribalism [as] the strongest force at work in the world today. And Indian people are the most tribal of all groups." I take "tribal" to mean the notion of people bound together through cultural, ethnic, and ancestral bonds, and "tribalism" to refer to commitment to those bonds. The modern tribalism Deloria avowed in *Custer* was an expression of indigenous identity infused with the political spirit of nationalism. He saw this form of political identity developing in the way, for example, by "using modern technical knowledge and having tremendous natural resources, Indian people can combine urban and rural life in a nationalistic continuum."[50] Here, then, nationalism served as a cohering political identity for tribal citizens still on the reservations and for those who had moved off the reservation, often to the cities, where they supplemented their tribal bonds with intertribal identifications. Deloria was not simply prescribing national identification in a vacuum, but rather saw it as driving the emergent indigenous political movement: "Most Indians are nationalists. That is, they are primarily concerned with the development and continuance of the tribe."[51] He made this point often, advocating a political approach infused with "nationalistic philosophies which relate to the ongoing conception of the tribe as a nation extending in time and occupying space."[52] This idea of the "tribe as nation" signals a postcolonial imperative of resisting the temporal and spatial impositions of American colonial rule by politicizing tribal identity, agency, and autonomy in modern time and space. In this regard, Deloria's postcolonial nationalism can be productively compared to the anticolonial nationalism of Frantz Fanon, who argued for a national consciousness fundamentally reforged and politicized

through a colonized people's assertive struggle against the colonizer and toward independence. Fanon's work is an exemplary revolutionary anticolonialist perspective of the 1950s and 1960s, and it is useful to compare it to Deloria's views to get a precise sense of where the indigenous politics of the time was situated in terms of its discourse, principles, and practices relative to liberation struggles being fought in and beyond the boundaries of the United States.

In his 1961 book *The Wretched of the Earth,* Fanon wrote that "colonial domination, because it is total and tends to oversimplify, very soon manages to disrupt in spectacular fashion the cultural life of a conquered people."[53] Out of the wreckage of these colonial impositions, colonized people cannot reclaim an undamaged precolonial identity but rather must devise a renewed political identity against and beyond their colonial circumstances: "The struggle for freedom does not give back to the national culture its former value and shapes; this struggle which aims at a fundamentally different set of relations between men cannot leave intact either the form or the content of the people's culture. After the conflict there is not only the disappearance of colonialism but also the disappearance of the colonized man."[54] Fanon's key point here is that the anticolonial struggle will succeed only if it does more than just expel the colonizer; it must do so in a way that decolonizes the imaginations of the colonized subjects themselves. This cannot happen if the colonized set their sights on reclaiming a collective cultural identity long since imposed on and corrupted by colonization. Rather, Fanon thought what was needed was the generation of a collective identity with "values and shapes" appropriate for thriving in a decolonized context, and this identity could be shaped only in the struggle of the colonized to achieve liberation. The colonized, then, "show proof of [their] nation . . . [and] substantiate its existence in the fight which the people wage against the forces of occupation."[55] In considering this idea in relation to Deloria's views, we can see that this direct anticolonial nationalist framework applied "almost the same, but not quite" to the challenges facing indigenous people's politics in the modern American context.

Deloria saw the need to decolonize the indigenous imagination because as a result of American colonial imposition "Indians have come to believe that their problems were soluble by conformity to the white culture."[56] This level of conformity defines many of the identity types along Warrior's

crude continuum, from "Slob" to "Ultra-Pseudo-Indian." The renewal of indigenous political identity would "show proof" of itself through political engagement against American boundaries. Specifically, the generation and expression of nationalism by indigenous people embodied the distinct political identity that Deloria saw as key to energizing collective political agency in the modern American context. The postcolonial nationalism emergent here seemed to gain its greatest energy in the urban centers, where indigenous people had been relocated via termination policies, and then worked its way back and forth between the urban and rural locations to renew and politicize tribal identity for the modern political struggle.

This urban-rural or off-reservation–reservation dynamic was evident to Deloria when he witnessed some very basic and practical political organizing in the city centers: "While tribal societies are beginning to awaken, assert themselves, and contact others in the rural areas, urban Indians have been developing a new nationalism for themselves. In January 1968 representatives of twenty-six Indian groups met in Seattle, Washington, for the first of a series of consultations on problems of off-reservation Indians."[57] Such "consultations" do not convey the romantic imagery of more militant political activism, but they were a sign to Deloria of the way in which "urban Indians have become the cutting edge of the new Indian nationalism." In "empty stores, church basements, and rented halls," indigenous people in cities such as Minneapolis built indigenous organizations that did not melt into a "general blur of Indianism," but instead infused their tribal identities with contemporary political energy. So, for example, the "Twin Cities Sioux Council, [and] Twin Cities Chippewa Council" developed and implemented urban-based programs in which "ideas unique to the particular tribe are emphasized." Similarly, Deloria saw the "rise of Indian nationalism by younger people" in Chicago, Denver, and Omaha, "which has a group of younger Indians which threaten to move city Indians toward community involvement."[58] The payoff politically for modern indigenous politics was that

> because there is such a mushrooming movement among urban Indians, old ideas and traditional policies become woefully outmoded. In the past, tribal policies have largely determined national Indian policy. Many times the Bureau of Indian Affairs has been able to apply pressure on certain tribes to hold back militant

> stands by Indian people. It learned to effectively play one tribe against another. . . . Urban Indians have a great advantage over reservation people. They have no restrictions on the way they raise money or spend money. The bureau has no means by which it can influence decisions made by urban Indian centers.[59]

In Fanon's terms, what Deloria saw occurring was a "struggle for freedom [that] does not give back to the national culture its former value and shapes." Urban indigenous people challenged those tribal forms and views that were too easily shaped by colonial rule—those that were emptied of their political content and energy—and in its place generated a modern political identity more willing to challenge American boundaries. The identity created through this urban-based political action was not, however, an anticolonial nationalism but rather a postcolonial one that articulated a complicated remapping of U.S.–indigenous relations. It was postcolonial because it was not as Manicheistic, as binaristically militant, as Fanon might recommend.

Postcolonial nationalism does not presume a divide between rural and urban indigenous communities; rather, as stated earlier, they exist on a "nationalistic continuum" in which the political activities and identity generated and given life in the urban centers can feed back to the reservations to motivate a modern tribalism with an expressive, independent political will. By definition, one cannot locate postcolonial nationhood in a single bounded realm of political space. Postcolonial nationhood was and remains located in the third space, which points to a key difference between it and the anticolonial nationalism of Fanon.

Fanon's anticolonial prescriptions set out a clear binary of colonizer and colonized: "To break up the colonial world does not mean that after the frontiers have been abolished lines of communication will be set up between the two zones. The destruction of the colonial world is no more and no less than the abolition of one zone, its burial in the depths of the earth or its expulsion from the country."[60] For colonized peoples living in a settler context, however, this logic presumes that the colonial impositions establishing and constructing settler sovereignty created a unified and bounded singular settler-domain, without gaps and fissures, which indigenous people can resist and expunge in unison. The inaptness of this very image is likely why Gayatri Spivak defines postcoloniality as "the failure

of decolonization."[61] In other words, the clear dividing line between self-other, us-them, and indigenous-American is the exact sort of boundary imposition postcolonial indigenous politics works against, because these dualisms serve the constitutive interests of the dominant polity much more than they serve as a unifying force for indigenous political communities. Instead, indigenous politics articulated through a postcolonial framework sees "frontiers," contra Fanon, not as being "abolished" but as sites for indigenous reappropriation and redefinition. That Deloria did not endorse a Manicheistic perspective was clear in his critique and rebuke of the political value of violence for modern indigenous politics.

Famously, Fanon viewed "violence as a cleansing force. It frees the native from his inferiority" as it further constitutes and "shows proof" of his anticolonial national consciousness.[62] Although Deloria did not completely preclude the idea of violence, it was simply not viable for the most obvious reason: the American nation was "founded in violence. . . . Anyone who tries to meet violence with love is crushed, but violence used to meet violence also ends abruptly with meaningless destruction."[63] But of even deeper concern to Deloria was the fact that violent militancy re-inscribed the imperial binary that indigenous people sought to resist: "As nationalists, Indians could not, for the most part, care less what the rest of society does. They are interested in the progress of the tribe. Militants, on the other hand, are reactionists. They understand the white society and they progress by reacting against it. . . . [They] shoot their arsenal merely to attract attention."[64] Thus, Deloria thought violence would not be a "cleansing force" freeing indigenous people from their "inferiority" because it would further bind their sense of identity and agency to recognition from the dominant settler culture rather than to the measure of tribal security and self-determination.

Finally, a militant approach by indigenous people would be a strategic mistake because its reliance on a binaristic framework more appropriate, if at all, for third world anticolonial nationalism was not applicable to the challenges and opportunities of indigenous political life in the third space. Deloria made this point in language that reflected his appreciation for a politics-on-the-boundaries approach: "Few militants would be sophisticated enough to plan a strategy of undermining the ideological and philosophical positions of the establishment and capturing its programs for their own use."[65] Here Deloria endorsed an indigenous politics that

works inside the American political system to "capture" resources necessary to empower self-determining tribes to move away from that system. That Deloria deemed such an on-the-boundaries approach appropriate and imperative was also evident when, at one point in the text, he warned that "minority groups must emphasize what they share with white society, not what keeps them apart," while in a different section of the book he suggested that "Indian people have the opportunity to deal officially with the rest of the world as a corporate [tribal] body" and "have the possibility of total withdrawal from American society because of their special legal status."[66] In other words, Deloria understood that indigenous political identity was located on the boundaries of the American political context, and that by reclaiming this boundary location as a site of agency, power, and self-determination indigenous politics would be in a better position to "capture" the means for redefining this location as a third space of sovereignty.

In Deloria's politics-on-the-boundaries approach, in the construction of a postcolonial nationalist claim indigenous people draw on an outside-the-boundaries identity (tribes as distinct "corporate bodies") as well as an inside-the-boundaries status (tribes as "minority groups") to help them "pivot the power structure," to recall his earlier prescription. In this regard, postcolonial nationhood resembles anticolonial nationalism in that it is a political identity forged through direct political engagement that aims to decolonize the imagination of the colonial subjects. However, postcolonial nationhood envisions not a binary relationship between American and indigenous political life, but rather one in which the boundaries of the former are traversed and remapped as tribes, from rural to urban settings, seek to gain greater self-determination in modern time and space. Thus, postcolonial nationalism in the 1960s was "almost the same, but not quite" like third world anticolonial nationalism. By the same token, as I discuss next, it was also "almost the same, but not quite" similar to the equality movements that defined so much of American politics of the time. In the day-to-day politics of the 1960s, postcolonial (tribal) nationalism went by the name of Red Power, a movement that took on the difficult task of balancing claims for equality and self-determination in a vibrant American political context in which the predominant political discourses revolved around the movements for civil rights and black power and against the U.S. war in Vietnam.

RED POWER POLITICS: NOT THE SAME AS THE CIVIL RIGHTS MOVEMENT

Deloria thought the indigenous politics of the 1960s sought to stake out a distinct position amid America's complex racial politics: "The future, as between the red, white, and black, will depend primarily upon whether white and black begin to understand Indian nationalism."[67] In the 1960s, domestic politics around the Vietnam War and civil rights provoked explicit questions about inequality and domination inside and outside American boundaries. To indigenous people, these questions were familiar, but this particular moment offered an opening through which their concerns could be articulated and addressed in new and potentially fruitful ways. In his effort to connect the injustice experienced by indigenous people in the United States and the injustice of the war in Vietnam, Deloria linked current American political actions abroad to the history of American political and military activities on this continent.

Deloria wrote, "Vietnam is merely a symptom of the basic lack of integrity of the government, a side issue in comparison with the great domestic issues which must be faced."[68] This "symptom" pointed to the deeper disease that "must be faced" in the American polity, a disease that had starkly plagued indigenous tribes. The Vietnam War divided American society in ways that no previous foreign war had, calling into question domestically the legitimacy of U.S. foreign policy and the principles of American political life. For indigenous people, these principles were already open to question, and for Deloria Vietnam was more of a logical end point than a new development in the practice of U.S. sovereignty. In this regard, Deloria reread what was commonly seen as the history of American domestic policy as evidence of the long and questionable history of the expression of American sovereignty in the international realm: "The Indian wars of the past should rightly be regarded as the first foreign wars of American history." In this regard, he refused the forgetting of the historical construction of American domestic and foreign spheres, a forgetting that protects the legitimacy of U.S. state sovereignty at the expense of indigenous sovereignty. Furthermore, through the lens of indigenous political experience he saw that "there has not been a time since the founding of the republic when the motives of this country were innocent. Is it any wonder that other nations are extremely skeptical about its real motives in the

world today?"[69] For Deloria, then, the solution to the Vietnam dilemma began with addressing the historical violations that pointed the way to this modern American entanglement.

He prescribed for America "a return to basic principles," which does not refer to some sort of idyllic American founding moment, but rather to the "definite commitments to fulfill extant treaty obligations to Indian tribes [as] the first step toward introducing morality into American foreign policy."[70] This prescription for, ostensibly, redeeming American political practices was a subtle effort to assert that U.S. Indian policy should be seen as simultaneously foreign and domestic policy, and the effort to deem it simply one or the other served to secure American colonial statist boundaries at the expense of the fullest possible expression of the political life of indigenous tribes and nations.

Deloria viewed the boundary line between U.S. foreign and domestic policy as a legal and political contrivance as it concerned indigenous people. The importance of making this point was that it challenged the colonialist imposition of boundaries that secure the American settler-state and encouraged the expression of an indigenous postcolonial identity constructed through resistance to this imposition. In another context Deloria argued that in the international realm "we have more in common with the Africans and Vietnamese and all the non-Western people than we do with the Anglo-Saxon culture of the United States."[71] With regard to the U.S. political realm, "The betrayal of treaty promises has in this generation created a greater feeling of unity among Indian people than any other subject."[72] Here Deloria was defining the postcolonial nationalist struggle for indigenous self-determination as that which is positioned on the boundary between a third world anticolonial nationalist struggle of "non-Western peoples" and a domestically located effort to compel the U.S. federal government to live up to the promises it had made to a people it now deemed more a domestic than a foreign concern. Furthermore, America's involvement in Vietnam reiterated the importance of cultivating firm collective grounds for dealing with America's tenuous relationship to its own political ideals. This was especially the case in the context of the racial struggles evident throughout the country. In this turbulent political context—both outside and inside the boundaries that marked U.S. domestic political space—indigenous tribes could see themselves as somewhat like the Vietnamese in feeling the unjustified military power

of the American government attacking their right to self-governance, and somewhat like black people in the United States in experiencing institutionalized and cultural prejudice as a marginalized minority group. However, a defining component of indigenous postcolonial identity was that one could not simply define indigenous tribes as foreign nations, like Vietnam, or domestic racial minorities, like the black population in the United States. Instead, Deloria saw the principles and practices of the Red Power movement as revealing the unique status of indigenous political identity at the time.

By around 1966, the term *Red Power* had emerged as a distinct name for the politicized identity I am calling postcolonial nationalism. Though this name drew on the term *Black Power,* which had been developed through the Student Non-Violent Coordinating Committee in the mid-1960s, the politics of Red Power was not a simple indigenous reproduction of the politics of black nationalism. There were similarities and important differences between the two. Black Power and Red Power activists were more distinctly nationalist than the more mainstream, and often older, voices among their brethren. Also, both Black Power and Red Power referred to respective experiences of political inequality and domination as consequences of American colonialism rather than to internal prejudice or racism alone. In that way, both "power" movements sought to articulate a stronger sense of collective identity for their people and make a nonintegrationist national claim to and against the U.S. government.[73] However, Deloria saw key distinctions between Black Power and Red Power.

While Black Power stood as an explicit politics of opposition to the American nation and state, Red Power, as Deloria saw it, was "playfully" expressed in order to "confus[e]" the government "bureaucrats . . . as to which path the tribes would take next." Deloria thus implicitly endorsed a postcolonial supplementary strategy whereby indigenous politics refuses to provide the American polity with, as Bhabha put it, a "contradictory or negating referent." Instead, indigenous political discourse "insinuates itself into the terms of reference of the dominant discourse," supplementing it with claims for sovereignty in an inassimilable third space.[74] In other words, Red Power politics did not involve a surrender of the demand for resources and rights from the American government—goods promised in treaties and legislation—but it also made it clear that the political status and concerns of indigenous tribes could be neither defined nor redressed

as if they were another minority group. This effort at both playfulness and confusion was an attempt to redefine the terms of political negotiation from the perspective of the tribes rather than to assimilate them to the discourse of the American polity. This contrasts with the way in which Deloria viewed Black Power discourse, correctly or not, as "not so much an affirmation of black people as it was an anti-white reaction."[75] In other words, he viewed Black Power as caught in a black-white binary discourse. By contrast, Red Power refused to set out indigenous identity as a "contradictory" or "negating referent" to white identity, because such a move would do more to affirm than to negate the coherent and dominant location of whiteness in U.S.–indigenous relations.

For Deloria, Black Power and the civil rights movement may have been the prevalent choices for constructing a racial politics in the 1960s, but neither spoke to the unique boundary location and third space claims of indigenous politics. Neither black nationalism nor civil rights discourse provided the language and ideals that could adequately speak to indigenous concerns, a dilemma he described in the wake of the chaotic year 1968: "No one seemed to know which direction the country would take. Return to the old integration movement seemed out of the question. Continuing to push power movements against the whole of society just seemed senseless."[76] While Deloria had a serious issue with the politics of the "power movements," he viewed the discourse and objectives of the civil rights movement as even more inappropriate for indigenous politics: "The tragedy of the early days of the Civil Rights movement is that many people, black, white, red, and yellow, were sold a bill of goods which said that equality was the eventual goal of the movement. But no one had considered the implications of so simple a slogan. Equality means sameness."[77] Here Deloria put forth what could be considered an early postcolonial critique of the egalitarian discourse defining so much of American politics of that time. Specifically, when Deloria defined "equality" as meaning "sameness" in American politics, he concisely referenced the way in which dominant discourses seek to contain nondominant political agency and objectives by translating them as affirmations of the colonial impositions of the American liberal democratic settler-state. The predominant focus on individual identity and rights in the liberal democratic constitutional system helped to secure and further impose colonial rule on the collective identity and autonomy of indigenous tribes. Deloria thought the civil

rights movement's strategy of emphasizing individual equality was doomed because it replicated and thus affirmed the racial, cultural, gendered, and political presumptions of the dominant American citizen—the elite white male, who was the embodiment of sovereign individualism pursuing life, liberty, and happiness—as the norm by which the equality of nondominant peoples in America should be measured. In other words, "equality means sameness" meant the imposition of the sameness of the dominant colonial subject on the political identities of nondominant peoples.

Deloria thought the civil rights movement viewed individual equality as an end in itself rather than as representing a deeper economic, cultural, and political need. Thus, when he asserted that "Civil Rights is a function of man's desire for self-respect, not of his desire for equality,"[78] Deloria reflected the way in which indigenous tribes understood their search for equality as part of a collective endeavor to preserve their cultural distinctiveness and legal rights through political autonomy. He claimed that his suspicions of the civil rights approach echoed the suspicions of indigenous people who "are becoming distrustful of people who talk equality because [Indians] do not see how equality can be achieved without cultural separateness."[79] A clear and stark of example of this suspicion, to which Deloria pointed, was Clyde Warrior's decision to support Republican Barry Goldwater in the 1964 presidential election, on the theory that "the emotional reliance on a Civil Rights bill to solve the black's particular question was the way to inter-group disaster." Deloria agreed with Warrior's decision, on the premise that "what the different racial and minority groups had needed was not a new legal device for obliterating differences but mutual respect with economic and political independence."[80]

Given the temporal and spatial circumstances of indigenous people's political situation, Deloria's claims here can and should be read as a postcolonial argument reflective of what Bhabha refers to as resistance against the colonial drive to "universalize the spatial fantasy of modern cultural communities as living their history 'contemporaneously,' in a 'homogeneous empty time' of the People-as-One that finally deprives minorities of those marginal, liminal spaces from which they can intervene in the unifying and totalizing *myths* of the national culture."[81] In this regard, Deloria's warning about "equality" claims can be read as driven by his postcolonial concern that if indigenous politics seamlessly adhered to American discourse and institutional mechanisms, it would legitimate U.S. spatial and

temporal boundaries as that which mark a singular, universal (American) political community, the "People-as-One." Such a discursive move would necessitate surrendering the unique location of indigenous political life and claims in the "liminal spaces" through which indigenous politics can best antagonize and reclaim American boundaries as sites of postcolonial agency and autonomy in the third space. These spaces are the sites of affirmative political expression rather than political reaction to and accommodation of the dominant power. Deloria believed that civil rights claims do not foster the unique, liminal location and resistance potentiality of one's minority group. Therefore, these claims leave marginalized individuals vulnerable to absorption and inevitable alienation within a dominant liberal democratic settler-state and nation that, at best, does not understand them or, at worst, is hostile to them.

For Deloria, the challenge facing indigenous politics was to develop an appropriate and translatable language of equality that affirmed the aim of tribal self-determination in a liminal space on the boundaries, further away from American institutional purview. He spoke to this issue at the NCAI annual conference in 1967:

> Red Power means we want power over our own lives. We do not wish to threaten anyone. We are only half a million Indians. We do not wish power over anyone. We simply want the power, the political and economic power, to run our lives in our own way. It frightens people, I know, to talk of Red Power, but we don't want to frighten them. We want to shock them into realizing how powerless the Indians have been. We feel that if we don't get power—now—we may not be around much longer.

The language of power translates practically into the objective of self-determination or, as Deloria glibly put it at the NCAI meeting: " 'Self-determination? That's Red Power spelled backwards."[82] Self-determination means that indigenous tribes will have the political standing to administer their own social, economic, and cultural needs. Tribal self-determination is sovereignty without the mechanisms of statehood, and this is the way Deloria constructed the meaning of the third space of sovereignty as reflective of the claims made by those engaged in "new Indian politics." This

third space challenges American presumptions, which not only define and seek to resolve inequality through an individual rights framework but also set out statehood as the norm by which a collectivity, especially that claiming nationhood, asserts recognizable sovereignty.

In the practical pursuit of group claims, Deloria credited the black nationalist critique of the civil rights movement for making this distinction about equality evident to the wider public. While he was critical of the terms and vision of radical black politics, Deloria credited it with a key discursive intervention: "Black power, as a communications phenomenon, was a godsend to other groups. It clarified the intellectual concepts which had kept Indians and Mexicans confused and allowed the concept of self-determination suddenly to become valid." This is not to say that Black Power came up with the notion of self-determination, but rather that in its critique of the civil rights movement it injected this concept into the general public sphere in a way that it had not been before. As a consequence, according to Deloria, "Indian leadership quickly took the initiative, certain that with pressures developing from many points the goal of Indian development on the basis of tribal integrity could be realized."[83] This form of leadership was evident in 1967, when tribal leaders expressed their opposition to a bill in Congress that they saw as a threat to indigenous interests.

The Indian Resources Development Act of 1967 (the Indian Omnibus Bill) was developed by the Department of the Interior and was "the most ambitious attempt to define Indian policy in the 1960s."[84] Indigenous tribes and tribal leaders, however, saw the Omnibus Bill as halting the recent trend of moving away from termination and toward tribal self-determination, as had been evidenced in the Economic Opportunity Act of 1964. Included in the bill were measures that allowed tribes to mortgage their land to secure loans, thus opening up the potential for foreclosure on tribal lands should an underdeveloped tribal economy not improve. Also, in writing the bill and subsequent messages to support it, the Department of the Interior offered "no refutation of termination, no commitment to on-reservation economic or cultural development, no discussion of Indian treaties which made their lands inviolate, and no mention of the importance of self-determination."[85] The emergence of the Omnibus Bill forced indigenous political actors from across the spectrum to speak to the

contemporary conditions in which indigenous people found themselves, and in so doing to translate for U.S. political institutions and actors the solutions necessary to address these conditions.

On February 2, 1967, at a conference in Washington, D.C., organized by the Department of the Interior and attended by members of the U.S. Congress and the executive branch, an older generation of leaders from thirty tribes recommended an alternative to the Omnibus Bill. In asserting their claim for economic development, the thirty tribes sought an

> American Indian Development Fund . . . comparable to the funds committed to our South American cousins (via the Alliance for Progress) and the native peoples of Africa and Asia. Aid to these peoples totals in excess of $3 billion annually—more than was spent on the American Indian between 1789 and 1960. . . . We should immediately provide $500 million in loan funds in this proposed fund for economic development of the reservations. To do less is to deny our own First Americans assistance in social and economic development that we are now already providing others world-wide.

Near the end of their presentation, they summed up their expectations: "We like our relationship with the Bureau of Indian Affairs and see our future in an important relationship. Let us develop a model for the former colonial world and avoid their mistakes."[86] Here, even in the arguments of some of the older, more conservative tribal leaders who came of political age prior to the emergence of the more recent radical indigenous politics, we see the effort to frame indigenous politics as "almost the same, but not quite" parallel to the political condition of the non-Western decolonizing nations. This was an effort to work across and against American boundaries.

By making the economic and political comparison with decolonizing nations around the world, these leaders sought to make the case that the concerns of indigenous tribes in the United States were a consequence of their colonial condition. Thus, a policy approach that viewed indigenous people as another minority group was inadequate. Even while they drew an international parallel between tribes and developing nations, these Indian leaders also found a way to gain leverage by emphasizing the

location of indigenous people within the United States. This latter effort focused on the difference between tribes and non-Western nations, and on this basis they essentially demanded that the U.S. government take care of domestically located peoples as well as it did those residing well beyond American boundaries. This politics-on-the-boundaries approach traced the fine line between domestic and foreign policy concerns in order to kill the Omnibus Bill and win passage of a bill that would address tribal economic, cultural, and political concerns. Although these thirty leaders generated their on-the-boundaries-approach in a somewhat diplomatic way, younger tribal leaders from the Red Power movement were much less reticent, especially with regard to the issue of self-determination.

On that same February 2, at a hearing in Memphis of the President's National Advisory Commission on Rural Poverty, Clyde Warrior spoke out against the general Indian policy agenda of the federal government and the premises on which this agenda was based. He also spoke for indigenous self-determination. Warrior's concern with U.S. Indian policies, whether developed through liberal or conservative perspectives, had to do with how they were planned, implemented, and assessed. By all three standards, he saw dominant American presumptions defining the future of indigenous political society. These American presumptions, emphasizing individualism, Puritanism, capitalism, and the white race as the cultural norm, led indigenous children to "lear[n] that their people are not worthy and thus they individually are not worthy." Thus, Warrior argued, "even if by some stroke of good fortune, prosperity was handed to us 'on a platter' that still would not soften the negative judgment our youngsters have of their people and themselves."[87] Here Warrior was articulating a postcolonial concern with the effect that any purported progressive policy would have on the colonized imaginations of indigenous people. For him, the problem and the solution were of the same origin: the lack of tribal sovereignty had undermined cultural bonds, and thus only sovereignty could strengthen those bonds and from that basis address economic and social problems in a practical manner.

The postcolonial politics Deloria documents in *Custer* resonate in Warrior's demand that federal government "programs must be Indian creations, Indian experiences. Even the failures must be Indian experiences because only then will Indians understand why a program failed and not blame themselves for some personal inadequacy." Warrior was

not calling for total separation—or total withdrawal, as Deloria called it—but rather for the means by which indigenous people could "enjoy the fruits of the American system and become participating citizens–Indian Americans rather than American Indians." I take this seemingly benign name shuffling as evidence of Warrior's argument that indigenous people must self-determine their relationship to American political life, not the other way around. In other words, the "Indian" will define his or her location in relation to the temporal and spatial boundaries of "America," not fully on the outside but certainly not fully assimilated. Warrior sought self-determination as a form of tribal sovereignty that would strengthen tribal identity, and from this basis help to secure an appropriate location across the boundaries of the American polity, further away from American supervision. He was tired of "bureaucratic administrators who are caught in this American myth that all people assimilate into American society, that economics dictates assimilation and integration." In resistance to this colonial myth of the homogenizing force of the settler-nation, Warrior argued that "the real solution to poverty is encouraging the competence of the community as a whole."[88] In other words, the task was to put the needs and norms of Indian identity ahead of those of American identity, to make them Indian Americans.

Political arguments by the older and younger tribal leaders did help persuade President Johnson, who was already unenthusiastic about the Omnibus Bill, to withdraw support for the bill, thus killing it. In a much more public way, the increasingly familiar discourse advocating self-determination also influenced federal government policymakers in the next U.S. administration. In January 1970, as the administration of Richard Nixon formulated its federal Indian policy, the Indian members of the National Council of Indian Opportunity (NCIO) delivered a lengthy and detailed statement of indigenous concerns and claims to Vice President Spiro Agnew and cabinet members in the White House. The statement addressed matters such as education, health, welfare, urban Indian issues, economic development, agriculture, housing, and representation of Indian issues in the executive branch.[89] The statement sought to consolidate indigenous demands: "In short, the Indian people want more services, more self-determination and relief from the hovering spectre of termination."[90] This demand was a product of at least a decade-long journey of indigenous politics from the 1961 tribal conference in Chicago to the White House

in 1970. Since the time of the AICC, the argument for self-determination had grown stronger and clearer, until a seemingly unlikely figure publicly affirmed its importance.

On July 8, 1970, in a special message to Congress, President Nixon gave his own lengthy statement of his vision of U.S. Indian policy.[91] Like the statement by the Indian members of the NCIO, Nixon's covered the gamut of issues, including education, economic development, health, urban Indian affairs, sacred lands, the role of Indian trust authorities, and the level of representation of Indian issues in the executive branch. Included in his message was a clear rejection of termination policies: "The premises on which it rests are wrong," Nixon said, because they implied that the federal government's trust responsibility was an "act of generosity toward a disadvantaged people." In other words, the premise was that indigenous people are a disadvantaged minority group rather than having "the unique status of Indian tribes. . . . The special relationship between Indians and the Federal Government is the result instead of solemn obligations which have been entered into by the United States Government." Here, then, from the U.S. executive branch, was an affirmation of the political history and importance of the "unique status" that defines indigenous people's political agency and objectives in relation to the American political system. After declaring that the termination policy was wrong, Nixon advocated self-determination: "Self-determination among the Indian people can and must be encouraged without the threat of eventual termination. In my view, in fact, that is the only way that self-determination can effectively be fostered." Furthermore, Nixon found no disabling paradox in the "unique status" of indigenous people that led them to demand from the federal government greater resources so as to enhance their level of autonomy away from the purview of U.S. sovereignty:

> There is no reason why Indian communities should be deprived of the privilege of self-determination merely because they receive monetary support from the Federal government. Nor should they lose Federal money because they reject Federal control. . . . In my judgment, it should be up to the Indian tribe to determine whether it is willing and able to assume administrative responsibility for a service program which is presently administered by a Federal agency.

Nixon's message would not be translated immediately into federal legislation, but it demonstrated the resonance of a new indigenous politics that expressed a revived political identity in the form of the Red Power movement and an increasingly legitimate claim for self-determination as a form of modern tribal sovereignty located across the boundaries, in the third space.

The positive direction mapped out in Nixon's message, however, did not mean that his administration or the federal agencies under his control would become quiescent in the face of indigenous political activism and claims.[92] To the contrary, government repression of indigenous political actors and movements in the early 1970s has been well documented.[93] In fact, it would not be until 1975, with Nixon long since flown from office (quite literally), that legislation would be enacted to officially close the termination era and open one premised on self-determination. The Indian Self-Determination and Education Assistance Act, passed into law on January 4, 1975, gave self-determination more tangible meaning by devolving power to the tribes to contract for health, education, and welfare services, thereby taking these programs out of the hands of the BIA, and ceding tribes more control over the education of indigenous children in public schools.[94]

In light of the five-year stretch from Nixon's message to the passage of self-determination legislation, the president's statement should be seen as a discursive turning point in U.S.–indigenous relations. By "turning point" I mean that this explicit and positive response from the president of the United States indicated that the indigenous claims and actions expressed over the preceding decade had finally proved translatable to the American government. The struggle was by no means won in 1970, but the affirming words of the highest elected official in the land offered some evidence that indigenous politics of the 1960s had in some meaningful way redefined the discourse of U.S.–indigenous relations.

In a *New York Times* article written a few months before Nixon's message, Deloria conveyed his sense of this turning point:

> There is an increasing scent of victory in the air in Indian country these days. . . . As the Indian movement gathers momentum and individual Indians cast their lot with the tribe, it will become apparent that not only will Indians survive the electronic world of

> Marshall McLuhan, they will thrive in it. . . . Knowing the importance of tribal survival, Indian people are speaking more and more of sovereignty, of the great political technique of the open council, and of the need for gaining the community's consensus on all programs before putting them into effect. . . . Indian people have managed to maintain a viable and cohesive social order in spite of everything the non-Indian society has thrown at them in an effort to break the tribal structure. . . . It just seems to a lot of Indians that this continent was a lot better off when we were running it.[95]

In this passage Deloria applauded the capacity and will of tribes and indigenous political actors to assert their own postcolonial way of becoming modern in the course of surviving the colonial rule of the American liberal democratic settler-state. Specifically, the postcolonial politics of indigenous tribes refused to accede to the colonial impositions that sought to "break the tribal structure" so as to assimilate indigenous people into the temporal and spatial boundaries of American colonial rule. Here Deloria signaled that postcolonial nationalism was coming to fruition in the form of an "Indian movement" that speaks "more and more of sovereignty" rather than the popular discourse of civil rights. Fittingly, Deloria wrote this article only a few months after an intertribal collection of indigenous activists seized and occupied the abandoned prison facilities and land of Alcatraz Island. In light of that political action, the last line of the passage quoted, referring to "Indians running the continent," also echoed the vision that Deloria articulated at the end of *Custer.* Specifically, in the book's concluding chapter Deloria advocated an indigenous "recolonization" of the continent, seemingly predicting the takeover of Alcatraz.

RECOLONIZATION: DELORIA'S THIRD SPACE VISION, RED POWER IN ACTION

The final chapter of *Custer* is titled "A Redefinition of Indian Affairs," and in it Deloria offered his view of the future of indigenous politics: "The eventual movement among American Indians will be the 'recolonization' of the unsettled areas of the nation by groups of Indian colonists."[96] In terms of understanding what this "recolonization" might mean, Deloria suggested that a shift in the intellectual approach of indigenous politics

was needed. This shift required an awareness of the power relationships within which indigenous people existed, including a sense of the power they do have because of their unique location in the American polity: "Past events have shown that Indian people have always been fooled about the intentions of the white man. Always we have discussed irrelevant issues while he has taken the land. Never have we taken the time to examine the premises upon which he operates so that we could manipulate him as he has us."[97] The premise on which "the white man" operates in U.S.–indigenous relations pivots on seeing indigenous people as anchored to a premodern period of American political time—colonial time—and thereby positioned impotently in relation to American political space. These imperial binary presumptions persist because the boundaries of American colonial rule were imposed on indigenous political life in a way that makes indigenous people appear to the dominant culture as lacking modern agency and identity: neither simply domestic nor foreign, neither fully assimilated nor "othered," but rather "domestic to the United States in a foreign sense."

This imposed location on the boundaries has made indigenous people vulnerable to the pervasive cultural perceptions and institutional power relations of American colonial rule, but it has also opened up a liminal space for redefining political identity and reappropriating political location in space and time. As mentioned, indigenous political actors during this period argued for political claims that were "almost the same, but not quite" like those made by decolonizing nations in non-Western contexts and by minority groups within the United States. This combination of nation-based claims and minority group concerns framed Deloria's language of recolonization in a way that built on and sought to foster, rather than denying and fracturing, the boundary location of indigenous political life. His argument for recolonization was thus an inherently postcolonial political claim, one based on the understanding that literally taking back all of America was impossible, but reasserting the power of indigenous political location in America—via a tribal nationalism that pushed for self-determination—could be accomplished. In so doing, recolonization necessarily involved an "examination of the premises" of American political rule, which would require reclaiming boundaries as active sites of indigenous political agency and autonomy and undermining the presumptive American national claim to belonging in political time and political space.

Alcatraz

One can see this effort to examine and upset the premises of American sovereignty in the course of redefining indigenous political identity and claims in the political action that began in November 1969, when Indians of All Tribes (IAT) seized the abandoned federal penitentiary and land of Alcatraz Island in San Francisco Bay.[98] Declaring "We didn't want to melt into the melting pot. . . . We wanted to remain Indians," the occupiers laid claim to the island to force negotiations with the federal government and to assert that Americans "forget us, the way they always have, but we will not be forgotten."[99] The occupation, which lasted until June 1971, claimed the land for the stated purpose of setting up such institutions as a Native American studies program, spiritual center, museum, and center of ecology. The proclamation announcing the occupation creatively and humorously inverted the discourse of European conquest. In so doing, IAT refused the coherence of America's colonial imposition on indigenous political space and political time.

The IAT's Proclamation: To the Great White Father and All His People began with "We, the native Americans, re-claim the land known as Alcatraz Island in the name of all American Indians by right of discovery." With the precedent of the Manhattan Island sale, IAT offered to "purchase said Alcatraz Island for 24 dollars." Echoing the discourse of American colonization, they offered to "give the inhabitants of this land a portion of the land for their own, to be held in trust by the American Indian government . . . to be administered by the Bureau of Caucasian Affairs."[100] In this way, the IAT's proclamation engaged in a supplementary antagonism of the colonial discourses imposed on indigenous people. The imagery of indigenous conquest of idle U.S. territory reclaimed and redirected the discourse of American colonial imposition by turning the language of nation-formation through conquest back against America. In this way, IAT discursively positioned itself as a foreign colonizing force competing with the American nation over the marking of international boundaries. This challenge to the international status of America's boundaries was supplemented with refusal of the elision of the contradictions preserving the myth that American boundaries mark a seamless noncolonial liberal democratic space.

Turning the history of American paternalism into a positive argument

for the Indians' claim to Alcatraz, the proclamation asserted that the Island is "more than suitable as an Indian reservation, by the white man's own standards." Alcatraz Island "resembles most Indian reservations" in that, to name but a few of the comparisons, "it is isolated from modern facilities," "it has no fresh running water," "there are no oil or mineral rights," "the soil is rocky and unproductive and the land does not support game," "there are no educational facilities," and "the population has always been held as prisoners and kept dependent upon others."[101] The occupation of Alcatraz and the claims set out in the proclamation were a politics-on-the-boundaries articulation that simultaneously called forth the American government's treatment of indigenous tribes within its boundaries and posed a nation-to-nation challenge to the temporal and spatial legitimacy of U.S. sovereignty in the international realm. In this way, they articulated a postcolonial challenge that inverted the meaning of what was domestic and foreign to the United States through an indigenous recolonization of a portion of the American domestic realm. To the occupants, Alcatraz represented the way in which the United States was foreign to indigenous people in a domestic sense—simultaneously a foreign nation-conqueror and a domestic oppressor. Furthermore, the expression of inherent indigenous sovereignty over the island symbolically asserted that America was foreign to itself, and thus not as seamlessly sovereign as its own national narratives of belonging imagined.

The Alcatraz occupation eventually lost political steam through internal divisions among the occupiers, depleted provisions on the island, and the dwindling attention of the American public. Still, Alcatraz marked what may have been the symbolic high point of Red Power political activism. Alcatraz was a constitutive symbolic moment that generated a positive notion of indigenous political identity that shaped not only the American public's view of indigenous concerns but also the views that indigenous people had of themselves as political agents in the modern world. Its rippling influence on indigenous political identity is still witnessed by Alcatraz occupants such as Edward Castillo, who remains critical of and doubtful about what the occupation accomplished materially: "More and more frequently, I encounter Indian people of my generation and younger who, on learning of my participation in that effort, describe the profound effect it had on their lives and their perceptions of what was possible for Indian people. Even some of the founding members of American Indian

Movement have publicly credited Alcatraz as a catalyst for their own political coming-of-age."[102] In many ways, then, the occupation of Alcatraz may have had its greatest effect in serving to decolonize the imagination of indigenous people as political agents, to imbue them with a positive political identity. As I have shown in this chapter, the early emergence of this postcolonial indigenous politics and political identity goes back to at least 1961. Nevertheless, the Alcatraz seizure of 1969 represented the most public and concerted manifestation of a postcolonial nationalism about which Deloria spoke and advocated.

In looking back on Alcatraz almost three decades later, Deloria also had doubts about the degree to which the occupation succeeded in fostering self-determination, the goal of postcolonial nationalism: "Most of the people involved in the occupation had no experience in formulating policy and saw their activities as primarily aimed at awakening the American public to the plight of the Indians." In this latter endeavor they were successful in a way that did change the terms of U.S.–indigenous relations by creating greater awareness of indigenous people as political actors. Though Deloria's critique of Alcatraz may be a little less generous than the occupation deserved, especially given the impact it likely had on indigenous political identity, his assertion that the occupiers lacked a capacity for specifically reformulating U.S. Indian policy was apt. In that regard, he contrasted the politics of Alcatraz with the *Twenty-Point Position Paper* of the 1972 Trail of Broken Treaties (discussed next), which he deemed "the best summary document of reforms put forth in this century."[103] Although Alcatraz may have physically manifested Deloria's 1969 vision by trying to literally recolonize the federal land of Alcatraz, in the *Twenty-Point Paper* he observed a more effective, if less dramatic, means to recolonization through the proposed redefinition of the legal and political relationship between indigenous tribes and the U.S. federal government.

The Trail of Broken Treaties

Organized by the American Indian Movement that emerged out of the Red Power movement in the late 1960s, the Trail of Broken Treaties (TBT) was a nationwide caravan that traveled to Washington, D.C., in 1972 for a mass demonstration and ended up occupying the BIA headquarters.[104] During a U.S. presidential election year, the TBT sought to raise public

awareness and make specific claims regarding the failure of the federal government to live up to its treaty and legislative obligations to indigenous tribes and people.[105] The *Twenty-Point Position Paper* was the document that set out and backed up in legal and political detail the demands of the TBT and BIA occupation activists, and it was eventually presented to President Nixon.[106]

The preamble to the *Twenty-Point Paper* framed the general political vision pursued by these indigenous political actors:

> We seek a new American majority—a majority that is not content merely to confirm itself by superiority in numbers, but which by conscience is committed toward prevailing upon the public will in ceasing wrongs and in doing right. For our part, in words and deeds of coming days, we propose to produce a rational, reasoned manifesto for construction of an Indian future in America. If America has maintained faith with its original spirit, or may recognize it now, we should not be denied.[107]

Calling for neither a separation from American society nor a surrender of a distinctively Indian future, this vision of a "new American majority" was premised on the effort to reconceive indigenous status in the American context by reasserting the basic, founding principles of U.S.–indigenous political relations. Such principles were not drawn from the rights-based language of the U.S. Constitution and the Declaration of Independence, as was the redemptive discourse of the civil rights movement. Rather, the main principle that would allow for a reconstruction of an "Indian future in America"—and also redeem the integrity of the American polity—was respect for the sovereign status of nations. This had been the legal basis for the hundreds of treaties negotiated between the American federal government and indigenous tribes during America's first century. The preamble to the *Twenty-Point Paper* thus introduced a manifesto that called for an end to the American legal and political view of indigenous tribes as entities stuck in a pre-1871 colonial time in relation to the United States. This challenge to American political time aimed to strengthen indigenous political location by placing tribes on more of an international footing in relation to the United States rather than allowing them to be viewed legally and politically more as domestic entities of the American political system.

To this end, the first of the points listed in the *Twenty-Point Paper* called for "Restoration of Constitutional Treaty-Making Authority,"[108] and it formed the key demand for redefining indigenous-American relations. In a similar fashion but with a different aim than the court decisions in *Kagama* and *Lone Wolf,* this demand further constructed and affirmed that the treaty rider of 1871 had marked a critical shift in the U.S.–indigenous political relationship. Almost exactly one century after the rider's passage, the TBT's first demand basically called for repeal of the action of the 1871 Congress so as to improve contemporary indigenous political status, agency, and autonomy, and U.S.–indigenous relations in general. The TBT deemed the revival of an active treaty-making relationship critical for proceeding to the point at which the U.S. federal government could tangibly recognize "Indian Tribes and Nations as political entities." Thus, while the Red Power movement generated a postcolonial nationalist effort to decolonize the imagination of indigenous people as they became more expressive political agents, the future security of indigenous self-determination still required a codified refiguration of the U.S.–indigenous relationship with indigenous sovereignty as its central premise. To this end, the TBT wanted Congress to allow the president to "resume the exercise of his full constitutional authority for acting in matters of Indian affairs—and in order that Indian Nations may represent their own interests in the manner and method envisioned and provided in the Federal Constitution." To support this vision, point 2 sought the "Establishment of a Treaty Commission to Make New Treaties," point 3 called for indigenous leaders to be allowed to address "The American People & Joint Sessions of Congress," and points 4 and 5 proposed commissions to address, respectively, "Treaty Commitments & Violations" and the status of "Unratified Treaties."

This effort to reshape U.S.–indigenous relations was meant to apply to all indigenous people in the American context, whether urban or rural, on or off the reservation, or enrolled or not enrolled as tribal members. This postcolonial nationalist vision is clear in point 6: "All Indian people in the United States shall be considered to be in treaty relations with the Federal Government and governed by doctrines of such relationship." The demands through point 9, which called for a "Joint House Senate 'Committee on Reconstruction of Indian Relations and Programs' " and the "development of a comprehensive broadly-inclusive 'American Indian

Community Reconstruction Act,'" were generally concerned with the organization and oversight of a new U.S.–indigenous political framework.

With point 10 the TBT made more material demands to support the claim and strengthen the exercise of treaty-based tribal sovereignty, including seeking the "Restoration of a 110-Million Acre Land Base." This demand sought to compensate indigenous people for the land lost during the allotment era, and it amounted to a request for about sixteen million acres on top of those that indigenous tribes (excluding Alaska natives) possessed at that time. Along with land, in point 15 the TBT sought the creation of an "Office of Federal Indian Relations and Community Reconstruction," with an "equality of responsibility" between the U.S. government and the "separate Indian Nations," which was to have "an authorized $15,000,000,000 budget" to be used for economic development and social programs. These material demands were paired with demands for self-government.

Notably, point 11 asserted: "The Congress should enact measures fully in support of the doctrine that an Indian Nation has complete power to govern and control its own membership." Also, point 13 (B) claimed that "all persons [Indian and Non-Indian] within the originally established boundaries of an Indian reservation are subject to laws of the sovereign Indian Nation in the exercise of its autonomous governing authority." This point sought to address the jurisdictional problem of checkerboarded reservations, where nonindigenous Americans owned property within the boundaries of a tribe's historic reservation. This was a claim for a tribe to occupy a third space of sovereignty by having autonomy over the expanse of land within its reservation boundaries in between and across the wider boundaries of the United States. Finally, point 20 closed the document by focusing on the one basic necessity for an "Indian future in America": "At a minimum, Indian Nations have to reclaim community education authority to allow creative education processes in forms of their free choice, in a system of federally-sanctioned units or consolidated Indian districts." Of all the points in the TBT document, the demands of point 20 came to greatest fruition in the previously discussed Indian Self-Determination and Education Assistance Act of 1975.

The TBT's *Twenty-Point Paper* unambiguously advocated strengthening the political and legal sovereignty of indigenous tribes and nations.

In calling for a reassertion of tribal sovereignty as the foundation of indigenous communities, the *Twenty-Point Paper* drew on principles and laws of the American political system. These included the principle of the legal role of tribes within the U.S. Constitution, as discussed in chapter 1 regarding the status of tribes in the Commerce Clause, as well as that of the legal status of treaties as "the supreme law of the land." Thus, the TBT worked within American political boundaries to achieve greater freedom for all indigenous people away from the jurisdiction of U.S. sovereignty. In the end, the TBT's goal was to secure the status of indigenous tribes as self-determining entities, and from this foundation to strengthen their political status and agency in defiance of the boundaries of the American nation and state. This status was to be a form of sovereignty based on a claim to material needs (more land and $15 billion for economic development, education, health, and housing) and political power (control of the terms of membership and jurisdiction over non-Indians on reservations). Thus, the tribal sovereignty pursued here was neither defined by American colonial rule nor completely separated from the practice and influence of the American liberal democratic settler-state. Rather, the TBT was making a claim for a third space of sovereignty that sought the most power and resources it could obtain from the American polity so as to gain for indigenous people the greatest possible freedom from American jurisdiction.

In 1969, Deloria viewed the radical indigenous politics of his time as carrying the potential for "Indians [to] retribalize, recolonize, and recustomize," and predicted that, especially "when the urban Indians have achieved a certain amount of political awareness and made their presence felt in national Indian affairs, it will happen."[109] This sentence could easily describe the seizure of Alcatraz. Almost three decades later, in 1997, Deloria's assessment of the *Twenty-Point Paper* praised its scope, presentation, and argument, saying it is "comprehensive and philosophical and has broad policy lines that can still be adopted to create some sense of fairness and symmetry in federal Indian policy."[110] Overall, Deloria's call for recolonization captured the spirit of both the Alcatraz action and the TBT's *Twenty-Point Paper* as distinct though connected efforts to resist American colonial rule and redefine North American political space as in some significant way sovereign indigenous space.

CONCLUSION: FROM A 1969 AFTERWORD TO A PREFACE FOR OUR TIME

In the waning years of the turbulent decade of the 1960s, Deloria viewed his effort in *Custer* as requiring him to take "extreme positions . . . because too often Indian people are [too] polite."[111] Interestingly, however, a new edition of *Custer* published in the late 1980s dropped the original 1969 afterword that contained the "extreme positions" statement. In its place, Deloria wrote a preface. The difference between the 1969 afterword and the 1988 preface offers us insight into Deloria's retrospective take on the successes and failures of the politics of the 1960s and his prospective look at the political possibilities for late twentieth century.

In the 1988 preface, Deloria wrote that in the late 1960s "American society had yet to hear the voices, demands, and aspirations of American Indians." And when these voices did gain a hearing, "Indians raised the question of the American past," but the war in Vietnam and the events at Kent State were strong evidence that "few people in the government heeded the lessons of history."[112] Furthermore, in his view "public attitudes toward Indians, sadly, have changed very little in the intervening years."[113] Although he did cite some positive developments since the late 1960s, Deloria's 1988 preface is, on the whole, a lament over the lack of positive political and social changes he had hoped for. He said that the "central message of [his] book, that Indians are alive, have certain dreams, and are being overrun by the ignorance and the mistaken, misdirected efforts of those who would help them, can never be repeated too often."[114] He thus foregrounded the postcolonial imperative that indigenous people are fighting to become modern on their own terms as they struggle to survive the colonial impositions of the American settler-state. To this end, the key themes of Deloria's first book were those of tribal endurance, political transformation, and the articulation of indigenous political ideals. Still, the path toward self-determination, greater prosperity, and political strength for indigenous people fell short of the expectations he had set out in the 1960s and 1970s. The 1980s witnessed a backlash against civil rights and minority groups, accompanied by a concomitant retreat of institutional efforts to alleviate the conditions of those marginalized by America. Yet Deloria's words of 1969 do offer a way to understand not only those times, but possibly even the challenges faced and successes experienced

by indigenous tribes in the late twentieth and early twenty-first centuries. Ultimately, we may look back on Deloria's concept of "recolonization" as the most telling prescription of *Custer,* because it could well define a contemporary postcolonial vision of indigenous politics that has the best chance of coming close to realization in contemporary North America.

In 1969, Deloria wrote that "knowledge of modern economic mores and understanding the strengths of tribal society enabled the people to project a type of recolonization that would be the most likely to succeed."[115] In the context of this quotation, he was looking to the politics of indigenous tribes in Canada as a way to rethink the political approach of tribes in the United States. However, Deloria's words can also be read as prefiguring contemporary indigenous politics in the United States, both in terms of the challenges to be faced and the openings and opportunities to be claimed. Specifically, the success that a number of indigenous tribes have had with owning and operating gaming enterprises has fostered possibly the most recognizable example of Deloria's vision of recolonization. Certainly, Deloria could not foresee that in the late twentieth century tribes would turn their "knowledge of modern economic mores" and "understanding of the strengths of tribal society" into, in some cases, vibrant casino-based political economies. In turning now to look at U.S.–indigenous relations in the contemporary era, especially but not solely around the politics of tribal casinos, I find that the shift in indigenous politics that Deloria marked out and prescribed reshaped the legal and political terrain in a way that has allowed tribes to seek out their own forms of postcolonial recolonization. However, this prospect has led to a heated political conflict with an American settler-society that feels threatened and claims to be victimized by tangible expressions of tribal sovereignty that refuse to be contained by the boundaries of American colonial rule.

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CHAPTER SIX

INDIGENOUS SOVEREIGNTY VERSUS COLONIAL TIME AT THE TURN OF THE TWENTY-FIRST CENTURY

For the first time in well over a century, a number of indigenous tribes are articulating their sovereignty in a manner that is fostering their enhanced economic and political capacity to reclaim indigenous location in North America in the form of literal territory and increasingly effective political agency and autonomy. In response, the United States, primarily state and local governments and citizen groups but also the U.S. Supreme Court, increasingly views tribal sovereignty as a political expression that is out of (another) time, and therefore a threat to contemporary American political life and political space. Present-day American resistance to the economic and political developments spurred by renewed tribal sovereignty is the contemporary example of Césaire's claim that it is "the colonized man who wants to move forward, and the colonizer who holds things back." In the late twentieth and early twenty-first centuries, the effort of American political actors to hold indigenous people back has involved inverting the colonial discourse in order to frame indigenous tribes as the colonizers and the American nation as the colonized. This image contrasts with Deloria's notion of recolonization, which advocated the reassertion of indigenous sovereignty as an inherent, legitimate claim to what I call postcolonial nationhood, the tribal claim to spatial and temporal location in the third space across American boundaries.

There has been a resurgence of tribal sovereignty since the 1970s, and along with this resurgence the American sentiment of colonial antitribalism has reemerged into the brighter light of the American political sphere. Colonialist antitribalism (or antitribalism for short) is the political view that opposes any expression of tribal sovereignty that does not strictly adhere to American political and cultural boundaries. Antitribal sentiment was prevalent during the allotment and termination eras, and it

has regained voice in the contemporary era in the form of two significant American spatial and temporal impressions. The spatial impression is that indigenous tribes can express sovereignty, if at all, only as narrowly conceived internal self-governance, severely bounded as to geographical and demographic reach. The temporal impression is that tribal sovereignty is out of time, a notion that can be broken down into three forms of temporal displacement: (1) the tribe has run out of time in making its claims; (2) the tribe's claims are based on archaic premises or promises, from another time, which are not applicable in modern American time; and (3) contemporary indigenous economic and political development has outpaced the historical boundaries of tribal sovereignty, and thus it is not an expression of sovereignty at all, but is rather a wild, reckless form of special-interest activity that threatens American civil society and political life.

I locate these colonial impressions in the arguments made both by American political actors who claim to be strictly concerned with the consequences of tribal economic development and by those who are expressly hostile to the very existence of tribal sovereignty. Since the late 1990s, the lines have become quite blurred between the antidevelopment and the antitribal positions. For example, indigenous tribes in California who operate casinos ("casino tribes" for short)[1] went from successfully enhancing their sovereignty through a historic state initiative in 1998 to becoming the critical scapegoat of Arnold Schwarzenegger's successful 2003 campaign to become the governor of California.

As my analysis of the California example will show, the contemporary era contrasts with earlier periods in U.S.–indigenous relations when Americans generally viewed tribes as too incapable or weak to be sovereign, and in response indigenous political actors like John Ross, Clinton Rickard, Vine Deloria Jr., and the Red Power movement set out to prove them wrong. This chapter, by contrast, focuses more on American political efforts to restrain and undermine the sovereignty of those tribes characterized as having become too strong rather than too weak. The tribes that are viewed as too strong are primarily those that have economically benefited from their casino enterprises. This economic success is not, by any means, representative of the socioeconomic condition of all indigenous tribes and people. However, the increased capacity of the casino tribes to express their sovereignty across American boundaries in resistance to the constraints of colonial rule has placed them at the forefront of the modern

political struggle over the meaning and purview of tribal sovereignty. I read this form of contemporary indigenous politics as engaged in a postcolonial battle to express a third space of sovereignty that envisions an overlapping, nonbinaristic rendering of the spatial and temporal mapping of modern American and indigenous political life.

To examine this important feature of contemporary U.S.–indigenous politics, I look first at the successful 1998 campaign by tribes to assert and expand their sovereign right to operate casinos in California by gaining passage of Proposition 5. I then reveal and analyze the antitribal discourse that served to propel Schwarzenegger to electoral success in the 2003 recall campaign. My examination of the California gubernatorial race shows the role of antitribal discourse in early twenty-first century American politics while also substantiating the practically ignored fact that Schwarzenegger's victory was secured, in no small part, by running against the casino tribes as much as he ran against his electoral opponents. I follow this discussion by digging more deeply into the roots of antitribalism by showing the connection between the discourse implicit in the mainstream politics of the California election and the discourse and objectives of antitribal groups that reside on the far right of American political life. I conclude the chapter by connecting this antitribalism to the U.S. Supreme Court decision in *City of Sherrill, New York v. Oneida Indian Nation of New York* (2005), a case about whether the Oneida nation had sovereignty over reacquired land within its historic reservation. On this question, the highest court in the land decided that Oneida sovereignty was out of time, in more ways than one. I begin the chapter by narrating and assessing the state of contemporary U.S.–indigenous relations, especially as it pertains to the rise of casino gaming as the most well-known modern expression of tribal sovereignty.

THE AMBIVALENT PATH TO THE RESURGENCE OF TRIBAL SOVEREIGNTY

On August 6, 2004, a member of the Native American Journalists Association posed the following question to President George W. Bush: "What do you think tribal sovereignty means in the 21st century, and how do we resolve conflicts between tribes and the federal and the state governments?" In response, Bush said: "Tribal sovereignty means that, it's sovereign.

You're a—you've been given sovereignty, and you're viewed as a sovereign entity. And, therefore, the relationship between the federal government and tribes is one between sovereign entities."[2] Bush's lack of clarity on this subject could be dismissed as a product of what one might call his carefree attitude toward the nuts and bolts of governance and grammar. However, whether he meant to or not, in saying that the federal government "gives" tribes sovereignty, "views" them as sovereign, and has a relationship with tribes as that "between sovereign entities," Bush pointed to three distinct components of ambivalent U.S. Indian policy and three constructions of the meaning of tribal sovereignty and, by correlation, U.S. sovereignty as well.

As discussed in the introduction, indigenous tribes and nations claim that their sovereignty is an inherent, aboriginal right, and thus not "given" to them by the federal government. Instead, to echo President Bush's other phrasing, indigenous tribes and nations expect the United States to "view" them as sovereign, constructed as political equals with regard to the capacity to create and maintain international agreements. On that basis, a relationship "between sovereign entities" represents the indigenous ideal of how tribal governments and the federal government should deal with each other politically. But, as I argued in chapter 3, a major premise and modus operandi of the relationship between indigenous and American governments as "sovereign entities" was undercut when Congress brought a formal end to treaty-making in 1871, followed by Supreme Court decisions that used the act of 1871 as grounds for legitimating federal plenary power over tribes. Since the late nineteenth century, the history of U.S. Indian policy has been defined by an ambivalent movement between policies that aim to assimilate indigenous people and policies that seek to recognize some form of autonomy for indigenous collectivities. In turning to the contemporary era, we can see that the indigenous political efforts of the 1960s and early 1970s shifted the pendulum of American colonial ambivalence in a better direction for tribal sovereignty and indigenous people's concerns generally.

In the words of a major study titled *Native America at the New Millennium,* "the drive for self-determination in the current era has its immediate roots in the civil rights movement and political activism of, particularly, the 1960s. . . . The Native version of the Movement sought *and achieved* degrees of political separateness and self-rule."[3] This activ-

ism, as I showed in chapter 5, fostered a change in American political discourse away from an emphasis on termination and toward an emphasis on self-determination. The formal shift in U.S. Indian policy in the wake of the civil rights era can be traced to the passage of the 1975 Indian Self-Determination and Education Assistance Act. The year 1975 marks the beginning of the self-determination era, in which the U.S. federal government devolved power to tribes without surrendering plenary power over them. This devolution of power recognizes a certain scope of tribal sovereignty by giving back to tribes authority over such important matters as health and education. It is important to keep in mind that devolution is a matter of the federal government's "giving back" rather than just "giving" sovereign powers to tribes. Recall that this distinction stems from the fact that tribal sovereignty in its present delimited form is a product of the historical diminishment of indigenous sovereignty through colonialism, not a creation or gift of the United States.

Since the mid-1970s, U.S. Indian policy has reasserted the view that indigenous tribes are self-governing entities in some form. According to a 2004 report by Joseph Kalt and Joseph Singer for the Harvard Project on American Indian Economic Development, the result of this policy is a "remarkable resurgence of the Indian nations in the United States":

> After centuries of turmoil, oppression, attempted subjugation, and economic deprivation, the Indian nations have asserted their rights and identities, have built and rebuilt political systems in order to implement self-rule, and have begun to overcome what once seemed insurmountable problems of poverty and social disarray. The foundation of this resurgence has been the exercise of self-government by the more than 560 federally-recognized tribes in the U.S.[4]

As a result of this renewal of tribal sovereignty, many gaming and non-gaming tribes have witnessed increases in real per capita income, median household income, and education levels, as well as decreases in family poverty, child poverty, and unemployment.[5] To be sure, these positive economic developments do not reflect the experience of every tribe, nor do they change the fact that the socioeconomic standing of indigenous people in the United States remains below the national average on almost

every single measure.[6] Nevertheless, a detailed study released in 2005 asserts that the "devolution of powers of self-rule to tribes can bring, and has brought, improvements in program efficiency, enterprise competency, and socioeconomic conditions," because "self-rule brings decision-making home, and local decision-makers are held more accountable to local needs, conditions, and cultures than outsiders."[7] In other words, there is a positive correlation between the increased expression of tribal sovereignty and the measurable improvements in the socioeconomic status of indigenous people. Nevertheless, Kalt and Singer warn: "Despite—or perhaps, because of—the economic, social, and political success of Native self-rule, tribal sovereignty is now under increasingly vigorous and effective attack."[8] In other words, the quantifiable success of the self-determination policy has not defused America's colonial ambivalence about U.S. Indian policy. Rather, such success seems to provoke this ambivalence in ways that could lead toward policies that favor the express imposition of colonial rule on indigenous political life if American political actors deem tribal sovereignty to have gone too far in some way. One need only look into the contemporary politics around tribal casino gaming, and the consequences thereof, to discover this postcolonial tension between American efforts to carefully bound and diminish tribal sovereignty and the efforts of indigenous tribes to actively construct and express sovereignty on their own terms.

Tribal casino gaming politics began as an expression of inherent sovereignty.[9] In the 1970s, the Seminole tribe in Florida ran bingo operations "six days a week and awarded prizes in excess of $100, both above limits set by state law." The local government authorities threatened to shut the facilities down and "make arrests," thereby starting a legal and political battle pitting a tribe's inherent right to express their sovereignty against an American government's claim that it had the right to restrict tribal sovereignty to a measured expression.[10] This conflict eventually made its way to the U.S. Supreme Court. In a 1983 decision, *Seminole Tribe of Florida v. Butterworth,* the court ruled that the state of Florida could not prohibit forms of gaming for indigenous tribes unless they were already prohibited by state law for all citizens of the state.[11] This issue reached the high court again in 1987, when in *California v. Cabazon Band of Mission Indians* the court found gaming a "regulatory" matter, because California already permitted nonprofit organizations to raise resources through gaming activi-

ties.[12] Thus, twice in four years the U.S. Supreme Court found that tribes were free to run gaming enterprises provided the states within which they resided did not explicitly prohibit such forms of gaming.[13] This expression of tribal sovereignty and the American legal efforts to define its limitations soon provoked a response from the legislative and executive branches of the federal government. In October 1988, President Ronald Reagan signed the Indian Gaming Regulatory Act (IGRA), which immediately became the defining federal law over tribal gaming enterprises.[14]

IGRA defined three categories—what it called "classes"—of gaming, the most complicated and politically pertinent of which is Class III gaming, which includes the more profitable games and devices such as roulette, blackjack, and slot machines, all normally associated with casinos.[15] IGRA allows tribes to operate casinos on their reservation lands or, with the approval of both the relevant state governor and the federal government, on off-reservation lands held in trust by the federal government. IGRA also echoed the Supreme Court's opinion that a tribe can establish a gaming enterprise provided that the "gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity." To operate a casino in accord with the IGRA framework, a tribe "having jurisdiction over the Indian lands upon which a Class III gaming activity is being conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities."[16] Through a tribal-state compact the two governments may determine the type and extent of gaming devices a tribe can operate, civil and criminal jurisdiction over the casino, possible payments to the state in lieu of taxation (tribes, as governments, cannot be taxed), and any other payments, such as those to fund gambling addiction programs, local fire and police services, or nongaming tribes in the state.

Senator Harry Reid of Nevada (Democrat), one of the authors and sponsors of IGRA, envisioned that "under such compacts, states and tribes, as if they were *foreign entities,* would negotiate the regulatory structure for Class III gaming."[17] But this analogy of tribes and states to "foreign entities" downplays the degree to which IGRA actually constructed a diminished form of tribal sovereignty because the government-to-government relationship of indigenous tribes "between sovereign entities" is supposed to

be with the federal government, not the state governments. By compelling tribes to engage in government-to-government negotiations with states to establish casinos, the federal government at once authorized and delimited the meaning of tribal sovereignty. In this sense, one can see the compact process as another product of the post-1871 era in U.S.–indigenous relations, because indigenous tribes no longer have the option of negotiating treaties with the federal government, but instead have been left to negotiate agreements with the state governments to define and express their sovereignty. That said, it is still the case that the rapid, profitable, and empowering rise of tribal casino gaming over the past two decades has challenged the American effort to impose and maintain colonial boundaries on tribal sovereignty.

Since the late 1980s, indigenous tribes have engaged in the casino business at a rate and with a level of general success that has been quite staggering. In the early 1990s, the total tribal gaming revenue was between $1.5 and $2.5 billion per year. By 2002, some 224 tribes operated a total of 354 gaming operations producing $14.5 billion in revenues, which was 21 percent of the total gaming revenue in the United States.[18] By the end of 2003, the total tribal gaming revenue had risen to $16.7 billion. However, only a small number of tribes enjoy significant profits, with 13 percent of tribal casino operations accounting for 64 percent of the total tribal gaming revenue in 2003. Unsurprisingly, tribes nearest to the coasts and city centers fared best, with the largest proportions of annual total revenues stemming from tribes in the western region, encompassing California, with $4.6 billion, and the eastern region, including New York, with $4.3 billion.[19] While antitribal discourse can be found across the nation, governmental and nongovernmental political actors in California and New York increasingly see the expression of tribal sovereignty as having gone too far. And, to be clear, it is tribal sovereignty and not simply casino gaming that is the fundamental issue agitating American political actors across the United States. As noted, for tribes with and without gaming enterprises, "native self-rule" has been a driving force behind the modern improvement in the social and economic condition of indigenous people. This fact only further underscores the importance of this contemporary postcolonial conflict that pits the efforts of indigenous tribes to express their inherent sovereignty against the efforts of American political actors and institutions to delimit, diminish, and even destroy tribal sovereignty.

THE POSTCOLONIAL FIGHT OVER CONTEMPORARY INDIGENOUS SOVEREIGNTY

It could be a poster for a 1950s B-grade horror flick. Two women and a man are pictured with their mouths agape in terror. One of the women seems to be running for her life. The words "You'll Watch in Horror" further convey a sense of dread. What inspires such fear and this frantic effort to flee? Emblazoned in big bright letters, an attention-grabbing filmic title screams the answer: "THE CASINO That ATE CALIFORNIA." The voracious monsters consuming California are the "uncontrolled Indian casinos that grow just about everywhere," sacrificing "thousands of union jobs," decimating "restaurant and small business revenues," having an impact on "nearby schools and churches," and leaving in their wake "30 million screaming taxpayers."[20] But this is not a movie poster. It is a political flyer by an organization called Yes on 68: A Fair Share for California, which advocated an initiative on the 2004 California ballot that sought for the state a larger share of tribal gaming revenues and enhanced jurisdiction over the tribes.[21] The initiative was unsuccessful at the polls, but the striking imagery framing casino tribes as an "uncontrollable," ravenous threat to America reflects the early twenty-first-century viewpoint of those opposed to tribal casinos and thus, wittingly or not, tribal sovereignty. This poster symbolizes the way in which potentially legitimate concerns about the impact of casino development can easily manifest themselves in a colonialist discourse that frames indigenous tribes as threats to the American way of life. In California, this discursive production has been particularly stark.

In 1998, the general image of indigenous tribes was that of a historically downtrodden people that had suddenly achieved a positive, even inspiring, newly empowered role in state politics. By 2003, however, indigenous tribes had come to be seen by many Californians as having gone too far.[22] By this time, tribes were portrayed as the unfair colonizers of the state because they had gone so far, so fast, as to outpace the historical bounds of their sovereignty, thereby transforming themselves into special interests instead of sovereign entities. I mark 2003 as a turning point because during that year's gubernatorial recall election this negative image played an important role in California politics when Arnold Schwarzenegger successfully drew on an undercurrent of antitribalism, provoking it to rise to the surface of American political life. In 1998, however, this antitribalist

undercurrent was evident but not yet politically fruitful, even while indigenous politics surged into the public eye of California politics in record-breaking fashion.

1998: PROPOSITION 5

In 1998, a number of casino tribes placed Proposition 5 (Prop 5) on the state ballot in order to counteract and overcome Governor Pete Wilson's insistence on a tribal-state compact that would severely restrict the form and reach of tribal casino operations. Specifically, Wilson sought to impose a single-compact model on the state's 107 recognized tribes, among whom would be evenly allocated the right to operate very restricted forms of gaming devices in accord with an overall statewide cap on such devices.[23] By proposing to so contain and delimit their casino activities, the California governor sought to impose his state's spatial impression on tribal sovereignty as it concerned one of the most successful economic enterprises tribes have ever known. In response, Prop 5 proposed, among other things, to expand the type of gaming devices tribes could operate and guarantee to each tribe better compact terms than the governor would allow.[24]

Campaign spending on Prop 5 set an American political record for an initiative or referendum vote, with a combined $92.1 million spent on the Yes and No campaigns. Some 88 of the 107 federally recognized tribes in California supported Prop 5, of which 31 were active gaming tribes, and they spent $66.9 million on their Yes-on-5 campaign. The No-on-5 campaign, funded in great part by Nevada interests and actively supported by Governor Wilson and a group called Stand Up for California, spent a little over $25 million.[25] Prop 5 passed by a wide margin of 63 to 37 percent.[26] A year and a half later, the tribes had to engage in a follow-up campaign to pass Proposition 1A, a measure proposing to amend the state constitution to certify the legality of tribal casinos.[27] That proposition passed by a wider margin of 64.6 to 35.4 percent.[28]

In their study of the 1998 and 2000 proposition campaigns, Carole Goldberg (who was a spokesperson for Prop 5) and Duane Champagne argue that although those "campaigns were not framed in terms of sovereignty, sovereignty was the key to the tribes' success." By refusing to give in to the state government, and successfully pressing their case for their right

to operate their casinos, these tribes "enacted their sovereignty. A separate government asserts the right to define its own sovereignty, and that is precisely what the California gaming tribes did."[29] The authors raise an important point here, that inherent tribal sovereignty stems not only from historical, legal, and political premises, but also from its practice. These indigenous tribes worked within the American political system to express and enhance their sovereignty at a greater distance from the dictates of the state of California. This was a politics-on-the-boundaries strategy that further articulated their sovereignty in the third space. Goldberg and Champagne conclude that this effort helped "restore California Indians to a place within the state's political and social landscape, at least for the near term."[30] However, these final words—"at least for the near term"—acknowledge the persistent American colonial ambivalence about tribal sovereignty, vulnerable to the imposition of colonial rule on indigenous political life. The specter of colonial ambivalence resonated in the way in which the Yes-on-5 campaign crafted its message to Californians.

As noted earlier, the Yes-on-5 campaign did not frame its argument "in terms of sovereignty," but sovereignty was still a part of the political discussion. For example, in a "letter on Sovereignty" written prior to the campaign, Yes-on-5 Campaign Chairman Ken Ramirez, who was also the vice chairman of the San Manuel tribe (the tribe that contributed the most money, $29 million, to the campaign),[31] argued that, with their "ever-increasing involvement in the larger American community as a result of Indian gaming," tribes find their sovereignty under greater attack and must respond with a vigorous defense. If they did not do so, went this argument, the tribes would become wholly absorbed within the American political system and be reduced to "just one of a multitude of interest groups fighting for their share of the pie."[32] However, placing Prop 5 on the California ballot meant that this defense of sovereignty was going to be carried out within the American electoral system, and thus the Yes-on-5 campaign had to figure out how to appeal to American voters on their terms rather than on strictly indigenous political terms. To this end, the campaign conducted focus groups, and their "early results underscored the point that few California voters understood tribal sovereignty issues, and they quickly grew disinterested and even hostile to the argument."[33] Given this undercurrent of hostility to tribal sovereignty, the Yes-on-5 campaign

looked for a way to define and secure tribal sovereignty without explicitly naming it as such. It did so by employing the language of self-reliance, referring to Prop 5 as the Self-Reliance Initiative.

A paid consultant to the Yes-on-5 campaign explained: "The Prop 5 campaign characterized Indian gaming as the means tribes were using to lift themselves out of poverty and isolation and toward becoming economically independent members of society."[34] To this end, Yes-on-5 campaign literature spoke to the proposition's value for indigenous and nonindigenous people: "Vote YES on Prop 5—TO PROTECT CALIFORNIA'S INDIANS, to allow them to continue on the path to self-reliance, AND TO BENEFIT CALIFORNIA TAXPAYERS."[35] The benefit to taxpayers accrued from, among other things, the measurable "drop in public assistance expenditures on reservations" where tribal casinos were doing well.[36] Yes-on-5 press releases in the campaign's final weeks warned that Prop 5's defeat "would be economically devastating for many Tribes throughout the state and destroy the progress they have made in reducing welfare and achieving economic self-reliance."[37] In this way, the Yes-on-5 campaign engaged in a delicate balancing act, calling forth classic American tropes such as "giving Native Americans a hope for the American dream"[38] while still seeing this political battle as one in which they had to define, express, and secure tribal sovereignty against the imposition of American boundaries. Thus, the tribes' strategy for dealing with American colonial ambivalence was to employ the American discursive trope of "self-reliance" for the sake of empowering tribal sovereignty in the third space. Of course, this strategy was not well received by many of those who opposed Prop 5. Because the anti-5 groups were roundly trounced in the 1998 vote, little attention has been paid to their arguments. But a sample of the claims made by the California-based anti-5 voices reveals the shape and tone of an antitribal politics that was to become more prevalent in the state.

For example, William Campbell, a past president of the California Manufacturers' Organization and an anti-5 advocate, focused his public criticism on the wealthier tribes, such as Ken Ramirez's San Manual Band, for trying to protect their "$1.5 billion-a-year casino empire . . . on the false pretense of protecting Indian sovereignty." Note how this statement implies that the expression of and effort to defend tribal economic interests, no matter how wealthy the tribe, does not seem to count as an

expression of and effort to protect sovereignty. Such an argument would not carry much weight if it was referring to, say, the effort of the U.S. government to negotiate the best possible trade deal with another sovereign state. But in this case the issue was "Indian sovereignty," which allowed Campbell to articulate the colonial impression that the economic development of the San Manual Band had outpaced—was out of time with—the tribe's right to assert and protect its sovereignty. He expanded on this colonial impression by writing, "Proposition 5 has nothing to do with Indian sovereignty and self-reliance" because its passage would allow the operation of "tax-free casinos . . . unlimited in scope and location . . . [with] no outside regulation and oversight," thus transforming "California into a wide-open gambling state."[39] While it is true that tribal governments are not taxed, just as state governments are not taxed, the Prop 5 plan included a stipulation that the gaming tribes would make payments to a trust fund for nongaming tribes, local communities, and medical care programs. Furthermore, regulation and oversight matters are subject to tribal-state negotiation, federal oversight from agencies such as the National Indian Gaming Commission, federal law such as IGRA—which, as noted earlier, restricts tribal casinos to those states that do not outlaw gaming—and, of course, ever-looming federal plenary power.[40]

Also consider another of Campbell's arguments, his assertion that gaming tribes do not really represent the cause of "Indian sovereignty and self-reliance" because their effort to pass Prop 5 does nothing for the "poor Indians" whose plight serves as fodder for the "emotion-tugging claims [of the] initiative backers."[41] This is an example of discursive colonialism that constructs and splits off bad Indians from good Indians. By this logic, gaming tribes are bad Indians because their economic success and political agency undermine their authenticity, whereas the poor Indians are good Indians, their authenticity proven by their poverty, which "tugs at the emotions" of California voters. In this way, the gaming tribes are pictured as colonizers willing to exploit and lacking any concern for other indigenous people. By this interpretation, the gaming tribes' lack of respect for other indigenous people and for any rules and limitations on their sovereignty also indicates that they will colonize America if given the opportunity. What we see here is the articulation of an inverted colonial discourse that would gain greater public purchase in only a few years. The

colonial inversion rhetoric can also be culled from some of the more amplified anticasino arguments produced by the main anti-5 organizations, No-on-5 and Stand Up for California.

In their "Argument against Proposition 5," No-on-5 offered up an image of an uncontrollable, boundless tribal casino economy that threatened the political, social, and moral fabric of California, because "Prop. 5 would result in dramatic expansion of UNREGULATED and UNTAXED casino gambling throughout California." They imagined a situation in which

> 150 recognized or pending tribes that could operate multiple casinos in communities throughout the state . . . purchase land OFF their reservations and open huge casinos wherever they want in California. All they need is the approval of two politicians—the Governor and Secretary of Interior. There is no LOCAL VOTE of citizens to authorize or reject these casinos . . . [which] would operate outside our tough environmental laws that protect us.

This document closed by decisively, even screamingly, restating the group's case: "UNREGULATED, UNTAXED, UNLIMITED casino gambling with NO LOCAL CONTROL is UNFAIR for California."[42] A similar sentiment was found in Stand Up for California's "The Case against Casino Gambling," which argued that ostensibly unregulated tribal casinos would have a devastating social and moral impact due to an increase in "assaults, robberies, shootings, violence, money laundering, drugs and prostitution." In the end, if Prop 5 succeeds, "casinos will change the culture and values of our State."[43] The imagery in these anticasino arguments is rather clear: tribes are seeking to place themselves outside the bounds of American civil and political life—UNREGULATED, UNTAXED, NO LOCAL CONTROL—where they will pose a direct threat to America's physical, moral, and political well-being, changing for the worse the "culture and values of our State." The antitribal and anti-Indian subtext here calls forth the imperial binary of savagery-civilization, producing the picture of wild gaming tribes acting with reckless abandon, out of time with and thus a threat to the civilized pace of American society.

In many ways, these 1998 arguments were likely driven by sincere concerns about casinos rather than by express antitribal sentiments. And, of course, there were valid and responsible questions that citizens should

have posed about the impact that economic development would have on their lives. However, sincerity of concern about casino development did not preclude the presence in these anti-5 arguments of an antitribal subtext that conveyed the impression that tribes and tribal sovereignty represent threats to America. That such impressions can be articulated, even implicitly, by those whose real concern is the impact of casinos indicates the presence and power of the undercurrent of antitribalism in U.S.–indigenous politics.

In the end, the message of indigenous tribes seeking "self-reliance" outweighed the anti-5 arguments, evident in the wide margin of victory at the polls and in the words of a South Sacramento resident who voted for Prop 5: "I felt compassion for the Indians. They've been on the sidelines for so long. This is their chance to get part of the American dream."[44] Still, before long an increasing portion of the public would start to see tribes and tribal sovereignty as having gone too far rather than as heartwarming, self-reliant participants in California politics. In assessing Prop 5's legacy one year after the vote, the *California Journal* concluded that "the most lasting affect of the 1998 Indian gaming wars" may be that "after centuries of being told by distant political leaders where to go, now, it seems, the tribes are the ones delivering the marching orders."[45] This image of the sudden political turnaround for the tribes—from order-takers to order-givers after winning the Indian gaming war—is another example of the discourse of colonial inversion, a discourse that helped turn the Terminator into the Govinator.

THE 2003 RECALL: THE COLONIZER SEEKS ITS "FAIR SHARE"

The 2003 California gubernatorial recall was one of the most bizarre elections in U.S. history, with 135 candidates on a ballot that included former child star Gary Coleman, *Hustler* magazine publisher Larry Flynt, watermelon-smashing comedian Gallagher, and of course action film star Arnold "The Terminator" Schwarzenegger. Antitax activists began working to recall Governor Grey Davis less than a month after he won reelection in November 2002.[46] To trigger a recall vote, California law requires a petition with signatures numbering at least 12 percent of the votes cast in the last election.[47] While this was a low threshold compared to those of other states, it was still a daunting task on which activists had failed

in all thirty-one attempts to recall a governor since 1913, including an earlier attempt against Davis in 1999.[48] But this effort was given life in April 2003 when wealthy Republican Congressman (and gubernatorial hopeful) Darrel Issa stepped in to contribute $1.8 million to the Rescue California committee, which paid petition workers between "$1 and $1.25 a signature, virtually guarantee[ing] the recall petition's success."[49] On July 23, 2003, the California secretary of state certified the recall for a vote. On July 24, Lieutenant Governor Cruz Bustamente announced that the vote would occur on October 7, with two connected issues placed before the voters: (1) Yes or No on the recall and (2) the election of a replacement should the recall pass. After a frantic campaign that received significantly more media attention than had the previous year's gubernatorial race,[50] voters recalled Davis by a margin of 55.4 to 44.6 percent and replaced him with Schwarzenegger, who bested his closest rival, Lieutenant Governor Bustamante, by 48.6 to 31.5 percent.[51] Only a few weeks into the race, Schwarzenegger's eventual victory was by no means obvious. But then the "Indians" came to his rescue, sort of, to help clear his path to Sacramento.

On August 6, Schwarzenegger formally announced his candidacy on the *Tonight Show with Jay Leno.* Five days later, a CNN/*USA Today*/Gallup Poll placed Schwarzenegger in a decisive early lead among probable voters, with 48 percent saying there was a very good or good chance they would vote for him, followed by former Los Angeles mayor Richard Riordan (who did not run) with 26 percent, Bustamente with 23 percent, and Republican State Senator Tom McClintock with 13 percent.[52] By late August and early September, however, there seemed to be a "decided switch from the initial California polls showing Schwarzenegger ahead."[53] While polls from three different organizations found the support for Bustamante ranging widely, from 18 to 35 percent, support for Schwarzenegger registered consistently at 22 to 23 percent, far below the 48 percent he had received just days and weeks before.[54] Furthermore, according to the *LA Times* poll (the one that had Bustamante at 35 percent), 48 percent of likely voters had a "favorable" view of Bustamante, while 29 percent had an "unfavorable" view of him. Schwarzenegger received a 46/44 percent favorable/unfavorable rating.[55] While poll results in the midst of a campaign should always be viewed with a skeptical eye, these polls consistently found a tempering of the electorate's initial excitement over Schwarzenegger's candidacy. This was likely

the result of a combination of factors, including the Hollywood star's reluctance to offer any specific policy proposals, increased public awareness of Bustamante as the only viable Democrat in the field of possible replacements for Davis, and the presence of conservative McClintock as the third viable candidate and the one most likely to peel away Republican support from Schwarzenegger.

But then, on September 2, in the midst of what the *Financial Times* called his "stumbling campaign,"[56] Schwarzenegger ran new television ads attacking "special interests" for "'having a stranglehold on Sacramento,'" asserting that if he was elected it would be "game over" for them.[57] For the Schwarzenegger campaign, there were only two "special interests"; unions and the casino tribes. Both groups did, indeed, spend a great deal of money on the recall, with tribes spending as much as $10 million, some of it through donations to Bustamante and a larger portion through independent advocacy advertisements.[58] While unions were discursively paired with tribes as the infamous special interests that were "strangling" California government, the rhetoric of "game over" clearly indicated Schwarzenegger's main target: the tribes who profited from gaming operations. In fact, a week before releasing the ad he publicly "ruled out taking money from Indian tribes, calling them 'big, powerful special interests.'"[59] With these ads, Schwarzenegger sought to undermine Bustamante by framing him as captive to the particular interests of the tribes. Indeed, donations such as $1.5 million from the Viejas tribe to a preexistent Bustamante reelection committee were the subjects of controversy for finding a loophole in the state's campaign finance law.[60] However, it was also no secret at the time that, on top of the massive amount of his personal fortune that Schwarzenegger put into his own campaign—around $10 million, including a $4.6 million personal loan to his campaign that was made through a loophole in the state law[61]—he also received significant donations from corporate interests, including $2.4 million from real estate interests and $1.5 million from the financial services industry.[62] But the fact that he received corporate money and took advantage of the state's campaign finance loopholes never harmed Schwarzenegger's campaign, while by almost every account the fact that Bustamante received money and independent support from the casino tribes likely doomed his prospects.

By successfully framing the tribes as a particular threat to California, a threat only he dared to name and stop, Schwarzenegger kick-started his

rise to the governor's office. Don Sipple, Schwarzenegger's campaign media director, publicly affirmed that a key moment in the campaign occurred when Schwarzenegger positioned himself against the casino tribes. At a conference held at the University of California–Berkeley just eleven days after the recall vote, Sipple stated that the involvement of casino tribes in California politics through their large donations was "one of the best symbols of what's wrong with the status quo in Sacramento out there": "So we went with a spot where I think Arnold was kind of defined as Governor in that commercial, to be honest with you, because everybody else would pander to them. . . . What distinguished us in a change versus status quo election, it made us the sole person who was not playing that game."[63] Sipple referred to the campaign as being about "symbolism, message, and messenger."[64] With this in mind, he and his team sought to frame Schwarzenegger as a "champion of the people" and "outsider," and the day after the election Sipple claimed that "the engagement of the Indian gaming issue . . . was very provocative, and it resonated with people."[65] By focusing on this "provocative" issue, an incredibly wealthy, famous, and politically connected movie star—a favorite of the Republican Party elite since the Reagan administration, who spent almost $23 million on television ads—was able to construct his political identity as a "champion of the people" and "outsider" by framing the political identity of tribes who operate casinos as that of "insiders" who have invaded and throttled the California political system. This strategy had an immediate impact on Bustamante's campaign, and then expanded into a wider critique of the tribes.

An *LA Times* poll released on September 12 told the tale of another shift in the recall campaign, and this shift would not reverse course. Bustamante's thirteen-point lead over Schwarzenegger from the August 23 *LA Times* poll was reduced to a five-point lead. The more telling statistic, however, was the change in the favorable-unfavorable ratings for the two major candidates. In only a few weeks, Bustamante's overall favorable-unfavorable ratings shifted from 48–29 percent to 41–50 percent, a drop of 28 points in the margin between favorable and unfavorable views of him. During that same time, Schwarzenegger's ratings went from 46–44 percent to 52–38 percent, an upward shift of 12 points in his favorable-unfavorable margin. Also, in response to the question of which person would "reduce the influence of special interests in Sacramento," likely voters overwhelm-

ingly chose Schwarzenegger over Bustamante by a count of 42 to 7 percent.[66] The poll numbers continued to move in this direction through the election, confirming the value of the Schwarzenegger strategy.

To be sure, Schwarzenegger's victory cannot be entirely attributed to his campaign's decision to focus his attention and advertising dollars on going after the casino tribes. Issues such as the state's economy and energy policy, the car tax, driver's licenses for undocumented immigrants, and whether Schwarzenegger could actually be taken seriously as a potential governor also weighed heavily in the outcome.[67] But Schwarzenegger expressed almost no firm, clear positions on any of these policy issues. He really offered specific claims only concerning his narrowly defined notion of special interests, especially the tribes. And this strategy worked well, because Bustamante's campaign was severely damaged by the image of taking and being associated with tribal contributions.

An October 1 *LA Times* poll found that 40 percent of voters were less likely to vote for Bustamante because he received tribal contributions, while 54 percent said it made no difference, whereas only 31 percent said they were less likely to vote for Schwarzenegger because he received corporate contributions, while 61 percent said it made no difference.[68] Nine percentage points may not be a canyon-wide difference—although it is enough to make an impact on most American elections—but it does clearly indicate that to a measurable degree tribal contributions seemed worse to the voters than contributions from nonindigenous business interests. In this regard, Garry South, Grey Davis's campaign consultant, asserted that tribal contributions "certainly had an effect on Bustamante. . . . In our focus groups . . . I have never seen a fundraising scandal, quote unquote, ever penetrate as deeply down to the bottom of the electorate as the Indian money laundering scheme."[69] When one takes into consideration both the massive amount of corporate money influencing American electoral politics generally and historically, about which the public is cynically aware, and the amount of personal and corporate money thrown into the recall campaign ($1.8 million from Issa to pay petitioners, $10 million from Schwarzenegger for his campaign, and millions from corporate interests), it seems highly likely that it was more than just the usual concern about money in politics that made the issue of tribal donations "penetrate" so "deeply down to the bottom of the electorate."

Indigenous political leaders such as Richard Milanovich, chairman of the Agua Caliente Band of Cahuilla Indians, sought to challenge Schwarzenegger's characterization of the tribes and of tribal sovereignty, arguing that to be "grouped into a category of a special interest is demeaning and derogatory to tribes as a whole. We are a bona fide government."[70] But, in the end, the key to Schwarzenegger's success was his ability to characterize tribes as special interests that have transgressed the narrow boundaries of their sovereign spatial purview in order to invade and take control of the California political system. This caricature implicitly conveyed the idea that just by engaging in an enterprise that is or may be economically successful, tribes transform themselves into particularistic interest groups, albeit ones that still articulate a political identity not fully integrated within American political boundaries: *they are domestic to the United States in a foreign sense.* In other words, by succeeding economically the tribes temporally outpaced their claim to sovereignty, while still being seen as somewhat alien to American political life. As a consequence, anyone associated with such ostensibly dangerous, invasive special interests, in this case Bustamante, can be tainted as not simply corrupted by money, but subject to the whims of a wild, uncontrollable, economically empowered and slightly foreign presence in the American political system. In this way, Schwarzenegger's campaign discovered that "using tribes as a foil in the recall campaign" was an effective political strategy, which it continued to use beyond its immediate purpose of undermining Bustamante.[71] In so doing, wittingly or not, Schwarzenegger's campaign drew the discourse of antitribalism closer to the surface of American politics.

The strategic value that the Schwarzenegger campaign placed on targeting the casino tribes was evident when it changed its position regarding whether the state government should seek more gaming revenue from the tribes, and if so, how much. On August 31, in response to the question of "whether Indian casinos should be required to give a bigger slice of their profits back to state coffers, [Schwarzenegger campaign spokesman Rob] Stutzman said the candidate could not outline those issues until he was elected."[72] By September 22, Schwarzenegger was certainly not elected yet, but he was willing to better outline his position in an ad that presented possibly the most recognizable policy stance of his campaign. Addressing the camera, the star got his cue, hit his mark, and delivered his lines:

> Indian casino tribes play money politics in Sacramento, $120 million in the last five years. Their casinos make billions, yet pay no taxes and virtually nothing to the state. Other states require revenue from Indian gaming, but not us. It's time for them to pay their fair share. All the other major candidates take their money and pander to them. I don't play that game. Give me your vote and I guarantee things will change.[73]

Here the language of the "fair share" gained its most famous proponent, and it became a metonym for the colonizing polity's sense of mistreatment and exploitation at the hands of the colonized. This advertisement and campaign slogan stands as one of the better-known examples of the inverted colonial discourse that positions indigenous tribes as "unfair" colonizers concealing their "special interests" under the cloak of sovereignty. The iteration of the "fair share" language would continue well after the recall vote, as we saw with the "Casino that Ate California" poster.[74] Unsurprisingly, indigenous political leaders promptly challenged the ad.

In a press release issued the day after the ad first aired, the California Nations Indian Gaming Association (CNIGA) quickly sought to clarify a couple of points. First, the claim that casino tribes do not pay taxes is a familiar one, but as CNIGA Executive Director Jacob Coin put it, "California state government does not pay taxes. Its citizens do. Indian governments do not pay taxes. Indians do."[75] There is a deep colonial impression at work in the criticism of tribal governments for not paying taxes. The impression is that they are not legitimate, governing entities—or at least they can be referred to with impunity as if they are not—and that their claim to sovereignty is out of time and now exists only to mask special interest claims. The second point of rebuttal made by CNIGA had to do with that portion of tribal revenue that did not go into tribal services.[76] Specifically, while casino tribes do not technically pay taxes to the California state government, they did put more than $100 million, and by some counts $130 million per year, into a fund for tribes without casinos and to "pay for the impact of gaming on local communities."[77]

The payments made to these funds represent a form of recognition by the casino tribes that their sovereignty exists and is expressed in a nonbinaristic fashion, uncontainable within easily defined boundaries.

Payments to local communities and to other sovereign tribes, the federal taxes paid by tribal citizens, and the payroll taxes tribal governments pay to the federal government all represent concrete ways in which the revenues from casino tribes are disbursed beyond tribal boundaries. Thus, when Schwarzenegger criticized the casino tribes for "paying no taxes and virtually nothing to the state," his demand represented another example of a colonial imposition. Even if Schwarzenegger was really concerned not with the issue of taxes per se, but rather with obtaining a greater share of tribal casino revenue for the state—whether through taxes or some other form of payment—his language of the "fair share" still invoked the imagery of tribes as political entities that are exploiting the much wealthier and more powerful state of California, the largest state in the union. What we see here, then, is a representative of the colonizing nation seeking to extract more resources from the indigenous population for the benefit of the settler society, and doing so not as part of an extreme, far-right-wing politics (in many ways Schwarzenegger is a more moderate Republican), but as part of a practice familiar to mainstream American political history. In this same vein, Schwarzenegger's demands also represent a move that is increasingly cost-free politically for American office-seekers, because it was a call for an increase in some form of "tax" on a people not fully integrated into the American polity. Therefore, voters could see it as a tax on the "other," and the majority of California voters agreed with Schwarzenegger's demand for the state's "fair share." As one analysis of the campaign put it, "Everyone, including tribes, concede the message struck a nerve with the public."[78] The nerve struck by the "fair share" rhetoric was the bubbling antitribal view that tribal sovereignty had breached its temporal and spatial limitations in California.

Only days before the release of the "fair share" ad, antitribal sentiment could be found on the opinion page of the *San Diego Union-Tribune,* where columnist Joseph Perkins wrote that his support in 2000 for Prop 1A was "the worst vote I ever cast." His column, titled "Gaming Tribes Have Gone Too Far," conveyed his feeling of being duped into supporting the tribes in 2000 by the argument that casino enterprises would help address the problems of "America's most needful minority. . . . [as] so many Native Americans continued to live under Third World conditions." He conceded that the leaders of these tribes "were interested in uplifting their poor and downtrodden brothers and sisters. But they were more interested

in growing their gambling operations to Las Vegas-like proportions." In other words, Perkins's vote was meant to help tribes out of their underdeveloped "third world" conditions, but tribal enterprises were apparently not supposed to go much further than that. He saw a tension between assisting poor tribal members and further expanding those tribal enterprises that are successfully earning resources for the tribe. But this was a tension only if support for Prop 5 and Prop 1A was contingent on helping tribes survive *but not thrive,* thereby leaving them anchored out of time, held back by a colonizing culture that places meager limits on corporate expansion and influence but declares that tribes have gone too far after a few years of successful economic development. Furthermore, Perkins thought that Prop 1A and subsequent legislation served to "further subordinate the interests of [California's] 36 million residents to the putative sovereignty of the state's tribes," which he referred to as a "special interest." In the end, the tribes "made fools of those" who supported Prop 1A, and he would likely have said Prop 5 as well, because the Californians who supported the earlier measures "never envisioned that the tribes' gambling riches would corrupt the state's political process." Perkins lauded Schwarzenegger for his refusal to be "purchased by the tribes," and closed his column by lamenting his own support for them in 2000: "No well-intentioned vote goes unpunished."[79]

Perkins's view perfectly captured the twin forces of American colonial ambivalence and colonial imposition regarding tribal sovereignty. He supported tribal sovereignty to uplift weak and disempowered indigenous people but opposed it when the tribes got strong enough to seek and attain objectives beyond just day-to-day survival for their people. As discussed in chapter 3, some 132 years earlier Senator James Harlan had argued that tribes were "not a proper and competent power"—they were weak and vulnerable—and as such they should not be deemed sovereign entities worthy of making treaties with the United States. In the contemporary era, by contrast, casino tribes are viewed as too much of a competent power, as strong and predatory, as evidenced by the way in which they transgress the spatial limitations of their sovereignty to colonize California's governance and subordinate the will of 36 million Californians. In 1871 tribes were too weak to be recognized as sovereign entities. By 2003 they were too strong to be recognized as sovereign entities. According to this contemporary reading, tribal sovereignty is a historically and spatially contained

expression of power, and when the tribes inserted themselves into the state's legislative and campaign processes they surrendered their claim to sovereignty and became just another special interest. As a consequence of this colonial impression, the contemporary argument against the casino tribes effectively employs the discourse of colonial inversion, where the expression of sovereignty in the third space is read as an effort to colonize the American people and government rather than as a nonbinaristic mapping of the sovereign-to-sovereign relationship between tribal and American governments. This nonbinaristic mapping refuses the inside or outside vision of the purview and location of tribal sovereignty, but does so not to threaten or colonize U.S. political space but rather to gain a fuller expression of tribal sovereignty and indigenous political identity in the shared space and time of North American politics.

The sentiment articulated by Perkins was not an isolated viewpoint. A familiar reading of Schwarzenegger's victory on October 7 was that it represented a victory for Californians over tribes that had "gone too far" in the expression of their sovereignty. For example, consider how the editorial page of another California newspaper sharply shifted its view of the power of the casino tribes in California politics. On September 3, the editors of the *Riverside Press Enterprise* deemed it safe to declare an early winner to the recall: "The first ballot in the California recall election has yet to be cast, but one winner already is apparent: Indian tribes that run casinos."[80] Apparently, whether Grey Davis or someone new won the election, no governor could succeed against the overwhelming power and influence of the casino tribes; their domination of California politics was beyond challenge. However, after the ballots were cast on October 7, these same editors changed their minds, proclaiming the tribes among the losers of the campaign because "by electing Schwarzenegger, who did not collect campaign loot from gambling interests, Californians put a healthy check on the tribes' sway over state policy."[81]

That the tribes were deemed "losers" of the recall campaign is, on its own, not necessarily cause for deeper investigation, because any election cycle produces winners and losers among a range of groups, interests, and parties. What is worthy of deeper examination is exactly how Schwarzenegger made these tribes one of the campaign's losers. His main strategy in this regard involved the implicit provocation of the colonialist antitribal view that indigenous tribes are emerging threats to American

civil and political life in the early twenty-first century. While the candidate himself may or may not have sincerely held such a view, his electoral victory was nevertheless facilitated in no small part by going after the tribes with rhetoric such as that about demanding the state's "fair share" and refusing to "play their game." There was a deeper antitribalism at work that struck a "nerve" with a meaningful portion of the California public. To investigate this sentiment further and show its workings and connection to mainstream politics in the California case, I next look at what might be called the central nervous system of contemporary antitribalism, which is comprised of the citizens' groups and coalitions that often reside at the margins of American political life.

THE NERVE CENTER OF ANTITRIBALISM

A cartoon in the August 4, 2004, edition of the tribally owned and operated national weekly newspaper *Indian Country Today*[82] pictures three organizations as the Three Stooges: One Nation United (ONU), United Property Owners (UPO), and Citizens Equal Rights Alliance (CERA). ONU asserts that it "does not oppose tribal entities, nor do we wish to intrude on tribal authority. Instead, we oppose federal policy that encourages tribal business monopolies destructive to a healthy free enterprise system."[83] UPO echoes this statement word for word,[84] adding: "Tribes must respect our self-government rights (including environmental rules and tax codes) just as we all must honor tribal sovereignty."[85] CERA, through its legal arm the Citizens Equal Rights Foundation (CERF), claims to seek to "protect and support the constitutional rights of all people, Indian and non-Indian," and refers to "Federal Indian policy [as] unaccountable, destructive, racist, and unconstitutional."[86] These organizations have been around since the 1980s and overlap with each other considerably, articulating stunningly similar political rhetoric, sometimes almost word for word, as a consequence of sharing columnists and board members. Their estimated combined membership, spanning all fifty states, is between 300,000 and 450,000.[87] While sympathetic with the characterization of them as the "Larry, Moe, and Curly" of contemporary U.S.–indigenous politics, Rebecca Adamson, a columnist for *Indian Country Today,* argued that it would be a mistake to "underestimate" and "dismiss" the efforts of these "three anti-casino groups" because they have "gotten the attention

of a few congressmen and state attorneys-general" and a "good deal of anti-Indian funding goes to these groups."[88] While Adamson's caution is wise, it is also important to note that "anticasino" and "anti-Indian" refer to distinct although often connected positions, neither of which, by itself, gets to the precise core of the mission of these organizations or of the contemporary effort to impose colonial rule on indigenous political life and tribal sovereignty.

To be anticasino is to be concerned with the consequences of a form of economic development. To be anti-Indian is to invoke and defend colonialist white supremacy.[89] While these two positions are often present in U.S.–indigenous political discourse, they are not always invoked together, especially by many on the anticasino side who would sincerely disavow any sympathy with a white supremacist agenda. However, the point of view that the anticasino and anti-Indian positions increasingly emphasize is the antitribal position. It is antitribalism that is assertively and with increasing publicity expressed by ONU, UPO, CERA, and their allies in editorials, legislative lobbying, and court cases. Their arguments often convey an explicit opposition to tribal casinos and a subtle, and sometimes not so subtle, white supremacism. Still, these groups are usually careful to pose their antitribal argument, especially in the more public venues, in the form noted earlier: against "federal Indian policy" but not against indigenous people or tribes themselves. This focus on U.S. Indian policy shields their antitribal position from the accusation of being anti-Indian while also providing a vehicle by which to invoke American spatial and temporal impressions about contemporary indigenous political life.[90]

However, a quick look at some of the statements made by these groups exposes their antitribal sentiment. A 2005 quote from Elaine Willman, the chair of CERA and Advisory Committee co-chair of UPO, connects CERA's critique of the federal government to its fear of tribes menacing America: "It is troublesome that at a time when America is risking the lives of our military personnel and expending billions to free countries from the tyranny of tribalism, we have a federal agency (EPA [the Environmental Protection Agency]) forcing tribalism as a substitute form of governance over American citizens here at home."[91] Similar imagery can be found in UPO's "National Update": "Tribal ethnic separatism is creating a growing balkanization of America; a sad situation elsewhere in the world where

racial tensions and ethnic wars have raged for centuries."[92] Given this sort of rhetoric, it is hardly surprising that commentators have referred to such organizations as "hate groups."[93] Such a critique seems especially apt when one considers the origins of CERA.

CERA was established during the 1988 convention of the organization Protect Americans' Rights and Resources (PARR). CERA was created to serve as a "national antitreaty group" representing a coalition of groups from at least thirteen states "dedicated to . . . the reevaluation of court interpretations of Indian tribal treaties."[94] CERA's connection to PARR is worth noting because the latter gained notoriety, and infamy, in the late 1980s and early 1990s through its vociferous protests against the Chippewa nation's treaty right to spearfish walleye within the boundaries of its historic territory in northern Wisconsin. When Chippewa from the Lac du Flambeau tribe sought to exercise this right, a large contingent of white protesters, many of them sports fishermen, gathered on the perimeter of the lake to harass the Chippewa and even impede their path to the water. As frighteningly captured in the documentary *Lighting the Seventh Fire,* some of the protesters carried signs reading "Save Our Fish, Spear a Pregnant Squaw" and "Spear an Indian, Save a Walleye," while others yelled "Timber nigger!" evoking laughter and smiles from their brethren. PARR was an active participant and supporter of these protests, holding staged rallies, selling T-shirts, and vowing to fight against treaty rights, which a spokesman referred to as a "license to steal."[95] PARR's efforts and rhetoric have continued into the twenty-first century, as evidenced in the opening lines of the spring 2004 issue of its newsletter, *American Rights Guardian Update:* "Another spring has arrived. The grass is greening; the flowers are blooming, and unfortunately another sign of spring is the emergence of the fisheries destruction parasite, *'The Walleye Warrior.'*"[96] In PARR's literature, this sort of racialized, antitribal rhetoric is consistently articulated and often linked to other right-wing causes. Their *Updates* refer to tribal sovereignty as a myth, tribal claims as fictitious, and the apparently cozy relationship between tribal rights supporters, "eco-freaks" and "gun-grabbers," and they include columns that maintain a knuckle-whitening grip on cold war imagery, such as "Why Communism Loves Indian Extremists."[97] The connection between PARR and CERA goes well beyond the latter's founding moment in 1988, as evidenced by the fact

that Elaine Willman, the aforementioned chair of CERA and co-chair of UPO, writes regularly for PARR, which refers to her as its "no nonsense, shoot from the hip West Coast Columnist."[98]

This intimate relationship between PARR and CERA points to the connective tissue between expressly racist anti-Indian sentiment on the far right of the political spectrum and the anticasino sentiment that exists much closer to the center of American political life.[99] Most anticasino activists would likely be horrified at the term "timber nigger"—and may themselves fall into the caricatured categories of "eco-freaks" and "gun-grabbers"—but their efforts to restrain the sovereignty of casino tribes can easily lead to the creation of witting or unwitting alliances with groups such as PARR and CERA on the common ground of antitribalism. In many ways, in fact, CERA as well as UPO have benefited from the rising wave of anticasino discourse by serving as conduits between the anti-Indian and anticasino viewpoints, emboldening their case against tribal sovereignty as they are heard by and connected to more mainstream players in American politics. A look back at the California political setting illustrates this point.

In September 2003, with Schwarzenegger's strategy of going after the tribes in full swing, Elaine Willman asked her readers: "Are you watching the California Governor's recall with its number one hot topic,—flagrant and boastful 7-figure contributions to CA's Lt. Governor, Cruz Bustamante, and to candidates that cannot win, but can take votes away from Arnold? . . . The political muscle of Indian tribes in California should be chilling to every state across the country." She went on to encourage American citizens to "quell the storms kicking up from Indian special interests" by utilizing the power of their vote, because "no one can outmoney the tribes."[100] First of all, notice that "Arnold" was the preferred candidate of an organization concerned with the "tyranny of tribalism." Second, Schwarzenegger and CERA converged in their characterization of tribes as "special interests" whose very strength had led them to historically and spatially outpace their claim to sovereignty. Finally, the discourse of colonial inversion employed successfully by Schwarzenegger resonates in Willman's image of tribes' flexing enough "political muscle" to send a "chill" through America's spine, because the tribes can apparently "outmoney" all the individuals, corporations, institutions, and governments of the United States. To be clear, my point here is not that Schwarzenegger

sanctioned or is responsible for the claims made by those expressly antitribal groups of the far right who happened to support him, and he would likely disavow their more extreme claims. However, what this discursive linkage demonstrates is that Schwarzenegger's campaign and victory, likely unintentionally, helped to draw such expressive, virulent, and at times racist antitribalism closer to the surface of mainstream American politics. As Schwarzenegger moved closer to antitribalism by positioning himself as a populist outsider who would stand up to the "unfair" tribes that were ostensibly dominating California state government, groups like CERA and UPO moved closer to him by pairing his more calculated political discourse with their own explicit rhetoric and holding him up as a model of how their antitribal efforts could change U.S. Indian policy.

For example, not long after Schwarzenegger took office, UPO's *Update* newsletter carried a column titled "Arnold Says Tribes Must Pay 'Fair Share.'" The column began by acknowledging that Schwarzenegger "did public opinion polling and spoke out on the need for Indian tribes to pay their 'fair share' of taxes in TV ads that his campaign team credits with propelling him to victory."[101] For UPO, which with "39 local umbrella groups helped gather signatures for the recall against Davis,"[102] Schwarzenegger's success proved that voters can pressure elected officials to deal with the "misguided government policies that are fueling needless division between tribes and their neighbors."[103] The long-term consequences of such a "division," if allowed to persist, were made clear in the next paragraph, where once again a contrast was set out between U.S. efforts around the world to "to free millions of people from generations of tyrannical tribal governments" and the federal government's promotion of "unaccountable tribalism as a substitute form of government for increasing numbers of U.S. citizens and businesses." In case one did not get the point, the column's final paragraph referred to the need to stop the "cancerous growth of tribal business monopolies."[104] But, as noted earlier, this criticism of federal Indian policy, seemingly directed at the U.S. government and not the tribes themselves, barely masked a deeper antitribalism directed at the very existence of tribal sovereignty. This is evident in the words of Barb Lindsey, executive director of UPO, who in January 2004 asserted that tribes use their sovereignty to turn Indian reservations into "islands of tyranny. They behave like mafias, or banana republics. They have been told they are immune from federal and local laws, so they

have a lawless mindset. They teach their children that they deserve special privileges because their ancestors were wronged, and that they don't have to work."[105] Taken as a whole, these statements by CERA and UPO shed clearer light on antitribalism in the contemporary era.

At its racialized core, antitribalism opposes the very idea of tribal sovereignty and of a distinctly indigenous political identity. In this way, it is decidedly anti-Indian. At its political core, antitribalism connects to the wider American public by opposing and seeking to scale back any expression of tribal sovereignty that steps beyond very narrowly drawn temporal and spatial boundaries, seeing these apparent transgressions as a "cancerous" threat to the unity, stability, and sovereignty of the American nation. By focusing on federal Indian policy, groups like CERA and UPO demand that the American federal government do a much better job of demarcating and protecting the boundaries of the American nation by narrowing and imposing limits on these tribes. The demand for such limits represent an effort to impose colonial rule on tribal sovereignty so that it will not develop temporally—progress over time—and thereby not express power beyond a very narrowly restricted spatial purview, if it is to have any purview at all. In this sense, antitribalism views North American political topography through the imperial binary, with clear boundaries between inside and outside, between who is included and who is excluded, constructing U.S. sovereignty as the unambiguous and unchallengeable claim to political authority in this part of North America. As a consequence, indigenous economic and political expression across American boundaries is necessarily deemed a threat rather than a postcolonial, nonbinaristic rendering of the historically and politically complex U.S.–indigenous relationship. In other words, antitribalism cannot see a third space of sovereignty as a supplementary postcolonial strategy, but rather views it as a zero-sum battle, with the very fate of U.S. sovereignty hanging in the balance. Here U.S. sovereignty is constructed as so rigidly bounded and exclusionary that even a much less powerful expression of tribal sovereignty that expresses itself across American boundaries threatens to shatter the standing and space of American sovereignty. It was no coincidence that the strong language about the "chilling" and "cancerous" impact of tribal sovereignty was used in CERA and UPO columns about Schwarzenegger. It demonstrated that political actors from the margins to the mainstream of American political life were serving in the effort to impose the bound-

aries of colonial rule and U.S. sovereignty on the meaning and reach of tribal sovereignty and indigenous political life.

Evidence of this political linkage from the margins to the mainstream of American politics can be found in the articles "Arnold Schwarzenegger Girds for Indian War" and "The Festering Problem of Indian 'Sovereignty,'" which were published, respectively, in the January and September 2004 issues of the *American Enterprise.*[106] This is the magazine of the American Enterprise Institute, the well-known inside-the-beltway conservative think tank. These articles demonstrate, to start, that one of the most established conservative public policy institutions in the United States clearly viewed Schwarzenegger and CERA-UPO as allies, intentionally or not, in the promotion of antitribalism.[107] The articles were written by journalist Jan Golab and excerpted in UPO's *Update.*[108] In the first article Golab referred to Schwarzenegger as "the first politician with the courage to speak up about the Indians" and interpreted his political success as indicating that California was "merely the primary front of a national war" against tribal casinos specifically and tribal sovereignty generally.[109] Along with lauding Schwarzenegger's rise, in both articles Golab praised the work of CERA, UPO, and ONU for "leading a growing national resistance to expanding tribal casinos" and for their efforts in this "growing anti-sovereignty movement."[110] Through this political convergence of citizen group antitribalism and Schwarzenegger's electoral success, the "growing anti-sovereignty movement" to which Golab referred increasingly has expressed the colonial impression that tribal sovereignty is out of time. Golab offered, approvingly, three examples of this colonial impression.

The first example of the claim that tribal sovereignty was out of time came from Cheryl Schmit, founder and director of Stand Up for California, the anticasino organization that opposed Prop 5 in 1998. In 1998, her organization focused on making their "case against casino gambling." However, Golab notes that six years later Schmit "believes Congress may eventually be forced to redefine 'sovereignty' or do away with it altogether." As to the prospect of redefining or doing away with sovereignty, she states, "I think it will happen, but it will take a Constitutional amendment, and that could be a 20 year process. During that time, I'm not willing to give up all the other issues we can address through local agreements."[111] Schmit was arguing for the eventual termination of tribal sovereignty on the basis that it had gone too far economically and politically, that by their very success

tribes had shed the traditional garb of limited and benign sovereignty in favor of the formal attire of a special interest. To deal with this development, Schmit proposed that Congress use its plenary power to declare that tribal sovereignty expressed in such economically and politically assertive ways is out of time with and thus a threat to America, and thus its reach should be radically narrowed or terminated altogether. In so doing, this well-established anticasino activist was asserting, or more likely wishing, that time had run out on tribal sovereignty in the United States.

With clarity and bluntness, Golab offered a second example of the argument that tribal sovereignty is out of time: "Many say sovereignty is a concept from another age that no longer works today." To elaborate on this colonial impression, Golab turned to former California Governor Pete Wilson, who strongly opposed Prop. 5 in 1998 and then served as an adviser to Schwarzenegger in 2003. Wilson said that tribal sovereignty "goes back a century to when native populations were dispossessed, to when the U.S. was largely an agricultural nation and we did not have the kind of economy we have today." Wilson then proceeded to criticize the passage of IGRA in 1988: "A lot of people [in Congress] voted for it thinking it amounted to little more than Bingo on reservations. . . . They didn't see it as a commercial enterprise that would transform reservations and their surrounding communities."[112] In other words, he viewed tribal sovereignty as a nineteenth-century relic that was not supposed to develop and be expressed in a contemporary form. It was supposed to stay moored within colonial time rather than fight for location in postcolonial time and space. From Wilson's perspective, then, the United States could tolerate tribal sovereignty, if at all, only as long as it meant that tribes had autonomy over nothing more than rudimentary, contained forms of activity—"little more than Bingo on reservations"—not as a means to develop, say, "commercial enterprises" that would serve to "transform reservations" and have any sort of effect on "surrounding communities" across American boundaries. Thus, Wilson's argument conveyed the colonial impression that tribal sovereignty is out of time because (1) it is based on archaic premises inapplicable to the modern age and (2) contemporary indigenous development has outpaced the colonial limitations placed on how far a tribe can express sovereignty without "transforming" it into special-interest activity.

Golab's third example of the "out of time" argument stems from the colonial impression that there is a temporal displacement between the po-

litical and the cultural goals of tribal sovereignty. Golab offered this argument in the words of Scott Peterman, the founding president of the anti-tribal New York group Upstate Citizens for Equality, who was a member of UPO's Advisory Committee until 2004.[113] Peterman "believes Congress should terminate tribal sovereignty definitively." He also views the contemporary expression of tribal sovereignty as fundamentally disconnected from the tribe's cultural location in colonial time:

> The irony is, the tribes claim they need sovereignty to preserve their culture, but they build casinos. They talk about 'mother earth,' but they are more than willing to trade land for slot machines. Many tribal governments are so corrupt they are bigger enemies to Indian culture than anybody. The Amish, Quakers, and Mennonites preserve their culture better than any Indian tribes, and they do it while paying taxes.[114]

Peterman thinks indigenous tribes face a fundamental contradiction between "preserving culture" and "building casinos." This is only a contradiction, however, because Peterman has the deeply colonial impression that indigenous tribes are bound to use their sovereignty only for the purpose of preserving the tribe's cultural traditions as historical remnants, not for active engagement in contemporary civic and political life. He therefore also conveys the notion that there is a tension between traditional cultural practices and existing as a modern independent people, whereas most tribes would suggest that such a Eurocentric distinction does not speak to their own understanding and experience of modernity. Through this Eurocentric lens, Peterman positions groups like the Amish as the ideal, nonassimilatory group because they perform their nonmodern rituals to the satisfaction of an unthreatened, even slightly charmed, modern America. In contrast to the well-behaved, historically anchored, and "tax-paying" Amish, tribes that seek to express sovereignty for a purpose other than reinforcing their traditional relationship to "mother earth" or any other colonialist image of indigenous primitivism are thereby developing politically at the expense of their cultural identity. In other words, tribes cannot develop their political economies in the modern context without being out of time with the historical premise of their claim to sovereignty, which is the maintenance of cultural forms more familiar to the nineteenth

century than to the early twenty-first century. By this logic, then, tribes are left with two choices: using their sovereignty solely for the purpose of maintaining temporally bounded cultural traditions or conceding that the claim to tribal sovereignty is anchored to archaic premises—from colonial time—and as such it is neither legitimate nor of contemporary benefit to indigenous people.

In one sense, then, Peterman's argument that tribes are "out of time" takes a different approach than that of Schmit or Wilson because his apparent concern is with what is best for the tribe itself, rather than for America. Therefore, he criticizes tribes for being "more than willing to trade land for slot machines." In fact, the situation is the exact opposite, especially in upstate New York, Peterman's immediate political concern; tribes such as the Oneida have used revenue from their "slot machines" not to "trade" away but rather to expand their title to land within the boundaries of their historic reservation, a development I will discuss shortly. Seen in this way, Peterman's argument is very similar to those of the other antitribal groups noted here. Like them, he is looking for a way to craft a publicly palatable argument for holding back and undermining the sovereignty of empowered indigenous tribes by imposing the boundaries of colonial rule on them, by containing them within colonial time.

When taken together, the claims of Jan Golab, a writer for a well-known public policy institute, Cheryl Schmit, a leading anticasino activist, Pete Wilson, the former governor of the largest state in the union, and Scot Peterman, an antitribal activist and founder of a like-minded citizens' group, represent different ways to define and articulate a deeply antitribal, colonialist argument against indigenous sovereignty and the place of indigenous political identity in modern space and time. This argument and viewpoint have gained an increasingly stronger voice in the early twenty-first century, especially but not solely on the conservative side of the American political spectrum. And these arguments take their most specific form in asserting that contemporary tribal sovereignty has escaped its restrictive location in colonial time. From this colonialist perspective, tribes cross such temporal limits when they construct and use their sovereignty to successfully foster their economic development and generate effective political power. In other words, tribes go beyond the limits of colonial time when they become too strong, economically and politically. Thus, indigenous sovereignty versus colonial time refers to the way in which

American political actors redefine the economic and political achievements of tribes as evidence that they have escaped their temporal and spatial limitations. Antitribalism of this sort resides not only in its citizen-group nerve center but also in the views of Arnold Schwarzenegger and the American Enterprise Institute, both with direct ties to the ruling conservative regime of early twenty-first-century American politics and thus very much involved in shaping the mainstream political arena. While my explication of colonialist antitribalism does not speak to every dynamic of contemporary U.S.–indigenous relations—no single claim could—I argue that it does capture the terms of a prevalent form of American resistance to empowered tribal sovereignty. Furthermore, this form of resistance is gaining greater legitimacy and expression in mainstream American governance, where it is articulated across the political spectrum by liberals and conservatives, Democrats and Republicans, as we can see by taking a look at the decision, mentioned earlier, that was handed down by the U.S. Supreme Court in March 2005. I close this chapter with an analysis of that decision against the Oneida nation of upstate New York.

"GRAVE, BUT ANCIENT, WRONGS": HOLDING BACK ONEIDA SOVEREIGNTY

In 1997 and 1998, the Oneida nation used profits from its Turning Stone Casino to buy on the open market some seventeen thousand acres of land scattered across Oneida and Madison Counties of upstate New York. This land resided within the boundaries of the nation's three-hundred-thousand-acre historic reservation. On this acquisition, the Oneida unilaterally asserted sovereignty over this land, specifically claiming immunity from state and local government taxation. Nevertheless, the city of Sherrill levied property taxes on Oneida-owned land within the city's limits, and when the Oneida did not pay these taxes the city sought to foreclose and assume title to these properties. Thus began the legal process that was to determine whether the United States would recognize Oneida sovereignty over this portion of their historic reservation, and if so, to what extent.

The reservation dates back to the 1788 Treaty of Fort Schuyler between the Oneida nation and the state of New York, by which the state purchased five million acres of Oneida territory, with three hundred thousand acres reserved for the Oneida. Not long afterward, in 1790, the U.S.

Congress passed the first in a series of Trade and Intercourse Acts (commonly known as the Nonintercourse Acts) declaring, among other things, "that no sale of lands made by Indians, or any nation or tribe of Indians within the United States, shall be valid to any person or persons, or to any state, whether having the right of pre-emption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States."[115] This act, in roughly the same form, was renewed every three years until more permanent language was added in 1802 and again in 1834. These acts made it clear that a fundamental tenet of U.S. policy was that land could be legitimately purchased from indigenous tribes and nations only through treaties approved or laws enacted by the federal government.[116] So after 1790, state governments could no longer purchase land directly from tribes. In 1794, the federal government and the Six Nations of the Iroquois Confederacy signed a treaty in Canandaigua, New York. Article 2 of the treaty is most pertinent to the contemporary dispute. It states: "The United States acknowledge the lands reserved to the Oneida, Onondaga, and Cayuga nations, in their respective treaties with the State of New York, and called their reservations, to be their property; and the United States will never claim the same, nor disturb them . . . but the said reservations shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase."[117] However, in 1795, over the objections of George Washington's administration, New York State purchased another one hundred thousand acres from individual Oneida citizens. Despite the restrictions set out in federal law and the 1794 treaty, the purchase of Oneida land continued apace, with the federal government neglecting its trust and treaty responsibilities. Furthermore, the one treaty (the 1838 Treaty of Buffalo Creek) that appeared to legitimate New York's purchase of Oneida land amounted to an agreement for a contingent, ultimately unconsummated, exchange of Oneida land in New York for land in Kansas.[118] The colonial ambivalence of this treaty was best reflected in the words of U.S. Indian Commissioner Ransom Gillett, who told the Oneida that they could "remain on 'their lands where they reside,' i.e., they could 'if they ch[ose] to do so remain where they are forever.' "[119] As a consequence of all these events, by 1920 the Oneida were left with just thirty-two acres of their original three hundred thousand-acre reservation.

The property in Sherrill had not been in the Oneida nation's possession since 1805. The Oneida's assertion of unilateral sovereignty over this land was based on the argument that because they had been dispossessed of almost their entire reservation without the express authorization of the federal government, in violation of the Nonintercourse Acts and the Treaty of Canandaigua, that is, illegally, the nation's inherent and treaty-secured sovereignty over this land had never been disestablished by the federal government. Therefore, from the Oneida perspective, going through the legal and political process of placing this land into federal trust, which would thereby make it immune from state and local taxation, was not only a time-consuming, resource-exhausting, and contingent venture, but also a redundant one, because once it purchased the land it automatically came under the purview of the nation's inherent sovereignty. In 2003, the Court of Appeals of the Second Circuit agreed with the Oneida's argument, and affirmed the nation's sovereign right to tax immunity.[120] The city of Sherrill then petitioned for and was granted a writ of certiorari by the U.S. Supreme Court to appeal the Second Circuit's decision. On January 11, 2005, the high court heard oral arguments in the case of *City of Sherrill, New York, v. Oneida Indian Nation of New York.*

As an indication of the stakes of and interests in this case, amicus curiae briefs supporting the Oneida nation were submitted by, among others, the Puyallup tribe, tribes of the Iroquois Confederacy, the United South and Eastern Tribes, the National Congress of American Indians, and the U.S. Department of Justice, which concurred with the Oneida claim that the federal government had never disestablished Oneida sovereignty over their reservation. Amicus briefs supporting the city of Sherrill were submitted by cities, counties, and the state of New York, as well as by the Citizens Equal Rights Foundation, CERA's legal arm.[121] The pertinent legal and historical questions addressed in the petitioner, respondent, and amicus briefs were the following: "1. Whether the Treaty of Canandaigua established a federal reservation and exempted the relevant lands from state and local taxation. 2. Whether the federal reservation created by the Treaty of Canandaigua was disestablished by the 1838 Treaty of Buffalo Creek. 3. Whether the OIN [Oneida Indian Nation], as a sovereign tribe and a successor-in-interest to the Oneida nation (a party to the Treaty of Canandaigua), may assert the statutory rights of its predecessor Tribe."[122]

While basically agreeing with the Oneida nation's answers to each of these three questions, the Supreme Court, by a decision of 8–1, nevertheless overturned the ruling of the Court of Appeals on the ground that the Oneida's inherent sovereignty was stuck in what amounted to colonial time, and as such its contemporary expression beyond that temporal boundary was a threat to the innocent property holders and good governance principles of America. As a consequence, the Oneida were deemed to be invading American political space, going beyond their delimited spatial boundaries in the construction and expression of their sovereignty.

Justice Ruth Bader Ginsburg wrote the majority opinion, in which the three "doctrines" justifying the decision imposed the Court's colonial impressions about the temporal and spatial location of indigenous sovereignty:

> In sum, the question of damages for the Tribe's ancient dispossession is not at issue in this case, and we therefore do not disturb our holding in *Oneida II.* However, the distance from 1805 to the present day, the Oneidas' long delay in seeking equitable relief against New York or its local units, and developments in the city of Sherrill spanning several generations, evoke the doctrines of laches, acquiescence, and impossibility, and render inequitable the piecemeal shift in governance this suit seeks to initiate.[123]

The reference to *Oneida II* concerns a 1985 decision of the court: "Oneida Indian Tribes held to have federal common-law cause of action for the occupation and use by counties of tribal land conveyed to state in 1795 in violation of the Nonintercourse Act of 1793."[124] In 2005, then, the Court not only conceded the legitimacy of the Oneida's claim that the 1795 treaty with New York represented an illegal dispossession of its reservation; it also reaffirmed its own ruling on that very account two decades earlier. Thus, the *Sherrill* decision was not based on a rendering that past dispossessions were just acts. Rather, read as an affirmation of colonial rule, the decision's controlling doctrines of "laches, acquiescence, and impossibility" translated, respectively, into arguments claiming that (1) the colonized group was out of time, (2) the colonizing society was an innocent party with justifiable contemporary expectations, and (3) overlapping U.S.–indigenous jurisdictions at the behest of the indigenous party is impossible. These

three doctrines were mutually constitutive, forming a colonial bulwark of legal and political logic to impose and secure the boundaries of colonial rule on the modern expression of tribal sovereignty.

The dictionary definition of *laches* is "failure to do a thing at the right time; delay in asserting a right, claiming a privilege, or applying for redress."[125] On this principle, the court decided that, due to the "Oneidas' long delay in seeking judicial relief against parties other than the United States, . . . the Tribe cannot unilaterally revive its ancient sovereignty."[126] It is important to understand that this principle had to do with *political* time, not *chronological* time, which Ginsburg's opinion confirmed: "Laches is not . . . a mere matter of time; but principally a question of the inequity of permitting the claim to be enforced—an inequity founded upon some change in the condition or relations of the property or the parties."[127] Time in this regard was thus marked not by the calendar but by economic and political development, that is, "some change in the condition or the relations of the property or the parties." Therefore, the Court's decision constructed tribal sovereignty as inescapably dislocated from modern American political time.

The court rejected what it called the Oneida's effort to "rekindl[e] embers of sovereignty that long ago grew cold" because "it was not until lately that the Oneidas sought to regain ancient sovereignty over land converted from wilderness to become part of cities like Sherrill."[128] The imagery here is telling: the "embers" of "ancient sovereignty" expressed in the North American "wilderness" are rendered "cold" and thus inapplicable within contemporary America. By "ancient" the court did not mean old, but rather premodern, that is, existing prior to America's economic and political development as a modern settler-state. Then, much as it had read the Oneida's delay in seeking "judicial relief," the court read the Oneida's reacquisition of land as out of time: "And not until the 1990s did OIN acquire the properties in question and assert its unification theory to ground its demand for exemption of the parcels from local taxation." But the Oneida could not have acquired such property until the 1990s because, as victims of American colonial rule, the nation was without the resources to do so until the emergence of their casino enterprises. Therefore, the Oneida's deprivation from the imposition of American colonial rule was held against them when they sought to resist and recover from this very imposition. Or, as Robert Porter, a leading scholar on Indian law, put

it: "It's a matter of looking at a shackled man and blaming him for not seeking his liberty."[129] In a footnote, Ginsburg conceded that the Oneida nation brought judicial action "promptly after acquiring these properties"; however, "OIN's claim concerns grave, *but* ancient wrongs, and the relief available must be commensurate with that historical reality."[130] In other words, the Oneida's claims may have been "grave," *"but"* as "ancient wrongs" they resided in colonial time and thus could be grounds only for reviving a form of indigenous sovereignty not "commensurate with" modern American political time—a time co-constitutively constructed through and measured by the colonial imposition of the American settler-state's temporal and spatial boundaries and construction of U.S. sovereignty.

Here the court's logic was not only that American colonial imposition trapped indigenous sovereignty in colonial time, but that the "historical reality" of colonialism was itself the justification for restraining contemporary Oneida sovereignty. In this way, the court placed the Oneida nation's claim in a seemingly inescapable colonial bind: its sovereignty and experience of "grave wrongs" were too ancient to repair, while their efforts to gain judicial hearing and reacquire land were made too late to provide relief. In these ways, the court defined the Oneida nation's sovereignty as invariably out of time, precluding it "from gaining the disruptive remedy it now seeks."[131] The doctrines of acquiescence and impossibility further substantiated the colonialist argument about why this expression of tribal sovereignty was "disruptive" to modern America.

In determining jurisdictional authority over territory, the court cited the precedent that "long acquiescence in the possession of territory and the exercise of dominion and sovereignty over it may have a controlling effect in the determination of a disputed boundary." If a court determines that one party has acquiesced to the territorial dominion of another over a long period of time, then "when [that] party belatedly asserts a right to present and future sovereign control over territory, longstanding observances and settled expectations are prime considerations."[132] In this case, then, the Oneida's ostensibly long delay in seeking to exercise sovereignty over this land allowed for the development of the aptly named "settled expectations" of those who had "settled" on the illegally dispossessed Oneida reservation. The doctrine of acquiescence thus built on laches, moving the court's decision from a focus on the inaction and temporal displacement of the colonized toward a concern for the contemporary expectations of the *in-*

nocent property owners who hail from the settler society, whose property rights are secured through the imposition of colonial rule.

With acquiescence seemingly established, Ginsburg invoked the doctrine of impossibility by quoting the Court's decision in *Yankton Sioux Tribe v. United States:* "It is impossible . . . to rescind the cession and restore the Indians to their former rights because the lands have been opened to settlement and large portions of them are now in the possession of innumerable innocent purchasers."[133] The passive textual construction of "lands have been opened to settlement" elides the agency of the colonial imposition that created this very "opening," which allowed for the seamless construction of these settlers as "innumerable innocent purchasers." In this way, the court engaged in the discourse of colonial inversion, positioning settlers as under threat from indigenous recolonization. Thus, with regard to the Oneida case, "the unilateral reestablishment of present and future Indian sovereign control, even over land purchased at market price, would have disruptive consequences similar to those that led this Court in *Yankton Sioux* to initiate the impossibility doctrine." The specific "disruptive consequence" that would occur with the recognition of the Oneida nation's sovereign right to tax immunity would be the creation of what the Court deemed an *impossible* political relationship: "A checkerboard of alternating state and tribal jurisdiction in New York State—created unilaterally at OIN's behest—would 'seriously burde[n] the administration of state and local governments' and would adversely affect landowners neighboring the tribal patches."[134] Indigenous tribes are all too familiar with this checkerboard concept, a result primarily of the allotment policy discussed in chapter 3. As Frank Pommersheim notes, through allotment "reservations became checkerboards of tribal, individual Indian, individual non-Indian, and corporate properties," and this "great influx of non-Indian settlers . . . simply eradicated much of the tribes' ability to govern."[135] Thus, here the "impossible" was not the creation of checkerboard jurisdictions per se, because they already existed as a consequence of U.S. Indian policy and an expression of American sovereignty, but rather the creation of such jurisdictions "unilaterally at OIN's behest," as an expression of indigenous sovereignty.

For the court, the difference here was between, on the one hand, checkerboard reservations imposed on indigenous tribes and, on the other hand, the articulation of an indigenous tribe's sovereignty on and across American

boundaries, in the third space where indigenous political agency can have some say over the terms of an overlapping jurisdictional relationship. It was the Oneida nation's unilateral expression of sovereignty that the court deemed truly impossible, because it represented a threat to America: "If OIN may unilaterally reassert sovereign control and remove these parcels from the local tax rolls, little would prevent the Tribe from initiating a new generation of litigation to free the parcels from local zoning or other regulatory controls."[136] Here we see a distinct antitribalism at work in the majority opinion, where the specific terms of the case signify a deeper fear of the increasing emergence of empowered tribal sovereignty in defiance of the boundaries of colonial rule.

It was left to the court's lone dissenting voice, Justice John Paul Stevens, to remind his colleagues that in the American political system the future of tribal sovereignty was subject to the plenary power of Congress—and thus not without "regulatory controls"—and was also not the matter at issue in this case because "the Tribe is not attempting to collect damages or eject landowners as a remedy for a wrong that occurred centuries ago." To the contrary,

> In this case, the Tribe reacquired reservation land in a peaceful and lawful manner that fully respected the interests of innocent landowners—it purchased the land on the open market. To now deny the Tribe its right to tax immunity—at once the most fundamental of tribal rights and the least disruptive to other sovereigns—is not only inequitable, but also irreconcilable with the principle that only Congress may abrogate or extinguish tribal sovereignty.[137]

Here Stevens implicitly endorsed a version of a third space of sovereignty, where recognition of the Oneida's tax immunity would codify the "least disruptive" nonbinaristic jurisdictional relationship between indigenous and American governance. For the other eight justices, however, even this seemingly minor disruption of the jurisdictional authority of local and state governments represented a construction and expression of indigenous sovereignty that would go too far, and thus had to be held back within the temporal and spatial boundaries of colonial rule. Across the American political spectrum, this decision was met with glee.

An editorial in the *Post Standard* of Syracuse, New York, praised the court's decision as a "pragmatic approach" that brought a "welcome sense of order rather than allow a chaotic patchwork of sovereignty" because it declared that the "Oneida Indian Nation cannot claim modern-day sovereignty over parcels of land it purchases on the open market."[138] New York Senator Charles Schumer (Democrat) thought the court had produced a "great victory for New York's taxpayers and town" by deciding that "the creation of a patchwork quilt of Indian land in Upstate New York would be chaotic." Similarly, Representative John McHugh (Republican of New York) referred to the decision as a "vitally important victory that will bring a sense of self-governance back to the people of the region."[139] CERA issued a press release celebrating the decision for answering "one of the biggest questions in Indian law by upholding that there are only two sovereign governments under the United States Constitution,"[140] the state and federal governments. The Web site for Upstate Citizens for Equality trumpeted the decision.[141] To these celebrating American voices, the court's argument secured U.S. sovereignty and American civic and political life by determining that the Oneida nation was out of time because its claim drew on "grave, but ancient wrongs" in order to "rekindle the cold embers" of its sovereignty. Note the language and its implications for this postcolonial conflict. Schumer believed "chaos" had been avoided because the temporal and spatial boundaries of American colonial rule had been solidified against the threat of indigenous sovereignty. Similarly, McHugh asserted that U.S. sovereignty had been restored, seeing the Court's decision as returning to Americans their "sense of self-governance," and this view was also seen in CERA's reading, that the decision meant that only state and federal governments can claim the mantle of sovereignty in the United States. For these political actors the court's *Sherrill* decision reconstructed American boundaries and sovereignty, and in so doing they once again secured these markers of national political authority through the co-constitutive delimitation and diminishment of indigenous sovereignty. These voices represented a range of American political views and parties, but they concurred in deeming the court's denial of the Oneida nation's claim to "modern-day sovereignty" a victory that restrained indigenous political modernity in defense of both U.S. sovereignty and the civic and political life and principles of the liberal democratic settler-state.

Of course, indigenous voices were not silent on the *Sherrill* decision.

For example, an editorial in *Indian Country Today,* which is owned by the Oneida nation, stated that in the "resounding 8–1 decision that underscored the severely anti-Indian property rights direction of the country, the court let it be known that it would not countenance any 'remedy' for Indian land claims that might 'seriously disrupt' existing expectations of the non-Indian community." The editorial also offered a postcolonial reading of the "disruptive" consequences that would stem from the court's colonial imposition on tribal sovereignty: "As a result, a successful tribal enterprise stimulus, akin to the much-heralded 'enterprise zones,' is itself disrupted by a clearly one-sided mindset bent on interpreting tribal sovereignty as a negative for American society."[142] Indeed, one might consider as evidence of this "mindset" that the majority opinion never took into account the potential disruptive effects—the "chaos"—that the court's decision might have on the Oneida nation as well as on the rest of the more than five hundred indigenous tribes, most of whom are not enjoying anything close to the financial success of the Oneida. This decision stands as a precedent and a rallying cry for the burgeoning antitribal movement in the United States. In this regard, the court's "one-sided mindset" in *Sherrill* was really a colonial mindset, which views U.S.–indigenous relations through a binaristic worldview, where jurisdictions must be defined and contained by strict boundaries, sovereign entities can be engaged only in a zero-sum contest, and the success of tribal sovereignty is necessarily a "negative for American society."

CONCLUSION

As noted earlier, detailed studies released in 2004 and 2005 provide tangible evidence of a correlation between enhanced tribal sovereignty and improvements in the socioeconomic condition of indigenous people, as reflected in measurements of poverty, employment, and education. Logic would seem to indicate that improvements in these socioeconomic measures would lead to decreases in American state expenditures in areas such as health, welfare, and social services. In this light, it is very easy to see tangible ways in which empowered tribal sovereignty could be deemed a very positive development for American society. But for this view to gain legitimacy in the American political system, a nonbinaristic understanding of U.S.–indigenous relations will need to take hold so that tribal

sovereignty expressed across American boundaries can be seen as working for a third space of sovereignty and not against American state sovereignty. This discursive political development is a necessary one because the economic and political success of indigenous tribes simply does not speak for itself as an unqualified good to Americans. In politics, facts do not speak for themselves; political actors and institutions do, or try to. For example, as this chapter has shown, to an increasing degree American political actors frame the economic and political empowerment of indigenous tribes as evidence of a threatening tribal movement to transgress the temporal and spatial boundaries of colonial rule, consume American property, and colonize the American political system.

With this in mind, as we look at the present state of U.S.–indigenous relations it is important to understand that we are in the midst of our own iteration of a colonialist conflict between a dominant American nation seeking to assert its settler-state authority and indigenous tribes that seek to assert their independence in a manner that will allow their people to thrive, not just survive. This chapter sought to show the dynamics and linkages that shape American colonialist practices located across the ideological spectrum, at the state and federal levels, on the hustings and in the courts, and in the many civic associations of American society. In our time, it is colonialist antitribalism that stands as the predominant form of American resistance to tribal sovereignty.

In the contemporary era, American political actors, organizations, governments, and institutions, such as Arnold Schwarzenegger, CERA, the city of Sherrill, and the U.S. Supreme Court, have come to see indigenous tribes as too strong to be recognized as sovereign governments. This contrasts with the situation in the late nineteenth century, when Americans generally viewed indigenous tribes as too weak to be recognized as sovereign governments. What this means for contemporary U.S.–indigenous relations is that on top of engaging in a postcolonial resistance against American colonial impositions, another of the many tasks for indigenous political actors is to articulate how the expression of political power by indigenous tribes and citizens is more often than not a supplementary strategy rather than one by which indigenous people seek either to be assimilated within or to displace the liberal democratic settler-state and nation. Homi Bhabha describes this as the political effort "to get beyond polarized geographies of majority v. minority, where it is assumed that the

political desire of the minority is to achieve the hegemonic majoritarian position."[143] I have referred to this as the effort of indigenous politics to express and secure autonomy in the third space. The expression of a third space of sovereignty (or citizenship) by indigenous people is not just a necessary form and product of postcolonial resistance. It is also a political trajectory that may well be *in time* with the more encompassing reassessments of sovereignty that have been taking place in the late twentieth and early twenty-first centuries. It is to the matter of the contemporary pertinence of the third space of sovereignty that I turn to conclude this book.

CONCLUSION

THE THIRD SPACE OF SOVEREIGNTY

In writing this book, a question often popped into my mind, the one famously posed by postcolonial theorist Gayatri Spivak: "Can the subaltern speak?" Spivak's question is not about the vocal cords of the colonized; it is about the colonizer's ear drums; "Can the subaltern speak?" really means, "Are the colonizers deaf?" not "Are the colonized mute?" This study has demonstrated ways in which the American settler-state and nation have sought, often successfully, to impose temporal and spatial limitations on indigenous political life. In resistance, indigenous political actors speak against and across the boundaries of colonial rule by articulating and fighting for a third space: a space of sovereignty and/or citizenship that is inassimilable to the modern liberal democratic settler-state and nation. The settler polity is often deaf to the indigenous claim for a third space because this claim refuses to accommodate itself to the political choices framed by the imperial binary: assimilation or secession, inside or outside, modern or traditional, and so on. Looked at in this way, indigenous political resistance is refusal of a false choice. Among other things, this book has been an effort to expose to clearer light the presence and politics around the third space, defined by colonial impositions and postcolonial resistances. To conclude the book, I look at how the third space concept could positively reshape the language and therefore the terms of and possibilities for indigenous–settler-society relations in the future, and I also suggest its applicability to the wider political discourse and politics around sovereignty.

REFUSING THE FALSE CHOICE: SEEING THE THIRD SPACE

In their introduction to the important collection *Political Theory and the Rights of Indigenous People,* the volume's editors, Duncan Ivison, Paul Patton, and Will Sanders, note that for some of their contributors, such as James Tully as well as Will Kymlicka and J. G. A. Pocock, "there can be

no equal standing for indigenous peoples until they are acknowledged as equal sovereigns within a postcolonial constitutional arrangement," while "for others, such as [Iris] Young and [Augie] Flores and [Roger] Maaka, it is the very nature of the sovereign state that must be rethought."[1] While these descriptions flatten the complex views of each of these scholars, there is something worth drawing from the two approaches implied here. The first approach seeks to rethink governance from below by seeking to secure and "arrange" multiple nodes of sovereignty in a multilayered political system wherein settler and indigenous polities can coexist, overlap, and interweave jurisdictions. The second approach, by contrast, rethinks governance from above by arguing that the hegemonic "sovereign state," and thus state sovereignty, is inherently incompatible, and in fact hostile, to the secured existence of indigenous political autonomy.

What I find compelling and significant here is the general direction in which these thinkers are going on this issue, which is to see and argue that the viability of political autonomy for indigenous tribes will not come through accommodation of the settler-state's political system, boundaries, and culture. Rather, it will require some degree of meaningful change in the settler-society's institutional organization and ideational approach and the concomitant solidification of a location and form of indigenous sovereignty that is self-determined and thus not dependent on the settler-society. Missing from these formulations, however, is a precise concept as well as a vocabulary that can pin down the alternatives represented in this "postcolonial arrangement" and/or "rethinking of the sovereign state." I propose that the "third space" may well provide the vocabulary that both captures and helps to constitute a viable, increasingly sought-after location of indigenous postcolonial political autonomy that refuses the choices set out by the settler-society. But cultivating this discourse and seeing its constitutive possibilities is easier said than done, so one of the first steps toward moving in this direction will involve refusing the false choice set out by the settler-state.

In a 1998 *Law Review* article, Julie Cassidy set out and critiqued the terms of the false choice presented to those advocating sovereignty for indigenous nations and tribes: "The resolution relating to Aboriginal sovereignty is often mistakenly perceived as only involving two possibilities: (1) acknowledgement of Aboriginal sovereignty and the consequent de-

struction of the "occupying" state's sovereignty; or (2) continuation of the past denial of Aboriginal sovereignty. However, it is possible for both entities to enjoy concurrent sovereignty."[2] The false choice here is that either indigenous tribes and nations must become sovereign states, thereby destroying the settler-states within which they reside, or their citizens must accept unambiguous inclusion in the settler polity, thereby denying their collective claim to sovereignty. This false choice of either destruction or denial is built on colonialist and statist presumptions. The colonialist presumption is that the settler polity and its institutions represent the ideal of modern political development, while indigenous political society and institutions are, at best, underdeveloped or, at worst, primitive, and thus incapable of real independence in our time. The statist presumption is that legitimate, viable sovereignty can be secured and expressed only through statist institutions, the purview of which is singular and plenary over political space marked by unambiguous boundaries.

When articulated in tandem, these colonial-statist presumptions form the foundation of the imposition of colonial rule over indigenous people within liberal democratic settler-states such as the United States. We saw this during and especially after the Civil War when, in their own way, each of the three branches of the American federal government sought to clearly define and secure the reunified boundaries of the American nation-state by domesticating indigenous tribes to them, which included ending the formal process of treaty-making and codifying U.S. plenary power. During the Progressive era, these colonial-statist imperatives drove U.S. policies that sought to break up what Teddy Roosevelt called the "tribal mass" through various means, including allotment of indigenous territory, the unilateral conferral or imposition of U.S. citizenship on people who were already citizens of their tribes, and the closure of U.S. political boundaries to indigenous people not residing within what America deemed its political space. This imperative persisted in different ways throughout the twentieth century, such as in the midcentury termination policy, and has taken its most notable contemporary form in the antitribal sentiment evident in mainstream American electoral politics, citizen groups' discourse in the civil society, and U.S. Supreme Court decisions. Over the course of American political history, indigenous sovereignty has been deemed something that needed to be denied—for example, through the codification of

U.S. plenary power—and/or something that threatened the destruction of U.S. state sovereignty, as expressed, for instance, by contemporary antitribalism. The enduring presence of colonial ambivalence has maintained the parameters of this false choice, putting indigenous sovereignty and political life in a seemingly impossible colonial bind that has positioned indigenous tribes as "domestic to the United States in a foreign sense." In fact, this ambivalence has served to forestall the complete imposition of any particular thrust in the vacillating history of U.S. Indian policy. The ambivalence inherent to the false choice is also, in part, a product of and opens room for what I have referred to as indigenous postcolonial resistance. This is a resistance that defies American colonial imperatives and seeks to reframe the boundaries that purport to bind indigenous political life.

Like the approaches offered by the scholars noted earlier, Julie Cassidy's alternative of "concurrent sovereignty" refuses the idea that the only options available result in either the destruction of state sovereignty or the denial of indigenous sovereignty. Her refusal echoes the efforts of indigenous political actors and movements discussed in this book. John Ross and his Cherokee colleagues refused the treaty terms that they thought would destroy their nation. In so doing, although they likely lost more than they won in the 1866 treaty negotiations, they nevertheless maintained the unity of the Cherokee nation and in important ways shaped its sovereign purview in the Indian Territory. During the Progressive era, Clinton Rickard and his compatriots, among others, fought to refuse the imposition of U.S. citizenship and the rigid American political boundaries that they saw as inimical to citizenship in their own nations. Their efforts amounted to a defense of the independent political life of those nations, and they resonate to this day in, among other things, the annual traditions enacted at the U.S.–Canadian border that symbolically and physically express an indigenous refusal to abide settler-state boundaries. In the 1960s and 1970s, the politics of indigenous refusal gained its greatest notoriety when the Red Power movement refused the false choice of either the assimilatory aims of the civil rights movement or the nationalist separatism of third world anticolonialism. Instead, Red Power fought for a right to self-determination as a proactive challenge to and even "recolonization" of American colonial boundaries, symbolized by the occupation of Alcatraz Island and by Vine Deloria's notion of the modern "tribe as a nation ex-

tending in time and occupying space." Deloria's vision was that of tribes whose identity and expression of sovereignty transcend the boundaries of colonial time—that feeling of being "unreal and ahistorical," as he called it—and by so doing are better able to secure and expand the location of indigenous people in postcolonial space, across the boundaries of colonial rule.

The political history of indigenous people's refusals of the false choice set out for them indicate a persistent effort both to self-determine what sovereignty means to them and to expose the uncertainty and even impossibility of U.S. sovereignty as a totalizing claim to supreme, legitimate authority. In this regard, indigenous and U.S. or settler claims to sovereignty face the challenge of dealing with the instability of the term itself. Recall Roxanne Doty's point, noted in chapter 1: "The social construction of sovereignty is always in process, and is a never completed project." This process can be seen in the political interchange between American colonial impositions, colonial ambivalence, and indigenous postcolonial resistance, which continually struggle over the precise meaning and purview of the political authority claimed by the settler-state and the many indigenous tribes. While the American perspective cleaves to a statist notion of sovereignty as a source of domination, indigenous politics in its many forms refuses to be contained by the limits of the boundaries of the settler-state and the nation. These refusals demonstrate that indigenous political identity, agency, and autonomy reside in postcolonial time and space, always already across the temporal and spatial boundaries marked out by the settler-state and the colonialist political culture. By articulating this postcolonial fact, indigenous political actors and institutions reveal that settler-state boundaries are just one way—a colonialist way—to map out a people's relationship to time and space in North America, and they can offer the third space of sovereignty as a politically and discursively locatable alternative. In this regard, it is my hope that the idea of the third space also contributes to the general aims pursued by the scholars noted earlier as well as by scholars of indigenous politics such as Tom Biolsi, who builds his contemporary analysis on the premise that "the nation-state, it turns out, is only one among several (perhaps many) political geographies imagined, lived, and even institutionalized under modernity by American Indians."[3] The "imagining" of alternative "political geographies" is a fundamental part of the effort to see viable alternatives to the statist or

colonialist conception of sovereignty. To be sure, this antistatist or anticolonial effort does not exist in a vacuum, relevant only to indigenous political concerns, but is connected to and possibly even constitutive of the effort to reimagine the role and meaning of sovereignty in the political world generally.

In a genealogy of the concept of sovereignty, international relations scholar Jens Bartelson urges us to consider "the question of sovereignty [as a] question of the unthought foundations of our political knowledge and how they relate to the concept of sovereignty, when stripped of all predetermined content and opened to definitional change over time."[4] Bartelson is encouraging us to imagine various possibilities for conceptualizing the relationship between people, power, and space over time, and, just as important, to take heed of what we lose by not opening ourselves up to at least a consideration of alternatives. For example, what are the implications of allowing hegemonic political space as defined by the state system to remain an "unthought epistemological foundation of sovereignty"? A major political implication, according to Alexander Murphy, is that by constituting and accepting "sovereignty as a territorial ideal . . . the modern territorial state has co-opted our spatial imaginations."[5] Refusing this cooptation—this false choice—requires a decolonization of our spatial imaginations to reveal forms of political space that cannot simply be mapped onto the boundary lines of the international state system. It is in this regard that indigenous politics can inform and be informed by the reconsiderations of sovereignty occurring more generally because they refuse to say simply Yes or No to state sovereignty, but instead imagine a postcolonial supplemental remapping of sovereign relationships that can include but will not be dictated to or contained by state boundaries. Therefore, I suggest that the third space may also prove of worth as a conceptualization of antistatist autonomy that can be an alternative to the polar imaginaries that either see state sovereignty as the unavoidably exclusive font of legitimate political space or postulate a political world in which we have somehow moved beyond state sovereignty altogether. In accord with this aim of decolonizing our spatial imaginations and thereby drawing out postcolonial supplemental alternatives to state sovereignty, I turn to the ideas of two contemporary indigenous political voices, one of whom is looking to reconsider governance from below and one from above.

In reconsidering contemporary governance from the ground up, we

should consider the decolonization plan proposed by Chief Justice Robert Porter of the Supreme Court of the Sac and Fox nation of Kansas and Missouri. Porter argues for a form of decolonization that I deem postcolonial in nature because it is based on an understanding that "a decolonized relationship does not mean that there is no relationship at all. The United States remains committed by treaty and legal obligations."[6] To this end, he proposes specific forms of decolonization that directly reshape the boundaries of U.S.–indigenous legal jurisdiction, such as a change in "federal law to recognize the power of Indian nations over misdemeanors committed by non-Indians within tribal borders."[7] This proposal works across the boundaries in an effort to decolonize them so that instead of representing colonial impositions on indigenous sovereignty they come to represent sites for the fuller expression of tribal sovereignty. Porter's postcolonial decolonization strategy is similar, in a general sense, to what the Oneida nation of New York sought in repurchasing land for their historic reservation: to assert indigenous authority over some components of the overlapping, checkerboarded legal and political jurisdictions of historic indigenous territory. This unilateral assertion of authority would not be seamless or comprehensive, for just as the Oneida were seeking only to be exempt from state and local taxation, Porter's claim is only for tribal jurisdiction over less serious offenses committed in indigenous territory. The intention of both efforts was to express and cultivate a third space of sovereignty, and one cannot fully comprehend either effort without appreciating the role of boundary-crossing here. Nevertheless, as we saw in chapter 6, the Supreme Court's decision in the Oneida case clearly indicates that American colonial impositions continue to seek to defuse and delimit indigenous sovereign expression. Although this was a disappointing decision for the Oneida nation and for indigenous tribes generally, the actions of the Oneida nation that led to this case point to the direction that future expressions of and struggles for indigenous sovereignty may well take across the boundaries of colonial rule.

The imposition of and resistance to colonial rule are defining features of modern U.S.–indigenous relations. The last chapter of this book focused on contemporary antitribalism in order to, among other things, reveal and demonstrate the persistence of colonialist politics in our time. By the same token, the other lesson of U.S.–indigenous political history is that indigenous postcolonial resistance is not going away, and it is important

to take account of the strategies this resistance may use. If the actions of the tribes in California and the Oneida nation in New York are any indication, what we may well be seeing in the near and long term are more indigenous efforts to, in a sense, turn the checkerboard around by expressing and fighting for an indigenous checkerboarding of American political space. This will involve a political struggle over postcolonial governing arrangements—those that overlap, without clear boundaries marking inside and outside—among indigenous tribes, the individual states, the federal government, and neighboring states such as Canada and Mexico and the indigenous peoples therein.

In this spirit of not being contained by American boundaries, I turn to the thoughts of an indigenous political scholar from Canada for a view of rethinking governance from above. Taiaiake Alfred of the Kanien'kehaka (Mohawk) nation, a professor in the Indigenous Governance Program and the Department of Political Science of the University of Victoria, sees a central problem in the fact that "the mythology of the state is hegemonic" within the Western paradigm. Alfred argues that "the struggle for justice would be better served by undermining the myth of state sovereignty than by carving out a small and dependent space for indigenous peoples within it."[8] This passage is drawn from a chapter titled " 'Sovereignty'—An Inappropriate Concept." On first blush, it might seem that Alfred has no use at all for the concept of sovereignty, but he begins the chapter tellingly by stating that he is critical of "the concept of sovereignty *as Native leaders have constructed it.*"[9] Specifically, Alfred is very critical of some indigenous leaders who have privileged the concept of *state* sovereignty when bargaining with and making claims within the settler-state. Instead, Alfred applauds those leaders who adhere to and articulate traditional visions of governance that do not seek to accommodate the terms and boundaries of colonial rule. In so doing, they serve the cause of "undermining the intellectual credibility of state sovereignty as the only legitimate form of political organization." Alfred thus applauds and encourages the "growing recognition given to indigenous models as post-colonial alternatives to state sovereignty."[10] In this way, he refuses the false choice and admonishes those indigenous leaders who accept it. His argument thus brings together the two directions articulated by the scholars discussed at the start of this section—devising postcolonial governing arrangements and challenging the hegemony of the sovereign state—and in so doing I see him arguing

that decolonization of the imagination requires direct resistance to the idea that the state is the exclusive site and form of legitimate political authority. Alfred's view of sovereignty is thus driven by an overarching critique of and caution about the colonialist consequences of being drawn into the statist paradigm for conceptualizing sovereignty and sovereign relations.

While the views of Robert Porter and Taiaiake Alfred do not cover the gamut of contemporary indigenous perspectives on this issue, what is worth noting here is that their ideas take us from seeking jurisdiction over non-Indian misdemeanors in tribal territory to refusing to abide the conceptual hegemony of the sovereign state, and therefore they necessarily implicate numerous and varied levels of government, from local government in the American context to government in the sovereign states of the larger North American setting. At all levels of governance, then, contemporary indigenous politics can and does pursue decolonization strategies that seek to supplement the mapping of sovereign relationships and decolonize our imaginations about how we see and know the space of sovereignty. When one considers the range of ways in which the politics of indigenous tribes and nations can be and are implicated in governance practices from the local to the state to the trans-state level, it becomes harder to see and think of indigenous politics as a marginal matter on the North American political landscape. By making boundaries the focus of a postcolonial analysis of U.S.–indigenous relations, I have sought to shift how one sees indigenous politics from that which appears defined by its marginality in relation to the settler-state to that which can be understood as continually re-marking and affirming a vibrant center. This center is further exposed when nonindigenous political observers, scholars, and activists also refuse the false choice of seeing U.S.–indigenous relations through the statist or colonialist mapping, and by this refusal they shed light on supplemental and very active forms of political spatialization such as the third space of sovereignty. It is through such refusals that we can move toward a decolonization of our statist and colonialist imaginations, a move pertinent not only to colonial political relations and the political concerns of indigenous people but also to the opening up of ways in which to see, know, and reimagine the political world generally.

While this study of U.S.–indigenous relations speaks most directly to those interested in indigenous people's politics, it has also been a study of American political development and race and ethnicity politics in

the United States, as well as an application of postcolonial theory to the analysis of the contemporary colonialist-anticolonialist struggles in settler societies. In that light, I now offer a few research questions and directions that students and scholars of politics might find worthy of pursuit. I arrived at these by thinking both about what paying serious attention to indigenous politics means in terms of how we look at the political world generally and what it means for the assumptions and strategies used in our particular disciplinary and subdisciplinary approaches to studying politics.

1. To what degree have the processes of colonial expropriation and human and institutional settlement of territory—and the movement and control of populations not deemed fully part of the American polity—shaped the American state in particular eras and over time? In short, might we need to "bring the settler-state back in" to our analyses of American political development? These questions beg historical analyses of the relationship of political foundations to contemporary institutions and processes and could be fruitfully explored through comparisons to other settler political societies.
2. When one takes into account America's long history of indigenous struggles over the status of tribal sovereignty in relation to the states and the federal government, might there be room for a serious reconsideration of the political development of American federalism, and in fact the very meaning of the concept itself? Should it be seen as a tripartite system more than a dual system, or somewhere between the two? Implicit in such studies would be an effort to offer more grounded and likely multiple ideas of what sovereignty does and can mean in the American context.
3. How does the recursive process of U.S. boundary-making and the construction of the nation's foreign and domestic spheres shape how we understand race and ethnicity politics over time? This question has been taken up in American studies by scholars such as Amy Kaplan and Nikhil Pal Singh, and it is worthy of exploration by political scientists because it would garner, I

think, unique and valuable insights on the complicated racial and ethnic landscape of American political life.[11] Two recent examples show us how this might be so. First, during the Hurricane Katrina tragedy of 2005, residents of New Orleans, almost all poor, the majority African Americans, were consistently referred to and in many ways treated as "refugees." Did the construction of poor, racial others in this way make them seem in some way "foreign" to the polity and governments to which they turned for the help and protection due to citizens? Second, on May 1, 2006, during the nationwide "Day without Immigrants," documented and undocumented immigrant workers, students, and business owners participated in what amounted to a one-day general strike in which they attended rallies to support the cause of immigrants, especially those from nonwhite regions and nations. Can we fully understand this political action—the people who composed it, the issues and concerns that drove it, the nongovernmental and governmental bodies that had to respond to it—without engaging in the politics on the boundaries at work here, without understanding the way in which boundaries are much more than merely sites of containment but in fact sites of politics itself? What other historical and contemporary events, developments, movements, policies, and cases might benefit from an analysis focusing on the construction of America's domestic and foreign spheres?

4. Nathan Glazer asserts that "we are all multiculturalists now."[12] Might there be some value in pondering the degree to which all or some of us might be postcolonialists now? Multiculturalism refers to the seeming contemporary accommodation of group difference in so-called first world liberal democracies, where cultural identity is increasingly tolerated as a "context of choice" as long as it produces citizens who abide by liberal norms.[13] Although multicultural concerns consumed a fair amount of the scholarly energy of the 1980s and 1990s, since the late twentieth century they have waned as political movements concerned with globalization, empire, and transnational flows of people, goods, capital, and conflicts have come to the fore. To suggest

> that we might be "postcolonialists now" references the increasing political and scholarly concern with the relationship between the local, national, and global contexts—as in the catchphrase "Think global, act local"—which necessitates analysis of the contested and contingent nature of boundaries and sovereignty at all levels of political organization. In this vein, with regard to, for example, the complicated cases of Hurricane Katrina and the Day without Immigrants, scholars of American politics might find greater value in a postcolonial approach that appreciates the "back-and-forth" relationship between numerous forms of boundaries and sovereignty in which each is "the structuring condition of the other"[14] than they would in some variant of a multicultural approach that focuses on the organization and inequality of group differences within one account of boundaries or sovereignty, likely that of the state. In this spirit, I simultaneously encourage political scientists to consider the value of postcolonial insights for their work and postcolonial theorists to bring their insights to subject matters that might generally be deemed more the terrain of political science. In the latter regard, it would be helpful if those working from a postcolonial framework engaged in thorough investigations and analyses of, for example, the complicated politics and history of American racial and ethnic issues so as to both draw readers to the clarity that can be provided by postcolonial critique and demonstrate that it is a perspective that travels well.

My twofold purpose for posing these questions is to suggest scholarly directions that I think would be worthwhile to pursue and to offer a number of different paths for reimagining the political world in which we live. In this spirit, consider reimagining contemporary political space. Imagine a map of North America in which it is as common to see the lines demarcating the political space of indigenous tribes and nations as it is those of the settler-states and their state and provincial subunits. This would be a more complicated map, without doubt, but it would also take us a step closer to seeing the multilayered, postcolonial world in which we may well be living. To this end, the postcolonial strategy of boundary-crossing allows us to see these indigenous historical and spatial boundaries as legiti-

mate, supplemental ways to mark out and map a people's place in North America, in the third space.

While this book has based its analysis of the U.S.–indigenous relationship on a theory of boundary politics that views indigenous tribes and indigenous political identity as neither wholly separate from nor seamlessly assimilated within settler-societies, it is concomitantly the case that these very dominant societies can neither ignore nor absorb indigenous people. One way I sought to reveal and address this point was through analyzing the colonial ambivalence expressed by the settler-nation in its relationship with indigenous people. That this ambivalence exists and that it can open up realms of political maneuverability for indigenous people is an often unspoken side of the U.S.–indigenous relationship. This maneuverability is possible because the dominant nation's ambivalence is also, even fundamentally, directed inward, toward itself. In this regard, one thing that indigenous politics tends to do—possibly more than any other form of political resistance—is challenge American presumptions about the coherence of the collective bonds and sense of temporal and spatial belonging that purport to confer legitimacy on U.S. colonial rule or sovereignty.

For too long, American political actors and institutions such as Jesse Ventura, James Harlan, the Citizens Equal Rights Association, the U.S. Congress, and the U.S. Supreme Court have posed loaded questions about whether indigenous tribes and nations are independent or dependent, outside or inside, and whether their sovereignty can assume a modern as opposed to a traditional form. In the end, these are not only false and damaging choices with regard to the colonialist assumptions they make about indigenous political life, but they also arise from a connected assumption about the preeminent and singular status of the settler-state's political authority. With this thought in mind, take another look at the first question I posed at the start of this book: "Where do indigenous people fit in relation to the American political system—inside, outside, or somewhere in between?" As I hope this book's analysis has shown, this very question has a colonial bias. Logically, it is as unhelpful to ask indigenous tribes and people if they reside inside or outside the United States as it is to ask the United States and the American people if they reside inside or outside the boundaries of, say, the Iroquois Confederacy. By making this point, it is not my intention to end this book on a falsely optimistic note on the future of U.S.–indigenous relations, because there is as much reason for

pause as for hope in that regard, at least for those who are supportive of indigenous claims to political autonomy. The politics here are complicated, and there are no easy answers, but one step in the right direction would be to pose better questions, questions that interrogate and reveal rather than presume and mask the boundaries implicated in the dynamic relationship between indigenous people and the United States.

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In an existential sense, this book began long ago as I was growing up in British Columbia, where indigenous politics is a central part of the political life of the province, and where a young man with some sort of weird interest in politics could not help but notice that words like *treaty* and *sovereignty* marked sites of deep contention. In fact, it took a move to the United States, and my graduate school experience at the New School for Social Research, for this book to get its tangible start. There, I was fortunate to find professors and peers who supported, challenged, and nurtured this project as they did me. Of my advisors, no one has been as important as Victoria Hattam. Vicky saw possibilities for this project from its earliest stages, beyond what I was able to conceive at the time. During moments when my confidence wavered about using postcolonial theory to study politics, she persistently urged me to prioritize this dimension of the project, and this proved invaluable to getting the book where I wanted it to go. As she does with all her students, she treated me more like a peer, never hesitant to pursue lines of thought outside the so-called mainstream (often for that very reason!); her concern was the content of the conversation and not the standing of those having the conversation. I am proud to say that she is, all at once, a friend, a peer, and a mentor. I thank David Plotke for the insight, advice, and supportive, convivial presence he has provided; I have learned, and continue to learn, a great deal from him. I have also greatly appreciated Anne Norton's help and unfailing enthusiasm regarding my work and future, and hope she sees the "negative space" possibilities in the third space. I must also acknowledge my first major influences at the New School, George Shulman and Ari Zolberg; in different ways, they challenged me and offered models of intellectual curiosity and engagement.

Over the years, many colleagues, especially at the New School and Babson College, have graciously read chapters of this book in various stages of development, and provided invaluable feedback. Most notably,

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One final note: The words and insights of Vine Deloria Jr. pervade this book more than those of any other person. I never had the honor to meet or know Professor Deloria, but his untimely death in November 2005 saddened me all the same. I can only hope that this study, even in some small way, serves the cause of indigenous people's liberation and autonomy, to which so much of his life was dedicated. To his memory, my book, like

many others, speaks to the truth of these words of Bernard of Chartres: "We are like dwarfs on the shoulders of giants, so that we can see more than they, and things at a greater distance, not by virtue of any sharpness of sight on our part, or any physical distinction, but because we are carried high and raised up by their giant size."

NOTES

A NOTE ON TERMINOLOGY

1. Thomas, "Pan-Indianism," 78.

2. Tribal identities themselves, as we know them today, are products of interaction not only between indigenous and nonindigenous peoples, but also between indigenous peoples themselves. For an essay that looks at both the coconstitution of indigenous and European peoples generally and at the constitution of the Cherokee tribal and general Indian identities in particular through interindigenous processes, see Shoemaker, "How Indians Got to Be Red."

3. Thomas, "Pan-Indianism," 78. On this same theme, see also Nagel, *American Indian Ethnic Renewal.*

INTRODUCTION

1. "Treaty with the Chippewa," July 29, 1837, *U.S. Statutes at Large* 7: 536, proclamation, June 15, 1838, in *Indian Affairs,* vol. 2, ed. Kappler, 491–92.

2. Jesse Ventura, quoted by Larry Oakes in "Governor's Words Draw Criticism from Tribal Leader," *Minneapolis Star-Tribune,* March 3, 1999.

3. Marge Anderson, "Letter from Marge Anderson to Gov. Ventura," March 2, 1999, http://nanews.org/archive/1999/nanews07.011. See excerpts of letter and discussion in "Tribal Leader Offended by Ventura Remarks on Sovereignty, Treaty Rights," *Associated Press State and Local News,* March 3, 1999.

4. *Minnesota, et al., Petitioners v. Mille Lacs Band of Chippewa Indians,* 526 U.S. 172, decided March 24, 1999.

5. 526 U.S. 194–95.

6. Wunder, *"Retained by the People,"* 27.

7. Here I both paraphrase and append Gayatri Spivak's assertion that "postcolonial*ity* is a failure of decolonization." Gayatri Spivak, "Teaching for the Times," 178 (emphasis in original). Also, on this point consider the fact that in the introduction to the edited collection titled *After Colonialism,* editor Gayan Prakash states that the essays in this collection seek to challenge the way in which Western history "sequestered colonialism tightly in the airless container of History, and casts postcoloniality as a new beginning, one in which certain modes of

domination may persist and acquire new forms of sustenance but one that marks the end of an era. To pry open the reading of colonialism from this prison-house of historicism requires more than the concept of neocolonialism. For at stake is not simply the issue as to whether or not former colonies have become free from domination, but also the question as to how the history of colonialism and colonialism's disciplining of history can be shaken loose from the domination of categories and ideas it produced." Gayan Prakash, *After Colonialism,* 5.

8. Bhabha, *The Location of Culture,* 37.

9. By "envisioned location" I mean the territorial, institutional, and cultural sense of belonging that a people may not presently have at all or to the extent that they wish, but that they envision themselves as gaining to some degree, or completely, at some point in time.

10. Along with the works cited thus far, the best historical, legal, cultural, and political studies that have had an important role in framing my understanding of U.S.–indigenous relations include at least the following works: Felix Cohen's *Handbook of Federal Indian Law,* Robert Berkhofer's *The White Man's Indian,* Vine Deloria Jr. and Clifford M. Lytle's *American Indians, American Justice* and *The Nations Within: The Past and Future of American Indian Sovereignty,* Russell Thornton's *American Indian Holocaust and Survival: A Population History since 1492,* Charles Wilkinson's *American Indians, Time, and the Law,* Stephen Cornell's *The Return of the Native: American Indian Political Resurgence,* Vine Deloria Jr.'s "Laws Founded in Justice and Humanity: Reflections on the Content and Character of Federal Indian Law," Robert Williams Jr.'s *The American Indian in Western Legal Thought: Discourses of Conquest,* Petra T. Shattuck and Jill Norgren's *Partial Justice: Federal Indian Law in a Liberal Constitutional System,* Francis Paul Prucha's *American Indian Treaties: The History of a Political Anomaly,* Frank Pommersheim's *Braid of Feathers: American Indian Law and Contemporary Tribal Life,* Jill Norgren's *The Cherokee Cases: The Confrontation of Law and Politics,* David Wilkins's *American Indian Sovereignty and the U.S. Supreme Court,* and Vine Deloria Jr. and David Wilkins's *Tribes, Treaties, and Constitutional Tribulations.*

11. A couple of fine examples of border theory scholarship, from cultural anthropology and legal studies, respectively, are Walter D. Mignola's *Local Histories/Global Designs: Coloniality, Subaltern Knowledges, and Border Thinking* and Mary L. Dudziak and Leti Volpp's edited volume *Legal Borderlands: Law and the Construction of American Borders.*

12. Shulman's quotation is from Ryan, Norton, Shulman, et al., "Conference Panel: On Political Identity," 152. The three main participants were Mary Ryan, Anne Norton, and Shulman. Their thoughts have helped shape my understanding of the role of power relations, culture, and language in the construction and articulation of political identity. Ryan states that political identities "are more than

just symbolically charged loyalties. . . . They are vehicles for making very major claims on the public realm, for exacting major concessions from the powerful and privileged, and the cause of often violent contention" (145). Norton notes that "in rational choice, the individual is taken for granted as a category, and politics is seen as the aggregate of individual actions. For those who study political identity, the situation is exactly reversed. Individuals, indeed the very notion of individuality, is seen as created within—and out of—political structures." She sees "political identities as constituted by and constitutive of relations of oppositions" (147). Finally, Shulman offers the thought that "politics is cultural because it involves collective identities, which people build and enact through narratives that identify the circumstances, interests, difficulties, and differences that confront and divide them, by defining the history, commitments and institutions that do or should bind them" (153).

13. For excellent examples of each of these approaches, see, for law, Shattuck and Norgren, *Partial Justice,* and Wilkins, *American Indian Politics;* for policy, Deloria and Lytle, *The Nations Within,* and Cornell, *Return of the Native;* for demography, Thornton, *American Indian Holocaust,* and Nagel, *American Indian Ethnic Renewal;* and for culture, Berkhofer, *White Man's Indian,* and Deloria, *Playing Indian.*

1. THE U.S.–INDIGENOUS RELATIONSHIP

1. Césaire, "From Discourse and Colonialism," 179.
2. Morris, "Vine Deloria Jr.," 124.
3. Fabian, *Time and the Other,* 23.
4. *Cherokee Nation v. The State of Georgia* (1831), 30 U.S. (pet. 5), 16–17.
5. Wilkins, *American Indian Sovereignty,* 21–2.
6. Shattuck and Norgren, *Partial Justice,* 190–91.
7. Wilkinson, *American Indians, Time, and the Law,* 14, 122.
8. Ashcroft, *Post-Colonial Transformation,* 35, 15.
9. Pearce, *Savagism and Civilization,* 49.
10. The concept of the constitutive outside stems from Jacques Derrida's semiotic insight that "the outside bears with the inside a relationship that is, as usual, anything but simple exteriority. The meaning of the outside was always present within the inside." Derrida, *Of Grammatalogy,* 35. For more recent uses of the concept, see Butler, *Bodies That Matter;* Mouffe, "Citizenship and Political Identity," 30; and Hall, "When Was the 'Postcolonial'?" 249.
11. Williams, *Like a Loaded Weapon,* 83.
12. Ibid., 62.
13. Standing Bear, "What the Indian Means to America," 307.
14. Biolsi, *Deadliest Enemies,* 14 (emphasis in original).

15. For an excellent, and in APD groundbreaking, study on these complexities of modern American state development, see Stephen Skowronek's *Building a New American State.*

16. Smith, *Civic Ideals,* 9.

17. Ibid., 459–63.

18. Kaplan, *The Anarchy of Empire,* 2, 15.

19. Ibid., p. 12.

20. Deloria, *Playing Indian,* 3. Two precursor works to Deloria's that are just as critical for understanding the cultural relationship of Americans with indigenous people are Robert Berkhofer's *The White Man's Indian* and Roy Harvey Pearce's *Savagism and Civilization.*

21. Deloria, *Playing Indian,* 103, 105.

22. Kirk Johnson, "Holding the Chips, Tribes Naturally Play Politics," *New York Times,* November 2, 1997, Week in Review, p. 5.

23. For more comprehensive outlines, see the ones in Cornell, *Return of the Native,* 14, and in Wilkins, *American Indian Politics,* 105.

24. For the most comprehensive collection of these treaties, see *Indian Affairs,* vol. 2, ed. Kappler. For an excellent study of the treaties and the treaty process, see Prucha, *American Indian Treaties.*

25. "Treaty of New Echota," December 29, 1835, article 6, reprinted in *History of the Cherokee Indians,* ed. Starr, 89.

26. Doolen, *Fugitive Empire,* xxiii.

27. Nothing underscores the constructed nature of the "blood" distinctions among the Cherokee than the fact that John Ross, the leader of the "full-bloods," was one-eighth Cherokee and seventh-eighths Scottish. In my text, I refer to "full-blood" and "mixed-blood" groups where appropriate, but always using quotation marks or some other qualifier. Along with the "full-blood" name for Ross supporters I also use "Ross Cherokee" more generally or "northern Cherokee" where appropriate. Similarly, along with the "mixed-blood" name for Watie supporters, I also use "Watie Cherokee" generally or "southern Cherokee" where appropriate.

28. Aleinikoff, *Semblances of Sovereignty,* 7.

29. Wilkins, *American Indian Politics,* 339.

30. Pierson, *Politics in Time,* 137.

31. Ashcroft, *Post-Colonial Transformation,* 23.

32. Specifically, the 2000 U.S. Census asserts that there are 2,475,956 people who identify as "American Indian and Alaska Native" in the United States. U.S. Census Bureau, "Census 2000 Redistricting Data" (P.L. 94–171), Table 1: "Population by Race and Hispanic or Latino Origin, for all Ages and for 18 Years and Over for the United States: 2000." For the complicated issue of the population history of indigenous people in what is presently U.S. territory, see Russell

Thornton's *American Indian Holocaust and Survival* and his entry "Population: Precontact to the Present," in Frederick Hoxie's *Encyclopedia of North American Indians,* 500–502. For the resurgence of people claiming indigenous identity, see Nagel, *American Indian Ethnic Renewal.*

33. Deloria, *Playing Indian,* 191.

34. Young, *Postcolonialism,* 59–60.

35. Tully, "The Struggles of Indigenous People," 50. See also Tully's *Strange Multiplicity.*

36. Bhabha, "DissemiNation," 306.

37. Deloria, *Custer Died for Your Sins* (1988), 38.

38. Deloria Jr., *We Talk, You Listen,* 60.

39. Yazzie, "Indigenous Peoples and Postcolonial Colonialism," 46.

40. Walker, *Inside/Outside,* 165.

41. Ibid., 14.

42. Richard Ashley makes similar remarks concerning "the gaze of a single interpretive center, a sovereign state." Ashley goes on to assert that the dominance of the international state system perspective, of sovereignty within domestic contexts and anarchy beyond such contexts, is "a perennial problem of modern global contexts. It is one that is always in the *process* of 'solution,' perhaps, but never can one say that the process is complete, that a solution has been found, that resistances have been totally quieted, and that states simply *are.* Yet this is precisely what theoretical discourse on the anarchy problematique does say. Indeed, this is its originary claim, its foundational claim, the claim that must not be questioned if anything else it says is to be taken seriously." Ashley, "Untying the Sovereign State," 229.

43. Beier, *International Relations in Uncommon Places.* For this concept, see chapter 1, "Revealing the Hegemonologue."

44. Doty, "Sovereignty and the Nation," 143.

2. RESISTING AMERICAN DOMESTICATION

1. McSloy, "Back to the Future," 252.

2. Bensel, *Yankee Leviathan,* 10.

3. In Starr's *History of the Cherokee Indians,* 89.

4. Bailey and Bailey, "Indian Territory," 271–73.

5. McLoughlin, *After the Trail of Tears,* 388 n3. On the size of Cherokee Strip, see p. 250.

6. Agnew, "Indian Territory," 192.

7. Abel, *The American Indian as Slaveholder and Secessionist,* 130.

8. Agnew, "Indian Territory," 194; Nichols, *Lincoln and the Indians,* 28.

9. Abraham Lincoln, First Inaugural Address, March 4, 1861, in *American Rhetorical Discourse,* 2d ed., ed. Reid, 476, 478.

10. Proclamation of Principal Chief John Ross, May 17, 1861, in *The Papers of Chief John Ross,* vol. 2, ed. Moulton, 469–70. Volume hereafter referred to as *Ross Papers 2.*

11. Ibid.

12. The Chickasaw and Choctaw nations resided in the most southeasterly part of Indian Territory. Their geographic proximity signified, and certainly influenced, their social, economic, and political proximity to the South. Thus both nations would not hesitate to move toward the Confederacy. The Creek and Seminole nations would each find themselves more internally divided over the issue, with some elites refusing to break with the Union, but in the end the political powers of each nation proclaimed their alliance to the Confederacy. These four nations had something in common that was not shared by the Cherokee nation; they were "all governed by mixed-blood slaveholders and had strong majorities in favor of repudiating their treaties with the United States" (McLoughlin, *After the Trail of Tears,* 176). For example, the Chickasaw population in Indian Territory numbered fewer than five thousand in 1861, and only around "two-hundred slaveholders owned about one-thousand slaves." These slaveholders were primarily the "mixed-blood elite" who "dominated tribal politics by their control of the constitutional government" (Gibson, *The Chickasaws,* 228). This fusion of mixed-blood control of both slaveholding capital and political capital was a driving force for Southern alliance in all four nations. The Chickasaw nation proclaimed its alliance to the Confederacy on May 25, eight days after the Northern abandonment and Southern seizure of Indian Territory. The Choctaw nation, with a much larger population of about eighteen thousand, followed suit with its proclamation of alliance on June 14 (Nichols, *Lincoln and the Indians,* 28; Abel, *The American Indian as Slaveholder and Secessionist,* 155–56, 211; Gibson, *The Chickasaws,* 231). The Creeks, with a population of about 13,500, declared alliance on July 10. The Seminoles, the smallest of the tribes with around 2,200 people, allied with the Confederacy on August 1. Abel, *The American Indian as Slaveholder and Secessionist,* 157, 211.

13. "A Treaty of Friendship and Alliance between the Cherokee Nation and the Confederate States of America," October 7, 1861, in *The War of the Rebellion,* ed. Scott, 673–86.

14. Wardell, *Political History of the Cherokee Nation,* 159; Thornton, *The Cherokees,* 92.

15. John Ross to Abraham Lincoln, September 16, 1862, in *Ross Papers 2,* 516–17. Ross summarized for Lincoln, his six main points: "*1st:* That the relations which the Cherokee Nation sustains towards the United States, have been defined by Treaties. . . . *2nd:* . . . . The Cherokee Nation as the weaker party placing itself

under the protection of the United States and no other sovereign whatever, and the United States solemnly promising that protection. *3rd:* The Cherokee Nation maintained in good faith her relations towards the United States up to a late period and subsequent to the occurrence of the war existing between the Government and the Southern States of the Union and the withdrawal of all protection whatever by the Govt. *4th:* That in consequence of the worst of that protection civil & military, and of the overwhelming pressure brought to bear upon them, the Cherokees were forced for the preservation of their Country and their existence to negotiate a treaty with the "Confederate States." *5th:* That no other alternative was left them. . . . *6th:* That as soon as the Indian Expedition marched into the Country the great Mass of the Cherokee People rallied spontaneously around the authorities of the United States."

16. John Ross to Abraham Lincoln, September 16, 1862, in *Ross Papers 2,* 517.

17. Foote, *The Civil War,* 3: 1022.

18. McPherson, *Battle Cry of Freedom,* 450.

19. The Homestead Act "offered any citizen or intending citizen who was the head of a family over 21 years of age 160 acres of surveyed public domain after 5 years of continued residence and payment of registration fee" and served the explicit purpose of promoting "westward agricultural expansion." By means of the Pacific Railway Acts, "a central transcontinental railroad was authorized." Morris and Morris, *Encyclopedia of American History,* 612.

20. *The Pacific Railway Act,* July 1, 1862, sec. 2, *U.S. Statutes at Large* 12: 489.

21. July 5, 1862, *U.S. Statutes at Large* 12: 512.

22. Sheingate, "Political Entrepeneurship," 188.

23. U.S. Senate proceedings, February 23, 1865, *Congressional Globe,* 38th Congress, 2d session, part 2, 1021.

24. Ibid.

25. Ibid., 1022.

26. Ibid., 1025.

27. McLoughlin, *After the Trail of Tears,* 194–95.

28. U.S. Senate proceedings, March 2, 1865, *Congressional Globe,* 38th Congress, 2d session, part 2, 1310.

29. John Ross to the Senate and House of Representatives, March 2, 1865, in *Ross Papers 2,* 630.

30. John Ross to the Senate and House of Representatives, February 18, 1865, in *Ross Papers 2,* 625. Emphasis in original.

31. U.S. Senate proceedings, March 2, 1865, *Congressional Globe,* 38th Congress, 2d session, part 2, 1305.

32. Ibid., 1304.

33. Ibid., 1308.

34. Ibid., 1309.

35. Along with Foster and Howard, the other seven senators to vote against S 459 were Henry B. Anthony, John B. Henderson, James McDougall, Edwin Morgan, Lazarus Powell, Waitman Willey, and Robert Wilson.

36. Along with Harlan and Lane of Kansas, the other fifteen senators to vote for S 459 were B. Gratz Brown, Charles Buckalew, John Conness, Edgar Cowan, James Doolittle, Nathan Farwell, Henry Smith Lane, James Nesmith, James Nye, Samuel Pomeroy, Alexander Ramsey, William Sprague, William Stewart, Charles Sumner, and Peter Van Winkle.

37. U.S. Senate proceedings, March 2, 1865, *Congressional Globe,* 38th Congress, 2d session, part 2, 1309.

38. Ibid., 1305.

39. Ibid., 1306.

40. Abel, *The American Indian and the End of the Confederacy.* The complete unedited text of the instructions is in Abel's book, on pp. 219–26.

41. Harlan instructions, in Abel , *The American Indian and the End of the Confederacy,* 220.

42. Ibid.

43. Ibid., 221.

44. Ibid.

45. Ibid., 224.

46. Ibid., 223.

47. Ibid., 224.

48. Bensel, *Yankee Leviathan,* 2.

49. Norgren, *The Cherokee Cases,* 144.

50. U.S. Office of Indian Affairs, *Annual Report of the Commissioner for 1866,* 2.

51. Ibid., 11.

52. Dale and Littan, *Cherokee Cavaliers,* 230. For this reason, the Northern Cherokee took to calling themselves the "loyal Cherokee" and referring to the Southerners as the "disloyal Cherokee."

53. U.S. Office of Indian Affairs, *Annual Report of the Commissioner for the Year 1866,* 11.

54. Franks, *Stand Watie,* 186.

55. The one matter on which Southern Cherokee representatives were initially reluctant to agree, which went to the core of their own secessionist political identity, was the granting of equal rights to freedmen residing in Cherokee country. However, the desire for division of their nation, and the political reality that the federal government was not going to cede on this issue, led the Southern Cherokee to eventually compromise on this matter. Prucha, *American Indian Treaties,* 266.

56. At this time, John Ross had become quite ill and was confined to his bed, from which he still had a significant hand in the treaty negotiations and response to the proposals of the Indian commissioner. In his place, six other Northern Cherokee leaders, including his son, Daniel, who was by then an executive counselor of the nation, wrote the official responses to the commissioner and had dealings with him directly.

57. Cherokee Nation, *Reply of the Delegation to the Commissioner of Indian Affairs,* 3. Signatories of this document were James McDaniel, Smith Christie, White Catcher, S. H. Benge, J. B. Jones, and Daniel H. Ross, listed as "delegates appointed by joint resolution of the National Legislature to treat with the United States as to the affairs of the Cherokee Nation."

58. Ibid., 3–4 (emphasis in original).

59. Ibid., 4, 6, 9 (emphasis in original).

60. Ibid., 5.

61. Ibid., 8.

62. Ibid., 6 (emphasis in original).

63. Ibid., 10. Unlike the previous three points about things that the Northern Cherokee found objectionable, each of which was articulated in a single sentence, the fourth point concerning division went on for four paragraphs, going into painstaking detail on the path to dividing the nation territorially and removing the Southern Cherokee from the internal governing jurisdiction of the Cherokee National Council.

64. Cherokee Nation, *Reply of the Delegation to the Commissioner of Indian Affairs,* 10 (emphasis in original).

65. Ibid., 10, 13–14.

66. John Ross to President Andrew Johnson, May 13, 1866, in *Ross Papers 2,* 676–77.

67. Prucha, *American Indian Treaties,* 268.

68. Cherokee Nation, *Reply of the Southern Cherokees to the Memorial of Certain Delegates from the Cherokee Nation,* 5, 9, 11. Signatories to the document were Elias C. Boudinot and William P. Adair.

69. J. W. Washbourne to J. A. Scales, June 1, 1866, in *Cherokee Cavaliers,* ed. Dale and Littan, 244.

70. Cooley, *The Cherokee Question,* 18.

71. McLoughlin, *After the Trail of Tears,* 224–25.

72. John Ross to President Andrew Johnson, June 28, 1866, *Ross Letters 2,* 678–80. Emphasis in original.

73. McLoughlin, *After the Trail of Tears,* 226.

74. McKitrick, *Andrew Johnson and Reconstruction,* 91. Johnson certainly was

not getting information about Southern Cherokee interests only from Ross. Harlan (and Cooley via Harlan) often updated him on the progress of the reconstruction treaties.

75. "Treaty with the Cherokee," July 19, 1866, *U.S. Statutes at Large* 14: 799, ratified July 27, 1866, and proclaimed August 11, 1866, in *Indian Affairs,* vol. 2, ed. Kappler, 942–50. In this section I will refer in the text to the number of the treaty article I am quoting and/or analyzing rather than creating a separate footnote for each reference.

76. Miner, *The Corporation and the Indian,* 16.

77. The Northern Cherokee were able to sell the Neutral Lands for $500,000 with interest, which was what the Southern Cherokee got, except theirs was without interest. For more on this particular sale, see Prucha, *American Indian Treaties,* 267; McLoughlin, *After the Trail of Tears,* 227; and Abel, *The American Indian and the End of the Confederacy,* 362.

78. Malcomson, *One Drop of Blood,* 100.

79. Regarding the "civilized"—meaning collectively and politically organized—indigenous groups, the Ross delegation was able to gain agreement that the "tribe and the Cherokee" would have to agree on the terms of incorporation, and if the *foreign* tribe should choose to incorporate into the Cherokee nation as citizens, there should be "first paid into the Cherokee national fund a sum of money" from that tribe's U.S. federal funding to support them in the Cherokee nation. Otherwise, if the *foreign* tribe should choose to retain its own collective political identity, it would be allotted a proportionate amount of Cherokee land for which it would pay "into the national fund such price as may be agreed on by them and the Cherokee Nation." Over the next couple of years, groups from the Delaware and Shawnee nations eventually did negotiate this latter type of agreement with the Cherokee nation. The "friendly"—meaning unorganized or "wandering"—indigenous people were to be granted fee-simple title to lands, in proportion to their population, which was also to involve payment to the "Cherokee Nation at such price as may be agreed on."

80. For a thorough history and analysis of the development and politics of the increased role of the U.S. federal court in the Indian Territory, see Burton, *Indian Territory and the United States.*

81. Lambert, "The Cherokee Reconstruction Treaty of 1866," 489.

82. The Allotment Act is commonly referred to as the Dawes Act after its sponsor, Republican Congressman Henry Dawes from Massachusetts.

83. *Curtis Act,* July 1, 1898., c. 545, *U.S. Statutes at Large* 30: 571, excerpted in *Documents of United States Indian Policy,* ed. Prucha, 197–98.

84. For excellent detailed studies of the political developments, challenges, and activities concerning the Cherokee nation, the other Five Civilized Tribes, and the

Indian Territory as a whole from the end of the Civil War to the early twentieth century, see McLoughlin, *After the Trail of Tears;* Burton, *Indian Territory and the United States;* and Miner, *The Corporation and the Indian.*

85. Deloria and Lytle, *The Nations Within,* 14.

3. 1871 AND THE TURN TO POSTCOLONIAL TIME IN U.S.–INDIGENOUS RELATIONS

1. Singh and Schmidt, "Introduction," in *Postcolonial Theory and the United States,* ed. Singh and Schmidt, 4.

2. Representative Sydney Clarke of Kansas, June 18, 1868, *Congressional Globe,* 40th congress, 2d session, 3264.

3. Hoxie, *Encyclopedia of North American Indians,* 466.

4. Parker, "Indian Commissioner Parker on the Treaty System," extract from *Annual Report of the Commissioner of Indian Affairs,* December 3, 1869, in Prucha, *Documents of United States Indian Policy,* 134–35.

5. Bhabha, writing in Bhabha and Comaroff, "Speaking of Postcoloniality," 24.

6. Downing et al., "Appendix 21: Communication from the Delegation of the Cherokee," in *Second Annual Report of the Board of Indian Commissioners,* 87.

7. *U.S. Statutes at Large,* 16: 566, excerpted in *Documents of United States Indian Policy,* ed. Prucha, 136 (emphasis in original).

8. There is, of course, a clear and well-documented history of the U.S. federal government's neither respecting nor abiding by treaties with indigenous tribes and nations well before and well after 1871 (see Prucha, *American Indian Treaties*). I am not denying that important point, but rather looking at the political and legal ideals that served to define the U.S.–indigenous relationship and provide a measure of accountability for both sides.

9. March 1, 1871. *Congressional Globe,* 41st Cong., 3d sess., part 3, 1823.

10. Ibid., 1824.

11. Ibid., 1822.

12. Ibid., 1824.

13. Ibid. Emphasis added.

14. Ibid., 1825.

15. Ibid., 1811.

16. Ibid., 1812.

17. Ibid., 1812.

18. Prucha, *American Indian Treaties,* 312.

19. Deloria and DeMallie, *Documents of American Indian Diplomacy,* 233.

20. *Cherokee Tobacco,* 78 U.S. (11 Wall.) 616 (1871).

21. Wilkins, *American Indian Sovereignty,* 55. Emphasis in original.

22. *The Major Crimes Act,* 18 U.S.C. sec. 1153. The other five major crimes named

in the original 1885 act are manslaughter, assault with the intent to kill, arson, larceny, and burglary.

23. *United States v. Kagama & Another, Indians,* 118 U.S. 375 (1886).

24. Shattuck and Norgren, *Partial Justice,* 94.

25. For more on plenary power, see ibid., 121–27; Pommersheim, *Braid of Feathers,* 46–48; Wilkins, *American Indian Politics,* 338; and Wilkinson, *American Indians, Time, and the Law,* 78–79.

26. *United States v. Kagama & Another, Indians,* 118 U.S. 375 (1886).

27. This phrase is from Judge Philip Nichols Jr.'s concurring opinion in *Sioux Nation of Indians, et al. v. The United States,* 148–78 U.S.C. 220, Ct. Cl. 442, 601 F.2d 1157 (1979). The pertinent sentence reads in full: "The day *Lone Wolf* was handed down, January 5, 1903, might be called one of the blackest days in the history of the American Indian, the Indians' Dred Scott decision."

28. Ibid., 977–82.

29. Ibid., 982–84.

30. "Treaty with the Kiowa and Comanche, 1867," in *Indian Affairs,* vol. 2, ed. Kappler, 978, 981.

31. *Lone Wolf v. Hitchcock,* 187 U.S. 553 (1903).

32. Dawes Act, February 8, 1887, *U.S. Statutes at Large* 24: 388–91, excerpted in *Documents of United States Indian Policy,* ed. Prucha, 171–72.

33. For more on allotment and the diminishment of indigenous-held property, see Jaimes, "Federal Identification Policy," 125–27; "Dawes Act," in *Encyclopedia of North American Indians,* ed. Hoxie, 154; "The General Allotment Act," in *The Native American Almanac,* ed. Hirschfelder and Kreipe de Montano, 20–22.

34. For more on the development and articulation of their protests, see Clark, *Lone Wolf v. Hitchcock,* 50–56.

35. U.S. Senate Committee on Indian Affairs, *Memorial from Kiowa, Comanche, and Apache Tribes: Letter from the Secretary of the Interior,* 56th Cong., 1st sess., Senate Doc. 76, 1.

36. *Lone Wolf v. Hitchcock,* 187 U.S. (1903), 564.

37. Ibid.

38. Ibid., 565–66.

39. Ibid., 566.

40. Clark, *Lone Wolf v. Hitchcock,* 97, 111.

41. *Lone Wolf v. Hitchcock,* 187 U.S. (1903), 567, 565.

42. Shattuck and Norgren, *Partial Justice,* 126.

43. On this point, Rogers Smith similarly observed that in the late nineteenth and early twentieth centuries "the federal courts, like the Reconstruction Congress[,] tried to make the status of the tribes as 'peculiar' and as vulnerable as possible. When tribal members claimed judicial protection, they were insufficiently

'foreign' to gain access. When they claimed the vote on the strength of their native status, they were once again members of 'independent political communities.'" Smith, *Civic Ideals,* 345.

44. Aleinikoff, *Semblances of Sovereignty,* 81.

45. For more on the Insular Cases, please see, along with the Kaplan and Aleinikoff citations in this section, the following two texts: Kerr's *The Insular Cases* and Barnett and Marshall's *Foreign in a Domestic Sense.*

46. *Downes v. Bidwell,* 182 U.S. 244 (1901), 341–42. Emphasis added.

47. Kaplan, *The Anarchy of Empire,* 2.

48. Ibid., 11–12.

49. Deloria and Wilkins, *Tribes, Treaties, and Constitutional Tribulations,* 70.

50. Bhabha, *The Location of Culture,* 86.

51. As Alexandra Harmon puts it, "The Friends of the Indian were several hundred people who, through a network of local and national organizations, mobilized to influence public opinion and to change policy by grass roots organizing, lobbying, public speaking, and writing. Their most powerful group was the Indian Rights Association." Harmon, "When Is an Indian Not an Indian?" 96.

52. Welsh, "How to Bring the Indian to Citizenship," 2.

53. Gates, "Addresses at the Lake Mohonk Conferences," 340.

54. Theodore Roosevelt, First Annual Message, December 3, 1901, in *Compilation of Messages and Papers,* ed. Richardson, 450–51.

55. Hirschfelder and Kreipe de Montano, *The Native American Almanac,* 21.

4. INDIGENOUS POLITICS AND THE "GIFT" OF U.S. CITIZENSHIP

1. In his autobiography, Rickard asserts that "fight for the line" were "the last words Chief Deskaheh had said to me before he died." Rickard, *Fighting Tuscarora,* 68.

2. *Indian Citizenship Act,* June 2, 1924, *U.S. Statutes at Large* 43: 253.

3. *Citizenship for World War I Veterans,* November 6, 1919, *U.S. Statutes at Large* 41: 350. This Act provides: "That every American Indian who served in the Military or Naval Establishments of the United States during the war against the Imperial German Government, and who has received or who shall hereafter receive an honorable discharge, if not now a citizen and *if he so desires,* shall . . . be granted full citizenship with all the privileges thereto." Emphasis added.

4. Concerning the unilateral conferral of citizenship, it is true that Congress passed a law in 1888 that made an indigenous woman a U.S. citizen when she married a U.S. citizen, but the law also declared that on marriage the woman surrendered her tribal status and her husband surrendered any right to own her property. As Kathleen Sullivan points out, those provisions were included because the aim

of the law was not to encourage indigenous women to become U.S. citizens, but rather to "discourage the intermarriage of white men and Indian women" by making such a union cost something for each party—tribal status for the woman and property for the man. Sullivan, "Marriage and Federal Police Power," 55.

5. For the active and influential role of individual Progressive legislators, despite the fact that the Progressive movement and political party as a whole were in distinct decline, see Link, "What Happened to the Progressive Movement?" 833–51.

6. The three were Burton K. Wheeler (Montana), Bob La Follette Jr. (Wisconsin), and Lynn Frazier (North Dakota).

7. Garretson Szasz, "Indian Reform in the Decade of Prosperity," 24.

8. Stein, "The Indian Citizenship Act of 1924," 266.

9. Ibid., 267.

10. Hoxie, *A Final Promise,* 213.

11. Indian Rights Association, *Forty-second Annual Report of the Board of Directors,* 29. The case to which the report is referring is *United States v. Nice,* 241 U.S. 591 (1916). *Nice* thereby overturned the previous court holding, that of *Matter of Heff,* 197 U.S. 481 (1905), which preferenced citizenship status over that of wardship and held that the U.S. government could not keep Indians in wardship status indefinitely. For more on *Heff* and *Nice,* see Wilkins, *American Indian Sovereignty,* 122–36.

12. Hoxie, *A Final Promise,* 230.

13. "Citizens—and Wards Too," 95.

14. Arthur C. Parker, "Certain Important Elements of the Indian Problem," *Quarterly Journal* 3 (1915), cited in *Talking Back to Civilization,* ed. Hoxie, 100.

15. For the formation and development of the SAI, see Maddox, *Citizen Indians.*

16. Cornell, *Return of the Native,* 116.

17. Hoxie, *Encyclopedia of North American Indians,* 176.

18. For more on the Ghost Dance massacre, including a bibliography, see ibid., 694–97.

19. Eastman, "The Indian as a Citizen," 70.

20. Ibid., 73.

21. Eastman, "The Indian's Plea for Freedom," 165.

22. Although it is not my focus here, after the passage of the ICA there was still a decades-long political battle to be fought by some indigenous people and their supporters to gain the enforcement of indigenous people's civil rights in many states. For more on the effort to enfranchise indigenous people across the United States, see Parker, "The Indian Citizenship Act of 1924," 44–71, and Peterson, "American Indian Political Participation," 116–26, especially 121–22.

23. For Montezuma's tensions with his colleagues in the SAI and the SAI generally, see Maddox, *Citizen Indians,* 111–15.

24. Montezuma, "Drafting Indians and Justice," cited in *Talking Back to Civilization,* ed. Hoxie, 126.

25. Ibid., 126, 127.

26. Renan, "What Is a Nation?" 11.

27. Bhabha, "DissemiNation," 310.

28. Ibid., 298–99.

29. Bonin, "Editorial Comment," 162.

30. Hoxie, *Encyclopedia of North American Indians,* 709. It should be noted that the National Council of American Indians is not the same organization as the National Congress of American Indians. The latter organization was founded in 1944 and is to this day still very active as an advocate for indigenous concerns within U.S. political institutions. The earlier NCAI diminished as an active political force in the 1930s. Still, the pan-Indian scope and integrationist political direction of the two groups are very similar, and the presence of the original organization likely influenced the shape, composition, and outlook of its successor.

31. "Petition of the National Council of American Indians to the Senate," printed in the *Congressional Record* for April 24, 1926, at the request of the Honorable Thomas F. Bayard, cited in Wise, *The Red Man in the New World Drama,* 571.

32. Frederick Hoxie, "Introduction," in *Talking Back to Civilization,* ed. Hoxie, 4.

33. Chippewa Indians of Minnesota, "Minutes of Annual Meeting Held at Cass Lake, Minnesota," July 8–10, 1924, pp. 1–2, in *Council Meetings,* reel 14 at 694.

34. The most obvious way indigenous leaders would have learned about the precise terms of the ICA would have been by reading it on their own. However, if a language issue or something else prevented this from occurring, the tribes not only were in communication with the BIA and other government officials about new legislation, especially during these annual council meetings, but were also hearing from nongovernmental organizations such as the Indian Rights Association about the implications of the new U.S. Indian policy.

35. Among the tribes that paid little attention to the passage of the ICA were those whose people had been declared U.S. citizens prior to 1924. Most notable in this regard during the Progressive era were the various Pueblo tribes of the Southwestern United States, whose citizens were conferred U.S. citizenship, without their consent, as a consequence of the Treaty of Guadalupe Hidalgo, made in 1848 following the U.S.–Mexico war. In the 1920s the Pueblos were much more concerned with congressional legislation, in particular the Bursum Bill of 1922, which sought to codify the land rights of white squatters on Pueblo territory. Thus, for reasons of both preexistent citizenship and more pressing concerns, during their

all-council meeting in July 1924 no mention was made of the Indian Citizenship Act. See "Meeting of All-Pueblo Council at Santo Domingo," July 17, 1924, pp. 1–43, in *Council Meetings,* reel 12 at 27. For the citizenship status of the Pueblos, see Witkin, "To Silence a Drum," 368–370. For Pueblo political activity during the 1920s, see Philp, "Albert B. Fall and the Protest from the Pueblos," 237–54. For an example of the support of white reformers for the Pueblo cause, see Collier, "Plundering the Pueblo Indians," 21–25, 56.

36. Zane Gordon, "Will Indians Give Up Tribal Independence?" 3.

37. Ibid.

38. Ibid.

39. U.S. Department of the Interior, "Fifty-fifth Annual Report of the Board of Indian Commissioners," 20.

40. Hauptman, "American Indian Influences," 324.

41. Barbara Graymont, "Editor's Introduction," in Rickard, *Fighting Tuscarora,* xxiv, xxiii, xvii.

42. Rickard, *Fighting Tuscarora,* 53.

43. Ibid.

44. Of the many excellent works on the forces shaping and the implications of the 1924 Immigration Act, the following are especially valuable: Higham, *Stranger in Land;* King, *Making Americans;* Ngai, "The Architecture of Race in American Immigration Law"; and Takaki, *Strangers from a Different Shore.*

45. Rickard, *Fighting Tuscarora,* 65.

46. For various maps of the historical and contemporary territory of the Six Nations as a whole and for particular nations that span the U.S.–Canada boundary, see Trigger, *Handbook of North American Indians,* vol. 15: *Northeast,* 450, 471.

47. "Treaty of Amity, Commerce and Navigation" (Jay Treaty), *U.S. Statutes at Large* 8 (1794): 116.

48. Luna-Firebaugh, "The Border Crossed Us," 162; "Treaty of Peace and Amity" (Treaty of Ghent), *U.S. Statutes at Large* 8 (1814): 218.

49. Rickard, *Fighting Tuscarora,* 67.

50. Like their brethren below the border, the Six Nations dealt with ominous settler-state policies because the Canadian government imposed citizenship on the indigenous people in its midst and sought to break up the more politically radical indigenous groups, such as the Grand River Council. In 1920, the Canadian federal government added an amendment to the Indian Act "which forced enfranchisement on Canadian Indians" (Hoxie, *Encyclopedia of North American Indians,* 219). In October 1924, "armed police burst into the Ohsweken Council House and read a decree dissolving the Six Nations' parliament." This was done on the

order of the Canadian government, "to overthrow the [Six Nations'] assembly that dared to challenge it" (Wright, *Stolen Continents,* 324).

51. Rickard, *Fighting Tuscarora,* 65.

52. Indian Defense League of America Web site: http://idloa.org.

53. Rickard, *Fighting Tuscarora,* 84.

54. *United States ex rel. Diabo v. McCandless,* 18 F.2d. 282; 1927 U.S. Dist. LEXIS 1053, March 18, 1927.

55. Luna-Firebaugh, "The Border Crossed Us," 163.

56. Rickard, *Fighting Tuscarora,* 85. The passage from the King Bill (S 716) is quoted as reprinted by Rickard.

57. Rickard, *Fighting Tuscarora,* 87.

58. Act of April 2, 1928, chap. 309, U.S. Statutes at Large 45: 401; codified in 8 U.S.C.A. 1359.

59. Rickard, *Fighting Tuscarora,* 88.

60. Indian Defense League of America Web site: http://idloa.org.

61. Tully, "The Struggles of Indigenous People," 42 (emphasis in original).

5. BETWEEN CIVIL RIGHTS AND DECOLONIZATION

1. I cite here two editions of this book by Deloria: *Custer Died for Your Sins: An Indian Manifesto* (New York: Macmillan, 1969), hereafter cited as *Custer* (1969), and *Custer Died for Your Sins: An Indian Manifesto* (Norman: University of Oklahoma Press, 1988), hereafter cited as *Custer* (1988). The quotes here are from the latter, 243, 245.

2. *Custer* (1988), 266.

3. By "much of nonindigenous America" I mean to reference the fact that the New Deal did not apply equally to all nonindigenous American citizens, especially as it concerned African Americans and other peoples of color. For more on the racial inequalities embedded and articulated in the New Deal, see Katznelson, *When Affirmative Action Was White.*

4. *Wheeler-Howard Act* (Indian Reorganization Act), June 18, 1934, *U.S. Statutes at Large* 48: 984–88.

5. The imposition here involved the Bureau of Indian Affairs' establishing a policy that abstentions in tribal elections would be counted as Yes votes to approve the IRA as defining the tribe's reconstituted government. For more on this and other aspects of the "Indian New Deal," see Taylor, *The New Deal and American Indian Tribalism;* Kelly, *The Assault on Assimilation;* and "The Indian Reorganization Act" in *Native American Almanac,* ed. Hirschfelder and Kreipe de Montano, 22–24.

6. Deloria and Lytle, *American Indians, American Justice,* 174.

7. The key act of the "termination" policy was House Concurrent Resolution 108, August 1, 1953. The movement toward this policy, however, began immediately following the Second World War. For more, see Fixico, *Termination and Relocation.* According to Stephen Cornell, between 1952 and 1961, as many as 160,000 tribal citizens relocated with BIA help to cities such as Denver, Los Angeles, Salt Lake City, Cleveland, Oakland, and Chicago, though by some estimates more than a third eventually returned to the reservation. Cornell, *Return of the Native,* 136.

8. The founding act of the "termination" policy was House Concurrent Resolution 108, August 1, 1953.

9. Cornell, *Return of the Native,* 123.

10. Ibid., 136.

11. Ibid., 130.

12. Johnson, Champagne, and Nagel, "American Indian Activism and Transformation," 22.

13. Johnson, *The Occupation of Alcatraz Island,* 9.

14. Cornell, *Return of the Native,* 136.

15. "Declaration of Indian Purpose," American Indian Chicago Conference, 1961, in *Documents of United States Indian Policy,* ed. Prucha, 245.

16. Oestreich Lurie, "Sol Tax and Tribal Sovereignty," 108.

17. "Declaration of Indian Purpose," 245, 244.

18. Ibid., 247.

19. Mel Thom, quoted by Steiner, *The New Indians,* 37.

20. For more on the role of Clyde Warrior and the formation of the NIYC, see Smith and Warrior, *Like a Hurricane,* 36–59, and Steiner, *The New Indians.*

21. Preamble to the Constitution of the National Indian Youth Council, Founding Resolution, August 10, 1961, reprinted in Steiner, *The New Indians,* 304.

22. Melvin D. Thom, "Statement of Purpose," Constitution of the National Indian Youth Council, August 10, 1961, reprinted in Steiner, *The New Indians,* 304–5.

23. Melvin Thom, "A Statement Made for the Young People," American Indian Capital Conference on Poverty, May 1964, in Josephy, *Red Power,* 67–68.

24. Cobb, "Philosophy of an Indian War," 74.

25. Castille, *To Show Heart,* 33.

26. Ibid., 62.

27. For more on fishing rights struggles, see Institute for Natural Progress, "In Usual and Accustomed Places: Contemporary American Indian Fishing Rights Struggles," 217–39; for the "fish-ins" specifically, see 221–23.

28. Clyde Warrior, "Which One Are You? Five Types of Young Indians," in

ABC: Americans before Columbus 2 (December 1964), no. 4, reprinted in Steiner, *The New Indians,* 305.

29. Ibid., 306.

30. Ibid., 307.

31. Ibid.

32. Fanon, *The Wretched of the Earth,* 179.

33. Along with the works written by Deloria alone that are cited throughout this book, see also these Deloria wrote or edited with Clifford M. Lytle: *American Indians, American Justice; Behind the Trail of Broken Treaties; God Is Red;* and *Red Earth, White Lies.*

34. *Custer* (1969), 270–71 (emphasis in original).

35. Ibid., 262.

36. Smith and Warrior, *Like a Hurricane,* 122.

37. *Custer* (1988), 13.

38. *Custer* (1969), 269.

39. *Custer* (1988), 2.

40. Ibid., 1.

41. Ibid., 2.

42. Ibid., 27.

43. Ibid., 221.

44. Ibid., 255.

45. Ibid., 26.

46. For more on actions of the Johnson administration, see Cobb, "Philosophy of an Indian War."

47. *Custer* (1988), 27.

48. Ibid., 241.

49. Nederveen Pieterse and Parekh, "Shifting Imaginaries," 11.

50. *Custer* (1988), 263.

51. Ibid., 241.

52. Ibid., 196.

53. Fanon, *The Wretched of the Earth,* 190.

54. Ibid., 197.

55. Ibid., 179.

56. *Custer* (1988), 265.

57. Ibid., 247.

58. Ibid., 250–1.

59. Ibid., 250, 251.

60. Fanon, *The Wretched of the Earth,* 33.

61. Spivak, "Teaching for the Times," 178.

62. Fanon, *The Wretched of the Earth,* 73.

63. *Custer* (1988), 255

64. Ibid., 241.

65. Ibid.

66. Ibid., 240, 194.

67. Ibid., 195–96.

68. Ibid., 53.

69. Ibid., 51.

70. Ibid.

71. Deloria, quoted by Steiner, *The New Indians,* 279.

72. *Custer* (1988), 50.

73. For the argument and theory of Black Power politics, the seminal text is Kwame Ture (formerly Stokely Carmichael) and Charles V. Hamilton, *Black Power: The Politics of Liberation.* Also, for an excellent collection that looks back on the Black Panther Party and its legacy, see Charles E. Jones, *The Black Panther Party (Reconsidered).*

74. Bhabha, "DissemiNation," 306.

75. *Custer* (1988), 182.

76. Ibid., 183.

77. Ibid., 179.

78. Ibid.

79. Ibid., 193.

80. Ibid., 184.

81. Bhabha, *The Location of Culture,* 249 (emphasis in original).

82. Deloria, quoted by Steiner, *The New Indians,* 269, 271.

83. *Custer* (1988), 180, 181.

84. Cobb, "Philosophy of an Indian War," 77.

85. Ibid. For more on the Indian Omnibus Bill, see, along with the Cobb article, Steiner, *Return of the Native,* 252, 264–65.

86. "Let Us Develop a Model for the Former Colonial World," a resolution adopted by a vote of 44–5 by leaders of thirty tribes at the conference called by the U.S. Department of the Interior, Washington D.C., February 1967, printed as an appendix to Steiner, *The New Indians,* 297–98.

87. Clyde Warrior, "We Are Not Free," testimony before the President's Advisory Commission on Rural Poverty, February 2, 1967, reprinted in Josephy, *Red Power,* 87.

88. Ibid., 88–89.

89. "Statement of the Indian members of the National Council of Indian Opportunity," January 26, 1970, Washington, D.C., reprinted in Josephy, *Red Power,* 203–22.

90. Ibid., 206.

91. All of the Nixon quotations are from Nixon's "Special Message on Indian Affairs," July 8, 1970, in Nixon, *Public Papers of the President of the United States,* 564–76.

92. For a broader overview of the Nixon administration's relationship to indigenous people, see Forbes, *Native Americans and Nixon.*

93. Three powerful texts to read on the role of the federal government in suppressing indigenous movements are Peter Matthiessen's *In the Spirit of Crazy Horse* and two books by Ward Churchill and Vander Wall, *Agents of Repression* and *The COINTELPRO Papers.*

94. *Indian Self-Determination and Education Assistance Act,* January 4, 1975, *U.S. Statutes at Large* 88: 2203–14.

95. Vine Deloria Jr., "This Country Was a Lot Better Off When the Indians Were Running It," *New York Times Magazine,* March 8, 1970, 32, 48–52; quote on 52.

96. *Custer* (1988), 263.

97. Ibid., 257.

98. For a much fuller account of the Alcatraz occupation than I will present here, see Johnson, Nagel, and Champagne, *American Indian Activism;* Johnson, *The Occupation of Alcatraz Island;* and Smith and Warrior, *Like a Hurricane.*

99. Indians of All Tribes, "Planning Grant Proposal," 379.

100. Indians of All Tribes, "Proclamation: To the Great White Father and All His People," November 1969, printed in Fortunate Eagle, "Urban Indians and the Occupation of Alcatraz," 61–64, and also in Johnson, *Occupation of Alcatraz Island,* 53–55.

101. Ibid.

102. Castillo, "Reminiscence of the Alcatraz Occupation," in *American Indian Activism,* ed. Johnson, Nagel, and Champagne, 128. Along with the many essays in this edited collection that provide similar personal stories of the experience and influence of the Alcatraz occupation on indigenous people's sense of their political identity, see also the Fortier documentary *Alcatraz Is Not an Island.*

103. Deloria, "Alcatraz, Activism, and Accommodation," 50.

104. For more on the caravan, see Smith and Warrior, *Like a Hurricane,* 143–49, and for more on the occupation, see the same book, chapter 8, "The Native American Embassy," 149–68.

105. For more on the Trail of Broken Treaties, see Morris and Morris, *Encyclopedia of American History,* 528, and Smith and Warrior, *Like a Hurricane,* especially chapters 7 and 8.

106. The document was primarily written by Hank Adams, a Sioux-Assiniboine

who, as a member of the NIYC, was active in the fish-ins of the mid-1960s and in Red Power politics from the late 1960s.

107. Trail of Broken Treaties, "20-Point Position Paper Preamble: An Indian Manifesto for Restitution, Reparations, Restoration of Lands for a Reconstruction of an Indian Future in America," October 31, 1972, http://www.aimovement.org/page45.html.

108. All quotations from the *Twenty-Point Paper* come from Trail of Broken Treaties, *Twenty-Point Position Paper* (Minneapolis: American Indian Movement, October 1972), available at http://www.aimovement.org/page15.html. I will clearly designate in the body of the chapter which quotations come from which of the *Twenty-Point* proposals rather than footnoting each time.

109. *Custer* (1969), 259.

110. Deloria, "Alcatraz, Activism, and Accommodation," 50.

111. *Custer* (1969), 271.

112. *Custer* (1988), vii.

113. Ibid., ix.

114. Ibid., xiii.

115. *Custer* (1969), 258.

6. INDIGENOUS SOVEREIGNTY VERSUS COLONIAL TIME

1. I grant that "casino tribes" is a rather inelegant phrase. By using it, I do not mean to flatten the uniqueness of any tribe's historical, cultural, or political identity. Instead, I use it here for the sake of brevity in a way that pinpoints the similarity (the operation of gaming enterprises) among those tribes that seem to be at the center of many of the most public debates and conflicts over tribal sovereignty in contemporary American politics.

2. "President's Remarks to the Unity Journalists of Color Convention," Washington Convention Center, Washington D.C. (Washington, D.C.: Office of the Press Secretary, The White House, August 6, 2004), http://www.whitehouse.gov/news/releases/2004/08/20040806-1.html. The question was posed by Mark Trahant of the *Seattle Post-Intelligencer.*

3. Henson and Taylor, *Native America at the New Millennium,* 4–5. Emphasis in original.

4. Kalt and Singer, *Myths and Realities of Tribal Sovereignty,* 1.

5. Taylor and Kalt, *American Indians on Reservations,* xi. The specific percentage increases and decreases for nongaming and gaming tribes, respectively, are as follows: Real per capita income: +25 and +36; Median household income: +14 and +35; College graduates: +1.7 and +2.6; Family poverty: –6.9 and –11.6; Child poverty: –8.1 and –11.6; Unemployment: –1.8 and –4.8.

6. Henson and Taylor, *Native America at the New Millennium.* See, in particular, "Figure 1: Measures of Socio-Economic Well-Being" and "Figure 2: Measures of Socio-Economic Distress," 6, 8.

7. Taylor and Kalt, *American Indians on Reservations,* xi.

8. Kalt and Singer, *Myths and Realities of Tribal Sovereignty,* 3.

9. For the long history of Indian gaming as a tradition among many indigenous cultures, and thus a tribal sovereign expression that has some inherent relationship to tribal traditions, see Gabriel, *Gambler Way.*

10. Mason, *Indian Gaming,* 46.

11. *Seminole Tribe of Florida v. Butterworth,* 102 S. Ct. 1717 (1983).

12. *California v. Cabazon Band of Mission Indians,* 107 S. Ct. 1083 (1987).

13. For valuable legal, historical, and political analyses of these cases and of the development of tribal gaming generally, see Eadington, *Indian Gaming and the Law;* Stein, "American Indians and Gambling"; Wilmer, "Indian Gaming"; Mason, *Indian Gaming;* and Light and Rand, *Indian Gaming and Tribal Sovereignty.*

14. *Indian Gaming Regulatory Act of 1988,* P.L. 100-497, U.S. Statutes at Large 102: 2467.

15. Ibid., sec. 2703, Definitions. The other two categories are Class I gaming, which refers to "social games solely for prizes of minimal value" and is under the sole and exclusive sovereign control of the tribe; and Class II gaming, which encompasses nonelectronic "bingo" and "card games" involving pooled wagering (i.e., poker), but not "banked stakes" in which one plays against the house (i.e., blackjack). This form of gaming, according to a law professor specializing in gambling issues, is "regulated primarily by the Indians themselves with some limited supervision by the National Indian Gaming Commission" (I. Nelson Rose. "The Indian Gaming Act and the Political Process," 9). See also *Indian Gaming Regulatory Act of 1988,* sec. 2705, Powers of Chairman (National Indian Gaming Commission), and sec. 2706, Powers of Commission.

16. *Indian Gaming Regulatory Act of 1988,* sec. 2701, Findings (5).

17. Reid, "The Indian Gaming Act and the Political Process," 19. Emphasis added.

18. "Library and Resource Center, Indian Gaming Facts" (Washington D.C.: National Indian Gaming Association), http://www.indiangaming.org/library/index.html#facts.

19. "Growth in Indian Gaming: Tribal Gaming Revenues by Region, Fiscal Year 2003 and 2002" (Washington D.C.: National Indian Gaming Commission), http://www.nigc.gov/nigc/tribes/tribaldata2003/gamerevenue.jsp.

20. "The Casino That Ate California," a flyer produced by Yes on 68: A Fair Share for California, supported by horse racing and card clubs, with major funding by Magna Entertainment Corp. and Pinnacle Entertainment Inc., 2004.

21. Specifically, Proposition 68 proposed that indigenous tribes either agree to surrender 25 percent of their gaming enterprise revenues to the state and comply with state laws and court jurisdiction or lose their exclusive right to offer casino-type games, specifically a form of slot machine known as a video lottery terminal. See Attorney General of California, "Official Title and Summary of Proposition 68: Non-Tribal Commercial Gaming Expansion: Tribal Gaming Compact Amendments. Revenues, Tax Exemptions; Initiative Constitutional Amendment and Statute," http://www.no68and70.org/. Read the Legislative Analyst's Office analysis.

22. For the longer history of tribal gaming politics in California, see Rosenthal, "The Dawn of a New Day?"

23. This was called the Pala compact and became known as the Pala model, named after the first tribe to sign such an agreement. According to Pala Band Chairman Robert Smith in his testimony to the National Gambling Impact Commission, along with the standard provisions concerning regulation, oversight, and environmental impact assessments, the Pala model's selling points for California tribes were the following:

- Tribes have a virtual monopoly on video gaming devices. The compact allows for a unique Tribal video gaming device that is a lottery, not a slot machine.
- Tribes get an increase in video machines allowed but a limit established for the benefit of everyone. . . . The total number of video lottery devices that will be permitted to operate on Indian lands for the first year is 19,900, an increase of 50% from the total number now in operation. . . . [Every federally recognized tribe gets] a base allocation of 199 devices, but by leasing rights from other tribes can have up to 75 machines. This temporary ceiling assures prosperity to all California tribes and assures the people of California that Indian gaming will not turn this state into another Nevada or New Jersey.
- Every federally recognized tribe . . . can, if it chooses, lease [its rights to any and all of its allocated 199 video devices] to another tribe more advantageously located for $5000 per device per year. This amounts to about $1,000,000 in annual revenue to any non-gaming tribe.
- A most favored nation provision, which means that if any later tribe conducts a more favorable compact provision than what Pala or other compacting Tribes enjoy, then they automatically get the benefit of the new and better provision.

Robert Smith, "Testimony before the National Gambling Impact Study Commission, July 29, 1998, San Diego (transcript available at the National Gambling Im-

pact Study Commission Web site, http://govinfo.library.unt.edu/ngisc/meetings/jul2998/p210729.html).

24. According to the state's official summary, Proposition 5 "Specifies terms and conditions of mandatory compact between state and Indian tribes for gambling on tribal land"; "mandates Governor to sign compact upon request by tribe [and] permits alternative compacts only if consistent with prescribed compact"; "permits gambling devices and lotteries at tribal casinos"; "amends California law to allow slot machines and banked card games at tribal casinos"; "provides for contributions to trust funds benefiting nongaming tribes, statewide emergency medical care programs, and programs benefiting communities near tribes, if tribes retain monopoly on authorized gambling"; and "provides for reimbursement of state regulatory costs." California Secretary of State, Vote 98, "Proposition 5: Official Title and Summary Prepared by the Attorney General: Tribal-State Gaming Compacts. Tribal Casinos Initiative Statute," http://vote98.ss.ca.gov/VoterGuide/Propositions/5.htm.

25. By 2003, sixty-one tribes had gaming compacts with the state, with fifty tribes operating fifty-one casinos. See "Native American Gaming," report prepared by Merrill Lynch Global Securities Research and Economic Group, Global Fundamental Equity Research Department, New York, report 18184, February 3, 2003, 11.

26. Steve Scott and Melissa Mikesell, "Follow the Money," *California Journal* 30, no. 10 (October 1, 1999). Accessed through LexisNexis.

27. In August 1999, the California Supreme Court ruled Proposition 5 unconstitutional for contravening a 1984 amendment to the State's constitution prohibiting "casinos of the type currently operating in Nevada and New Jersey."

28. Kevin Fagan, "Big Casinos Move Fast to Cash In," *San Francisco Chronicle,* March 9, 2000, A1.

29. Goldberg and Champagne, "Ramona Redeemed?" 58.

30. Ibid., p. 60.

31. The San Manuel Band contributed $29 million, while the Morongo Band of Mission Indians and the Viejas Band of Kumeyaay each gave $13 million to the campaign. For the list of the leading political contributors of 1998, with the San Manuel Band topping the list, see Dan Morain, "Wealth Buys Access to State Politics," *Los Angeles Times,* April 18, 1999, A1.

32. Ken Ramirez, "A letter on Sovereignty," February 1998, http://www.sanmanuel.com/KRamirez2.html.

33. Goldberg and Champagne, "Ramona Redeemed?" 52.

34. Richard Maulin, "Passing California's Proposition 5—Indian Gaming Initiative," *Campaigns and Elections,* February 1999.

35. Jeff Dedivic (president, California Firefighters Association), Les Sourisseau

(past president, California Police Chiefs Association), and Daniel Tucker (Californians for Indian Self-Reliance), "Rebuttal to Argument against Proposition 5," *Vote98—VoterGuide* (Sacramento: California Secretary of State), http://vote98.ss.ca.gov/VoterGuide/Propositions/5norbt.htm.

36. Ibid. The full quote and figures are as follows: "California's Indians are truly pulling their own weight and paying their own way, citing a 68% drop in public assistance expenditures on reservations, a concomitant savings of around $50 million to the state government, and a $120 million increase in state and local tax revenues as a result of tribal gaming."

37. "Press Release: New Yes on 5 Ads Highlight Strength of Indian Support for Proposition 5" (Yes on 5: Californians for Indian Self-Reliance campaign, September 21, 1998).

38. Ken Ramirez, quoted in "Press Release: Yes on 5 Coalition Announces Over 220,000 Californians Stand in Support of Proposition 5," (Yes on 5: Californians for Indian Self-Reliance campaign, September 10, 1998).

39. William Campbell, "Gaming Tribes Don't Need Proposition 5 to Prosper," *Union Tribune Publishing,* October 28, 1998, http://www.pechanga.net/gaming_tribes_don.htm.

40. See note 35 for Proposition 5 plan.

41. Campbell, "Gaming Tribes Don't Need Proposition 5 to Prosper."

42. Griselda Barajas (small business owner), Jack Gribbon (California political director, HERE, AFL-CIO), and Sheriff Glen Craig (former president, California Police Officers' Association), "Argument Against Proposition 5," *Vote98—VoterGuide* (Sacramento: California Secretary of State), http://vote98.ss.ca.gov/VoterGuide/Propositions/5noarg.htm.

43. Stand Up for California, "The Case against Casino Gambling: An Analysis of Proposition 5" (Sacramento, The Casino Gambling Initiative, 1998), http://standup.quiknet.com/proposition_5/case_against.html.

44. Resident quoted in "A Gamble That Paid Off," *California Journal* 29, no. 12 (December 1, 1998). Accessed through LexisNexis.

45. "Proposition 5's Legacy—California Indian Gaming Wars Are Changing the Face of Initiative Politics," *California Journal* 30, no. 10 (October 1, 1999). Accessed through LexisNexis.

46. These activists were Mark Abernathy and Ted Costa, and they sought to collect petitions through their Web site, http://www.Davis_Recall.com. They started discussing such a recall effort on November 17, 2002, not even a month after Davis's reelection. See Kousser, "The California Governor's Recall," 32.

47. There were 7.5 million total votes in the 2002 gubernatorial race, which meant that 897,158 signatures were needed to qualify a recall for the ballot. Kevin

Shelley (California secretary of state), "Frequently Asked Questions about Recalls," 2003, http://www.ss.ca.gov/elections/recall_final.pdf, 8.

48. Other states usually have a threshold of 25 percent or higher. For this comparative state information as well as the general history of recalls in California, see Shelley, "Frequently Asked Questions"; Miller, "The Davis Recall and the Courts"; and Bowler and Cain, "Introduction—Recalling the Recall," 7. For the lack of success historically in efforts to place gubernatorial recalls on the ballot prior to 2003, see Bowler and Cain's article and Baldassare, "The Role of Public Opinion on the California Governor's Recall in 2003," 166.

49. Bowler and Cain, "Introduction—Recalling the Recall," 8.

50. In their detailed research on campaign coverage in the major California newspapers, Brian K. Arbour and Danny Hayes quantified the increase in coverage. For example, the *Los Angeles Times* "published 58% more stories about the recall in the last month of the campaign that it did in the last month of the 2002 contest." Arbour and Hayes, "Voter Turnout in California Recall?" 204–5, including table 5.

51. California Secretary of State, "Statement of Vote, 2003 Statewide Special Election, October 7, 2003, Vote Summaries, Official Declaration of the Result on Statewide Measures" (Sacramento, California Secretary of State, 2003), http://www.ss.ca.gov/elections/sov/2003_special/sum.pdf, 3.

52. David W. Moore, "Schwarzenegger Leads Gubernatorial Race," *Gallup News Services,* August 11, 2003, http://www.gallup.com/poll/content/print.aspx?ci=9013.

53. Frank Newport, "California Recall, Public Schools, the Economy, Civil Rights, Top Colleges," *Gallup News Services,* August 26, 2003, http://www.gallup.com/poll/content/print.aspx?ci=9112.

54. David W. Moore, "The California Recall: A Tale of Three Polls," *Gallup News Service,* September 2, 2003, http://www.gallup.com/poll/content/print.aspx?ci=9184. This movement and general trend in the polls at the time is also substantiated by Shaw, McKenzie, and Underwood, "Strategic Voting in the California Recall Election," 227, figure 2: "Second Ballot Choice in California Recall Election."

55. "*Los Angeles Times* Poll Alert," *Los Angeles Times,* August 24, 2003, study 486, 2, 3. Accessed through LexisNexis.

56. Christopher Parkes, "Schwarzenegger States His Goal," *Financial Times,* September 4, 2003, 2.

57. Barry Witt, "Critics Attack American Indian Tribe's Donation to Bustamante," *San Jose Mercury News,* September 3, 2003; Barry Witt, "Schwarzenegger Scores $4 Million in Campaign Contributions," *San Jose Mercury News,* September 11, 2003.

58. Christian Berthelsen, "$80 Million in Contributions in 75-Day Recall Campaign," *San Francisco Chronicle,* October 11, 2003, A1.

59. Margaret Talev, "Two Candidates in California Recall Election Offer Support for Tribal Gaming," *Sacramento Bee,* August 29, 2003. Accessed through Factiva.

60. For this controversy over tribal donations and the uncertain status of California state campaign finance law, see Mark Simon and Zachary Coile, "State Urged to Shut Loophole in Campaign Law: Tribe's Donation to Bustamente at Issue," *San Francisco Chronicle,* September 4, 2003, A10.

61. Barry Witt, "Schwarzenegger Takes Heat for Loan Loophole," *Knight-Ridder Tribune Business News,* October 3, 2003, 1. After the election, a state Superior Court judge decided that Schwarzenegger's campaign did violate the state's campaign laws by engaging in the loan in the first place as well as trying to raise money to repay the loan instead of Schwarzenegger's repaying it himself. See Tom Chorneau, "Judge Calls Schwarzenegger's $4.5 Million in Campaign Loans Illegal," *Associated Press,* January 27, 2004, and Alexa H. Bluth, "Judge Targets Governor's Bank Loan: Stop Raising Money to Repay It, Capital Jurist Orders," *Sacramento Bee,* January 27, 2004, A1.

62. For a critique given during the campaign of Schwarzenegger's distinction between seeing tribes and unions as special interests but not corporations, see John Marelius, "Contradictions Abound for Schwarzenegger," *San Diego Union-Tribune,* August 31, 2003, A1. Schwarzenegger gave his own campaign around $10 million through direct contributions and loans. For this and a list of the top ten donors to his 2003 campaign, see Berthelsen, "$80 Million in Contributions." For further confirmation of these figures and Schwarzenegger's ties to "longtime Republican donors, many of whom will have interests in legislation and decisions made by the governor and his administration," see Dan Morain, "Tracking Money in the California Recall Election: Newspapers Miss a Major Element of Campaign Coverage If They Give Short Shrift to Campaign Money," *Nieman Reports,* Winter 2003, 63.

63. Don Sipple, statement made during Panel IV, The Governor's Race, at California's 2003 Governor's Race: The Recall, a conference hosted by the University of California–Berkeley, October 18, 2003. A Web stream of Panel IV can be accessed at http://www.igs.berkeley.edu/events/recall.html.

64. Ibid.

65. Carla Marinucci, "Actor Reaches Top in a Mere 9 Weeks," *San Francisco Chronicle,* October 8, 2003, A1.

66. "*Los Angeles Times* Poll Alert." In fact, on the "special interest" question, Bustamante came in fourth behind former Baseball Commissioner Peter Ueberroth (12%) and McClintock (7%).

67. For more on these issues as well as others pertaining to the process and outcome of the recall, see the articles in *American Politics Research* 33, no. 2 (March 2005) and *PS: Political Science and Politics* 37, no. 1 (January 2004). Both journals dedicated all or a significant part of those issues to articles on the recall. Not a single one of the articles devotes more than a paragraph, and some not even a sentence or a word, to the impact of the casino tribes on the campaign.

68. "*Los Angeles Times* Poll Alert." In questions 30 and 31, the two pertinent questions posed to voters were (1) "Does knowing that Bustamante has taken campaign contributions from Indian tribes make you more or less likely to vote for him for governor, or does that not make a difference one way or the other?" and (2) "Does knowing that Schwarzenegger has taken campaign contributions from donors with business before the state government make you more or less likely to vote for him for governor, or does that not make a difference one way or the other?"

69. Statement by Garry South during "Panel IV, The Governor's Race." On the idea that large tribal contributions were a key player in Bustamante's failed campaign, a generally accepted view in political, academic, and journalism circles, see Kousser, "The California Governor's Recall," 34, and Thomas Higgins, "The 'Govinator': Report from California," *Commonweal* 130, no. 18 (October 24, 2003): 6.

70. Michelle DeArmond, "Schwarzenegger Campaign in Riverside; Republican Hopeful Vows to Meet with Tribes," *Press-Enterprise,* September 5, 2003, A01.

71. Anthony York, "Movers & Shakers: Native American Tribes," *California Journal* 35, no. 9 (September 1, 2004): 43.

72. Carla Marinucci, "Schwarzenegger Spars with Davis on Gaming: Candidates Take on More Aggressive Tone," *San Francisco Chronicle,* August 31, 2003, A1.

73. "Analysis of New Arnold Schwarzenegger Ads," *Associated Press,* September 23, 2003.

74. The language of the "fair share" had been articulated previously in other states, although obviously never with as much notoriety and thereby impact as in the Schwarzenegger ads. For an earlier version of the "fair share" argument and discourse, see Thompson and Schmidt, "Not Exactly a Fair Share."

75. Jacob Coin, quoted in "Schwarzenegger Far Off the Mark on Tribal Governments," CNIGA press release, September 23, 2003, http://www.cniga.com/media/pressrelease_detail.php?id=40.

76. Almost all tribal revenues earned through casino operations are used for services for tribal members, as required by the terms of the IGRA, which stipulates that revenues from any form of tribal gaming "are not to be used for purposes other than" . . . "to fund tribal government operations or programs," . . .

"to provide for the general welfare of the Indian tribe and its members," . . . "to promote tribal economic development," . . . "to donate to charitable organizations," or "to help fund operations of local government agencies." *Indian Gaming Regulatory Act of 1988,* sec. 2710, Tribal Gaming Ordinances.

77. CNIGA press release, September 23, 2003. The figure of $130 million is cited in "Tribal Leaders Fire Back at Schwarzenegger over 'Fair Share' Ad," *San Diego Union-Tribune,* September 25, 2003, A16.

78. James P. Sweeney, "High Stakes Gambling," *California Journal,* 35, no. 7 (July 2004): 28.

79. Joseph Perkins, "Gaming Tribes Have Gone Too Far," *San Diego Union-Tribune,* September 19, 2003, B7.

80. "Editorial: Our View, Recall Winner: Indians," *Press-Enterprise,* September 3, 2003, A10.

81. "Editorial: Our View, Winners and Losers," *Press-Enterprise,* October 9, 2003, A10.

82. *Indian Country Today* is owned and operated by the Oneida nation, located in upstate New York. The paper's perspective is not that of the Oneida nation, however, but that of indigenous people generally, with journalists and columnists from many tribes and nations around the country and with stories, articles, and columns addressing indigenous people's concerns through the United States as well as in other countries.

83. One Nation United, "Who We Are," http://www.onenationok.com/.

84. The symmetry in wording is a product of the fact that in January 2005 One Nation United and United Property Owners announced that they would merge under the single banner of One Nation United. Since that time, they have merged, although the documents cited in this chapter preexisted this merger, and thus I use quotations attributed to each group at that time.

85. United Property Owners, "The Problem," http://unitedpropertyowners.org/index.html.

86. Citizens Equal Rights Alliance, "Interest of Amicus Curiae," and "CERF and CERA's Mission Statement," *CERA News* 9, no. 1 (January 2004): 2. CERF was established by CERA.

87. All three organizations are registered as 501(c)(4) nonprofits. One Nation United has been based out of Oklahoma, United Property Owners out of Washington State, and CERA out of Montana. On estimates of membership, Barb Lindsay, "new national director of One Nation United, says her group has more than 300,000 members in all 50 states." Eric Leach, "Group Seeks Indian Equity," *Knight Ridder Business News,* February 12, 2005, 1. This figure of 300,000 does not include CERA. Accounting for CERA brings the numbers up to possibly 450,000 or more. See Julie Titone, "Flexing Too Much Muscle? Some Non-Indians Feel

Threatened by Tribal Governments," *Spokesman Review,* December 25, 2000, A1; Grossman, "Treaty Rights and Responding to Anti-Indian Activity"; and Elaine Willman, "CERA Notes: We Go, Grow and Gain Ground!" *CERA News* 8, no. 2 (July 2003), http://www.citizensalliance.org.

88. Rebecca L. Adamson, "Anti-Federal Indian Policy Groups Make a Lame Showing but Then Again . . . ," *Indian Country Today,* August 4, 2004, A3.

89. For an important collection of essays on anti-Indianism, see Cook-Lynn, *Anti-Indianism in Modern America.* Cook-Lynn's wide range of essays offers evidence of the often but not always implicit articulations of anti-Indianism in, for example, cultural productions such as artistic and literary forms, in scholarship produced by indigenous and nonindigenous scholars, in forms of legal reasoning, and in political conflicts such as that over the Sioux nation's Black Hills territory in South Dakota. See especially the author's comprehensive definition of anti-Indianism, the first component of which is this: "It is the sentiment that results in unnatural death to Indians. Anti-Indianism is that which treats Indians and their tribes as though they don't exist, the sentiment that suggests that Indian nationhood (i.e., tribalism) should be disavowed and devalued" (x). In this regard, I differ slightly from Cook-Lynn in that I see antitribalism as a position that serves as the central meeting point for, and thus is in an important way distinct from, expressly racist anti-Indian positions and those positions that seem to be sincerely defined by concerns about development, in particular casino development. Still, Cook-Lynn's attentiveness to the ubiquitous and pernicious presence of anti-Indian sentiment in America informs my own attentiveness to the same concerns, if from a slightly different argument and with a focus on a different set of political actors and institutions.

90. For an excellent analysis of the development of this discursive strategy, see Toole, *Drumming Up Resentment: The Anti-Indian Movements in Montana.* As the title suggests, this study is focused on what has occurred in Montana, but the activities in that state were and remain key sources of contemporary antitribalist politics. Toole notes the change in the political discourse as these groups evolved and adapted: "Anti-Indian activists say they have nothing against Native Americans. They say their complaint is with the system of laws, rules, and regulations which govern the relationship between Native American people, tribal members, their non-Indian neighbors and the U.S. government" (6).

91. Elaine Willman, "From CERA's Chair: In between our Splendid CERA Conferences," *CERA News,* 10, no. 1 (April 2005): 2.

92. "National Update," United Property Owners Web site, http://unitedpropertyowners.org/issues.htm.

93. See, for example, Grossman, "Treaty Rights and Responding to Anti-Indian Activity"; Robert Taylor, " 'Hate Group' Member Seeks GOP Nod," *Indian*

Country Today, February 27, 2002; Dave Lundgren, "CERA: The Ku Klux Klan of Indian Country," *Indian Country Today,* June 22, 2004; and Editors Report, "Educate America or Perish Is Challenge for Indian Country," *Indian Country Today,* November 12, 2004. All accessed through http://www.indiancountry.com.

94. Kurt Chandler, "Some Whites Say 19th-Century Treaties Should Be Set Aside," *Minneapolis–St. Paul Star-Tribune Newspaper of the Twin Cities,* April 17, 1998, A23, and Grossman, "Treaty Rights and Responding to Anti-Indian Activity."

95. Osawa, *Lighting the Seventh Fire.*

96. Protect Americans' Rights and Resources, *American Rights Guardian Update* 7, no. 2 (Spring 2004): 1.

97. David Yeagley, "Why Communism Loves Indian Extremists," *American Rights Guardian Update* 7, no. 2 (Fall 2003): 7–8.

98. *Elaine Speaks Out,* PARR Equal Rights and Treaty Rights Link's Page, http://www.parr1.com/ElaineWillman/Elaine%20Willman.htm.

99. Toole notes the connection between the expressly anti-Indian groups in Montana and CERA (*Drumming Up Resentment,* 7, 22–23, 38, 40, 43).

100. Elaine Willman, "CERA Notes," *CERA News* 8, no. 1 (September 2003), http://www.citizensalliance.org.

101. "Arnold Says Tribes Must Pay 'Fair Share,'" *Update: United Property Owners,* Winter 2004, 4.

102. Golab, "Arnold Schwarzenegger Girds for Indian War," 39.

103. "Arnold Says Tribes Must Pay 'Fair Share,'" 4.

104. Ibid.

105. Golab, "Arnold Schwarzenegger Girds for Indian War," 40.

106. Ibid., 36–41, 49, and Golab, "The Festering Problem of Indian 'Sovereignty,'" 26–31.

107. The American Enterprise Institute was founded in 1943, with listed fellows that include Newt Gingrich, former speaker of the House, and Lynne Cheney, conservative author and wife of Vice President Dick Cheney.

108. Excerpt of "Arnold Schwarzenegger Girds for Indian War," in *Update,* Winter 2004, 8, and excerpt of "The Festering Problem of Indian 'Sovereignty'" in *Update,* December 2004, 11.

109. Golab, "Arnold Schwarzenegger Girds for Indian War," 36, 37.

110. Ibid., 39, and Golab, "The Festering Problem of Indian 'Sovereignty,'" 28–29.

111. Golab, "Arnold Schwarzenegger Girds for Indian War," 49.

112. Golab, "The Festering Problem of Indian 'Sovereignty,'" 29.

113. Peterman was President of UCE until 2004. For his listing as UCE presi-

dent and UPO adviser, see "Advisory Committee Members," *Update,* Winter 2004, 1.

114. Scott Peterman, quoted in Golab, "The Festering Problem of Indian 'Sovereignty,'" 29.

115. *Trade and Intercourse Act,* July 22, 1790, *U.S. Statutes at Large* 1: 137–38, excerpted in Prucha, *Documents of United States Indian Policy,* 15.

116. For this policy in the federal code, see 25 U.S.C. 177.

117. Article 2 of "Treaty with the Six Nations, 1794," November 11, 1794, U.S. Statutes at Large 7: 44, proclamation, January 21, 1795, in *Indian Affairs,* vol. 1 , ed. Kappler, 35. The treaty is commonly referred to as the Treaty of Canandaigua. For more on this treaty, especially contemporary Haudenosaunee understandings of it, see Jemison and Schein, *Treaty of Canandaigua,* 296–98.

118. "Treaty with the New York Indians," January 15, 1838, U.S. Statutes at Large 7: 550, proclamation, April 4, 1840, in *Indian Affairs,* vol. 1, ed. Kappler, 502–16.

119. Ransom Gillett, quoted in *City of Sherrill, New York, Petitioner v. Oneida Indian Nation of New York et al.,* 161 L. Ed. 2d 396. For more on Gillett's critical role in the development and ratification of the Treaty of Buffalo Creek, a role for which he is deeply criticized for his manipulation of the New York Indians, see Laurence M. Hauptman, *Conspiracy of Interests,* 186–90.

120. *Oneida Nation v. Sherrill,* 337 F.3d 139.

121. All these briefs are available on the Web site of the Native American Rights Fund, Court Watch: Tribal Supreme Court Project, *Sherrill v. Oneida Nation of New York* (docket 3-855), http://doc.narf.org/sc/index.html.

122. See ibid., "Brief for the United States as Amicus Curiae Supporting Respondents," 1.

123. *City of Sherrill, New York, Petitioner v. Oneida Indian Nation of New York et al.,* 161 L. Ed. 2d 406.

124. *County of Oneida v. Oneida Indian Nation,* 470 U.S. 226.

125. *World Book Dictionary* (Chicago: Doubleday, 1979).

126. *City of Sherrill, New York, Petitioner v. Oneida Indian Nation of New York et al.,* 161 L. Ed. 2d 394.

127. Ibid., 403.

128. Ibid., 401.

129. Robert Porter, quoted in "Supreme Court: Oneidas Too Late; Sherrill Declares Victory, Wants Taxes," the *Syracuse (NewYork) Post-Standard,* March 30, 2005, A1.

130. *City of Sherrill, New York, Petitioner v. Oneida Indian Nation of New York et al.,* 161 L. Ed. 2d 403, note 11. Emphasis added.

131. Ibid., 392.

132. Ibid., 389.

133. Ibid., 404. The majority's citing of *Yankton Sioux* points to the fact that the *Sherrill* decision was consistent with many contemporary Supreme Court decisions restricting tribal sovereignty. This was so clearly the case that the lone dissenter, Justice John Paul Stevens, cited two such cases in a footnote of his dissenting opinion. He did so to assure the majority that tax immunity for the *Oneida* did not portend disaster for state and federal sovereignty because the court had already set down restrictive parameters for the expression of tribal sovereignty. The two cases he cited and commented on in note 6 were (1) *Atkinson Trading Co. v. Shirley,* 532 U.S. 645 (2001), which denied tribal jurisdiction in part because the tribe could not "assert a landowner's right to occupy and exclude" over the land in question, and (2) *Brendale v. Confederated Tribes and Bands of Yakima Nation,* 492 U.S. 408, 444–45 (1989), in which the court decided "Because the Tribe no longer has the power to exclude nonmembers from a large portion of this area, it also lacks the power to define the essential character of the territory [through zoning]." Furthermore, though not cited in this decision, similar modern and notable precedents that accord with the *Sherrill* decision include *Nevada, et al., v. Floyd Hicks, et al.,* 533 U.S. 353 (2001), in which the decision reads: "The tribal court held not to have jurisdiction over civil claims against state officials who entered tribal land to execute search warrant against tribal member suspected of violating state law outside reservation," and *Oliphant v. Suquamish Indian Tribe et al.,* 435 U.S. 191 (1978), in which the court "held that (1) by submitting to the overriding sovereignty of the United States, Indian tribes gave up their power to try non-Indian citizens of the United States, except in a manner acceptable to Congress, and (2) therefore, Indian tribal courts did not have inherent jurisdiction to try and punish non-Indians." The point here is that the *Sherrill* decision should not be seen as an aberration. For more on the Court's history in this regard, see Wilkins, *American Indian Sovereignty and the U.S. Supreme Court,* and Williams, *Like a Loaded Weapon.*

134. *City of Sherrill, New York, Petitioner v. Oneida Indian Nation of New York et al.,* 161 L. Ed. 2d 388.

135. Pommersheim, *Braid of Feathers,* 20–21. In this text, see also pages 79–98 for Pommersheim's excellent discussion and analysis of the different levels and forms of jurisdictional overlap produced by the checkerboarding of reservations through U.S. Indian policy. For this same reason, see also Wirth and Wickstrom, "Competing Views," 509–25.

136. *City of Sherrill, New York, Petitioner v. Oneida Indian Nation of New York et al.,* 161 L. Ed. 2d 393.

137. Ibid., 407, 409.

138. " 'Pragmatic Approach': Supreme Court Ruling Brings Order to a Chaotic Situation," editorial, *Post Standard/Herald-Journal,* March 31, 2005, A14.

139. "Official Reaction to the Supreme Court Decision on *Sherrill v. Oneida Nation,*" *Post Standard/Herald-Journal,* March 30, 2005, A9.

140. Citizens Equal Rights Alliance, "A Supreme Court Victory for a Tiny New York Town Will Have Impact across the Country," *U.S. Newswire,* March 29, 2005.

141. Upstate Citizens for Equality Web site, http://www.upstate-citizens.org/ (accessed March 30, 2005).

142. "Judicial Activism Defines High Court's Oneida Ruling," *Indian Country Today,* April 6, 2005, A2.

143. Homi Bhabha, writing in Bhabha and Comaroff, "Speaking of Post-coloniality," 17.

CONCLUSION

1. Duncan Ivison, Paul Patton, and Will Sanders, "Introduction," *Political Theory and the Rights of Indigenous Peoples,* 19.

2. Cassidy, "Sovereignty of Aboriginal Peoples," 99.

3. Biolsi, "Imagined Geographies," 240.

4. Bartelson, *A Genealogy of Sovereignty,* 4.

5. Murphy, "The Sovereign State System," 87, 107.

6. Porter, "A Proposal to the Hanadaganyas," 961.

7. Ibid., 984.

8. Alfred, *Peace, Power, and Righteousness,* 58.

9. Ibid., 56. Emphasis added.

10. Ibid., 63.

11. Kaplan, *The Anarchy of Empire in the Making of U.S. Culture,* and Singh, *Black Is a Country.*

12. Glazer, *We Are All Multiculturalists Now.*

13. Ibid., 166.

14. Cooppan, "The Ruins of Empire," 97.

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